

STONES OF HOPE

**HOW AFRICAN ACTIVISTS RECLAIM
HUMAN RIGHTS TO CHALLENGE
GLOBAL POVERTY**

EDITED BY

**LUCIE E. WHITE &
JEREMY PERELMAN**

WITH A FOREWORD BY

**JEFFREY D. SACHS
& LISA E. SACHS**



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to Challenge Global Poverty*

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We dedicate this book to the courageous people whose stories are chronicled in it.

JP: To my grandparents, and to M

LW: To Anna, Caroline, and John

We will be able to hew out of the mountain of despair a stone of hope.

**Martin Luther King Jr., Speech at the Lincoln Memorial,
Washington, D.C., August 28, 1963**

Foreword

Jeffrey D. Sachs and Lisa E. Sachs

More than sixty years after the worldwide adoption of the Universal Declaration of Human Rights, in 1948, economic and social rights (ESR)—the very foundation of human survival and well-being—still elude billions of people, especially the estimated 1.4 billion people who live in extreme poverty. Making ESR operational is an enormous challenge for human rights activists, development practitioners, lawyers, and citizens. The important new book *Stones of Hope*, edited by Lucie White and Jeremy Perelman, explores this critical topic persuasively and creatively, by delving deeply into several African case studies where ESR has made a real difference in people's rights and well-being. The cases—involving urban evictions, access to AIDS treatment, rural land tenure, and the healthcare rights of indigents—are terrific in their own right, and in combination make the powerful point that ESR can be a driver of deliberative democracy, institutional innovation, and significant betterment of the living conditions of the poor.

For the world's poorest people, daily life is a struggle for survival, with millions of impoverished people each year losing that struggle to famine, disease, environmental catastrophes, and violent conflicts that arise in conditions of extreme deprivation. Similar desperation applies to girls and women in societies where legal, political, and social institutions offer them scant opportunities and little protection from violence, and to ethnic minorities and indigenous populations that are deprived of access to basic social services and protection by the political system. Ironically, in many parts of the world it is often the descendants of the first arrivals—the indigenous communities—who suffer the bitterest combination of poverty and exclusion. Today's dominant groups often wrested their dominance through conquest and exploitation of the indigenous inhabitants and maintain power through violence and extralegal methods.

The pressing challenge of ESR for our generation is not so much in defining their contents—which have been elaborated in the International Bill of Human Rights (the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, and the International Covenant on Economic, Social and Cultural Rights of 1966) as well as dozens of treaties, global agreements, and national laws over the past half century—but rather in maximizing their usefulness as a means of leverage for spreading human survival, dignity, and hope to those trapped in the bitter clutches of extreme deprivation and exclusion. Both of us face this practical challenge as well. As Special Advisor to UN Secretaries-General Kofi Annan and Ban Ki-Moon on the Millennium Development Goals (MDGs), Jeffrey has looked for ways to promote the MDGs through a “rights-based” approach, that is, promoting the achievement of the MDGs through appeal to the instruments of ESR. Lisa is currently at an academic institution (the Vale Columbia Center on Sustainable Investment at Columbia University) whose aim is to promote sustainable foreign investment. Through the center’s work with organizations promoting corporate social responsibility, she has been engaged in translating ESR into norms for corporate responsibility and accountability.

There are many ways to promote the MDGs and corporate social responsibility. Donor nations give development assistance for many reasons, including formal standards like ESR as well as considerations of national security, foreign policy, and national values. Similarly, companies adopt standards of corporate social responsibility, including ESR, for many reasons as well: legal codes, reputation, workplace morale, and customer satisfaction. Economic and social rights is but one of the motivations driving governments and businesses. We strongly endorse the viewpoint of a former UN Rapporteur on the Right to Health, Paul Hunt: “Confronted with such a complex and colossal challenge as global poverty, it is extremely important that development practitioners use all the tools available in their workshop, including the national and international human rights commitments of developing and developed states.”¹

International law is notoriously fragile and hamstrung in protecting and promoting ESR adequately, especially in the poorest countries where the need is greatest, such as those of sub-Saharan Africa. There are, of course, several complex challenges. One basic point, not always remembered, is that impoverished countries lack their own budgetary resources needed to supply vital—indeed life-saving—services such as primary healthcare or support for smallholder farmers. The poor are thereby trapped. The lack of public services

leads to hunger, poverty, and disease, while the poverty means that the tax base of government is too small to support public policies to alleviate hunger, poverty, and disease. Foreign assistance is then needed to break the vicious circle. In principle, the International Bill of Human Rights creates a poor country's "right" to receive assistance from the rest of the world. In practice, this "right" (or conversely, the "duty to assist" of high-income countries) is difficult to enforce, to say the least.

Of course, the obligations of developed countries vis-à-vis poor countries are joined by the equally or even more critical obligations of domestic governments to realize basic human rights within their own countries. Poor governance, discrimination, corruption, and warped ideologies are unfortunate realities and deep impediments to the realization of ESR in many countries, developing and developed alike. Even when the ESR challenges are more "domestic," the use of courts, government agencies, and politics to defend ESR, as well as the overall challenge of leveraging rights into results, is extraordinarily difficult, requiring bravery, persistence, and ingenuity. Efforts to improve governance, accountability, equitable distribution, access systems, and social justice are absolutely necessary. Those efforts are the focus of this pathbreaking volume.

Importantly, the case studies in *Stones of Hope* demonstrate that there is no single model for ESR activism, even if there are common strands among successful and meaningful campaigns. The activists in this volume range from national-scale legal organizations to a community-based "Mothers' Club," from constitutional lawyers arguing in the highest courts in South Africa to people on Ghanaian streets signing a petition that powerfully restates their right to health. What is common among these case studies are campaigns of empowerment, community engagement, and inclusiveness, information sharing and pragmatism, and especially resilience, persistence, and creativity. As White and Perelman note, these cases demonstrate the power of the shared language of human rights to bridge social, cultural, and political differences in a common pursuit of dignity, well-being, and survival. That the advocates assert the rights and needs of these communities within the normative context of basic human rights gives crucial legitimacy to their campaigns. Importantly, the advocates use a variety of outreach tools to build the size and cohesion—and therefore power—of their communities and use this power to leverage the institutional and structural changes in the ESR delivery framework that would remedy the relevant injustices. In each case, litigation—a common and expected tool of lawyers and rights-based activists—is but one tool in a strategic and multifaceted approach

to promoting ESR, and courts are used, if at all, more often to enhance the visibility, gravity, and effectiveness of the more extensive political and social efforts than to defend ESR through court orders.

Although the editors note historical and political similarities among the countries in which these cases transpired, the differences are also notable. The specific rights at issue, the population (size and makeup) affected, the concentrations of power, the political institutions, and the resources of the activists vary widely from case to case. But the editors skillfully present the array of strategies, tactics, and targets used in the case studies explored in this volume and usefully distill the common challenges, victories, and lessons. In each chapter, the authors explain the importance of institutional change to ensure that “success can be structurally grounded in order to carry some promise of broader, and lasting, transformative change” (Chapter 3). The case studies that White and Perelman have brought together will usefully enable ESR activists (and development practitioners) in Africa and elsewhere to learn from the various political, legal, and social practices the activists in these case studies have used to achieve such lasting reform—some successfully and some less so.

The chapters in this volume also highlight some of the important actors in a successful ESR campaign. First and foremost is the “convening authority,” who brings the community together, keeps the discussions and strategies focused, and, importantly, engages the “local power holders and interested groups [in] a deliberative dialogue” (Chapter 6). It is critical that the convening authority earn the trust of the community and interested parties as well as the respect of and access to the “power holders” and local authorities. Additionally, achieving true institutional change often requires the cooperation of institutional “insiders . . . work[ing] to change the agencies from within” (Chapter 6). Working directly with government officials and civil employees on institutional reform can reinforce external pressure on the institution in a positive feedback mechanism, each force giving strength and support to the other. Finally, the editors note the legitimizing power that external groups can give to a domestic campaign by providing not only material resources but also information, skills, and influence.

It should be noted that while White, Perelman, and their cocontributors focus mainly on ESR activism in the national context, they acknowledge the important roles of global actors in assisting, or restricting, the realization of ESR even in “domestic contexts.” For instance, the “financial muscle” of international financial institutions (IFIs) such as the World Bank, if improperly used, can “aggravate the poverty of target beneficiaries,” as in the case of the

World Bank–funded drainage and sanitation project in Lagos, Nigeria, which resulted in the brutal and unlawful eviction of thousands of indigents and the destruction of their houses (Chapter 1).

In that case, a prominent local human rights organization—the Social and Economic Rights Action Center (SERAC)—used a public advocacy strategy to force the World Bank to address the unlawful evictions in Lagos, to provide SERAC with relevant information, and to engage directly with the affected community. (Incidentally, the authors describe the important political considerations in Nigeria that steered SERAC away from litigation as a primary strategy in halting the forced evictions.) That the more recent projects funded by the World Bank (and other IFIs) in Lagos and elsewhere have taken steps to internalize the importance of community engagement and human rights impact assessments is a testament not only to national advocacy campaigns like SERAC’s but also to direct pressure exerted by human rights practitioners worldwide on international financial organizations to internalize processes into standard lending procedures, specifically to ensure that ESR are respected in such IFI-financed projects.

Chapter 2 documents the remarkable ESR campaign led by the Treatment Action Campaign (TAC) for a national treatment plan for all South Africans with HIV/AIDS. One of TAC’s important and successful strategies was to use “international networks of human rights organizations to pressure . . . the multinational pharmaceutical companies” (Chapter 2). The obligation of “big pharma” to assist with the realization of the right to health is one of the early and prominent examples of the important responsibilities that the private business sector has in realizing ESR within its spheres of influence. This important role of the private sector has been notably advocated by socially responsible institutional investors, such as the Interfaith Center on Corporate Responsibility (where Lisa worked), who use shareholder advocacy and company engagement to promote industry-wide business practices that not only respect but promote ESR as a matter of good business sense. Efforts to promote corporate social responsibility have been especially active in the pharmaceutical industry, extractive industry, and finance sector, and such advocacy is now extending to many other sectors. Fortunately, by dint of CEO commitment, concern over corporate reputation, employee morale, and the goodwill and patronage of suppliers and customers, an increasing number of major companies are internalizing ESR norms within core company policies. Many other major companies, however, remain to join the cause!

While not featured centrally in this volume, the obligation of developed countries to assist in the realization of ESR in developing countries is also critically important. In Chapter 5, Perelman and White correctly point out that African governments “often lack the funds or governmental capacity to solve such big-ticket problems as healthcare without help from other sources” (Chapter 5). As we mentioned above, adequate financing is needed to alleviate the poverty-related burdens of weak governance, inadequate infrastructure, excessive population growth, poor health, low literacy, and resource depletion, which all contribute to extensive ESR violations. Yet economic development is precluded by precisely these poverty-related burdens, which decrease productivity, earning ability, and economic investments. The implication of poverty traps is that poor countries, on their own, are often unable to honor their basic economic and social rights obligations. Realizing these human rights requires increased public outlays and infrastructure that are beyond the financial means of poor countries. This is not to remove the responsibility of the home governments of low-income countries, but it is to emphasize that ESR is often a partnership affair—achievable through the joint efforts of rich and poor countries alike. That is why, for example, the Millennium Development Goals from the start incorporated global partnership as MDG 8.

Developed countries that are parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have a legally binding obligation “to take steps, individually and *through international assistance and co-operation, especially economic and technical*, to the maximum of [their] available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant” (ICESCR, article 2[1]; emphasis added). The ICESCR also refers to international assistance and cooperation for the full realization of the rights in the treaty, in articles 1, 11, 15, 22, and 23. General Comment 3 to the covenant, on the nature of states parties’ obligations, clarifies that “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.”²

Several United Nations resolutions and declarations have reaffirmed UN member states’ commitment to international assistance. The Millennium Dec-

laration, adopted by the General Assembly in 2000, recognized “a collective responsibility to uphold the principles of human dignity, equality and equity at the global level.”³ Developed countries agreed to undertake concrete actions such as the adoption of fair trade rules, a debt relief program for the heavily indebted poor countries, and increased development assistance to poor countries committed to poverty reduction. It is critically important that developed countries fulfill these commitments to enable poor countries to break free of the poverty trap and to make necessary investments for the basic needs of their low-income populations, needs that include improved health, infrastructure, education, governance, and environmental security.

Even when necessary international transfers are made to under-resourced governments, ESR advocates will be needed to ensure that the domestic institutions create proper management systems to oversee the reliable and accountable distribution of the international resources to the communities in need. As White and Perelman describe, this will require that ESR advocates work within the relevant “national ESR-delivery framework” with the respective agencies, authorities, and institutions, in cooperation with scientists, economists, public-sector managers, and, of course, the communities. In the end, the tools of local ESR advocacy will be essential.

The case studies are interesting stories in their own right, and, importantly, they demonstrate that with creativity, ESR provides important tools for confronting, and resolving, the global injustices of poverty, hunger, and disease—by fighting discrimination, exclusion, exploitation, and neglect. We agree with the authors that crucial advances have been made on the use of ESR to address social challenges facing the poor and dispossessed, and that ESR will play a growing role in confronting these challenges in the coming years. *Stones of Hope* will be an important milestone in this work and should generate further case studies dedicated to additional aspects of the ESR challenge, including international development assistance, foreign investment law and practice, the role of multilateral development agencies, and other international dimensions of our increasingly globalized society. Our generation is the first with the practical possibility of ending extreme poverty. Economic and social rights will be among the critical tools for that historic achievement.

Contributors

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LUCIE E. WHITE is the Louis A. Horvitz Professor of Law at Harvard Law School. She specializes in domestic poverty law and international economic and social

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