

# DOCTRINA ESTRANGEIRA

## COSMOPOLITANISM AND HUMAN RIGHTS:

A CALL FOR THE MONITORING OF ECONOMIC,  
SOCIAL AND CULTURAL RIGHTS IN BRAZIL

## COSMOPOLITANISMO Y DERECHOS HUMANOS:

UN LLAMADO A EL MONITOREO DE LOS DERECHOS  
ECONÓMICOS, SOCIALES Y CULTURALES EN BRASIL

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Recebido em: 12-3-2014

Aprovado em: 8-9-2015

Sumário: Introduction; 1.Cosmopolitanism, Democracy and Social Authoritarianism in Brazil; 2.The Monitoring of ESCR in Brazil; 3.The Role of Human Rights Networks in the Monitoring of ESCR in Brazil; Conclusion; Bibliography.

### Abstract:

This paper aims at advocating for the monitoring of Economic, Social and Cultural Rights (ESCR) in Brazil based on *cosmopolitan social theory* (Held, 2010). It addresses the relationship among cosmopolitanism, democracy and social authoritarianism, emphasizing the importance of the redemocratization of Brazil for the establishment of human rights into domestic regime. The analysis has been conducted considering the work

### Resumen:

Este trabajo tiene como objetivo la defensa de el monitoreo de los derechos económicos, sociales y culturales (DESC) en Brasil, a la luz de la teoría social cosmopolita (Held, 2010). Se ocupa de la relación entre el cosmopolitismo, la democracia y el autoritarismo social, insistiendo en la importancia de la redemocratización de Brasil para el establecimiento de un régimen nacional de derechos humanos. El análisis se llevó a cabo teniendo en cuenta el trabajo

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of Held (2010), Levy (2010), Risse, Ropp, Sikkink (2013 and 1999), Dagnino (2007, 2001, 2000, 1994 and 1993), Risse and Sikkink (1999) and Keck and Sikkink (1998). Further, the paper introduces the reasons for the progressive implementation of ESCR as well as for its monitoring in Brazil. Some consideration is given to the work of Eide (1995) and Eide and Rosas (1995). Then, it sheds light on the role played by social movements and human rights networks in the monitoring of ESCR in Brazil. The analysis has been made considering the work of Brysk (1993) and Keck and Sikkink (1998). Finally, the paper argues that the *monitoring of rights* as a method of improving human rights protection might be an important tool by transnational and national advocacy networks in their activities for overcoming social authoritarianism and achieving human rights changes within Brazil.

**Keywords:**

Cosmopolitanism; Human Rights; Monitoring of Economic; Social and Cultural Rights (ESCR).

de Held (2010), Levy (2010), Risse, Ropp, Sikkink (2013 y 1999), Dagnino (2007, 2001, 2000, 1994 y 1993), Risse y Sikkink (1999) y Keck y Sikkink (1998). Además, el artículo presenta las razones de la implementación progresiva de los DESC, así como para su seguimiento en Brasil. Así se tiene en cuenta el trabajo de Eide (1995) y Eide y Rosas (1995). Además, el artículo arroja luz sobre el papel jugado por los movimientos sociales y redes de derechos humanos en el monitoreo de los DESC en Brasil. El análisis aquí se hace teniendo en cuenta el trabajo de Brysk (1993) y Keck y Sikkink (1998). Por último, el trabajo sostiene que el monitoreo de los derechos, como un método para mejorar la protección de los derechos humanos, puede ser una herramienta importante en las redes transnacionales y nacionales de *advocacy* en sus actividades para superar el autoritarismo social y el logro de los cambios de los derechos humanos en Brasil.

**Palabras-clave:**

Cosmopolitanismo; Derechos Humanos; Monitoreo de los Derechos Económicos, Sociales y Culturales (DESC).

**Introduction**

This paper aims at advocating for the monitoring of economic, social and cultural rights (ESCR) in Brazil from the analysis of the Brazilian social struggles under the *cosmopolitan social theory* (HELD, 2010). It calls for the monitoring of ESCR while at the same time acknowledges the changes in the field of human rights formalization since the redemocratization of the country. The *monitoring of rights* as a method of improving human rights protection might be an important tool to transnational and national advocacy networks in their activities for achieving human rights changes within Brazil. This may not only contribute to the establishment of effective human rights into domestic regime, but it also indicates that Brazilian social struggles are both being influenced by/and influencing regional and global actors, spheres and/or practices.

The Brazilian reality has been deeply marked by the paradox of dominant *versus* dominated once various contradictions have been unveiled through the history of Brazil, particularly regarding the execution of indigenous peoples, with the elimination of entire ethnic groups; enslavement of Africans and native Indigenous people by Portuguese colonizers; various forms of social inequalities; political and economic domination exercised by elite groups that have controlled dominated sectors; poverty; and so on (DAGNINO, 2007, 2001, 1994, and 1993; HOLANDA, 1995; PRADO JR, 1996). Hence, the formation of Brazilian society has been marked by social authoritarianism (DAGNINO, 2007, 2001, 1994, and 1993). In other words, there are plenty of historic facts that prove human rights have been violated in Brazilian lands, particularly after the South American invasion by Europeans (MARTINS FILHO, 2011; BUENO, 2010; DEL PRIORE and VENÂNCIO, 2010; MEADE, 2010; MCCANN, 2008; LUNA and KLEIN, 2006; GASPARI, 2003; CAMPOS, 1988). As inferred, such a scenario has been presented through Brazilian history and, therefore, persists nowadays (Carbonari, 2007). It follows that the vast majority of Brazilians do not have effective mechanisms to satisfy their basic needs<sup>2</sup> and fully realize their fundamental rights (Tertó Neto, 2010; Abramovay et al, 2002).

Nonetheless, it should be considered that the universalization of human rights – through the implementation of international pacts, treaties and covenants that influence national legislative processes of those countries which have ratified them – has generated the *positivization*<sup>3</sup> of human rights into domestic legal systems. In this regard, two key issues arise within the debate. The first issue refers to the fact that the reception of international human rights norms into the Brazilian Legal System is not enough to solve problems related to human rights violations in the country.<sup>4</sup> In order to those norms to produce any practical results, not only is their reception required, but also, and more importantly, their

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<sup>2</sup> Those related to their economic, social and cultural rights.

<sup>3</sup> This paper considers *positivization* as a formal and legal procedure through which international norms are implemented into national legal systems, whereas *socialization* would be a socio-political process through which international human rights norms are socialized within national States. See Risse and Sikkink (1999) and Mendes; Coelho and Branco (2008).

<sup>4</sup> Although Brazil has ratified the majority of human rights treaties such as CAT - *Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (28 Sep 1989), CAT-OP - *Optional Protocol of the Convention against Torture* (12 Jan 2007), CCPR - *International Covenant on Civil and Political Rights* (24 Jan 1992 (a)), CCPR-OP2-DP - *Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty* (25 Set 2009 (a)), CED - *Convention for the Protection of All Persons from Enforced Disappearance* (29 Nov 2010), CEDAW - *Convention on the Elimination of All Forms of Discrimination against Women* (01 Feb 1984), CERD - *International Convention on the Elimination of All Forms of Racial Discrimination* (27 Mar 1968), CESC - *International Covenant on Economic, Social and Cultural Rights* (24 Jan 1992 (a)), CRC - *Convention on the Rights of the Child* (24 Sep 1990), CRC-OP-AC - *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (27 Jan 2004), CRC-OP-SC - *Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography* (27 Jan 2004), and CRPD - *Convention on the Rights of Persons with Disabilities* (01 Aug 2008), it has not yet ratified the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*. Office of the High Commissioner for Human Rights (OHCHR) <<https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>> accessed 1 January 2015.

principles and potential effects must be applied to concrete cases in reality.<sup>5</sup> The second issue concerns the fact that the paradox of “constitutional formalism *versus* material exercise of fundamental rights”<sup>6</sup> (TERTO NETO, 2010; GONCALVES, 2006) strengthens the understanding that social movements are crucial in the search for social change in the country, and in this way, they have played a decisive role in organizing and conducting historical fights for the full enjoyment of fundamental rights in Brazil (GONCALVES, 2006; DAGNINO, 2007, 2001, 2000; GOHN, 1997; DOIMO, 1994; SKIDMORE, 1988; SMITH, 1987).<sup>7</sup> Therefore, it is within such a context that this paper is presented. The second section addresses the relationship among cosmopolitanism, democracy and social authoritarianism, emphasizing the importance of the redemocratization of Brazil for the establishment of human rights into domestic regime. The analysis has been conducted considering the work of Held (2010), Levy (2010), Risse and Sikkink (2002) and Keck and Sikkink (1998). The third section introduces the reasons for the progressive implementation of ESCR as well as for its monitoring in Brazil. In this section some consideration is given

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<sup>5</sup> This paper accepts that the reception of international human rights norms into the Brazilian Juridical System is a complex procedure due to legal and political formalities derived from the Constitutional Amendment n° 45, 2004 (CA n° 45/2004). In this respect, there has been a debate between *Monists*, who claim that International Law and Domestic Law compose a unified legal order, and *Dualists*, who claim that International Law and Domestic Law are two distinct legal orders. In the Brazilian case, there seems to exist a kind of “mixed system in which to international treaties for the protection of human rights – by force of Article 5°, § 1° – is applied the automatic incorporation systematic, whereas to the other international treaties is applied the legislative incorporation systematic, to the extent in which it has demanded the intervention of a normative act to make the international treaty mandatory in the domestic legal order. In this regard, with the exception of human rights treaties, there is no constitutional dispositive in the Constitutional Text that faces the question of the relationship between International Law and Internal Law. That is, there is no explicit mention to neither currents of thought, be it the monist, be it the dualist. Thus, the predominant doctrine has understood that, with the constitutional silence, Brazil adopts the dualist current, in which there are two diverse legal orders (the internal order and the international order). For the ratified treaty to produce effects in the internal legal order, it is necessary the edition of a national normative act – in the Brazilian case, this act has been a decree of execution, expedited by the President of Brazil, with the finality of conferring execution and fulfilment to the treaty ratified in the domestic order.” (PIOVESAN, 2008, 88). Irrespective of the majority position, this paper aligns with Flávia Piovesan when she argues that the predominant doctrine’s interpretation “does not apply to human rights treaties, which, by force of Article 5°, § 1°, has immediate applicability. That is, in the face of the principle of immediate applicability of norms that define fundamental rights and guarantees, human rights treaties, as soon as they are ratified, must produce effects in the international and internal legal orders, dispensing with the expedition of a decree of execution.” (PIOVESAN, 2008, 88-89). Further, it should be stressed that this paper does not intend to analyse the extent to which the special formal procedure for the reception of international human rights treaties and conventions – regulated by Article 5°, Paragraph 3, according to CA n° 45/2004 – contributes negatively or positively to the enjoyment of fundamental rights as expressed by the 1988 Brazilian Constitution. Instead, the point on the topic assumed by this paper is that, although it is important the reception of international human rights norms into legal system of Brazil, it must be followed by immediate concrete applicability in order to produce practical effects.

<sup>6</sup> With human rights already guaranteed constitutionally (formally) by the 1988 Brazilian Constitution, social movements started new struggles, this time for the material exercise (real enjoyment of) those fundamental rights by everyone. Thus the paradox of “constitutional formalism” *versus* “material exercise of fundamental rights”.

<sup>7</sup> See also U.S. Department of State's *Country Reports on Human Rights Practices for 1988-1990*. The Hathi Trust Digital Library <<http://babel.hathitrust.org/cgi/pt?seq=1&id=mdp.39015014188273&page=root&view=image&size=100&orient=0>> accessed 1 January 2015.

to the work of Eide (1995) and Eide and Rosas (1995). The fourth section sheds light on the role played by social movements and human rights networks in the monitoring of ESCR in Brazil. The analysis here is made considering the work of Brysk (1993) and Keck and Sikkink (1998). Finally, in the fifth section a brief conclusion is presented.

## **1. Cosmopolitanism, democracy and social authoritarianism in Brazil**

Brazil has been transformed since 1964, from an authoritarian military dictatorship into a formal democratic regime ruled by Law. This process has been marked by a dialectical relationship between the organized national civil society and the Brazilian State under the strict observation of regional (Organization of American States – OAS) and/or global (United Nations - UN) mechanisms as well as of transnational advocacy networks (GONÇALVES, 2006; KECK and SIKKINK, 1998; GOHN, 1997; SKIDMORE, 1988; SMITH, 1987). Throughout the authoritarian military dictatorship period (1964-1985) the organized national civil society directed the social struggles towards redemocratization and, specifically from late 1970s, also towards human rights affairs. Throughout redemocratization period – from transition (1985-1990) to formal democracy (1990-on going) – the organized national civil society has directed the social struggles towards human rights affairs and the strengthening of the young Brazilian democracy, seeking particularly the full enjoyment of fundamental rights formally guaranteed by the 1988 Brazilian Constitution. In both authoritarianism and re-democratization periods the organized national civil society carried out the fights and social struggles under the strict observation of regional and/or global mechanisms and, more often than otherwise, in partnership with transnational advocacy networks (GONÇALVES, 2006; KECK and SIKKINK, 1998; GOHN, 1997; SKIDMORE, 1988; SMITH, 1987).<sup>8</sup> Accordingly, it may be observed that from 1964 until today there have been improvements in Brazil's democracy and human rights affairs as a result of social struggles conducted by social and popular movements in the country (DAGNINO, 2007, 2001, 1994, and 1993; PRADO JR., 1996; HOLANDA, 1995; DOIMO, 1994).

Under this perspective, Held (2010) believes that the “trajectory of change” is going in the direction of a multi-dualistic globe, and characterizes it as a scenario within which there is an apparent decrease of Western power in contrast with the growth of Asian economy, particularly China. He suggests within this new global reality that there is a paradox - “the paradox of our times” - as he affirms to be still overcome. According to Held, although collective issues have become transnational ones, the alternatives for facing them are still not appropriate, which reveals a persistent problem of governance. Analysing the impact of

<sup>8</sup> See also U.S. Department of State's *Country Reports on Human Rights Practices for 1988-1990*. The Hathi Trust Digital Library <<http://babel.hathitrust.org/cgi/pt?seq=1&tid=mdp.39015014188273&page=root&view=image&size=100&orient=0>> accessed 1 January 2015.

the global financial crisis, the author claims that a balance of power is taking place in the world today and, as a result, the policy problems or public functions should be dealt with individual states through international cooperation with other states and non-states actors. In order to do so, he argues, it is necessary to eliminate the fear of “shared problems” and “collective threats”, which might be accomplished via cosmopolitanism. Drawing on various understandings of cosmopolitanism throughout history, Held (2010) presents his model of cosmopolitanism as one in which, each individual is taken “as an autonomous moral agent entitled to equal dignity and consideration” (HELD, 2010, 15), without denying the role played by local affiliations. In his own words:

While my account aims at being universal, it tries to address cultural and political specificity seriously. Universal moral principles play a defining role, yet the hermeneutical necessity of interpreting their precise meaning in the local settings in which they operate is recognized. It is in the intersection of principle and pluralism – in the space where the former creates the conditions for the latter, and the latter elucidates the former – that regulative cosmopolitan principles and democracy conjoin. I call this a layered cosmopolitan approach (HELD, 2010, 16).

In this respect, it might be noted that Held (2010) offers a thorough account of two fundamental metaprinciples – the metaprinciple of autonomy (MPA) and the metaprinciple of impartialist reasoning (MPIR) – and affirms that these principles are the basic source for the shape and force of his model of cosmopolitanism. In fact, he makes the point that the afore mentioned principles are entrenched “at the core of the transition from cosmopolitan principles to the real world of politics”, phenomenon which he describes as a precondition for the establishment of a cosmopolitan order, which he calls “democratic public law” (HELD, 2010, 17).

The author points out that the liberal model of sovereignty should be replaced by what he calls a *cosmopolitan model of sovereignty*. According to him, the cosmopolitan model of sovereignty goes beyond the idea of delimited borders and territories governed by States alone. In this way, he argues, a moral and political framework is needed to organize the coexistence and cooperation among States towards the resolution of current social, economic and legal issues. Basically, by refusing the idea of cosmopolitanism as a form of Western ideological dominance or imperial control, Held’s theory claims the cosmopolitan approach is indeed a

[...] framework of ideas and principles that can guide us towards the governance of the challenges we face. Cosmopolitanism is, contrary to popular criticism, the triumph of difference and local affiliations. Insofar as a cosmopolitan institutional project aims at the entrenchment of law-governed relations, it creates the requirements for political autonomy that each person and group needs in order to foster its ideas of

the good life. Without such a framework, solutions will not be adopted on the basis of deliberation and law, but on the basis of power and economic strength. A world without cosmopolitan principles is not a world in which communal differences are entrenched and valued for their own sake, but rather a world in which power (in its different manifestations) drives the resolution of what I have called the pressing issues of our time (HELD, 2010, pp. 19-20).

However, some caution is needed here by all means. In fact, although Held (2010) suggests that realism is dead and that cosmopolitanism should have a long life, it should be noted that when it comes to economic and political interests usually Western powers neither pay attention to democratic global governance nor international cooperation based on cosmopolitan principles/norms. Consequently, this paper is more comfortably aligned with the *recursive cosmopolitization* approach proposed by Levy (2010). Indeed, due to the fact that transitional justice aspects have marked the Brazilian social struggles deeply, a venue for socio-political and legal transformations has been made in the country (Figure 1). In this aspect, by illustrating how diverse types of cosmopolitanism are “frequently expressed through a mutually constitutive set of cultural dispositions and institutional practices that emerge in the interstices of global norms and local orientations” (LEVY, 2010, p. 580), the author suggests that a heuristic perspective is indispensable for a cosmopolitan methodology conducted under a relational approach.

Moreover, shifting attention from “a (European) universal (and categorical) notion of cosmopolitanism to a recursive understanding of cosmopolitization” (LEVY, 2010, p. 581), he makes the important point that in Argentina and other parts of Latin America the transition from an authoritarian regime into a formal democratic one has produced legal, cultural and institutional precedents, all of which would eventually impact international relations regarding human rights practices. For Levy, the “political influence of specific norms (in this case related to post-authoritarian politics), at times need to be conceptualized in regional rather than national or global scales” (Levy, 2010, p. 581). Thus, as transitional justice developments have impacted the Brazilian social struggles so deeply that they have also been influencing regional and global agents/organs, it seems accurate to suggest that Levy’s *recursive cosmopolitization* (2010) approach is more suitable for the purposes of this paper. As discussed, the Brazilian transition from dictatorship towards democracy has affected human rights practices within the country. In this regard, it might be stressed that Risse and Sikkink (1999) bring relevant contributions to the analysis of Brazilian social struggles undertaken in this paper, particularly concerning their proposed “Spiral Model of Human Rights Change” (RISSE and SIKKINK, 1999, p. 20), which according to them, is a

[...] five-phase ‘spiral model’ of human rights change which explains the variation in the extent to which states have internalized norms. [...] the enduring implementation

of human rights norms requires political systems to establish the rule of law. Stable improvements in human rights conditions usually require some measure of political transformation and can be regarded as one aspect of liberalization processes. Enduring human rights changes, therefore, go hand in hand with domestic structural changes (RISSE, ROPP, and SIKKINK, 1999, pp. 3-4).

The authors point out that their proposed model consists of five different phases – (1) Repression; (2) Denial; (3) Tactical concessions; (4) Prescriptive status; and (5) Rule-consistent behaviour. These phases are “distinguished by the dominant response from the norm-violating the societal and transnational activities” as well as “serve to operationalize the theoretical framework of norm socialization [...], to identify the dominant mode of social interaction in each phase (adaptation, arguing, institutionalization), and, ultimately, to specify the causal mechanisms by which international norms affect domestic structural change” (RISSE and SIKKINK, 1999, p. 19). In this regard, it might be noted that Brazil has moved from phase 1 (repression) to phase 4 (prescriptive status) of the proposed “Spiral Model of Human Rights Change”, as far as the country is committed to international human rights law (RISSE, ROPP, SIKKING, 2013 and 1999). This means Brazil has made progress concerning civil and political rights since its redemocratization. Nonetheless, it is unclear whether it is going to move from phase 4 (prescriptive status) to phase 5 (rule-consistent behaviour). In other words, it remains uncertain whether Brazil is going to move from commitment<sup>9</sup> to compliance<sup>10</sup> with international human rights law (RISSE, ROPP, SIKKING, 2013 and 1999). This might depend also on the effective implementation of ESCR in Brazil.

Within this line of argumentation, drawing on both traditions – constructivists in international relations theory and social movement theorists in comparative politics –, Keck and Sikkink (1998) used a “grounded theory” approach to conceptualize the category *Transnational Advocacy Network (TAN)*<sup>11</sup>. According to them, the uniqueness of TAN rests upon the fact that “they are organized to promote causes, principled ideas, and norms, and they often involve individuals advocating policy changes that cannot be easily linked to a

<sup>9</sup> “By “commitment”, we mean that *actors accept international human rights as valid and binding for themselves*’ (RISSE, ROPP and SIKKINK, 2013, p. 9).

<sup>10</sup> ““Compliance” is defined as *sustained behaviour and domestic practices that conform to the international human rights norms, or what we called “rule-consistent behaviour” in the original spiral model*’ (RISSE, ROPP and SIKKINK, 2013, p. 10).

<sup>11</sup> “Networks are forms of organization characterized by voluntary, reciprocal, and horizontal patterns of communication and exchange. [...] In spite of the differences between domestic and international realms, the network concept travels well because it stresses fluid and open relations among committed and knowledgeable actors working in specialized issue areas. We call them advocacy networks because advocates plead the causes of others or defend a cause or proposition. Advocacy captures what is unique about these transnational networks: they are organized to promote causes, principled ideas, and norms, and they often involve individuals advocating policy changes that cannot be easily linked to a rationalistic understanding of their “interests” (KECK and SIKKINK, 1998, pp. 8-9).

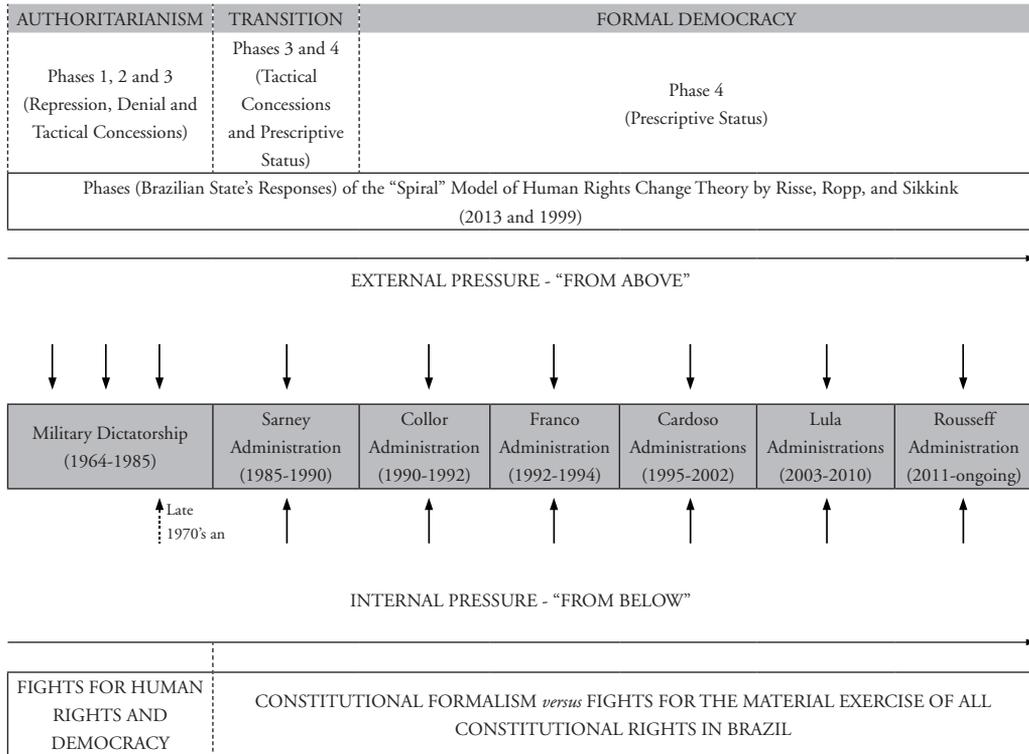
rationalist understanding of their ‘interests’” (KECK and SIKKINK, 1998, pp. 8-9). Although Keck and Sikkink (1998) note that TAN might include agents, entities, organs and structures from both public and private sectors, they warn their research does not lead to believe these interactions characterize the formation of an emerging *global civil society*. Instead, they prefer to work with the conception of *transnational civil society* as a dialectical and fragmented space of social, economic and political struggles in which specific groups may surge and be legitimized. The present paper has taken into account Keck’s and Sikkink’s approach (1998) toward the category *transnational civil society*, which has been contrasted with the *national civil society*. Thus, as described by Figure 1, through the recent history of Brazil, it is possible to argue the existence of high levels of social authoritarianism (DAGNINO, 2007, 2001, 2000, 1994 and 1993), despite all progress that started with the terms of President Cardoso (1995-2002) (Macaulay, 2007; Pinheiro, 1999; Panizza and de Brito, 1998) and that became notable under President Lula (2003-2010) (BIANCARELLI, 2014; FORTES and FRENCH, 2012; DE PAULA, 2011; HUNTER and POWER, 2007; PAIVA, 2006) and the first term of President Rousseff (2011-2014) (SILVA and SILVA, 2014; SOARES and SANTOS, 2014; BOITO JR. and BERRINGER, 2013; BRESSER-PEREIRA, 2013 and 2013; CAGNIN et al, 2013; MELO and SANTOS, 2013; MENDONÇA and OGANDO, 2013; TEIXEIRA and PINTO, 2012; VON BULOW and LASSANCE, 2012; PEIXOTO and RENNO, 2011). In this respect, it should be borne in mind that Brazil has passed through important periods – authoritarianism (1964-1985) and transition (1985-1990) – until recently when it was transformed into a formal democracy ruled by Law (1990-Ongoing).<sup>12</sup> Hence, it is important to consider that over the last 50 years, Brazil gradually overcame a military dictatorship (1964-1985), promulgated a democratic Constitution (1988), conducted seven direct presidential elections (1990-1994-1998-2002-2006-2010-2014) and, consequently, made considerable efforts to improve its democracy.<sup>13</sup> All of this may have resulted from various social struggles organized and performed by social and popular movements interacting with transnational advocacy networks in the country and abroad.

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<sup>12</sup> The Brazilian transition to democracy is usually divided into three main phases: *military dictatorship* (1964-1985); *transition* (1985-1990); and *formal democracy* (1990-Ongoing). For more details see Skidmore (1988) and Smith (1987).

<sup>13</sup> This paper accepts that there are different contexts of human rights violations in authoritarianism and re-democratization (transition and formal democracy) periods. For instance, while during the military dictatorship civil, political, economic, social and cultural rights (all human rights) were constantly violated also by state agents with the support of the State itself (military regime), with the advent of redemocratization and once being a formal democracy ruled by Law Brazil has made progress in relation to civil and political rights, despite, for instance, the residual problem of police violence, as well as in relation to economic, social and cultural rights, despite issues concerning the right to health, the right to education, the right to housing, etc. Further, with the advent of redemocratization human rights violations no longer have the official support by the State, even though state agents continue to violate human rights – as, for instance, in the case of torture, forced disappearance, summary execution and so on, which are usually perpetrated by civil and military police forces – all over the country. For more details see Brasil, 2014; UN Brazil et al, 2012; MNDH and PAD, 2006; Gaio et al, 2006; Front Line and Centro Justiça Global, 2001; FIDH and OMCT Reports 2001-2012; and Amnesty International, 1998.

Figure 1 - Recent History of Brazil under the “Spiral” Model of Human Rights Change Theory (RISSE; ROPP; SIKKINK, 2013 and 1999)



Nonetheless, from the figure above one may not believe that the afore mentioned social struggles for democracy and human rights have happened without any reaction from conservative and powerful forces which controlled the economic and political mechanisms in Brazil. On the contrary, the reactions of the elite to those social struggles have been not only very strong, but also, unfortunately, very damaging for social and popular movements. For instance, from the military *coup d'état* until today there have been threats, criminalization, and killing of well know activists, militants and human rights defenders who usually organize and conduct social struggles for human rights in Brazil (BRASIL, 2014; UN BRAZIL et al, 2012; MNDH and PAD, 2006; GAIO et al, 2006; FRONT LINE and CENTRO JUSTIÇA GLOBAL, 2001; FIDH and OMCT REPORTS 2001-2012; AMNESTY INTERNATIONAL, 1998).<sup>14</sup> Nevertheless, it might be noted that

<sup>14</sup> As already explained, this paper accepts that there are different contexts of human rights violations in authoritarianism and redemocratization (transition and formal democracy) periods. For more details see previous footnote.

despite uncountable losses and their respective consequences,<sup>15</sup> the organized national civil society (in partnership with the transnational one) has contributed to the development of the young formal democracy of the country, which has forced Brazil to be open to criticism and cooperation on human rights issues of international organs. In this way, it seems correct to argue that the efforts of the organized Brazilian civil society have been made in interaction with transnational advocacy networks, resulting in the *socialization*<sup>16</sup> of various cosmopolitan human rights norms<sup>17</sup> into the Brazilian Legal System over the last 50 years,<sup>18</sup> which may characterize, as discussed, the *recursive cosmopolitization*<sup>19</sup> (LEVY, 2010). As a result, it is generally accepted that the socialization of international human rights norms has produced repercussions in legal, economic and political reality of Brazil, which may contribute to the overcoming of social authoritarianism as well as the accomplishment of human rights change and, ultimately, social justice in the country.

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<sup>15</sup> The consequences are young Brazilian democracy at risk; decreasing of social movements' actions; social question not confronted properly; and, therefore, the perpetuation of a high level of social authoritarianism. For *social question*, see Iamamoto (2004), Netto (2004), Oliveira (2000), Castel (1998), and Cerqueira Filho (1982). For *social authoritarianism*, see Dagnino (2007, 2001, 2000, 1994 and 1993)

<sup>16</sup> The concept of socialization is useful to comprehend how international human rights norms are transmitted by regional and/or international societies to its Member States. See Risse, Ropp and Sikkink (2013 and 1999).

<sup>17</sup> For an account as to the institutionalization of cosmopolitan law-making, see Sato (2009).

<sup>18</sup> Here the paper considers two major periods: *authoritarianism* (1964-1985) and *redemocratization* – from transition (1985-1990) to formal democracy (1990-Ongoing). In this respect, it might be noted that during the military dictatorship only 2 human rights treaties were ratified at the UN level (CERD in 1968 and CEDAW in 1984, whereas during the redemocratization (transition and formal democracy) more than 10 human rights treaties were ratified on UN level (CAT in 1989; CRC in 1990; CCPR in 1992; CESCR in 1992; CEDAW-OP in 2002; CRC-OP-AC in 2004; CRC-OP-SC in 2004; CAT-OP in 2007; CRPD and CRPD-OP in 2008; CCPR-OP2-DP and CCPR-OP1 in 2009; and CED in 2010). United Nations (UN) <[www.un.org](http://www.un.org)> accessed 1 January 2015. By the same token, it is important to consider that during the military dictatorship no human rights treaties were ratified at the OAS level, whereas during the redemocratization (transition and formal democracy) 5 human rights treaties were ratified at the OAS level (ICPPT in 1989; ACHR acceded in 1992; ICPPEVAW in 1995; AP-ACHR-ESCR acceded in 1996; and OP-ACHR-ADP in 1996). Organization of American States (OAS) <[www.oas.org](http://www.oas.org)> accessed 1 January 2015. Consequently, it may be argued that the majority of human rights treaties to which Brazil is committed has been internalized into the Brazilian Legal System after the redemocratization process started in the country.

<sup>19</sup> “[...] My central argument is that the link between the synchronicity of ‘cosmopolitan imperatives’ and the multiplicity of particularized expressions is not merely a function of variety and interconnectedness, but mainly a global phenomenon that is co-evolving in the context of *intercrossings* during which distinctive cosmopolitanisms are constituted. In order to capture the tension of ‘synchronicity’ and ‘path-dependency’ I introduce the notion of *recursive cosmopolitization*. The concept refers to an open ended process in which centre and periphery stand in a recursive relationship that is reflected, among other things, in the intercrossings of global normative expectations and their local appropriations. Moreover, *recursive cosmopolitization* reveals how local articulations are inscribed into global norms [...]” (LEVY, 2010, p. 580).

## 2. The monitoring of ESCR<sup>20</sup> in Brazil

Firstly, it is necessary to comprehend the *monitoring of rights* as a valuable method for the improvement of human rights protection. This way, it should be borne in mind that the *monitoring of rights* is – among others of equal efficacy – an indispensable tool in the social struggles for the promotion, protection, and realization of human rights worldwide. Secondly, it is generally accepted that there is an expected *modus operandis* from all agents involved in the conduction of the *monitoring of rights*. In this regard, it should be noted that there are eighteen basic principles taken by experts as those which must be respected by all human rights organizations during the *monitoring of rights* process, particularly while monitoring ESCR, as follows: (1) *do no harm*; (2) *respect the mandate*; (3) *know the standards*; (4) *exercise good judgement*; (5) *seek consultation*; (6) *respect the authorities*; (7) *credibility*; (8) *confidentiality*; (9) *security*; (10) *understand the country*; (11) *need for consistency, persistence and patience*; (12) *accuracy and precision*; (13) *impartiality*; (14) *objectivity*; (15) *sensitivity*; (16) *integrity*; (17) *professionalism*; and (18) *visibility*.<sup>21</sup> These principles can be applied not only to human rights bodies that belong to regional (OAS) or global (UN) systems, but also to national human rights entities, particularly to NGOs working on the promotion, protection and realization of fundamental rights within a country. Thirdly, it should be noted that human rights organizations – international bodies, intergovernmental organizations, civil society institutions (NGOs) – must assure that practices and public policies of the State are, *de facto*, directed to the full realization of human rights, that is, they must verify if those rights possess efficacy. In order to do so, among various methodologies designed to monitor the progressive realization of ESCR by States, human rights organizations may present different approaches – *investigative, statistical, and/or analytical* – when during the monitoring of ESCR they deal with: *violations of ESCR; progressive realization of human rights; main obligations of the State; identification of tendencies; legal determinations and governmental public policies; and the analysis of public budget*.<sup>22</sup> This is important due to the fact it may prevent practices and public policies of the State from impeding, for instance, the progressive realization of ESCR.

Furthermore, considering the determinations of *Vienna Declaration and Programme of Action*, in which an accurate interpretation states that human rights are *universal*,

<sup>20</sup> ESCR stands for economic, social and cultural rights.

<sup>21</sup> Training course on Monitoring Economic, Social and Cultural Rights, organized by the Project on Economic, Social and Cultural Rights at the Geneva Academy of International Humanitarian Law and Human Rights ([www.adh-geneva.ch](http://www.adh-geneva.ch)), Switzerland; UN Fact Sheet n° 33; and UN OHCHR Professional Training Series n° 7 (Training Manual on Human Rights Monitoring).

<sup>22</sup> Training course on Monitoring Economic, Social and Cultural Rights, organized by the Project on Economic, Social and Cultural Rights at the Geneva Academy of International Humanitarian Law and Human Rights ([www.adh-geneva.ch](http://www.adh-geneva.ch)), Switzerland; UN Fact Sheet n° 33; and UN OHCHR Professional Training Series n° 7 (Training Manual on Human Rights Monitoring).

*indivisible, interdependent and interrelated*,<sup>23</sup> it should be stressed that any human rights conceptualization presented in this paper must be seen in terms of the political and historical perspectives.<sup>24</sup> In fact, this approach has been chosen to demonstrate that political and historical disputes among UN Member States – regarding the non-adoption of international norms for the protection of human rights or, once adopted and ratified, concerning their non-implementation – have influenced the measures and interpretations towards the conceptualization of human rights. Such disputes have generated various divisions/categorizations such as *Civil and Political Rights (CPR)* and *Economic, Social and Cultural Rights (ESCR)*. As a result, it is necessary to consider that there are still technical and ideological aversions and controversies towards the category *ESCR*. Some argue that those rights are not rights, whereas others give them priority over, for instance, *CPR* (EIDE, 1995). Despite all controversies, the fact is that once they are recognized as human rights, *justiciability*<sup>25</sup> is aggregated to the *ESCR*, that is, the real possibility to demand that the Judiciary Power (Judges and Tribunals, in the case of Brazil) respect *ESCR* formally as well as provide concrete ways for guaranteeing their materiality.<sup>26</sup> In fact, this is a fundamental point for anyone to understand the historical aversions of many UN Member States regarding the realization of *ESCR*, particularly because their interpretations do not only impose obligations on States, but also, and more problematically, demand that States develop concrete actions towards the protection of vulnerable groups in their respective territories.

While it is fully possible to give concrete legal relevance to economic, social and cultural rights, it cannot be overlooked that there are in many quarters ideological aversions towards such an approach. Taking economic, social and cultural rights seriously implies at the same time a commitment to social integration, solidarity and equality, including tackling the question of income distribution. Economic, social and cultural rights include a major concern with the protection of vulnerable groups, such as the poor, the handicapped and indigenous peoples (EIDE and ROSAS, 1995, p. 17).

Nonetheless, despite the existence of controversies regarding their conceptualization, *ESCR* may be interpreted as those related to *family life, work place, social security, access*

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<sup>23</sup> Office of the High Commissioner for Human Rights (OHCHR) <<http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>> accessed 1 January 2015.

<sup>24</sup> See Piovesan (2008).

<sup>25</sup> The *justiciability* of *ESCR* is taken here as a legal and political process that involves a dialectical relation between the international sphere and the domestic one whose most apparent result is the positivization of international norms into the Brazilian juridical system. For more details, see: Scheinin (1995) and Risse, Ropp, and Sikkink (1999).

<sup>26</sup> The *ESCR*'s legal framework is composed by international and regional instruments, resolutions, general comments (UN), advisory opinions (OAS), and recommendations as well as by national constitutional and infra-constitutional legislation.

*to housing, integral health, potable and safe water, public education, and so forth.*<sup>27</sup> Once guaranteed formally as well as materially, ESCR would make possible the full enjoyment of human dignity, especially due to the fact they create constitutional and infra-constitutional obligations to States. This would certainly contribute to overcoming social authoritarianism in Brazil. These obligations are intended not only to make the necessary conditions for everyone to fully enjoy their human rights, but also to provide everyone with juridical remedies and extra-judicial mechanisms in the event of their fundamental rights being violated (BRINKS, 2008; PIOVESAN, 2008). Given the current reality of social authoritarianism of Brazil, the realization of ESCR in the country is not only important, but also crucial for making possible for everyone to fully enjoy their human dignity (DAGNINO, 2007, 2001, 2000, 1994 and 1993; Sarlet, 2004 and 1998). Therefore, national human rights networks must consider monitoring the progressive implementation of ESCR by the Brazilian State in their campaign for an effective domestic human right regime.

### **3. The role of human rights networks in the monitoring of ESCR in Brazil**

As discussed, the Brazilian reality is deeply marked by a historical scenario of social authoritarianism. This means it is crucial for the further establishment of human rights into domestic regime that all social struggles for the promotion, protection and realization of human rights continue countrywide. It should be noted, within this context, that social movements and national human rights networks play not only a substantive role but also, and more importantly, a decisive one, especially as to exert pressure and, therefore, to demand that the State act in the event of any human rights violation (BRYSK, 1993).

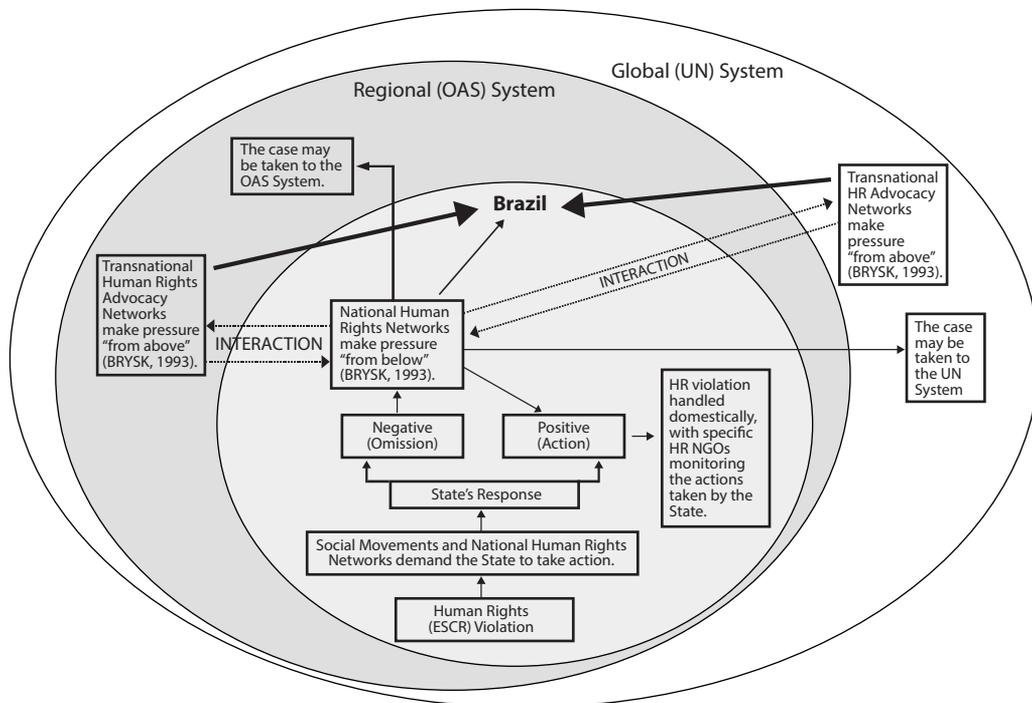
It is generally accepted that human rights changes have occurred in Brazil as a direct result of political pressure exerted towards the State by the organized national civil society, sometimes with transnational advocacy networks (transnational civil society), which may characterize the phenomenon called “the boomerang pattern” (KECK and SIKKINK, 1998). According to the authors, the phenomenon occurs when dialogue between the national civil society and State is no longer an available option. In fact, they believe that the boomerang pattern of influence is commonly related to human rights campaigns and usually takes place when “domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside” (KECK and SIKKINK, 1998, p. 12). In this regard, it should be noted that this paper considers Keck’s and Sikkink’s (1998) boomerang pattern as an appropriate approach for the analysis of social struggles

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<sup>27</sup> See Committee on Economic, Social and Cultural Rights (CESCR)’s General Comments at United Nations <<http://www.un.org/ga/>> accessed 1 January 2015.

in Brazil. Figure 2 shows the role played by social movements and national human rights networks in the face of a human rights (ESCR) violation.

Figure 2 - The Role Played by Social Movements and Human Rights Networks while facing HR (ESCR) violations in Brazil.



As described above, when human rights (ESCR) violations occur in Brazil, social movements and national human rights networks (domestic civil society) demand an immediate response from the State. Different strategies may be chosen depending on the response of the State. If it were a positive one, the violation would be handled through national institutions, with the organized domestic civil society monitoring the action(s) taken by the State to solve the problem. On the other hand, if the response of the State were a negative one, social movements and national human rights networks would start exerting pressure on the State as well as demanding that effective action be undertaken. If the State keeps presenting a negative response, then, at this stage, it is common for national human rights networks to establish partnerships with transnational civil society to make the pressure on the State stronger, that is, to exert pressure towards the State “from below” and “from above” (BRYSK, 1993). If neither the exertion of political pressure towards the State nor the use of national mechanisms for the protection of human rights produce any positive result at all then, national human rights networks with transnational advocacy networks may take the case to the regional system (OAS) or to the global one (UN), which would produce even more international pressure towards Brazil. On this matter, it should

be clarified that the OAS and UN systems are totally independent from one another, which means there is no hierarchy between them. In fact, once submitted to the UN system, a case of human rights violation should not be submitted to the OAS system and *vice versa*.

It is important to consider, however, that national human rights networks should keep not only monitoring the progressive implementation of ESCR, but also demanding that the Brazilian State act in order to face current social problems<sup>28</sup> related to ESCR in the country. In fact, both activities go hand-to-hand with each other and, therefore, should be considered as strategies used by the national human rights networks in their quest for overcoming social authoritarianism as well as establishing an effective human rights regime in Brazil.

## Conclusion

A reality of social authoritarianism has been part of the Brazilian history, which demonstrates the urgency with which social struggles for the full enjoyment of fundamental rights by everyone must continue to be pursued by social movements and human rights networks in the country. There are still so many things to be done in Brazil regarding the promotion and protection of human rights, especially concerning the full realization of ESCR. Therefore, it is important to advance beyond the constitutional and infra-constitutional formalism, that is, it is crucial that social struggles envisage the material application (practical fulfilment) of constitutional guarantees which determine that everyone shall enjoy their fundamental rights fully and, in this way, have their human dignity without any kind of impediment. In this sense, the construction of a proposal for a *new sociability* towards a *new citizenship* (DAGNINO, 2007, 2001, 2000, 1994, 1993) in which everyone can have access to their human rights reflects the urgency and indispensability of those social struggles conducted by popular and social movements in Brazil.

Nonetheless, despite its persistent reality of social authoritarianism, it seems logical to argue that over the last 50 years Brazil overcame a military dictatorship (1964-1985) and metamorphosed into a formal democratic State functioning under the rule of Law (1985-Ongoing) as well as opened to international influence (from global and regional human rights mechanisms and/or transnational advocacy networks) and cooperation (with other States) as a direct consequence of various social struggles for democracy and human rights in the country. It is in such a context that the *monitoring of rights* as a method of improving human rights protection might be used as an important tool by transnational and national social movements and advocacy networks in their activities for achieving

<sup>28</sup> They are poverty, inequality, exclusion, violence and so forth, all of which symptoms of the existence of social authoritarianism in Brazil. For *social question* see Iamamoto (2004), Netto (2004), Oliveira (2000), Castel (1998), and Cerqueira Filho (1982). For social authoritarianism see Dagnino (2007, 2001, 2000, 1994 and 1993).

human rights changes in Brazil. This might not only contribute to the establishment of effective human rights into domestic regime, but also demonstrate that Brazilian social struggles are both being influenced by and influencing regional and global actors, spheres and/or practices.

In this respect, it seems appropriate to infer that the Brazilian social struggles have become more cosmopolitan than ever before, which signifies they are not only being influenced by regional and global human rights systems and actors, but also, and more importantly, affecting human rights agendas, norms and strategies domestically, regionally and globally.

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## Internet Resources

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