Chapter 2. Expectations of Law

Introduction

In their book on U.S. citizens' legal consciousness, Patricia Ewick and Susan S. Silbey noted that "[l]egality is a social structure actively and constantly produced in what people say and in what they do" (1998, 223). Like other authors writing about legal consciousness, Ewick and Silbey's research examined the everyday understanding of law as it shapes the social relations of people interacting with, using, or coming into conflict with legality (see also: Merry and Canfield 2001, 538). While stating that "the law incorporates countless, varied, and often ambiguous rules" and that, therefore, "the law appears to us in varied and sometimes contradictory ways" (1998, 17), Ewick and Silbey also defined three different "stories" (*ibid.*, 31) of how interlocutors framed their legal experiences: First, they observed the story of people who stand "before the law;" these interlocutors described legality as a sphere detached from everyday life, which follows its own rules and formalities, and thus appears to be objective but at the same time intimidating and elusive (*ibid.*, 47, 57–108). In the second story of legal consciousness, which Ewick and Silbey categorize as "with the law," legality is perceived as a kind of "game" or, more specifically, "a bounded arena in which preexisting rules can be deployed and new rules invented to serve the widest range of interests and values" (*ibid.*, 48). In this perception, law provides tools or, rather, is instrumental by itself and thus enables those who (strategically) utilize it to assert their own interests (*ibid.*, 180–164). Finally, there is the dark side of legality, which Ewick and Silbey sum up as the story "against the law" (*ibid.*, 165–222). This includes stories of people resisting legality, its rules and its institutions, or simply avoiding it because, as a "product of arbitrary power, legality is seen as capricious and thus dangerous to invoke" (*ibid.*, 192).

In the process of judicialization that I describe in this book, I observed many of the stories of legality described by Ewick and Silbey. As I mentioned in the introduction, I noticed a significant difference in the field in terms of expectations regarding the law between the legal NGOs in Lima and the social movements in Cajamarca. Activists who were criminalized by the state for their political involvement have a different perception of legality than, for example, human rights lawyers, whose pro-

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fession includes seeking social justice through legal processes. In this book's discussion on the different forms of legal mobilization *from below* (in Chapter 3) and *from above* (in Chapter 4), as well as in the analysis of the strategy of litigating cases *abroad* (in Chapter 6), these different forms of legal consciousness will be a recurring theme that accompany and shape my analysis. This chapter is intended to serve as preparation for this analysis. Since I consider the legal NGOs and human rights lawyers in Lima to be among the main drivers of the judicialization processes in Peru's mining regions, and since their work is at the center of my analysis, I focus this chapter on their expectations of the law. Thus, I provide insight into their belief in the law and their hope to use the law as a counterhegemonic means for social change.

In this sense, I deal with the form of legal consciousness that Ewick and Silbey have described as "with the law," i.e. with the instrumental, strategic use of law. In the first part of the chapter I describe what Peruvian human rights organizations understand by the concept of "strategic litigation," an approach that has often been used in recent years to describe the systematic use of legality by civil society organizations. In the chapter's second part I then discuss the various expectations that legal NGOs and human rights lawyers have of the law and categorize these different expectations. In doing so, I examine what the NGO lawyers seek to achieve for the people they defend in court, but also, in a broader sense, what they seek to achieve for larger population groups, specific social movements, and society in general.

Strategic litigation

In Ewick and Silbey's (1998) book, it was mainly individuals who recounted the history of acting "with the law" and who took advantage of legal mechanisms to pursue their personal interests or to resolve private disputes. The aspirations these individual followers of the law are similar, however, to a more institutionalized form of legal mobilization which has in recent years been discussed as the so-called "strategic litigation" approach. Strategic litigation is a concept that takes into account the instrumental use of rights by civil society organizations such as NGOs or legal aid centers, which use the law in emblematic court cases in order to have an impact not only for the plaintiffs, but also for other groups affected by the same violation of rights.[1] The approach became particularly popular in relation to public health care,

1 Various lawyers who are active in strategic litigation wrote about the approach and its implementation; see for example the work by lawyers working with the European Center for Constitutional and Human Rights (ECCHR) in Germany, Claudia Müller-Hoff (2011), and Miriam Saage-Maaß and Simon Rau (2016), or by lawyers working with the Argentine *Centro de Estudios Legales y Sociales* (CELS 2008) and the *Asociación por los Derechos Civiles* (ADC 2008). For a general overview from an academic perspective, see for example the work by Helen Duffy (2018), César Duque (2014), or Rachel Sieder (2017, 35–7).

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for example during the HIV movement (Ezer and Patel 2018), but also more generally in struggles to defend fundamental human rights of vulnerable groups. The idea is that the legal system offers instruments that can be used strategically to force a political change in society through precedents via the legal system (Müller-Hoff 2011, 24). Comparable to the individuals who, in Ewick and Silbey's work, reproduce the story of legal consciousness of "with the law," legality for these civil society organizations thus becomes "a space 'within' which to operate and something 'with' which to work" (Ewick and Silbey 1998, 123).

In recent years, the strategic litigation approach also reached Peru, where it has been pursued by parts of the human rights movement, especially by legal NGOs in Lima, such as IDL and *Fedepaz*. IDL and *Fedepaz* were both founded during the internal armed conflict with the aim of defending human rights and, since then, have pursued the strategy of using legal mechanisms to get justice for people affected by state violence and human rights violations – for instance, in the context of the extractive industries. As civil society organizations, their legal mobilization is aimed at the persuasion of clear political goals and at the promotion of social change. For the lawyers of *Fedepaz* and IDL, to litigate is a political act, as various lawyers working with these NGOs told me during fieldwork. According to them, to litigate notorious human rights violations is a matter of shaping public discourse and of "pushing forward public policies (*empujar políticas públicas*)," as one IDL lawyer framed it.

According to David, one of *Fedepaz*' lawyers, strategic litigation comprises various methodological elements. A court case, usually based on a so-called "emblematic case" of (fundamental) human rights violations, serves as a starting point. By taking the case to court, the aim is to have the judicial authorities address the infringement and provide an official response to it. However, as David explained to me, it is not just a matter of filing a complaint or a lawsuit and "then waiting for the court to respond," but at the same time a political process must be initiated to accompany the court proceedings. This includes, on the one hand, making the case publicly known through press releases, press conferences, and other forms of cooperating with the media. According to David, lobbying among political allies, for example in Congress, or the cooperation with autonomous state institutions such as the *Defensoría del Pueblo*, Peru's ombudsperson, is also part of strategic litigation.

Furthermore, *Fedepaz* has regularly participated in the sessions of the IACHR, in which the NGO attempted to address the political demands raised by its court cases at the international level. This internationalization of its judicial struggles also includes the use of transnational advocacy networks to exert pressure on the national authorities from abroad (see Chapter 5) or to turn to foreign courts to support court cases at home, as *Fedepaz* did in the torture case in Piura by bringing a civil complaint

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against the parent company in the United Kingdom (see Chapter 6).[2] In all these endeavors, the initial lawsuit acts as the pivotal point, and all the further efforts are aimed at supporting this specific case. However, even if the human rights lawyers are ultimately unable to win a particular case in court, the lawsuit may lead to a favorable outcome through the political debates or processes it triggered. Ideally, this will result in political or social changes and thus bring the NGO closer to its political goals, for example by initiating a public debate, which then leads to a change in the legal framework (see also: Müller-Hoff 2011, 26).

Thus, strategic litigation comprises a range of measures to support a court case from outside the legal sphere. A second important characteristic of this approach is that it pursues goals that not only affect the plaintiffs directly involved, but also, as already mentioned, a larger population group. The aim is to litigate "structural" human rights violations and to change the conditions that allowed for the infringements, as David told me. In this context, it is telling how Pedro, who worked as a lawyer with IDL and as a Bertha Justice Fellow[3] at EarthRights International's Peruvian office, explained his work to the participants of the *Escuela de Líderes y Lideresa*s in Celendín. In doing so, he addressed the approach of strategic litigation and said that it consists of different components:

> I want you to understand that it's not just about taking a bunch of paperwork to a judge and dropping it there, so that's not what it is, right? It's not just about bringing a lawsuit before a judge. […] Usually when a lawyer gets out of college, he learned to litigate cases in the following way: "Just present a case and it's [a discussion from] lawyer to judge and [from] lawyer to lawyer. Nothing else." In strategic litigation it's not like that. It has components, one of which is the social component. For me, this is the most important component. Because you're the ones who are going to build the legal action. The second component is the legal component. The lawyer has to do the legal component. That's our job. But then again, strategic litigation also has a communicational component, doesn't it? Furthermore, it has a public policy component. Can you question a public policy [by initiating] a legal process? Yes, of course you can! – *Pedro, human rights lawyer,* Escuela de Líderes y Lideresas, *March 2017, Celendín (field notes, own translation)*

The aim of Pedro's legal capacity training was to give the *escuela*'s participants insight into the possibilities of filing constitutional complaints when large investment

2 For a detailed discussion of how David and Rosa reflected *Fedepaz*' strategic litigation approach in relation to the torture case from Piura itself, see: Velazco Rondón and Quedena Zambrano 2015, 32–42.

3 The Bertha Justice Fellowship is a program financed by the Bertha Foundation which aims to train young lawyers or the "next generation of social justice and movement lawyers" (Bertha Foundation n.d.) at international legal NGOs, such as EarthRights International, for example.

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projects threaten the rights of local communities. At that time, IDL and the Peruvian office of EarthRights International were preparing a constitutional complaint, a so-called *proceso de amparo* or an injunction, against the Peruvian state to stop the hydroelectric dam projects in the Río Marañón. Pedro participated in the *escuela* to inform the members of the social movement in Celendín about the possibilities of this constitutional complaint. As I explain below, constitutional complaints are one of the human rights movement's key instruments to ensuring that the state assumes responsibility for protecting the rights of the population and for preventing human rights violations in the context of large-scale investment projects.

In a personal conversation during the *escuela*, Pedro described what he means by the social component he referred to when explaining his understanding of strategic litigation. He said that the social component is about involving the plaintiffs of a court case in the preparation of the case and about making them understand how the process is conducted and what can be achieved with it. This includes, as I explain below, the expectation that by conducting legal proceedings, the persons concerned will be "empowered" to exercise their rights and to strengthen their negotiating position, for example *vis-à-vis* the state or other powerful actors. Thus, according to Pedro, strategic litigation also includes "*un proceso de fortalecimineto,*" a process of empowerment, which gives an idea of the extent to which human rights lawyers in Peru perceive law and legality as an emancipatory means for the social movements and marginalized groups they represent in court.

Strategic litigation thus constitutes the methodological framework with which legal NGOs in Peru attempt to mobilize the law *from below* in order to defend the rights of specific population groups – including in the context of mining or other social conflicts. This makes the approach fundamental to understanding the case studies I discuss later in this book. As I demonstrate in the following chapter, however, human rights litigation in Peru is characterized by many hurdles and obstacles and the legal NGOs face considerable challenges when filing cases. In view of these circumstances, a question arises regarding the extent to which legal actions can actually be planned and strategically pursued and thus how *strategic* litigation can actually be in practice. As we see in the further course of this book, human rights lawyers do make strategic decisions, for example by leaving out the responsibility of the mining company, as in the torture case in Piura, so as not to jeopardize the entire process against the police officers directly involved (see Chapter 3). Beyond that, however, the actual *strategy* is using all possible means in the law and exhausting all instruments available to lawyers to get ahead with court cases. As we will see, the approach of strategic litigation therefore represents the theoretical ideal rather than the actual legal practice with which the lawyers are confronted. As I discuss in this chapter's second section, this is also related to the different expectations lawyers have of the law.

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Categorizing expectations of law

The question of the expectations, aspirations and hopes placed on the law is, from a theoretical perspective, related to the question of the function of law in society. As I discussed in the introduction, legal anthropologists examine law as a social process. Merry and Canfield noted that "'law' refers broadly to the rules, processes, and norms that regulate social life" (2001, 535). Sally Falk Moore (2001, 97) defined the function of law, *inter alia*, as "problem-solver," thus pointing to the central role of law in resolving disputes and conflicts. Following these considerations, law is ascribed an ordering power on the basis of its established rules and formal procedures because "[l]aw provides a set of categories and frameworks through which the world is interpreted" (Merry 1990, 9). People adhere to the law because of its ability to determine the rules of the game for the disputes that are carried out within the "juridical field" (Bourdieu 1987). Individuals who enter the juridical field – or who are brought into or pushed into it – approach the law with specific expectations that are shaped by their legal consciousness, by previous experience with the law, or by other aspects related to their personal background. Expectations of law are thus strongly person-related; but we can, however, categorize these expectations in order to observe common patterns of how the law is "anticipated" (Eckert 2017) under specific conditions and circumstances.

Second, the question of the expectations of law is also related to the question of justice, an issue that has also played a major role in current legal anthropological studies and beyond (see, for example: Fraser 2009, Clarke and Goodale 2010, Faulk and Brunnegger 2016, Bens and Zenker 2017). Anthropology has made an important contribution to this field, especially in relation to truth and reconciliation commissions and in the context of transitional justice.[4] Despite the variety of these contributions, however, the concept of justice has theoretically remained difficult to grasp. "Justice means many things to many people" (Sikkink 2011, 12) and is difficult to define because it includes both "procedural and substantive aspects" (Merry 2017, xii). At the same time, however, justice works as a "utopian goal" (Goodale and Clarke 2010, 1), which is sought by individuals, but also by movements, and which serves as a political demand that is often universally understood. Justice is thus contextual and universal at the same time. This book aims to contribute to these discussions and to give the blurred picture some clearer lines.

This book deals with cases of human rights violations committed by corporate and state actors in the context of social conflicts. These abuses have mostly been dealt with in the field of criminal law, which already gives a first indication of the expectations of the law that are pursued in these court cases. In the following sections,

4 See, for example: Wilson (2001) on South Africa, Shaw (2007, 2010) on Sierra Leone, Theidon (2013) and Laplante and Theidon (2007, 2010) on Peru.

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I categorize and discuss five forms of expectations that the actors in my research place on the law. These are, on the one hand, personal expectations such as, first, financial compensation and reparation, and second, justice and truth. Third, the expectations of law that I observed in the field also include expectations toward the state in the sense that legal processes lead to the redirection of violent conflicts into institutional channels. This indicates the extent to which the legal processes are also perceived as political processes by the human rights movement. Additionally, this links to the aim of, fourth, empowering and strengthening communities and movements by mobilizing legal means on their behalf. Finally, the fifth expectation that I observed in the field is directed at social change. As I argue below, it encompasses an overall societal dimension and thus aims at the change of previously existing, in this sense "hegemonic" norms and structures.

Financial compensation and reparation

> I always say, the worst enemy of dignity is poverty. If I have never had money and suddenly a foreign lawyer says, "It's easy, I will obtain compensation and you will be paid," people forget their rights, they don't even focus on [access to] water anymore, they focus on money and accept any strategy. In other words, it is not because they are greedy people, but because they have never had anything and they feel that it is fair. —*Jorge, human rights lawyer, February 2018, Lima (interview transcript)*

Within the human rights movement in Peru and elsewhere, financial compensation is a controversial issue, since demanding money and defending human rights do not seem to go together according to certain perspectives. The issue therefore causes a great deal of controversy, as I also observed during fieldwork.

Juliana, who worked in the office of EarthRights International in Lima, told me that lawyers as well as complainants or plaintiffs both face accusations when they demand financial compensation for suffered human rights violations. As she recounted, there is, first, the allegations that "lawyers are only interested in money" but that the complainants or plaintiffs they represent would seek "something else, something more related to justice than just demanding money." Second and in contrast to this first point, many human rights lawyers also believe, as Juliana told me, that financial compensation always involves the risk of negative effects on plaintiffs, their families, and their community and that these lawyers therefore argue for other means of reparation, although plaintiffs often need and demand financial compensation. Compensation payments would, according to these concerns, lead to an individualization of claims and could thus cause divisions within plaintiff groups or social movements. Maritza, a lawyer working with IDL in Lima, was particularly concerned about this aspect and told me,

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> In the communities they often do not have the necessary conditions to have a decent life, right? So they see that opportunity where [the opposing party in the lawsuit] says, "We're going to offer you so much money in reparation." Then, of course, they see that opportunity and say, "Wow." I mean, "Yes, I was beaten, I suffered, so I want to be compensated." – Which is normal, right? [But] then the rest, I mean, it's forgotten. […] Then [the plaintiffs say:] "I forget about my organization, I forget about the *asamblea*, I forget about everything, and that's it. I don't care what the community thinks, I care about my process because in that process, I'm going to get paid." So, it's that change in thinking that it is. It's also fine, it's normal, it's fair that everyone gets compensation, but not in the way that in the end you break the [social] structures and there's a whole problem within the community. *– Maritza, lawyer with IDL, February 2018, Lima (interview transcript)*

As I explain in Chapter 6 with reference to the torture case from Piura and the resulting transnational lawsuit against the parent company, these concerns mentioned by Maritza are not unfounded. The risk of negative effects is particularly high if the financial compensation is based on an out-of-court settlement and not on a court decision, i.e. if an agreement is reached outside the legal sphere. The expectations placed on the law to *award* financial compensation through a judgment must be considered and evaluated separately from this.

In addition, Juliana argued that "from an office in Lima it is easy to say" that moral values must be upheld and that "human rights claims cannot be about demanding money," while, at the same time, the people directly affected often live in precarious conditions and their lives are marked by poverty, so money is a real necessity for them. This illustrates how complex the considerations of human rights lawyers must be in assessing the risks of legal activism. I refer to this point when dealing with the relationships between plaintiffs and lawyers in Chapter 7.

The third accusation that Juliana raised in relation to the issue of human rights struggles and financial compensation concerned the fact that a person who receives indemnity is often judged on what he or she spends that money on. Juliana told me about a young *campesino* who had received financial compensation through a court case and who had invested this money in material things such as a moped and a television, for which he was later harshly criticized by people of the social movement he belonged to. According to Juliana, a person living in the city would never have been confronted with such accusations, which in her view indicates the clear ideas that prevail as to how a *campesino* should deal with such a compensation payment and for what he is allowed to use the money. In Juliana's experience, the notions of who, from a moral point of view, is entitled to claim financial compensation thus fundamentally shape the ideas of what a "victim of a human rights violation" should be. Furthermore, these moral considerations also define on what the obtained financial compensation should be spent.

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Nevertheless, within the Peruvian human rights movement, financial compensation represents an important expectation of what court cases can achieve for the injured parties. This is particularly true in lawsuits on behalf of people belonging to marginalized parts of the population who are being killed, seriously injured, or tortured, thus in cases like those that this research is dealing with. The majority of the persons involved as aggrieved parties in the cases I am investigating came from modest backgrounds; many worked in small-scale farming or as simple employees in the urban area. As *Fedepaz* lawyer David put it, financial compensation could help improve the lives of these complainants, "a life that until now has been a hard life, [marked] by misery, by needs, by shortcomings." At least in material terms, financial compensation could be a relief, as David told me.

Furthermore, in various cases I am dealing with, the human rights violations have resulted not only in psychological, but often also in physical long-term consequences, for example the *campesino* Elmer, who was shot in the back by the police during a protest march against Conga (see Chapter 3 and 6). Before the incident, Elmer had lived in a *comunidad campesina* in the region of Cajamarca and had earned a living in agriculture for himself, his wife, and his children. Due to the gunshot wounds, Elmer became paraplegic and has been dependent on a wheelchair ever since. He had to give up his work in agriculture and move to the city. In addition, for a long time afterwards he was still dependent on complicated medical procedures, for which he had to travel to Lima because of the inadequate health care system in the highlands. For this reason, the criminal complaint, which the *Coordinadora* filed on Elmer's behalf (see Chapter 3), was, among other claims, clearly aimed at a compensation payment in order to improve Elmer's personal situation.

Similar to this is the situation of the women whose family members were shot dead by state security forces during the Conga protests. The women had lost their husbands or their sons and thus not only a beloved person, but often the main breadwinner of the family. As a result, many of the bereaved families found themselves in precarious living conditions and had difficulty making a living for themselves and their families. Mar Pérez, the *Coordinadora* lawyer who has represented the families in court, therefore hoped to achieve financial relief for the women through the court case. The criminal proceedings in this case were, however, dropped several times, as I explain later, and during my fieldwork, it looked like there was little hope that the men's deaths would ever be legally investigated. Adelaida, one of the widows, therefore searched for other ways to make the demands to which she had a right to, as she herself put it.

On the occasion of the fifth anniversary of her husband's death, Adelaida spoke on the radio show *Resistencia Celendina*, the program that the PIC broadcasted. Adelaida recounted that she had gone to the municipality of Celendín to ask for support for herself and the other surviving families. In doing so, she did not directly ask for money but for work to be able to sustain her family. Adelaida justified her claims

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by saying that if the father of her children was still alive, she would not make any demands, but since her children were now orphans, she would "embarrass herself" (*avergonzándome*) and ask for work. For Adelaida, asking for help is shameful, but financial compensation is an important part of justice, and she claimed to have a right to demand for this form of reparation. In addition, she justified her demand with the fact that her children had lost their father, and not directly with her own rights and that she had lost her spouse. She said that everyone knew that her husband had been a good father who took care of his children and that she wanted to offer her children the opportunity to get a good education, but she needed a job to do that. In this sense, Adelaida did not admit to herself the right to demand financial compensation for herself personally, but instead established her family's right to compensation with her children, who lost their father and who have thus been deprived of the security they would have had for the future.

This example again demonstrates the complex situation in which plaintiffs find themselves when demanding financial compensation for the harm they have suffered. My intention in the following chapters is to provide insight into how human rights lawyers have dealt with this issue in individual court cases and how they seek to meet the expectation of financial compensation through legal proceedings.

Establishing and knowing the truth

The second category of expectations of law, which plays an important role in my research, is, in a sense, the counterpart of financial compensation and includes what Juliana described by saying that plaintiffs are often expected to demand "something else [other than money], something more related to justice." Several human rights lawyers differentiated in our conversations between "compensation" and "other forms of justice." Mar, for example, spoke of the complainants demanding "compensation and justice," thus she referred to this differentiation, too. David, for his part, said, in relation to the torture case in Piura, that financial compensation could improve the lives of the complainants and that it was "a manifestation of justice," but that compensation is "not the justice that [the complainants] actually want." And he continued,

> Justice means concretely that the truth is known, that they [the complainants] know this truth and that it is made public, that the [system of] justice says that the policemen were criminally responsible and that they were victims of torture and kidnapping. This is what they want. – *David, lawyer with* Fedepaz, *May 2017, Lima (interview transcript)*

Thus, obtaining public acknowledgment about the suffering experienced is an important goal in the legal processes with which NGOs like *Fedepaz* seek to intervene

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on behalf of the complainants. In addition, David attributed this expectation of law to bring about justice by establishing the truth not only to the plaintiffs whom he and the other lawyers of *Fedepaz* represent in court, but also to the legal NGO itself. For *Fedepaz*, the search for truth is a central part of the legal process and is related to the fact that law, as a public process involving state actors and based on norms and processes on which a society has agreed, has the function of establishing justice. Establishing justice by establishing the truth thus implies a political recognition of the violations by the state and its institutions. This testifies to the anticipation that a judgment establishes a "definitive narrative" (Rubin 2008, 268) about an event. Furthermore, the NGO hopes that such a judgment will have a broader impact beyond the individual complainants, an aim which *Fedepaz* strives for with its strategic litigation approach, as described above.

There has recently been considerable research in legal anthropology into the relationship between truth and justice, for example by Rosalind Shaw on the TRC and the Special Court for Sierra Leone. Shaw argued that Sierra Leone became a "laboratory" for international legal experts who "viewed the Special Court's concurrent operation with Sierra Leone's TRC as an 'experiment' to answer the question of whether mechanism of truth and justice could work together" (2010, 211). Shaw questions, however, whether the mechanism of law enforcement – as executed by the Special Court – and the search for truth – as executed by the TRC – could work in harmony. In Shaw's opinion, the example of Sierra Leone illustrates that the binaries of the *politically* motivated search for "truth" and the *legal* processes focusing on "justice" are difficult to overcome.

What I have found in my research, however, is that truth is an essential component of justice for both human rights lawyers and the people they represent in court, precisely because of its political dimension. The fact that many legal NGOs in Peru emerged from the context of the internal armed conflict, that they later contributed to the Fujimori trials and that, in addition, many members of the human rights movement had worked with the Peruvian TRC may explain this strong link between the idea of justice and the search for truth. The movement's greatest success in recent years may have been the moment when the judgment against Alberto Fujimori was given and when the court secretary read, in a firm and loud voice, the Supreme Court's decision, confirming that "yes, it is proven" that Fujimori was guilty of crimes against humanity.[5] This marked the moment when some of the most serious human rights violations committed by state actors during the internal armed conflict were recognized by that very state and its legal authorities. This category of expectations of the law is thus nourished by the function of law to express official

5 The video recordings of the *relator judicial* Yanet Carazas Garay reading this judgment are widely known in Peru and symbolized the historical moment that confirmed the Fujimori regime's defeat.

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recognition, based on the power of the state. In addition, this example also indicates why criminal law, as a legal body with which the state prosecutes and sanctions crimes against its norms, plays a central role in the struggles of human rights organizations such as *Fedepaz* or the *Coordinadora*.

In addition to this political dimension, however, learning the truth also has a remedial effect on the directly affected people. For many plaintiffs and complainants in the court cases I am dealing with, knowing the truth is also related to "being right" (*tener la razón*), a term widely used in this context. Behind this phrase, we can identify the hope that through a court case, the harm one had personally suffered would be acknowledged. The idea is that by a court decision, state authorities "recognize the right of those who have it" (*dar la razón al que la tiene*), as a teacher in Cajamarca expressed it. In this sense, Adelaida, the widow from Celendín, had hoped to obtain public recognition of her husband's death through the criminal lawsuit. In the PIC's radio program, she expressed her anger about the judicial system as follows,

> The poor person is ignored, the poor person is not given an answer as it should be. What we claim together with our relatives is that there must be justice. How many years have already passed by! Now it's going to be five years since they got lost, and we don't have any answers. – *Adelaida, radio broadcast* Resistencia Celendina, *July 2017*

What Adelaida demanded from the judicial system was a response, an official statement of the recognition of what happened to her husband. These aspects also influence the expectations of the law raised by Mar, the *Coordinadora* lawyer who represented Adelaida in court and who has previously represented many relatives of people killed in social conflicts. Mar expected a court case to establish, through public recognition of the truth, that the suffering that the individuals experienced was inadmissible and against the law. As I discuss repeatedly in the following chapters, large parts of the rural population in Peru not only feels marginalized by the nation state, but also abandoned and forgotten. They see themselves treated as second-class citizens who are denied fundamental rights. As I argued elsewhere (Lindt 2015, 90), people consequently perceive themselves as a kind of *homo sacer* in the sense of Giorgio Agamben (2010, 92), that is, as someone who loses all rights and can be killed with impunity (see also: Drinot 2006, 16–7, Nuijten and Lorenzo 2009, 113, Silva Santisteban 2013, 453). The fact that the death of demonstrators during social confrontations often goes unpunished confirms this perception of the population. By obtaining a court judgment that clearly condemns the death of demonstrators, this "state of exception" (Agamben 2010) of being without rights is overcome. Mar expressed this as follows,

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> It strikes me very much that in several places [...] people say something like, "Our relative was not an animal." No? Everyone repeats that. I mean, it's like that the [judicial] process in itself is also a form of... reparation. That is, the sentence is a form of reparation, meaning that it is recognized that your relative was a human being who had rights, who was killed unjustly, right? – *Mar, lawyer with the* Coordinadora, *January 2018, Lima (interview transcript)*

This second expectation that human rights lawyers place in litigating human rights violations thus arises from the function of law to rule on admissibility and inadmissibility, on compliance and infringement, and on right and wrong.

In addition, establishing truth through litigation is also a matter of deciding *who* is responsible for the death of a relative or for the abuse suffered. Interestingly, in some cases the focus is not on the perpetrator directly involved, for example the individual police officer who fired at protesters, but rather on the "intellectual" perpetrators who gave orders or otherwise made the crime possible. For example, the mother of Joselito Sánchez Huamán, another man killed during the Conga conflict, told me that she hoped for the day when former President Ollanta Humala would receive a prison sentence for a corruption scandal he was suspected of at that time. Humala held the presidency during the Conga conflict's violent confrontations that led to the death of five people in Celendín and Bambamarca. From the social movement's perspective, Humala was regarded as the commander in chief of the military and police operations against the demonstrators.

Humala had nothing to fear from the court case in which the death of the demonstrators was investigated, but at the time of my field research, Humala was under investigation in the so-called *Lava Jato* case, a corruption scandal involving the Brazilian company Odebrecht, which bribed all the former presidents of Peru in the last twenty years. *Doña* Santos Huamán Solano, Joselito's mother, told me that she hoped Humala would finally go to prison, "even if it is not because of the death of my son but because of the money that he has stolen. The day Humala goes to jail, I'll be happy." At that time, the court case to investigate the death of her son had already been dismissed several times and the hurdles that arose in the proceedings seemed insurmountable at that time (see Chapter 3). *Doña* Santos therefore hoped that Ollanta Humala would face punishment through another trial. The expectation of knowing the truth through litigation thus also includes the hope for the punishment of those responsible.

Finally, the expectation of knowing the truth also involves striving for an admission of guilt. In the case of Elmer, the *campesino* who was shot in the back during protests, this element was particularly strong within the lawsuit. As Mar explained, a central aim of the court case was to get Minera Yanacocha and the police to apologize for the violence against the people of Cajamarca, thus, to get them to publicly acknowledge their mistakes. This recognition of guilt seems to be an important ex-

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pectation toward legality particularly in cases dealing with corporate liability and thus with a powerful, but intangible perpetrator, which a corporation is. Jaime, an NGO employee from Cusco, who was involved in a social conflict involving the mining project Glencore Antapaccay, also emphasized this point. He told me that it is important that in a court case there is "some kind of sanction against the company, some kind of 'justice,' in quotation marks." He justified this by saying that there is a great powerlessness among the population in the face of the abuses committed by corporations and that the Peruvian government "does not say anything about it" and does not impose any sanction on these companies. In Jaime's opinion, a court case could help in this regard and help to regulate the corporation's behavior.

Thus, to sum up, the expectation of law to establish the truth comprises three different aspects: First, it aims at the public and official recognition of human rights violations by state authorities and thus involves a political dimension; second, it seeks recognition of the suffering of those affected or their survivors and recognition that they have been wronged; and finally, it aims at holding perpetrators accountable by getting them to admit responsibility and by imposing sanctions or regulations. These three aspects illustrate why establishing truth through a judicial process is so central to the human rights movement in Peru.

Redirecting violent conflicts into institutionalized structures

The third category of expectations of law that I observed in the field points specifically to the role and the responsibility of the state in social conflicts. According to the fundamental principles of international law, the nation state acts as the guarantor of the rights of its citizens and is the main addressee of human rights provisions. As such, the nation state holds a duty to respect, protect and fulfill human rights (Karp 2020). One expectation of the Peruvian human rights movement in conducting human rights litigation is to remind the nation state of this duty and to enforce the human rights framework set by international and domestic law.

Human rights discourses are particularly well suited to make demands to the state (Keck and Sikkink 1998, 12, Martinez-Alier 2002, 202–3, Nash 2012, 805). The state is not seen as the only bearer of responsibility for human rights violations in social conflicts, and, as previously indicated, attempts are being made to attribute responsibility to companies or third parties, as well. Nevertheless, a central responsibility is ascribed to the state because of its special role as guarantor of rights. Many legal NGOs see the use of law as particularly suitable for holding the state and its authorities to account. As I discuss in this section, the aim is thereby not to use the "law against the state" (Eckert *et al.* 2012b, see also: Eckert 2006, 51), but rather to demand the implementation of its administrative functions and to (re-)establish the rule of law, i.e. to strengthen the state and its institutions. When I speak about "the state", I thereby rely on an emic perspective of the people I worked with, who, by using this

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term refer, on the one hand, to the national government, the administration in Lima and the state institutions they are in contact with in their daily lives; and on the other hand also to the very *idea* of the state as the totality of different institutions that hold together and organize social life. These notions of statehood and of the perception of the state are closely linked to the hopes and expectations people place in the law as a social practice.

As mentioned above, the nation state is difficult to grasp for the population in the Peruvian highlands. Social movement activists in Cajamarca, for example, complained that the state's institutions are often absent in the *sierra*, or if they are present, they are weak or even act against the population, such as in the case of police and military operations controlling social protests. At the same time, the population's opportunities for democratic participation are for the most part limited to the participation in regional or national elections every four or five years, respectively. The national authorities and the administration of the central government decide on major economic projects such as industrial mines, with the local population generally having little say in these matters. Even with the implementation of its international obligations regarding the rights of the indigenous population to previous consultation, the Peruvian state has taken only hesitant steps these last years. As recent developments have revealed, however, parts of the local population oppose the promotion of large-scale projects. Since democratic channels to express the dissatisfaction with this form of economic development are lacking, there is a constant risk that social conflicts will escalate into violence.

However, the law provides an alternative. As Sieder *et al.* noted "the weakness of effective citizenship rights, the insecurities and hardships produced by economic crisis, and the failure of neoliberal policies to alleviate poverty have prompted ordinary people to resort to the courts or court-like structures to try to press their claims and secure their rights" (Sieder *et al.* 2005, 1). Eckert (2006) argued along the same lines by discussing the importance of citizenship rights in everyday struggles in India. In a similar manner, by using the judicial system, legal NGOs in Peru attempt to prevent these outbreaks of violence. Juan Carlos, one of the leading constitutional lawyers working with IDL explained to me in this regard,

> The idea is to redirect these conflicts to institutional mechanisms. By winning them, on the one hand, we affirm the rule of law; on the other hand, it is to give back to the state the confidence, to close the way to violent options, where in the end the dead are paid by the poor. And to force the justice system to assume its responsibility. So our first concern is not academic, but in a country with so many social conflicts… [our concern] is to provide a legal service to these vulnerable sectors in order to solve their conflicts within the justice system, thus, [we have] to appropriate legality. —*Juan Carlos, lawyer with IDL, February 2017, Lima (interview transcript)*

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According to Juan Carlos, to bring a lawsuit is thus to remind the state of its duty and to hold its institutions responsible for resolving disputes within the society. By "appropriating legality," as Juan Carlos framed it, the legal NGOs make use of the state's inherent mechanisms. Thus, they "enact" its norms and rules in order to overcome the country's social conflicts and to strengthen the marginalized segments of the population.

Furthermore, Juan Carlos referred to a function of law, which Rodríguez-Garavito described in his research in Colombia and which I briefly mentioned in the introduction: Due to its "intrinsic procedural nature" (Rodríguez-Garavito 2011b, 273), the law lays down clear rules and prescribes fixed instructions as to how certain procedures – for example those involved in resolving conflicts – are to be carried out. In this context, the origin of the Peruvian human rights movement during the period of internal armed conflict is relevant again. The experience of both human rights activists and the general population of what can happen when conflicts are not steered along institutionalized lines but erupt into violence seems to me to be a major reason why people place their trust in the law. Through legal proceedings, conflicts can be steered into predetermined paths, and an escalation into violence can be prevented. As Rodríguez-Garavito argued using the example of consultation processes between indigenous groups and the Colombian state, the law provides not only the guidelines for procedural aspects, but also a *lingua franca* that facilitates negotiation between conflicting parties (*ibid*.).

To be able to use this ordering power of law, as I would frame it, or legality as "a structural component of society" as Ewick and Silbey (1998, 43) put it, a great deal of hope is placed within the Peruvian human rights movement in a specific legal body – that is, in constitutional law. With constitutional complaints, legal NGOs seek to persuade state institutions to protect the rights of the population, also in view of economically significant investment projects. As in other Latin American countries, social movements and civil society organizations in Peru make particularly frequent use of so-called *procesos de amparo* (injunctions) or, less often, *acciones de cumplimiento* (enforcement actions).[6] As mentioned above, the Peruvian office of EarthRights International, together with IDL, filed an *amparo* claim in favor of the population of the Río Marañón area by arguing that the hydroelectric dam projects will violate the population's right to a healthy and "balanced" environment (*el derecho a un medio ambiente sano y equilibrado*, Quispe Mamani and Barboza López 2019, Prado 2018, see Chapter 7). *Fedepaz* used the same mechanism in favor of the *comunidad nativa* Supayaku in Cajamarca to support the population in its fight against a mining project that threatened its livelihood and environment. In this *amparo* claim, *Fedepaz* argued

6 In recent years, there has been considerable research on the *amparo* or *tutela* processes in Latin America. See, for example, the work of Catalina Smulovitz (2005, 2006, 2010) on Argentina or of Sieder *et al.* (2005) on the Latin-American context in general.

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that the Ministry of Energy and Mines, by granting a mining concession, had violated the community's right to a prior consultation on development projects that affect their territory.[7]

The aim of these constitutional complaints is thus to *prevent* an infringement of rights. In this research, however, I am dealing with human rights violations that have already been committed in the context of social conflicts. In the court cases that I am analyzing, the aim is to investigate and prosecute committed crimes, not to prevent them. For this reason, constitutional complaints play only a minor role in this work and are dealt with only marginally. Much more important for my considerations are the expectations that are placed on criminal law and that aim at the process of acknowledging the violations.

Empowerment

The human rights organizations and legal NGOs discussed in this book have set themselves the goal of defending the fundamental rights of those who they refer to as the "marginalized," "vulnerable" or "weak." From a socioeconomic perspective, there are great disparities between the lawyers and activists of legal NGOs and the people they represent in court. The vast majority of Lima's human rights lawyers have attended and graduated from one of the country's two leading universities, either from the *Universidad Nacional Mayor de San Marcos* or the *Pontificia Universidad Católica del Perú*. Most of them come from middle-class families, and most were born in Lima, although it is not uncommon to have a history of migration within the family and family ties to the highlands or other regions. The parents of several of the NGO employees I met in the field had moved from the rural provinces to the capital, which is typical for the development of Peruvian society in the twentieth century.

In turn, people affected by human rights violations in the mining regions often belong to the economically and socially marginalized population. Most of them work in agriculture or in the informal sector and have, compared to the lawyers, a lower level of education. The "marginalization" of these population groups by the Peruvian state and society is manifold and does not only include geographical aspects, with these people often living in remote areas, and economic aspects that allude to their marginal economic position. As Veena Das and Deborah Poole (2004, 10) described, marginalization of particular groups does not only involve a spatial or an economic

7 *Fedepaz* had filed the constitutional complaint on behalf of the *comunidad* in 2013; in 2016, a constitutional court in Lima ruled in favor of the plaintiffs by confirming that their right to prior consultation had been violated by the Ministry of Energy and Mines. In consequence, the mining project was suspended, at least temporarily. The lawsuit was a great success for the *comunidad* Supayaku and *Fedepaz*. It was the first judgment in which a Peruvian court granted a *comunidad nativa* the right to the *consulta previa* in the context of a metallurgical mining project (Fedepaz 2018a).

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exclusion. Rather, hegemonic discourses, social narratives and political intentions also contribute to the fact that these population groups are pushed to the margins of society. Different aspects of manifest or latent racism play a major role in the Peruvian context. In this sense, I follow Poole, who wrote that

> "marginalization" is a powerful technique of power precisely because the margin is both a real place where roads do not penetrate, commodities seldom reach, and schools barely exist, and a discursive and ideological position from which people learn how to speak about things like justice to the state and among themselves. (Poole 2004, 38)

At the same time, however, this marginalization does not mean that the state has no importance for the population concerned. As I have discussed at length elsewhere by using the example of the Cajamarca region (Lindt 2015), the nation state and its institutions play a fundamental role for the population of Peru's highland area. This is particularly linked to the citizenship rights that the local population invoke and demand from the state, for example in social conflicts. Thus, the highland population does not avoid the state, but rather seeks to turn to it again and again and to receive its attention. The juridification of their social protests contributes significantly to these attempts. Through the use of law, human rights advocates seek to bridge this gap between the periphery of society and its center and to protect the rights of those who have been marginalized. It is therefore a matter of empowering people and demanding their rights as citizens of the Peruvian state, but also a matter of their fundamental human rights.

Legal NGOs seek to achieve this empowerment not only through actual court cases, but also through legal capacity training or workshops in the communities. Examples of such trainings are the *Escuela de Líderes y Lideresas* in Celendín or the workshops that *Fedepaz* conducted in the *comunidad* of Supayaku (see Chapter 7). The aim of these workshops is to raise awareness of the rights, legal frameworks, and norms available as a means of defending individual and collective interests. "Generating access to information" (*generar acceso a la información*), "training" (*capacitación*) of leaders or of communities and "providing empowerment" (*fortalecer* or *aportar el fortalecimiento*) are keywords that people used in the workshops I attended in Lima, San Ignacio and Cajamarca.

Pedro's contribution to the *escuela* in Celendín, which is briefly mentioned above, exemplified these intentions. He had the participants of the workshop read specific articles from the Peruvian Constitution regarding their right to file an *amparo* claim and then discussed those articles with the group. It was apparent how carefully the participants themselves dealt with legal terms and specific vocabulary and brought into the discussion the knowledge they had acquired in previous legal capacity trainings. Among the participants there were some who turned out to be actual experts,

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for example, on the law concerning the *rondas campesinas*. This acquisition of legal expertise also struck me when talking to Adelaida, the woman from Celendín who had lost her husband. Adelaida explained to me in great detail the various stages and specifications of the criminal proceedings, using the legal expertise she had acquired through the criminal proceedings.[8] The expectation that legal proceedings lead to an empowerment of the people involved includes, on the one hand, the aspect that people know their rights and know how to apply them.

On the other hand, empowerment is also about creating understanding and trust in the judicial mechanisms. For the Peruvian human rights movement, relying on legal mechanisms also means strengthening the faith of marginalized population groups in the judicial system and in the law itself. Mirtha Vásquez, a lawyer and the then director of *Grufides*, formulated this as follows after the pronouncement of the Court of Cassation in Lima in favor of the *campesino* family Chaupe against Minera Yanacocha (see Chapter 5),

> We believe that this [lawsuit] is worthwhile not only for Máxima, for her family, who have suffered so much mistreatment over the years. It is worth it for the justice of the weakest people in this country and especially for the people who are being abused by economic powers like these big corporations. I think there are many Máximas in this country; people who are abused by corporations, there are many in this country. And in those terms, I also believe that this court ruling serves to restore hope in justice and let communities know that, like Máxima, they can stand up and be right in confronting these big corporations and these big powers. What we are doing here is ratifying that the weak, the poor also have rights that have to be respected. – *Mirtha, lawyer with* Grufides, *declaration made in front of journalists and activists, May 2017, Lima (field notes, own translation)*

This court case in which criminal action was taken against the Chaupe family is one of several examples of how the law in Peru's mining regions is also applied against social movements. In Chapter 4 I discuss several of these criminalization cases. As I illustrate from the discussion of these examples, in the context of this kind of legal mobilization from *above*, as I call it, the aim of human rights lawyers is to restore the confidence of the criminalized persons in the legal system. The lawyers' aim in these criminalization cases is to strengthen the people in their right to defend their rights.

This in turn refers back to a point I mentioned in the previous section, that the legal NGOs do not seek to use the law "against the state," but rather to strengthen its

8 Eckert observed a similar development among young Muslim men in Mumbai, who, due to their experience with the police and judicial authorities, became experts in certain areas of law and proved to be "somewhat of a legal counselling body within their neighbourhood" (2006, 52).

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institutions and to reinforce the rule of law. In contrast to the struggles of, for example, anarchist, libertarian, or even indigenous movements, the efforts of Peru's human rights movement are thus characterized by the fact that they seek to strengthen the state and its institutions themselves through the use of law, instead of fighting it or withdrawing from its influence. The expectation is that the law in itself can be an "ally" (Merry 1990, 4) for vulnerable groups and that the judicial system offers marginalized parts of the population the necessary tools and instruments with which they can defend their interests even against otherwise powerful actors. This aspect thus refers to the emancipatory possibilities of legal mobilization and to the expectation of using the law as a counterhegemonic tool, an aspect that is repeatedly taken up in this research.

Social change

Finally, the fifth category of expectations placed on law by Peru's human rights movement includes the hope to achieve social change by mobilizing the law. This category thus links to the aim of strategic litigation that I referred to above and to the forms of legal mobilization described by so-called counterhegemony theorists that I discussed in the introduction. Many counterhegemony theorists who addressed the emancipatory potential of law and legality have dealt with the aspirations of the users of law and their goals of changing existing political and social conditions through legal activism. However, most of these authors remained rather vague on the question of how this social change through law should then be enforced in concrete steps. In addition, their explanations often remained unspecific with regard to what they actually mean by the vague concept of "social change."

From the perspective of Peru's human rights advocates, the hope for social change includes, above all, the demand for institutional change and for the consistent implementation of the existing legal framework. The difficulty in Peru to get justice for human rights violations lies in the vast majority of cases not in the lack of laws or in an insufficient, deficient legal basis, but rather in the lack of implementation of these norms. Many of the cases that I analyze in this book are, at their core, about police violence used against demonstrators in the context of transnational mining conflicts. This involves killing, assault, or torture and thus classic offenses in criminal law. For the human rights lawyers involved, bringing about social change in these cases means regulating the actions of the state security forces and of the corporations and thus overcoming the impunity of corporate and state actors.

As David told me when explaining *Fedepaz*' aims of litigating such cases of human rights violations, he referred to the torture case from Piura and said that one of the legal actions' objectives was to induce the legal authorities to deal with the responsibility of the police officers and their superiors, as well as of the corporate actors.

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On the one hand, as mentioned above, the aim was to establish the truth and thus provide certainty and public recognition of the suffering of the persons concerned. However, on the other hand, this also aimed to prevent a repetition of this crime in the future. Specifically, the aim was to influence the way the police act against protesters during operations in the context of social conflicts. Citizens' rights to participate in demonstrations should again be seen as a right of the population and not as a crime that can be misused as a pretext for committing human rights violations.

In Peru as elsewhere, the law offers mechanisms to promote such social change in an institutionalized form, for example with so-called guarantees of non-repetition. *Coordinadora* lawyer Mar told me that in recent years they relied on this mechanism in many criminal cases relating to police violence in social conflicts. The legal NGOs *Coordinadora* and *Fedepaz* attempt, in these lawsuits, to address not only the responsibility of the directly involved police officers, but also of the Ministry of the Interior as the state institution responsible for the police. In the ideal case of a court ruling acknowledging the Ministry's responsibility for the committed abuses, the human rights lawyers hope that institutional reforms will subsequently be initiated.

In the case of police violence during protests, for example, the lawyers demanded that police officers no longer be equipped with "weapons of war," such as assault rifles, when they are sent on operations against demonstrators, but with rubber shotguns or other non-lethal weapons, as Mar explained in one of our conversations. In her words, the idea is to induce institutional reforms to ensure that the police act in accordance with domestic legal frameworks and international human rights standards during demonstrations. In the human rights lawyers' opinion, these small steps of institutional change can then lead to social change.

Additionally, as a civil law country, legal change in Peru is normally not brought about through judicial precedents, but rather through the parliamentary process. The focus is therefore not on sensational rulings which establish completely new norms and upend the previously existing legal texts. It is less about legal activisms that help "create precedents that can become law," as Kirsch (1997, 136) put it; rather, it is a matter of gradually initiating institutional reforms through favorable court rulings which then changes the state officials' behavior.

Furthermore, it is mostly not a matter of demanding and implementing new law, but rather of securing existing rights for the benefit of marginalized population groups that have hitherto not been able to enjoy these rights. In this regard, I again follow Eckert (2006), who pointed out in her research on "citizens' practices of evoking state legal norms" (*ibid.*, 70) that different types of "legalism from below" give rise to changes on the normative level, in particular changes to what counts as "right or wrong" according to a society's norms. These forms of legal activism do not strive for an actual creation of new norms or new forms of law, but rather the reaffirmation of already existing norms. This in turn connects back to the expectation that legal proceedings will strengthen the rule of law and thus ultimately the state

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and its institutions, as I explained above. Moreover, this example illustrates how law can act as a counter-hegemonic means by granting power to socially marginalized groups of people through institutionalized channels.

In addition to Eckert's approach, I also rely on the work by Sikkink (2011) on individual criminal accountability. She followed a theoretical path similar to Eckert's, but in a completely different context. Sikkink dealt with transitional justice cases that followed military dictatorships in various European and Latin American countries. She argued that the power of law in these cases is that the norms of domestic criminal law, which had been applied for hundreds of years against "ordinary" criminals, are now used to hold former political and military elites accountable for their crimes (*ibid.*, 12). This "justice cascade," as Sikkink described it, has led to social change by applying the law to the powerful. Thus, what she observed was, again, not the appearance of new forms or norms of law, but rather a new way of enforcing the existing norms, as they were previously laid down in the legal code. This is the kind of process I trace in the analysis of the judicialization of Peru's mining conflicts.

Conclusion

The Peruvian human rights movement places great hopes in the law and expects to achieve a number of goals through legal mobilization – for the individuals it represents in court, their communities and social movements, but also for Peru's society as a whole. In doing so, the legal NGOs and their lawyers place so much hope in the law as a social process, because the law as a social practice, as a "problem solver" (Moore 2001, 97) or as an "ally" (Merry 1990, 4) for vulnerable groups provides for a multitude of possibilities. The different categories of expectations that I have discussed in this chapter encompass these different forms of hopes placed in the law. At the same time, however, they also highlight the many different possibilities that can be achieved through the mobilization of law. This explains why it makes sense for Peru's human rights movement to rely on law and legal mechanisms and why they attempt to achieve their goals "with the law," as Ewick and Silbey (1998) have categorized it.

Ideally, litigating a case of human rights violations in Peru considers different aspects. For example, in the case of *campesino* Elmer, who was shot by the police during the Conga protests, his lawyers made different claims to the court: First, they demanded financial compensation for Elmer as the injured party; second, they demanded a prison sentence for the responsible police officers who committed the crime; third, they demanded a public apology from the mining company and the police to the population of Cajamarca; and finally, they demanded the modification of the legal norms that regulate the actions of the police in interventions against demonstrators. By using the different possibilities the law provides for, it was thus

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possible to demand both justice for Elmer and social change for society and thereby to fulfill different legal expectations.

At the same time, as this chapter has also illustrated, legal processes not only raise expectations of the law, but also expectations of the persons involved, especially the "victims" and the lawyers. These expectations can lead to conflicts, especially if there are mediation difficulties in the negotiation processes between plaintiffs and lawyers or if there are major power differences. This highlights the fact that human rights ligation entails not only a legal but also a social process. Pedro, the lawyer who conducted the legal capacity training during the *Escuela de Líderes y Lideresas* in Celendín, focused on these aspects when he told me,

> The outcome of the lawsuit must not only be considered from a legal point of view, because sometimes the lawyer is very narrow-minded (*muy cuadrado*), sometimes very much limited to the law, and well, I can achieve a very good legal result, wow, spectacular, which, however, only serves the lawyers. So we have to think of a result that serves the people (*la gente*) and not the lawyer. I mean, I tell you, once we won a very good case, we got the best judgment [laughs], we could write a whole thesis about the judgment, but we didn't achieve anything for the people. […] And well, I think you always have to think about the effects of what you are going to achieve […] with a lawsuit, with a judgment. You always have to think not only about the legal effects, but about the social effects, the effects within and outside the community. Everything has to be thought about before developing the legal strategy. You also have to think about… if you win the process, what effect will it have? That's why you have to think very carefully about the strategy, not only with a lawyer's vision, but a vision of what could happen. If you win, if you lose, what would be the community's reaction? Because if you lose, it is more likely that the community no longer believes in justice. – *Pedro, NGO lawyer, Lima, February 2018 (interview transcript)*

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