The 'Case' For Reconceptualizing International Law": Panel Discussion 12/2/2020

Moderator:

Professor E. Tendayi Achiume: United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; UCLA School of Law.

Panelists:

Professor Sundhya Pahuja: Director of Melbourne Law School's Institute for International Law and the Humanities; author of the foundational work *Decolonizing International Law*.

Professor Makane Moïse Mbengue: Professor of International Law at the Faculty of Law of the University of Geneva; legal practitioner in the field of international investment law.

Professor Balakrishnan Rajagopal: United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; MIT Department of Urban Studies and Planning.

Opening Remarks

Professor Achiume began the session by outlining that the purpose of the series is to create a confrontation between history, theory, and contemporary practice in international law. Part of this project is to think about decolonization, or the unfinished business of undoing structures of systemic political, economic, social and cultural subordination that characterized European imperialism and which remain in effect today and operate through international law. Part of the goal of the series is then to ask questions about what it might mean to remake the international order in more just and equitable terms, taking into account this colonial history and its legacies.

Professor Achiume is the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. She noted that one of her priorities as Special Rapporteur is to bring to the fore the way that the very meaning and operation of race as a structure of contemporary subordination cannot be divorced from imperial histories of slavery and colonialism. She then went on to discuss her recent report on reparations to the UN General Assembly, which focused on addressing the need for states to recognize their obligations to provide reparations for racial discrimination, rooted in slavery and colonialism.

By way of background, Professor Achiume noted that debates at the UN level regarding reparations have been "fraught and stalled." Many UN officials, agencies, and mainstream human rights actors tend to be dismissive of the idea of reparations: these actors tend to characterize reparations as an impossible, or even ill-motivated and unwarranted. Moreover, there is immense geopolitical resistance to the idea of reparations from the First World – former colonial powers – and the publics of those nations may be in deep denial, or else don't fully understand what reparations are as a matter of law, or what role international law or international human rights has to play.

Professor Achiume highlighted two of her aims in creating her report on reparations. The first was to establish the normative baseline for reparations for racial discrimination rooted in colonialism and slavery, under existing international human rights law and existing international law. The report highlights that reparations exist as an established remedy under prevailing international law and principles, and provides examples of where reparations have been provided. However, Professor Achiume expressed her skepticism at the current international system's ability to adequately address and provide reparations without fundamental reform.

The second aim of the report that Professor Achiume highlighted was to explicitly name the reconceptualization of international law as a target of reparatory and decolonial intervention. The report

highlights that reparations entail two related projects: historical remediation, which includes justice and accountability for historic wrongs; and the eradication of existing structures of inequality and discrimination that have resulted from the failure to address the racism that was rooted in slavery and colonialism – a decolonial project. The report reminds its audience that international legal doctrine has a longer history of justifying and enabling colonial domination than it does guaranteeing equal rights to all human beings. Actors within the international system will often point to barriers to reparations in existing international law, such as the intertemporal principle; however, to the extent that there is doctrine in international law that perpetuates neocolonial dynamics, including the failure to eradicate legacies of slavery and colonialism, those laws themselves must be condemned as neocolonial and targeted as a site of both decolonization and of reparations.

<u>Question to all panelists</u>: Is there a need to reconceptualize international law for decolonial purposes, and if so, why? Panelists were invited to reflect on this question with the focus on their specific areas of expertise in international law.

<u>Professor Sundhya Pahuja</u>:

Professor Pahuja noted that reconceptualizing international law entails a different kind of approach than the apply/extend/reform approach taken by many progressive lawyers and academics – that is, applying international law to worldly problems, extending the operations of international law to make it more inclusive, and reforming international law and its institutions. By contrast, reconceptualization invites us to examine the foundations or building blocks of the discipline and invites us toward a fairer rethinking of our institutions, doctrines, and norms.

This is necessary because international law is implicated in producing or patterning injustices and inequalities. As Professor Achiume mentioned in her opening remarks, international legal doctrine has a longer history of justifying and enabling colonial domination than it does of guaranteeing equal rights to all human beings. There's a huge amount of research that shows that intimacies between international law and empire; whether it's in terms of resource extraction, racial hierarchization, forced labor practice or land appropriation, international law was involved not because it was misused in the name of empire but because it was structured to serve the needs of empire.

Moreover, that intimacy continues into the present: there's also a large body of scholarship which shows precisely that these imperial structures didn't end with formal decolonization. For example, the geography of inequality and the geography of empire share a common pattern, which international law is involved in repeating. This is why the apply/extend/reform approach is unlikely to make or produce a more just world, and could even make it worse. We therefore need to reconceptualize international law because international law itself is contributing to the problem, especially because of the repetition or active re-inscription of colonial or imperial structures.

The question therefore is, how does international law contribute to the repetition of those structures, and what does it imply about what we should do about it? This question becomes politically charged, because even although the legacies of empire are problematic for most of the world in demographic numbers, they are also highly beneficial to some. Not every institution or doctrinal formation can be reconceptualized or decolonized; some institutions may need to be dismantled in order to contribute to the project. Specifically, Professor Puhuja noted that identity-based approaches, that might change the nationality or color of the personnel involved but maintain the same structures, don't tend to contribute to substantive redress but instead tend to produce what she called an assimilated diversity, which needs to be avoided.

Professor Puhuja then applied this to the idea of development, which she has focused on in her own work. While development may for some be conceived as a proxy for human progress and wellbeing, a brief historical study of development and its invention in the 1940s reveals that

development is a concept that picked up where the civilizing mission left off. This kind of historicization is crucial to reconceptualizing: it is through that attention to the historical invention of such concepts that we can be attentive to their effect. For example, development reproduces the civilizing mission because it perceives difference, and like the civilizing mission, rearranges it in a hierarchy by locating some people and some ways of life in the past, and some people and some ways of life in the future through a fictitious story or projection of a universally shared history. So in other words, some ways of life are described as "traditional" and "dying out," and others as "modern," whereas actually they are all co-existent but different. And like the civilizing mission, development generates a moral imperative to assist the "underdeveloped" to become more like the "developed," also according moral authority to the powerful.

That hierarchy reproduces the racialized hierarchies of colonialism, but conceals the racialized basis of it by attributing the differences to "culture," and particularly to economic culture. The effect of the reproduction of this hierarchy is to produce a geography of knowledge, in which knowledge is only understood as properly coming from the North, to be applied in the South. That geography results, crucially for us as lawyers, as a distribution of authority and moral authority upwards into the international or northwards into the global North, and a distribution of responsibility downwards into the nation-state. And by effecting that distribution, it secures regimes of exploitation, including things like investor-state dispute settlement by re-narrating them as necessary for the poor in the name of development, and their development is equated with the kind of undifferentiated notion of economic growth even though the effect of those doctrines and institutions is both the enrich the wealthy and reduce democracy in the South.

Professor Pahuja therefore strongly argued that any move toward reparations directed through the development machinery or development aid are the wrong kind of reparations. Instead, she urged the audience to think about justice-based claims, using the example of the Residential Schools Settlement in Canada, which arguably takes a justice-oriented approach and recognizes the strength and existence of First Nations laws. She contrasted this with the ways in which "reconciliation" in Australia has been conceived as "closing the gap," which reproduces an assimilationist doctrine.

Professor Makane Moïse Mbengue:

Professor Mbengue began with an anecdote from his personal legal practice, where he had been appointed recently by a French-speaking country in Africa to represent it in investment arbitration proceedings before the International Centre for the Settlement of Investment Disputes. Because one of the lawyers working with him was Anglophone, they decided to submit all the written submissions in both English and French. But then the lawyers representing the claimants, who were based in Europe, wrote to the tribunal to complain that the African country, because it used to be a former French colony, should only be allowed to present its arguments in French – that the African country, a sovereign nation, should not have the right to choose the language in which it would like to present its arguments before an international tribunal, even if explicitly allowed by the rules of the tribunal. This anecdote, he concluded, shows that there is definitely a need to reconceptualize international law for decolonial purposes. This debate is practical as well as theoretical.

Professor Mbengue noted that the idea of decolonizing international investment law – his area of practice and legal expertise – is not that new. For example, in the mid-19th century in Latin America the Calvo doctrine was formulated, which was a rejection of so-called customary international law that would protect foreign property as situated on the territory of states. During the 1960s, there was also Resolution 1803 of the UN General Assembly, entitled "Permanent Sovereignty over Natural Resources," and Resolution 3281 of 1974, the famous Charter of the Economic Rights and Duties of States.

These resolutions were perceived, even in the practical world of international law, as strategies of decolonization. At the end of the 1970s, for example, a sole French arbitrator – Professor René-Jean Depuy, who actually later on became the Secretary General of the Hague Academy of International Law – decided the case of Texaco vs. Libya. Dupuy's award in this case interprets those resolutions – Resolution 1803, Resolution 3281 – as elements of resistance against powerful nations, describing them as 'ideological strategies toward development.' Dupuy then declined to accord legal weight to the resolutions because rich or developed nations – which he claimed to be in charge of international economic relations – had voted against them.

Finding that there has been a historical push to decolonize the international investment regime, the question then becomes: why have these attempts failed? Professor Mbengue iterated three factors that have led to the failure of those decolonization strategies: dependency, competition, and conditionality. Firstly, many countries could not effectively put decolonial strategies in place because of their dependence on foreign direct investment. Secondly, competition has limited decolonial practices: for example, some nations may feel that they have no choice but to sign bilateral investment treaties because otherwise neighboring states who are willing to sign those treaties will receive all the foreign investment. Thirdly, conditionality: external forces – for instance the IMF – condition aid or financial credit or so on to adherence to the dominant investment regime that has been put in place by rich nations. These three structural barriers have been key weaknesses in really putting decolonial strategies in place, and therefore must be taken into account when thinking about why and whether we need to reconceptualize IL for decolonial purposes.

Professor Balakrishnan Rajagopal:

Professor Rajagopal first expressed his gratification that Professor Achiume's report to the UN was anchored in the 2001 World Conference Against Racism in Durban. This conference marked a moment when a new generation of Third World Approaches to International Law [TWAIL] was coming of age. The earlier demands for a more equal international law between developed and developing states that should take account of its colonial past had concluded, and the solidarity shown by many of the developing countries in the immediate post-WWII period had dissipated. In its place there rose a new form of the Third World, which consisted of ordinary people who were organizing in the form of social movements and other collectivities that were able to increasingly have an impact on the international level.

This trend was exemplified at the Durban conference. For example, the African American community in the United States participated as a whole for the first time in an international conference in Durban. There were substantial mobilizations by other communities advocating the rights of Palestinians, the Dalit community from India, the Roma and Sinti communities, migrants, people of African-Asian descent, the Burakumin communities in Japan – the number of groups that were able to gather together under the umbrella was unprecedented. This, Professor Rajagopal noted, was perhaps the most important gain from the Durban conference: not so much whether laws were changed, but the very fact of coming together and affirming their solidarity, and showing that a new form of solidarity is possible.

Professor Rajagopal reiterated that the criticism of human rights as being historically Eurocentric is not new. Though this might be true, however, credit must be given to the critical, formative role played by developing countries in shaping the human rights framework. It was the developing countries, many newly independent, that joined the UN Human Rights Commission in the 1960s that pushed for important advances in human rights, such as creating rights against racial discrimination and a right to self-determination for the first time. The subsequent influx of more newly independent states in 1979 led to the creation of individual complaints mechanisms, which was the foundation of the Special Procedure mechanisms that Professors Rojagopal and Achiume now hold.

And all of these changes led to further victories – to, for example, the New International Economic Order and the Permanent Sovereignty resolutions, the resolutions on Colonial Countries & Peoples, the Declaration of Right to Development, and to UN Declarations like UNDRIP.

Though this is a positive recounting of the history of human rights, colonialism and its legacy of course lingers. Professor Rajagopal noted three facets of this colonial legacy. One is the very language and epistemology of rights, their very material and moral possibilities within which the idea of rights is sought to be realized – for example, the idea of standard of living is positioned within the epistemology of development, which carries with it all the issues Professor Pahuja raised. Going beyond rights to taking into account other forms of resistance is therefore a crucial part of coming up with a way to decolonize rights. But Professor Rajagopal noted that we have to ask not whether we can decolonize rights, but whether we can decolonize resistance.

The second sort of colonial legacy that lingers with us is the racial identity of rights talk, which expresses itself particularly in the physical localities of institutions based as they are in the Global North. Particular practices are valorized and celebrated as being "best practices," with very little attention paid to practices from the South that may legitimately be seen as pioneers as advancing the arch of human rights. What we need to do, Professor Rajagopal argued, is reverse this directional flow and ask what South has done in terms of its impact on practices and institutions in the North.

The third and the last thing about the colonial legacy of human rights is the values of public international law in which international human rights law is trapped: it results from the actions of states, and so its basic legitimation comes from the fact that it is rooted in a process of law-making by formally equal states.

These issues are joined by other barriers to achieving reparations or decolonization, including doctrines such as the intertemporal principle and sovereign immunity. Moreover, many of the former colonial countries have conveniently excused themselves from the compulsory jurisdiction of, for example, the ICJ. The formal legal bodies have therefore not really had a chance to deal with the sort of issues that are raised in Professor Achiume's report.

Finally, the barriers or colonial legacy goes beyond international law to the colonial legacy of the inherited laws within countries, as countries have transitioned from colonial rule to postcolonial situations. Most of these countries have retained their former laws, and this has proved to be an enormously influential source of the continuation of colonial practices and extractive mechanisms that have been now carried out in the name of a global capitalist elite.

<u>Question to Professor Rajagopal</u>: Offline I think you and I should talk about really important work that we might do to bring together knowledge about the movement work that was done at Durban.

<u>Professor Rajagopal</u>:

Durban is underestimated and overlooked globally, politically, because of the unfortunate fact that it concluded on the September 10, 2001 and then we had 9/11 the next day. And then the news cycle was completely taken over by 9/11 coverage and it disappeared, it fell out of sight. Any follow-up events after 9/11 were totally poisoned by the counter-terrorism attitude, the framing that was pushed by the Bush administration in the early 2000s. So, for example, you could not even get the 3rd committee to approve the outcome document. The 5th committee did not approve the budget in the General Assembly for the Anti-Discrimination unit which the High Commissioner wanted to create within the OHCHR. This is the unfortunate reality of what happened to the Durban Conference. It definitely needs more attention and study from international lawyers going forward.

<u>Question to Professor Pahuja</u>: Your presentation emphasized a kind of abolitionist approach to reconceptualizing international law for decolonial processes: in the idea that the liberal crisis or contradictions that we are seeing right now in international law are features of the system rather than aberrational; and the idea that for some institutions and some bodies of law, there is no reforming – it is about getting rid of them and starting from the ground up. Do you see this as generating an opportunity for a more explicitly abolitionist thread within international legal scholarship? Is the project for international lawyers ultimately the abolition of international law?

<u>Professor Pahuja</u>:

The entire post-war history of international law is full of efforts by leaders in the Global South and resistance leaders precisely to push back against the imperial inheritance that they knew was international law. And when we try to understand why they "failed," we need to take a historical approach because they did not fail for natural or primordial reasons, but because they were killed. You can read books like Adom Getachew's book, *World Making After Empire*, or Jessica White's book about human rights and neoliberalism, or B.S. Chimni's book or many other books[1] to say that those initiatives emanating from the Global South, in the period of decolonization, were explicitly fought against. Reading these historical accounts of why these efforts failed is therefore a very, very important question for anyone who purports to be interested in reconceptualizing international law.

The question of reformation or abolition is a good one. If you take, for example, the international investment regime, it relies on a series of contested assumptions. First, it relies on an assumption that without an investment treaty according rights to investors, there will be no foreign investment. Second, it relies on an assumption that foreign investment is good for development. These assumptions are then used as a justification for granting special rights to investors. If you take a reformist approach, you might say, this regime isn't fair, and so we need to have an international investment court, we need to proceduralize. But this is a good example of where we need to fight for abolition, because there is no empirical justification for the according of extra rights to investors. People must make up their own minds about whether taking up the instruments that are available and trying to reform them is better than acknowledging that these institutions were conceived, designed, and built with an imperial purpose at their heart and trying to get rid of them entirely. And while these questions may be difficult because they affect us, our lives and our livelihoods as international lawyers, Professor Pahuja argued that it is important to keep the question of unreformability on the table.

Perhaps surprisingly, Professor Pahuja stated that she would argue against the abolition of international law as a whole. But while she argued that law is necessary, she also argued for a vision of international law that attends to the plurality of law and legal sources. The current system of international law is not the only one – it squashed out a whole lot of others, just as the laws of the nation state were themselves empire-writ-small which pushed off the table Indigenous law, or other forms of legal systems. Therefore, if we want to reconceptualize international law and hold it to a project of justice, we need to pay attention to these other forms of international law.

<u>Professor Mbengue:</u>

Professor Mbengue agreed that the decolonial project is of an abolitionist nature, at least when it comes to the investment regime. He called attention to the ways in which African countries are domesticating international investment law as a kind of decolonial strategy. He supplied the examples

[1] Professor Achiume also recommended Natsu Taylor Saito's new book on racial justice as a decolonial project and James Gathii's keynote, *The Promise of International Law: A View from the Third World*. Professor Achiume and Professor Pahuja are currently creating a bibliography of similar works to send out to interested participants.

of South Africa, which has decided to stop concluding bilateral investment treaties, and instead has adopted a domestic investment law that integrates some international law; Tanzania adopted a new law rejecting the jurisdiction of international arbitral tribunals in deciding disputes regarding the exploitation of natural resources on its soil. While these strategies reject international law they are not quite abolitionist; however, they allow developing countries to reclaim a certain jurisdiction on how they want to implement, to interpret, and to apply standards of international investment law.

Professor Rajagopal:

While agreeing that some institutions are beyond redemption, Professor Rajagopal warned us to be careful that abolishing one institution or doctrine doesn't leave something worse in its place. For example, the Center for Transnational Corporations was abolished in the early 90s; while it was rightly criticized for being ineffectual and largely symbolic, it was succeeded by nothing, by a celebratory neoliberalism during the 90s in which it was hard to find sites where transnational corporations could be criticized. And an institution like the World Bank, which may rightly be subject to criticism and calls for abolition, at least has an information policy which compels them to share information about things, which its competitors do not currently have. And so Professor Rajagopal reminded us that every act of abolition will also be an act of creation, and we have to be sure that what is created will actually be better than what has been abolished.

Question to Professor Mbengue: you speak about dependency, competition, and conditionality as structural barriers that have prevented the coming to fruition of decolonial work. Given that structural account of the barriers to decolonization, is it conceivable that international practitioners could identify decolonial legal practices? Or would any kind of change require the obliteration of the existing universe that we have, and the recreation of another one that would get over the barriers that you articulated?

Professor Mbengue:

Professor Mbengue noted that in his experience in his practice, negotiators of investment agreements in Africa may get scared if you use the word "decolonization." In his experience, it has been important to find other labels for decolonial projects or purposes – for example, talking about the "Africanization" of international investment law, which reflects the idea that Africa is giving its voice to the making of international investment law.

Two decolonial practices that Professor Mbengue named as being helpful to legal practitioners are the rejection of certain international law standards that are not adapted to development concerns – such as the doctrine of Fair and Equitable Treatment – and the tailoring of others to fit a particular context. So, for example, rather than using the dominant model of investment agreements coming from rich capital exporting nations that focus on protecting the foreign investor, one can insert investor's obligations in investment agreements. These obligations may be dealing with corruption, obligations preventing investors from engaging in coup d'états, obligations preventing land-grabbing, and so on.

Question to Professor Rajagopal: Your call to think about decolonizing the resistance as a priority is a really important one. What might this look like in the context of your mandate in the context of Right to Housing? Could you speak concretely about what decolonizing resistance might look like in the context of your mandate going forward?

Professor Rajagopal:

In terms of how you decolonize resistance, well that's a very long conversation. Focusing on decolonial legal practices, we can see some movements which have been successful in lawmaking at the

international level. For example, a movement like Vía Campesina has contributed to international lawmaking and implementation for at least the last two decades much more robustly through the Committee on World Food Security, and through the contribution to the drafting of new legal instruments such as the Declaration on the Rights of Persons. And as Professor Pahuja noted, an approach that emphasizes legal pluralism should be celebrated and expanded as a decolonial legal practice that can decolonize resistance. We should also celebrate multiple modes of lawyering and exchange. Movement lawyering is a critical role performed by many, many important lawyers. We need to highlight and celebrate the role of movement lawyering much more as part of international legal practice, which can be excessively focused on legal practice in the traditional, conventional sense.

A reparative approach to human rights is also a critical way to think about human rights in a more liberatory fashion, particularly economic social and cultural rights – and as Professor Achiume noted in her report, paying attention to history but also the continuing legacy of the present. And some recent cases do offer some good examples of how that could be done. For example, the TAC [Treatment Action Campaign] led formally to the Doha Declaration on Right to Health, which in turn made a formal dent in the kind of the intellectual property umbrella that was being passed all over the world through the TRIPS agreement. This is an important milestone or example of how social mobilization can align itself with strategic considerations by states, and can be done in a way which can actually reorient international law, in this case international trade law. There are also cases like the Awas Tingni case in the Inter-American Commission on Human Rights, which showed how oral practices that account for demarcation of Indigenous lands could actually be elevated to legal standards, and then can in turn form the basis for recognizing land tenure. There are similar models available for urban areas – for example, the Catherine Frank's recent work on at community land trusts in the United States as a possible response to reparations.

Finally, we should be bold in rethinking or re-deploying conventional legal doctrines. For example, there are recent cases involving Cambodian farmers suing corporations before UK courts where the concept of unjust enrichment was used to actually score some significant gains. There are many tools that already exist on the books that can be used, as we also push for new tools and new norms and new forms of plurality.

Professor Pahuja:

The doctrine of odious debt as well is a very useful strategic possibility.

Question to all panelists: There are two questions from the chat that I'll group together. One is, how we should situate the humanization of international law project in the context of the current discussion pertaining to decolonization of international law? Are they exclusive of each other, or can we say the former is a subset of the latter?

Another question that might be related is one that asks, within post-colonial studies there's a well-known suspicion of universal humanism – how do we speak to the critique of universal humanism while preserving some of its more salient goals, such as extending rights more equitably?

Professor Pahuja:

Professor Pahuja noted that there is a liberal fantasy of international law, which is that international law is virtuous but marginal – a good thing that doesn't do good things because it is powerless. However, international law is actually what Gary Simpson has called "powerful and constitutive" – its power lives in its world-making function. For example, a state does not exist before law: states and law come into being together. So, when we consider questions such as how to deal with the economic disparity between different states so that we can implement good international laws, we

have to think about the way that international law is not exogenous to that structural relation. It produces it. It's a regime that is produced in part through the operation of international law. So first ask, what role is this international law or regime playing in the production of certain forms of relations? And so even the question about universal humanism, and how do we critique humanism while holding onto its goals – don't make the assumption that you want to hold onto its goals. Ask what work universal humanism is doing in structuring the world, and then work from there.

Professor Mbengue:

What is the definition of the humanization of international law? This is part of the broader debate on decolonizing international law. The global child labor regime is a very interesting laboratory to discuss the connection between humanization of international law and the broader debate on decolonizing because there are countries, mostly from the rich world, that believe that child labor should just be prohibited, period. You even have an ILO convention, Convention 182, which is just about prohibiting child labor. But in many parts of the developing world, child labor is actually important for the sustainability, for the resilience of those societies. The very notion, the very idea of humanization can be subject to this debate on reconceptualizing international law because there has been one direction to what humanization means in the system.

Professor Rajagopal:

The problem of the discomfort that postcolonial scholars have had with the criticisms that have come about universal humanism have more to do with the word "universal," and less to do with the word "humanism." Humanism is a very wide concept and you could interpret it many different ways. But if it emphasizes, for example, "do no harm," it emphasizes a particular view of preserving life as it is and valuing it for its own sake, which is a very different sort of thing from, or is a different issue from the idea of universal or universality that precedes the word "humanism."

Instead of the word "universal," perhaps we should try to experiment with the word "pluriversal." There is no assimilationism if you don't actually assume that something is universal. If something is pluriversal, then multiple forms of living become equally valid. It doesn't mean that they cannot be criticized on their own terms for falling short of particular normative standards, but nevertheless it starts from the premise of plurality. There has been a dire need to go beyond this idea of universality for years.

Question for all panelists: Two of the constituencies participating in this webinar include practicing international lawyers and law students. There are two questions that come from each of those constituencies that are related. One is, how can international lawyers can contribute to change on a day-to-day basis that can advance some of the changes each of you have highlighted as priorities? And a related question is, what would you say to graduating law students who are pursuing careers that might bring to fruition or advance some of the visions you've articulated, including movement lawyering?

Professor Mbengue:

In response to the question about how international lawyers can contribute to a decolonial project, Professor Mbengue noted that in his personal experience, capacity-building is very important. You cannot have an agenda of decolonization if the stakeholders or government are not aware of why that work is important, or the challenges, or why some of the some of the instruments of international law are not relevant to them. There is work behind every nation's decision to adopt a moratorium on negotiating investment agreements, or to domesticate laws governing investment. And so both from

the academic side and from the practitioners side, we should not underestimate the power of knowledge and capacity building in order to advance these decolonial purposes.

In response to Professor Rajagopal's comments about movement lawyers, Professor Mbengue noted that we shouldn't see movement lawyering and legal practitioners as being clinically isolated from each other. Instead, they should be mutually supportive. This is what IILA [Independent International Legal Advocates], of which Professor Mbengue is an advisory council member, is trying to do: build bridges between movement lawyering and legal practitioners. If you want as an international lawyer to be able to have some impact, to have policy makers listening to you in how they can actually change the rhetoric of international law, it is helpful to have this dual role as practitioner and movement lawyer.

Professor Rajagopal:

On movement lawyering, the challenges are actually far deeper than one realizes. The issue arises with the very structure of legal education and pedagogy, the type of materials that we think are appropriate for studying as lawyers, the kind of legal training that is emphasized clinically in law schools, the kind of client-engagements that we do. Especially in much of the developing world. And and so there is a challenge in getting people to de-professionalize themselves enough from what they are learning, while at the same time being technically expert in what they're doing. If you take yourself far too seriously and fall in yourself with your skills in that way, chances are not very likely that you'll become a movement lawyer. If this is to be a serious project, the law schools should in particular should treat this as one of the central strategic objectives of legal education rather than seeing it as something that you deal with because you looks nice on your brochure, it's a pro bono thing, or whatever.

Professor Rajagopal also clarified that he agreed with Professor Mbengue – there is no necessary contradiction between movement lawyering and mainstream lawyering if it means representing states, for example, or representing clients before formal dispute resolution bodies. People are in movements one moment, and a few years down the road they are in the government or they're actually litigating something else. But many movement lawyers accidentally find themselves doing this kind of work, whereas this should actually be a strategic priority of legal education in order for this to happen at scale.

Professor Pahuja:

In terms of advice, there's no global prescription because what you can do will depend on where you stand in all sorts of different respects. There is no position which is going to be protected by its virtue just because it's got the name of a traditionally progressive set of institutions. And so, the best piece of advice is, read more! There's a famous book that was published in Australia about the oppression of Aboriginal people called *Why Weren't We Told?,* which was written by a white historian. And if you're Black, or if you're one of the oppressed in whatever axis, you don't have the luxury of waiting for someone to tell you. So the question is not, why weren't we told, but why didn't we ask? So, read more. Because you need both technical mastery and theoretical and historical depth in order to understand what interventions might be effective, what strategic uptakes of doctrine might work, how you can assess the objectives, how you can teach in particular ways – all of those things starts with reading more.

Professor Rajagopal:

Professor Rajagopal answered one last question from the online chat about how best practices from the south actually travel, and institutional resistance to them. Professor Rajagopal brought up the concept of participatory budgeting, which was developed in Brazil and which Professor Rajagopal teaches in some of his classes. Though it was initially a very difficult idea to accept in many Western cities, participatory budgeting has found quite a bit of traction in many American cities, along with other mechanisms or languages that have also emanated from Brazil, like the idea for the right to the City.