Liminality and Resistance in Gilgit-Baltistan

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1. Introduction

On January 4, 2010, a landslide measuring two kilometers wide, three kilometers long and six hundred meters deep cut off the Gojal Valley from the rest of Pakistan’s newly formed “self governed region”, Gilgit-Baltistan. The slide killed twenty people and blocked the Hunza River for five months. It also created the twenty-five kilometer Attabad Lake that submerged villages, flooded sections of the Karakoram Highway and displaced over twenty thousand people. The disaster continues to exacerbate food insecurity and unemployment by flooding hundreds of acres of agricultural land, homes, shops, hotels, schools and factories. It also blocks the only route connecting Islamabad to the northern regions, thus further limiting the movement of goods and people, access to medical care, and employment and educational opportunities.

The landslide has also brought to the surface people’s long-standing discontent with the legal and political exclusion of Gilgit-Baltistan from Pakistan. In particular, people attribute the federal government’s failure to remove the blockage and provide sufficient aid to the people to the ambiguous constitutional status of the region. Formerly called the Northern Areas, Gilgit-Baltistan is the northernmost region of Pakistan-administered Kashmir, whose territory is still disputed by India, Pakistan and China. Although Pakistan has had administrative control over Gilgit-Baltistan since Pakistan’s independence in 1947, the legal status of the region remains undefined in the Constitution and its people lack representation at the National Assembly in Islamabad.

The most recent legislation, the Gilgit-Baltistan (Empowerment and Self-Governance) Order (2009 Order), which came into force only a year before the landslide, proposes “necessary legislative, executive and judicial reforms for granting self-governance to the people of Gilgit-Baltistan.” The Order calls the region a “province” for the first time, extends fundamental rights to its residents, and provides the regional Legislative Assembly with greater powers. Yet, as scholar Senge H. Sering argues, “Pakistani policymakers have kept the Constitutional status of Gilgit-Baltistan in a limbo, making the region an extraordinary example of political and judicial ambivalence.” The landslide encapsulates the region’s collective exclusion from Pakistan which the Government of Pakistan constructs through the constitution and federal legislation, justifies by the unresolved Kashmir conflict, and which is now written into the landscape.

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1 An Order To Provide Greater Political Empowerment and Better Governance to the People of Gilgit-Baltistan (9 September, 2009) [2009 Order].
2 For example, see “We Want Our School Back!”, The Dawn (19 July 2011) online: The Dawn <http://www.dawn.com/2011/07/19/%e2%80%9cwe-want-our-school-back%e2%80%9d.html>.
4 IUCN, Environmental Law in Pakistan: Governing Natural Resources and the Processes and Institutions that Affect Them: Northern Areas (Karachi, Pakistan: IUCN Pakistan, 2004) at 17; Constitution of Islamic Republic of Pakistan, 1973 (12 April 1973) [Constitution]; The National Assembly of Pakistan is the lower house of the Majlis-e-Shura, which also includes the President of Pakistan and the Senate.
5 2009 Order, supra note 1, at preamble.
This paper conceptualizes both the residents of Gilgit-Baltistan, and the region itself, as liminal within the international territorial dispute and Pakistan’s federal framework. It argues that people from the region of Hunza resist their liminality and its effects by engaging legal and political means at local, national and international levels. In particular, I use Boaventura de Sousa Santos and César A. Rodriguez-Garavito’s approach of “subaltern cosmopolitan legality” to examine the use of local and inter-village level institutions known as Village Organizations and Local Support Organizations (LSOs). This approach captures the emphasis of these organizations on plural forms of resistance that engage political mobilization and collective action through and also beyond law-centric strategies.

Legal empowerment scholarship shows how people experience particular forms of vulnerability that result from exclusion from the law. As the LEP Report notes, “law-induced exclusion and poverty go hand in hand, yet neither is inevitable.” The people in Gilgit-Baltistan experience a specific kind of vulnerability resulting from the region’s liminal status. Thus they may (but not necessarily) experience the kinds of legal exclusion as millions of other people in Pakistan, including a lack of legal identity, inadequate protection by the law and its institutions, and an inability to use law to improve their livelihoods. However, these exclusions are exacerbated by the liminality of the region. This paper seeks to think more critically about legal empowerment, including the differences in how exclusion operates and how it is experienced.

The paper proceeds with a three-step argument. First it shows how the status of Gilgit-Baltistan is legally liminal; second, it demonstrates how this liminality exacerbates political, legal and economic marginalization, with a particular emphasis on the implications for natural resource based industries; and third, it shows how communities engage and strengthen their Village Organizations and LSOs to resist their in-between status and mitigate its effects.

The paper supports its analysis with examples relating to natural resources for several reasons. First, communities frequently see their constitutional exclusion through the lens of the environment and natural resources because of their weighty economic, cultural and political implications. As Nancy Lee Peluso argues, “[p]ower struggles between the state and society are played out constantly in the course of resource allocation, resource control, and resource access.” In Gilgit-Baltistan, since the main source of income is agriculture, questions of water management,
land use and tenure are critical. Moreover, as the paper discusses, sectors like mining are seen as the key hope for improving livelihood opportunities and ensuring long term stability. Second, some of the most obvious and problematic implications of the 2009 Order relate to natural resources, especially with the recent constitutional devolution provided for in the Constitution (Eighteenth Amendment) Act, 2010 (18th Amendment). Third, more generally, disputes over natural resources visibly capture inequalities and injustices, and reveal how they not only hide behind legal justifications but also are created and sustained through the law itself, namely the Constitution and the 2009 Order.

The paper draws upon a month of fieldwork conducted in Pakistan, primarily in the Hunza region of Gilgit-Baltistan, during July 2011. Initial data was obtained through my role as a volunteer legal researcher with the HiMaT Indigenous Leadership and Development Project. This data came from research conducted by two non-governmental organizations: a Canadian organization called the Four Worlds Centre for Development Learning (Four Worlds), and an organization from Hunza called the Karakoram Area Development Organization (KADO). The research assessed the challenges, strategies and successes of communities with local natural resource management. The Four Worlds’ training sessions on development leadership in the village of Khyber in July provided a platform to interview over twenty-five members of five different LSOs from Hunza. I also interviewed government officials, legal scholars and non-governmental organization staff members in Gilgit and Islamabad on the status of Gilgit-Baltistan.

2. Liminality and the law

This section of the paper describes the theory of liminality within the social sciences, including its emergence in legal scholarship. It also provides an overview of the utility of the theory for analyzing Gilgit-Baltistan, and shows how the region is liminal in the international order of states as well as within the federal structure of Pakistan.

The theory of liminality in social contexts originally emerged with anthropologist Arnold van Gennep’s analysis of *rites de passage*.

In particular, he describes ceremonies marking transitional events like funerals and weddings as possessing three major phases: separation, transition, and incorporation. Separation is identified as the intervening period of ambiguity between two stable, fixed states. Victor Turner appropriated van Gennep’s *rites de passage* to describe the state of transition as a “liminal period,” which is an “unstructured” in-between phase of rituals where participants transition from one social status to another. Turner sees the “structural invisibility of the liminal *persona* [as having] a twofold character. They are at once no longer classified and not yet

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17 Ibid.
classified.”

He further describes this “interstructural state” as when “liminal entities are neither here nor there; they are betwixt and between the positions assigned and arrayed by law, custom, convention, and ceremonial.”

As research in anthropology shows, the theory of liminality is a critical way of examining modes of transition, and the social, legal and political meanings that come with this in-between state. The theory has been taken from its original, narrow focus on rituals to emerge, according to sociologist Arpad Szakolczai, as a “concept [that] is potentially one of the most general and useful terms of social science.” However, liminality has received only minimal attention in analyses of law. While legal scholarship often examines law in terms of classifications, boundaries and borders, it infrequently engages with the theory of liminality in a direct manner. Mark Goodale, for example, employs the concept of “betweeness” to capture how human rights discourses are ambiguous, unfolding without clear special referents. He also sees human rights actors as experiencing the “human rights discourse betwixt and between, as a kind of legal or ethical liminality that can both empower the relatively powerless and place them at a greater risk of further violence at the same time.” Besides the minimal work on liminality by human rights scholars like Goodale, most scholarship has been undertaken by theorists analyzing immigration and refugee regimes and stateless persons. The theory of liminality is useful for analyzing how law creates categories such as “citizen,” “permanent resident” and “illegal alien,” and the cultural, legal and political effects and meanings of falling outside or between these categories. For example, Cecilia Menjívar examines the “liminal legality” of Central American migrants in the United States, while Liisa Malikki’s work on Tutsi refugees in Burundi describes refugees as “liminal in the categorical order of nation-states.” Laurie King-Irani similarly examines the situation of Palestinians living under occupation in Israel or as refugees in surrounding countries. She argues that:

they occupy a liminal and interstitial space in the international legal and political order, an order that (contemporary discourses of cosmopolitanism, globalization and emergent transnational organizations aside) remains founded upon and grounded in the interests of

21 Ibid at 93.
24 For example, see Paul W Kahn, The Cultural Study of Law: Reconstructing Legal Scholarship (Chicago: The University of Chicago Press, 1999) (“[l]aw’s space is always bordered space”) at 56.
26 Ibid at 23-24.
27 Law and geography scholars also allude to liminality in theorizing the connections between law and space. For example, see S Blandy & D Sibley, “Law, Boundaries and the Production of Space: Guest Editorial, Introduction to Special Issue” 19:3 Social and Legal Studies 275.
29 King-Irani, ibid at 923.
sovereign nation states rather than in the claims of sub- or transnational actors, whether individuals or groups.\textsuperscript{30}

While the analysis draws upon other theories of exclusion and resistance including Santos and Rodriguez-Garavito’s notion of subaltern cosmopolitan legalities, this paper finds the concept of liminality particularly helpful in understanding the status of Gilgit-Baltistan and the impact of this status on the its residents in four ways. First, liminality is useful for characterizing the region, as its legal-political position derives from its in-between status. Second, liminality reveals particular impacts on the people of Gilgit-Baltistan, including their ambiguous status as citizens of Pakistan lacking the rights necessary to participate in the Nation State, including the rights to vote in federal elections or elect a representative in the National Assembly. Third, the theory shows how the effects of liminality operate as a cycle: the in-between status of Gilgit-Baltistan within the international sphere justifies liminality within the domestic arena, which further exacerbates the ambiguous status by making it difficult to determine who has the power to act or challenge the status.\textsuperscript{31} Fourth, liminality also helps to understand how people resist their unique type of marginalization.

Liminality is an insightful concept for understanding the ambiguous status of Gilgit-Baltistan generally within the global “contemporary system of nation-states,” and particularly within the federal order of Pakistan.\textsuperscript{32} First, as a result of the persisting Kashmir conflict, the region is liminal in the “contemporary, categorical order of nations.”\textsuperscript{33} Kashmir is split between Indian-administered Jammu and Kashmir, Pakistani-administered Azad Kashmir and Gilgit-Baltistan, and China-administered Aksai Chin and the Trans-Karakoram Tract. China, India and Pakistan have never formally recognized the accession of the areas administered by other States and each country continues to make different, opposing claims to territory. Although India has recently stated that it is willing to grant Kashmir independence, Pakistan argues that the region’s status should be determined by the people of Kashmir through a plebiscite, and China contends that Aksai Chin is indisputably part of Chinese territory. While numerous resolutions by the United Nations Security Council (UNSC), General Assembly and the United Nations Commission for India and Pakistan have mandated the peaceful settlement of the dispute, the conflict persists.\textsuperscript{34}

Second, Gilgit-Baltistan is also liminal within the federal structure of Pakistan. The territory has been contested since at least 1840, when the territory shifted from governance by independent princely States ruled by Mirs and Rajas to administration under the British Government of India.\textsuperscript{35} Following the British departure and the partition of the Indian Subcontinent in 1947, the Gilgit Agency (compromising of territory which is now Gilgit-Baltistan, including Hunza) was handed to the Maharaja of Kashmir.\textsuperscript{36} The Maharaja’s decision to join India caused public dissent amongst

\begin{itemize}
\item \textsuperscript{30} Ibid at 924.
\item \textsuperscript{31} For example, the Courts say that it is up to the Government while the federal government says that it is unable to act because of the persisting Kashmir conflict.
\item \textsuperscript{32} Malkki, supra note 28 at 5.
\item \textsuperscript{33} Ibid at 253.
\item \textsuperscript{34} UNSC Resolution 39 (1948); UNSC Resolution 47 (1948); Resolution 51 (1948); Resolution 80 (1950); Resolution 91 (1951); Resolution 96 (1951); Resolution 98 (1952); Resolution 122 (1957); Resolution 126 (1957); Resolution 209 (1965); Resolution 211 (1965); Resolution 214 (1965); Resolution 215 (1965); Resolution 303 (1971); Resolution 307 (1971).
\item \textsuperscript{35} IUCN, Customary Law in Pakistan: Governing Natural Resources and the Processes and Institutions that Affect Them: Northern Areas (Karachi, Pakistan: IUCN Pakistan, 2003) at x.
\item \textsuperscript{36} Ibid at xi.
\end{itemize}
people in the Gilgit Agency and Muslim officers of the army who raised the Pakistan flag in the regional capital, Gilgit.\textsuperscript{37}

Since 1947, the region has had varying degrees of independence from and connection to Pakistan. The Government of Pakistan immediately took over administration of the region in 1947, even though in practice, the administration was run by the hereditary Mirs until 1972 or 1974, depending on the area.\textsuperscript{38} With the abolishment of the Mir system, Pakistan began directly administering the region, enforcing the laws of Pakistan and naming it the Northern Areas.\textsuperscript{39} However, as discussed below, the 2009 Order re-named the region and designated it a province, despite the fact that it lacks critical characteristics of a province and is not included in the Constitutional list of Pakistani territory.

Liminality also situates the ambiguous status of Gilgit-Baltistan in time. As Ronald L Grimes argues, liminality is “an in-between ‘place’ that is both geographical and metaphoric” as well as a “‘moment’ in a temporary process.”\textsuperscript{40} The temporal aspect of liminality described by Grimes also captures the supposed temporariness of the condition in Gilgit-Baltistan – the idea that in some future point in time the Kashmir crisis will be resolved and the roadblocks to Gilgit-Baltistan becoming a ‘real’ province will be lifted. While there is also an independence movement in Gilgit-Baltistan, it is minimal and is not addressed in this paper.\textsuperscript{41}

3. Ambiguity and exclusion through the Constitution and the 2009 Order

Although the Kashmir conflict and the landslide have exacerbated the region’s sense of being in-between, the formal law plays a central role in constructing this uncertain status. The next part of the paper argues that the Constitution of Pakistan, the Supreme Court of Pakistan’s interpretation of the Constitution in \textit{Al-Jehad Trust \& others v Federation of Pakistan and others}, as well as the 2009 Order, actively structure the region as a liminal place, and in doing so, exacerbate the marginalization of its residents.\textsuperscript{42}

3.1. The Constitution and the \textit{Al-Jehad} case

The Constitution of Pakistan does not list Gilgit-Baltistan as a Pakistani territory, although the State has exercised sovereignty in the region since Independence.\textsuperscript{43} Rather, Gilgit-Baltistan is described as a territory “administered by Pakistan” and is excluded from the Constitution.\textsuperscript{44}

\textsuperscript{37} Ibid.
\textsuperscript{38} Ibid.
\textsuperscript{39} Ibid at xii.
\textsuperscript{40} Ronald L Grimes, \textit{Rite Out of Place: Ritual, Media, and the Arts} (Oxford: Oxford University Press, 2006) at 112.
\textsuperscript{41} See Bansal, supra note 6 (arguing that “[a]s the alienation of people in Gilgit-Baltistan increases, it has led to a demand for the creation of a ‘separate Karakoram Province with real executive and legislative powers’” at 87). However, he points out that this movement has largely come from the Shia majority while the some parts of the Sunni minority wants the region to be merged with ‘Azad Kashmir’ (Mirpur–Muzaffarabad) at 87.
\textsuperscript{42} \textit{Al-Jehad Trust \& others v Federation of Pakistan and others}, 1999 SCMR 1379 [\textit{Al-Jehad Trust}].
\textsuperscript{43} IUCN, \textit{Environmental Law in Pakistan}, supra note 4 at 17; Constitution, supra note 4 at Section 1 (defining the Republic and its territories).
\textsuperscript{44} Ibid.
In 1999, the Supreme Court of Pakistan was called on to assess the constitutional status of the Northern Areas. *Al-Jehad Trust* shows the role of the formal law in analyzing, describing and ultimately justifying this constitutional liminality. In particular, the petition before the Supreme Court sought four remedies: (1) the enforcement of fundamental rights found in the Constitution of Pakistan; (2) a declaration of the Northern Areas’ Constitutional status; (3) a declaration that the people of the Northern Areas are full citizens of Pakistan with the right to fully participate in the affairs of the federation; and (4) granting of provincial status to the Northern Areas.45

The Supreme Court’s decision is ambiguous in its outcome and reasoning. On the one hand, it affirms Pakistan’s administrative control over the Northern Areas and holds that residents are “citizens of Pakistan, for all intents and purposes.”46 As citizens, they have fundamental rights guaranteed to all Pakistani citizens by the Constitution.47 These include the right to freedom of movement, freedom of association, freedom of trade, business or profession, freedom of speech, freedom to profess religion and to manage religious institutions, the right to property, and the equality of citizens.48 The Court also calls on the government of Pakistan to “ensure that the people of Northern Areas enjoy their fundamental rights, namely to be governed through their chosen representatives and to have access to justice through an independent judiciary, inter alia, for enforcement of their fundamental rights guaranteed under the Constitution.”49 Along with rights, residents also have duties including the obligation to pay taxes.50

On the other hand, however, the Supreme Court holds that there is no legal obligation to grant the people of the Northern Areas representation in the National Assembly. Rather, the Court finds that the only obligation of the federal government is to provide regional representation and access to the High Court, not the Supreme Court. This two-fold decision reifies the liminality of the people in the region. It confirms that the people of Gilgit-Baltistan do not have a right to representation in the critical decision-making body despite being citizens of Pakistan and having the same fundamental rights as other citizens.

45 *Al-Jehad Trust, supra* note 42 at para 14.
46 Ibid (“Since most of the Pakistani statutes have been made applicable to Northern Areas including Citizenship Act as stated above, we are of the view, that the people of Northern Areas are citizens of Pakistan, for all intents and purposes. The above distinction between the two categories of the above fundamental rights of the Constitution is not material. They, as the citizens of Pakistan, like any other citizen have the right to invoke any of the above Fundamental Rights, but they are also liable to pay taxes and other levies competently imposed.” at para 14).
47 Ibid (“Since most of the Pakistani statutes have been made applicable to Northern Areas including Citizenship Act as stated above, we are of the view, that the people of Northern Areas are citizens of Pakistan, for all intents and purposes. The above distinction between the two categories of the above fundamental rights of the Constitution is not material. They, as the citizens of Pakistan, like any other citizen have the right to invoke any of the above Fundamental Rights, but they are also liable to pay taxes and other levies competently imposed.” at para 14).
49 *Al-Jehad Trust, supra* note 42 at headnote.
The reasoning of the decision is also rooted in ambiguity. The Court bases its finding on the sensitivity of the region, its historical distinction from other parts of Pakistan, the division of powers between the executive and the judiciary, and UNSC Resolutions.

It may be observed that since the geographical location of the Northern Areas is very sensitive because it is bordering India, China, Tibet and USSR, and as the above areas in the past have also been treated differently, this Court cannot decide what type of Government should be provided to ensure the compliance with the above mandate of the Constitution.

The Supreme Court further contends that “[n]or can we direct that the people of Northern Areas should be given representation in the Parliament as, at this stage, it may not be in the larger interest of the country because of the fact that a plebiscite under the auspices of the United Nations is to be held.” The Court also characterizes the issue of the status of the Northern Areas as a political question which is properly addressed by the Government of Pakistan, not the courts.

In this way the judgement draws upon the pre-existing liminality of the region. It points to how the region is “sensitive” given its position at the conflux of multiple, contested borders and its historically distinct treatment. The Court also acknowledges the transitory middle ground in which the region must wait for a plebiscite, agreed upon in principle in UNSC Resolutions from 1948 and 1949. While Pakistan continues to call for a plebiscite, international support for the plebiscite has waned significantly. If Pakistan continues to justify the exclusion of Gilgit-Baltistan on this basis, the region may find itself in “permanent liminality.”

3.2. 2009 Order, liminality in disguise

In 2007, former President General Pervez Musharraf presented a provisional legal framework to address some of the issues raised in Al-Jehad Trust. This included upgrading the representative body in the region to a “provincial legislature” and empowering it to elect its own head and prepare its own budget. It also provided for the transfer of administrative and financial powers to the Northern Areas from the Kashmir Affairs and Northern Areas Ministry. While the 2009 Order also expands the powers allocated to the region, Gilgit-Baltistan continues to be legally constructed as a liminal place, with major consequences for residents.

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51 There have also been demands for a third option of independence for Kashmir. See “Kashmir’s forgotten plebiscite” BBC News 17 January 2002, BBC online: <http://news.bbc.co.uk/2/hi/south_asia/1766582.stm>.
52 Ibid at para 26.
54 Nicholson report, supra note 3 (The European Parliament states that “the UN-laid down conditions for such a plebiscite have not been, and can no longer be, met by Pakistan. The situation has moved on” at para 24); similarly the United States, for over twenty years, has argued that the dispute should be settled through direct negotiations between India and Pakistan.
55 Szakolczai, supra note 23 at 219. Szakolczai acknowledges, however, that the concept of permanent liminality “inherently paradoxical” since it “implies a fixity that is not characteristic of luminal situations”.
56 Bansal, supra note 6 at 88.
57 Ibid at 83.
58 Ibid.
First, the legislation still excludes the region from representation in the National Assembly and other important federal bodies. While democratic deficiency does not automatically imply liminality, in Gilgit-Baltistan the lack of representation is conceptualized by the Federal government as an impermanent, transitory situation. It is considered a temporary state of being that will change once the Kashmir conflict is resolved. Moreover, as discussed below, the justification for the democratic deficiency is based on the liminality of the region itself. In this way, the liminality operates as a cycle, whereby the ambiguous status justifies further uneven exclusions.

Second, the 2009 Order relies upon and concretizes liminality by excluding Gilgit-Baltistan from the jurisdiction of the Supreme Court of Pakistan. Although it establishes a Supreme Appellate Court for Gilgit-Baltistan, it holds that cases are not appealable to the highest court of Pakistan. This creates a parallel ambiguity to being a citizen with lesser rights and a lack of representation: residents have a right to a forum that will uphold their fundamental rights; however, they are not citizens with access to the country’s highest court.

Third, the Order reifies the liminality of Gilgit-Baltistan by defining the region as a “province” without giving it actual jurisdiction over subject matters provided under the legislative list for provinces. In federal States, a “province” is a distinct entity that has a defined relationship with the central government. While the government of Pakistan uses the term province, it creates an altogether different political-legal entity, which is dissimilar from the “real” provinces listed in the Constitution. In particular, as described below, the 2009 Order creates a “province” that is largely controlled by the federal government.

The 2009 Order claims to strengthen the locally-elected Legislative Assembly while allocating many of the most important subjects to the Legislative Council, still dominated by federal actors. For example, the Order structures the Council so that eight out of the fifteen members of the Legislative Council are not elected by the people of Gilgit-Baltistan, and seven are specifically nominated by, or appointed on the advice of, the Prime Minister of Pakistan. Furthermore, the 2009 Order gives extensive powers to the “Chairman of the Council,” which is in fact the Prime Minister of Pakistan. The Chairman has “power to grant pardons, reprieves and respite and to remit, suspend or commute any sentence passed by any court, tribunal or other authority,” as well as the power to issue a Proclamation of Emergency, all in a jurisdiction that is supposedly outside of the power of the federal government.

Second, despite being called a province, the 2009 Order continues to imbue the Legislative Council with extensive powers, including jurisdiction over the most financially-valuable sectors such

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60 Ibid. Gilgit-Baltistan still does not have representation before the Council of Common Interests, the National Hydro-electric Board, the Indus River System Authority, the National Judicial Council and the National Finance Commission.
61 2009 Order, supra note 1 at Section 33 established that the Council consists of (1) the Prime Minister of Pakistan; (2) the Governor of Gilgit-Baltistan (appointed by the President of Pakistan on the advice of the Prime Minister of Pakistan under Section 20); (3) six members nominated by the Prime Minister of Pakistan from amongst Federal Ministers and members of Parliament; (4) the Chief Minister of Gilgit-Baltistan (elected by the members of the Legislative Assembly from amongst themselves); and (5) six members to be elected by the Assembly.
62 Ibid at Section 33(2).
63 Ibid at Section 34.
64 Ibid at Section 34.
as tourism, forestry, minerals and mineral wealth, planning for economic coordination, \textsuperscript{65} development of industries, \textsuperscript{66} electricity and bulk water storage, \textsuperscript{67} and duties. \textsuperscript{68} The Council also has control over the fees, \textsuperscript{69} jurisdiction and powers of all courts, \textsuperscript{70} and offences against laws \textsuperscript{71} for any of the matters in the list. As Senge contends “[a]t best, the order legitimises Pakistan’s occupation and claims political rights for the locals without changing the power equation”. \textsuperscript{72}

In this way, the people of Gilgit-Baltistan are “at once no longer classified and not yet classified.” \textsuperscript{73} They are not members of a princely state or the British Empire and yet they are also not full citizens of Pakistan. Their exclusion is also uneven. While the Supreme Court recognizes some rights deriving from Gilgit-Baltistan’s relationship to Pakistan, it also excludes others. Thus, the people of the region, in the words of Turner, “elude or slip through the network of classifications that normally locates states and positions in cultural space.” \textsuperscript{74} However, the space the people of Gilgit-Baltistan evade is political and legal, with drastic implications for how they relate to the State, contest their marginalization and manage their development processes.

4. The effects of being in-between

Traditional conceptions of liminality by van Gennep and Turner see the interstructural position as often empowering and creative where “there is a certain freedom to juggle with the factors of existence.” \textsuperscript{75} Subaltern scholars and gender theorists also show how the stages of separation and transition invert existing hierarchies and create space for new norms, relations and ideals. \textsuperscript{76} However, authors like Menjívar and King-Irani contend that transitional stages “breed uncertainty” when “extended indefinitely.” \textsuperscript{77} In legally liminal places like Gilgit-Baltistan, the in-between status has radical implications for access to justice and rights. \textsuperscript{78} In particular, the liminality of Gilgit-Baltistan has two major impacts on the residents. First, as mentioned above, the ambiguity of Gilgit-Baltistan creates challenges for developing natural resource industries and negotiating fair revenue-sharing agreements. Second, it also exposes the region to greater legal uncertainty, especially following the recent 18\textsuperscript{th} Amendment.

\textsuperscript{65} Ibid at Section 18.
\textsuperscript{66} Ibid at Section 29.
\textsuperscript{67} Ibid at Section 34.
\textsuperscript{68} Ibid at Section 42.
\textsuperscript{69} Ibid at Section 50.
\textsuperscript{70} Ibid at Section 51.
\textsuperscript{71} Ibid at Section 52.
\textsuperscript{72} Sering, supra note 59 at 354–55. One employee of a civil society organization stated that “after six decades they have just allocated a name for us. Basically, it is just a game to make local people happy.”
\textsuperscript{73} Turner, “Betwixt and Between: Liminal Period”, supra note 18 at 96.
\textsuperscript{74} Turner, The Ritual Process: Structure and Anti-Structure, supra note 22 at 95.
\textsuperscript{75} Turner, “Betwixt and Between: Liminal Period”, supra note 18 at 116.
\textsuperscript{77} Menjívar, supra note 28 at 1007 (showing how the legal ambiguity of migrants who are not fully documented yet not undocumented has drastic effects on many aspects of their lives at 1001).
\textsuperscript{78} See also Laurie King-Irani’s analysis of Palestine, supra note 28 at 225
4.1. The democratic deficit – natural resource management and revenue-sharing

Residents in Gilgit-Baltistan face a democratic deficit specifically because they are seen as not quite a part of Pakistan. The effects of liminality are evident when people try to improve their livelihoods, especially by developing natural resource based industries in the region. While the main source of income is agriculture, people seek to diversify their livelihoods. Communities in Gilgit-Baltistan promote the private and public sector development of mining, tourism, and wildlife and trophy hunting, and they seek investment on terms that give them control over the development and a fair share in profits. In particular, mining has received considerable local, national and international attention given the extensive deposits of copper, iron-ore, uranium, coal, and precious and semi-precious gemstones in the region. Yet, across Gilgit-Baltistan, and especially in Hunza, “no significant results have been materialized.” There have been no large scale developments in the sector, although extensive illegal, small-scale operations exist.

Initiatives to develop mining in the region face many limitations. Combined with the lack of human, technical and financial resources, the uncertain constitutional status impedes the ability of communities to obtain investment for the development of industries and also limits their capacity to negotiate with public and private actors over critical issues like revenue sharing. Thus, developing mining initiatives beyond small-scale projects in Hunza is nearly impossible, with the Chipursan Valley being an illustrative example.

Chipursan Valley is the region running parallel to the Wakhan Corridor of Afghanistan. Numerous members of the Chipursan LSO have taken initiatives to develop the region’s coal industry. The most ambitious and coordinated initiative is the Chipursan Mining Company. It was formed in the 1990s when shares of 250 rupees (under $3 CAD) were collected from households and registered under the Companies Act. The company seeks to develop the region’s resource extraction industry and to ensure that the benefits from such industries go to members of the communities.

Despite obtaining two licences and receiving some assistance from NGOs, however, the company has been unable to start mining. A former director of the company attributes this to an underdeveloped market, lack of financing and expertise, and also government regulations defining the Chipursan Valley as a restricted area. The federal government has imposed a clearance requirement for all foreigners wanting to visit the area requiring them to obtain No Objection Certificates (NOCs) from the Interior Ministry in order to travel there. However, the systematic refusal to grant NOCs directly affects the tourism industry of the Valley, and further limits their ability to obtain foreign investment in projects. Members of Chipursan contend that their exclusion from Pakistan’s constitutional framework means that they have less lobbying power to encourage the federal government to lift the requirement of NOCs. While the Chipursan LSO has written to the federal government requesting reasons for the restrictions and their removal, the NOC is still in place.

80 Aftab Ismail & Hussain Asif, Northern Areas Strategy for Sustainable Development (IUCN: Gilgit, 2003) at 16.
81 Ibid at 16.
The constitutional liminality also inhibits communities like Chipursan from obtaining both public and private investment to develop natural resource industries. The federal government asserts that since Gilgit-Baltistan is part of Jammu and Kashmir and is thus a disputed territory, it cannot invest in the region. It claims that investment would unfairly prejudice the outcome of the territorial dispute with India. This is inconsistent with the government’s approach in other parts of Gilgit-Baltistan including in Diamer, where Pakistan recently laid the first stone of a mega project, the Bhasha Dam. The federal government has reputedly prohibited foreign companies from operating in the region, even those who are collaborating with the Chipursan Mining Company or other groups in the Valley. The Legislative Assembly has also imposed a ban on gemstone mining and exportation of precious stones from the region, even though it is uncertain whether this capacity falls within their jurisdiction.

However, there is a great deal of confusion as to the formal policies of the national, regional and local governments, who has power, and who, in practice, is in control. The liminality of the region – and its practical impact on economic development – is expressed through the abundance of rumours that circulate locally. These rumours build on gaps in information and also perpetuate further confusion. For example, some people say that the federal government secretly awards licences, while others state that it operates “ghost companies” to extract resources from Hunza without local communities’ permission and without providing them with any royalties. One recent controversy is the alleged issuance of a mining lease to a Hong Kong based company, Mohsan, by Gilgit-Baltistan authorities, which was equated with “robbing” Gilgit-Baltistan of its natural resources. The Chief Minister of Gilgit-Baltistan claims that Islamabad issued the lease, while the Gilgit-Baltistan Finance Minister says that the Chief Minister issued the lease himself “in the darkness of the night.” Others say that foreign companies are restricted, but for reasons besides the constitutional status of the region. These reasons include preventing foreign companies from mining uranium, and pressure from the American government to prevent further Chinese intervention in the area. While the rumours have not been verified, they highlight frustration and a lack of basic communication between communities and the different levels of government.

It is also clear that communities feel vulnerable, excluded and denied access to much needed sources of revenue. They are unable to lobby or express their interests and they have an uncertain position in negotiations. Attempts at mining in Chipursan expose the challenges facing communities. Besides limiting potential investment, the constitutional uncertainty also inhibits the ability of communities to lobby for greater control of the development of these industries. Weak political elected bodies may not be able to defend the rights and interests of people in the region. For example, communities seek investment that provides them with fair shares in the revenue. Without strong political representation, they feel unable to lobby for laws and regulations that protect their interests.

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82 The World Bank has denied funding for the project on the basis that it is a disputed territory.
85 Ibid.
86 Ibid.
87 For example, a former director of the Chipursan Mining Company stated that the Company seeks fifty percent of the revenue derived from collaborations with private companies.
These constitutional issues compound existing challenges of developing natural resource-based industries, especially for community-based initiatives like the Chipursan Mining Company. For example, Peter van der Veen, of the World Bank’s Mining Department, points to a number of persisting impediments to foreign investment including a lack of “clearly identifiable, available prospects using reliable, up to date maps,” a lack of standardization in the procedures and terms of licences, persisting corruption, as well as “lengthy, uncertain and unrealistic requirements” and insufficient guarantees in law.\textsuperscript{88}

Another example of the tangible impact of Gilgit-Baltistan’s liminality on residents is revenue-sharing. Royalties and the distribution of natural resources are common sources of dispute among provinces and the federal government in Pakistan.\textsuperscript{89} Particularly controversial claims include the distribution of royalties to Khyber Pakhtunkhwa (formerly called the North West Frontier Province) for hydro-electric power, and to Baluchistan for its natural gas, and the disputes over the construction of the Kalabagh dam.\textsuperscript{90} In Hunza, however, questions of revenue-sharing are even more complex because first, it is not legally clear who owes royalties to whom, and second, communities and the government of Gilgit-Baltistan argue that the data documenting earnings is withheld from them by the federal government.

Similarly, in Hunza, participants frequently articulate their discontent with the constitutional framework through the injustice of unequally divided revenue. They contend that their lack of constitutional status impedes their communities’ ability to obtain a fair share of the financial benefits derived from their natural resources since they are unable to effectively lobby the government. Furthermore, even where the government of Gilgit-Baltistan would have control over the revenue, it is still in practice managed and controlled by departments of the federal government in Islamabad, as it is in the case of tourism, for example.

Some sectors have well-established policies that give local communities a fair portion of the revenue. For example, wildlife and trophy hunting fees are split between the local community and the government, with eighty percent going to the former and twenty percent going to the latter.\textsuperscript{91} However, communities in Gilgit-Baltistan express frustration that funds collected by the federal government in the form of taxation and fees for many other sectors including forestry, tourism and the Dry Port in Sost are not fairly shared with communities. For example, an LSO Chairman argues that local people in his region are only given twenty percent of royalties from forestry even though communities in Khyber Pakhtunkhwa are given eighty percent. He states that there is “big discrimination” between people in Gilgit-Baltistan and those from other provinces because they lack a “voice” in the National Assembly and are also not politically-aware or organized.

\textsuperscript{90} Ibid at 151.
\textsuperscript{91} See Mountain Area Conservancy Project, “Spectacular Hunt in the Fascinating Mountains at Ghulkin Community Conservation Area” handout and “Bunji Community Conservation Area, The Land of Choice for Astore Markhor” handout.
Other people argue that funds collected by the Tourism Department are also not distributed to communities. For example, one member of KADO points out that the department in Islamabad charges tourists trekking fees, environmental protection fees and an expedition adventure fee, but refuses to make the figures public and does not share earnings with the communities. He argues that “before September 11th the area was full of tourists, mostly climbers, […] and they are paying to the federal government […] a lot of money. It was from these mountains to the federal government […] not the community”. He further points out that the government department was not re-investing the money to improve tourist facilities.

The discontent over revenue-sharing also relates to the confidentiality over earnings. For example, one community member argues that all the fees go to the Tourism Department in the capital, “[e]verything is in Islamabad. Trekking fees, environmental protection fees, there is expedition adventure fees. Special rules because of security problems. They charge all these fees but they never make it public.” Another community member from a different part of Hunza similarly states that “[t]here are many high [mountain] peaks and tourism was a big industry in this area, [but] they never pay us, they never publish the information.” An LSO Chairman also points out that the federal government refuses to disclose the amount of revenue being made at the Sost Customs Checkpoint for the Dry Port. While trucks entering from China pay duties, the money is not going to the local communities. This is seen as especially unfair given that local communities’ lands face increased environmental damage as a result of the heavy traffic and construction of new infrastructure to support the port.92

4.2. Liminality as legal uncertainty

The legal liminality of the region is compounded by uncertainties over the role and responsibility of different levels of government with the recent 18th Amendment to the Constitution. The Amendment abandons the concurrent list of federal and provincial powers and devolves numerous exclusive powers to the provinces, including the environmental protection regime and forestry.93 While devolution provides the provincial governments with far more responsibilities and control, its practical effects will largely depend on political will and the capacity of provinces to take on these responsibilities. The practical outcomes of the amendments will also be shaped by the Implementation Commission, provided for in Article 96(9) of the 18th Amendment.94

However, the implications for Gilgit-Baltistan are even more uncertain than for other provinces, since some subject matters that have been devolved to the provinces are still under control of the Gilgit-Baltistan Council and not the Legislative Assembly. For example, forestry is constitutionally under the jurisdiction of the provinces but in Gilgit-Baltistan it belongs to the Council’s Legislative List. Given the central role of federal actors in the Council, it is questionable whether the amendments result in real devolution for Gilgit-Baltistan.

92 Sost has launched a complaint about the Sost Dry Port authority for environmental damage.
93 Constitution (Eighteenth Amendment) Act, 2010 (26 November 2010) at Art 96 and Art 101(3) [18th Amendment].
94 Ibid, the Art provides that “[f]or purposes of the devolution process under clause (8), the Federal Government shall constitute an Implementation Commission as it may deem fit within fifteen days of the commencement of the Constitution (Eighteenth Amendment) Act, 2010.”
One of the main areas for uncertainty emerging from the 18\textsuperscript{th} Amendment involves the new concurrent power over mineral oil and natural gas, and revenue-sharing. For example, it provides that “mineral oil and natural gas within the Province or the territorial waters adjacent thereto shall vest jointly and equally in that Province and the Federal Government.”\textsuperscript{95} Moreover, the Amendment allocates revenues derived from duties and royalties on natural resources like natural gas and oil to the provinces in which the well-heads are situated.\textsuperscript{96} Provinces, such as Khyber Pakhtunkhwa see the amendments as a long-awaited opportunity to obtain greater control over and financial benefits from resources located in their territory. For example, Senator Afrasiab Khattak states that the 18\textsuperscript{th} Amendment made Pakistan Asia’s best federal system since it gave provinces maximum autonomy.\textsuperscript{97} He argues that “[a]s autonomy without resources is meaningless, the 18th amendment [...] of the Constitution has addressed this issue and now oil and gas resources are jointly and equally owned by the federal government and provinces.”\textsuperscript{98} However, it is uncertain how devolution and revenue-sharing would function in Gilgit-Baltistan.

5. Resisting liminality

Despite the challenges posed by liminality, scholars show how people fight back. As Malkki argues, “the possibility of creative subversion of the national order is already written into its classificatory processes themselves [...] People can categorize back.”\textsuperscript{99} She shows how Hutu refugees lived within categories “that were not their own making, but they also subverted these categories, to create new ones.”\textsuperscript{100} King-Irani also shows how stateless persons and refugees engage their “interstitial location and liminal status in the current political world order of sovereign nation-states.”\textsuperscript{101} She further points to how Palestinians try to use “mechanisms of international justice that transcend the nation-state system and that are not based solely on territorial jurisdiction.”\textsuperscript{102}

The challenges stemming from the liminality of Gilgit-Baltistan similarly call for tactics that traverse borders, cross disciplines and target different types of rights. In particular, the residents of Gilgit-Baltistan engage legal and non-legal mechanisms and look to a combination of local and global networks and regimes to resist their liminality and contest its negative effects. In this context, LSOs play a critical role in dealing with the region’s in-between status, especially in the absence of any major constitutional changes in the near future.

The Aga Khan Rural Support Program (AKRSP), an organ of the Aga Khan Foundation, developed a strategy of participatory development by establishing village, and later, intra-village

\textsuperscript{96} 18th Amendment, \textit{ibid} (Art 60 (1)(a) provides that the net proceeds of the Federal duty of excise on natural gas levied at well-head and collected by the Federal Government and of the royalty collected by the Federal Government shall be paid to the Province in which the well-head of natural gas is situated. Similarly, Art 60(1)(b) provides that the proceeds of duties on oil shall be paid to the Province in which the well-head of oil is situated).
\textsuperscript{97} “KP to Revisit Laws Related to Natural Resources”, supra note 95.
\textsuperscript{98} Ibid.
\textsuperscript{99} Malkki, \textit{supra} note 28 at 8.
\textsuperscript{100} Ibid at 8.
\textsuperscript{101} King-Irani, \textit{supra} note 28 at 930.
\textsuperscript{102} Ibid at 930.
organizations. Village Organizations and Women’s Organizations are the principal “self-sustaining development institution […] that can enter into a partnership for development with governmental and private agencies.” The Village Organizations collect contributions from households which are put into a fund managed by an elected Village Organization Manager and Bookkeeper. These institutions help facilitate projects that include infrastructure, health, enterprise development, micro-financing and micro-insurance, and leadership and skills training. In the late 1990s, the AKRSP also helped village organizations and women’s organizations “federate” into “valley or Union Council-level institutions”. The LSOs are legal entities, usually registered under the company ordinance of the government of Pakistan, which also work in collaboration with the government, NGOs, and donor agencies to assist communities with development.

This paper’s focus on LSOs aims to recognize the “bottom-up resistance and legal innovation” of grassroots organizations. In particular, Santos and Rodriguez-Garavito speak of a “subaltern cosmopolitan legality” as a way of approaching the study of law and globalization, so as to better understand the connections between law and politics and “[reimagine] legal institutions from below.” The approach is particularly useful in examining Gilgit-Baltistan since it has three overarching themes, which reflect the ways that Village Organizations and LSOs resist the liminality of the region and attempt to mitigate its effects.

First, the approach exposes the limitations of the law-centric strategies and focuses on plural forms of resistance that combine legal, illegal and non-legal strategies. For example, Santos and Rodriguez-Garavito call for case studies of “rallies, strikes, consumer boycotts, civil disobedience, and other forms of (oftentimes illegal) direct action […] that simultaneously pursue institutional avenues such as litigation and lobbying.” In Gilgit-Baltistan there is only so much the law can do. The Supreme Court in Al-Jehad recognized the status of the region as a political issue, and consequently refused to make any findings that would imply the inclusion of the region into Pakistan. While the Court drastically expanded the legal recognition of rights of residents, it took over fifteen years for the government to make any modifications, and even those, as discussed below, required domestic and international political mobilization.

103 NF Campos, FU Khan & JE Tessendorf, “From Substitution to Complementarity: Some Econometric Evidence on the Evolving NGO-state Relationship in Pakistan” (2004) 37:2 The Journal of Developing Areas 49. The Aga Khan Foundation is led by His Highness the Aga Khan, the 49th hereditary Imam of the Shia Ismaili Muslims. The Foundation’s organizations including the AKRSP and the AK Development Network, AK Agency for Microfinance, AK Education Services, AK Fund for Economic Development, AK Health Services, AK Planning and Building Services, AK Trust for Culture and the AK University are leading development organizations around the world, focusing on the improving the livelihoods of Ismailis.
107 Ibid.
108 Ibid.
109 Ibid.
110 Ibid.
111 Ibid.
112 Ibid.
113 Ibid.
Second, the approach focuses on political mobilization rather than only individual rights. It emphasizes collective action to “muster the type of countervailing power necessary to bring about sustained legal change.” Thus, it recognizes that rights need to go beyond the individual and “incorporate solidaristic understandings of entitlements.” This broader conception of rights reflects the community-focused approach to resistance and change in Gilgit-Baltistan. The LSOs and Village Organizations work explicitly to help the entire village or collection of villages improve their standards of living. Moreover, as the Chipursan Mining Company and community controlled hunting areas reveal, initiatives for the development of natural resources are entirely shared by the community.

Third, Santos and Rodriguez-Garavito’s approach of subaltern cosmopolitan legality examines how resistance operates “by definition across scales” to engage the local, national and global as well as state and non-state legal orders. Examples include the local, national and regional environmental tactics used by Portuguese communities, or the anti-sweatshop coalitions that mobilize domestic courts, engage NAFTA institutions and target international brand imaging. Gilgit-Baltistan’s liminal status requires that residents take diverse approaches to contesting their exclusion, which demands strategies that traverse scales and engage a wide array of actors.

These tactics of combining different strategies, focusing on political mobilization, and operating across different scales help Village Organizations and LSOs deal with the challenges of the region’s liminality in two different ways. This paper first examines how these village and inter-village organizations use legal and non-legal modes of contestation. Second, it shows how Village Organizations and LSOs engage local and global regimes, networks and discourses.

5.1. The legal and the non-legal, local and global

As the scholar Balakrishnan Rajagopal argues, people and their political movements have “an ambivalent relationship with the law.” He contends that people see the law as both a “force for status quo and domination which must be contested as part of a larger political struggle or largely ignored as irrelevant,” yet at the same time “it also provides them space for resistance.” In Hunza, as throughout the rest of Pakistan, the formal legal system is often perceived as inefficient, inaccessible and corrupt. Consequently, people primarily rely on local dispute resolution bodies and faith-based tribunals like the Ismaili Council to resolve their daily problems. This emphasizes Jesse C. Ribot’s argument that legal means “are not the only rights-based way of gaining, controlling, or

113 Ibid.
114 Ibid at 16.
115 Ibid.
116 Ibid at 16.
119 Ibid at 183.
maintaining benefits from resources.” Nonetheless, people also view the formal legal system as an important mechanism to ensure their rights and they undertake numerous types of legal actions. For example, where local dispute resolution bodies fail, communities may go to the formal courts to deal with land ownership issues. For example, the Village of Shimshal has used the courts to contest the expropriation of pastures for the Khunjerab National Park by the federal government. Furthermore, as Ribot notes, “within formal and informal systems of legal pluralism a state often remains the ultimate mediator, adjudicator, and power holder.”

However, the only case to directly assess the status of Gilgit-Baltistan is Al-Jebad. Yet other legal claims have dealt with the region’s status indirectly, seeking to close the gap between Gilgit-Baltistan and the rest of Pakistan. For example, the Supreme Court of Pakistan recently heard a claim contending that the appointment of retired judges to the Supreme Appellate Court of Gilgit-Baltistan is prohibited by the Constitution of Pakistan. The applicant argued that the appointment constitutes discrimination against the people of Gilgit-Baltistan since the appointments undermine the right to a fair, independent judiciary in the region. The applicant specifically pointed to the Supreme Court’s ruling in Al-Jebad as confirming that the people of Gilgit-Baltistan (then the Northern Areas) are citizens of Pakistan and thus entitled to the same fundamental rights available to all other citizens of Pakistan.

Yet these sorts of constitutional cases are unusual and the status of Gilgit-Baltistan is usually contested within a political framework instead of a legal one. The people of Gilgit-Baltistan do not prioritize formal legal claims as a mechanism of contesting power because the judicial system is seen as explicitly linked to their liminality and exclusion. While the Supreme Court in Al-Jebad Trust held that in order for the people of the region to enjoy their fundamental rights they required access to an independent judiciary, there is no constitutional right to be able to appeal to the Supreme Court. The Supreme Court only asserted that the Northern Areas must have a Chief Court, equated with a High Court in that “it is manned by the persons of the status who are fit to be elevated as Judges to any High Court in Pakistan” and with jurisdiction to assess constitutional petitions.

Consequently, people engage other mechanisms besides the formal domestic legal system to resist the effects of their liminality, and the liminality itself. In particular they argue for the politicization of their plight at both international and local levels. As Santos and Rodriguez-Garavito argue, “subaltern cosmopolitan legality views law and rights as elements of struggles that need to be politicized before they are legalized.” This highlights that successful legal claims often require a strong political movement both within the affected communities and the wider public in order to effectively leverage the law. Consequently, in rooting their exclusion as a violation of international human rights norms, people in Gilgit-Baltistan appeal to legal and political discourses as well as to international actors and local members of the community.

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121 Ibid.
123 Ibid.
124 Al-Jebad Trust, supra note 42 at headnote.
125 Sousa and Rodriguez-Garavito, supra note 7 at 16.
First, international attention is seen as necessary to contest constitutional liminality. In particular, people frequently point to the European Parliament’s diplomatic intervention in Gilgit-Baltistan as demonstrating the necessity of engaging in international activism. The European Parliament’s 2007 Report on Kashmir: Present Situation and Future Prospects is considered a crucial document that underscores the democratic deficit in Gilgit-Baltistan, and which pressured the government of Pakistan to enact the 2009 Order. The report, led by Baroness Nicholson of Winterbourne and adopted on 21 March 2007 by the European Parliament, strongly criticizes the government of Pakistan’s lack of implementation of democracy in Gilgit-Baltistan. It states that the European Parliament “is concerned that the Gilgit-Baltistan region enjoys no form of democratic representation whatsoever,” and that “the people of Gilgit and Baltistan are under the direct rule of the military and enjoy no democracy.” It further “calls on Pakistan to hold elections for the first time in Gilgit and Baltistan.”

In commenting on the democratic deficit in the region, the report connects the exclusions in Gilgit-Baltistan to the international human rights regime. For example, it invokes Article 1.1 of the International Covenant on Civil and Political Rights, which states that all peoples have the inalienable right of self-determination, as well as Article 1.3, which requires all parties to the covenant to promote the realisation of the right of self-determination. Moreover, while the European Parliament’s Report on Kashmir does not specifically link issues like democracy with natural resources, it calls on both India and Pakistan to explore options for “increased self-governance” and enhanced cooperation on water, tourism and environment which alludes to broader notions of international sustainable development.

More generally, people in Hunza also understand political participation and access to royalties as rooted in their fundamental rights. For example, the founder of a local civil society organization draws upon a human rights discourse to contest the confidentiality of information about revenues in the region. She contends that there is “no proper human rights protection system. All the documents are secret. For example, Sost Customs Checkpoint, how much do they charge from each truck? What is the income, revenue? We are not informed. This is all managed from downside from custom officers and army officers. This is our area.” In this way, people engage a hybrid international human rights discourse that includes group rights, individual freedoms and environmental protections.

One LSO representative explicitly credits the enhanced powers found in the 2009 Order to the European Parliament’s report. He believes that the Government of Pakistan would not have enacted the Order without external pressure from the European Union. The perceived impact of Europe’s political intervention leads him to emphasize the critical role of the international activist. He argues that “if there is some letter from UN, we think they will consider this issue. For example, Amnesty International advisors can write. Nicholson wrote a report. Pressured Pakistan to give some rights. She wrote a report, it was discussed in European Parliament in 2004, she visited […] and under this pressure they gave us the Order in 2009.” In this way, he draws upon recognized, reputed human rights organizations like Amnesty International and appeals to bodies he sees as sympathetic to Gilgit-Baltistan’s claims. Similarly, another LSO member states that “[w]hen

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126 Nicholson report, supra note 3 at 38.
127 Ibid at paras 14-15 and 18.
128 Ibid at para 12.
129 Ibid at para 3.
Nicholson submitted report to European Parliament, the government of Pakistan objected and said it was one-sided. Said she was an agent of India, presenting an Indian opinion. The European Parliament said it was genuine, correct, and under this pressure, the Government of Pakistan gave political package in 2009. They gave us the Legislative Assembly. So-called.” This member also sees the pressure of the European Union as an effective tool in prompting political and legal changes, although they are still insufficient.

However, these appeals for international assistance and uses of a global discourse of human rights are not limited to the global level. Communities actively seek to strengthen the political awareness of people within Gilgit-Baltistan. Members of LSOs as well as people employed by civil society organizations contend that people have not been able to effectively lobby the government of Pakistan, not only because of the democratic deficit, but also because people in the region are not politically savvy. The lack of awareness of the political situation is explained by the region’s lack of formal democratic institutions throughout history. For example, an employee of a local civil society organization states: “I cannot blame the community because we were under the Mir system of government. No one was allowed to even [go to] Gilgit [the region’s capital city] without permission of the Mir.” Another employee of the same organization states that “people have no idea of democracy […] We are always dependent on others. The Mir was here […] and few people had the power. And still these guys are representing us in the Assembly.” However, although people – especially local civil society employees – believe that the region lacks sufficient political awareness to effectively contest its liminality, communities demonstrate persistence and ingenuity in strengthening their own local political institutions to improve their livelihoods and promote change.

5.2. Strengthening local institutions and enhancing community unity

The failure of the federal government to respond to the 2010 landslide has been perceived by communities as an illustration of the centralized government’s unwillingness to assist the region, even in a time of crisis. It has also emphasized the need to look elsewhere – both internally to communities themselves, and externally to other countries, international organizations and Ismailis around the world – for assistance and support. Arun Agrawal suggests framing examinations of community-based natural resource management around “institutions” rather than “community” in order to “focus on multiple interest and actors within communities, on how these actors influence decision-making and on the internal and external institutions that shape the decision-making process.”

One way to account for the critiques of a focus on “communities” is to look at the organizational institutions found in the regime. In particular, the capacity-building training sessions hosted by Four Worlds in Khyber in July to strengthen communities’ self-government revealed the desire of communities to strengthen Village Organizations, Women’s Organizations and LSOs, in order to better manage their resources and be able to negotiate and collaborate with external actors. The way in which they deal with their liminality reveals them to be an emergent, subaltern civil society.

Village Organizations and LSOs play critical roles in managing and governing natural resources despite the constitutional liminality of the region. They are crucial to developing capacity, providing information, sensitizing communities and creating platforms for political lobbying. Moreover, each village has numerous committees to address specific issues such as nature.

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conservation, water and grazing. In the village of Ghulkin, for example, the nature conservation committee installs garbage bins, maintains pony trails, passes bylaws, and collects fines and fees, including from hikers and tenters. These committees are often organized under an umbrella organization. Similarly, the Hussaini Organization for Local Development encompasses committees for education, health, sports and hoshali (meaning prosperity, which focuses on infrastructure and grazing).

Communities also establish their own dispute resolution committees. For example, the Chairman of one LSO recalled a dispute between two groups in the community over barren lands. The village created a committee composed of a mullah, experts, elders, members of the Village Organizations and representatives of the village clans. The Chairman states that the dispute was resolved in only one day by a process in which the arguing groups agreed to divide the lands equally amongst their households. Given the perceived inefficiency and corruption of the formal legal system, it is not surprising that communities, especially ones in rural Hunza where courts are even more inaccessible, look to local, customary institutions to solve disputes. Yet where constitutional frameworks are seen to be manifestly unjust, there seems to be an even greater emphasis on local solutions.

Despite working on issues at the grassroots level, LSOs frequently go beyond the local level to collaborate with national and international donors, as well as different levels of government to construct community infrastructure, develop business ventures and enhance educational opportunities. The creation of community controlled hunting areas (CCHAs) is a particular example of how local institutions engage with the legal, non-legal, local and global actors in order to improve livelihoods in their communities.

Wildlife and trophy hunting has had considerable success in generating income for villages in Hunza. The region has a great diversity of wildlife, especially sheep and goats (Caprinae) and is “one of the key countries globally for Caprinae conservation.” Trophy hunting programs conserve wildlife by regulating the number of available licences and create job opportunities, while also providing a major source of income for community development projects. Through LSOs registered under the Companies Act, communities establish CCHAs that are managed by local conservation committees such as those found in Khyber, Passu, Husseini and Ghulkin. The funds generated are funnelled directly back into the communities. For example, in Khyber the money was used to reinvest in tourism infrastructure by purchasing land and building a guesthouse, while the Khunjerab Villagers’ Association uses the money for education, agriculture and health. Most notably, Shimshal has created a CCHA in land incorporated within the Khunjerab National Park, which has been one way of maintaining legally-permissible control of pastures and wildlife.

Wildlife and trophy hunting demonstrates the importance of community-based conservation. The successes in Hunza show that involvement of local communities in the management of biodiversity promotes sustainable environmental and ecological protections and greater empowerment of local people. In particular, it enables local communities to monitor and manage

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131 DM Shackleton, A Review of Community-Based Trophy Hunting Programs in Pakistan (Mountain Areas Conservancy Project, 2001) at 4.
hunting in the territory, and provides them with revenue and employment opportunities. Community-based approaches to hunting are seen as the “only viable strategy for wildlife management in Pakistan” since a complete hunting ban is unenforceable and also undermines communities’ access to economic benefits.

The success of the CCHA as a locally-based mechanism to manage natural resources and obtain revenue is also related to collaboration that cross geographical boundaries and legal-political frameworks. The success of the CCHA requires cooperation between the federal and provincial governments and assistance from large international NGOs like WWF Pakistan, the IUCN and the AKRSP. In particular, the lucrative schemes which attract international hunters require cooperation from the government of Pakistan, for instance to provide NOCs to tourists, and an agreement that fairly divides the revenue between the government and community. For example, the Mountain Areas Conservancy Project, funded by the Ministry of Environment and implemented by the IUCN, has helped communities set up hunting packages. It provides a travel itinerary aimed at international guests for a hunting expedition of the Astore Markhor for $25000, or the Himalayan Ibex for $2000. The price includes accommodations in Islamabad, travel to Hunza, hunting and camping equipment, guides, and export processing fees for the trophy. Through networks that engage local, regional and international actors within NGOs, international organizations, and the federal government, residents of Gilgit-Baltistan have been able to establish initiatives that provide income and which require them to establish accountable community organizations.

6. Concluding remarks

Gilgit-Baltistan can be seen as “occupy[ing] a problematic, liminal position in the national order of things.” The region has an ambiguous place within both Pakistan and the wider international sphere. Its in-between status stems from a complex web of colonialism, post-colonialism, globalisation of resources, and even international security which makes the status of the region uncertain, but also geo-politically, economically, and militaristically strategic. Its liminality is often seen as part of a global power struggle in which its ambiguous status is both an opportunity and a threat to countries like China, the United States, India and Pakistan. For example, a community member from Karimabad recalls an article in a national newspaper arguing that the 2009 Order is “just like a covering, like a protection against the increasing influence of Chinese trade and its political interest. As Chinese investment increases, so is the American fear about the hegemony of China in this region. As a result the think tanks of Pakistan worked for six or seven months on an ordinance just to preserve the influence of Pakistan.” Likewise, Sering argues that the 2009 Order “allows Pakistan to reap benefits from Gilgit-Baltistan’s strategic location, in a time when China, her all-weather ally, is investing billions of dollars in the region.”

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135 Ibid.
136 Malkki, supra note 28 at 2.
137 Yaqoob Khan Bangash, “Three Forgotten Accessions: Gilgit, Hunza and Nagar” (2010) 38:1 The Journal of Imperial and Commonwealth History 117 (pointing out that two of the former Princely states, Hunza and Nagar, now apart of Gilgit-Baltistan have been claimed by the Kashmir Darbar and Chinese authorities as part of their empires at 134).
138 Sering, supra note 59 at 355.
These beliefs, regardless of their degree of truth, capture the challenges and concerns posed by the ambiguous status of Gilgit-Baltistan. They reveal the vulnerability and uncertainty of being excluded from the order of nations in some ways but connected in other ways. For example, although the 2009 Order terms the region a province and the Supreme Court recognizes the people as citizens of Pakistan, residents lack genuine democratic and constitutional processes to voice discontent and resolve problems. There is also a tangible sense of injustice that Pakistan “reaps the benefits” from Gilgit-Baltistan while not including it formally within the State.

It is tempting to feel skeptical about the ability of people at the grassroots level to resist their liminality and its effects. As the landslide revealed, residents of the region are structurally positioned so as to be unable to contest their in-between status. Their exclusion from the National Assembly and the minimal power granted to the Legislative Assembly mean that political mobilization and contestation is difficult. Moreover, the inability of the region to appeal to the Supreme Court, along with the broader, more general challenges to accessing the legal system, also mean that the formal legal system is an inefficient strategy to contesting exclusion.

However, this paper shows how residents resist their exclusion and liminality in multiple ways through the use of legal and non-legal modes of contestation, and through the engagement of local and global regimes, networks and discourses. Through the Kashmir conflict, the people of Gilgit-Baltistan are linked to a wider international network of United Nations resolutions, human rights discourses, and international scholarly and political commentaries to which they connect and “vernacularize.”

Santos and Rodriguez-Garavito’s approach of subaltern cosmopolitan legality emphasizes bridging the global/local, the legal/non-legal and the political. As such, it is a useful approach for examining the liminality that lies at these interstitial crossroads. Because of their ambiguous status and exclusion from regular political and legal channels, communities in Gilgit-Baltistan are forced to cross scales and engage in a range of tactics, including filing cases before domestic courts, appealing to transnational faith-based organizations like the Aga Khan Foundation, and enhancing their own local political institutions. In particular, Village Organizations and LSOs have been central institutions in organizing communities and enabling them to link with other local and global actors. The community controlled hunting areas are a specific example of the successes, and persisting challenges, of initiatives that go beyond strictly legal/political/local/global categories.

However, Santos and Rodriguez-Garavito’s approach has a number of limitations. First, it largely focuses on global collective action through transnational networks and local or national struggles. Both fail to capture the unique exclusion facing residents of Gilgit-Baltistan by not accounting for structured legal-political interstitiality. While they define cosmopolitanism as subverting hierarchies and borders, the approach does not clearly consider how people resist their exclusions when those hierarchies and borders are uncertain or in flux. Similarly, as with any theory applied to “practice,” liminality as a tool to explain the situation of Gilgit-Baltistan is incomplete. In particular, liminality rests on the presumption that there are two stable states between which liminality sits. However, as the paper’s brief historical overview notes, Gilgit-Baltistan has been anomalous for a very long time. Even during the rule of the Mirs and Rajas there were persisting political instabilities that require asking where liminality starts and ends. If it is indiscernible, or if

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there is no a stable starting point, Gilgit-Baltistan may not be in a liminal position, but rather in a stable state of uncertainty. Furthermore, most applications of the theory of liminality show how the in-between state allows for the inversion of statuses. For example, Malkki shows how Tutsi refugees subverted their forced liminality by “categorizing back.” Or Ribot shows more generally how “[a]mbiguity also plays an important role in overlapping systems of legitimacy, i.e., where a plurality of legal, customary, or conventional notions of rights are used to make claims.” In this way, there may be greater opportunities for access or ownership of resources where there uncertainties over who has formal power. Further research in Gilgit-Baltistan is needed to determine the extent to which people benefit from or actively take advantage of their liminality, and to test the common assumption that certainty is a requirement for empowerment.

During the interviews and group discussions, no positive statements were made about the region’s uncertain constitutional status. However, research into the independence movements may show that for some groups, the liminal position of the region benefits political aims. Despite their limitations, both liminality and the approach of subaltern cosmopolitan legality help expose the multiple and often contradictory sources of exclusion. They also help articulate the plural forms of resistance that emerge in dynamic and diverse ways.

140 Malkki, supra note 28 at 8.
141 Ribot, supra note 120, at 163.