Embracing concurrent realities: Revisiting the relationship between human rights and conflict resolution

Parlevliet, M.B.

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Embracing Concurrent Realities

Revisiting the Relationship between Human Rights and Conflict Resolution

This study focuses on the interplay of human rights, justice, conflict and peace resolution in the practice of civil society organisations and independent state institutions, so as to contribute to improved practice. It has been recognised that human rights, justice, conflict and peace are closely linked. Yet, for many years, bodies of theory and practice have remained surprisingly separate in conceptual and practical terms. Those working on these issues have strongly disagreed about the most suitable response in specific instances. At times they may even perceive one another’s actions as hampering their own.

By considering the practical experiences of specific non-governmental organisations and state institutions in South Africa, Northern Ireland, Nepal and Zimbabwe, the study deviates from much of the existing literature that focuses extensively on the so-called ‘peace versus justice’ debate. As such, it recognises that conflict resolution entails more than reaching a settlement to end violence or repression. It also appreciates that efforts to advance human rights go beyond pursuing individual criminal accountability for serious abuses.

The study is based on some eighteen years of personal practical experience, a review of relevant literature and key informant interviews.

Michelle Parlevliet (MA Political Science, MA International Peace Studies) has worked on the nexus of human rights and conflict resolution in various capacities since 1997. She has published widely on this theme and related topics, and has provided facilitation, training, research and technical assistance to multiple organisations and networks at grassroots and senior policy-making levels in Africa, Asia, and Europe. Between 2010 and 2015, she pursued her PhD at the Faculty of Law at the University of Amsterdam.
Embracing Concurrent Realities

Revisiting the Relationship between Human Rights and Conflict Resolution
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Revisiting the Relationship between Human Rights and Conflict Resolution
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Embracing Concurrent Realities

Revisiting the Relationship between Human Rights and Conflict Resolution

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aan de Universiteit van Amsterdam
op gezag van de Rector Magnificus
prof. dr. D.C. van den Boom
ten overstaan van een door het college voor promoties ingestelde commissie, in het openbaar te verdedigen in de Aula der Universiteit
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Prof. mr. J.E. Goldschmidt
Prof. C.L. Sriram

Faculteit: Faculteit der Rechtsgeleerdheid
The single story creates stereotypes. And the problem with stereotypes is not that they are untrue, but that they are incomplete. They make one story become the whole story.

The danger of a single story
Chimamanda Ngozi Adichie
# Table of Contents

Acknowledgements xi

Abbreviations xv

1 Introduction 1
   1.1 Rationale, focus and research questions 6
      1.1.1 Background 6
      1.1.2 Societal relevance 9
      1.1.3 Academic relevance 13
      1.1.4 Focus and aim 16
      1.1.5 Research questions 16
   1.2 Theoretical framework 17
      1.2.1 Constructivism and actor orientation 17
      1.2.2 Of fields and frames 19
   1.3 Methodological approach 23
      1.3.1 Reflective practice 24
      1.3.2 Limitations 26
      1.3.3 Mitigation strategies 27
      1.3.4 Qualitative research methodology 29
   1.4 Structure and chapter overview 36

## Part I – Lenses

2 The Human Rights Field 41
   2.1 Foundations and development 43
   2.2 Key ideas 48
   2.3 Key actors 52
   2.4 Key practices 56
   2.5 Contradictions and conundrums 59
      2.5.1 Broad concept, narrow take: Human rights as narrow, technocratic and legalistic 59
      2.5.2 Deep-rooted problems, surface manifestations: Human rights as symptoms-focused 62
      2.5.3 Challenging power, sustaining power: Human rights as ambivalent in relation to power 64
      2.5.4 Universal norms, local application: Human rights as insensitive to local context and agency 66
   2.6 Conclusion: The human rights field 68

3 The Conflict Resolution Field 71
   3.1 Foundations and development 73
   3.2 Key ideas 76
   3.3 Key actors 82
3.4 Key practices 85
3.5 Contradictions and conundrums 87
  3.5.1 Comprehensive in theory, limited in practice: Conflict resolution as technical and non-political 88
  3.5.2 Underlying causes, visible behaviour: Conflict resolution as symptoms-oriented 90
  3.5.3 Seeking social change, maintaining status quo: Conflict resolution as deferential to power 92
  3.5.4 Complexity of conflict, simplicity of models: Conflict resolution as applying recipes 95
3.4. Conclusion: The conflict resolution field 97

4 Comparing the Fields: Human Rights and Conflict Resolution 101
4.1 Differences 102
  4.1.1 Disciplinary roots 103
  4.1.2 Conceptual frame of reference 103
  4.1.3 Practical approach 106
  4.1.4 In Sum: Differences 109
4.2 Similarities 110
  4.2.1 Normative character 110
  4.2.2 Evolution over time 111
  4.2.3 Challenges 113
  4.2.4 In Sum: Similarities 115
4.3 Conclusion: The human rights and conflict resolution fields compared 115

Part II – Fluidity

5 Two Field-Specific Organisations 121
5.1 Lawyers for Human Rights (South Africa) 123
  5.1.1 Background 123
  5.1.2 Security of Farmworkers’ Project 127
  5.1.3 Exploring conflict resolution 131
  5.1.4 Hangberg: A complex situation raising questions 134
  5.1.5 Use of mediation and negotiation 138
  5.1.6 In sum 140
5.2 The Centre for Conflict Resolution (South Africa) 144
  5.2.1 Background 145
  5.2.2 Morality, legality, human rights 147
  5.2.3 Human rights questions in an intervention in community conflict 150
  5.2.4 Large-scale violence against non-nationals in 2008 154
  5.2.5 Considering human rights 159
  5.2.6 In sum 164
5.3 Conclusion 167
6 Actors on the Interface
  6.1 Churches in Manicaland (Zimbabwe)
    6.1.1 Background
    6.1.2 Serving the local population
    6.1.3 Human rights and conflict resolution
    6.1.4 Two overall challenges
    6.1.5 In sum
  6.2 Civil society only? Independent state institutions
    6.2.1 Background
    6.2.2 Institutions on the interface
    6.2.3 Beyond South Africa
    6.2.4 The Northern Ireland Parades Commission
    6.2.5 In sum
  6.3 Conclusion

Part III – Navigating Complexity

7 Handling Dilemmas
  7.1 Immediate relief or long term change? Addressing the symptoms and
      causes of rights violations and violent conflict
    7.1.1 Dilemma
    7.1.2 Possible approach
    7.1.3 Discussion
    7.1.4 In sum
  7.2 Confrontation or cooperation? The ebb and flow of addressing conflict
      and advancing human rights
    7.2.1 Dilemma
    7.2.2 Possible approach
    7.2.3 Discussion
    7.2.4 In sum
  7.3 Facilitator or advocate? Handling role tensions
    7.3.1 Dilemma
    7.3.2 Possible approach
    7.3.3 Discussion
    7.3.4 In sum
  7.4 To raise or not to raise? Referring to rights in conflict resolution
      interventions
    7.4.1 Dilemma
    7.4.2 Possible approach
    7.4.3 Discussion
    7.4.4 In sum
  7.5 Conclusion

8 Factors Affecting Convergence
  8.1 Conceptions of ‘human rights’ and ‘conflict resolution’
8.1.1 Northern Ireland: Narrow conceptions, little convergence 291
8.1.2 South Africa: Broader conceptions, more convergence 299
8.1.3 In sum 303

8.2 Broader political and economic context 306
8.2.1 Political context: Political ideology and dynamics 306
8.2.2 Economic context: Origins, organisation and allocation of funding 312
8.2.3 In sum 316

8.3 Strategies to further human rights and conflict resolution goals 316
8.3.1 Which, where, when and how effective? 317
8.3.2 Articulating human rights claims or concerns 323
8.3.3 In sum 327

8.4 Exposure, interaction and appreciation 328
8.4.1 Benefits of exposure and interaction 328
8.4.2 Obstacles to productive interaction 332
8.4.3 Features of productive interaction 339
8.4.4 In sum 345

8.5 Conclusion 346

9 Conclusion & Implications: Embracing Concurrent Realities 351
9.1 Summary of findings 353
9.1.1 Lenses on social reality 353
9.1.2 Fluidity between human rights and conflict resolution 355
9.1.3 Complexity - beyond binary frames 358
9.2 The clash revisited 363
9.3 Framing revisited 366
9.4 Concurrent realities 369
9.5 Implications for practice 370
9.5.1 Being attentive to human rights, conflict resolution, and their interplay 371
9.5.2 Recognising multiple dimensions in human rights and conflict resolution 372
9.5.3 Honing the ability to hold, embrace and act on concurrent realities 374
9.6 Suggestions for further research 375

References 377

Summary 405

Samenvatting 415

Curriculum Vitae 427
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## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADR</td>
<td>Alternative dispute resolution</td>
</tr>
<tr>
<td>AI</td>
<td>Amnesty International</td>
</tr>
<tr>
<td>AOs</td>
<td>Authorised Officers (Northern Ireland Parades Commission)</td>
</tr>
<tr>
<td>AGM</td>
<td>Annual General Meeting</td>
</tr>
<tr>
<td>CAJ</td>
<td>Committee for the Administration of Justice (Northern Ireland)</td>
</tr>
<tr>
<td>CDA</td>
<td>Collaborative for Development Action</td>
</tr>
<tr>
<td>CiM</td>
<td>Churches in Manicaland (Zimbabwe)</td>
</tr>
<tr>
<td>CCMA</td>
<td>Council for Conciliation, Mediation, and Arbitration (South Africa)</td>
</tr>
<tr>
<td>CCR</td>
<td>Centre for Conflict Resolution (South Africa)</td>
</tr>
<tr>
<td>CHRCR</td>
<td>Centre for Human Rights and Conflict Resolution, Tufts University (United States)</td>
</tr>
<tr>
<td>CINEP</td>
<td>Center for Research and Popular Education (Colombia)</td>
</tr>
<tr>
<td>CPS</td>
<td>Civil peace service (Germany)</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil society organisation</td>
</tr>
<tr>
<td>CSRC</td>
<td>Community Self-Reliance Centre (Nepal)</td>
</tr>
<tr>
<td>DPA</td>
<td>Department of Political Affairs (United Nations)</td>
</tr>
<tr>
<td>ESTA</td>
<td>Extension of Security of Tenure Act (South Africa)</td>
</tr>
<tr>
<td>FIDH</td>
<td>International Federation for Human Rights</td>
</tr>
<tr>
<td>FMLN</td>
<td>Farabundo Martí National Liberation Front (El Salvador)</td>
</tr>
<tr>
<td>HRCMP</td>
<td>Human Rights and Conflict Management Programme (CCR, South Africa)</td>
</tr>
<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICG</td>
<td>International Commission of Jurists</td>
</tr>
<tr>
<td>ICR</td>
<td>Institute for Conflict Research (Northern Ireland)</td>
</tr>
<tr>
<td>IEC</td>
<td>Independent Electoral Commission (South Africa)</td>
</tr>
<tr>
<td>INSEC</td>
<td>Informal Sector Service Centre (Nepal)</td>
</tr>
<tr>
<td>INGO</td>
<td>International non-governmental organisation</td>
</tr>
<tr>
<td>IRA</td>
<td>Irish Republican Army (Northern Ireland)</td>
</tr>
<tr>
<td>KOFF</td>
<td>Centre for peacebuilding (peacebuilding network, Switzerland)</td>
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<tr>
<td>LHR</td>
<td>Lawyers for Human Rights (South Africa)</td>
</tr>
<tr>
<td>LTA</td>
<td>Labour Tenants Act (South Africa)</td>
</tr>
<tr>
<td>LTTE</td>
<td>Liberation Tigers of Tamil Eelam (Sri Lanka)</td>
</tr>
<tr>
<td>MDC</td>
<td>Movement for Democratic Change (Zimbabwe)</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
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<tr>
<td>NHRI</td>
<td>National human rights institution</td>
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<tr>
<td>NHRC</td>
<td>Northern Ireland Human Rights Commission</td>
</tr>
<tr>
<td>NIPC</td>
<td>Northern Ireland Parades Commission</td>
</tr>
<tr>
<td>MP</td>
<td>Member of Parliament</td>
</tr>
<tr>
<td>OECD-DAC</td>
<td>Organisation for Economic Co-operation and Development-Development Assistance Committee</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights (United Nations)</td>
</tr>
<tr>
<td>OPP</td>
<td>Office of the Public Protector (South Africa)</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Name</td>
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<tr>
<td>RPP</td>
<td>Reflecting on Peace Practices Program</td>
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<tr>
<td>SAHRC</td>
<td>South African Human Rights Commission</td>
</tr>
<tr>
<td>SFP</td>
<td>Security of Farmworkers Project (LHR, South Africa)</td>
</tr>
<tr>
<td>ZANU-PF</td>
<td>Zimbabwe African National Union-Patriotic Front (Zimbabwe)</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNHCR</td>
<td>United Nations High Commission for Refugees</td>
</tr>
<tr>
<td>UNOHCHR</td>
<td>United Nations Office of the High Commissioner for Human Rights (also OHCHR)</td>
</tr>
<tr>
<td>WFP</td>
<td>World Food Programme (United Nations)</td>
</tr>
<tr>
<td>ZLHR</td>
<td>Zimbabwe Lawyers for Human Rights (Zimbabwe)</td>
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</table>
Chapter 1: Introduction
It is early January 2001. South African residents of Du Noon and Doornbach, two adjacent squatter areas to the north of Cape Town, forcibly evict people of foreign descent living in their midst, ostensibly in retaliation for the killing of a South African squatter. They chase out the 'makwerekwere' (a derogatory term used in South Africa to denote migrants from other African countries), threatening them with more violence should they try to return and accusing them of being involved in crime and of stealing jobs, houses, and women. Those evicted, their shacks and other belongings having been destroyed through arson and other means, seek refuge at a local police station. This is poorly equipped to deal with the sudden presence of over a hundred upset, fearful and angry non-nationals. The local municipality steps in to provide food and temporary shelter, erecting tents on the station's premises. It also contacts a well-known non-governmental conflict resolution organisation in Cape Town, the Centre for Conflict Resolution (CCR), to request assistance in resolving this situation.

Two mediators from CCR contact the informal leaders of the South African squatter residents and those evicted, to check whether they – and the people they represent – agree to CCR facilitating a conflict resolution process to address the issues between them. They engage with the local police and local municipality, both of which are keen to get the matter sorted out as soon as possible. The municipality stresses that it can only provide relief to those expelled for a brief period of time. The mediators also communicate with the local office of the South African Human Rights Commission (SAHRC), since it too approached CCR for support in relation to this violent eviction, having received a few complaints of human rights violations. As the country's principal human rights institution, the SAHRC is concerned about violence directed against non-nationals. Unfortunately, this is not a new phenomenon in 'the new South Africa', but few incidents of this scale have been recorded until now.1

For the Centre for Conflict Resolution, this situation was not unlike others the organisation had encountered before. In the 1980s and 1990s, CCR had been one of several Cape Town-based non-governmental organisations (NGOs) actively involved in addressing community-based conflict and containing political violence in cities and townships in the Western Cape province. As such, the organisation had often intervened in conflicts that had already erupted into violence or might do so in future, and in which the pressure was on to deliver results as quickly as possible.

CCR's practitioners were used to operating in situations where hostility was intense, passions ran high, multiple issues – social, political, economic, cultural – appeared to be at stake, and which involved a range of actors, all with their own concerns and priorities. In this particular instance, the lead mediator was a seasoned practitioner, a long-term lay minister and community activist who had cut his conflict resolution teeth in the first half of the 1990s, when political violence in South Africa was at its height. His co-mediator was a former student activist, whose turn to ‘professional’ conflict resolution practice was more recent but no less rooted in concrete life experience. And yet,

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1 Personal notes, on file with author. Those evicted were mostly Namibians and Angolans; the term ‘non-nationals’ is derived from SAHRC practice. For more discussion and references, see 5.2.3, 7.1.1 and 7.4. A brief discussion of this case was previously published in Galant and Parlevliet (2005).
The Centre's mediators soon find themselves in a bind. The South Africans living in the two settlements are inflamed by claims – contained in local media reports – that they have violated the evictees' human rights, and that xenophobia must have played a role in their behaviour. As they speak with the mediators, they indicate their willingness to take part in a facilitated dialogue process, but also say that they will walk out if they are accused of xenophobia or if their actions are going to be talked about in terms of human rights.

Meanwhile, those sheltered at the police station tell the mediators that the violence and destruction inflicted on them can only be talked about in such terms. They insist that, for them to participate, the abuses committed should be included as 'human rights violations' in any agenda for talks between themselves and their former neighbours. In their view, not doing so will amount to their further victimisation. Some have lodged a complaint of human rights violations with the South African Human Rights Commission; a few have also laid criminal charges for theft and destruction of property.

At the time, I was working at the Centre for Conflict Resolution, managing a programme on human rights and conflict management I had helped to establish at the Centre nearly two years before. While I had read about the expulsion in local newspapers, I only became aware of CCR's involvement when the mediators working on the case invited my programme colleague and myself to join them on the mediation team. Noting that this case raised some difficult questions, they suggested that it would be useful if some more 'human rights'-oriented people assisted the mediation, given the apparent prominence of human rights issues.

Why was the very use of human rights language considered so contentious – and how should they deal with that? Another concern related to impartiality: if, as mediators, they were to raise the alleged human rights violations as issues in the dispute to be addressed in mediation, the South African residents would perceive them as biased. Yet not doing so might well make the mediators suspect in the eyes of those who had been thrown out of the informal settlements. How were they going to avoid alienating the South Africans without downplaying the treatment meted out to those evicted? Then there were the complaints lodged with the SAHRC and a criminal case the police had opened – what did these mean for the intervention process? My mediator colleagues were quick to point out that, of course, they were well versed in mediation and we should not think of them being at a loss about how to handle this. Even so, our knowledge of human rights might be useful as they set out to analyse the conflict, devise an intervention strategy and liaise with the SAHRC.

Until then, much of the work undertaken through the Human Rights and Conflict Management Programme (HRCMP) I managed at CCR had entailed assisting rights-focused organisations to explore how they could use conflict resolution methods to enhance their human rights work; this had included a prominent human rights NGO, the South African Human Rights Commission and a network of refugees in Cape Town.

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2 Personal notes, based on conversations with mediators at the time, on file with author.
The interaction with my mediator colleagues, however, brought to light other facets of the relationship between human rights and conflict resolution.

It showed how conflict resolution practitioners might grapple with human rights questions arising in the course of their work – questions that were impossible to ignore since they could affect the credibility or effectiveness of conflict resolution efforts. It also illustrated the terms in which my colleagues perceived this case, such as ‘the parties’, ‘issues to a dispute’, ‘intervention’ and ‘impartiality’. Yet it could also be talked differently, using human rights terminology – ‘abuses’, ‘violations’, ‘allegations’, ‘victims’ and ‘perpetrators’. Did these alternative ways to view and name the same empirical reality have implications for how to approach the matter and conceive of possible solutions? It further seemed that my mediator colleagues were not very familiar with dealing with the human rights aspects of a case like this. In fact, this rights dimension appeared to generate some discomfort, as if it interfered with my colleagues’ tried and tested conflict resolution process and methodology.

The situation described above is only one example of how questions of human rights and conflict resolution may intersect in the practice of individuals or organisations seeking to advance human rights or ensure the sustainable resolution of conflict. Here, conflict resolution practitioners sought to draw on knowledge of human rights as they set out to facilitate a dialogue to resolve a specific conflict between parties. In addition, a human rights institution sought support from a conflict resolution organisation in dealing with a situation where rights and conflict were entangled. However, in many other situations, no such link between human rights and conflict resolution perspectives or approaches is made. Alternatively, when they do meet, they are often perceived as being at loggerheads, however surprising or counterintuitive that may seem to people unfamiliar with either field or with international relations (Solomon 2006, ix). Practitioners from the two fields may thus be oblivious of one another’s efforts, despite operating in the same context, or they can appear to work at cross-purposes.

This study is about the relationship between human rights and conflict resolution in theory and practice. It considers how the interplay of the two fields manifests in reality and what questions this raises for practitioners working in them. Focusing especially on the work of national or local civil society organisations and independent state institutions, it also considers the implications of this interaction for the relationship between human rights and conflict resolution more generally, in light of a longstanding debate on these fields supposedly being contradictory or complementary in nature.

The study is based on some eighteen years of practical experience working on the nexus of human rights and conflict resolution in various capacities (notably programme manager, trainer, facilitator and adviser) and contexts, supplemented with a review of relevant literature and interviews. Much of this practical experience
Introduction

was gathered in the course of my work at CCR (1999-2005), in the context of which I collaborated with other organisations and institutions throughout South Africa and travelled repeatedly to Northern Ireland and Zimbabwe to work with actors based in Belfast and the Manicaland province. Other experiences were gathered while serving as senior conflict transformation adviser for a Danish-funded human rights and good governance development programme in Nepal that provided financial and substantive support to some 60 domestic civil society actors, which focused on human rights protection, access to justice, democracy promotion, social inclusion and media freedom (2006-2009).³

Outside these periods of formal employment, I have also benefited from insights arising from assignments focusing on human rights and conflict resolution undertaken as an independent consultant. During my work on this study, I became involved in various projects that were directly relevant, including speaking engagements at meetings of practitioners and scholars from the two fields, preparing a joint publication, facilitating training workshops on linking human rights and conflict resolution for practitioners from various organisations, and participating in a few internal UN processes.⁴ All in all, this study combines insights from practice and theory and constitutes an exercise in reflective practice, as will be explained below.

The remainder of this introductory chapter sets out the background to this study, its relevance, focus and research questions. It also clarifies the theoretical grounding of the study and discusses its methodological approach. Finally, it provides a brief preview of the chapters. Before we move on, however, it is useful to briefly clarify the use of the terms 'human rights' and 'conflict resolution'. More discussion of these and related terms will follow in chapters focusing specifically on the two fields.

'Human rights' is understood here as referring to norms that express expectations about appropriate behaviour and capture ideas about the equal moral worth of all human beings (Chong 2010, 21; Mertus 2011, 128). Since these are largely reflected in international treaties, the term also refers to such standards and to the legal and moral claims made by individuals and groups based on them. Finally, it denotes a particularly defined, specialist field of inquiry and practice (as in ‘the human rights

³ See the curriculum vitae at the back of this book.
⁴ These include the design and delivery of six training workshops on connecting human rights and conflict transformation (of which four for Swiss development practitioners (2012-2015); two for German practitioners, including coordinators from the German Civil Peace Service (2009, 2012); and one for a Zimbabwean human rights NGO (2012)); preparation of a publication on human rights and conflict transformation in development practice, with staff members from the peace and security and human rights-based approaches sections of German development assistance (Parlevliet 2011a); participation in three Amsterdam Dialogue meetings between high-level human rights advocates and senior mediators (2010-2012, see also fn. 13 below); delivery of keynote address to Annual General Meeting of KOFF Centre for Peacebuilding in Switzerland (2012); assignments with the United Nations (2012-2014, see fn. 14 below); facilitation of a working session on human rights, justice and peacebuilding at international conference hosted by German peacebuilding network Fri-Ent (2014); and facilitation of two learning events about human rights and peacebuilding for international peacebuilding NGO Conciliation Resources (2014).
field’ or ‘human rights journal’). As regards ‘conflict resolution’, the study uses this as a generic term to cover the whole gamut of positive conflict-handling and the field as such, following two canonical publications (Ramsbotham, Woodhouse, and Miall 2011; Bercovitch, Kremenyuk, and Zartman 2009a). The use of this term rather than any other – such as conflict management, conflict transformation or peacebuilding – is further justified by its frequent use in the debate on the relationship between the two fields (e.g. Babbitt and Lutz 2009a; Hannum 2006).

1.1 Rationale, Focus and Research Questions

1.1.1 Background

Historically, the fields of human rights and conflict resolution have largely developed separately as bodies of theory and practice. For years, they existed more or less in parallel universes that were barely connected, each rooted in different disciplines and focusing on a specific set of concerns, resulting in human rights and conflict resolution organisations generally operating independently from one another (Arnold 1998a, 1).

Conflict resolution initially concentrated mostly on understanding and addressing violent conflict, with particular emphasis on preventing violence breaking out between states. For human rights actors, on the other hand, holding the state accountable for abuses of power in its relating to citizens was crucial, prompting a focus on the development, codification and implementation of legal standards. Until the 1990s, scholars and practitioners devoted relatively little attention to the question of how these fields related to one another, even though the 1948 Universal Declaration of Human Rights had explicitly linked the protection of human rights with the prevention of violent conflict, stating that “it is essential, if man is not compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

Over time, however, these separate endeavours, both set on improving the human condition (Babbitt 2009a, 615), have increasingly moved towards one another, due to a changing context, expanding notions of ‘human rights’ and ‘conflict resolution’, and growing ambitions in each field. This especially started happening once the Cold War ended, as normative considerations became more prominent in international relations and efforts to end violent conflict through negotiated settlements between adversaries became central to the desire to ensure ‘a new world order’. Attention was shifting to conflict within states rather than between them. Amongst policy-makers, scholars and

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5 My own use of terminology in previous publications has varied over time as I have used, consecutively, ‘conflict management’, ‘peacebuilding’ and ‘conflict transformation’ (in Parlevliet 2002, 2009, 2010a, 2011a, respectively). This is due to my various organisational contexts, the different audiences addressed and progressive insight over time. For an explanation of my use of the term ‘conflict management’, see Parlevliet (2002, 9); on my shift to ‘conflict transformation’, see Parlevliet (2010a, 16).

practitioners, awareness grew that such peace agreements were relevant from a human rights perspective. After all, whatever was agreed in peace talks would form the foundation for future systems of governance and the protection of human rights in the post-settlement context; it might also provide an opportunity to address past abuses. Hence, ‘peace’ became more and more linked to the notion of justice. Conflict resolution was no longer simply measured by the absence of bloodshed but by the “moral quality of the outcome” (Baker 1996, 566).

It soon became clear that Isaiah Berlin was right in suggesting that not all good things go well together (Berlin, Hardy, and Hausheer 1997, 7). The belief that the pursuit of justice and peace can easily be simultaneously pursued was abruptly challenged in the Balkans. After the 1995 Dayton Peace Agreement formalised the break-up of the former Yugoslavia, an anonymous author in a key human rights journal accused the international human rights movement of having prolonged the war in Bosnia-Herzegovina by insisting on a peace agreement fully compliant with human rights standards. S/he observed that human rights activists had denounced pragmatic deals that could have ended the violence, even though – with hindsight – these proposals had been no worse than the eventual agreement in rewarding ethnic cleansing and aggression. Thereby, these activists had effectively made “today's living the dead of tomorrow” by pursuing a perfectly just and moral peace that would bring “justice for yesterday's victims of atrocities” (Anonymous 1996, 259). An influential human rights scholar hit back soon after, arguing that,

The human rights community’s articulation of concern, identification and analysis of the facts, and pressure for protection against abuses cannot be subject to the vagaries of international politics or the particulars of negotiations. Its role has been and [...] should be to point a spotlight on abuses, to demand action to stop abuses, and to call for punishment of the perpetrators. To do otherwise would turn [it] into just another political actor, rather than an impartial force in favor of human rights principles (Gaer 1997, 7-8).

Since then, a growing body of literature has emerged that looks at various aspects of the relationship between human rights and conflict resolution. A recurrent theme has been the idea that the normative nature of human rights standards complicates practical conflict resolution efforts, pitting principle against pragmatism and norms against politics. Arguably, human rights bring in or exacerbate the moral dimension in conflict (Nherere and Ansah-Koi 1990, 34).

A tension has thus been perceived to exist between human rights promotion and conflict resolution practice, or between ‘justice’ and ‘peace’. This has become all the more pronounced as ‘human rights’ is increasingly associated with international criminal law, which has developed rapidly since the late 1990s. A vehement ‘peace

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Chapter 1

The ‘peace versus justice’ debate has unfolded in relation to various countries around the globe affected by widespread societal violence. Those focused on conflict resolution tend to prioritise peace as a basis for justice, arguing that a viable and enduring system can only be developed once violence had ceased and conflict has been resolved; those focused on protecting and promoting human rights are likely to stress that lasting peace requires justice, in terms of holding perpetrators accountable, restoring the rule of law, and building democratic institutions. This debate presents advancing human rights and addressing conflict as being diametrically opposed: an emphasis on norms places certain demands on conflict resolution that appear to limit its prospects.8

Even so, recognition has grown over time that "justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives" (United Nations 2004, 1). This stems partly from the broader understandings of ‘peace’ and ‘justice’ that have evolved. These days, peace is thought to go beyond "the negative peace of order and the cessation of direct violence" (Ramsbotham, Woodhouse, and Miall 2011, 251); it now also comprises addressing the underlying causes of conflict that give rise to violence. Meanwhile, the notion of justice has been differentiated beyond individual criminal accountability, including also distributive justice and institutional reform (e.g. Bloomfield 2006; Mani 2002).

Moreover, it has been increasingly acknowledged that violations of – and demands for – human rights can be both causes and consequences of violent conflict in various ways. With human rights being relevant to the generation and manifestation of such conflict, it follows that they also have a bearing on its resolution and prevention (Mertus and Helsing 2006b; Parlevliet 2002, 39).9 A more complementary relationship between human rights and conflict resolution has thus been noted in the literature, with some publications serving as "acts of advocacy" (Lutz, Babbit, and Hannum 2003, 192) arguing for collaboration and cross-fertilisation: "the fields of human rights and conflict resolution are interdependent, [...] they must operate in synergy, and [...] have much to learn from one another" (Babbitt and Lutz 2009b, 9; also Babbitt and Williams 2008; Parlevliet 2002)

Interactions between practitioners from both fields and in societies affected by violent conflict indeed seem to reflect a potential for complementarity, cross-fertilisation and synergy. For example, actors in one field may draw on insights and methods from the other field (like my conflict resolution colleagues in the example described above, who sought to utilise knowledge of human rights when embarking on a mediation process). Alternatively, a human rights NGO focused on advocacy, monitoring and reporting of abuses starts to facilitate local agreements between warring opponents to reduce violence or ensure the release of people who have been abducted, despite this

8 For example, since the late 1990s, mediators acting on behalf of the UN have been prohibited from endorsing agreements that provide for amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights; see Transitional Justice Institute (2013), United Nations (2012) and Hayner (2009a). See also 8.4.2.
9 See also Lutz (2009), Baldwin and others (2007) and Thoms/Ron (2007).
function being more commonly linked to conflict resolution. These and other experiences suggest that the boundaries between the two domains may be less clear than is often assumed; there is a “blurring of the lines between human rights and peace work” (Mertus 2011, 128). Another indicator of such ‘fluidity’ is the existence of actors that cannot easily or distinctly be defined in human rights or conflict resolution terms. Their work comprises activities geared towards both the non-violent handling of conflict and ensuring respect for human rights.\(^{10}\)

Finally, practitioners increasingly seem to move back and forth between the fields at both elite and grassroots level. One high-level example is Louise Arbour, who joined the International Crisis Group – an international NGO focusing on preventing and resolving deadly conflict – once her term as United Nations (UN) High Commissioner for Human Rights ended.\(^{11}\) Another is Jan Egeland, a former diplomat from Norway long known for his role in several peace processes (including the 1992 Oslo Accords between Israel and Palestine and the 1996 Guatemala peace agreements), who later moved to Human Rights Watch, a prominent international human rights NGO.\(^{12}\)

1.1.2 Societal Relevance

At present, therefore, seemingly contradictory realities can be observed. On the one hand, multiple declarations and reports have highlighted the importance of linking human rights and conflict resolution initiatives and perspectives. An early example is the first report of the UN Secretary-General on the rule of law and transitional justice in conflict and post-conflict situations (United Nations 2004). A more recent one is the 2011 World Development Report, which emphasised the relationship between conflict, security and development and pointed to the need for developing the rule of law in preventing and recovering from crisis situations (The World Bank 2011). In general, human rights norms have become an important component of the global policy framework for thinking about and dealing with conflict, not least because of a greater focus on protecting civilians in all stages of conflict (Parlevliet and Eijkman forthcoming).\(^{13}\)

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10 This is often the case with religious bodies (such as Catholic Commissions for Justice and Peace in various countries) or with independent state institutions such as the Northern Ireland Parades Commission (see chapter 6).
11 Arbour left the organisation in July 2014 after serving as its President from 2009. Before serving as UN High Commissioner for Human Rights (2004-2008), she had been the Chief Prosecutor for the International Criminal Tribunals for the Former Yugoslavia and Rwanda (1996-1999).
12 Egeland served as the organisation’s Deputy Director and Europe Director between 2011 and 2013, after working as UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator from 2003. Prior to his involvement in peace processes, he had served as Chair of Amnesty International Norway and Vice-Chair of the International Executive Committee of Amnesty International (another prominent international human rights NGO).
13 This focus is evidenced, for example, in the fact that the UN Secretary-General has regularly reported on the protection of civilians since 1999, and has done so on an annual basis on the role of women in facilitating peace and security (since 2010) and on children and armed conflict (since 2012).
Chapter 1

In practice too, there are signs of greater understanding between advocates and practitioners of human rights and conflict resolution, with various insiders observing a significant shift in the interaction between actors in the two fields and more actual connection of human rights protection and conflict resolution efforts. Some intergovernmental organisations and civil society actors “have begun to break new ground in combining human rights with conflict resolution work” (Babbitt 2009a, 622). Amongst civil society organisations, this includes collaborations between human rights and conflict resolution actors, as well as NGOs that integrate rights concerns into their conflict resolution work (idem, 625). Meanwhile, the UN has come to insist that mediators should be familiar with the applicable international law and normative frameworks when facilitating peace negotiations (2012; Hayner 2009a). Several steps have also been taken to increase understanding, exchange and collaboration between agencies and practitioners working on human rights and those focusing on conflict prevention and peacebuilding in the UN system.

In addition, human rights and conflict resolution perspectives are increasingly meeting in the context of development cooperation, following a growing emphasis on incorporating a human rights based approach and conflict sensitivity in development practice. In 2007, the Development Assistance Committee of the Organisation for Economic Co-operation and Development commissioned a scoping study on human rights, conflict and peacebuilding to improve programming in sectors that are relevant from both perspectives (OECD-DAC 2007). At least two large bilateral development agencies have published briefing notes or practical guidance documents in this area since 2010. In sum, there is considerable interest in and desire to enhance links between the human rights and conflict resolution fields, both in the policy realm and ‘on the ground’, i.e. where human rights protection work is done and conflict resolution efforts are undertaken.

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14 Comments from various participants at the second and third Amsterdam Dialogue, an annual high-level, invitation-only conference for peace mediators, human rights advocates, the ICC and academics, jointly hosted by Dialogue Advisory Group, Human Rights Watch, and International Crisis Group, Nov 2011, Nov. 2012.

15 This includes a study on the role of human rights in conflict resolution and the relationship between the UN Office for the High Commissioner for Human Rights and the Department of Political Affairs (Hannum 2006); a one-day learning event to increase the interaction between human rights and conflict prevention practitioners (29 June 2012, New York); a three-week online consultation to canvas experiences and ideas from people in the UN system on bringing together human rights and conflict prevention perspectives, cross-posted on nine internal listservs (20 June - 9 July 2013); development of an online course on human rights and conflict transformation for UN personnel through the UN System Staff College; and a three-day pilot dialogue process between UN human rights advisers and peace and development advisers based in Eastern Europe and the Caucasus, also involving representatives from relevant UN agencies in New York and Geneva (26-28 February 2014, Caux). The reports on the online consultation and the events in New York and Caux are not public, but are on file with the author of this study. I provided expert input to the one-day learning event in 2012, advised on the development of the online course, and acted as facilitator of the online consultation in 2013 and the dialogue process in 2014.

16 Examples are land reform, justice sector reform, security sector reform and governance and decentralisation.

17 These are the German Agency for International Technical Cooperation (Parlevliet 2011) and Swedish International Development Cooperation Agency (2012).
On the other hand, the fields of human rights and conflict resolution seem as irreconcilable as before, if not more so. Only recently did Louise Arbour question whether freedom, peace and justice are actually incompatible agendas in reality, despite the nexus between human rights, security and development being “so compelling rhetorically” (2014). Some argue that the debate on peace versus justice has intensified over time (Johansen 2010, 189; Hayner 2009b). The involvement of the International Criminal Court (ICC) in situations of violent conflict where peace talks are badly needed, imminent or in progress, has been a catalyst in this regard. Fears remain that the push for accountability and the threat of prosecution is a disincentive for peace, prompting dictators and insurgent leaders to entrench themselves rather than negotiate a transition from authoritarianism or civil war. It has also been questioned whether criminal trials are an adequate response to politically driven mass violence.

This debate has been remarkably heated, even “vituperative” (Sikkink 2011, 25), with not only (alleged) perpetrators and victims taking strong positions on the matter, but also scholars and practitioners. In fact, intense polarisation between human rights activists and conflict resolution workers has ensued at times as they perceive one another’s efforts and approaches as being detrimental to their own objectives. Serious divisions emerged, for example, within Kenyan civil society after the post-election violence in early 2008. Arguably, at some point human rights activists and conflict resolution practitioners spoke less with one another than they spoke out against one another, questioning one another’s priorities and strategies. In Sri Lanka too, advocates of the two approaches have been at loggerheads (e.g. Hoole 2009; Keenan 2013).

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20 After incumbent President Mwai Kibaki was declared winner of the presidential election of December 2007, large-scale violence erupted, following calls from his opponent, Raila Odinga, to supporters to engage in mass protests against alleged manipulation of the results. Targeted ethnic violence escalated, initially directed mostly against the Kikuyu population (to which Kibaki belongs). Former UN Secretary-General Kofi Annan eventually facilitated a power-sharing agreement between Kibaki and Odinga, including the formation of a coalition government.

21 Separate conversations with George Wachira, a prominent conflict resolution practitioner (Berlin, 27 January 2010); Firoze Manji, who hosted an internet-based discussion forum for Kenyan activists on the violence (Oxford, 8 May 2010); and Ron Slye, an international member of the Kenyan Truth, Justice and Reconciliation Commission (Cape Town, May 2009). A leading Kenyan human rights activist (name withheld on request) agrees there were tensions but would not go as far as the comment made here.
Aside from such direct tension, human rights and conflict resolution efforts are still, by and large, separated in the institutional set-up of many organisations concerned with human rights protection, conflict and peace, including the UN, bilateral development agencies, or country-specific civil society organisations: human rights and conflict resolution perspectives are usually housed in different units or are championed by different individuals. Interaction and exchange between these units or persons is usually limited due to the pressures they face related to separate schedules, deliverables and budgets. Questions of terminology add to this ongoing disconnect between the fields, as people may use different terms to refer to the same phenomenon or use the same term but mean something different.  

This institutional separation impacts on what happens in practice. Practitioners still often work in an isolated manner and seldom consider how their respective efforts might relate, for better or worse. Many human rights practitioners do not see themselves as dealing with conflict in any real way, while many conflict resolution practitioners still tend to overlook human rights issues as they design and facilitate processes to address conflict. Mertus thus observes that “the degree of cooperation between human rights advocates and peace advocates should not be overstated” (2011, 128). As a result, when they do encounter one another, they still regularly perceive the other’s efforts as interfering with their own. Attention and energy often shifts then from dealing with the problems at hand to pointing out the limitations in the others’ analysis and approaches.

This study’s point of departure is that such polarisation detracts resources from what actors in these fields seek to achieve, and that greater understanding of the relationship between human rights and conflict resolution may positively contribute to what they do, how they operate, how they relate to one another in practice and the impact of their efforts. It recognises that such understanding is hard to come by when the stakes are high:

Where violent conflicts or massive violations of human rights are occurring, all interveners are likely to feel pressure to act urgently to reduce the likelihood of continuing bloodshed or abuse; to react to events rather than to anticipate them; and to be impatient with those whose aims or philosophies diverge from their own. These are poor circumstances in which one might try to foster better interdisciplinary communication and cooperation to achieve common goals. What is needed are venues in which academics and practitioners from both perspectives can meaningfully explore, teach and put into practice new ideas (Lutz, Babbit, and Hannum 2003, 192).

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22 An example of the latter is ‘impartiality’, as will be explained in the chapter comparing the two fields (see 4.1.3).
1.1.3 Academic Relevance

Besides being pertinent to the world of practice and policy-making, this study is also relevant from an academic point of view as it addresses some shortcomings of the existing literature. These are set out in this sub-section.

First, the ‘peace versus justice’ debate often overshadows other aspects of the relationship between human rights and conflict resolution. As one interlocutor noted, "this debate is a very narrow take on [the] relationship, but it is a dominant part – it is so big and powerful that it starts to pervade all thinking about the fields".23 There is, however, much more to consider and explore about the interplay between human rights and conflict resolution and this study is a conscious effort to do so. It explores how the relationship between the two fields plays out in settings other than those where 'human rights' equals the pursuit of individual criminal accountability for serious abuses and 'conflict resolution' implies reaching a high-level settlement to end violence or repression – i.e. contexts where there is a risk that those most responsible for such conditions demand immunity in exchange for agreeing to lay down arms or step down from power. This is not to downplay the difficult political, ethical and legal issues that arise in those circumstances, but to argue that much goes missing when the interaction between human rights and conflict resolution is reduced to a question of ‘peace versus justice’ (Parlevliet 2010b, 109-110; Idriss 2003).

The second shortcoming of the literature follows from the first. The heavy presence of the peace versus justice debate means not only that much literature operates with a limited conception of what 'human rights' and 'conflict resolution' endeavours entail in practice. It also implies that a narrow focus prevails in terms of timeframe and actors. Most publications focus on a time of crisis and are concerned with developments at state level involving political elites. Little attention tends to be devoted to the question of how the relationship between human rights and conflict resolution plays out for actors operating at non-elite levels and in pre- and post-crisis periods – put differently, in contexts that are not (or are no longer) defined by extensive violence.

Yet efforts to advance human rights are not just undertaken in times of crisis. Human rights concerns – related to, for example, protection, non-discrimination, freedom of expression and association, political participation or access to public services – arise at many other times and do so too in societies not afflicted by civil war. Similarly, conflict resolution practice and theory is relevant in situations of latent conflict, where societal tensions have not (or have not yet) erupted into violence or where

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23 Informal conversation, Laurie Nathan, 11 June 2011, Cape Town. Nathan is the Director of the Centre for Mediation in Africa at the University of Pretoria, South Africa. He was previously a visiting fellow at the Crisis States Research Centre at the London School of Economics (2005-2010), and the Executive Director of the Centre for Conflict Resolution in Cape Town (1992-2003). He has also served on the African Union’s mediation team for Darfur (2005-2006) and the International Council for Conflict Resolution of The Carter Center (2001-2004).
Chapter 1

widespread violence has abated, for example after an agreement (Ramsbotham, Woodhouse, and Miall 2011; Bercovitch, Kremenyuk, and Zartman 2009a). In terms of timeframe, moreover, it has been argued that a post-crisis period is particularly significant when it comes to ensuring respect for human rights and addressing causes of conflict. A 2003 World Bank report found that many countries emerging from civil war slide back into violent conflict within ten years (Collier and others 2003).

Moreover, much literature on the relationship between the fields disregards that extensive work on human rights and on conflict resolution is done by actors not involved in elite negotiations or other high-level processes, notably civil society organisations and independent state institutions. Literature from both human rights and conflict resolution studies has, however, long recognised that such actors – be they non-governmental organisations, professional associations, religious bodies or national human rights commissions – can play important roles in human rights protection and conflict resolution. They may do so by, for example, providing legal assistance to indigent people, monitoring rights violations, dealing with complaints of rights abuses, enhancing conflict-handling skills, facilitating interaction between people from different identity groups, or intervening in community conflict. To date, the literature on human rights and conflict resolution has barely drawn on such research. This is an oversight, not least because the efforts of such actors have great bearing on how conflict, conflict resolution, human rights, peace and justice, are experienced in the everyday life of common people.

Admittedly, the conflicts and human rights issues considered by these actors are usually of a different scale. Nevertheless, seemingly small, local conflicts and distinct cases of rights violations – as arising in the forceful eviction of non-nationals from squatter areas around Cape Town by South African residents noted at the start of this chapter – are often rooted in larger structural conditions related to marginalisation and insecurity, for example. These provide fertile ground for the outbreak of violence and affect practitioners’ ability to address such situations effectively and sustainably, whether from a human rights or conflict resolution perspective. Conversely, “higher-level conflicts” always manifest locally in specific conflicts that need to be resolved on the ground (Hilhorst and Van Leeuwen 2005, 540). It is hence likely that considering

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24 Conflict resolution may then be referred to as ‘conflict prevention’, ‘peacebuilding’ or ‘conflict transformation’. See also chapter 3 on terminology in the human rights field (section 3.1).


26 As Galanter has noted, “Just as health is not primarily found in hospitals or knowledge in schools, so justice is not primarily to be found in official justice-dispensing institutions. People experience justice (and injustice) not only (or usually) in forums sponsored by the state but at the primary institutional locations of their activity – home, neighbourhood, workplace, business deal [sic], and so on” (1981, 17).

27 For example, parading disputes in distinct localities in Northern Ireland have evolved in parallel with the wider peace process before and since the 1998 Good Friday Agreement. Street-level activism and community-level politics reflected the tactics adopted by the two main blocs at the level of political negotiation, resulting in violence in fragile, segregated, working-class residential areas (Jarman 2009, 191).
the experiences of such actors operating at non-elite level may provide valuable insights that can enhance our understanding of the relationship between human rights and conflict resolution more generally.

Moreover, little attention has been devoted to examining the fields of ‘conflict resolution’ and ‘human rights’ in their own right. This constitutes the third shortcoming addressed here. As I have noted elsewhere, the literature on human rights and conflict resolution has thus far tended to mix discussion of three different, but interrelated, elements: the relationship between human rights and conflict (especially violent conflict); the interaction between actors from different backgrounds who operate in the same conflict context; and, to a lesser extent, the interface between the ‘fields’ or ‘disciplines’ of human rights and conflict resolution in terms of concepts, analytical perspectives and methods (Parlevliet 2010a, 36-41). In the context of the latter two, authors usually describe practitioners and scholars in either field in simplified terms: human rights people are rigid, principled, judgemental and adversarial, while conflict resolution people are pragmatic, flexible, non-judgmental and collaborative (e.g. Bell 2006; Arnold 1998a). At best, a cautionary comment may soften such descriptions, noting that the groups often overlap in practice (e.g. Baker 2001, 756). All too often, however, “these categories are accepted on face value and reified” (Idriss 2003, 30).

Beyond the simplified categories, little effort has been made to grasp what a ‘human rights’ or ‘conflict resolution’ perspective may entail, how the fields have evolved over time, how they ‘look like and behave’ in practice – and whether they are truly as unambiguous as they are perceived and portrayed. As such, there is limited insight into how “those in each field articulate the principles and approaches that define their work” (ibid). With the differences between the fields painted in stark, dichotomous terms, moreover, there is relatively little recognition of their similarities – which is remarkable, considering that they share a common concern with protecting life and improving the human condition (Babbitt 2009a, 615-616) and have more or less come of age in the same period. A more thorough exploration of the antecedents, theory and practices of and in these fields is thus in order so that we may better appreciate what may connect human rights and conflict resolution and what may drive them apart.

The fourth and final shortcoming of the existing literature that has informed the focus and approach of this study is the fact that much of it sways between two seemingly mutually exclusive positions: the human rights and conflict resolution fields are either competing and contradictory (i.e. either human rights protection or conflict resolution has to take precedence in a given case), or they are complementary (i.e. they are mutually supportive and can be pursued simultaneously). The ‘peace versus justice’ debate outlined above exemplifies the ‘contradiction’ position, while writing on the importance of and scope for pursuing ‘peace with justice’ reflects the
Chapter 1

‘complementarity’ position. Yet this ‘either/or’ frame does not allow for the possibility that human rights and conflict resolution may both support and be in tension with one another depending on time and context. It also seems to imply a fixed state, as if the interaction remains constant irrespective of time, location, issues or actions by organisations and practitioners. An alternative would be to consider the relationship as both variable and dynamic; it tends to manifest in many different ways, and can change over time. This raises the question of what factors may influence how the interplay between human rights and conflict resolution unfolds over time – a question that has barely been considered thus far but that appears pertinent if one seeks to reduce the risk of actors in the two fields working at cross-purposes and/or to tap into the potential for synergy.

1.1.4 Aim and Focus

This study addresses the above-mentioned shortcomings in the existing literature by focusing on the interplay of human rights and conflict resolution in the practice of civil society organisations and independent state institutions, with a view to improving understanding of the potential synergy and limitations of connecting these fields and contributing to improved practice. It will do so with reference to specific actors in particular countries, notably South Africa, Northern Ireland, Zimbabwe and Nepal. In describing and analysing practical experiences – and combining this with insights from relevant literature – the study is mostly exploratory in nature. It contains, however, an explanatory dimension in considering what may account for the variable and dynamic interaction of human rights and conflict resolution in practice, so as to shed light on their convergence and divergence in concrete situations.

1.1.5 Research Questions

The central question addressed in this study is:

How does the relationship between human rights and conflict resolution play out in the practice of civil society organisations and independent state institutions (with particular reference to actors in South Africa, Northern Ireland, Zimbabwe and Nepal), and what can we learn from this about the relationship between human rights and conflict resolution more generally?

To go into more detail, the following sub-questions guide the research:

- What constitutes the fields of human rights and conflict resolution, how have they evolved as distinctive bodies of theory and practice, what are their key features and how do they compare?

28 See, for example, Nuremberg Declaration on Peace and Justice. Annex to the Letter Dated 13 June 2008 from the Permanent Representatives of Finland, Germany and Jordan to the United Nations addressed to the Secretary-General. UN Doc. A/62/885, 19 June 2008, as well as Martin (2002).

29 The focus on these country contexts is explained below in 1.3.4.
How do civil society organisations and independent state institutions seek to contribute to human rights protection and promotion, and to conflict resolution? What activities do they undertake in this regard and how do they encounter ‘the other field’?

What challenges or dilemmas do actors seeking to advance human rights and/or conflict resolution encounter that relate to the interaction between the fields, and how do they address them in practice?

How may specific factors influence the way in which the relationship between human rights and conflict resolution unfolds in a given context, in terms of their potential convergence or divergence?

1.2 Theoretical Framework

1.2.1 Constructivism and Actor Orientation

Theoretically, this study is grounded in constructivism, which stresses the social construction of reality. It asserts that ideas or knowledge – symbols, rules, concepts and categories, culturally bound and historically produced, and made visible through rhetorical, political, moral and cultural contestation – help to shape an actor’s identity, interests and behaviour. Ideas inform how an actor constructs and interprets his or her world (Barnett 2011, 155; Chong 2010, 18). This perspective posits the notion of ‘social facts’, things that exist by the grace of human agreement and are so taken for granted that they are perceived as objective facts and shape how we categorise the world and what we do; they serve as conditioning structures for behaviour (Barnett ibid).30 Their existence calls attention to the inter-subjective nature of reality: “individuals and groups recreate and maintain these structures through their shared beliefs, practices and interactions” (Jackson 2009, 175).

This is not to say that constructivism rejects the existence of material reality; rather, it notes that its meaning and effect on human behaviour and social organisation depends on and is created through ideas, interpretation, the use of language, symbols, etc. (Barnett ibid; Jackson ibid). The social construction of reality thus shapes the definition of a situation, who can legitimately act, and what action is seen as appropriate; it endorses and enables some kinds of action while ruling out others (Chong 2010, 18). This emphasis on the social construction of reality implies that it is possible to question what are seen as matters of course (Barnett 2011). It also means that we deal with ‘a world of plenitude’ – multiple constructions – and that our grasp of this world is an interpretation that necessarily involves a reduction of its complexity (Van Leeuwen 2009, 13; Cilliers 2002, 78). It further highlights that the meanings that actors bring to their environment and activities are not always fixed;

30 Examples of such social facts are money, states, boundaries and human rights. Barnett contrasts such social facts with “brute facts such as rocks, flowers, gravity, and oceans”, that exist irrespective of human agreement and will still exist “even if humans disappear or deny their existence” (2011, 155).
“the fixing of meaning” happens through social interaction, negotiation and contestation (Barnett 2011, 159; Hilhorst 2003, 228). These points are relevant in the context of this study, which explores varying constructions of reality as put forth by the fields of human rights and conflict resolution and the practical implications for actors in these fields when these alternative constructions meet.

A constructivist perspective thus highlights that human rights and conflict resolution, both as concepts and in practice, are inherently social activities: socially constructed processes that involve various groups of social actors (Van Leeuwen 2009, 9). It suggests that these fields are – in and of themselves – constitutive agents as each produces knowledge that impacts on actual practice. Each serves as “important discursive structure that co-constitutes the practices” of conflict resolution and human rights (Jackson 2009, 185). Hence human rights are not givens – with a metaphysical quality and inherent in humanity – but socially constructed ideas produced through interaction and subject to ongoing interpretative practices. Their features are historically and contextually contingent rather than essential (although their nature as social facts implies that they are often treated as objective reality).31 Conflict, war and peace, too, are social constructions (idem, 186).

Consequently, constructivism emphasises the need to consider the use and understandings of human rights and conflict resolution by specific actors in social and political struggles. In relation to human rights, this has been referred to as ‘the social life of rights’ (Wilson 1997a, 3; Oomen 2011, 18). This phrase reflects that research needs to go beyond a legal take on rights that will always construe them as a ‘good thing’ (Short 2009, 105; also Miller 2010, 919). This warning against assuming that human rights are beneficial per se (ibid) is also pertinent to conflict resolution. Finally, since constructivism views agents and structures as interdependent and co-constitutive,32 it stresses “the unique context-specific human agency” at the heart of conflict and/or human rights processes and draws attention to “the malleable nature of the ideational and discursive structures” that make conflict and their resolution – or human rights, and their violations – possible (Jackson 2009, 185).33

In light of the above, this study adopts an actor orientation (Giddens 1984; Long 1990). This presumes that social actors have agency: they reflect on their experiences and what happens around them, and use their knowledge and capabilities to interpret and respond to this. While recognising that there are many structural constraints that affect social actors, an actor orientation stresses that these constraints operate

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31 See Miller (2010, 919), Chong (2010, 10, 139), Short (2009, 102), and Barnett (2011, 155). Social constructivists recognise that “human rights claims are often grounded in appeals to natural law or universal, transcendental values” (Chong 2010, 163, fn. 38). From a constructivist perspective, such appeals are part of the social construction of (the idea of) human rights.

32 This means that agents produce structures through their ideas, beliefs, actions and interactions, and structures produce agents by influencing their identities and interests (Jackson 2009, 175; Barnett 2011).

33 Since Jackson only focuses on constructivism in relation to conflict resolution, I have adjusted his text to take human rights into account.
through social actors in that they shape their everyday life experiences and perceptions, directly or indirectly (Long 1990, 6; Hilhorst 2003, 5; Van Leeuwen 2009, 8). It is thus useful and necessary to study ‘the everyday practices’ of social actors, be they formal NGOs, independent state institutions, an informal network of clergy, or individual practitioners in such bodies. This includes looking at how they define situations, identify objectives, understand options for action, and take action in relation to human rights and conflict resolution (cf. Hilhorst 2003, 6). Hence, the study devotes considerable attention to reviewing practical experiences of actors encountering and engaging with the relationship between human rights and conflict resolution; it also reflects on their understanding and action and how these change.34

Nevertheless, it remains important to take into account how actors’ choices and actions are shaped by “larger frames of meaning and action (i.e. by cultural dispositions [...] and by the distribution of power and resources in the wider arena” (Long 1990, 7). This provides an additional rationale for examining the fields of human rights and conflict resolution in their own right since they provide the ‘larger frames of meaning and action’ that inform ‘everyday practices’ of actors in these fields. To aid this part of the research, an explanation of the theoretical notions of ‘field’ and ‘frame’ is in order.

1.2.2 Of Fields and Frames

The term ‘field’ is used here in the Bourdieuan sense (Bourdieu 1987), as a semi-autonomous realm of socially patterned activity, often disciplinarily and professionally defined; it is “organised around a body of internal protocols and assumptions, characteristic behaviours and self-sustaining values” (Terdiman 1987, 806; also Edelman, Leachman, and McAdam 2010, 669). Maton argues that the “social structure of a field is emergent from but irreducible to constituent agents and their practices; the relational whole is more than a sum of its parts” (2005, 689). The notion implies that it is possible to identify distinctive features commonly shared or widely adhered to within a field, as well as actors – individuals, groups, or institutions – within that field. Fields thus contain a certain coherence and boundedness (Edelman, Leachman, and McAdam, ibid).

Yet this is not uncontested. According to Bourdieu, “Every field is the site of more or less overt struggle over the definition of the legitimate principles of the division of the field” (1985, 734; 1987). Hence, fields are hierarchically structured with actors competing to maximize their position in terms of the distribution of resources conferring power or status within the field, which Bourdieu calls ‘capital’ (idem; 34 My use of an actor orientation differs somewhat from that of authors such as Hilhorst (2003) and Van Leeuwen (2010), who examine how the claims, performances, mandates and policies of organisations – while rooted in history, context and ideology – acquire meaning in practice through the everyday practices of the social actors in and around these bodies. Because my study focuses on the relationship between human rights and conflict resolution, it is less concerned with the practices and behaviours of social actors within organisations as such.
Chapter 1

Maton 2005, 689). Such capital may be social, economic or cultural in nature – e.g. access to funding, contacts with well-placed individuals or institutions, familiarity with a certain milieu – but is not exclusively so. Also relevant is what Bourdieu calls ‘symbolic capital’, which includes tangible and intangible ‘things’ such as reputation, knowledge, academic degrees, or debts of gratitude one is owed. While each field has its preferred form of capital (Schinkel 2007, 709), whichever form should be regarded as the dominant measure of achievement within a specific field is subject to struggle in and of itself (Maton 2005, 690).

The "terminological and conceptual conflict, the struggle for conceptual control" implicit in any field's existence (Terdiman 1987, 813) calls into question the ambition to describe ‘the’ human rights field or ‘the’ conflict resolution field as the chapters following this introduction set out to do. This phraseology will however be retained in this study for several reasons. It is common amongst practitioners and in literature on human rights and on conflict resolution. Alternative terms – such as ‘industry’, ‘movement’ or ‘phenomenon’ – are not used widely across both realms, and may be questionable because of specific connotations. The suitability of the field concept also emerges from specific observations on the conflict resolution field and the human rights field. As regards the former, Fisher and Zimina observe for example that,

There is a recognisable constituency of people worldwide who think of themselves as contributing to, or building, peace. [...] This community knows no single name and has no common platform as yet, beyond a commitment to peace, however defined, and a more or less familiar set of references on both theory and practice (2008, 11).

Regarding the latter, it has been noted that “human rights practices and transnational expert communities create ‘cultures’ of their own through distinct knowledge practices, ontologies and membership criteria” (Halme-Tuomisaari 2010, 24; also Merry 2006a; Riles 2006).

In addition, seeking to describe ‘core’ ideas, practices, norms and assumptions prevailing in a certain field, is not at odds with recognising the presence of tensions within that field. It simply means that one should acknowledge that the field depicted

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35 The use of the article (as in ‘the field’) is inherently flawed. It suggests homogeneity and clear boundaries. Putting it between apostrophes throughout the study – i.e. ‘the’ human rights field, ‘the’ conflict resolution field – may mitigate this. Yet this stylistic device is likely to impede reading and may function as a self-reflexive ironic signifier that is mostly if not exclusively appreciated by insiders to the two fields considered here.  
37 All three terms are used in literature on human rights but less regularly – if at all – in relation to conflict resolution. ‘Industry’ is used by, e.g. Horberger (2007) and Stammers (1999); ‘movement’ by Kennedy (2011), Bob (2009a), Clapham (2007), Mahoney (2007), Merry (2005) and Mutua (2002); ‘phenomenon’ by Halme-Tuomisaari (2010). The ‘industry’ notion is at times applied to conflict resolution (e.g. Babbitt/ Hampson 2011; Weitsch 2009; in relation to Northern Ireland, MvWegh 2002), but ‘movement’ and ‘phenomenon’ are not.  
38 For example, ‘industry’ implies mass production, standardisation, profit-making and self-interest (Hornberger 2007, 132); ‘movement’ suggests a coherence and activism that is dubious in relation to conflict resolution.
is heterogeneous and may well be “riddled with contradictions” (Kennedy 2002, 106; Charlesworth 2002). One should also accept that one’s own description could also be called into question. Moreover, in a comment about ‘the human rights world’ that is also applicable to ‘the conflict resolution world,’ Hornberger argues that,

It is precisely such rifts and conflicts that allow us to call [this world] a locality. Differences, which to an outsider appear as hardly noticeable, become for insiders deep ravines and reasons for clashes [with] emotional loading and [...] everyday bickering. It is in fact the ability to see the nuances as magnified that makes one an insider and creates a sense of belonging (2007, 137-138).39

In other words, contestation within a field and at its edges may only serve to prove the field’s very existence. Its negotiated nature implies that a field’s boundaries may shift over time, as can indeed be observed in the two fields examined here. This highlights the relevance of looking at a field’s development and internal contradictions when describing it, as will be done in chapters 2 and 3.

Finally, the field concept calls attention to the ways in which actors within a field seek to “impose their internal norms on broader realms and establish the legitimacy of interpretations to the self-conception of the field, to the ratification of its values, and to the internal consistency and outward extension of its prerogatives and practices” (Terdiman 1987, 809). Linguistic and symbolic strategies are especially relevant, since the constitution of any field is a “principle of constitution of reality itself” in Bourdieu’s view (1987, 831). Noting ‘the magical effect of naming’, he argues that entering and participating in a specific field entails a “conversion of mental space” (idem, 840, 828). The study will thus illustrate how human rights and conflict resolution have generated field-specific “categories of perception and judgement” (Bourdieu 1987, 893), with terms that are not easily accessible to the uninitiated and professional identities embodying certain beliefs, attitudes, values and routines. Bourdieu’s point also speaks to the confusion that may ensue when practitioners steeped in one field encounter the ‘other’ field.

Hence the fields of human rights and conflict resolution can be understood as constructing and representing interpretations of specific situations and of the world more generally. This process is usually referred to as ‘framing’ (Gray 2006; Benford and Snow 2000).40 The notion comes initially from social movement theory, which notes that frames are an essential tool used by activists to transform the terms and nature of the debate and influence policy outcomes (Miller 2010, 921). It is a way of ordering a complex world “that describes the move from diffuse worries to actionable beliefs” (Hajer and Laws 2006, 255). Merry explains frames as “ways of packaging and presenting ideas that generate shared beliefs, motivate collective action and define

39 Bell (2012, 244) agrees that critical discourse about a field is part of that field instead of being separate from it.
40 The literature on framing is broad and exists in various social sciences, such as psychology, linguistics, media and communication studies, political science and sociology (Miller 2010, 921; Benford/Snow 2000; Autesserre 2009).
Chapter 1

appropriate strategies of action” (2006b, 41). Overall, the frame concept focuses “the analysis on how people organize knowledge and interpret it [and] how this understanding makes certain actions possible while precluding others” (Autesserre 2009, 252).

Thus, while the ‘field’ concept implies that both ‘human rights’ and ‘conflict resolution’ have a certain coherence that can be described, the ‘frame’ concept points to the way in which problems are not predetermined but have to be constructed. It suggests that frames shape one’s view on what constitutes a problem and what does not – as well as one’s response to it (ibid; Schön 1983, 40‐42). The relevance of ‘frames’ to the human rights and conflict resolution fields respectively has been noted. In general, both ‘human rights’ and ‘conflict resolution’ can be seen as a frame in their own right, a “device for thinking about the real, and expressing our thoughts” (Freeman 2011, 3). In addition, actors within either field adopt and project particular frames as they engage with social reality – and thereby co‐construct the very reality in the process. They also tend to frame one another in a specific way.

Effectively, in reviewing the fields, this study seeks to capture and contrast the frames that these fields constitute and project, and that human rights and conflict resolution actors use. As such, it engages in a form of interface analysis, which studies “the interplay of different discourses and how they are negotiated in everyday practices” at social interfaces “where different, and often conflicting, life worlds or social fields interact” (Hilhorst 2003, 11). Studying such interfaces “can bring out the dynamics of the interactions taking place and show how the goals, perceptions, interests and relationships of the various parties may be reshaped as a result of their interaction” (ibid, citing Long).

A Final Note on Theory

Examining the human rights and conflict resolution fields runs the risk of “essentialising something that is, in fact, far more fluid and contradictory” (Cowan, Dembour, and Wilson 2001, 10). This is a challenge, all the more so because this study is, at least in part, intended to nuance the debate on the relationship between human rights and conflict resolution. It shows that the boundaries between the two fields are

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41 This explanation draws on the work of scholars who study ‘collective action’ frames (i.e. the ‘signifying work or meaning construction’ engaged in by social movement activists and others (Snow 2004; Benford/Snow 2000). It is used here even though conflict resolution interventions by individual practitioners or organisations may not qualify as ‘collective action’, as the term is generally used in relation to social movements. This use is informed by the observation that frames may forge similar kinds of action from diverse constituencies operating separately (Gready 2004, 24; Autesserre 2010, 2009; Van Leeuwen 2009). For a discussion of the similarities and differences between ‘collective action frames’ and ‘everyday interpretive frames,’ see Snow (2004).

42 In relation to human rights, see e.g. Oomen (2011, 5), Miller (2010), Chong (2010), and Tate (2007). In relation to conflict resolution, see e.g. Autesserre (2009) and Gray (2006). Some of this literature (especially in the human rights field) focuses on the strategic use of frames, by considering when and why actors adopt a particular frame. That is not a focus in this study.
Introduction

less distinct than is generally presumed and that there is considerable fluidity between human rights and conflict resolution in practice, which manifests in several ways. It also highlights that these fields contain several internal contradictions, which reflect that ‘human rights’ and ‘conflict resolution’ are not as unequivocal as often perceived by outsiders. These internal tensions reveal the limitations in either field’s construction of reality and illustrate how the frames projected by the fields inherently involve a reduction in complexity, as noted by some authors (Van Leeuwen 2009; Hajer and Laws 2006).

Yet it is nearly impossible to consider the relationship between human rights and conflict resolution in theory and in practice without first ‘pulling them apart’ in some way. This study may hence fall into the same trap as happens often in publications on this topic and in real-life interactions between actors in the two fields, namely that it engages in ‘strategic essentialism’ as it has been called: making essentialist claims so as to ensure that they are heard (Cowan, Dembour, and Wilson 2001 ibid). The study thereby risks reinforcing the very distinctions it hopes to challenge, if only by its premise that there are separate human rights and conflict resolution fields. As Mosse and Lewis note, “the concept of ‘interface’ (between different social or life worlds, knowledge, and power) itself involves an unhelpful compartmentalization of identities and may be an increasingly inadequate metaphor for the various types of exchanges, strategic adaptations, or translations” that are possible (2006, 10). If anything, these observations show the co-constitutive nature of a research project like this, in that it tells a story that co-produces the very practice it seeks to examine and enhance. It also shows the limitations of language to describe complex phenomena and the extent to which ‘the relationship between human rights and conflict resolution’ is also a social construction.

Finally, it must be noted that the social construction that this study constitutes in and of itself, has one important gap: conspicuously absent are the voices of those who are affected by or engage in violent conflict and rights abuses – people whose life and actions human rights work and conflict resolution practice seek to affect. This follows from the practical experiences that underpin this study, which focused more on engaging with actors operating in these fields than with those meant to benefit from their efforts. It reflects my decision to define the scope of this project accordingly. This study is not about the experience of conflict, violence or abuses, but about the ways in which actors working on human rights and/or conflict resolution seek to address these phenomena and encounter and engage with the relationship between these domains (Tate 2007, 20-26).

1.3 Methodological Approach

In order to focus on interfaces and the everyday, which flows from the theoretical framework outlined above, the study draws on my own practical experiences of working on and at the nexus of human rights and conflict resolution, gathered over a
period of some eighteen years. In doing so, I emulate others who can only analyse the phenomenon they seek to examine from a position that places them within ‘it’ as a member of the very ‘communities’ they describe (Mosse 2005, 11; also Eyben 2003). The account that follows constitutes an exercise in reflective practice, an approach that stresses the importance and legitimacy of experience-based theory (Schön 1983). This section explains first what reflective practice entails and its relevance for this research project (in 1.3.1). It then points to possible limitations of this approach (1.3.2) and explains the strategies adopted to mitigate them (1.3.3). Finally, it ‘translates’ the reflective practice approach into more conventional academic terms pertaining to methodology (1.3.4).

1.3.1 Reflective Practice

Reflective practice, as set forth by Schön (ibid), essentially asserts that it is possible “to start with practice and engage the work of practitioners, and your own work, as a form of knowing that [can] be grasped, understood, and developed” (Laws 2010, 599). It conceives of professionals as ‘reflective practitioners’ who ‘construct’ problems to be solved from situations that are puzzling, troubling or uncertain, and in this process define what decisions need to be made, the ends to be achieved, and the possible means to be used (Schön 1983, 40).

According to Schön, in handling the ambiguity and complexity of real life, practitioners usually rely on a kind of ‘knowing-in-practice’: a knowing that is ‘implicit in their patterns of action and in their feel for the stuff with which they are dealing – a knowing that is in their action’ (1983, 49). They also ponder what they are doing while doing it, referred to as ‘reflection-in-action’ or thinking on one’s feet (Smith 2001, 10). Whande writes of practitioners having an ‘internal navigator’ which reflects such ‘reflection-in-action’:

Every practitioner is constantly pondering what she does, wondering if it makes sense, if it is having an impact, if there is a need to shift course, to do something differently. This is almost like an internal navigation system, an impact navigator that traces and ‘reads’ the situation, one’s own intervention, the responses of others, one’s own internal reactions to their response; this happens all the time without a break. There is an individual, intuitive and natural sense-making process that takes place. This internal navigator [...] evaluates continuously how we impact on the world and how it impacts back on us (2012, 197).

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43 While Schön focused on professionals working in sectors such as medicine, management and engineering, his thinking on reflective practice is applicable to this study given the professionalisation of the human rights and conflict resolution fields (see chapters 2 and 3). Moreover, according to Van Aken, Schön focused on professional work that “involves changing the actual into the preferred, which involves both analyzing problems in the actual and designing and realizing the preferred” (2010, 610). This description rings true for individuals and organisations working in conflict resolution and/or human rights protection.
Reflection-in-action involves surfacing the understandings that tacitly inform one’s assessment and action, reviewing and reworking them as necessary, and integrating them in further action. It can also entail reflecting on how one has framed the problem or constructed one’s own role in a larger institutional context. In so doing, a practitioner engages with the problem or phenomenon at hand as if it is unique yet also considers lessons from previous cases to make sense of the present case and to design alternative solutions. Drawing on a repertoire of, “among other things, iconic examples, models, theories, possible interventions and generic solution concepts” (Van Aken 2010, 610), practitioners engage in a ‘reflective conversation with the situation’: their actions serve as experiments that produce changes in the situation, generating new insights that further aid the tentative and progressive identification of problems and exploration of solutions. They cannot assume that their repertoire of explanations and methods will suffice, and must be ready to invent new ones (Schön 1983, 50-68, 129-147; Smith 2001, 110-112). Hence, reflection-in-action is “a creative, intuitive process, dealing with the actual and exploring the potential” (Van Aken ibid).

In addition, reflective practice involves ‘reflection-on-action’. This means looking back after the encounter, when new insights can no longer influence the situation itself, yet may be useful in future (Wieringa 2011, 169). When done regularly and honestly, “reflection on practice becomes an on-going effort to manage our relationships to our own competence by getting access to the theories that guide our actions” (Laws 2010, 600). Consequently, reflective practice requires accepting confusion, being alert to surprises, spotting puzzles, testing ideas, challenging preconceived notions, reframing problems, and ‘listening to a situation as it talks back’ in response to action taken by the practitioner (Higgins 2010, 603; Schön 1983, 131-132). It has thus been argued that reflective practice involves the ‘simple disciplines’ of demystifying theory – recognising the omnipresence of theory in daily life, explicating underlying assumptions – and remystifying practice – sharpening a sense of curiosity about how it ‘all really works’ (Lederach, Neufeldt, and Culbertson 2007, 3-4).

This study is an exercise in reflective practice, in which I process experiences, insights and questions as these have evolved in many years of working on the nexus of human rights and conflict resolution in various settings. I have used my repertoire of typical examples, understandings and images, while seeking to be attentive to new ideas and puzzles emerging during this process. While engaging in reflection-on-action, this study also constitutes ‘reflection-for-action’ as it seeks to contribute to improved practice in future.

This reflective practice approach is valuable in several respects. First, this thesis stems from an unusual type of social research, initially unintentional, a blend of lived experience and social investigation, drawing on insights as a participant-insider (Mosse 2005, ix). In addition, reflective practice is relevant in light of the subject matter explored. Babbitt and Lutz argue that “research to investigate the relationship between the human rights and conflict resolution fields can only be done in the
Chapter 1

context of actual cases, in which people on the ground have been forced to cope with the realities of actual conflict circumstances” (2009b, 15). This analytical account provides ample opportunity to do so; as noted, my work has generally entailed assisting human rights- and conflict resolution-oriented organisations – or institutions whose work encompasses both human rights protection and conflict resolution – in dealing with challenges arising from ‘the realities of actual conflict circumstances’.

Reflective practice is further useful as it foregrounds the notion of framing: it recognises that “practitioners constantly need to define the problems by naming the things they will concentrate on and framing the context in which they will attend to them (Wieringa 2011, 168).44 It also points to the possibility of conflicting paradigms of practice, when there is disagreement over multiple ways of framing the practice role (Schön 1983, 40-41, 309-313). It seems fitting that this study uses a methodology that recognises the significance of the ‘frame’ notion, given its important role in this study conceptually. More explanation of what this methodology entails practically will follow below; we will first consider its limitations and the mitigation strategies adopted.

1.3.2 Limitations

Despite the promise reflective practice holds for a study like this, some caution is warranted. Firstly, ‘practice romanticism’ lies in wait, as if academic knowledge is wholly irrelevant and practical experience is always right (Gadlin 2002, 328). Specialisation and ‘routinisation’ also constitute a risk: practitioners may miss opportunities to think about what they are doing as their practice becomes more repetitive and routine (Schön 1983, 60-61). The very existence of a repertoire based on conventional practice may in fact limit practitioners’ ability and willingness to adjust their theory-of-action and act on the ‘back-talk’ (idem, 79) from a situation.

After all, “since the action frames that create this world are also the basis for professional competence and respect, challenges [to the theories from which we act] will often be experienced as threats that are more likely to make us cling tenaciously to prior beliefs and authority than turn to critical reflection” (Laws 2010, 601-602). Practitioners thus run the risk of their reflection turning into self-deception and self-justification (Gadlin 2002), also because the very effort to reflect will re-express their existing theory-of-action and the limits of their behavioural repertoire (Laws 2010, 600). Given my long involvement in the subject matter set forth here, and the extent to which this constitutes the foundation of my professional reputation and any ‘expertise’ I may lay claim to, these are important reservations to note.

Questions of bias and ethics also arise. In general, participant observation has been criticised for the impossibility of achieving any pretence of objectivity (Eyben 2003, 6;
Tate 2007, 10-26). An account in which the practitioner herself is the main informant – and which relates to events in which she was more observant-participant than participant-observer (Mosse 2005, vii) – is even more susceptible to criticism of partiality and bias. This is all the more the case when she has taken a clear position on the subject matter under review, as I have done. In earlier writings, I have argued that the human rights and conflict resolution fields are more complementary than contradictory (e.g. Parlevliet 2010a; 2002). Thus, while my participation in situations discussed here adds texture and immediacy to the story, it does foreground my perspective on events and runs the risk of obscuring alternative views (Benington and Turbitt 2007, 232).

On an ethical note, a question can be raised as to whether the individuals and organisations with whom a practitioner engaged during practical work have consented to being written about as an object of study. Past interactions had another purpose; any notes taken at the time by the practitioner would have been made in her capacity as ‘advisor’, ‘facilitator’, ‘trainer’ or ‘colleague’, not ‘researcher’ (Eyben 2009, 76 fn. 4). This applies to the study at hand: my interlocutors were not aware that I might later write about these experiences; in fact, I often did not realise that myself.

In sum, reflective practice has certain limitations that cannot be dismissed in the context of this study. These are, however, not necessarily insurmountable. I have sought to address them mainly by referring to academic literature and by playing off my ideas, questions and observations against interpretations by other practitioners. Overall, I have made an effort to be, in Halliday and Schmidt’s terms, “methodologically thoughtful” (2009, 4).

1.3.3 Mitigation Strategies

To avoid practice romanticism, this study combines insights gained as a participant-insider with a review of relevant literature. Recognising that the role of formal knowledge is not trivial, however important practical knowledge (Wieringa 2011, 172), it draws broadly on various bodies of literature, notably from human rights studies, conflict resolution studies and development studies, incorporating legal, socio-legal, anthropological, and political science perspectives. It thus explores the subject matter at hand from both an ‘emic’ and an ‘etic’ perspective (Headland, Pike, and Harris 1990), complementing the subjective account of an insider with analysis by outside observers. The added advantage of this conversation with the literature is that it also serves verification purposes.

Concerns about bias may be further mitigated by the conditions under which I gathered the empirical material discussed here and engaged in reflective practice both in the past and while working on this study. These conditions – further commented on below – allowed for extensive ‘testing’ of my interpretations against insights and observations from other practitioners; as such, they may also address concerns about
routinisation and lack of critical engagement. Authors writing on reflective practice highlight the importance of it happening in conversation with others. Laws, for example, points out that reflective practice does not entail ‘wrestling with problems in solitude’ but is meant to develop in interaction:

To see reflection as constituted in the solitary relationship between actor and object – be it baseballs, electrons, plans – is a distortion that neglects the importance of conversation, [...] the social interaction. [...] Inquiry is a social process involving behaviour and interpretation constituted with respect to others whom we need because they can observe our behaviour without fully sharing our interests and assumptions. This makes others useful; talking with them can help us get access to the elusive theories that are shaping our behaviour (2010, 601).

In a similar vein, Whande writes that:

Among groups of peers and colleagues, observations and readings [from the practitioner’s internal navigator] are put to the test – how does what I saw resonate with another colleague’s observations? How do we make sense of what happened collectively? [...] Such joint interpretation processes prove invaluable, not only to read a situation in the moment but to make meaning of it and arrive at a shared understanding of the situation. It is this sense of a shared understanding emerging that confirms to the internal navigator a sense of having ‘read’ the moment, process or situation accurately and comprehensively (2012, 197).

The significance of conversation and interaction to reflective practice means that such inquiry goes beyond correcting the theories from which we act through individual reflection. Instead, it can be understood as a “process of producing the behavioural settings in which it is possible to surface these theories and critically reflect on them with the help of others” (Laws 2010, 601). Such settings certainly prevailed when I was a full-time practitioner. My work usually entailed long-term and in-depth interaction with other practitioners, both in the organisation where I was based and in other organisations and institutions. Early on, much of my work consisted of providing training to various organisations, which was always tailor-made, based on information obtained through extensive discussions with people working in these organisations; in consultation with them I developed role-plays, case studies and other exercises that were relevant to their context and drew on actual situations experienced. Moreover, such training usually consisted of several multi-day encounters over a longer period of time rather than a one-off event. This allowed those I worked with and myself to experiment and to refine our understanding and training materials to reflect reality more accurately.

This way of working meant that I gained considerable insight into interlocutors’ experiences and questions; it also meant that I could not simply impose ideas but had to test their relevance against the context and issues faced by others and adjust them appropriately. This became all the more the case when my work became more explicitly focused on facilitating reflection processes for actors who were operating in

45 Emphasis added. See also Lederach and others (2007, 4-5) on how to demystify theory and remystify practice.
Introduction

contexts unfamiliar to me and who sought support to think through particular challenges related to human rights and conflict resolution. Having little knowledge of, for example, the specifics of managing parading disputes in Northern Ireland, or the pressures faced by clergy in Zimbabwe at a time of rising political violence, I focused on acting as a sounding board, facilitating exchange between my interlocutors, drawing out their insights and raising questions, while also offering ideas and examples from my own practice. Being open to what would emerge, in terms of deeper understanding and/or further puzzles on their and my part, was key to such processes.

In other words, these conditions provided ample space for critical reflection. Other factors added to such ‘behavioural settings’. I usually designed and facilitated processes together with other practitioners and at some point started writing about my work as a way of sharing observations and soliciting feedback; comments received then informed subsequent practical assignments. Moreover, wearing a ‘human rights hat’ in a conflict resolution environment and a ‘conflict resolution hat’ in a human rights environment meant that I was often asked to explain what I was doing and why, also because these positions or initiatives were new and I was moving into unchartered territory. Thus, engaging with critical questions was par for the course.

Moreover, as noted previously, while working on this study I undertook several assignments that were directly relevant. Besides enabling me to share insights previously gained, these projects challenged and sharpened my ideas, prompted new observations, and helped me to surface and interrogate my theories and assumptions further (cf. Van Leeuwen 2009, 22). Critical reflection was also aided by doing 26 interviews with former colleagues and other practitioners with in-depth knowledge of the issues and situations discussed here and by engaging in correspondence and informal conversation with some of them and other interlocutors (further explained below). This also helped address the ethical concern about consent, as interviews and correspondence made it easier to get those involved to consent to being included in this study. Inviting interviewees to comment on draft text also alleviated this ethical concern. In sum, important limitations of reflective practice have hopefully been mitigated through engaging in conversation with the literature and with others.

1.3.4 Qualitative Research Methodology

In more conventional academic terms, the above means that the research methodology is decidedly qualitative. As alluded to, the various activities I engaged in while working as a full-time practitioner constitute a form of participant observation,
with processes like training workshops, reflection meetings and inputs at gatherings or sessions at conferences serving as focus-group discussions. The research thus makes use of field and meeting notes I made during these years and of reports prepared for these organisations. Information gathered through participant observation has been complemented with relevant ‘grey material’ produced by the civil society actors and independent institutions described in this study, such as workshop reports, leaflets and public statements. Past correspondence with various interlocutors was reviewed and some additional correspondence with some was undertaken.47

As noted above, 26 key informant interviews were undertaken to gain an insight into how others constructed meaning (including former colleagues), to enhance critical review of past events and actions, to test my own ideas, and to obtain more information about examples discussed here, specific country contexts, or the study’s general themes.48 Of these, thirteen are South Africa-related,49 three are from Northern Ireland,50 three from Zimbabwe,51 five focus on Nepal,52 one is from Kenya and one from Colombia.53 Informal conversations were also held with one South African and three American practitioners operating internationally.54 Most of these

47 Additional correspondence took place in particular with two long-term members of Churches in Manicaland, Rev. Shirley DeWolf and Fr. Michael Bennett, because telephone and Skype connectivity was unreliable. I also engaged in correspondence with a former commissioner of the Northern Ireland Parades Commission, Robin Percival, who reviewed the draft text on this statutory body at the request of the Commission’s Executive Secretary.

48 Where the text draws on interviews, a footnote provides information on the name, position and background of the interviewee, and on the location and date of the interview. Further notes immediately below only provide summary information (without names) to give an indication of the interviewees.

49 Of these, nine were practitioners I had closely worked with in the late 1990s and early 2000s (eight were former CCR colleagues and one worked at Lawyers for Human Rights at the time), one was an employee of Lawyers for Human Rights at the time of the interview, one had just left that very organisation at the time of the interview, and two are South African human rights scholars with an international reach.

50 They are the director of the Institute for Conflict Research that had initially invited me to Northern Ireland in the early 2000s, the human rights scholar who served as Chair of the Human Rights Commission at the time, and a founder member of Mediation Northern Ireland.

51 This concerns two long-term members of the network Churches in Manicaland and the director of a human rights NGO; the name of the third person (and the NGO) has been withheld on request.

52 Three of the five are Nepali practitioners involved in the country’s land rights movement through the Community Self-Reliance Centre (an NGO and membership organisation); the fourth is a Nepali human rights activist working as regional coordinator for the Informal Sector Service Centre (a human rights NGO); the fifth is an international human rights practitioner who used to work for the Office of the UN High Commissioner for Human Rights (OHCHR) in Nepal and has since been associated with a prominent domestic human rights NGO, Advocacy Forum.

53 The persons from Kenya and Colombia were interviewed following their contributions to a publication on human rights and conflict transformation for which I had written the lead article (see Nderitu 2010, García-Durán 2010, and Parlevliet 2010a, respectively). The Kenyan is a peacebuilder and human rights educator who used to work with the Kenya National Commission on Human Rights, and who has since become extensively involved in conflict resolution efforts in Kenya, Nigeria and South Sudan. The Colombian served as the director of a non-profit foundation promoting social change in Colombia, the Center for Research and Popular Education.

54 The South African is Laurie Nathan, op.cit. (fn. 23). The three Americans are the director of an international peacebuilding NGO based in London; a former head of the UN Standby Team of Mediators (and founding director
Interviews were done in person (thirteen) or through Skype (eight), while four were conducted in writing with practitioners who preferred to speak in their native language. A set of questions guided the verbal interviews, which unfolded more like generalised, and more to facilitate exploration and detailed description (Van Leeuwen 2009, 17). In that sense, the empirical material discussed is illustrative rather than representative. This is in line with views of case study research that highlight it as particularly appropriate for examining contemporary phenomena within their real-life contexts (Yin 2009, 18). The selection of cases was guided by Flyvbjerg’s recommendation that this is best done on the basis of expectations about their content, to maximize the utility of information from a small sample of cases (2006, 229-230). This is referred to as theoretical sampling, since cases are chosen for the likelihood that they will offer theoretical insight by “illuminating and extending relationships and logic among constructs” (Eisenhardt and Graebner 2007, 27); this may thus occur after the initial data collection and analysis (Charmaz 2011, 363).

As a result, the focus here is on interactions that I had come to see as iconic over time, in that they highlight issues, patterns or dynamics that seemed to recur in relation to various actors and in different contexts. I also included a few that appeared to challenge these. Some cases are briefly presented to elucidate certain points, while others are portrayed in considerable detail so as to allow readers to ‘enter’ the story and follow the development of the argument. This is also the reason that the first empirical chapter (chapter 5) focuses on two examples that I was involved in early on.

Cases

Much of the empirical material for this study has been organised through case studies, which are “rich, empirical descriptions of particular instances of a phenomenon that are typically based on a variety of data sources” (Eisenhardt and Graebner 2007, 25). The aim of the case studies used here has been less to draw conclusions that can be generalised, and more to facilitate exploration and detailed description (Van Leeuwen 2009, 17). In that sense, the empirical material discussed is illustrative rather than representative. This is in line with views of case study research that highlight it as particularly appropriate for examining contemporary phenomena within their real-life contexts (Yin 2009, 18). The selection of cases was guided by Flyvbjerg’s recommendation that this is best done on the basis of expectations about their content, to maximize the utility of information from a small sample of cases (2006, 229-230). This is referred to as theoretical sampling, since cases are chosen for the likelihood that they will offer theoretical insight by “illuminating and extending relationships and logic among constructs” (Eisenhardt and Graebner 2007, 27); this may thus occur after the initial data collection and analysis (Charmaz 2011, 363).

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Introduction

of an academic institute for justice and peace); and an international expert on truth commissions who is currently writing and advising on the subject of justice in peace negotiations.

55 The four Nepali practitioners preferred to communicate in writing in Nepali. A trusted former Nepali colleague from the development programme where I used to work translated both my questions and their responses; the communication went back and forth a few times. He had assisted with interpretation during field trips during my time in Nepal. His name is also included in the relevant footnotes.

56 The questions covered the following areas: information about the person, their career and background, self-identification in terms of human rights and/or conflict resolution; general features of the two fields (including key ideas, actors, practices, strengths and weaknesses) and interaction between field actors; the relationship between human rights and conflict resolution as experienced in their practice (including examples of situations, points of connection, challenges experienced, their own role, evolution of their own thinking over time), and information about particular case examples, country context or organisations discussed in this study.

57 I also made notes during or after informal conversations; where the text draws on such conversations, I have verified the use of comments with the persons concerned.
Chapter 1

and that laid the foundation for my further practice and thinking on these matters. The study is, however, not organised in a strict chronological order; information from early experiences is combined with information and reflection on later events.

The ‘theory’ that emerges results from an interplay of induction, deduction and verification usually associated with grounded theory (Charmaz 2006; Glaser and Strauss 1967). However, while continually moving back and forth between empirical material and theory development as advised in this context, I cannot claim to have applied grounded theory’s formal methods in any conscious manner, notably its elaborate processes for gathering field data and discover theory through a hierarchical structure of categories (Eisenhardt and Graebner 2007, 30).

Country contexts

The examples are mostly drawn from four country contexts, namely South Africa, Northern Ireland, Zimbabwe and Nepal, due to pragmatic, methodological and conceptual reasons. Pragmatically, I gathered most of the experiences that constitute the empirical basis of this study in these countries. Methodologically, the study takes after Marcus’ multi-sited ethnography (1995). As Merry explains, this does not involve discrete comparisons but is “an ethnographic engagement with the fragments of a larger system that recognises that the system is neither coherent nor fully graspable [...]. This is a disembodied space of social life, one that exists in various spaces but is not grounded in any one of them” (2006a, 29) . My focus is thus “on a social world whose locations are diverse but whose words and practices sound and look the same” (ibid) . This is useful in drawing out crosscutting themes (Van Leeuwen 2009, 17).

Conceptually, the focus on these country contexts is motivated by some similarities between the four countries, aside from their major difference in terms of geographical location. The countries have all experienced (or are still experiencing) a type of conflict that is largely internal and asymmetric in nature, referred to in conflict studies as protracted social conflict. This entails “the prolonged and often violent struggle by communal groups for such basic needs as security, recognition and acceptance, fair access to political institutions and economic participation” (Azar, in Ramsbotham, Woodhouse, and Miall 2011, 99). Such needs may be reflected in demands for more access to economic resources, wider political participation, opportunities for self-determination, or more fair treatment by public institutions – all of which relate to human rights norms and can be formulated as rights claims (Parlevliet 2010a)

The nature and functioning of the state and systems of governance play an important role in this type of conflict, since the state denies or allows individuals and groups access to the resources, opportunities and processes required to meet their needs and

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58 For example, by identifying themes from what I was observing and experiencing, comparing ‘data’ across contexts and situations, and capturing evolving insights in writing which then formed the basis for subsequent interactions and information collection.
Introduction

exercise their rights (Parlevliet 2010a, 20; Azar 1990). Consequently, human rights concerns are an intrinsic part of causes and consequences of (violent) conflict in the four countries. The state’s inability or unwillingness to protect basic human rights and provide mechanisms for the peaceful resolution of conflict has been an important cause of conflict in these countries; at the same time, such conflict itself manifested in extensive rights violations of both a civil-political and socioeconomic nature. Even though these phenomena are largely in the past when it comes to South Africa and Northern Ireland, their long-term ramifications affect these countries to date; furthermore, structural conditions persist that continue to generate tension in the two societies.59 In Nepal, the experience of protracted social conflict is far more recent, and limited progress has been made in addressing widespread poverty, the intense stratification of society, the lack of representation embedded in the political system and poor access to justice. In Zimbabwe, finally, such phenomena are ongoing with periods of more or less intensity.

In all four countries, moreover, conflict resolution efforts at the national level have recognised the relevance of human rights issues. The peace agreements concluded in South Africa (1993), Northern Ireland (1998) and Nepal (2006) all devote considerable and explicit attention to human rights, noting their protection as instrumental to redressing past wrongs and ensuring a peaceful future respectful of human dignity.60 So too does the 2013 draft Constitution of Zimbabwe, prepared during the reign of a Government of National Unity in power between 2009 and 2013.61 In addition, domestic human rights actors and institutions in the four countries have sought to play – and still do play – an active role in addressing conflict, enhancing respect for human rights, and building peace at a more local level.

Of course, beyond these similarities, the countries differ in many respects, including in their location and cultural contexts. While it is beyond the scope and purpose of this study to provide an in-depth comparative analysis of them, considering examples of the interaction between human rights and conflict resolution drawn from contexts in Africa, Europe and Asia illustrates that the ‘frames’ of human rights and conflict resolution may vary across cultural and geographical contexts, and the implications this has for practitioners working in these fields. (Conceptions of ‘human rights’ and ‘conflict resolution’ differ considerably between Northern Ireland and South Africa, as will be discussed in chapter 8).

59 This is reflected in, for example, ongoing contestation over governance and accountability for past violations in Northern Ireland and socioeconomic tensions in South Africa due to ongoing inequality.
60 Constitution of the Republic of South Africa (Act 200 of 1993), also known as ‘Interim Constitution’; Agreement Reached in the Multiparty Negotiations, Belfast, 10 April 1998 (also referred to as the Good Friday Agreement or Belfast Agreement); Comprehensive Peace Accord signed between the Government of Nepal and the Unified Communist Party of Nepal (Maoist), Kathmandu, 21 November 2006.
Chapter 1

Embedded research and positionality

Overall, my methodological approach resembles what Mosse calls ‘ethnography from within’ (2005, 11-15) and what Tate refers to as ‘embedded research’ (2007, 12-13). These notions highlight the question of the researcher’s own positionality (Mosse) and institutional positioning (Tate) as a key factor in knowledge production. They call attention to how this account has been shaped – and limited – by my formal position in specific organisations and my own history and frame of reference.

Thus, the fact that this study points to ‘fluidity’ between human rights and conflict resolution may well be, at least in part, a ramification of my own experience of fluidity in moving between the fields and often presenting or representing the ‘other’ perspective in my work environment – even though I never named it as such until I had started drafting this study. In the same vein, my early emphasis on the need to consider human rights and conflict resolution in conjunction to a greater extent than was commonly done (e.g. Parlevliet 2002) contributed to the fact that this study contains more examples pointing to convergence between the fields than to divergence; after all this stance was usually the reason for my engagement with other actors, as they sought to explore how linking the fields could be useful for them or to figure out how to address particular dilemmas. This is not to say they were never reluctant, doubtful or critical – they were! – but it is to recognise that actors convinced that human rights and conflict resolution are incompatible would probably not have approached me.

The issues of positioning and positionality also raise more challenging questions about perspective and power. Where do I stand when it comes to the two fields? How have experiences recounted here been influenced by the power I hold or held, by virtue of managing a programme, serving as senior adviser, representing a donor agency, or by virtue of being white, European, well-off and well-educated (in contexts where the last two aspects were not matters of course for many of those I worked with)? As to the first question, I must own up to a somewhat conflicted identity. I perceive myself as being both in and between the two fields, with the qualification that I hold a degree in peace studies and none in law or human rights studies, either of which may be a vital condition for many in the human rights field for full membership of their tribe. In the absence of formal legal training, I may feel

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62 The last designation (representing a donor agency) only applies to my time in Nepal. In South Africa, the HRCMP had limited funds; this meant that when working with other organisations, we covered our own costs (e.g. of travel or training materials) and the partner covered the costs of its staff/associates (e.g. accommodation, travel). The costs of the meeting venue were often shared or negotiated on a case-by-case basis. It can be argued that partners only collaborated with us if they truly saw value in it and were willing to co-finance the collaboration.

63 Some conflict resolution scholars may actually question whether ‘peace studies’ amounts to ‘conflict resolution’; peace studies probably sits at the intersection of the two fields. During my degree, I focused more on human rights than on conflict resolution, in terms of the classes I took and the papers I wrote (email, Larissa Fast, May 2015).
more at ease in the conflict resolution field, yet I have worked regularly with human rights organisations and in human rights environments, including legal ones. As such it was still a surprise to realise, late in the writing process, that my approach to human rights and conflict resolution over time actually reflects core tenets of conflict resolution thinking.\footnote{Beyond that, I suspect that my long-term being ‘between different worlds’ – between the Netherlands and South Africa, North and South, white and black, theory and practice, human rights and conflict resolution, social sciences and law – has informed my engagement with the relationship between the fields both as a practitioner and researcher. I have experienced being ‘othered’; have struggled for acceptance, credibility, and legitimacy in a world where language and practices were unfamiliar and alienating; and have lived with the confusion that such ‘betweenedness’ (Fook 1999, 18) brings. Perhaps most importantly, while I may have wished away the ambiguity, tensions and contradictions that come with this state of liminality (Eyben 2009, 85), I have had to live and work in and with them. Probably, this will have infused my practice and research. This means that I cannot separate myself as the researcher from myself as the practitioner and as the person; my construction of subjectivity may be an integral part of the study (Fook 1999, 13). Yet while I am part of and present in this study, I have not made my liminality, associated highs and lows, and “reflexive self” central to the narrative (Eyben 2009, 81), for the simple reason that it is doubtful that baring my soul will add much to the analysis. Besides, I was often so engaged in the action that “I forgot to observe myself, let alone situate that observation in relation to my personal history and professional status” (Eyben 2003, 6). 

As to the second question posed above – how has my power, past and/or present, influenced the experiences recounted here – this is difficult to assess. Probably, my mobility and capital (in terms of knowledge, skills, degrees, exposure and resources) have provided me with opportunities that many others working on human rights and/or conflict resolution have not had. Still, whether and how that affects the analysis is unclear. More clear is that, much as my observations and insights have been infused with ambiguity, tensions and contradictions that come with this state of liminality (Eyben 2009, 81), for the simple reason that it is doubtful that baring my soul will add much to the analysis. Besides, I was often so engaged in the action that “I forgot to observe myself, let alone situate that observation in relation to my personal history and professional status” (Eyben 2003, 6). 

\footnote{This is revisited in the conclusion, chapter 9.}

\footnote{Thus, for example, my review of the two fields in their own right, in terms of historical development, key ideas, practices and internal tensions, is not only a response to a weakness in the existing literature; it also stems from my desire to come to grips with both to a greater extent than I had done until I started this study.}

\footnote{The term ‘reflexive’ is used here as relating to “self-critical epistemological awareness, entailing critical reflection on the part one plays, and one’s relationships and interactions play, in the formation, framing and representation of knowledge and action” (Eyben 2003, 2); it thus regards one’s ability “to locate oneself in the picture” (Fook 1999, 11). As such, it differs from – but is closely related to – being a reflective practitioner as outlined above, which I understand as reflecting in and on one’s practice so as to distil one’s implicit practice-based theory and improve future practice. For me, the focus is hence different: reflectivity entails reflection on the question of how one’s own personal history, background and professional status shapes knowledge production (whether in- or outside a formal research context), while reflectivity entails reflection on one’s own practice and knowledge implicit within that.}
developed through interaction with others, and much as I draw on those of others, it is in Mosse’s words, “my experience, values, and interpretations, my self-critical judgements, [...] and my continuing involvement that impose coherence; it is my narrative that becomes the meta-narrative” (2005, 14). As such, I have a responsibility to ensure that those whose stories I draw on can accept the way this study reflects their voices and/or engages with any objections they may have (ibid). I also have a responsibility to not make myself ‘the story’, since there is a bigger picture that should be far more interesting and important.

In sum, the ‘embedded’ or ‘insider’ quality of this project draws attention to the partial nature of this account (as is in fact any account, given the social construction of reality and knowledge in general). Yet with a view to getting to the bigger picture and avoiding the “infinite spiralling of meta-discourse which adds layers and layers of reflexivity” (Eyben 2003, 6), I will leave it at this: this study tells a story about the relationship between human rights and conflict resolution and presents an interpretation of events, processes and dynamics based on practical experiences and a process of reflection on them. It seeks to be credible and persuasive, but does not try nor seek “to claim the hegemony of truth” (Hilhorst 2003, 230). It recognises that others may tell another story, whether about the bigger picture of the relationship between human rights and conflict resolution, or about specific situations and processes discussed here. In the end, such different stories can only add up to greater insight.

1.4 Structure and Chapter Preview

This study is organised in three parts. The first part (chapters 2, 3 and 4) sets the stage for the empirical material by embedding the discussion of actual experiences and concrete challenges, in a solid understanding of these fields. To this end, it first maps out the human rights and conflict resolution fields in their own right and then compares them. Chapters 2 (human rights) and 3 (conflict resolution) discuss the historical foundations and development of the fields, and the ways in which each field manifests through key ideas, important actors and prevalent practices. They also identify several tensions within human rights and conflict resolution, reflecting that the body of thought and practices in each field is subject to certain limitations. Chapter 4 provides a comparative summary overview, pointing out not only clear differences but also some remarkable similarities between the fields. The systematic analysis in Part 1 goes beyond the existing literature and may serve as an introduction for those readers less familiar with one or both of the two fields.

Part 2 (chapters 5 and 6) focuses on how the relationship between human rights and conflict resolution plays out in practice. Chapter 5 examines experiences of two civil society organisations in South Africa that are clearly located in one or the other field: a human rights NGO (Lawyers for Human Rights) and a conflict resolution NGO (the Centre for Conflict Resolution). Through vignettes of specific situations, it shows how
human rights and conflict resolution are deeply interwoven in these organisations’ daily reality. Chapter 6 considers such fluidity – the extent to which human rights and conflict resolution flow into one another in practice – from another perspective. It shifts attention to organisations that are less clearly or exclusively associated with either the human rights or the conflict resolution field. It first looks at another civil society actor – a network of churches in Zimbabwe – that operated at the interface of human rights and conflict resolution in a context of rising political violence, by simultaneously engaging in rights advocacy and dialogue facilitation. It then reflects on the practice of a number of independent state institutions, which also encounter the permeable boundaries between human rights and conflict resolution in various ways.

Part 3 (chapters 7 and 8) builds on the preceding chapters but places the examples discussed in a broader context. Chapter 7 probes some challenges that regularly arise for organisations and individuals experiencing the fluidity of human rights and conflict resolution. Framing these as dilemmas to reflect that they resist easy solutions and imply different courses of action, it explores how various actors have sought to navigate such complexity. Taking a step back from practice, chapter 8 looks more generally at the relationship between the fields of human rights and conflict resolution. It reconsiders the binary framing that has characterised the debate on human rights and conflict resolution thus far, positing them as being either contradictory or complementary. It argues that the relationship between the fields is instead dynamic and contingent. Building on professional experiences and the literature, it explores four factors that may affect the interaction of human rights and conflict resolution in a specific context and over time.

Chapter 9 seeks to pull the strands of this study together, concluding it with a summary of main findings, a reflection on larger insights emanating from the study and a discussion of its implications. It also points to areas for further research.
Part I – Lenses
Chapter 2: The Human Rights Field
This chapter is the first of three that seek to provide a general overview of the human rights and conflict resolution fields so as to lay a foundation for the empirical chapters that will follow. The present chapter examines the human rights field, the next considers the conflict resolution field, and the third compares the two. These fields, while both motivated by “the desire to improve the human condition” (Babbitt 2009a, 615), have largely developed separately. The argument put forth in these three chapters is that each field provides a ‘lens’ for understanding and speaking about the world, as well as various strategies for tackling a wide range of problems that people and societies face. The human rights and conflict resolution fields thus offer specific ways of seeing and doing – put differently, ways of being in and engaging with social reality. These ways differ markedly in many respects but are surprisingly similar in others, as set out in the comparative summary of the two fields in chapter 4.

The human rights field is discussed here in terms of its theoretical foundations and evolution over time, and of its manifestation through key ideas, important actors and prevalent practices. The chapter sets out how ‘human rights’ has become the dominant normative vocabulary of our time. Rather than providing a definition of ‘human rights’ up front, it outlines how this notion, which encapsulates a set of ideas about “the equal moral worth of all human beings” (Mertus 2011, 128), is understood and used in the field. It explains how the notion has steadily expanded in the course of several decades while retaining a constant emphasis on the accountability of the state and on individuals. The distinctly legal nature of the human rights field is highlighted, given its extensive focus on developing, implementing and enforcing formal standards that regulate the conduct of states towards persons in their jurisdiction. Even so, the discussion here shows that human rights are more than law; they also constitute powerful moral claims to mobilise people and hold the state to account. The chapter further points to the rising number of actors at international, national and local level that work to protect and promote human rights and discusses the practical ways in which they may do so. Finally, it lays bare expressions and images that surface when reviewing the field and sets out some major criticisms levelled against the human rights field by internal and external actors. The contradictions within human rights thinking and practice thus emerge, pointing to the field’s limitations.

The origins and historical development of the human rights field are addressed in section 2.1, while section 2.2 sets out ideas that are central to this field, arguing that these form a fairly coherent body of thought. Sections 2.3 and 2.4 discuss key actors and key practices respectively, after which section 2.5 discusses several tensions that run through the human rights field. These tensions not only inform the comparison of the two fields in chapter 4, but also constitute the backdrop to the discussion and analysis of concrete situations in the later empirical chapters. The final section, 2.6, summarises the chapter’s findings and relates these to the earlier discussion (in section 1.2.2) on fields and frames.
2.1 Foundations and Development

As Halme‐Tuomisaari observes, “expansion has been the most salient element of the global human rights phenomenon” (2010, 57). With the notion, language and practice of human rights rapidly spreading in recent decades, human rights have become “the dominant normative or moral discourse of global politics and a major standard of international legitimacy” (Goodhart 2009b, 2). They now belong to “those convictions of our society that are tacitly presumed to be self‐evident truths and that define the space of the conceivable and the utterable” (Hoffmann 2011, 1).

Various narratives exist as to the origins of human rights and how they became the ‘moral lingua franca’ (Ignatieff 2001, 53) of our time. The conventional one sees this as the outcome of a steady progression of (European) intellectual and political thought from at least the 17th and 18th centuries onwards (Langlois 2009; Donnelly 2003; Weston 1992). Locating the concept’s origins in philosophy, law and theology, this narrative tends to link human rights to Greek thinking, mono‐theistic religion, natural law, the American and French revolutions, revulsion at slavery and, in particular, the Holocaust atrocities (Moyn 2010, 7; Freeman 2011). Efforts have also been made to identify links with religions and cultures across the globe (e.g. Ishay 2008; Clapham 2007). Typified as a “celebration of origins” (Moyn 2010, 9), this account has been challenged on various counts.1 Critics assert that “human rights in their specific contemporary connotations are a relatively recent invention” (Hoffmann 2011, 3). It is also argued that human rights are distinctly Western in origin, having emerged in a specific historical, cultural and political context (e.g. Mutua 2002; Oomen 2011; Stammers 1999; Shivji 1989).

Bypassing such genealogical debates, one can identify a few periods that were particularly important in the evolution of the field and the rise of human rights as legal, moral and political vocabulary to make claims and check abuses of power by the state. The 1940s set the parameters for human rights to become part of international politics with the creation of the United Nations and adoption of the Universal Declaration of Human Rights and the Genocide Convention.2 The 1970s saw a surge of interest in human rights, as civil society activism grew rapidly in London, New York, Geneva, Latin America and Eastern Europe.3 This activism had a relatively limited

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1 For example, critics have pointed to the very limited use of ‘human rights’ language prior to the 1940s and the sudden appeal of human rights in the 1970s when disillusion set in with other ideologies such as communism and anti‐colonialism; see for example Moyn (2010), Hoffmann (2011), Afshari (2007) and Cmiel (2004).

2 Other important developments at this time were the Nuremberg and Tokyo war crimes trials, and the subsequent codification of the legal principles underlying the trials by the International Law Commission of the UN in 1950. For a discussion of the 1940s and a summary of literature on this period, see Cmiel (2004, 128‐129) and Halme‐Tuomisaari (2010).

3 London’ refers to Amnesty International; ‘New York’ to Human Rights Watch; ‘Geneva’ to the International Commission of Jurists (see 2.3 for more information on these organisations). ‘Eastern Europe’ refers to citizens groups monitoring compliance with the Helsinki Accords within the communist bloc; and ‘Latin America’ refers to
focus on abuses of civil and political rights by repressive regimes, based on a notion of human rights as minimal standards “concerned with avoiding the terrible [rather] than with achieving the best” (Nickel 2010, 3). Important legal standards came into force at this time too, notably the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both in 1976).

In the 1990s, after the end of the Cold War, normative considerations became more explicitly present in international relations. Human rights went truly global, with activist groups popping up around the world, adopting rights language as the frame for various demands, including social and economic justice. They also went domestic: in policy and activism, the emphasis shifted from codifying norms to actual implementation in national settings as a wave of democratisation swept the globe. Widespread abuses in Rwanda, the former Yugoslavia and East Timor provided additional reason to make human rights real. While standard-setting had dominated earlier decades, with negotiations between lawyers, diplomats and UN staff resulting in numerous rights instruments, this was a time of human rights ‘coming home’: the domestication of global standards became a key concern, focusing attention on national human rights institutions and human rights education programmes, for example (Oomen 2011, 6-7; Halliday and Schmidt 2004). This was facilitated by a growing emphasis on good governance in bilateral and multilateral development cooperation; human rights, good governance and rule of law were increasingly conflated in this context.

All in all, a remarkable feature of this expansion of human rights thinking and practice has been its multi-faceted nature. Both the number and diversity of actors taking up the human rights baton has magnified. ‘Speaking’ and ‘doing’ human rights are no longer the exclusive domain of a highly educated, cosmopolitan and legally oriented elite in major urban centres, as activists across the world have linked human rights to their own cultural and religious traditions, and use them to fight their own social and political struggles.4 This is not to say that the ‘emancipation of rights talk’ (Oomen ibid) has made that elite redundant in the human rights field.5 Even institutions not known for their activism – the World Bank, the Organisation for Economic Cooperation and Development, national Ministries of Foreign Affairs – have come to refer regularly to human rights, aided by the conflation of human rights, good governance and rule of law noted above. Human rights “artefacts”6 have proliferated

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4 For accounts of human rights activism by groups around the world, see e.g. Bob (2009a) and Gready (2004a). Rights talk has been used for both expressive and instrumental reasons: to express identity, norms, values, and to gain access to international networks, legitimacy and resources (Stammers 1999; Hafner-Burton/Ron 2009, 369-370; Tate 2007).

5 See below at 2.4 and 2.5.

6 These are objects made by human beings, or, as Halme-Tuomisaari (2010, 8-9) explains, “entities that exist objectively in empirical and ontological terms.”
too, with an ever-growing number of instruments (international, regional and national); institutions; policies; academic journals; academic degree programmes and non-formal training courses (Halme-Tuomisaari 2010, 8-9). These have spurred the professionalisation of the field.

Perhaps most importantly, an agenda that was once fairly minimalist has turned maximalist (Moyn 2010), with new issues – such as environment and development – being framed in human rights language, and ever more groups singled out for targeted protection (e.g. women, disabled persons, children, minorities, indigenous peoples, migrant workers, asylum seekers, etc.). This has led to the identification of new rights (e.g. right to water, right to the city) and to the formulation of human rights standards for specific categories of rights-holders. Such developments continue to date. In addition, entities such as non-state actors, multinational companies and international financial institutions are increasingly thought to have human rights obligations, too (Smis and others 2011, 79; Halme-Tuomisaari 2010). It has thus been argued that human rights have evolved into a “full blown moral-theological-political vision of the good life” (Wilson 2007, 349; also Etinson 2012, 924) with global norms codified as international law.

The proliferation or ‘mushrooming’ of human rights (Klabbers 2002, 72) has raised fears of ‘rights inflation’: as the human rights label becomes more inclusive, it runs the risk of losing all meaning, power and legitimacy (e.g. Freeman 2011, 6; Bob 2009b, 10). This risk looms all the larger given the multiple ways in which the human rights concept is used nowadays (Goodale 2007; Jean-Klein and Riles 2005). It has also become clear that very different ideological projects may be advanced through the use of a human rights frame (e.g. Tate 2007; Gready 2003, 750). The human rights field is thus “a Babel of diverse voices and agendas” (Gready and Phillips 2009, 3) marked by “ideological promiscuity” (Wilson 2006, 77-78) and “indeterminacy” (Koskenniemi

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7 Existing concepts have also undergone substantive expansion. For example, ‘violence against women’ is now understood in much broader terms than used to be the case (Merry 2006a, 59-60; Halme-Tuomisaari 2010, 58-59).

8 See Bob (2009a) on the process through which new rights ‘emerge,’ when new claims are formally recognised as constituting human rights violations. Carpenter (2010) provides the flipside to this analysis by examining the failure of rights scholars and advocates to devote systematic attention to protecting children born from rape in war.

9 On the obligations of non-state armed groups, see e.g. Dudai/McEvoy (2012), Petrasek (2012), and International Council on Human Rights Policy (2006b); on obligations of companies, see e.g. International Council on Human Rights Policy (2002); on those of the World Bank and International Monetary Fund, see e.g. Skogly (2001).

10 According to Halme-Tuomisaari, human rights have become ‘free-floating signifiers:’ any speaker can define them for herself and can use them to argue for anything, including “the improved treatment of chimpanzees” (2010, 9). See also the next section on the various ways in which ‘human rights’ can be used.

11 For example, in her study of the culture and politics of human rights activism in Colombia, Tate (2007) shows that civil society human rights activists, state human rights agencies, and military officials all make human rights claims to mobilise political action to very different ends.
2011, 147-148). This universal versatility of human rights – or, their ‘universatility’\(^{12}\) – has prompted Wilson to call for a distinction between *human rights law* and *human rights talk* to counter “sloppiness and overgenerality” in the use of human rights terms (2007, 350). ‘Human rights law’ then refers to “positive norms in national or international law” and ‘human rights talk’ to “how people speak about those norms, or aspire to expand or interpret them in new ways” (ibid).

In light of these developments, the status of the human rights field in this new millennium is probably best characterised as a mixed picture. On the one hand, human rights have come of age to an extent that some claim we now live in the Age of Human Rights (Kennedy 2012, 20). Besides human rights advocacy and protection having become a recognised professional practice\(^{13}\) and global movement, the academic study of human rights is now widely accepted within many disciplines, current affairs media frequently report on human rights, and an extensive human rights infrastructure exists. This comprises national agencies, regional human rights courts, and special rapporteurs at regional and international level, universal periodic review mechanisms, and a growing number of complaints and monitoring mechanisms within treaty bodies.\(^{14}\) It also includes international criminal tribunals,\(^{15}\) reflecting the increased prominence of international criminal justice in the field and the rapid development of international criminal law since the 1990s.

In addition, nowadays human rights concerns are regularly considered in other areas, such as peace and security, humanitarian assistance, disarmament, trade, public health and development. In these various domains, “human rights has imposed itself – as a challenge to the way things have been done, and as offering a new way of doing things” (Petrasek 2011, 108). For example, the assessment of peace processes and agreements in terms of consideration of human rights concerns and compliance with international standards has become an established practice (e.g. Human Rights Watch 2009; International Council on Human Rights Policy 2006a; Bell 2000). Development

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12 Audience member, at seminar on ‘Global Values in Changing World: Challenging Universality’ hosted by the Society for International Development (Netherlands section), together with Amnesty International and the National Committee for Sustainable Development and International Collaboration (NCOO) in The Hague, 14 September 2011. From his later comments it transpired the term ‘universatility’ was a slip of the tongue; it matches Wilson’s notion of the ‘promiscuity and slipperiness’ of rights talk (2006, 77-78).


14 Special Rapporteurs are individuals mandated to investigate, monitor and recommend solutions regarding specific human rights problems; they work independently and on behalf of international and regional organisations (United Nations, African Union, Organisation of American States). The universal periodic review is a state-driven process under the auspices of the UN Human Rights Council that examines the human rights performance of all UN member states (see *Resolution Adopted by the General Assembly on 15 March 2006*, UN Doc. A/RES/60/251). Treaty bodies are commissions set up by a treaty to monitor state compliance with their treaty obligations.

15 The permanent International Criminal Court and temporary bodies such as the International Criminal Tribunals for the Former Yugoslavia and Rwanda, and Special Courts for Sierra Leone, Lebanon, East Timor, and Cambodia.
bodies, governmental and non-governmental, widely use a ‘human rights based approach’ to development (e.g. Gready and Ensor 2005a). The continuing advance of human rights is also illustrated by the currency that the doctrine of ‘responsibility to protect’ has gained over time. State sovereignty is no longer necessarily an insurmountable obstacle when persons commit serious violations of international human rights and humanitarian law (e.g. Parlevliet and Eijkman forthcoming). In general, international relations have ‘judicialised’, in that there is much more emphasis on law (and, especially, human rights) and legal institutions in nations’ dealings with one another (Oomen 2005, 890).

Yet this upbeat “story of gradual, global human emancipation” is tempered by accounts suggesting ‘a crisis in human rights’ (e.g. Pedersen and Murray 2012; Bullard 2008) or even the ‘endtimes’ of human rights (Hopgood 2013). A bleaker image indeed emerges when considering, for example, infringements of human rights due to strict security measures related to the ‘war on terrorism’ (e.g. Eijkman 2014; HRW 2012; OHCHR 2008). There is also renewed resistance to human rights – not just in non-Western parts of the world, but also in countries that have traditionally propagated the human rights cause in global affairs, such as the United Kingdom and the Netherlands. Meanwhile, the increased profile and influence of (international) human rights organisations has raised questions about their legitimacy and accountability (e.g. Petrasek 2011; Hobe 2011; Mutua 2007). Questions about impact are not far behind. The gap between activism and the actual realisation of human rights – which has been a feature of the field from the start – has become all the more manifest and all the more frustrating as human rights have gained prominence (e.g. Dudai 2007, 1264; Khan 2005, 3). It is further laid bare by the growing body of

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interdisciplinary research and a greater emphasis on assessing impact within the field.21

2.2 Key Ideas

Despite contestation over origins and some “doctrinal ambiguity” (Wilson 2006, 78), it is possible to distil several ideas that are central to the field. The “human rights orthodoxy” (Dembour 2010) conceives of human rights as rights inherent to all human beings, irrespective of colour, sex, religion, national or ethnic origin, nationality, place of residence, language or any other status.22 Human rights are “those rights one has by virtue of being human” (Donnelly 2003, 7; Dembour 2006, 1) — an understanding that draws on natural law. Another standard definition is more egal positivist, depicting human rights as rights set down in treaties, conventions and international customary law (e.g. Omen 2011, 3; Buergenthal 2007, 1).

Such established notions reflect that human rights are believed to belong to everyone and that they are bound up with law; they are, as Freeman observes, “to a considerable extent, though not wholly legal” (2011, 4; also Mertus 2011, 128). The 1948 Universal Declaration of Human Rights (UDHR), proclaimed by the UN General Assembly as a “common standard of achievement for all nations”, holds pride of place in contemporary human rights thinking (ibid; Halme-Tuomisaari 2011, 68), as do the notions of human dignity, equality and non-discrimination contained within it.23

Human rights orthodoxy places much emphasis on the state and on the individual: human rights have traditionally been seen as (legal) entitlements protecting individuals against abuse of power by the state, or, put differently, as rules and standards that regulate the conduct of states towards persons within their jurisdiction. In the field, the state is referred to as a ‘duty-bearer’, as it has obligations ‘to respect, protect and fulfil’ human rights, which involves refraining from certain actions (such as torture) and acting in particular ways (e.g. taking measures to ensure equal access to health care).24 Such obligations exist first and foremost in relation to individuals, referred to as ‘rights-holders’. Yet, as human rights standards and their contents have evolved, it is increasingly accepted that groups may be rights-holders.

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21 For example, statistical research has cast doubt on claims about the positive results delivered by international human rights instruments and mechanisms (e.g. Hafner-Burton/Ron 2009, 370-373). Ethnographic research has pointed to possible complicity of human rights practices with structures of state violence, see e.g. Jensen/Jefferson (2011), Hornberger (2007).


23 Ibid; see also 1948 Universal Declaration, op.cit.

24 ‘Respecting’ human rights means that the state should not violate human rights itself; ‘protecting’ means that it should protect individuals and groups against human rights abuses by others; and ‘fulfilling’ means that it should take positive measures to facilitate people’s enjoyment of human rights (Howard-Hassman 2012, 93).
The Human Rights Field

too and that there are duty-bearers beyond the state. Human rights are thus concerned with the relationship between rulers and ruled – how the state and public institutions should treat individuals and groups. They are meant to make power accountable (Gready and Phillips 2009, 1; Tate 2007, 5), and favour an ethos of political democracy and constitutionalism (Mutua 2002). An implicit assumption is the existence of a functioning state.

The field further considers human rights to be universal, inalienable, indivisible, interrelated and interdependent in nature. This is field-specific terminology that warrants explanation, and links to the idea that human rights are grounded in or derived from the inherent dignity of every human person. In Howard-Hassmann’s words, this human dignity “requires that individuals be treated as autonomous human beings, living in societies where they are recognised as persons of value, where they do not suffer from discriminatory legislation, where they are able to participate in collective decision-making, and where they can freely pursue their interests” (2012, 107).

The presumed universality of human rights, while much contested over time, remains a core tenet of the human rights field; according to OHCHR, it is “the cornerstone of international human rights law”. Human rights advocates may thus point to the fact that states around the world have signed major human rights treaties, to support the claim that these instruments truly reflect global norms. Nevertheless, the on-going debate on universality has led to growing recognition in the field that the local application of human rights may differ from their global formulation due to region- or culture-specific values (Smis and others 2011, 16).

Meanwhile, as the human rights concept has expanded over time, social justice concerns have gained ground, usually framed in terms of economic and social rights. These days, more attention is devoted to promoting a fair and equal division of power, resources and opportunities beyond the political realm than used to be the case (Chong 2010). This is accompanied by a strong emphasis on protecting the

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25 Group rights are rights held by a group rather than by its members individually, or rights held only by individuals within the specific group, such as the right to self-determination.

26 As noted in the previous section, non-state actors, multinational companies, and international financial institutions are increasingly thought to have human rights obligations as well; for references, see fn. 9 above.

27 These terms reflect the idea that everyone everywhere has human rights (universal); that human rights cannot be taken away (inalienable); that all human rights carry equal weight (indivisible); and that no single right can be fully enjoyed without the other rights, or, put differently, that the realization of one right usually depends (in whole or in part) on the realization of other rights (interdependent and interrelated).


29 See also the discussion at 2.5.4.

30 This development has largely taken place from the 1990s onwards. Leading international human rights NGOs, Amnesty International and Human Rights Watch have taken up the cause of social and economic rights after...
vulnerable and powerless, [...] the weakest and most excluded'; for Merry and others, this is "clearly fundamental to the aspirations of human rights" (2010, 102; Ibhawoh 2007, 93-94).

Yet for many, human rights are not solely a language of protection; they are just as much a language of empowerment (e.g. Fukuda-Parr 2009; Ignatieff 2001). Human rights supposedly enable people to defend themselves "from what they consider unjust and define for themselves what their individual aims and ends are [...] and to insist that one’s choices be tolerated" (Brown 2004, 455, 458). This reflects the belief, widely held in the field, that the language of human rights and the associated system of law "can inaugurate a different distribution of power and order of justice" (idem, 458). From this vantage point, human rights is much more than law – it is about challenging the status quo, emancipating the oppressed, and facilitating social change towards a more fair, equal and participatory society where people can live in dignity and freedom.

The above highlights that the human rights field is highly normative in origin and outlook. Recognising one moral universe, not multiple, it projects a certain absolutism, with simple ethical positions and a clear sense of what conditions or behaviour are 'good' or 'right' and which are 'bad' or 'wrong' (Koskenniemi 2010, 48; Riles 2006, 56; Mutua 2002). Within these parameters, the field brings together a wide variety of claims, as alluded to before. Merry and others observe that actors may focus on human rights as a system of law (focusing on legal instruments, codification, enforcement), as a set of values (focusing on the aspirational, the principled, social justice and social change), or as a vision of good governance (highlighting process matters such as participation, accountability, transparency) (2010; Rosen and Yoon 2009; Tate 2007, 8).31

Often human rights actors straddle different conceptions in their work, mixing what Chong (2010) calls legal and moral approaches to human rights.32 This is reflected in a speech by the then head of a leading international human rights NGO: "Our challenge is to reframe the debate on human rights, not simply in terms of law but in terms of what is right and what is wrong [...] as a moral argument based on fundamental values. [...] Human rights is about values, not only laws and systems, it is about voice, not only text. It is about the lived experience” (Khan 2005).

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31 The ‘process’ dimension of human rights has especially gained prominence in development cooperation, in the context of the human rights based approach to development referred to earlier; see Gready/Ensor (2005a).

32 Legal approaches rely on legal documents, discourses, authority and procedures to define rights and their practical expression, while moral approaches delink human rights from their international legal sources, and typically interpret rights as basic moral principles synonymous with equality, justice, participation, empowerment and dignity (Chong 2010, 3-6; 133-135). See also the discussion of human rights practices at 2.4 below.
Human rights thus constitute, as Gready and Phillips note, a “dual discourse of violence and violations (victims, perpetrators, witnesses), and of idealism and resistance” (2009, 9). The frames projected by the field are generally binary in nature, as a sample of prominent pairings shows: victim/perpetrator; rights/duties; state/citizen; civil-political/social-economic; relativism/universalism. Such binaries, while not unique to this particular field, have become “crucial fault-lines within rights discourse and practice” (Gready 2003, 751). They “are not neutral, but establish meaning through opposition and hierarchy” (ibid). The overarching binary in human rights, heavily invested with oppositional value and implying an urgent need to take action, is that of right/wrong. Stories of human rights get told in a Manichean frame of black and white, projecting a stark picture of a dangerous world where heroic rights defenders fight to protect human dignity and secure a future built on respect for human rights (e.g. Merry 2005, 251). Embedded within this frame is an aversion to compromise.

Another assumption is that advancing human rights means not only engaging with suffering but also entails struggle or battle. The UN hence issues principles to ‘combat’ impunity, states sign treaties to ‘eliminate’ all forms of discrimination, and persons seeking to protect rights are human rights ‘defenders’. Meanwhile, researchers title their books ‘Fighting for Human Rights’ (Gready 2004a), ‘Rights in Rebellion’ (Speed 2007a), or ‘Counting the Dead’ (Tate 2007). They refer to human rights as ‘shields’ or a ‘bulwark’ against state power (respectively Brown 2004; Dudai and McEvoy 2012), and write of activists ‘taming authoritarian regimes with courage, principle and ambition’ (Press 2011). Strong images are used to denote certain roles; the human rights arena has clear heroes, reprehensible villains and vulnerable victims (e.g. Mutua 2002; Ihawoh 2007). Such imagery may only have intensified with the rise of international criminal justice, given its emphasis on holding perpetrators accountable and restoring the dignity of victims.

Arguably, the notion of human rights as a ‘fighting creed’ entailing a ‘call to arms’ (Ignatieff 2001, 22) may have affected the field’s perspective on the use of violence to

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33 The field’s Manichean frame transpires from a comment a human rights practitioner once made to me: “a human rights violation has either taken place or it has not, in the same way one is pregnant or not.”


37 Mutua (2002) argues that a ‘damning metaphor’ runs through the human rights field, that of ‘savage-victim-saviour,’ with each dimension constituting a metaphor in its own right. Kate Gilmore, the former Executive Deputy Secretary General of Amnesty International, reportedly shares this view, considering it to have been “at the heart of traditional INGO human rights work for years” (Hortsch 2010, 147).
protect human rights. Human rights scholar-practitioner David Petrasek asserts that
the imperative of ‘peace’ – as in preventing war and addressing conflict by non-violent
means – has gradually become delinked from human rights discourse. In his view, an
initial concern with finding alternatives to war post-1945 gave way to a focus on
monitoring abuses committed during armed conflict (1960s-1990s); the emphasis
then shifted to judging peace by human rights criteria (1990s to mid-2000s); more
recently, human rights have increasingly been used to justify armed interventions on
foreign territory. With reference to the ‘responsibility to protect’, Petrasek contends
that one can now speak of ‘the human rights war’, in which war is waged to protect
victims of abuses and prevent further violations’ (also Gready 2003, 749; Ignatieff
2001).38

While it is too blunt a claim that field actors now generally support using violence to
protect rights – human rights NGOs have been divided over a potential military
response in Syria, for example39 – it is fair to note that human rights advocates do not
reject violent conflict per se. Some attribute this to the fact that human rights work is
based on international law, which regulates rather than prohibits war (Lutz, Babbit,
and Hannum 2003, 179-180).40 Nevertheless, the notion of non-violence is not absent
from human rights discourse. For example, the 1998 UN Declaration on Human Rights
Defenders states that those seeking to protect and promote human rights must
conduct their activities peacefully.41 The field’s emphasis on legal and judicial
solutions to rights concerns can also be seen as reflecting a desire to limit the use of
force.42

2.3 Key Actors

The human rights field comprises many different actors, organisations and
institutions.43 These can be categorised in terms of the level at which they operate

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38 Inaugural lecture ‘Can Bombs Lead to Peace?’ (together with Alvaro de Soto), 3 May 2011, Dialogue Advisory
Group, at http://www.dialogueadvisorygroup.com/wp/?page_id=1623. Petrasek is a former Special Adviser to
the Secretary-General of Amnesty International, and previously worked at the UN Office of the High
Commissioner for Human Rights, the International Council on Human Rights Policy, and the Centre for
Humanitarian Dialogue.

39 See Alex Rogers, “Human Rights Groups over Potential Syria Intervention,” at TIME.com’s Swampland, 30
August 2013, http://swampland.time.com/2013/08/30/human-rights-groups-divided-over-potential-syria-
intervention/ (hereafter Rogers “Human Rights Groups”) and various posts at the blog Justice in Conflict,
http://justiceinconflict.org/category/responsibility-to-protect-r2p/.

40 Amnesty International and Human Rights Watch have indeed repeatedly stressed that they do not take a
position on the use of force in international relations. See for example Rogers “Human Rights Groups”, and
“Questions and Answers” on Amnesty International’s website http://www.amnesty.org/en/news/syria-possible-

41 Declaration on Human Rights Defenders, 1999, op. cit. On the difficulties of applying the ‘non-violence’
criterion in the context of an occupation and violent conflict, see Jaraisy/Feldman (2013) and Nah and others
(2013, 403-405).


43 This section focuses solely on actors explicitly seeking to protect and promote human rights. It does not
consider others whose actions affect human rights in any specific context, such as companies, financial
(international or domestic) and their sphere of activity (public or private). While such distinctions are useful for analytical purposes, it is worth noting that various actors transcend them by, for example, undertaking activities that connect the international and domestic realms (Landman 2006, 19-20).

Given the emphasis on the state in human rights thinking, it is not surprising that public institutions play an important role in human rights practice. At international level, the UN system has been a chief actor, facilitating standard-setting, institution-building, and the promotion of human rights (idem, 20-23; Freeman 2011, 58-60). Regional mechanisms are relevant too. At domestic level, both governmental agencies and independent state-sponsored bodies – e.g. national human rights commissions or ombudsman’s offices – contribute to the realisation of human rights. The latter, usually referred to as national human rights institutions, have rapidly increased in number around the world from the 1990s onwards (Parlevliet, Lamb, and Maloka 2005b; International Council on Human Rights Policy 2004; Human Rights Watch 2001).44

The empirical material in subsequent chapters focuses more on private, not-for-profit, organisations. It is widely recognised that non-governmental organisations (NGOs) and other civil society actors have been essential in the advance of human rights (e.g. Hobe 2011; Merry 2003). They have shifted paradigms (by framing issues such as ill health, poverty, and homelessness in terms of human rights rather than as personal or social problems), made law (by, for example, suggesting the idea of a permanent international criminal tribunal, lobbying for its establishment, and providing expertise), and served as monitors (Glasius 2009). For Mutua, international non-governmental organisations (INGOs) have been the field’s ‘prime engine of growth’ (2001, 151). The most prominent are Amnesty International (AI, founded in 1961), Human Rights Watch (HRW, 1978), the International Commission of Jurists (ICJ, 1952), and the International Federation for Human Rights (FIDH, 1922).45 Their influence is such that they function as ‘gate-keepers’: the establishment of new standards depends in large part on their endorsement of previously ignored grievances as genuine human rights claims (Carpenter 2010; Bob 2009a).

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44 The UN defines national human rights institutions as bodies established by governments under the constitution, by law or decree, to protect and promote human rights. It distinguishes three main types: human rights commissions, ombudsman’s offices, and specialised institutions focusing on the rights of specific vulnerable groups such as minorities, women, etc. For more information, see Parlevliet and others (2005a), also International Council on Human Rights Policy (2002), Human Rights Watch (2001). Chapter 6 refers to two examples of such bodies, the South African Human Rights Commission and the Office of the Public Protector.

With the international legal human rights framework as their point of departure, these and other INGOs have been very active in monitoring human rights abuses around the world and mounting public campaigns to pressurise states and international organisations to take action to stop such violations (Landman 2006, 23). A perception persists that they prioritise civil and political rights, but most now work across the entire spectrum of human rights (Petrasek 2011, 11). While the size and organisational structure of human rights INGOs varies, they are usually based in the West. Despite their global orientation – manifested in various country offices, local chapters or partnerships with domestic NGOs – and a culturally diverse staff, their internal culture is mostly shaped by white, middle class, Euro-American men (Hopgood 2006, 75-101; Landman 2006, 25; Mutua 2002). These are professional organisations with access to legal expertise and cosmopolitan knowledge, and with staff members who are at ease using the human rights system and handling its many acronyms: "they know how to present cases, which conventions to use, and how to speak in such a way that grievances can be heard" (Merry and others 2010, 102; Merry 2006a; Kennedy 2002). As such, they tend to 'think down' rather than 'up,' bringing international standards to bear on national and local settings.

Similar NGOs dedicated to human rights exist at the national level too. They vary in form, size, focus, type of activities, and the extent to which they are open to working with various organs of their own state. Those that concentrate on monitoring, reporting and advocacy tend to keep at a distance, emphasising independence and impartiality.

Beyond these professional NGOs, which tend to be elitist (Mutua 2007; Massoud 2011), there are many more domestic civil society actors that work on human rights in some way, including churches, women’s collectives, indigenous groups, professional associations and social movements. Often more grassroots-based, their efforts may entail more human rights talk than human rights law (see further below at 2.4). While these activists are usually less powerful and less versed in the technical legal features of human rights, they may carry considerable clout within the field itself and when engaging with the state. This stems from the numbers of people they can rally and their rootedness in a given context, which provides direct access to lived experience. Coalitions with elites, both domestic and international, also help. Much scholarship exists on the significance of transnational advocacy networks linking grassroots

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46 The slogans and/or ambition listed on their organisational websites reflect this global orientation: ‘Working to Protect Human Rights Worldwide’ (slogan Amnesty International); ‘Defending Human Rights Worldwide’ (slogan Human Rights Watch); ‘to embody a world movement for Human Rights’ (listed as FIDH’s ambition).

47 Examples of this continuing perception can be found in Mutua (2007) and Ibhawoh (2007).

48 This term refers to Northern countries with a Judeo-Christian heritage (Bell/Coicaud 2007, 3).

49 On the prevalence of acronyms in the human rights field, see Halme-Tuomisaari (2010, 149-151) and Merry (2006a, 36). Acronyms used refer to treaties (ICCPR, ICESCR, CEDAW, CRC), institutions (NHRIs, for national human rights institutions), particular practices (e.g. FGM for female genital mutilation, GBV for gender-based violence), and to other entities (WG, working group).

50 Chapter 5 discusses one such domestic human rights NGO, Lawyers for Human Rights (South Africa).
activists and national NGO workers with international counterparts (Glasius 2009; Gready 2004b; Risse, Ropp, and Sikkink 1999; Keck and Sikkink 1998).

What generally unites these various actors is their faith in human rights, a “belief that human rights are a good thing” (Coomans, Grunfeld, and Kamminga 2009, 13). Their emotional investment in human rights prompts some activists and/or observers to speak of ‘vocation’ or ‘devotion’ (e.g. Tate 2007, 27; Kennedy 2002, 102). Their passionate engagement suggests “a kind of secular religiosity born of collective action, sacrifice, and suffering” (Hopgood 2006, 216). A sense of moral superiority may thus ensue (idem, 166), a notion that human rights advocates have a “monopoly on virtue” (Mutua 2002, 15). One observer hence describes human rights organisations as “a source of hope and idealism among well-meaning do-gooders” (Nader 2010, 325). Another remarks that “disturbingly, the human rights movement often acts as if it knows what justice means, always and for everyone – all you need is to adopt, implement and interpret these rights” (Kennedy 2012, 52). Close personal bonds amongst activists and experts, forged over time while fighting for a common cause and attending meetings around the world, boost sentiments about ‘doing good’ and ‘fighting injustice’, while fortifying the consensus about the primacy of international standards (Hornberger 2007, 135-137). They perceive of the treaties and declarations as “self-evident, their alidity and authority axiomatic” (Dudai 2006, 784).

Notably, this frame of mind and the ‘self-referential nature’ of such networks (Hornberger 2007, 135) tend to leave little space for questioning human rights. According to two researchers working in a European rights organisation with an international reach, criticism is often frowned upon and may be construed as “tantamount to heresy” (Jensen and Jefferson 2011, 1). Writing by a well-known human rights lawyer from Northern Ireland indeed reflects that critique, even from colleagues in the field, can be perceived as ‘an unwelcome distraction from what could literally be life-and-death battles’, prompting questions as to whether ‘that is the best use of one’s time and powers of analysis’ or ‘why should our enemies be handed their arguments on a plate?’ (Bell 2012, 219). Alternatively, those who challenge the moral authority or foundation of human rights may encounter reminders that they can only do so “to the extent that their own human rights are not unduly restricted and denied” (Fagan 2009, 2). The practical working conditions of human rights lawyers may feed into this, as these conditions “do not allow them to spend time

52 On human rights being considered self-evident, see also Hoffmann (2011, 1), Koskeniemmi (2011, 123), Halme-Tuomisaari (2010, 17-19, 147).
53 Christine Bell served as a Commissioner on the Northern Ireland Human Rights Commission and used to be very active in the Committee on the Administration of Justice, a leading Belfast-based human rights NGO (see further chapter 8). These references stem from a chapter in which Bell reflects on the anger she felt when first reading a now seminal piece by critical legal scholar David Kennedy (2002), which questioned whether the human rights movement was ‘part of the problem’. Bell is not alone in pointing to the ‘life-and-death’ dimension of human rights work (e.g. Felner 2012; Grant 2011; Pogge 2007; Khan 2005).
engaging in forms of critical thinking that foreclose progress in clear plans of action or straightforward imperative goals” (Hornberger 2010, 267; Riles 2006).

Yet scholars appear to refrain from criticism too. Many consider human rights a worthy moral cause that “should not be exposed too closely to an analytical gaze that might rob it of its moral high ground” (ibid). Others want their research to enhance respect for rights, and are loath to criticise international rights bodies for fear of weakening them (Coomans, Grunfeld, and Kamminga 2009, 13). Langlois thus argues that “the very rhetoric of the human rights movement, with its built in moralism and boosterism, makes it hard to consider that 'human rights might be a bad thing', or that they may not be the best [or] the only framework for considering serious problems [...] within the international system”. Questions along these lines are hence “anathema to the activists and scholars promoting human rights” (Hafner-Burton and Ron 2009, 362). The legal background of many in the field may contribute to this: their focus is on law, not on how it functions in society, ‘where law meets reality’, as a group of authors from Africa puts it (Okello and others 2012).

### 2.4 Key Practices

The discussion thus far has already alluded to some practices within the human rights field, such as monitoring and reporting. This information gathering, evaluation and dissemination is one of the most important practices (Dudai and McEvoy 2012; Wiseberg 1992). Generally entailing “the relentless cataloguing of depressing statistics” (Tate 2007, 26), monitoring may involve fact-finding and investigation of specific events. Reporting combines factual documentation on the extent and frequency of a particular problem or practice with personal testimonies of victims of violations, presenting “simple story lines of suffering and responsibility” (Merry 2005, 241). A legal analysis of why and how the problem or practice violates universal norms, supported by lots of footnotes, often complements this, especially when published by law-oriented organisations like AI, HRW, and UNOHCHR and their local counterparts.

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54 Admittedly, such practical constraints are not unique to human rights lawyers; Verkoren observes similar obstacles to reflection and learning amongst Southern peace NGOs (2008, 282-296).

55 Langlois, blogpost “Human Rights in Crisis?”, op.cit.

56 Traditionally, this practice focused solely on government behaviour as only government was formally accountable in terms of international standards (see also chapter 8). Nowadays many human rights actors monitor and report on the behaviour of various non-state actors, using international human rights and international humanitarian law as a yardstick.

57 The first-person testimonies tend to serve three functions: they strengthen the fact-finding presentation; they give voice to the victims; and they add emotional, non-legal, language to a report that its writers feel they cannot include themselves because it might diminish the report’s professional and objective tone (Dudai 2006, 790).

58 Human rights reports have become so visible and credible that it has been suggested that they constitute a new literary genre (e.g. McClennen/Slaughter 2008; Dudai 2006). For an early anthropological analysis of human rights reports, see Wilson (1997b, 134-160).
The Human Rights Field

Human rights reports are meant to convey technical expertise, professionalism, impartiality and objectivity – “one is not pro or anti Israeli, pro or anti Palestinian, one simply looks at reality, compares it to human rights norms, and does the maths” (Dudai 2006, 784). Memorably described as “advocacy with footnotes” (idem), such publications are designed to generate both outrage and action, laying claim to truth and certainty (Merry 2005). They uncover and bear witness to what is unknown in terms of human rights violations yet also publicise ‘public secrets’ – information that is known but denied by authorities and/or others implicated in abuses (Tate 2007). This practice seeks to stir up public pressure and to mobilise shame so as to force the relevant actors to change their practices. It is therefore often referred to as ‘naming and shaming’ (e.g. Dudai and McEvoy 2012; Hafner-Burton 2008).

Closely related are the practices of advocacy and lobbying, in which context human rights actors speak out against abuses and alleged perpetrators and rally support for measures necessary to ensure meaningful respect for human rights. They may also try to prod the state to comply with its commitments by pointing out violations before international rights bodies and soliciting critique that can be mobilised in the national context (Oomen 2013). The field’s readiness to challenge and ‘stand up for what is right’ is reflected in such practices, which are largely adversarial in nature.

In their recommendations, human rights actors tend to focus on legal solutions relating to accountability, legislative reform, ratifying of treaties and enhancing existing rights bodies. Actual efforts towards codification of norms and institution-building to facilitate and enforce their implementation constitute another key practice. Such efforts target both the international and national levels; the adoption of domestic legislation incorporating international standards is a priority for human rights actors. A relatively new area of practice is that of human rights impact assessments, which entails measuring the impact of policies and other interventions (for example, business activities or trade agreements) on human rights, so as to prevent negative effects and maximise positive ones.

A more classic area is litigation of human rights cases before national, regional and/or international courts, in order to obtain a judicial order instructing the relevant state to abide by its treaty obligations. Litigation is often pursued in relation to cases that are considered strategic because of their potential to result in jurisprudence that will contribute to institutional reform. Since the mid-1990s, another adversarial practice has gained much ground: the criminal prosecution of individuals allegedly responsible

59 Not all reports are directly geared towards naming and shaming. Human rights NGOs may publish alternative reports to international human rights bodies that parallel official government reports, known as shadow reports.
60 See e.g. the Human Rights Litigation Report (Open Society Justice Initiative 2012) or Hannum’s discussion of cases of human rights violations in Northern Ireland filed under the European Convention on Human Rights (2009). See also below on limitations of litigation (2.5.1, 2.5.2), and chapter 7 for considerations amongst staff members of South African human rights NGO Lawyers for Human Rights about the use of litigation to protect the rights of farmworkers (7.2.1).
for serious violations of international human rights and humanitarian law. This is pursued through international and national courts.

A practice underlying or accompanying many of the above strategies is sharing technical expertise with other actors, for example government authorities, security forces, international human rights bodies or local rights groups. Providing legal aid to victims of rights violations to facilitate redress, for example by training and deploying paralegals, has less of an elite focus. This also applies to the mobilisation of the general public and/or grassroots communities around specific issues, such as blood diamonds and landmines. Mobilisation is also often less law focused, with human rights serving as moral principles related to justice, equality, dignity, and as a practice of claims making to generate social and political action, which may include legal accountability but not necessarily so (Merry and others 2010; Chong 2010). According to Chong, such a moral approach seems to hold less legitimacy within the human rights movement, especially amongst gatekeeper organisations for whom ‘real’ human rights work requires explicit references to international documents and taking “advantage of the legal accountability that is ostensibly central to a rights‐based approach” (2010, xi; also Stammers 1999, 991). It has however gained currency, especially in relation to subsistence rights (idem; Heywood 2009; Gready 2004).

Human rights education and training programmes constitute the last key practice noted here. This is a favoured form of intervention, considered essential for empowering people to defend their own rights and those of others. Many authors hence advocate a participatory and experiential methodology to enhance people’s ability to take action. In practice, however, much human rights education has a legal and top-down orientation, focusing on “the formulaic delivery” (Phillips and Gready 2013, 217) of global standards with little regard for the moral, social and political aspects of human rights or people’s lived realities. Falling short in ‘walking the talk’, it seems to conceive of learning as a process in which knowledge is transmitted from those ‘who know’ to those who do not (Halme-Tuomisaari 2010, 119-170; Hornberger 2007, 139-156; Parlevliet 2004). This approach to human rights education stresses content knowledge and thinking skills with no regard for action or empowerment, according to Felisa Tibbits, a scholar with much practical experience (2002, 163-164). Yet education that merely entails “rather vague talk about ‘human rights

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63 The studies referred to focus on three different contexts: human rights education of graduate students by a Scandinavian network of human rights academics (Halme-Tuomisaari 2010); human rights education within the South African Police Service, designed by international human rights organisations (Hornberger 2007); and non-formal human rights education conducted by the South African Human Rights Commission (Parlevliet 2004).

64 Tibbits has focused on human rights education since 1991. She is the founder and senior advisor of Human Rights Education Associates, a NGO dedicated to human rights education and training known, which she directed.
values” (Phillips and Gready 2013, ibid) without engagement with the international legal framework, has also been questioned. The place of law in human rights education and training thus remains unresolved.

2.5 Contradictions and Conundrums

When the field is reviewed, some tensions become clear. The gap between the normative ideals embodied in human rights standards and the practical reality of ongoing violations around the world has already been noted; human rights are both omnipresent and absent at the same time (Hornberger 2010, 268). The dual role of the state constitutes another contradiction inherent to the field: the state is considered both the principal protector and primary violator of human rights. Less obvious and explicitly acknowledged is what Dudai (2006) calls ‘the emotional/rational dissonance’. He observes that emotions and morality are at the core of the human rights undertaking, but the law-based rational ‘footnotes format’—essential to the work of many human rights actors—is anything but emotional and compassionate. Instead it imposes a “kind of cold and slightly tedious legal sophistry” (idem, 787) which is a far cry from the emotional call that tends to drive actors in the field and that can mobilise support most efficiently (idem, 789–790).

Without claiming to be exhaustive, this sub-section discusses four contradictions that run through the human rights field and have particular relevance for the forthcoming exploration of empirical material. These are set out below as they point to the field’s limitations and feed into the process of comparing the fields of human rights and conflict resolution (chapter 4). They also help to frame the discussion in chapters 5 to 8, and the concrete situations considered there shed further light on them.

By way of summary, the first contradiction considered below regards the legalistic and fairly technocratic character of (much) human rights thinking and practice, while the second relates to the symptom-oriented nature of much work in this field. The third concerns human rights’ ambivalent relationship with power and what this means for their transformative potential. The fourth relates to human rights’ difficulty to accommodate the specificities of local circumstances and contexts within its framework of global standards.

2.5.1 Broad Concept, Narrow Take: Human Rights as Legalistic, Technocratic and Non-Political

Despite the expansive vision of human rights put forth by the concept’s advocates, “the reality of the concept at work” may be very different (Pedersen and Murray 2012, 3). Gready and Ensor argue that a ‘legal reflex’ is at play in much human rights

from 1999 to 2011; see www.hrea.org. She also established the Human Rights in Education Program at the Carr Center for Human Rights Policy at the Harvard Kennedy School of Government (2012-2013).
discourse; this refers to “the automatic and unthinking resort to the law in the belief that it is the most effective and perhaps only form of protection and remedy” (2005b, 9). For many in the field, human rights are only effective and/or meaningful if embodied in positive law and made justiciable – i.e. enforceable in a court of law.65 This was long a key reason for powerful human rights organisations to pursue human rights related to food, housing and health care less vigorously than civil and political rights (e.g. Freeman 2011; Chong 2010). The emphasis placed on the legal recognition of human rights and the creation of legal machinery to implement standards seems to suggest that such efforts constitute an end in itself, rather than a means to an end. This tendency to ‘foreground form’ (Kennedy 2002, 110) or bias towards legal positivism (Stammers 1999) leads to “an almost obsessive focus on sub-articles, redrafting committees, textual finessing and the like” (Gready and Phillips 2009, 9).66 Such a legalistic take on human rights does not take into account the limitations of law and legal systems relating to access, effectiveness, legitimacy and implementation; for one, it assumes a functioning judicial system with a division of labour between independent organs of court operating free from societal pressures (e.g. Glasius 2008, 429; Putnam 2002).67 It also fails to recognise the substantive and strategic validity of moral approaches that use human rights talk rather than human rights law, despite their relevance for mobilisation and shaming purposes. As such, it overlooks the significance of social and political processes in ensuring human rights (Chong 2010; Heywood 2009; Gready and Ensor 2005b). Furthermore, the field’s reliance on international law means that it remains state-centric, irrespective of current realities of governance, power and sovereignty (Dudai and McEvoy 2012, 1; Petrasek 2012; Lafont 2010). It excludes consideration of everyday practices or other forms of non-official conduct (Rajagopal 2007, 281), and “raises false expectations that the state can solve social and economic problems” (Wilson 2007, 352).

The field also remains resolutely focused on the individual. It thereby downplays solidarity and community, disregards how individuals are – at least in part – shaped by the context in which they live, and stresses autonomy over interdependence, individual choice and entitlements over responsibilities (Merry 2006b; Mutua 2008; Koskenniemi 2011, 150-151). The individualism prevalent in human rights discourse – epitomised in how injustice is analysed, through individual rights violations – is also

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65 Legalisation generally refers to the state of affairs that “positive law, both international and domestic, has become the primary means through which human rights are defined, expressed, and implemented” (Chong 2010, 25).

66 Elsewhere, Gready speaks of ‘report fetishism’ and ‘report fetishisation,’ meaning “a focus on the report-writing process accompanied by a comparative neglect of the report’s wider impact” (2011, 34).

67 The law may be inaccessible to those who are most vulnerable in society and/or an effective legal system or remedy may not exist in a given context. Also, laws may contain traces of oppression or the existing judicial system may sustain or reinforce discrimination. Even if progressive legislation does exist, failure to implement and enforce it limits the law’s impact on society: norm creation is no guarantee for norm implementation (see also Gready 2011, 136-137). In contemporary Nepal, for example, caste discrimination continues to affect the functioning of the judicial system despite the practice having long been outlawed.
at odds with the reality that violations often arise in 'collective' situations, involving large numbers of people. Overall, rights violations are handled through a legal/technical framework rather than an ethical one (Cowan, Dembour, and Wilson 2001, 12). In Simmons' words, 'throwing law at human rights problems' runs the risk of neglecting "the underlying political conditions essential for rights to flourish" (2009, 7). Some thus warn against a legalisation of politics: contestation over conflicting interests and agendas is removed from the political sphere and addressed instead through technical legal means, effectively depoliticising it (e.g. Johnson and Jacobs 2004; also Wilson 2007, 351-353).

In sum, there is a contradiction between the expansive nature of human rights and the narrow take on human rights that dominates (much) human rights practice, which has been referred to as legalistic and technocratic (e.g. Kennedy 2002; Wilson 1997b; Stammers 1999). This narrow conception also lies at the root of the claim – often put forward by professional human rights NGOs and national human rights institutions – that the pursuit of human rights is not political at all since it merely involves the objective, independent and impartial application of internationally agreed standards (e.g. Dudai 2006, 784; Ignatieff 2001, 9-10; Gready 2003). While this claim is useful in certain contexts, it is also deceptive. It is hard to conceive of human rights as anything but political when considering that they are seen as a check on state power and are premised, in Brown's words (2004, 453), "on the immorality of politically induced suffering". Moreover, according to Diez and Pia, ‘reducing human rights to legal norms […] is in itself a political act that lends credibility and authority to those that speak in the name of human rights, and […] puts their claims beyond political contestation in the name of an indispensable universal truth" (2010, 50).

Finally, the process through which certain social concerns are recognised as 'human rights violations' is deeply political as it depends on a range of factors, including a tolerant context without strong state interests, few disadvantages in accepting a norm, a match between the norms and existing concerns, both political and cultural, and support from national policy-makers (Bob 2009b, 11-12; Busby 2007, 252; Gready 2004b, 9). As such, the 'broad vision, narrow take' contradiction is closely linked to another one, relating to the claim to be beyond – or above – politics and the political nature of human rights in concept and practice. A distinction thus arises between

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68 I am grateful to Marlies Glasius for pointing this out to me; see also Nouwen/Werner (2011, 1162-1163).
69 Gready (2003) uses the term ‘non-political,’ Dudai (2006) ‘apolitical,’ and Ignatieff (2001) ‘anti-political.’ See also Nagaraj/Wijewardene (2014), Koskenniemi (2011, 133-152) and Brown (2004, 453). I came across this claim myself when interacting with Commissioners and staff members of (mostly African) national human rights institutions. They often sought to project their human rights activities as being outside politics and expressed concern that ‘engaging with conflict resolution’ or ‘using conflict resolution’ in their work would be ‘too political.’
70 By projecting human rights work as ‘non-political’ (being about the technical/ legal aspects of developing and applying international standards), human rights actors can create space for manoeuvring in repressive contexts and have done so in the past at times of international polarisation (e.g. during the Cold War).
‘clean law’ and ‘dirty politics’ as if the former must (and can) be protected from the latter, without recognition that the two are inherently intertwined.\textsuperscript{71}

\subsection*{2.5.2 Deep-Rooted Problems, Surface Manifestations: Human Rights as Symptoms-Focused}

In its emphasis on non-discrimination and equality, the human rights field seeks to bring about fairness in access to and control over power, resources and opportunities. It also seeks to ensure a system of governance that protects the rights of everyone, irrespective of distinguishing features such as status, ethnicity, gender or background. This suggests that human rights actors focus on addressing deep-rooted problems in society, to rectify injustice, inequality, insecurity and indignity. This impression is reinforced by the field’s emphasis on what could be called institutional solutions – developing new standards, refining existing ones, creating procedures and mechanisms to ensure their application, establish accountability, and facilitate redress for victims of rights violations. However, as Alston already wrote in the late 1980s:

Both human rights scholarship and activism have [...] tended to ignore the structural aspects of human rights violations. Rather than focusing on ways in which to remedy the underlying problems which later manifest themselves as egregious violations, they have tended to play the role of an ambulance arriving at the scene after the accident has occurred and often too late to be of much use to any of the victims. They function as chroniclers rather than social healers (1988, 13).

Similarly, Kennedy notes that “the human rights movement practices a systematic lack of attention to background sociological and political conditions that will determine the meaning a right has in particular contexts” (2002, 110). Observing that such conditions “often do far more damage”, he speaks of a ‘tip of the iceberg problem’ (2012, 25). Others question why the human rights field prioritises redress and individual accountability over structural reforms, symptoms over causes (e.g. Gready 2003, 746), or why it focuses on recording the nature and frequency of civil and political rights violations rather than on exploring the socioeconomic and other factors that underlie them (Ibhawoh 2007, 90; Speed 2007b, 180). Admittedly, reporting procedures before the UN Human Rights Council and treaty bodies shed light on structural constraints to rights realisation, but reports considered in these forums carry relatively little weight.

According to Tate, the focus on manifestations of violence rather than its underlying causes may be inherent to the knowledge produced through human rights reporting by independent rights actors, both international and domestic. Such reporting, “like all forms of legal documentation, [...] does not address the issue of why violence happens but accountability for specific acts: who has committed them” (2007, 301).\textsuperscript{72}

\textsuperscript{71} This distinction emerges, for example, in an exchange between Nouwen/Werner (2011, 2010) and Schotell (2011) on whether the International Criminal Court can become an actor in political struggles.

\textsuperscript{72} In fact, human rights reports may not even ascribe actual responsibility to individuals, but focus on identifying the relevant norms and establishing that said norms have been violated.
She cites a Guatemalan NGO rights activist who observes "We reported the facts without judging who makes those facts happen. [...] We [...] didn't think about the political project beyond the denuncia [denouncing] of the events" (idem, 302). Wilson thus argues that reports de-contextualise violations. This may serve some functions – projecting an aura of neutrality and objectivity, or signalling that violations of universal standards cannot be justified under any circumstances – but it also depoliticises events and diverts attention from structural conditions of class or ethnicity (1997b, 145-153). Statistical and forensic methods used in courts and commissions of inquiry exacerbate this tendency, as "statistics do not in themselves explain the origins and causes of violence" (2006, 80).

Notably, this 'symptom-orientation' goes beyond human rights reporting and associated interventions such as monitoring, naming and shaming. It also appears to pervade efforts to address violations through judicial and non-judicial means. For example, national human rights institutions that handle complaints of violations have been criticized for a tendency to view them in isolation. A comparative study by the International Council on Human Rights Policy finds that such bodies seldom try to detect patterns that point to systemic human rights problems to be resolved through measures at institutional and policy level (2004, 71-72).

Human rights litigation is another case in point: it focuses on specific events in which the rights of one or more individuals were violated. While such abuses usually reflect structural conditions of repression, marginalisation or discrimination, these conditions are seldom subject to scrutiny when the evidence is evaluated; human rights law focuses on the (direct) relationship between government and citizens, not on broader problems of structural violence (Simmons 2009, 366; Kennedy 2012, 25). Even strategic litigation has limitations: despite the ambition to realise a wider societal impact beyond ensuring individual redress – through setting a precedent or fuelling reform of policy and practice in other ways (e.g. Open Society Justice Initiative 2012) – the jury is out as to whether such litigation is actually able to achieve this. Rosenberg (2008), for example, argues that human rights trials are far less likely to foster social reform or political change than is usually claimed.

The above points to a contradiction between, on the one hand, human rights’ (conceptual) concern with rectifying crucial problems in society and facilitating

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73 See Gready (2011) on de-contextualisation in the work and report of the South African Truth and Reconciliation Commission. A truth commission is an official body mandated to investigate large-scale human rights violations in a particular country committed during a certain time period; for a general analysis of such bodies, see Hayner (2011).

74 Statistical methods have gained prominence in the work of truth commissions; for a discussion and critique of their use in the East-Timor truth commission, see Roosa (2007).

75 Five case studies of national human rights commissions in Africa confirm this; see Parlevliet and others (2005).

76 On the basis of a study of human rights litigation in the United States, he finds that reform usually resulted from social and political changes already underway. See also Keck (2009) and Hannum (2009) for assessments of the impact of human rights litigation in other contexts and the extent to which it can (and does) trigger reforms.
fundamental social change and, on the other hand, the degree to which actual human rights practices focus on recording, reporting and dealing with symptoms by speaking out against them, facilitating redress, and holding those allegedly responsible to account. Notwithstanding the importance of addressing concrete rights violations, the field thus runs the risk of “big picture blindness”, with little appreciation of how “human rights concerns in the present” are linked to “structural continuities with the past” (Gready 2011) – or to the international political economy (Ibhawoh 2007, 88-89).77 This may explain the observation by Lutz and others that “most human rights NGOs have honed the skills to respond to short-term needs, but they have little experience applying long-term solutions to correct the underlying issues” (2003, 174).78

2.5.3 Challenging Power, Sustaining Power: Human Rights as Ambivalent in relation to Power79

The growing emphasis in the field on economic and social rights and social justice has made the assumption of human rights as a driver of benign social change more explicit. Much is made of the extent to which human rights allow ordinary citizens to hold the state accountable, and of the challenge that human rights present to imbalanced power relationships. This belief has been called into question, however (Pedersen and Murray 2012, 8; Brown 2004). Some argue that human rights lose transformative potential once they turn from normative claims into justiciable entitlements (e.g. Koskenniemi 2011, 133; Stammers 1999). The institutionalisation of human rights is thought to have this effect in part because it requires a degree of political consensus. The evolution of new human rights norms illustrates this: they only gain hold when backed by powerful actors who believe that a right deserves acceptance as a formal standard (Bob 2009b, 8). Moreover, once codified, human rights still need interpreting and enforcing, which is conducted by institutions rooted in the political, social and economic status quo (Pieterse 2007, 797).80

In Koskenniemi’s view, therefore, “the social meaning of rights is exhausted by the content of legal rights, by the institutional politics that give them meaning and applicability. From a condition or limit of politics, they turn into an effect of politics”

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77 According to Ibhawoh, since the human rights framework assumes primary responsibility for abuses to lie with states and governments, there is little attention for how human rights conditions in the South are affected by larger issues of global inequities, the role of international financial institutions and transnational corporations (2007, 88-89). See also Nagaraj and Wijewardene, who argue that human rights activists in Sri Lanka insufficiently confront issues of class and political economy in their practice. As a result, they tend to work “piecemeal on issues” and risk being conditioned “to work within the boundaries set by the system” (2014, 415-416).
78 This issue will be further discussed in chapter 7, section 7.1.
79 The notion of human rights ‘challenging and sustaining power’ is drawn from Stammers (1999); both he and Greedy (2011, 234) speak of human rights having ‘an ambivalent relationship with power’.
80 A variation of this argument is the suggestion that human rights get ‘tamed’ when they are transformed from global standards into domestic law (Halliday and Schmidt 2009, 9).
Human rights do not greatly differ from other types of law in this regard, and the limitations of law to serve as an agent of social transformation have already been indicated. The double-edged nature of law is another factor to take into account: while law can be used to challenge power, it can also be used to sustain it (Abel 1995; Wilson 1997a). This also applies to human rights. It has been observed, for example, that strong provisions for protecting human rights written into South Africa’s post-apartheid Constitution have helped to preserve white economic privilege through private property rights (Koskenniemi 2010, 53; Mutua 2002). The inclusion of socioeconomic rights only corrects this to a limited extent, as the Constitutional Court has approached such rights cautiously (e.g. Pieterse 2007).

It is debatable whether more can be expected of human rights in their ‘non-legal form’ when actors seek to challenge an unjust status quo (Stammers 1999). Even then, framing social and political concerns in terms of human rights may come at a cost. Rights talk can “narrow or limit the discursive resources available to civil society groups by suppressing alternative claims rooted in labour-based organising, nonalignment or nationalism” (Massoud 2011, 17; Oomen 2011, 20) – an observation echoed in Kennedy’s famed claim that human rights “occupies the field of emancipatory possibilities” (2002, 108-109). Yet ‘rival idioms of social and political protest’ may be more effective or appropriate in a given context (Hafner-Burton and Ron 2009, 393). Reliance on rights talk may also shift the attention of civil society actors from fighting for their demands to be met to fighting for recognition of their right to make the demand in the first place (Pieterse 2007, 815). This can lead to empty victories; in Gready’s words, “where we previously had resistance, we now have human rights” (2011, 234).

The above points to a contradiction between the extent to which human rights are claimed to be – and can function as – a hefty sword to advance the interests of the weak and marginalised, and the way in which they may be used as a shield to maintain the existing division of power, resources and opportunities in society. A final point and further contradiction worth noting here relates to the power of and in the human

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81 South Africa under apartheid exemplifies this: the legal nature of the regime enabled the opposition to use law to fight power (by, for example, litigating against the pass laws), but also helped the state to maintain power as it used legal institutions to administer apartheid. Most legal challenges mounted by the ANC and others failed (Abel 1995). The double-edged nature of law persisted after apartheid: for example, individuals responsible for apartheid crimes used law to prevent the Truth and Reconciliation Commission from naming them (e.g. Gready 2011, 42-43).
82 See also chapter 8, sections 8.1.2 and 8.2.
83 The Court has probably focused more on government’s compliance with general principles of good governance in its design and implementation of socioeconomic policies than on addressing “the survival interests of poor and vulnerable sectors of society” in line with the content of socioeconomic rights (Pieterse 2007, 811).
84 See Speed (2007a; 2007b) on the non-legal form of human rights used by the Mexican Zapatista movement.
85 An associated risk is that if and when the right to make the demand is recognised by the state, further activism might be deflated over time by being tied up in lengthy legal processes of rights interpretation.
86 This draws on Abel’s (1995) characterisation as law being both ‘sword’ and ‘shield.’
rights field itself. While rights actors generally perceive themselves as representing and fighting for ‘the underdog’, they also wield considerable power in their own right – as reflected in the imprint ‘human rights’ has left on other domains.\(^{87}\) This relates mostly to international rights actors, rather than national or local ones.\(^{88}\) International advocacy organisations are seen as dominant, both within and outside the field (Petrasek 2011, 108-110; Gready 2011, 231). Concerns from Southern NGOs about “ideology, paternalism, and lopsidedness” (Ibhawoh 2007, 95), amongst other things, testify to this.

Arguably, international human rights advocates, having long spoken ‘for’ others, now face a challenge of speaking ‘with’ others or even “refraining from speech so that others may be heard” (Hortsch 2010, 147). This is easier said than done, not least because ‘speaking for’ is often done on behalf of people who risk persecution or otherwise “lack the space or skills to speak for themselves” (Madlingozi 2010, 210). Still, speaking ‘for’ and ‘about’ victims can perpetuate their marginality and disempowerment (ibid). This is all the more likely given the power and resource inequalities between the global North and the global South. These affect funding flows for programmes, research, participation in international meetings, and reform initiatives (Merry 2006a, 224-227; Bell and Coicaud 2007, 1-98). The human rights field may thus reproduce power asymmetries within itself. This raises questions about the extent to which powerful actors in the field live up to the very human rights values – e.g. accountability, inclusion, autonomy, and participation – they advocate when speaking truth to power themselves (Petrasek 2011; Mutua 2007; 2002). In sum, the human rights field’s ambivalence towards power is multi-faceted.

### 2.5.4 Universal Norms, Local Application: Human Rights as Insensitive to Local Context and Agency

The fourth and final contradiction set forth here relates to the tension between ‘universalising and localising impulses’ in relation to human rights (Ibhawoh 2007, 86). It is rooted in the “desire to formulate general principles and the need to apply these principles within particular circumstances and contexts” (Cowan, Dembour, and Wilson 2001, 6). It has long been recognised that human rights especially acquire meaning in "small places, close to home", as Eleanor Roosevelt noted famously,

> The world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.\(^{89}\)

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\(^{87}\) See section 2.2 above.

\(^{88}\) Clearly, national or local activists still suffer harassment and have trouble raising concerns in their own context.

This emphasis on making human rights matter in actual lives has been the rationale behind the implementation drive that followed the human rights actors' initial focus on standard-setting and institution-building.

In this regard, it has become clear that global standards may have to be translated into local idioms and practices if they are to carry weight in a particular setting, a process referred to as ‘vernacularisation’ (e.g. Merry 2006a; Goodale and Merry 2007). The more human rights are made to resonate with local customs and culture, the more likely it is that they gain meaning for local actors and are accepted by them. Such ‘tailoring’ is also in line with the desire to maintain cultural diversity, which forms part of the human rights framework too (Merry 2006a, 131).

However, the whole system of human rights assumes “that local features of culture, history, and context should not override universal principles [of] how societies should be organised and individuals protected” (ibid). For many human rights actors, it is hence an article of faith that universal categories prevail over local particularities. This is all the more so because they are well aware that authorities or local power brokers often turn to culture, tradition or religion to justify their failure to advance equality, accountability, and human rights values such as autonomy and choice. Consequently, human rights advocates tend to dismiss ‘culture talk’ as a tactic by local elites to resist efforts to further human rights, tackle impunity and hold norm violators accountable (ibid; Orentlicher 2007, 20-21).91

This raises the "sociocultural challenge" of promoting "universal human rights in a way that is responsive to the reality of sociocultural difference and diversity" (Ibhawoh 2007, 92). The import of doing so stems not only from the need to make rights meaningful in 'small places.' Human rights values necessitate this too; as noted earlier, the human rights framework sets great store by letting individuals define their own interests and preferences. Nevertheless, whether this means that victims of rights violations or local human rights activists can decide to ‘opt out’ of international norms and use alternative mechanisms to deal with human rights violations and provide redress (other than established judicial approaches), is highly contested; the dominant human rights paradigm rejects this notion. By and large, solutions for problems in specific contexts are sought in the application of universal norms.

Rights actors may thus face a “paradox of partnership”, Hortsch (2010) suggests. She writes: “We want to empower clients and communities to speak for themselves but we also must protect and nurture the universal nature of human rights norms. [...] Human rights organisations must be careful [...] lest they sacrifice something even more sacred in the name of listening to and having solidarity with victims of human rights

90 See also chapter 7, section 7.4.
91 Yet local rights activists may also use ‘culture talk’ to avoid alienating their immediate constituencies. Ibhawoh writes that Nigerian and Egyptian activists are less assertive about gay and lesbian rights than their colleagues from the North to avoid jeopardising other human rights advocacy work (2007, 93-94).
abuses” (idem, 155). Tension between “the general and the particular” (Merry 2006a, 132) has become especially (though not exclusively) evident as ‘human rights’ have become more associated with international criminal law and ‘criminal justice’ has become the dominant frame for dealing with mass atrocities in the aftermath of violent conflict. This has generated much debate on, amongst other things, “seemingly oppositional approaches to justice: local restorative approaches versus international retributive approaches” (Baines 2007, 96; also Clark 2010; Okello 2007). Contextual particularities also challenge prevailing human rights binaries: how are victims and perpetrators to be defined when some are both at the same time, and there are also beneficiaries and bystanders to take into account (e.g. Kayser-Whande and Schell-Faucon 2010)?

The above illustrates how “abstract and seemingly unambiguous categories become complex when applied to reality” (Halme-Tuomisaari 2010, 14). Reconciling the ‘competitive normative pulls of global norms with local agency’ (Orentlicher 2007) is difficult as this interacts with dynamics noted earlier: the field’s emphasis on technical legal approaches, its tendency to address symptoms at the expense of considering wider social, political and economic conditions, and unequal power relations within. A theory of change may also be at play in the human rights field that exacerbates this tension. Babbitt detects a theory of change in human rights thinking and practice that centres on defining the desired end state (based on ideals entrenched in domestic legislation and human rights treaties) and working back from there by pushing states to meet these ideals (2009a, 621). In her view, “although in practice human rights changes are recognised as being incremental [...] the strategy to produce any change is to demand nothing less than the ideal” (ibid).

Strong recommendations may thus be put forth that are fully in line with treaty obligations, but not particularly applicable in the specific context or that go against local preferences. For Cain this amounts to indefensible ‘human rights cheerleading’ (1999) while Simmons speaks of “justified sensitivity to global values that run roughshod over local distinctiveness” (2009, 371). Hence, in the contradiction between universal norms and their local application, human rights actors run a risk of “being principled but irrelevant” (Gready 2003, 754) when dismissing local context and agency.

2.6 In Sum: The Human Rights Field

The above discussion has sought to set out the scope and substance of the human rights field. It has reviewed the field’s foundations and development, the prevailing

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92 Child soldiers are the example par excellence of persons who are both victim and perpetrator at the same time.
93 Emphasis in original. The point about incremental change is reflected in the notion of ‘progressive realization’, used in relation to the realization of social and economic rights.
94 Admittedly, this raises questions about how to ascertain ‘local’ preferences and whose preferences are then ascertained.
body of thought, and the various actors and practices through which the field manifests itself. It has also pointed to several contradictions that run through the field. Some may be more like paradoxes or conundrums than outright contradictions, while others seem to comprise several tensions at the same time. The contradictions highlight certain limitations in how the notion of human rights has evolved and been used over time; they also indicate that putting human rights into practice may be more messy and less clear-cut than is generally recognised. Since the previous sections summarise a wealth of information about the human rights field, the purpose of this last section is not to condense the field even further; already, this chapter risks presenting a diverse field as more homogeneous and neatly circumscribed than it is. Instead, it will briefly reflect on the field in terms of the ‘field and frame’ discussion set out in section 1.2.2. Further comments will follow once a discussion of the conflict resolution field (in chapter 3) allows for a comparative analysis of the two fields (in chapter 4).

The review has shown that the human rights field has a distinctly though not exclusively legal character, attributing primacy to international human rights standards. These standards can be seen as the field’s spine. They provide coherence, solidity and power, both legal and moral, to actors operating in the field, be they professional human rights NGOs, social activists or independent state institutions. Familiarity with these standards – especially in their legal form – constitutes essential capital in the field. It enables those who have it to describe social reality in terms of these standards and to reach powerful audiences in doing so, as it confers them with considerable legitimacy and moral authority. Such description is an act of translation, as individual experiences, societal events and long-term developments are framed in field-specific terminology with words and acronyms that are likely to sound as code to outsiders, yet are perfectly comprehensible and self-evident for those ‘in the know’. Personal relationships, access to advocacy networks, and factual verifiable information about actual human rights abuses also constitute relevant capital in the field.

It is thus appropriate to consider ‘human rights’ as a frame in its own right; it is a means to understand and engage with the world, projecting “certain constructions of self and sociality, and specific modes of agency” (Cowan, Dembour, and Wilson 2001, 11-12). Such projections are frames too. They focus attention on certain issues and particular aspects of human coexistence, and grant legitimacy to specific ideas and interventions while downplaying or invalidating others. Central to these frames are the state and the individual. ‘Human rights’ shine the spotlight on the extent to which the state affords or denies persons recognition as being worthy of respectful treatment, freedom of choice and participation; ‘accountability’ is the essential code word in this regard, constituting a frame in itself. If international human rights standards are the field’s spine, the inherent dignity of the individual human being can be understood as the spinal fluid. It provides the emotional and moral impulse that generates action and commitment within and across national borders and facilitates
the use of rights talk as an ideology of justice and language of social mobilisation irrespective of formal legal provisions.

As such, the human rights field provides a fairly narrow lens with which to view social reality and human life (Dudai 2006), yet one that is also remarkably powerful and versatile. The ‘promiscuity’ of human rights was noted in this regard, which has only increased with the emancipation of rights talk. It is moreover a lens that has steadily expanded over time, and has imposed itself on various other realms, ranging from humanitarian action, poverty reduction efforts, peace and security, to even international business. Even so, this lens (or: the human rights frame) has been consistent in encouraging some kinds of action – many adversarial in nature – while constraining others, notably compromise on issues of justice. In that sense, the umbrella, overarching, binary in the human rights field is that of right/wrong; this runs through both legal and moral approaches to human rights.
Chapter 3: The Conflict Resolution Field
Chapter 3

This chapter constitutes the equivalent of the previous one, but pertains to conflict resolution. It provides a general overview of the field, and shows how conflict resolution provides a distinct ‘lens’ for perceiving social reality and identifying possible responses to problems faced by people and societies. To facilitate understanding and comparison, this chapter is structured in the same way as the previous one. This means that the primary focus is on conflict resolution in its own right, in terms of how the field has evolved over time and how it has materialised in specific ideas, actors and practices. Little attention is devoted here to the way in which conflict resolution has interacted with the human rights field, aside from a few comments on the field’s notion and assessment of a ‘rights-based approach’ to conflict resolution.\(^1\) The next chapter will consider the relationship between the fields in greater detail, in the context of a comparative analytical overview of the two fields.

The discussion here outlines how the conflict resolution field has greatly expanded in scope and ambition since it emerged in the 1950s and 1960s. While noting the diffused and heterogeneous nature of contemporary conflict resolution in theory and practice, the chapter explains how the field has consistently focused on the question of how to address conflict constructively and effectively when it arises. The field is shown to place particular emphasis on the prevention and reduction of violence and on generating solutions that balance the interests of parties in conflict and are arrived at through a (facilitated) process of dialogue and collaboration between opponents. Its evolved understanding of conflict resolution as a long-term process involving fundamental change is noted, resulting from a growing concern with protracted social conflict in which power between parties is imbalanced. The chapter points to the wide variety of actors at international, national and local levels that put these and other ideas into practice, and the main strategies they use in doing so. It also identifies some of the images, metaphors and attitudes prevalent in conflict resolution, and pays attention to contradictions that provide an insight into the field’s limitations.\(^2\)

Following the structure of the previous chapter, section 3.1 outlines the foundations and development of the conflict resolution field. Section 3.2 presents core concepts and ideas, while section 3.3 discusses actors, categorising them into different types and briefly commenting on their rationale and attitude. Section 3.4 summarises dominant practices in the field, and section 3.5 examines some of the tensions that run through the field. The concluding section, 3.6, reflects on the conflict resolution field in terms of the ‘field and frame’ discussion in the introduction.

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1 Conflict resolution’s conception of a ‘rights-based approach’ is different to that applied in the human rights field; see 3.2 for an explanation of the conflict resolution notion and note 24.

2 Several of the chapter’s observations concur with findings from a recently published ethnography of peacebuilding (Autesserre 2014). That study focuses however on expatriate peacebuilders who intervene in conflict zones by taking part in international peace missions. As such, its conception of ‘peacebuilders’ is much broader than the one used here and includes individuals focusing on rule of law, policing, state-building, military, and other functions. This chapter therefore does not draw on that ethnography.
3.1 Foundations and Development

In the course of several decades, conflict resolution has rapidly grown into a “self-contained, vibrant, interdisciplinary field where theory and practice pace real-world events” (Bercovitch, Kremenyuk, and Zartman 2009b, 1). Scholars generally agree that conflict resolution emerged as a discipline in Europe and North America in the 1950s and 1960s, under both this name and others (‘peace studies,’ ‘peace and conflict studies’, etc.). In a context marked by superpower polarisation and threat of nuclear war, people on both sides of the Atlantic started studying conflict as a general phenomenon, with similar features irrespective of the context in which it could occur. In doing so, they drew on numerous disciplines – international relations, political science, sociology, psychology, economics, biology, law, ethics and philosophy – and on practical insights gained from labour relations, diplomacy and community mediation (Ramsbotham, Woodhouse, and Miall 2011, 4).3

The emerging field also built on certain precursors, including ideas about non-violence and pacifism as put forth by Ghandi and religious traditions such as the Quakers and Mennonites. Efforts by peace movements in the context of World War I to mobilise people against war constituted another source of inspiration (Fisher and Zimina 2009a, 18). So too were empirical studies of war and conflict conducted in the 1930s and early 1940s (Kriesberg 2009a, 17-18; Ramsbotham, Woodhouse, and Miall 2011, 36-42).4 Bercovitch and others thus argue that the field began “as a deliberate ideological challenge” to foreign policy practice and conventional international relations teaching, which focused only on realist and institutional perspectives (2009c, 669).

From the outset, conflict resolution was conceived of as a multi-or interdisciplinary field, which would consider all levels of conflict and be analytical as well as normative. It was to bring “insights and concepts to bear on actual conflicts, be they domestic or international” (idem, 1), thus reflecting a “constant mutual interplay between theory and practice” (Ramsbotham, Woodhouse, and Miall 2011, 8).5 The field defined itself in relation to the challenge of understanding and addressing violent or destructive conflict, focusing primarily on peaceful ways to wage conflict and on reducing and preventing violence. In this foundational phase in the 1950s/1960s, a ‘minimalist’ and pragmatic agenda focused on preventing war dominated in the United States; in Europe, a more ‘maximalist’ agenda was common, with an emphasis on the content of peace and on critical analysis of structures (idem, 44).6

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3 See also Carayannis and others (2014, 2), Roy and others (2010, 348), Fast (2002, 528-529) and Aall (2001, 372).
4 This included studies on arms races, revolutions, war frequencies, causes of war, and on the social psychology of conflict and collective bargaining.
5 Other authors confirm the interplay between theory and practice as an important feature of the conflict resolution field (e.g. Babbitt/Hampson 2011; Kriesberg 2009a, 15; Lederach and others 2007; Fast 2002, 530; Galtung 1985).
6 Compare for example Galtung (1985), and Boulding (1977). In Europe, the field was usually referred to as ‘peace studies’ or ‘peace and conflict studies’, while ‘conflict resolution’ was more common in the United States.
A period of consolidation and institutionalisation followed in the 1970s/1980s, with the establishment of dedicated research groups and institutes, academic journals, training programmes, and civil society organisations in both Europe and the United States. This period also saw a rapid expansion of alternative dispute resolution practices in family matters and labour relations (notably in the US) and more analysis of negotiation and mediation processes, drawing on insights from game theory and social psychology. Ideas about joint problem-solving between political opponents were increasingly applied to actual conflicts in the Middle East, Cyprus and Northern Ireland. The field thus focused on both (potentially violent) societal conflict and on conflict in smaller settings (families, companies, etc.); this bifurcation continues to date. Civil society organisations doing mediation and dialogue facilitation and offering training in conflict resolution methods also started to emerge elsewhere (e.g. South Africa, Kenya).

The end of the Cold War ushered in a “major transformation” of the field (Babbitt 2009b, 539), due to an “explosion of interest in conflict resolution worldwide” (Ramsbotham, Woodhouse, and Miall 2011, 56). Conflict resolution became central to attempts to redefine a ‘new world order’, yet it also encountered new challenges, notably an increase in intra-state conflict. This brought to the fore issues of systemic complexity, power asymmetry, cultural diversity and intractability (idem, 55-62). A broader ‘peacebuilding’ agenda emerged, stressing the importance of conflict prevention and post-agreement activities related to institution-building, governance reform and reconciliation. Instrumental in this regard was the Agenda for Peace issued by UN Secretary-General Boutros-Ghali (United Nations 1992). It represented “an enormous shift” from the previous emphasis on inter-state relations and superpower negotiating strategies and opened up the conflict resolution agenda practically and conceptually (Babbitt 2009b, 542). According to Ramsbotham and others, actual conflict resolution efforts became more sophisticated as the principles of complementarity and contingency took hold. These called attention to the connection between responses and to the need to match approaches and conflict phases (2011, 56; see also Bloomfield 1995; Fisher and Keashly 1991).

With “internal conflicts, ethnic conflicts, conflicts over succession and power struggles within countries [becoming] the norm in the 1990s” (idem, 5), the role of non-state actors grew as both antagonists and intermediaries in conflict. Unlike governments and intergovernmental institutions, civil society actors could engage with non-state opposition groups and militias without conferring undue legitimacy on them. They were also thought to have other comparative advantages in conflict resolution related to flexibility, accessibility, duration of engagement and technical expertise (e.g. Paffenholz 2010; Bartoli 2009; Simonse, Verkoren, and Junne 2009). Consequently, NGO activity increased remarkably from then on. Meanwhile, conflict resolution thinking began to impact on other spheres of work: there was growing awareness

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7 The remainder of this chapter (and the study as a whole) is concerned with societal and communal conflict only.
about the extent to which development aid or humanitarian relief could exacerbate societal tensions, generating notions of ‘do no harm’ and ‘conflict sensitivity’ (e.g. Uvin 2004; Lange and Quinn 2003; Anderson 1999).8

In addition, international organisations (e.g. the Organisation for Security and Cooperation in Europe, the Organisation of African Unity, and the Organisation for Economic Cooperation and Development), financial institutions like the World Bank, and overseas development ministries (from, for example, Norway, Sweden, Germany, Switzerland and the United Kingdom) started to allocate significant resources to conflict prevention and conflict resolution, influenced by a new policy agenda focused on enhancing human security, human development and, later, state fragility (Ramsbotham, Woodhouse, and Miall 2011, 56‐57; Kriesberg 2009a, 25‐27; Babbitt 2009b). The significant funding available spurred a rapid expansion, professionalisation and institutionalisation of the field (some now speak of an ‘industry’ or ‘business’).9 An exponential growth of academic and professional programmes in peace and conflict studies added to this, turning conflict resolution into a ‘career choice’ (Austin 2011, 211; also Alliance for Peacebuilding 2012, 21).10

Hence, by 2005, a “once marginal field” had transformed into “an international expertise”, as Timura describes it (2004b, 162; also Zelizer 2013, 31). It is now an extensive and independent field of practice, policy and study involving a broad spectrum of actors across the world, and bringing its insights and tools to bear on other sectors, including business, journalism, environment, policing, development, human rights and justice, and state-building (often under a ‘peacebuilding’ tag.) During this evolution, “the very concept of conflict resolution has been stretched” (Bercovitch, Kremenyuk, and Zartman 2009c, 673), broadening from an initial focus on reaching agreements, modifying parties’ behaviour and stopping violence, “to incorporate the conditions for building peace” (Kriesberg 2009a, 17).

In the process, a bewildering array of terms has emerged to describe various aspects of and approaches to conflict resolution, leading to “terminological chaos” (Fast 2002, 529) and “confusion” (Dudouet 2005, 48). Besides notions noted above, the field’s “archipelago of concepts” (Gunner and Nordquist 2011, 33) includes conflict transformation, conflict settlement and conflict management, to name but a few. In the

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8 Conflict sensitivity involves, “gaining a sound understanding of the two-way interaction between activities and context and acting to minimise negative impacts and maximise positive impacts of intervention on conflict, within an organisation’s given priorities/objectives (mandate)”, see http://www.conflictsensitivity.org/. A precursor to this concept is the notion of ‘do no harm,’ which highlights that relief and development work, while seeking to alleviate human suffering and support the realisation of sustainable economic and social systems, can fuel or exacerbate societal or communal tensions – but can also aid peace (Anderson 1999).

9 See for example Zelizer (2013, 31) on the business of peacebuilding, and Babbitt/Hampson (2011, 54) on the emergence of a ‘mediation support’ industry, with dedicated units or programmes set up in various agencies.

10 Academic degree and professional training programmes are not confined to Western Europe and North America, but located across the world (including in Sub-Saharan Africa, Eastern Europe, Asia-Pacific, Latin America, etc.)
absence of consensus on terminology and the relationship of concepts, the terms used by organisations and individuals depend largely on their training and institutional approaches (Zelizer and Oliphant 2013, 7). In fact, the term ‘conflict resolution’ is highly ambiguous as it is used in multiple ways (further explained below). Conflict resolution theory can seem messy, “hardly elegant or parsimonious” (Babbitt and Hampson 2011, 46). The diffusion and differentiation that has characterised the development of the field from the 1990s onwards means that nowadays, the “conflict resolution field is highly diverse in the kind of work done in an array of conflicts” (Roy, Burdick, and Kriesberg 2010, 349); Timura speaks of the field’s “uncanny ability to contain [...] such heterogeneity” (2004a, 333).

For some, the rise in profile and expertise, and the extension in substance and reach, means that the field is “on the cusp of a true revolution” (Alliance for Peacebuilding 2012, 22). The 2011 World Development Report (The World Bank) also seems to attest to a ‘global momentum’, considering its focus on trust-building and institutional transformation as key to breaking cycles of violence. Others, however, have come to question the ethics of actors in the field, especially given the way in which conflict resolution practice has become embedded in the global political economy (e.g. Francis 2010; Fisher and Zimina 2009a). The relevance of conflict resolution is also subject to discussion due to geopolitical developments and new forms of violence. In particular, “the lethal combination of ‘rogue’ or ‘failed’ states, trans-border crime, the proliferation of weapons of mass-destruction, and the fanatical ideologues of international terrorism” is of concern (Ramsbotham, Woodhouse, and Miall 2011, 6). Climate change and developments in international law and information communications technology are also challenging the field’s practice and theory. Other concerns relate to a supposed cultural and ideological bias (ibid; Kriesberg 2009a; Avruch 2003), and the question of impact (Scharbatke-Church 2011; Culbertson 2010; Anderson and Olson 2003).

3.2 Key Ideas

The ‘messiness’ of conflict resolution notwithstanding, there is, as noted previously, “a more or less familiar set of references on both theory and practice” (Fisher and Zimina 2008, 11). An integral part of these are specific conceptions of conflict, violence and peace, which reflect and shape conflict resolution’s understanding of and approach to

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11 For example, some argue that conflict settlement, resolution and transformation represent distinct schools (e.g. Paffenholz 2012; Marchetti/Tocci 2011; Reimann 2004) while others assert that they all form part of one tradition (e.g. Ramsbotham and others 2011). This study follows the latter approach.

12 They attribute this to the fact that conflict resolution theory draws on many different disciplines. One of the conflict resolution practitioners interviewed also characterises conflict resolution as ‘messy;’ see further 8.4.3.

the social world. Arguably the field’s fundamental tenet is the idea that conflict is a normal, inevitable and omnipresent part of life. It is understood as an inherent feature of human existence and an intrinsic aspect of social change, which occurs throughout society at multiple levels: within and among individuals, groups, states and/or regions. Consequently, the field posits that conflict, as a social and political phenomenon, cannot and should not be eliminated; what ought to be curbed, however, is the expression of conflict through violence. Conflict resolution thus does not seek to eradicate conflict but to address it effectively when it arises (e.g. Ramsbotham, Woodhouse, and Miall 2011, 8-32; Bercovitch, Kremenyuk, and Zartman 2009b, 1-4).

Many definitions of ‘conflict’ in the field – there is no commonly accepted one – focus on the pursuit of incompatible goals by different parties; some include a perceptual element and/or refer to a relationship between parties (ibid; Wilmot and Hocker 2001; Mitchell 1981, 17). A notion that has become widespread is Galtung’s ‘conflict triangle’ (1969), depicting conflict as entailing three interrelated elements: contradiction (what the conflict is about), behaviour (how the parties act), and attitude (parties’ beliefs, emotions, assumptions and perceptions about others and self). Over time, conflicts have thus come to be seen as dynamic processes in which subjective factors (e.g. hostility, misperceptions) and objective ones (e.g. incompatibility of material interests, or unfairness of oppressive structures) interact (Dudouet 2006, 8-9; Reimann 2004, 44; Fisher and Keashly 1991, 34). Much literature presents conflict as going through a series of escalation/de-escalation phases, depicting such ‘conflict dynamics’ in more or less complex diagrams.

As the above implies, the field does not identify violence as a necessary or integral part of conflict but considers it a specific manifestation of conflict or a conflict handling strategy (e.g. Van der Merwe 1989); the presence of violence points to the inadequacy of existing conflict handling mechanisms (Odendaal 2013, 28). In general, the field has embraced a more complex notion of ‘violence’ than is common in the public domain, separating ‘direct’, ‘structural’ and ‘cultural’ violence (Galtung 1969).

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14 For example, the introduction to the Sage Handbook of Conflict Resolution is titled ‘the nature of conflict and conflict resolution’ (Bercovitch and others 2009b).
15 Conflict resolution asserts in fact that conflict can serve positive functions, such as enhancing group cohesion, redistributing power, making people aware of problems, and creating or modifying rules (e.g. Coser 1956).
16 The goals pursued may relate to concrete matters (material resources, power, land) and/or to intangible ones (symbolic resources, such as values, status or recognition) (e.g. Wallensteen 2002, 16-17; Coser 1956, 6).
17 Simple ones show a linear escalation ‘ladder’ (e.g. Glisl 1982, 119-140) or a “wave-like timeline” (Lederach 2005, 43), in which conflict intensity rises and falls over time (also Ramsbotham and others 2011, 13; Lund 2009, 290). More complex diagrams are cyclical or use arrows to reflect that conflicts may ‘jump stages’ or ‘move backwards’ (e.g. Ropers 2011, 114; Dudouet 2006).
18 ‘Direct violence’ refers to physical violence (e.g. a woman is raped). ‘Structural violence’ entails situations where injustice, repression or exploitation are embedded into society’s structures, and where individuals and groups are damaged due to differential access to resources built into a social system (e.g. law enforcement agencies do not take female victims seriously and do not pay attention to sexual crimes, etc.) ‘Cultural violence’ entails beliefs and attitudes that facilitate or condone violent behaviour by justifying it or presenting it as
Chapter 3

It has also adopted a differentiated conception of ‘peace,’ distinguishing between ‘negative’ and ‘positive’ peace, whereby the former refers to the absence of physical violence and the latter contains notions of peaceful co-existence, justice and legitimacy (ibid; Ramsbotham, Woodhouse, and Miall 2011, 12). Such field-specific terms – inaccessible without explanation – reflect the idea that conflict resolution seeks not only to address manifest conflict or violent behaviour, but also a conflict’s underlying causes and parties’ attitudes (idem, 11; Bercovitch, Kremenyuk, and Zartman 2009c, 673). Wallensteen thus argues that “conflict resolution finds itself at a bridge between a very narrow concept of peace (no war) and a very broad one (justice)” (2002, 11).

This emphasis on understanding conflict and related phenomena is linked to the prevalent belief that “what we know about conflict affects the way we address it” (Bercovitch, Kremenyuk, and Zartman 2009b, 1). This echoes the field’s self-conception as linking theory and practice noted earlier. Hence, another set of central ideas focuses on what Bercovitch and others consider the field’s basic question: “how best to approach and resolve or manage conflicts?” (idem, 2). In general, conflict resolution prefers parties in conflict to talk rather than fight one another in pursuing their goals (idem, 2-4). It argues that ‘hard power’ (ability to impose, enforce, command) is ineffective if not counter-productive if used on its own (Ramsbotham, Woodhouse, and Miall 2011, 33, 62). It tries to facilitate greater use of exchange power (linked to bargaining) and, especially, integrative power (associated with persuasion, cooperation and transformative problem-solving (idem, 22-23). While not everyone in the field blankly rejects a resort to coercive force, conflict resolution “tends to stress relying minimally, if at all, on violence in waging and settling conflicts” (Kriesberg 2009a, 16).

Conflict resolution highlights the possibility of generating a solution in which all parties achieve their goals, at least in part; this is referred to, following Deutsch (1973), as a ‘win-win’ solution. Essential in this regard is a distinction made between the positions held by conflicting parties (their formally stated demands) and their interests (underlying concerns and aspirations); interests are considered to be more easily reconciled than positions (Ramsbotham, Woodhouse, and Miall 2011, 21; Fisher, Ury, and Patton 2012). Conflict resolution thus emphasises exploring and considering the interests and needs of all parties so as to reach an outcome that is acceptable to all. This emphasis on interest-based approaches to conflict stems from an awareness of shared humanity: conflicts are to be pursued in a way that recognises

‘normal’ (ideas such as ‘a proper woman should not go out at night/wear a short skirt’, ‘boys will be boys’ or ‘the police have better things to do than attend to women’s complaints.’)

19 The slogan of INGO International Alert is telling in this regard: ‘Understanding Conflict. Building Peace.’

20 Kriesberg recognises a long-term debate in the field on whether the use of (some kinds of) violence is acceptable in some conditions (2009a, 28). Ramsbotham and others (2011, 278-279) note the field’s struggle with humanitarian intervention/responsibility to protect; see also Wallensteen (2002, 47-48) and Fisher and others (2000, 11).
the humanity of others, including adversaries (Ramsbotham, Woodhouse, and Miall 2011, 426; Francis 2010, 45).

Conflict resolution has long stressed the role of external intermediaries, known as ‘third-party intervention’ (idem, 21; Kriesberg 2009a). It has traditionally conceived of third parties as being impartial or non-partisan so as to help parties move to joint problem-solving (e.g. Reimann 2004, 44-47; Fast 2002).\(^{21}\) Impartiality has been “typically defined as the intervener's ability to be even-handed while maintaining an unbiased relationship with each of the disputants” (Lutz, Babbit, and Hannum 2003, 182). Hence, intermediaries usually refrain from assigning “blame to any one party, assuming that all parties are engaging in conflict-perpetuating rhetoric or behaviour” (idem, 179).\(^{22}\) Roy and others even suggest that conflict resolution actors seek to “accord moral and political legitimacy to all sides in a dispute”, in striving to reach mutually acceptable accommodation through respectful processes (2010, 351). Process matters considerably in the field: how conflict resolution efforts are undertaken is believed to affect the quality and sustainability of their outcomes (ibid; Anderson and Olson 2003, 9; Parlevliet 2002, 22-24).

Due to the increasing concern with ‘asymmetric conflict’, in which power between parties is imbalanced, contemporary conflict resolution focuses much attention on identity groups; these are regarded as the most relevant unit of analysis in relation to protracted social conflict (Reimann 2004, 59; Saunders 2009, 383). Addressing such conflict is thought to entail “a deep transformation in the institutions and discourses that reproduce violence, as well as in the conflict parties themselves and in their relationships” (Ramsbotham, Woodhouse, and Miall 2011, 31); fundamental change is envisaged in the personal, relational, structural and cultural realm (Lederach 2003). Notions of conflict transformation, social justice and social change have thus come to the fore as patterns of exclusion, and marginalisation and fragmentation are recognised as structural causes of societal tension that can prompt the outbreak of violence (Parlevliet 2011b; Baldwin, Chapman, and Gray 2007).

Overall, conflict resolution is now considered a long-term process, with many actors engaging in various initiatives at multiple levels and with different time frames; reference is made to the need for building ‘an infrastructure for peace’ that combines top-down and bottom-up approaches (e.g. Unger and others 2013; Odendaal 2013; Van Tongeren 2011). As such, there is much emphasis nowadays on the role that people and organisations from within a conflict setting should play if conflict resolution is to be relevant and sustainable (Ramsbotham, Woodhouse, and Miall

\(^{21}\) The term ‘neutrality’ has become less common due to recognition that conflict resolution is not neutral in relation to certain values (e.g. Mayer 2004; Kraybill 1992). See further below, as well as sections 4.2.1 and 7.3.

\(^{22}\) Some prefer to use the term ‘multi-partiality’ to refer to “the need for empathizing with all the principal parties, by building trust and personal relationships, and understanding their respective worldviews” (Duduoet 2006, 53).
Outsiders are no longer supposed to serve as main intermediaries, but should support local actors in their efforts to resolve conflicts. This stems from the notion that change must be generated from within rather than being imposed from outside (Babbitt 2009a; Anderson and Olson 2003, 35). What is required, in Siebert’s words (2013), is “strengthening the immune system from within instead of prescribing antibiotics”.

Despite this clear set of ideas about the nature of conflict, peace and violence and the kind of approach preferred, the use of the term ‘conflict resolution’ itself remains variable. Ramsbotham and others explain that the term may denote both a process of addressing conflict and the completion of that process; it may refer to a specialist field; to a particular approach in handling conflict and/or to specific activities undertaken to address conflict (2011, 31). Duduot notes that conflict resolution can mean a goal (overcoming the root causes of conflict) or a specific set of peacemaking techniques (e.g. facilitative mediation) (2005, 11). Field actors also like to characterise conflict resolution as ‘a science and an art’ (e.g. Carlson 2010; Meerts 2009). This reflects the belief that conflict resolution relies on tried and tested analytical models grounded in empirical reality, yet also requires specific aptitudes and attitudes.

The review thus far shows that the conflict resolution field is highly normative. This is further reflected in what Babbitt calls its “core principles”: inclusion, participation, empowerment, trust-building and tolerance (2009b, 554). Even so, the field has long devoted little attention to human rights. ‘Positive peace’ is assumed to contain human rights (e.g. Mertus 2011; Odendaal 2013, 8), but this is seldom discussed in any detail; “human rights are viewed as a by-product of peace, not as a major component of building peace” (Mertus and Helsing 2006, 9). In general terms, conflict resolution recognises the use of standards of justice and fairness to determine the outcome of a conflict. It calls this a ‘rights-based approach’ to conflict, differentiating it from interest-based and power-based approaches (Ury, Brett, and Goldberg 1988, 7-15).24 A rights-based approach – applying adjudication or arbitration – is considered valuable in setting a precedent, clarifying behavioural norms, and protecting a weaker party (e.g. Carlson 2010, 675-677; Parlevliet 2002, 29).

It is also seen to have serious drawbacks: it strains relationships and can generate resentment on the part of the ‘loser’ due to its adversarial character, it takes ownership for resolution away from the parties, and is usually costly and time-

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23 See also De Coning (2013), Odendaal (2013), Lederach/Appleby (2010), Lederach (2005, 1997). Local capacities for peace entail spaces, systems, attitudes, shared values, interests, common experiences, symbols and occasions that connect people across dividing lines and help prevent overt violence between groups (Anderson 1999, 24-31). For critical comments on how ‘bottom-up approaches’ are conceived, see Carayannis and others (2014, 16-17).

24 Power-based approaches entail the exercise of power over a weaker party (Ury and others 1988). Notably, conflict resolution uses the term ‘rights-based approach’ differently than the human rights field, where it refers to the use of human rights standards and principles to guide the design, implementation and monitoring of development efforts.
The Conflict Resolution Field

consuming. Moreover, the effective use of the judicial system depends on its legitimacy and capacity, which often cannot be taken for granted in conflict-affected contexts. Consequently, practitioners seldom consider a rights-based approach a suitable first resort in handling conflict; the use of the formal legal system is not mainstream in conflict resolution. The perceived negative influence of human rights advocacy on peace talks and the growing association of human rights with international criminal justice (referred to in chapter 1), has long added to reluctance to embrace human rights and formal legal approaches. As noted in chapter 1, however, this may be changing. Field scholars and practitioners increasingly concede that “human rights both impede and sustain resolution” (Bercovitch, Kremenyuk, and Zartman 2009c, 673; Babbitt 2009a; Manikkalingam 2008).

Finally, it is worth noting that much of the field’s body of thought is conveyed through visual diagrams and metaphorical images. Triangular (also referred to as ‘pyramid’ or ‘iceberg’) images are particularly prominent, serving to explain various concepts and analytical models. This ‘triangulisation’ (Timura 2004a, 150-160) may correlate to a general emphasis in conflict resolution on the need to break out of rigid dualities or binary oppositions and the importance of recognising ambiguity (e.g. Lederach 2005; 2003). Thinking in ‘threesomes’ is an integral part of the field; conflict resolution often points to the ‘middle’ entity – i.e. a third party, middle-level leadership – and intermediary functions as being key to resolution and transformation (e.g. Ury 2000; Lederach 1997). Field literature also uses the image of ‘being in the middle’ (e.g. Williams and Williams 1994).

Other recurrent metaphors include ‘space’ – as in ‘creating space for dialogue’ (e.g. Vukosavljevic 2011; Spies 2006); ‘healing’ – reflecting concern with the social-psychological features of conflict; ‘table’ – the proverbial one around which parties meet for dialogue (e.g. Roy, Burdick, and Kriesberg 2010, 359); and ‘tools’ or ‘toolkit’ – implying that conflict resolution has tangible instruments to help ‘fix’ a conflict situation (e.g. Zelizer and Oliphant 2013, 12-13; Ricigliano 2012; Lederach, Neufeldt, and Culbertson 2007).

26 See sections 1.1.1 and 1.1.2.
27 See practitioner handbooks (e.g. Lederach and others 2007; Fisher and others 2000), crossover publications (e.g. Austin and others 2011; Duduuet 2006), and a renowned academic book on contemporary conflict resolution, now in its third edition (Ramsbotham and others 2011).
28 Beyond the conflict triangle noted above, examples include: triangles capturing the distinctions between direct, structural and cultural violence and between peacemaking, -keeping and –building (see Ramsbotham and others 2011, 10); an ‘iceberg’ to distinguish between symptoms and causes of conflict (Parlevliet 2010a; Timura 2004a); and the use of a ‘pyramid’ to capture levels of leadership in society (Lederach 1997).
29 See also the discussion of four challenges in chapter 7.
3.3 Key Actors

The actors engaged in conflict resolution are as diverse as the field itself. As mentioned previously, governments and intergovernmental organisations, especially the UN and regional bodies like the African Union, European Union and Organization of American States, have long played an important role, especially with regard to facilitating formal, high-level peace processes and providing funding for conflict resolution and prevention. This also applies to some national government ministries. Here, however, we focus on civil society actors, whose significance for conflict resolution is well-established. The field is rather fragmented in this regard, not just at national and grassroots level but also internationally – where a large number of prominent organisations exists. One can discern four types of international civil society actors based on focus and scope of activity. These are set out here, after which the section considers non-international actors and outlines some general features of civil society actors in conflict resolution in terms of perspective or attitude.

A first group of international civil society actors focus mostly on undertaking or supporting elite-level negotiation processes. This is a relatively small group of professional INGOs, which often draw on former heads of state and/or former senior officials of international bodies to obtain and project credibility and expertise, although one – the Community of Sant’Egidio (founded in 1968) – is a religious organisation with volunteer members conducting its conflict resolution efforts (Bartoli 2009). Examples are The Carter Centre (founded in 1982 by former US President Jimmy Carter), the Centre for Humanitarian Dialogue (1999), and the Crisis Management Initiative (2002, founded by former Finnish President Martti Aahisaari).

A second group of professional INGOs with global reach focus less exclusively on the world of high politics and engage in a wider range of activities with a wider range of audiences, such as individuals, groups and organisations in civil society and/or at grassroots level within conflict-affected societies. They seek to generate practical and cooperative solutions to conflict and violence, influence policy, change perceptions of and approaches to conflict, bolster local conflict resolution capacities, enhance public

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30 This section focuses only on actors explicitly seeking to address conflict constructively, and does not consider those whose approach to conflict is inconsistent with conflict resolution principles ideas, and methods. Like chapter 2, this chapter mentions intergovernmental institutions and international NGOs given its overview character, even though the study devotes little attention to them beyond the comments here (and some references in 8.3.1 and 8.4.2).
31 E.g. CDA Collaborative Learning Projects (2012a), Paffenholz (2010), Fischer (2011), Bartoli (2009), Simonse and others (2009); it is however recognized that civil society is also subject to certain limitations.
32 For more information, see the organisations’ websites: www.santegidio.org, www.cartercenter.org, www.cmi.fi and www.hdcentre.org. While not founded by a former head of state, the Centre for Humanitarian Dialogue has many associates who previously worked as senior officials for the UN or European Union. Networks of former heads of state, such as the Elders (founded in 2007 by former South African President Nelson Mandela), also fall into this category although their activities are more oriented towards good offices and shuttle diplomacy rather than direct facilitation of peace talks between opponents; see theelders.org.

A third set of INGOs active in conflict resolution consists of large relief and development organisations, whose involvement stems from recognition that aid can exacerbate existing divides or create new ones; examples are Oxfam International, Catholic Relief Services and World Vision International.34 A fourth group comprises think-tanks, which provide analysis of specific conflict situations and international issues from a conflict resolution perspective and/or offer practical training to civil society practitioners, government officials, etc. Worth noting in this category are the Peace Research Institute Oslo (1959), the Stockholm Peace Research Institute (1966), the Program on Negotiation at Harvard Law School (1983), the United States Institute of Peace (1984) and the International Crisis Group (1995).35

The second group is most relevant here for its involvement in a broad range of practical conflict resolution efforts, notably at community and civil society level. With headquarters in European or American cities, these dedicated conflict resolution INGOs work in countries around the world, usually in partnership with local organisations and with funding from West European governments and/or charitable foundations. Their work is often guided by explicit codes of conduct, which tend to emphasise understanding the context, impartiality, local ownership, respect for diversity, long-term commitment, and accountability and trust (e.g. Ropers 2001, 528-529).36 They usually embark on activities abroad when invited to do so by respected individuals or organisations from within the given context; this stems from the belief that participation in conflict resolution should be voluntary (idem). Little (ethnographic) information is available on the organisational culture and staff composition of such organisations, but they resemble other INGOs in this respect. This means that, although they are culturally diverse, their staff comprises many white, middle-class, university-educated individuals with a cosmopolitan outlook and experience of living and working abroad.

Yet it is incorrect to assume that such North-based INGOs are the sole or even primary civil society actors in the conflict resolution field. For example, the influence of various Africa-based organisations is well established. Some are regional networks, others are NGOs based in specific countries working domestically, and/or across the continent, such as the Centre for Conflict Resolution (1968), the Nairobi Peace Initiative (1984), the African Centre for the Constructive Resolution of Conflict (1992) and the West

34 No dates are provided since these INGOs’ year of foundation precedes the starting point for their engagement in peace and conflict work. For more information, see www.oxfam.org; crs.org; www.wvi.org.
36 See also the guiding principles on the organisations’ websites, listed in note 33 above.
Africa Network for Peacebuilding (1998). Such organisations and networks also exist in other regions, including Asia/Pacific, Central and South Asia, and the Middle East. Besides professional NGOs, which are still fairly elite- and urban-based (Paffenholz and Spurk 2006, 17; Orjuela 2005), many other actors are engaged in conflict resolution, including faith-based groups, trade unions, women’s associations and other voluntary groups. While not necessarily framing their activities in field terminology, they bring people together across political or ethnic divides, build popular support for peace through education and media campaigns, or monitor violence. Their peace practice is often tied to broader activism around exclusion, democratic reform, social justice and income generation (e.g. Vukosavljevic 2011; Van Leeuwen 2009).

The relevance of such local actors is such that ‘civil society’ in conflict resolution practice cannot be reduced to professional NGOs only. Hilhorst and Van Leeuwen cite research on “seemingly insignificant women’s groups in post-war Bosnia”, which finds that “they are potentially a social space (and a rare one) in which a genuinely transformative progressive revisioning of the social might happen after catastrophic societal failure” (2005, 540-554; also Orjuela 2005). Local activists may receive support from ‘outside’ peace practitioners in the form of mentoring, training and/or funding while facilitating access to local communities and insider information(CDA Collaborative Learning Projects 2012b; Van Leeuwen 2009). Meanwhile, several global and regional networks have sprung up and various listservs now exist that facilitate relationships and information exchange around the globe. These have helped to narrow a “distinct North-South divide as well as the East-West divide” previously observed to exist (Ropers 2001, 526-527).

In terms of attitudinal features, civil society actors in the field generally “think of themselves as contributing to, or building, peace” (Fisher and Zimina 2008, 11). For many, their involvement in conflict resolution stems from a drive to “fight injustice and violence and [...] contribute to creating better societies” (Vukosavljevic 2011, 266). This is rooted in ‘various subjective engagements’ (Timura 2004a, 166): religious values, a political or moral commitment to social justice or non-violent political change, personal or family experiences of violence, or a “more spiritualised understanding, a kind of Ghandian-like admonition that ‘you must be the change you wish to see in the world’” (idem, 169). Conflict resolution may thus constitute a Weltanschauung – a philosophy or conception of the world – that applies irrespective of time and place (Kriesberg 2009a, 15).

38 Examples are the Peace and Collaborative Development Network (www.internationalpeaceandconflict.org), the Global Partnership for the Prevention of Armed Conflict (www.gppac.net) and the Alliance for Peacebuilding (www.allianceforpeacebuilding.org).
A three-year civil society-driven project, Reflecting on Peace Practice (RPP), which examined experiences of international, national and local ‘peace agencies’, found that “most practitioners [...] feel the way they act and interact, and the processes which they employ in their work, must reflect and embody the values and ideals that they work for” (Anderson and Olson 2003, 29). Thus, ‘being’ and ‘doing’ are closely related, as are ‘means’ and ‘ends’. Notable in this respect is the emphasis placed in academic texts and training manuals on the importance of empathy, self-awareness, reflexivity and humility (Odendaal 2013, 143; Ramsbotham, Woodhouse, and Miall 2011, 323; Lederach, Neufeldt, and Culbertson 2007). The very existence of RPP – and the high regard for it in the field – suggests that this cannot be dismissed as mere rhetoric.

Despite this strong value-base, observers have questioned the ethics and practices of civil society actors in the field, both international and local. Some express a concern that “many activists [...] no longer own the vision which inspired the first pioneers of this field” (Fisher and Zimina 2008, 3), partly due to increasing professionalisation and commercialisation (Orjuela 2005; Paffenholz and Spurk 2006). The term ‘peace vultures’ has for example emerged (Spies 2006, 51), and the influx of funds has led to a proliferation of practitioners and organisations ‘doing conflict resolution’, some of which may be keener on making a quick buck than on making or building peace. Others, who started with “heartfelt idealism and kitchen table activism”, can get “trapped in webs of formality and formalism that stifle passion and creativity”, the more they are recognised for addressing conflict effectively, as the receipt of donor funds necessitates institutionalisation. Finally, competition can be rife. Effective coordination – let alone collaboration – is often a distant ideal in conflict settings as actors seek to profile themselves and guard their autonomy in the pursuit of resources (CDA Collaborative Learning Projects 2012b; Simonse, Verkoren, and Junne 2009).

### 3.4 Key Practices

Within the field, practices are often considered in terms of the level at which they take place and the type of actors involved – or put differently, whether they constitute official or unofficial processes. Track I efforts involve high-level political and military leaders, senior government officials and intergovernmental representatives, and are also known as Track I diplomacy; ‘hard power’ often plays a role in these processes. Track II and Track III efforts entail unofficial processes, carried out by actors like NGOs, businesspersons, think-tanks, religious bodies, and academics; these are our

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39 Between 1999 and early 2003, RPP engaged with over 200 international, national and local (civil society) peace agencies around the world “to learn from experience what has worked and what has not worked, and why” (Anderson/Olson 2003, 1). Since then, it has worked with various partners in different regions to test the application of its findings in practice, and has done in-depth case studies of the cumulative impacts of peacebuilding in 16 countries. See http://www.cdacollaborative.org/programs/reflecting-on-peace-practice/.

40 See for example the questions ‘non official intervenors should be asking themselves’ in Bozicevic (2009, 71).

41 The term stems from a conversation Spies had with Bishop Paride Taban of Southern Sudan.

42 Email correspondence, Undine Whande, 18 April 2014; see also Bozicevic (2009, 71).
focus here. Track II concerns efforts involving more senior or elite civil society leaders (also referred to as ‘middle level leaders’) while Track III refers to efforts by local or indigenous actors at grassroots level. In Track II and Track III processes, the actors involved cannot apply ‘carrots and sticks’, but rely instead on their relationship-building, process skills, moral standing or technical expertise (Ramsbotham, Woodhouse, and Miall 2011, 28-29; also Bartoli 2009, 396).

As noted, the conflict resolution field is particularly associated with third-party intervention. This can take the form of mediation: a process in which an impartial, independent intervener helps parties in conflict to negotiate with one another (Ramsbotham, Woodhouse, and Miall 2011, 21-22; Moore 2003). Yet much third-party intervention can better be described as dialogue facilitation. This is one of the most commonly used conflict resolution practices, especially amongst civil society actors (Paffenholz and Spurk 2006; Anderson and Olson 2003, 77-78). Dialogues are often combined with other practices, including capacity-building, institution-building or concrete projects like reconstruction or income-generation schemes. They can be one-off events or constitute longer-term open-ended political processes (e.g. Saunders 2009; Ropers 2004).

Training programmes constitute another dominant practice and have been referred to as “a default activity for peace work” (Anderson and Olson 2003, 89). Training is widely used because it is thought to raise awareness of the causes and dynamics of conflict, be non-threatening, assist in relationship-building, and “spread sensitivity and skills to strategically placed people, contributing to creating what is metaphorically referred to as critical mass or critical yeast” (Austin 2011, 209). Conflict resolution training is often one aspect of a ‘multi-pronged approach’. It tends to use participatory methodology emphasising reflection on experiences, learning from peers, and skills practice (idem; Meerts 2009), yet the jury is out as to whether training truly prepares people to handle actual conflict situations outside the training space (e.g. Anderson and Olson 2003, 90-95). Another practice, known as ‘imagining the future’, involves bringing groups of people together to create a visual picture of the desired future and identify what they can do in their own life to bring it about (Ramsbotham, Woodhouse, and Miall 2011, 55).

An important range of practices is geared towards reducing physical violence through actual protection and/or monitoring activities. This can include negotiating violence-free days or areas (‘peace zones’), facilitating ceasefires, deploying unarmed civilians at violence-prone events or locations, or accompanying persons threatened by

43 Facilitation allows for more flexibility in the process and the role of the intervener; mediation is more precisely defined (see also 8.3.1). See also Bercovitch (2009) on definitions and approaches to mediation.
44 Dialogue facilitation at Track I level is often geared towards reaching power-sharing agreements.
45 The emphasis here is on training with adults or young people in non-formal, non-academic settings, and does not consider the many academic programmes that provide training or education in conflict resolution.
46 The term ‘critical yeast’ stems from Lederach; see (2005, 91-94) for an explanation.
political violence.\textsuperscript{47} Also relevant is the formation of local peace committees in times of transition or widespread political violence.\textsuperscript{48} Experiences from diverse contexts suggest that such bodies may have political and symbolic significance beyond their immediate function in de-escalating tension. They can encourage political tolerance and social inclusion, and help to develop a wider constituency for peace and conflict resolution in general and for solving problems through dialogue in particular (Odendaal 2013; Marks 2000). It has been suggested that this also applies to another practice that entails developing a longer-term conflict-handling mechanism, yet is unrelated to political violence: the establishment of community-based mediation programmes providing a low-cost, easy-access avenue for resolving small disputes (Lederach and Thapa 2012).

Furthermore, the use of media has steadily increased in conflict resolution practice. Activities include the development of media campaigns, programs or public service announcements that seek to encourage public discussion, spread messages about non-violence and coexistence, or promote any agreements reached. Even so, negotiations or other forms of dialogue facilitation are often kept out of the limelight so as not to jeopardise delicate discussions and confidence-building measures (Gilboa 2009; Rolt 2005).\textsuperscript{49}

The last key practices noted here relate to analysis and monitoring. These are undertaken to influence policy, enhance conflict prevention through early warning, and improve practice and programming. In general, conflict analysis forms part of most, if not all, practices within the field; it examines a broad range of elements, including the actors directly and indirectly involved, the issues at stake, underlying conflict causes, conflict dynamics over time, and broader contextual factors. A specific type of analysis, peace and conflict impact assessments, has become increasingly common. It appraises the implications of policies, projects and programs (related to development, relief, business interventions, etc.) for structures and processes of peace and violence (e.g. Paffenholz and Reychler 2007; Bloomfield, Fischer, and Schmelzle 2005).

### 3.5 Contradictions and Conundrums

Some tensions emerge when considering the conflict resolution field. For one, reality and ideals do not match: the increased prominence and spread of conflict resolution has not made violent conflict any less rife. As RPP puts it, "all of the good peace work

\textsuperscript{47} On accompaniment, see Mahony (2007), Mahony/Eguren (1997); on peace zones, see Mitchell/Allan Nan (1997).

\textsuperscript{48} Composed of individuals representing diverse identity groups, political perspectives and social status, a local peace committee functions as an “inclusive forum” operating at the sub-national level (district, municipality, town, village) that “provides a platform for the collective leadership to accept joint responsibility” for violence prevention and peacebuilding in that community (Odendaal 2013, 6).

\textsuperscript{49} The field has also become increasingly aware of the role that journalism can play in times of conflict, for better and worse. This has led to a growing concern with ‘conflict sensitive journalism’ (e.g. Howard 2003).
Competition between conflict resolution actors in a given conflict setting is also at odds with the field’s emphasis on joint problem-solving, interest-based engagement and collaboration. Conflict resolution’s normativity generates another contradiction: how can the field’s credo that conflicting parties should own the process and outcome of conflict resolution and that solutions cannot be imposed from the outside be reconciled with its strong normative ideas about how conflict should be addressed?

Hug’s observation that actors in the field try “to keep or re-establish ‘good’ norms and to challenge and change ‘bad’ norms” (2012, 39) seems to fly in the face of the notion that a third party has no stake in the outcome.

Without intending to be complete, this sub-section discusses four contradictions within the conflict resolution field that are particularly relevant in light of the empirical material considered later in this study and the next chapter’s comparison of the human rights and conflict resolution fields. Pointing to the field’s limitations, they reveal its shadow-side, so to speak. The first contradiction considered here relates to the technical and non-political nature of (much) conflict resolution practice, while the second involves its tendency to focus on the symptoms of (violent) conflict rather than its causes. The third contradiction relates to the extent to which conflict resolution may reinforce power imbalances and defer to power more generally. The fourth regards the risk of conflict resolution addressing complex and context-specific conflict with generic and relatively simple, if not simplistic, tools. These four contradictions are very interconnected but are discussed in separate sections to facilitate explanation and comprehension.

3.5.1 Comprehensive in Theory, Limited in Practice: Conflict Resolution as Technical and Non-Political

Reviewing the field highlights that conflict resolution scholars and practitioners seek to be comprehensive in their analysis of and approach to conflict. Early conflict mapping guides show as much (e.g. Wehr 1979), as do any of the many elaborate frameworks for conflict analysis and assessment that have emerged since then. The ambition to be comprehensive can also be detected from the way conflict resolution is now envisaged as a long-term, multi-track process involving multiple actors undertaking many efforts with various time frames. It is supposed to be based on the synthesis and integration of many actors and strategies. Yet according to Fisher and Zimina, conflict resolution “practice contrasts with the proclaimed goals and conceptual bases” of the field (2008, 19).

Writing by various authors shows that practice tends to be limited in notably three respects: the strategies used, the partners worked with, and the analysis conducted. In terms of strategies, it has been noted that conflict resolution extensively relies on activities meant to de-escalate tension and facilitate social cohesion and socialisation, such as dialogue projects, peace education or conflict resolution training (Paffenholtz...
In terms of partners, practice seems biased towards working with the ‘easy to reach’: persons and groups who are already predisposed to support peace (Anderson and Olson 2003, 51). Urban, elite-based, non-membership NGOs are targeted in particular, disregarding other civil society actors – whether they be faith-based groups, trade unions, professional associations (Paffenholz 2012), or ‘the unlike-minded’ in the form of extremist or (formerly) armed groups (Austin 2011, 221; Bozicevic 2009). Little attention is also devoted to engaging with state systems, despite these being “absolutely indispensable” to addressing conflict and building peace (Clements 2004, 459).

When it comes to analysis, RPP has found that many practitioners “perform only enough conflict analysis to justify their proposals, to affirm that what they know how to do best is needed” (Chigas and Woodrow 2009, 48). They focus on “where, in a given context, the things they know how to do can be useful and on whether their approach to change fits that particular context” (Anderson and Olson 2003, 52). Elements regularly overlooked include a conflict’s international and regional dimensions, the political and economic interests that condone and sustain violence, and the content and outcome of previous interventions (idem, 53-54; Clements 2004). The application of sophisticated analysis methodologies incorporating environmental, economic and other aspects, may fall short too: this tends to produce long lists of factors in fairly general terms – e.g. ‘absence of rule of law,’ ‘corruption,’ ‘discrimination’ – rather than a differentiated analysis showing the interaction and dynamics among the many factors noted, and identifying the most crucial factors in the particular context (Chigas and Woodrow 2009, 49).

This rather limited take on conflict resolution is wrapped up with an increased emphasis on its technical aspects. The proliferation of intricate analysis and assessment tools attests to the field’s ‘technisation’ (Austin 2011, 220). So does the growing emphasis on providing professional services and technical expertise, and the strong focus in conflict resolution training on developing technical process management and conflict analysis skills (Lederach 2005, ix, 174-176). Fisher and Zimina thus claim that many in the field “have settled for a ‘technical’ approach to dealing with conflict” (2008, 3; 2009a). Organisations are “happier to develop strategic plans, funding proposals and risk assessments, than to clarify their ethical stance and draw out rigorously, and realistically, what that means, [...] in the long term [and] in the here and now” (idem, 19). This technical approach is not based on any explicit theory of change; the underlying assumption is that the success of a particular

50 In Clements’ view, conflict resolution practitioners have always been ambivalent towards the state and political systems even though they recognize their importance. He attributes this to “a critique of the state’s monopoly of power and a rejection of threat and coercion as the primary means for generating order and stability” (2004, 445).

51 Accounts of conflict resolution work in Croatia (Bozicevic 2009) and Sri Lanka (Orjuela 2008) echo Fisher and Zimina’s observation; various other authors concur too, to a greater or lesser extent (e.g. Hopp/Unger 2009; Weitsch 2009; Lederach 2005).
programme automatically translates into “[advancing] a bigger vision for peace and wellbeing in the area” (idem, 28; Anderson and Olson 2003, 15).

This orientation towards technique has been associated with conflict resolution’s evolution into a profession and the rise of a ‘peace industry’ (Weitsch 2009, 60) which “bureaucratises peace work” (Orjuela 2008, 234) and interprets interventions mostly in terms of effectiveness (Van Leeuwen 2009), stressing project cycles, results and limited timeframes. Whatever its causes, the ramifications are twofold, at least. First, important elements of conflict resolution practice, linked to attitude, innovation and creativity, are neglected. As Lederach puts it, “the moral imagination” – that is, “the capacity to imagine something rooted in the challenges of the real world yet capable of giving birth to that which does not yet exist” – is not cultivated (2005, 29). The “art of serendipity in social change” goes missing, which is “the capacity to situate oneself in a changing environment with a sense of direction and purpose and at the same time develop an ability to see and move with the unexpected” (idem, 188).

The second implication is that conflict resolution becomes depoliticised. Practitioners resist “being described as political” (Fisher and Zimina 2008, 11) and conflict resolution language is “rendered neutral, a management consultant’s toolkit, ready for use in any context wherein conflict might emerge” (Jabri 2006, 72; Körppen 2011, 79). The field’s ‘impartiality’ ethos feeds into this: actors often downplay the political dimension of their work to avoid being perceived as biased. Presenting conflict resolution efforts as a-political may thus serve a purpose. Projecting training as technical skills training in negotiation or mediation can also help conflict resolution actors in bringing together representatives of warring factions who are reluctant to engage in substantive talks as yet.

Nevertheless, as Fisher and Zimina note, “political this field surely is, if anything” (2008, 11), given its normativity, the political choices implicit in analysis and interventions, and the ramifications of efforts. A contradiction thus exists between the comprehensive and inherently political notion of conflict resolution in theory – which many in the field endorse – and the limited way in which it may be put into practice.

**3.5.2 Underlying Causes, Visible Behaviour: Conflict Resolution as Symptoms-Oriented**

The conflict resolution field places much emphasis on the importance of addressing the underlying conditions and relationships that generate conflict and may lead to the outbreak of violence. The need “to look beyond the immediate manifestations of conflict” (Francis 2010, 5) emerges clearly from, *inter alia, the distinction between positive and negative peace, and the differentiated notion of violence noted earlier.* Violence, while significant from a humanitarian point of view, is considered the outward manifestation of a fundamental crisis. As long as destructive conditions...
The Conflict Resolution Field

Persist – e.g. the exclusion of identity groups from governance, authoritarian rule, socioeconomic deprivation with inequity, weak states lacking the will or institutional capacity to handle conflicts constructively – the potential for violence remains in a society (Nathan 2001). Thus, “today, one of the central messages of the peacebuilding community is that peace requires more than behavioural change to reduce and eliminate direct violence” (Fisher and Zimina 2008, 19; Clements 2004, 443).

Yet many practices routinely relied upon in the conflict resolution field address the overt manifestations of conflict, whether in the form of destructive behaviour or hostile relationships; they are more geared towards encouraging behavioural and attitudinal change than structural change. This applies, for example, to negotiating local or national settlements, crisis intervention, monitoring and deployment. It also pertains to practices meant to facilitate social cohesion, improve relationships and enhance conflict resolution capacity; these are generally limited in going beyond the surface, partly due to flaws of the ‘workshop-to-action’ model (Francis 2010, 17). Even problem-solving workshops with actors holding different views, meant to address ‘deep-rooted conflict’ by exploring underlying interests and needs, struggle to tackle underlying causes. These processes are rooted in social-psychological principles and encourage adversaries to alter their view of the problem (and others) by seeing the world through other people’s eyes (Dudouet 2005, 62). Hence, as Fast notes, “this type of resolution process does little to address the structures that perpetuate conflict” (2002, 531).

Besides a tendency in the field to emphasise perceptual or psychological dynamics and factors rather than structural ones (Mitchell 2011, 52), other factors hinder conflict resolution in tackling more than the manifestations of conflict. Mechanisms like local peace committees or community mediation teams exemplify this. While they can – as previously noted – address problems at local level and lay a foundation for political tolerance, their ability to deal with underlying causes of conflict is circumscribed, as the experience of South Africa’s peace committees in the early 1990s shows (Odendaal 2013, 44-45; Nathan 1993). This is partly due to their local nature: conditions relating to governance, exclusion or inequity warrant reforms that are part of a wider and more structural peacebuilding process. Moreover, such bodies are usually formed when social-political tension is high and/or when there is little formal institutional capacity for constructive conflict handling. Their main focus then becomes preventing violence and solving short-term problems as they are most urgent.

Thus, the fact that pressure to take action is most easily mobilised at the peak of a problem when it is highly visible, exacerbates the symptom-orientation of conflict resolution, irrespective of the scale of conflict (Dudouet 2005, 64). Furthermore, once efforts to defuse tension and contain destructive behaviour take effect, the commitment to address the underlying issues at stake often wears off. As Bercovitch and others note, “conflict management is the enemy of conflict resolution, as it
removes the pressure to resolve, yet it is frequently the only means to reduce violence” (2009c, 671). Finally, an ‘industry-effect’ may play a role here too, in that ‘fire-fighting’ is often easier to market (and take credit for) than structural prevention, which amounts to exposing and removing the logs that catch fire.\textsuperscript{55} It does not help that it is notoriously difficult to prove and quantify the impact of prevention.

Mayer hence speaks of a ‘resolution bias’ among conflict professionals: they “exhibit a strong tendency to ignore the ongoing (or enduring, long-term, or endemic) aspect of conflicts and to focus only on those aspects that can be resolved”, assuming that their role is to bring about resolution (2009, 2).\textsuperscript{56} Meanwhile, Fast observes that “few practice strategies have emerged from [...] seminal concepts” like structural and cultural violence (2002, 531). Consequently, conflict resolution actors have difficulty addressing the systemic components of conflict. The above-noted flaws in analysis only feed into this. As a result, “many peace programs never address the systems (or individuals) that promote or perpetuate war” (Anderson and Olson 2003, 58).

In sum, there is a contradiction between conflict resolution’s focus on addressing the structural, underlying conditions that give rise to the outbreak of (violent) conflict, and the extent to which its actual practice struggles to go beyond the surface. Its continuing orientation towards dealing with the overt manifestations or symptoms of destructive conflict is problematic as “it leaves aside the situations of ‘latent’ or ‘potential’ conflicts, where structural contradictions are not yet manifested in [the parties’] attitudes and behaviours” (Dudouet 2005, 64). So, while RPP rightly notes that actors in the field work towards two basic goals, "stopping violence and destructive conflict" and "building just and sustainable peace through supporting social change and addressing political, economic, and social grievances that may be driving conflict" (Anderson and Olson 2003, 10), the reality is that the conflict resolution field seems particularly attuned and equipped to doing the first and has difficulty doing the second.

3.5.3 Seeking Social Change, Maintaining the Status Quo: Conflict Resolution as Deferential to Power\textsuperscript{57}

The growing emphasis on transformation tallies with the field’s understanding of conflict resolution as an emancipatory venture. As noted, many practitioners are motivated by a broader agenda for social change and social justice (e.g. Lederach and Appleby 2010; Shapiro 2006, 63; Timura 2004a, 186-190), and conflict resolution is touted as a powerful tool for empowerment and the contestation of social stratification (e.g. Roy, Burdick, and Kriesberg 2010, 210; Davidheiser 2006, 294). Yet

\textsuperscript{55} According to Francis, “most major donors will be unwilling to support interventions that lift the lid off conflict, rather than turning down the heat or pressing down the lid” (2010, 103); see also Parlevliet (2002, 20).

\textsuperscript{56} Emphasis in original. See also 7.2.3.

\textsuperscript{57} The discussion of this contradiction builds on the previous section but focuses specifically on the implications in terms of power and social change.
the usefulness of conflict resolution for "creating opportunities for emancipatory social transformation" (Fetherstone 2000, 199) has been questioned. This is largely due to the way conflict resolution is prone to ignore power differences in the direct relationship between adversaries and in the larger context when emphasizing negotiation techniques, facilitating non-coercive processes, clarifying misunderstandings and improving communication (Mitchell 2006, 89; Dudouet 2005, 59-63). It falls short on engaging "issues of asymmetry and domination" and "tends to lack a deeply integrated analysis of power on the institutional and systemic level" (Roy, Burdick, and Kriesberg 2010, 348, 357).

Traditional conflict resolution methods like mediation and negotiation, problem-solving and dialogue are thought to work effectively when there is relative power parity (e.g. Francis 2010, 6). In contexts of power asymmetry, however, conventional approaches may be "inadequate if not counter-productive" because they will probably reinforce the relative power of the stronger party (Ramsbotham, Woodhouse, and Miall 2011, 59). The emphasis on ‘impartiality’ exacerbates this: “balanced’ interventions which treat as equal the oppressor and oppressed can not only be ineffective but also harmful by implicitly siding with the powerful in reinforcing an unjust status quo” when gross inequalities and injustices are embedded into social, political and economic institutions (Dudouet 2006, 54; also 2005, 63-70; Fast 2002, 631-532).

Consequently, conflict resolution practitioners have been criticised for unwittingly generating peaceful illusions on unjust and untenable institutional bases (Clements 2004, 446), being agents of social control rather than of social change (Mayer 2004, 160-167; Scimecca 1987), creating harmony at the expense of justice (Nader 1997; 1991), and preaching pacification rather than peacemaking (Francis 2010; Meijer 1997; Webb 1988). Such claims particularly arise when conflict resolution does not question existing structures,58 or is pursued by civil society actors at the request of public authorities – for example, to help manage socio-political tension or prevent violence when people protest against poor service delivery or large infrastructure projects. Failure to devote attention to the ways in which the state generates and sometimes escalates socio-political tension and violent conflict (Clements 2004, 445) may turn conflict resolution into "part of an apparatus of power which attempts to discipline and normalize” (Fetherstone 2000, 200). Hence, “peace’ can become a ‘dirty’ word when those who work in the name of peace are perceived to be promoting a contested or dominant agenda” (Fisher and Zimina 2009b, 102).59

58 Nader (1993, 1991) has criticised mediation and other forms of alternative dispute resolution in the US for enabling people to resolve their disputes without challenging underlying structures that possibly contribute to the tension between them, such as, for example, racism or patriarchy. Civil society in Sri Lanka has been criticised for uncritically supporting the Norway-led peace process in the early 2000s, despite the political biases it contained and its neglect of power dynamics related to legitimacy and representation (Orjuela 2008, 230-231; Keenan 2007). See also 8.2.2.

59 See also 5.2.1, on negative connotations attached to ‘conflict resolution’ in South Africa in the 1980s.
Put differently, conflict resolution can be “superficial and irresponsible” by prematurely ending a struggle for justice and social change and institutionalising inequalities instead (Van der Merwe 2000, 217). Some therefore advocate putting ‘the political’ back into conflict resolution (Jabri 2006, 74; Clements 2004, 455). Others argue that ‘courageous confrontation’ and dissent are needed in contexts of power asymmetry, rather than ‘preaching respect and kindness’ (Roy, Burdick, and Kriesberg 2010, 347) or ‘induced harmony’ (Nader 1991).

Yet this brings to light a paradox concerning conflict resolution’s belief in the potential of conflict as an opportunity for development and transformation, and its desire to de-escalate. It relates to the fact that movements for change are by nature destabilising – at least in the short term – while de-escalation seeks to stabilise. As Francis puts it, “despite our theory about conflict and change, we are [...] (properly) wary of action to confront structural violence and bring hidden conflict into the open – afraid that it could make things worse rather than better” (2010, 103). Increased recognition of the relevance of conflict and confrontation in addressing injustice in contexts of asymmetry has therefore “not notably [changed] the practice of most organisations” (idem, 6).

The above reflects the tension that has long existed between conflict resolution’s settlement and transformation dimensions (Ramsbotham, Woodhouse, and Miall 2011, xvii). It also points to the tension that may arise between its normative and pragmatic sides. As Lutz and others observe, when there is “great loss of life or other high stakes,” normativity often yields to political expediency, especially at Track I level (2003, 183). It has been noted that such tensions between conflict resolution as a tool for change and for pacification may also arise in interactions between conflict resolution actors from within a conflict setting and international agencies and practitioners that opt to become involved in that context (Anderson and Olson 2003, 40). Arguably, ‘insiders’ are often more willing to take a stand, challenge vested interests and resist the powers that be than ‘outsiders’, who tend to be risk-averse so as to not jeopardise relationships with their own governments (by whom they are funded and/or who may well be complicit to the violence in a particular context) (Francis 2010, 60, 103; Fisher and Zimina 2008, 19, 24-25).

In that sense, the tensions relating to challenging power and deferring to it, may have a political economy dimension too, prompting Fisher and Zimina to write scathingly that “the ‘sustainable peace’ being sought [...] seems to amount in practice to little more than ‘patching’ – attempts to create the minimal stability that would allow the current world order, driven by market forces and geopolitical constellations, to step in” (idem, 20). In sum, while seeking social change and transformation, conflict resolution may in practice maintain the status quo.
3.5.4 Complexity and Contextuality of Conflict, Simplicity and Generality of Models: Conflict Resolution as Applying Recipes

The fourth contradiction discussed here concerns the tension between conflict resolution’s contextualising and generalising tendencies. Within the field, conflicts are generally understood to be dynamic, multi-causal, and complex. The complexity of conflict has been particularly stressed in relation to protracted social conflict. These enduring conflicts are seen as chaotic and unpredictable, with an internal momentum that is hard to influence (e.g. Van Leeuwen 2009, 11-12; Ramsbotham, Woodhouse, and Miall 2011, 12-13). Causality is difficult to attribute in such dynamic processes, also because the original causes may fade into the background while new reasons for escalation emerge over time (Körppen and Ropers 2011, 11; Sriram, Martin-Ortega, and Herman 2010, 6). Complexity is also thought to reside in the fact that a ‘single’ conflict may actually consist of host of embedded, interlocked, conflicts that manifest features of several escalation or de-escalation stages simultaneously (Kriesberg 2011, 59; Dudouet 2006, 12).

Yet the complexity of such situations “contrasts starkly with the relative simplicity of the core theories we can find in conflict resolution” (Miall 2004, 69). Formal recognition of complexity and non-linearity appears to have barely affected ways of thinking and doing in the field (Körppen and Ropers 2011, 11). Giessman thus notes “an increasingly obvious discrepancy between the high complexity and interdependence of conflict – and a comparably under-complex strategy and toolbox used [...] to handle this complexity properly” (2011, 7). Several factors contribute to this: large-scale, protracted conflicts have seldom been a primary source for ideas and practices in the field; insights from inter-personal and inter-group conflict or based on contexts with well-functioning dispute handling systems are increasingly applied to contexts of fragility and asymmetry (Kriesberg 2011, 63; Schmelzle and Bloomfield 2006, 5). Organisations and practitioners also engage in simplification practices since they need to “develop comprehensible and workable representations of the complexity they are working in” (Van Leeuwen 2009, 12). They must begin somewhere, even if operating in “complex adaptive systems where nothing is simple or straightforward” (Mitchell 2006, 87).

Of course, important parts of reality may get lost or escape attention when simplifying complexity (Van Leeuwen 2009, 13). Context becomes contained and controlled in ways that make the models applicable to all conflicts (Timura 2004a, 158). A related
contradiction hence concerns the field’s simultaneous emphasis on the context-specificity of conflict (e.g. Lederach 1997) and the development of “universal models and techniques applicable across all social and cultural contexts” (Duffey 2000, 145). The field stresses that every conflict is unique, that solutions from one context do not necessarily work elsewhere, that conflict resolution efforts must be shaped by the specific context, and that peace and change have to originate from within, driven and owned by those affected by destructive conflict (e.g. Siebert 2013; Odendaal 2013; Lederach and Appleby 2010). These are articles of faith that are as much part of conflict resolution’s ‘toolkit’ as dialogue facilitation, process design, conflict analysis, negotiation training, etc. Meanwhile, it also assumes that “rules, norms and understandings” exist that help field actors to treat conflicts in similar ways (Wallensteen 2002, 70) and that suggest “universal patterns of conflict and corresponding intervention strategies” (Windmueller, Wayne, and Botes 2009, 296).

Admittedly, a reasonably coherent conflict resolution field would not exist without generic, broadly applicable models (ibid; Ramsbotham, Woodhouse, and Miall 2011, 332). Nevertheless, there is growing concern that conflict resolution practice may have turned into an application of recipes. This claim has particularly been levelled against the ‘liberal peace’ paradigm, memorably described as “Ikea-peacebuilding discourse” (Körppen 2011, 77) for its tendency to set out the components needed irrespective of where assembly takes place. It envisions the UN, outside intervening states, state governments and opposition factions engaging in mediation, state-building, promoting democracy and rule of law, disarmament, and creating free markets and free media.63 This ‘intervention-reconstruction-withdrawal’ approach (Ramsbotham, Woodhouse, and Miall 2011, 226) has been pervasive since the early 2000s. It has been criticised for trying to impose change top-down; for being linear, naïve, and culturally insensitive; for ignoring context, non-state forms of governance and sub-national conflict dynamics; and for transplanting Western models of social, economic and political organisation on war-ravaged contexts. Boege and others write that, “in effect, locals are supposed to ‘own’ what outsiders tell them to – ‘local ownership clearly means ‘their’ ownership of ‘our’ ideas’” (2009, 611).

While the liberal peace paradigm is particularly associated with international institutions and state action, civil society actors working at Track II and Track III level seem not devoid of a recipe-orientation either. Paffenholz asserts that their initiatives often entail “a predefined set of activities – [...] implemented regardless of their relevance in the context” (2012, 16). RPP echoes this claim, speaking of “‘off-the-shelf’ approaches, with slight variation to adjust to the particular context” (Chigas and

63 The literature on liberal peace is vast. For a general discussion of the paradigm, experiences to date, and critiques, see for example Ramsbotham and others (2011, 198-245), Körppen (2011, 77-83), Philpott (2010, 3-9), Richmond (2010), Fischer/ Schmelzle (2009), Boege and others (2009). Carayannis and others highlight the failure to interrogate pre-defined notions of key governance and post-conflict reconstruction ‘outputs’ (e.g. security, political stability, economic recovery, good governance) (2014, 14-15). One of the earliest discussions is Paris (2004).
Woodrow 2009, 49). This flies in the face of core beliefs in the field about recognising complexity, supporting change from within, and the importance of context-specificity. It has also been known to lead to unintended consequences, such as reinforcing exclusive identities (Komarova 2011, 152; Orjuela 2008, 240) or disempowering local people and insights – offers of ‘technical expertise’ or reliance on ‘good practices used elsewhere’ easily imply that local knowledge and experience is inferior in addressing conflict or facilitating change (Füst 2007, 10-11; Anderson and Olson 2003, 27).

In sum, there is a contradiction between conflict resolution’s recognition of and emphasis on the contextuality and complexity of conflict and its simplifying and generalising tendencies, which can lead to an uncritical application of recipes and have other negative ramifications. This contradiction interacts with tensions observed earlier. It also relates to the question of whether conflict resolution concepts, ideas, and ‘tools’ apply to diverse cultural and socioeconomic contexts, or are rather embedded in liberal Western cultural and ideological assumptions (e.g. Odendaal 2013, 48; Duffey 2000). Overall, the field may have lost some of its earlier blindness to culture following anthropological critique by Avruch and others (1991), and its general embrace of Lederach’s ‘elicitive’ approach (2003; 1997) – at least conceptually. Yet the above discussion shows that conflict resolution’s grappling with complexity and contextuality has not been resolved as yet.

3.6 Conclusion: The Conflict Resolution Field

This chapter has reviewed the conflict resolution field, considering its foundations and historical development, as well as key ideas, actors and practices. It has also outlined several contradictions that permeate the field which point to its limitations. Many of these suggest some incongruence between conflict resolution theory and the way it is practiced; some draw attention to unintended negative consequences of practical conflict resolution efforts. Clearly, good intentions do not guarantee good outcomes (Anderson and Olson 2003, 28). The contradictions identified here suggest that conflict resolution has a shadow side, highlighting weaknesses in the way thinking and practice in the field has evolved over time. These relate, amongst other things, to its engagement with issues of power and its difficulty in addressing deep-rooted causes of destructive conflict. This last section briefly considers the conflict resolution field in relation to the discussion on fields and frames in chapter 1.

While drawing on many different disciplines, conflict resolution is largely grounded in the social sciences. As such, it contains a wide variety of perspectives and a degree of

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64 A static and essentialist notion of identity held by conflict resolution actors can deepen communal tension by upholding prejudice about ‘the other’ or by failing to question exclusive notions of ‘community’ (Komarova 2011, 152; Orjuela 2008, 240). Conflict resolution work in Northern Ireland has been criticised for this (see 8.1.1).

65 Some observe that non-Western audiences may be suspicious of ‘conflict resolution’ (e.g. Francis 2004, 98; Abu-Nimer 1998, 102).
fragmentation is a feature of the field. Nevertheless, a fairly coherent body of thought can be discerned with field-specific categories of judgement and perception. These include differentiated understandings of terms commonly used in the public domain, and various diagrammatic models. Familiarity with the conflict resolution lexicon – in terms of words and imagery, both visual and metaphorical – and the ability to apply it to social reality facilitates interaction and understanding between scholars and practitioners from different contexts and backgrounds. It enables them to capture information about behaviour or a context in specific terminology, typifying for example a particular situation as ‘latent conflict’, or certain practices as ‘local capacities for peace’, or determining that ‘the conflict parties’ engage on the basis of ‘positions’ rather than ‘interests’. Practical experiences of addressing (destructive) conflict constitute another form of capital, which relates, at least in part, to the field’s emphasis on linking theory and practice: conflict resolution is not meant to be an ivory tower exercise but to be firmly rooted in practical action and the challenges of the real world. A third form of capital is probably ‘connectivity’: conflict resolution actors’ webs of relationships matter as they provide access, credibility and legitimacy.

The discussion here supports the claim that conflict resolution constitutes a frame in itself, one that suggests that mutually beneficial outcomes are possible, as is collaboration between opponents. This frame emphasises responsiveness to local conditions, suggesting that change only occurs when actors within a specific context want it and consider it viable, and that change cannot be imposed – although third parties can support or encourage processes of change. The extent to which this frame prioritizes certain courses of action rather than others is exemplified by the slogan of a large conflict resolution INGO: ‘Understanding differences. Acting on commonalities.’

As a frame, conflict resolution thus devotes much attention to facilitating constructive communication and communal interaction, focusing on identity groups as the most relevant unit of analysis. It stresses enhancing relationships, exploring underlying needs and interests, and designing inclusive processes that can open up possibilities for positive and peaceful change. Yet in its emphasis on containing destructive conflict and preventing violence, it risks prioritising symptoms over causes, and emphasising behavioural and attitudinal change at the expense of structural change.

All in all, conflict resolution is a normative frame, although such normativity is grounded in broad moral notions of social justice, fairness, participation, and respect rather than in any formal or legal standards. This normativity also does not manifest in strong notions of right and wrong, or a concern with attributing blame, however strong the field’s focus on identifying and addressing causes of conflict. On the contrary, it has been noted that the field is prone to perceiving the world through a ‘threesome’ or ‘triangular’ filter that resists binary categories and recognises

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66 This is the slogan of Search for Common Ground, www.sfcg.org.
complexity. Arguably, ambiguity and complexity run through the field itself. The heterogeneity of its ideas and practices speaks to this, as does its terminological minefield, its performance of both conservative and emancipatory functions, and the (uneasy) coexistence of normative and pragmatic tendencies. As such, the conflict resolution field exhibits the 'messiness' that is inherent to conflict and which also characterises the very conditions conflict resolution seeks to change for the better.
Chapter 4: Comparing the Fields:
Human Rights and Conflict Resolution
It will have become clear by now that the fields of human rights and conflict resolution represent particular ways of grasping, being and doing in the world. After the separate reviews in the two previous chapters, this chapter seeks to relate them to one another by considering how the fields differ and resemble one another. This comparative summary overview will round off our general consideration of the fields, intended to ground the later discussion of actual examples in a solid understanding of human rights and conflict resolution. As such, it clarifies how appreciating the distinct nature and content of these 'lenses' – whether by themselves or in comparison – helps to understand that these fields, in general terms, may both connect and disconnect.

As noted in chapter 1,¹ the literature has usually painted differences between human rights and conflict resolution in stark dichotomous terms, while paying little attention to the extent to which these fields resemble one another.² This chapter challenges that pattern by pointing out such similarities without disregarding the differences that do exist. Given the extensive discussion and wealth of material put forth thus far, it sets out both with only limited explanation. Of course, a comparative summary as presented here runs the previously noted risk of essentialising human rights and conflict resolution.³ This hazard – and the associated disregard for the diversity within each field – cannot be entirely negated; the discussion here thus contains some qualifying comments, in line with the study's intention to nuance existing scholarship on the relationship between human rights and conflict resolution.

The next section, 4.1, focuses on the conventional story by outlining key differences, grouping them in three categories: the fields’ disciplinary groundings, their conceptual frame of reference, and their practical approach. Section 4.2 considers the flip side, arguing that the human rights and conflict resolution fields are remarkably similar in three respects: the normative character of the fields, their evolution over time and their internal contradictions, which suggest that both human rights and conflict resolution may have trouble living up to their aspiration ‘to do good’. The concluding section, 4.3, reflects on the two fields in general, turning back once more to the discussion on ‘fields’ and ‘frames’ which provided the parameters for reviewing human rights and conflict resolution. It will also explain how the following chapters will build on the issues raised here.

### 4.1 Differences

The separate reviews of the fields in their own right have highlighted that human rights and conflict resolution perceive social reality from different vantage points and through different frames, and hence approach it in different ways. In other words, differences between the fields not only exist in the realm of practical strategies but

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¹ See 1.1.3.
² A notable exception is Babbitt (2009a).
³ See 1.2.2.
Comparing The Fields: Human Rights And Conflict Resolution

also relate to the fields’ conceptual frame of reference and their disciplinary groundings. Three sub-sections set out these differences below.

4.1.1 Disciplinary Roots

The human rights field has by and large been grounded in law, and legal approaches remain dominant in much human rights practice. The conflict resolution field, on the other hand, draws much more on the social sciences in both theory and practice. These different disciplinary roots are likely to impact on the way in which each field perceives of social reality and prioritises certain courses of action. For example, legal reasoning has been claimed to constitute a distinct, if not entirely unique, form of analysis that mostly focuses on the application of rules and following of precedent while examining sources and considering authority (Schauer 2009; Baghoomians 2009). Social science perspectives, on the other hand, may pay more attention to ‘why’ and ‘how’ questions beyond scrutiny of ‘what’.

At the same time, the distinction between human rights as predominantly law-based and conflict resolution as mainly social science-based must not be taken too far. The study and practice of human rights has become more interdisciplinary over time. The conflict resolution field has not been devoid of influence from law and lawyers either, from its early days onwards to the present day. In other words, while these disciplinary differences do leave their mark in how the fields perceive the world and ways to solve problems, they are not absolute.

4.1.2 Conceptual Frame of Reference

Several differences have surfaced in the bodies of thought at the core of human rights and conflict resolution. For one, the human rights field strongly focuses on the individual person and on the state, emphasising their respective legal entitlements and obligations. Conflict resolution pays more attention to identity groups (however defined) and to non-state actors; it is also concerned with exploring parties’ underlying interests and needs rather than with assessing behaviour and situations in terms of certain standards. It can hence be argued that human rights thinking and practice is mostly focused on what can be called ‘vertical’ relationships, between the state and citizens. A conflict resolution perspective considers these relevant too, especially in the context of protracted social conflict (although it then still tends to prioritise the state’s relationship with identity groups, rather than with individuals). Yet it focuses as much – if not more – on ‘horizontal’ relationships, between persons and groups and within groups. Code words regularly used in the fields reflect this difference in focus: in human rights, accountability matters; in conflict resolution, relationship-building and reconciliation.

The fields differ too in their conception of justice. The human rights field conceives of justice mostly in terms of individual or state level accountability, pursuing this
through much exhortation, including naming and shaming. Moreover, with the rapid
development of international criminal law, ‘justice’ has been increasingly associated
with retributive justice, attained through criminal prosecutions (e.g. Babbitt 2009a, 616). By and large, the human rights conception of justice is a product generated or
distributed by the state (cf. Galanter 1981, 1, 17). Conflict resolution defines justice
more often in terms of fairness of a settlement or outcome in the eyes of those
involved in conflict. Rebuilding relationships between victim and offender
communities is also prioritised; conflict resolution gives precedence to restorative,
rather than retributive, justice (Babbitt ibid; Arnold 1998a, 2). This focuses more on
the victim and the hurt than on the offender and the crime, and emphasises, inter alia,
the participation of victims and offenders in repairing the harm done (e.g. Zehr 2009;
2002; Bloomfield 2006, 21). As such, in conflict resolution, the notion and delivery of
justice does not rely on formal, state-sponsored, justice-dispensing institutions (e.g.
Lederach and Thapa 2012, 14).

The theories of change informing human rights and conflict resolution may also vary. The
human rights movement focuses on creating international norms; these are
intended to shape behaviours. It assumes "that people should be held to moral
imperatives of what is right", as these have been negotiated and agreed to in
international standards (Babbitt 2009a, 616). In the conflict resolution field, however,
most Track I and Track II actors believe that constructive change stems from a well-
designed process of engagement and joint problem-solving; they try to improve the
quality and durability of relationships and outcomes by facilitating such processes and
by helping those who take part in them to develop strategies in line with conflict
resolution principles. Thus, “in human rights, social change is thought to proceed by
defining the end state and then finding effective means to reach that end” (Babbitt
2010, 68), while conflict resolution defines the means, and assumes that “the ends that
emerge will be fair if the process is designed well and people are educated to use the
process wisely” (Babbitt 2009a, 617). In other words, human rights is guided by a
notion of what ought to be, working backwards from the desired outcome, while
conflict resolution tries to work forwards from the present reality, starting from what
is.

Another conceptual difference may lie in the fields’ perspective on violence. Conflict
resolution eschews the use of violence; it emphasises the use of constructive or non-
violent approaches to conflict rather than destructive ones. The work of human rights
actors is however grounded in international law, which “does not ban war, although it
does attempt to regulate it”; hence “human rights advocates are more accepting than
conflict resolvers of violent conflict per se” (Lutz, Babbit, and Hannum 2003, 179). This
is not to say that human rights actors are indifferent to violence. They are as keen to
limit loss of life and other suffering as much and as quickly as possible. Where and
when human rights violations occur, they insist that these must stop. Even so, violence
or civil war in itself does not necessarily violate international human rights norms,
and human rights law “has never had the lofty aim of ending all war” (Hannum 2006,
Comparing The Fields: Human Rights And Conflict Resolution

5). In contrast, in the conflict resolution field “there is widespread agreement [...] that violence is wrong” (Kriesberg 2009a, 28).

Arguably, moreover, the conflict resolution field is largely future-oriented, while the human rights field tends to focus considerably on the past – seeking accountability and redress for wrongs committed – even if it frames this concern as an investment in the future, a step necessary towards the ideal of a rights-respecting state and a rights-respecting society (Colvin 2008, 6-7). A degree of optimism seems embedded in conflict resolution, about the opportunities for positive change inherent in conflict situations and the human capacity for learning and growth (Shapiro 2006, 63). Conflict resolution rejects deterministic ideas about violence being an inevitable and integral part of conflict: “there are always seen to be other options” (Ramsbotham, Woodhouse, and Miall 2011, 6). Such optimism and belief in ‘other options’ may be less present in the human rights field, which is saturated in hard data about abuses.4 Relevant too is the difference observed between human rights' binary or dualistic thinking and conflict resolution’s triangular perspective. Human rights actors are likely to perceive a situation or specific persons in terms of ‘either/or’, while conflict resolution is concerned with ‘both/and’.5

A final aspect noted here that may set human rights and conflict resolution conceptually apart is the extent to which the fields grant the existence of various moral perspectives.6 The human rights field recognises one moral universe as being right and legitimate: one that is framed by international standards and defined in terms of human rights. However, besides its normative stance that violence is wrong, conflict resolution is inclined to accept the possible existence of multiple moral universes. It is willing to assume that the conflict parties act “from within a moral universe that supports [their] decisions” and “grants a space for negotiation from within it” (Boyd-Judson 2011, 149, 9). This does not mean that conflict resolution assumes the moral equivalence of “all perceptions of a situation, choices of action, and potential consequences” (idem, 155).7 Rather, it believes that taking account of alternative moral perspectives or notions of justice held by those involved in conflict may be fitting in order to ensure productive negotiations (idem, 153).

Conflict resolution actors thus tend to refrain from passing moral judgement on alternative perspectives (other than rejecting the use of violence as a means to pursue them). They may also doubt “the utility and wisdom of relying on hierarchical international ethical norms as the best or only means to achieve just outcomes” (ibid). Meanwhile, human rights actors seldom have qualms in challenging the moral

4 Some may, however, consider human rights actors’ persistence in calling upon offender states and other entities to comply with rights standards – in reports documenting their abuses – as a sign of optimism, implying a willingness to grant offenders the benefit of doubt.
5 See also chapter 7, for discussion and illustration of ‘both/and’ thinking.
6 This paragraph draws on Boyd-Judsen’s work on ‘strategic moral diplomacy’ (2011), which engages the moral perception of one’s adversary and may concede contrary moral positions so as to reach political objectives.
7 Some argue however that conflict resolution does just that, assuming moral equivalence (e.g. Baker 2001, 759).
legitimacy of any entity deemed responsible for violating human rights. In fact, they feel compelled to do so when observing behaviour outside the internationally agreed moral realm.

### 4.1.3 Practical Approach

As the above discussion suggests, the conceptual differences outlined affect the way the fields of human rights and conflict resolution manifest in practice. Their practical approaches can be so different that much has been made of that in the literature; it has in fact been argued that ‘human rights’ and ‘conflict resolution’ constitute “divergent paths to peace” (Baker 2001). This section hence draws on the separate reviews in the preceding chapters and on such literature.

If, as Roy and others suggest, ‘dialogue’ or ‘talk’ is “the prime tool of the conflict resolution trade” (2010, 358), then ‘rules’ or ‘standards’ may be the equivalent in the human rights business. The human rights emphasis on factual information, on formal, written texts (treaties, conventions, monitoring reports), and on legal remedies and institutions, probably matches conflict resolution’s concern with process, space and relationships. Moreover, while much human rights practice is focused on examining specific instances of rights violations, conflict resolution practice – especially conflict analysis – tends to be geared towards considering situations (issues, behaviour, events) in context; it seeks to comprehend the larger picture, making an effort to probe underlying conditions and conflict dynamics over time (even if not always succeeding in doing so). This contrasts with the incident-driven nature of much human rights practice. It could also be argued that human rights actors are inclined to point out gaps – identifying where policies and practices fall short of what they should be – while conflict resolution practitioners are keen to spot resources existing in a given context that can serve as capacities for peace.

A clear contrast has further been noted in ‘the treatment of norm violators’ (Babbitt 2009a, 616), especially when egregious violations have been committed. In such contexts, human rights actors usually expose those responsible for abuses and urge their exclusion from political forums and processes. They are keen to avoid an impression of rewarding bad behaviour, and argue that the inclusion of such individuals may grant them undue legitimacy and political influence. Instead, they are likely to denounce them and press for mechanisms to hold such persons accountable.

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8 See also 8.3.
9 Interviewee Ingrid Massage considers this a major difference between human rights and conflict resolution practices. She has long been active in the human rights field, working for Amnesty International and OHCHR amongst others; in 2006/7, she pursued a MA degree in international conflict studies at King’s College, United Kingdom. Conversation, 30 August 2011, London.
10 This is a throwback to the ‘peace/justice’ discussion referred to in chapter 1, notably in 1.1.2, 1.1.2 and 1.1.3.
so as to alter their behaviour. Meanwhile, conflict resolution practitioners generally try to make the processes they design and facilitate inclusive so as to not alienate any party that could derail the process, irrespective of this party's human rights record. They seek to explore the concerns of all parties in order to change their actions and attitudes. They are thus unlikely to push for a strategy of isolation and punishment regarding ‘norm violators’, and will probably avoid publicly criticising them; as noted, human rights actors do not shy away from attributing blame.

The use of the media reflects these different approaches. Conflict resolution actors may use the media to spread messages of coexistence and non-violence and to highlight the importance of dialogue as a means to settle conflict. Yet dialogue facilitation – the field’s quintessential strategy – is mostly conducted outside the limelight, to avoid jeopardising sensitive processes of engagement. In human rights practice, on the other hand, the glare of publicity is a vital ingredient of key strategies like monitoring, reporting, and advocacy. The media is used strategically to conjure up public pressure to halt offensive behaviour by entities involved in abuses or induce other actions meant to enhance respect for human rights, such as ratification of a treaty.

In general terms, human rights actors are more inclined to adopt adversarial approaches in seeking to advance the protection and promotion of human rights, while conflict resolution actors use more collaborative approaches with a view to establishing relationships, building trust and reaching mutually acceptable outcomes (Arnold 1998a). To this end, they carefully guard their impartiality to ensure their acceptability to all parties. Impartiality is seen here as being even-handed and showing no bias in the treatment of different parties. For human rights actors, being perceived as not taking sides is far less a concern; impartiality is about the objective application of human rights norms, irrespective of status or resources. Yet since most standards are created to "protect the weak individual from the abuses of the state or other potentially exploitative authorities, the human rights result does not appear impartial but instead looks like [...] advocacy for one party over another" (Babbitt 2009a, 619). Thus, "impartiality has completely different meanings for practitioners in each field" (ibid). 12

This discussion points to the different roles that human rights and conflict resolution actors tend to play in conflict situations. Human rights actors are particularly geared towards roles such as norm-framing, advocacy, monitoring, and investigation. Conflict resolution practitioners tend to play facilitative roles, seeking to bring parties together and helping them to communicate in a constructive way. Arguably, human rights actors are focused on principles while conflict resolution actors are

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11 This probably applies more to non-governmental human rights actors than intergovernmental ones; in the UN context, OHCHR engages with ‘norm violators’ on a regular basis (feedback from a UN official, during dialogue process between UN Human Rights Advisers and Peace and Development Advisers, February 2014, Switzerland).
12 This point is revisited in chapter 7, in the context of a discussion on handling role tensions in 7.3.
pragmatically oriented – i.e. solutions must be *right* (human rights) or they must *work* (conflict resolution). It has also been suggested that the two sets of actors differ in their respective emphasis on process (conflict resolution) or outcome (human rights) (e.g. Baker 2001, 760). Yet it would be farfetched to claim that conflict resolution practitioners are not concerned with whatever comes out of the processes they facilitate, or that they do not care about principles; the review of the conflict resolution field revealed its normative character.

Rather, the difference probably lies in human rights actors being more prescriptive and conflict resolution practitioners being more facilitative in their respective approaches to outcomes. Human rights actors generally advocate a certain type of outcome (one that abides by international and national standards and ensures the legal protection of rights), while conflict resolution actors are likely to stress the kind of process needed to reach a good outcome. They usually describe their work “in terms of methodology (i.e. active listening, reframing, distinguishing positions from interests)” rather than “articulating the ethical principles from which that methodology has developed” (Idriss 2003, 31). In sum, conflict resolution seeks solutions for problems in a specific context through the design of processes, while human rights tends to seek them in the application of global norms. It is worth noting, however, that process considerations have gained weight in the human rights field with the emergence of the human rights based approach (e.g. Gready and Ensor 2005a; Parlevliet 2009).

A final difference pointed out here is that conflict resolution practice pays much attention to what can be called the ‘subjective’ dynamics of conflict (i.e. mistrust, fear, hostility, enemy images). In contrast, human rights work mostly steers clear of dealing with emotions and psychological issues, preferring to let ‘the facts’ speak for themselves.13 In this regard, it could be argued that human rights and conflict resolution actors share a certain reticence about something that drives their practice but is seldom openly recognised as such: the emotion and passion fuelling much human rights practice may be hidden by the emphasis on the professional, detached and objective application of technical standards; the normative character or ethical principles informing conflict resolution work is often obscured by the field’s emphasis on methodology, tools and process.

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13 I thank Undine Whande for pointing this out to me. Of course, emotions do matter in human rights work in terms of mobilising public opinion through human rights reporting and human rights actors’ passion for their cause. Yet human rights practice is more geared towards *appealing to* emotions than *dealing with* them; it also generally does not seek to address the emotions of those directly implicated in and/or affected by violations. Conflict resolution practice explicitly seeks to acknowledge and deal with these and other subjective dynamics of parties in conflict.
### 4.1.4 In Sum: Differences

Based on the discussion above, the following chart summarises key differences between the fields of human rights and conflict resolution, grouped under more specific headers than the categorisation used thus far.

<table>
<thead>
<tr>
<th>Human rights</th>
<th>Conflict resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unit of Analysis</strong></td>
<td></td>
</tr>
<tr>
<td>Individual; state</td>
<td>Identity group</td>
</tr>
<tr>
<td>Legal entitlements and obligations</td>
<td>Underlying interests and needs</td>
</tr>
<tr>
<td><strong>Theory of Change</strong></td>
<td></td>
</tr>
<tr>
<td>Define ends; work out means to achieve those ends</td>
<td>Define means; ends will be fair if emerging out of well-designed process</td>
</tr>
<tr>
<td>Work backwards from desired end state, guided by notion of what ought to be</td>
<td>Work forwards from what currently is to desired future</td>
</tr>
<tr>
<td><strong>Conception of Justice</strong></td>
<td></td>
</tr>
<tr>
<td>State level and individual accountability; retributive justice</td>
<td>Fairness in terms of outcome in eyes of eyes of those involved; restorative justice</td>
</tr>
<tr>
<td>Justice delivered/distributed by state</td>
<td>Delivery of justice not tied up with state-sponsored institutions</td>
</tr>
<tr>
<td><strong>Practical Approach</strong></td>
<td></td>
</tr>
<tr>
<td>Adversarial</td>
<td>Co-operative</td>
</tr>
<tr>
<td>Focus on protection of rights and degree of compliance with human rights standards (international, regional and domestic)</td>
<td>Explore needs, interests, concerns of parties in order to reach mutually agreeable outcomes that meet interests of all parties</td>
</tr>
<tr>
<td>Prescriptive regarding outcome – outcome must be in line with international human rights standards</td>
<td>Facilitative regarding outcome – negotiated outcome is be acceptable to those involved and affected and suitable to specific context</td>
</tr>
<tr>
<td>Solutions for problems in specific context sought in application of universal norms</td>
<td>Solutions for problems in specific context sought through design of process</td>
</tr>
<tr>
<td><strong>Attitude to Parties</strong></td>
<td></td>
</tr>
<tr>
<td>Urge the exclusion of alleged perpetrators from political processes to avoid granting them undue legitimacy and political influence</td>
<td>Include all relevant parties in dialogue, since excluding important actors will undermine durability of process and outcome</td>
</tr>
<tr>
<td>Need to apply human rights standards irrespective of who violates them</td>
<td>Need to treat all parties in even-handed manner</td>
</tr>
<tr>
<td>Name and shame those responsible for human rights violations</td>
<td>Refrain from judging and criticising parties, especially in public</td>
</tr>
<tr>
<td><strong>Orientation</strong></td>
<td></td>
</tr>
<tr>
<td>Focused on finding solutions that are right (‘principled’)</td>
<td>Focused on finding solutions that work (‘pragmatic’)</td>
</tr>
<tr>
<td>Keen to build legal structures and processes that comply with international standards, protect the weak, provide remedies, ensure accountability</td>
<td>Keen to improve relationships, trust, and respect between adversaries, and enhance mechanisms for constructive conflict handling</td>
</tr>
<tr>
<td>Let the facts speak for themselves, dispassionate application of international standards</td>
<td>Emotions and psychological dynamics matter and need to be addressed</td>
</tr>
<tr>
<td><strong>Roles</strong></td>
<td></td>
</tr>
<tr>
<td>Norm-framer, advocate, monitor, fact-finder</td>
<td>Facilitator, convener, reconciler, mediator</td>
</tr>
<tr>
<td><strong>Key Words &amp; Imagery</strong></td>
<td></td>
</tr>
<tr>
<td>Standards, obligations, legal entitlements, fight, struggle, justice, dualism, rights-holder/duty-bearer, victim/perpetrator, either/or, rights/wrongs, naming and shaming</td>
<td>Dialogue, table, space, talk, being in the middle, reconciliation, peace, building, healing, triangle, both/and, tools, toolkit, interests, needs, dynamics</td>
</tr>
<tr>
<td><strong>Discipline</strong></td>
<td></td>
</tr>
<tr>
<td>Law</td>
<td>Social sciences</td>
</tr>
</tbody>
</table>
Of course, it is worth noting that such a chart fuels essentialist conceptions of human rights and conflict resolution, as it depicts the fields as being clear-cut with ‘fixed’ differences and does not contain any qualifiers.

4.2 Similarities

Notwithstanding the various differences noted above, the separate reviews in the preceding chapters suggest that the human rights and conflict resolution fields resemble one another in several respects, more so than has generally been recognised in the literature to date. The fields have three features in particular in common, namely their normative character, the way they have evolved over time, and the challenges they face in light of internal contradictions.

4.2.1 Normative Character

The human rights and conflict resolution fields both have a strong normative orientation. They share a concern to improve the human condition and make the world a better place. Their vision of the desired nature of society is similar, even though they tend to describe it differently and root it respectively in an awareness of shared humanity (conflict resolution) or the notion of inherent human dignity (human rights). Human rights efforts aim to create conditions in which individuals and groups are protected against abuse and have access to fair and institutionalised mechanisms for holding the state accountable, where their dignity is respected and where people can develop their full potential and shape their own lives and society around them. Conflict resolution work seeks to achieve sustainable peace: conditions characterised by social justice, a fair distribution of power, resources and opportunities, and constructive inter-group relations where individuals, groups, and institutions are willing and able to handle conflict without violence, negotiate their differences constructively, and where people can take part in decisions that affect their life.

Both fields hence seek to support and facilitate long-term social change so as to create “a world in which all human relations reflect a fundamental respect for human dignity and a desire to meet human needs” (Idriss 2003, 31). Irrespective of where the desired social change comes from or how it supposedly comes about, the fields share an essentially utopian belief in the ‘make-ability’ of society, and in the agency of individuals and groups to shape their environment. They also share a belief in the possibility to rectify power imbalances, the importance of which is stressed by both fields. It could thus be argued that the human rights and conflict resolution fields entail ambitious forms of social engineering. Underpinning their efforts to remake the world seem to be what Colvin has called, in another context, ‘technicist dreams’: the
Comparing The Fields: Human Rights And Conflict Resolution

idea that “societies can be understood and manipulated, and that people behave rationally or at least predictably” (2008, 12).14

Within the parameters posed by the fields’ normative nature and faith in society’s make-ability, moreover, it is also possible to identify specific values that are common to the human rights and conflict resolution fields. In particular, participation, empowerment, protection of human life, and equity seem to be common norms, even if these tend to look somewhat different from a human rights or a conflict resolution perspective (Babbitt 2009a, 615). For example, the paradigms agree on the importance of protecting human life, yet try to achieve this in different ways: conflict resolution focuses on stopping and preventing violence by facilitating dialogue and addressing points of contention between opponents, and by addressing basic needs for identity, protection, welfare and freedom, while human rights work emphasises the right to life and seeks to protect individuals from torture and other forms of cruel and degrading treatment, prohibit slavery, and ensure freedom of religion, conscience, expression and movement (idem, 616).

In a similar vein, in terms of equity, both human rights and conflict resolution “would argue that all human beings should be treated with respect, even those with whom we strongly disagree” (ibid). A human rights perspective emphasises equal access to due process, fair and impartial hearings, and protection from arbitrary arrest while a conflict resolution perspective makes an effort to understand the needs and concerns of all sides – including those of persons or entities violating other people’s rights. Both perspectives also agree that equity is not necessarily the same as equality, as differences in resources may remain; nevertheless, the human rights agenda may be “much more explicit” in seeking both equality and equity (ibid). In sum, the human rights and conflict resolution fields have several norms in common even though they may differ in how these norms are put into practice. Moreover, as noted, conflict resolution practitioners are generally less explicit about the norms guiding their practice than human rights actors are (ibid; Idriss 2003, 31).

4.2.2 Evolution over Time

Their evolution over time constitutes a second striking resemblance between the fields. The review of their historical development highlights that ‘human rights’ and ‘conflict resolution’ both came of age as specialist fields of scholarship and practice in the post-Cold War world, after coming to the fore initially after World War II. The fields experienced a significant impetus in the 1970s and 1990s, which speaks to geopolitical developments related to the demise of colonialism, the growth of development cooperation, democratisation and globalisation, and the increasing prominence of non-state actors.

14 Colvin (2008) raises the notion of “technicist dreams” when exploring the ‘shared logics’ of transitional justice and development, which resonates with the discussion here on the human rights and conflict resolution fields.
Civil society organisations – international, national, and local – have come to play a significant role in the two fields. In addition, human rights and conflict resolution have expanded considerably in terms of (conceptual) substance and (practical) manifestation through tangible strategies and activities. The number of people working in the two fields has also greatly increased, as has their geographical reach and the financial resources invested in them. This expansion has furthermore materialised in rapid professionalisation and a growing influence on other realms, such as development. Put differently, both human rights and conflict resolution have moved ‘from the margins to the mainstream’ (cf. Beirne and Ni Aolain 2009, 212).

Yet the resemblance does not stop there. The fields’ expansion has not led to a consensus on core concepts and key terminology. In both fields, terminological sloppiness has ensued, with the key term – be it ‘human rights’ or ‘conflict resolution’ – being used in multiple ways. Moreover, the rising expectations and ambitions in either field have led to concerns –within and outside the fields – about the extent to which human rights and conflict resolution actually manage to achieve their lofty goals.

Ironically, a relationship may exist between the fields’ expanding ambitions and their shortcomings in delivering results, as Van Rooij and Nicholson have suggested in another context (2013, 345): increasing ambition produces limited impact, yet lack of impact prompts proposals to address gaps and do more. Scholars and practitioners contribute to this process by developing and endorsing new, more comprehensive, paradigms while criticising older ones for their limitations.15 A risk thus arises of the human rights and conflict resolution fields turning into their own ‘straw-man’: by expanding their aspirations they set themselves up for more critique, yet then self-deliver such critique (ibid).

Nevertheless, the broadening conceptions of what is involved in protecting and promoting human rights and facilitating sustainable conflict resolution have resulted in the boundaries between the fields becoming less distinct as the points of connection increase; the metaphorical ‘edges’ of the fields are fraying (cf. Fast 2002). Clearly, the conflict resolution field has had to start paying attention to human rights and ‘the law’, in light of the ascent of the human rights paradigm and the rise of international criminal justice. Conversely, the human rights field has been challenged to consider the impact of its interventions on conflict dynamics. There are also other connection points; this probably informs Mertus’ assessment (mentioned in the introduction) that the lines between human rights and peace work have blurred as the range of actors involved and the nature of activities have widened (2011, 128; also Schirch 2006, 63-64). The growing movement of practitioners across the fields, noted in chapter 1,

15 Van Rooij and Nicholson observe what they call the “co-evolution of ambition and limited impact” in a review of inflationary trends in the field of law and development (2013).
Comparing The Fields: Human Rights And Conflict Resolution

attests to this too. It is noteworthy too that an increasing number of issues have become matters of concern to both human rights and conflict resolution actors. These include not only the question of how societies can come to terms with a legacy of serious abuses in the aftermath of violent conflict (‘transitional justice’) but also, for example, the impact of business operations in conflict-affected environments and the management of natural resources, to name but a few.

In sum, the fields’ evolution means that human rights and conflict resolution perspectives, actors and approaches increasingly ‘meet’ one another. Of course, while enhancing prospects for cross-fertilisation and collaboration, the narrowing gap between the fields has also raised the odds of the fields and the actors within them colliding when their respective priorities and strategies diverge or are perceived to do so. This has probably become most clear in the context of transitional justice and the peace/justice debate more generally – which is important to acknowledge here even if this study does not cover this for reasons set out previously.

4.2.3 Challenges

Finally, neither of these fields is as straightforward as they are often perceived or portrayed. In fact, human rights and conflict resolution are remarkably similar when considering the tensions existing in each field, and consequently, the challenges faced by actors concerned with human rights protection and promotion or conflict resolution. The fields' difficulty in having the desired impact has already been noted; common too are the problems associated with measuring or proving effectiveness.

In addition, while both fields are concerned – at least in theory – with addressing power imbalances in their aspiration to create more equal, participatory and fair societies, their relationship with power is ambiguous in practice. Both human rights and conflict resolution are subject to critique for challenging power insufficiently when resources and opportunities are asymmetric. In fact, both may serve to sustain a status quo marked by structural inequalities: human rights can do so by displacing alternative idioms of social and political protest, while conflict resolution may freeze existing inequalities, facilitating pacification rather than transformation in seeking to prevent a situation turning from bad to worse. As such, neither field can elude the liability that activities undertaken with the best of intentions may well have unintended negative consequences. Moreover, practical efforts in either field may be beholden to the very (statist) powers that enabled formal rights standards to come into being or that requested the initiation of an interest-based conflict resolution

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16 In this regard it is also noteworthy that many practitioners in the human rights and conflict resolution fields (notably those operating in the realm of INGOs) nowadays resemble one another in terms of political views and ideals, cultural history, and socioeconomic position – as Colvin has observed previously in relation to practitioners in the fields of transitional justice and development (2008, 8).

17 See chapter 1, notably 1.1.3.
process. Either way, the entities wielding power can limit the transformative impact of interventions, whether focused on human rights or conflict resolution.

A feature that has further bearing on the fields’ ambivalent attitude to power is also shared by human rights and conflict resolution: the extent to which both fields have evolved into specialised, technical approaches with a tendency to downplay – or even ignore – the political dimension of actual efforts. This technical turn manifests similarly in some respects (namely, rapid professionalisation) and differently in others (e.g. formulation of new human rights standards; development of elaborate conflict analysis tools). The ‘technification’ of human rights and conflict resolution is undeniable, however. Both fields, as a set of discourses and practices in the contemporary world, rely heavily on technique: “they are invested in an idea that with the proper tools and systems in place, their goals can be accomplished effectively and efficiently” (Colvin 2008, 2). This development has been criticised in both fields, as it provides little “guidance on the normative substantive issues at stake” (idem, 12) and fails to appreciate “the uncertainty and ambiguity inherent in all social processes” (Körppen 2011, 77).

It has also transpired that human rights and conflict resolution extensively use strategies meant to ameliorate conditions in the short term despite their aspiration to facilitate long-term, structural change. In this respect, intentions and actual practice in the two fields do not match. Another shared dilemma is the tension between the general and the particular. In part, this relates to charges levelled against human rights and conflict resolution that their respective body of thought and practices, under the guise of universal relevance and application, represents a Western perspective and is of only limited value elsewhere. Beyond that, the general/particular question plays out differently. In the human rights field, theory and practice are both universalist; the emphasis on the primacy of universal norms competes with the importance of having them resonate with customs and culture in a specific context, and with demands for local agency. In conflict resolution, tension arises more between theory and practice; the desire to defer to the complexity and specificity of a particular conflict and the notion that context-specific needs must prevail, clash with the field’s simplifying and generalising tendencies. Still, in both fields, calls for ‘taking context into account’ and ‘ensuring local ownership’ are more easily said than done.

The challenge of reconciling the general and the particular has become more pressing over time, as many more NGOs – both context-specific and international – are working on human rights and peace, while transnational networks have grown in size, scope and influence and global power relations are shifting. Resource inequalities are an exacerbating factor as activities originating from and (supposedly) driven by persons and organisations embedded in a particular context tend to be largely dependent on material resources provided by external actors.
In this regard, it is also often overlooked that talk of particularities and local context quickly turns essentialist, without regard for the fact that ‘the local’ is not a monolithic, straightforward entity that is easily known, but is contested and emergent: “it emerges out of the engagement of actors, internal and external, in their mutual, sometimes conflicting efforts to remake the world. As such, it is unpredictable and unknowable before the fact” (Colvin 2008, 13). Our discussion thus far implies that accommodating such ambiguity and unpredictability is hard for fields that put such faith in the make-ability of the world.

4.2.4 In Sum: Similarities

The chart below summarises the similarities outlined in the discussion thus far:

<table>
<thead>
<tr>
<th>Similarities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Normative character</td>
<td>• Recognising shared humanity/ inherent dignity of all human beings</td>
</tr>
<tr>
<td></td>
<td>• Seeking to support constructive social change</td>
</tr>
<tr>
<td></td>
<td>• Believing in the ‘make-ability’ of society</td>
</tr>
<tr>
<td></td>
<td>• Faith in individual and collective agency to shape own environment</td>
</tr>
<tr>
<td></td>
<td>• Emphasising protection of human life, participation, empowerment, equity</td>
</tr>
<tr>
<td>Evolution over time</td>
<td>• Strong impetus in 1970s and 1990s, growing professionalisation</td>
</tr>
<tr>
<td></td>
<td>• Increasing influence on other realms (e.g. development)</td>
</tr>
<tr>
<td></td>
<td>• Increasing ambition and reach (substantive and geographical)</td>
</tr>
<tr>
<td></td>
<td>• Terminological sloppiness</td>
</tr>
<tr>
<td>Facing similar challenges</td>
<td>• Having impact, proving effectiveness</td>
</tr>
<tr>
<td></td>
<td>• Match between theory and practice</td>
</tr>
<tr>
<td></td>
<td>• Ambivalence in relation to power</td>
</tr>
<tr>
<td></td>
<td>• Extensive reliance on technique (and downplaying political nature of efforts)</td>
</tr>
<tr>
<td></td>
<td>• Symptom-orientation and dominance of short-term strategies</td>
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<td></td>
<td>• Tension between the general and particular; taking context into account</td>
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4.3 Conclusion: The Human Rights and Conflict Resolution Fields Compared

As the last of three chapters considering the human rights and conflict resolution fields in general, this chapter has sought to compare them with a view to adding to our understanding of the fields and facilitating insight into what may connect them and/or drive them apart. This concluding section summarises the differences and similarities observed and reflects on human rights and conflict resolution in light of the earlier discussion on the notions of ‘field’ and ‘frame’.
This chapter has discussed differences between the fields in three areas: their disciplinary groundings, their conceptual frame of reference, and their practical approaches. While law has in large part shaped the human rights field and continues to provide the parameters for its existence and functioning, the conflict resolution field has been more influenced by various social sciences. This different disciplinary basis affects how human rights and conflict resolution view social reality and the options for action identified.

Conceptually, the fields differ in several respects, such as their analytical focus, understanding of how ‘change’ is likely to happen, notions of justice, and the extent to which they are willing to engage with ‘alternative moral universes’ beyond the realm framed by international normative standards. The dominant practices in each field also tend to differ considerably, as reflected in, *inter alia*, their respective attitude towards parties, their approach to problem-solving, and the types of roles they most regularly play. Human rights does not shy away from adversarial approaches and seeks solutions for context-specific problems through the application of human rights instruments; conflict resolution is more collaboration-oriented and relies mostly on the design of processes to address problems.

Yet these differences, however obvious they may be, only represent one side of the story when considering the fields in conjunction. The separate reviews of the fields show remarkable similarities between human rights and conflict resolution, which are also worth acknowledging. This chapter has argued that the fields resemble one another in three respects in particular. First, both are highly normative, and seek to facilitate constructive social change so as to improve the human condition. They also share a belief in the agency of individuals and groups to shape their environment. Second, the fields are similar with regard to their evolution over time, having both experienced a steady expansion in substance, reach and scope, as well as rapid professionalisation within a few decades. Third, the fields contain significant internal tensions or contradictions, which show that their specific perspectives on and approaches to the world have limitations. Yet these contradictions are surprisingly similar, suggesting that particular challenges are not unique to either field. These relate, *inter alia*, to a reliance on technique, a tendency to focus on symptoms rather than causes, a degree of ambivalence when it comes to challenging power, and the question of combining the general with the particular. In other words, both human rights and conflict resolution have a ‘shadow side.’ Furthermore, neither can claim to possess the definitive truth about the world and how to improve the human condition.

Thus, a comparison of the two fields, based on careful review of human rights and conflict resolution in their own right, demonstrates that different stories can be told about the way they hold up to one another in general terms. Focusing on their *telos*, or purpose, is likely to draw attention to their “shared logics” (Colvin 2008). A concern with the methods of their practice will probably bring out contrasts. Nevertheless, such differences are not to be negated, as it is clear that they may generate tensions
Comparing The Fields: Human Rights And Conflict Resolution

between human rights and conflict resolution actors, perspectives and approaches. As Colvin has noted in another context,

[a] set of quite conventional philosophical debates underlies [these differences and tensions]. What are and ought to be the relationship between the individual and the collective? Between the past and the future? Between event and structure? Between the ideal (pure) and the material (technical)? How do we understand agency and responsibility [...]? What causes justice and inequality, what are the forms suffering can take and where should we look for their remedies? As often as not, our answers to these questions reinforce the underlying categories and distinctions between them (idem, 6).

Appreciation of the fields' differences may help to explain the stereotypes and prejudices that exist around each field, and that lead to ‘human rights' and 'conflict resolution' often being typified in simple dichotomies, if not caricatures, that imply their mutual exclusivity. Nevertheless, a careful reading of the above discussion on similarities and differences shows that these are not absolute. What is similar in one respect – e.g. a shared norm of protecting human life – may be put into practice differently; a seemingly obvious difference – for example, the fields’ disciplinary roots – may hide a more nuanced reality. Even authors that do depict stark contrasts between the fields may qualify them, recognising that human rights and conflict resolution actors often overlap in reality and share many perspectives (e.g. Baker 2001, 756).

A question can therefore be raised as to why, thus far, the literature on human rights and conflict resolution has paid such attention to the differences between the fields with relatively little regard for their shared points of reference. Why has the gap between these bodies of thought and practice been seen to be so deep (cf. Colvin 2008, 4)? This runs the risk of “missing the fact that they have always been deeply connected, if only through the process of carefully keeping them in contrast to one another” (idem, 8). Rather than pursuing this question here, we will revisit it in the conclusion, as later chapters may also shed light on it.

For now, given the concluding nature of this section, it makes sense to reconsider the ‘field’ and ‘frame’ notions in relation to human rights and conflict resolution to enhance the coherence of these last three chapters. The reviews of the human rights and conflict resolution fields show how the constitution of a field may indeed entail the constitution of reality itself, as Bourdieu argued (1987, 831).\(^{18}\) The words and images social actors use in the context of conflict resolution practice or human rights work, reveal the world in a particular way; certain features of social reality are highlighted while others are obscured, referred to the background or dismissed as irrelevant. It has also become clear how these frames make certain actions possible while precluding others. While the concern with human dignity and accountability in human rights' thinking turns norm-framing, advocacy and fact-finding into key strategies, this is less suitable in a conflict resolution frame; there, the ambition to find

\(^{18}\) See 1.2.2.
mutually acceptable outcomes and faith in the power of good processes makes relationship-building and dialogue-facilitation more relevant.

In other words, the human rights and conflict resolution fields each provide a distinct ‘lens’ through which to view the world and conceive of possible responses to problems faced by people and societies. These ‘lenses’ come with priorities, preferences and demands, which may well pull in different directions and are expressed in vocabularies that are fairly inaccessible to the uninitiated. They also come with certain limitations, which is relevant given the way actors in a field seek to impose their internal norms on broader realms and project the legitimacy of their notions and interpretations outwards (Terdiman 1987, 809). The gradual expansion of the fields reflects this tendency, which has resulted in the boundaries of human rights and conflict resolution becoming less distinct over time. Broadening conceptions, growing ambitions and diversifying practices have reduced the distance between the fields. Human rights and conflict resolution perspectives and approaches thus increasingly encounter one another – for better and worse, so to speak; this development has come with opportunities and challenges.

Overall, appreciating the distinct nature and content of the two lenses – in their own right and in comparison – thus sheds light on the extent to which human rights and conflict resolution, in general terms, may connect and disconnect at the same time. In my own work, when engaging with a group of people representing both ways of doing, being and thinking, a curious pattern of drawing together and pulling apart has surfaced that illustrates this interaction. If I present human rights and conflict resolution as essentially similar in some fundamental respects and as part of a larger endeavour to remake the world (cf. Schirch 2006, 64), resistance usually ensues and people assert the many differences between their respective emphases and approaches. Yet if I take them through a process that spells the two lenses and positions them as distinct, a reverse movement follows, with similarities and complementarities soon being pointed out.

The next three chapters explore this dynamic interaction further, by considering how the relationship between human rights and conflict resolution plays out in practice. To this end, it examines the experiences of some civil society organisations and also refers to the work of a number of independent state institutions.
Part II – Fluidity
Chapter 5: Two Field-Specific Organisations
Chapter 5

After the more abstract review and comparison of the two fields, we now turn to the question of how the relationship between human rights and conflict resolution may play out in practice. This is the focus of this chapter and the next one, which take as their entry point the experiences of a number of actors, some field-specific and others less clearly defined. This chapter focuses on two South African civil society organisations, one from each field: Lawyers for Human Rights (LHR) and the Centre for Conflict Resolution (CCR). Besides illustrating many points made in chapters 2 and 3 about field thinking and practice, the discussion shows how the actual encounter of human rights and conflict resolution brings opportunities and challenges for the organisations and individual practitioners involved. Analytical insights and practical approaches from conflict resolution can be usefully brought to bear on initiatives seeking to enhance human rights, yet also seem to undermine rights protection at times. The reverse applies too, in that human rights can both help and hinder conflict resolution.

The practical examples considered here challenge the notion that ‘human rights’ and ‘conflict resolution’ are very separate fields with clear boundaries. In practice, the two endeavours turn out to be closely related. Actors find ways to combine rights advocacy and protection with conflict resolution, but also run into tough questions relating to ‘the other field’ that warrant engagement. A degree of fluidity can be observed, in that human rights and conflict resolution efforts flow into one another. This appears to be due to the context in which these organisations operate and the nature of their work. It is thus argued that the boundaries between human rights and conflict resolution are far less distinct than has been recognised so far – and as seemingly suggested by the previous chapters. While focusing on the experiences of these two field-specific organisations, examples from elsewhere are drawn upon to illustrate that the permeability of boundaries between the fields – ‘crossing over’, ‘branching out’, or ‘stumbling into’ the other field – may not be confined to these two South African NGOs.

The chapter contains two main sections, one for each organisation. The overall structure for these sections is roughly the same, though they do not wholly mirror one another in substance. This is due to the way in which much of the material discussed here came to my attention (through practice rather than formal research), which shaped later information-gathering. Each section starts with a brief preview of what will be discussed, after which it sets out some historical background to the organisation and the context in which it came to explore and/or grapple with conflict resolution (LHR) or human rights (CCR). The two sections then consider situations I was involved in while working in CCR’s Human Rights and Conflict Management Programme. They subsequently place the discussion in a contemporary context by considering more recent experiences related by interlocutors in interviews conducted for this study. This is followed by a more general discussion on the attention paid to conflict resolution or human rights (or the lack of it). Each section ends with a summary that outlines findings and briefly refers to examples from other contexts to
Two Field-Specific Organisations

support certain points. The chapter as a whole concludes with a final section that
notes overall insights and reflects on the fluidity between human rights and conflict
resolution.

5.1 Lawyers for Human Rights (South Africa)

This section focuses on LHR’s experiences with addressing rights-related conflict in
eviction cases, as part of the organisation’s efforts to enhance access to justice for the
rural poor in South Africa’s Western Cape Province since the end of apartheid. After
providing some background (in 5.1.1), it discusses how LHR staff came to question the
use of adversarial human rights tactics tried and tested in the apartheid era, given the
tense relationship dynamics in farming communities and the limited prospects of
farmworkers if evicted (5.1.2). It explains how LHR sought to enhance the conflict
resolution capacity of its staff and partners (paralegals, trade unionists and other
activists) in support of its human rights work, yet also found that interest-based
approaches are no panacea; at times, the full force of the law and the judicial system
would be needed to ensure the protection of rights (5.1.3).

The focus then shifts to a later situation in which LHR did not play a third-party role
itself, but acted as legal representative for a group of people in a process involving an
external mediator. This raised questions for LHR related to the mediator’s role and
approach, the issues prioritised for problem-solving, and the type of outcome
resulting from the process (5.1.4). The section then considers the limited use of
interest-based methods, despite recognition of their relevance for addressing rights-
related conflict amongst rights actors and government (5.1.5). The final sub-section
(5.1.6) comments on LHR’s encounters with conflict resolution, and links these to a
few other examples of rights NGOs.

It should be noted that ‘conflict resolution’ is mostly equated here with mediation and
negotiation, disregarding the field’s broader scope as set out in chapter 3. This is how
the LHR actors I engaged with as a practitioner and while writing this study talk about
conflict resolution; their understanding is what matters here. Also, this section only
focuses on human rights lawyers as human rights practitioners; again, this is a
consequence of the real-life example. Finally, it does not review mediation in eviction
cases in detail or assess whether mediation lives up to its supposed benefits. Instead,
it seeks to show why LHR sought to use conflict resolution and what questions it
encountered in that regard.

5.1.1 Background

Lawyers for Human Rights was established in 1979 as an independent non-
governmental human rights organisation, in the context of growing opposition by
liberal, middle-class South Africans to the apartheid regime. Leading legal scholars
and practitioners of the time were involved in its foundation, many of whom would
Chapter 5

later fulfil important functions in post-apartheid South Africa. They were concerned about the country’s legal profession being implicated in upholding an illegitimate system. In their view, the law should become relevant for society at large, and should protect everyone, including black people (Pollecut 2009, 13-14). The name of the organisation was remarkable in that it referred explicitly to human rights. Earlier in the 1970s, terms like ‘human rights’ and ‘legal aid’ were unacceptable in South Africa, given its restrictive political environment. By 1979, however, “the word ‘human rights’ had entered South African life”, according to John Dugard, a prominent South African human rights lawyer involved in setting up LHR.¹

From the outset, LHR sought to fight intolerance and injustice by mobilising lawyers to become involved in human rights activism and public interest litigation. Initially, it operated as a membership organisation, constituting an association of lawyers. They were mostly whites, who were willing to represent individuals accused of politically-related crimes (Handmaker 2009, 157); there were relatively few black lawyers and legal professionals in South Africa at the time.² The organisation only acquired a secretariat in the late 1980s, after which it evolved into the professional NGO it is today: an organisation that “uses the law as a positive instrument for change and to deepen the democratisation of South African society” and “strives to promote awareness, protection and enforcement of legal and human rights through creation of a human rights culture”.³ A critical part of its work is providing free legal services to “vulnerable, marginalised and indigent individuals and communities, [...] who are victims of unlawful infringements of their Constitutional rights”.⁴

During the 1980s and the early 1990s, the organisation took practical and legal action to challenge apartheid and support those affected by detention and legislation, such as the Group Areas Act and the pass laws, so as to mitigate the system’s impact.⁵ It also played an important role in fighting the death penalty and uncovering the regime’s death squads, in line with its guiding principle of “human rights and justice for all”. In the post-1994 period, its focus shifted to enhancing access to justice for the rural poor and other vulnerable and marginalised groups. In 1998, this led to the development of a new project in the Western Cape province, geared towards protecting and

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¹ Interview, 25 August 2011, The Hague. A year before establishing LHR, its initiators had founded two other organisations focusing on protecting human rights through public interest litigation (the Centre for Applied Legal Studies at the University of Witwatersrand, and the Legal Resources Centre). They had not dared make explicit reference to human rights yet. The country’s first university courses on human rights (taught by Dugard in 1973) were titled ‘aspects of public law’, ‘international law’ and ‘criminal procedure’ to avoid scrutiny and censorship.
² Ibid. According to Dugard, one of LHR’s first tasks was to establish a black lawyer association.
⁴ Ibid. LHR set up the first comprehensive paralegal training programme in South Africa. This later became an NGO in its own right (Handmaker 2009, 157).
⁵ The Group Areas Act (Republic of South Africa, Act 41 of 1950) enforced the segregation of different racial groups into specific areas in urban environments, and restricted ownership and occupation of land to a specific statutory group. The pass laws controlled the movement of black South Africans during apartheid, by requiring all above the age of 16 to carry a pass book everywhere and at all times (Republic of South Africa, Natives (Abolition of Passes and Co-ordination of Documents Act, commonly known as the Pass Laws Act, Act 67 of 1952).
Two Field-Specific Organisations

promoting the rights of rural dwellers and farmworkers, especially those threatened with eviction. To appreciate the significance of this initiative, it is necessary to provide some historical context to the conditions prevailing on South African farms, and in particular in the Western Cape, and to outline the changing legal environment at the time.

The province – the third largest in the country – had long exemplified the country’s severely skewed land ownership. As a result of the 1913 Natives Land Act\(^6\), which confined 80% of the South African population to 13% of the land, whites owned 87% of the country’s surface area despite making up only 15% of the total population (Sachs 1992). Arable land is scarce in South Africa, constituting just over one-tenth of the total surface area. Much of it is located in the Western Cape, where it is used for large-scale commercial farming, mostly for the production of wine and fruit juice. Unequal power relations and racial paternalism have historically reigned supreme here.

Labour relations on farms were unusual, due to the legacy of a labour tenancy system that, from the late 19\(^{th}\) century onwards, had forced a form of contractual servitude on what was previously a squatter peasantry. The family, rather than the male representative, was the unit of production in this system. Over time, a situation had evolved in which the landowner/farmer and farmworkers perceived of themselves as living in a ‘community’, albeit one in which the former controlled virtually every aspect of the latter’s lives: their work and housing, their access to food, water, medical facilities, electricity and education, and the movement and labour of their children and spouses (South African Human Rights Commission n.d., 3-4). This persisted throughout apartheid: the formal labour relations machinery did not include farmworkers and their rights of residence on a farm were not regulated, leaving them with no legal protection.

In the Western Cape, the repercussions of another method of social control exacerbated the vulnerability of farmworkers and their families: the infamous dop or tot system, in which labour was paid in alcohol rather than cash. By the mid-1990s, this was no longer widely practised, yet the resultant alcoholism in farming communities remained. The consequences were many: high rates of violence, child and spousal abuse, malnutrition, tuberculosis, and a prevalence of foetal alcohol syndrome (idem, 58). Social exclusion, marginalisation and alienation marked farmworkers’ daily lives (idem, 3). Poverty and functional illiteracy were extremely common too (Nkuzi Development Association 2005, 10). Overall, farmworkers were at the mercy of landowners. This was reflected in evictions without notice or recourse, frequent assaults or deaths of farmworkers by farmers, systematic denial of access to

\(^6\) Republic of South Africa, Natives Land Act (Act 27 of 1913).
health care, and arbitrary closure of schools located on farms by owners (South African Human Rights Commission n.d., 57-72).

The post-apartheid government made several policy and legislative changes to protect the interests of both farmworkers and farmers, enhance equity, and make the agricultural sector more competitive. It included farmworkers in the Labour Relations Act of 1995, abolished some tax breaks for farmers, and undertook land tenure reform efforts. These sought to clarify, fortify and secure the rights of people living on communal land and farm dwellers, including labour tenants. They were intended to give effect to sections 26(3) and 25(6) of the new 1996 Constitution, which respectively stipulate that no one can be evicted from their home or have their house demolished without a court order, and place a positive obligation on the state to provide for legislation to address the situation.

The Labour Tenants Act (LTA) of 1996 was enacted to help labour tenants to obtain security of tenure and gain ownership of land they occupy. The Extension of Security of Tenure Act (ESTA), promulgated in 1997, sought to regulate the conditions of residence on certain land, including farms, the conditions and circumstances under which the right of persons to reside on land is terminated, and the legal process that the landowner should follow before a farm worker may be evicted. LHR assessed ESTA as “an intricate and complicated piece of legislation” aiming to “avoid the past hardships and injustices that were caused by arbitrary evictions”. It observed that the legislation only provided for long-term security of tenure in some instances, and mostly prescribed “the requirements to be met, the procedures to be followed, and the factors to be considered by the court before granting an eviction order”. Thus, land tenure reform as initiated after 1995 focused on improving conditions of tenure as they existed rather than on transforming them. For some, this ratification of ‘marginal land rights’ effectively legitimised historically oppressive relationships between white owners and black workers (e.g. Mutua 1997, 95).

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7 The use of the past tense in this paragraph is not intended to suggest that these conditions have ceased to exist; they persist to date in many farming communities.
7 Section 26(3) states: “No one may be evicted from their home, or have their house demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary eviction”, Republic of South Africa, Constitution (Act 108 of 1996) (hereafter 1996 Constitution).
9 Section 25(6) states: “A person or community whose tenure of land is legally insecure as a result of past discriminatory laws or practices is entitled to the extent provided by an Act of Parliament either to tenure which is legally secure or to comparable redress”, 1996 Constitution.
11 Republic of South Africa, Extension of Security of Tenure Act (Act 62 of 1997), preamble. The legislation tries to make a clear distinction between farmworkers and labour tenants, yet “the reality is far less so and the distinction is murky at best” according to the South African Human Rights Commission (n.d., 4).
12 Funding Proposal, SFP, LHR, 1997, p. 3.
13 Ibid.
5.1.2 The Security of Farmworkers' Project

Despite its limitations, the tenure reform offered LHR the opportunity to enhance access to justice for a particularly vulnerable constituency, in line with its new motto “making rights real”, adopted at the end of 1997. Prior to the promulgation of ESTA, the organisation had already considered addressing issues of farmworkers’ rights and land reform (an early project proposal had suggested focusing on providing legal services to the rural poor in relation to land restitution claims), civil litigation for assaults and deaths of farmworkers by owners, and rights education for farmworkers. The introduction of ESTA shaped LHR’s intervention, prompting a focus on security of tenure. The organisation was well aware that evictions had a ‘devastating impact’ on farmworkers and their families, also because of the major backlog in the province regarding the provision of houses. As the then regional coordinator of LHR, Judith Robb Cohen, puts it,

An eviction for the farm worker is not even a crisis, it’s a catastrophe. It impacts [him and his family] in so many ways, particularly in terms of people’s economic and social rights. It’s literally either you have a roof over your head and food to eat, [or] you’re literally on the side of the road.

Another interviewee familiar with the context, Rodney Dreyer, concurs. He mentions that those evicted “would become the people at the traffic lights”, i.e. people begging at intersections. With limited education and no professional experience other than working on farms, farmworkers were hardly able to create “new lives in dignity in relocation settlements” (Nkuzi Development Association 2005, 10).

Hence, soon after ESTA was promulgated, LHR established a Security of Farmworkers Project (SFP) to “assist rural indigent farmworkers and dwellers/occupiers in the Western Cape to enforce their rights in terms of [ESTA] by providing the capacity for activist legal intervention thereby giving effect to these persons’ constitutional rights”. Concentrating on enforcement and advocacy of tenure security rights of farmworkers, LHR started representing individuals facing possible eviction and engaged in litigation if need be. It complemented this with other practices, such as training farmworkers, facilitating networking, disseminating information and offering telephonic advice. The SFP worked closely with other civil society organisations focusing on land issues and the rights of the rural poor, including the paralegal

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14 'From the Office of the National Director’, Annual Review 1997, LHR, p. 2.
15 Draft Funding Proposal, LHR, n.d.
18 Interview, Rodney Dreyer, 14 June 2011, Cape Town. Dreyer is a former CCR colleague who later became very involved (on behalf of a conflict resolution consultancy firm) in the establishment of the government’s Land Rights Management Facility in 2008 and trained many of its mediators; see also below at 5.1.5 (and fn. 44).
19 LHR website, op.cit.
movement; paralegals were (and still are) usually the first point of contact for farmworkers faced with evictions.

It rapidly transpired that the context in which the SFP operated was even more volatile than the LHR lawyers had anticipated. Farm owners detested the new legislation, perceiving it as draconian, punitive and burdensome. In their view, it led farmworkers to believe that they were ‘untouchable’ and caused productivity to drop. Agri Wes Cape, the regional chapter of the farmer’s union, declared that it did not support ESTA and that its members would "circumvent the provisions within the boundaries of the law" (South African Human Rights Commission 2003, 61). Union representatives or paralegals from local Advice Offices seeking entry to farms to explain the new legislation to farmworkers were regularly chased off properties, at times with the use of dogs and/or guns. In general, owners were aggressive and verbally abusive towards paralegals and legal representatives acting on behalf of farmworkers.

Tension also arose in relation to the rights of farmworkers laid down in ESTA, such as the right to receive visitors, to family life, and not to be denied access to health or educational services. When trying to exercise any of these rights, farmworkers might experience their electricity or water supply being cut off, a frequent tactic by owners to intimidate workers and get them to vacate their premises. This in itself would amount to an illegal eviction in terms of the legislation. As such, it could be the basis for farmworkers laying criminal charges against the farmer and seeking a civil remedy in terms of a court order to restore the service – which, in turn, would further infuriate owners. Tension between farm owners and farmworkers occasionally erupted into violence, requiring the police or local civil society actors, including LHR lawyers, to intervene to prevent escalation.20

Speaking years later of the kinds of situation experienced, Kamal Makan, who coordinated LHR’s Security of Farmworkers Project from 2001 to 2009, recalls an owner blocking a farmworker from accessing his dwelling by locking it up with a padlock:

Yes, he uses a padlock, that actually did happen! [You must realize] that conflictual context – there’s such one-sided dominance, such an imbalance of power, that [farmworker] was helpless, he was in a state of shock when he [got] back to the house. The farmworker [had been] in his house, and his wife was returning from work. He used to walk to the national road [where she was dropped off] to wait for her and walk back home with her. When they got back to the house, it was padlocked. Within that short time period! It was a helpless situation - he had to sleep at a neighbour’s. I think we had to obtain a court order to restore the house to him.

[There are] other instances... At this farm in Stellenbosch, a colleague and I did not go through the gate but went over the fence [of the farm] to see the client [a farmworker].

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20 Information drawn from discussions at the time with Judith Robb Cohen, LHR regional coordinator and founder-coordinator of the Security of Farmworkers’ Project, personal work notes.
Whilst at [his] dwelling, there we had the owner running down the hill. He was armed. He looked like one of those Butch Cassidy kids. He was very highly strung, that we got onto his property, that this farmworker was seeking assistance. We had to make an exit then, without speaking to the farmworker. We introduced ourselves, and managed to calm him down. But it was a life-threatening situation.\(^{21}\)

Ongoing harassment of clients was another regular occurrence:

For example, this one farmworker, he and his wife - an innocent couple - were living on a farm; [they] had rights of residence. Both had lost employment but remained on the farm as they could not find alternative accommodation. The farmer constantly harassed them; his son - also the supervisor on the farm - used to park his car outside their dwelling, rev the car, shoot pellets. I think it was just to instil fear in them. This [farmworker] was a man who couldn’t read or write. I guess almost 80% of the people we saw were illiterate, which makes their vulnerability all the greater. [And then the] cutting off of water, electricity as intimidation, to get [people to] vacate, [or] farmers used to complain that they had to pay for the water.\(^{22}\)

Intimidation or obstruction was but one factor hindering effective implementation of ESTA. Another was a lack of knowledge and understanding of the new law amongst farmworkers and farm owners. Farmworkers were often unaware of their rights under ESTA and were too afraid to demand their enforcement (South African Human Rights Commission 2003, 60). LHR observed several ‘misconceptions’: for example, farmworkers seldom realised that ESTA did not prohibit or preclude evictions as such, but merely set out the procedures to be followed by a landowner seeking to evict individuals. Many also thought that the legislation granted them ownership of the houses they occupied on farms, rather than residency rights. Meanwhile, owners who had recently acquired their land were often unaware that the rights given to occupiers by the previous owner, passed on to them and hence remained in place, despite the property having changed hands (Lawyers for Human Rights n.d.).

Communication and information dissemination about the legislation were thus of great importance. They were, however, impeded by the high level of polarisation prevailing in the farming context. Interaction with owners was especially problematic; the racism commonly found amongst farm owners quickly turned engagement hostile.\(^{23}\) In addition, paralegals, trade unionists and other grassroots activists – many of whom had a farmworker’s background themselves – tended to take a strong, adversarial stance when engaging with prospective, alleged or actual violators of rights. This approach was informed by experiences from the apartheid past, when confrontation had been a dominant way to challenge injustice. Paralegals were also very aware of the system’s historical background and the past denial of land rights.

Their adversarialism was reinforced by awareness of the present situation: the tables had turned in South Africa’s democratic dispensation. The law now finally offered

\(^{21}\) Interview, 14 November 2010, through skype.

\(^{22}\) Ibid.

\(^{23}\) Interview, Judith Robb Cohen, 9 June 2011, Cape Town.
some protection to those who had been disadvantaged for so long. As a result, many activists were keen to ‘teach a lesson’ to persons who were perceived to deny rights or be insufficiently observant of them. This turned their interactions with owners into potentially explosive situations. At the time, it seemed to me that knowledge of the legislative framework had become a weapon in countering the power imbalance experienced by both activists and their clients alike. Like Vaclav Havel, who had spoken ‘truth to power’ in the 1970s and 1980s during the communist regime in Czechoslovakia, these activists were now speaking ‘law to power’. They were doing ‘politics by other means’, much as law had been used in the struggle against apartheid (Abel 1995).

Yet the LHR staff in the Security of Farmworkers Project started to question whether this adversarial approach truly facilitated effective enforcement of farmworkers’ rights. A harsh confrontation about the illegal eviction of a farmworker between a paralegal from an Advice Office brandishing ESTA and a farmer might well lead to the worker’s reinstatement on the farmer’s land. However, the relationship between the owner and the worker would often deteriorate so badly that their co-existence and cooperation on the farm would be negatively affected. In the end, the worker’s rights would be formally enforced, but his/her living situation might have become untenable, with the owner acting out his resentment in various ways. He would also probably resent the legislation even more, afterwards.

According to Judith Robb Cohen, who founded the SFP and served as its first coordinator for three years, LHR also realised that “a legal adversarial battle in the court room would not create the solutions you want”. She reflects that:

It was absolutely clear from the start that [...] all that could be achieved through courts really was time. [The] relationship between the farm owner who had the power and the farmworker would be totally and utterly destroyed. [...] Also, farmers didn’t want to go to court, it just cost too much money. It makes no sense in the South African scenario. The court process just takes up so much time and you can never win. [...] The person is still going to be thrown off the farm. So [it] was more constructive to mediate within a human rights framework when it was clear that the court would ultimately come to a decision that the person would be evicted. You could achieve far more in securing that person’s rights, if you were to mediate with the landowner – who would ‘buy’ it because it would cost them less money. [...] Both sides could benefit from mediating solutions.

And [...] with the great power discrepancies – farmdwellers weren’t educated and [didn’t have] the social skills to interact and negotiate their departure with the farm owner, and because of the historical legacy it immediately became antagonistic when a farmdweller comes to speak to them. It just goes really really ugly and I think [it gets] very, very damaging in terms of dignity for the farmdweller. So, it would be way better for an external person to come in and to actually start negotiating some of these issues. That’s

24 Personal work notes, based on conversations with LHR staff members, June-July 1999, and on interactions with activists from various organisations and Advice Offices during pilot training workshop, 24-26 Aug. 1999.
26 Interview, 9 June 2011, Cape Town.
all I did at [LHR], negotiate conflicts between farmers in positions of power and farmworkers where the power imbalance is so great and where the [workers] – when they lose, they lose everything.27

Thus, human rights tactics that had been tried and tested in the apartheid era had limitations in securing sustainable settlements for LHR’s clients that took account of their rights and underlying interests and needs.

5.1.3 Exploring Interest-Based Conflict Resolution

Within a year of the SFP’s establishment, LHR’s Western Cape office approached the Centre for Conflict Resolution (CCR), previously mentioned in the introduction to this study, to explore how it could assist in strengthening the conflict resolution capacity of LHR staff members and its partners. This step, directed at the Centre’s Human Rights and Conflict Management Programme, was facilitated by the fact that the SFP coordinator and I had met before, when studying for a human rights law degree and a peace studies degree respectively at the same university in the United States. We had not kept in touch after graduating and had been surprised to find ourselves in one another’s vicinity some five years later. Realising that we were both heading a new initiative at our respective organisations, and that the SFP’s interest in using alternative methods to enhance rights protection matched ‘my’ programme’s interest in exploring the relationship between human rights and conflict resolution, we seized the opportunity to link our efforts.

Lengthy discussions – on the SFP’s context, work, clients, situations experienced, questions grappled with – led to the design and delivery of a first training workshop on human rights and conflict resolution for a group of people from various paralegal Advice Offices in the province, trade unions, and two other NGOs engaged in land rights issues and legal assistance to farm dwellers, the Legal Resources Centre and the Centre for Legal and Rural Studies. In keeping with the practice in the conflict resolution field, the training focused on developing conflict resolution skills and their application using experiential training methodology.

Participants engaged in role play and other exercises to practice interest-based negotiation, non-threatening communication, and problem-solving in typical conflict settings. Unlike most conflict resolution training however, the training also paid attention to human rights and applicable law. The scenarios used were based on actual evictions encountered by the SFP and its partners in Western Cape province; for example, a new landowner seeking to evict dwellers from a recently purchased farm, or an elderly couple threatened with eviction due to alleged misconduct by their son-in-law.

27 Ibid.
The participants were required to use their knowledge of ESTA to resolve certain substantive legal issues. The debriefing of the exercises focused on how the participants had used conflict resolution skills and applied the law. The participants also re-enacted an eviction-in-progress which, in reality, had led to a terse stand-off between the owner and farmworkers which had required police intervention. This illustrated how a situation can rapidly escalate and served to identify possible de-escalation measures for crisis intervention.\footnote{28} Feedback at the end of the course reflected what the participants deemed most instructive: "I learned that there are different ways to handle conflict", "that it is not about settling scores or getting even with the farmer but about our clients", "that you do not have to reciprocate the farmer’s anger and let your emotions take over". One person noted that “we deal with many of these issues on a daily basis, but I was not aware of the skills and techniques to use. [...] I am now more conscious of taking certain steps”, while another indicated that "the workshop was really good in boosting my self-esteem and validating my experiences". Some commented on the novel experience of ‘standing in the owner’s shoes’ when participating in role play; they had never before considered the owner’s perspective and interests in the situations they encountered.\footnote{29}

Afterwards, SFP coordinator Robb Cohen assessed that the event had been a ‘mind blowing experience’ for most people, showing an alternative approach to conflict and challenging activists to engage with farm owners rather than just fight them. An independent evaluation conducted a few years later found that many former participants still felt that they had derived lasting benefit and had adjusted their approach to farmers accordingly (Roux 2002). The collaboration between LHR and CCR led to more joint training workshops for a similar audience; it also attracted the interest of the provincial Department of Land Affairs. Concerned with the limited number of lawyers willing to take on ESTA cases, the Department sought to expand the mediation capacity available in the province.\footnote{30}

LHR’s recognition of the value of interest- and dialogue-based methods for addressing rights-related conflicts did not make litigation irrelevant, however. This became clear when Robb Cohen contacted me for advice on an urgent matter. She was due to appear in court soon after concerning an application she had brought against an owner who had destroyed the houses of seven families living on his farm. She was acting on the families’ behalf. The presiding judge had contacted her to indicate that the owner had requested that the case be mediated instead. She now had to submit a report to the court setting out whether she accepted this request and the grounds for


\footnote{30} See HRCMP, 2000, Report. Training Session on Alternative Dispute Resolution, Department of Land Affairs, Western Cape, 29 January 2000. Cape Town: CCR. The Department was renamed the Department of Rural Development and Land Affairs in 2009 and is referred to as such below (see 5.1.5).
her decision. She considered mediation completely inappropriate but did not quite know how to present her argument. Could CCR assist? I asked her to explain why she believed mediation was out of the question. Could she tell me more about the situation?

Robb Cohen proceeded to express her disbelief at the audacity of the owner in proposing mediation; for her, this was merely a stalling tactic. The owner had not been available to meet with her despite several attempts on her part to do so. He and his attorney had delayed responding to her application for more than a week, during which the families had been without shelter. Such behaviour did not suggest any concern for her clients’ wellbeing – not to mention the actual way in which he had demolished their housing. Without any notice, he had driven over them with a truck, dumping the rubble and any remaining possessions outside the grounds of his farm, on the side of the road. The families’ belongings had all been destroyed. Fortunately no one had been in the residences at the time, as they would certainly have been seriously injured. She said she took this case very seriously, all the more so because it was the third case in a few months in which a landowner had destroyed the housing of people legally residing on his land. If this practice were not explicitly prohibited through a ruling proclaiming its illegality, she feared that other owners would follow suit.

Her exposé allowed us to identify factors informing her belief about the inapplicability of mediation in this matter. One was the gravity of the offence (the destruction unleashed on the residents’ housing and belongings and the disregard for their dignity). Another was the nature of mediation as a voluntary process of joint problem-solving between conflicting parties that is geared towards relationship-building; in this case there was reasonable doubt about the farmer’s commitment to retain a relationship with the families and find a mutually acceptable solution (reflected in the aggressive manner in which people had been evicted and the owner’s lack of response to the efforts of the families’ legal representative to engage). Then there was a need to protect the weaker party (given the serious power imbalance between the parties and the farmer’s intimidation of the families, and the slim prospect of the latter being able to negotiate freely with the former in the context of mediation, even if assisted by an independent third party). Finally, it was necessary to establish a precedent to prevent similar infractions in future (a mediated agreement would carry little or no weight beyond this case and hence would not deter other owners in the region).31 These became the core of her submission to court.

The discussion made abundantly clear that interest-based approaches were at times far less suitable than rights-based ones involving the use of the judicial system and formal standards. While interest-based methods expanded the range of tactics at LHR’s disposal and met its desire to take existing conflict dynamics and resource

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31 Based on conversation with Judith Robb Cohen and notes taken at the time; written up as a training exercise, following verification with Robb Cohen and published in Parlevliet (2002, 46).
Chapter 5

constraints into account, they were no panacea. At times, the full force of the law and the judicial system would be needed to ensure access to rights and prevent future rights violations; in certain instances interest-based processes ran the risk of undermining rights protection in the short and long term. In these instances, the benefits of litigation – protecting victims, securing redress, signalling the wrongfulness of a certain practice – would outweigh the drawbacks of this adversarial approach, in terms of increased tension, resources required, etc.

Overall, this interaction exposed the significance of grasping the respective strengths and limitations of the various methods, and of being able to assess what approach would be most suitable given the conditions at hand. In this instance, the pooling of our respective insights and experience paid off: the judge dismissed the landowner’s request for mediation, the case went ahead, and LHR obtained redress for the families and a precedent. Also, no further evictions of this kind seemed to take place in the months that followed.

5.1.4 Hangberg: A Complex Case Raising Questions

A more recent case demonstrating the interplay between human rights and conflict resolution, as experienced by LHR, sheds further light on challenges and opportunities that may arise in this regard. In this instance, LHR did not act as the intermediary, but represented a party to a conflict involving another mediator. According to Sheldon Magardie, who coordinated LHR’s Security of Farmworkers Project between 2009 and 2011, such a situation may well raise “all kind of complexities” that he and colleagues “are really grappling with”.

The case in point is an urban eviction in a town adjacent to Cape Town. It concerns a piece of land where artisans and fishermen have historically settled, on a mountain slope overlooking the pristine bay of the town. It turned into “a very, very violent conflict” between the city’s law enforcement authorities and the people who had long resided on Hangberg mountain. The conflict erupted when the land – formally owned by the South African National Parks Authority – was sold and the city’s anti-land invasion unit sought to demolish structures erected by those living there. Faced with fierce resistance, the police used tear gas, water cannon and rubber bullets to disperse and subdue people. The city brought an application in the Cape Town High Court to evict those living on the land and to interdict them from occupying the land. When the case went to court, the parties agreed to engage through mediation, leading to the appointment of a mediator with the parties’ consent.

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32 Interview, 14 June 2011, Stellenbosch.
33 Interview, Sheldon Magardie, 14 June 2011, Stellenbosch. See also for example, Glynnis Underhill, “Cape Town Riot Tactics Under Fire”, Mail and Guardian, 8 October 2010, and “Metro Cops Injured in Hout Bay Violence”, Mail and Guardian, 21 September 2010; available through http://www.mg.co.za.
For Magardie, who has long worked as a human rights lawyer, the mediation process – facilitated by a long-term conflict resolution practitioner – raised questions about the approach and role of the mediator, the issues prioritised for negotiation and problem-solving, and the extent to which the process recognises the legal framework. His comments reveal the ‘complexities’ he is struggling with and also speak to his perception of conflict resolution:

We’re acting on behalf of quite substantial group of people. [...] Our clients have difficulties with the general approach to the mediation in these circumstances. [...] [The mediator] may have good reasons for this, but – his approach seems to be that he looks at the issue as a whole, to look at issues around development of the community, allocation of housing, etc. But the problem is, the only issue that is before the court is a case that will effectively make people homeless. Now there could be other aspects that are related to that, the underlying problem of homelessness and lack of access to adequate housing is in many senses linked to issues around resources, political will and so forth, but the problem that we have is how does a mediation operate in that kind of contested environment? [...] An important question that it raises, not just in the context of this case - it’s around the role of mediation in a legal setting, where there is a dispute. The fact that there is mediation does not make the dispute go away. There’s often an assumption that mediation is for parties to sit and be nice to each other and, you know, try and resolve the problems, but that’s not the point. [...] Where mediation occurs in an adversarial setting, like litigation, my view would be that the rules of that process don’t necessarily completely fall away, because then it becomes a free for all, it becomes a meeting and you know – what happens to meetings that are run by committees, nothing actually ever gets resolved.34

Without putting it in such terms, Magardie points to the risk of ‘process’ becoming a pacifier. He further questions the ‘big picture’ focus of conflict resolution, in the context of which an effort is made to examine underlying conditions. This reflects a difference noted earlier, between the human rights’ focus on examining and redressing specific rights violations and conflict resolution’s tendency to consider situations in context and probe underlying conditions.35 In this regard, he is concerned about the kind of outcome that may result from this process:

You know, [...] the Terms [of Reference] get so broad, when one talks about issues of housing, development, and community upliftment and so forth –maybe it’s just that I’m looking at it from a specific legal perspective – the concern that would arise in those circumstances is that it’s in the interest of one group to make the Terms so wide that they can make promises, or undertakings that are effectively wide enough to operate in their favour. To say, “We are promising that we will focus on this community by looking at issues of development in the long term”, and then people that are sitting there are thinking “Wonderful, we’ve been left off the radar for so long and you now want to focus on us” – but what does it actually mean, what exactly do you mean?! Because – there’s 300 people. I want to know, does it mean you’re going to send 50 officials in two months’

34 Interview, 14 June 2011, Stellenbosch.
35 See chapter 4 (notably 4.1.3).
time to interview every single person that’s on my list of clients? Because if you’re not going to do that, then – [these] become issues that are up in the air.36

Magardie thus doubts whether the outcome will be sufficiently tangible. He fears that the process may enable those in positions of authority to evade responsibility for taking concrete and swift measures to ensure the rights of those victimised. He also questions whose role it is to determine which issues are to be dealt with, and the weight accorded to the voices of the people most directly affected:

My concern in these circumstances would be that – to what extent do the Terms of Reference of a mediation go into issues that are beyond the dispute of the parties? To what extent is it a role of the mediator to identify what he determines are the underlying issues - that’s the thing one must grapple with. I think when you’re going into that terrain, you’re identifying what you think is important; then if we come to the meeting and my client says or I say “I don’t agree that that is important” and then it becomes an issue between us and the mediator. Because we would then play a legal role and advise our clients – “This is not working in your interests, they haven’t spoken about how this issue is – what is in your interests, my role is to keep you in your house”. Yes, [my clients] may have concerns around the fact that there’s not enough schools in the area, not enough traffic signs – but what they’re coming to us [for], is to say “They’re trying to kick me out of my house, I’ve been on the waiting list [for housing] for ten years”, and our role would be to defend their rights in those circumstances, so I think – there will be that contestation, what will be in the interests of specific parties.37

From a human rights perspective, various concerns are at stake here, including the right to an adequate standard of living, to a fair administration of justice, and to redress. The dignity of prospective evictees and their participation in decisions affecting their lives matter too. So does the degree of compliance by authorities with their legal obligations, and the extent to which they are held accountable. For Magardie, it is doubtful whether this mediation can address such concerns adequately. His account also speaks to the tension related to prioritisation, in terms of a concrete problem to be addressed in the here and now and the larger, structural conditions in which it is embedded, which require longer-term action.

However, while being concerned about what it means to mediate complex rights-related cases in a legal framework, Magardie emphasises that he is not opposed to mediation as such. He notes in fact that he is “looking at it in a number of cases”. In fact, he is:

Starting to seriously question whether [litigation] actually resolves anything. Because the reality is that in most of these cases [of farmworkers that come to our office], there is no actual legal defence. [...] These cases boil down to a question of [finding] alternative accommodation [for those who will be evicted.] With the general ESTA eviction case, where one is unable to establish that there is sufficient defence to the actual case – if you look at the jurisprudence of the Land Claims Court for example, in most of the cases where eviction orders are dismissed, it would be for some kind of technical problem

36 Interview, 14 June 2011, Stellenbosch.
37 Interview, Sheldon Magardie, 14 June 2011, Stellenbosch.
with the papers. And all that then happens is that [those seeking eviction] bring it again.\textsuperscript{38}

Resource considerations are an important factor too:

I’ve got one matter - we’ve had protracted litigation for the last two weeks, involving interdicts to stop the demolition of structures on land where a group of small-scale farmers are farming vacant state land. They’ve been farming there for over ten years. The Department now wants to use the land for something else, and [has] been increasingly pressurizing our clients and the operations there. We had to bring an urgent application to interdict them from demolishing structures. They then brought an application to stop us from developing further structures on the land. It looks like we’ll have to bring another application to stop them from putting the housing development on the site without consulting with us. So – just from a resource point of view, obviously, that [is] an important consideration.\textsuperscript{39}

This echoes Robb Cohen’s comments (in 5.1.2.) on the limitations of litigation in eviction cases. Magardie also worries that litigating such cases “effectively [absolves] the state from any responsibility regarding the underlying, real problem with land reform in this country”, relating to people living in insecure tenure and the availability of alternative accommodation. He explains that:

What happens in litigation, [is that] it becomes [a matter between] the applicant, the respondent – lawyers arguing over something. Out of the picture are the Departments that have a statutory responsibility for ensuring security of tenure, like the Department of Rural Development and Land Reform, the municipalities – they are excluded in most cases from that process. [...] In balancing [the rights of the owner and the worker], the courts have found in favour of the owner of the land, [saying] that it is not the responsibility of the private landowner to provide housing.\textsuperscript{40}

In his view, this might be different in a negotiation or mediation process in which all three parties – the farm owner, the worker and public authorities – jointly seek a solution when a worker is facing eviction; he indicated that he had some good experiences with this.\textsuperscript{41} This is interesting given his earlier reservations about mediation in the Hangberg case in terms of potentially allowing authorities to defer taking remedial action by putting matters into a (long) dialogue process. The seeming contradiction is probably explained by the scope of that case and the extent to which broader conditions of deprivation are meant to be addressed: doing joint problem-solving to find alternative accommodation for one or a few families is different from doing so for hundreds of families, and is easier than delivering on broader development issues.

\textsuperscript{38} Ibid. He notes that approximately 75% of the eviction orders sought by farm owners are granted by the Land Claims Court. This means that most evictions go ahead (interview, 16 November 2010, through skype).
\textsuperscript{39} Ibid.
\textsuperscript{40} Ibid.
\textsuperscript{41} Ibid; Magardie also made this point in an earlier interview, 16 November 2010, through skype.
Thus, this human rights practitioner recognises various reasons for using (dialogue- and interest-based) conflict resolution to address rights-related cases, while realising that doing so also raises challenging questions. For him, the *sine qua non* of effective and legitimate conflict resolution in such cases, is that:

The whole mediation process must take account of the whole underlying legal framework. It requires mediators with the skills and background knowledge on what the legal position would be, and what are the legal issues that arise in these types of matters.

In that scenario I think it can work.\(^{42}\)

Thus, conflict resolution cannot escape ‘the shadow of the law’ when conflict parties choose mediation to address the issues between them (Kocken 2011, 242; Mnookin and Kornhauser 1979). Put differently, law and rights set the parameters for addressing conflict (Parlevliet 2002, 24).

### 5.1.5 Use of Mediation and Negotiation

While recognising the relevance of mediation and negotiation in facilitating access to economic and social rights, interviewees observe that such methods have been underutilised in handling eviction cases. ESTA provides for both litigation and alternative dispute resolution (ADR, the legal term for interest-based dispute settlement involving a third party), yet Makan refers to its ADR provisions as “a waste of paper”, and Magardie considers these methods “the orphans in the tools”.\(^{43}\) This section sheds some light on factors contributing to this underutilisation.

The limited use of conflict resolution methods seems to have partly been a matter of resources, both human and financial. A pool of mediators was long lacking: the government did not establish a Land Rights Management Facility to provide legal and mediation services to farm dwellers until 2008.\(^{44}\) Also, district offices of the Department of Land Reform and Rural Development used to have a budget only for legal services, not for conflict resolution services.\(^{45}\)

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\(^{42}\) Interview, 14 June 2011, Stellenbosch.

\(^{43}\) Interviews, respectively 16 November 2010 and 14 November 2010, both through skype. The legal description of interest-based methods as ‘alternative’ dispute resolution reflects that in law, dispute settlement through application of normative standards and judicial mechanisms (i.e. what the conflict resolution field refers to as ‘rights-based methods’) is considered the ‘normal’ or ‘standard’ method. (In the conflict resolution field, interest-based approaches are the rule rather than the exception; as such, the term ‘alternative’ does not apply there.)

\(^{44}\) Interview, Sheldon Magardie, 16 November 2010, through skype. Between 1995 and 2000, a National Land Reform Mediation and Arbitration Panel existed (see Bosch 2002) but there was no mechanism after that. The 2008 establishment of the Land Rights Management Facility (by the Department of Land Reform and Rural Development and the Department of Justice) was due to a Land Claims Court decision in 2001, providing that indigent ESTA occupiers (and labour tenants) facing eviction proceedings are entitled to legal representation at the state’s expense; see Hall (2003), Lahiff (2008), Land Claims Court, *Nkuzi Development Association v. Government of the Republic of South Africa and Another*, LCC 10/01, 6 July 2001.

\(^{45}\) Interview, Rodney Dreyer, 14 June 2011, Cape Town.
Meanwhile, a limited understanding of conflict resolution and questions about its applicability in a context defined by law and rights, also seems to have played a role. Magardie argues, for example, that “ADR and mediation very much depend on what the conflict is about, if it’s not a rights-based discussion. Interest-based disputes can be resolved by mediation, but rights disputes are very often to be resolved by arbitration and the courts”.46 Yet in reality, rights and interests are intertwined, in that rights are “an instrument of individual and collective struggle to protect core interests” (Osaghae 1996, 172; Parlevliet 2002). Conflicts are seldom about one or the other; the notions ‘rights-based’ and ‘interest-based’ refer to approaches for resolving conflicts, not to the issues at stake between the parties. Magardie’s comment seems to imply that mediation may be ruled out on the basis of mistaken assumptions about the process.

Conflict resolution practitioner Rodney Dreyer, who helped to form and train the new Facility’s Mediation Panel and served as its coordinator for some time, asserts that litigation was long the standard in handling evictions, because such cases relate to law:

> Before 2008, most of the eviction cases were dealt with in court, the thinking here is – because it’s an Act promulgated in Parliament, the only way to deal with an Act and its regulations is in court. Many cases [still] go straight to litigation, because that was the process, the action that existed before. Even dwellers went to seek lawyers.47

According to him, conflict resolution practitioners themselves grappled with questions about the applicability of mediation, especially when the outcome would disadvantage the weaker party (in full compliance with the law):

> Even us as practitioners have this tension between the law and ADR – because the challenge we have, when we say we go in there to provide a mediation service, and the outcome is that the farm dweller has to leave the farm, are we not assisting the perpetrator – the farm owner – to be successful in his attempts to evict? So confidence in dialogue, problem-solving, mediation, this kind of stuff, [...] was very low, amongst parties but also amongst us as practitioners. Now, what we’ve come to terms with, is that it’s not an either/or, it’s a both/and. It’s not either you stay or you leave – both scenarios are acceptable, [and] supported by the legal framework that is ESTA. What’s happened in many cases, in the options generations stage, there are a few options, options relating to law. All of this is described in law [and] policy documents.48

In other words, a process of learning was required, and of proving ‘that it can work’:

> Even those who wrote the Act weren’t sufficiently confident that within that framework mediation can be successful. As the senior practitioner, I had to convince both the [mediation] company I was working with and [the Department] that mediation is an appropriate strategy. Initially, I had to do all of the difficult cases in all of the provinces, so that the process – which is firstly a theoretical process, but also something that

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46 Interview, Sheldon Magardie, 16 November 2010, through skype.
47 Interview, 14 June 2011, Cape Town. Dreyer worked at the Centre for Conflict Resolution as the manager of its Mediation and Training Services Project in the late 1990s and early 2000s.
48 Ibid.
worked in practice, with taxis and housing, and human rights, it worked for us, right? – I had to convince the company and the client that it can work.49

An integral part of that learning process involved becoming familiar with the legal framework, according to Dreyer. He notes that:

I needed to familiarize myself, even more than that, I had to know and understand the rights framework – I needed to find the link between conflict resolution and the rights framework. All mediators [on the panel] needed to understand the rights framework and that the rights framework would sufficiently inform the conflict resolution intervention, the design of the conflict resolution intervention.50

With this, he echoes Magardie’s concern that the rights standards – the ‘rules’ – should not fall away, and that conflict resolution efforts must take account of the legal framework. In fact, he mentions that he now recognises and values the rights framework as a ‘tool’ in handling eviction cases.51 He thus confirms that mediators “who are good at mediation but who fall short” in areas such as applicable law and policy or understanding implementation difficulties, are problematic (Bosch 2002, 9). Nevertheless, Dreyer warns that lawyers may not completely understand what mediation actually entails:

The interesting thing is, lawyers also define the work they do as being mediation. So [say] I’m the lawyer of this group of people, and I’d take instructions from them and then I’d give them some options, from a legal perspective. You’re the lawyer from that group, take instruction, and so on. And then I will come to you as the lawyer, and I’ll say, “Here’s a couple of options, and what you think would best suit your client, have you checked out any options with your client?” So they’d meet on the steps of the High Court, or the magistrate’s court and have this conversation. They’d agree on two options, get a court date and put the two options before the magistrate or judge. They then say “That’s mediation”. Obviously, I have major process problems with that. I argue and debate it with these lawyers – without any success though, haha – just to get the word out there.52

Thus, as mediators without legal knowledge are found wanting, so too are lawyers that fail to grasp mediation as a process in which the parties come up with their own solutions through interest-based negotiation, with the assistance of a third party.

5.1.6 In Sum

This section has discussed how and why LHR sought to use conflict resolution methods to ease its human rights work. It has further looked at LHR engaging with conflict resolution in another way, acting as legal representative in a case mediated by

49 Ibid. Dreyer’s reference to ‘taxis, housing, human rights’ relate to interventions he was involved in when working at CCR. From the late 1980s onwards, taxi associations and individual minibus drivers fought out violent turf wars. In 1991, CCR’s Facilitation and Mediation Services Project successfully mediated between two warring taxi associations in Cape Town (see Centre for Conflict Resolution, 2009, Forty Years of Peacebuilding at http://www.ccr.org.za/index.php/about/history?tmpl=component&print=1, hereafter CCR, Forty Years).
50 Ibid. Emphasis as spoken.
51 Ibid. See also further below at 5.2.5.
52 Ibid.
Two Field-Specific Organisations

an external third party. In doing so, the discussion has also highlighted the extent to which this human rights NGO has encountered and dealt with conflict on an ongoing basis. This seems due to the context in which LHR has operated and to the nature of its work, in which conflict – not necessarily of the violent kind – has been omnipresent. It was noted that LHR’s Security of Farmworkers Project was founded in a setting marked by severe power imbalances, inequity and racial paternalism, which became more polarised as the political and legal environment changed. A high degree of structural and cultural violence existed, which provided fertile ground for the outbreak of direct violence. This came to pass through assaults, destruction of dwellings, and other rights abuses inflicted on farmworkers.53

The prevalence of conflict also seems related to the nature of LHR’s work: the discussion reflects that protecting and promoting human rights, especially to benefit persons who have been marginalised, can generate conflict in itself by challenging the status quo. As Robb Cohen says, “claiming and asserting human rights inherently gives rise to conflict. It’s inherently connected in the work you do. It cannot be avoided; you’re constantly using conflict resolution skills whether you realise it or not. The two are side by side”.54 For Magardie, human rights work and dealing with conflict are closely related, since different rights must be balanced against one another: “On the one hand, you have the right to security of tenure, on the other, the property rights of the owner. Whose rights trump the other? That’s a matter of managing conflict”.55

The experience of LHR, in terms of continually encountering and addressing conflict while working on human rights, is not unique; something similar has been observed in the case of other human rights organisations. For example, a study of a dedicated land rights NGO in South Africa’s northernmost province, the Nkuzi Development Association, finds that:

Nkuzi’s work is strongly influenced by the large extent to which the organisation is confronted with power inequalities and conflict. […] Negotiation and mediation in conflicts form a large part of [its] work. […] The organisation tries to reduce the acute situations that give rise to conflict and to prevent and resolve conflict and ensure peace on the long term. […] In practice, conflict, even if in a ‘softer’ version, plays such a large role in Nkuzi’s life that it cannot be ignored (Winnepeninckx 2005, 103-104, translated from Dutch).56

Hence, “Nkuzi occupies a permanent position of intermediary, between different individuals/ organisations/ institutions in conflict” (ibid). The publication speaks of the organisation having a “multiple mediator’s identity” because it mediates between so many different parties (ibid).

53 See chapter 3 (section 3.2), for an explanation of the distinction between structural, cultural and direct violence.
54 Interview, 9 June 2011, Cape Town.
55 Interview, Sheldon Magardie, 16 November 2010, through skype.
56 Winnepeninckx speaks of ‘conflict in a “softer version”’ (quotation marks in original) to reflect that the conflicts encountered by the organisation are not large-scale, violent land-related conflicts (2005, 104).
The Nepali human rights NGO Informal Sector Service Centre (INSEC), constitutes another case in point. During Nepal’s 10-year civil war, INSEC’s fieldworkers were frequently called on to serve an explicit conflict resolution function due to the organisation’s credibility. Wearing blue vests marked ‘human rights defender’ in Nepali and English, they intervened in local stand-offs between the security forces and Maoist rebels to protect village populations, negotiated the release of persons who had been abducted, and organised peace rallies.\footnote{Conversation with Bhola Mahat, INSEC regional manager, Mid-Western Development Region, Nepalgunj, November 2006; followed up through email correspondence September/October 2012, translated by Mukunda Kattel. It is worth noting that the Maoist insurgency started in this region in 1996. Also conversation with Subodh Pyakurel, one of the founders of INSEC and Board member of INSEC at the time, Kathmandu, December 2006.} One observer notes that “they were the mediators, the equivalent of [South Africa’s] local peace committee facilitators\footnote{Interview, Andries Odendaal, 9 June 2011. Odendaal is a South African conflict resolution practitioner – and former CCR colleague – who spent two weeks in Nepal as a consultant when the war was still ongoing, in 2005. In the early 1990s, he had worked with local peace committees in the Western Cape (see fn. 72 below).},”\footnote{Interview, Ingrid Massage, 11 November 2011, through skype. Between November 2005 and September 2006, Massage was the deputy chief of the protection division of the UN Office of the High Commissioner for Human Rights in Nepal.} while another recalls “they were constantly used to negotiate, to act as go-betweens”.\footnote{INSEC initially did not ‘label’ its fieldworkers’ third-party intervention activities in any particular way, but started referring to them as ‘peacebuilding’ as time went on. Correspondence with Bhola Mahat, translated by} The Burundian human rights NGO League Iteka was also called on to intervene in conflict situations – so much so in fact that, like LHR, the organisation decided to seek conflict resolution training for its staff:

The need was very clear to them. Much of their work is conducted in polarised environments. They often need to negotiate access to political prisoners or sites where gross human rights violations were alleged to have been committed. They also facilitate meetings in communities throughout the country where atrocities have occurred and people are still coming to terms with loss, anger and fear. The government [also] asked them to intervene in a labour dispute between [itself] and the teacher’s union […] To perform this work effectively, Ligue Iteka recognised that they needed a better understanding of the theory and practice of conflict resolution. […] Iteka felt that [such] understanding […] would provide a much-needed service to the communities in which they work and it would promote their vision of human rights (Arnold 1998a, 2).

These examples are not to say that encountering conflict as a human rights actor is necessarily the same as actually doing conflict resolution; the two cannot be conflated as a matter of course.

Nevertheless, the above highlights that experiencing the former may well lead rights actors to become involved in the latter. Whether by choice or inadvertently, human rights actors may end up engaging in conflict resolution in terms of really trying to impact on existing conflict dynamics while working on human rights, and/or in trying to apply conflict resolution principles and methods, such as serving as a third party in interest-based problem-solving. (Whether they then explicitly label such activities ‘conflict resolution’, is a different matter and of less importance here).\footnote{Interview, Subodh Pyakurel, One of the founders of INSEC and Board member of INSEC at the time, Kathmandu, December 2006.} In any event,
it seems appropriate to speak of LHR in such terms, as it sought to consider the wider context in which rights were to come alive (including relationship concerns), looked for solutions that would meet parties’ underlying interests, and facilitated dialogue and joint problem-solving to come to outcomes acceptable to all involved.

The above also highlights that a human rights organisation can benefit from exposure to the conflict resolution field. Conflict resolution presents certain opportunities to human rights actors; its insights and approaches can be usefully brought to bear on their efforts to enhance respect for human rights. In particular, interest-based methods like negotiation and mediation can serve as an alternative to litigation when addressing rights-related conflicts (Parlevliet 2002, 27-30). The LHR discussion suggests that this is especially relevant when there are serious resource or capacity constraints that limit the protection of rights through the judicial system, or when the rights of different parties need to be balanced against one another. Conflict resolution methods can then assist in arriving at solutions that uphold the rights of different parties and meet their underlying interests, through processes that may be less costly in terms of time, money and damage to relationships – and which might even be empowering or transformative by allowing parties to participate in problem-solving and by changing established patterns of interaction (e.g. Lederach and Thapa 2012).

Yet conflict resolution also raises challenges for human rights actors and human rights practice. For one, interest-based methods are no panacea for handling conflicts over rights issues, particularly when it comes to serious rights abuses, the need to establish a precedent and/or to protect a weaker party (e.g. Kocken 2011; Nader 1991). This relates to the earlier discussion on the tension in conflict resolution about dealing with power asymmetry.61 Also, the ‘big picture’ focus of conflict resolution may (seem to) come at the expense of settling the concrete issue for which a remedy is sought. Other challenges brought to the fore relate to the question of what issues are prioritised for problem-solving (and who decides on that), the weight accorded to victims’ voices and preferences, and the risk that conflict resolution may lead to a prolonged process of dialogue without a tangible outcome. Finally, how much space and weight is afforded to formal rights standards and the legal framework, is a pressing question too that arises from a human rights perspective when encountering conflict resolution.

As to the last aspect, this section also speaks to the limitations of law and legal approaches when it comes to safeguarding human rights. As two former LHR practitioners noted, the legal circumstances of eviction cases were often such that an eviction was inevitable. Thus, a legal approach to rights (Chong 2010) does not necessarily result in an outcome that is desirable from a moral perspective, i.e.

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61 See chapter 3 (notably 3.5.3).
Also relevant here is the fact that in most social conflicts, the claims of opposing sides can be framed as rights claims, yet there is usually no technical (legal) way of assessing the relative weight of the different interests involved. Resolving rights-conflict thus “presumes a place ‘beyond’ rights, [that] allows the limitation of the scope of the claimed rights” in light of certain public values and modes of human conduct and interaction (Koskenniemi 2011, 144, 159).

These concluding reflections highlight that no one approach to conflict – whether rights-based or interest-based – is automatically better or worse. Litigation and mediation are options on a spectrum of approaches to resolving rights-related conflict that all have strengths and flaws – much like the fields of human rights and conflict resolution do. In each case, an assessment must be made to determine which is most appropriate. This requires a nuanced grasp of the various approaches, which is important for human rights and conflict resolution practitioners alike.

### 5.2 The Centre for Conflict Resolution (South Africa)

This section focuses on the experiences of CCR and conflict resolution practitioners in engaging with human rights in various conflict situations. It first provides some background to the organisation (in 5.2.1) and explains that its leadership and practitioners, while not neutral on issues of peace and justice, perceived of justice primarily in moral, rather than legal, terms (5.2.2). It then discusses how practitioners found themselves facing human rights questions and actors in different instances of xenophobic violence in Cape Town. In 5.2.3, it focuses on the situation briefly set out at the beginning of this book, in which South African residents from two informal settlements forcefully chased out foreign nationals living there.

The use of rights language turned out to be particularly contentious between the parties, causing the practitioners involved in addressing the situation to wonder how to deal with this issue. Their approach to this intervention is set out, as well as doubts that emerged later as to whether rights aspects were adequately taken into account. 5.2.4 considers the involvement of a group of conflict resolution practitioners in handling a later bout of much more widespread xenophobic violence, in 2008. This reveals that many were not particularly attuned to human rights concerns arising in this context, and became frustrated with the adversarial advocacy encountered from human rights actors. Subsequently, in 5.2.5, the section looks further into the tendency to overlook the human rights aspects of conflict situations, which may well result from the conflict resolution field’s frames, as set out in chapter 3. Yet it also appears that practitioners who have had substantial exposure to or engagement with human rights standards and actors may come to appreciate human rights as an asset...

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62 See chapter 2 (notably 2.5.3).
63 See also Gasper (2007, 15) and Uvin (2004, 186) on conflicts of rights; both assert that the human rights field has traditionally been reluctant to address this issue, not least in the realm of socioeconomic rights.
to their work, rather than a liability. The section concludes with a summary of findings (5.2.6).

5.2.1 Background

The Centre for Conflict Resolution (CCR), an independent NGO affiliated with the University of Cape Town, was established in 1968 to conduct research and education on race and language group relations.\textsuperscript{64} While initially intended to focus on relations between English and Afrikaans language groups and between whites and ‘coloureds’,\textsuperscript{65} it soon became concerned with interracial contact in South Africa more generally, seeking to contribute to understanding and improved relations among members of different population groups. The founding director, H.W. van der Merwe, crossed several boundaries in his personal life: descended from a traditional Afrikaner family and raised in a rural conservative environment, he became a Calvinist dissident and academic and gradually developed into an anti-apartheid activist and Quaker peacemaker (Mandela 2000; Van der Merwe 2000).

During the 1970s and the 1980s, the Centre pioneered conflict resolution in South Africa (Chan, Jabri, and Du Pisani 1993). It undertook research in peace and conflict studies, invited British and American scholars to conduct workshops (in conflict resolution, conflict analysis, mediation and negotiation), and provided third-party intervention, facilitating interaction between different political and community groups on request (Van der Merwe 2000).\textsuperscript{66} Conflict resolution was a contentious endeavour in South Africa’s polarised environment at that time. According to Taylor and others, “a commitment to peace and non-violence was widely interpreted to mean either acquiescence to apartheid, or a denial of the legitimacy of armed struggle as a means of resistance to the apartheid regime” (1999, 2). Andries Odendaal, who started working at CCR in the early 1990s, recalls that concepts like mediation, negotiation and conflict resolution carried connotations of ‘selling out’:

What troubled me in the 1980s was this sense of ‘I’m in the middle, neither fish nor flesh’. I often found myself mediating [at my then workplace, a black university predominantly staffed by white faculty and administration]. [I found] myself trying to explain one party to the other, on specific issues and the key question for me was – what does this mean about myself? Does it mean that I don’t have the guts to take a stand, shouldn’t I just move into the activist role? There were cases where I did, if the issues were clear, but more often than not the issues were not clear, and I saw my role as – needing to help and clarify the issues. I developed a lot of self-doubt about this [..]. Then I discovered through this workshop [at CCR] that there is a credible role that you can pursue with integrity. It was a very important discovery for me, to help [me] understand that it was possible to go and stand in the middle. The key question of course at the time

\textsuperscript{64} Its initial name was the Abe Bailey Institute of Inter-Racial Studies. In 1973 it was renamed the Centre for Intergroup Studies. In 1994 its name was changed once more, into the Centre for Conflict Resolution.

\textsuperscript{65} The term ‘coloured’ is contested and refers to individuals of mixed race descent. The term is used here (with some unease) because of its common usage in South African society.

\textsuperscript{66} See also CCR, Forty Years.
Chapter 5

was ‘If you talk about mediation, are you not being a sell-out?’ Van der Merwe was often accused of this, that by opting for the middle, he was actually siding with the other side.67

Consequently the Centre had to exercise ‘great political sensitivity’ in trying to promote conflict resolution techniques and third party intervention (Van der Merwe 2000, 98). It thus initially used ‘conflict accommodation’ as a generic term, realising that ‘conflict resolution’ ran the risk of ending the struggle against apartheid’s injustices too early, before the system had been dismantled (idem, 217).68

In line with dominant thinking in the conflict resolution field and Quaker ideas, the Centre’s leadership rejected all forms of violence in principle. It nevertheless accepted violence as a fact and “steered clear of any moralistic role or preaching” (idem, 178). It recognised that violence could be a strategy in fighting for justice, but believed that the resulting damage in the long term cancelled out any short-term benefits. Violence was regarded as “a form of communication, albeit destructive” (ibid); CCR’s task was to promote less destructive communication among conflicting groups, by developing the concept and practice of conflict resolution. The NGO thus launched the country’s first training programme on communication skills for mediators and other third-party interveners in community and political conflict in 1982, later adding training in mediation and negotiation (ibid).69

Concerned about the “almost total absence of neutral mediating groups, peace initiatives or movements” in South Africa, the organisation also started to focus increasingly on mediation (Van der Merwe 1989). This was eased by a fading of the negative connotations attached to ‘peace work’, ‘conflict resolution’ and ‘negotiation’; an expanded notion of ‘peace’ emerged in South African civil society during the 1980s, which comprised notions of justice and social action (Cock 2004, 183).70 This expanded notion informed CCR’s activities; it was felt that its staff “could not remain neutral on important moral issues such as race discrimination and gross injustice” (Van der Merwe and Meyer 1993, 169; also Van der Merwe 2000, 89-97). Its first director argued that “there can be no peace without justice. Peacemaking should concern itself with the promotion of justice and removal of fundamental disparities in social, economic and political matters” (Van der Merwe and Odendaal in Taylor, Cock, and Habib 1999, 4). Yet the organisation was more a peace organisation than a ‘classic’ anti-apartheid one, according to an observer.71

The Centre’s emphasis on mediation consolidated in the early 1990s, when several staff members worked in regional and local peace committees established after the

67 Andries Odendaal, in interview 9 June 2011, Stellenbosch; confirmed by Chris Spies, in the same interview.
68 This echoes the observation that peace can become a ‘dirty’ word (Fisher/Zimina 2009b, 102); see also 3.5.3.
69 See also CCR, Forty Years.
70 See further below at 8.1.2.
71 Interview with Jeremy Sarkin, Cape Town, 2 June 2011. Sarkin is a Senior Professor of Law at the University of the Western Cape and former Chair of the UN Working Group on Enforced Disappearances.
signing of the National Peace Accord.\textsuperscript{72} Its approach to mediation was non-directive, which “assumes that the best solutions are produced when parties listen to each other in a new way, cooperate in the generation of options and jointly arrive at the preferred solution. […] The role of the mediator is […] to be a facilitator of communication” (Odendaal 1998, 11). Impartiality was a crucial tenet, although ‘absolute impartiality’ was considered impossible, since conflict resolution practitioners are motivated by personal, cultural and professional values. A distinction was thus made between ‘technical impartiality’ (a commitment to facilitate a process in a fair, even-handed and respectful manner) and ‘moral impartiality.’ Impartiality was hence connected to procedural fairness.\textsuperscript{73}

If the Centre’s mediators were unable to assume or maintain a non-partisan stance, they could refrain or withdraw from a mediating role – for example, if a party continued to engage in violence or was only interested in addressing the symptoms of conflict, not the underlying issues (Nathan 1999, 3; Odendaal 1998, 12; Henkeman 2010). In the late 1990s, Laurie Nathan, who served as CCR’s director between 1992 and 2003, summarised the organisation’s stance as follows: ”[a]lthough the Centre is non-partisan when mediating, it is not neutral on matters of peace and justice. It has, for example, issued public protests and called for police action against parties, which repeatedly flout negotiated agreements and resort to violence. However […] the functions of mediation, advocacy and enforcement should be kept separate” (1998, 10).\textsuperscript{74}

By the mid-1990s, the Centre’s mission was to “contribute to a just and sustainable peace in South Africa and other African countries by promoting constructive, creative and cooperative approaches to the resolution of conflict and the reduction of violence”.\textsuperscript{75}

\section*{5.2.2 Morality, Legality and Human Rights}

Several interviewees who worked with CCR in the early 1990s emphasize that a strong sense of morality existed within the organisation and amongst practitioners – though this was not linked to law or human rights, however. In that, it resembled broader society; Jeremy Sarkin, a prominent human rights academic and practitioner, notes that, "before the mid 1990s, South Africans did not talk about human rights, or in terms of human rights. People here were fighting issues based on morality rather

\textsuperscript{72} In September 1991, a National Peace Accord was signed in South Africa, prompted by spiralling political violence as negotiations between the regime and the African National Congress got underway. A network of 11 regional peace committees and over 260 local peace committees was established; these bodies were meant to contain, address and prevent public violence. For description and analysis, see Olukotun (2009), Spies (2002), Marks (2000) and Gastrow (1995); see also 8.1.2.

\textsuperscript{73} Interview with Chris Spies, Stellenbosch, 9 June 2011.

\textsuperscript{74} See also the discussion on handling role tensions, in 7.3.

\textsuperscript{75} As printed on the back of CCR’s publication Track Two (e.g. Nathan 1999).
Chapter 5

than on law”. One former CCR practitioner mentions that he was not aware of the Universal Declaration of Human Rights in the 1980s; another reflects that human rights “did not figure strongly” in his mind, despite his firm belief that apartheid was unjust. A third recalls:

At CCR, a lot of the stuff, the big community development-type mediations we were doing, but also the taxi wars and the little ones – these were disputes that we were really trying to settle between the parties. There was a lot of talk about the settlements, [that those should be] what the parties agree upon and are happy with, etc. Very little reference to [the question] ‘is this legal?’ for example, at the time. […] There was a sense of moral obligation. If there was something that felt morally wrong for you as a mediator, or that you knew was illegal – stuff like that you just wouldn’t countenance… but there was really no structured way of referring back to ‘does this accord to the legal framework,’ for instance. And I think at the time it was okay, because people [were] driven by their moral sense of right and wrong. Bear in mind that at the time of the late 80s, early 90s, you almost did not want to respect the law, so you needed to appeal to a higher authority – a moral authority, we had the moral high ground.

Looking back, this practitioner reflects “Now I can see the problematic elements with that, they just jump out… If it is a moral right and wrong, and your morality and my morality aren’t the same, for example, then what?” In his view, this problem never arose at the time because “there was a synergy between the mediators’ morality and the parties’ morality” due to the “presence of a strong Christian background amongst the mediators and within the communities in which we worked. They could call on a common body of language, and you could hold them accountable to that”. Thus, the morality embedded in the Centre’s practice of conflict resolution had spiritual or religious overtones rather than legal ones.

Yet, as the 1990s progressed, issues of law and human rights emerged more clearly for the organisation. This was not really pursued as a goal in its own right, at least not initially. Nathan, the then director of CCR, it was due to what was happening in South Africa at the time, notably in relation to the question of amnesty; the 1993 Interim Constitution had made specific provision for an amnesty process for crimes committed during apartheid, but left it up to the first post-apartheid government to work out what this would entail (e.g. Hayner 2011, 27-31; Asmal 2000). According to Nathan, this meant that “we were struggling with this [relationship between human rights and conflict resolution] as activists ourselves”. Another contributing factor

76 Interview, 2 June 2011, Cape Town.
77 Interview, Chris Spies, 9 June 2011, Stellenbosch.
78 Interview, Andries Odendaal, 9 June 2011, Stellenbosch.
80 Ibid.
81 Ibid.
82 Ibid. Interviews with other conflict resolution practitioners who worked with CCR at the time confirm this, e.g. Chris Spies and Andries Odendaal (9 June 2011, Stellenbosch); Eldred de Klerk (3 June 2011, Cape Town); Rodney Dreyer (14 June 2011, Cape Town).
83 Conversation, 11 June 2011, Cape Town.
may have been the fact that CCR “began to look beyond South Africa’s borders” after 1995, and started working in other African countries.84

The Centre encountered advocacy by international human rights NGOs in that context, for example in Burundi, where a former South African politician now working at CCR helped to facilitate dialogue between warring factions. Nathan recalls being frustrated with Human Rights Watch’s insistence on war crimes trials in Burundi with seemingly little appreciation for something that for him was fundamental in any conflict resolution process: that it was ultimately up to the local population to decide.85 Sarkin, the human rights lawyer, recalls encouraging the Centre to start considering international law in relation to its international engagements:

We would talk, [the director] and I, and I would say – you won’t win the argument if you frame [the issues] in the way you do. Say, there would be a discussion about the peace process in Burundi, and I would say “This is the alternative view, if you want to win this debate, you’ll have to frame it in this way as well”. [...] I would highlight “[your line of argument] won’t fly for the UN, you need to consider international legal provisions”.86

Meanwhile, the Centre was occasionally approached to provide conflict resolution training for human rights NGOs like Ligue Iteka in Burundi, mentioned at the end of the previous section.

Such experiences led CCR to draft a handbook on human rights, conflict management and minorities for the UN Centre for Human Rights.87 According to Nathan, “it did not feel like big pioneering on our part; [it] was a consequence of what we were dealing with at the time”.88 For other conflict resolution practitioners, however, linking human rights and conflict resolution was less obvious; many of those contacted by CCR for its work on the handbook “did not see themselves as dealing with human rights issues to a significant degree” even though they frequently worked in systems of violent conflict (Arnold 1998a, 1). Working on the manuscript prompted CCR to create a Human Rights and Conflict Management Programme (HRCMP) in 1999, to take the thinking on human rights and conflict management further and put it into practice. I joined CCR a few months later to become the HRCMP’s manager, having done some groundwork for its establishment.89

84 Interview, Jeremy Sarkin, 2 June 2011, Cape Town. In 1996, the Centre established its Africa Project, which worked in other countries and with regional mechanisms on the continent (CCR, Forty Years).

85 Conversation, 11 June 2011, Cape Town. International criminal law was not so far developed at the time and the International Criminal Court did not yet exist.

86 Interview, Jeremy Sarkin, 2 June 2011, Cape Town.

87 The UN Centre for Human Rights put out a tender for this handbook, which CCR won. The manuscript (drafted by Kent Arnold and Jeremy Sarkin with contributions from others) was never published due to restructuring of the UN Centre (it became the Office of the High Commissioner for Human Rights). At the time, CCR used ‘conflict management’ as a generic term since conflict, as a political and social phenomenon, cannot be eliminated, prevented, or resolved; see Parlevliet (2002, 9).

88 Conversation Laurie Nathan, 11 June 2011, Cape Town.

89 While working as a researcher at the South African Truth and Reconciliation Commission (1997-1998), I had provided some assistance to CCR’s work on the manuscript. After it was finalised, and following discussion with
5.2.3 Encountering Human Rights Questions in a Community Conflict Intervention

In early 2001, the Centre was asked to intervene in a conflict in two adjacent squatter settlements to the north of Cape Town where South African residents had forcefully evicted non-nationals living in their midst.90 This situation, briefly set out at the beginning of chapter 1, was brought to CCR’s attention by the local municipality, which was temporarily providing food and shelter to over a hundred distraught non-nationals at the local police station, where they had sought refuge. Those evicted lost their shacks and belongings through arson and other means, and were threatened with more violence should they try to return to the settlements. A few laid criminal charges. Others submitted complaints of human rights violations to the South African Human Rights Commission (SAHRC), which subsequently also requested CCR to intervene. Here, this case is discussed in more detail to show how human rights were considered in this intervention, and what questions it raised for CCR’s practitioners (including myself), at the time and afterwards.

As noted in the introduction, CCR’s mediators soon encountered rights-related challenges that led them to invite my HRCMP colleague and me to join them. In particular, the use of human rights language proved to be contentious: while those chased out insisted on it, those who had done the chasing fiercely rejected it. The South Africans were inflamed by allegations that they had violated the evictees’ human rights and that xenophobia had fuelled their actions. In their view, rights were not relevant here; the foreigners had usurped ‘their’ houses, jobs and women, and had been involved in crime. They threatened to leave the dialogue process if their actions were framed as human rights abuses. For those evicted, however, the violence, destruction and disrespect they had suffered had to be talked about in such terms; not doing so would mean more victimisation, they insisted.

The intervention team thus wondered how to not alienate the South Africans without downplaying the treatment inflicted on the non-nationals. Put differently, how would we ensure that the process recognised the wrongfulness of what had happened while retaining the participation of both parties – and our impartiality? The case also raised questions about our own values and stance on the use of terms like ‘xenophobia’ and ‘violations’. Another challenge was the interaction between a possible criminal case, the complaints before the SAHRC, and the facilitated process. (In early internal discussions, one team member floated the idea of asking evictees to drop charges to reduce the level of polarisation between the two groups).

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90 A summary discussion of this case was first published in Galant and Parlevliet (2005). I follow the South African Human Rights Commission in using the term ‘non-nationals’, as the term ‘foreigners’ (makwerekwere in slang) has been used in a derogatory manner in South Africa; see also Matsinhe (2011) and Harris (2002).
At the time, violence against non-nationals was not new in South Africa but few incidents of this scale had been recorded until then, at least in Cape Town. Black foreigners, particularly from Africa, comprised the vast majority of victims. They were usually identified through profiling of skin colour, manner of dress, hairstyle, movement and language.91 This was widespread amongst ordinary citizens and public officials; the South African Police Service reportedly relied on people's physical appearance in establishing citizenship, nationality and illegality (Matsinhe 2011, 302-304; Harris 2002). Media reports routinely represented refugees, immigrants and migrants in a negative light, implying that 'masses from a troubled north' were 'flooding' South Africa, as if a 'plague was descending onto the country' (Harris 2002; Danso and Mcdonald 2001). In 1998, Human Rights Watch thus noted that:

South Africa's public culture has become increasingly xenophobic, and politicians often make inflammatory statements that the 'deluge' of migrants is responsible for the current crime wave, rising unemployment and even the spread of diseases. As the unfounded perceptions that migrants are responsible for a variety of social ills grows, migrants have become increasingly the targets of abuse (1998, 4; also Palmary 2002).

Perpetrators of violence against non-nationals were seldom charged. Very few were convicted, and at times, state agents “actively protected those accused of anti-foreigner violence” (Landau and Misago 2009, 104). Various factors were thought to fuel the violent aversion towards black foreign nationals, such as South Africa’s prolonged isolation during apartheid, dissatisfaction with the tardiness of redressing past inequalities, a desire for scapegoats, the nature of post-apartheid nationalism, and the legacy of white supremacy and violence (e.g. Matsinhe 2011; Harris 2002).

From our interactions with the SAHRC, it transpired that its representatives believed that a facilitated dialogue process might best address the complaints received. They recognised the validity of strategies such as documenting the abuse, highlighting flaws in the police response, preparing a case for litigation (or supporting the complainants in doing so), and monitoring its progress through the judicial system. In their view, this approach would send a clear signal about unacceptable behaviour, but would also take a long time and consume many resources, which were not readily available. Furthermore – and this was the crux for the Commission – it could fuel resentment among the local squatter residents and increase their hostility to those deemed 'foreign'. It would probably not facilitate the evictees’ return to the settlements (which is what they wanted), or help to shift local attitudes. The SAHRC hoped that a dialogue process would work in this direction, and that it would enhance understanding amongst all involved about rights and responsibilities.92

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91 At times black South Africans who supposedly did not look/smell/dress/move like ‘South Africans’ were arrested or assaulted too. (This phenomenon continues to date). See Matsinhe (2011) and Moshoeshoe Monare and Melanie-Ann Feris, "Teacher assaulted for being too dark", Independent On Line, 11 March 2001, at http://www.iol.co.za/news/south-africa/teacher-assaulted-for-being-too-dark-1.61776#.U7QlShzGgE.

92 Notes from meetings recorded at the time; also captured in Galant and Parlevliet (2005).
Meanwhile, our internal preparatory team discussions revealed that we considered the actions and attitudes of the South African residents highly problematic. As in CCR’s past, moral concerns took precedence over legal ones. My three South African colleagues (two African, one ‘coloured’) referred to other African countries hosting South African freedom fighters during apartheid, and to the violence inflicted on black Africans in the past. They argued that South Africans ‘owed’ the people of other African countries. The only rights-related comments were a reference to the horizontal application of human rights in the South African Constitution (which means that private individuals are bound to uphold the rights of other individuals), and the observation that asking people to drop criminal charges would undermine their right to redress.93

Amongst ourselves we agreed with the SAHRC that the mediation process should facilitate some understanding of the rights of all persons living in South Africa, even if we were not clear on how to do so and did not want to be perceived as partisan. We had little time to consider this, as the local authorities were only willing to provide food and shelter for a limited time.94 Also, our analysis revealed intense frustration amongst the South Africans about flawed service delivery in the settlements: water and electricity were in short supply, as was police presence and access to housing. Our assessment was that these issues needed to be promptly addressed if future outbursts were to be prevented. This pointed to the role of local government.

In the actual process, we decided not to use the term ‘xenophobia’ up front, because of its inflammatory impact. We explained this to the evictees, and talked with the South Africans about the importance of addressing both parties’ grievances, which would mean consideration of rights, dignity and security concerns. We clarified that we could not interfere with proceedings in the criminal case. Over a series of meetings, the process created space in which those evicted spoke, face-to-face, about the violations they had experienced and how this had affected them. Later, we invited an SAHRC education officer to provide information about rights and responsibilities in the South African context with particular emphasis on the rights of non-nationals. By then, we had placed the South Africans’ concerns about water, security, housing and law enforcement in a rights context, by framing them in terms of human needs; this highlighted rights as a concern for all, not just for some.95

In an effort to address the underlying conditions we engaged with local government on development and delivery, and brokered an agreement between the squatters and the police about increased patrols. It soon became clear, however, that we could make little real progress in relation to housing and service delivery more generally, as this

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93 The ‘human rights’ people on the team (my HRCMP colleague, Victoria Maloka, and myself) made these two points (personal notes). On horizontal application, see Art. 8(2), 1996 Constitution, and below at 8.1.2.
94 Palmary quotes a public official as saying that local authorities withdrew food gradually, “to kind of force them… to become self-sufficient… what we do is try to force them to move by themselves” (2002, 19).
95 See chapter 7 (notably 7.4.2 and 7.4.3) for a discussion of framing rights as needs.
depended on larger political and bureaucratic processes. We then focused on facilitating interaction between the settlement residents (national and non-national), civic organisations and public officials to increase the flow of information, improve relationships, and get service delivery and development higher on the political agenda. This approach allowed for collaboration between the two earlier conflict parties, and enabled us as interveners to point out the implications of poor service delivery in terms of the potential for conflict and violence. In the end, many non-nationals returned to the settlements, although some moved elsewhere.

Afterwards we felt that we had done well within the confines of what could be achieved. Yet later I questioned whether the process had encouraged ad hoc, reactive decision-making at the political level rather than a systematic approach to protecting non-nationals, development and service delivery. Furthermore, had our flurry of activity unwittingly promoted the negative behaviour of the South African squatters? After all, their violent outburst had produced some results, in terms of attention and resources allocated to the settlements (Galant and Parlevliet 2005, 124). More doubts emerged much later, after I had gained more experience. I started doubting whether we had adequately taken the rights dimension into account.

Had we enabled the local administration to pretend that it was meeting its obligations in this one instance, without challenging it to take measures to do so on an ongoing basis? Ideally, the facilitated discussions between the squatter residents and the local authority had served an accountability function, but only for the limited duration of the intervention. We did not follow-up to verify implementation of the commitments made by the authorities, nor did we refer the case to other organisations for monitoring purposes. In addition, aside from the invitation to the SAHRC education officer, we had paid little attention to rights questions after the initial stage nor had we reviewed the 1998 Refugee Act. Our efforts to address issues of housing, electricity and safety were informed by a commitment to address underlying causes; we did not analyse them in terms of rights standards. While we noted the conflict implications of poor service delivery in talks with local authorities, we failed to highlight that they are legally obliged to provide services to non-nationals. The SAHRC education session had only been targeted at the South African squatters, not at municipal officials – yet we must have noticed that they were just as prejudiced regarding non-nationals.

Finally, we did not think of clarifying roles and responsibilities between various tiers of government in addressing xenophobic violence and facilitating rights provision to non-nationals. This was stressed as a major shortcoming of the city’s approach to this and other events of xenophobic violence in a report published one year later (Palmary 2002). The report lauded the city for recognising that such “conflict cannot simply be

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tackled using a law enforcement approach” (idem, 19), but noted that its handling of the violence left much to be desired:

[S]ecurity services which were intended to protect refugee communities from further attacks by South Africans were gradually withdrawn [...]. No medium-term solution was developed to ensure that the future roles of the various tiers of government are clarified or that more violence would not occur. [...] The slow and often inadequate response to xenophobic conflict in the [...] incidents [...] was not only driven by a lack of awareness of whose responsibility it was to intervene; but also by a lack of knowledge about the rights of refugee communities and by xenophobia within the city authorities (idem, 19-21).

Admittedly, one can question whether addressing such shortcomings would or should fall within the scope of a conflict resolution intervention by an NGO. Nevertheless, our limited consideration of rights concerns – the actual rights violations, accountability, government’s limited rights awareness, protection mechanisms – may well have reduced the sustainability of our efforts.

Overall, this example shows how a particular conflict situation can have a range of human rights facets, for example in how grievances are framed, what underlying conditions give rise to conflict, or which actors get involved in an intervention process. It reveals that, as conflict resolution practitioners, we paid little attention to human rights beyond the initial challenge of how to handle the use of human rights language (and how to do so without being perceived as biased), and beyond the early decision to incorporate awareness-raising in the intervention process. As such, it lends credence to the claim that the human rights dimensions of conflict resolution are seldom adequately explored (Mertus and Helsingh 2006b, 9).

5.2.4 Large-scale Violence against Non-Nationals in 2008

A later and much more widespread spate of xenophobic violence in South Africa sheds more light on the challenges conflict resolution practitioners may experience in relation to human rights. These relate, inter alia, to the interaction with human rights activists, the role of facilitators in relation to raising human rights concerns, and – as in the case of LHR, the question of facilitating dialogue in a rights framework. The comments below are not intended as an in-depth discussion or assessment of the crisis itself or how it was handled by government and civil society; they serve only to illustrate how several conflict resolution practitioners in the Western Cape engaged with ‘human rights’ in this context.

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97 According to Monson and Misago, government officials have generally perceived victims of xenophobic attacks as outsiders to the state, rather than as residents of South Africa in need of protection (2009, 30).

98 For analysis on the crisis itself and the state’s and civil society’s handling of it, see e.g. Peberby/Jara (2011), Everatt (2011), Misago and others (2009), Monson/Misago (2009), Igglesden and others (2009), Landau/Misago (2009), Steinberg (2008), and Pillay (2008).
In May 2008, South Africa experienced the "first sustained, nationwide eruption of social unrest since the beginning of [its] democratic era in 1994" (Steinberg 2008, 1), as a wave of xenophobic violence swept the country, killing 62 and displacing tens of thousands.99 Once more, "the mobs sang of foreigners stealing houses, women, and work" (ibid), while attacking (or threatening to attack) non-nationals, mostly of African origin, in the main urban centres of the Gauteng and Western Cape provinces. In the Western Cape, the violence was less severe than in the Johannesburg area, yet displacement and looting was still serious. According to Judith Robb Cohen, who was then the SAHRC’s regional coordinator, “one Friday afternoon, 20,000 people were displaced in Cape Town”.100

Displacement in the Western Cape was mostly pre-emptive in nature: anticipating violence, foreign nationals sought protection (Igglesden, Monson, and Polzer 2009, 20). After the first few days, in which mostly faith-based organisations provided shelter in makeshift locations, the city set up six camps on the Cape peninsula, moving people from over 100 places elsewhere. The establishment of these centralised camps was controversial, partly because they were far from where displaced people had lived and public transport was absent (Peberdy and Jara 2011, 45).101

To facilitate reintegration of those displaced into local communities, and recognising the existence of strong disincentives for some to re integrate (Igglesden, Monson, and Polzer 2009, 47), the provincial government appointed a team of approximately 25 facilitators. The senior official who had proposed this, Sifiso Mbuyisa, had previously worked at CCR as a practitioner and programme manager and was now responsible for ‘human rights and social dialogue’ in the province. His proposal stemmed from the realisation that “government was a party to the crisis – either because of actions it had taken or inaction on certain issues. So government could not be impartial, therefore we sourced a team of professional mediators”.102 Several of these mediators were conflict resolution practitioners who had worked with the Centre for Conflict Resolution for many years as full-time employees or freelancers.103 In interviews, it

99 Estimates of the total number of people displaced range between 80,000 and 200,000. For an explanation of the wide range, see Igglesden and others (2009, 20). Most of those displaced were of African origin, although some were of Asian descent. Some South Africans were also affected; a third of those killed were South African (ibid).

100 Interview 10 June 2011. This is the same Judith Robb Cohen who featured in the previous section as the regional coordinator of LHR and founder of its Security of Farmworkers Project.


102 Interview, Sifiso Mbuyisa, 7 June 2011, Cape Town.

103 They were contracted into the facilitation team as individual consultants, not as CCR. The text below hence relates more to (these) conflict resolution practitioners than to CCR as an organisation.
emerged that they had found dealing with human rights questions, actors and advocacy, vexing.

Echoing the sentiments I heard from a number of them, Ghalib Galant, a practitioner who served for some time as the coordinator of the facilitation team, recounts:

Of course human rights came up. Suddenly, refugee rights, asylum rights, were [the] flavour of the day. They were advocated by all sorts of pressure groups [...] but also by the displaced people themselves, who just became even more bolshy... They were pushy, pushed their own agenda - I can't fault them for that, that's part of the thing with rights activism, you have to believe that your rights are the only ones that exist, and push these beyond everything – but it certainly hampered the efforts we were making. They were pushing for repatriation, knowing full well that they would never be repatriated, because you can't do that under international law. However, it sounds really good: “South Africa is dangerous, send me back home! Oh, you can't send me back home, well, then, send me to Canada”. They used how they understood the international rights framework in quite an aggressive way, and they would get angry because this particular thing they were wanting – resettlement – was not going to happen.104

The quote is telling; ‘human rights’ was perceived as enabling more aggressive posturing by the displaced, which was then experienced as hampering facilitators’ efforts.

Hindrance was also perceived in interaction with human rights activists from civil society, who, from the facilitators’ perspective, seemed not very problem-solving oriented or sensitive to process considerations. For example, Andries Odendaal speaks of rights activists interfering in the process of trying to defuse the crisis, commenting that they seemed more concerned with ‘grinding an axe’ with government than with addressing the crisis itself.105 Galant, the erstwhile coordinator of the team says:

I experienced the destructive effect of the lack of the knowledge – the lack of appreciation, the lack of understanding, of this process stuff, from human rights activists. They were jumping up and down, standing on tables and what not for their constituency, with very little appreciation for any other constituency, or that there was a broader project happening which was this readintegration of people into communities. It did not say, you had to reintegrate into the community from which you came; the idea was that we would help you to find a place where you would feel, in yourself, safe, [and that] might be in a different place. Yet many of the human rights activists couched their solutions in very specific terms, [like] “The police must guarantee the safety of the people I represent back in location X,” or wherever their shack or container was. So sure,
they would be asking for the security of the person, which is a right, but without really exploring – maybe location X is not the place to go back to, you know – or being open to creative solutions.\(^{106}\)

This reflects a difference between human rights and conflict resolution approaches noted earlier, between the human rights tendency to take a more prescriptive stance in relation to outcomes, and the conflict resolution emphasis on facilitated outcomes.\(^{107}\) It also reveals discomfort with a strong positional stance with demands that are purely focused on (a specific kind of) redress for (a specific group of) people without seemingly much regard for other people’s concerns or the broader context.\(^{108}\)

Galant continues:

One huge dispute that happened half way through [related to] international minimum standards that apply when the UN sets up a camp. They were demanding these, and the guy from the UN [Office for Coordination of Humanitarian Affairs] said “Most of these standards you already have [...] and nowhere in the world are these minimum standards applied in their entirety”. Yet it became this bone of contention, to the point that some people were calling [...] the provincial government liars. The point they were making was a good one. There need to be minimum standards, clearly. But the way they went about it, did not help at all.\(^{109}\)

Thus, Galant does not contest the substance or relevance of this human rights advocacy, but only how it was done. His comment reflects another difference noted in the comparative review of the two fields, between more adversarial or cooperative approaches and alludes to the interdependence of process and outcome (Parlevliet 2002, 22-24).

Whether the facilitators themselves paid attention to human rights, seems to have largely depended on their individual personality, knowledge base and experience. According to Galant, some facilitators were aware of ‘the rights aspect’ but did not push it, while others “just glossed over it, it wouldn’t even come up in the conversation, it would really just be about dealing with the issues for these parties, right here”.\(^{110}\) He notes that the provincial government gave little guidance on whether or how they should take rights concerns and standards into account. He attributes this to the background of the provincial official responsible for the facilitation team: it “is very much on the dialogue side, he’s not as strong on the law

\(^{106}\) Interview, 3 June 2011, Cape Town. Emphasis as spoken. Galant mentions that some non-nationals combined the monetary reintegration assistance they received and decided to jointly rent an apartment in town, to indicate that some preferred to seek accommodation at other locations than where they had been before.

\(^{107}\) See 4.1.3.

\(^{108}\) See also 7.2.3 on ‘anchoring’ by human rights actors and 8.3.2. on positional framing of human rights claims.

\(^{109}\) Interview, 3 June 2011, Cape Town. Emphasis as spoken. Two NGOs, the Treatment Action Campaign and the Legal Resources Centre, brought a legal challenge against the provincial and city governments arguing that the camps did not meet international humanitarian norms and standards and violated the constitutional rights of camp residents. The case was withdrawn after the provincial government released appropriate emergency guidelines (Peberby/Jara 2011, 46).

\(^{110}\) Interview, Ghalib Galant, 3 June 2011, Cape Town. Confirmed by other practitioners involved, notably Andries Odendaal and Eldred de Klerk; interviews, 9 and 10 June 2011 respectively.
Chapter 5

side”. He also mentions that government officials generally did not appreciate being challenged by facilitators on their delivery regarding rights entitlements of displaced people. He comments that:

Facilitators in the field were being asked [by displaced people] “Well, how many South Africans who have looted, are now jailed? Or does the law not apply to South Africans?” So from the perspective that it would make [their] job in the field easier, I started pressing [the police] for information, to relay back to people … Part of the thing for me, representing the team of facilitators out in the field was to say [in meetings of the joint disaster management committee] “Now, Home Affairs, there’s a complaint from Somalis that they’re not getting their dockets, where is your response to this?” I know I pushed buttons for [government people], around ‘this is your responsibility, you’re provincial government, you need to do the following things, because in fact you’re asking us to go out there and say that that’s what you’re going to be doing, so why aren’t you delivering?’ And that – they did not like that.

This suggests that facilitators were in a bind, between displaced people pressing for feedback on rights-related matters, and government officials resenting questions about their poor delivery on commitments. Interviews with Mbuyisa, the senior government official overseeing the process, and Robb Cohen, the regional coordinator of the SAHRC, confirm this. The latter notes that facilitators were caught in a difficult role; she argues that their mandate to facilitate reintegration turned them more or less into representatives of provincial government.

Mbuyisa admits that while he had intended the facilitators to be independent, he found it very hard when “some in the team took up the position of the foreign nationals” and started challenging government. It made him doubt their impartiality – which reflects that challenging parties on rights issues as a conflict resolution practitioner easily gives rise to perceptions of bias; doing so can be tricky. He also concedes that government is not very familiar with its human rights obligations and that he himself was conflicted internally:

I think I had a sense of bias in me, as a resident, a South African citizen, and as an official. In retrospect, I see that some human rights issues cannot be compromised, such as safety... but we’re also dealing with general lawlessness – this displacement, is that then prioritised over people who are daily raped? How do I address it without sideliining other issues? From a government perspective, I was worried about [the fact] that we’re addressing this issue at the risk of getting criticized for only focusing on non-nationals,

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111 Ibid. This refers to Mbuyisa’s background as a conflict resolution practitioner at CCR, before he joined the provincial government. Galant also points to public institutions’ general lack of consideration of facilitating dialogue in a rights framework, referring in this regard to the Independent Election Commission (which appoints a panel of mediators for each election) and the South African Human Rights Commission; see further 6.2.2.

112 Interview, Ghalib Galant 3 June 2011. By September 2009, only one murder case had led to a conviction and the National Prosecuting Authority had withdrawn the majority of cases (Monson/Misago 2009, 29-30).

113 Interview, 10 June 2011, Cape Town.

114 This is probably even more so when conflict resolution practitioners are independent in name but paid for their facilitation services by the very party that they challenge on human rights concerns, as happened here.
not nationals. South Africans feel marginalised – they also have rights for provision of basic services.\textsuperscript{115}

His comment is particularly relevant given that the violence, threats and looting in Cape Town mostly occurred “in the areas of greatest deprivation, neglect, and contestation over limited resources” where “people live in overcrowded and underserviced townships and informal settlements” (Peberdy and Jara 2011, 37, 39).

It speaks to challenges noted earlier, of balancing different rights of different (groups of) people, of deciding which issues get prioritised, and of the broader context in which specific rights violations take place. As such, it reflects that the rights framework does not necessarily provide guidance for all matters related to human rights. At the same time, an implicit assumption seems to be at stake here which can be questioned: a notion that realising the rights of some people will unavoidably come at other people’s expense, as if human rights constitute a pie with limited slices or a zero-sum game – yet in theory, provision of services to non-nationals could be organised in such a way that nationals could benefit too.

5.2.5 Considering Human Rights

The examples discussed above suggest that many conflict resolution practitioners may be rather ‘blind’ when it comes to recognising and engaging with the human rights dimension of the conflict situations they address. It also seems that when rights aspects do become apparent (for example, because parties frame their demands in rights language, or because human rights actors are also involved in a given context), practitioners’ first impulse may be to view ‘human rights’ as a problem.\textsuperscript{116} This section looks further at the limited attention paid to human rights by conflict resolution practitioners. It confirms the first point above (about a possible ‘blind spot’) and qualifies the second, in that it appears that practitioners who have had substantial exposure to human rights standards, actors or training, may value ‘human rights’ as an asset for their work rather than a liability.\textsuperscript{117}

The notion of a blind spot resonates with my own impression over the years, as issues of human rights and law have seldom featured prominently in the thinking and practice of conflict resolution practitioners with whom I have engaged (in South Africa and elsewhere), whether in relation to conflict analysis, process design, or another aspect of their work. This was also the case in interviews with practitioners conducted for this research. Few could easily recount examples of taking rights into account

\textsuperscript{115} Interview, Sifiso Mbuyisa, 7 June 2011, Cape Town. This sentiment was probably widespread amongst government officials. Monson and Misago refer to a provincial Disaster Management executive citing a ‘high-level decision’ that assistance to foreign nationals displaced by the violence should not exceed the living conditions of South Africans living in poverty (2009, 25); they do not mention the province concerned.

\textsuperscript{116} This is not confined to the South African context; consider, for example, the experience of the fieldworkers of the Northern Ireland Parades Commission, as set out in 6.2.4.

\textsuperscript{117} See further 8.4.1.
when intervening in conflict situations. Yet this mostly relates to human rights as law, i.e. formal standards. Many practitioners expressed commitment to facilitating processes according to certain values which are easily related to human rights (respect, dignity, fairness, empowerment, etc.), and those who served in South Africa’s peace structures in the early 1990s felt that their work was motivated by a concern with justice.

According to Galant, many practitioners “just want to make things nice”. In his view, they do not really consider the legal context in which they work – which “allows some things, does not allow other things, gives me some leeway, constrains me in other ways” – or reflect on its impact on their practice. This reminded me of a training course that Galant, another HRCMP colleague and I conducted in 2004 with thirteen public protectors. The setting had been a high school in a township outside Cape Town where unemployment, drug abuse, gangsterism, crime, violence and alcoholism were rife. Over time the school had become replete with conflict as the principal and his staff clashed on various issues, including the selection of prefects, admission of black learners, and decision-making processes. Other concerns related to alleged gender and racial discrimination by the principal, his use of corporal punishment, and his managerial style, which was perceived as intimidating, humiliating and authoritarian. Eventually, the provincial Education Department asked CCR to intervene.

After presenting the case, we asked the participants in our course to analyse it and design a suitable intervention process. In the debriefing, we found that our participants, working separately in four groups, had barely thought of rights and legal standards. In their analysis, they highlighted that relationships were strained, decision-making seemed problematic, the degree and quality of information-sharing was contested, and that all parties felt undermined and disrespected. In their process

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118 This echoes Magardie’s comment that “there’s often an assumption that mediation is for parties to sit and be nice to each other” (see 5.1.4). It also brings to mind the suggestion made by one of my CCR colleagues when preparing to intervene in the 2001 xenophobia case in Du Noon and Doornbach, that we ask those evicted to drop charges against South Africans who had chased them out of the informal settlements, so as to reduce polarisation (see 5.2.3).

119 Interview, 3 June 2011, Cape Town.

120 Galant was working at the time as a freelancer for CCR’s HRCMP, and was regularly contracted to provide (facilitation and training) support for the programme in light of its limited human resource capacity. The ten-day course sought to ‘induct’ individuals who might become resource persons for HRCMP afterwards. They were mostly South African facilitators with 3 to 8 years experience and different racial and educational backgrounds. The group also included one South African human rights lawyer, one Zimbabwean facilitator, and two persons from Northern Ireland (one conflict resolution practitioner from the Northern Ireland Parades Commission and one staff member of the Northern Ireland Human Rights Commission). The preponderance of conflict resolution practitioners in the group was due to the partners the HRCMP was working with at the time (the Office of the Public Protector and the SAHRC), and the type of support requested, which focused more on conflict resolution.

121 For a more extensive description of this case and intervention, see Galant and Parlevliet (2005, 119-121). Corporal punishment of learners has been outlawed since 1994, but many educators intent on maintaining discipline continue using the practice, also to date (interview, Judith Robb Cohen, 10 June 2011, Cape Town).
design, all groups focused on gathering more information and opening up dialogue between the various parties. Rebuilding relationships and getting parties 'into a process' to engage with one another seemed to be of utmost importance. Conflict resolution training was suggested for the staff and the principal to enhance the durability of any outcome reached.

The fact that a rights framework existed was not taken into account in any substantial way, as if it were regarded as being 'out there' but as having no direct consequences. Dealing with the alleged discrimination and corporal punishment fell outside the participants’ purview. As did the question of ensuring awareness of and future compliance with their rights and obligations according to South African law. Finally, little attention was devoted to improving the functioning of the school's governance systems to allow for greater sharing of responsibility, power and decision-making and to facilitate the constructive handling of any conflict in future.\textsuperscript{122} Whether our participants' tendency to focus on process, relationships and communication reflects a general pattern amongst conflict resolution practitioners is of course debatable. It may have been influenced by how the case was presented to them – but it does largely reflect the field's frames as outlined in chapter 3.

In this regard it is noteworthy that the actual intervention as facilitated by Galant was more comprehensive. Besides dialogue- and relationship-oriented steps and communication skills training, as suggested by our participants, it entailed joint development of a code of conduct based on human dignity to guide interaction at the school, discussion with the Education Department about the alleged misconduct (leaving it up to them to gather evidence to substantiate the claims and decide on a course of action), an information session by the Department on the legal framework, a review of how the existing governing systems were functioning, elections for staff representatives on various governance bodies, and development of better feedback and communication mechanisms. Upon hearing how Galant had approached the case, the participants observed that his intervention had picked up on issues of law and structure that they had not considered but which would probably affect the intervention's sustainability and legitimacy.\textsuperscript{123}

When asked to explain the difference between his own more far-reaching approach and that proposed by a group of conflict resolution practitioners, Galant credits his legal background. He also points to the fact that he worked for several years at a statutory body focused on addressing labour disputes through conciliation, mediation and arbitration, which made “the question of dealing with conflict in a legal

\textsuperscript{122} Ghalib Galant and Victoria Maloka, the HRCMP colleague who co-facilitated the workshop with Galant and myself, confirmed this recollection in separate interviews, respectively 3 and 13 June 2011, Cape Town.

\textsuperscript{123} Personal notes taken at the time.
framework quite present” for him. He concedes that another practitioner “could have arrived there also, just through the relationship stuff – saying, ‘going forward, how do we manage our relationships?’”, but argues that someone else may “come up with a completely different set of structures, rather than appreciating that there are some constraints already, [that] there is a structure in place, and [then focus on] how best to work with those.”

By way of explanation, he elaborates:

Oftentimes, the problem is that we come out, in a particular scenario, with something – because we’re now in the moment, in the process, and we sign off on a charter, a code of conduct, whatever. A good example is that about ten years ago, a consortium of refugee organisations engaged with the city and they signed off on a charter on dealing with refugees and asylum seekers in the city. So [in 2008] you have issues in the city, involving refugees and asylum seekers, and does anyone refer to this charter? No, not at all – and yet this was a process that they’d gone through. What people are referring to now, are these laws, these structures [national legislation, international instruments] that were always there. So that charter is a nice to have, it’s a nice document but really does not bear [out], it does not hold parties accountable.

I think that this is sometimes one of the problems with our mediation or facilitation processes – in the moment, it satisfies something for the parties but in the longer term, if you don’t take into account the context, the laws and the regulating framework, these school governing type things, that you have a Western Cape Education Department with rules and regulations – if you don’t take that into account, then pretty soon the agreement that you come up with, will sort of just fade away. [It is] a question of the durability of the agreement. Can this survive, the charter for refugees? This nice piece of paper, it comes from a particular feeling in that moment, and you’ve been able to engender this – lovely, short-term fluffy feeling, warm in the pit of your stomach, but it is not durable at all.

While not using the phrase, Galant speaks about conflict resolution practitioners needing to recognise that they operate in the shadow of the law; he suggests that failure to do so may well undermine the sustainability of their efforts. His comments about practitioners “just wanting to make things nice” and “engendering a lovely, short-term fluffy feeling” also link back to the conflict resolution field’s shadow side as discussed in chapter 3, in terms of being concerned with altering behaviour and attitudes, facilitating short-term improvements, and neglecting structural aspects of conflict situations. Such aspects encompass not only the underlying conditions that give rise to destructive conflict, but also the legal framework and rights standards that relate to a given situation.

According to Galant, it was only through working at a statutory body that he started to view “the legal framework, or the Constitution, for example” as “one of the tools in my

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124 Interview, Ghalib Galant, 3 June 2011, Cape Town. He refers to the Commission for Conciliation, Mediation and Arbitration (CCMA), which replaced the former Industrial Court; see Republic of South Africa, Labour Relations Act (Act 66 of 1995) (and 8.1.2).
125 Ibid.
126 Ibid. Emphasis as spoken.
Two Field-Specific Organisations

toolbox” that “really can be used, which it wasn’t before”.127 For him, “the fact that our Constitution operates horizontally and vertically” has become “very important” in processes he facilitates: “it is about getting people to understand that the right to dignity is a fundamental right in the Constitution, so when we’re engaging with each other, in this process, we need to respect each other”.128 Human rights as law and as values are thus fusing, and turn into an instrument that helps him to achieve a certain type – or quality – of process.

Meanwhile, his involvement in the 2008 xenophobia crisis has taught Galant even more that his conflict resolution perspective is not sufficient to understand and address situations encountered. In his view, the crisis required three intervention strands: a human rights one, a humanitarian one, and a conflict resolution one that he also refers to as a social cohesion or process strand. He says that “really understanding the impact of these things on each other throughout is critically important. As an individual person [grounded] in one of those respects, I cannot do that by myself, I don’t think. Cause sometimes I don’t even know what question to ask”.129

The senior official who appointed the facilitators, Sifiso Mbuyisa, has learned a similar lesson; in future, he would include persons with a human rights perspective on the intervention team.130 Rodney Dreyer, the practitioner who featured in the previous section’s discussion on the use of conflict resolution in relation to land rights and eviction cases, expresses comparable sentiments. He notes that he has come to appreciate the rights framework as a ‘tool’ he uses in handling cases, even if mediating within this framework is “difficult” since “there’s a lot that [it] presents as non-negotiable”. Nevertheless, “it’s a tool that is so widely acceptable, not only in our country but globally, that the farmer has difficulty arguing against it”.131

These examples suggest that conflict resolution practitioners who engage extensively with ‘human rights’ (in some form or another, e.g. concrete standards, training, or specific actors) may overcome a tendency to overlook rights-related aspects of the situations they seek to address. They may recognise that not paying attention to human rights can negatively affect their conflict resolution efforts – and in fact, they may start considering human rights a resource for their practice. However, this is probably easier said than done, in that practitioners’ encounters with human rights may initially be perceived as a ‘bruising’ experience.

127 Ibid.
128 Ibid; Art. 10, 1996 Constitution, op.cit., providing the right to have one’s inherent dignity respected and protected. Horizontal application of human rights is provided for in Art. 8; see also 8.1.2.
129 Interview, Ghalib Galant, 3 June 2011, Cape Town. Emphasis added.
130 Interview, Sifiso Mbuyisa, 7 June 2011, Cape Town.
131 Interview, Rodney Dreyer, 14 June 2011, Cape Town. See 5.1.2 and 5.1.5 for previous references to Dreyer.
5.2.6 In Sum

This section has discussed experiences of CCR and associated conflict resolution practitioners in facing human rights issues, actors and practices in different conflict situations. It shows that practitioners are likely to encounter human rights in the context of their work, for example when they are requested to intervene in specific situations. At times, this is explicitly so, when human rights are “key components of parties’ interests and concerns” (Babbitt 2009a, 627) and one or more conflict parties use rights language to frame their grievances and demands. Such ‘explicit running into’ human rights also occurs when actors with a clear human rights mandate try to influence an intervention process or its outcome, for example because they act on behalf of specific parties or insist on certain standards being upheld. At other times, ‘human rights’ are more implicitly present, in that they matter in terms of both conflict symptoms and causes: conflict may manifest in ways that negatively affect the rights of parties involved yet may also arise from underlying conditions that relate to poor rights realisation, such as deprivation, social exclusion, or the absence of legitimate and fair mechanisms to raise dissent and seek redress (e.g. Parlevliet 2002; Babbitt idem).

It can thus be argued that it is in the nature of the work undertaken by conflict resolution practitioners that they will encounter human rights. The environment in which they work may add to this: in South Africa, for example, both human rights law and human rights talk spread rapidly after 1994, due in part to a constitution-making process that involved an extensive national consultation on a Bill of Rights, the adoption of various laws meant to enhance human rights, and the establishment of institutions intended to protect human rights and constitutional democracy, such as the Constitutional Court and the SAHRC. Attitudes towards human rights in South Africa underwent “a real revolution” around this time,132 and “human rights talk [was] in everybody’s mouth and everybody’s ear” (Hornberger 2007, 18). This was a period of ‘bringing human rights home’ (Halliday and Schmidt 2004).

Yet such a rise in human rights law and/or prevalence of human rights talk does not imply that conflict resolution practitioners are necessarily sensitive to this rights dimension. It seems that they easily overlook rights aspects if these are not pointed out to them or if they have not learned to consider human rights in relation to conflict resolution. They then fail to grasp the relevance of rights to the substantive issues at stake and may regard concerns framed in rights language as unhelpful or even obstructive. They may disregard the state’s responsibilities regarding human rights, and be ignorant of regulatory frameworks impinging on the situation at hand – and the implications for the design of interventions or the solutions agreed upon. As such, this section highlights all the more that encountering a certain phenomenon does not per se equal making an effort to affect it: conflict resolution practitioners who ‘stumble

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into’ or ‘encounter’ human rights do not automatically seek consciously to enhance human rights conditions in a specific context or for specific persons or groups. Nevertheless, in the examples discussed, practitioners sought at times to take human rights into account and to strengthen rights awareness and protection while engaging in conflict resolution (the school case was probably the most multi-faceted approach in this regard). They tried to do so by, for example, incorporating an educational element in the intervention process, creating space for parties to speak about the rights violations experienced, stressing human dignity as a core value to guide future interactions, considering systems of governance within a particular institution, or – in the case of the former coordinator during the 2008 xenophobia crisis – pressing duty bearers on delivery and accountability so as to relay relevant information back to rights-holders. Interestingly, practitioners, when including awareness-raising on human rights into a dialogue process, decided to draw in an actor with rights-related responsibilities (the SAHRC, the provincial Education Department) rather than assuming this function themselves. This differs from what was observed in relation to LHR (whose practitioners did take on conflict resolution functions). It begs the question whether the reverse is less likely – and if so, why.133

An overall finding is that conflict resolution actors can benefit from more understanding and technical knowledge of human rights and regulatory frameworks, including rights standards. The situations discussed here at least suggest this: overlooking human rights aspects may limit an intervention undertaken by conflict resolution practitioners to only some aspects of a conflict, which undermines its sustainability. Furthermore, failure to take rights into account may lead to outcomes being facilitated that unwittingly disregard rights standards or even flout them. The following example illustrates that this is not unique to South Africa:

Community mediators in Nepal have had to learn legal provisions pertaining to ownership entitlements of formally registered tenants tilling the land of someone else.134 Legally, such tenants are entitled to 50% of the land but few know this when registering a claim to ownership of a portion of that land. Consequently, many respond positively when the owner of the land offers them 25%, and are generally pleased when they settle at 30-33% of the land – only to become very angry when finding out later that they were entitled to half of the land.135

In sum, it is important to take human rights into account in the context of conflict resolution (Parlevliet 2002). This is not only so for the ‘negative’ reasons mentioned above – termed so because they relate to avoiding negative impact – but also for positive reasons. Considering human rights may enhance the durability of conflict resolution efforts, for example by drawing attention to the nature and functioning of

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133 See in this regard the discussion in 7.3, notably 7.3.3.
134 Conversations with Preeti Thapa, Senior Programme Officer, Asia Foundation, Kathmandu, February-May 2007; personal notes.
135 Ibid, and further confirmed by Jagat Basnet, Director of the Community Self Reliance Centre (CSRC), a NGO and membership organisation involved in the national land rights movement in Nepal, Kathmandu, February-May 2007; also Parlevliet (2011a, 29). More discussion on land rights in Nepal and CSRC will follow in 7.1 and 7.2.
public institutions and systems of governance. In addition, human rights law and values can serve as tools that conflict resolution practitioners can draw on in their practice. They highlight the parameters within which conflict resolution must take place, and can help practitioners to bring parties together around issues of common concern, or to develop useful partnerships with organisations that may be better placed to raise particular issues.

Yet the above makes clear that putting this into practice is not without challenges. It is clear that paying attention to human rights – or incorporating an explicit human rights dimension – in conflict resolution practice raises several questions. Some relate to dealing with human rights claims made by conflicting parties and the potential polarisation resulting from such claims, as opponents are likely to resist allegations of being responsible for rights violations. Questions also arise regarding the role of conflict resolution practitioners in raising human rights issues in intervention processes. Other questions relate to addressing various rights concerns: this entails not only balancing the rights of different persons or constituencies, but also dealing with the fact that some rights concerns relate to the consequences of conflict, others to its underlying causes. Ignoring the latter will probably undermine any constructive solution for the immediate issues at hand, but affecting them will require longer-term political and developmental initiatives that are beyond the scope of non-governmental conflict resolution practitioners.

As such, this section has also illustrated some of the limitations of conflict resolution’s way of being, doing and thinking. It has been suggested that conflict resolution practitioners, in their efforts to engage parties in dialogue, improve relationships and ‘put issues into process’, may ignore important elements of a given conflict. Also, to what extent may such an approach lay the basis for similar conflict situations to emerge in future, however unintentionally, by not enforcing important standards, punishing certain behaviour, or holding authorities accountable for their failure to meet their obligations? One can only wonder whether a stronger human rights- or law-based approach to early incidents of xenophobic violence in South Africa might have deterred future violence against non-nationals and/or made authorities more aware of the rights of non-nationals and of their own responsibility to provide them with protection and other services.

A related matter of concern is the way in which authorities may use conflict resolution services provided by civil society organisations (like CCR) in a context like South Africa, where significant tensions generate a ‘societal propensity to violence’ (Nathan 2001). Whether by design or not, the use of such services may enable authorities to contain eruptions of violence or outbursts of protest by citizens (and non-nationals) without taking responsibility for their failure to deliver on rights obligations. Conflict resolution actors then run the risk of serving as fire-fighters and pacifiers – especially when any effort on their part to raise rights concerns is frowned upon by public
officials and perceived as bias. All in all, considering human rights in relation to conflict resolution raises some tough questions for practitioners.

5.3 Conclusion

This chapter has focused on the question of how the relationship between human rights and conflict resolution plays out in the practice of civil society organisations focusing on protecting and promoting human rights or the peaceful resolution of conflict. It has done so by examining the experiences of two South African civil society organisations, one from each field: Lawyers for Human Rights (LHR) and the Centre for Conflict Resolution (CCR). This concluding section summarises overall insights and reflects on the fluidity between these fields.

The situations described here, and the brief references to experiences of organisations elsewhere, demonstrate that human rights and conflict resolution efforts are closely related in practice. LHR’s human rights practitioners started to draw on insights and methods from conflict resolution in their efforts to ensure the rights of farmworkers in the Western Cape. They sought to enhance their own capacity and that of their partners in mediation and negotiation so as to handle eviction conflicts effectively and constructively. Meanwhile, CCR’s conflict resolution practitioners found that they could not ignore human rights concerns while intervening in various conflict situations. Doing so would negatively affect the credibility and sustainability of their conflict resolution efforts.

The actual encounter of human rights and conflict resolution in practice brought both opportunities and challenges for the organisations and practitioners involved. For the LHR practitioners, the use of conflict resolution methods expanded the range of strategies at their disposal. It allowed them to take relational dynamics and contextual constraints into account while seeking redress for their clients, in a way that did not seem possible when using traditional adversarial approaches or accessing the formal judicial system. The opportunities presented by conflict resolution thus seemed particularly apparent to them. However, questions later arose about the limitations of conflict resolution approaches, in terms of setting a precedent, enforcing standards, giving due regard to the applicable ‘rules’, and protecting the weaker party. It thus transpired that conflict resolution could both help and hinder human rights protection.

The CCR practitioners initially perceived more challenges than opportunities when ‘human rights’ cropped up in their work, as rights claims seemed to intensify polarisation between the parties and raised challenging questions about the meaning of impartiality and facilitators’ own stances. The interaction with rights activists also proved taxing: their adversarial approach and insistence on specific outcomes seemed at odds with the conflict resolution practitioners’ more facilitative approaches. Nevertheless, consideration of human rights could also benefit conflict resolution
practice, by, for example, drawing attention to aspects of conflict situations that might otherwise be ignored, facilitating useful partnerships with other organisations, clarifying the parameters within which interventions were to take place, or bringing parties together around issues of common concern. Some practitioners thus came to appreciate human rights as a tool they could use in conflict resolution. Noteworthy in this regard is that while LHR practitioners mostly conceived of human rights as ‘law’ or ‘rules’, CCR practitioners understood human rights in a more multi-faceted way, linking them not only to law, but also to values, the type of processes facilitated and to the quality of relationships.

The practical examples put forth attest to the relevance of considering ‘human rights’ and ‘conflict resolution’ as distinct fields with specific frames: different analytical perspectives and ways of approaching problems can be observed. Yet the discussion here also highlights that the boundaries between human rights and conflict resolution may be far more permeable than the ‘field’ notion recognises. Actors focused on the one may find themselves dealing with the other, whether by conscious choice or inadvertently. A degree of fluidity thus exists between the fields, which belies the seeming ‘solidity’ of the two lenses emerging from the earlier chapters. Human rights and conflict resolution flow into one another in multiple ways, and the impression that they are separate fields with clear boundaries warrants qualification.

This suggests that maintaining ‘distinct human rights and conflict resolution operations’ (Arnold 1998a, 1) may not only be untenable in various situations, but also undesirable at times – at least, if no attention is given to the way in which human rights and conflict resolution efforts interrelate. Of course, there are considerable differences in the situations, organisations and individual practitioners described in this chapter. Variation exists, for example, in the degree to which connections between human rights and conflict resolution are purposefully pursued or rather stumbled upon, to which they are recognised or ignored, and to which they are capitalized on or perceived as unwelcome interference. Such differences however do not detract from the observation that human rights and conflict resolution are very interwoven in practice; this manifests in all situations described here.

A common element in the discussion of LHR and CCR experiences is that practitioners responded to specific conditions or challenges encountered in their context; this is what brought the fluidity of human rights and conflict resolution to the fore. Staff members of LHR consciously decided to explore and use conflict resolution when they realised the limitations of classical rights strategies in a heavily polarised environment characterised by severe power imbalances. CCR’s practitioners had to start thinking about human rights when meeting parties that framed their grievances and demands in rights language. This ‘element of response’ suggests that actors do not necessarily explicitly connect or consider human rights and conflict resolution in conjunction from the outset. It is in their practice that these actors come across the permeable boundaries between the fields. Faced with specific, dynamic situations
embedded in myriad relationships, and involving multiple perspectives, interests and entitlements, it may no longer be viable for practitioners to focus only on human rights or conflict resolution or to 'do' one without considering the other, at least to some extent.

This chapter has suggested that the fluidity between human rights and conflict resolution may stem in large part from the nature of the work undertaken by the actors considered here, and the context in which they operate. The situations described here point to a multi-faced relationship between human rights and conflict, especially when considering 'conflict' broadly. While the non-realization of human rights may be one of several causes of social-political conflict in a specific context, protecting and enforcing them can also generate conflict in itself. It can challenge existing power relations, alter the existing division of resources and opportunities, and highlight shortcomings on the part of the state to realise rights. Such change carries potential for conflict, especially when human rights are seen in zero-sum terms, as if one party's gain is another's loss. Recognition of the previously denied rights of a specific group may cause other groups whose rights had thus far been upheld to perceive this as limiting their own rights (Parlevliet 2002, 34).

Hence, as the LHR example and the references to other human rights organisations reflect, human rights actors are constantly dealing with conflict. They do so when representing a party in conflict or when encountering resistance or obstruction in their human rights work. They may also serve as intermediaries and facilitate negotiations between parties. Meanwhile, conflicts of rights cannot be solved only by reference to human rights alone (Koskenniemi 2011, 159). While it was noted that encountering conflict does not imply that human rights actors actually engage in conflict resolution, it has also transpired that one may lead to the other: frequently dealing with conflict may prompt human rights actors to start working on conflict more intentionally, using conflict resolution methods and principles.

Human rights may be equally inescapable for conflict resolution, if only because the substantive issues at stake in conflicts often pertain to human rights in one way or another. The context may add to this: legal frameworks exist that affect the solutions that can be negotiated, parties may couch their positions in rights language or question conflict resolution actors on how abuses are being addressed, and human rights activists may operate in the same setting, possibly focusing on the same conflict situations, so that conflict resolution actors are likely to encounter them. Such dynamics are especially likely in contexts where human rights are 'brought home' through the domestication of international instruments.

It can thus be argued that conflict resolution practitioners generally work 'in' human rights – i.e. in settings where human rights feature in one way or another, and in which their actions are likely to affect human rights. They do so even if they do not consciously work 'on' human rights in the sense of explicitly seeking to protect and
promote them – and even if they prefer to work ‘around’ human rights when perceiving formal legal standards and moral claims as cumbersome, complicated, or simply not their concern. The distinction made here – between working in, on, and around a particular phenomenon – stems initially from the development field. While not very sophisticated (Lange 2004), it helps to discern different ways in which actors may engage with a phenomenon that is a defining feature of their context but does not play a prominent role in their traditional frame of reference. The observation that human rights actors may work ‘in’ conflict and that conflict resolution practitioners tend to work ‘in’ human rights has certain practical implications. For example, as Babbitt asserts, those who design and implement conflict resolution processes “cannot assume that human rights are ‘not our issue’. [...] The question to answer is not if, but how, to use these norms in a constructive and appropriate way” (2009a, 627).

The types of problem focused on by the actors considered in this chapter probably add to the way in which human rights and conflict resolution are intertwined. Land reform, xenophobia, flawed service delivery – these can all be considered what Kahane has called “tough challenges” (2010, 5). They are dynamically complex (in that cause and effect are interdependent and far apart in space and time), socially complex (due to the different interests and perspectives of the various individuals, groups and organisations involved), and generatively complex (in that their future is basically unknown and undetermined) (ibid; Senge and Scharmer 2001, 204-205). These features affect how such challenges can be addressed: the first means that it is important to see the system as a whole rather than tackling aspects piece by piece; the second points to the need to engage all actors involved rather than relying on authorities or experts; and the third highlights the importance of growing new solutions rather than applying set recipes from the past (ibid).

While it is debatable whether all situations mentioned in this chapter qualify as ‘tough challenges’, the discussion suggests that even seemingly small-scale, distinct conflicts dealt with by actors considered here – a conflict at a school in a destitute area, the eviction of a farmworker, the demolition of structures erected by urban settlers – may be rooted in and symptomatic of larger conflict dynamics that do constitute such ‘tough challenges’, and that will impact on practitioners’ ability to address such situations effectively and sustainably. Hence, Kahane’s threefold complexity may be the rule rather than the exception, even if it manifests most clearly in the 2008 xenophobic violence and may be less obvious in other situations described here.

As such, this chapter endorses the point made elsewhere that many issues that manifest themselves as legal problems cannot be conclusively resolved through legal routes (International Council on Human Rights Policy 2009, 17). It can be argued, in the same vein, that issues that manifest as ‘conflict’ problems warrant an approach that goes beyond conflict resolution and that tackling ‘human rights’ problems requires more than human rights. The chapter suggests that whether a problem is
seen as a ‘human rights’ or ‘conflict’ issue may be in the eye of the beholder, determined by their perspective: it may be both at one and the same time.

In this regard, it is revealing that various practitioners featured here seem to have become aware that their own perspective and methods, their regular way of operating, may be insufficient to address the situations at hand. The lament of a conflict resolution practitioner ‘Sometimes I don’t even know what question to ask!’—(in 5.2.5) is the most potent and explicit reflection of this. In other instances too, practitioners have realised that their efforts could benefit from a combination of insights and approaches from both fields. Indeed, learning processes appear to have taken place for various actors, both organisational and individual. This is another way in which the fluidity of human rights and conflict resolution emerges: it relates to a willingness amongst actors working in these fields to reflect on their own lens and actions, to acknowledge limitations, and to explore different approaches – in sum, allowing new practices to emerge, or in Kahane’s terms, growing new solutions.
Chapter 6: Actors on the Interface
Chapter 6

Thus far, we have discussed the experiences of two field-specific actors when exploring the interplay of human rights and conflict resolution in practice. There are, however, many other organisations working to advance human rights or address conflict that are not professional NGOs. This chapter considers how the relationship between human rights and conflict resolution plays out in the practice of actors outside of that category. Focusing on opposite ends of the organisational spectrum, it looks on the one hand at a loosely organised civil society network not especially geared towards human rights or conflict resolution, and on the other hand at a number of independent state institutions with a mandate to protect human rights, safeguard democracy, facilitate dispute settlement and/or ensure fair public administration.

The discussion shows that the fluidity observed in the previous chapter – the way in which human rights and conflict resolution flow into one another – is also manifest in the practice of the actors considered here. It argues that these actors can be understood as operating on the interface of human rights and conflict resolution, as they perform functions and undertake activities usually associated with both fields. Distinguishing where human rights and conflict resolution respectively begin and end is difficult in the case of these actors. This is first demonstrated, in 6.1, with reference to a loose ecumenical network of churches that have jointly operated as ‘Churches in Manicaland’ (CiM) since mid-2000 in the easternmost province of Zimbabwe. Clergy from the network began working on rights protection, violence mitigation and dialogue facilitation in response to growing political violence. Initially associating with nothing other than religion, they increasingly realised that they were actually undertaking both human rights and conflict resolution efforts while trying to make a difference in their context. In 6.2 the chapter shows that various independent state institutions also often work in both realms – even if their formal title or mandate may emphasise or refer to only one of the two fields (or neither). The extent to which such statutory bodies recognise this and engage with the interface varies greatly, however.

Overall, the chapter confirms previous findings on the extent to which human rights and conflict resolution are interwoven in practice, and how this brings both opportunities and challenges for the actors concerned. The final section, 6.3, links the discussion in chapters 5 and 6, offers some tentative conclusions as to what these fields may contribute to one another and points to recurrent questions. As with chapter 5, the account provided here draws on my own work with these actors, personal notes, internal reports and correspondence. It however barely places the discussion in a present-day context due to limitations of space and scope. My assessment is that, by and large, the arguments presented here – about fluidity and the interface – still stand and remain relevant to this study’s larger narrative about the interplay of human rights and conflict resolution in practice. Feedback from

1 ‘Interface’ is used here as discussed in chapter 1, referring to the interplay between various life worlds or social fields, while recognising its limitations in suggesting compartmentalisation (see 1.2.2).
2 Correspondence and internal documents are cited with permission and are on file with the author of this study.
interlocutors supports this assessment, which is why these experiences are included here despite some of them occurring long ago and the changes that have taken place on the ground and in the political context since then.

6.1 Churches in Manicaland (Zimbabwe)

This section discusses the experiences of Churches in Manicaland (CiM), a loose ecumenical network that has sought to advance both human rights and conflict resolution from 2000 onwards in the face of a growing political crisis in Zimbabwe, although it did not conceive of its efforts in such terms at first. It first provides some background on the network and the circumstances in which it came into being (6.1.1). It explains how CiM started engaging in various activities, including advocacy, monitoring, support to victims of abuses, shuttle diplomacy and crisis intervention, while drawing on biblical teachings for inspiration, vindication and mobilisation (6.1.2). Such activities can be seen understood as a mixture of human rights and conflict resolution practices, and over time, these notions gained increasing importance for the Manicaland Churches as a way of expressing ‘what they were about’. This is the focus of 6.1.3, which sets out how the Churches adopted a ‘pastoral approach’ in engaging with human rights, conflict and violence, meaning that they sought to confront wrongs through direct relationships with victims and perpetrators.

In trying to enhance both peace and justice in the province, CiM experienced two recurrent challenges that are relevant in the context of this study. One concerned tension around its functioning simultaneously as a human rights advocate denouncing abuses and as a facilitator of dialogue reaching out to actors regardless of their involvement in violence. The other related to the fact that many of CiM’s activities focused on alleviating symptoms in the short term, while the underlying problems giving rise to suffering required sustained action to ensure peace and justice on the long term (6.1.4). The section concludes with a summary (6.1.5).

6.1.1 Background

Churches in Manicaland is an interdenominational forum representing a wide range of churches and Christian organisations in Manicaland, one of Zimbabwe’s eight

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3 I use ‘Churches in Manicaland’ and ‘the Manicaland Churches’ interchangeably, in line with CiM practice. The word ‘churches’ refers to individual Christians/clergy, rather than to the institutional church (Tarusarira 2014, 101).

4 Due to logistical constraints, only two interviews could be conducted with long-term members of CiM to augment and verify the information from my notes and previous correspondence. Both Rev. Shirley DeWolf and Fr. Michael Bennett had been involved in CiM from the very start, and they had been my main contact persons throughout the work with the Churches. At the time of these interviews (which took place through skype on 9 June 2011 and 18 January 2012, respectively), Rev. DeWolf continued to be a central figure in CiM while Fr. Bennett had moved to South Africa. As such, he was no longer participating in CiM yet kept in touch with former colleagues. Rev. DeWolf also shared the draft text with at least one other long-term CiM member (name withheld on request).
provinces (located in the country's east on the border with Mozambique).\textsuperscript{5} It was formed in May 2000 by a group of church leaders who were concerned about the rising violence in the province in the run-up to a parliamentary election to be held later in June. At the time, this was the first election in which the then ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), would face any real opposition due to the formation of the Movement for Democratic Change (MDC) in September 1999.

Before the election, in February 2000, the government had already suffered a painful defeat in a referendum on a new draft constitution which sought to broaden presidential powers and included a clause allowing for the acquisition of commercial farms without compensation.\textsuperscript{6} Despite this defeat, farm invasions began soon after: assisted by state security operatives, landless farmers and veterans of Zimbabwe's liberation war occupied commercial farms (mostly white-owned) and refused to leave. These occupations became part of a wider campaign of repression intended to eliminate opposition and silence dissent. Amnesty International called the campaign a "deliberate and well-thought out plan of systematic human rights violations with a clear strategy, constituting state-sponsored terror in the run-up to the June elections" (2000, 1).

In a context defined by violence, intimidation and uncertainty about "who they could trust and who would undermine them", clergy in the province were initially at a loss as to how to make a difference. One of the founding members, Rev. Shirley DeWolf, recalls,

\begin{quote}
I think the whole story of how we started is important. We started simply as a response, not knowing what to do. It was a situation where the churches were completely without any wind in their sails. We had no energy, no direction, nothing to focus on. In 2000, when all of this violence suddenly came up around the elections – because we now had a new opposition party and the backlash was so extreme – the pastors who knew that this was something we should be engaged in, didn’t know what to do. We felt a real sense of guilt and couldn’t look each other in the eye. We were avoiding each other, it was that bad. There were cartoons coming out in the newspaper, showing three bishops sitting on a bench, with violence all around them. One had the eyes covered, one had the ears covered, and one had the mouth covered. People were phoning into the radio, saying ‘Where are the churches?!’ We did not know where we were.\textsuperscript{8}
\end{quote}

\textsuperscript{5} The number of participating churches fluctuates. Forty-four churches and Christian organisations signed CIM’s foundation pastoral statement Life in Abundance (2001). According to Tarusarira, members from some 15 denominations and organisations constantly participate in CIM; he attributes the fluctuating numbers to fear of being identified with a politically critical organisation (2014, 101).

\textsuperscript{6} The draft constitution was opposed by the MDC and the broad-based National Constitutional Assembly, a civil society network established in December 1997, including the Catholic Commission for Justice and Peace, the Zimbabwe Council of Churches, the Zimbabwe Congress of Trade Unions, human rights organisations, student organisations and women’s groups; see Sithole (2001) and International Crisis Group (2000a).

\textsuperscript{7} "Manicaland Churches: some information on organisation", n.d. Also recounted in correspondence, July 2001.

\textsuperscript{8} Interview, Rev. Shirley DeWolf, emphasis as spoken, 9 June 2011 (skype). One of CIM’s founding members, Rev. DeWolf served as coordinator of its steering committee in the beginning.
A first meeting of three clergy led to a second gathering, attended by fifteen, and a third, in which fifty clergy participated. Thereafter the number grew to over a hundred from all over the province, representing a wide spectrum of churches. The participating clergy agreed that they had “an obligation to do something to stop the violence” and that they wanted to collaborate “for peace and justice in the province”. According to Rev. DeWolf,

We came up with a plan – these people are going to write up a statement, and those are going to take the statement and go out to the bus stops and the petrol stations and ask the people to distribute this as they drive up [country], and we took it to the police commissioner of the province, all of it. That’s how it started, this small group of volunteers, who started running.

A few days before the parliamentary election, the Manicaland Churches issued their first public statement, calling upon people to exercise their right to vote freely and in peace, to respect others’ right to vote according to their own choice, and to refuse to participate in intimidation. They also called upon political party leaders to refrain from using force to gain votes and to present their party's platform in a non-violent manner and promote dialogue as an alternative to force. By then, the clergy had started a ‘quick action group’, which met with the authorities when hearing of real or potential violence to press for intervention. They were also visiting violence-torn areas to provide support to victims, work with local pastors to identify possible mediators, and advocate on victims’ behalf with local leaders who could stop the violence. Another area of concern was countering misinformation, based on the realisation that “when the churches speak, people listen and believe them”.

For example, when a rumour went around two days before elections that the invisible ink put on people’s hands would show how they had voted, we sent a delegation to the Provincial Administrator and to the Asst. Commissioner of Police to get their statements saying that this was false information. Then we typed up some paragraphs to assure people of the truth on this issue and on several other facts that had been falsely portrayed. We made thousands of copies to spread throughout the province by the bus transport system.

After the election – which ZANU-PF narrowly won – the Manicaland Churches engaged with members of parliament elected from provincial constituencies to highlight important issues warranting attention, such as youth and unemployment, justice and the rule of law, constitutional reform, and land access and management.
In reaching out, the Churches noted that they had erred in the past by failing to provide ministerial care to individuals who had been elected; they indicated that they considered it their responsibility to accompany such persons in future. They explained that they sought to prevent a situation where it would no longer be possible to jointly address and resolve issues threatening the common welfare of Zimbabweans. CIM stated that,

We do not believe that there can be peace in Zimbabwe without deep-rooted examination of the problems that beset us, and without a bold commitment by each one of us to recognise our complicity and to carry our full share of responsibility to right the wrongs. Manicaland, with its diverse political party representation, has a unique opportunity to demonstrate on the political level how pluralism can enrich our national vision-building. Zimbabwe needs to rid itself of the suspicion that tensions that have been allowed to grow up between people of different ages, races, ethnic groups, cultures, religions, socio-economic status, and political persuasions. We need to develop a culture of tolerance based on mutual respect, a sense of need for each other, and a belief in personal freedom of choice and expression.

By pointing to the importance of mutual respect, interdependence, political pluralism and personal freedom of choice and expression, the Manicaland Churches alluded to human rights and conflict resolution values without using these notions explicitly. Over time, they started conceiving of their activities more in these terms, as will be set out below. CIM’s suggestion that Manicaland was well-placed to show the value of pluralism stemmed from the fact that it was the only province from which candidates from three political parties had been elected: from the ruling party, the main opposition party, and a small split-off group from ZANU-PF. Moreover, political activism had always been high in the province, which had been a critical military frontline in the fight for liberation from colonial rule. Over time, many senior leaders from the ruling party had come from the province, and opposition seats in parliament had been usually held by politicians elected in Manicaland (e.g. Chimange 2010).

The Churches foresaw the possibility of widespread conflict in the province, notably around elections, and were concerned about various developments. This included the deployment of uniformed youth brigades affiliated with the ruling party, the deliberate spreading of misinformation, new repressive legislation being prepared by government on public order and access to information, displacement of thousands of farmworkers and their families due to a ‘fast-track land redistribution scheme’

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17 Interview Rev. DeWolf, op.cit; also mentioned in correspondence July 2001.
18 Quoted from paper presented to newly elected members of parliament (MPs), in correspondence of July 2001. When only opposition MPs heeded CIM’s invitation to attend a meeting with some 100 clergy representing constituencies around the province, CIM visited each individual ZANU-PF MP to draw attention to the churches’ concerns and explain the rationale for the churches’ activity.
19 Correspondence 2001.
started by the government after the parliamentary election,\textsuperscript{21} and growing poverty and hardship as a result of reduced food production and the spread of HIV/Aids.

Reports by international organisations at the time corroborate CiM's assessment, painting a bleak picture. In April 2001 the International Bar Association found that "the events of the past twelve months have put the rule of law in the gravest peril. The circumstances which have been disclosed show, in our view, conduct committed by government which puts the very fabric of democracy at risk" (2001, 77; see also Amnesty International 2001).\textsuperscript{22} In July 2001, the International Crisis Group characterised Zimbabwe as being "in a state of free fall. It is in the worst political and economic crisis of its twenty-year history as an independent state" (2001, ii). Noting the increased use of state-sponsored violence through war veterans, police, army and other ZANU-PF supporters, it observed that "Zimbabwe is descending into a cycle of poverty and repression. [...] [The] ZANU-PF leadership appears willing to do anything to stay in power" (ibid).

A growing food crisis – due to the disruption of commercial farming, political interference in food distribution, and erratic rainfalls – compounded the situation, prompting the UN World Food Programme to launch a large-scale relief food operation aimed at assisting more than half a million people.\textsuperscript{23} The fact that a presidential election was scheduled for March 2002 exacerbated the turmoil in the country, as the regime was "emasculating the pillars of independent opposition: media, civil society organisations, student groups, labour and any other constituency from which ZANU-PF might conceivably face a challenge" (International Crisis Group 2002, 2).

\section*{6.1.2 Serving the Local Population}

In this context of violence, death, poverty and famine, Churches in Manicaland felt morally compelled to react to the political crisis as a way to make faith relevant. Their willingness to challenge irresponsible political practice and behaviour by political leaders set them apart from mainstream religious institutions in Zimbabwe, which mostly kept silent in the face of growing repression or were allegedly co-opted,

\textsuperscript{21} In July 2000, the government announced a fast-track resettlement programme in the context of which 150,000 families were to be settled on commercial farms compulsorily acquired by the government. By September, some 350,000 workers on commercial farms were estimated to have been affected, most of whom were reportedly regarded by ZANU-PF as MDC supporters; see International Crisis Group (2000b).

\textsuperscript{22} This included an invasion of the Supreme Court by war veterans, public criticism of Supreme Court justices by President Mugabe and some cabinet ministers as ‘relics of the Rhodesian era’, and intimidation leading to the resignation of several Supreme Court and High Court judges, including the Chief Justice (International Crisis Group 2001, 12; International Bar Association 2001; International Commission of Jurists, 2002).

especially in those early days (Tarusarira 2014).24 They organised themselves as a loose platform with a steering committee but without formal structure or rules of engagement, only agreeing to ‘maintain mutual respect and common purpose’ and to hold consultation meetings at important decision-making times. This mode of operation stemmed from security concerns, and allowed for flexibility and rapid response to issues as they arose.25

CiM undertook a wide range of activities. This included providing pastoral support to victims of violence, engaging in discussions with elected politicians, public authorities and traditional leaders on issues of peace and justice, educating congregations regarding ‘responsible civic action’, convening ‘rapid response’ meetings with key leaders to stop or prevent violence and inhumane treatment, undertaking advocacy and lobbying on draft legislation, denouncing human rights abuses, holding public prayer meetings to facilitate reflection, mobilisation and social interaction, and organising grassroots healing workshops. It also issued public statements on various issues stressing, inter alia, the importance of ‘peaceful process’, the need for more respect for the rule of law, and a review of the electoral process.26 Tarusarira argues that CiM helped people cognitively, emotionally and morally, by providing them with a clear analysis of the crisis in Zimbabwe, offering space and support in dealing with their feelings about the situation, and giving guidance on how to act in the face of crisis (2014, 106).

From the outset, the Churches emphasised that they were non-partisan and were available to offer ‘counselling and vision-building to people of all political persuasions’. According to a former steering committee member, Fr. Michael Bennett, such impartiality “was a sine qua non. To be seen to be taking political sides would have been a recipe for disaster”.27 CiM countered politicians’ reprimands that ‘churches should leave politics to politicians’ by noting that “the Gospel embraces every aspect of human life, not just the spiritual but also the material, economic, social and political aspects”.28 Characterising their activities as “evangelical”, CiM stressed that they promoted values of love, peace, truth, justice and liberation and applied these to all that they did, personally and in their public life.29 Overall, they were

24 Notes from personal conversations with steering committee members, 2002-2003; see also Chitando (2011, 46) on the motivations of church leaders to align themselves to the President and ZANU-PF. Mainstream churches and institutions became more critical as the 2000s progressed (e.g. Chitando 2011; Kaulemu 2010).
25 Each individual member and church could (and still can) choose the nature and extent of their participation, thus preventing rivalries with established organisations like the Zimbabwe Council of Churches or the Zimbabwe Catholic Bishops Conference; see “Manicaland Churches, some information on organization”, n.d.; “The Churches in Manicaland Steering Committee”, 2009, both from Churches in Manicaland; Tarusarira (2014, 104).
27 Correspondence, 29 Dec. 2011.
28 “Message from the Manicaland Churches to Members of Parliament Elected in Manicaland in the Year 2000”, Churches in Manicaland; for politicians’ rejection of churches’ activism, see also Tarusarira (2014, 103-105) and Chitando (2011).
“seeking the guidance of the Holy Spirit in taking action to promote tolerance in society, to give direction to public decision-makers and to enable our people to live Gospel values and principles” (Churches in Manicaland 2006).

These descriptions reflect how CiM generally rooted its statements and actions in biblical teachings rather than in notions of human rights or conflict resolution. Thus, in reaching out to MPs after the 2000 election, CiM emphasised the “value and worth of the individual as a unique child of God, whose ‘every hair is numbered and known’” instead of speaking of every person’s human rights or human dignity. Its foundational pastoral statement Life in Abundance also reflects this approach. Affirming its commitment to the “central Christian principles of justice, truth, mercy, peace and compassion”, CiM argued that “the struggle for justice and the resulting peace between all people is at the heart of our Christian faith and mission” (Churches in Manicaland 2001).

This framing of CiM’s concerns and activities stemmed in part from security considerations. As Manicaland clergy became more active and outspoken, and encouraged individual Christians to “confront and remove contradictions between what they believe society should be and what it is actually becoming”, they were increasingly targeted by local militia and state security operatives for “meddling in politics” (Kaulemu 2007, 8).31 Another contributing factor was the fact that the Churches were initially mostly bound together by a common grounding in Christianity. Coming from different theological backgrounds, they greatly varied in their approach to social action: some had a strong tradition of social justice teaching and activism, while others stressed a spiritual approach to justice. At one of my first interactions with a large group of CiM clergy, they thus discussed lessons learned about crossing their own prejudices and denominational differences, and considered how this constituted a basis for trying to address conflicts in the communities they served.33

6.1.3 Advancing Human Rights and Conflict Resolution

The discussion thus far shows how an organisation with no particular affiliation to either the human rights or the conflict resolution field became engaged in activities that – from a field perspective – can be understood as a mixture of the two. Over time, these notions became more important for CiM as a way of capturing what they ‘were about’ and sought to do, even though religion remained the “sentimental pool for motivation, mobilisation and justification” (Tarusarira 2014, 99). This sub-section

30 Section on ‘Our prophetic role’ (Churches in Manicaland 2001).
31 Individual clergy involved in CiM were aware in 2002 that their activities were monitored, and Zimbabwean intelligence interrogated the then coordinator of the steering committee on a number of occasions (personal interaction and correspondence, 2002). Steering committee members also made me aware that intelligence operatives were amongst participants at two workshops I conducted in Mutare in late 2002.
32 Correspondence, July 2001; personal notes from discussion with steering committee members, October 2002.
33 Workshop with some 45 clergy from Churches in Manicaland, Mutare, October 2002.
considers how human rights and conflict resolution emerged more explicitly in CiM’s activism and how they interacted in its approach.

The Churches’ protection work involved efforts to halt violence, calling for a return to legality and for accountability of perpetrators of abuses, and providing sanctuary to individuals subjected to violence. It also comprised visits to arrested persons in prison, arranging for bail, liaising with other actors (notably human rights NGOs) to ensure legal assistance, and monitoring elections. At first, such activities were not necessarily framed in terms of ‘human rights’ even if statements occasionally referred to ‘rights’ or spoke of CiM’s “obligation as religious leaders to be active custodians of the people’s rights in Manicaland”. Yet when CiM set out to formulate a common agenda after the first rush of activities associated with the 2000 parliamentary election had subsided, referring to ‘human rights’ became a conscious decision. According to Rev. DeWolf,

It was quite some time after [that first election] that we finally said, we need to say who we are. We need to write down who and what we [are] all about. And it was interesting to strike a right balance – because we had been a response and to put that down in words, in terms of an objective, became difficult to do. I remember putting human rights in there, but realising that we’d actually never talked about human rights. We were responding to human rights violations. It was not just the political work that we’d do, we were also working with victims – we were doing human rights protection, but we had never called it that. So we put it down on paper, as one of our intentions for being together.

CiM’s agenda was thus formulated as follows: “to seek together God’s guidance for these difficult times in our country so that we can make common Christian witness; to ensure that rights and safety of our people are protected against violence and exploitation; and to better understand what is contributing to violence in our society and to promote peaceful and effective solutions”.

In engaging with questions of human rights, conflict and violence, CiM adopted what it called a ‘pastoral approach’. This meant that “there is no person and no event taking place in our society which is outside our pastoral duty”, and that “all of our advocacy and confrontation of wrongs in society comes out of direct personal relationship with both victims and perpetrators”. Personal contact was thus seen as the starting or pivotal point for change. Pastoral work was familiar to all clergy involved, and the use of this approach also stemmed from an appraisal of CiM’s strengths and weaknesses. Rev. DeWolf explains,

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34 Correspondence, 2001-2003.
35 “Message from the Manicaland Churches to Members of Parliament Elected in Manicaland in the Year 2000”, Churches in Manicaland.
36 Interview, 9 June 2011, skype.
37 “Notes from Steering Committee Meeting, January 2001”, Churches in Manicaland.
38 Correspondence, 2001.
40 Correspondence, 2011.
It started towards the beginning, when we were thinking of who we are – what are our strengths? We were very aware of our weaknesses: we were not economic analysts, we knew there were economic problems but we were not on our own able to analyse things, we were not political analysts. We were having to dialogue with people who knew much more about these areas of work than we did, and yet we brought the moral dimension to that, so wherein lay our strengths? We decided our strengths lay in our relationship to people, our pastoral relationship to people. That pastoral background meant that we had to take a much more counselling kind of approach to things. Where necessary, in our statements, yes, we could come out and state very clearly what it was we were standing for. That was what helped to determine why we had to take a pastoral approach. In the church it will always be the contact, the relationship, and the conversation that takes first priority. If we have to be forceful, it will not be force that will break that relationship.41

The pastoral approach’s emphasis on establishing and maintaining relationships and conversation was thus closely linked to CiM’s non-partisan stance. Yet the Churches’ ‘moral dimension’ meant that the pastoral approach was still strongly normative and infused with an on-going resolve to ‘sort out the truth’ and ‘clarify the church’s stance on issues’ to counter the excess of ‘misinformation and carefully manipulated information’ going around.42 The pastoral approach was thus combined with efforts to break the culture of silence, speak truth to power, and challenge alliance and co-optation. In other words, it did not lessen the importance of human rights for the Churches:

Human rights abuse is truly at the centre of a lot of what’s happened, and [what makes us] respond to situations on the ground. It’s the human rights abuse that immediately triggers our concerns, because the Churches are concerned with human welfare. That’s our first line of concern. What we’ve never done is to sit down, and actually go through a course on what are human rights, how do you work with human rights, and so on and so on. We have two human rights lawyers in Mutare that we bring in from time to time to our meetings, for advice, and occasionally we’ve asked them to come and speak to us at a larger meeting. So we have close relations with them, but we’ve never done any formal [human rights work].43

CiM’s take on human rights was more social – as embedded in a social context of interdependent relationships and behaviour – than legal:

Throughout the years we have used the term ‘human rights’ in a social sense rather than a legal sense. We have been carrying out human rights defence work through a theological and social interpretation of it rather than a legal interpretation - not because we were avoiding the latter, but because it did not seem to be a priority.44

This assessment was also based on the recognition that there were other organisations “covering that terrain” (i.e. law-based human rights work). These were

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41 Interview, 9 June 2011, confirmed by correspondence (2001) and records of activities from CiM in 2002.
42 Interview, Rev. Shirley DeWolf, 9 June 2011, skype.
43 Ibid.
44 Correspondence, July 2011.
Zimbabwean human rights NGOs, with which CiM networked.\textsuperscript{45} In the same vein, ‘justice’ was understood as ‘fairness in our dealing with others’ and as relating to ‘equality of opportunity for all members of society’ and to ‘restorative justice’ rather than in terms of legal accountability (Churches in Manicaland 2001; 2006). Nevertheless, in 2005/2006, two clergy involved in CiM took part in a 10-day training course in international human rights law in South Africa. In sum, the term ‘human rights’ was increasingly used or was “added as a catch phrase to portray the central concern and foundational intervention work we did for the security of individuals and communities and for the freedoms that we were advocating in our discussions with officials”.\textsuperscript{46}

Yet, while “human rights abuse [being] always what’s motivated” CiM, the network came to focus “much more on the conflict resolution side” in its outreach to people in the province, and in providing training to clergy, lay persons and staff from various faith-based organisations.\textsuperscript{47} Conflict resolution, with its emphasis on relationship-building and facilitating dialogue across divisions, breaking down enemy images, and de-escalating tensions, followed on from the pastoral approach adopted by the Churches. It was also in line with their commitment to be available to all, irrespective of political affiliation or involvement in (political) violence, past or present. Overall, CiM believed that its pastors had “access to many people through their churches and [were] socially entrusted with the societal values of peace and reconciliation” (Tarusarira 2014, 102).

CiM started exploring conflict resolution thinking and practices in late 2002, after meeting one of my South African colleagues, Andries Odendaal, who by then was working with various organisations in Zimbabwe in the context of a collaboration between the UN and CCR.\textsuperscript{48} Its steering committee expressed an interest in CiM learning more about conflict and how to respond effectively. It also requested assistance with reflecting on its own functioning and that of the overall network, in terms of what it wanted to achieve and the challenges it encountered. That prompted my involvement, as the clergy experienced some tension between their human rights- and conflict resolution-oriented activities and the associated roles (discussed below). My engagement took the form of reflection and strategizing with CiM’s steering committee, three training events with larger groups of clergy, and correspondence before and after these activities (mostly taking place between 2002 and 2003). The precise focus of our meetings was decided on the basis of interests expressed and information provided through the steering committee; my involvement consisted

\textsuperscript{45} Interview, Rev. DeWolf, 9 June 2011. See also Tarusarira (2014, 105).
\textsuperscript{46} Correspondence, July 2011. Even so, CiM did not start to explore ‘pastors as human rights defenders’ until 2011.
\textsuperscript{47} Interview, Rev. DeWolf, 9 June 2011. Progress reports from CiM also reflect this (2005, 2006, 2007).
\textsuperscript{48} This included a faith-based development NGO and the UN Development Programme, which had contracted CCR to help design and deliver a multi-year ‘social cohesion’ programme (2001-2004) providing conflict transformation training to various audiences, including parliamentarians, security force personnel, civil society organisations, etc.
initially mostly of asking questions, facilitating discussion amongst CiM people, and listening.49

The Churches’ interest in learning about conflict resolution was due to the fact that many clergy were extensively involved in addressing conflict in Manicaland. Church leaders were for example asked to intervene in a crisis in a rural village on the Mozambican border after harsh action by the military when villagers crossed the border to hunt and to trade to obtain cash to buy food.50 Following the eviction of 48 people from a farm, CiM engaged in shuttle diplomacy with those responsible and local officials, while temporarily accommodating and feeding those evicted.51 They also played a role in distributing food aid, which often involved clashes with local government officials intent on allotting food based on political criteria rather than need. Pastors resisting such interference (or trying to return food to people who had it taken from them) suffered retaliation.52 These and other situations placed CiM in the middle of conflict handling, and occasionally caused tension within the network around goals and methods.53 Their functioning in a climate of intimidation and fear also meant that the clergy needed “to guard against absorbing the tensions we with t” to deal with in society and allowing hem to pull us apart, as one of them put i.54

Grappling with such situations highlighted for the steering committee a need to enhance the Churches’ ability to handle conflict and aroused a desire to develop such skills amongst many more in the province. From mid-2003 onwards CiM thus embarked on “a drive to conscientise the masses” (Tarusarira 2014, 102) in Manicaland on issues related to conflict resolution, reconciliation, human dignity, truth, justice and freedom. Besides drawing on support from CCR, the network sent two members to a three-month conflict resolution training course in the United Kingdom. This growing emphasis on conflict resolution was further enhanced by CiM members’ participating in meetings at provincial and national level. One such meeting prompted the following reflection from a steering committee member:

We listened [to] people who represented the most polarised ends of our political spectrum speaking on the same issues, [and] were able to hear the void between them, and to start some speculation about our roles as churches in bridging this void. X and I came home convinced that CiM has given too little attention to our mediation role and

49 A one-day session was held for a group of some 40 clergy from all over the province; the second was a three-day workshop for 75 clergy (including some thirty delegates from Zimbabwe’s nine other provinces); the third was a two-week workshop for a core group of 25 people. While I took the lead in conducting these events, I worked closely with a group of two to six people associated with CiM to design and facilitate them. After my practical involvement ended, I remained in contact to keep abreast of CiM’s activities and developments.
50 Correspondence, 6 December 2002. For a discussion of how vulnerable people from Manicaland have exploited opportunities for survival in neighbouring Mozambique in recent years, see Duri (2010).
51 Correspondence 2003, and “CiM: Brief version of Chimamani conflict story, 2002-2003”.
52 WFP had contracted a Christian organisation to distribute food relief, which worked through local churches on the ground; see “Report of the Manicaland Churches Provincial Meeting on Food Issues: 2 May 2002”. On the politicization of food aid, see also Howard-Hassman (2010) and Human Rights Watch (2003).
53 Correspondence, 2011.
54 Correspondence, 2003.
2003 may be the year we have to change this around. [...] One of the clear developments arising from CiM’s interaction with you/CCR has been this move towards seeking our mediating and reconciling role. It is not a direction that you have suggested to us, but more something we have discovered for ourselves through the prompting of exercises you have conducted with us. What I see now is that we are collectively aware that the extreme polarisation in our society needs mediation. It needs some hard work to help Zimbabweans realise a new form of nationalism, which says we belong to each other and have a common future and therefore must find ways to express that commonality even at points where we disagree.  

In sum, the Manicaland Churches increasingly started to conceive of their purpose and activities in terms of human rights and conflict resolution, leading them to seek support from practitioners and organisations in both fields to help frame their thinking and practice. Arguably, for CiM, “all of [its] conflict intervention efforts were around human rights protection and vice versa”, even if human rights terminology was not much used at first, and the notion of human rights informing its efforts was social/moral rather than formal/legal.  

6.1.4 Two Overall Challenges  

The above highlights how human rights and conflict resolution were very intertwined for the Manicaland Churches. They did not consider them as separate domains, but as an integral part of their efforts to address the crisis and support transformation in Zimbabwe. Yet they experienced two recurrent challenges that are relevant in the context of this study: one concerned a tension that seemed to pit human rights against conflict resolution, the other a tension that lies embedded in both human rights and conflict resolution. These challenges are briefly set out here; they will be further discussed in chapter 7.  

As actors concerned with both rights protection and conflict resolution, CiM clergy found themselves at times caught between roles that seemed to operate on “fundamentally contradictory principles” (Arnold 1998b, 16), in terms of denouncing abuses and reaching out impartially to all actors at the same time:  

The churches [wrestle] with that question: how to take a principled stand which often means a stand against the actions of one side or the other, and yet also be impartial enough to mediate between the sides. We see mediators as neutral, even detached from the issues at hand, and maybe that is a mistake. We are deeply involved in the issues that divide our people. Because these issues are so highly politicised we may as individuals be more partisan than we realise. Can we find our mediating and reconciling role even while we are so involved? Does it require some standing back or detachment from the

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55 Correspondence, 2003. The ‘you’ referred to concerns this author. The ‘exercises conducted’ included reflection exercises on CiM’s evolution from 2000 onwards, balancing peace and justice, conflict analysis, etc.  
56 Correspondence, 2011.  
57 Notably in 7.1 and 7.3.
Actors on the Interface

situation, and if so, how do we do that – are we even willing to do that? We really are asking strategy questions over and over again.58

Combining advocacy and mediation (or more generally, facilitation) was particularly hard because the Churches were part of the very context they were trying to alter:

Some of us see that as church leaders we are part of the national conflict here - not only by innocently occupying what we believe to be high moral ground and therefore being directly in the firing line, but also [by] deliberately taking an aggressive stance. We feel no compunction for that, but we also recognise our role as mediators, as people who must represent something beyond the conflict, the positive possibility that lies beyond the present turmoil of conflict-ridden relationships. So in addition to being able to analyse the conflicts, we also need something to clarify our thinking about both the solid ground under our feet and the quicksand spots related to being both a part of the conflict and being the channel through which the conflict can be addressed. [..]

Right now we are working hard to tip that [balance of power towards a more equitable distribution of power] because we believe ethically in checks and balances of power in society and in the full rights of all people not to be marginalised on key issues effecting [sic] their lives. [...] Yet we are also pastoral, we have a shepherding relationship towards all people. And we believe theologically that every selfish and hurtful person, hence every selfish and hurtful situation, has the potential to be turned around or converted. We may need to decide whether there is an in-built conflict in our ministerial task - between the urgency and the patience required of us, between the condemning and affirming roles we play. How can we best harness the positive energies that are produced by this inborn friction?59

The friction between the different roles played generated questions amongst the clergy as to which should take precedence, their ‘condemning’ or ‘affirming’ role (also referred to as ‘prophet’ and ‘pastor’ roles). The combination of these roles also prompted confusion and irritation amongst other actors present in CiM’s context. Being very active on the condemning or prophetic side – by denouncing violence and repression and calling for accountability – negatively affected their ability to perform their pastoral role and facilitate dialogue amongst diverse parties, because it meant they were perceived as biased; the publicity associated with the prophet’s role was also at odds with the confidentiality required for the pastor’s role. However, when the Churches sought to intervene in local conflict situations and reached out to individuals or groups engaged in violence, they experienced pressure from citizens to stand up for what was ‘right’ and ‘just’.

The Churches were thus torn in different directions, as some prioritised one role, while others preferred the other. With hindsight, it seems to me that a related difficulty was the fact that ‘impartiality’ looks very different from a human rights perspective than it does from a conflict resolution perspective (as explained in chapter 4). CiM’s activism seemed informed by both a human rights- and a conflict resolution-oriented notion of impartiality, but these required quite different tactics

58 Correspondence, 2003.
59 Correspondence, 2002.
Chapter 6

and were hence not easily reconciled – especially because responsibility for abuses was not evenly divided amongst the parties.60

The other recurrent challenge that became a theme in my collaboration with CiM did not concern a tension between human rights and conflict resolution but rather one that runs through both fields, as observed in chapters 2 and 3.61 Illustrated by the above quote, with its reference to ‘an in-built conflict [...] between urgency and patience’, this related to the challenge of balancing short-term and long-term efforts. CiM’s steering committee questioned how the network could move from a reactionary mode of operation – intended to alleviate symptomatic rights violations and contain violence in the short-term – to a more pro-active one, addressing root causes and supporting longer-term peace and justice:

> We have recently worked ourselves into a rut, constantly reacting to wrongs we see being committed, condemning them, writing public statements, trying to appeal to key government leaders to change what they are doing, etc. But that is all very reactionary and so our rhythm tends to be set by the people we are reacting against. We need to have our own sound direction and agenda. [...] The build up to each of the two elections since June 2000 has been a crescendo of activity for all of us, and in the period immediately afterwards we collapse away from sheer exhaustion. We have clearly identified that the in between-crisis period is the most important for our activity, but are not getting as much done as we would like to.62

Sometime later, this was expressed in different terms: “How can we strategize for the long-term journey? Can we be more in charge of that journey rather than letting others determine how we travel?”63 In reflection sessions I conducted with the steering committee, members used a running metaphor to capture what they were struggling with: was Churches in Manicaland a sprinter (involving short bursts of intense activity) or a marathon runner (in it for the long haul, steadily moving towards its desired long-term goal of fundamental change)?64 Again, some in CiM were inclined towards one approach, whereas others felt more strongly about the other. This occasionally caused tension within the network.

My impression from listening to the interaction amongst the clergy on these two challenges was that the options for action in both regards – i.e. which role to perform, what time frame to focus on – were usually (yet implicitly), perceived in either/or terms. During their discussion, another question arose: were these roles or approaches mutually exclusive? Did CiM have to opt for one or the other, or could it do both? These questions – which are explored in the next chapter – speak to CiM’s

60 See 4.1.3 on notions of impartiality. Further discussion will follow in 7.3. For a previous write-up of the role tension faced by CiM, see Galant/Parlevliet (2005, 124-125). On uneven distribution of violations, see 7.4.1.
61 See 2.5.2 and 3.5.2 on the human rights and conflict resolution fields’ struggle to move beyond symptoms.
62 Correspondence, 2002.
63 Correspondence, 2003.
64 Report on Reflection and Strategizing Session with Steering Committee of Churches in Manicaland, Mutare, 9 December 2002, and personal notes during session, both by author.
aspiration to advance both peace and justice in the short- and long-term. They also reflect that progressing in this direction was easier said than done.

6.1.5 In Sum

This section has focused on the experiences of the Zimbabwean ecumenical network Churches in Manicaland in the first few years of its existence as it sought to respond to socioeconomic and political instability. It has described how this civil society actor – which was not associated with human rights or conflict resolution – started undertaking activities related to rights protection, violence mitigation and the non-violent resolution of conflict, aiming to “offer a service to the people of Manicaland in the context of growing violence” (Mkaronda 2003, 30). It has also shown how the Churches increasingly came to conceive of their efforts in terms of human rights and conflict resolution, and started using these notions to explain their rationale, frame their positions, and decide on a program of action.

The Churches thus tried to advance both human rights and conflict resolution from the outset even if they did not name them as such at first. It can hence be argued that CiM has operated on the interface of these fields while responding to developments in its daily environment. Indeed, the discussion has highlighted the extent to which the fields of human rights and conflict resolution may be interwoven in practice. For CiM, there were no boundaries between their rights-oriented and their conflict resolution-focused efforts; both were part of a larger endeavour to challenge inaction by political elites and citizens alike, prevent further violence, and move towards peace and justice in the long term. In fact, many of CiM’s actions were intended to further human rights and conflict resolution at the same time.

Nevertheless, it is noteworthy that CiM’s activism, while motivated by its concern about rights abuses and a commitment to promote ‘God’s Kingdom values’ in Zimbabwe’s polarised context, came to emphasise conflict resolution in its practical engagement on the ground with various actors. This was largely due to the network’s analysis of its strengths in terms of its ability to access people across the political spectrum, and its realisation that other civil society organisations were better placed to do classic human rights work. However, it is not unlikely that CiM’s pastoral approach and conflict interventions enabled it to raise rights concerns with individuals and groups who were otherwise not particularly receptive to them. At the same time, its explicit moral dimension and stance on human rights may have lent its conflict-focused efforts a certain authority and legitimacy.

Hence, the unplanned combination of human rights and conflict resolution probably created some opportunities for the Manicaland Churches. Yet it clearly generated challenges too. It proved difficult to act as prophet and pastor, ‘condemning’ and ‘affirming’ at the same time. This role tension also raises questions about the place of morality or value judgements in conflict resolution, and about the meaning of
neutralit y and impartiality. The difficulty of one person or organisation combining the seemingly incompatible roles of advocate and facilitator is well established in the literature. For Meijer, for example, this is likely to result in “serious confusion and potential harm” (1997; Kay 1997) while Van der Merwe writes,

The peacemaker or conciliator must have credibility on all sides of a conflict. Building and maintaining good relations and credibility with all parties is not compatible with attacks on injustice or public confrontation with the perceived perpetrators of injustice. The roles, tasks, and styles of peacemakers and prophets are different. And this difference can cause severe tension within any one person or group, and among persons and groups (1989, 3).

It has been suggested that the ‘role tensions between prophets and peacemakers’ (ibid) may be especially acute for people working as mediators in their own country because, “they are part of the situation they are attempting to alter. How can they balance the necessary impartiality with the equally necessary partisanship of change?” (Curle 1989, xiv). The Manicaland Churches surely experienced ‘the inner tensions and contradictions’ associated with such ‘role trouble’ (ibid), given their strong, critical stance in public statements.

The section has further highlighted how CIM struggled with balancing short- and long-term efforts. While this is certainly not unique to the human rights and conflict resolution fields, the CIM example illustrates that this challenge may particularly arise for actors seeking to enhance rights protection and conflict resolution because so many tactics used to further these ends are short-term oriented: speaking out on violence, monitoring abuses, assisting victims, bailing people out of prison, crisis intervention to reduce tension, etc. Consequently, when violence is widespread and polarisation is high, actors working towards peace and justice are easily caught up in short-term fire-fighting. Notwithstanding its significance from a humanitarian point of view, it leaves little time, energy and attention for considering steps towards longer-term change. As a CIM member noted, “continuous reaction can be exhausting – physically and mentally. We become so focused on the immediate event that we fail to see the wider picture”.67

Overall, our consideration of Churches in Manicaland confirms the previous chapter’s finding regarding permeable boundaries between human rights and conflict resolution; efforts to protect human rights and address conflict are closely related. While that chapter made clear that actors focused on one realm might end up dealing with the other (by conscious choice or unintentionally, in response to the situation at hand), this section has highlighted that actors not geared to either may end up doing

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65 In that sense, the CIM example links back to the case discussed in the previous chapter, about CCR practitioners dealing with the eviction of non-nationals from two informal settlements (see 5.2.3).
66 Emphasis in original.
67 Notes from Churches in Manicaland, Steering Committee, reflection and strategising session, 9 December 2002.
both as they seek to make a difference in their specific context. It confirms too how the interplay of human rights and conflict resolution brings opportunities and challenges.

6.2 Independent State Institutions

This section considers the experiences of a number of independent state institutions to highlight that the fluidity between human rights and conflict resolution is not confined to civil society actors. The institutions considered here are statutory bodies independent from government. Their mandate often relates to human rights protection, dispute settlement, social cohesion and/or public administration. They usually have review, monitoring and advisory functions regarding the actions and policies of government and public institutions, and interact directly with citizens through, for example, complaints mechanisms or public hearings. Some of these bodies are national human rights institutions (NHRIs), i.e. bodies with a constitutional and/or legislative mandate to promote and monitor the effective implementation of international human rights standards at national level, in line with UN-endorsed principles.68

While it is beyond the scope of this study to examine such bodies in depth, it is worth devoting some attention to them. This is because many independent state institutions can also be understood as operating on the interface of the human rights and conflict resolution fields, akin to the Manicaland Churches – even if their formal title or mandate may only refer to one field explicitly. This section first outlines this argument (6.2.1) and then illustrates it with reference to a few South African institutions (6.2.2), and to a number of bodies elsewhere, most of which are clearly defined in terms of human rights (6.2.3). Subsequently, to balance such comments on rights-focused bodies, it highlights one independent state institution whose mandate is more oriented towards conflict resolution. This is the Northern Ireland Parades Commission, which facilitates and promotes mediation as a means to resolve disputes regarding public processions (6.2.4). Again, a summary concludes the section (6.2.5).

6.2.1 Background

Thus far, in the previous chapter and the previous section of this chapter, our discussion has focused only on civil society actors. Yet it would be premature to conclude that the boundaries between human rights and conflict resolution are only permeable in the practice of these actors. My observations of and experiences with various independent state institutions in different countries suggest otherwise; they indicate that many such bodies also operate on the interface of the two fields, since

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68 Principles relating to the status and functioning of national institutions for protection and promotion of human rights, endorsed by the Commission on Human Rights in March 1992 (Resolution 1992/54); General Assembly Resolution A/RES/48/134 (20 December 1993) (known as ‘the Paris Principles’). For information on NHRIs, see e.g. OHCHR (2010), Parlevliet and others (2005a) and International Council on Human Rights Policy (2004); see also chapter 2, fn. 44.
implementing their mandate requires them to work in both domains. This does not mean that such institutions necessarily consider their work in terms of the relationship between these fields, or recognise the interconnectedness of human rights and conflict resolution in their practice. More often than not they conceive of themselves as focused only on one of these fields, a self-conception that may be fuelled by their formal title. This is especially the case with national human rights commissions, which are charged with rights protection and promotion yet also regularly engage in conflict resolution – including the use of interest-based methods (Parlevliet, Lamb, and Maloka 2005a; 2005b).

This assessment initially emerged in the context of work conducted through CCR’s Human Rights and Conflict Management Programme. Within the first few years of the HRCMP’s existence, my colleagues and I had provided training and other technical support, at their request, to two statutory bodies, namely the South African Human Rights Commission and the Office of the Public Protector (OPP). Theoretically, both are national human rights institutions, provided for in the post-apartheid constitution to support ‘constitutional democracy’. While the SAHRC focuses on the protection and promotion of human rights in general, the OPP is an ombudsman’s office that focuses on administrative justice by investigating and redressing improper and prejudicial conduct, maladministration and abuse of power in state affairs. Both bodies are mandated to handle individual complaints and conduct investigations on their own initiative, as part of their rights protection responsibilities; the SAHRC also provides human rights education to the public at large and within specific sectors.

In separate interactions with senior managers from these institutions, it transpired that staff members regularly acted as intermediaries when dealing with complaints, as this involved facilitating interaction between citizens and public officials to resolve disputes. At other times, they became a party in conflict themselves when conducting investigations or other activities within the scope of their mandate, during which they often encountered lack of cooperation or outright resistance. Generally, their work could generate much hostility, occasionally involving physical aggression. The SAHRC educators also frequently faced tense situations in their awareness-raising efforts, as they challenged existing prejudices and deeply held normative beliefs. Issues like racism, sexism, homosexuality, abolition of the death penalty, prohibition of corporal punishment, abortion and xenophobia were particularly contentious.

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69 Chapter 9, 1996 Constitution, op. cit. All three types of national human rights institutions recognised by the UN (human rights commissions, ombudsmen and specialized institutions that focus on the rights of specific vulnerable groups) exist in South Africa. To simplify matters, the SAHRC is considered the country’s national human rights institution.


71 Personal notes from interactions with the regional coordinators of the SAHRC and OPP in Cape Town; and with senior managers from the national headquarters of both bodies, including the then Director and Deputy Director of the SAHRC’s National Centre for Human Rights Education and Training; see also Parlevliet (2002, 36-37).
Overall these bodies’ experiences resembled those of LHR discussed earlier: the context in which they operated and the nature of their work meant that they were continuously dealing with conflict, broadly defined. In another parallel, the leadership of these two bodies approached the HRCMP with a view to enhancing their understanding of the relationship between human rights and conflict and improving their employees’ capacity to handle conflict constructively.\(^\text{72}\) Conflict resolution was also relevant to these independent state bodies for another reason: the laws governing them provide for interest-based, non-judicial approaches to handling complaints, notably mediation, conciliation and negotiation.\(^\text{73}\) The use of such methods, aimed at facilitating dialogue and relationship-building, is partly due to the fact that such statutory bodies are meant to function as a bridge between the state and citizens; in the South African context, it has further been motivated by a desire to leave the adversarialism of the apartheid past behind.\(^\text{74}\)

The SAHRC and OPP thus served human rights and conflict resolution functions, working to protect rights while seeking to reconcile the interests of conflicting parties through facilitated dialogue and joint problem-solving. Over time, I began to realise that the human rights and conflict resolution practices undertaken by these bodies could go beyond the ‘micro’ level of addressing individual complaints and other small-scale conflicts arising in the context of their work. This particularly applied to the SAHRC, which also works at a ‘macro’ level by trying to address general tensions related to discrimination, marginalisation and exploitation. Through public hearings and systemic investigations into certain rights concerns – such as human rights violations in farming communities, school-based violence, violence against non-nationals and access to healthcare – it has sought to impact on structural conditions that provide fertile ground for abuses and violence in South African society. Such processes have often gained much support, and have provided an arena for wide public debate on problems and possible solutions.\(^\text{75}\)

It thus seems appropriate to argue that these independent state institutions operate on the interface of human rights and conflict resolution. Using the terminology introduced at the end of chapter 5, these bodies worked both ‘in’ and ‘on’ conflict (and continue to do so), even though their mandate is not framed in terms of conflict-

\(^{72}\) In 2001, incidental workshops were conducted with all staff at the Cape Town offices of both institutions. After that, the HRCMP worked with the SAHRC between 2002 and 2004, providing a series of (3-day) training workshops for all its educators on human rights and conflict management and the use of conflict resolution methodology in facilitating education events. Work with the OPP was conducted between 2004-2005, consisting of a series of basic and advanced (3-day) training workshops on human rights and conflict management (for all professional staff) and on mediation in complaints handling (for senior managers and investigators) (4-days). The HRCMP developed institution-specific case studies and role plays based on real-life examples, with information provided by staff members from the two bodies.

\(^{73}\) Human Rights Commission Act (op.cit.), art. 8; Public Protector Act (op.cit.), art. 6.4(b).

\(^{74}\) In fact, the UN-endorsed Paris Principles (op.cit.) relating to national human rights institutions encourage amicable settlement of complaints through conciliation; many bodies hence engage in alternative dispute resolution. On South Africa’s desire to reduce adversarialism after apartheid, see 8.1.2.

\(^{75}\) For reports on public hearings, see ‘hearing reports’ under ‘publications’ at www.sahrc.org.za.
handling but in terms of safeguarding constitutional democracy, human rights protection and/or administrative justice. They work in settings where conflict is very present and where their actions interact with existing societal tensions or conflict dynamics, and they may consciously try to address conflicts, using interest-based methods.

6.2.2 Institutions on the Interface in South Africa

Interviews with South African interlocutors endorse this reading of these independent state institutions as bodies that operate on the interface between human rights and conflict resolution. For example, in separate meetings, conflict resolution practitioner Ghalib Galant and human rights academic Jeremy Sarkin observed that “human rights and conflict resolution come together in a number of institutional ways in South Africa”, as Galant puts it. They refer in this regard not only to the two bodies mentioned above but also to other independent state institutions such as the Independent Electoral Commission (IEC) and the Commission for Conciliation, Mediation and Arbitration (CCMA) which deals with labour disputes.

Yet interviewees also raise questions as to the extent to which this is recognised by these institutions. While conflict resolution may be used to address some rights-related matters, the extent to which the relationship between human rights and conflict resolution is considered in the institutions’ practice may be more a consequence of an individual employee’s experience, interest and capacity than of an institutional readiness to explore the interface and what it means for their work, including capitalising on the respective approaches offered by these fields. This transpires from examples recounted by two senior SAHRC managers based in Cape Town and Johannesburg respectively, and from Galant’s observations on working with the IEC.

Judith Robb Cohen, the regional manager of the SAHRC’s Western Cape office, refers mostly to the 2008 xenophobia crisis when discussing the body’s involvement in conflict resolution. She recalls that much conflict-handling fell initially to the SAHRC because those displaced did not trust any other South African authorities at first. “We had to establish trust with the leadership of the non-nationals and say to them, you need to work with the South Africans,” Robb Cohen says. She speaks of negotiating the end to two hunger strikes, and of defusing tension between displaced people and police officers at a ‘safety site’ where the atmosphere was explosive due to the many people brought together there, the limited facilities, and the general unrest caused by the violence, saying that, “all I would do was facilitate discussions – what we would

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76 Interviews with Ghalib Galant, 3 June 2011, and with Jeremy Sarkin, 2 June 2011.
77 See 5.2.4.
78 Interview, Judith Robb Cohen, 10 June 2011. She held this position at the time of the interview, but now works at the SAHRC in another position.
say is that we were there to problem-solve. [...] We negotiated a lot for the non-nationals".79

Others in the Commission were less comfortable playing an active conflict-handling role. Robb Cohen notes how, after receiving a call for help from non-nationals at a safety site in the Johannesburg area, she urged a colleague based there to go intervene in the situation – only to be told 'I've never been trained, I've never been prepared for something like this.'80 She attributes her own ability to engage effectively to her previous work at LHR, where she 'learned conflict resolution' and 'negotiated so many eviction conflicts' before joining the SAHRC. In her view, there were 'huge analogies' between her LHR work and what was required during the crisis, so she 'was just transposing those lessons'.81 In fact, the SAHRC itself found in 2010 that it had been fairly slow to respond to the 2008 violence and had been uncertain of its role in these unprecedented circumstances. Its report recommended that the SAHRC "prioritise the issues of rule of law, justice and impunity in relation to social conflict in light of the scale and gravity of its potential impact on human rights" (2010, 80).82

A senior SAHRC manager based in Johannesburg, Victoria Maloka, illustrates the interface of human rights and conflict resolution in the Commission's practice by referring to its efforts to combine the two when dealing with a complaint of racism against four white students at a historically white university, the University of the Free State.83 The complaint related to the release of a racist video protesting against the university's hostel integration policy, which caused major uproar in the country because it showed the students degrading five black university workers in an initiation-type ceremony.84 The case was partly addressed through judicial proceedings before the Magistrates' Court and the Equality Court, which dealt respectively with criminal charges against the students and redress for the university workers.85 As Maloka explains, the SAHRC considered the court cases inadequate to resolve the matter:

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79 Ibid.
80 Ibid.
81 Ibid. As noted before, Robb Cohen established LHR’s Security of Farmworkers Project (see 5.1). In her view, these analogies stem from the powerlessness experienced by farmworkers and non-nationals alike.
82 Emphasis added. In terms of the SAHRC’s role, it was questioned whether the institution should primarily assist or monitor government in a disaster of such scale; and whether it should become engaged in relief activities; see South African Human Rights Commission (2010, 79).
83 Maloka was the Director of the SAHRC's Human Rights Advocacy Programme at its national office in Johannesburg at the time of the interview but has since left the SAHRC.
84 The video shows the students instructing the university workers (four female cleaners and one male gardener) to drink beer and do various physical exercises, after which they are forced to eat food that seems to have been urinated on. See “Outcry in SA over “racist” video”, BBC World News, 27 February 2008, at http://news.bbc.co.uk/2/hi/7267027.stm; and Beauregard Tromp, Botho Molosankwe and Nadine Visagie, “University of Free State set to explode”, IOL news, 1 March 2008, at http://www.iol.co.za/news/south-africa/university-of-free-state-set-to-explode-1.391495.
85 In the Magistrate’s Court, they were charged with crimen injuria (unlawfully, intentionally, and seriously impairing the dignity of another) and were sentenced to a R20,000 fine (or 12 months’ imprisonment). In the Equality Court, papers were filed asking the former students to apologise and pay R1m each in punitive damages;
The complaint went straight to court, but we realised that we would not get everything we want out of it. [...] What the court case produced was a public apology, and a compensation package but the workers were still employees of the university, and the court case did not deal with that. There were still rifts between the university and the workers, which needed a completely different process. [Also], the workers felt very seriously violated by boys who they had considered as their own children – [like] ‘I made his bed on a daily basis’ – these personal things wouldn’t have been dealt with in a court of law.86

Consequently, the SAHRC designed and facilitated a ‘reconciliation process’, which involved several counselling sessions with a psychologist, a face-to-face meeting between the workers and the students, and a two-day seminar on reconciliation. It culminated in a ceremony attended by 300 guests at which the students apologised and asked for forgiveness.87

While lauding the SAHRC’s decision to address the matter through a mixture of human rights and conflict resolution, Maloka expresses concern about how the reconciliation process unfolded (she was involved as a senior manager). She trained as a human rights and constitutional lawyer herself but worked in CCR’s HRCP from 2001 to 2006, before joining the SAHRC, which exposed her to conflict resolution thinking and practice. She argues that members of the Commission, as human rights activists, tend to be very focused on the outcome they want to achieve, and overlook process concerns. In her view, this resulted in a mistake being made in the reconciliation process:

One of the Commissioners wanted to use the platform in the Free State to make a big point about women’s rights. [The Commissioner] wanted the women to speak during the final ceremony [but] the women said [that] they don’t want to speak. [They said] ‘We’ve already spoken so much [at other occasions], why do you want to parade us? We don’t want to come.’ I kept saying ‘the women don’t want to come’ but [the Commissioner] did not want to listen. It was a difficult thing. There I was, caught between a human rights defender who wanted to promote the rights of women [and the women themselves], and between the human rights defender in me and the peacebuilder in me – I kept thinking, ‘you can’t go parade them, that’s violating the very rights of the women you’re trying to promote’. In [trying] to get the voices of the women out, [the Commissioner] ended up speaking for them rather than letting them speak for themselves.88

86 Interview, 13 June 2011, Cape Town.
88 Interview, Victoria Maloka, 13 June 2011.
According to Maloka, greater ‘process sensitivity’ (which conflict resolution practitioners supposedly have) would have ensured more attention for the women’s concerns, which might have avoided them being instrumentalised. She sighs when saying “I so wish that my Human Rights Commission could understand just a little more about conflict resolution theory and practice and how integrating some practices from the conflict resolution field could make our job easier”.89

Conflict resolution practitioner Ghalib Galant, who has worked extensively with several of South Africa’s independent state institutions – notably the SAHRC, the OPP and the IEC – and who served on the Commission for Conciliation, Mediation and Arbitration, doubts whether there is any ‘critical engagement’ in such bodies on how ‘issues around human rights and conflict resolution manifest themselves in their work’. Pointing out that the Independent Electoral Commission establishes a mediation panel at every election, he notes “I’m not yet convinced that the IEC has truly interrogated what mediating for the IEC during an election means, or that the people they get as mediators have [done so]”.90 He illustrates this with an anecdote:

At the national election [in April 2009], I was a mediator and went out to a voting station where you had two parties [...] who had their stands quite close to the voting station. Now that’s okay, except that they were playing competing songs on these huge amps, and these songs could be heard inside the tent where people were casting their vote. So there’s a law – a rule under the regulations, under the Act that you may not interfere with someone making their vote. The presiding officer [at the station] wasn’t doing anything. I then, as the mediator, when coming around with the regional person, went over to both stands and said ‘turn the music down’. They complied with that, but it was interesting talking to the regional coordinator [afterwards], who said ‘why did you do that?’ I said, ‘well, I’m a mediator on behalf of the IEC’. ‘Yeah,’ he said, ‘but no one has declared a dispute’.

So I picked that up with some of the [mediator] colleagues later on, who said ‘yes, there has to be a dispute’. Does that mean that if the two [political] parties are quite happy with whatever it is, that there is no dispute? Surely not, because there is in fact a breach of the regulations, so there is a dispute, it just has not been declared by either of the parties. So, what does that mean for me as a mediator? There is a dispute – but this time it is with the voters, and the legal framework – so not every dispute is going to land up in the election court. Is there a role for [the IEC’s] mediators to play in that sort of scenario?91

He thus questions what IEC mediators consider a ‘dispute’ and whether mediators in a legally regulated context like elections only play a conflict resolution role when there is a recognised dispute between identifiable ‘conflict parties’, or whether they also have a responsibility to act when rules are breached. The latter may well be relevant from a conflict prevention perspective.

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89 Ibid.
90 Interview with Ghalib Galant, former CCMA Commissioner, 3 June 2011.
91 Ibid.
Chapter 6

Galant hesitates when asked to explain what he calls the ‘lack of critical engagement’ by such state institutions regarding the interaction of human rights and conflict resolution, and says:

There may be something around ‘because there is a law, we think the law says everything’. So, as [the former Chairperson of the SAHRC] often said, ‘the Human Rights Commission is empowered to do [a, b, c]’, and then we just do that. But then there’s not necessarily the question around – how. [In] my experience with [the] IEC mediators [...] this question of mediating within a human rights framework did not even come up – to be asked, or thought about. When I asked the convenors of the [mediation] panel, is that something to consider, the response was ‘well, we’re only here for one day – so why should we bother ourselves too much’?

By emphasising the ‘how’, Galant also implies that these institutions pay little attention to process matters. Of course, it is debatable whether the reported response (‘we’re only here for one day’) represents the position of the institution as such. It is nevertheless telling, suggesting that the body does not set great store by reviewing how, where and when it uses conflict resolution when implementing its mandate and how its use relates to the legal framework and rights standards to be enforced.

Overall, the examples and observations from interlocutors confirm the interconnectedness of human rights and conflict resolution in the functioning of these independent state institutions. Bodies like the SAHRC and IEC, which are mandated to protect constitutional democracy and/or human rights, seem to recognise the relevance of conflict resolution to their work and may draw on it while implementing their mandate. Yet it is questionable how much such institutions reflect on the interaction of human rights and conflict resolution in their work and what it means for their practice – in terms of, for example, using conflict resolution to address rights-related matters or mediating in a human rights framework, or the extent to which employees can, should or may engage with social conflict, and their capacity to do so effectively.

### 6.2.3 Beyond South Africa

While South Africa may be exceptional in the number of independent statutory bodies established to protect human rights, the institutions mentioned above are not unique. There are numerous examples of similar institutions in many other countries that also work on the interface of human rights and conflict resolution. As this subsection suggests, this may be especially clear in the case of national human rights institutions.

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92 Ibid, emphasis as spoken.

93 Besides the SAHRC, OPP, and IEC, the 1996 Constitution (op.cit.) also provides for a Commission for Gender Equality and a Commission for the Promotion and Protection of Cultural, Religious and Linguistic Minorities.

94 By 29 May 2015, 72 NHRI were accredited as being ‘fully compliant’ with the Paris Principles, which speaks to their independence; the remainder of institutions around the globe was either accredited as not fully compliant (26) or non-compliant (10), or was not accredited at all; see International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Chart of the Status of National Institutions, 29 May 2015, at http://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart.pdf.
institutions, both in general terms and in specific instances. It also identifies two institutions that do not belong to this category and are more explicitly oriented towards conflict resolution, to offset the attention devoted to bodies whose mandate is formally framed in terms of human rights.

In general terms, it is worth taking note of the 2004 Seoul Declaration, issued at a global conference bringing together national human rights commissions from across the world. It recognised that national institutions are mandated to protect and promote human rights in conflict situations and have a role to play in early warning, conflict resolution and conflict prevention. At the Seoul conference, the UN High Commissioner for Human Rights also announced the development of a course on conflict prevention for national institutions as part of an effort to strengthen their capacity. Earlier, in 2002, African human rights institutions had already adopted the Kampala Declaration, in which they committed themselves to pay 'greater attention to issues related to peace, conflict resolution, democracy and development'.

Several institutions have gone beyond mere rhetoric and a general recognition of the close relationship between human rights and conflict resolution. They have taken practical action to address concrete conflict situations in their context at national and local level. For example, during the civil war in Nepal, the National Human Rights Commission facilitated negotiations towards a human rights agreement between the government and Maoist rebels in 2003; the then chair of the Commission later explained this as an effort to enhance rights protection and build confidence between the parties to lay the basis for more extensive peace talks which, if successful, should help to protect rights on the long term (Parlevliet, Lamb, and Maloka 2005b, 19).

In Kenya, the National Commission on Human Rights started addressing recurrent ‘politically ethnic-based clashes’ around Mount Elgon, which were negatively affecting its human rights work there. It did so through a process that combined analysis of conflict dynamics and rights concerns, human rights education, joint problem-solving and visioning. It also involved facilitated dialogue between diverse ethnic groups and

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96 The conflict prevention course was delivered six times to NHRI s across five continents, in English, French and Spanish. The author of this study wrote the course material and tutored the course twice. For more information, see Jha/Parlevliet (2008); ‘Evaluation of Project DDH/2005/112-936, ‘Strengthening National Human Rights Institutions (OHCHR), March 2008’, at http://www.apt.ch/content/files_res/actors-for-change-evaluation.pdf.


98 In the end, no agreement was signed because the government feared signing would convey a notion of parity between itself and the Maoists. Follow-up efforts to get the parties to sign a separate bilateral human rights agreement with the Commission fell through due to a ceasefire breakdown.
between citizens and public officials to address issues around access to land, water and food. According to Alice Nderitu, the former senior manager who spearheaded the process at the time, insights and practices from conflict resolution facilitated a more practical approach to the Commission's human rights work.\footnote{Conversation, 7 June 2011, Cape Town; and Nderitu (2010, 58). These efforts in the Mount Elgon area occurred between 2004 and 2007. On Nderitu’s learning of conflict resolution as a human rights activist, see 8.4.1. Nderitu headed the Education Department at the Kenya National Human Rights Commission at the time.} In Bolivia, the Defensoría del Pueblo (Public Protector) has found that the local ‘Defensores’ based throughout the country are very often called upon to intervene in communal conflicts due to the institution’s high credibility, gained through handling individual complaints; it has therefore sought to enhance the capacity of its staff to address conflict constructively.\footnote{Correspondence from Verena Frey, Coordinator of the German-funded Civil Peace Service in Bolivia, 2011; for two concrete examples of interventions by a local Defensor in conflicts over housing between the municipality and a tenants’ association representing over 600 families, see Parlevliet (2011, 40-41).}

These examples are not to suggest that the engagement of national human rights institutions with conflict and conflict resolution is uncomplicated. Many bodies are rather reluctant to respond directly to conflict beyond handling complaints, viewing it as a politically sensitive act that could jeopardise their relationship with government, human rights protection efforts, or independence. Case studies of five African NHRIs also found that commissions may insufficiently understand that rights violations can be both symptoms and causes of destructive conflict. As such, they do not always grasp how conflict dynamics relate to structural human rights conditions, or how individual complaints may reflect deeper societal tensions (Parlevliet, Lamb, and Maloka 2005a).\footnote{The observations in this and the next paragraph are informed by interactions with and amongst members of NHRIs, at the 7th International Conference for National Institutions for the Promotion and Protection of Human Rights, Seoul, 14-17 Sept. 2004, and at HRCP/CCR Technical Seminar “National Institutions, Conflict Management and Peacebuilding in Africa,” (Cape Town, 28 Nov.-3 Dec. 2004). See Technical Seminar Report, by HRCP, 2005, Cape Town: CCR, at http://www.ccr.org.za/images/stories/19_NHRI_Report-D4.pdf.} Nevertheless, such examples and case studies show that it is hard for many NHRIs to get ‘around’ conflict since it is so present in their environment and affects the state of human rights that is their primary focus. Several bodies have thus become aware that working explicitly on conflict may be useful in fulfilling their human rights mandate; they also often use interest-based conflict methods, notably dialogue facilitation and mediation, to address rights-related matters (ibid).

The boundaries between human rights and conflict resolution are equally fluid for several other independent state bodies. The National Cohesion and Integration Commission of Kenya is a case in point. Established in 2009 in response to widespread violence following elections in late 2007, it uses various methods to pursue its mandate to promote equality of opportunity, harmony and peaceful co-existence between persons of different ethnic and racial backgrounds. Some are conflict resolution-oriented, such as facilitated dialogue between the main political stakeholders and a travelling television show intended to familiarise Kenyans with
their compatriots from different parts of the country and deconstruct images of ‘the Other.’ Human rights strategies include human rights education, instigation of hate speech cases in court, advocacy through national media and reviewing legislation.\textsuperscript{102} Alice Nderitu, who became a Commissioner on this body when it was established, thus argues that it is located “slap-bang in the middle” of a human rights/conflict resolution spectrum.\textsuperscript{103}

The final example noted here is the Northern Ireland Parades Commission (NIPC), a quasi-judicial body that regulates access to public space. While this body is mostly geared towards conflict resolution and interest-based methods, it has found that it cannot avoid human rights for the simple reason that the situations within the confines of its mandate are directly related to rights standards, claims and entitlements. This is set out below.

\textbf{6.2.4 The Northern Ireland Parades Commission}

Because most attention thus far has been devoted to statutory bodies that are mostly defined in terms of human rights, this penultimate subsection discusses an institution geared towards conflict resolution. It shows that human rights are integral to the NIPC’s context and work, although its founding legislation does not refer to human rights once.\textsuperscript{104} Dealing with human rights has been somewhat challenging for the Parades Commission, however. Its experiences resemble those of other actors discussed previously.

Established in 1997 in response to widespread inter-communal violence and public disorder in Northern Ireland, the NIPC facilitates and promotes mediation as a means to resolve disputes about public processions (referred to as ‘parades’), based on the recognition that there are legitimate interests at stake for parties wishing to parade or remain free from parades. Parading has long been an important feature of Northern Ireland culture. Yet various parades – which often have cultural, religious and political significance – are contentious, partly due to demographic changes along the routes taken, the use of controversial symbols, the impact on community life, etc. The Parades Commission is supposed to consider all parades deemed contentious or offensive.\textsuperscript{105}

\textsuperscript{102} Republic of Kenya, \textit{The National Cohesion and Integration Act} (Act No. 12, 2008).
\textsuperscript{103} Conversation, 7 June 2011, Cape Town. See also the Commission’s website at http://www.cohesion.or.ke/.
\textsuperscript{105} For general background and discussion on parading disputes, see e.g. Jarman (2009), Bell (2007), and Hamilton/ Bryan (2006). Controversial symbols include particular songs, paramilitary paraphernalia and flags. The NIPC considers a parade contentious when it receives concerns about a particular proposed parade through the police. The organisers of parades and of protests against them have to notify the police in advance of their intentions.
Chapter 6

The NIPC believes that solutions to parading and related problems in Northern Ireland can best be achieved through meaningful and sustained dialogue. It has thus, from the outset, encouraged dialogue between the organisers of a parade and of protests against it, so as to reach a mutually acceptable agreement. Such dialogue may occur through direct negotiation or through the mediation of NIPC contractors or Commissioners.\textsuperscript{106} If the parties cannot reach 'local, horizontal, accommodation', the NIPC will issue a legally binding ruling (a 'determination') specifying whether a parade can go ahead and under what conditions (Hamilton and Bryan 2006). In deciding on a determination, the Commission considers a number of factors, including the risk of public disorder or damage to property, the potential disruption to the life of the community where the parade is to occur, and the procession's potential impact on relationships within the community (Northern Ireland Parades Commission 2005a).\textsuperscript{107}

This institutional set-up does not explicitly refer to human rights, but the Parades Commission has become well aware that human rights are central to its work. Consider, for example, this quote from the ‘frequently asked questions’ page on its website, in response to the question “Why does the Parades Commission allow parades in areas where they are not wanted?":

The Commission operates from the fundamental premise that the rights to freedom of assembly (i.e. to parade) and to freedom of expression (i.e. to protest) are important rights to be enjoyed equally by all. It acknowledges however, that these rights are not absolute and that there are other equally important rights that have to be taken into account when a parade is taking place. In considering whether to place restrictions on a parade the Commission is required to consider certain criteria. [...]

Tolerance and respect for the rights of others is an important responsibility for people living in a free and democratic society. Society seeks to protect the right of peaceful assembly, whether it involves a parade or a protest against a parade. But the Commission considers a number of other rights too, including the rights of people living and working in the area of a parade or in the area of a parade protest. The specific rights the Commission has taken into account in any decision will be documented in the Commission's determination, which is a publicly available document.\textsuperscript{108}

While this comment recognises the relevance of human rights to the NIPC's mandate and work, in practice the Commission has found handling contending rights claims challenging at times. This surfaced particularly in the early 2000s, when its fieldworkers, the Authorised Officers (AOs), observed a growing reliance on human

\textsuperscript{106} The NIPC used Authorised Officers for its fieldwork during the first 13 years of its existence; they were not formal staff members but self-employed conflict resolution practitioners contracted by the Commission. They worked in teams of two, which were balanced as far as possible in terms of gender and religion. The NIPC in office between April 2011-April 2012 dispensed with AOs and members of the Commission took on their role themselves. Communication from Robin Percival, former Commissioner, 14 September 2014, on file with author.

\textsuperscript{107} Conditions may include modifications to the route and timing of the parade, prohibition of certain sectarian songs or paramilitary displays during the parade, or banning of certain participants who have previously been involved in breaches of its determinations.

\textsuperscript{108} See http://www.paradescommission.org/FAQs.aspx.
rights language in parading disputes following the introduction of the 1998 Human Rights Act, and the signing of the 1998 Good Friday Agreement, which makes explicit reference to human rights.109 The remainder of this section refers largely to this period and is mostly based on work conducted with the NIPC in 2002 and 2003.110

The AOs perceived the increased use of human rights discourse as fuelling polarisation in parading disputes. In their view, it fortified the positions taken by the parties, who were becoming more adamant now that they could stake their claims with reference to human rights contained in the Good Friday Agreement and the European Convention on Human Rights.111 This juxtaposed the ‘right to parade’ and the ‘right to remain free from parades’. The former was grounded in the right to peaceful assembly and the right to freely participate in the cultural life of the community; the latter was linked to the right to freedom of expression, the right to dignity, the right to freedom of movement,112 and to the right to ‘remain free from sectarian harassment’, which is contained in the peace agreement.113

For the AOs, human rights claims were thus another form of ammunition thrown back and forth between those in favour of parading and those protesting against it; rights talk only seemed to make the parties more convinced that they were in the right and the other party in the wrong. Consequently, the AOs were reluctant to engage with human rights, either in terms of formal standards or loose ‘rights talk’. They also questioned whether it was actually possible to engage with human rights in a way that would defuse rather than escalate tensions between parties, and raised concerns about working in a legalistic framework, given that their responsibilities were mostly geared towards improving community relations – the term generally used in Northern Ireland to refer to conflict resolution.114 They further pointed out that rights discourse had historically been mostly used by the Catholic/nationalist minority in Northern Ireland; if they were to use this language, they might risk being perceived as biased.

My interactions with the Executive Secretary, AOs and some members of the Commission, suggested that the AOs were not alone in their concerns – allegedly a few

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109 Good Friday Agreement (or Belfast Agreement), 10 April 1998 (section ‘Rights, Safeguards and Equality of Opportunity); Parliament of United Kingdom, Human Rights Act 1998 Chapter 42.110

110 Following an introductory session on human rights and conflict resolution as pertaining to the NIPC, requested by the then Executive Secretary, Andrew Elliott, the Commission contracted me to conduct some training and reflection sessions with the AOs in late 2002 and early 2003 (which a few Commissioners attended at times), and a debriefing session after the 2003 parading season (of 2 to 4 days each). I undertook this work in my capacity as manager of CCR’s Human Rights and Conflict Management Programme.


112 The appeal to the right to freedom of movement and the right to dignity by those protesting parades is related to the possibility that a strong police presence may be deployed at parades that have caused major disorder in the past.

113 For an early review of legal principles and human rights standards pertaining to parading (commissioned by the Northern Ireland Human Rights Commission), see Hamilton and others (2001); for a more recent and more extensive review, see Northern Ireland Human Rights Commission (2013).

114 See further below at 8.1.1 and 8.2.1.
Chapter 6

Commissioners deemed ‘human rights’ even more problematic than they did.115 Separate meetings with two researchers who had long focused on parading disputes and regularly consulted for the NIPC shed further light on such concerns. According to the researchers, these concerns were not just due to the perceived impact of human rights on conflict dynamics, but also to doubts amongst AOs and Commissioners about their own abilities regarding human rights.116

In various ways, the discomfort observed amongst various people working with the Parades Commission resembled that amongst my CCR colleagues, discussed in the previous chapter, when undertaking a conflict resolution intervention following the eviction of non-nationals from two squatter settlements in Cape Town. They too encountered human rights language that they were not wholly prepared (or equipped) for, saw rights claims as polarising, and feared perceptions of bias if they were to take up human rights concerns. In both instances, the issue of whether and how to engage with human rights when facilitating dialogue between conflict parties, proved challenging – or, as I wrote in my notes while at the NIPC, the question was “how to move from rights as a polarising discourse to a unifying one”.117

Yet it seemed to me that not engaging with human rights was not feasible for the Parades Commission, as I wrote in a report to the body in May 2003:

Human rights have increasingly become part of the vocabulary of the parties in the parading context, and it is essential that the various actors within the Commission develop a common understanding of and approach to human rights concerns. [...] Some may be reluctant to engage in discussions on human rights, also because of their polarizing nature in the parading context. [Yet] the Commission may have little option in this regard. Even if it were to refrain from engaging in the rights discourse, parading and protesting communities will continue to yield the language of rights to support their demands. Standing back from the debate therefore would not mean that the rights claims go away – on the contrary, it would allow parties to [get] away with what seems at times a fairly simplistic understanding of rights.118

My work with the AOs thus included helping them to examine and deconstruct their concerns and perceptions about human rights, and facilitate understanding that human rights and conflict resolution need not be as irreconcilable as they thought.119

It is matter of debate whether the Parades Commission has dealt with human rights more extensively or effectively in subsequent years. Long-term observers Hamilton and Bryan have criticized the NIPC “for failing to clearly enunciate the boundaries of the human rights claims made by the parties” (2006, 169); for example, it has not

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115 Personal notes, recorded while at the Northern Ireland Parades Commission, May 2003.
116 Meetings with Dominic Bryan, Queen’s University, Belfast; and Neil Jarman, Institute for Conflict Research, 25 and 26 May 2003, Belfast.
117 Personal notes, May 2003, on file with author. For the discussion on CCR practitioners, see 5.2.3.
118 Report to the Northern Ireland Parades Commission, 2003, for NIPC and CCR by author (on file with her).
119 Ibid; for information on how this was done, see also typed up flipcharts from May 2003 workshop and training notes prepared for various sessions, both on file with author.
Actors on the Interface

clarified what constitutes a ‘peaceful’ assembly or the “precise circumstances when ‘the right to private and family life’ would be engaged on the part of local residents in the vicinity of a parade” (idem, 170, fn. 170). According to them, this “timidity in not explicitly ruling on the validity of [such] claims allows the vocabulary of rights to be used rhetorically in defence of entrenched positions”, which reduces the potential for local accommodation of parading disputes (idem, 170-174). This suggests that a failure to establish ‘the legal default position’ (Hamilton 2003, 290) may allow ongoing competing opinions on the scope of parties’ entitlements to continue to fuel disputes, since the parameters for conflict resolution are not clear (Parlevliet 2009, 284).120

Neil Jarman, the Director of the Institute for Conflict Research in Northern Ireland and co-author of an early review on legal principles and standards relating to parading (Hamilton, Jarman, and Bryan 2001), argues that the NIPC still fails to apply a series of principles to all parades across Northern Ireland but continues to consider parading disputes on a localised basis. He describes its approach as a “muddle-through, a mixture of community relations and human rights [...] with an emphasis on reducing the risk to public order, rather than a principled approach”.121 Robin Percival, who served on the Commission between 2011 and 2013, points out however that the body is legally required to take public order into account and to consider each parade separately. He also notes that the NIPC pays more attention to human rights legislation than may be recognised, and that human rights and community relations approaches have been combined in dealing with various parading disputes outside of Belfast.122

In sum, it is clear that human rights are essential to the Parades Commission’s work as its conflict resolution efforts revolve around competing rights claims – even if its approach to human rights has been generally mixed and uneasy at times. Before concluding, it is worth noting two other challenges that became themes in my interaction with the NIPC, besides the question of turning rights into a ‘unifying rather than polarising’ discourse. Echoing the discussion on Churches in Manicaland, these related to balancing the multiple roles played by Authorised Officers and to a desire to become less crisis-oriented.

The role challenge stemmed from the fact that the NIPC had both adjudicative and mediating functions. The AOs aimed to build relationships and facilitate mediation, but they were also meant to report on the potential for local accommodation. Their reporting responsibility could negatively affect their ability to mediate: the Commission used the information reported to devise determinations when parading and protesting groups could not agree amongst themselves, and an observed lack of

120 This contrasts with LHR’s desire to obtain a clear legal ruling and reject mediation in a certain case, so as to prevent similar infractions in future (see 5.1.3). Establishing the ‘legal default position’ may thus serve a conflict prevention purpose.
121 Interview, on skype, 7 October 2011. For a suggestion of basic principles that can enable local accommodation of parading disputes, see Jarman and others (2009, 65-66).
122 Correspondence, 14 September 2014, on file with author; a prime example is Derry Londonderry. See also Jarman and others (2009, 21-22).
‘constructive engagement’ was likely to affect the conditions imposed (Hamilton and Bryan 2006, 176-182; Northern Ireland Parades Commission 2005b, 4-5).

In terms of the desire to become more proactive, the AOs had found that they were so busy preventing violence and disorder during the parading season that they could not take any steps with a more long-term impact. They identified the winter season as a great opportunity for working with various groups on, for example, exploring rights and responsibilities in the parading context or developing a joint vision of what parading could look like in the long term. However, at the end of the parading season, all actors concerned – themselves included – were so exhausted that little was done until they had to get ready for the next season.123 This was surprisingly similar to what the Manicaland Churches had highlighted halfway across the world, in terms of being caught up in containing symptoms. It made me think that certain challenges might be recurrent when working on human rights and conflict resolution, despite the different contexts in which actors may operate.

6.2.5. In Sum

This section has considered the experiences of several independent state institutions. It has argued that the interconnectedness of human rights and conflict resolution is as manifest in their practice as it may be for civil society actors. This is the case for various statutory bodies whose formal title and mandate are mostly framed in human rights terms, and also applies to an institution focusing more on conflict resolution. It has thus suggested that the bodies discussed here can be understood as operating on the interface of the two fields, since the implementation of their mandate may require them to engage in both human rights and conflict resolution efforts and use approaches from both fields.

With regard to national human rights institutions, the discussion has shown that such bodies often have to engage with conflict by virtue of their human rights mandate and in order to fulfil that mandate. This partly stems from their responsibility to handle complaints and the legislative requirement to use alternative dispute resolution – i.e. interest-based approaches – to address them. It is also due to the impact of social conflict on human rights conditions; this may prompt such bodies to undertake outright conflict resolution initiatives so as to enhance human rights protection.

Their credibility as a human rights institution can be another contributing factor, generating requests for institutions to play a mediating role in social conflict. Finally, the issues dealt with by such bodies are often contentious, which means that their staff and commission members have to overcome resistance and hostility while implementing the institution’s mandate. This of course constitutes ‘conflict’ of a very different nature than the social conflict referred to above, but still reflects the

123 Personal notes, May 2003, on file with author.
prevalence of conflict as a phenomenon faced by such institutions and the reality that they regularly handle conflict in some form or another.

Overall, these bodies tend to work ‘in’ and ‘on’ conflict to a fair degree, and conflict resolution is often more present in their practice than is recognised. Hence, where human rights and conflict resolution respectively end and begin is hard to separate when it comes to such institutions. The fuzzy boundaries between human rights and conflict resolution have also come to the fore in our consideration of a more conflict resolution-oriented statutory body, the Parades Commission in Northern Ireland, for the simple reason that the conflicts it is supposed to address relate to contending rights claims. Hence, its efforts are affected by human rights standards and impact on human rights conditions although it has no explicit human rights responsibilities. It has therefore not been able to get ‘around’ human rights, even if some in the institution may have been inclined to do so at times.

The discussion has further shown that independent state institutions vary greatly in the extent to which they recognise the interconnectedness of human rights and conflict resolution in their practice. Some that do, may try to combine insights and practices from both fields when addressing situations within the confines of their mandate, or seek capacity-building for their staff in the domain they are relatively unfamiliar with (e.g. conflict resolution training for staff of a human rights commission or ombudsman’s office). Other institutions seem less conscious of and/or comfortable with the close relationship between human rights and conflict resolution. These tend to approach ‘human rights’ or ‘conflict’ and ‘conflict resolution’ with reluctance or anxiety, fearing that it may compromise their independence, the implementation of their mandate, or relationships with important actors (e.g. government or specific identity groups).

On the whole, it is doubtful whether any of the independent institutions considered in this section have explored the human rights/conflict resolution interface (or the implications for their practice) in any thorough or systematic manner. As such, they may miss opportunities to use the interface to their advantage by drawing on approaches from either field. They may also fail to engage with important questions about mediating in a human rights framework, handling human rights talk in conflict resolution interventions, balancing different roles, or the range of skills and knowledge required to implement the institution’s mandate. It should be noted that the thesis set out here – that many independent state institutions operate on the interface of human rights and conflict resolution – is empirical rather than normative. It is intended to depict what is rather than what ought to be. Any associated normative suggestions are left to this study's conclusion.124

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124 See further 9.5.
6.3 Conclusion

This chapter has sought to examine how the relationship between human rights and conflict resolution plays out in the practice of actors that are not field-specific, professional, NGOs, recognising that much valuable work in these areas is done by organisations of a different nature. It has focused on a civil society network of churches that cannot be defined as either a human rights or a conflict resolution actor, and has looked at experiences of some independent state institutions in South Africa and elsewhere. Because the question underpinning this chapter and the previous one is the same, this conclusion revisits the main findings of chapter 5 with a view to expanding on them.

The discussion on Churches in Manicaland and statutory bodies like the SAHRC and NIPC has highlighted once more the close relationship between human rights and conflict resolution in practice. In the case of CiM, it showed how an actor that was not very focused on either human rights or conflict resolution was effectively trying to impact on both domains while responding to political violence. It has thus been asserted that CiM found itself operating on the interface of human rights and conflict resolution – even if it did not conceive of its efforts as relating to these fields at first. Arguably, the independent state institutions considered here can also be seen as ‘operating on the interface’, even though their title or mandate may only explicitly refer to one or the other field. Working in both realms often seems integral to their mandate, whether explicitly or implicitly – for example, the use of interest-based methods is stressed to address complaints of rights violations, or a body’s conflict resolution work revolves around balancing conflicting rights claims.

This chapter thus confirms the permeable boundaries between human rights and conflict resolution, suggesting that this may be inherent to these fields. It confirms other findings too: that the fluidity of human rights and conflict resolution may especially come to the fore as actors face and respond to concrete situations on the ground; that this fluidity may stem from the nature of the work they do, the context in which they operate and the type of problems addressed; that encountering a certain phenomenon (e.g. human rights claims or conflict) – earlier referred to as working ‘in’ human rights or conflict – may make actors realise that they cannot get ‘around’ this phenomenon and may prompt them to try to address it directly; and, that learning and exposure to insights and methods from both fields and reflection on challenges experienced may be useful in handling the fuzzy boundaries between the fields.

The ‘response’ element is particularly obvious in the case of the Manicaland Churches, but also emerges in the case of the SAHRC and some other independent state bodies referred to here. The experiences of the Parades Commission perhaps most clearly illustrate the ‘context’ element, as the body found that it could not avoid engaging with human rights given the increased prominence of human rights discourse following the adoption of the UK Human Rights Act and the Good Friday Agreement. This reflects
the ‘human rights homecoming’ dynamic noted previously in relation to CCR and LHR. The relevance of context and the type of problems addressed also becomes evident when considering how intertwined human rights and conflict resolution are in situations of widespread political violence (as faced by CiM) or in contestation over the use of public space (as addressed by the NIPC). Understanding such situations only in terms of either ‘human rights’ or ‘conflict resolution’ fails to do justice to their complex nature. The ‘learning and reflection’ element has not been discussed in great detail here but emerges nevertheless: the SAHRC and OPP leadership wanted their staff members to learn about conflict resolution as they anticipated this would benefit their human rights work; several interviewees raise the question whether these and other statutory bodies sufficiently consider how human rights and conflict resolution ‘come together’ in their practice; and both CiM and the NIPC felt the need to reflect on their practice in light of the challenges faced.

Overall, chapters 5 and 6 provide clues as to what conflict resolution and human rights may contribute to one another. For human rights-focused actors like LHR and the SAHRC, conflict resolution offered additional methods and tools to address rights-related conflict. This reflects the relevance of non-legal solutions to rights violations (e.g. International Council on Human Rights Policy 2009, 17; Parlevliet 2002, 27-30). The appeal of interest-based methods for these actors was enhanced by their potential to deal with the relationships between parties and emotions such as mistrust, fear, hurt, anger and insecurity.

This suggests that conflict resolution brings to human rights an awareness of the broader social and political context in which rights-related conflict takes place, so that human rights become alive. It highlights the importance of considering relational and emotional dynamics besides the formal legal entitlements that exist. Quotes by practitioners also suggest that conflict resolution may bring an appreciation of ‘process’ to human rights, as it stresses the need to consider how best to approach a given situation. It is noteworthy that several interlocutors associate ‘process’ concerns mainly with conflict resolution, even though these have gained weight in the human rights field over time. This suggests that practitioners – both within and outside a specific field – may not be fully abreast of a field’s evolution and have a dated understanding of its thinking and practices.

As regards the contributions of human rights to conflict resolution, it has become clear that human rights set parameters within which conflict resolution is to take place, and that conflict resolution occurs ‘in the shadow of the law’. Ignorance or neglect of the law may have negative ramifications, as agreements negotiated may flout legal standards or be unsustainable. Clarity on the scope and limitations of entitlements also has the potential to function as a tool for conflict resolution by laying down a bottom line of what is allowed (referred to as the ‘legal default position’ in the context

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125 This relates to the emergence of the human rights-based approach to development; see 2.1 and 4.1.3.
of the NIPC) or by identifying commonalities in the parties’ underlying grievances. Moreover, considering human rights in the context of conflict resolution efforts may draw attention to the role and functioning of public authorities and the extent to which their own action or inaction fuels conflict in a given context; this transpires most clearly from the review of the conflict resolution intervention in the eviction of non-nationals from two squatter camps around Cape Town. It also may highlight the importance of considering what (governance) structures exist that can help in addressing conflict in a constructive manner and how the functioning of such structures can be improved.

While such mutual contributions can be understood as opportunities brought by the encounter of human rights and conflict resolution, both chapters also indicate that dealing with this fluidity can be confusing, frustrating and challenging. Genuine questions emerge for organisations and individual practitioners that experience the permeable boundaries of human rights and conflict resolution in their practice. For example, what is the role of mediation in a legal setting, and what does it mean to do conflict resolution in a human rights framework? How can conflicting rights be balanced, and the contending rights claims of parties in a conflict resolution process be dealt with? Also, when and how should human rights concerns be raised when engaging with conflicting parties, and who should do so? If ‘human rights’ are experienced as a polarising discourse, can they be turned into a unifying one and how?

Moreover, while it seems relatively easy for human rights actors to take on conflict resolution functions, such as dialogue facilitation or mediation, conflict resolution actors appear to have more difficulty raising issues of human rights. Doing so raises questions about impartiality and neutrality, and combining advocacy and facilitative roles in particular seems to spell role trouble. How do actors that combine ‘condemning’ and ‘affirming’ roles – either by mandate or by choice – deal with this? Such questions seem to pit human rights and conflict resolution against one another, while other challenges relate to tensions embedded in both fields. How can actors concerned with ensuring respect for rights and resolving conflict peacefully go beyond reacting and have a more lasting impact? Is it possible to balance short-term and long-term efforts, to address both the immediate issues at stake and the underlying structural causes? What is the scope for addressing power imbalances, so that well-intentioned interventions to prevent violence and contain abuses go beyond mere pacification? Questions such as these are the focus of the next chapter.
Part III – Navigating Complexity
Chapter 7: Navigating Complexity
Chapter 7

This chapter seeks to shed further light on the interplay of human rights and conflict resolution by considering four challenges that regularly arise for organisations and individual practitioners working in these fields. It explores how various actors have sought to engage with these challenges and what this reveals about the relationship between human rights and conflict resolution. The challenges considered mostly stem from the cases discussed in the last two chapters, yet also draw on the contradictions and conundrums identified in the field chapters. The four challenges are: addressing the symptoms or causes of rights abuses and violent conflict; pursuing confrontation or cooperation in conflict contexts marked by structural injustices and power asymmetry; managing tensions between facilitator and advocate roles; and referring to rights violations (and rights concerns more generally) in conflict resolution processes.1

It is easy to conceive of these challenges as dilemmas as they tend to resist easy solutions and “reveal conflicting objectives and difficult orientations between alternatives”, thus reflecting what Klein Goldewijk and De Gaay Fortman call the “paradoxical nature” of reality (1999, 36). As the previous chapters revealed, the challenges considered here, arise out of highly complex and open-ended real-life situations with no clear guidelines, no map or compass to guide us through them. On the contrary, dilemmas that emerge from concrete reality are often confusing and stressful precisely because they are linked to different and conflicting ways of settling matters. Complex dilemmas also reveal a wide ‘grey area’ regarding the appeal to ethical principles. It may be easy to identify right and wrong by relying on general ethical principles and values such as respect, justice, fairness and responsibility, but dilemmas in real life often present open-ended alternatives that are neither wholly right nor wholly wrong (ibid).

Dilemmas are thus challenging in that they present various options for action that are all justifiable. Each has certain consequences, multiple values and conflicting interests are at stake, and a choice is required (idem, 39-40). The Oxford Dictionary concurs, defining a dilemma as “a situation in which a difficult choice has to be made between two or more alternatives that are equally undesirable”.2 Clearly, dilemmas have no real solutions that truly settle the matter; all possible courses of action have undesirable implications. Whatever choice is made, it is inherently unsatisfying. It has hence been argued that it is hard – if not impossible – to resolve dilemmas within their own logic.3

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1 These are obviously not the only challenges faced by organisations and individual practitioners working on human rights and/or conflict resolution; many more questions have surfaced in the previous chapters. The decision to focus on these four stems from the fact that I have observed them arising for actors in widely different contexts, which suggests that these are highly relevant to the relationship between human rights and conflict resolution (even if they are not unique to actors in these fields). This chapter does not seek to address these issues exhaustively but to serve as a first exploration that can be used to identify further lines of inquiry later.


This dilemma notion is helpful in reflecting that the challenges considered here defy easy answers and clear-cut solutions, and involve possibly conflicting values and interests. Understanding them as such also seems appropriate given the fact that the dilemma notion often emerges when human rights and conflict resolution are considered in conjunction; the 'peace vs. justice dilemma' is probably the most obvious manifestation of this tendency. Furthermore, several of the above challenges seem to pose outright contradictions for individuals and organisations facing them, as if they force actors to choose between competing impulses or energies (Lederach 2003, 51-52). Should they prioritise advocacy or facilitation, symptoms or causes, cooperation or confrontation?

Such dilemma thinking can be problematic, however. It easily locks actors into what can be called 'either/or' thinking, as if there are, as the Oxford Dictionary suggests, only two 'equally undesirable' alternatives. This is reflected in Klein Goldewijk and De Gaay Fortman's assessment that dilemma thinking is “unavoidably constrictive: it reduces the basic options at stake to two”, framed in mutually exclusive terms (idem, 40). Of course, in reality, the options are seldom limited to two (ibid). Dilemma thinking thus disregards the possibility of other alternatives beyond the two that are obvious. It also overlooks the possibility that a combination of the two is possible – 'both/and' rather than 'either/or'.

This chapter examines the four challenges against the background of this discussion. It shows how each can be perceived as a 'dilemma' supposedly presenting competing imperatives. It also shows how construing them in this way restricts the options for action available to actors seeking to advance human rights and conflict resolution, and often simplifies the situation and issues at hand. It thus argues that capturing actors’ choices in 'rigid either/or terms' (Lederach 2003, 52) has serious limitations, and fails to do justice to the ways in which they try to navigate complex reality. Practical examples and insights from the literature demonstrate that organisations and practitioners may in fact seek to combine the two evident options for action or identify alternatives outside the simplistic binary frame; such approaches essentially entail a process of reframing the challenge at hand to create space for manoeuvring.

The discussion of the four challenges – and the ways in which actors seek to deal with them – reveals a degree of interdependence between the fields’ approaches and ideas; often, these are both necessary but not sufficient in themselves. Such interdependence does not always look the same but may manifest itself, for example, concurrently or sequentially. ‘Interdependence’ does not mean that possible tensions between human rights and conflict resolution are glossed over. Three challenges actually seem to pit the two fields against one another. These are raising rights concerns in conflict resolution interventions (discussed in 7.4), role tensions (7.3), and emphasising

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4 See 1.1.1.

cooperation or confrontation in contexts of severe power asymmetry (7.2). That said, the latter is paradoxical in that it also speaks to a common feature of the fields, namely their mixed relationship with power.6 A similarity is also at stake in the remaining challenge, tackling symptoms and causes, which is discussed first (7.1).

The chapter has five sections, of which the first four – addressing each of the challenges – follow the same structure: after an introduction, the specific ‘dilemma’ is set out with reference to practical examples and, where relevant, additional literature. A possible approach is then put forth, occasionally with a visual image to clarify matters. The third sub-section contains a discussion, the focus of which varies, providing additional explanation and examples, identifying likely implications, comparing different examples, or engaging with objections to the approach. Each section ends with a summary presenting insights gained about the relationship between human rights and conflict resolution. The fifth section presents an overall conclusion including a summary overview of findings (7.5).

It should be noted that the possible approaches to the challenges outlined in this chapter imply considerable agency on the part of the actors discussed. This is in line with the actor-orientation and constructivist perspective adopted in this study. It also reflects the belief in ‘make-ability’ that is implicit in both fields.7 Naturally, in reality, organisations and practitioners seeking to advance human rights and/or conflict resolution do not have unlimited agency. Various factors affect their choices and actions – and also how the relationship between human rights and conflict resolution unfolds in a given situation. That is not the focus here, but the discussion will at times highlight how context matters a great deal. More attention will be paid to the issue of context in the next chapter.

7.1 Immediate Relief or Long-Term Change? Tackling Symptoms and Causes of Rights Abuses and Violent Conflict

This first section focuses on “the dilemma of balancing short-term and long-term imperatives” (Lutz, Babbit, and Hannum 2003, 184). While not unique to the human rights and conflict resolution fields, it is discussed here in part because it shows that the fields may be less different than is often assumed. It also reveals that combining the respective emphases and approaches of human rights and conflict resolution offers a possible approach to dealing with this dilemma. Overall, the section argues that it is possible to contribute to immediate relief and long-term change at the same time, rather than having to focus on one or the other. It proposes that one way of achieving this is by incorporating elements and strategies usually associated with ‘the other field’. Put differently, part of the ‘solution’ to this dilemma may lie in what the

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6 This challenge is therefore discussed as reflecting both a tension between the fields and a commonality. See 7.2.1.
7 See 1.2.1 (on constructivism and actor-orientation) and 4.2.1 (on the fields’ belief in make-ability), respectively.
other field offers. (This will not suddenly make dealing with this challenge a simple matter, hence the quotation marks around ‘solution.’)

The section outlines the dilemma, noting that short-term goals easily take precedence in the face of real or imminent violence. This has certain shortcomings, but focusing only on underlying problems is also problematic (7.1.1). It then sets out how a few actors have tried to tackle causes and symptoms at the same time, working in a way that is both "short-term responsive and long-term strategic" (Lederach 2003, 50). This is explained through a model put forth by conflict resolution scholar/practitioner Lederach (ibid; 1997), building on work by peace researcher Dugan (1996) (7.1.2).

The subsequent discussion, with further examples, suggests that conflict resolution-focused actors may strengthen the long-term impact of their de-escalation, dialogue, problem-solving and relationship-building efforts by clarifying and institutionalising ‘rules of engagement’ and by enhancing governance and accountability mechanisms. Human rights-oriented actors can probably do the same by complementing their concern with rights and responsibilities with attention to the relational and institutional context in which violations occur and by creating spaces for dialogue and problem-solving amongst diverse groups (7.1.3). The section concludes with a summary presenting insights about the relationship between human rights and conflict resolution (71.4).

7.1.1 The Dilemma

Here, the dilemma is set out with reference to the discussion and examples presented in previous chapters, and some additional literature. The analysis below shows that the two obvious options for action in ‘the symptoms versus causes question’ (Gready and Phillips 2009, 11) are both flawed if pursued in isolation. It argues that construing this dilemma in either/or terms is problematic, given the interdependence of causes and symptoms. Dealing with this challenge thus raises fundamental questions about the focus, scope, and objective of interventions and their ramifications, including unintended ones.

Chapters 2 and 3 demonstrated that both the human rights and conflict resolution fields struggle with balancing short- and long-term goals. Actors in these fields generally seek to support or facilitate structural change, but often use strategies that are primarily geared towards achieving short-term objectives: containing violence, ending abuses, providing redress to individual victims, etc. This contradiction is embedded in both human rights and conflict resolution.

Various examples in chapters 5 and 6 bear out this tendency to focus on addressing symptoms. A case in point is LHR coordinator Magardie’s account of the mediation during a large urban eviction at Hangberg mountain: he was mostly concerned about keeping his clients in their houses, fearing that the mediator’s focus on underlying
problems (e.g. housing, access to schools and other services, community development) would obscure a tangible solution to their imminent eviction. Another example is the response to widespread xenophobic violence in the Western Cape in 2008, which mostly sought to stem the crisis. Conflict resolution practitioners served as “fire-fighters, sent out to quell things, keep it in a holding pattern”, as one of them put it. They focused primarily on facilitating the reintegration of those displaced, and little (if any) attention was devoted to developing a more systemic approach to the exclusion, deprivation and racism that had fuelled the violence.

These and other examples reflect that mitigating suffering and containing instability easily take priority over other concerns in the face of real or imminent violence. The limitations of this symptom-orientation are clear: interventions intended to ameliorate conditions in the short-term are likely to be stop-gap measures with limited long-term effect. Situations of rights denial and destructive conflict usually defy quick fixes, being rooted in multiple, interrelated and complex issues (Parlevliet 2002, 24). Also, by constantly reacting to wrongs being committed, actors run the risk of ‘failing to see the wider picture’ as Churches in Manicaland observed. This emphasis on ‘the tip of the iceberg’ (Kennedy 2012, 25; Parlevliet 2010a, 14) is thus problematic, irrespective of whether one is coming from a human rights or a conflict resolution perspective.

A focus on treating symptoms carries the additional risk of ‘becoming part of the problem’ by ‘contributing to the underlying causes’ (Gready and Phillips 2009, 11-12). Writing by Israeli human rights lawyer Michael Sfard is instructive in this regard. Sfard represents Palestinians living in the occupied territories before Israel’s Supreme Court. He argues that bringing individual petitions before the Court helps to challenge the occupation’s injustices and has generated some self-restraint amongst the Israeli Defense Forces, but also legitimizes an institution that is a pillar of the very regime and occupation that is being contested (2009). In his view, by lodging petitions, “human rights lawyers act as public relations agents of the occupation by promoting the notion that Palestinian residents have a recourse to justice” (idem, 48). This is worrisome not least because the Court’s jurisprudence has “systematically enhanced the power and authority of the Israeli Army and approved a wide range of abuses of the rights of the occupied population” (idem, 39).

The risk of practitioners’ strategies feeding into the underlying problems can also be detected in some of the practical experiences discussed previously, two of which will be mentioned here. The review of the CCR intervention in Du Noon and Doornbach in 2001 revealed that the de-escalation resulting from our conflict resolution efforts may
have reduced the pressure on the state to take meaningful action to address the underlying conditions giving rise to the violence (after all, the urgency to do so decreased as the situation stabilised). Furthermore, the direct interaction between the settlement residents and local government facilitated by the CCR team may have shown the South African squatters that violence against non-nationals pays off by enhancing direct access to public officials and prompting the allocation of additional resources. Thus, however well-intentioned, this intervention arguably ‘contributed to the causes’ in two ways: by enabling the state to shirk responsibility for failing to live up to its rights obligations and for not taking effective measures, and by inadvertently ‘rewarding’ violent approaches to conflict in a society already saturated with violence.

The case of the Northern Ireland Parades Commission provides another insightful example of how strategies to contain symptoms may ‘become part of the problem’. The NIPC’s (mandate-induced) emphasis on resolving such disputes in a way that enables parades to occur with minimal threat to public order, tends to turn the absence of public disorder into the primary indicator of ‘peace and stability’. As a consequence, specific parades may be seen as ‘successful’ or ‘peaceful’ without recognising that an astounding amount of effort and energy is required to stave off any overt violence, masking what is actually a conflict-prone status quo. An illusion of ‘normality’ can thus gain hold without a substantial change in the dysfunctional nature of social relationships.

This focus on the absence of direct, physical violence also puts much emphasis on the state as the key actor in addressing societal conflict, since it is the primary duty-holder for maintaining law and order and protecting citizen’s rights. Hence, institutions like the Parades Commission and the police have long been expected to regulate contentious parades in Northern Ireland, as parade organisers and protesting residents take strong positions on what they feel entitled to, with little consideration

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12 This is the same situation mentioned at the beginning of this study. See also 5.2.3 (and 3.5.2 more generally).
13 For example, in spring 2003, I witnessed a ‘junior parade’ of young people associated with the Orange Order in Ardoyne. The responsible Police Commander and a Parades Commissioner afterwards assessed it as ‘peaceful, even ‘normal’. When I asked what they meant, they noted that the event had occurred without violence or massive protest from nationalist residents in the area. They did not pay any heed to what had caught my attention, e.g. that the state had had to mount a large-scale security operation involving several units of riot police and military personnel on the ground and in the air, setting up a command centre with banks of CCTV screens, and installing crowd control obstacles. They also disregarded the fact that the preparations for this operation had lasted three months and that the NIPC’s Authorised Officers had engaged in intensive shuttle diplomacy over weeks and months prior to the event. To my surprise, the parade itself consisted of some ten children between the ages of 6 and 12, accompanied by five adults. My interlocutors overlooked these elements because they had become part of how things are done and what is considered acceptable. Their sense of ‘normality’ and ‘peacefulness’ was only turned on its head when I asked them how ‘normal’ it is that such measures are necessary for a small group of children to walk down a road in a ‘peaceful’ society (personal notes, April/May 2003).
14 Report on work conducted with the Parades Commission, May 2003, by author, on file. Based on conversations with various interlocutors in Northern Ireland in 2003, including then Chief Superintendent Irwin Turbitt and Parades Commissioner Peter Osbourne, and Neil Jarman in his capacity as long-term observer of parading disputes.
of how their own attitudes and behaviour may affect their ability to exercise their rights or how they might influence others’ willingness to take their rights into account. Effectively, protagonists’ responsibility for policing their own behaviour and acting within the framework of the law is thus removed (Benington and Turbitt 2007, 384-387; Parlevliet 2009, 279-281).

These three examples – one relating to human rights work, the other two to conflict resolution practice – demonstrate that mostly or exclusively concentrating on alleviating symptoms is clearly flawed in the eyes of the actors concerned. Some actors therefore decide to focus instead on pursuing structural remedies to pave the way for long-term change. For example, LHR changed the strategy of its Security of Farmworkers Project in 2010 to focus more on the state’s obligations to facilitate access to alternative accommodation for persons threatened with eviction and to provide services. In LHR’s view, its approach until then had not fundamentally altered the conditions experienced by farmworkers, even if it had resolved specific cases and been helpful in building the project’s credibility and expertise. In SFP coordinator Magardie’s words:

We’ll do less cases, less run of the mill, and be more strategic in what cases we take on and what we want to achieve. Provision of legal services, dealing with [individual] cases – that was an important strategy, to defend people in their homes. But now we have to go one step beyond. We need to now focus more on [litigation of] test cases to deal with the underlying problems and patterns.15

Yet such an approach – aiming for structural change without addressing immediate problems in a context where violence is imminent and rights abuses are already taking place – has drawbacks too. As LHR shifts towards strategic litigation, what will happen to those situations that do not qualify as test cases? How many farmworkers will be evicted – with little access to legal assistance – before its new strategy produces results?

The ongoing importance of addressing rights violations that are symptomatic of structural conditions emerges from an interview with Undine Whande, a conflict resolution practitioner who worked extensively with a human rights NGO in Zimbabwe between 2010 and 2013. She notes that the organisation’s lawyers realised that their legal representation of activists at police stations and in court has become “about protecting a minimal space […] – if you do get arrested, you do get out again”:

[They’re] not being able to prevent that you’re wrongfully charged, that some mock prosecutor might end up pursuing the case and that some judge, who’s compromised, might actually end up sentencing you on an unjust charge that was cooked up. (It often happens that people get charged with the very crimes they came to report.) […] Working in that type of environment, I think there’s a sense that [the organisation] keeps a minimum non-negotiable. Like [X] is a guy who works for a youth network - he says that

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15 Interview, 16 Nov. 2010, through skype.

220
his activism was greatly strengthened by the fact that he knows there is a lawyer if [he] gets arrested.  

The experiences of the Parades Commission also show that not addressing symptoms is problematic. Ongoing violence and disorder around parading disputes will fuel fear, mistrust and further polarisation between opposing groups, at community level and in the political arena. It is also likely to undermine people’s confidence in the state’s ability and/or willingness to establish the rule of law, protect citizens’ rights and provide public security (Parlevliet 2009, 264-265; Jarman 2009). Former NIPC member Robin Percival thus argues that maintaining public order should remain an important concern for the Commission.  

This discussion demonstrates that “the conflict between concrete and immediate help […] versus struggling for structural change at some point in the future” (Gready and Phillips 2009, 11) is a common and painful dilemma shared by human rights and conflict resolution practitioners. This dilemma raises questions about “the appropriate remit and ambition, and sometimes unintended consequences” of human rights efforts and conflict resolution interventions (ibid). Faced with such questions and the contradictions involved, it is easy to get caught in ‘either/or’ thinking, the notion that practitioners must opt for one or the other option – pursuing short- or long-term goals, targeting symptoms or causes, facilitating immediate relief or working towards structural change – also in light of limited resources.  

Yet it should be clear by now that both are necessary and important, but neither is sufficient or sustainable in its own right. An ‘either/or’ frame of reference is thus flawed. It disregards the interdependence of symptoms and causes: fire-fighting is ineffective on its own when not coupled with measures to remove the logs that caught fire, but it is hard to get to the logs when the fire is so intense that sparks fly everywhere and one risks being consumed by it. The either/or frame also obscures the question whether the different strategies can be combined – a question echoed in the concern expressed by clergy from the Manicaland Churches, “How can we fit the sprints we are doing into the long-term marathon we’re also running?,” and also posed by others (e.g. Gready and Phillips 2009, 12).  

7.1.2 Possible Approach  

In fact, various actors appear to combine short- and long-term strategies. This is illustrated below by a few examples. This possible approach is explained in terms of an analytical framework put forth by Lederach (2003; 1997), building on Dugan (1996), and with the aid of an image that depicts the distinction between causes and

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16 Interview, 6 June 2011 Cape Town.  
17 Personal communication, 15 Sept. 2014, on file with author.  
18 Gready and Phillips’ writing only focuses on human rights practice, yet it is equally relevant to conflict resolution efforts.  
19 See 6.1.4.
symptoms, and various ‘levels of response’ at which conflicts can be addressed. While conceived in the conflict resolution field, this framework is relevant for actors in both fields, as will be explained in the next sub-section.

In chapter 6, it was noted how the Kenyan National Commission on Human Rights had started intervening in the Mount Elgon area (which is prone to violent clashes between different ethnic groups), using a combination of human rights- and conflict resolution-oriented strategies. An important component of its intervention was convening 'human rights forums'. At these events, Commission staff facilitated interaction between farmers, law enforcement officers and officials from the Ministry of Agriculture with a view to tackling immediate problems about land allocation and developing more long-term solutions related to access to land, water and food (Nderitu 2010, 58).20

The intervention in a conflict between teachers and the principal at a school in an impoverished township, facilitated by a CCR colleague (mentioned in chapter 5), represents another example of an effort to address symptoms and causes simultaneously. Besides facilitating dialogue between the conflicting parties and providing communication skills training, this conflict resolution intervention included the development of a code of conduct to guide future interactions at the school, and measures to improve the legitimacy and functioning of the school governance systems.21

In a similar vein, the Northern Ireland Parades Commission has issued a code of conduct that protagonists on either side have to abide by. The code includes provisions on stewarding by parade and protest organisers so as to encourage them to assume responsibility for the behaviour of their own supporters.22 The NIPC considers compliance with this code when deciding on imposing conditions on a parade or protest (Northern Ireland Parades Commission 2005a, 7-8; 2005c). It has further made ‘constructive engagement’ between organisers and residents a consideration in its decision-making process; in this regard the NIPC assesses whether the steps taken “by the organisers of public processions or related protest meetings represent a real attempt to address the relevant concerns of others” (Northern Ireland Parades Commission 2005b, 4). These are valuable measures that help mitigate some of the downsides of the Commission’s concern with reducing public disorder in the short term.

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20 See 6.2.3. Also conversation with Alice Nderitu, 7 June 2011, Cape Town.
21 See 5.2.5.
22 ‘Stewarding’ refers to the deployment of individuals (‘stewards’ or ‘marshalls’) to assist the organisers of a public event to maintain control over those participating in it. The Northern Ireland practice of stewarding is informed by South African experiences; during apartheid, marshals were used at demonstrations to maintain order and thereby give the security forces less reason to use violence against protesters; personal communication with Neil Jarman, 2001-2003. The NIPC code of conduct further covers the routing of parades (and the importance of giving advance notice), the timing of parades, the involvement of bands in parades, stewarding, and preparing a parade (see Northern Ireland Parades Commission 2005c).
Common to these examples is the effort to be “short-term responsive and long-term strategic” as Lederach puts it (2003, 50). This conflict resolution scholar/practitioner argues that it is possible to conceptualise “change processes that address solutions for immediate problems and at the same time create a platform for longer-term change of relational and structural patterns” (idem, 38, emphasis in original; 1997). The framework he puts forth “emphasizes the challenge of how to end something that is not desired and how to build something that is desired” (ibid, emphasis in original). It reflects an ambition to address, simultaneously, the short-term priority of alleviating – or ‘ending’ – symptoms of destructive conflict, including rights abuses, and the long-term imperative of addressing root causes – ‘building’ the conditions for durable peace and rights.

The framework proposed by Lederach is informed by Dugan’s nested theory of conflict (1996). It asserts that conflicts can be analysed and addressed at four different yet interconnected ‘levels of response’: the issue level (the immediate problems that manifest as a crisis or visible conflict); the relationship level (the relationship context in which the ‘issue’ plays out); the sub-system level (a specific geographical or institutional setting or sector in which the ‘issue’ occurs, which also reflects the larger, structural conditions giving rise to the ‘issue’); and the system level (the larger, structural problems to be addressed, i.e. underlying causes) (Lederach 1997, 55-61; Dugan 1996). By way of illustration, consider the Du Noon/Doornbach example once more:

The ‘immediate, presenting issue’ requiring a response or solution is the eviction of non-nationals from the two informal settlements; this springs from and is embedded, amongst other things, in the relationships between South African residents and non-nationals; the two informal settlements and the governance thereof by local authorities constitute sub-systems, i.e. specific (geographical or institutional) arenas in which society-wide structural problems manifest on a more confined scale; and these in turn are embedded in broader societal conditions, such as xenophobia, economic inequity, poor service delivery, and limited state accountability.23

This framework, or ‘nested’ model suggests a more refined way to understand conflicts and possible interventions, by identifying two intermediate levels that connect symptoms and causes – rather than merely distinguishing between the two, as the discussion thus far has done (in line with much of the literature). Visually, this can be depicted as shown in Figure 1.24

Lederach argues that strategies focusing on the relationship and sub-system levels can "serve as sources of practical, immediate action and sustain long-term transformation

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23 For an example of this analytical framework as applied to complaints handling by national human rights institutions, see Parlevliet and others (2005b, 22-23).
24 Lederach usually depicts the four levels of response (also referred to as ‘nested paradigm’) the other way around (eg. 1997, 55-61), with ‘issue’ at the bottom and the other levels above. I have turned it upside down to illustrate more clearly how this ‘levels of response’ framework can be linked to the distinction between symptoms and causes (as represented in the iceberg image).
in the setting” (1997, 61, emphasis in original). In his view, these can address both the ‘micro’ issues in a particular social political setting (the visible expression of conflict, above referred to as ‘symptoms’) and the more systemic, broader concerns (mentioned above as underlying causes); they connect what he calls a specific conflict “episode” with the “epicentre” of conflict (2003, 31).

The proposed approach thus builds on the notion that the immediate problems present a ‘window’ into underlying structural conditions (Lederach 2003, 48-49), as previously alluded to in the conclusion of chapter 5.²⁵ This idea exists in the conflict resolution and human rights fields alike. Human rights reports often include detailed descriptions of individual cases of rights violations that are representative of many more, similar, cases; these may be referred to as ‘window’ or ‘illustrative’ cases.²⁶ The approach set out here, however, goes further by highlighting levels of response that link symptoms and causes, or issue-level and systemic concerns. Providing additional options for action, these have the potential to offset the flaws of focusing mostly on either causes or symptoms.

7.1.3 Discussion

By way of further discussion, this sub-section relates the above-mentioned framework to the earlier examples and to two additional ones. Taken together, these examples suggest that incorporating elements and strategies usually associated with ‘the other

²⁵ See 5.3.
²⁶ Amnesty International generally speaks of ‘illustrative cases’ (David Petrasek, personal communication, 8 Nov. 2011, Amsterdam). The South African Truth and Reconciliation Commission called them ‘window cases.’
field’ may facilitate working at the two intermediate levels of response and impacting on short-term and long-term goals at the same time.

The examples mentioned thus far illustrate the relevance of this framework regarding ‘levels of response’ for actors in the conflict resolution and human rights fields, and those operating on the interface of the two. The approach adopted by Kenya’s National Commission on Human Rights in the Mount Elgon area – convening ‘human rights forums’ – can be understood as targeting the two intermediate levels of response. It builds relationships between different groups of citizens, law enforcement officials and civil servants, and enhances government accountability in a specific setting. According to Alice Nderitu, the forums also served ‘to make human rights real’ by linking economic, social and cultural rights (related to access to land and water) to civil and political rights (related to freedom of association and information).27

In terms of the school example and the Parades Commission, the development and application of a code of conduct is intended to improve the interaction between different parties (relationship level) through institutionalising rules about acceptable behaviour and dealing with complaints. Its application within a specific context (i.e. parading disputes in a certain locality, a particular school) enhances its sub-system dimension. In the school case, the latter is further targeted by attention to the functioning of the school’s governance systems; this also relates to underlying conditions pertaining to participation, decision-making and leadership. For the Parades Commission, the formal emphasis on stewarding and constructive engagement works in this direction by speaking to systemic concerns about accountability and the reciprocity of rights.

Such strategies have the potential to spread beyond the particular context targeted at a given time (e.g. to interactions between unionists and nationalists in other localities or in contexts other than parading, and in the school case, to other schools in the Western Cape). It is noteworthy in this regard that the Northern Ireland Human Rights Commission has observed a “conceptual shift in Northern Ireland parading discourse towards protecting ‘the rights of others’ from sectarianism” (2011, 42): where restrictions on parades and protests used to be exclusively based on public order grounds, it has become increasingly accepted that “limitations can also be grounded on the basis of advocacy of hatred and discrimination” (ibid).28 While it is questionable whether this shift can be only attributed to the NIPC’s approach, it has probably contributed to some extent.29

27 Conversation, 7 June 2011, Cape Town.
28 This is modelled “through the prism of [European Convention on Human Rights] ‘rights of others’ limitations, but is not yet reflected in the domestic legal framework” for parading (Northern Ireland Parades Commission 2011, 42). Neil Jarman has also observed increasing recognition of what he calls the ‘mutuality of rights’ (interview, 7 Nov. 2011, through skype).
29 In Derry, for example, the NIPC has supported moves by the Apprentice Boys of Derry Association (which engages in parading) and the Bogside Residents’ Group (through which local opposition to the parades was organised) to gradually loosen restrictions on parades: restrictions that had initially been agreed upon were
The experiences of two human rights-oriented civil society organisations can also be understood in terms of the framework outlined above. They represent additional examples highlighting the validity and usefulness of targeting an intermediate level of response for working towards short-term and long-term imperatives at the same time. The Zimbabwean human rights NGO referred to above was looking for ways to impact more substantially on rights protection than merely providing the legal support necessary when a person came into conflict with the law or the authorities\textsuperscript{30} – i.e. doing more than “just bailing people out”, as one observer put it casually.\textsuperscript{31}

Senior members of the organisation realised that they had some links with prosecutors and magistrates – for example, by having gone to law school together. They started developing these relationships, not to influence the outcome of cases or the way in which a client’s matter was handled, but with “the objective to ‘humanise’ the lawyer, the prosecutor, the judicial officer, and make all of them see the importance of their role in the justice delivery system, and the value of cooperating, through complying with their obligations, in order to ensure that rights are protected and justice is done.”\textsuperscript{32} They anticipated that this would make a difference when a case comes to court. Ultimately, the client is going to benefit.\textsuperscript{33}

Engaging with magistrates and prosecutors on the professionalism and quality of the judicial services rendered also gave the organisation opportunities to assist them with training and capacity-building on issues of law and human rights protection. Reportedly, such assistance empowered the magistrates and prosecutors and opened up space for them to personally reflect about acting with integrity within the system, prompting some to question orders. The extent to which these spaces became a “site for expression and expansion of agency” of those participating (Cornwall 2002, 9), and had real and transformative potential to shape “policies, discourses, decisions and relationships affecting people’s life and interests” (Gaventa 2006, 25) may be inferred from the fact that after some time, a senior government official sought to prevent further interactions amongst different actors in the justice sector.\textsuperscript{34}

The human rights NGO thus targeted the relationship level so as to facilitate the handling of specific cases (which can be understood as ‘issue’-level interventions) and have a more long-term impact. The training and capacity-building can be understood as steps towards developing a sub-system intervention with the potential for wider

\textsuperscript{30} The organisation was previously mentioned in 7.1.1. Example drawn from Undine Whande, interview 6 Jun. 2011, Cape Town, and verified with the director of the NGO (name of the person and the organisation withheld at request), both verbally (Jan. 2012, Harare) and in writing (Jul. 2015).

\textsuperscript{31} Interview, Undine Whande, \textit{op.cit.} Her phrase is not meant to minimise the value of the NGO’s legal interventions.

\textsuperscript{32} Written comment by the director of the organisation, 3 Jul. 2015, used with permission.

\textsuperscript{33} Paraphrased from conversation with director, Jan. 2012.

\textsuperscript{34} According to Whande, “this means that they touched a nerve, right?” Interview, \textit{op.cit.}
ramifications, evolving around a common concern with the professionalism of judicial services provided.35

The relevance of such relationship- and sub-system-oriented strategies for human rights actors intent on working towards long-term change while affecting current issues and conditions, also emerges from the example of the Community Self-Reliance Centre (CSRC), an NGO and membership organisation spearheading the land rights movement in Nepal. This organisation, established in 1993, combines grassroots organising, popular education, developing human rights defenders, and lobbying for land and agrarian reform with the national government.36

Initially only working in two village development committees (the Nepali equivalent to municipalities) in 1993, its activities now cover 53 of Nepal’s 75 districts. As part of its general efforts to ensure a more equitable distribution and ownership of land and to protect those farming the land against exploitation by landlords, CSRC undertook a ‘mapping’ of land distribution in 16 districts around the country in 2010-2011.37 There are no reliable figures in Nepal of the exact number of rural landless. A true picture of farm distribution is also lacking, due to outdated data, tiny samples, different sets of information providing contradictory results, and wilful concealment of real holding size (Alden Wily, Chapagain, and Sharma 2009, 38).

It is clear, however, that distribution is highly skewed, with a small number of farmers owning vast tracts of land – much above the legal landholding limit – and more than half of rural households being functionally landless.38 Landholding is strongly correlated with caste and ethnicity (ibid). Landlessness is prevalent amongst Nepal’s low castes and indigenous peoples; many belonging to these groups work as bonded or semi-bonded labourers, making them very vulnerable to human rights abuses.39 Ownership of land thus continues to determine the economic prosperity, social status

35 The common concern with the professional nature of the judicial services rendered in Zimbabwe was emphasised by the organisation both because it felt very strongly that this truly was a common concern, but also to take away the suspicion that its actions were politically motivated. Conversation with director, January 2012.

36 For more information on the organisation, see its website, http://www.csrcnepal.org/. The Leitner Center for International Law and Justice at Fordham Law School in New York awarded the organisation its annual Human Rights Prize in 2010. For a historical overview of social activism around land rights in Nepal, see Basnet (2008).

37 See Dhakal (2011) for findings and explanation of methodology. The study focused on forms and types of tenure arrangements, different rights allocated to the tillers in various parts of the country, gender patterns in various forms of ownership and tenure arrangements, and land transactions (including inheritance and land fragmentation). The districts selected represent the different areas of Nepal from east to west and from north to south; mapping was done in one village development committee (or sub-district) per district.

38 According to Alden Wily and others, about 7.5% of farmers own nearly one third of the country’s farming area, and nearly 60% of rural households are functionally landless (2009, 38) (meaning they own less than 0.5 ha, which is required to meet subsistence requirements) – although real landlessness and land poverty could be much higher since functional landlessness is estimated on the basis of minimum figures (ibid, 46). See also Deuja (2008) on causes of landlessness in Nepal.

39 While formally outlawed since the 1950s, bonded labour affects an estimated 80,000-100,000 households (Alden Wily and others 2009, 39). Semi-bonded labour affects many more. Also personal notes from discussions with CSRC leadership, 2007-2008. On Nepal’s ethnic, religious and linguistic diversity, see Lawoti (2012).
Chapter 7

and political power of individuals and families in Nepal (Dhakal 2011, xiv), also because it is often a precondition for accessing services (Office of the High Commissioner for Human Rights 2007, 15). Land reform was a central Maoist demand during Nepal’s civil war (1996-2006), and it is an important component of the country’s peace agreement and interim constitution.40 However, in the post-agreement period little progress has been made, and land issues have become an increasing source of tension with frequent forced evictions, conflicts between landowners and landless, and land seizures (idem, 19).

The mapping exercise was intended to generate reliable primary data on forms and patterns of landholdings, ownership and land relations in contemporary Nepal (Dhakal 2011, xiv, 2). This was supposed to enable the organisation and the broader land rights movement to interact effectively with the newly established land reform commission and to feed into the drafting of Nepal’s new constitution and of land-related policies and legislation.41 Yet through this intervention – which can be seen as a ‘sub-system’ response given its focus on specific districts – CSRC arguably managed to connect its ‘system-level’ objective (changing policy and legislation to facilitate structural change) with its ambition of having an immediate impact on the ground.

According to CSRC director Jagat Basnet and his colleagues Jagat Deuja and Kalpana Karki, the mapping helped to reduce tension at local level and resolve several disputes between landlords and landless labourers.42 It did so by enhancing relationships between various parties and raising their awareness of local conditions and formal regulations; this apparently prompted some landlords to settle tenants’ ownership claims by handing over part of their land to them. CSRC also used the study’s findings to refute claims by politicians and public officials that the number of unregistered tenants in Nepal is so small that tenancy rights need not be provided for in law.43 The data compiled have led the authorities to agree on ensuring tenancy rights for unregistered tenants in law after all.44

The approaches adopted in the examples above are alike in that they all enable the human rights and conflict resolution actors concerned to work in a way that is simultaneously short-term responsive and long-term strategic (Lederach 2003, 50).

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41 Information obtained from Jagat Basnet, Jagat Deuja and Kalpana Karki, CSRC through personal conversation (2009) and correspondence (2010-2011) (with translation by Mukunda Kattel).
42 Ibid. Deuja is CSRC’s deputy director, having joined the land rights movement in 1996 and working previously as the Centre’s programme manager. Kalpana Karki was CSRC’s campaign coordinator in Dhangadhi, a city in Nepal’s Far Western Development Region, at the time of my work with CSRC; nowadays she is its (national) campaign coordinator.
43 Ibid. CSRC findings in this regard are confirmed by the study by Alden Wily and others, who estimate that the number of farmers operating as tenants is thrice the number of formally registered tenants (2009, 39).
44 Information obtained from Jagat Basnet, Jagat Deuja and Kalpana Karki, CSRC, op.cit.
Yet the approaches differ too, in that the two sets of actors seem to adopt elements and strategies more commonly associated with ‘the other field’ in order to achieve this. Human rights actors pay more attention to the relational context in which rights violations take place and start creating spaces where diverse groups or parties can discuss human rights concerns and work out possible solutions – thus using approaches that are reminiscent of the conflict resolution field. Meanwhile, actors mostly concerned with conflict resolution appear to focus on clarifying and institutionalising ‘rules of engagement’ and enhancing accountability and governance mechanisms, strategies that evoke the human rights field.

7.1.4 In Sum

This section has highlighted that the fields of human rights and conflict resolution are both seriously challenged when it comes to balancing short-term and long-term goals. The fields are very alike in this regard, even if that is not widely acknowledged.45 The section has argued that dealing with this dilemma need not be a matter of either providing immediate relief or facilitating long-term change – or, in terms of the framework discussed, of pursuing either ‘issue’- or ‘system’- level responses. Such an ‘either/or’ frame fails to appreciate that symptoms and causes present “different but interdependent aspects of a complex situation” (Lederach 2003, 50).

Instead, the dilemma may be better understood as a challenge of doing both at the same time. It can be reframed along the following lines: how can symptoms be tackled in such a way that this has longer-term ramifications and contributes to structural change? And, how can we address the underlying causes giving rise to violence and symptomatic rights violations in a way that also improves conditions in the short term? Such reframing does not miraculously solve the dilemma, but it provides space for thinking creatively about pursuing necessary and interdependent imperatives.

Through various examples, the section has demonstrated that it is indeed possible “to create strategies that integrate short-term response with long-term change” (ibid). Doing so is facilitated when actors design interventions that try to connect these two priorities – and this, in turn, may be aided by incorporating emphases and tactics usually associated with ‘the other field.’ Put differently, combining elements of human rights and conflict resolution may assist actors working in these fields to respond to immediate problems on the ground while also having a longer-term impact. Conflict resolution actors may enhance the long-term ramifications of their efforts towards dialogue, de-escalation, relationship-building and problem-solving by focusing more on rights, rules and responsibilities, both vertically (between state and citizens) and horizontally (between individuals and groups).46 For human rights actors the reverse appears to apply: relationship-building and creating space for dialogue and problem-

45 A notable exception is Lutz and others (2003, 183), which refers to this as ‘a shared dilemma’.
46 See Parlevliet (2009) on horizontal and vertical relationships; and 8.1.2 on horizontal and vertical application of human rights.
solving across divisions and perspectives may deepen the impact of their usual strategies.

Overall, the discussion yields two main insights about the relationship between the fields. It brings out that human rights and conflict resolution may be less different than is often presumed. It also points to a certain concurrent complementarity of human rights and conflict resolution. After all, if one way of managing this challenge is to draw on emphases and strategies from the other field, this highlights that combining aspects of both fields can strengthen interventions in either area. This requires a degree of reflection in terms of recognising the limitations of tried and tested methods, and looking for additional ways to enhance the impact of efforts undertaken.

7.2 Confrontation or Cooperation? The Ebb and Flow of Addressing Conflict and Advancing Human Rights

This section reviews the dilemma of pursuing confrontation or cooperation in conflict contexts marked by structural injustices and power asymmetry between opponents. Here, human rights and conflict resolution seem to be at odds as human rights practices are inclined towards confrontation, challenge and critique, while conflict resolution is oriented towards cooperation, negotiation and engagement. Yet the confrontation/cooperation dilemma also evokes a challenge that is common to both fields, namely their mixed relationship with power. A certain paradox is thus at hand in that the dilemma appears to set human rights and conflict resolution apart but also speaks to one of their similarities, namely a tension present in both fields.

Drawing on Curle’s analysis of the dynamics of conflict caused by ‘unbalanced’ relationships (1971) and other literature, the section argues that strategies intended to exert pressure and confront an unjust status quo and those geared towards facilitating dialogue and cooperation are not mutually exclusive but interdependent. As such, the dilemma highlights the need to strive to attain a balance between confrontation and cooperation, rather than making a choice between them (Van der Merwe 1989, 65-66; Kahane 2010, 54). Time is an essential factor in this regard, as confrontational activism and advocacy are probably necessary precursors to facilitating dialogue between conflicting parties in contexts of power asymmetry (Dudouet 2006, 54; Parlevliet 2010a, 27).

The section first sets out the relevance of both cooperation and confrontation in contexts where power is imbalanced, and points to the tension between the two strategies (7.2.1). It then proposes a possible approach to the dilemma, which takes the dynamics of asymmetric conflict into account, recognises the significance of intensifying conflict, and stresses the need to use different strategies at different points in time. This is illustrated with reference to the land rights movement in Nepal (7.2.2). Subsequently, the section discusses some implications of recognising the ‘ebb
and flow' of asymmetric conflict (Lederach 2003, 33) for conflict resolution and human rights practice (7.2.3). A concluding summary presents insights gained about the relationship between human rights and conflict resolution (7.2.4).

7.2.1 The Dilemma

This sub-section lays out the dilemma of pursuing confrontation or cooperation in conflicts characterised by significant disparity in power, status and resources between opposing parties, with reference to literature and examples from previous chapters. After revisiting the notion of asymmetric conflict, it explains why confrontation and cooperation are both useful and important strategies in such contexts but insufficient in their own right. The discussion thus echoes the line of argument put forth in 7.1, suggesting that an ‘either/or’ frame is unsuitable for understanding the dilemma. It also relates the dilemma to human rights and conflict resolution and explains the paradox that the dilemma reflects both a contradiction and a parallel between the two fields.

Asymmetric conflicts are “not only about religious, ideological or ethnic cleavages, but also and most importantly about the objective, structural repartition of power between the different contentious groups” (Dudouet 2006, 16). Their key feature is a relationship of domination in which one adversary is systematically stronger than the other; this relationship structure constitutes the root of asymmetric conflict, more so than specific issues or interests that may divide the parties. At stake is therefore opponents’ ambition to change or sustain the very structure of their relationship (Ramsbotham, Woodhouse, and Miall 2011, 24; Gallo and Marzano 2009, 2-4).

The term ‘asymmetric conflict’ is usually applied to large-scale conflicts between or within states (e.g. Kriesberg 2009b), but is more broadly applicable. Conflicts over access to and control over land – such as ongoing in Nepal – are usually asymmetric too, with public institutions and policies often being in favour of one side (i.e. landowners) (Gallo and Marzano 2009, ibid). Contemporary grassroots protests by township residents in South Africa about poor service delivery and not being taken seriously except at election time, are also characterised by structural power asymmetry. The discussion below draws on such varied examples, both small and large scale.

In contexts of asymmetric conflict, when violence has broken out or threatens to in the near future, conflict resolution is appealing so as to reduce destructive behaviour, decrease tension, and prepare the ground for dialogue and joint problem-solving. However, as noted in chapter 3, with its focus on negotiation and cooperation, conflict resolution may then also play into the hands of the more powerful party, fortifying

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47 Since 2004, local protests have become widespread in South Africa, leading Alexander (2010) to speak of a ‘rebellion of the poor’. See also Atkinson (2007). On the emergence of a shack dwellers’ movement in Durban and the anti-eviction campaign in the Western Cape, see Pithouse (2006) and Miraftab/Wills (2005), respectively.
existing inequalities and serving as a tool for pacification. Supposedly impartial third-party interventions in unbalanced conflict systems – both latent and manifest – hence run the risk of being used or perceived as a means “for the oppressors to bring about limited change within the boundaries of the status quo” (Dudouet, Schmelzle, and Bloomfield 2006, 31).

Comments by two South African conflict resolution practitioners validate such concerns. Ghalib Galant for example notes that the question “peacemaking, at this juncture, is that the right thing?” has arisen for him in the context of intervening in service delivery protests in townships around Cape Town:

If we go in there, because people in Khayelitsha, they've blocked [the highway] yet again, and they're stoning the busses, and anybody coming in, cause they are now sick to death of the pit latrine that they had to live on, you know this dump, [...], the housing hasn’t been delivered, and and and – so they are now burning tyres in the street, stoning vehicles, and you go in, you rush in and you now get them into a [conflict resolution] process. Yeah, so that they don't square off the police and the police don’t fire water cannons, and what not – what are we actually doing there? These people have been living with this situation for sixteen years, so in terms of your process, are you now saying – well, okay, give us another five? [laughs cynically] That sort of situation for another five years – is that what we're about, as a conflict resolution person?

Likewise, Andries Odendaal, who helped to provide conflict resolution training to various audiences in Zimbabwe in the early 2000s, admits to having doubted these efforts later, when political change in the country was slow to materialise. Internally, he wondered whether “it wouldn't have been more relevant to help people in Zimbabwe become effective activists. [...] It is that thin line of whether we promote peace in peaceful ways, or promote peace by strengthening the oppressed”.

Consequently, at times, confrontation and mobilisation may be more appropriate than cooperation in addressing conflict and advancing human rights – or, as Galant suggests only half-jokingly, get ready for revolution, not resolution. Francis indeed notes that “it [is] not conflict that [needs] to be prevented but violence, and sometimes conflict [is] needed to bring about change” (2010, 6). She and others thus speak of the need to escalate or intensify conflict, to make it harder for ‘the powers that be’ to maintain their privilege. This means that strategies that become relevant in contexts marked by power asymmetry and structural injustices are different from those

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48 See 3.5.3.
49 Interview, Cape Town, 3 June 2011.
50 Ibid. Khayelitsha is one of the Cape Town’s largest townships, consisting of both formal houses and shacks.
51 Interview, Stellenbosch, 9 Jun. 2011. According to Odendaal, such comments are “an expression of the doubt that lives within [him], it is not [his] dominant position”.
52 Interview, 3 Jun. 2011. Sifiso Mbuyisa, senior civil servant in the Western Cape, concedes that demonstrations were needed to get the government to act on its rights obligations regarding service delivery; interview, Cape Town, 7 Jun. 2011.
usually associated with conflict resolution, namely ones that seek to challenge the status quo and exert pressure on the more powerful side.

LHR’s decision in 2010 to focus more on litigation can be seen in this light, as it was intended to compel the South African government to comply with its statutory obligations, rather to secure its cooperation through negotiation. According to Sheldon Magardie, the Manager of LHR’s Security of Farmworkers Project at the time, the government’s ‘intransigence’ has necessitated litigation to enforce dwellers’ rights in recent years:

There’s no dispute that [local government has] obligations. The Constitutional Court has declared that the state has a duty to engage meaningfully with people facing evictions. However, our experience is that [the state] is either not prepared to listen or they don’t care, [they] have no appreciation of the actual reality [of what it means to be evicted.] [...] The only time they respond is when we go to court – up to then we’re constantly ignored.55

Judith Robb Cohen from the SAHRC concurs that “the soft approach, the sort of conflict resolution approach, has not worked [in getting government to deliver on its rights obligations] [...] Litigation can be a very powerful weapon if used correctly.”56

Of course, strategies exist other than judicial ones that are similarly geared towards exerting pressure and confrontation, such as ‘the Gandhian tactic of ‘speaking truth to power’, mobilising popular movements, increasing solidarity, making demonstrations of resolve, establishing a demand for change” (Ramsbotham, Woodhouse, and Miall 2011, 25). While many of these constitute non-violent resistance (discussed below), other strategies may be less peaceful.

For example, the Nepali land rights movement was long internally divided on the use of violence to move the issue of land reform higher up on the political agenda after the 2006 peace agreement between the Maoists and the government. Many activists believed that the government would not listen to their concerns unless the movement were to use violence.57 In South Africa, many local protests have used militant tactics, often when peaceful methods have not solicited a response.58 Besides forcing non-nationals out of townships, these have included destruction of buildings, looting and clashes with the police; some protests reportedly reached “insurrectionary proportions with people momentarily taking control of their township” (Alexander 2010, 37).

54 See 7.1.1.
55 Interview 16 Nov. 2011, through skype; also discussed in interview 14 June 2011, Stellenbosch.
56 Interview, 10 Jun. 2011, Cape Town. As noted before, she founded the Security of Farmworkers Project at LHR.
57 Jagat Basnet, Jagat Deuja, Kalpana Karki from CSRC, written response to questions, translated by Mukunda Kattel, Nov 2011; also personal notes taken in workshop with CSRC activists, autumn 2007, both on file with author.
From both a human rights and conflict resolution perspective, adversarial strategies that are nonviolent are naturally preferable to destructive ones. Yet even then, intensifying conflict may well have drawbacks. In Nepal, for example, regular mobilisation and advocacy tactics used by political and social activists to buttress their demands – such as padlocking public offices with employees inside, or blocking traffic through a transport strike – tend to generate anger and irritation amongst the public at large and often make people in positions of authority reluctant to engage, all the more because they are used so frequently. In South Africa, local protests – including peaceful ones – have met with heavy-handed police responses at times, recalling images of apartheid. Sfard's assessment of lodging petitions before Israel's Supreme Court (2009), referred to in 7.1.1, points to a possible catch of judicial strategies in an asymmetric context – the risk that law and judicial institutions may prop up power more than they challenge it.

In general, confrontational tactics risk setting in motion an escalation in which the actions of opponents turn increasingly destructive, their resolve 'not to give in or give up' hardens, issues become defined in zero-sum terms, and enemy images consolidate. After all, those who benefit from the status quo will usually resent and resist demands for change. They may use various means to fend off challenges, such as conceding minor improvements, engaging in co-optation, sowing division, or embarking on intimidation and repression. All in all, strategies intended to confront and exert pressure, to force change to occur, may well increase polarisation and undermine prospects for dialogue and cooperation. Nevertheless, at some point, a process of dialogue will probably be needed to figure out a sustainable way forward.

The dilemma thus shows the tension between the need for escalation (to confront the status quo and induce willingness to change) and the need for de-escalation (to stop or prevent violence and induce cooperation). This is why it appears to put human rights and conflict resolution at odds, as human rights practices are generally more comfortable with (and inclined towards) confrontation, challenge, and critique – naming what is wrong and exerting pressure to force those abusing power to change – while conflict resolution is oriented towards cooperation and engagement – looking for common ground and negotiating interests to encourage willingness to change. Even so, the dilemma also touches on a resemblance between these fields, in that the above discussion alludes to the way in which both human rights and conflict resolution may end up sustaining conditions of power asymmetry rather than helping to change them, in practice.

60 See also 2.5.3, on the human rights field’s ambivalence towards power.
61 See the separate discussions on each field, 2.5.3 and 3.5.3, as well as 4.2.3.
However, the observation that the confrontation/cooperation dilemma suggests a contradiction as well as a similarity between the fields, provides no insight into how to address it. The above discussion highlights that confrontation and cooperation are both necessary in asymmetric conflict yet that neither is sufficient on its own. Thus, rather than presenting a clear choice between these imperatives, or between escalation and de-escalation, the dilemma exposes their interdependence. It brings to mind Martin Luther King's observation that "power without love is reckless and abusive, and love without power is sentimental and anemic" (1967).

This suggests that a balance between power and love, or confrontation and cooperation, must be sought rather than aggressively or exclusively pursuing one or the other (Van der Merwe 1989, 65-66; Kahane 2010, 54). How can actors seeking to advance human rights and address conflict approach this, given the seeming incompatibility of these strategies, and what are the implications for human rights and conflict resolution? These questions are explored in 7.2.2 and 7.2.3, respectively.

### 7.2.2 Possible Approach

The approach to the confrontation/cooperation dilemma outlined here draws on an analysis of the dynamics of conflict caused by ‘unbalanced’ or ‘unpeaceful’ relationships, initially conceived by Curle (1971) and later endorsed or adapted by many other authors. Reflecting the relevance of intensifying conflict, it calls attention to the evolution of asymmetric conflict over time and suggests that different strategies are needed at different times. Below, this approach is first presented conceptually in a simple diagram and then illustrated with reference to the Nepali land rights movement.

According to Curle (ibid) and others, conflict resolution – in terms of interest-based negotiation – is unrealistic and unsuitable in asymmetric conflict as long as power remains highly imbalanced. Meaningful negotiation can only occur when the groups involved realise that they cannot just simply impose their will on (or eliminate) the other side, and can only achieve their respective goals through working together. For this to occur, however, the weaker side must first increase its own relative power and obtain sufficient leverage to be taken seriously and make a difference to the more powerful side. Palestinian activist Zoughbi Zoughbi puts it as follows: "strengthen the weak and bring the strong to its senses" (as cited in Kahane 2010, 102). This requires in turn that ‘the weak’ become aware of the power imbalance and structural injustices affecting them, and that they organise themselves so that they can challenge the status quo and confront ‘the strong’. That involves awareness-raising or ‘conscientisation’ (Freire 1972) and mobilisation amongst ‘the weak’ so that they start

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63 The description in this paragraph and the next draws on the writings of Curle (1971) and those of other authors building on his work, listed in the previous footnote.
articulating grievances, which brings underlying tensions to the surface.\textsuperscript{64} Sustained confrontation makes it difficult for ‘the strong’ to “proceed with business as usual” (Dugan 2003, 2), and increases the cost of maintaining the imbalanced relationship. It also heightens the awareness of both ‘top dog’ and ‘underdog’ that they are interdependent. This is considered to help balance the power between them, and to open up the possibility for conflict resolution.

This analysis thus recognises that “the passage from unpeaceful to peaceful relationships may involve a temporary increase in overt conflict” (Ramsbotham, Woodhouse, and Miall 2011, 24). Curle in fact argues that “the greater the unbalance between the rulers and the ruled, and the sharper the conflict of interest, the greater the need for confrontation” (1971, 201). A simple diagram, as shown in Figure 2, captures this progression.

\begin{figure}[h!]
\centering
\includegraphics[width=\textwidth]{figure2.png}
\caption{Progression of conflict in unbalanced relationships}
\end{figure}

\textsuperscript{64} In asymmetric contexts, structural injustices may be so embedded that conflict is initially hidden or latent. Also, the ‘weaker side’ or ‘the oppressed’ may see the existing power imbalance as ‘natural’, due to culture, religion, or ideology, and thus fail to perceive a conflict of interest or needs with the dominant side. Hence conscientisation, mobilisation and empowerment become necessary in such contexts to challenge this state of affairs and counter engrained ideas about inferiority and lack of agency; see Curle/Dugan (1982, 23), Francis (2010, 183-184) and Gallo/Marzano (2009, 4-6).
It is of course possible to criticize the above portrayal. It is of course possible to criticize the above portrayal. In reality, asymmetric conflict does not progress in a neat and linear way from one stage to the next; there is usually “some cycling between successive stages of confrontation and negotiation” (Gallo and Marzano 2009, 5). Furthermore, confrontation does not always lead to meaningful negotiation, and negotiation does not necessarily result in restructured relationships and peaceful development (Lederach 1997, 66). This depiction further overlooks the fact that large-scale conflicts usually involve multiple issues, parties and sub-parties, and often consist of a myriad of smaller conflicts, which are likely to evolve at a different pace than ‘the overall conflict’ (Francis 2010, 182).

Finally, “equity and justice are not always served by increasing symmetry”, as Kriesberg points out with reference to small groups or organisations that advocate “extremely intolerant ideological, religious, or nationalist policies” that could “produce widespread disorder” and “destroy many lives and suppress opponents and resisters” if they were to gain strength (2009b, 5). The above analysis – with its bias in favour of evening out power imbalances and empowering persons and groups who are marginalised – is hence especially or mostly appropriate in contexts where those challenging the status quo are committed to human rights and eschew oppression.

In other words, the diagram only presents some ideas about reality, not reality itself (Francis ibid). Despite its limitations, the analysis is still useful for considering the confrontation/ cooperation dilemma, as it recognises the interdependence of these strategies. Van der Merwe thus observes, à la Martin Luther King, that “without coercion, negotiation deteriorates into cheap reconciliation; without negotiation, coercion becomes merely punitive and destructive” (1989, 115-116). As such, the analysis signals that conflict resolution’s traditional belief in negative peace as a precondition for positive peace, may be flawed in asymmetric conflict; in that context, working towards justice and equity is probably necessary for durable conflict resolution (Dudouet 2006, 18).67

The analysis further provides an insight into the possibility of balancing in practice what King (1967) referred to as power and love, by calling attention to the factor time. As Hampden-Turner has noted in another context, “what makes contrasting values seem so oppositional is that both are presented to us at one moment in time. In reality, time is used to mediate these contrasts” (as cited in Kahane 2010, 54). The analysis outlined above indeed points to “a temporal complementarity between cross-party dialogue facilitation and partisan advocacy work” in asymmetric conflict (Dudouet 2006, 54; Schirch 2006, 85-87); confrontational activism and advocacy may need to precede interest-based, dialogue-driven and cooperation-focused conflict resolution.68

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66 For visual images allowing greater complexity, see Francis (2010, 183) and Dudouet (2006, 18-22).
67 See 3.2 for an explanation of negative and positive peace.
68 Interesting in this regard are the findings of a quantitative study on the impact of (international) media coverage of violations on the intensity of large-scale violent conflict over time (Burgoon and others 2014). While
The experiences of the Nepali land rights movement and CSRC bear out the validity of this approach with its recognition of the relevance of conflict intensification and emphasis on preceding negotiation with activism and advocacy to level the playing field. The movement and CSRC have focused much attention on awareness-raising and mobilisation amongst landless Nepalis to help them demand respect for their rights and stand stronger in their interaction with landowners, government officials and politicians. In a society where caste discrimination and Hinduism have long been pervasive, many landless still believe that their plight is God-given rather than a social construction that privileges the upper castes. The ‘people’s organisations’ of the landless take various actions, including making detailed maps of land distribution in their area, and pressing for better working conditions with land-owners.

Beyond seeking to affect the power imbalance between owners and workers, land rights activists also make an effort to raise concerns and exert pressure more widely, at district, regional, and national level. They try to do so in a way that gets their message across and builds broader sympathy for their cause. They have therefore sought to refrain from the typical pressure tactics noted above – transport strikes, padlocking offices. Instead, they have made an effort to use creative means such as cycle rallies in district headquarters, marches of large groups of people ending with sit-ins in front of district administration offices or the Constituent Assembly, building cross-caste alliances, mobilising the media, and enabling local people to make claims on budgets set aside for agriculture and social services.

CSRC has tried to push the envelope in other ways, too, for example by undertaking land invasions during which temporary structures are erected on vacant land. After the first resulted in violent confrontation between activists and law enforcement officials, the organisation has planned them more carefully, with advance warning to the authorities, explaining the purpose to local politicians, and extensive briefing of activists about how to deal with official eviction efforts. Later land invasions have thus proceeded more peacefully, generating much publicity and debate at district level about the need for land reform without many negative ramifications.

CSRC has also contemplated using another adversarial tactic, namely compiling a database detailing land ownership amongst members of the Constituent Assembly to show how many politicians own land above the legal ceiling and to question their willingness to support land reform. It has, however, decided to suspend this for practical and strategic reasons. In the absence of a good land registry, gathering the necessary information would be very difficult, and the fallout from such outing of

recognising that ‘naming and shaming’ may at times hinder peacemaking (e.g. by sparking intransigence amongst parties, the study finds modest support for the hypothesis that human rights-focused media pressure helps to promote peacemaking; it seems to lower the intensity of conflict over time, measured as battle deaths. Such ‘naming and shaming’ may, inter alia, “embolden belligerent parties to make changes in human rights conditions that can serve to improve political legitimacy and stabilize social opposition in ways that promote peaceful transition” (idem, 2).
Assembly members could outweigh the benefits of upping the ante in this way and would probably harm lobby efforts on tenancy and land reform in the constitution-making process.\textsuperscript{69}

The land rights movement has thus tried to balance confrontation and cooperation, alternating between these approaches as it sees fit depending on the circumstances and specific objectives pursued. In its mobilisation and advocacy efforts, it has mostly used a moral approach to human rights (Chong 2010) although it has also sought to enhance the legal basis of rights claims pertaining to access to and ownership of land. The example of Nepal’s land rights movement thus reflects the relevance of a human rights-driven social movement “in which poor people become their own advocates” (Heywood 2009, 17), in effectuating a change of government policy and practice towards greater equality and dignity.

This discussion illustrates Lederach’s claim that it is possible to envision conflict “as an ecology that is relationally dynamic with ebb (conflict de-escalation to pursue constructive change) and flow (conflict escalation to pursue constructive change)” (2003, 33). Conflict resolution practitioner Chris Spies uses the metaphor of preparing food to convey a similar idea: “If the food is too cold, you’ve got to heat it up. If it is too hot, the food gets burned. So, make sure you’ve got the temperature at a level which will be able to feed you.”\textsuperscript{70} These images, and the discussion as a whole, highlight that there is much scope for empowerment, mobilisation and advocacy in efforts to address (latent or manifest) conflict in contexts marked by structural inequity and injustice – more so than may be generally recognised in the conflict resolution field (Parlevliet 2010a, 27).

\subsection*{7.2.3 Discussion}

The realisation that both pressure and negotiation are “proper and useful modes of action” (Van der Merwe, Hendrik W. 1989, 66) (Van der Merwe 1989, 66) in contexts of power asymmetry is likely to have implications for human rights and conflict resolution actors and practices. This section points out some implications for each field, while accepting that they may be relevant beyond that specific field and that there may be others that are not noted here. For conflict resolution, it highlights the importance of ‘staying with conflict’ (Mayer 2009), the value of the radical stance, the relevance of nonviolent resistance, and the possibility of reconsidering one’s general commitment to impartiality and providing support to ‘the weaker party’ (even if this may negatively affect one’s ability to perform an intermediary role at a later stage).

With regard to human rights, the section suggests going beyond the legal realm and recognising the power and potential of ‘community-based human rights advocacy’

\textsuperscript{69} Conversations with Jagat Basnet, Jagat Deuja, and Kalpana Karki, CSRC, 2007-2008; personal notes taken during workshop October 2007 and field visits; and correspondence, November 2011 (all on file with author).

\textsuperscript{70} Interview, 9 June 2011, Stellenbosch. Spies notes that this metaphor is based on the work of Mark Gerzon.
Chapter 7

(Heywood 2009, 19). It points to the relevance of engaging with those in positions of power, and of shifting between power-, rights-, and interest-based approaches to conflict. It further raises questions about the style and tone of advocacy used. These two sets of implications are set out below, with reference to practical examples, comments from interviews, and/or literature. At the end, one general implication is noted.

Implications for conflict resolution

The discussion thus far lends credence to Mayer’s appeal that, when addressing entrenched conflict, ‘conflict specialists’ should focus less on resolving conflict and more on “helping people to engage constructively at all phases of the conflict process” (2004, 120). Shifting from resolution to engagement requires being willing to ‘stay with conflict’, and reviewing the suitability of specific roles and strategies at different times (idem, 182-185; 2009). This brings to mind a ‘contingency approach’ to third-party intervention, which matches various strategies to different stages of escalation and de-escalation of conflict (e.g. Fisher and Keashly 1991; Fisher 2011).

The discussion also supports the claim that nonviolent resistance is a necessary complement to conflict resolution given the “need to incorporate constructive methods of waging a structural struggle into the repertoire of peace-making techniques” (Dudouet 2005, 12). Including nonviolent protest, non-cooperation and intervention (Sharp 2005, 44), such nonviolent resistance constitutes a response to the challenge of how to wield power in politics effectively (Dudouet 2011, 243). It “magnifies existing social and political tensions, by imposing greater cost on those who want to maintain their advantages under an existing system” (idem, 241). Of course, nonviolent resistance is more suited to some circumstances and stages of conflict than to others (idem, 259). Nevertheless, recognising its limitations does not undermine the point that conflict resolution could benefit from paying more attention to nonviolent resistance and social mobilisation. While these domains have long been separate and there is some tension between them, this is not insurmountable and there is much scope for cross-fertilisation.

The notion of conflict intensification further sheds light on what could be called the ‘value of the radical stance’. A comment from conflict resolution practitioner Undine

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71 See also Francis (2011, 2010), Lederach (1995) and Van der Merwe (1989). Nonviolent resistance differs from pacifism in that it entails direct political action; pacifism is an ethical principle about eschewing the use of physical violence that does not necessarily involve such action (Dudouet 2011, 241, n. 3)

72 Nonviolent protest entails demonstrations and advocacy; nonviolent non-cooperation includes strikes, boycotts, and civil disobedience; and nonviolent intervention disturbs “the normal operation of policies or the system by deliberate interference, either psychologically, physically, socially, economically, or politically” (Sharp 2005, 44).

73 See e.g. Dudouet (2005), Ramsbotham and others (2011, 42), Francis (2011) and Lederach (1995). See also Roy and others (2010), who focus on cross-fertilisation between conflict resolution and social movement scholars.
Whande illustrates this. She observes that working with a human rights NGO in Zimbabwe has taught her that,

There's something about occupying a more radical position – knowing that you may not get it, but that you have to be off the centre so that the centre can possibly open up. I've got increasing appreciation for the way in which [human rights defenders] allow things to move at times, by sticking to a certain stance, by not moving from a position – which is really unfamiliar to someone who's learned to go beyond positions.74

The 'radicalism' of the stance related more to the way in which the NGO held on to its position rather than to the substance of that position; irrespective of political developments, the organisation continued to insist on the need to respect human rights, ensure accountability, fairness and transparency in governance, curb the excessive power of the executive, enhance civilian control over the security forces, and address impunity. Apparently, at some point a group of civil society activists involved in a confidential dialogue process with senior military officials about the country's future appreciated the NGO's stance in a similar way: they consciously decided not to ask its director to join the process, feeling that the organisation's 'naming and shaming' might do more to move the dialogue forward than the director's direct participation in the process could.75

Such 'anchoring' by human rights actors – taking a position and refusing to budge, so that any compromise will have to come from the state rather than from those monitoring or advocating human rights compliance (Babbitt 2009a, 617) – is often frowned upon by conflict resolution practitioners. They tend to consider such zero-sum bargaining strategies as counterproductive, fearing that it may lock parties into a process of demand-driven negotiation prone to generating deadlocks (ibid). Yet the example suggests that it can serve a purpose over time. This implies that it may be useful for conflict resolution to gain more appreciation for the value of the radical stance, however risky and uncomfortable it may feel.

The confrontation/cooperation dilemma also has implications for conflict resolution's emphasis on impartiality. As Babbitt notes, power asymmetry presents "a conundrum for the conflict resolution practitioner who recognises that social justice requires creating a more level playing field, but who needs to maintain evenhandedness to remain credible" (2009a, 619). In particular, it raises the question whether and when it might be appropriate for such practitioners to depart from their general stance of impartiality and 'side with the weaker party', as Van der Merwe puts it (1989). This flies in the face of those who argue that activism or advocacy cannot be considered part of conflict resolution since the latter precludes working exclusively with one party, given the need for impartiality (e.g. Fast 2002, 537-539).

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74 Interview, 6 June 2011. The phrase ‘going beyond positions’ means focusing on underlying interests instead of on the stated demands. For an explanation of the ‘positions/interests’ terminology, see 3.2.

75 Informal conversation, Undine Whande, 10 February 2011; confirmed in conversation with an international conflict resolution practitioner based in-country who supported the process, name withheld at request, February 2011.
My experiences in South Africa and Nepal however lead me to concur with others who assert that conflict resolution practitioners should go beyond neutrality (Mayer 2004) or consider how to incorporate advocacy in their work (Babbitt 2009a). This is also in line with the normative nature of conflict resolution, as observed before. At times, it makes sense from a conflict resolution perspective to focus one’s efforts on ‘strengthening the oppressed’ and support activism and advocacy. In Nepal, for example, in the post-peace agreement context, it seemed most appropriate to help land rights activists explore how they could connect their drive towards land reform and social justice to larger political developments in the country, such as drafting the constitution and the overall peace process. I also helped them to integrate insights and tools from conflict resolution into their activities, such as analysis of conflict dynamics and parties, communication skills, interest-based negotiation, etc.

Such ‘traditional’ aspects of conflict resolution turned out to be surprisingly useful despite the activists’ concern with challenging the status quo. This related to tensions within the movement, and to activists’ interaction with people outside the movement, which corresponds with research by Roy and others (2010); they observe that conflict resolution ideas and practices can assist social movement organisations in managing internal conflict dynamics around culture, power, doctrine and approach, as well as in making negotiation strategies with adversaries more effective (idem, 351-355). In Nepal, we thus examined patterns of communication and how they played out in the movement, considered different forms of power and how they manifested in various arenas, and used relationship-mapping (e.g. Fisher and others 2000) to discern how to strengthen bonds between different groups of activists. We assessed opportunities for engaging with those deemed more powerful at various levels of society, the impact of existing enemy images on such efforts, and how to deal with such perceptions.

In this process, I also queried the land rights activists on the adversarial style they used as a matter of course in interacting with landlords, politicians and public authorities – not to downplay the importance of confrontation but to help them reflect on when and how they deployed it. According to three CSRC leaders, this prompted many activists to realise “the benefits of a nonviolent movement and the losses of a violent one” in terms of "producing more enemies than friends." More reflection

76 Internal tensions stem from the fact that the land rights movement encompasses people from many different (cultural, ethnic and caste) backgrounds; also, local authorities at times try to ‘play off’ different landless groups against one another, for example by settling freed kamaiyas (bonded labourers) on land previously promised to other landless people in the area. Personal communication with Jagat Deuja and Kalpana Karki, and interactions with landless groups during field visits, 2007/2008; also correspondence, November 2011, on file with author.

77 According to Roy and others, social movements often experience internal problems of inequality, and activists’ intensive dedication (and associated burnout) can also cause conflict in progressive organisations (2010, 352-353). See also Merry and others (2010) on tensions arising within New York-based women’s and human rights movements.

78 Correspondence from Jagat Basnet, Jagat Deuja, and Kalpana Karki, with translation by Mukunda Kattel, Nov/Dec 2011; also personal notes taken during workshop in October 2007; both on file with author.
ensued about ends and means, the possible ramifications of various actions, and opening the door to de-escalation (cf. Mayer 2009, 172-178). As a result, few in the movement support the use of violence nowadays; nonviolence has become a conscious “strategy to create moral pressure. [It] does not allow people in authority not to react to the issues before them, and does not allow pretences to be cooked”.\footnote{Ibid. CSRC’s homepage contains a strong commitment to non-violence nowadays; see http://www.csrcnepal.org/.}

Thus, conflict resolution does not become irrelevant in contexts of power asymmetry even as conflict is intensified. Yet its focus may shift – from facilitating resolution of issues between opponents to assisting individuals and groups constituting the ‘weaker party’ to engage effectively in conflict; conflict resolution practitioners then serve, for example, as coaches, advisers or strategists, rather than as facilitators or mediators (Mayer 2004, 117-120; also Dugan 2003, 7). It is important to note that such a shift to a more political engagement in support of one party may reduce practitioners’ ability to play an effective intermediary role in future. After all, it will probably generate perceptions of bias, making it difficult to reach out to others and facilitate dialogue later on as an ‘impartial’ intervener.\footnote{See e.g. Fast (2002, 37-541), Meijer (1997) and Mitchell (1992); see also the discussion on role tensions in 7.4.}

**Implications for human rights**

Clearly, the adversarial strategies highlighted before are likely to come more easily to human rights actors than to conflict resolution practitioners, given the latter’s impulse to calm matters down rather than stir them up (Dudouet 2006, 57-58; Dugan 2003, 7). Beyond that, while the above recognises the power of human rights as law, it also highlights the need to go beyond legal strategies when confronting structural injustice. What Heywood calls ‘community-based human rights advocacy’ (2009, 19) is a powerful tool in effectuating a change of government policy and practice towards greater equality and dignity.

This is not to deny the significance of judicial approaches as ‘peaceful change strategies’ (Dugan 2003). LHR’s strategy shift referred to in 7.2.1 shows their relevance in contexts where power is imbalanced and tensions are latent. The experience of the South Africa-based Treatment Action Campaign (TAC) also shows how effective litigation can be in “getting governments to do their duties” (Heywood 2009, 19). TAC has fought several “highly publicized and rightly celebrated judicial victories” (Greedy and Phillips 2009, 8) in its lengthy conflict with the South African government about access of persons living with HIV/AIDS to life-saving medication.\footnote{The TAC (together with the AIDS Legal Project) has undertaken constitutional litigation on five matters, including on rolling-out anti-retroviral treatment and profiteering by multinational pharmaceutical companies (Heywood 2009, 20-23). Its first victory was in 2002, when the Constitutional Court ordered the government to provide antiretroviral drugs to pregnant women to prevent transmission of the virus to their babies during birth (Constitutional Court of South Africa, Treatment Action Campaign & Others v. Minister of Health & Others, CCT 8/02).}
Even so, Heywood notes that “the litigation was not left to lawyers, but used to strengthen and empower a social movement, and backed up by marches, media, legal education and mobilisation” (2009, 22). Pointing to the limitations of what he refers to as “abstract denunciations of justice, however true they may be” (idem, 20), he argues that pressure around rights is more likely to be accelerated through a social movement in which poor people have learned “how to articulate human rights” and “how to apply them as demands in relation to specific social and political issues” (idem, 17). While the right to health may be recognised in international treaties, national constitutions and jurisprudence, community activists can only use it effectively when they can connect it to issues of law, politics, and governance, and have a deep understanding of health itself (ibid).

Heywood’s emphasis on combining social mobilisation, litigation and negotiation in confronting justice and inequality is all the more important when considering that, in many societies experiencing or emerging from violent conflict, activists are unable to take advantage of the law and legal systems for various reasons. In such contexts, referring to rights and international standards remains relevant – it has a symbolic and legitimising function and can help to generate international pressure for change – but banking on a legal approach that requires a functioning judicial system and professional human rights advocates is not enough.

This is also because the existing judicial system and legal framework may sustain structural injustices, as we have seen. It then is vital “to build capacity to pursue human rights entitlements directly among the poor and to catalyse a political movement” (ibid) for change in a particular area, be it health (in the case of TAC), land reform (CSRC), or something else. The combination of a legal approach and broader mobilisation and awareness-raising centring on rights as moral and political claims has been considered effective elsewhere too (Merry and others 2010, 123; Roy, Burdick, and Kriesberg 2010, 356; Dugan 2003, 6).

Another implication of the previous discussion is that effectuating change requires constructive engagement with the powerful at some point, however important the “escalation and articulation of conflict” (Roy, Burdick, and Kriesberg 2010, 354) and however necessary the empowerment of the powerless may be. After all, they “are the ones who must either agree to changes required for peace, or support (or not oppose) the systems to sustain peace and justice” (Chigas and Woodrow 2009, 52). This may be easier said than done, given the ‘singleness of purpose’ associated with advocacy and activism (Fast 2002, 537). Also, for many human rights organisations ‘the instinct is to back off’ when a state asks them to get involved in shaping policies or reforming

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82 See 2.5.1 on the limitations of law and legal systems relating to access, effectiveness, legitimacy, and implementation.
83 Both Dugan (2003) and Roy and others (2010) refer to the 1955 Montgomery bus boycott by way of example. Others point to the way in which anti-apartheid activists combined legal interventions and social mobilisation during the struggle against apartheid (e.g. Handmaker 2009, 187; Achmat 2004; Abel 1995).
institutions that do not respect rights so as to not compromise on their principled approach. Yet this urge is probably more present amongst international human rights actors than domestic ones; constructive engagement with ‘the powers that be’ is hence not impossible (Putnam 2002; Vuco 2002).

Both the South Africa-based Treatment Action Campaign and the Nepali land rights movement are cases in point. The former has not demonised the South African state despite being at loggerheads with it. It has engaged in civil disobedience and broken the law where it deemed laws unjust and has constructively developed plans and policy proposals when it anticipated that such a strategy would yield results (Gready and Phillips 2009, 8; Heywood 2009; Sleap 2004). In fact, Friedman and Mottiar point to the TAC’s “tactical flexibility” as an important asset in its effective action for equity (2005, 553). In Nepal, CSRC and land rights activists more broadly have started to pay more attention to interacting frequently and constructively with national and local government officials, without compromising on their advocacy. In doing so, they seek to enhance the officials’ understanding of the need for land reform and to obtain their collaboration in practical matters such as data collection, tenant registration and nonviolent evictions.

In other words, ‘education’ or ‘conscientisation’ as envisioned by Curle (1971) and Freire (1972) cannot be confined to the powerless only. In South Africa, raising awareness of the ramifications of apartheid for stability and prosperity amongst “external or internal supporters of the top dog” weakened the regime considerably (Ramsbotham, Woodhouse, and Miall 2011, 25). The various examples above also point to the need to develop a differentiated understanding of power-holders, instead of perceiving them as generally problematic and monolithic (Fisher and Zimina 2009b, 100). It further underscores the importance of appreciating the strengths and limitations of power-, rights- and interest-based approaches, previously discussed in relation to LHR. Being able to shift between these approaches and assess their relative relevance at a given point in time is a valuable competence for actors seeking to advance human rights in situations of power asymmetry.

Finally, the above raises questions about the style and tone of advocacy about issues of rights and justice. Since realising human rights generally requires cooperation from others (whether grudgingly or willingly), it is helpful if people can talk about, defend and present their right claims in a way that makes such cooperation more, not less, likely. Over the years, it has struck me that rights claims are often presented as positions, i.e. what a party wants or believes should be done. This easily triggers a

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84 Interview, Ingrid Massage, 11 November (through skype). She has long worked in the human rights field for both international (Amnesty International, OHCHR) and national organisations (eg. the Nepali NGO Advocacy Forum).
85 Also confirmed by Ingrid Massage, see previous footnote.
86 Personal communication with activists from CSRC, June 2008-February 2009; also confirmed in written comments by Jagat Basnet, Jagat Deuja, and Kalpana Karki, November 2011, with translation by Mukunda Kattel.
87 See 5.1.3.
defensive reaction as it increases recipients’ perception of a threat and tends to reduce their receptiveness to the rights claims being made. At times it may therefore be useful to consider a less adversarial and more confidence-building approach to human rights advocacy in which rights claims are framed in terms of the underlying needs and interests of various groups or parties. This allows human rights actors to convey the importance of realising human rights without resorting to ideal or categorical statements that rights must be protected, in line with Heywood’s concerns about ‘abstract denunciations of justice’ noted above (2009, 20). It is a strategy geared towards rights protection and social change that tries to combine challenging the status quo and a problem-solving orientation (Parlevliet 2010a, 30-31; 2002, 32-34). 

This is not to deny the value of the radical stance outlined before or to downplay the relevance of confrontation, but to suggest that these can be communicated in different ways, with more or less respect for self and others, including adversaries. It points to the need to develop a sophisticated approach to advocacy and activism, one that facilitates the articulation of “strongly held views and feelings without losing sight of the humanity of others” (Mayer 2004, 132), and that recognises how “different kinds of pressure might favour different types of outcome” (Roy, Burdick, and Kriesberg 2010, 354). Such consideration for one’s adversaries can help to contain escalation and steer a power exchange in a more productive direction (Mayer 2009, 175).

A last, general point worth noting is that this take on conflict resolution and human rights, flowing from the confrontation/cooperation dilemma and the ‘ebb and flow’ of asymmetric conflict (Lederach 2003, 33), may prompt questions about the commitment of social activists, rights advocates, and/or conflict resolution practitioners to ‘do no harm’ or be ‘conflict sensitive’. Nepali land rights activists often faced such questions from donors and others who feared that the movement’s efforts to empower and mobilise marginalised people would exacerbate local tensions. As a district coordinator from the land rights movement rightfully noted, landlords and other authority figures considered their activism and advocacy by definition as ‘harm’, since ‘it creates trouble’. In response, he asked “But if we don’t do so, surely that does much more harm? That would just maintain the social injustice that exists.”

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88 See also 7.4.3. The notion of a confidence-building or less adversarial approach to rights advocacy draws on the distinction between positions and interests (e.g. Fisher and others 2012) and on Nathan’s argument about the relative strengths and weaknesses of a power-based approach to mediation (1999), which relies on coercion or leverage to obtain the cooperation of parties yet also hardens their resistance and generates resentment against solutions imposed on them. See also Fisher/ Keashly (1991, 33) on the distinction between ‘mediation with muscle’ and ‘pure mediation’.

89 Also relevant here is Augsburger’s notion of ‘carefronting’ (1973), which means confronting others with respect for self while also conveying care for others.

90 See 3.1, for an explanation of ‘do no harm’ and ‘conflict sensitivity’, notably fn. 8.

91 Personal notes, taken at workshop October 2007 with 35 land rights activists, Bhaktapur.
Thus, notions like ‘conflict sensitivity’ and ‘do no harm’ should not hold actors back from undertaking or supporting initiatives that challenge a status quo worth challenging or to shy away from raising critical, justice-related issues in a local context, even if this risks feeding into existing divisions. Instead, such notions raise the question of how to challenge vested interests in a constructive and strategic way, without provoking a repressive or violent response – or rather, with a view to the possible ramifications of one’s actions and the aims pursued. They also point to the need for careful analysis, so that the actors involved can anticipate resistance or outright conflict that may be triggered and contemplate in advance how they will deal with it (Parlevliet 2010a, 29-30; also Wallace 2013).

7.2.4 In Sum

This section has considered the dilemma of emphasising confrontation or cooperation when seeking to address conflict and advance human rights in contexts of power asymmetry. It has argued that both are important and necessary strategies in such settings but that, given their respective strengths and limitations, neither is sufficient in its own right. While confrontation challenges the status quo and increases pressure on power-holders to force them to change, it also tends to exacerbate polarisation and reduce willingness to seek joint, mutually acceptable, solutions. Meanwhile, pursuing cooperation through negotiation may well de-escalate tension and stop or prevent violence, but risks consolidating existing injustices and serving as a tool for pacification.

It has thus been argued that there is often a need for confrontation and cooperation, advocacy and negotiation, escalation and de-escalation when power is structurally imbalanced and injustices are engrained. As such, the dilemma can be best understood in ‘both/and’ rather than in ‘either/or’ terms; it highlights the interdependence of confrontation and cooperation in asymmetric contexts – or what Kahane calls “the essential complementarity of power and love” (2010, 8), following King (1967). This is not to deny that these strategies may be perceived as incompatible at times. After all, actions intended to exert pressure and confront the status quo – advocacy, nonviolent resistance, mobilising marginalised people – are often experienced as increasing tension between opponents, while others – mediation, dialogue facilitation, negotiation – are seen as reducing it.

However, the discussion here suggests that “the longer-term progression of conflict towards increased justice and peaceful relations must integrate and view these activities as necessary and mutually interdependent in the pursuit of just change and peaceful relations” (Lederach 1995, 15; Schirch 2006, 87). Time has indeed surfaced as an essential factor; confrontational advocacy and activism may need to precede cooperation-focused dialogue facilitation in asymmetric conflict so as to address power imbalances between opponents before negotiation takes place. As Van der Merwe notes, “this approach cuts across the false but popular notion that negotiation
and coercion are contradictory and mutually exclusive. [...] We do not have a choice between negotiation and coercion. We must strive to achieve a balance between them” (1989, 65-66).

All in all, the section generates some valuable insights about the relationship between human rights and conflict resolution. Firstly, it points to a temporal complementarity between the former’s adversarial tactics and the latter’s cooperative tactics. This complementarity may mostly emerge in the long term, as the two approaches can seem contradictory at a specific moment in time. Nevertheless, they can be understood as interdependent rather than mutually exclusive, which highlights a challenge of combining and navigating potentially contrasting impulses and imperatives on an on-going basis. This, in turn, draws attention to the inherently dynamic nature of the interplay between human rights and conflict resolution, which corresponds with various examples set out in this and previous chapters.

It has further become clear that the continuous (yet non-mechanical!) alternation of pressure and engagement that is necessary in contexts of power asymmetry may require human rights actors and conflict resolution practitioners to leave their comfort zone – or at least gain appreciation for methods they are less familiar with and recognise that different tactics may be needed at different points in time. For conflict resolution actors, this involves recognising the validity of intensifying conflict (and of ‘the radical stance’) and reconsidering their usual take on impartiality; for human rights actors, this may entail combining legal and moral approaches to human rights and engaging with the powers that be to a greater extent than is common.

That said, combining such diverging tactics and performing different functions is probably easier said than done; as Heywood notes, the space between cooperation and confrontation can be a difficult one to occupy for one and the same actor (2009, 29). The next section will look more closely at the question of combining different roles.

7.3 To Facilitate or Advocate? Dealing with Role Tensions

This section builds on the previous one by focusing on the tension individuals or organisations may experience when trying to combine advocacy and facilitation roles: the dilemma of being, in Van der Merwe’s terms, a prophet or a peacemaker (1989, 3). This appears to pit human rights approaches against those of conflict resolution, making them seem truly incompatible. While the literature asserts that these roles should not be combined, this section observes that at times actors end up performing both roles simultaneously. It further notes that they then find different ways to manage the tension between what the Manicaland Churches called their ‘affirming’
and ‘condemning’ functions.\textsuperscript{92} It thus argues that this role combination cannot always be avoided in practice, and is not necessarily experienced as highly problematic.

As before, the section first outlines the dilemma with reference to practical experiences and literature; it also clarifies the terms used (7.3.1). It then describes how the Manicaland Churches in Zimbabwe and Nepali human rights organisation INSEC sought to make their various roles ‘hang together’.\textsuperscript{93} This highlights the importance of reflection, and framing and clarifying roles; it also points to the possibility of devising an internal division of labour or identifying other roles that allow for a way around the facilitator/advocate tension (7.3.2). A subsequent comparison of the experiences of CiM and INSEC sheds light on some factors – both contextual and organisation-related – that appear to affect the feasibility of combining advocacy and facilitation (7.3.3). The last sub-section sums up the discussion, including insights gained about the human rights/conflict resolution relationship (7.3.4).

\textbf{7.3.1 The Dilemma}

It will have become clear by now that different strategies and approaches are often used to advance human rights and to address conflict constructively. It has been observed that these need not be contradictory or mutually exclusive and that they can actually complement or strengthen one another. Nevertheless, when individuals or organisations are trying to resolve conflict and protect and promote human rights at the same time, they are likely to encounter some friction between two primary roles associated with these pursuits: those of ‘facilitator’ and ‘advocate’. The difficulty of one actor combining these two roles is well established in the literature, especially in the conflict resolution field (e.g. Dudouet 2005; Fast 2002; Arnold 1998b). This first sub-section explains what these roles entail and why the combination is considered so challenging. It points to the resulting emphasis in the literature on ‘role clarification’ and ‘role integrity’, and refers to some examples previously discussed by way of illustration.

The Oxford Dictionary defines ‘advocate’ as “a person who publicly supports or recommends a particular cause or policy; a person who puts a case on someone else’s behalf”.\textsuperscript{94} Mayer identifies three key features in the advocate’s role, namely representation, empowerment and substantive focus: an advocate focuses on advancing client interests in a specific substantive area, and provides ‘power, leverage, voice and wisdom’ to this end (2004, 250-251). He also refers to legal academic Anthony Kronman, who notes that an advocate’s duty is ‘not to define the

\textsuperscript{92} The terms ‘affirming’ and ‘condemning’ roles stem from email correspondence from Rev. Shirley DeWolf, Steering Committee member, 2 Dec. 2002, on file with author.

\textsuperscript{93} Expression used by Rev. Shirley DeWolf, correspondence, September 2011, on file with author.

\textsuperscript{94} See http://oxforddictionaries.com/definition/advocate?q=advocate.
collective well-being’ of all those involved, but ‘to get as much as s/he can for his client’ (ibid).

Taking note of the dictionary definition, this notion of ‘getting as much as possible’ can also apply to the specific cause or policy an advocate espouses. This is relevant in the context of human rights work, where a cause – the fight for human rights and justice – is as important as safeguarding the interests of ‘clients’, i.e. victims of human rights violations, and persons at risk of being subjected to abuse. In this context, acting as an advocate is also associated with publicly denouncing violations, and mobilising public pressure to bring about changes in behaviour, policy or legislation – referred to previously as ‘naming and shaming’.95

The Oxford Dictionary definition of ‘facilitator’ is “a person who makes an action or process easier”, while the Merriam-Webster dictionary adds that s/he does so “by providing indirect or unobtrusive assistance, guidance, or supervision.”96 Cheldelin and Lyons refer to a commonly used definition of ‘facilitation’ in the conflict resolution field, which is ‘assisted negotiation’ (2008, 319). Other definitions focus on bringing parties together, assisting with the communication between them, enabling a fruitful exchange of visions, aims and versions, guiding the process, and remaining neutral to solutions (idem, 320; also Mitchell 2011, 20; Arnold 1998b, 15-17). The field considers ‘facilitator’ and ‘facilitation’ as more flexible terms than ‘mediator’ and ‘mediation’, which refer to a clearly delineated process and focus on achieving a concrete outcome. By contrast, a ‘facilitator’ acts in a broader range of processes, and focuses more on aiding the process of dialogue than on obtaining resolution (Cheldelin and Lyons 2008, 319; Van der Merwe 1989, 95).

The explanations thus far show that the facilitator and advocate’s roles differ in several ways. This helps to explain the challenge involved in combining the two. The advocate’s role is essentially partisan in nature, seeking to advance specific interests, while the facilitator’s role is meant to be non-partisan, and to consider the interests of all parties. Moreover, while an advocate can be very adversarial – this role requires readiness to speak out in public and take a strong stance – the facilitator is inclined to use a more collaborative style, operate out of the limelight, and to refrain from publicly criticizing parties.

Impartiality, which matters a great deal to both roles, tends to mean something different for them – either objective application of standards and championing a certain cause across the board (advocate) or even-handed treatment of all parties and not promoting any one party’s interests (facilitator) – due to which a facilitator may perceive an advocate’s impartiality as partisan and vice versa.97 The two roles thus

95 See 2.4
96 For Oxford, see http://oxforddictionaries.com/definition/facilitate?q=facilitator#facilitate__4; for Merriam-Webster, see http://www.merriam-webster.com/dictionary/facilitator.
97 The different meanings of impartiality are derived from Babbitt (2009a, 619); see also 4.1.3.
typify many of the differences that set the human rights and conflict resolution fields
apart – prompting some to argue that these roles operate on “fundamentally
contradictory principles” (e.g. Arnold 1998b, 16).98

Given the different styles and tasks required from prophets and peacemakers, various
authors warn against any one person or group performing both roles simultaneously,
noting that this can cause, for example, ‘severe tension’ (Van der Merwe 1989, 3) and
‘serious confusion’ (Meijer 1997). They accept that actors can play multiple
intervention roles in a given context, but assert that shifting between facilitator and
advocate’s roles is particularly difficult, if not impossible; what Mayer calls ‘third-
party’ and ‘ally’ roles do not go well together (2004, 221; also Fast 2002, 537).99 He
thus argues that the challenge is establishing “role clarification from the outset and
then maintaining a boundary between those roles” (idem, 240). Arnold speaks of the
need to maintain ‘role integrity’, which means ensuring that actors that perform
multiple intervention roles do not assume contradictory ones. In his view, failure to do
so undermines interveners’ ability to perform their functions effectively:

For example, one of the characteristics of the role of a third-party facilitator is
impartiality. If the facilitator is also seen as an advocate or patron for a party to the
conflict, other parties may feel the process is biased. There are other role combinations,
such as enforcer and reconciler, which can compromise an intermediary’s credibility or
continued participation. [...] It becomes necessary for interveners to find ways to decouple
actors from roles, which create dissonance for them or the parties (1998b, 16-17,
emphasis added).

Several examples recounted thus far are relevant to this discussion. At least two
reflect a desire on the part of conflict resolution practitioners not to mix seemingly
incompatible roles and ensure role integrity; in both instances, they invited another
actor into the process to perform a certain role that they deemed necessary but did
don not want to assume themselves so as to avoid a perception of bias. In the Du
Noon/Doornbach intervention, my CCR colleagues and I requested an information
officer from the South African Human Rights Commission to provide an information
session on the rights of non-nationals in South Africa.

In the school case, conflict resolution practitioner Ghalib Galant asked the regional
Education Department to brief the parties involved in a conflict at a township school
on the relevant legislation and human rights standards.100 The division of labour thus
established did not jeopardise the facilitators’ credibility and impartiality in the eyes
of the conflicting parties in the two cases – which the practitioners considered a risk
even though the additional function did not constitute outright advocacy but focused

98 See differences discussed in 4.1.3 and overview provided in 4.1.4, respectively.
99 Within the conflict resolution field, several authors have come up with typologies of intervention roles; besides
100 See 5.2.3 and 5.2.5 respectively.
on education instead. This is not unreasonable, given that the substance of such awareness-raising could be easily construed as being in favour of a certain party. For the Churches in Manicaland, however, 'role trouble' (Curle 1989, xiv) was far harder to avoid. As discussed in 6.1, clergy from this network experienced friction between their facilitator and advocate’s roles, also called their ‘affirming’ and ‘condemning’ roles. The more outspoken and active they were in the latter capacity, the more it affected their ability to act as facilitator because their impartiality was called into question by those with whom they engaged. Yet their facilitation of dialogue between a wide range of actors – which included reaching out to confirmed or suspected perpetrators of abuses – led to pressure to stand up more for justice. This created confusion within CiM, as some members prioritised one role while others focused on the other. Confusion ensued outside CiM too; the public at large and actors involved in the conflict (such as youth militia, war veterans, intelligence operatives, politicians from the ruling party, and opposition politicians) had trouble reconciling CiM’s different modalities.

Yet ‘decoupling’ these roles, casting one aside or transferring it to another actor in the local context, to establish role integrity as suggested by Arnold (1998b), was easier said than done. For CiM, both were integral to the church’s mission. According to Rev. DeWolf, a steering committee member, it was therefore not a matter of making “an either-or decision with regard to roles that appear to be in conflict”. Rather,

[W]ithin the church the potential conflict in diversity of roles must find a way to hang together and form a whole that the public can understand. There is always a tension here for the church - it is built into our nature and our work. [...] The binary-thinking public often doesn’t often understand this complexity and wants the church to come down either one way or the other without variety – so we [also] have to grapple with another tension, that of viewing the church from the outside and viewing ourselves from the inside.

The CiM case thus confirms the difficulty of one and the same actor playing both facilitator and advocacy roles, but also highlights that avoiding this combination is not always possible.

Another example, from Nepali human rights organisation INSEC, also demonstrates the latter point. Human rights field workers from INSEC served as facilitators at grassroots-level during the 10-year civil war between Maoist rebels and the state, without toning down or giving up on their human rights advocacy. Meanwhile, their activism did not prevent them from being effective facilitators when negotiating with combatants on both sides to assist in the release of abducted or arrested individuals, to relieve a community from being targeted by both sides, or to ensure that schools

101 It is for example likely that the South African residents of the informal settlements would perceive awareness-raising on the rights of non-nationals as being beneficial to non-nationals and/or implying support for them.

102 Email correspondence, 20 September 2011, on file with author.

103 Ibid, emphasis added.
were respected as ‘zones for peace’. Role trouble and confusion seems to have been less of an issue for this organisation and its staff members. This raises the question whether combining the roles of facilitator and advocate is invariably experienced as problematic, as implied above.

The CiM and INSEC examples thus illustrate that combining seemingly incompatible roles is sometimes the reality for practitioners on the ground, requiring them to deal with it in some way (e.g. Mayer 2004, 240; Van der Merwe 1989; Laue and Cormick 1978, 216). How did they do so?

7.3.2 Possible Approach

CiM and INSEC used different strategies to address the actual or potential tensions between their facilitator and advocate’s roles. Churches in Manicaland focused on reflection and role clarification as a way of grappling with the dilemma, and identified other relevant roles outside this dualism that provided additional scope for manoeuvre. Within INSEC, a division of labour evolved, and the organisation framed its facilitation role and advocacy messages carefully. Below, these different strategies are described, with CiM’s approach being discussed in more depth than INSEC’s. A few references to interactions with other actors are also included, to support points made.

Once CiM had pinpointed its role trouble as something it wanted to come to grips with, its first step was to explore the various roles played by clergy involved in the network. The hope was that this would help CiM members to understand the nature of some of the tensions experienced and provide some insight into ways of dealing with them. To this end, they used an exercise I had designed with the help of six persons from CiM who served as my co-facilitators and as a sounding board for gatherings with the network.

Rather than focusing solely on the facilitator and advocate’s roles, it highlighted five ‘archetypical’ roles regularly performed by CiM members, so as to reflect CiM’s reality and functioning more fully. These were linked to Jesus, to root the exercise in the clergy’s context and enhance its accessibility: Jesus as one who prays (seeking spiritual guidance and intervention, but not taking any concrete actions oneself); as prophet (advocating for what is right, denouncing what is wrong); as pastor (facilitating dialogue between different parties); as teacher (educating others about the world, norms and values); and as priest (providing counselling and other support to others).

A group of some 60 clergy affiliated with CiM discussed these roles extensively, to develop a common understanding of each role, the values that informed it, the

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104 Conversations with INSEC staff members, Nov 2006, July 2007 in Nepalgunj; correspondence with Bhola Mahat (INSEC) Nov 2011, on file with author (with translation by Mukunda Kattel). See 5.1.6 for previous references to INSEC and info on Mahat’s position.
activities it undertook, the methods it relied on, and its merits and limitations. They also shared experiences of acting in such roles. They explored whether certain roles were more or less easily combined and why, in general terms, and in relation to actual situations encountered. The process culminated in the making of 'human sculptures', in which CiM members positioned persons representing the various roles in situation-specific constellations to depict their understanding of the relative priority of each role, and the relations between them.\textsuperscript{105}

Sculptures were created to analyse past experiences (e.g. the handling of conflicts around food distribution in a particular district), and to reflect on situations in districts that were still being addressed by CiM. In the latter instance, the sculptures provided the clergy with an opportunity to think through different options for approaching the situation, almost serving a problem-solving function: which role might be most appropriate at a given point, how would others come into play, and how did they relate to one another? Could CiM divide these roles amongst themselves or draw on anyone else in the local context to play a particular role that the clergy deemed relevant?\textsuperscript{106}

The process generated much energy and discussion amongst those present, suggesting that it really resonated for them; the CiM Steering Committee continued to use the five roles in their own discussions after this event, to reflect on the network’s actions – past, current, and future. In my own notes, I later wrote:

[It] was very interesting – and the sculptures really work because it's such a visual way of working and easily prompts discussion. Question to self - Did the exercise TAKE AWAY the difficulty of balancing these seemingly contradictory roles? No, of course not; but my impression is that this was quite useful, in a number of respects: it externalised something they were feeling inside of themselves and in the network (being torn in different directions re. roles); it gave them a handle on what they were experiencing; and it provided a new/different way of thinking about a particular situation. It enabled them to step outside of it, look at it, and say ‘So this is what is going on’ and then ‘What do we want to do about it?’\textsuperscript{107}

In other words, approaching the question of playing multiple roles in this way did not solve the issue of role tension but appears to have made it more manageable. In large part, it appears to have done so by providing space for reflection on what the people in the Manicaland Churches experienced and by devising images and a language to capture this and talk about it.\textsuperscript{108}

\textsuperscript{105} For a more detailed description of the process with CiM, see Workshop Report, Churches in Manicaland workshop, December 2002, on file with author; see also Galant/Parlevliet (2005). For a general description of the exercise instructions (not relating to CiM), see Parlevliet (2011a, 100-101).

\textsuperscript{106} Workshop Report, Churches in Manicaland workshop, December 2002, on file with author; and personal notes, undated, on file with author.

\textsuperscript{107} Personal notes, n.d., on file with author, emphasis in original; impression confirmed in conversations with CiM members.

\textsuperscript{108} Part of the process also entailed CiM clergy discussing the best vernacular terms for each role in Shona and Ndebele (Zimbabwean languages), and exploring the terms’ connotations.
Specifically, the process made the clergy aware that all five roles served important functions that were required in the Zimbabwean context. None was by definition better or worse than any other, and the relative significance of each role could change over time, depending on the circumstances. This was relevant given the fact that part of CiM’s internal role trouble stemmed from an implicit assumption by some that one role should generally prevail.\textsuperscript{109}

The process also prompted recognition that the various people and churches within the CiM had different affinities and strengths in terms of these roles and that this need not be a problem. On the contrary, it could facilitate a tentative division of labour amongst actors involved with CiM. Finally, the process raised the clergy’s awareness that, even if they individually did not see a contradiction in acting as both pastor and prophet, this was not necessarily the case for other people in the local context. This highlighted the need to pay more attention to expectations and perceptions amongst members of the public and to explain the rationale for playing a particular role or for shifting between roles to reduce confusion.\textsuperscript{110}

In a general sense, it is worth noting that the value of creating space for reflection on playing multiple roles – and combining facilitator and advocate’s roles – has also emerged from other settings since. Other human rights and conflict resolution practitioners who have participated in such a process have shown a sense of relief similar to that which became palpable amongst CiM clergy. While the number and type of roles identified have varied depending on the group of people involved, the outcome has been comparable in making something visible or explicit that is mostly experienced implicitly, in generating appreciation for the interdependency of various roles, and in providing a way to grapple with the tensions that may arise in concrete situations and figure out how to deal with them.\textsuperscript{111} This is also the experience of conflict practitioner Undine Whande, who wrote a story about ‘warriors and weavers’ to help a human rights NGO in Zimbabwe come to terms with the different impulses in the organisation, with some staff members geared for battle in court, while others preferred quiet relationship-building.\textsuperscript{112}

\textsuperscript{109} The creation of sculptures and the ensuing discussion also showed that individual clergy from the same locality might prioritise the various roles very differently, suggesting that there is no one right, or proper, way to approach these situations. (Personal notes, undated, on file with author).

\textsuperscript{110} See also Workshop Report, Churches in Manicaland workshop, December 2002, and personal notes, both on file with author; also confirmed by three members of CiM.

\textsuperscript{111} I have done the same exercise with the Northern Ireland Parades Commission’s Authorised Officers (September 2003), staff members of seven Nepali human rights organisations (July 2009), and practitioners from German development agencies, including the civil peace service (June 2009), and Swiss development organisations (January & June 2013; January 2014). The process used in these instances differed from the CiM exercise in one respect: key roles were identified together with participants as part of the process (rather than in advance, as happened in the case of CiM; that was due to the large number of people expected and the limited time at our disposal.)

\textsuperscript{112} The Warriors and the Weavers, Undine Whande, January 2012; also interview, 6 June 2012, Cape Town.
Such a process of reflection may also lead to surprising insights. In the case of the Manicaland Churches, it seems to have revealed other roles that could provide individual clergy and/or CiM as a whole with a way out of the pastor/prophet dilemma. This was at least suggested by an email sent by CiM sometime after they had engaged in the role exercise. It noted that:

At our last Steering Committee meeting we redid the ‘river of life’ exercise [to reflect on CiM’ evolution]. The river showed us conclusively that the pastor and the prophet roles had been carried consistently throughout [CiM’s life] and we discussed the few incidents when the decision for one or the other had been a matter of contention between us. The river also showed us conclusively that we have not gone far with our priest and teacher work – in fact have even missed opportunities for more effective intervention in certain situations.113

For CiM, a greater focus on the roles of teacher and priest allowed the associated clergy to intervene effectively in their local setting without getting stuck in the advocate/facilitator dilemma. Their educational and counselling functions made engaging with people responsible for (or involved in) political violence, more legitimate and acceptable to their own communities. They could also still speak out on matters of rights and justice but do so in a way that did not raise questions about their facilitation activities.

Admittedly, CiM’s approach was probably facilitated by its recognition that there were other actors in Zimbabwe (conventional human rights organisations) that could (and did) engage in more ‘hard-hitting’ advocacy.114 Nevertheless, it brings to the fore how an advocate need not publicly storm the barricades, but can also challenge and confront quietly, out of the limelight. It reflects Lampen’s observation that “the combination of friendship and a moral position may result in the [facilitator] sometimes confronting one party: a criticism may be accepted within a relationship which would be ignored if it was made in public” (1997).115 This links back to the earlier idea that CiM, through its pastoral approach, may have been able to access and raise rights concerns with persons and groups who were otherwise unresponsive to such issues.116

A reflection process meant to facilitate role clarification, may thus point to other roles that lie on the prophet/peacemaker spectrum. These may provide alternative ways of operating, especially if they are also relevant in that context and in line with an actor’s objectives, values and capacities. Likewise the Parades Commission’s Authorised

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113 Email correspondence, 1 March 2003, on file with author. The ‘river of life’ exercise is one in which people chart their evolution (or that of their organisation/network/community) over time, using the image of a river to reflect the ‘life’ under scrutiny and marking key events, obstacles, opportunities, etc. through other visual symbols. See Report on Reflection Session with Steering Committee, December 2002, on file with author.
114 See 6.1.3.
115 ‘Friendship’ is understood here as a relationship built over time, in which the facilitator tries to grasp the concerns and problems experienced by both sides; this does not imply agreement with their actions (Lampen 1997).
116 See 6.1.5.
Officers came to realise through such a process, that they often played a role that was somewhere between ‘facilitator’ and ‘advocate’. Contrary to their expectations and self-perception, they did not serve that frequently as formal mediators, in terms of facilitating negotiations between parties in parading disputes while having no stake in the outcome. What they called their ‘adviser’ or ‘whistleblower’ roles were more prevalent than anticipated; in confidential interactions, they regularly warned parties of inappropriate behaviour and pointed out the potential ramifications in terms of restrictions imposed on parading or protests. Again, the facilitator/advocate division turned out to be less absolute and insurmountable than initially perceived and assumed.117

In sum, the process of examining the roles played assisted Churches in Manicaland to reflect on the question of "how to make choices at certain moments within the wide range of Christian principles that emerge from our understanding of our vocation", as Rev. DeWolf puts it.118 She continues:

Unfortunately (in my personal opinion) many church leaders take the much easier route of making a "one-size-fits-all" choice, in other words only one role to play and no situational ethics to have to bother with. To me the articulation of these paradoxes and tensions in our workshops with you were exciting because they showed that we were deeply aware of the tensions and willing to struggle with them.119

DeWolf’s comment speaks to the importance of reflection as a way of figuring out how to handle certain predicaments. It also highlights that there probably is no one, single, way to do so; instead, thinking about ‘situational ethics’ may be more useful. In other words, the dualities are there; they can only be contextually reconciled by keeping “one’s eyes on the ball”, as Koskenniemi puts it.120

The experiences of Nepali human rights organisation INSEC provide other useful insights when it comes to possible approaches to the facilitator/advocate dilemma, all the more so because this actor appears to have experienced less role tension during the civil war between the Maoists and the state. Regional coordinator Bhola Mahat, who is based in the region where much of the fighting took place, attributes this to a division of labour that evolved organically between the organisation’s community activists and its national headquarters’ in Kathmandu.

INSEC’s field workers focused on the facilitator’s role, undertaking conflict interventions and negotiation to provide assistance to individuals wounded or abducted in attacks; the head office emphasised fact-finding, advocacy and denunciations of human rights violations that occurred at grassroots level:

117 Report, on workshop with Northern Ireland Parades Commission, September 2003, on file with author.
118 Email correspondence, 20 September 2011, on file with author.
119 Ibid, emphasis added.
120 Martti Koskenniemi, Masterclass for PhD candidates, Faculty of Law, University of Amsterdam, 11 October 2011.
This happened many times, especially when the Maoists attacked security personnel or vice versa. Our job in the field was to make sure that those wounded or abducted were treated fairly, and [that] such incidents were not repeated. For this we had to move to the site, see the parties concerned and do all necessary to calm down the tension. Our central office used to do the 'harsher' job – denounce the attack etc. If we started denouncing the attack ourselves in the field, we would block our way to reach the incident site, and hence, would fail to assist the wounded and abducted. Empathising with the victims enabled us to be seen as a friend in need by the parties, which was – and is – the only way to adopt to work effectively in the field in times of conflict.121

Mahat notes that public statements on specific incidents by INSEC’s head office had few adverse effects on the organisation’s field workers who engaged with combatants. He says that:

The combatants on the ground would be less reactive to the high-level statement. They would seek our clarification sometimes, and we would tell that what was done [i.e. the statement] was mandated by human rights law which we should abide by.122

Nevertheless, both the Maoists and the state did at times accuse the organisation of bias. According to Mahat, INSEC dealt with this challenge by ensuring that it reported on violence committed by both parties, and “denounced them against international human rights standards to which both parties had committed”.123 Such standards were presented as objective, external instruments that applied to both sides. Mahat also notes that,

We introduced a shift in the way of presentation. We focused more on the act of offence or violence and less on individual actors. We held the leadership responsible for every breach, and reminded [them] that the leaders should be accountable for the violence. We also repeatedly [stressed] that it was the leaders’ responsibility to make their fighters’ aware of human rights and humanitarian principles, and regulate their conduct accordingly. So we targeted the ‘policy’ or ‘decision’ community, not the rebels seen or met on the ground or the infantry.124

It could thus be argued that the internal division of labour allowed the INSEC field workers to project some distance, both figuratively and literally, between themselves and the denunciations made by members of the organisation at higher levels of authority. This allowed the field workers to continue engaging with combatants at grassroots level from both sides without making them feel that they, as human rights activists, were condemning them.125

121 Correspondence, October–December 2011, on file with author (translated by Mukunda Kattel). This division of labour came up previously in conversations with Bhola Mahat and community workers of INSEC, Nepalgunj office, 2006/2007; and in comments from other human rights activists in DanidaHUGOU workshop, July 2007, Nepalgunj.
122 Ibid.
123 Ibid.
124 Ibid.
125 Ibid.
Mahat’s comments also bring out the relevance of framing in dealing with seemingly incompatible roles: INSEC ‘packaged’ its facilitation role and advocacy messages carefully. On the one hand, it framed its facilitation function with reference to the need to attend to victims irrespective of who they were; on the other hand, when speaking out against violence, acts by individual combatants ‘on the ground’ were separated from commitments made by the leadership of the conflicting parties, and human rights standards were emphasised as applicable to both sides.

### 7.3.3 Discussion

The experiences of INSEC and CiM described above raise the question why the combination of facilitator and advocate’s roles seems to have posed less difficulty for INSEC than for CiM. Space does not permit a thorough exploration of this question here, but some factors that probably affected the feasibility of this role combination are outlined below.

Firstly, context matters. For example, geography probably helped INSEC’s field workers to put distance between their own facilitation efforts and advocacy by the organisation’s head office. There has always been a large divide between Nepal’s centre and its periphery; what happens in Kathmandu only gets through to the country’s outer regions with considerable delay. By contrast, CiM clergy performed their facilitator and advocate’s roles in the same province and may therefore have been less able to separate the two.

In framing its advocacy messages, moreover, INSEC could use the fact that the state and the Maoist leadership had committed themselves – in public and in writing – to respect international humanitarian law and international human rights law. In 2003, for example, Nepal’s conflicting parties came close to signing a human rights agreement facilitated by the national Human Rights Commission. Pledging respect for human rights was a tactic used by the Maoists and the state to enhance their moral credibility and gain support from the international community (e.g. Rawski and Sharma 2012, 177). This greatly facilitated INSEC’s advocacy, as it could refer to commitments made by both sides when denouncing violations. In Zimbabwe, CiM faced a very different context during most of the 2000s: human rights concerns were primarily put forth by those in opposition and the ruling party generally regarded human rights activists as critics to be silenced. Advocacy by CiM was therefore easily construed as supporting the opposition. In other words, if human rights discourse is mostly associated with one specific party, this may affect an actor’s ability to combine facilitation and advocacy roles.\(^\text{126}\)

Another contextual factor, the scale and direction of human rights violations, is also relevant. The more asymmetrical the violence in terms of responsibility for abuses,
the more likely it is that human rights advocacy will be perceived as support for a particular party (e.g. Felner 2004; Babbitt 2009a). Even though, in both countries, forces supporting the state were responsible for the majority of rights violations, in Zimbabwe the violence was largely unidirectional while in Nepal, the Maoists were also heavily implicated in abuses.

As a result, INSEC’s condemnations of abuses ‘covered’ both parties in Nepal over time, suggesting a certain impartiality. In Zimbabwe, however, most victims of rights violations were not aligned to ZANU-PF.127 This meant that advocacy ran more risk of being perceived as partisan, as speaking out against violence was mostly critical of the regime. Felner thus speaks of a ‘credibility problem’ for actors engaging in rights advocacy, since violations are seldom “equally or proportionally distributed between warring groups”; this ‘disproportion’ leaves them open to accusations of bias (idem, 4).128

Beyond such contextual factors, the varying natures of the two civil society actors considered here may also have contributed to their different experiences in combining facilitation and advocacy. As one of Nepal’s leading human rights NGOs, INSEC was expected to engage in rights advocacy and speak out against violations. Its facilitation function was generated from this human rights platform: its strong and well-known human rights stance enhanced its activists’ credibility amongst communities and combatants, and prompted requests for INSEC field workers to act as facilitators. According to INSEC’s regional coordinator Mahat, they made human rights the basis of their peacebuilding work.129

For CiM, the situation was less straightforward. As a network of churches at the interface of human rights and conflict resolution, its nature was more ambiguous. It functioned in a ‘grey’ zone: the Manicaland Churches were very clear about the gospel values – such as justice, dignity, respect – that informed their activities, but they also emphasised their pastoral approach and willingness to engage with anyone, regardless of possible wrongs committed. In their outreach and educational activities, moreover, they devoted more attention to conflict resolution. As such, CiM’s prophetic voice may have come as an unpleasant surprise to those in Zimbabwe who assumed that the Churches’ focus on ‘the love of Jesus Christ’ would prevent a critical stance.

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127 This situation persists to date.
128 This is not to argue in favour of ‘spreading’ critique evenly across the various conflicting parties; if violations are unevenly distributed between them, this would misrepresent what is going on. Also, stressing ‘even-handedness’ in denouncing violations may inadvertently result in downplaying them if the notion is interpreted to mean that abuses by one side can only be condemned if the other side has committed equivalent ones. Keenan argues that such an understanding paralysed critiques of human rights abuses during the Sri Lankan peace process in the early 2000s, as “it was impossible to present a fully balanced list of charges against all the parties the conflict” (2007, 101).
129 Correspondence, October/December 2011, on file with author; information previously obtained through conversations with INSEC staff in Banke, Bardiya and Kathmandu (2006, 2007); and DanidaHUGOU synergy workshop, Nepalgunj, July 2007, with participants from INSEC and six other Nepali human rights NGOs.
The resulting fall-out may have triggered some of the role tension experienced within CiM. Thus, while no one in Nepal would ever have doubted that INSEC would be critical and outspoken, this was far less the case for CiM in Zimbabwe.\(^{130}\)

As alluded to above, it is likely that notions of partiality/impartiality came into play too. For INSEC, its partiality, based on human rights standards, was a given; its impartiality related to how it applied them across the board. It was therefore relatively easy for the organisation to denounce abuses while facilitating dialogue, since such behaviour was in line with how other actors in the environment understood its goals, functions and actions.

CiM, on the other hand, repeatedly stressed that they were non-partisan. For them, this only related to political impartiality, in that they would not take political sides by endorsing one political party and not another. That this would not hold them back from being “partial to life-giving values”,\(^{131}\) may not have been fully appreciated by all those with whom the Churches engaged. Instead, the network was probably expected to be impartial in terms of keeping equidistant from all parties in the conflict and/or treating them in evenhandedly (e.g. Babbitt 2009a; Fast 2002). Dudouet speaks of ‘multi-partiality’, to capture the notion of empathising with all major parties through trust- and relationship-building, and understanding their respective worldviews (2006, 53). The network’s public stance on issues of justice – which was, as explained above, primarily critical of the regime – seemingly played into the hands of one of the conflicting parties and alienated the other. CiM’s plea not to confuse its “constructive criticism of the government with enmity towards the State as such” (Churches in Manicaland 2006, 71) probably fell on deaf ears, as the harassment of clergy signifies.

All in all, this highlights the importance of paying attention to external expectations and of clarifying expectations when serving multiple functions, especially facilitator and advocate roles – which CiM clergy increasingly realised the more they considered the role question. This discussion also points to the risk that an interveners’s value advocacy may be understood as party advocacy; its championing of certain principles (such as dignity, fair play, rule of law) is then seen as promoting the interests of a specific party. The distinction between these different forms of advocacy stems from Kraybill (1992), who identifies two additional ones, namely process advocacy (promoting a specific way of deciding things or getting things done) and outcome advocacy (pursuing an outcome the advocate considers desirable irrespective of who happens to benefit from it).

Kraybill observes that “[peacemakers] are advocates of something all of the time, whether we are conscious of it or not. The question is not if we are advocates, but rather of what. [We] can choose forms of advocacy that enable [us] to define a clear

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\(^{130}\) For CiM’s own thinking on the role of the church in public affairs, the relationship between state and church, and the positive role of criticism by the church, see Churches in Manicaland (2006, 68-71).

\(^{131}\) Correspondence, 29 December 2011, on file with author. See also 6.1.3.
perspective without falling into the blind partisanship of party advocacy” (idem, 14; also Mayer 2004, 105-106). He argues that ‘neutrality’ is an illusion for conflict resolution practitioners (idem) – a stance shared by others (e.g. Dudouet, Schmelzle, and Bloomfield 2006). In Kraybill’s view, value and process advocacy go well together with peacemaking; those engaged in conflict resolution must be candid about the values that motivate them and about the nature of processes that they facilitate (idem, 14; also Mayer 2004, 105-106). Transparency about their moral position and approach to process enhances peacemakers’ credibility (also Lampen 1997).

Kraybill’s differentiated understanding of advocacy usefully recognises that conflict resolution is a highly normative undertaking, as set out in chapter 3. It is also helpful in signalling that certain forms of advocacy can be combined with facilitation and conflict resolution. It does, of course, not remove the possibility that some may conflate a facilitator’s value advocacy with party advocacy; this was the problem faced by Churches in Manicaland. Even then, appreciating different forms of advocacy can still serve a function, helping actors like CiM develop more insight into role tensions experienced. Providing another angle on facilitation and advocacy, it can add to their understanding of what is happening and help them think through ways of managing the role dilemma.

The discussion has pointed out various factors that affect how individuals and organisations deal with the thorny role combination of facilitation and advocacy. Some are contextual, such as the physical setting in which actors operate, the scale and direction of abuses committed, and the extent to which human rights discourse is utilised by various parties in conflict or primarily associated with one specific party. Others relate more to the nature of the actor and how others view the organisation or specific practitioners. The discussion thus shows that the agency of individuals and organisations to chart their own course in dealing with the facilitator/advocate role dilemma has limitations; their scope for manoeuvring may be curtailed, for example, by the expectations of others.

7.3.4 In Sum

This section has considered the tension that may arise between facilitator and advocate roles if one and the same actor performs them simultaneously. This tension stems from the different approaches and tasks required from prophets and peacemakers, which seem contradictory. The experiences of Nepali human rights NGO INSEC and Churches in Manicaland in Zimbabwe show that this role combination, while not ideal, cannot always be avoided. The emphasis in the conflict resolution

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132 It has been noted that ‘outcome advocacy’ may not be outside the realm of conflict resolution practitioners either, if it is understood as advocating, in general terms, for an outcome that meets parties’ underlying interests and fits within a rights framework, rather than a precisely defined substantive outcome (Galant/Parlevliet 2005, 117).

133 Following CiM’s positive response to Kraybill’s framework, it has become a regular part of the roles exercise.
literature that these roles cannot and should not be performed by one and the same actor, must thus be qualified. In practice, individual practitioners or organisations seeking to impact constructively on a conflict and the associated human rights conditions may end up performing both roles simultaneously, shifting between them in the same context.

The experiences of CiM and INSEC indicate that they sought to address the role challenge through various strategies. Important measures included acquiring greater clarity on the various roles played, appreciating the strengths and limitations of the roles as well as their interdependence, devising an internal division of labour, and identifying other roles that can offer a way around or out of the facilitator/advocate dilemma – such as that of adviser or educator. The experiences of the actors considered here also draw attention to the possibility of engaging in advocacy behind the scenes. They further highlight the relevance of differentiating advocacy in terms of its focus – i.e. values, process, outcome, or party – since some forms of advocacy are more compatible with facilitation than others. Overall, reflection and reframing proved to be useful practices for these actors as they worked out what a CiM member called the ‘situational ethics’ of balancing their various roles.

At a general level, the section demonstrates that the facilitator/advocate dilemma cannot be resolved by dismissing one or the other role, as both are important when pursuing human rights protection and conflict resolution. Rather, it raises a question of how to ensure that these (and other) functions are performed as appropriate (e.g. Arnold 1998b). Moreover, if a certain actor ends up combining facilitator and advocate roles, the dilemma highlights the need to consider how to deal with the possible confusion that may ensue amongst others in the actor’s environment. After all, it has become clear that the perceptions and expectations of others are likely to affect the ability of an actor to combine these functions. The discussion thus echoes Mayer’s point that, when it comes to roles, “a purist approach in the end serves no one” (2004, 204), as well as his suggestion that:

We will have to work to refine certain role boundary safeguards while maintaining the role flexibility that disputes call for. Transparency will be a key tool in helping us with this. We will need to be clear with the disputants just what role we are in, why we have chosen it, what has gone on before in terms of our contacts with other disputants, and what process we will use to change our role (idem, 240-241).

Role clarity may thus be a greater imperative than role integrity, even if the latter is worth pursuing as far as possible.

When it comes to the relationship between human rights and conflict resolution, the section reveals that there are tensions between the different approaches – as represented in the archetypical roles of advocate and facilitator – but that these are not necessarily absolute or insurmountable; they can be contextually resolved, or rather, navigated. It has also transpired that actors focusing on human rights and conflict resolution certainly have agency in how they deal with challenges like the
facilitator/advocate dilemma, but that they also face constraints. Various factors – contextual and otherwise – appear to affect their ability to chart their own course.

Finally, it is possible to formulate a tentative claim that warrants further study: the more explicit and recognised an actor’s ‘rights-oriented’ partiality is up front, the more feasible it may be for this actor to facilitate dialogue between conflicting parties – particularly if both (or all) have committed abuses. However, the more conflict resolution-oriented an actor is (or perceived to be), the more difficult it may be to combine facilitator and advocate roles, as the actor will be expected to display a specific kind of impartiality: evenhandedness, refraining from judging parties in public, etc.

Values advocacy runs the risk of being mistaken for party advocacy, especially when it is conducted in public and when responsibility for abuses is unevenly divided between the parties. This tentative claim is based on the comparison of INSEC’s and CiM’s experiences and resonates with other examples put forth before in chapters 5 and 6. For example, LHR and a few national human rights institutions did not seem particularly fazed by assuming facilitation functions, while CCR and the Northern Ireland Parades Commission struggled with human rights to a certain extent.

7.4 To Raise or Not To Raise? Referring to Rights in Conflict Resolution Interventions

Building on the previous sections, which called attention to the style, tone and focus of advocacy,134 this section focuses on the question of referring to human rights violations in conflict resolution interventions. This seems to reflect a tension between human rights and conflict resolution. From a human rights perspective, raising the abuses committed as issues to be addressed in a facilitated dialogue process is a matter of course, something both necessary and inevitable. From a conflict resolution perspective, doing so may hamper the process in various ways, as explained below. Thus what is right (from a human rights point of view) and what will work (from a conflict resolution point of view) seem to clash, suggesting a dilemma of ‘to raise or not to raise’.

It is argued here that the matter is more complicated. Conflict resolution actors face a range of questions when facilitating dialogue between parties in conflicts where human rights abuses have been committed. They not only have consider whether to raise abuses at all, but also what abuses to raise, when to raise them, who is best placed to do so, and perhaps most importantly, how to raise them. The section points to several strategies that may be useful in addressing this last question, including the possibility of reframing rights violations and rights issues more generally in conflict resolution interventions.

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134 See 7.2.3 (on a confidence-building approach to advocacy) and 7.3.3 (on distinguishing between process-, values-, party-, and outcome-advocacy), respectively.
However, such an indirect approach to communicating about human rights and rights abuses – possibly evading explicit human rights language and referring to notions like human dignity and human needs instead – can prompt misgivings amongst human rights actors. The section therefore also engages with concerns encountered over time, relating them to the ‘vernacularisation' of human rights (Merry 2006a). Overall, the discussion contends that raising human rights concerns in dialogue and problem-solving processes may be less problematic than conflict resolution actors often believe, and that an indirect approach, including needs terminology, may be more compatible with human rights thinking than those active in that field often perceive.

The section is structured the same way as before. After explaining the dilemma first in general terms and then with reference to the Du Noon/Doornbach case (7.4.1), it discusses a possible approach based on the intervention in that case and on an example from land rights mediation in South Africa (7.4.2). It then considers two objections levelled against this approach (7.4.3), and concludes with a summary that sheds light on lessons learned about the relationship between human rights and conflict resolution (7.4.4).

7.4.1 The Dilemma

Various authors and practitioners have noted that raising issues of human rights violations in conflict resolution processes is challenging, especially from the perspective of a third party (e.g. Manikkalingam 2008; Arnold 1998a). Doing so has the potential to negatively affect the process and the parties. However, not raising committed violations is also problematic. This dilemma is explained here with reference to the literature and to an example previously discussed, in which the issue specifically came up. The discussion below shows that framing the dilemma in 'either/or' terms – ‘to raise or not to raise’ – is unhelpful and overlooks important aspects that need to be considered. It also casts doubt on the idea that referring to rights violations and rights issues more generally reflects a definite tension between human rights and conflict resolution.

From a conflict resolution perspective, raising violations during a facilitated dialogue process poses the risk of jeopardising parties' willingness to participate in the process, the interaction between them, their relationship with the facilitator, and the latter's impartiality. Such undesirable effects link back to the earlier facilitator/advocate discussion, but also relate to the response on the part of individuals allegedly responsible for abuses. Ram Manikkalingam, who served as senior adviser to the Sri Lankan President during peace negotiations in the early 2000s, writes that raising human rights violations can “alienate parties to a conflict” (2008, 7). He explains that

Raising issues of human rights violations in [the context of resolving conflict] can make it harder to build trust between the parties – whether such issues are raised by the negotiators on behalf of the two parties, or by the mediator. This is particularly true at the initial stages of a peace process, when parties are most sensitive to criticism and most uncomfortable with the change in the political context and their own relationship
with each other. The memory of violations by both sides is still fresh, and raising human rights violations – even in order to address them – can distance parties from each other and [from] the mediator in a conflict (2008, 7).

Arnold concurs, noting that “labelling a party as violator of human rights is a weighty matter. It is likely to escalate the dispute and place the accused in a defensive position” (1998a, 2). Defensiveness on the part of an alleged perpetrator may be compounded by a broader ‘image problem’ of human rights, as various actors in conflict settings tend to reject ‘human rights’ as a foreign imposition or Western invention with limited or no local relevance – something we will return to below.\(^{135}\)

Of the various examples set out thus far, the CCR intervention in DuNoon and Doornbach in early 2001, after the forceful eviction of non-nationals by South African residents of these two informal settlements, illustrates the dilemma most clearly. As described before, the use of human rights language proved contentious: those responsible for chasing the non-nationals out rejected discussion of what had happened – violent attack and displacement, destruction and looting of property, intimidation and harassment – in terms of ‘human rights’ or ‘human rights violations’, but those evicted asserted that discussing it in any other terms would amount to further victimisation.\(^{136}\) Consequently, the CCR practitioners (of which I was one) initially perceived two options for action: we would either raise the alleged human rights violations as ‘issues to the dispute’ – conflict resolution jargon for including them in the agenda for discussion – or we would not raise them at all.

These options seemed mutually exclusive and each had merits and flaws. Framing the events in human rights language – raising what had happened as human rights violations – could signal to the South Africans that their behaviour was not acceptable in ‘the new South Africa’. It would highlight that, according to the new Constitution, everyone, including private persons, had responsibilities in relation to other people’s rights.\(^{137}\) It could also help the non-nationals who had been subjected to violence gain confidence in the dialogue process and in us as mediators. Yet we also had to consider that the South Africans had threatened to walk out of the process if we were to go that route. What use was a signal if those whom it was intended for, were not there to heed it? Practically, we were unable to compel the South Africans to participate in the intervention. We also understood mediation as a voluntary process as a matter of principle.

The fact that each option for action was associated with one or the other party added to our dilemma: the parties could easily perceive either course as the mediators siding with one of them. This was problematic given the importance our organisation

\(^{135}\) The notion that human rights may have an ‘image problem’ is informed by a conversation with Marlies Glasius, Amsterdam, 17 Feb. 2012. See also below at 7.4.2 and the earlier discussion in 2.5.4 (referring to culture talk and sensitivity to global values).

\(^{136}\) See the very beginning of the introduction, as well as 5.2.3, respectively.

\(^{137}\) This relates to the horizontal application of human rights in the 1996 Constitution (op. cit.), see further 8.1.2.
attached to remaining impartial. Nevertheless, not discussing the alleged abuses as such might implicitly convey a message that they did not matter or that the mediators did not appreciate the gravity of the situation. It could cause those evicted to distrust the process and the outcome, and undermine our credibility as mediators. In terms of our own values, moreover, we did regard the eviction (and the abuses that came with it) as a serious affair. We also thought the SAHRC had a point when suggesting that this case was an opportunity to enhance understanding of human rights.

However, the value of raising human rights violations in conflict resolution processes is not just a question of whether or not to raise them. The literature shows that what also matters are which and whose violations to raise, when to do so and who should do so. The discussion thus far indicates that it can be hard for conflict resolution practitioners to be the ‘who’ that raises violations. Since this links back to the previous section on facilitation and advocacy, it is not considered any further here. The question of timing is illustrated by Manikkalingam’s comment cited above, suggesting that doing so early in a process is tough as discomfort and sensitivity are high and trust is low (2008, 7).

The questions of which and whose violations to raise warrant more explanation; this is done first on the basis of literature and then in relation to DuNoon and Doornbach. They relate to a lack of ‘symmetry’ in human rights violations, in terms of the scale and type of violations committed. It has already noted that violations are seldom proportional or equal amongst groups in conflict (Keenan 2007, 88-117; Felner 2004, 6). Regarding type of violations, one can differentiate between those that stem from violence itself (e.g. killing, torture, summary execution, displacement, and destruction of property and infrastructure), and those rooted in the political and social structure of the state (e.g. limited political representation, denial of land rights, exclusion of a specific identity group); the former constitute symptoms of conflict, the latter relate to its causes.

While violations caused by direct physical violence can relatively easily be tackled by ceasing hostilities, dealing with the structural violations requires social and political change. In a civil war, this may lead to “asymmetry in the process of addressing rights violations between those that entail long-term reform and those that can be addressed immediately” (Manikkalingam 2008, 8; also Keenan ibid). Such asymmetry in violations is often advantageous to states, since they “can say to the rebel armed actor ‘Halting your rights violations simply requires the political will to issue an order [to stop fighting], addressing ours requires a complicated political process that may even

138 On CCR’s stance on impartiality, see 5.2.1.
139 Personal notes taken at the time. For the SAHRC’s involvement in this case, see 5.2.3.
140 This also transpires from the discussion of the 2008 xenophobia crisis in 5.2.4; the senior civil servant responsible for appointing the facilitation team in the Western Cape admits having found it hard when facilitators started raising rights questions and referred to the obligations of public officials; he perceived this as a sign of bias.
141 This previously came up in the facilitator/advocate discussion, see 7.3.3.
entail constitutional reform” (ibid). Non-state actors may hence perceive “the use of human rights as a ruse to get them to make concessions […] while enabling states to return to the status quo ante with no political concessions” (ibid).

Admittedly, these observations relate to a very different situation than that in DuNoon and Doornbach; this was not a protracted conflict on a national scale with periods of intense violence. Yet the distinction between violations directly resulting from physical violence and those associated with long-term non-realisation of rights also applies here. So too does the point about the different types of action required to address either kind of violation – to persuade the South Africans living in the informal settlements to desist from direct violence against non-nationals, and to urge the state to make efforts to address structural violence by introducing reforms to ensure greater allocation of resources and more participatory decision-making.

Our dilemma about whether or not to raise the alleged rights violations in the mediation process thus concealed another challenge: if violations were to be on the agenda, would this address only the abuses committed by the South African residents against the non-nationals, or also the failure of the state to live up to its rights obligations to both citizens and non-nationals alike – which very likely shaped the conditions in which the violence could occur? To be honest, I doubt that we perceived this clearly at the time. This discussion shows that the question of raising rights violations in the context of efforts to address conflict cannot simply be reduced to a dilemma of ‘to raise or not to raise’, as this ignores many other important aspects related to ‘who, what, when and which?’

The notion that the question necessarily reflects a tension between human rights and conflict resolution also merits qualification. Raising violations matters not only from a human rights point of view but also from the perspective of conflict resolution; there are practical and principled reasons for the latter, which will simply be restated here, as several have already been mentioned. Failure to raise committed violations can lead to victims losing trust in a mediator and can raise “concerns about the legitimacy of the process and the determination of a just outcome” (Arnold 1998a, 2) amongst victims and others. It also carries other risks, including neglecting important symptoms and causes of the conflict, conveying an implicit message that such violence is ‘okay’, or overlooking formal legal standards that relate to the matter at hand and thereby reaching an outcome that does not comply with the law. Practically, it may be virtually impossible to avoid raising rights violations in such terms given that conflict parties and other interested actors often use human rights as a frame to understand both the problems and possible solutions.

Thus, the two options for action in the dilemma, simplistically framed as ‘to raise or not to raise’, cannot be exclusively associated with a specific field. While raising violations may be a sine qua non from a human rights point of view, not raising them is unlikely to reflect a conflict resolution stance. This is not to deny the challenges
involved; they are real, as the discussion above made clear. As such, another question emerges, that of how: how can conflict resolution actors raise violations while mitigating at least some of the drawbacks outlined above, such as defensiveness on the part of the alleged violators, polarisation between the parties, and alienation from the mediator? This is the focus of the next sub-section.

7.4.2 Possible Approach

The discussion below highlights some strategies to address the dilemma set out, paying particular attention to what can be called an indirect approach to referring to human rights violations in conflict resolution interventions. Instead of relying on explicit human rights terminology, it uses other concepts to communicate human rights concerns, such as human dignity and basic human needs. This approach thus entails reframing human rights violations rather than refraining from raising them. It is informed by practical experiences gained in the context of CCR’s Human Rights and Conflict Management Programme (HRCMP) and backed up by suggestions from two conflict resolution authors who are both seasoned mediators. This is explained below, first with reference to the literature and then in relation to the intervention in DuNoon/Doornbach. It also offers one other example to illustrate such an indirect approach and other strategies mentioned.

The notion of reframing human rights violations is derived from Arnold, who observes that, “conflict resolution practitioners [may prefer] to reframe human rights issues in ways which make them more easily heard or understood by the accused” (1998a, 2). He does not elaborate, but others have noted that framing and reframing are crucial tools for mediators in their third-party role; they help to provide an alternative way of conceptualising the conflict and the issues at hand, so as to increase the chances of resolution in a way that the parties perceive as fair (Gray 2006; Moore 2003, 232-244). Without speaking of ‘reframing,’ Manikkalingam suggests that practitioners raise rights violations “in more subtle and constructive ways” (2008, 7). He points to the possibility of focusing not only on committed abuses but also on mechanisms for addressing them. Furthermore, he proposes that mediators encourage other actors to raise the issue of human rights violations (ibid).

The CCR intervention following the eviction of non-nationals from the informal settlements of Du Noon and Doornbach in 2002 illustrates such strategies, and provides an example of reframing. Since the intervention process adopted by the mediation team was already set out in 5.2.3, I will not repeat that here but link what we did to this discussion. With hindsight, we seem to have effectively split up the question of whether and how to raise human rights violations into three parts (without necessarily being aware of it at the time). The first entailed deciding on a course of action regarding the use of the inflammatory ‘xenophobia’ label; the second was to create space for immediate past abuses to be raised; and the third was to draw attention to human rights and responsibilities in a more general way, by considering
aspects of structural violence and encouraging parties to consider what they sought to experience in the future instead of only focusing on what went wrong in the past.

As to the first part, we decided to not use the term ‘xenophobia’ to reduce polarisation and defensiveness. Regarding the second, we explained that mediation required that both parties’ concerns had to be raised, implying that ‘process’ rather than ‘bias’ motivated the discussion of alleged abuses; this set the parameters for the victims themselves to raise the direct violence to which they had been subjected, and to do so in terms of human rights violations. We addressed the third part through general awareness-raising – drawing in another actor, the SAHRC, who we thought was better placed to perform this role – and by facilitating interaction between local government officials and the settlement residents (i.e. between duty-bearers and rights-holders).142

The notion of reframing relates particularly to this last part. First, we focused on future measures to be adopted to address underlying concerns. We also framed the concerns put forth by the South African residents and the non-nationals initially in terms of ‘basic human needs’ rather than human rights. Foregoing human rights language in this way was informed by lessons learned in the context of CCR’s HRCMP, relating to the ‘image problem’ of human rights alluded to above. This warrants some explanation before the approach used in the DuNoon/ Doornbach mediation can be discussed further.

While working in the HRCMP, my colleague Victoria Maloka and I had observed that we often encountered resistance when engaging people in explicit conversation about human rights. There were some recurrent themes in the concerns they expressed: that human rights are abstract legal concepts with little bearing on people’s daily personal and professional lives; that they are foreign constructs imported from or imposed by ‘the West’ or ‘the North’; and that human rights are problematic because they ‘interfere’ with people ‘getting their job done’.143 Interviews conducted for this study indicate that we were not alone in this experience. For example, Alice Nderitu, who used to head the education department of the Kenya National Commission on Human Rights, recalls that “people just switched off when we’d start speaking of human rights” making her wonder “how can we make human rights real?”144 According to Andries Odendaal, who provided conflict resolution training in Zimbabwe in the early

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142 See 5.2.3 for a more detailed description of the intervention process adopted. The decision not to use the term ‘xenophobia’ was probably the mediation team’s most conscious one in relation to the question of how to address the rights violations in the intervention process.

143 The third response was often raised by South African public officials working in correctional services or law enforcement; members of the police would argue that the rights afforded to suspects protect criminals and complicate the maintenance of law and order by enabling suspects to ‘talk back’ at officers or refuse to answer any questions (Parlevliet 2002, 38; see also Hornberger 2007). The second was a concern regularly raised by politicians and senior government officials from various African countries; we encountered the first response more broadly (for a similar observation, see Beirne/Knox 2014, 34).

144 Interview, 7 June 2011, Cape Town.
2000s, “there is a real danger that human rights is still perceived – and it's a perception – as a colonial instrument”.145

To get past such concerns – which suggest that human rights have, at the very least, an 'image problem' – we developed an approach of talking about human rights indirectly, using the notions of human dignity and basic human needs as a starting point. We found that those we engaged with easily related 'dignity' and 'basic human needs' to their professional and personal experiences. They quickly linked them to tangible social, political, economic and cultural concerns, which we could then use as the basis for bringing human rights into the conversation, becoming more explicit over time.

Needs also served as a 'conceptual bridge' that could help us explain the relationship between human rights and conflict, drawing on ideas from conflict resolution that unmet needs tend to be a driver of conflict and that a denial of human rights implies a frustration of needs related to identity, freedom, security and welfare.146 The notions of human needs and human dignity thus helped us to ground human rights in people's life experiences, in a sense 'demystifying' them (Parlevliet 2002, 38), or, as Gready and Ensor put it, conceptualising "human rights as the everyday" (2005b, 10).147 An anecdote from Odendaal reflects the relevance of this approach:

I've done this exercise with the Zimbabwean army, for example – I said to them, 'let's talk about human rights,' and I wrote 'human rights' on a flip chart and asked 'what do you think, when you see these words.' [Out came] just a torrent of abuse – colonial oppression, hypocrisy, all of that – a stream of very negative content. And then we went through the exercise, you know, identify the needs, the dignity, and [at the end] they said 'Oh, okay, if that's what human rights are, it's ours.'148

These experiences from the HRCMP informed the approach taken during the intervention in the DuNoon/Doornbach case. The South African settlement residents initially perceived 'human rights' to be only beneficial to 'the foreigners' and associated 'human rights violations' with the large-scale crimes of apartheid.149 Their defensiveness and resistance to human rights prompted the mediators to frame rights issues in terms of basic human needs.

145 Interview, 9 June 2011, Stellenbosch; emphasis as spoken.
146 This draws on work of Burton (1990), Azar (1990) and Galtung/Wirak (1977), as discussed in Parlevliet (2010a, 20-21; 2002, 16-19). On the relationship of human rights and human needs, see also 7.4.3 and Gasper (2007; 2005).
147 Initially, we did this primarily during training workshops with various audiences; later, I also did so when serving in other capacities (e.g. as an adviser to other organisations, or as a member of intervention teams.)
148 Interview, 9 June 2011, Stellenbosch. The exercise Odendaal refers to was developed by the HRCMP, which prompts people to reflect on their understanding of 'human dignity', identify ways in which human dignity has been disrespected in their context, and develop 'rules' that should ensure protection of human dignity in future; these are then compared with a relevant human rights instrument. The HRCMP developed this exercise and others around human dignity and basic human needs for use in workshops, as a way of getting participants to talk about human rights. For description and instructions, see Parlevliet (2011a, 78-83; 2002, 44-46).
149 Personal notes taken at the time.
Chapter 7

This proved useful in several respects. It enabled us to explain to the South Africans that their concerns about jobs, housing, water and safety related to human rights — hence, that 'human rights' were not 'against' them, but were as relevant for them as they were to the non-nationals (Galant and Parlevliet 2005, 124-125). Needs language also helped make the two parties aware of their common ground: they shared concerns related to subsistence, protection, recognition and participation. In our interaction with local government officials, it helped in explaining the importance of attending to service delivery concerns in terms of the increased potential for conflict when basic human needs are frustrated — without accusing them outright of failing to live up to their rights obligations, which might have reduced their willingness to cooperate.

In other words, raising rights indirectly was a means to an end for my colleagues and myself, aimed at preventing interlocutors from 'switching off' when encountering rights language. It was intended to help them 'grasp the meaning, value and relevance of rights', as I put it:

[This] approach of raising rights indirectly is not meant to diffuse or silence rights. It is a strategy to ensure [people's] continued and substantial involvement with human rights. It is primarily relevant in the beginning of [our interaction]; concepts such as human dignity and human needs are not meant to replace rights. Once people have [engaged with] human dignity and/or human needs, it is much easier for them to grasp the notion of rights – the values they represent, the purposes they have, and their regulatory character. The introduction of rights instruments is facilitated in this way: the rights therein have come to life (Parlevliet 2004, 59-60, emphasis in original; also 2002, 38).

An indirect approach to raising rights violations in a conflict resolution intervention also transpires from experiences recounted by Rodney Dreyer, the practitioner who helped to set up the Mediation Panel for the South African Department of Land and Rural Affairs (described previously in 5.1.5); the question of referring to human rights came up regularly in land mediations. Dreyer explains that he used to get involved as a supervisor if he perceived a mediator as being insufficiently attentive to the violations in a particular case:

Sometimes mediators are really in a difficult situation, when the rights violations issue is of such an extent that it affected the dignity of people, and [the mediators] don't really realize it, so how do you say this to them? The mediator would push on [to get to an agreement] irrespective of the unjust behaviour of the farm owner particularly. [Since I'm overseeing their work] I'd say to the mediator ‘what about the restoration of that person's dignity? What about their rights? Is [the owner's] offer making that possible? My assessment right now, on the telephone, it's not’. I'd say 'ask the parties if you can come back tomorrow' and I’d get on the first plane and the next day I’d be there next to the mediator. The mediator then would say to the parties that ‘he or she has deemed it necessary to invite his or her supervisor and the supervisor would just like to address this issue and that issue, to check in with you, whether you're aware of these implications.’

And then I'd pick it up. I would not necessarily use the language [of unjust behaviour] — I’d ask the farmdweller in the company of the farm owner – when the owner said this to
you, how did you react and why? How did you feel when that was said? [Then] when I’m alone with the owner, I’d use the language [of unjust behaviour]. I’d say, so tell me, the behaviour that the farmdweller was talking about, that lasted over a period of time, would it be correct if I say that that kind of behaviour was unjust towards the farmdweller, unfair towards him? Would I be correct? What’s your take on it?’ I’m saying it’s my interpretation, my assessment of what I’ve been exposed to now. But to some extent a right has been violated.150

The quote reflects several strategies mentioned before: letting someone outside the mediation process raise the issue of violations (creating a division of labour, preventing questions about the facilitator’s impartiality), creating space for the party negatively affected to speak for himself, and expressing criticism when being alone with the offending party. In terms of reframing, note how Dreyer speaks of ‘unjust behaviour’ instead of ‘abuses’ or ‘violations.’ In addition, he does not directly accuse the farm owner of violating the farmworker’s rights, framing the allegation of ‘unjust behaviour’ as a question and as ‘his interpretation’. He continues:

Often, 60% of the time, the [owner’s] lawyer will also be present. Some [owners] are adamant, ‘This is my farm, and those who live on my farm must live under my rules, and I don’t care if this rule is unjust or not, it’s my rule, it’s my farm.’ Now that’s good, that’s fine – we can agree to disagree on that one. Then [I’d say] ‘But let’s just go to perhaps, the Constitution of our country? Perhaps the lawyer can help us here, which section it is? It does speak of human dignity, a right to residence, to live, the right to education and stuff, the fact that you don’t allow the bus to come onto your farm, deny children [the right] to go to school.’ I’d say ‘Mr. Attorney, this Bill of Rights thing in our Constitution, which section is it, which chapter? Because I have a copy here, you know, spare me the effort’ – and he does not know, I don’t know either, I’d have to look it up, but I’m calling his bluff. Once I’ve done that, I’d say ‘it’s still my assessment that there’s been behaviour that’s treated people unjust. And I’m not denying the fact that it’s your fault.’151

Several aspects are striking. He only attributes blame at the very end, framing this in a roundabout way. His explicit references to rights come gradually, also bringing in the Constitution. The reference to this fundamental standard serves to remind the owner that there are higher rules at stake that require compliance, surpassing the rules set by himself. Drawing the lawyer into the conversation lends additional legal weight to this point – while implicitly alerting the lawyer that he has a professional responsibility to ensure that his client abides by the country’s legal framework.

Of course, whether the approach outlined unfolds in practice exactly as described, is unclear; the quote stems from Dreyer talking about his experiences, not from me observing him in mediation. The main elements are nevertheless remarkably similar to the way we tried to handle the vexed question of raising rights violations in conflict resolution in the DuNoon/Doornbach process. This approach effectively reframes the very dilemma itself: instead of focusing on the question of whether to raise violations,
it considers the question of how to raise them, thereby creating space for manoeuvring.

7.4.3 Discussion

The above discussion shows that an indirect approach to raising rights violations can be very useful from a conflict resolution perspective, to prevent defensiveness, reduce resistance and facilitate cooperation; it serves to "lay a foundation" for human rights that people can "easily relate to and do not consider threatening" (Parlevliet 2004, 59). Yet human rights actors have been critical of such an indirect approach at times, in two respects: the very act of reframing human rights is contentious and doing so in terms of 'needs' is especially controversial.152 This sub-section reviews such concerns, relating them, amongst others, to Merry's notion of 'vernacularising' human rights (2006a). It argues that reframing is not that foreign to human rights practice and that doing so with reference to needs may be more compatible with human rights thinking than critics realise – although this depends, in part, on the conception of 'human needs' used.

In terms of framing in itself, I have encountered concerns that speaking about human rights without naming them diffuses them and lessens their significance. Allegedly, doing so backtracks on gains made in getting human rights on the political agenda – certainly when it comes to social-economic rights – and depoliticises rights claims. Such charges seem to suggest that efforts towards rights protection and promotion only qualify as such if named that way explicitly. While it is clear that explicit rights talk has benefits – as Jochnik writes, "rights rhetoric provides a mechanism for reanalysing and renaming 'problems' as 'violations,' something that needn't and shouldn't be tolerated" (1997, 3-4) – a review of the literature demonstrates that it is quite possible to talk about or work on human rights without framing efforts in explicit terms.

For example, authors studying the inclusion of human rights in peace agreements note that the scope of an agreement’s human rights component is hard to ascertain; provisions that do not explicitly mention 'human rights' can still address rights issues when dealing with reform of the judiciary and police, power-sharing arrangements, civilian control over the military, or elections (International Council on Human Rights Policy 2006a, 3; Putnam 2002, 238; Bell 2000).153 Meanwhile, Mahony highlights the

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152 I have encountered such criticism mostly in face-to-face interactions, rather than in writing; a South African conflict resolution practitioner interviewed for this study testifies to encountering it as well (Chris Spies). Such critique has mostly arisen in interactions with practitioners and scholars working in an international or 'Northern' setting (e.g. European development organisations, human rights officers of the United Nations, American academics, etc.). Apparently, my use of needs language in relation to human rights once prevented an international consultancy assignment being offered to me on the grounds that ‘I wasn’t really doing human rights’.

153 Such provisions address concerns related to procedural fair treatment, participation in the public process, freedom of speech, movement and association, substantive limits on state powers, etc.
use of ‘persuasive human rights diplomacy’ by human rights monitors in areas affected by violent conflict. This entails using “indirect pressure” and ‘deliberately ‘vague’ hinting” to relay rights-related messages to members of government, security forces, and armed groups without alienating them (2006; also 2007, 263).

More generally, Gready observes that many NGOs “engage in dialogue and cultural adaptation as a matter of good basic practice” when promoting human rights in non-Western contexts (2003, 747). Such ‘processes of reinterpretation’ (ibid) have become known, following Merry (2006a), as ‘vernacularisation’: local or national intermediaries – activists, lawyers, NGO workers – translate transnational human rights discourse into local idioms and practices, adapting human rights to the normative structures and socio-historical situations that exist in their particular context (Merry and others 2010, 108). It thus seems clear that human rights efforts come in a range of forms, which may be more or less explicitly framed as ‘human rights’. Put differently, some reframing is relatively common in human rights practice; it may well be intrinsic to it.

That said, Wilson points out that vernacularisation can entail ‘meaningful translation’ but can also involve actors “gesturing towards aspects of human rights talk with very little specificity, or actual content” and with “only a fleeting and expedient commitment to the legitimating mantle of rights” (2007, 358, 359). In this regard, our reframing of rights violations in the DuNoon/Doornbach intervention probably constitutes a mixed bag. On the upside, as mediators we used ‘human dignity’ and ‘human needs’ as a stepping stone for talking about rights explicitly, including reference to national instruments; we also sought to enhance the local authorities’ responsiveness to the settlement residents, both South African and non-national, by facilitating interaction between them. On the downside, we did not clarify and insist on the legal obligations of local government regarding service delivery to non-nationals. So we were not as forthright on accountability as we could have been – although it is doubtful whether this stemmed from reframing as such or rather from our limited knowledge and experience at the time.

In sum, there is a risk of diffusing rights when reframing them, but it cannot be assumed that it occurs as a matter of course. This observation is an important retort to actors critical of reframing or talking indirectly about human rights. Yet it also highlights that conflict resolution practitioners need to consider the possible consequences of reframing, positive and negative, and to anticipate critical questions that may be raised in this regard. Overall, one can distinguish between the empirical observation that reframing rights happens regularly and may serve certain functions when seeking to advance human rights protection, and the value judgement that reframing should not be done given its potentially negative ramifications.

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154 The term ‘vernacularisation’ was previously mentioned in chapter 2; see 2.5.4.
155 See the assessment at the end of 5.2.3.
As noted, a second type of concern encountered about reframing human rights has been related the use of the concept of ‘basic human needs’. Three concerns have been encountered in this regard: that the needs concept is too narrow as it refers only to social and material goods; that it presumes a hierarchy that defies the interdependence and indivisibility of human rights; and that it implies a dependency on the part of vulnerable people on institutions that can fulfil their needs. Such charges stem from the increased interaction between human rights thinking and development assistance from the 1990s onwards, in the context of which development is no longer about meeting needs and providing services but about realising rights.

Individuals and groups targeted through development are nowadays ‘rights-holders’ with legal entitlements rather than ‘beneficiaries’ with needs, and public institutions have changed from ‘service providers’ into ‘duty-bearers’ responsible for delivering on rights obligations (e.g. Miller 2010; Gready and Ensor 2005a). Such a (human) rights-based approach to development is thought to counter previous technocratic approaches and to facilitate “a renewed focus on the root causes of poverty and exclusion, and on the relations of power that sustain inequity” (Cornwall 2002, 16; also Jochnick 1997, 4). It is thus supposed to imply a more political appreciation of development, with greater attention for structural conditions of vulnerability, marginalisation and discrimination (Gready and Phillips 2009, 11; Gasper 2007).

This evolution explains the resistance from some human rights actors regarding the use of needs language to reframe rights concerns: it seems to set back the clock. The remainder of the sub-section presents an alternative perspective to show that needs language may be less foreign to human rights thinking than critics acknowledge. It draws on a difference between the notions of ‘needs’ prevailing in the human rights and conflict resolution fields, which affects how the relationship of human rights and human needs is conceived. After all, when considering the suitability of needs language in relation to human rights, much depends on the specific conception of needs that is used. The notion of a hierarchy of needs, for example, stems largely from Maslow (1970), who posited that immediate physiological and safety needs take precedence over needs for esteem and self-actualisation.

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156 Human dignity, which I have also regularly used in reframing, has generally not been controversial, although Judith Robb Cohen, the former SAHRC manager in Cape Town, notes that, “human rights practitioners get nervous when you use dignity as a be all and end all of everything, particularly if you start using dignity [as a basis] upon which to make legal decisions because it is so broad – they say because it is so powerful and special, you shouldn’t decide things on the right to dignity; you should rather decide on the actual right in question. Because it almost becomes too easy” (interview, 10 June 2011, Cape Town).

157 There is a vast literature on (human) rights-based approaches; see e.g. Fukuda-Parr (2009), Gasper (2007) and Alston (2005). Miller (2010) comments on the distinction between rights-based approaches and human rights-based approaches to development; both terms are used in the literature and professional practice in the human rights field.

158 For criticism of Maslow’s hierarchy of needs, see e.g. Klein Goldewijk/De Gaay Fortman (1999, 45-47).
Exploring the differences between the two fields in this regard is therefore instructive. In the human rights field, the concept of needs has been mostly considered in relation to socioeconomic rights and material concerns; thus, Claude and Weston define needs as encompassing “those ‘social goods’ that are essential to human subsistence – for example, food, clothing, shelter, medical care, schooling” (2006, 161; also Uvin 2004, 34).

By contrast, the conflict resolution field has employed a much broader conception. Burton (1990) and Azar (1986), for example, relate needs to both material and non-material concerns such as security, recognition and participation, and consider them universal motivations that are an integral part of human beings and are fundamental to their survival and development. Others perceive needs as relating to security, identity, welfare and freedom, and as having an individual and collective dimension (Galtung and Wirak 1977), or they distinguish access, acceptance and security needs, which refer to economic and political participation, recognition of identity and culture, and nutrition, shelter and physical security, respectively (Miall 2004).

This understanding of needs is easily related to the full spectrum of human rights, all the more so because it considers needs as interrelated and presumes no hierarchy. An early human needs/ human rights approach to balanced human development by peace scholars Galtung and Wirak (1977) thus highlights “the essential interconnectedness of all human rights” by reflecting “the interrelatedness of individual and collective rights and of political liberty and economic equality” (Claude and Weston 2006, 165, 164). It proposes that all needs give rise to certain rights; realising rights helps to secure the goods, services or processes necessary to meet these needs. As Osaghae frames it, human rights are “an instrument of individual and collective struggle to protect core interests” (1996, 172; also Galtung and Wirak 1977, 258). Needs thus conceived encounter human rights through human dignity: “behind human rights are freedoms and needs so fundamental that their denial puts human dignity itself at risk” (Klein Goldewijk and De Gaay Fortman 1999, 1-146, 117; also Gasper 2007, 17).

Hence, reframing human rights by referring to human needs as understood in the conflict resolution field is probably more consistent with human rights thinking than critics from that field recognise. Gasper in fact suggests that the dismissal of basic needs theory as a ‘primitive forerunner’ – “technocratic, commodity-focused, a staging post on the path to right thinking” – stems from ‘scant knowledge of leading basic needs theorists’, many of whom contributed to the development of the human rights-based approach (2007, 17-18). Overall, the presumption that basic needs merely

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160 The work of Max-Neef (1991) is a case in point, identifying nine (categories) of basic human needs that are easily related to the conflict resolution conception outlined above (and to human rights): participation, identity,
mean “a set of commodities that sustain material subsistence” (idem, 16) is flawed, and certainly not reflective of conflict resolution understandings. It is rather a human rights understanding projected onto a conflict resolution use of the concept.

What then of the concern that needs language puts people in a dependent relationship to institutions that can meet their needs because they cannot do so themselves? Underlying this claim is the idea that rights language calls attention to the entitlements that rights-holders can claim from duty-bearers, which enables empowerment and agency. While needs language does, indeed, not have the ‘struggle and empowerment orientations’ (idem, 20) of human rights practice, and also fails to convey the state’s obligations towards its citizens, the reality is that realising human rights also requires action by the state. People depend on the state to protect and secure their rights, for it to “[use] law and public policy to achieve this end” (Nussbaum 2011, 26). It thus seems questionable to only associate the notion of ‘basic human needs’ with dependency.

The above defence of needs discourse is of course not to say that its use is always preferable or that it is without tensions or flaws (Gasper 2007, 19; Francis 2010, 46-48). The discussion has alluded to some of its limitations, which means that it is probably more suitable in some contexts and at some times than others. This points to the relevance of using ‘needs’ and ‘rights’ language strategically (Schirch 2006, 88-89; also Beirne and Knox 2014, 34).

Yet it also highlights that human rights actors’ rejection of needs language may be largely based on a very specific and very limited conception of needs, without them recognising that this is so. It furthermore suggests that conflict resolution practitioners would do well to clarify their notion of needs when using it to reframe human rights concerns – and then to consider concerns of diffusion, depoliticisation and disempowerment as well. It further brings out how one and the same term may have very different meanings in the context of human rights or conflict resolution, which may affect its acceptability across the fields.

7.4.4 In Sum

This section has discussed the question of referring to rights violations in conflict resolution processes. While this is a sine qua non from a human rights perspective, it often seems difficult from a conflict resolution perspective as it may escalate tensions between the parties and lessen their willingness to seek a mutually acceptable solution. It has been argued here that this dilemma cannot, however, simply be reduced to a question of ‘to raise or not to raise’. This framing in either/or terms

freedom, subsistence, protection, understanding, affection, creation and leisure (also Parlevliet 2002). Yet it is worth noting that Sen, whose work was groundbreaking in its emphasis on the interconnections of political freedoms and fulfillment of economic needs, mainly conceived of ‘needs’ in economic and material terms (e.g. 2000, 147-148).
overlooks other relevant questions that arise for conflict resolution practitioners facilitating dialogue between parties in conflict, such as what violations to raise, when to raise them, and who is best placed to do so. It is thus possible to reframe the dilemma in a way that allows more space for manoeuvring, by shifting away from the question of whether to raise violations and focusing instead on how to raise them.

The discussion here has pointed to various strategies that conflict resolution actors can use to raise violations while mitigating some of the drawbacks associated with doing so. This includes, for example, encouraging other actors to raise abuses or considering mechanisms for addressing past or preventing future violations. Another possibility is reframing violations and rights issues more generally in conflict resolution interventions, using concepts such as human dignity or human needs.

This indirect approach to talking about human rights may make those accused of violating human rights less defensive, and help circumvent what has been called the ‘image problem’ of human rights – the perception that human rights are abstract, irrelevant or foreign. It has the potential to do so by rooting rights concerns in people’s life experiences, thereby facilitating interaction with interlocutors who are inclined to disengage when encountering rights language and whose cooperation is nevertheless required for rights to be respected in practice.

Even though reframing rights concerns can aid conflict resolution in various ways, actors from the human rights field are not always comfortable with the practice. This is informed by fears that not talking explicitly about rights or that using needs language to reframe rights concerns, will diffuse or depoliticise them and/or undermine accountability and empowerment. These risks are not improbable, yet it cannot be assumed that they necessarily occur. It has also become clear that reframing is not alien to human rights work, as rights discourse is adapted (‘vernacularised’) in different cultural contexts. The same applies to needs language, which may be more in line with human rights thinking than is generally recognised, especially when employed as understood in the conflict resolution field. All in all, raising rights indirectly, implicitly or with reference to human needs is probably less inherently problematic than critics have suggested.161

As before, we can glean some lessons about the relationship between human rights and conflict resolution from the discussion. What initially seems an irreconcilable dilemma that pits the fields against one another, turns out once again to be more nuanced: it cannot be assumed that raising rights violations and concerns in conflict resolution interventions is only relevant from a human rights perspective (it also makes sense from a conflict resolution perspective); there is considerable variety in how rights issues are raised or framed within the human rights field (perhaps more so than is generally recognised); and an approach to framing human rights from conflict

161 Of course, this is not to deny that certain environments require the use of rights language and ‘legalese’ (e.g. formalised court settings).
resolution may be compatible with human rights thinking after all (idem). In that sense, this dilemma does not really reflect a tension between principle and pragmatism, as both human rights and conflict resolution actors are inclined to mix the two.

The discussion also lends further weight to the earlier observation that discourses and tactics from human rights and conflict resolution have certain strengths and limitations, making them more or less appropriate at different times and in various contexts. This points to the potential for cross-fertilisation and mutual learning, rather than the absolute applicability of one or the other approach. The fact that a particular concept may be understood quite differently across the two fields, can pose a challenge in this regard; failure to appreciate – and clarify – the field-specific connotations at stake can generate friction between human rights and conflict resolution actors.

7.5 Conclusion

This chapter has focused on four challenges that regularly arise for organisations and individuals working on human rights and conflict resolution, namely addressing the symptoms or causes of rights abuses and violent conflict, pursuing confrontation or cooperation in conflict contexts marked by structural injustices and power asymmetry, managing tensions between facilitator and advocate roles and, finally, referring to rights violations (and rights concerns more generally) in conflict resolution processes. It has explored what these challenges involve and how actors have sought to approach them, with a view to shedding further light on the relationship between human rights and conflict resolution.

The challenges were initially framed in terms of dilemmas, understood here as a choice between two alternatives that are mutually exclusive and carry adverse implications, after Klein Goldewijk and De Gaay Fortman (1999, 40). This was done to show how easily such challenges can be (and often are) perceived as forcing actors to choose between competing courses of action, a frame that is indeed readily present when human rights and conflict resolution are considered together. It has however become clear that “framing real-life situations as dilemmas may reduce complexity rather than clarifying it” as the above-mentioned authors concede (ibid). Lederach’s observation that “far too often, the way we [pose] our questions limit our strategies” (2003, 51) thus rings true here. The chapter has highlighted that what he calls “narrowly defined dualisms” (2005, 173) often simplify the issues at hand and the options for action available; they capture a complex social reality in artificial and seemingly absolute either/or categories.

A summary overview of the challenges, possible approaches and insights discussed in the previous sections, is provided below. This reflects that organisations and practitioners seldom allowed themselves to be confined by a dualistic frame of
reference; instead, they ended up looking for ways to combine the evident options for action or to work around them by identifying alternatives. It also emerged that grappling with a specific challenge – and the contradictions it seems to project – may highlight the interdependence of various imperatives (addressing symptoms/causes, in 7.1.), strategies (confrontation/cooperation, 7.2), or roles (facilitator/advocate/other roles, 7.3). Such grappling can also bring out how binary framing risks overlooking important aspects of a challenge (as was the case in the question of referring to rights abuses and concerns in conflict resolution interventions, 7.4).

Consequently, the various approaches outlined in the chapter, derived from examples and the literature, usually involved a process of reframing. This often entailed shifting to a ‘both/and’ frame of reference that recognised and reflected the legitimacy of different, but not necessarily irreconcilable, goals and energies in a specific setting, turning a dilemma into a question that "holds both at the same time" (Lederach 2003, 52). Such reframing became especially explicit in relation to the symptoms/causes question and the 'raise/not raise' dilemma. It was more implicit in the discussion of the other challenges but can be inferred there too; the overview captures the various reframings that underpin the possible approaches outlined. The approaches also regularly included a degree of reflection on actors’ own practices and a willingness to grapple with the ambiguities, tensions and questions prevalent in lived experience.
### SUMMARY OVERVIEW OF FINDINGS

<table>
<thead>
<tr>
<th>Dilemma in terms of HR/CR relationship</th>
<th>Possible approach derived from examples &amp; literature</th>
<th>Insights re HR/CR relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Symptoms/Causes</strong> (7.1)</td>
<td>Both/and (concurrently)</td>
<td>HR &amp; CR fields are not that different in this respect, both struggle with this</td>
</tr>
<tr>
<td></td>
<td>Recognise concurrent interdependence of strategies targeting symptoms &amp; causes</td>
<td>Combining insights &amp; approaches from both fields facilitates being 'short-term responsive &amp; long-term strategic' (Lederach 2003)</td>
</tr>
<tr>
<td></td>
<td>Reframe: how can symptoms be tackled in way that contributes to long-term change &amp; how can underlying causes be addressed in way that improves conditions in short term?</td>
<td>Adopting/incorporating elements &amp; strategies usually associated with other field can help enhance impact:</td>
</tr>
<tr>
<td></td>
<td>Look for ways to contribute to short-term relief &amp; long-term change at same time</td>
<td>CR actors: long-term impact may be enhanced by paying attention to 'rules of engagement' and to accountability &amp; governance mechanisms</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HR actors: long-term impact may be enhanced by paying attention to relational &amp; institutional context and create spaces for dialogue, problem-solving</td>
</tr>
<tr>
<td><strong>Confront/Cooperate</strong> (7.2)</td>
<td>Both/and (sequentially)</td>
<td>Temporal complementarity of HR's adversarial tactics &amp; CR's cooperative tactics over time (but tension possible at specific moments in time)</td>
</tr>
<tr>
<td></td>
<td>Recognise sequential interdependence of confrontation &amp; cooperation over time in contexts of power asymmetry</td>
<td>Confrontational advocacy &amp; activism may need to precede cooperation focused dialogue facilitation in asymmetric context</td>
</tr>
<tr>
<td></td>
<td>Reframe: how can pressure be exerted to 'force' change without unleashing further violence &amp; how can polarisation be reduced without perpetrating injustices, to induce willingness to change?</td>
<td>HR &amp; CR actors can benefit from getting out of comfort zone &amp; gaining appreciation for methods they are less familiar with:</td>
</tr>
<tr>
<td></td>
<td>Balance confrontation and cooperation, to confront unjust status quo and allow for meaningful negotiation</td>
<td>CR actors to recognise validity of conflict intensification, value of 'the radical stance' and to reconsider usual take on impartiality (NB: possible implications for potential to play 3rd party role later on)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HR actors to combine legal &amp; moral approaches and to engage with powers that be, both to greater extent than usually the case</td>
</tr>
</tbody>
</table>

*But: this dilemma also reflects a shared tension (i.e. the fields’ mixed relationship with power)*
<table>
<thead>
<tr>
<th>Dilemma in terms of HR/CR relationship</th>
<th>Possible approach derived from examples &amp; literature</th>
<th>Insights re HR/CR relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facilitator/Advocate (7.2)</td>
<td>Both/and is possible if need be (but may be difficult) Importance of clarifying &amp; reflecting on roles Reframe: how can parties be brought together to resolve issues while letting them know some acts are impermissible? Consider possibility of alternative roles allowing for combination or a way around the two roles; create internal division of labour Consider how advocacy is done (in/out of limelight); about what (process, values, party, outcome) &amp; framing of advocacy messages</td>
<td>Tensions do exist between different roles (&amp; associated approaches) but these are not necessarily absolute or insurmountable; they can be contextually resolved or navigated Actors have agency in how they navigate the role tension dilemma but are constrained by contextual &amp; organisational factors; perceptions &amp; expectations from others in environment matter Worth further study: the more explicit and recognised an actor’s ‘rights partiality’ is, the more feasible it may be to assume facilitation function; the more CR-oriented actor is (or perceived to be), the harder it may be to combine the two roles, due to external expectations regarding impartiality.</td>
</tr>
<tr>
<td>To Raise/Not to Raise (7.4)</td>
<td>Both/and is possible but question itself is framed in flawed manner; dilemma is false Reframe: how can rights violations &amp; concerns be raised in such a way that gets them ‘heard’ while not adding to polarisation or defensiveness or glossing over important issues? Consider indirect approach and reframing, e.g. allowing another actor to raise HR concerns; focus on ways to prevent &amp; address abuse Possibly reframe rights concerns by not using explicit rights language but other concepts (e.g. human dignity, human needs), especially initially</td>
<td>Dilemma reflects no absolute tension between HR &amp; CR; raising rights concerns in CR efforts is important from a HR and a CR perspective There are many more issues to consider re. raising rights concerns beyond should they be raised (e.g. questions of who, what, when, how) Reframing rights concerns happens regularly in HR practice &amp; needs language may be less incompatible with HR than often assumed – but depends on conception of needs used Discourses from HR &amp; CR each have strengths &amp; limitations, making them more or less appropriate in particular circumstances → potential for cross-fertilisation &amp; mutual learning One and same concept may carry very different connotations across the fields; this can create friction if field-specific meanings are not specified and/or implications of specific connotations are ignored</td>
</tr>
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Chapter 7

The possible approaches identified in this chapter show that the actors discussed displayed considerable creativity and flexibility in their efforts to address the challenges they encountered. It should be noted, however, that these approaches do not present clear-cut solutions. The discussion shows that some contradictions often remain embedded within them and that mitigating adverse consequences entirely may not be possible. As such, the dilemma notion is relevant despite its flaws; it highlights that the questions explored here defy easy answers. They represent difficult situations that different actors may perceive as problematic in different ways, that can "be worked on and through but that keep evolving and never get 'fixed'" (Kahane 2010, 113). Therefore, the recurrent elements in these approaches – respecting complexity, recognising interdependence, creating space for manoeuvring through reframing and reflection, and not getting caught up in 'forced dualistic categories of truth' (Lederach 2005, 36)– can probably best be regarded a 'basic orientation' (Klein Goldewijk and De Gaay Fortman 1999, 43) for navigating the complexity of reality, rather than as a 'how to' guide.\footnote{162 Klein Goldewijk and De Gaay Fortman suggest that figuring out a 'basic orientation' is what is required in addressing dilemmas, as solutions do not exist in the midst of conflicting values (1999, 43).}

The chapter also paints a nuanced picture when it comes to the relationship between human rights and conflict resolution. While human rights and conflict resolution seemed to be at odds in three of the four challenges, further exploration called this into question. In the facilitator/advocate dilemma, tensions between these roles were not absolute or insurmountable. It also emerged that they cannot exclusively be ascribed to one or the other field, since conflict resolution practitioners tend to be advocates in some respects too. Also, contrary to first impressions, the issue of raising human rights issues in conflict resolution interventions does not simply pit pragmatism against principle, or conflict resolution against human rights: paying attention to rights concerns is in the interests of human rights and conflict resolution, and reframing rights is a practice used in both domains.

Even where tensions between human rights and conflict resolution approaches remained obvious – in pursuing confrontation or cooperation in asymmetric contexts – closer examination revealed that their adversarial and cooperative tactics may still be complementary in the long term, as effectuating change in such conditions probably requires both coercion and negotiation (Van der Merwe 1989, 115-116). This points to an ultimate paradox, in that compatibility may exist in incompatibility, or that contradiction may still be complementary.

This is not to deny or gloss over contradictions that may arise in concrete situations or at specific moments in time. It does, however, suggest that human rights and conflict resolution may 'hang together' in a 'both/and' way to a greater extent than is evident at first sight (or is generally recognised) even if tensions remain. It also highlights the need to look "beyond what is visible" and to inquire "what may hold together seemingly contradictory social energies in a greater whole", as Lederach puts it (2005,
Finally, rather than calling on human rights and conflict resolution actors to shy away from using strategies or undertaking initiatives that ‘the other field’ may call into question, it urges them to use the concerns they encounter as a signal – as a basis for considering whether they are overlooking critical issues in the situation at hand, and how to address possibly adverse consequences of their actions. Thus, there is value in engaging with the contradictions, rather than wishing them away.

Overall, this chapter shows that human rights and conflict resolution may both support and be in tension with one another. Its findings also provide grounds for the argument that the practice and theory of human rights and conflict resolution have some potential to ‘fill gaps’ in one another’s understanding of and approach to reality. They can draw attention to aspects of reality that may be downplayed in one frame of reference but foregrounded in the other, and can point to strategies beyond those readily known and used within a specific field. This came particularly to the fore in the context of the symptoms/causes discussion, where combining the respective emphases and tactics of human rights and conflict resolution provided a possible approach for actors seeking to impact on both causes and symptoms. It also surfaced in the confrontation/cooperation discussion, as alluded to above (in the ‘taking a leaf out of one another’s book’ observation), and the discussion on raising rights concerns in conflict resolution interventions.

More generally, the chapter’s consideration of the four dilemmas and possible approaches shows how models, theories and concepts from the two fields can help deepen understanding of challenges they face and their options for action. For example, the ‘nested’ paradigm (described in 7.1) stems from the conflict resolution field but it can also serve as a ‘think tool’ for human rights actors, to aid analysis and strategising. Human rights actors’ reservations about the ‘needs’ concept (7.4) can alert conflict resolution actors to the need to pay attention to issues of accountability and empowerment. This suggests that there is substantial potential for cross-fertilisation and mutual learning between the fields, to broaden actors’ horizons, enhance versatility and sharpen reflective practice.

The above references to combining emphases and approaches, mitigating consequences, and cross-fertilisation, while relevant, run the risk of implying that actors seeking to advance human rights and/or conflict resolution have full agency in how they engage with difficult situations. The facilitator/advocate discussion highlighted that this is not the case. Various factors, contextual and otherwise, affected the ability of the Manicaland Churches to perform both roles simultaneously, while Nepali human rights organisation INSEC was far less confined in this regard. This reflects how the relationship between human rights and conflict resolution can manifest in various ways in different contexts, and how its manifestation is contingent on a range of factors. This will be considered in more detail in the next chapter.

163 See the comments at the end of 7.2.3 about conflict sensitivity and do no harm.
Chapter 8: Factors Affecting Convergence
It has become clear that the relationship between human rights and conflict resolution is dynamic and variable: it manifests differently in various circumstances and can change over time. This raises the question of what factors influence how the interplay of human rights and conflict resolution unfolds in practice. The discussion in the previous chapter suggests that some will probably be contextual, while others may relate to the agency of those involved in human rights or conflict resolution efforts. This chapter further substantiates the claim that the human rights/conflict resolution relationship is dynamic and contingent by showing how four clusters of factors can impact on it. The chapter argues that the extent of convergence between the fields is, at least in part, a function of these factors.

This focus on factors affecting convergence is a relatively new line of enquiry in the study of the relationship between human rights and conflict resolution. To date, research has focused more on whether human rights and conflict resolution are complementary or contradictory, as if the fields’ modes of relating can only be one or the other. The limitations of this ‘either/or’ frame should be clear by now; it fails to recognise that the relationship between the fields is probably both contradictory and complementary. This complementarity/contradiction frame also seems to imply a fixed state, as if the relationship between the fields remains constant, irrespective of contextual conditions, circumstances at a certain time, or actions taken by organisations or individual practitioners. The findings of this study so far indicate otherwise.

The focus in this chapter thus transcends the existing frame by starting from the observation that human rights and conflict resolution can conflict at times and in some ways and enhance one another at other times and in other ways. The use of the term ‘convergence’ (and its counterpart, ‘divergence’) is another departure from the existing frame, intended to reflect the dynamism inherent in the interplay of the two fields. Convergence as used here generally denotes a situation in which human rights and conflict resolution move towards one another and come to support and enrich one another. Associated with complementarity, it links to notions of synergy, collaboration and cross-fertilisation that emerged in previous chapters. Divergence refers to an opposite movement, in which the fields move apart and tensions rise; it relates to notions of clashing, being at odds and contradiction.

A full examination of what factors influence the way the relationship between human rights and conflict resolution unfolds in practice is beyond the scope of this study. This chapter seeks to show instead the usefulness of this line of enquiry by considering how the relative convergence of human rights and conflict resolution may be affected by the following factors: the conceptualisations of ‘human rights’ and ‘conflict resolution’ that prevail in a given context; the political and economic context in which human rights and conflict resolution thinking and practices take place; the strategies

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1 See 1.1.3, on the fourth shortcoming of the existing literature. A notable exception is Manikkalingam (2008).
Factors Affecting Convergence

used to pursue human rights and conflict resolution goals; and the nature and extent of practitioners’ knowledge of, exposure to, and appreciation of human rights and conflict resolution. Considering the possible impact of these factors on the relative convergence of the two fields is not intended to imply that convergence is necessarily the ‘holy grail’; while this study has argued that convergence has several benefits, it has shown that apparent divergence can also serve a function.²

As the above suggests, this chapter does not aspire to be exhaustive nor does it assert strict causality. Resembling a plausibility probe, it is explorative in nature and builds on what I have encountered in practice and in the literature.³ This motivates the focus on these four factors. Three are derived from specific cases and contexts I have worked on and in; they have struck me over time as very relevant as I tried to make sense of the interplay of human rights and conflict resolution in different settings. This relates to prevailing conceptions, the political and economic context, and exposure, interaction and appreciation. The other factor discussed here, strategies used, stems more from the literature, which has mainly pointed to ‘conflicting methods’ in explaining tension between the fields.⁴ Overall, the chapter draws on a broader range of experiences than those featured before, including assignments undertaken while working on this study,⁵ and accounts from other countries. This supplementary information reinforces the line of argument set forth here and enhances insight into matters discussed. Hence the chapter refers to a few other countries to illustrate specific points (notably Sri Lanka and Colombia) and includes some references to actors operating internationally.⁶ The first two sections, however, provide more background to examples previously discussed by looking specifically at conditions in Northern Ireland and South Africa.

In terms of structure, the chapter first considers the conceptual level by contrasting the conceptions of human rights and conflict resolution that prevailed in Northern Ireland and South Africa (section 8.1). It subsequently takes a step back and places these conceptions in a broader frame of reference, by exploring the possible impact of the political and economic context with reference to Northern Ireland, Colombia and

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² This links back to the discussion of the confrontation/cooperation and facilitator/advocate dilemmas (in 7.2 and 7.3), which highlighted that seemingly conflicting (or: divergent) approaches can be complementary. This will be revisited in this chapter, notably in 8.3.1 and 8.4.3.

³ At a minimum, a plausibility probe may try to establish that a theoretical construct is worth considering at all, in the sense that an empirical example of it can be found (Eckstein 1999, 148). Drezner likens it to “dipping the first toe in the water. Swimmers want to know if the water is temperate enough to go deeper. Researchers want to know if the empirical climate is friendly enough for more extensive forays” (1999, 59).

⁴ See the introduction to section 8.3 for references.

⁵ These generally entailed speaking engagements or facilitation of training sessions or reflection focusing specifically on the relationship between the two fields, for mixed audiences (comprising human rights-, conflict resolution-, and/or development-focused practitioners). Many of these practitioners work in countries around the globe, through the United Nations or European development organisations.

⁶ This can be through the UN, field-specific INGOs, and international development agencies. Colombia and Sri Lanka feature mainly in 8.2.1 and 8.2.2, respectively; references to international practitioners are mostly confined to 8.4.
Chapter 8

Sri Lanka, as well as CCR’s Human Rights and Conflict Management Programme (HRCMP) (8.2). It then descends to the level of practice by considering how the strategies used to advance human rights and conflict resolution may affect prospects for convergence; it does so by bringing together overall insights from the study thus far and from the literature (8.3). Thereafter, the chapter focuses on practitioners in these fields themselves, looking at their exposure to, interaction with, and appreciation of the ‘other’ field (8.4). The final section presents the chapter’s conclusion (8.5).

8.1 Conceptions of Human Rights and Conflict Resolution

This section argues that the relative convergence of human rights and conflict resolution in a given context depends in part on how these notions are understood and applied in that setting; the specific conceptions of ‘human rights’ and ‘conflict resolution’ shape the interaction of the fields. It posits that the narrower the prevailing conceptions of human rights and conflict resolution, the less scope may exist for convergence, as it is more likely that proponents of these fields will question the relevance of one another’s perspective and approach and/or perceive their respective efforts as being at odds. It attributes this to the relatively few points that narrow conceptions – which construe human rights and conflict resolution in fairly classical terms – provide for connecting the two; such conceptions are therefore more likely to give rise to a perception of being mutually exclusive.

The section advances this thesis by contrasting the conceptualisation of these key notions in Northern Ireland and South Africa and noting the apparent implications for the relationship between human rights and conflict resolution in the two contexts. Focusing mostly on the late 1990s and the early 2000s, it observes that rather narrow conceptions operated in Northern Ireland, leaving little room for one another. This contributed to tension between the fields and scepticism amongst field actors as to whether human rights and conflict resolution could go together. In South Africa, on the other hand, broader conceptions prevailed, which offered multiple entry points for practitioners in both fields to accept the relevance and legitimacy of one another’s perspective and approach; it was hence easier to combine aspects of both in addressing contentious issues or problems in society. Below, the section first considers conceptions in Northern Ireland (8.1.1) and South Africa (8.1.2) and then summarises the findings (8.1.3). The discussion assumes that it is possible to identify a ‘dominant conception’ of human rights or conflict resolution in a context.⁸

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⁷ The focus on this time period is due to the fact that most of my activities in these contexts took place at that time.

⁸ As discussed in relation to the ‘field’ concept (1.2.2), recognising a ‘dominant conception’ does not preclude the chance of it being contested. Also, differences and ambiguities exist in the conceptions used (Beirne/Knox 2014, 32).
8.1.1. Northern Ireland: Narrow Conceptions, Little Convergence

This sub-section sets out the conceptions of human rights and conflict resolution prevailing in Northern Ireland in the late 1990s and early 2000s and explains how they probably negatively affected the relationship between the two: the analytical frameworks, priorities for action and strategies adopted by actors in both fields seemed unrelated or even outright conflicting. To substantiate this claim, it notes criticism levelled back and forth by proponents of the two fields, and outlines impressions from my first visit to Northern Ireland in late 2002.

This visit was in response to an invitation from the Belfast-based Institute for Conflict Research (ICR), which sought to organise a seminar on human rights and conflict management for relevant actors in Northern Ireland. The director, Neil Jarman, had become aware of CCR’s work in this area and believed that its experiences in linking the fields could be useful in the local context, especially because there was little interaction between human rights and conflict resolution actors in Northern Ireland, while what interaction did exist was not particularly constructive. As a researcher focusing on parading disputes, Jarman had been a member of the Committee on the Administration of Justice (CAJ) for some time, the leading human rights NGO in Northern Ireland. He had subsequently remained in touch with ‘the human rights community’, seeking ways of building links between it and the conflict resolution community.

Inviting me to Belfast to discuss the relevance of bridging the divide between human rights and conflict resolution, based on experiences in South Africa, offered an opportunity to bring practitioners working in these fields in Northern Ireland together and facilitate an exchange between them. ICR also arranged for me to have several meetings with relevant organisations and individuals. From my engagements at the seminar and in separate meetings, I got the impression that actors in the two fields – both individual practitioners and organisations – were reluctant to engage directly with one another. There seemed to be considerable frustration on both sides about ‘the other’s’ priorities and practices. I was told that field actors seldom attended one another’s events. The seminar seemed a case in point: few human rights ‘people’ turned up. All in all, I observed more of a gap between the two ‘camps’ (Beirne and Knox 2014, 28) and more pessimism about the potential for synergy than I had ever noted in the South African context, which was both fascinating and puzzling.

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9 Established in 1981, CAJ describes itself as “an independent human rights organisation with cross community membership in Northern Ireland and beyond. It lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law;” see http://www.caj.org.uk/.

10 Interview, 7 October 2011, through skype; personal notes from interaction with Jarman, September-November 2002.

11 Personal notes from meetings in Belfast and Derry, November 2002, on file with author.
While later visits did not dispel this picture,\(^\text{12}\) it is worth noting that these initial encounters were overshadowed by the publication of a special issue of *Human Rights Dialogue*, a journal of the Carnegie Council on Ethics and International Affairs (2002).\(^\text{13}\) Focusing on integrating human rights and peace work, it contained an article by leading human rights scholar/activist Christine Bell, former Chair of CAJ and a member of the Northern Ireland Human Rights Commission.\(^\text{14}\) It also featured a response by prominent conflict resolution practitioner Mari Fitzduff, the director of a university-based centre for applied conflict-related research who had previously headed the Community Relations Council, established to improve community relations between Protestants and Catholics in Northern Ireland and promote cultural diversity.\(^\text{15}\) Judging from their contributions, there was little love lost between the human rights and conflict resolution communities in Northern Ireland.

According to Bell, what was at stake was a “subtle and fundamental division over the causes of conflict and the best ways to end it” (2002, 6). She wrote that,

> During the period prior to the peace agreement, the community relations industry [...] was singularly unable to provide any broader structural initiatives aimed at challenging the conflict and its effects. [...] Community relations proponents operated at best with a toleration of human rights groups and at worst with an antipathy towards them as divisive and partisan, obstacles to good community relations – and therefore peace. Instead of viewing all difficult issues as political and subject to negotiation, human rights groups suggested that in some areas there were absolutes that, even if divisive, must be addressed. Many working from a human rights perspective viewed community relations work as perpetuating a status quo in which key causes of violence were not addressed and conflict could not be meaningfully resolved (2002, 7).

Concluding, Bell conceded that “human rights protections are not the whole solution”, yet warned that “human rights are too often not recognised as part of the solution. It does not serve lasting peace for human rights protections to be subjected to barter and exchange” (idem, 8).

In response, Fitzduff wrote that “the conflict resolution field does not have problems with human rights work per se, but rather with the selective and limited way in which

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\(^\text{12}\) After the first trip in November 2002, I visited Northern Ireland in spring and autumn 2003, and in 2004. I spent most of the time in Belfast. After the first trip I engaged mainly with the Parades Commission, notably its Authorised Officers and Executive Secretary. My trips lasted between 4 and 10 days.

\(^\text{13}\) This special issue had come out in the week preceding the ICR seminar; I had also contributed to it.

\(^\text{14}\) The Northern Ireland Human Rights Commission was set up as an independent statutory body in 1999 in line with the 1998 Good Friday Agreement, “to promote awareness of the importance of human rights in Northern Ireland, to review existing law and practice and to advise government on what steps need to be taken to fully protect human rights in Northern Ireland (including on the development of a Bill of Rights for Northern Ireland)”. See Parliament of United Kingdom, *Northern Ireland Act 1998 (Ch. 47, s. 68-70)*, and http://www.nihrc.org/.

\(^\text{15}\) The Community Relations Council was set up in 1990 as an independent company and registered charity, replacing a unit established in 1986 as a result of a research report by the Northern Ireland Standing Advisory Committee on Human Rights. While formally independent, the Council has been largely resourced by the British government (see also below at 8.2.2). For more information, see http://www.community-relations.org.uk/about-us/.
some institutions and individuals have been promoting human rights in Northern Ireland” (2002, 8). In her view, in relation to the peace process,

Practitioners of conflict resolution were frustrated by the repetition of the simplistic suggestion that a human rights approach was the only way to solve the conflict. Many in the human rights field gave the impression that if you did not agree with their particular way of pursuing human rights issues, you were against human rights. As a result, many in Northern Ireland saw human rights workers as generally judgemental, obsessed with political correctness, and lacking experience in dealing with the complex and muddy issues that conflict resolution workers often confront. Whether dealing with a riot, trying to stop maiming and murder, or merely trying to get groups who hate each other to meet for the first time, one needs a very wide and sensitive repertoire of approaches: referring to people’s rights in such situations can be about as useful as referring to the Ten Commandments. [...] [Experienced] conflict resolution activists know that rights and responsibilities merely become weapons for division unless they are deployed within the context of long-term and sustained dialogue between communities in conflict (ibid).

Even though these writings were partly framed as relating to a past, pre-Good Friday Agreement period, they alluded to ongoing concerns in the form of present-tense comments. These suggested that reciprocal frustrations had not evaporated in post-agreement times; the stop-and-go nature of the peace process probably provided ample opportunity for continuing disagreements on the way forward.16 Over time, it became increasingly clear to me that this divergence was related, at least in part, to the prevailing conceptions of and approaches to human rights and conflict resolution in Northern Ireland.

Conception of human rights

According to a recent article by Beirne and Knox, human rights practitioners in Northern Ireland describe their work as being primarily about challenging governments, focusing on issues of accountability, relying on the law and legally imposed legal frameworks and, to a large extent, on international standards, concepts, and campaigning (2014, 26). Practitioners also refer to a mixture of ‘soft’ and ‘hard’ law, and to a “confused stance regarding the overlap between civil and political rights on the one hand, and economic, social and cultural rights on the other” (ibid).18 These

16 The Northern Ireland Assembly (established by the Good Friday Agreement) was suspended several times due to political disagreements about devolution (the transfer of government powers from London to Belfast, including those relating to the police and judiciary) and decommissioning of weapons held by paramilitary groups. In late 2002, London reinstated direct rule of Northern Ireland. The Assembly only started operating again in May 2007 after a power-sharing agreement between the Democratic Unionist Party and Sinn Féin, the party associated with the Irish Republican Army (IRA).

17 The article is based on in-depth interviews with fourteen reconciliation and human rights activists and six key stakeholders from academia and equality and human rights statutory bodies during early 2012 (Beirne/Knox 2014, 28). The findings related to reconciliation work are noted below, under the header ‘conception of conflict resolution’.

18 The term ‘soft law’ refers to quasi-legal instruments that do not have legally binding force (or whose binding force is somehow ‘weaker’ than traditional law). Declarations and Resolutions of the UN General Assembly are
last two aspects hardly played a role in what I was hearing in the early 2000s; the strong focus on rights violations by the state and a heavy law-orientation featured all the more.

The stance of the Committee on the Administration of Justice at the time is illustrative, given its status as the premier domestic human rights organisation. While consistently opposing the use of violence for political ends, CAJ refrained from addressing abuses by non-state actors like the Irish Republican Army (IRA) and loyalist paramilitaries. Insisting that its work should be grounded in international human rights law, it maintained that it could not consider violent acts by paramilitaries as human rights violations since human rights treaties only bind states, not non-state actors (Felner 2012). This was “quite a traditional stance for human rights groups in the early 1980s” (Beirne and Hegarty 2007, 396), but CAJ maintained its position even as international practice started to change (ibid).19 It questioned the application of international humanitarian law to the conflict in Northern Ireland (which would enable scrutiny of non-state abuses); for CAJ, international human rights law provided the most solid and clear foundation for its work and was hence least disputable.20

Overall, activists from CAJ and other domestic human rights groups have argued that human rights are intended to hold the state accountable; taking non-state abuses into account could undermine their impartiality, downplay the role and responsibility of the state, and weaken rights arguments.21 For them, state abuses were key to the origins and continuation of the conflict in Northern Ireland, and protecting rights threatened by the state was essential to resolving the conflict (Felner 2012, 63; McEvoy 2001, 215). It is worth noting that early rights activism in the 1960s had paid attention to social and economic rights concerns – notably access to housing and employment for the Catholic/ nationalist minority – but after the state adopted changes in policy and legislation to address these concerns, and introduced stringent security measures to 'prevent terrorism' and 'ensure law and order', a strong focus on civil and political rights violations took hold.22

Arguably, this emphasis largely persisted in the 1990s and early 2000s. An external observer notes that human rights have been viewed “relatively narrowly [in Northern

usually soft law. Soft-law instruments may gain binding force over time, however, for example by giving to a treaty-making process or by leading to the creation of customary law. See also 8.3.2 (on moral or legal framing of human rights).

19 See also Hadden (2011), Beirne/Hegarty (2007), Bell (2002) and Committee on the Administration of Justice (2002). In 1991, Amnesty International started using international humanitarian law to examine paramilitary violence in Northern Ireland (McEvoy 2001, 224-225). CAJ revisited its stance several times in light of internal division and external criticism but essentially maintained it (CAJ ibid; McEvoy 2001, 243-244.).

20 See references at previous footnote; also Felner (2012) and Bell (2006). Some activists were concerned about the difficult position of arguing about the position of “legitimate targets” (CAJ 2002; Dickson 2010). For other arguments against the application of humanitarian law, see McEvoy (2001, fn. 87).

21 Personal notes from conversations in Belfast and Derry, Nov 2002; also references in previous footnotes.

Factors Affecting Convergence

Ireland], as a system of protection that might have an impact on specific issues, such as interrogation techniques, detention without trial, nonjury trials, criminal investigations and access to lawyers” (Hannum 2009, 245-246). This stance called attention to the role of the state as a party to the conflict, something that was not widely accepted in Northern Ireland at first and contradicted the British government’s view that it was merely a neutral arbiter between two warring factions (idem; Bell 2006; McVeigh 2002).23

In practical terms, the concern with state accountability, civil and political rights violations, and international standards has meant that the human rights field in Northern Ireland has mostly pursued law-based strategies with a structural and institutional focus: litigation of individual cases before the European Court of Human Rights so as to highlight rights violations by the state at the international level; monitoring respect for human rights in the conduct of state agencies, especially the police; lobbying to embed rights protection in policy and legislation (notably through a Bill of Rights); and raising human rights concerns at ‘every step of the peace process’ to ensure the inclusion of relevant provisions into the 1998 peace agreement (Bell 2006, 361). Since 1998, rights actors have devoted much attention to monitoring the implementation of its human rights provisions and enhancing the Northern Ireland’s ‘human rights infrastructure’ (Beirne and Ni Aolain 2009; Bell and Keenan 2004).24

Conception of conflict resolution

Conflict resolution work in Northern Ireland has long been conducted under the rubric of ‘community relations’. Community relations theory assumes that “conflict is caused by on-going polarisation, mistrust and hostility between different groups” (Fisher and others 2000, 8); Fitzduff has explained the objective of community relations practice as enhancing “understanding, respect and cooperation between communities in working together to develop a solution to conflict that is both just and sustainable” (as quoted in Komarova 2011, 144). Conflict resolution in Northern Ireland has also been framed in terms of ‘reconciliation’ (e.g. Beirne and Knox 2014; McEvo, McEvoy, and McConnachie 2006).

Exponents describe their work as being “primarily about bottom-up human dynamics and relationship-building; the creation of trust as a prerequisite for working together and breaking down barriers; and, the importance of processes as much or more than the eventual product (on the ‘how as much as, or at least before, the ‘what’)” (Beirne and Knox 2014, 26). The aim of the Community Relations Council attests to this conceptual link between conflict resolution, community relations and reconciliation in

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23 See further below at 8.2.1.
Northern Ireland: it seeks to “promote a peaceful and fair society based on reconciliation and mutual trust”.  

Practically, conflict resolution or community relation actors have placed much emphasis on challenging sectarianism, improving interaction and communication between members of different groups, reducing enemy images, and generally promoting greater tolerance and acceptance between communities in Northern Ireland, particularly regarding relationships between Catholics/nationalists and Protestants/unionists. The focus on improving bottom-up relationships has also prompted a concern with addressing contentious issues that affect people’s daily life, so as to reduce violence and disorder in situations where nationalists and unionists meet. Such issues include the use of public space – for example in relation to parading disputes – and street disorder and rioting at interfaces between unionist and nationalist residential communities. Initiatives in these areas include recording incidents, deploying monitors, establishing mobile phone networks for swift de-escalation and intervention, and facilitating local problem-solving.

At times, community relations practice has crossed over into community development work, in an effort to bring ‘the two communities’ together around common socioeconomic concerns. This stems from the reality that inter-communal violence mostly occurs in low-income areas (O’Brien 2007; Cochrane 2001). Aside from cross-communal initiatives, community relations work has also included ‘single-identity’ activities targeting one community only, on the grounds that this prepares them for later dialogue with ‘the other side’ by building their confidence and addressing their own deprivation first (Cochrane idem, 103, 105; Bell 2002, 7). Conflict resolution in Northern Ireland has thus mainly focused on horizontal relationships, while human rights theory and practice has mostly been concerned with vertical relationships, i.e. between the state and individuals.

**Mutual criticism**

These conceptions of human rights and conflict resolution have prompted criticism amongst their respective proponents about one another’s choice of strategies and their implications. Conflict resolution practitioners have deemed the classical

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28 Interviews with Neil Jarman, 7 Oct. 2011; Joe Campbell, 7 Oct 2011 (one of the founding leaders of Mediation Northern Ireland); and Brice Dickson, 14 Nov 2011 (Chair of the NIHRC, 1999-2005, and former Chair of CAJ).
29 For ease of presentation, the criticism is summarised in two categories: conflict resolution actors criticising the human rights perspective and practices, and vice versa. This is in accordance with most of the literature consulted. Yet not all literature referred to neatly represents a ‘human rights’ or ‘conflict resolution’ author: an analysis critical of conflict resolution may not have been written by a ‘human rights’ author (e.g. Komarova 2011; Cochrane 2004), while a human rights practitioner may be critical of the classical human rights conception (e.g. Felner 2012; Dickson 2010).
conception of human rights flawed for its legalistic character and for ignoring the reality on the ground, given the numerous abuses by non-state actors during and after the conflict. The human rights field’s failure to consider abuses by the IRA and loyalist paramilitaries seemed to suggest a certain partiality (e.g. Beirne and Knox 2014, 27, 33; Felner 2012; Fitzduff 2002). Moreover, in stressing injustice and inequality as the main cause of conflict, the human rights perspective failed to accept that “a very large element of [the conflict] was around whether violence was a justifiable way of seeking political objectives and whether workable arrangements could be made for ensuring power-sharing in what was obviously a deeply divided society” (Dickson 2010, 22).

The claim of turning a blind eye to reality also relates to issues that remain controversial in the post-agreement period, notably contested parades and violence at local interfaces. The prevailing conception of human rights has offered little concrete guidance on how to address such problems. This has prompted concerns that “human rights work is too focused on international principles to successfully affect local realities and conditions” (Beirne and Knox 2014, 33). It has also raised questions about the practical relevance and applicability of a human rights approach (Jarman 2009; Fitzduff 2002). In so far as human rights actors have engaged with ongoing political and communal violence, they have mostly commented on police behaviour and its use of force, or have set out relevant standards without discussing what these mean in practical terms.

Rights actors have generally avoided addressing the competing claims over human rights in the parading context, and they have said little on violence and disorder in interface areas – other than to note, as a consortium of eight British and Irish human rights groups stated in 2003, that “human rights principles have much to offer to tackle these problems” (Jarman 2009, 202, 206; Committee on the Administration of Justice 2003). The insistence of the human rights community to consider human rights only in the relationship between government and citizens - and its reluctance to consider their relevance in the relationship between citizens or groups of citizens - has thus been decried (Jarman ibid).

Conversely, human rights actors have criticised the conflict resolution perspective for failing to recognise and address the conflict’s root causes, notably the role of the state. In their view, its focus on relationships seemed to suggest that “the perpetuation of societal division in Northern Ireland is due to individual prejudice manifest at

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30 Also personal notes from interactions in Belfast and Derry, Nov. 2002, and interviews with Jarman and Dickson (op. cit. fn. 28 above).
31 Email correspondence with Neil Jarman, May 2003; Oct/Nov 2011 (on file with author). According to Jarman, “the exceptions to this avoidance have come from academics rather than from within the activist community” (2009, 202). One of these academic papers was commissioned by the NIHRC but written by three long-term parading observers (Hamilton, Jarman and Bryan 2001). The NIHRC only followed up much later with self-authored publications: it first issued a briefing paper on human rights compliance and Commission policy (2011); then a report on the international human rights framework relating to parades and protests (2013).
intergroup level between the two main communities”, rather than a lack of justice, equality and democracy (McEvoy, McEvoy, and McConnachie 2006, 95; McVeigh 2002).32 A study of peace and conflict resolution organisations in Northern Ireland partly confirms this, finding that such organisations “rarely presented an analysis of the causes of the conflict” and hence “responded to issues and problems that were consequences and symptoms of the conflict”. This included social alienation, group marginalisation, a perception of relative deprivation, and the threat of cultural loss and dilution (Cochrane and Dunn 2002, 169).33

Thus, relationship-building took precedence over the challenge function (Beirne and Knox 2014, 33), and there has been no analysis of “who has the power to discriminate or use violence” or who benefits from the existing ‘relations’ between communities (McVeigh 2002, 54). Human rights actors have also been critical of how the community relations approach has played into the state’s efforts to represent the conflict as an ‘internecine dispute’ between ‘two tribes’, which suggests an artificial symmetry between nationalists and unionists and disregards historical power structures.34 Moreover, as Bell puts it, “dialogue between Catholics and Protestants, even on issues of justice and equality, [is] not an adequate substitute for the government actually delivering justice and equality” (2002; also Robson 2000).

Rights actors have further criticized the focus on relationships between nationalists and unionists for overlooking contradictions within those groups, and for disregarding issues and people outside the sectarian divide (e.g. racism, disabled people, migrant workers) (Beirne and Knox 2014, 33-34). Single-identity work is considered problematic because it is easily “used to buttress particular political and religious ideologies that are exclusivist, supremacist and judgemental rather than pluralist” (Cochrane 2001, 106; Komarova 2011, 152; Bell 2002, 7). Generally, many conflict resolution organisations accommodate existing unionist and nationalist identities, rather than transforming them (Cochrane and Dunn 2002, 152).35

Final observations

The above lends credence to the claim that the human rights and conflict resolution perspectives and practices prevailing in Northern Ireland have limited prospects for

32 Meyer speaks of a ‘person-oriented frame’ in which the protagonists’ “personal attitudes” were mostly responsible for the conflict, meaning that changing people’s attitudes was the basis for a solution (2002, 188).

33 Of the ten ‘peace ‘peace and conflict resolution organisations’ studied in-depth by Cochrane and Dunn (2002), eight are dialogue-facilitation, relationship-building, and community-development oriented. This is why this study deems it fitting to include their findings here, even though it also comprised two organisations with a human rights focus, namely CAJ and Families Against Intimidation and Torture (campaigning against paramilitary intimidation and violence). The latter may be more a political lobby group using the human rights framework as a rhetorical base, rather than an actual human rights organization (McEvoy 2003, 326).


35 Orjuela observes a similar tendency amongst peace groups in Sri Lanka; these often have an “unproblematised and essentialist understanding” of identity and fail to question exclusionist discourses (2008, 229-230).
Factors Affecting Convergence

convergence in that context, if only because actors in both fields have vilified one another’s (supposedly) flawed analysis and/or inadequate approach. Tensions between the fields seem to have been exacerbated by a belief that human rights and conflict resolution are mutually exclusive. For example, arguing that “one actor’s analysis negates another’s”, Bell speaks of a “meta-conflict,” i.e. “conflict about what the conflict is about” (2006, 356). She writes:

Some believe that conflict is rooted in interethic hatred, while others view it as a consequence of racial domination and discrimination, or a government’s illegitimacy. If one believes that a conflict is about interethnic hatred, then this leads to one set of solutions; if it is about the denial of justice and inequality, that leads to another (2002, 6; also 2006, 356).36

Whether such divergence has lasted to date is subject to debate. Jarman and Dickson assert that it has barely dissipated.37 Beirne and Knox present a more mixed picture. Their article reflects that tensions remain between the pursuit of ‘human rights’ and ‘reconciliation’ as conceived in Northern Ireland, and that the criticism can be surprisingly personalised; one interviewee speaks of an “ideological war in which people in both camps deride and belittle each other” (2014, 32, 36).38

Yet they also note that several interviewees dismissed the supposed tensions as ‘artificial’ and that there was “a unanimous view that barriers which exist should be overturned, and that more bridges should be built” (idem, 38).39 In addition, some interviewees, primarily those working at community level, report using a combination of rights and reconciliation (idem, 37). The human rights/conflict resolution dynamic thus appears to be shifting in Northern Ireland; at least, the respective analyses and strategies seem no longer to be regarded as mutually exclusive.40 In South Africa, conceptions of human rights and conflict resolution have allowed more space for one another’s existence and legitimacy all along, as set out below.

8.1.2. South Africa: Broader Conceptions, More Convergence

In South Africa, the situation has been decidedly different. The understanding and application of ‘human rights’ and ‘conflict resolution’ has been much broader, meaning that there was not such a discrepancy between the fields and that they could relatively

36 Two other authors have also observed two distinctly different analyses and approaches amongst civil society actors in Northern Ireland and perceive them as mutually exclusive. While not framing these in terms of ‘human rights’ and ‘conflict resolution,’ one distinguishes between behavioural and structural analysis of conflict causes, arguing that these cannot be combined (Cochrane 2002, 104-105); the other points to cultural and structural ways of handling conflict which operate in separate spheres (Bloomfield 1995, 1559-160).
37 Interviews, 7 Oct 2011 and 14 Nov 2011, respectively.
38 Many of the concerns set out above (under ‘mutual criticism’) still persist amongst interviewees, and one “described the two agendas as operating in parallel universes” (Beirne/Knox 2014, 36).
39 Beirne and Knox also detect “an extensive crossover in practice between the two disciplines”, based on the fact that a few interviewees wrongly assumed that they fell in the other category for the purpose of the research (i.e. a rights activist self-identified as a reconciliation activist and vice versa) (2014, 38).
40 However interesting, it is beyond the scope of this study to examine how this shift has occurred.
easily coexist. Notwithstanding different emphases and strategies, human rights and conflict resolution have left room for one another's perspective on and approach to social reality. This has facilitated a degree of collaboration between field actors and some cross-fertilisation, as explored before. Because previous chapters have already shed some light on such constructive engagement, this sub-section merely summarises the conceptions of human rights and conflict resolution prevailing in South Africa – and the implications for convergence – to support the thesis advanced in section 8.1 as a whole: that the way in which human rights and conflict resolution are understood and applied in a specific context affects how the relationship between the fields plays out.

Conception of human rights

While international instruments heavily influenced the South African conception of human rights too, the notion as understood in that context goes beyond such standards in several respects. This is clear from a cursory look at the Bill of Rights contained in the South African Constitution (Republic of South Africa 1996). It allows for both vertical and horizontal application of human rights: it binds the state and private or juristic persons (idem, art. 8(2); Sarkin 1999, 80). The latter, horizontal application stemmed from the recognition that inflicting abuse had not been the sole prerogative of state agents during apartheid and that private individuals also bear responsibility for respecting the rights of fellow citizens (Klae 1998, 179-187).

Moreover, the socioeconomic rights contained in the Bill of Rights are justiciable, resulting from a strong concern with social justice (e.g. Moseaneke 2002). Socioeconomic rights gained importance during the transition, given the country's "appalling history of racism, poverty, and the concomitant skewed distribution of wealth along racial lines" (Davis 2008, 688). Noteworthy in this respect is the emphasis placed on 'human dignity' as an underlying value that guides the interpretation of the Bill of Rights (e.g. Sachs 2009; Chaskalson 2000). Serving as the 'moral ideal and legal touchstone' of the Constitution, dignity is understood as relating both to equal worth and to a dignified existence (Grant 2012, 237, 240). According to former Constitutional Court Judge Sachs, "respect for human dignity is the unifying constitutional principle for a society that is not only particularly diverse but extremely unequal. [...] The Bill of Rights exists not simply to ensure that the 'haves' can continue

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41 This has especially come to the fore in chapters 5 and 6, in terms of the experiences of LHR, CCR and some independent state institutions in South Africa.
42 The discussion does not consider the extent to which this conception of human rights has been realized; observers agree that South Africa’s post-1994 human rights record leaves much to be desired (e.g. Hornberger 2007).
43 Articles 26 and 27 provide for the rights to access to adequate housing, health care, food, water and social security. These are to be progressively realised within available resources (1996 Constitution; Davis 2008).
44 This emphasis is contained in the Constitution and has also been made by leading human rights figures, such as Chaskalson (the first President of the South African Constitutional Court (1994-2001) and the country’s Chief Justice (2001-2005)) and Sachs (who served on the Constitutional Court for fifteen years [1994-2009]).

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to have, but to help create conditions in which the basic dignity of the 'have notes' can 
be secured" (2009, 213).45

Further, the South African conception of human rights has not been very legalistic. For 
example, much attention was devoted to 'good process' during the drafting of the 
Constitution, so as to counter the lack of transparency, participation and trust during 
apartheid (Corder 2004, 320-321; Sarkin 1999; Ebrahim 1998).46 The decision to 
pursue a policy of truth-telling and disclosure rather than one of retribution in 
relation to crimes committed during apartheid is another case in point. One of the 
architects of the Truth and Reconciliation Commission characterised the "simplifications 
insisted upon by penal law fundamentalists" as not helpful to South 
Africa’s transition (Asmal 2000, 13).47 Also relevant is the inclusion of interest-based 
dispute settlement mechanisms – notably mediation and negotiation – in rights-
related legislation enacted in the post-1994 period.48

In part, this 'search for alternatives to adjudication' was due to the limited legitimacy 
of the formal court system resulting from apartheid and the lack of access to justice 
for marginalised and poor people (Lyster 1996, 236-237). Yet recognition of the need 
to balance conflicting rights and restore the relationship between parties in conflict 
also played a role (e.g. Sachs 2009). Thus, in 'a shift from the old adversarial model of 
labour relations', a Commission for Conciliation, Mediation and Arbitration replaced 
the Industrial Court to address workplace disputes, to facilitate social justice and 
restore the relationship between parties in conflict – notably mediation and negotiation – in rights-
related legislation enacted in the post-1994 period.49

45 This relates to the “dark undercurrent of human rights in South Africa: its role as a bulwark of protection for 
white economic privilege” given the inclusion of property rights in the Constitution (Klaaren 1997, 3; also 
46 Hailed as one of the most democratic and inclusive constitution-making processes in history, the drafting 
process was very participatory and involved a broad publicity campaign to raise awareness and solicit 
submissions; thousands of submissions and petitions were received (Sarkin 1999, 70-71; Oomen 2010; Barnes/De 
Klerk 2002).
47 The decision to forego trials was based on pragmatic and principled considerations: the 1993 Interim 
Constitution resulting from negotiations included an agreement to grant amnesty for politically motivated 
crimes. This was combined with truth-telling so as to restore victims’ dignity, repair relationships between social 
groups, retrieve information from perpetrators about crimes, and prevent forgetting of past atrocities. See, for 
and others (1998).
48 This includes, amongst others, the Public Protector Act (Act 23 of 1994); the Restitution of Land Rights Act (Act 
22 of 1994); and the Labour Relations Act (Act 66 of 1995), all Republic of South Africa.
50 This (fairly positive) summary of the South African conception of human rights is not to say that this conception 
have been without critique; it has for example been criticised for being detached from its legal foundation and for 
becoming a language of political compromise rather than one of principle and accountability (Wilson 2002, 15), 
and for not being sufficiently transformative given its recognition of individual property rights (e.g.
Conception of conflict resolution

As alluded to in relation to the Centre for Conflict Resolution, the South African conception of conflict resolution has long contained an emphasis on addressing injustice alongside the classical concern with improving relationships and facilitating non-violent conflict resolution and joint problem-solving. As one pioneer of conflict resolution in the country put it, “where gross injustices are built into the major structures [of society], conflict cannot be accommodated constructively and social justice and peace cannot be achieved without fundamental structural change” (Van der Merwe and others 1990, 217). He later put it more bluntly: “common ground and compromise can easily deteriorate in cheap reconciliation and fence-sitting” (2000, 201).

Conflict resolution in the South African context was thus not only concerned with relationship-building, preventing violence and facilitating dialogue, but also with power and justice. Odendaal and Spies observe that, as practised through the peace committees emanating from the 1991 National Peace Accord, it implied “value-laden change” (1996, 12). Generally, the committees – which brought together social and political activists, NGO workers, business people, clergy, police officers and local government officials – stressed values of participation, inclusion, tolerance, peaceful change, and democratic decision-making (ibid; Marks 2000; Parlevliet 2009, 266-268). Practitioners also recognised that the interaction between conflicting parties occurred in a context of power relations. The notion of ‘levelling the playing field’ became widely used when conflict resolution thinking and methodology spread through the country via the peace structures (Odendaal and Spies 1996, 10; Marks 2000, 114).

Overall, a comparative study of peace and conflict resolution organisations in South Africa, Northern Ireland and Israel/Palestine finds that the South African organisations had more ‘coherent political objectives’ than their counterparts in Northern Ireland (Cochrane and Dunn 2002, 152; Gidron, Katz, and Hasenfeld 2002a, 12-13; 2002b, 14-24). In South Africa, ‘peace with justice’ became “an animating ideology” (Cock 2004, 183), with ‘peace’ being understood as “freedom from the systemic violence generated by the political, legal, and socio-economic foundations of the apartheid order” (Taylor, Cock, and Habib 1999, 3). This stands in stark contrast to Northern Ireland, where ‘peace’ has largely meant a cessation of direct violence (Parlevliet 2009, 278-281; Gidron, Katz, and Hasenfeld 2002b, 24).
**Mutual entry points**

These South African conceptions have provided multiple ‘entry points’ for constructive engagement between the fields in terms of discourse, analysis and practice. In relation to ‘human rights’, this includes their direct horizontal application, recognition of the limitations of formal institutions and judicial processes in ensuring justice, awareness of the need to balance conflicting rights and address relationship dynamics, a concern with good process, space accorded to interest-based approaches in ensuring rights protection, and an emphasis on ‘human dignity’ as an overarching value that binds society together. This conception suggests that human rights matter not only in the positivist sense as law, but also as moral values which affect people’s daily lives and interactions.

This has been matched, so to speak, by a conception of conflict resolution that was not apolitical but emphasised ending political violence and securing justice and democracy. It also comprised a realisation that conflict resolution interventions must consider power imbalances between parties. Recognising the importance of devoting attention to the interaction between state and citizens, the conception and practice of conflict resolution in South Africa has further ensured the involvement of both state and non-state actors in its processes. Therefore, neither horizontal nor vertical relationships have been the exclusive domain of either the human rights or the conflict resolution field. Instead, both fields have been concerned with both.

Consequently, even though human rights work and conflict resolution practice in South Africa have placed different emphases and employed different strategies – with conflict resolution focusing more on facilitating dialogue, joint problem-solving, and reducing violence, and human rights on institutional reform, monitoring and denouncing abuses, and providing legal services – this has generally not been perceived as the fields being mutually exclusive, as was the case in Northern Ireland. This is not to say that there have been no altercations between human rights activists and conflict resolution practitioners in South Africa over time, as illustrated by the 2008 xenophobia crisis in the Western Cape.\(^5^4\) However, unlike in Northern Ireland, such disagreements have probably related mostly to particular situations, strategies and priorities at specific times, rather than to the perspectives, analyses and approaches advanced by human rights actors and conflict resolution actors in general.

**8.1.3. In Sum**

This section has argued that the specific conceptions of human rights and conflict resolution that prevail in a certain context can affect the way in which the relationship between these fields unfolds. By contrasting the conceptions that operated in

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\(^5^4\) See 5.2.4.
Chapter 8

Northern Ireland and South Africa, it has shown that the relative convergence of the fields is contingent (at least in part) on the way in which they have been understood and applied in these contexts. This final sub-section summarises the discussion.

It has become clear that generally, relatively narrow conceptions of human rights and conflict resolution have prevailed in Northern Ireland, in comparison to broader conceptions in South Africa, as outlined below:

<table>
<thead>
<tr>
<th>Human rights</th>
<th>Northern Ireland</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Vertical application</strong>: only the state can violate and protect human rights.</td>
<td><strong>Vertical and horizontal application</strong>: both the state and private citizens bear responsibility for protecting human rights.</td>
<td></td>
</tr>
<tr>
<td><strong>Emphasis on human rights as law and on civil and political rights</strong>.</td>
<td><strong>Emphasis on human rights as law &amp; values, on civil-political and socioeconomic rights</strong>.</td>
<td></td>
</tr>
<tr>
<td><strong>Strategies</strong>: adjudication, legislative and institutional reform, monitoring state compliance with international norms, litigation before European Court.</td>
<td><strong>Strategies</strong>: adjudication and interest-based methods to protect rights, institutional and legislative reform, monitoring state compliance.</td>
<td></td>
</tr>
<tr>
<td><strong>Little consideration of violence by non-state actors, and of problems related to balancing conflicting rights, entrenched enmity in inter-communal relationships</strong>.</td>
<td><strong>Concerned with abuse by state and non-state actors, limitations of judicial institutions, balancing conflicting rights, relationship dynamics</strong>.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Conflict resolution</th>
<th>Northern Ireland</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Community relations</strong>: enhancing respect, understanding and peaceful coexistence between two main identity groups.</td>
<td><strong>Building peace with justice</strong>: facilitating the peaceful transformation of the state, institutions and society at large.</td>
<td></td>
</tr>
<tr>
<td><strong>Emphasis on building relationships &amp; trust between minority and majority communities; reducing prejudice; enhancing tolerance and acceptance</strong>.</td>
<td><strong>Emphasis on facilitating dialogue, joint problem-solving, creating ‘space’ to air grievances, reducing violence, levelling the playing field to address power imbalance</strong>.</td>
<td></td>
</tr>
<tr>
<td><strong>Focus on reducing and preventing violence in context of parading and local interface areas</strong>.</td>
<td><strong>Recognition that striving for peace, reconciliation and compromise, without addressing causes of violence, may institutionalise unjust status quo</strong>.</td>
<td></td>
</tr>
</tbody>
</table>

In Northern Ireland, these narrow conceptions have meant that actors in the human rights and conflict resolution fields have generally set different priorities and have used different strategies. They have also targeted their efforts in different directions: conflict resolution actors have mostly been concerned with ‘on the ground’ interactions between members of minority and majority communities, while human rights actors have directed their interventions mostly at the level of the state and political elites (Parlevliet 2009). Probably, the different analyses, priorities and strategies have limited the prospects for convergence between human rights and conflict resolution in Northern Ireland, all the more because they were perceived as
being mutually exclusive. As a result, they have generated ‘ideological debate’ (Beirne and Knox 2014, 28) and much frustration amongst actors in both fields about what each perceives to be the other’s flawed analysis and deficient approach – and failure to appreciate the value of their contribution to addressing conflict in Northern Ireland.55

In South Africa, however, the prevailing conceptions of human rights and conflict resolution have connected at several points and generally allowed more space for one another’s existence and legitimacy. This has impacted positively on the interactions of practitioners and organisations in both fields and on their appreciation of the various strategies utilised in pursuit of human rights goals and conflict resolution objectives. This is suggested by the degree of ‘cross-fertilisation’ and cooperation that has taken place, manifested, for example, in the partnership between organisations such as LHR and CCR and the inclusion of alternative dispute resolution mechanisms in rights-related legislation.

This section has thus highlighted how different conceptions of human rights and conflict resolution may influence how the relationship between the fields plays out in practice. It suggests that the narrower – or the more traditional – the conceptions that prevail in a certain context, the more likely it is that divergence may ensue, since there are fewer points of connection. Based on the Northern Ireland example, the discussion suggests that an understanding of conflict resolution that disregards the role of the state and issues of justice may well be problematic.56 As regards human rights, the limitations of a mostly positivist and legalistic understanding show up when it fails to appreciate the social or relationship context in which rights function and manifest – not at the level of public governance and state institutions but in daily life, i.e. in the politics of everyday. Human rights imply a social dimension, since human freedoms can only unfold in relation to fellow persons (Bielefeldt 1995, 591).

Even so, it is probably inappropriate to conclude that narrow conceptions of human rights and conflict resolution will necessarily lead to divergence and contradiction. After all, in theory, a notion of human rights that emphasises vertical relationships, structural reform and rights-based solutions, can be compatible with a conception of conflict resolution that emphasises horizontal relationships, good process, trust-building and dialogue. Yet such coexistence would probably require that field actors appreciate the respective strengths and limitations of both perspectives – and that they recognise the interdependence of conflict’s subjective dimension (related to relationship and identity dynamics) and the objective factors that underlie it (related to power, resources and governance) (Parlevliet 2009, 270-273; 2002, 22-23).

The perception of human rights and conflict resolution being mutually exclusive suggests that other factors may have been at play in Northern Ireland too. Particularly

55 See also below at 8.4.3, fn. 157.
relevant in this regard may be the wider political and economic context in which the
discourses and practices of human rights and conflict resolution have operated. We
therefore now turn to a consideration of this broader context as another factor that
can affect the convergence or divergence of human rights and conflict resolution in
practice.

8.2 Broader Political and Economic Context

This section argues that the broader political and economic context in which human
rights and conflict resolution thinking and practice takes place, also affects how the
relationship between the fields plays out in a given context. With regard to the
political context, it suggests that the relative convergence of human rights and conflict
resolution is affected by the political ideology underpinning or associated with the use
of these discourses and approaches, and the way in which these bodies of thought and
practices feed into existing political dynamics. The section draws particular attention
to the possibility that the two fields may become aligned with specific conflict parties;
this is likely to fuel polarisation between human rights and conflict resolution.

The situation in Northern Ireland serves again as an example, but references to other
contexts suggest that it is probably not unique in this regard. Funding practices by
external donors can also impact on the relationship between the fields, in part because
they may privilege certain conceptions and approaches to human rights and conflict
resolution that facilitate more or less convergence. As regards the economic context,
the section thus points to the origins, organisation and allocation of funding as
important factors to consider, and also notes the impact of competition for resources
amongst actors working on human rights and conflict resolution. References to
experiences in Northern Ireland, Sri Lanka and CCR's Human Rights and Conflict
Management programme illustrate this discussion.

Clearly, the issues considered here constitute only part of the broader political and
economic context. The section takes this partial approach so as to highlight the
relevance of examining contextual issues more thoroughly in future; doing so here is
beyond the scope of this chapter. The section focuses first on the politics in and of
human rights and conflict resolution (8.2.1), then on issues related to funding (8.2.2),
and concludes with a summary (8.2.3).

8.2.1 Political Context: Political Ideology and Dynamics

This first sub-section brings out how politics may matter in how the relationship
between human rights and conflict resolution unfolds. It draws on writing of Mauricio
García-Durán, a Jesuit priest and long-term researcher of peace processes and peace
activism in Colombia, who used to direct a non-profit foundation that promotes social
change and undertakes both human rights monitoring and peace and conflict work in
that country. It first sets out his argument and then relates it to the South African context and Northern Ireland. This highlights another possible explanation for the variation in the fields’ relative convergence in the two settings: in South Africa, one political ideology informed the conception and application of both human rights and conflict resolution, but in Northern Ireland the fields were associated with competing political ideologies.

According to García-Durán, the interaction between human rights and conflict resolution is “conditioned by the context in which their conceptual and practical instruments are used, a use which always has a political content” (2010, 99). Understanding the fields’ interaction therefore requires “an analysis of their political use, in order to understand what is the real content of each, and to what extent one practice complements the other” (ibid). He illustrates this with reference to the Colombian context, noting that “the way in which human rights have been politically framed has established the conceptual and practical conditions for how human rights activists relate themselves with peace and conflict [resolution] frameworks” (ibid).

In the 1980s, for example, human rights activism in Colombia was mostly defined in terms of the political left and evolved from “expressions of solidarity with class fellows affected by [the then] repression” (2009, 1577). Activists used human rights to address a specific kind of violence, namely violence perpetrated by the state against the left (2010, 100; Tate 2007, 73). They viewed the state as an enemy involved in state terrorism and largely considered violence employed by the Colombian guerrillas as the legitimate expression of the ‘right to rebellion’ (ibid). Hence, human rights defenders were not receptive to conflict resolution proposals that conceived ‘the state’ as key to any institutional solution to political violence in Colombia or that focused on democratising the state. They also viewed slogans by peace activists – whether blanket rejections of violence or generic calls for peace – as a competing discourse that hindered efforts to achieve justice and accountability (García-Durán 2010, 100; Tate 2007, 132).

A specific political ideology thus informed activists’ use of human rights discourse and methods which allowed for little convergence with conflict resolution at the time – all the more because peace activists advocated for a negotiated solution to the armed conflict, which conflicted with the vision of the state as an enemy. In the 1990s, human rights activism in Colombia professionalised and the resulting human rights NGOs focused on monitoring and reporting on abuses by state agents and illegal armed groups in line with international standards. Many rights activists developed new forms of relating to the state – supporting local officials, lobbying for a new

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57 This is the Center for Research and Popular Education (CINEP) in Bogotá, Colombia; http://www.cinep2015.org/. García-Durán became its director in August 2007 and left the organisation in May 2012.
58 García-Durán’s argument builds on a long-term study of human rights activism (Tate 2007), which has met with wide acclaim (e.g. Goodale 2011), and his own long-term study of social mobilisation for peace in Colombia (2005).
constitution, or articulating the political reforms necessary for a lasting peace (Tate 2007, 145). This take on human rights, which sought to “co-construct a state that fulfils its obligations to its citizens” (ibid), provided more scope for constructive interaction with conflict resolution frameworks given their emphasis on engaging with the state (García-Durán 2010, 100).

García-Durán thus argues that human rights and conflict resolution frameworks are used from the vantage point of a specific political perspective, which results in certain elements of each being given more or less emphasis – and this, in turn, influences how the relationship between the fields unfolds in a certain context (ibid). The examples of South Africa and Northern Ireland give credence to his claim that considering the political perspective underpinning or associated with the use of these ‘frameworks’ can shed light on their interaction, as is explained below.

**South Africa: one political ideology underpinning both fields**

As Johnson and Jacobs observe, ‘two rival traditions of political thought’ have existed in South Africa that have generated contending approaches to ensuring respect for human rights, namely liberalism and black nationalism (2004, 85). While black nationalism calls for redistributive policies to address past imbalances and secure actual equality of the country’s black majority, liberalism advances a ‘difference-blind approach to the application of equal rights’ (ibid, 85-95). In the 1990s, liberalism became the dominant political ethos, and with it, a particular conception of human rights: one that prioritises individual political freedoms and equality before the law over substantive equality in socioeconomic terms (ibid; Mutua 1997). This influenced the negotiations between the apartheid regime and its opponents and was built into the country’s constitutional arrangement; South Africa’s peace agreement was the 1993 Interim Constitution. It is however likely that the ‘underlying cross-current’ of black nationalist ideology (Johnson and Jacobs 2004, 85) influenced this dominant conception somewhat, resulting in the concern with social justice and socioeconomic rights noted earlier.

Following García-Durán, an explanation for the relative convergence of human rights and conflict resolution in South Africa is then that a similar political perspective informed the two bodies of thought and practice there: the liberal conception of human rights that prevailed matched the liberal outlook of the leadership of prominent non-governmental conflict resolution organisations in the country, as observed by other analysts (Taylor 2002; Taylor, Cock, and Habib 1999, 3). Had the black nationalist take on human rights become dominant (which would have advocated a more radical redistribution of wealth in the country), it might have been more in tension with conflict resolution – after all, the latter still envisaged a negotiated end to the conflict that would meet the interests of both the black majority and the white minority.
Another relevant contextual factor is that conflict resolution in South Africa grew rapidly as a professional practice and discourse in the 1980s, when state repression was on the rise and pressure to dismantle apartheid grew both at home and abroad (ibid). This also facilitated the conflict resolution field in South Africa assuming a "system-transforming frame" (Meyer 2002, 191). Thus, both the human rights and the conflict resolution fields became set on ending the apartheid regime and ensuring a more peaceful and just society. This common political drive was conducive to convergence.

**Northern Ireland: conflicting political ideologies associated with the fields**

One feature of Northern Ireland’s political context is particularly striking when trying to make sense of the interaction between human rights and conflict resolution there: the fact that both have been associated with distinct political ideologies and, thereby, with a specific party to the conflict. As human rights activism focused on challenging the state, it became “politically situated as a tool of one community, the nationalist community, rather than something that could be used more broadly,” as Jarman puts it. The decision by human rights groups to refrain from monitoring paramilitary violence fuelled a perception of human rights as a partisan nationalist agenda (Hadden 2011, 6). The reluctance on the part of some rights activists to denounce republican abuses – in more explicit terms than through general statements opposing political violence – reinforced this impression.60 Moreover, republican politicians quickly saw “the potential of calling on human rights language as a means of garnering international support for their claims” (Lamb 2010, 1000).

The resulting suspicion amongst unionists/Protestants was exacerbated by the hostility towards human rights that characterised Protestant politics (ibid). Yet their ‘ideological rejection of rights’ (idem, 1001) was mostly due to their relationship with the state. To embrace rights was to be “disloyal to their own politicians and organisations such as the [police] or the British Army who were perceived as protecting [their] community from Republican terrorism” (ibid). The idea that ‘their’ police and security forces were guilty of violating the very standards that the British state had signed up to, was also difficult to stomach. Dickson suggests that this community also came to resist human rights since rights activism in Northern Ireland initially modelled itself after the American civil rights movement: “They did not like to

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59 Interview, 7 Oct. 2011; also interviews with Joe Campbell, 7 Oct. 2011 and Brice Dickson, 14 Nov. 2011; see also Beirne/Knox (2014, 33).
60 Some rights activists may actually have viewed such violence against certain targets (British security personnel and infrastructure) as legitimate (Felner 2012, 64-65); confirmed by Jarman and Dickson in separate interviews (op. cit.)
61 Personal communication, Robin Percival (former NIPC Commissioner), Sept 2014. The British government had signed and ratified all the major human rights treaties and claimed to abide by them in Northern Ireland (Bell 2000, 58). Members of the police force in Northern Ireland, the Royal Ulster Constabulary, mostly came from the protestant community. This body existed until Nov. 2001, when the Northern Ireland Police Service replaced it.

309
think of themselves [as] behaving towards Catholics or nationalists in the same way as whites were behaving towards blacks in America”.62

Of course, a chicken and egg question arises: did nationalist ideology shape the conception and practice of human rights in Northern Ireland into a project that was solely oriented towards holding the state accountable or did the state-centric focus of human rights work derived from international instruments lead to human rights being viewed as a nationalist agenda? Probably, both dynamics have been at play. Either way, framing concerns in human rights terms became perceived “as a particularly politicized form of engagement, which the other side distanced themselves from”.63 Consequently, it has long been difficult for human rights actors to “reframe human rights issues as cross-community issues related to good governance which it was reasonable to expect Unionists to accept, rather than merely ‘concessions to Nationalists’” (Bell and Keenan 2004, 355-356).

As a corollary, conflict resolution in Northern Ireland became linked to unionist ideology and was perceived as “colluding with a state agenda of defining and ‘containing’ the problem in colonial terms” (Beirne and Knox 2014, 33).64 According to McEvoy and others, the government considered it necessary to facilitate reconciliation between the two communities so as to obtain Catholic allegiance to a reformed Northern Ireland state and reduce support for more militant republicanism (2006, 85-87). In their view, “community relations was arguably always a softer and more palatable alternative to rights discourse with its inevitable critique of the state”, notably for “the more progressive elements of Unionism” (idem, 86). The association was fortified by government’s open spearheading of the community relations venture through a dedicated Ministry and Commission in the early 1970s, and financial support for civil society involvement from the 1980s onwards (Komarova 2011, 144).65

Some have thus seen community relations “as an almost completely state-led project”, intended to obscure power dynamics (ibid). Jarman stresses that many nationalists dismissed community relations as ‘irrelevant’ given its disregard of the state. Their resistance probably also related to the implicit challenge that community relations posed to nationalists’ claim of being non-sectarian: “Engaging with community relations would have opened up questions about the rationale for certain attacks by republicans [as to whether there was] a sectarian motive. This caused tension as they usually claimed that they were only hostile to the state, not to the protestant

62 Interview, 14 Nov. 2011. The idea that early rights activism in Northern Ireland took after the American civil rights movement is widely held; see also, for example, Lamb (2010, 1000) and McEvoy and others (2006).
64 This relates to the ‘two tribes’ approach mentioned in 8.1.1.
65 On funding, see further 8.2.2.
community as such”.66 (This relates to attacks on police and other security personnel in private spaces, when the notion that these constituted ‘legitimate targets’ was questionable).

Admittedly, certain nuances can be added to this analysis.67 Yet the overall picture remains as set out, and emerges clearly from the literature, interviews and personal observations: in Northern Ireland, the two bodies of thought and practice have been linked with competing political ideologies – and thus with the two sides in conflict. This probably fed into the idea that human rights and conflict resolution were mutually exclusive and may well have fuelled polarisation between the fields.

**Fields associated with conflict parties**

It appears that the situation in Northern Ireland, with human rights and conflict resolution being associated with one or the other side in conflict, is not unique. A similar dynamic reportedly emerged in Rwanda. According to Hizkias Assefa, a professor of conflict studies with much mediation experience in Africa, justice and human rights came to be viewed as a ‘Tutsi’ matter after the 1994 genocide, while Hutus were identified with conflict resolution, coexistence, and reconciliation efforts (as noted in Lutz, Babbit, and Hannum 2003, 191). It has also been observed that human rights and peace groups in Sri Lanka were largely split along ethnic lines (or were perceived as such), with rights organisations being mostly dominated by Tamils and peace ones by Sinhalese (Orjuela 2008, 185-188; Perera 2002; Thiagarajah 2002).68 A similar division has been noted in the Israeli/Palestinian context amongst non-governmental organisations (Abu-Nimer and Kaufman 2006, 292).69

A common pattern exists in these examples: the human rights agenda is linked to the identity group that does (or did) not wield political power at the time when most violations occurred, while the conflict resolution agenda is associated with the group controlling (or privileged by) the state at the time of widespread violence. This may relate to various factors observed before, such as human rights’ traditional aim of holding the state accountable, the asymmetric nature of the conflicts involved, and the

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66 Interview, 7 Oct. 2011. Jarman draws a parallel with racism: “for the nationalist community, it tends to be that the protestant community is seen as sectarian, but that there is less sectarianism within their own constituency. It’s a bit the idea that – the white community is racist, but the black community isn’t racist.”

67 For example, after its establishment in the 1990s, the Community Relations Council has also provided funding to CAJ and other human rights groups (Fitzduff 2002, 8); within some unionist quarters, there was some support for a Bill of Rights for Northern Ireland from the 1970s onwards (McEvoy and others 2006, 101, n. 36); after the Good Friday Agreement, some parts of the protestant/unionist community started to use human rights language to support political demands (Bell and Keenan 2004, 353-354); and practitioners of community relations came from both protestant and catholic communities (Cochrane 2001); also interviews with Joe Campbell and with Neil Jarman, both 7 Oct. 2011.

68 It is unclear whether this division is specific to a certain time period or is a long-standing pattern.

69 Abu-Nimer and Kaufman note the involvement of many Israelis in the ‘peace movement’ and far fewer in human rights groups; on the Palestinian side, human rights groups have mushroomed and there has been no sizeable organized ‘peace movement’ (2006, 292).
resulting uneven distribution of violations between warring groups. Another factor at play may be the fact that those who benefit from the status quo are more likely to be set on limiting violence and pursuing reconciliation than on heeding calls for change. A state seeking to maintain stability and order – i.e. negative peace – may also wish to use conflict resolution as a tool for pacification.

While a firm causal relationship can probably not be established, it is fair to suppose that such a dynamic – the two agendas being ascribed to different conflict parties – will undermine the scope for convergence. Human rights and conflict resolution are more likely to be at odds when their ‘conceptual and practical instruments’ (García-Durán 2010) become embroiled in ethnic or political polarisation and zero/sum thinking between parties in conflict. Naturally, this can change over time; for example, changes in the domestic or international environment may lead groups previously resisting rights language to start ‘operating under the human rights banner’ to serve their own political ends (Bell and Keenan 2004, 369). It is thus problematic to assume that one discourse – e.g. ‘human rights’ – can only serve one political project over time or even at a time.70

A related caveat is that in-depth research of any specific context will probably reveal complexities beneath a simple division of human rights and conflict resolution along conflict lines – also because of the limitations of treating identity groups as homogenous entities and of framing conflict as ‘a perpetual or primordial rivalry’ between them (Orjuela 2008, 219). Nonetheless, the chance of human rights and conflict resolution thinking and practice getting caught up in polarisation between opponents highlights the importance of considering ‘the politics in and the politics of’ human rights and conflict resolution practice (Nagaraj and Wijewardene 2014, 399) when seeking to make sense of the interplay between the fields.

8.2.2 Economic Context: Origins, Organisation and Allocation of Funding

Beyond politics, economics also matter for the relative convergence of the fields, especially in terms of funding by external donors: where funding comes from, and how it is organised and allocated, can influence how the relationship between human rights and conflict resolution unfolds. This sub-section illustrates this by referring to experiences in CCR’s Human Rights and Conflict Management Programme (HRCMP), and in Northern Ireland and Sri Lanka. These highlight that funding practices can influence perceptions of efforts by civil society actors, their ability to work across the fields, and how they practice human rights and/or conflict resolution, all of which can affect the fields’ interaction.

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70 This also transpires from Tate (2007) and Keenan (2006) with reference to Colombia and Sri Lanka, respectively.
Factors Affecting Convergence

Origins of funding

As noted above, government funding for community relations was a factor in this perspective being associated with a specific political agenda, with adverse effects for convergence. McVeigh, for example, speaks of the "community relations project in the north of Ireland" being "inspired and bankrolled by the British state" (2002, 49). He is not alone in referring scornfully to a community relations or reconciliation 'industry,' a term that casts doubt on the legitimacy or veracity of the undertaking given its connotations of mass production, profiteering and self-interest (Hornberger 2007, 47). The source of funding made efforts suspect in critics’ eyes, even if others observe that almost all peace and conflict resolution organisations in Northern Ireland – including nationalist ones – accepted government funding pragmatically while discarding the associated political agenda (Cochrane 2004, 149-150; Cochrane and Dunn 2002, 166).

Organisation of funding

In general terms, Babbitt and Williams observe a ‘dichotomisation’ of funding which limits practitioners’ flexibility to work across the human rights and conflict resolution fields (2008, 6). This tallies with my own experiences when fundraising for the HRCMP between 1999 and late 2003. Various donors indicated that they could not provide funding for the programme because it did not fit their funding parameters; its focus and activities straddled separate funding lines. I was repeatedly told that the programme was ‘too human rights-oriented’ to qualify for funding under the conflict resolution rubric, and ‘did too much conflict resolution’ to be eligible for funds set aside for human rights and justice-related programming. While this may have been an easy way to dismiss one of many contenders for scarce resources, the pattern was striking. It shows that activities must fall within fixed categories and comply with donors’ beliefs of what ‘human rights’ or ‘conflict resolution’ efforts entail. These are more likely to reflect traditional conceptions and distinctiveness than they are to recognise fluidity between the fields or potential for convergence.

Allocation of funding

The significance of donor conceptions also emerges clearly from an analysis of the impact of funding flowing into Sri Lankan civil society after a ceasefire agreement was concluded in 2002 between the government and the Liberation Tigers of Tamil Eelam (LTTE), brokered by the Norwegian government (Keenan 2007). Peace and conflict

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71 See McEvoy and others (2006, 82) and Bell (2002, 7).
72 Cochrane and Dunn note however that the CAJ was “atypical of the groups studied” in that it explicitly refused funding from British government sources, to protect the independence and integrity of the organisation (2002, 166).
73 This theme recurred across responses from bilateral funders and large foundations.
74 This analysis focuses on the years 2002-2006, see also Hoole (2009, 133). The LTTE was a Tamil armed group that fought the Sri Lankan state for over 30 years, seeking to establish a separate Tamil state in the North and
resolution-initiatives proliferated as international donors sought to tap into the peace-building power of Sri Lankan civil society. The model of conflict resolution sponsored was “quite technical, even apolitical”: local civil society organisations were not “encouraged to engage directly with the power structures and ideological formations that sustain Sri Lanka’s various violent conflicts” (idem, 90). Much emphasis was placed on being ‘evenhanded’ and ‘balanced’ with respect to the main negotiating parties, the Sri Lankan government and the Tamil Tigers. This meant that “one was only allowed to criticize the violations of one of the two parties (generally the Tigers) [if] the other party (generally the government) had committed equivalent violations” (idem, 95). Instead, local NGOs were to build peace by supporting the formal elite-level process (idem, 101).

As a result, local peace organisations refrained from criticising either of the parties, international actors or their donors. They failed to engage with the undemocratic tendencies within the main parties and with exclusivist Tamil and Sinhalese nationalist ideologies, disregarded voices that were excluded from the negotiating table, and avoided expressing “an independent political agenda of their own” (ibid; also Hoole 2009). In Keenan’s view, these developments had a ‘devastating effect’ on the work of human rights activists and organisations (ibid). Not only did they lose much of their funding, but human rights criticisms were also strongly frowned upon by foreign donors and prominent Sri Lankan civil society supporters of peace: “the popularity of the ideals of evenhandedness and balance paralyzed critiques of human rights abuses by making them seem unfair and/or destabilising”, given that it was “impossible to present a fully balanced list of charges against all parties in the conflict” (ibid).

Other authors confirm key elements of this analysis. Frerks notes that donors strongly advocated a “peace and harmony discourse” that identified “misunderstanding, lack of respect and mistrust” as the crucial problem, to be overcome through “exchange, cultural festivals, reconciliation workshops and the teaching of non-violent principles” (2013, 29-30). Pointing to a potential tension between the principles underlying this peace discourse and existing justice-related grievances, he observes that “the agencies involved tend to avoid questions regarding rights and injustice [that were] subordinated to the greater goal: peace” (ibid; also Kayser-Whande and Schell-Faucon 2010, 101).75 According to Orjuela, the optimism invested in the peace process led to rights concerns being silenced as human rights groups saw their funds drying up and organisations highlighting ceasefire violations or flaws in the peace process were

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75 See also Parlevliet (2011ab, 23-24), for comments from an international adviser working in a conflict transformation project in Sri Lanka at the time (funded by German development aid), on this project being criticised by rights actors for paying insufficient attention to human rights concerns.
Factors Affecting Convergence

sometimes seen as ‘spoilers.’ Meanwhile, civil society actors focusing on peace experienced “a sharp increase in funding opportunities” (2008, 189).76

This example illustrates how funding can have a considerable influence on how the relationship between human rights and conflict resolution plays out on the ground; the authors referred to speak in varying terms of conflict between human rights and peace efforts and consider the role of external organisations and donors vital. As such, the example reflects that donors in a transitional situation “work within notions of what it is that builds the peace and what […] undermines it” (Bell and Keenan 2004, 355). They thereby “shape priorities, adopt particular analyses of conflict resolution which local players interact with, and even create and shape the field of local players itself” (idem, 377). Put differently, “practices of funding can have profound implications for how NGO actors give meaning to their organisation and its fields of intervention” (Hilhorst 2003, 193).

‘Hard-hitting advocacy work’ (Bell and Keenan 2004, 366) may be particularly prone to being negatively affected in transitional contexts as funders shy away from politically contentious issues, shift funds from critical accountability-focused activities towards capacity-building of public institutions (or towards initiatives in support of a peace process) once an agreement has been signed, or generally fail to realise the relevance of human rights activism to ‘building peace’.77 This concurs with the impression of conflict resolution practitioner Undine Whande, who says “the more radical human rights actors tend not to get funded. Dialogue and peace work has the better stance, it’s always more sexy.”78 Whether it is a matter of ‘sexiness’ or political convenience is of course subject to debate; a ‘bandwagon’ effect is also thought to exist that “diverts money away from projects that are not in vogue” (Saunders 2001, 4).

It is likely that such dynamics will undermine prospects for convergence. An imminent or actual loss of funds for activities deemed central to an actor’s mandate will probably increase a perception of threat and a sense of competition. The same applies to a real or perceived depreciation of such core activities by influential international players. This is likely to ring true for organisations irrespectively of whether they focus on human rights or conflict resolution. While competition could (in theory) generate an interest in cooperation between individual practitioners and organisations in the two fields, it is more likely to have the opposite effect, certainly in a context of where the stakes are high in terms of potential loss of life and the organisation’s survival.

76 An independent evaluation of Norway’s peace efforts in Sri Lanka between 1997 and 2009 (Goodhand and others 2011) actually found that the peace process reproduced rather than transformed structural obstacles to conflict resolution.
77 This is based on a review of studies of human rights NGOs in transitional contexts like South Africa, Bosnia, Cambodia, Central America and Northern Ireland (Bell/Keenan 2004).
78 Interview, 6 June 2011, based on Whande’s experiences of working with human rights and conflict resolution NGOs in various African countries, including Zimbabwe and Kenya, between 2008 and 2013.
Hence, the greater the sense of threat and the more acute the competition, the greater the risk of tension between field actors is as they will probably not hesitate to point out one another’s flaws. Conflicting assessments of the issues at hand and the responses required, will feed into this – especially when funders promote a take on conflict resolution that pursues relationship-building and tolerance across divisions without any analysis of power, and frown upon human rights efforts that stress issues of justice, accountability, equality and democracy.

8.2.3 In Sum

This section has highlighted how various features of the broader political and economic context may affect the way in which human rights and conflict resolution interrelate in a given setting. It has drawn attention to the way in which these bodies of thought and practice may be used from a particular political vantage point, which stresses certain aspects of human rights and conflict resolution and downplays others, and can thereby affect the relative convergence of the fields. Making sense of the relationship between human rights and conflict resolution thus requires an analysis of their political use – both real and perceived – and how these frameworks feed into existing political dynamics. At times, the fields may become associated with different parties to a conflict. This is likely to limit their potential to function as cross-community frameworks and does not bode well for their constructive interaction.

The politics of and in human rights and conflict resolution practice may be exacerbated by where funding comes from and how it is organised and allocated. The impact of donor support can be significant in that funders’ choices tend to reflect an understanding of what a specific conflict is about and how it can be addressed or even overcome. This affects what conceptions of human rights and conflict resolution prevail and how they are put into practice. Of course, the above discussion on the broader context is far from complete – yet it suffices to highlight the importance of taking these and other contextual conditions and dynamics into account when considering convergence.

8.3 Strategies to Further Human Rights and Conflict Resolution Goals

While focusing on conceptions and political ideologies, the discussion in the previous sections has also shown that the strategies used by actors to advance human rights protection or address conflict can be at odds, and that this can affect the interaction between the fields. This tallies with the literature, which has mostly pointed to ‘conflicting methods’ in so far as it has tried to explain tension between the fields. For example, an early text noted ‘sharply different approaches’ being used by ‘conflict managers’ and ‘democratisers’ – those who pursue protection of human rights, rule of law, democratic institutions and accountability for atrocities – and suggested that
these constitute ‘divergent paths to peace’ (Baker 1996). The relevance of strategies also emerges from the peace versus justice debate mentioned in chapter 1: the fields easily clash when the pursuit of peace (or conflict resolution) consists only of facilitating dialogue to end violence and reach a pact between elites, and the pursuit of justice (or ‘human rights’) entails no more than establishing criminal accountability for past abuses through trials.

As such, the assertion that the relative convergence of human rights and conflict resolution is contingent in part on the methods used to further their respective goals does not warrant much elaboration – also in light of the differences in practical approaches summarised in chapter 4. Therefore this section brings together some overall insights from the study thus far and from the literature, while noting the difficulty of establishing firmly how strategies pursued impact on convergence. In 8.3.1, it makes some observations related to the question of which strategies are pursued, where, and when, and how considerations of effectiveness can affect prospects of convergence. In 8.3.2, it looks at the articulation of human rights claims, given the earlier discussion on framing human rights demands and the style and tone of advocacy. A summary, in 8.3.3, concludes the section.

8.3.1 Which, Where, When, and How Effective?

This sub-section first considers practitioners’ choice of strategies in terms of their acceptability and nature, with particular attention for the degree of formalism in strategies pursued – yet it also cautions against simplistic assumptions about the fields’ strategies and the supposed impact on convergence. Subsequently, it discusses two claims put forth in the literature: that the level at which strategies are applied (policy-making or grassroots) affects the interaction between human rights and conflict resolution, and that there is a temporal element in how strategies affect convergence. It also notes how actors’ assessment of strategies’ effectiveness may be relevant.

Which: acceptability, formalism and irreconcilable opposites?

The ‘frame’ concept helps to clarify why the strategies pursued can influence the interplay between human rights and conflict resolution. As set out in chapter 1, the frames projected by these fields shape what action is seen as legitimate in these domains; they enable some kinds of action while precluding others. Hence, problems are likely to arise if a particular strategy is frowned upon or even

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79 Babbitt/Williams (2008), Lutz and others (2003) and Saunders (2001) also highlight ‘methods being at odds’.
80 See 1.1.1 and 1.1.3 on the peace/justice debate; see also Parlevliet (2009, 36; 2002, 25-26) and Idriss (2003).
81 As elsewhere in the study, this section uses ‘strategies’, ‘methods’, ‘approaches’, ‘tactics’ and ‘practices’ interchangeably.
82 On framing human rights demands and style and tone of advocacy, see for example 5.2.3, 5.2.4 and 7.2.3.
83 See 1.2.1. (on constructivism) and 1.2.2. (on fields and frames).
considered unacceptable within one frame, but regarded as perfectly acceptable within the other (and/or is explicitly encouraged as such). This may explain why the question of including or excluding persons allegedly responsible for mass atrocities in formal peace talks can be divisive amongst proponents of the two fields: they have a different assessment of what is appropriate, acceptable and legitimate in such a situation.84

Arguably, convergence may also become more difficult as strategies become more formalist. Consider mediation, for example: in its 'pure' form, it is a voluntary process in which parties retain control over the outcome (Ramsbotham, Woodhouse, and Miall 2011, 32). It is a circumscribed process in which an independent third party impartially assists negotiations between the parties so as to arrive at a mutually acceptable outcome, without expressing their own views, exerting pressure or offering suggestions. As such, it leaves little space for the actor involved to bring in aspects from the human rights field. Conflict resolution strategies that are less formalist in terms of the role of the intervener and the process envisaged provide more room to connect to human rights thinking and practice. This includes strategies such as facilitation, shuttle diplomacy, violence monitoring, conflict resolution skills training, conflict analysis and developing conflict-handling mechanisms.

Likewise, the more formalist human rights strategies become, the more 'human rights' are understood in terms of technical law, and the greater the emphasis on international legal standards and on using formal judicial institutions to enforce compliance. The term often used in this regard in the literature and by interlocutors is 'legalistic'.85 Strategies such as naming and shaming, public interest litigation and criminal prosecutions of alleged perpetrators impose certain limitations on the actors adopting these methods, more so than standard-setting, human rights education, social mobilisation or institution-building. Thus, prospects for convergence are likely to decrease as human rights and conflict resolution strategies become more formalist. Formalism magnifies the differences between the fields – in terms of the values prioritised, methods adopted, and stances advocated – and constrains the flexibility of actors to engage with or draw on ideas or approaches outside their familiar realm.

Two cautionary comments are in order, however. These relate to the tendency to depict the field’s strategies in sharp contrasts – with human rights supposedly using only high-visibility, fault-finding, prescriptive and confrontational strategies and conflict resolution exclusively relying on strategies that are low-visibility, problem-solving, facilitative, pragmatic and collaborative by nature. The idea that the strategies used by human rights and conflict resolution practitioners constitute a major source of division is closely related to this tendency; implicit assumptions seem to be at play that the fields’ strategies are inevitably diametrically opposed and that such opposites

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84 See 4.1.3 on the fields’ respective approaches to dealing with norm violators and Babbitt (2009a, 616).
85 See for example Dudai/McEvoy (2012, 8) and Felner (2012, 62); see also 2.5.1.
necessarily clash. Such a dichotomous categorisation of strategies falls into the trap of essentialising the fields, the limitations of which have been noted.\textsuperscript{86}

These categories – like most stereotypes – contain some truth, but they disregard the variation that exists within each of these fields (Idriss 2003, 30).\textsuperscript{87} The above shows that each field contains some approaches that are more formalist and others that are less so. The same applies to strategies focusing on other aspects (e.g. use of media, problem-solving or engagement). Consequently, one cannot simply assume that the extreme manifestations of any kind of strategy – e.g. low/high-visibility – are neatly divided between the fields; the fields’ strategies are not by definition diametrically opposed. The diversity of approaches within each field means that tension between the fields resulting from different strategies is not a matter of course.\textsuperscript{88}

Moreover, while it is not unreasonable to anticipate tension when human rights and conflict resolution actors use starkly different approaches, the findings from chapter 7 imply that it cannot be taken for granted that opposites cannot go together; the confrontation/cooperation and the facilitator/advocate dilemmas highlighted the interdependence of seemingly incompatible methods.\textsuperscript{89} Hence divergent strategies are not problematic per se. Yet for these to be perceived as complementary rather than contradictory, the actors involved probably need to recognise the value of their respective approaches – and possibly even coordinate them. This emerges from an example provided by Lutz and others (2003, 188-189) based on an account by Alvaro De Soto, the UN mediator of peace negotiations in El Salvador in the early 1990s.\textsuperscript{90}

De Soto initially perceived critical reports of the human rights records of the two negotiating parties – the government and Farabundo Martí National Liberation Front (FMLN; then a rebel group) – by organisations such as Human Rights Watch as a factor impeding the peace talks, as they made the parties defensive and triggered threats of them leaving the negotiations. However, "he later developed channels that enabled him to anticipate and use the pending release of such reports to urge the parties toward an accord that included significant human rights protections" (ibid). The naming and shaming by rights actors that seemed such a hindrance at first became a way to enhance the conflict resolution process and its outcome. This example illustrates that apparently conflicting strategies need not undermine convergence,

\textsuperscript{86} See the introduction (at the end of 1.1.2) and chapter 4 (introduction and 4.1.4.)

\textsuperscript{87} For example, some human rights advocates may be more flexible and less adversarial than is usually assumed due to specific contextual conditions (Idriss 2003, 31; Vuco 2002); in conflict resolution, some prefer a more coercive form of mediation – referred to as mediation with muscle – than the pure, confidence-building approach to mediation advocated by others (e.g. Ramsbotham and others 2011, 32; Nathan 1999; Fisher/Keashly 1991).

\textsuperscript{88} The diversity of approaches within each field also means that tension may arise amongst practitioners within one field, for example about engaging with the state or the use of force. See for example, García-Durán (2010, 100) on tension amongst Colombian human rights activists in dealing with the state.

\textsuperscript{89} See 7.2 (on confrontation and cooperation) and 7.3 (on facilitation and advocacy).

\textsuperscript{90} Confirmed by De Soto in informal conversation with author, Amsterdam, Sept. 2010.
even though they seem likely to do so. It also reflects that practices adopted by field actors interact with other factors influencing the relative convergence of human rights and conflict resolution.

**Where: at policy level or on the ground?**

Besides the question of *which* strategies are pursued, it has been suggested that the questions of ‘where’ and ‘when’ they are pursued may also affect the interplay between the fields. As to where, authors note that practitioners working at community level tend to perceive less contradiction – and distinguish less clearly – between human rights and conflict resolution than is usually the case at policy level and in the international sphere. Actors working ‘on the ground’ may blend aspects of both, while this is less likely at policy level where there is considerable tension and disdain for one another’s tactics (e.g. Schirch 2006, 63-64; Saunders 2001). Interviews by Beirne and Knox with practitioners in Northern Ireland lend some credence to this claim. They suggest that nowadays synergy “seems most advanced in practice on the ground”; interfaces might be the site “where a combined reconciliation/rights approach would most frequently be pursued” (2014, 40-41, 37).

These authors thus draw “one very marked conclusion” that “the difference between the two themes may vary greatly depending on where one carries out one’s work” (idem, 37), thereby corroborating the dynamic and contingent nature of the relationship between the fields as asserted in this chapter. The findings from this study on fluidity also provide some support for this thesis. Human rights and conflict resolution proved to be interwoven in the practice of various actors discussed earlier – such as LHR, CCR and CiM – as they sought to respond to problems that could not exclusively be defined in terms of one or the other field. Nevertheless, past experiences in Northern Ireland and the earlier example of Sri Lanka show that there is no definite link between practices used ‘on the ground’, fluidity and convergence. In sum, the prospects for convergence may be greater at grassroots level, but occur by no means automatically.

**When: what stage of conflict?**

The literature suggests that there may be a temporal dimension to the impact of strategies on the potential convergence of human rights and conflict resolution. The argument here is that “each phase of the conflict cycle demands specific practices both from human rights defenders and conflict [resolution] practitioners. In some cases, those practices tend to converge; in others they diverge, depending on how the actors

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91 See also 8.4.2 on obstacles limiting productive interaction.

92 Beirne and Knox explain this as follows: “After all, interface work requires close cooperation across the sectarian divide where the toolkit of reconciliation should help, and the rights toolkit may help to mediate the inevitable tensions and conflict that will arise from time to time in such work” (2014, 37).

93 On fluidity, see the conclusions to chapters 5 and 6 (sections 5.3 and 6.3).
are focusing their practice to face the specific contextual challenges of the conflict” (García-Durán 2010, 99; also Hadden 2007; Lutz, Babbit, and Hannum 2003).

The idea that different stages of conflict – in terms of escalation and de-escalation – warrant specific strategies is established in both fields. It has thus been noted that human rights NGOs may move from “critical adversarial positions” to “constructive engagement aimed at addressing what might work” in transitions from violent conflict to peace (Bell and Keenan 2004, 334). Putnam (2002) highlights strategies such as standard-setting, institution-building and human rights education as very relevant in post-settlement contexts. Such engagement-oriented strategies would presumably increase the scope for convergence with conflict resolution, which may mostly focus on reconstruction, rehabilitation, reconciliation and restorative justice at that time (García-Durán 2010, 98).

Yet a need for more confrontational strategies – monitoring, reporting, denouncing abuses – may persist once widespread atrocities have subsided, as violence often continues in other forms (Bell and Keenan idem; Paffenholz 2012, 14). Calls for accountability and redress for past abuses will also be likely at that stage. It is thus wrong to assume that only one kind of strategy prevails amongst actors from one and the same field in any phase, as their priorities will differ.94 This hinders determining a firm relationship between the strategies adopted at different conflict phases and convergence. This is only exacerbated by the fact that a conflict can exhibit various escalation and de-escalation stages in different geographical areas at the same time (Dudouet 2006, 12; García-Durán 2010, 99).

Thus, even though it is plausible that the temporal relevance of strategies affects the relative convergence of human rights and conflict resolution, figuring out what this actually entails in concrete terms is easier said than done. More research is needed to go beyond the general observation that the phase of conflict is likely to influence practitioners’ choice of strategy and that this may impact on the relationship between the fields.

How: what strategies are most effective?

Examples discussed in earlier chapters suggest that assessments of strategies’ effectiveness may also impact on the relative convergence of human rights and conflict resolution. Concerns about effectiveness can prompt individual practitioners or organisations to look into approaches that lie outside familiar territory and that may relate to the ‘other’ field. For example, the staff of LHR’s Security of Farmworkers

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94 According to Putnam, for example, large human rights INGOs generally rely on an enforcement approach in post-settlement contexts (emphasising inclusion of formal human rights provisions in peace agreements and the pursuit of individual responsibility for past violations) while NGOs from the Global South are more inclined to pursue human rights ‘by other means’, i.e. institution-building, human rights education, and standard-setting (2002, 256).
Project began to explore the use of interest-based conflict resolution methods when they realised that the adversarial approach of confronting farm owners was not particularly effective in ensuring farmworkers' rights. Another case in point is the decision by the South African Human Rights Commission to design a reconciliation process to complement the judicial approach used for handling a racism-related complaint; this was meant to address issues of recognition and respect as well as relational dynamics left unattended by the court case.

Thus, if existing strategies seem ineffective or insufficient, practitioners may be open to looking for ‘other’ strategies that can complement or enhance their efforts. This can be understood in terms of convergence. It is important to note that any shift or broadening of approach usually proved to stem from an informal hunch on the part of one or more practitioners rather than from any formal or structured assessment of effectiveness. Whether they act on such a hunch and adjust future actions probably depends on various factors, including, for example, the extent to which they have easy access to other strategies or to people who can introduce these, and how receptive their organisation is to venturing off the beaten track.

Furthermore, effectiveness concerns do not automatically prompt convergence, since actors in both fields are aware that the desired change often happens gradually and is usually hard to measure. In fact, it has been explicitly argued in the human rights field that the question of ‘what works’ should not be the primary driver of practice and advocacy (Gready 2009, 380). This relates to the nature of the work in that “change can be slow in coming”, as Ian Gorvin of Human Rights Watch notes (2009, 480). Also relevant is the conviction that certain values or policies must be promoted as a matter of principle, irrespective of whether doing so achieves the desired outcome (idem, 482; also Archer 2009, 333).

Such sentiments are not unique to the human rights field. In conflict resolution too, actors may persist in using approaches based on the belief that, as Gorvin puts it, these “can or should make a positive difference” (2009, 478) even if it is unclear whether they actually result in positive change or prevent things from getting worse (e.g. Carayannis and others 2014; Paffenholz 2012). Thus, considering ‘effectiveness’ may motivate practitioners to look for alternative or additional approaches that might complement or enhance their efforts, but does not necessarily do so.

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95 See 5.1.2 and 5.1.3.
96 See 6.2.2.
97 To my knowledge none of the organisations mentioned in this study has undertaken any thorough review that considered whether or how approaches from other ‘fields’ could enhance the organisation’s work.
98 See also the next sub-section (8.4), on the impact of exposure, interaction, and understanding across the fields.
99 According to Colleen Duggan, senior program specialist at the Evaluation Unit of the International Development Research Centre in Ottawa, “just standing still” may be progress in highly volatile contexts (2011, 217).
8.3.2 Articulating Human Rights Claims

At various points in this study, the relevance of ‘framing’ has come up; how issues are framed or articulated by practitioners – and/or by parties in conflict – can help or hinder the way the human rights/conflict resolution relationship plays out in practice. Attention has also been drawn to the style and tone of advocacy. Hence framing should probably be recognised as a relevant factor in considering how strategies may affect relative convergence. This sub-section sums up what has transpired thus far, highlighting three aspects: the potential impact of framing claims in terms of positions or interests, moral values or legal standards, and in inclusive or exclusive terms. Given previous discussions, it focuses mainly on the articulation of human rights claims, without intending to imply that the framing of conflict resolution concerns does not matter for convergence.

Positions or interests

It has been observed that rights claims are often presented as positions: demands or statements about what ought to be done or how particular matters should be resolved. It was noted that such positions may generate resistance amongst those who encounter them – whether they are parties in conflict, public officials, conflict resolution practitioners, etc. This builds on negotiation theory, which holds that bargaining over positions tend to become a contest of will that quickly gets stuck, does not do justice to complex issues, and jeopardises relationships. It advocates focusing on the underlying interests – the needs, desires, concerns and fears that motivate the demands – since these define the actual problem and are usually easier to reconcile; often shared and compatible interests (as well as conflicting ones) lie behind opposed positions.

This suggests that convergence is more likely when human rights claims are articulated in terms of underlying interests rather than in the form of positional demands (Parlevliet 2011a, 108; 2002, 32-35). Conflict resolution practitioner Andries Odendaal indeed objects to “the manner in which these things [i.e. human rights] are pursued, the moral indignation, the top-down, the imposition of values and
standards.” Also interesting is Hannum’s study on the relationship between the UN Office for the High Commissioner for Human Rights and the Department of Political Affairs (2006). He argues that a more constructive interface between human rights practice and conflict resolution efforts means, among other things, that rights officials cannot automatically adopt a “lecture and hector” approach, or “merely ‘state the law’ or ‘draw the line’ on human rights issues” (idem, 57). Without using the terminology of positions and interests, both Odendaal and Hannum speak about framing rights claims as prescriptive demands; their comments evoke the frustration expressed by facilitator Ghalib Galant in relation to his interaction with human rights activists during the 2008 xenophobia crisis.

Of course, the reverse probably holds true too: conflict resolution-related concerns framed as positional demands can trigger resistance amongst human rights practitioners. It is also worth noting that rights activists intent on ensuring compliance with standards in dire conditions may not be particularly interested in balancing interests, maintaining relationships or negotiating efficiently. As observed before, there is ‘value in the radical stance’, notably in situations of power asymmetry. These comments do, however, not negate the proposition that human rights or conflict resolution claims framed as positions are less likely to facilitate convergence than when concerns are raised in terms of the interests informing them, especially in the short-term.

**Moral values or legal standards**

Another distinction that appears to be relevant in relation to convergence is the extent to which rights claims are framed mostly with reference to their moral content or their legal basis. The distinction between moral and legal approaches to human rights (Chong 2010) was noted in chapter 2; in the former, human rights serve mostly as an aspirational ideology of justice and a set of values, while the latter focuses especially on rights as a system of law (idem; Merry and others 2010). In relation to the question of raising rights violations and rights issues more generally in conflict resolution processes, attention has been drawn to the way in which rights claims may be framed in more or less explicit terms. It was observed that framing rights concerns through notions of human dignity or human needs can aid conflict resolution efforts,

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104 Interview, 9 June 2011, Stellenbosch.
105 Hannum derives the notion of a ‘lecture and hector approach’ from an interview with a former senior OHCHR official. He also stresses the need for DPA officials to adopt “a more holistic view of politics and conflict resolution” and “to integrate a minimum understanding of human rights and its [sic] role in politics” (2006, 57,59).
106 See 5.2.4.
107 See 7.2.3 on the implications for conflict resolution flowing from the confrontation/cooperation dilemma and the importance of conflict intensification in asymmetric contexts.
108 See 2.2 (on key ideas of human rights) and 2.4 (key practices).
especially when engaging with individuals or groups who are not very receptive to human rights.\textsuperscript{109}

This suggests that human rights and conflict resolution may more easily converge the more human rights are invoked as moral values such as fairness, equality, participation or transparency rather than with reference to legal standards. Possibly, this is because references to standards are more likely to be accompanied by difficult questions related to accountability that are quickly perceived as confrontational; examples provided by Beirne and Knox include ‘you said you would do this’, ‘why have you not done so?’ or ‘when will you do this?’ (2014, 35).\textsuperscript{110} These authors argue that ‘soft law’ approaches “provide more flexibility and avoid challenges of human rights being overly ‘legalistic’” (idem, 36).\textsuperscript{111} They nevertheless warn that “emphasising human rights values [...] rather than citing black letter law may raise false expectations [...] or risk dangerous ‘fuzziness’” (ibid).

In other words, moral value-based framing of rights claims may be more palatable in a conflict resolution context as it makes claims relatively easy to relate to and rally around and is not prone to alienating people. It arguably provides for a degree of constructive ambiguity that facilitates manoeuvring and reaching across divisions. Yet moral framing may generate apprehension in human rights defenders wanting to avoid human rights being “shorn of its ‘accountability’ edge to render it cosy” (idem, 35).\textsuperscript{112} This is all the more likely when moral framing entails bland statements that all parties suffered injustices without recognition that the state bears a particular responsibility to protect rights or that different groups may have experienced abuses unevenly.

Moreover, the ambiguity provided by moral framing need not be constructive for conflict resolution efforts over time. It has been suggested that the Northern Ireland Parades Commission’s failure to establish ‘the legal default position’ (Hamilton 2003, 290) may continue to fuel disputes since there are no clear boundaries to the rights claims made by parading and protesting groups.\textsuperscript{113} In sum, moral and legal framings of human rights claims both have merits and flaws in facilitating convergence. What works well for one set of actors can be problematic for the other, although this is not necessarily so at all times and in all conditions.

\textsuperscript{109} See 7.4 (on raising rights issues in conflict resolution interventions).
\textsuperscript{110} This tallies with the experience of conflict resolution practitioner Galant when trying to facilitate reintegration of displaced non-nationals in the 2008 xenophobia crisis; government officials did not appreciate it when he raised specific questions about their commitments (see 5.2.4).
\textsuperscript{111} For an explanation of ‘soft law’, see 8.1.1 (on the conception of human rights in Northern Ireland).
\textsuperscript{112} See also Bonacker and others (2011, 40) on the possibility of human rights serving an ‘integrative function’ when they are articulated in a sufficiently open way that allows for different interpretations and appropriation by various conflict parties, while the demands of legal discourse require sufficient specification of rights’ formal meaning for them to bear legal force.
\textsuperscript{113} See 6.2.4.
Chapter 8

Inclusive or exclusive articulations

The third and final aspect considered here concerns what Jarman calls "the mutuality of rights": the extent to which people invoking human rights recognise that not only they themselves have human rights but others do too, including their opponents.\footnote{Interview, 7 Oct. 2011, through skype.} The emphasis here is particularly on human rights being invoked by actors constituting (or aligned with) specific conflict parties rather than by (professional) human rights practitioners.\footnote{The distinction between these categories can of course be blurred, as illustrated by the previous discussion on how human rights activism in Northern Ireland was associated with the nationalist cause.}

Reluctance or failure to accept such mutuality arguably contributed to human rights being perceived as "weapons of division" (Fitzduff 2002, 8) in Northern Ireland.\footnote{Interviews with Jarman (7 Oct 2011) and Dickson (14 Nov 2011), both through skype.} According to Jarman and Dickson, limited understanding of human rights amongst paraders and protesters led to ‘simplistic rights claims’ suggesting that the rights claimed only applied to the own group and not universally to all.\footnote{This was largely why the Parades Commission’s Authorised Officers initially regarded human rights claims as yet another form of ammunition thrown back and forth between parading and protesting groups, as mentioned in 6.2.4.} Such claims tended to reflect a certain zero-sum absolutism, as if one’s rights are either fully respected or not at all or as if one’s rights can only be exercised at the expense of others (Parlevliet 2009, 283-284).\footnote{This happened when Sinhalese supremacist groups became increasingly vocal about the need to ensure respect for human rights, as actors supporting the peace process in the early 2000s failed to address ongoing abuses. According to Keenan, “while they were legitimately outraged at the Tigers’ repeated ceasefire and human rights violations, these groups had […] little interest in a just settlement of Tamil grievances” (2007, 103).} In a similar vein, Keenan deplores the reduction of human rights discourse in the Sri Lankan context to “an arsenal of rhetorical weapons used by partisans who refuse to apply the same human rights principles to each side” (2007, 103).\footnote{The case studies are Israel-Palestine, Cyprus, Bosnia-Herzegovina and Turkey’s Kurdish issue, and form part of a larger study brought together in Marchetti/Tocci (2011).}

Diez and Pia (2010) make a distinction between ‘inclusive’ and ‘exclusive’ articulations of human rights claims that is helpful in this regard. Exclusive articulations involve human rights being invoked on behalf of members of one group only, while inclusive ones do not involve any form of ‘othering’ but instead convey the benefits of human rights as applying to all, across identity groups. Based on case studies of civil society actors in four contexts, they argue that exclusive articulations reinforce existing group identities and hence intensify conflict dynamics (ibid; also 2011, 205-208).\footnote{The case studies are Israel-Palestine, Cyprus, Bosnia-Herzegovina and Turkey’s Kurdish issue, and form part of a larger study brought together in Marchetti/Tocci (2011).} This would imply that exclusive articulations are likely to undermine convergence of human rights and conflict resolution – in part because they tend to reflect alignment
Factors Affecting Convergence

of human rights with the interests of one side of a conflict; they imply that the future benefits of rights realisation only accrue to this conflict party (Bonacker and others 2011, 40). Conversely, inclusively framed claims that recognise the mutuality of rights may contribute to the convergence of the two fields. They probably enhance the potential of human rights to function as a cross-communal framework and to consider the social context in which human rights function.

8.3.3. In Sum

This section has considered the argument that how the relationship between human rights and conflict resolution plays out in practice is in part influenced by the strategies used to further goals in these areas. In general terms, it has observed that convergence may be adversely affected when the acceptability, legitimacy and suitability of one and the same strategy are perceived very differently within the two frames, or when actors in these fields use formalist strategies that limit their flexibility. It has also looked at two claims advanced in the literature, that convergence of human rights and conflict resolution is more likely to emerge at grassroots level than at policy-making level, and that there is a temporal aspect to convergence in that the strategies adopted by practitioners tend to vary across different phases of a conflict.

It further pointed to the relevance of effectiveness considerations, suggesting that practitioners or organisations may be open to exploring ‘other’ approaches if the strategies they routinely use are found wanting. Besides these general observations, the section has paid attention to the articulation of human rights claims with a view to bringing together insights from the study thus far. It has outlined the potential impact of framing rights claims in terms of positions or interests, moral values or legal standards, and in inclusive or exclusive terms. It has suggested that claims presented as positional demands without speaking to underlying interests may undermine the scope for convergence. This may also happen when human rights are invoked as legal norms only, or when human rights claims are articulated in a way that denies the mutuality of human rights and projects their benefits as only serving the interests of one group.

The discussion in this section has, however, also revealed that it is often difficult to establish firmly or in absolute terms how different elements of strategies may affect how the human rights/ conflict resolution relationship unfolds. It has pointed to limitations in assumptions that are often made in this context and has shown that what transpires in some instances is not necessarily always the case. As noted, such qualifications do not negate the basic thesis that ‘strategies’ matter when it comes to the potential for convergence, even if they caution against hasty or absolutist conclusions. In this regard, strategies adopted by field actors have also proved to interact with other factors to influence the relative convergence of human rights and conflict resolution – such as the extent to which individual practitioners and
organisations recognise the respective value of their different approaches.121 This will be considered in the next section.

**8.4. Exposure, Interaction and Appreciation**

This section highlights a fourth factor that seems to influence the relative convergence of human rights and conflict resolution over time in a specific context, namely the extent to which practitioners working in either field are exposed to – and interact with – ‘the other field’ and gain appreciation for its perspective, insights and approaches. The argument put forth here is that such enhanced appreciation is likely to increase the potential for convergence by laying a foundation for collaboration and cross-fertilisation. Several practical examples discussed in this study have clearly indicated this, even if it has also transpired that appreciation and convergence are not inevitable outcomes of exposure and interaction; frustration and tension can ensue too. Exposure and interaction should therefore not only be considered in terms of ‘quantity’ – i.e. does it take place or not and how often does it occur – but also in terms of ‘quality’.

The section first summarises the main benefits of exposure and interaction to substantiate the claim made here about the link with convergence, building on previous examples and interviews (8.4.1). In light of the above-mentioned concern with ‘quality’, it then points out some obstacles to (8.4.2) and key features of productive interaction (8.4.3). These sub-sections draw on a wider range of practical experiences than have been featured in previous chapters, as these shed light on what can help and hinder interaction between actors in the two fields. As before, the section concludes with a summary (8.4.4).

**8.4.1. Benefits of Exposure and Interaction**

Various examples in previous chapters have revealed how exposure and interaction may facilitate convergence between human rights and conflict resolution as practitioners gain more knowledge of what these fields entail in terms of substance and approach. They develop an understanding of their respective strengths and weaknesses as well as insight into how these perspectives and methodologies may complement one another or ‘hang together’. This can prompt them to look for, create or seize opportunities for convergence. All in all, the value of learning about ‘the other field’ has emerged as a recurrent theme in this study. The primary benefits of exposure and interaction appear to be enhanced technical skills, shifts in attitude, and shifts in understanding of local conditions and possible approaches.122 These are outlined below, illustrated by comments from practitioners.

121 This became clear in the example of how UN mediator De Soto initially perceived reports by Human Rights Watch and later used them to further the Salvadoran peace talks, and in the comments on effectiveness (both in 7.3.1).

122 Of course, the distinction between these is somewhat blurred (which is reflected in the write-up that follows).
Factors Affecting Convergence

Enhanced technical skills

Many remarks from interviewees reflect the benefit of learning ‘technical’ skills and knowledge – such as negotiation and communication skills, conflict analysis or human rights standards – because of the way this has expanded their ‘toolbox’, as one of them puts it. This notion of ‘borrowing techniques’ or ‘seeing the other community’s tools as tools for one’s own work’ was also observed at one of the earliest events bringing together human rights advocates and conflict resolution specialists, hosted by the Carnegie Council on Ethics and International Affairs in 2001 (Saunders 2001, 4). Thus, for example, South African conflict resolution practitioners Ghalib Galant and Rodney Dreyer speak of their enhanced ability to identify rights concerns in conflict situations and to facilitate processes that comply with the legal human rights framework. Nepali land rights activists Jagat Basnet, Jagat Deuja and Kalpana Karki note that their practice has improved by developing skills in conflict analysis and relationship-mapping; it benefits their mobilisation and advocacy efforts. They have also become more strategic in reaching out to diverse stakeholders (such as politicians, police officers and landowners) including ones that dislike the land rights movement. Their perception of conflict has changed too: while previously seeing conflict only as a negative force and equating it with violence, they now understand it as a part of their lives and work. They are therefore no longer afraid of conflicts, either within the movement or outside of it.

For Kenyan human rights practitioner Alice Nderitu, learning about conflict resolution allowed her to go beyond what she calls ‘human rights conventionism’. She notes that she always perceived human rights “as being very abstract”, because practice seemed to consist mostly of referring to conventions and declarations; she found this frustrating. Taking a conflict prevention course for national human rights institutions helped her to become more practical in working on human rights, as reflected in the Mount Elgon intervention she designed for the Kenyan National Commission on Human Rights (where she worked at the time). This process combined human rights education and analysis of rights issues and conflict dynamics with space for dialogue and problem-solving. She says “It was so exciting, if [we’d] stuck to conventions, declarations, [we] wouldn’t have gotten anywhere. I realised how important it is to have a space where people can speak about issues that matter to them.”

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123 Interview with Ghalib Galant, 3 June 2011; see also 5.2.5.
124 Ibid; also interview with Rodney Dreyer, 14 June 2011.
125 Correspondence, November 2011, on file with author (translated by Mukunda Kattel); also conversations in 2007-2009, Kathmandu.
126 Conversation, 7 June 2011, Cape Town. See also 6.2.3 and 7.1.2 for previous references on the Mount Elgon intervention. Nderitu designed this process as her final assignment for the conflict prevention course, and later turned it into a real plan of action for her institution after convincing its leadership to try this new approach. The course, which was largely online, was offered by the United Nations System Staff College in cooperation with OHCHR and Fahamu, and was designed by this author. Following her participation in the course, Nderitu has become increasingly involved in conflict resolution interventions in Kenya and beyond (personal
Shifts in attitude and in understanding of contextual conditions and possible approaches

These examples suggest that, besides adding to technical skills and knowledge, exposure to ‘the other field’ may generate shifts in attitude and approach. The newfound appreciation felt by conflict resolution practitioner Undine Whande for ‘occupying a more radical position on issues of justice and governance, so that a more moderate position can open up’ reflects this too. When pondering what engaging with human rights NGOs in Kenya, Uganda and Zimbabwe since 2008 has meant for her, she remarks that,

I’ve come to appreciate that there’s an uncompromising ethical stance [...] a forwardness in human rights actors, an unrelenting ability to focus, and [willingness] to go into tough spaces and stick your neck out. [...] There’s a lot less going with the flow, which tends to be the quality conflict actors bring – but it’s precisely not going with the flow, keeping your stance, [that can be very valuable].127

She concludes “I think I’ve moved a long way to the human rights side of the spectrum”,128

Reflections from other interviewees reflect how deeper understanding of conditions ‘on the ground’ and possible strategies to address them may also develop. Human rights practitioner Ingrid Massage says that conducting a study of community mediation in Nepal made her realise “just how marginal human rights are at the village level. I had never quite appreciated to this extent that the state is virtually or completely absent [there]. From a human rights perspective, I’d ask people about going to the police, and this would just draw blanks.”129 This brought home the relevance of strengthening or developing non-formal mechanisms to address disputes at local level, rather than relying on the state.

Her pursuit of a post-graduate degree in international conflict studies further made her “question who has agency in transformation and what is the agency of people directly affected by conflict, by human rights violations. It has also changed my practice – I’m now more really listening [and] using active participation”.130 Meanwhile, Galant notes that he has become more concerned with ensuring that the processes he facilitates deliver a tangible outcome than he used to be.131 This is

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127 Interview, 6 June 2011, emphasis as spoken. See also 7.2.3 on ‘the value of the radical stance’.
128 Ibid.
129 Conversation, 30 August 2011, London. Massage used to work for OHCHR in Nepal and still serves as a researcher for Nepali human rights NGO Advocacy-Forum from her base in London. In 2008, she was contracted to conduct this independent study together with two Nepali consultants by a Danish development programme on Human Rights and Good Governance (where I worked as senior conflict transformation adviser at the time). I helped to draft the terms of reference for the study and reviewing the draft report.
130 Interview, 11 November 2011.
131 Interview, 3 June 2011.
Factors Affecting Convergence

notable given his earlier frustration during the 2008 xenophobia crisis, about the ‘lack of appreciation and understanding of process stuff’ he then observed amongst human rights activists. While he objected at the time to their prescriptiveness and insistence on specific solutions,132 he has realised that conflict resolution cannot just be about ‘putting issues into process’ and ‘getting dialogue going’; interventions need to result in tangible outcomes for those involved and affected.

Exposure and interaction

Observations such as these confirm the validity of recommendations on encouraging more conversation and exchange between the fields of human rights and conflict resolution as put forth by various authors over the years.133 They reflect how exposure and interaction can help practitioners develop complementary skills and approaches that can benefit their own work, and assist in broadening their understanding of the issues at hand and possible ways of dealing with them. Some practitioners also speak of being able to forge more collaboration with other actors.

Dreyer, for example, recalls a situation in which he spoke with the lawyer of a large landowner – who was responsible for fencing off a worker’s homestead – about the Extension of the Security of Tenure Act and about the evolution of labour relations and tenure conditions in South Africa over time. This led to the lawyer providing support in a way Dreyer did not consider possible before, by harshly calling his client to account:

[The lawyer] admits to me that he’s not familiar with ESTA, I give him a copy, say ‘you might not want to read it right now, but it would help your client if you know a little bit when you talk to him’. He says “I’m going to call the owner right now”. He gets his phone, speaks in Afrikaans, “Sou jij jou fokking vuilgat hier krij, will you get your fucking, filthy ass here!” – I’m thinking ‘how can he speak to the farmer like this?’ [He goes], “I now have a Mr. Dreyer in my office here and he’s told me things that I did not know about, wil jij trond toegaan? Do you want to go to prison?” Within minutes the guy is there. He sees me sitting, he’s shocked!134

The lawyer asks, ‘is what Mr. Dreyer says, the truth? Did you put a fence around the man’s house? The children can’t get to school, is that true? Is it the truth that you’re not allowing the municipality to bring water, is it true that they can’t get to the shop? The farmer goes “Well ja, die mense, [those people] must fuck off my farm.” That’s when the lawyer says to him, “if you’re not prepared to enter into conversation with Mr. Dreyer, I’m resigning as your lawyer, cause I cannot see how you’re causing this struggle to people unnecessary!” I took that lawyer for coffee once everything was settled, he says,

132 Ibid; see also 5.2.4 (on Galant’s frustration with human rights activists) and 5.1.4 (on the observation by LHR practitioner Makan that ‘process’ can become a pacifier).
134 The landowner had previously dismissed Dreyer when the latter came to speak to him, telling him to ‘go and speak to his lawyers’. Interview, Rodney Dreyer, 14 June 2011.
“don’t worry, I would not have resigned, I’m being paid way too much. I was calling [the owner’s] bluff.”135

In other words, exposure and interaction can “enable practitioners to communicate effectively across barriers” (Babbitt and Williams 2008, 6), and may help to “alleviate the ethical quandaries and tensions that human rights advocates and conflict resolvers experience” (Lutz, Babbit, and Hannum 2003, 192). Even Keenan, who is critical of how human rights and conflict resolution interacted in Sri Lanka, suggests that organisations working on ‘peace’ and those working on ‘human rights’ have much to learn from each other (2007, 116, n. 29).136

8.4.2 Obstacles to Productive Interaction

Exposure and interaction do not always result in more skills, understanding and collaboration between human rights and conflict resolution practitioners, however. They can also give rise to more division. This suggests that the quality of encounters and exchanges matter greatly, and is affected by the way and conditions in which they happen. This sub-section describes various obstacles to productive interaction, based on my own observations over the years, comments from interlocutors and insights from the literature. Some relate to concrete issues of timing, proximity, structure and resources that are objectively verifiable. These interact with less tangible, more psychological, concerns, such as notions of superiority and inferiority, fear of annexation and professional pride. The discussion here draws on points made in earlier chapters about the ethos and approaches in the two fields without explaining them anew. An effort has been made to cluster obstacles in a meaningful way, but they are not listed hierarchically.

Disconnection in space, structure and during crisis

Authors suggesting that there is a greater dichotomy between human rights and conflict resolution communities in the international policy sphere rather than at ground level, attribute this in part to a lack of proximity (Schirch 2006; Saunders 2001). Proximity speaks to the existence (or absence) of ties between individual practitioners and larger organisational networks and the extent to which people and organisations operate in the same physical space, and thus encounter one another regularly in the context of their work. Convergence in South Africa was probably aided by the fact that NGOs working on human rights and conflict resolution all belonged to

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135 Ibid.
136 Keenan suggests that civil society organisations focusing on ‘peace’ need to address their legitimate activities (regarding power-sharing, inter-ethnic dialogue, etc.) towards the same goal as human rights advocacy, namely new, more inclusive and less violent political relationships, and that organisations focusing on ‘human rights’ need to consider more carefully how their interventions can best support moves towards peaceful coexistence. He also argues that activists denouncing the militarism and exclusive nationalism of both the Sri Lankan state and the Tigers, need to learn “from the techniques of conflict resolution in order for human rights and peace advocates to negotiate their way through and ultimately beyond divisive ethnic identification” (2007, 116, n. 34).
Factors Affecting Convergence

a close-knit network of civil society actors driven by the same vision (Taylor, Cock, and Habib 1999).

Yet the weight of this factor should not be overstated. The case of Northern Ireland reflects that physical proximity is no guarantee for interaction, let alone convergence. Another example is CINEP, the organisation García-Durán directed in Colombia: while it houses one unit involved in human rights monitoring and another focusing on conflict resolution, practitioners from the two teams seldom meet “to reflect on how they relate, or how [the work on] one case relates to what the other team is doing and vice versa.” García-Durán says that “if you push a bit and open the discussion between them, then people can see the connection. But there’s only occasionally connection – you know, both teams have to focus on the area where they are expected to show results”. CINEP’s experience is not unique. As noted in chapter 1, institutional separation occurs in other organisations – whether intergovernmental, governmental, or non-governmental – whose mandate and institutional set-up comprises both fields. Often, human rights and conflict resolution work takes place in separate departments. The pressures people in these units face related to their specific and separate timetables, deliverables and budgets, limit interaction and exchange. Thus, proximity is both relevant and relative when it comes to convergence. While proximity may facilitate substantial engagement, structural factors can impede it.

The circumstances that instigate proximity can also be an obstacle. Crisis situations tend to be the occasion par excellence where human rights and conflict resolution actors encounter one another, both in the international policy realm and at ground level. As Lutz and others note, in the midst of crisis, when abuses are widespread and destruction is rampant, people seeking to intervene urgently have usually little patience with those whose aims, beliefs and methods diverge from their own (2003, 192). This may also apply in the aftermath of crisis, when pressurised conditions and high stakes persist, given the many acute needs at that time and the likely ongoing instability.

Arguably, crisis situations are also challenging since they tend to bring out an issue that remains contentious, that of ‘peace vs. justice’. This has been sidestepped in the

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137 Three interviewees observe independently from one another that there were – and still are – few occasions in Northern Ireland where practitioners from both fields meet; interviews with Joe Campbell (7 Oct. 2011), Neil Jarman (7 Nov. 2011) and Brice Dickson (14 Nov. 2011). Also, the fact that Northern Ireland has created separate statutory institutions to promote equality, human rights and community relations may feed into the apparent divisions (Beirne/ Knox 2014, 37).

138 Conversation, 17 June 2011. At the time of this conversation, García-Durán was still CINEP’s director.

139 Ibid.

140 See 1.1.2.

141 This happened, for example, during the post-election violence in Kenya in 2008, when national human rights activists and conflict resolution workers clashed repeatedly about how to address the violence (see 1.1.2).
study for reasons explained before, but it must be recognised that it looms in the background when practitioners from the fields meet – as will also be shown below. In other words, there are times, places and conditions that are more or less conducive to genuine interaction and mutual understanding between human rights and conflict resolution actors.

**Competition, communication and a zero-sum assumption**

The earlier discussion on funding allocation in Sri Lanka suggests that competition for resources can undermine productive interaction between human rights and conflict resolution actors, especially when increased funding for one area of work comes at the expense of the other (or is perceived to do so). Competition for resources and policy influence is indeed another factor identified as generating division in the international policy sphere between large field-specific organisations based in Europe and North America (Schirch 2006, 64; Saunders 2001).

Styles of and attitudes in communicating also matter, notably the extent to which people engage with a view to gaining more understanding of one another's arguments and concerns or seek to rebut them. Conflict resolution practitioner Chris Spies observes “an absence of dialogue and listening on both sides”:

I still don’t see a healthy interaction between these disciplines. It’s safer to stay with your own position, why you think your side or your perception ought to be the dominant side. Increasingly, I’m getting frustrated because ‘dialogue’ is spoken about but not really practised. What I see is that the notion of dialogue is a softer term for describing contestation and debate – [there's] often a confusion of those terms. If dialogue is practised more than talked about, then I think we’ve got a greater opportunity to bridge the gap.

This raises a question about the intention underpinning interaction: does interaction spring from a genuine desire to explore the different perspectives and approaches and consider opportunities for convergence or is it driven by a missionary zeal to prove one's own right and the other's wrong? The different styles of communicating in the

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142 On the ‘peace vs. justice’ debate, see 1.1.3 (including explanation why it has been sidestepped in this study).
143 This reflects an interlocutor’s assessment that the peace vs. justice debate is such a dominant feature in thinking about human rights and conflict resolution that it pervades everything; conversation, Laurie Nathan, 11 June 2011.
144 See 8.2.2.
145 Beirne and Knox similarly observe more tension amongst practitioners in Northern Ireland who seek to influence policy and engage directly with decision-makers than amongst those working ‘on the ground’. They also allude to the possibility of institutional rivalry and competition for resources (2014, 37).
146 Interview, 9 June 2011. Other practitioners I have interacted with over the years have echoed Spies’ comments. This applies mostly but not exclusively to conflict resolution-oriented individuals.
147 Ibid. Spies makes a distinction here between ‘debate’ and ‘dialogue’ that is common in conflict resolution. Dialogue is understood as being collaborative in nature and geared towards finding common ground through careful listening and considering underlying assumptions; debate is seen as oppositional and geared towards winning an argument by defending one’s own positions and finding fault with points put forth by others; see e.g. Saunders (1999, 81-85).
two fields may come into play here, as human rights activists – especially lawyers – may see hard and intense debate as a way to increase understanding, while conflict resolution practitioners generally see it as inhibiting it.\textsuperscript{148}

In this regard, it has been striking to hear a few senior conflict resolution practitioners in recent years make statements to the effect that ‘human rights has won’ and ‘we’re losing the argument – and it’s having huge consequences in people’s life’.\textsuperscript{149} While such remarks were usually made in the context of discussions on international criminal justice and peace processes (i.e. the peace/justice-debate), they are relevant for what they hint at: interaction between human rights and conflict resolution actors may at times play out or be experienced more as a competition about which field is to hold sway in policy discourse and political decision-making at international and national level, rather than as genuine engagement based on willingness to pair perspectives and learn from one another.

Admittedly, there is a objectively verifiable factor at play here, in that the rapid evolution of international criminal law has put actual limits on the outcomes and processes that conflict resolution people can facilitate, especially in peace negotiations at elite level. It can thus be argued that such actors have seen their space for manoeuvre reduced, generating a sense of loss;\textsuperscript{150} observer Mark Kersten indeed asserts that “international criminal justice has too often been presented as a fait accompli to mediators and negotiators”.\textsuperscript{151} Without going into the substance of this matter, it is useful to mention it here since it shows how objective factors interact with more subjective dynamics in the interaction between practitioners from the two fields. It also suggests that field actors may – perhaps subconsciously – perceive the relationship between human rights and conflict resolution in zero-sum terms, assuming that one field’s gains are necessarily the other’s loss.

\textsuperscript{148} The distinction between ‘dialogue’ and ‘debate’ may thus reflect the ‘DNA’ of the two fields (conversation with Marlies Glasius, 20 September 2012).

\textsuperscript{149} This includes two practitioners in leadership positions in separate conflict resolution organisations that operate in various countries and at policy level. The ‘consequences’ alluded to relate to the idea, held by many conflict resolution actors, that arrest warrants or indictments against leaders of warring factors by international criminal tribunals may cause them to refrain from engaging in negotiations or signing peace agreements – thus prolonging the fighting and increasing the loss of life and destruction of livelihoods and infrastructure (see also 1.1.2).

\textsuperscript{150} The notion of ‘having lost freedom to manoeuvre’ also emerged from contributions by several senior mediators at two seminars hosted by Dialogue Advisory Group and Human Rights Watch (Amsterdam, Nov. 2010, Nov. 2011). It applies, for example, to the norm that peace agreements may not include amnesty for war crimes, crimes against humanity, gross human rights violations, etc. (e.g. Transitional Justice Institute 2013, United Nations 2012).

Chapter 8

*Notions of superiority and inferiority, fear of annexation and professional identities under threat*

Superiority/inferiority complexes may impede productive interaction too, in that actors in both fields often firmly believe in the greater significance, if not superiority, of their own frame of reference and approach while being keenly aware of the other's limitations. Thus, for example, during an informal talk about the challenge of achieving more effective cooperation between human rights and conflict resolution personnel within the UN system, a senior UN official suddenly blurted out "Of course I believe our field is the best. We [conflict people and human rights people] both are in our fields because we love them and think they're the best!"152

Yet it also seems at times that actors in one field perceive the other field as generally having the upper hand or being more capable of proving its worth. Human rights activists may, for instance, complain that politics will always trump law and normative considerations, while conflict resolution practitioners can grumble that 'human rights' has something concrete to back up its claims – legally binding instruments – which conflict resolution does not. Some among the latter also note that while 'human rights' makes a clear, tangible contribution to 'conflict resolution' (as Galant puts it, it helps “conflict resolution people with mediating in a rights framework”),153 it is generally harder to grasp what 'conflict resolution' adds to 'human rights'. Galant admits that he has been struggling with figuring out how “to sell” conflict resolution to human rights people.154 This paradoxical dynamic of feeling both better and weaker than the other field, is likely to complicate interaction.

Comments made at a 2012 meeting of Swiss development NGOs on 'connecting human rights and conflict transformation; what can human rights workers and peacebuilders learn from each other?' are also telling.155 After my speech, a practitioner with a conflict resolution background shared her experience of working with a human rights colleague in her NGO. They were tasked with developing a policy on human rights and peacebuilding with concrete guidance for combining 'best practices' from both fields. At first, it had been hard to really 'hear' one another, partly because both were

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152 Name withheld on request, 29 June 2012, New York. This conversation took place in the context of an internal UN learning event on bringing conflict prevention and human rights work together in the UN (see also 1.1.2, fn. 15).
153 Interview, Ghalib Galant, 3 June 2011, Cape Town.
154 Ibid. The notion of 'selling conflict resolution' stems from Galant. At the risk of reading too much into it, his use of the word 'selling' seems to suggest a concern that human rights actors may not recognize the relevance of conflict resolution of their own accord (see also at 8.4.3, at 'recognition of legitimacy'.)
155 Annual General Meeting (AGM) of Swiss peacebuilding network KOFF (Bern, 10 May 2012); I was the keynote speaker. For a summary version, see Parlevliet (2012). KOFF consists of some fifty Swiss NGOs involved in development and peacebuilding activities in and outside Switzerland, and includes the Federal Department of Foreign Affairs. Many network members approach at least part of their development work through a human rights lens. The meeting used the terms ‘conflict transformation’ and ‘peacebuilding’, but conflict resolution in this study is understood to comprise both.
Factors Affecting Convergence

cerned that the other might not properly appreciate their perspective.\textsuperscript{156} In time, they had overcome this and had started to believe that both fields can learn from each other – only to run into the next hurdle, the responses from their wider circle of colleagues:

To be honest, the initial reactions from our colleagues were not very enthusiastic. We noted that we have a very strong peacebuilding faction and a strong human rights faction in the house and a third faction who doesn’t care much about one or the other. Initial reactions were that the two fields are very distinct from each other, operate on the basis of completely different worldviews, and cannot and must not be brought closer together. [...] Apart from the valid concerns [put forth], we believe that the opposition of our colleagues was also guided by the fear that, in the future, one field will annex the other or that one field will be reduced to a mere crutch serving the other.\textsuperscript{157}

As she spoke, I observed many in the audience, comprising both human rights and conflict resolution practitioners, nodding in agreement. They continued to do so when she concluded: “Since [X] and I are each representatives of one of these fields, we can sympathize with these fears and are in a good position to alleviate them”\textsuperscript{,158} It was exciting for me to hear this person speak so openly about fears and observe the reactions; I had sensed the presence of fear in the past but had not named it until then.

The discussion thereafter highlighted that actors in both fields derive much pride and satisfaction from their respective efforts and that their interaction is deeply bound up with professional identities.\textsuperscript{159} As a result, practitioners may swiftly get defensive and perceive a threat of being ‘submerged’ or of ‘having to be like the other’, construing critical questions as a claim of deficiency and suggestions to explore possible linkages between human rights and conflict resolution as calls for ‘merging’ which are resisted more or less vehemently. People attending this meeting especially associated ‘merging’ with the facilitator/advocate question discussed in 7.3, whether mediators or dialogue facilitators should start speaking out against human rights violators and human rights advocates should refrain from taking a stance on rights concerns.\textsuperscript{160}

\textsuperscript{156} A similar pattern had struck me during my first visit to Northern Ireland in 2002: it seemed to me that both human rights and conflict resolution practitioners were so concerned with getting their own contribution to the peace process recognised by ‘the other’ that they overlooked the possibility that ‘the other’ may have had a similar desire to have their respective contribution acknowledged by them. Conversations often ran along the following lines: ‘They must see what we brought to the process’; ‘No, they must see what we did.’

\textsuperscript{157} Input at AGM, KOFF peacebuilding network (10 May 2012, Bern); name of speaker and organisation withheld on request (input and later correspondence on file with author). The ‘third faction’ concerns ‘traditional’ development practitioners focusing on areas such as rural livelihoods and development, sanitation, infrastructure, education, etc.

\textsuperscript{158} Ibid. Name of colleague withheld on request.

\textsuperscript{159} See also Saunders’ report (2001) on a workshop with human rights defenders and conflict resolution specialists, which similarly points to strong professional identities as a factor contributing to dichotomy between the fields.

\textsuperscript{160} Notes taken by author at KOFF AGM, 10 May 2012 and at debriefing with Ursula Keller, KOFF director, 11 May 2012. It is noteworthy that several authors have stressed in the past that their advocacy for more linkages and greater understanding is not meant to suggest that the fields should merge (e.g. Babbitt/Williams 2008;
Soon after, I saw these sentiments play out once more at a workshop of coordinators of the German civil peace service (CPS) focused on incorporating human rights to a greater extent in their work. Many of them were reluctant to pay greater attention to human rights: they questioned whether this was necessary and fretted about jeopardising relationships with other actors in their work context.\footnote{Mertus/Helsing 2006b, 2; Lutz and others 2003, 192; Parlevliet 2002, 39). This emphasis may well have been informed, at least in part, by a desire to pre-empt potential fears and resistance.} I also spoke about these ideas on the influence of professional identities, fears of annexation and loss of distinctiveness, and the desire to prove one’s own relevance and have it recognised by ‘the other,’ with a group of UN staff members representing both fields. They were received with various indications of consent, including the same kind of head nodding I had observed at the Swiss meeting.\footnote{Sixteen coordinators participated (based in Nepal, the Philippines, Afghanistan, Bolivia, Guatemala, Kenya, Lebanon, Rwanda, Uganda, Peru, Cambodia, Zimbabwe, Palestine, Niger, Burundi and Ethiopia). They primarily perceived ‘paying more attention to human rights’ as taking an explicit normative stance, denouncing wrongs in society, and calling for accountability. They were worried about increasing the security risks for seconded peace workers and local partner organisations, besides being fearful of damaging relationships. Notes taken at CPS workshop, 21-22 June 2012, Bonn, and Parlevliet, M. and Whande, U., Reflective Report: Connecting Human Rights and Conflict Transformation in the German Civil Peace Service, 9 July 2012, for the Civil Peace Service, Deutsche Gesellschaft für Internationale Zusammenarbeit [hereafter Reflective Report, 2012]; both on file with author.} 

**Final observations: hegemonic contestation, resisting archetypes and loss aversion**

The above shows that when human rights and conflict resolution practitioners meet, more is probably going on than is visible on the surface. This may partly be a process of what Koskenniemi has called in another context “hegemonic contestation” (2011, 222): a struggle for dominance between actors in which they seek to ensure that their own interpretation and approach gains total supremacy. "To think of this struggle as hegemonic is to understand that the objective of the contestants is to make their partial view [...] appear as the total view, their preference seem like the universal preference” (ibid).\footnote{Emphasis in original. Koskenniemi (2011) uses the notion in the context of international law and politics, referring to the way in which international actors and political opponents challenge one another by invoking legal rules and principles that support their preference and negate those of others (2011, 221-223). My use of it here is informed by my interaction with Koskenniemi at a master class where I discussed my research (Faculty of Law, University of Amsterdam, 18 Oct. 2011) and a follow-up conversation with him (10 Oct. 2011, Utrecht).} ‘Hegemonic contestation’ thus speaks to the sense of competition that can pervade interactions between practitioners from these fields, and the extent to which discussions on human rights and conflict resolution may have – or are seen to have – concrete and distributive effects in the external world, relating for example to policy influence, allocation of funds and possibly even (in the context of the peace vs. justice debate) loss of life or ongoing impunity.\footnote{The reference to ‘effects in the external world’ is informed by my interaction with Koskenniemi, noted above.}
Another element of these invisible dynamics may be the presence – and resistance to – deeply held images of what 'the other field' is about.\textsuperscript{165} It seems that both human rights and conflict resolution practitioners focus strongly on, or are subconsciously guided by, a particular manifestation of ‘the other’ that is both feared and rejected for its potential hegemony and inherent flaws. These images are archetypes: for many in the human rights field, ‘conflict resolution’ stands for power-sharing between elites to the exclusion of everyone else, and more generally for staying silent on wrongs and being willing to shake hands with the devil. For many in the conflict resolution field, ‘human rights’ denotes international criminal justice, naming and shaming, and waving with treaties detached from reality.\textsuperscript{166} Both groups are quick to perceive these archetypical manifestations at the international and grassroots level and react in a knee-jerk manner to counteract their assumed bid for supremacy and prospective appeal to decision-makers and wider society.\textsuperscript{167}

Arguably, a cognitive bias known as ‘loss aversion’ (Tversky and Kahneman 1991) may also play a role.\textsuperscript{168} People facing choices under uncertain conditions tend to be more concerned about changes that make things worse (losses and disadvantages) than about possible gains or improvements. They may therefore act in ways that do not maximise their advantage (ibid). In the current context, this suggests that human rights and conflict resolution actors may be more focused on avoiding losses – erosion of professional identity, devaluation of their field, reduced funding, or letting go of approaches perceived as fundamental to their self-conception – than on exploring the possible benefits that such exchanges may yield. Overall, the discussion suggests that a mixture of tangible factors, objective interests, and more intangible and psychological dynamics related to identity, fears and perceptions can considerably impede productive interaction.

8.4.3 Features of Productive Interaction

The above exposé on possible obstacles is not intended to suggest that productive interaction between human rights and conflict resolution practitioners is impossible. That is not the case. My experience suggests otherwise and the literature also contains

\textsuperscript{165} This paragraph is informed by a conversation with Marlies Glasius, based on an earlier draft of this text, 20 Sept. 2012.

\textsuperscript{166} The phrase ‘waving with treaties’ stems from Oomen (2013b), who uses it when discussing the politics of implementing human rights education in the Netherlands.

\textsuperscript{167} While the archetypical manifestations are particularly obvious at global policy level and in the context of peace negotiations between elites, often local NGOs exist in conflict-affected contexts that seem to conform to them as well.

several accounts of fruitful encounters.\textsuperscript{169} A pattern can be detected in such accounts: stereotypical images tend to dominate the interaction at first, but gradually make way for awareness that actors in each field share common goals and that the fields’ differences are more nuanced than is often assumed (e.g. Babbitt and Williams 2008; Saunders 2001).\textsuperscript{170} This cannot simply be dismissed with the argument that such events will only attract persons who already accept the idea of convergence or complementarity and recognise the limitations of preconceived notions. Mutual caricatures and prejudices can be very strong at such events.\textsuperscript{171} This can make the growing reciprocal appreciation all the more meaningful.

So what then makes for productive interaction? This sub-section identifies some key features, such as recognising the legitimacy of both fields, being able to ask difficult questions and checking expectations in terms of anticipated outcomes. Final comments relate to the important role that individuals can play.

\textit{Recognising legitimacy}

Based on the discussion thus far, exchange and interaction between human rights and conflict resolution practitioners seems especially likely to prosper when the legitimacy and usefulness of each field is recognised and when those involved are not particularly concerned with establishing one or the other field as better or worse, right or wrong. While this can be stated up front, it is more often a realisation that gradually dawns on people engaging across the fields. For example, conflict resolution practitioner Whande describes how, when working with the lawyers of a human rights NGO operating in a tense political environment between 2010 and 2013, she found herself “dipping in and out”\textsuperscript{172} of appreciating and doubting their combative mode, their boldness in fighting for the right, and their strategising to defeat the enemy. She says “At one point I’m sitting there thinking ‘this is great what you’re...”

\textsuperscript{169} These accounts mostly concern meetings bringing practitioners from the two fields together for one or more days to discuss the human rights/conflict resolution relationship or particular case studies, rather than describing longer-term or more regular engagement between individuals or organisations pertaining to their ongoing work.

\textsuperscript{170} My own experience of participating in events bringing practitioners together confirms this too. Internationally, these have included two meetings co-hosted by CCR’s HRCMP, the Centre for Human Rights and Conflict Resolution (CHCRC) at Tufts University (USA), and the Institute for Conflict Research (Northern Ireland) (2003, 2004); meetings on joint research projects by CHCRC at Tufts University (2004) and by the International Council for Human Rights Policy (now defunct) (2005); an internal consultation process at UN headquarters (29 June 2012); a three-day dialogue process between UN Human Rights Advisers and UN Peace & Development Advisers (Feb. 2014); and training workshops conducted with German development organisations (2009, 2012) and Swiss ones (2012, 2013, 2014, 2015).

\textsuperscript{171} Conversation with Joyce Neu, 24 Oct. 2011, Amsterdam. Neu attended meetings with human rights actors and conflict resolution practitioners at The Carter Center in the mid to late 1990s, and at the Fletcher School’s Centre for Human Rights and Conflict Resolution. She was the founding director of the Joan B. Kroc Institute for Justice & Peace at the University of San Diego, in which capacity she regularly engaged with practitioners from both fields. She later served as the Team Leader of the Standby Team of Mediation Experts within the UN Department of Political Affairs (2008-2009), and has worked as a conflict prevention and resolution consultant from 2009.

\textsuperscript{172} Interview, 6 Jun. 2011, Cape Town. The rest of this sentence is excerpted and paraphrased from a longer statement.
Factors Affecting Convergence

doing’ and straight away I’m thinking ‘how can you be so unforgiving?’ I’m coming to realise that you don’t have to doubt the truth value of one or the other”.173

Not ‘doubting the truth value’ of either also means acknowledging – or coming to grips with – the reality that both human rights and conflict resolution have strengths and flaws; neither is a panacea for rights- and conflict-related problems faced by people and societies. Useful in this regard is being willing to own up to the limitations of one’s own field. Several practitioners I have engaged with in the context of this study and beyond share openly about having come to appreciate the shortcomings of their own approach. Speaking of how legal training frames lawyers’ thinking, the director of the above-mentioned human rights NGO notes that “it limits what we can do in a law-based situation – it holds us back from really being able to think outside the box, move beyond the court room”.174 Andy Carl, who directs the London-based INGO Conciliation Resources, says, “it’s so obvious what we don’t have. We’re not strong lawyers, so it’s good to have someone that brings law into the conversation, it makes any piece of work more meaningful”.175 For Galant,

If there’s a blind or soft spot in our training, it is that there is no right or wrong. This notion of right or wrong, as a mediator, do I need to work with that? I think yes, but our training seems to suggest no. The [human rights] angle does ask [about] the impact of this notion of right and wrong [so that] this question [of] has there been a breach – we don’t just ignore that.176

Building on this last remark, a final aspect of recognising that both sets of perspectives and approaches are legitimate and valuable in their own right is probably accepting that what human rights and conflict resolution contribute to each other – in terms of insights, approaches and attitudes – is likely to differ in nature and/or manifestation. Thus, even if “the messiness of conflict resolution may make it harder for human rights actors to appreciate what conflict people bring, it’s harder [for them] to get”177 than it is for ‘conflict people’ to identify what ‘human rights’ concretely adds to their work, that does not mean that conflict resolution does not have anything to offer to human rights. It may just be different.

Engaging with difficult questions

The quality of interaction is also enhanced when practitioners can engage respectfully yet critically with one another on difficult issues that they struggle with in relation to their own or the other field. Babbitt and Williams point specifically to the need for “open and constructive discussions [on] the tension between universal norms and cultural practices” since “this tension causes problems both between the fields and within them” (2008, 6). My experience also reflects this, although I have usually

173 Ibid. Emphasis added.
174 Conversation, 3 Feb. 2012, name withheld at request.
175 Conversation, 16 Apr. 2012, London.
176 Interview, 3 June 2011.
177 Interview, Undine Whande, 6 Jun. 2011, Cape Town.
framed it as a tension between "global norms and local agency" following Orentlicher (2007). This has indeed regularly come up in interviews conducted for this study and in discussions on human rights and conflict resolution I have observed and participated in over time (e.g. Parlevliet 2010b, 111). It especially arises in interactions with practitioners from Africa or working on the continent, as the challenge of balancing peace and justice is not looming in the background there but is acutely experienced in several countries.\footnote{179}

The relationship between the individual and the collective also often arises in that context. Conflict resolution practitioners might question human rights workers on whether ‘the focus placed on punishing some individuals does justice to the larger issues faced by society.’ They may also query what still seems to be a dominant emphasis on civil-political rights, at the apparent expense of economic, social and cultural rights, which may be locally preferred (Parlevliet and Whande 2012, 3). Of course, critical questions can also be raised in the other direction: for example, a human rights defender present at the event with the coordinators of the German CPS asked them “What’s so problematic about the emphasis on individual rights?”\footnote{181} She also challenged them on what she perceived as a desire to avoid conflict at all costs, questioning whether “it is a policy of the German peace service not to have any conflict”.\footnote{182}

The point here is not that such questions can, will or should be resolved conclusively (see also below), but rather that they can be raised and addressed in an honest, open and patient manner. This requires that interactions provide sufficient time, space and trust for practitioners to engage with them and with one another. Interaction along these lines can help generate awareness that both human rights and conflict resolution put forth legitimate perspectives, none of which is necessarily better or worse. This is reflected in the following recollection from conflict resolution practitioner Whande:

> You know, it only sank in after several years. I mean, all that time I’d seen you work on human rights and conflict resolution, but at some point, I suddenly got it. It was at the induction workshop that the HRCMP did with a bunch of practitioners in, what was it, 2003? That had to do with it, really being with the other people. It was during that fish bowl [exercise] on universalism and relativism we had. I suddenly grasped both sides’ realities. I was so convinced the universal perspective was right – and so was the

\footnote{178 See also 2.5.4 on ‘universal norms and local application’.
179 This includes Sudan, Uganda and Kenya.
180 This is paraphrased from comments made by Andries Odendaal and Chris Spies in interviews, 9 Jun. 2011, and at workshop with coordinators of the German CPS, June 2012 (see also 8.4.2, fn. 161 above).
181 Anja Hoensbroech at CPS workshop, June 2012, \textit{op.cit.}; personal notes taken by author. A participant at a three-day training workshop involving a mixed audience stressed that many supposedly ‘individual’ rights actually enable persons to engage with others, such as freedom of assembly (KOFF workshop, Bern, 10 Jun. 2015; and follow-up email exchange with Simone Sinn, 27 Jun. 2015). See also Beirne and Knox about ‘the caricature of human rights as individualistic’ (2014, 36) and Bielefeldt (1995, 591).
182 Ibid. Reacting to a draft version of this text, Romy Stanzel of the German Civil Peace Service wonders whether “it isn't rather about confrontation than conflict [that is being avoided]”; email correspondence, 23 June 2015.}
relativist position. I realised that maybe it’s not about deciding that it’s one or the other thing.

*And what was it that made ‘getting it’ possible?*

I could be more open because I felt appreciated in that space. We got onto that spiral – I opened up and others opened up. There was a willingness to respectfully listen and engage... It was much easier to transcend resistance.\(^1\)

Such engagement may thus shift practitioners’ concern away from ‘deciding that it’s one or the other thing’ to suspending judgement and recognising the validity of both in their own right. They can also come to realise that their understanding of what ‘the other field’ is about, is actually fairly limited.\(^2\)

*Keeping expectations realistic*

Another feature of productive interaction probably relates to expectations: what is supposed to come out of encounters between the two fields? Addressing the apprehension felt amongst many practitioners about the daunting prospect of the fields ‘merging’ is relevant here. More generally, it is useful to heed a warning by human rights scholar Bell:

> Human rights activists may be fully trained in conflict resolution skills, and this may change how they present arguments and approach strategies, but it will not change their analysis of human rights protections as important to addressing the conflict. Conflict resolvers may be trained in human rights standards but still feel that addressing human rights violations is unnecessary, divisive, and disruptive to attempts to foster peace or reconciliation (2006, 357).

This highlights that more interaction does not necessarily mean that differences between the fields are resolved or dissolved; differences in priorities, approaches and analyses may well persist beyond exchanges between human rights and conflict resolution actors. Even so, practitioners may experience such differences as being less detrimental than before, having gained more understanding of the ‘other’ perspective and more confidence in their own concerns being taken seriously. Such interaction may also facilitate greater appreciation of the interdependence of human rights and conflict resolution in general or of particular roles and strategies in particular.

Nevertheless, recognising that differences are likely to remain also means accepting that certain issues will continue to be contentious and that practitioners may still, at

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\(^1\) Informal conversation 10 February 2012. Emphasis in original. The ‘induction workshop’ was a ten-day training course in 2003 for a group of in the context of CCR’s HRCMP (for more information, see 5.2.5, fn. 120). In a fishbowl exercise, a few participants sit in the middle of a circle to act out a role-play or hold a discussion while everyone else sits around them and observes the interaction; they may have an option of taking over a seat in the centre to bring in ideas or approaches not raised or used yet.

\(^2\) Discussion of such questions at the CPS workshop, for example, brought out nuances in human rights thinking that the conflict resolution practitioners present were unaware of and that challenged some of their accepted beliefs about human rights (*Reflective Report, 2012, op.cit.*, 4).
times, find themselves vehemently disagreeing about the desired course of action. Friction between practitioners is not inevitable, both in dedicated meeting settings and during longer-term engagements. Yet it should be clear by now that, although friction can be destructive, it need not be so. Aside from the potential complementarity of divergent and seemingly conflicting strategies observed previously, the discomfort generated by friction can spark a shift in practitioners’ awareness and willingness to look beyond the familiar. Put differently, their interest and desire to explore convergence may partly stem from friction and divergence experienced at some stage. A practitioner from Northern Ireland interviewed by Beirne and Knox concurs, arguing that tension should not always be seen in negative terms, as change (in the human rights/conflict resolution-relationship) only occurs as a result of addressing tension (2014, 34).

It is thus helpful to conceive of interaction as a space for exposure, exchange and reflection rather than for resolution. In that sense, an element of interaction may be considering how to handle discord when it arises so that the energy generated is channelled towards constructive expression rather than becoming destructive and detracting from the issues at hand (Lederach 2005, 149).

A final factor worth noting in relation to expectations is time. It is important to realise that exposure and interaction may not immediately result in tangible ‘outcomes’ in terms of collaboration or other forms of convergence. Outside a workshop setting focused on exploring the fields and their interplay, when actors engage with one another in the course of their work, it can take considerable time for insights and appreciation to grow and to turn into experimentation or joint action. Whande’s comment cited above reflects this (‘it took several years to sink in’). It also emerges from Jarman’s observation that it took many years for the Northern Ireland Human Rights Commission and the Community Relations Council to establish a regular working relationship.

**Final observation: the role of individuals**

The role that individuals can play in instigating substantial engagement between the human rights and conflict resolution fields (and sustaining it over time) should not be underestimated. The fact that individuals can make a real difference in this regard often came up in interviews and at gatherings of actors across the fields. It was also a recurrent observation at the international consultation between human rights and conflict prevention personnel in the UN, where institutional separation is a matter of course. In Northern Ireland, the interaction between the NIHRC and CRC was apparently enhanced when someone who had started working in the CRC obtained a

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185 This text benefits from a conversation with Undine Whande based on an earlier draft, 20 Aug 2012.
job in the NIHRC. This personal linkage facilitated more structural connections between the two bodies.\textsuperscript{187}

8.4.4 In Sum

This section has advanced the argument that exposure and interaction between proponents of human rights and conflict resolution can affect the scope for convergence to a considerable extent. This is not to say that it is only about the fact or the quantity of interaction. How interaction takes place – i.e. its quality – matters greatly if it is to facilitate genuine appreciation between field actors, prompt greater insights into local conditions and possible approaches, and enhance technical skills. It has become clear, however, that various obstacles can hinder productive interaction.

Crisis conditions, for example, are not particularly conducive to it, given the intense pressures and high stakes at such times, which impede patient and considerate engagement across the fields. Other obstacles include institutional separation, competition for scarce resources and disparate communication styles. More intangible dynamics in the perceptual, emotional and psychological sphere are also likely to play a role. Practitioners in both fields tend to have strong professional identities, seek recognition for their own contribution to a better world, and are fearful of being overtaken by the other. Below the surface, field actors may be involved in a struggle for hegemony in terms of whose perspective and approach will hold sway.

Yet productive interaction is possible, especially when actors in the two fields recognise that both perspectives and approaches are legitimate and valuable in their own right and that both have strengths and limitations. The quality of interaction is also enhanced when practitioners are able to raise difficult questions and grapple with them; this tends to show up issues as being less straightforward than perceived, and can also make practitioners aware of their own limited understanding of ‘the other’. All in all, interaction is not so much about resolving contentious questions conclusively – which is probably neither possible nor desirable – but about creating space for reflection, exploration and possibly experimentation.

Interestingly, a very specific notion of ‘human rights practitioner’ has surfaced in this discussion, namely human rights lawyers. This image quickly pops up quickly when engaging with human rights and conflict resolution practitioners about exposure and interaction across the fields. It seems very entrenched and is both resisted and appreciated. The image of the impartial mediator is the equivalent on the other side. Such implicit images – which speak to the presence of archetypes as mentioned before – can surface during exposure and interaction between the fields, challenging practitioners to review the dichotomies that are often used to define their differences (Idriss 2003, 31).

\textsuperscript{187} Ibid.
8.5 Conclusion

This chapter has built on findings from earlier chapters that the relationship between human rights and conflict resolution can look very differently across cases, locations or time periods, and that various factors appear to influence how it manifests and develops over time and in a given context. As the scope of this chapter did not permit a comprehensive exploration of such factors, it has discussed instead how four specific ones may affect the relative convergence of human rights and conflict resolution. It used the notions of ‘convergence’ and ‘divergence’ to capture the dynamic nature of the relationship, rather than ‘complementarity’ and ‘contradiction’, which have been used more regularly to date in the literature (and in earlier parts of this study).

The four factors considered are the way in which ‘human rights’ and ‘conflict resolution’ are conceptualised in a specific setting, the political and economic context within which human rights and conflict resolution thinking and practices emerge and take place, the strategies that are used to advance human rights and conflict resolution goals, and the extent to which practitioners in the two fields gain appreciation for one another’s perspective, approaches and concerns through exposure and interaction across the fields. This last section summarises findings and makes some general observations on convergence and divergence in the relationship between human rights and conflict resolution.

In terms of the first factor discussed, a comparison of human rights and conflict resolution conceptions prevailing in Northern Ireland and South Africa revealed that the way in which these key notions are understood and put into practice can considerably affect the relative convergence of the fields. In Northern Ireland, fairly narrow conceptions generated substantial friction between proponents of human rights and community relations, the specific take on conflict resolution in that context. As practitioners set different priorities and used different methods without recognising the interdependence between them, they perceived one another’s analysis and approach as flawed. In South Africa, on the other hand, the conceptions were broader, providing multiple connections between the fields and uniting practitioners across the fields in a common vision of peace with justice. All in all, the discussion suggested that the scope for convergence probably increases when conflict resolution is conceived in a way that is mindful of the role of the state and issues of justice, and the conceptualisation of human rights recognises the social context in which rights manifest, thus looking not only at the level of public governance and state institutions but also at daily life and social interaction.

The relevance of considering the broader political and economic context as affecting relative convergence transpired in the second section. The divergence in Northern Ireland was probably exacerbated by the fact the fields were associated with competing political ideologies, with human rights being mostly associated with the nationalist cause and conflict resolution being seen by many as a unionist project that
advanced the agenda of the British state. This points to a risk of the two fields becoming aligned with specific conflicting parties, which probably does not bode well for convergence. Analysing how these bodies of thought and practice interact with existing political perspectives thus seems important when trying to understand how and why they relate in practice in the way they do. Yet economics also matter: where funding comes from and how it is organised and allocated can influence the interplay between the fields by, for example, affecting the ability of civil society actors to work across the fields, shaping how they practice human rights and conflict resolution, or shifting financial support from interventions in one domain to the other, generating a sense of competition. In sum, this is an area worth considering further when unravelling the interplay of these fields.

The third factor considered was the strategies used to pursue human rights and conflict resolution goals, noted in the literature as a major source of tension between the fields. In general terms, it was suggested that convergence is probably negatively affected when one field rejects a particular strategy that is encouraged by the other field. The use of formalist strategies may have a similar effect: they tend to constrain actors’ flexibility to act due to a circumscribed role and process. However, assessing more precisely how strategies may affect relative convergence proved difficult. For example, while there is evidence to suggest that actors working at grassroots level may more easily experience convergence than practitioners focusing on policy-making, there are also examples to the contrary. Similarly, a perceived lack of effectiveness may prod actors towards exploring convergence, but not necessarily so. It is also important to consider how human rights claims are framed, as forms of framing that recognise the reciprocal nature of human rights or that refer to interests or broader moral values, may contribute to convergence. This is not absolute, however; failure to clarify applicable standards is risky from a rights perspective and may complicate conflict resolution in the long term. Overall, strategies can probably affect the scope for convergence considerably but it is hard to establish firmly or in absolute terms how they do so.

The fourth section focused on the extent to which practitioners working in either field are exposed to and interact with ‘the other field’ and come to appreciate its perspective, insights, methods, strengths and weaknesses, arguing that increased appreciation can aid convergence. Yet various obstacles hinder fruitful engagement. These range from the very concrete (e.g. institutional separation, competition over scarce resources or policy influence) to the intangible (such as strong professional identities, fears of one’s field being devaluated or eclipsed, feelings of superiority/inferiority). Practitioners seem quick to perceive an archetypical manifestation of ‘the other’ that is both feared and rejected and may tacitly engage in a struggle for hegemony. Even so, productive interaction across the fields is possible. Probably, a key feature of this is recognising the legitimacy of both human rights and conflict resolution and containing the desire to judge one as definitively better or worse. Engaging with difficult questions is also valuable. This can clarify concerns and
positions, reveal implicit assumptions and unexpected nuances, and challenge simplistic beliefs. It is also important to realise that differences will remain and that not everything that is contentious can be resolved – but that this need not efface the possibility of convergence.

By considering the potential impact of these four factors, the chapter has lent credence to the claim that the relationship between human rights and conflict resolution is both dynamic and very contingent (even if strict causality could not be established). It has also demonstrated that the line of inquiry proposed here – exploring what factors and conditions influence how the human rights/conflict resolution relationship plays out in practice – can yield new and relevant insights when it comes to understanding when and why these fields can support and be in tension with one another. As such, the empirical climate seems amenable to more extensive research forays in this direction (Drezner 1999, 59).

The discussion has further brought to light that factors affecting the relative convergence of human rights and conflict resolution comprise a mixture of elements involving agency on the part of field actors (e.g. conceptualisation of key notions, choice of strategy, engaging across the fields) and circumstances beyond their control (including political dynamics, the allocation of funding, or how human rights and conflict resolution efforts are institutionally organised). Given its constructivist slant and actor-orientation, the study as a whole may have privileged the former. However, it has become clear that matters of structure cannot be ignored in coming to terms with the interplay of these fields.

Ironically, the very fact of exploring what may affect how these fields relate to one another brings us back to the very notion of human rights and conflict resolution constituting separate fields that this study started off with. That notion was qualified in the course of chapters 5 and 6, which highlighted a degree of fluidity and permeable boundaries between the fields. The observation of arriving back where we started in a sense mirrors the movement of pulling apart and coming together noted before, at the end of chapter 4. Overall this chapter reflects how the relationship between the fields is a dynamic process in its own right, entailing both convergence and divergence.

On the one hand, this raises a question of how to ‘work’ with that movement in a way that contributes to ‘improving the human condition and making the world a better place,’ which both human rights and conflict resolution aspire to (Babbitt 2009a, 619; Idriss 2003, 31). On the other hand, it suggests that convergence and divergence may be inextricably linked, or even that divergence may be a facet of the movement towards convergence. This is not to negate the earlier concern with the destructive and dysfunctional tension that may arise between human rights and conflict

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[188] See the last paragraph of 4.3.
resolution ‘people’; this remains problematic for reasons explained before. Yet it does recognise that, much as convergence is worth exploring and exploiting, divergence can serve a function, too – in ensuring the use of different yet complementary and interdependent approaches and analytical frameworks or in generating a sense of frustration and unease that can spark the impulse in practitioners to venture outside of the familiar and start taking the other field seriously.

An analogy can thus be drawn with a core premise of the conflict resolution field, namely the idea that ‘conflict’ is not necessarily bad or inherently violent but a phenomenon that can be constructive and destructive in its manifestation and consequences. In a similar vein, divergence or friction between human rights and conflict resolution may not be problematic per se. It only becomes so when field actors are more concerned with finding fault with one another and being right than they are with addressing the issues at hand. Finding myself drawing this conclusion is somewhat surprising, as my practice and research have for so long been focused on exploring convergence and making the case for complementarity (endeavours to which I remain committed). It goes to show the power of reflective practice; undertaking this study has deepened my own understanding too, bringing me to a place I had not anticipated at the beginning.
Chapter 9: Conclusion & Implications: Embracing Concurrent Realities
Chapter 9

This study has focused on the interplay of human rights and conflict resolution in the practice of civil society organisations and independent state institutions, so as to enhance understanding of the relationship between these fields and contribute to improved practice. While it has been recognised for some time that human rights, justice, conflict and peace are closely linked, thus far the domains of human rights and conflict resolution have remained rather separate in conceptual, institutional and practical terms. By and large, the fields still have their own distinct sets of practitioners and scholars, frames of reference, range of methods, research centres, organisations, forums and constituencies. People working in these domains seldom consider whether and how their respective efforts interact and what the implications are of operating in the same context. At times, they have been known to perceive one another’s actions as hampering their own initiatives. Rights activists and conflict resolution practitioners have occasionally vehemently disagreed about the most suitable course of action or the ends to be pursued in a given context; tensions especially arise when abuses are widespread and pressure to act is high.

Such polarisation detracts attention and resources from the actual problems practitioners seek to address. Even when there is no explicit acrimony between actors in the two fields, and they are merely oblivious of one another’s efforts, the question arises whether their respective initiatives are as effective as possible. After all, human rights and conflict are inextricably linked. Violent conflict often manifests in human rights violations, while a sustained denial of human rights can also contribute to such conflict. Hence, it is likely that failure to consider the two bodies of theory and practice in conjunction will negatively affect interventions in either realm. This study has sought to counteract the ongoing disconnect between human rights and conflict resolution and to contribute to more effective practice. It has done so by examining how the human rights/conflict resolution-relationship plays out in various concrete contexts, drawing extensively on practical experiences. It has focused particularly on actors and situations in South Africa, Northern Ireland, Zimbabwe and Nepal, and has made occasional reference to examples in other contexts. This study has thus blended lived experience and social investigation, and is written from the perspective of a reflective practitioner drawing on participant-insider insights.

This final chapter summarises the study’s main findings and discusses its implications for practice and further research. It first engages with the research questions set out in the introduction through three themes that have emerged in the course of the study: lenses, fluidity and complexity. It then reflects on the study more generally (9.1). It considers a question lingering in the background of this study without being an explicit focus: how is it that the differences between human rights and conflict resolution tend to be so magnified, and that the perception of a clash has been so persistent, while the fields have many points of reference in common? Ironically, similarities may well be as much of a hindrance to greater synergy or convergence between human rights and conflict resolution as differences (9.2). Thereafter, the conclusion comments on the importance of framing and the possibility of remaking
existing frames, outlining three possible ways for doing so (9.3). It also clarifies the notion of concurrent realities (9.4), sets out implications for practice (9.5) and suggests areas for further research (9.6).

9.1 Summary of Findings

9.1.1 Lenses on Social Reality

Part I (chapters 2, 3 and 4) revolved around the first set of sub-questions underpinning this study: what constitutes the fields of human rights and conflict resolution, how have these evolved as distinctive bodies of theory and practice, and how do they differ and/or resemble one another? In general, the study has observed that the human rights and conflict resolution fields each provide a distinct ‘lens’ for perceiving social reality and identifying possible responses for problems faced by people and societies. These lenses come with priorities, preferences, and demands as they highlight certain aspects of reality and human coexistence, downplay or overlook other features, and shape practice by encouraging some kinds of action while invalidating others.

‘Human rights’ spotlight the extent to which the state affords or denies individuals recognition as being worthy of freedom of choice, respectful treatment, and participation; fact-finding, advocacy, codification and enforcement of legal standards are central practices given the field’s focus on accountability, protection against abuse, and law. In conflict resolution, on the other hand, dialogue facilitation, relationship-building and third-party intervention are key strategies; these relate to the field’s emphasis on identity groups as the primary unit of analysis, its concern with finding mutually acceptable outcomes, its notion that collaboration between opponents is possible, and its faith in the value of good process.

Clearly, human rights and conflict resolution represent particular ways of grasping, being and doing in the world. Thus far, most attention in scholarship and practice has been devoted to how these are different. Indeed, in some respects, the respective emphases and approaches put forth by either lens diverge to such an extent that they appear incompatible. This applies, for example, to the fields’ respective stance on engaging with norm violators (including them in dialogue and problem-solving processes or dissociating from them) or on expressing judgement in public (refraining from publicly criticising parties or denouncing behaviour that flouts international standards).

In other respects, however, field-specific ways of understanding and approaching social reality do not necessarily preclude one another even if they are different. Thus, the human rights’ emphasis on considering relationships between state and citizens can complement and coexist with the conflict resolution concern with relationships between and within identity groups. Similarly, the human rights emphasis on finding
solutions that are ‘right’ may also coexist with the conflict resolution focus on solutions that ‘work’.

In addition, surprising similarities exist between the fields, more so than has been noted to date. They share a concern with protecting human life, ensuring respect for human dignity, and rectifying systemic and unchecked power imbalances. Both seek to support and facilitate social change, and they have a belief in the agency of individuals and groups to shape their environment in common. The fields are also alike in how individuals and organisations operating in either domain have rapidly professionalised since the mid-1990s. Moreover, both experience similar contradictions or tensions. These relate, for example, to having the desired impact, challenging power dynamics, furthering long-term change, and relying extensively on technical approaches with little attention for the political dimension of actual efforts.

Terminology, metaphors and symbols are an integral part of the social construction of reality projected by either field, and to the constitution of the fields in and of themselves. The lenses are conveyed and reinforced through field-specific imagery and vocabularies that are hard to grasp for those outside a field; in that sense, ‘human rights’ and ‘conflict resolution’ constitute different languages, with most actors only being proficient in one or the other. Yet language is a device for both insight and blindness, as it facilitates seeing and understanding some things but usually at the cost of not perceiving other things. The study indeed shows that the conceptual perspectives and practical approaches put forth by the two fields have limitations; the identification of contradictions in each field and the later discussion of practical examples demonstrate as much.

Hence, both human rights and conflict resolution are subject to different forms of epistemological and ontological “blinkering” (Stammers 1999, 990); they come with blinders that prevent people in these fields from gaining a full understanding of a situation, causing a narrow or limited outlook instead. Put differently, the human rights and conflict resolution fields reduce the inherent complexity of reality to make it more manageable and comprehensible. Neither field can claim sole possession of ‘the ultimate wisdom’ about the world or how to create the desired future - if only because of the other’s very existence.

Yet many proponents tend to believe or pretend otherwise: despite such limitations, actors in both fields usually have great faith in the rightness and applicability of their respective lenses. As such, they have generally been eager to project the legitimacy of their interpretations outwards. Rising ambitions in each field reflect this tendency. The substantive issues of interest considered and the scope of activities undertaken under the header of ‘human rights’ or ‘conflict resolution’ have greatly expanded over time. As a result, working in isolation has become increasingly difficult, both conceptually and practically: with the broadening conceptions of human rights and conflict resolution, the distance between the two fields has narrowed, and the
boundaries between human rights and peace work have become blurred (Mertus 2011, 128). This has increased the likelihood of human rights and conflict resolution actors clashing.

Yet this narrowing distance has also expanded the prospects for collaboration and synergy, as there are now many more points of connection than used to be the case before the 1990s. Contemporary notions and practices of human rights and conflict resolution are increasingly paying attention to concerns that have long been primarily associated with the 'other' field. For example, in the human rights field, 'process' considerations – long stressed mostly by conflict resolution – have gained weight with the emergence of the human rights-based approach. In conflict resolution, issues of justice and governance have become more important due to a growing emphasis on transforming underlying structural conditions giving rise to conflict and violence.

Overall, appreciating the distinct nature and content of the two lenses – in their own right and in comparison – thus sheds light on the very fact of human rights and conflict resolution, in general terms, connecting and disconnecting at the same time. The next section (9.2) will pick up on this thread when considering possible reasons for the persistent perception that the fields clash despite various common features.

9.1.2 Fluidity between Human Rights and Conflict Resolution

How does the relationship between human rights and conflict resolution manifest in practice? This second sub-question was explored in Part II (chapters 5 and 6), through a discussion of practical experiences of two field-specific civil society organisations in South Africa (one human rights NGO and one conflict resolution NGO), one civil society actor not associated with any particular field (an ecumenical network of churches in Zimbabwe), and a few independent state institutions. The theme 'fluidity' has emerged in this context, to capture how human rights and conflict resolution are interwoven in the daily practice of these various actors. The boundaries between the two domains turn out to be very permeable.

The study shows that practitioners in the two field-specific organisations, while seeking to protect human rights or facilitate conflict resolution at local level, encountered the other field in various ways, by choice and inadvertently. Human rights lawyers realised that legal means were not sufficient to conclusively resolve rights issues manifesting themselves as legal problems. They also had to take relationship dynamics and larger contextual constraints into account if the rights of indigent people were to be respected, prompting the use of interest-based negotiation and mediation. Such conflict resolution methods were no panacea, however; the rights practitioners had to develop a good understanding of the various strategies at their disposal – power-, rights- and interest-based (Ury, Brett, and Goldberg 1988) – in order to be effective in their human rights work by switching between these strategies as appropriate.
Meanwhile, conflict resolution practitioners found themselves facing human rights questions and human rights actors when intervening in various conflict situations. They were seldom attuned to such rights aspects, which meant that they tended to overlook them and/or be frustrated by them. They hence might ignore the responsibility of the state, fail to take relevant standards into account, or perceive rights actors as disruptive. Still, over time, some practitioners came to appreciate human rights – in both a legal and moral sense, as legal entitlements and powerful moral claims – as an additional ‘tool’ they could use when addressing conflict situations, and as setting the parameters within which conflict resolution interventions must take place.

The examples recounted reflect considerable variation in the degree to which connections between human rights and conflict resolution are purposefully pursued or rather stumbled upon by practitioners working from a particular perspective; the degree to which they are recognised or ignored; and the degree to which they are capitalised on as providing additional strategies and insights or rather perceived as unwelcome interference. Yet these differences do not detract from the observation of fluidity, i.e. the interconnectedness of human rights and conflict resolution. Fluidity stems from the nature of the work undertaken by the actors considered here, the context in which they work, and the type of problems they seek to address. However useful, a human rights or conflict resolution ‘lens’ on its own is unlikely to capture all the facets of a situation such actors try to address; both are necessary but insufficient by themselves (cf. Beirne and Knox 2014, 14).

Thus, human rights actors generally operate in contexts defined by conflict, and are constantly dealing with conflict when taking action to protect and promote human rights. In the same vein, human rights seem to be inescapable for conflict resolution actors. This is due to various factors: the causes and symptoms at stake in conflict situations often pertain to human rights, legal standards exist that have a bearing on the possible solutions that can be negotiated, and/or parties may couch their positions in rights language. The observation that human rights actors may work ‘in’ conflict and that conflict resolution practitioners tend to work ‘in’ human rights, has implications for practice that will be commented on below.

For now, it reflects a manifestation of the relationship between human rights and conflict resolution in practice: while seeking to impact primarily on one domain – protecting human rights or seeking to resolve conflict at local level – field-specific organisations are likely to find themselves engaging with the phenomenon that is central to the other domain, by conscious choice or accidentally. They will also probably encounter the other frame given its relevance to the context or situation at hand. This prompted the use of metaphors such as ‘branching out’, ‘crossing over’, or ‘running’ and ‘stumbling’ into the other domain, in chapters 5 and 6.
Fluidity also came to the fore when considering the experiences of one non-field-specific civil society actor and independent state institutions. The metaphor of ‘operating on the interface of human rights and conflict resolution’ was used to describe their experiences, as these actors may perform functions commonly associated with both fields. This was first demonstrated in the case of a network of churches in a highly politicised province in Zimbabwe. Clergy from these churches began working towards rights protection, violence mitigation, and peaceful resolution of conflict through dialogue in the face of rapidly rising political violence. Various independent state institutions also often have to engage with both realms when implementing their mandate. These bodies may thus also operate on the interface as well, even if their formal title or mandate may only emphasise or refer to one field (or to none). Yet such state institutions seldom seem to give much thought to the way in which human rights and conflict resolution come together in their work. In the practice of these various actors, the interconnectedness of human rights and conflict resolution especially emerged as they responded to concrete situations faced on the ground.

In general, the discussion of empirical experiences and concrete situations has shed more light on how the relationship between human rights and conflict resolution manifests in practice. It showed that they can both contribute to one another and be in tension as well – just as the review of the two fields in general terms suggested that they connect and disconnect at the same time. Human rights and conflict resolution can enhance one another when it comes to analysis and identifying appropriate practical approaches, especially because they call attention to different aspects of the same complex reality and encourage different kinds of action.

Thus, for example, considering human rights in the context of conflict resolution practice highlights the role of public authorities and calls into question how their action – or inaction – may fuel conflict in a given context. It also highlights identifying existing governance structures that can help to address conflict constructively and emphasises the importance of institutional solutions. Conversely, conflict resolution brings to human rights practice an awareness of the larger social, political, economic and cultural context in which conflict and associated rights abuses take place. It further underlines the importance of engaging with actors that are not perceived as natural allies in the fight for human rights and of paying careful attention to process.

Yet the review of practical experiences also shows that the fluidity between human rights and conflict resolution offers not only opportunities to practitioners – in terms of additional insights, tools and approaches – but also challenges. Considerable ground for frustration exists when actors from the two fields interact directly or find that their activities affect one another when operating in the same context (see chapter 5). Yet, while it can be challenging to link human rights and conflict resolution in practice, the study finds that not doing so may be even more problematic. For field-specific actors and actors working across both fields, working ‘around’ the
relationship of human rights or conflict resolution is likely to have adverse effects, as important aspects of reality that contribute to rights violations and/or conflict dynamics are not taken into account and relevant strategies are ignored.

Overall, the practical examples put forth in the study confirm, on the one hand, the existence and relevance of the two lenses or fields: different analytical frameworks and ways of engaging with problems can be noted, and the practices of civil society organisations and independent state bodies can be understood in terms of these lenses. On the other hand, the practical examples also highlight the main shortcoming of the ‘lens’ and ‘field’ metaphors: in reality, their boundaries are far less strict than these notions imply, and there is great fluidity between human rights and conflict resolution. A paradoxical situation thus exists, as an ongoing disconnect between the fields can be observed and yet there is also considerable overlap and fluidity.

9.1.3 Complexity - Beyond Binary Frames

Part III explored the remaining sub-questions, focusing on challenges regularly arising for actors working on human rights and conflict resolution (chapter 7), and on factors that may affect how the fields’ relationship unfolds over time (chapter 8). A theme emerging from these chapters relates to the limitations of binary frames, which construe social reality in rigid ‘either/or’ terms. Such frames are readily present when human rights and conflict resolution are considered in conjunction. However, they do not do justice to the complexity of the social world nor provide actors involved in human rights and conflict resolution with much space for manoeuvring or identifying creative solutions.

In chapter 7, the discussion of specific challenges highlighted the fact that actors navigate the complexity of the context in which their human rights and/or conflict resolution takes place in various ways. Reframing and reflection are important strategies in this regard, enabling actors to go beyond dualistic frames that project two mutually exclusive options for action. Chapter 8 took issue with a long-standing discussion in the literature about whether the relationship between human rights and conflict resolution is complementary or contradictory. Arguing that the relationship between the fields contains the possibility of both manifestations, it showed that this relationship is better understood as being highly dynamic and contingent.

The study probed some challenges that regularly arise for actors in these realms, derived from the empirical material. These related to balancing short- and long-term goals, addressing conflict in a context of serious power imbalances between parties or engrained injustices, managing tensions between facilitator and advocate roles, and raising human rights abuses in conflict resolution interventions. Challenges such as these resist easy solutions because they involve conflicting objectives and different values. Moreover, they imply various courses of action, each of which tends to have some unfavourable consequences. Hence, they are easily positioned and experienced
Conclusion & Implications: Embracing Concurrent Realities

as dilemmas that capture the choices available to practitioners in a simplistic binary frame, as if only two – mutually exclusive – options for action exist. Yet real-life situations rarely allow for only two possible courses of action; they are more complex than that.

Indeed, the study shows that in practice, actors working on human rights and/or conflict resolution navigate the complexity of the social world in various ways. They may combine the two evident options for action or identify alternatives that were previously not obvious. Such strategies essentially entail a process of reframing the challenge at hand in a way that recognises the inter-dependence of various alternatives and creates space for manoeuvring. For example, when faced with the question of whether or not to raise allegations of human rights abuses in a mediation process, Cape Town-based conflict resolution practitioners understood that either course of action was likely to affect their credibility as perceived by one or the other party to the conflict. Hence, rather than getting stuck in a frame of ‘should/should not’, they effectively reframed the challenge and focused on the question of how they could refer to these and other human rights concerns in the course of the mediation while retaining their credibility as impartial interveners in the eyes of all parties. They ended up raising human rights issues in terms of human needs rather than relying on explicit rights language, so as to defuse defensiveness amongst those allegedly responsible for abuses and make the parties aware of common ground between them.

The challenge of pursuing short- and/or long-term goals readily arises for human rights and conflict resolution practitioners. They generally aspire to support long-term structural change, but often use strategies that are primarily geared towards achieving short-term goals: ending violence and abuses, providing redress, etc. While the challenge of what goals to pursue is easily construed in ‘either/or’ terms, the study shows that in practice, several actors find ways of working in a way that is both ‘short-term responsive and long-term strategic’ (Lederach 2003, 50). Interestingly, human rights actors appear to achieve this by paying attention to the relational and institutional context in which rights violations take place and by creating spaces where diverse groups or parties can discuss human rights concerns. These strategies – relationship-building, facilitating dialogue and joint problem-solving – are more commonly associated with the conflict resolution field. For conflict resolution actors, on the other hand, strategies that hold particular promise are geared towards clarifying and institutionalising ‘rules of engagement’ and enhancing accountability mechanisms – in other words, strategies generally associated with the human rights field. Thus, reframing the dilemma from ‘either/or’ into ‘both/and’ terms highlights how actors in these fields devise creative solutions. In turn, these solutions point to the scope for synergy and illustrate the interdependence of human rights and conflict resolution approaches.

Such interdependence also came to the fore when considering the challenge of dealing with conflict in contexts characterised by severe power imbalances between the
parties or where injustices are embedded in the way the state is organised and society functions. Both the options for action that immediately present themselves have unfavourable consequences: facilitating dialogue may stabilise a situation but will probably reinforce the status quo, while confronting the more powerful party may be more suitable in calling injustices into question but is likely to escalate conflict and can generate more violence. The study has however found that both imperatives are important and in fact interdependent, which raises the question of whether and how conflict can be intensified to exert pressure on the stronger party to rectify imbalances without more violence, and how polarisation between parties can be reduced without perpetuating injustices. This focuses attention on the relevance of human rights activism in the context of addressing conflict; important strategies in this regard are not just litigation and advocacy but also mobilisation of marginalised people; as such, this discussion highlights the significance of recognising human rights both as law and as moral claims. In addition, the discussion finds that conflict resolution actors may side with the weaker party to strengthen its ability to engage effectively and strategically with the stronger party. In other words, the role of such conflict resolution actors may shift, which limits their ability to serve as an intermediary in future.

Finally, the study has found grounds to qualify the notion prevalent in the literature, that actors should not combine roles with conflicting principles and objectives, notably those of facilitator and advocate. It has demonstrated that this combination of roles, while not ideal, cannot always be avoided; actors seeking to impact constructively on a conflict situation may get caught up in both. Actors handle the tension between these roles in various ways. Thus, the network of Zimbabwean churches laid more emphasis on playing other relevant roles (such as advisor or educator), while a Nepali human rights organisation developed an internal division of labour between staff based in different geographical locations and at different levels of authority. Comparison of these cases highlights that the context, the specific conflict- and power dynamics at stake, and the way the organisation is perceived by its external environment influence how actors handle this thorny role combination and the space they have to perform both roles concurrently. It is also clear that some forms of advocacy are more easily compatible with facilitation than other forms.

In sum, the study stresses the relevance of approaching challenges in a 'both/and' manner rather than maintaining a binary 'either/or' frame. Yet it has also transpired that such reframing does not necessarily solve any particular challenge, as tensions remain. In this regard, it is worth noting that what appears to be particularly useful is when actors are willing and able to surface and grapple with the contradictions, ambiguities, and questions arising in their practice. As such, chapter 7 points to the value of processes of reflection to help actors working on human rights and/or conflict resolution figure out how to address each situation appropriately.

360
The need to go beyond binary frames and appreciate complexity and to recognise the absence of clear-cut solutions and standard responses, has also clearly emerged in relation to understanding the relationship between the human rights and conflict resolution fields more generally. The study has argued that this relationship is best understood as being both dynamic and contingent, rather than being either contradictory or complementary. This observation has highlighted the importance of examining what factors may affect the way human rights and conflict resolution interact in practice.

Chapter 8 has demonstrated the usefulness of this line of enquiry by considering how the following four specific factors affect the relative convergence of human rights and conflict resolution: the dominant conceptions of ‘human rights’ and ‘conflict resolution’ in a given context; the political and economic environment that shapes the discourses and practices of human rights and conflict resolution; the strategies used by actors to promote and protect human rights and/or pursue the peaceful resolution of conflict; and, finally, the extent to which practitioners working in one of these areas are exposed to and develop an appreciation for insights and practices from the ‘other’ field.

A comparison of the situation in Northern Ireland and South Africa has highlighted that the way in which the relationship between the fields plays out depends partly on how human rights and conflict resolution are understood in a certain context and put into practice there. In particular, narrow conceptions of human rights and conflict resolution are more likely to fuel divergence in the sense of generating outright tension between the fields; these point practitioners into different – sometimes opposite – directions in terms of concerns to be addressed and strategies to be utilised. They also make it hard for practitioners to understand how their respective priorities interrelate, inducing instead a sense that these priorities are mutually exclusive. This increases the likelihood that human rights practitioners and conflict resolution workers fail to grasp the value of any approach or insight falls outside their own scope of vision and action.

At the same time, it has become clear that conceptions of human rights and conflict resolution do not exist in a vacuum but emerge and function in a wider context. With reference to Colombia, South Africa, and Northern Ireland, it transpired that analysing the political perspective or ideology underpinning the use of these bodies of thought and practice can shed light on how the relationship between human rights and conflict resolution plays out. It was further demonstrated that where human rights and conflict resolution get entangled in the general polarisation between political opponents, this does not bode well for convergence; this was the case in Northern Ireland, with human rights being largely perceived as a ‘nationalist’ project and conflict resolution as a ‘unionist’ one.
Chapter 9

Funding practices by donors constitute another part of the wider context impacting on the relative convergence or divergence of human rights and conflict resolution. These practices also tend to be driven by a certain political perspective or analysis of what generates rights violations and violent conflict in a certain setting. Recipients of donor funding may thus adjust their focus and activities to be in line with the priorities put forth by funders and the latter’s take on what human rights or conflict resolution efforts ought to entail. The associated competition for funds is likely to fuel divergence between human rights and conflict resolution actors in a given context. This is especially so if the conceptualisation of one field as encouraged by funding practices excludes concerns or strategies considered crucial by the other field.

The strategies adopted to further human rights and conflict resolution goals can also allow for more or less convergence between the fields. Divergence is especially likely when one field or frame discredits a specific course of action that is accepted and possibly even encouraged in the other field. Even so, strategies differ not only between but also within the fields of human rights and conflict resolution; far greater diversity of approaches can be found within each field than is generally recognised. It was further noted that time may play a role in how strategies affect the interaction between human rights and conflict resolution, since different strategies may be justified at different times in a conflict's life cycle. It was noted too that the way in which human rights concerns are articulated can influence how the relationship between the fields unfold. For example, invoking human rights as moral values may facilitate convergence more easily than invoking them as legal standards. Framing rights concerns in terms of interests and underlying needs – rather than in the form of positions or demands– may have the same effect; as might invocations that recognise the reciprocal nature of human rights and that are inclusive, in terms of conveying the message that the benefits associated with rights accrue to everyone, not just one specific group. Effectiveness considerations also come into play: when practitioners do not consider existing approaches sufficiently effective, they are more inclined to look to the other field to ‘borrow’ techniques.

Finally, the study has found that exposure, and other forms of learning or interaction between actors across the fields, can contribute to convergence. It cannot be assumed that any interaction will have this effect; much depends on the nature of the interaction and the tone with which ‘human rights people’ and ‘conflict people’, as several interlocutors put it, engage. Encounters become less beneficial as they get more competitive, for example when policy influence, public profile, or allocation of funds is at stake. Relevant in this regard are also the strong professional identities of practitioners in both fields. Harbouring considerable pride in and commitment to their respective body of thought and practice, practitioners seldom take kindly to having either questioned. Instead, they are keen to have the validity and legitimacy of their analysis and approach recognised.
In other words, in the interaction between human rights actors and conflict resolution practitioners, subjective (psychological, emotional and cultural) elements tend to be interwoven with contested issues of substance and objective conditions related to power and resources – just as is the case in protracted social conflict itself (Fisher 2011, 166). Still, the discussion on convergence and divergence has not meant to suggest that divergence of human rights and conflict resolution is problematic per se. It can serve a useful function when actors appreciate their own and others’ respective strengths, and when they do not perceive the latter as a threat nor are fearful of their perspective and approach being submerged or overtaken. In that sense, the two chapters of part III point to surprising paradoxes, finding that contradiction may still be complementary and that divergence may be part of the movement towards convergence.

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Thus far, this concluding chapter has summarised the study as a whole by noting the findings in relation to the research questions underpinning the research. The remainder of this conclusion contains more overall reflections. It identifies larger insights emanating from the study, and devotes special attention to the study’s implications for future practice and research.

9.2 The Clash Revisited

The study begs the question why the mutual stereotypes about human rights actors and conflict resolution practitioners remain so strong. Given the fields’ common points of reference, the fluidity between them, and the increased recognition of the close links between human rights, conflict and peace, how is it possible that the perception of a clash between human rights and conflict resolution persists? Also, how can interaction between actors in the two fields about their relative contributions to a better world become so vituperative? This is not just a theoretical puzzle. It has practical relevance in terms of lost opportunities for effective collaboration between actors working from different perspectives and for maximising impact in a specific context – key concerns driving this research. Even though this study did not set out to examine why the fields’ differences have become magnified and solidified in both the literature and perceptions of many who work on human rights and conflict resolution, its findings shed some light on what may explain the durability of the ongoing perception of a ‘clash’ and the continuing disconnect between human rights and conflict resolution that results from it – and sustains this perception in turn.

Clearly, various factors can fuel the sense of a clear-cut dichotomy, such as competition for resources and protection of professional turf and identity, especially for actors operating at an international policy level. The way in which ‘human rights’ and ‘conflict resolution’ manifest and play out in the empirical world may exacerbate tension between (actors in) the fields; we saw that this can be the case, for example,
when either 'lens' is associated with a specific party in conflict. Conceptual differences are also likely to come into play, such as the conception of justice prevailing in either field or the relative weight attached to international norms. The different disciplinary roots of the fields matter too: these shape how practitioners view social reality and perceive the 'blinders' in other understandings of and approaches to reality. It is evident that the strategies emphasised in either field can be at odds at times – even if, as noted, this need not be so when strategies differ. Finally, this study provided several examples of limited understanding amongst actors working from one perspective about the other perspective. As such, simplistic interpretations remain, and caricatures of both constituencies are hard to eradicate.

All in all, there is probably no single definitive explanation of the persistent strength of the 'clash' perception and of why interaction across the fields can become so polarised that it becomes dysfunctional. Yet the study points to an additional factor that may fuel this dynamic, which has seldom, if ever, been noted thus far. Besides the differences that do exist, the fields' similarities are likely to get in the way of effective and constructive engagement. For one, Freud's notion of 'the narcissism of minor differences' may be relevant – the idea that the small differences between people who are otherwise quite alike constitute the very basis for feelings of hostility between them, as details of differentiation assume great weight in identity- and boundary-formation (Blok 1998). Yet the similarities between human rights and conflict resolution matter in other, perhaps more important, respects too. The strong normative character of these fields, and the passionate belief of human rights and conflict resolution actors in the rightness and applicability of their respective frames, spawn proselytising tendencies and impede openness to other perspectives.

The increasing professionalisation of both fields exacerbates this. As actors become more specialist and technique-oriented, they are prone to interpret situations and contexts only in terms of their specific lens. Put differently, they develop 'tunnel vision'. Professional identities become entrenched, and the need to prove one's own relevance – and sustain one's identity, skill set, and perspective – increases too, as does the need to safeguard future work opportunities. And while most are quick to perceive and expose the flaws in another understanding and approach, they seldom appreciate their own 'blinders' being pointed out. Fear of 'the other field' overpowering one's own way of thinking, being, and doing – with the associated loss of identity, status, influence, and access to resources (see chapter 8) – does not facilitate owning up to one's own limitations either, especially when the proponents of the other field are considered to be plainly wrong on several counts.

Hence, defensiveness easily ensues. I have come to believe that this also arises because the human rights and conflict resolution fields, much as they have the potential to complement one another, can tap into each other's 'soft' spot. In essence, human rights thinking and practice perceives the world in terms of right and wrong, black and white, while conflict resolution highlights and capitalises on the areas of
grey that exist in reality. Acknowledging and working with such grey areas is difficult for human rights actors, since doing so creates a slippery slope of morality. This has to be denied or avoided as much as possible in a human rights frame. Meanwhile, in conflict resolution thinking and practice, practitioners are inclined to refrain from making hard judgments, certainly in public – in other words, from taking the very stance a human rights frame demands, which affords credibility and legitimacy in the human rights field. The fields thus challenge one another fundamentally, on ideas and practices that are integral to their self-conception.

In addition, each field may touch the core of what actors in the other field struggle with or feel sensitive about. For example, while the human rights emphasis on tackling structural, under-lying conditions of injustice is generally accepted in conflict resolution (certainly in theory), this is an area where conflict resolution actors have trouble developing effective strategies and showing real results. Yet with the fields containing similar contradictions (e.g. the human rights field experiences its own challenges in addressing structural problems), a certain ‘pot calling the kettle black’ dynamic can also be observed: at times actors in one field criticise elements in the other field that they themselves also struggle with. As such, human rights and conflict resolution can as it were trigger one another’s ‘shadow’: what they denounce in ‘the other frame’ may be something that is equally contentious within their own frame and which they would rather wish away.

Overall, this discussion reflects how the similarities between human rights and conflict resolution can be as much of a hindrance to greater synergy or convergence between the fields as their differences. It also highlights how the relationship between human rights and conflict resolution contains its own conflict dynamics. In fact, without actually intending to do so, this study – and the practical approach I have developed over the years – reflects some core tenets of conflict resolution.

This study did not set out to establish the inferiority or superiority of one or the other field. Rather, it has come to recognise that each frame has useful and legitimate points to contribute to our grasp of social reality and the rights- and conflict-related problems people and society face. It has assumed that there is value in engagement; despite instances of confrontation between the fields as alleged opponents, it did not rule out the possibility of mutual accommodation (or, in this specific context, complementarity or convergence). It has stressed the need for greater interaction and more dialogue between human rights and conflict resolution actors, assuming that this will facilitate appreciation of their interdependence. It has also highlighted the importance of gaining more understanding of the fields’ conceptual perspectives and practical approaches, and of calling into question existing stereotypes and prejudices.

Finally, the study has been especially concerned about the negative ramifications when ‘conflict’ between human rights and conflict resolution turns destructive, i.e. when actors’ attention turns to contesting one another’s perspective and approach.
rather than tackling the actual issues at hand. Thus, rather than considering the possible conflict between the fields as problematic in itself and as something to be avoided or eradicated, it has emphasised the need to prevent or mitigate such negative effects so as to not undermine rights protection and conflict resolution efforts. By and large, the findings of this study attest to the relevance and validity of these principles – although, as the author of this study, I am of course biased.

The above is not to argue, however, that all tensions or contradictions between human rights and conflict resolution proponents, perspectives, and practices, can be conclusively resolved by more interaction and understanding between the fields. As noted before, while subjective dynamics – perceptions, misunderstandings, fears, identity concerns, desire for recognition – are important in the relationship between human rights and conflict resolution, objective factors matter too. Hence, however valuable and necessary enhanced dialogue and cross-fertilisation may be, some ‘meta-conflict’ between human rights and conflict resolution is likely to remain. This is simply because substantive differences – in how human rights and conflict resolution interpret social reality and what solutions they consider most suitable – will continue to exist (Bell 2006, 356-357). These will also continue to be exacerbated by the allocation of power and resources in a given context.

Nevertheless, rather than seeing such differences as insurmountable, and as evidence of human rights and conflict resolution being incompatible after all, this book implies that it is more appropriate to understand them for what they are: different takes on the world, specialist frames and vocabularies, each of which may be good for some purposes, but ‘pretty bad’ for others (Koskenniemi 2012). Hence, when they arise, such differences can serve as a warning signal that some salient features of reality may be overlooked or that there are additional or alternative courses of action to consider.

9.3 Framing Revisited

In general, the study has highlighted the notion and the importance of framing – the significance of ascribing specific concepts and categories to social reality – as well as the selection, salience, and silence that framing involves: certain features of a problematic situation are selected, and are accorded relative salience, while other features are silenced, treated as matters of course, ‘the way things are’. A reduction in the complexity of reality is thus inherent in such a process of grasping, being, and doing in the world. This study has also shown how this process of sense-making differs between the fields of human rights and conflict resolution, how it may separate them, and how it influences the ability of actors in these domains to interact.¹

¹ I have benefited from an email exchange with David Laws in writing this section (December 2012).
In that sense, the study points to the risks involved when practitioners do not reflect on their own frame but mainly act from it (Schön 1983, 312). They then elevate their own point of view to be the only – and complete – view, leaving little space for alternative understandings of reality as they defend their own position and attack the positions of those who think otherwise. The parable of the four blind men and the elephant comes to mind here: in seeking to learn what an elephant is, each touches a different part – a leg, the tail, the trunk, the belly – and they share their findings thereafter. As these differ radically, they end up arguing, each insisting that he alone is right. With all being so focused on their specific body part, they completely disregard the possible existence of other parts. Inevitably, a definitive conclusion evades them because no one has been able to examine the animal in its totality and grasp how the parts connect (Nyamnjoh 2012, 64-65). As such, the study echoes Adichie’s warning about the ‘danger of the single story’, which serves as its motto: “the single story creates stereotypes. And the problem with stereotypes is not that they are untrue, but that they are incomplete. They make one story become the whole story”.2

Yet with blindness being both competing and complementary (Nyamnjoh 2013, 136), the study points to the potential that lies in combining various frames when it is recognised that these, while different, all say something meaningful about social reality and possible strategies to change it for the better. The study also points to the possibility of remaking existing frames. Clearly, the frames that exist in human rights and conflict resolution and that practitioners espouse cannot be changed easily. Reframing requires reworking deeply held beliefs, routines (both individual and organisational), terminologies, and images of self, others, and the world; it involves taking risk. It seems that such remaking of existing frames can happen in various ways, which can be termed the domination route, the reflection-on route, and the inaction route.

Reframing through domination

A first way, only alluded to in this study, is when one frame gains supremacy in a struggle for dominance. This is probably what has happened – at least in the view of some senior conflict resolution practitioners – with competing human rights and conflict resolution frames concerning high-level peace negotiations. This relates to the increased attention for human rights in peace processes in general, and in particular to questions of accountability, as policy and practice have evolved to the extent that it is no longer legitimate for international brokers to sign off on peace agreements that contain blanket amnesty for war crimes, crimes against humanity, and gross human rights violations. While the study did not extensively examine the ‘domination’ route to reframing, it is clear that fear of one’s frame being superseded is a concern for several practitioners encountered in the course of this study, although not necessarily consciously. Paraphrasing Adichie, when a frame gains supremacy, it gains the ability

to not just tell the story of a certain problem or situation, but to make it the definitive story; it is, as she notes, “impossible to talk about the single story without talking about power” (2009).

*Reframing through reflection*

A second way in which existing frames can be remade is through reflection: controversy about process or outcome, definition of the problem or solution, and/or absence of desired results then prompt actors to reflect on their own commitments and to review whether they still make sense or warrant adjustment. A case in point is the shift made by leading rights practitioners working at LHR's Security of Farmworkers Project in the late 1990s. Realising that established, adversarial, methods for defending farmworkers' rights were not delivering the desired outcomes, they started using interest-based conflict resolution, in the hope of this being more effective in the changed context of post-apartheid South Africa.

The country's 2008 xenophobia crisis – and the questions it raised about the role and relevance of human rights – also triggered such reframing through reflection. At least, it seems to have done so for the senior public official who oversaw the provincial government’s conflict resolution intervention and for various practitioners involved in it. Whether individual reframing has institutional ramifications, however, remains to be seen, as the example of the Northern Ireland Parades Commission shows. Reflection events with the Commission's fieldworkers, prompted by their concern about the polarising use of human rights arguments in parading disputes, may well have changed their personal understanding of and approach to human rights. Yet it is doubtful whether this affected the frames prevailing in the institution at large.

*Reframing in action*

A third way in which existing frames may be remade that emerges from the study can be called reframing in action. While the boundaries between reframing through reflection and reframing in action are blurred, significant in the latter process are small openings and instabilities of framing that are raised by practical problems, and people’s inventiveness in responding to these changing and uncertain circumstances. The situation described at the beginning of this book (and in chapter 5) – about an intervention in two informal settlements outside of Cape Town by CCR practitioners, including myself – exemplifies this ‘in-action’ route to reframing. The experience of Churches in Manicaland constitute another example: while acting against political violence, they increasingly came to understand their activism – initially framed in biblical terms – in terms of ‘human rights’ and ‘conflict resolution’. The clergy's reframing in action continued as they sought to combine both rights advocacy and dialogue facilitation.
These and other examples mentioned in the study, demonstrate how reframing in action happens in a process that is partial at any moment and accrues over time, evolving in and through interactions: knowledge and practices become subject to renegotiation with every new experience, each new encounter or relationship (Nyamnjoh 2013, 134). The case material also shows the sense of confusion and degree of discomfort that practitioners may experience in the process. As such, it is likely that reframing in action only occurs if practitioners manage to be patient and comfortable with the cognitive dissonance and vulnerability that can result from facing multiple "interpretive horizons" (Shutt 2008, 30). Resisting the temptation to ensure the stability of their beliefs by ‘managing’ empirical evidence or dismissing certain information, is important too. The study suggests that other helpful factors include strong personal relationships between actors holding different frames, individual and organisational commitment, and practitioners' willingness to move beyond their comfort zone and to be guided by the situation and context, rather than by established beliefs and routines.

9.4 Concurrent Realities

Considering the relationship between human rights and conflict resolution thus highlights the existence of multiple realities that exist simultaneously. Concurrent realities have emerged in this study in several ways, starting with the specific realities constructed by the fields through their respective frames, practices, and vocabularies, and which exist at the same time. The notion of concurrent realities captures too how the ‘human rights’ and ‘conflict resolution’ realities connect and overlap in some respects yet are very disconnected and different in other respects. It also reflects the study's complementarity and contradiction discussion: recognising the complementary nature of human rights and conflict resolution does not preclude the possibility that in certain respects or situations real tensions may arise.

In the same vein, it is possible to appreciate that these fields have come closer together, yet remain as far apart as ever and may even at times be more separate than before. The former – coming closer together – relates to human rights and conflict resolution as general bodies of thinking and practice evolving over time, with broadening understandings of the fields' core concepts. The latter – remaining apart – relates to human rights and conflict resolution as institutional practices and when narrowly construed as concluding a settlement and seeking accountability for serious crimes.

Engaging with the relationship between human rights and conflict resolution entails accepting such concurrent realities. This goes beyond embracing the abstract theoretical notion that reality is socially constructed, the constructivist perspective that underpins this study. It involves recognising – and working with – the simultaneous validity of these concurrent realities, and acknowledging that, even if they are conflicting, in general, they are interdependent.
Ultimately, this study is thus about both the imperative and the challenge of holding, embracing and acting on the concurrent realities presented by human rights and conflict resolution and shown up by the interplay between these fields. This conjures up those ambiguous pictures that contain two images in one, for example both a young girl and an old woman or the rabbit/duck illusion made famous by Wittgenstein. Usually, one only sees one image at first, but it is possible to make out the other one after some time. Once you have perceived both, you can flip back and forth between them. Your own mind determines the image you see; there is no objective reality in which the distinction lies (Koskenniemi 2012, 3). Put differently, one can practice the ability to switch – and to even hold the varying images simultaneously, something I will return to below.

### 9.5. Implications for Practice

What, then, are the implications of this study for future practice? Occasionally, in the context of a reflection event, training workshop, or more informal interaction, other practitioners ask me to explain what the human rights/conflict resolution relationship means for their work in concrete terms. When probing more deeply, I often get the impression that they are looking for a blueprint that will help them to link human rights and conflict resolution in practice. What ‘tool’ will set out what they should do? What are the steps to ‘harvesting the potential at the interface between human rights and conflict resolution’ as someone put it at one event?

By and large, the findings of this study highlight that there is no blueprint. The desire for one is not surprising given the professionalisation and technification of the human rights and conflict resolution fields, the belief in the make-ability of the world, and practitioners’ need to establish a clear direction in the midst of complexity. Yet any blueprint for linking human rights and conflict resolution will become a frame in its own right with strengths and weaknesses, its own vision and blindness. If anything, this study shows that the interface between human rights and conflict resolution will probably look different from case to case.

Beyond that, the study does give an inkling of what to avoid: holding an unwavering belief in the primacy of one’s own frame, dismissing the possibility that reality may have facets one tends to overlook, interacting with others merely to prove one’s own right, getting stuck in rigid either/or-frames, or questioning the legitimacy of other frames without really grasping or engaging with them. Problems arise when we insist that the fields interact in just one way or another, when one policy or analytical perspective seems to leave no room for any other, when approaches from one field are presented as superior without recognising their limitations, or when one imperative, be it peace or justice, is construed as automatically trumping the other. Aside from these ‘negative’ pointers, it is possible to outline three implications that are fairly

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Conclusion & Implications: Embracing Concurrent Realities

general in nature. These are set out below in an effort to “tread the fine line between coming up with a new blueprint and helpless paralysis”.  

9.5.1 Being Attentive to Human Rights, Conflict Resolution, and their Interplay

Actors working in these fields need to recognise that, even though they may be mostly focused on one specific phenomenon (e.g. human rights or conflict), they generally work in contexts where the other phenomenon is somehow present too, and where the other frame could also be relevant. As such, they need to realise that they cannot get ‘around’ this other phenomenon or the other frame: human rights actors cannot avoid or ignore conflict and conflict resolution, while actors focused on conflict resolution cannot steer clear of human rights as phenomenon and frame. Consequently, human rights and conflict resolution practitioners need to reflect on how the phenomenon that has traditionally been outside their frame of reference may affect their efforts, and how their actions might interact with it. They must do so both before taking action and while in action, so that they can modify their strategies or adopt additional ones as appropriate, to enhance the impact of their efforts. Furthermore, if they do so after taking action, future interventions can benefit from any insights gained. It is also useful for actors to review their intended and actual efforts through the lens of the other field or to draw on others who can assist in this regard.

However, this is not a call to ‘do no harm’, urging actors to refrain from initiatives that make sense in their own frame of reference but that could be perceived as ‘problematic’ or even ‘harmful’ from the other perspective. The flaws of the ‘do no harm’ notion have been noted (see chapter 7). Human rights actors will not desist from promoting human rights simply because calling for accountability or exposing abuses runs the risk of escalating socio-political tensions. Conflict resolution actors may still want to engage with a conflict party suspected of rights violations despite human rights opposition warning off glossing over abuses and fortifying the party’s position.

The point is not to shy away from actions that may be contentious, but to anticipate possible negative consequences and critical reactions, and identify ways of addressing these to the extent possible. The purpose of doing so is to enhance the relevance of one’s efforts, facilitate more support for them, and to contain or mitigate potentially adverse effects. In this way, actors can check whether they have failed to notice any important issues or dynamics that can undermine what they seek to do (Parlevliet

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2011a, 70-75). It may also assist in noting opportunities to draw on insights and approaches from the other domain – and/or to contribute to addressing issues focused on by the other domain, even if only indirectly.

In sum, what is being argued for here is greater alertness and susceptibility to conflict and conflict resolution amongst human rights actors, and to human rights (as legal standards, moral claims, and frame) amongst conflict resolution actors. This is a fairly minimalist approach to linking human rights and conflict resolution in practice, in that there is no intention or effort to develop initiatives that truly draw on both fields. Even so, it is a starting point. A more maximalist approach will mean making a conscious and sustained effort to harness insights and methods from both human rights and conflict resolution, so as to develop a more integrated, comprehensive approach. This brings us to the next implication, which relates to the way 'human rights' and 'conflict resolution' are to be understood when considering these in conjunction and looking to draw on both fields.

9.5.2 Recognising Multiple Dimensions in Human Rights and Conflict Resolution

When working on human rights and conflict resolution, it is important to bear in mind that narrow traditional notions of 'human rights' and 'conflict resolution' are both limited and limiting in terms of analysing situations and identifying options for action. They do not do justice to the evolution of thinking and practices in these fields. They also do not suit the nature of contemporary asymmetric, protracted social conflict, nor do they heed the close linkage between human rights, justice, conflict, and peace. Overall, this study has highlighted the value of understanding human rights and conflict resolution in a broader way, especially in light of the relationship between these domains.

With a more holistic understanding of human rights and conflict resolution being in order, it is useful to conceive of pursuing human rights and conflict resolution as having multiple dimensions, namely rules, structures and institutions, relationships, and process (explained further below). All must be addressed when trying to alter actually and potentially violent conflict into processes of non-violent social and political change and ensure the realisation of human rights. The dimensions pertain both to each domain in its own right and to the interface of human rights and conflict resolution. This means that on the one hand, the dimensions can be recognised as existing in human rights and conflict resolution separately; practice in either domain should pay attention to them. On the other hand, they can be understood as the points where the fields meet in practice and theory, and where they have something to contribute to one another. These dimensions thus comprise the interface of human rights and conflict resolution:

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5 See Parlevliet (2010a; 2009) for a more extensive discussion of these dimensions and Galant and Parlevliet (2005).
Conclusion & Implications: Embracing Concurrent Realities

- The ‘rules’ dimension refers to the legal aspect to be considered in human rights and conflict resolution: the standards that outlaw certain behaviours and actions and demand others, as contained in international instruments and domestic legislation. It stresses that addressing conflict, whether latent or manifest, has to take place in a framework of international law and national standards that sets parameters for solutions. Even so, some scope for variation exists in how specific rights are realised in a specific context, taking into account political, cultural, and historical conditions (Gready and Ensor 2005b, 11; Parlevliet 2002, 24-26). Attention must also be paid to potential conflicts between rights. This dimension highlights the importance of identifying the substantive rights and obligations of all conflict parties, rights-holders and duty-bearers and of designing conflict resolution processes that abide by rights standards. It points to the need to grasp the strengths and weaknesses of human rights norms, how these have been translated in national and international law, and their relevance to and impact on a particular conflict and conflict resolution process (Babbitt 2009a, 627).

- The ‘structures and institutions’ dimension relates, on the one hand, to the structural division of power, resources, and opportunities in society, and on the other hand, to the absence or presence of effective and legitimate mechanisms to handle conflict (between state and citizens and between individuals or groups) and help provide redress. It emphasises the need to address structural conditions of injustice, insecurity, inequality and inequity that give rise to violence and abuse, i.e. the underlying causes of conflict and human rights violations; to support the development of capable, legitimate, and independent institutions and processes that support non-violent approaches to conflict and the realisation of rights and secure remedies; and to institutionalise respect for human rights by adopting, implementing and enforcing relevant legislation. Still, it is useful to remember that, “the question is not only whether particular laws or institutions exist or how they appear, but rather how laws and institutions relate to people and how people perceive, use, change and develop them” (Tomas 2005, 172).

- The relationship dimension highlights the importance of considering the relationship context in which human rights, conflict, and conflict resolution manifest. It points to the need to review the (patterns of) interaction and communication existing to date, and the need to develop respectful relationships vertically (between public institutions and citizens) and horizontally (between individuals and groups, and within groups). Vertically, the responsibility and responsiveness of the state towards citizens is key, as is the extent to which citizens can raise their voice and demand accountability. Horizontally, it is important that people realise that they also have responsibilities, in how they relate to others, how society functions, and how discontent is handled. Their actions and beliefs affect whether others can exercise their rights and address their interests and needs. Overall, this dimension stresses the relevance of building strong connections between people at different hierarchical levels and from different political, religious, social, cultural, and ethnic backgrounds, so that they recognise others’ humanity and their interdependence with them. It recognises that human rights exist in a social context and are reciprocal, and that ‘recognition of the other’ is a core value of these rights (Douzinas 2000).
The process dimension reflects how concerns related to human rights, conflict, peace and justice, are addressed. It recognises that the impact, legitimacy, and sustainability of efforts to advance human rights and conflict resolution depend both on what is done (the actual substance of efforts) and on how it is done (the process used to carry out efforts). When people deem a process fair, this generally increases their willingness and commitment to participate and uphold its outcome. If they consider it flawed, however, they are likely to question its validity and reject both the process and the outcome (Parlevliet 2002, 22-24). This dimension thus highlights that actors working on human rights and conflict resolution need to pay careful attention to what they do and to how they do so. It points to the need to pursue human rights protection and conflict resolution through processes that reflect values such as dignity, inclusion, participation, ownership, and protection of divergent or marginalised voices – all of which are highly relevant from both a human rights and a conflict resolution perspective.

9.5.3 Honing the Ability to Hold, Embrace and Act on Concurrent Realities

Finally, there is great value in learning more about the ‘other’ field, especially for actors – organisations and individual practitioners – that are mostly oriented towards a specific one, be it human rights or conflict resolution. This is not to argue that human rights actors should become conflict resolution experts or vice versa, but to recognise that specialisation carries risks which can damage actual efforts to improve rights protection or facilitate durable solutions to conflict. Greater insight into other ways of grasping, being, and doing in the world enhances actors’ versatility to probe, observe, and act. They become more able to grapple with complexity and uncertainty, to choose the language, frame, or course of action to use at a given moment, and to collaborate with actors whose perspective and methods differ.

A corollary to this is that actors need to reflect more on the scope, substance, and limitations of their own frames. They need to become aware of their own blindness and to practice suspending judgment on ideas, analyses, or approaches that are foreign. Once more, this is not to dismiss or downplay one’s own field-specific expertise, but to accept that it is partial by definition, as is all knowledge. Blindness is a fact of the human condition (Nyamnjoh 2013, 135). Moreover, as Louise Arbour, who now heads a leading conflict analysis think-tank but previously served as UN High Commissioner for Human Rights, has noted, “it is only by acknowledging the inadequacies of our own approaches that we have any chance of improving them” (2013, 5). In this regard, actors also need to take their cue from the situation or context at hand, from ‘where people are at’ in their daily lives (Beirne and Knox 2014), rather than from what they know best, are most familiar with, or what ‘usually works’. As we have seen, practical problems create small openings for creativity in dealing with uncertain circumstances.
Conclusion & Implications: Embracing Concurrent Realities

In sum, the overarching implication of this study is the importance of sharpening our ability to hold, embrace and act on concurrent realities. This involves engaging in reflective practice, grappling with the contradictions that arise, carefully observing what is happening and emergent in the context in which we work, and "honning our perceptions to respond with quality and care to each situation with its inherent dynamics, vulnerabilities and demands," in the words of one practitioner interviewed for this study.  

9.6 Suggestions for Further Research

Undertaking this study has been both exciting and challenging, not least because it has generated many additional questions and areas for further research. I outline a few here, starting with an obvious one: more qualitative research will be helpful in considering how the issues raised here play out in relation to specific groups of actors, specific countries, and/or particular problems. For example, besides the present study, only limited research has been done thus far on civil society actors that do both human rights and conflict resolution work (e.g. Babbitt 2009a, 624-625).

This study has also noted how efforts to address certain complex problems (e.g. integration of refugees or displaced persons, land reform, use of contested public space) provide an arena in which human rights and conflict resolution perspectives and approaches tend to meet. Such arenas warrant further inquiry: they can shed more light on the scope for (and limitations of) an approach that combines human rights and conflict resolution, and clarify what ‘an integrated approach’ may actually entail in various settings. The context of development cooperation constitutes a meeting space too, even if the fields have mostly, to date, manifested there in the form of separate, parallel, tracks – namely, human rights-based approaches to development and conflict sensitivity and peacebuilding in development. Still, the growing emphasis on human rights, peace, and conflict in development policy and practice offers an opportunity to study whether and how human rights and conflict resolution come together in this context, and under what conditions this is for better or worse (and of course, what is perceived as such and why). Many focus areas are relevant, including transitional justice, support for media, natural resource management, justice sector- and security sector reform, as well as local governance and decentralisation (e.g. Parlevliet 2011a, 26).

In general, the larger political and economic context in which human rights and conflict resolution work takes place, merits more attention than I could devote to it. Funding priorities and power dynamics in relation to resource allocation can be explored further, given the amount of money going around in the business of protecting human rights and addressing conflict and the direction in which funds flow – from multilateral and bilateral donors, mostly based in a relatively affluent and

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6 Email correspondence from Undine Whande, 27 November 2013, quoted with permission.
peaceful ‘North’, and put to use in a more conflict- and poverty-affected ‘South’ (the limitations of such labels notwithstanding). What are the distributive consequences of the human rights and conflict resolution conceptions and strategies promoted, and is there a structural bias in this regard? What does the nature and scope of funding mean for the fields’ ambition to challenge power and seek social change?

These questions point to more critical research à la Koskenniemi (2011; 2005) and others. They also feed into the long-standing debate on peace and justice, as the current emphasis on (and approach to) criminal accountability for serious crimes comes with a woeful neglect of socioeconomic drivers and symptoms of large-scale violence. It also diverts attention and resources away from much-needed institutional reform and redistributive justice, required to address patterns of structural violence and societal complicity. This applies not only to the national level but also to the international realm, as global power arrangements continue to facilitate double standards.

Another area of further research flows from the recognition that some ‘meta-conflict’ between human rights and conflict resolution proponents may continue to exist. This could be considered in light of Ramsbotham’s theory of ‘radical disagreement’ (2010) and his emphasis on promoting ‘dialogue for strategic engagement of discourses’ when parties radically disagree – rather than the ‘dialogue for mutual understanding’ usually stressed in conflict resolution. While its applicability remains to be seen, the theory may hold some promise in instances where discussions on human rights and conflict resolution, or peace and justice, become intractable and the prospect of mutual accommodation is forcefully rejected.

Finally, while writing this book, I have become aware that my thinking on holding and embracing concurrent realities and harnessing insights from various lenses tallies with writing in other fields (business, organisational development) on engaging with opposites, ‘thinking ahead together’ and ‘being attentive to emerging futures’ in complex and dynamic environments where people do not agree on the problem let alone the solution (e.g. Kahane 2012; 2010; Scharmer 2009; Senge and others 2005; Kaplan 2002). Such literature underlines the validity of the arguments put forth here and could be a fascinating source of future contemplation.

Overall, the study is a call for nuance and further engagement between people and organisations from different backgrounds concerned with peace, conflict, human rights and justice. It has revealed the relevance – and necessity – of considering human rights and conflict resolution in conjunction more than has been the case to date, in theory and practice. While the fluidity, dynamism and interdependence inherent in their relationship may at times be challenging for practitioners to deal with, this study has shown that there is much to gain from engaging with it seriously.
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Summary

**Embracing Concurrent Realities: Revisiting the Relationship between Human Rights and Conflict Resolution**

This study focuses on the interplay of human rights and conflict resolution in the practice of civil society organisations and independent state institutions. It aims to enhance understanding of the relationship between these fields and contribute to improved practice. While it has been recognised for some time that human rights, justice, conflict and peace are closely linked, for many years these two bodies of theory and practice have remained quite separate in conceptual and practical terms. Organisations and people working in these domains do not necessarily consider whether and how their efforts interact, or the implications of operating in the same context. At times, they have been known to perceive one another's actions as hampering their own. Human rights activists and conflict resolution practitioners can disagree vehemently about the most suitable course of action or the ends to be pursued in a given context; tensions arise especially when abuses are widespread and pressure to act is high.

The starting point of the study is that such polarisation detracts attention and resources from what actors in these fields seek to achieve and that the ongoing disconnect between their approaches threatens to undermine efforts in both realms. After all, human rights and conflict are closely linked. Violations of human rights can be both symptoms and causes of violent conflict, suggesting that protecting human rights may help address conflict sustainably. By facilitating greater understanding of the relationship between human rights and conflict resolution – in both theory and practice – the study thus seeks to enhance how human rights and conflict resolution actors work and relate to one another ‘on the ground’. It examines how human rights and conflict resolution thinking and practices have interacted in specific situations experienced by specific actors in South Africa, Zimbabwe, Northern Ireland and Nepal (with some reference to examples from elsewhere). It also explores what this can teach us about the relationship between the two fields generally.

By focusing on the practical experiences of civil society actors and independent state institutions, the study deviates from much of the existing literature. In particular, it sidesteps the ‘peace versus justice’ debate on the challenges of promoting both peace and accountability in countries affected by violent conflict. In doing so, it recognises that ‘conflict resolution’ entails more than reaching a settlement to end violence or repression, and that ‘human rights’ goes beyond pursuing individual criminal accountability for serious abuses. It also recognises that efforts to address conflicts or advance human rights are not undertaken only in times of crisis, and often involve organisations and individuals other than political and military elites. It further acknowledges that human rights and conflict resolution may both support and be in tension with each other, depending on time and context. To date, the existing literature has devoted relatively little attention to examining the variable and dynamic nature of their relationship.
Methodologically, the study is based on some eighteen years of practical experience; the author has worked on and at the nexus of human rights and conflict resolution in diverse contexts (and continued to do so during the period of this study). This is augmented by a literature review and 26 interviews. The study is an exercise in reflective practice that processes insights, questions and observations arising over time, blending lived experience and social investigation. This implies a qualitative methodology that draws on empirical material gathered by a participant-insider.

Theoretically, the study is grounded in constructivism, which stresses the social construction of reality. Adopting an actor-orientation, it presumes that actors have agency in how they define situations, identify objectives, understand options for action and pursue human rights and/or conflict resolution goals. Finally, the notions of 'field' and 'frame' run through the study. The first implies that 'human rights' and 'conflict resolution' constitute realms of socially patterned activity that can be described; the latter points to the way in which problems are not predetermined but have to be constructed in order to be acted upon.

The study consists of nine chapters and three parts. Chapter 1 explains its focus, aim and rationale, and introduces the theoretical and methodological framework as outlined above. The next three chapters comprise part I, and provide a general overview of each field, followed by a comparison. The purpose of this is twofold: it seeks to embed the later discussion of concrete experiences and challenges in a solid understanding of human rights and conflict resolution and it addresses another gap in the literature, which often describes field actors in simplistic terms and makes little effort to comprehend what the two fields entail in terms of their foundation, evolution, core ideas and practices. The literature also often portrays the two fields as fairly unambiguous while each contains several contradictions. This suggests that human rights and conflict resolution are less straightforward than may seem at first sight, and that they are subject to certain limitations.

Chapter 2 reviews the human rights field, noting how 'human rights' has become the dominant normative vocabulary of our time. The field has a strong legal character, giving primacy to global human rights standards. Yet human rights are more than law; grounded in the notion of inherent human dignity, they also serve as moral principles and inform social and political action. An emphasis on making power accountable and safeguarding individual freedoms has long been central to the field. 'Human rights' spotlight the extent to which the state affords or denies individuals respectful and non-discriminatory treatment, freedom of choice, and participation.

The concept has expanded over time, devoting more attention to fairness and equality in the socioeconomic realm. It also recognises nowadays that groups may be rights-holders and non-state actors duty-bearers. Yet, there is a contradiction between the narrow and legalistic character of much thinking and practice in the field and the expansive nature of the rights concept itself and the field's ambitions. Other tensions
Summary

include a tendency to stress redress and individual accountability rather than structural reforms, an ambivalent relation with power, and balancing the universal nature of rights norms with the importance of local application, relevance and ownership.

Chapter 3 considers the conflict resolution field, which has also expanded in scope and ambition since it emerged. Despite considerable heterogeneity, the field has consistently focused on how to address conflict constructively and effectively when it arises, assuming that conflict need not be physically violent. It emphasises preventing violence and generating solutions that are acceptable to the parties, balance their underlying interests, and are reached through dialogue. Over time, conflict resolution has become more concerned with asymmetric conflict in which power is imbalanced, prompting a focus on identity groups as the most relevant unit of analysis. This has also induced a greater emphasis on social justice and long-term change.

In seeking to limit violence, however, conflict resolution risks being used as a tool for pacification, prioritising the manifestations of conflict over its causes and falling short on engaging power imbalances. Tensions thus exist between the field’s settlement and transformation sides and its pragmatic and normative impulses. Other tensions relate to its generalising and contextualising tendencies and to the contrast between the notion of conflict resolution in theory and the limited way in which it is often put into practice.

Chapter 4 compares the two fields and challenges the tendency in the literature to pay far more attention to their differences than to their similarities. It does not gloss over such differences, however. At times the fields’ respective emphases and strategies diverge to such an extent that they appear incompatible. Yet striking similarities do exist. Both fields are very normative: they seek to improve the human condition and share a belief in the agency of people to shape their environment. The fields have also evolved similarly over time, expanding steadily in substance and reach within a few decades. Finally, their internal contradictions are surprisingly alike, pointing to how difficult is for both human rights and conflict resolution to live up to their aspirations ‘to do good’.

Overall, the argument put forth in part I is that the two fields offer specific lenses for seeing, being and doing in the world. Coming with priorities, preferences and demands, these lenses highlight certain aspects of reality, downplay or overlook other features, and shape action by encouraging some responses while invalidating others. They are expressed and reinforced through specific imagery, concepts and vocabularies that are fairly inaccessible to the uninitiated. They also contain certain limitations. Neither field can claim to possess the ultimate wisdom about solving problems and creating the desired future. Part I further shows how rising ambitions, widening conceptions and diversifying practices have reduced the distance between human rights and conflict resolution. This has increased the probability of the fields
clashing – while also increasing the prospects for synergy and cross-fertilisation. By and large, part I clarifies how understanding the distinct nature of the two lenses sheds light on how both fields may simultaneously connect and disconnect.

**Part II**, consisting of chapters 5 and 6, explores how the relationship between human rights and conflict resolution manifests in practice. It does so by discussing practical experiences of two field-specific civil society organisations in South Africa (a human rights NGO and a conflict resolution NGO), one civil society actor not associated with either field (an ecumenical network of churches in Zimbabwe) and a few independent state institutions (notably a number of rights-oriented South African institutions and a conflict resolution-focused institution in Northern Ireland).

The discussion in part II confirms the existence and relevance of the two lenses: distinct frames of reference and ways of engaging with problems can be noted. Yet it also reveals that the boundaries between human rights and conflict resolution are far more permeable than the ‘field’ and ‘lens’ notions imply. Descriptions of practical situations demonstrate that human rights and conflict resolution are deeply interwoven in the daily practice of these actors and that there is considerable fluidity between the fields. This especially comes to the fore as actors seeking to advance rights or address conflict respond to concrete situations on the ground.

**Chapter 5** first discusses how and why lawyers from Lawyers for Human Rights (LHR), a South African NGO, started to draw on interest-based conflict resolution methods (mediation and negotiation) in their efforts to ensure the rights of farmworkers in the Western Cape province, a very vulnerable constituency. This was in response to the realisation that adversarial tactics and legal means were insufficient to resolve conflicts around farmworkers’ rights conclusively. The rights practitioners subsequently found that interest-based methods, while very useful, were no panacea. They had to learn when rights- or interest-based methods might be most suitable.

The chapter also discusses how practitioners from another South African NGO, the Centre for Conflict Resolution (CCR), faced human rights questions when intervening in community-level conflict situations. As they were seldom attuned to such rights aspects, they tended to overlook or be frustrated by them, which could negatively affect their interventions. Yet, over time, some practitioners came to appreciate human rights – in both a legal and moral sense – as setting the parameters within which their conflict resolution efforts ought to take place and as a ‘tool’ they could use to address conflict.

The experiences of these organisations highlight how working on conflict and working on human rights prove to be closely related in practice. Human rights and conflict resolution flow into one another in multiple ways, bringing opportunities and challenges for the actors involved. The observed fluidity probably stems from the
nature of the work they do, the type of problems they address, and the context in which they operate.

However, many efforts to advance human rights or tackle conflict are pursued by actors that are not professional NGOs in either one or the other field. Chapter 6 hence considers the interplay of human rights and conflict resolution in the practice of a number of other actors, on opposite ends of the organisational spectrum. It first discusses a church network in Zimbabwe's Manicaland province that began to engage in rights advocacy, support to victims of abuses, violence mitigation and dialogue facilitation in response to growing political violence. While not conceiving of itself initially in terms of human rights and/or conflict resolution, it tried to impact on both domains.

The chapter then looks at some independent state institutions charged with protecting human rights, preserving democracy, facilitating dispute settlement or ensuring administrative justice (including the South African Human Rights Commission and the Northern Ireland Parades Commission). These statutory bodies also often have to engage with both human rights and conflict resolution while implementing their mandate, even though their formal title (or mandate) may only emphasise one. The chapter therefore characterises these different actors as operating on the interface of human rights and conflict resolution, since they perform functions and undertake activities associated with both. It is hard to see where 'human rights' and 'conflict resolution' begin and end. The extent to which the actors grasp this and consciously engage with the interface of the two fields varies greatly, however. While the Manicaland churches gradually recognised it and used the insight to reflect on their roles and approach, the independent state institutions referred to seldom seem to give much thought to how human rights and conflict resolution come together in their work – let alone the practical implications.

Together, the chapters comprising part II shed light on what human rights and conflict resolution may bring to one another. Mutual contributions include enhancing analysis and expanding the practical approaches at the disposal of actors, because the fields call attention to different aspects of the same situation and encourage various kinds of action. This suggests that the practice and theory of human rights and conflict resolution have potential to 'fill gaps' in one another's approach to and understanding of reality.

Yet the practical examples also show that experiencing the fluidity of human rights and conflict resolution can be confusing, frustrating and challenging for actors working in and across these fields. Tough questions emerge which cannot be avoided. The study finds that working 'around' the relationship of human rights and conflict resolution – trying to evade or ignore it – is likely to have unfavourable consequences, as important facets of reality that contribute to rights violations and/or conflict dynamics are not taken into account and relevant strategies are overlooked.
Part III, consisting of chapters 7 and 8, focuses on the theme of navigating complexity and points to the importance of moving beyond binary framings, i.e. thinking in either/or terms.

Chapter 7 probes four particular challenges that regularly arise for actors working on human rights and/or conflict resolution. Derived from the examples presented previously, they relate to balancing short- and long-term goals, pursuing confrontation or negotiation in contexts marked by structural injustices and power asymmetry, managing tensions between facilitator and advocate roles and referring to human rights violations and concerns in conflict resolution interventions. It explores what these challenges involve and how actors have sought to approach them, so as to shed further light on the relationship between human rights and conflict resolution. The challenges are often positioned and experienced as dilemmas that involve conflicting, yet equally relevant, objectives and imply various courses of action, each of which potentially has adverse effects. Such dilemma-thinking captures the choices available to practitioners in a simplistic binary frame, as if actors are forced to choose between only two, mutually exclusive, options for action.

The study shows that organisations and individual practitioners navigate the complexity of the social world in various ways. They seldom allowed themselves to be confined by a dualistic frame of reference. Instead, they look for opportunities to combine the evident options for action or to circumvent them by identifying alternatives. In fact, grappling with a particular challenge may bring out the interdependence of different imperatives, strategies, or roles – even ones that seem outright incompatible, like confrontation and cooperation, or facilitation and advocacy.

In addition, binary framing risks simplifying the issues at stake and can jeopardise actors’ ability to act effectively. In reality, the practical approaches identified often involved a process of reframing to create space for manoeuvring. Yet such reframing does not necessarily resolve tensions that may arise in particular situations or at specific times. The chapter finds that it appears to be especially useful when actors are willing to come to grips with such tensions, questions and ambiguities rather than wishing them away. As such, it also points to the importance of processes of reflection to help actors in both fields to figure out how to negotiate the challenges they face.

Chapter 8 challenges the binary framing that has marked much of the literature on the fields’ relationship to date, which positions them as either contradictory or complementary. Building on the findings of earlier chapters, it argues that human rights and conflict resolution can support and be in tension with one another, depending on context, time and the actions of organisations and practitioners. By calling attention to the variable and dynamic nature of the relationship between the
Summary

two fields, the chapter reveals the relevance of examining what factors may affect the way they interact in practice.

It shows the usefulness of this line of enquiry by considering how the following four specific factors affect the relative convergence of human rights and conflict resolution: the conceptualisations of 'human rights' and 'conflict resolution' that prevail in a given context; the political and economic context in which human rights and conflict resolution thinking and practices take place; the strategies used to pursue human rights and conflict resolution goals; and finally, the nature and extent of practitioners’ knowledge of, exposure to and appreciation of 'the other field'.

These four factors highlight that actors working on human rights and conflict resolution do not have unlimited agency in how they deal with the challenges they encounter. For example, while they can chose how to construe the meaning and application of 'human rights' and 'conflict resolution' (at least to a degree), actors can exert far less influence on how political dynamics interact with such conceptualisations. In some contexts, the human rights and conflict resolution agendas end up being associated with different conflict parties, which will probably undermine the scope for convergence. In the same vein, while actors have a choice in deciding whether to engage or work across the fields, their ability to do so may be affected by the way funding is allocated, or how the institutional set-up of their organisation separates human rights and conflict resolution oriented activities.

Chapter 8 hence serves as a salient addition to chapter 7, which highlights agency on the part of actors by focusing on the possibility of combining approaches and creating space for manoeuvring through reframing and reflection. It establishes that matters of structure cannot be ignored when seeking to grasp the interplay of human rights and conflict resolution. It also builds on the finding that seemingly divergent and conflicting approaches may be interdependent and complementary. It observes that divergence can serve another function: it may generate a sense of unease that can, over time, prompt practitioners to venture outside the familiar and start taking the other field seriously. In that sense, part III points to surprising paradoxes, finding that contradiction may still be complementary and that divergence may be part of the movement towards convergence.

In conclusion, chapter 9 summarises the main findings of the study, reflects on larger insights emanating from it, and discusses its implications for practice and further research. It revisits the notion of the human rights and conflict resolution fields clashing, and suggests that their similarities may be as much of a hindrance to greater synergy as their differences. Their strong normative character and actors’ passionate belief in the applicability and rightness of their respective frames impede openness to other views and approaches. The professionalisation of the fields probably exacerbates this by facilitating tunnel vision, entrenching professional identities and increasing the need to prove their relevance.
The relationship between the fields can thus be seen to contain its own conflict dynamics, to which core tenets of conflict resolution apply – like the importance of enhancing understanding between proponents of human rights and conflict resolution. Even so, some tension is likely to persist, as substantive differences in interpretations and approaches to social reality will not go away. The chapter argues that these can best be appreciated as different perspectives on the world, specialist frames and vocabularies, each of which is more suitable for some purposes, but less so for others. They can also serve as a warning signal to prevent salient features of reality and/or alternative courses of action from being overlooked.

The conclusion further revisits the notion of reframing, explaining that the study points to the risks involved when practitioners merely act from within their own frame without reflecting on it. It suggests that it is possible to ‘remake’ such existing frames, identifying three different ways to do this. Reframing can occur when one frame gains supremacy, or as the result of a process of reflection. In the second instance, practitioners review their prevailing perspectives and approaches after experiencing trouble with their definition of the problem or solution, or when they have been unable to achieve the desired results. This can prompt an interest in experimenting with new frames or lenses in future. A third route to remaking existing frames opens up when these frames are destabilised by practical problems and unforeseen circumstances. Actors’ perspectives and practices then become subject to renegotiation – at least, if they are able and willing to cope with a degree of confusion and vulnerability and resist the temptation to ensure the stability of their beliefs by ‘managing’ empirical evidence or dismissing certain information.

An overall insight emerging from the study is that considering the relationship between human rights and conflict resolution reveals the existence of multiple, concurrent realities. Engaging with this relationship thus means recognising that, even if they conflict at times, these realities are simultaneously valid and interdependent. The study thus emphasises the necessity and the challenge of holding, embracing and acting on the concurrent realities presented by human rights and conflict resolution. This is important for organisations working on human rights or conflict resolution, since the study also makes clear that failing to consider the two in conjunction can jeopardise their efforts. There is, however, no blueprint for linking human rights and conflict resolution in practical efforts, because how they interact will probably look different from case to case. Even so, the study does offer some clues as to what behaviour and attitudes it is best to avoid.

It also has three general implications for future practice:

Firstly, actors working in and across these fields need to recognise that, even though they may be mostly impact on one of the two – be it human rights or conflict – they generally work in contexts where the other is present too, and where the other lens is also relevant. Consequently, they need to reflect on the interaction between their own
Summary

efforts and the phenomenon that has traditionally been outside their frame of reference. This is not to shy away from initiatives that may be contentious, but to anticipate possible negative effects and critical reactions – and to identify ways of addressing them as much as possible.

Secondly, it is important to adopt a more holistic understanding of human rights and conflict resolution. Narrow, traditional notions of both core concepts fail to do justice to the evolution of thinking and practice in these fields. Furthermore, they do not suit the nature of asymmetric conflict and disregard the close links between human rights, justice, conflict and peace. Instead, it is useful to understand both of these endeavours (and their interface) as having multiple dimensions. Rules, structures and institutions, relationships and processes need to be taken into account when seeking to channel violent and potentially violent conflict into non-violent processes of social and political change and ensure the realisation of human rights.

Thirdly, there is great value in learning more about the ‘other’ field and reflecting on the scope, substance and limitations of one’s own frame. This is not to argue that human rights actors should become conflict resolution experts or vice versa, but to recognise that specialisation carries risks which can jeopardize well-intended efforts to improve rights protection or facilitate durable solutions to conflict. Greater insight into other ways of grasping, being and doing in the world enhances actors’ versatility to probe, observe and act in support of their efforts to improve the human condition and create a better world.

At the core, this study is a call for nuance and for further engagement between people and organisations from different backgrounds concerned with peace, conflict, human rights and justice. It has revealed the relevance and necessity of considering human rights and conflict resolution in conjunction more than has been the case to date, in theory and practice.
Samenvatting
(Summary in Dutch)
Samenvatting

*Gelijkttijdige Werkelijkheden Omarmen: de Relatie tussen Mensenrechten en Conflictoplossing Heroverwogen*

Deze studie richt zich op de interactie tussen mensenrechten en conflictoplossing zoals die naar voren komt in de praktijk van maatschappelijke, niet-gouvernementele organisaties (NGOs) en onafhankelijke staatsinstanties. Het doel hiervan is het begrip van de verhouding tussen deze twee velden te vergroten, en bij te dragen tot een betere aanpak van praktische problemen. De vakgebieden van mensenrechten en conflictoplossing zijn lang vrij gescheiden van elkaar gebleven in theoretische en praktische zin.

Wetenschappers en beleidsmakers erkennen dat mensenrechten, conflict, vrede en gerechtigheid nauw verbonden zijn, maar in de praktijk lijken organisaties die op deze gebieden werken vaak weinig aandacht te besteden aan de vraag hoe hun verschillende werkzaamheden samenhangen of wat de implicaties zijn van werken in dezelfde context. Er zijn gevallen bekend waarin zulke organisaties elkaars optreden schadelijk vonden voor hun eigen activiteiten. Mensenrechtenspecialisten en conflictoplossers kunnen het heftig oneens zijn over de aanpak van bepaalde situaties of de na te streven doeleinden. Zulke spanningen lopen vooral op als ergens mensenrechten op grote schaal geschonden worden, en wanneer de druk hoog is om actie te ondernemen.

Deze studie gaat uit van het idee dat zulke polarisatie aandacht en middelen afleidt van wat mensen en organisaties die werkzaam zijn op deze terreinen beogen te bereiken. Een aanvankelijk uitgangspunt is de notie dat het uitblijven van verbinding tussen mensenrechten en conflictoplossing initiatieven in beide gebieden kan ondermijnen. Mensenrechten en gewelddadige conflicten hangen immers nauw met elkaar samen. Mensenrechtenschendingen kunnen niet alleen symptomen van een gewelddadig conflict zijn, maar ook een oorzaak daarvan; dit suggereert dat bescherming van mensenrechten kan bijdraagen aan een duurzame aanpak van conflicten.


Door te focussen op de praktische ervaringen van maatschappelijke organisaties en onafhankelijke staatsinstanties wijkt de studie af van veel van de bestaande...
literatuur. Het onderzoek gaat met name voorbij aan het ‘vrede versus gerechtigheid’-debate over de uitdaging om beide doeleinden te bevorderen in landen die getroffen zijn door een gewelddadig conflict. Het doet dit omdat ‘conflictoplossing’ meer inhoudt dan het bereiken van een vredesakkoord om een einde aan geweld of onderdrukking te bewerkstelligen, en dat het bevorderen van ‘mensenrechten’ zich niet beperkt tot het nastreven van individuele strafrechtelijke verantwoordelijkheid voor serieuze misdrijven. Bovendien vinden pogingen om conflicten te lossen of mensenrechten te bevorderen niet alleen plaats in tijden van crisis en groot schalig geweld; vaak zijn daarbij andere organisaties en personen betrokken dan alleen politieke en militaire elites. Een ander inzicht dat ten grondslag ligt aan deze studie is het gegeven dat de verhouding tussen mensenrechten en conflictoplossing niet eenduidig is: zij kunnen elkaar aanvullen maar ook met elkaar botsen.

Methodologisch gezien is de studie gebaseerd op ongeveer achttien jaar praktijkervaring van de auteur in verschillende landen en omstandigheden, ook tijdens het onderzoek zelf. Dit is aangevuld met literatuurstudie en 26 interviews. Daarmee is de studie een reflectie op de praktijk geworden, om inzichten, vragen en observaties te verwerken die in de loop der tijd zijn opgekomen; ervaring en onderzoek worden zo met elkaar vermengd. Er is dus gebruik gemaakt van een kwalitatieve methodologie en empirisch materiaal verzameld door een deelnemer-insider.

In theoretische zin stelt de studie op het constructivisme. Dit legt de nadruk op de sociale constructie van de werkelijkheid. Verder wordt verondersteld dat organisaties en mensen uit de praktijk (hierna vaak ‘actoren’ genoemd) handelend vermogen hebben: zij kunnen situaties definiëren, doelstellingen identificeren, diverse manieren van handelen begrijpen, en ze zijn in staat doelen na te streven op het gebied van mensenrechten en/of conflictoplossing. De begrippen ‘veld’ (ook wel terrein of vakgebied) en ‘frame’ (of kader) komen ook geregeld voor. Het eerste houdt in dat ‘mensenrechten’ en ‘conflictoplossing’ terreinen zijn waarop patronen van activiteit plaatsvinden die beschreven kunnen worden. Het tweede doelt erop dat problemen niet vooraf bepaald zijn maar eerst op een zekere manier geconstrueerd (of begrepen) moeten worden voordat ze aangepakt kunnen worden.

De studie bestaat uit negen hoofdstukken en 3 delen. **Hoofdstuk 1** zet de focus, het doel, en de motivatie voor de studie uiteen en introduceert het theoretische en methodologische kader. De volgende drie hoofdstukken vormen **deel I** en geven een algemene overzicht van beide velden, gevolgd door een vergelijking. Het doel hiervan is tweeledig: enerzijds beoogt het de latere discussie van concrete ervaringen en uitdagingen te verankeren in een gedegen begrip van mensenrechten en conflictoplossing. Anderzijds vult dit overzicht een andere leemte op in de bestaande literatuur: deze beschrijft actoren in de velden van mensenrechten en conflict oplossing vaak op simplicistische wijze, en doet weinig moeite om beide vakgebieden werkelijk te begrijpen wat betreft hun oorsprong, ontwikkeling,
Samenvatting

gedachtegoed en methoden. Bovendien presenteert de literatuur de twee velden dikwijls alsof ze gespeend zijn van enige ambiguité, terwijl ze elk bepaalde tegenstrijdigheden bevatten. Dat duidt erop dat mensenrechten en conflictoplossing minder rechttoe rechtan zijn dan op het eerste gezicht lijkt, en dat ze bepaalde beperkingen kennen.

Hoofdstuk 2 bespreekt het mensenrechtenveld, en wijst erop dat ‘mensenrechten’ de dominante normatieve ‘taal’ is geworden van onze tijd. Het veld heeft een sterk juridisch karakter en geeft voorrang aan internationale mensrechtenstandaarden. Toch zijn mensenrechten meer dan formeel recht; ze dienen ook als morele principes en beïnvloeden sociale en politieke actie omdat ze stoelen op de notie van de inherente menselijke waardigheid. Van oudsher legt het veld sterk de nadruk op het ter verantwoording roepen van macht en bescherming van individuele vrijheden. ‘Mensenrechten’ belichten de mate waarin de staat individuele personen met respect en zonder discriminatie behandelt en hen keuzevrijheid en participatie toekent (of juist niet).

Het begrip is in de loop der tijd breder geworden. Tegenwoordig besteden mensenrechtspecialisten meer aandacht aan eerlijkheid en gelijkheid op sociaaleconomisch vlak, en erkennen zij dat groepen ook mensenrechten kunnen hebben, en niet-statelijke actoren mensenrechtenverplichtingen. Desalniettemin is er een tegenstrijdigheid in de manier waarop veel denken en handelen in het mensenrechtenveld tamelijk beperkt en legalistisch is vergeleken met het uitdijende karakter van het mensenrechtencategor zelf en de ambities van het veld om de wereld te verbeteren. Andere spanningen zijn er ook binnen dit vakgebied. Mensenrechtenorganisaties zijn geneigd de nadruk te leggen op verhaal halen en individuele verantwoording en minder op structurele hervormingen. Een andere tegenstrijdigheid betreft de ambivalente relatie tussen mensenrechten en macht. Het balanceren van het universele karakter van mensenrechtenmannen en het belang van lokale toepassing en relevantie is ook lastig.

Hoofdstuk 3 beschouwt het conflictoplossingsveld dat ook sinds zijn ontstaan steeds breder is geworden in ambitie en inhoud. Alhoewel het veld behoorlijk heterogen is, is de kernvraag altijd dezelfde geweest, namelijk hoe conflicten op een constructieve en effectieve manier aan te pakken. Binnen conflictoplossing gaan specialisten uit van de notie dat conflict niet per se gewelddadig is. Zij leggen de nadruk op het voorkomen van geweld en het genereren van oplossingen die acceptabel zijn voor de betrokken partijen. Zulke oplossingen worden geacht de onderliggende belangen van de partijen te balanceren en bereikt te worden door middel van een dialoog. In de loop der tijd is conflictoplossing zich meer gaan bezighouden met asymmetrisch conflict, waarin macht ongelijk verdeeld is. Hierdoor besteedt conflictoplossing thans veel aandacht aan identiteitsgroepen, en hecht dit vakgebied ook meer belang aan sociale rechtvaardigheid en verandering op de lange termijn.
De sterke focus op het beperken van geweld brengt echter risico’s met zich mee: er is een kans dat conflictoplossing gebruikt wordt als een instrument van pacificatie, om mensen koest te houden – waarbij dan meer aandacht uitgaat naar het bestrijden van de symptomen van conflict dan naar de oorzaken ervan, en waarbij partijen en specialisten tekort schieten in het aanpakken van machtsongelijkheid. De meer behoudende en transformerende aspecten van conflictoplossing staan dus met elkaar op gespannen voet; dat geldt eveneens voor haar pragmatische en normatieve kanten. Conflictoplossing kent ook andere tegenstrijdigheden. Zo is er een neiging tot generaliseren maar willen actoren in dit vakgebied ook contextualiseren. Ook geldt dat conflictoplossing vaak op zeer beperkte wijze in de praktijk wordt gebracht terwijl het in theorie heel breed is.

**Hoofdstuk 4** vergelijkt de twee velden en betwist de neiging van de bestaande literatuur meer aandacht te besteden aan hun verschillen dan aan hun overeenkomsten. Dit betekent niet dat het bestaande verschillen negeert; in sommige opzichten wijken de velden zoveel van elkaar af in nadruk en gebruikte strategieën dat het lijkt of ze onverenigbaar zijn. Er zijn echter een aantal opvallende overeenkomsten. Zo zijn beide velden erg normatief: mensenrechten en conflictoplossing beogen allebei de levensomstandigheden van mensen te verbeteren, en deze velden delen een rotsvast geloof in de maakbaarheid van de maatschappij. Ook is hun ontwikkeling vergelijkbaar. Beide zijn steeds breder geworden en hebben een grotere reikwijdte gekregen in de loop van enkele tientallen jaren. Een andere, verrassende, overeenkomst betreft de contradicties die de vakgebieden bevatten; deze tonen aan dat het mensenrechtenveld en het terrein van conflictoplossing beide moeite hebben hun ambities omtrent ‘goed te doen’ waar te maken.


Verder laat deel I zien dat de twee velden elkaar dichter zijn genaderd ten gevolge van toenemende ambities, bredere concepten en een diversificatie van gebruikte methoden. Daardoor komen de twee velden sneller dan voorheen in elkaars vaarwater – maar is er ook meer kans op synergie en kruisbestuiving. In grote lijnen laat deel I zien dat een beter begrip van de specifieke aard van de twee lenzen verduidelijk hoe de velden van mensenrechten en conflictoplossing tegelijkertijd wel en niet met elkaar verbonden zijn.
Samenvatting

Deel II, bestaande uit hoofdstukken 5 en 6, verkent hoe de relatie tussen mensenrechten en conflictoplossing uitpakt in de praktijk. Daartoe komen de praktische ervaringen van twee ‘veld-specifieke’ organisaties in Zuid-Afrika aan bod (een mensenrechten NGO en een NGO die zich richt op conflictoplossing) en van een maatschappelijke organisatie die niet gelieerd is aan een van de twee velden (een oecumenisch netwerk van kerken in Zimbabwe). Ook krijgen een paar onafhankelijke staatsinstanties aandacht, met name enkele Zuid-Afrikaanse instellingen die gericht zijn op mensenrechten en een Noord-landers orgaan dat zich bezighoudt met conflictoplossing.

De discussie in deel II bevestigt het bestaan en de relevantie van de twee lenzen: het is mogelijk om de specifieke referentiekaders en aanpak van problemen te onderscheiden. De discussie laat echter ook zien dat de grenzen tussen ‘mensenrechten’ en ‘conflictoplossing’ veel minder scherp zijn dan de begrippen ‘veld’ en ‘lens’ suggereren. Beschrijvingen van praktische situaties tonen aan dat mensenrechten en conflictoplossing sterk verweven zijn in de dagelijkse praktijk van de diverse actoren. Deze twee terreinen vloeien behoorlijk in elkaar over. Dit blijkt vooral wanneer actoren die mensenrechten willen bevorderen of conflicten willen oplossen, reageren op concrete situaties die ze ter plekke tegenkomen.


Het hoofdstuk behandelt ook hoe praktijkmensen van een andere Zuid-Afrikaanse NGO, het Centre for Conflict Resolution (‘Centrum voor Conflictoplossing’) te maken kregen met vragen over mensenrechten toen zij intervenieerden in conflicten in lokale gemeenschappen. Zij waren zelden bekend met mensenrechtenaspecten van conflicten, waardoor ze die vaak over het hoofd zagen of erdoor gefrustreerd raakten – hetgeen hun interventies nadelig kon beïnvloeden. In de loop der tijd begonnen echter sommige conflictoplossers mensenrechten steeds meer te waarderen, zowel in juridische als morele zin; in hun visie scheppen mensenrechten het (juridische en morele) kader waarin conflictoplossing plaatsvindt. Ook bleken deze beoefenaars mensenrechten te gebruiken als een instrument bij het aanpakken van conflicten.
De ervaringen van deze organisaties tonen aan hoe mensenrechten- en conflictoplossingswerk nauw verwant zijn in de praktijk. Mensenrechtenwerk en conflictoplossing vloeien op allerlei wijzen in elkaar over; dit brengt kansen en uitdagingen met zich mee voor de actoren die ermee te maken krijgen. Deze fluiditeit komt waarschijnlijk door het soort werk dat deze actoren doen, het type problemen dat ze proberen aan te pakken, en de omgeving waarin ze werken.

Toch is het zo dat veel initiatieven om mensenrechten te bevorderen of conflicten op te lossen ontstonden door actoren die geen professionele NGOs zijn in het ene of andere veld. Daarom bespreekt hoofdstuk 6 de wisselwerking van mensenrechten en conflictoplossing in de praktijk van een aantal andere actoren, die ver uit elkaar liggen op het organisatorische spectrum. Eerst is er aandacht voor een kerkelijk netwerk in de provincie Manicaland in Zimbabwe dat zich bezig ging houden met mensenrechten en conflictoplossing in reactie op toenemend politiek geweld. De betrokken kerken gingen lobbyen voor mensenrechtenbescherming en steun verlenen aan slachtoffers van misdrijven, en probeerden de gevolgen van geweld te verzachten en een dialoog tussen politieke opponenten te vergemakkelijken. Ze probeerden dus op beide terreinen zinnige dingen te doen, ook al zagen ze zichzelf niet in termen van ‘mensenrechten’ of ‘conflictoplossing.’

Daarna bespreekt het hoofdstuk een aantal onafhankelijke staatsinstellingen die de taak hebben mensenrechten te beschermen, de democratie te waarborgen, geschillen te beslechten, of goed bestuur te bewerkstelligen – waaronder de Zuid-Afrikaanse Mensenrechtencommissie en de Noord-Ierse Parade Commissie. Deze formele organen moeten zich ook vaak bezighouden met mensenrechten en conflictoplossing in het uitvoeren van hun mandaat, ondanks het feit dat hun formele titel (of mandaat) mogelijk slechts een van de twee vermeldt.

Deze verschillende actoren zijn daarom te typeren als werkzaam op het snijvlak van mensenrechten en conflictoplossing; de functies die ze vervullen en de activiteiten die ze ondernemen hebben te maken met beide terreinen. Het is moeilijk te zien waar het ene begint en het andere eindigt. De mate waarin deze organisaties dit inzien – en bewust nadenken over het snijvlak van mensenrechten en conflictoplossing – varieert echter zeer. De kerken in Manicaland begonnen dit langzamerhand te beseffen, en gebruikten dat inzicht om te reflecteren op hun rol en aanpak. De onafhankelijke staatsinstellingen waarnaar verwezen wordt, leken er echter zelden over na te denken hoe mensenrechten en conflictoplossing samenkomen in hun werk, laat staan wat de praktische implicaties daarvan zijn.

De hoofdstukken van deel II belichten wat de terreinen van mensenrechten en conflictoplossing aan elkaar kunnen bijdragen. Zo kunnen ze elkaars analytisch kader versterken en het arsenaal aan praktische benaderingen die actoren kunnen gebruiken, vergroten. Dit heeft te maken met het feit dat de velden de aandacht vestigen op verschillende aspecten van dezelfde situatie en verschillende
oplossingsrichtingen suggereren. Dit doet vermoeden dat de praktijk en theorie van mensenrechten en conflictoplossing het potentieel hebben om leemtes op te vullen in elkaar's begrip en benadering van de werkelijkheid.

Tegelijkertijd laten de praktische voorbeelden ook zien dat het omgaan met de fluiditeit van mensenrechten en conflictoplossing verwarrend, frustrerend, en moeilijk kan zijn voor de betrokken organisaties en individuele beoefenaars. Moeilijke vragen komen op die niet vermeden kunnen worden. Een bevinding van de studie is dan ook dat pogingen om de relatie van mensenrechten en conflictoplossing te vermijden of te ontkennen – dus 'eromheen te werken' – waarschijnlijk nadelige gevolgen hebben. Dit is omdat belangrijke facetten van de realiteit, die bijdragen aan mensenrechtenschendingen of aan spanningen tussen mensen, dan niet worden onderkend. Bovendien worden in dat geval mogelijke manieren om de problemen aan te pakken over het hoofd gezien.

**Deel 3**, bestaande uit hoofdstukken 7 en 8, focust op het thema van omgaan met complexiteit. Ook belicht dit deel het belang van het loslaten van zogenaamde 'binaire' denkpatronen, dus het denken in termen van 'of/of.' **Hoofdstuk 7** onderzoekt vier specifieke uitdagingen waar organisaties en beoefenaars van mensenrechten en/of conflictoplossing vaak mee te maken krijgen, ontleend aan de eerder besproken praktische voorbeelden. De eerste betreft het balanceren van korte en lange-termijndoelen. De tweede gaat over de vraag of het beter is de confrontatie aan te gaan dan wel samenwerking te zoeken in omstandigheden die gekenmerkt zijn door machtsongelijkheid en onrechtvaardigheid. Het derde vraagstuk heeft betrekking op het omgaan met spanningen tussen de rol van lobbyist en bemiddelaar. Het vierde betreft de vraag hoe te verwijzen naar schendingen van mensenrechten (en andere mensenrechtenkwesties) tijdens processen van conflictoplossing.

Dit hoofdstuk verkent wat deze vraagstukken inhouden en hoe verschillende actoren ermee zijn omgegaan, om zo verder licht te werpen op de relatie tussen mensenrechten en conflictoplossing. Het blijkt dat actoren deze uitdagingen vaak ervaren als dilemma's tussen twee conflicterende – maar even belangrijke – doeleinden welke een verschillende aanpak vereisen die elk nadelige gevolgen kunnen hebben. Dit denken in dilemma's vat de keuzes die beoefenaars moeten maken in een simplicistisch binair kader, alsof actoren moeten kiezen tussen twee handelingsmogelijkheden die elkaar uitsluiten.

De studie toont aan dat organisaties en beoefenaars op diverse wijzen hun weg vonden door de complexiteit van de sociale werkelijkheid. Zij lieten zich zelden tegenhouden door een dualistisch denkkader. In plaats daarvan zochten ze naar mogelijkheden om de voor de hand liggende manieren van handelen te combineren, of ze te omzeilen door een alternatieve aanpak te identificeren. Vaak blijkt in feite uit de worsteling met een bepaalde uitdaging dat er een onderlinge afhankelijkheid bestaat tussen verschillende prioriteiten, strategieën, of rollen – zelfs tussen zaken die
volstrekt onverenigbaar lijken, zoals confrontatie en samenwerking, of lobbyen en bemiddelen.

Binair denken is riskant omdat het de problemen die spelen versimpelt; het kan ook het vermogen van actoren om effectief op te treden ondermijnen. In de praktijk herdefineerden actoren daarom vaak het specifieke vraagstuk waar ze mee te maken hadden, om uit het binaire kader te stappen en meer handelingsruimte voor zichzelf te creëren. Het is echter niet zo dat een dergelijke herformulering de problemen per se oplost. Bepaalde afwegingen en kwesties blijven moeilijk. In dat geval blijkt het vooral zinnig als actoren bereid zijn om de vragen en tegenstrijdigheden tot zich te laten door dringen, in plaats van te hopen dat deze zullen verdwijnen. Deze discussie wijst dus op het belang van reflectie voor actoren in beide velden zodat ze kunnen bedenken hoe ze zullen omgaan met de problemen waar ze mee te maken krijgen.

**Hoofdstuk 8** betwist het binaire kader dat veel literatuur over de relatie tussen mensenrechten en conflictoplossing kenmerkt. Voorgaande bevindingen onderbouwen de stelling dat mensenrechten en conflictoplossing elkaar zowel kunnen completeren als op gespannen voet met elkaar kunnen staan, afhankelijk van de specifieke omstandigheden, periode, en/of het optreden van organisaties en praktijkmensen. Het hoofdstuk vestigt zo de nadruk op het variabele en dynamische karakter van de relatie tussen beide vakgebieden. Dit maakt het relevant om uit te zoeken welke factoren van invloed zijn op de interactie tussen mensenrechten- en conflictoplossingswerk in de praktijk.

Om het nut van deze onderzoeksrichting aan te tonen bespreekt het hoofdstuk hoe vier specifieke factoren de relatieve convergentie van mensenrechten en conflictoplossing beïnvloeden. Dit zijn achtereenvolgens de manier waarop 'mensenrechten' en 'conflictoplossing' begrepen worden in een bepaalde context; de politieke en economische omgeving waarin het denken en handelen vanuit mensenrechtenperspectief en vanuit conflictoplossingsperspectief plaats vindt; de methoden die gebruikt worden om doelen op het gebied van mensenrechten dan wel conflictoplossing na te streven; en, tenslotte, de mate waarin beoefenaars van mensenrechten en conflictoplossing kennis hebben van elkaars vakgebied en de mate waarin zij het waarderen.

Het blijkt dat actoren die zich richten op bevordering van mensenrechten en/of conflictoplossing niet volledig vrij zijn om te bepalen hoe ze met situaties omgaan die ze tegenkomen in de praktijk. Zo kunnen ze bijvoorbeeld wel bepalen hoe ze 'mensenrechtenwerk' en 'conflictoplossing' opvatten en ten uitvoer brengen, in elk geval tot op zekere hoogte. Ze kunnen echter weinig invloed uitoefenen op de manier waarop deze opvattingen en de lokale politieke dynamiek op elkaar inwerken. In sommige contexten worden de mensenrechten- en conflictoplossingsagenda geassocieerd met verschillende partijen in conflict; convergentie tussen mensenrechten en conflictoplossing wordt dan waarschijnlijk lastig. Op soortgelijke
wijze kunnen actoren zelf de keuze maken dat zij zich zowel met mensenrechten als met conflictoplossing willen bezighouden, maar de mate waarin zij dit ook daadwerkelijk kunnen doen wordt wellicht bepaald door de toekenning van financiering voor activiteiten – of door de institutionele structuur van hun organisatie (die bijvoorbeeld initiatieven op het gebied van mensenrechten en conflictoplossing gescheiden houdt).

Hoofdstuk 8 is daarmee een belangrijke aanvulling op hoofdstuk 7, dat de nadruk legde op het handelend vermogen van actoren om verschillende methoden te combineren en bewegingsruimte te creëren door herformulering en reflectie. Hoofdstuk 8 laat echter zien dat structurele zaken ook van belang zijn als we de wisselwerking tussen mensenrechten en conflictoplossing willen begrijpen. Ook de bevinding dat ogenschijnlijk uiteenlopende en tegenstrijdige benaderingen elkaar kunnen complementeren (en wederzijds afhankelijk kunnen zijn) wordt aangevuld. Divergentie tussen mensenrechten en conflictoplossing kan ook een andere functie dienen: beoefenaars in beide velden die ermee te maken krijgen kunnen een dusdanig gevoel van ongemak ervaren dat ze na verloop van tijd buiten de gebaande paden gaan stappen, en de inzichten en benaderingen van 'het andere veld' serieus gaan nemen. In dat opzicht komen verrassende paradoxen naar voren in deel III: tegenstrijdigheid kan nog steeds complementair zijn, en divergentie kan een onderdeel zijn van een beweging naar convergentie.

De conclusie, hoofdstuk 9, vat de belangrijkste bevindingen van de studie samen, identificeert overkoepelende inzichten op basis van de studie, en bespreekt de implicaties voor de praktijk en verder onderzoek. Met betrekking tot de notie dat de twee velden botsen, wordt gesuggereerd dat de overeenkomsten tussen mensenrechten en conflictoplossing wellicht net zo’n obstakel zijn als hun verschillen in het bewerkstellig van meer synergie. Het sterke normatieve karakter van de velden belemmert ontvankelijkheid voor andere perspectieven en benaderingen; dat geldt ook voor de gedrevenheid van de actoren die in deze vakgebieden werken, en hun hartstochtelijke geloof in de juistheid en toepasselijkheid van hun specifieke referentiekader. De mate waarin beide velden geprofessionaliseerd zijn versterkt dit waarschijnlijk, omdat het tunnelvisie teveel brengt, beroepsmatige identiteiten verankert en de behoefte vergroot om de eigen relevantie aan te tonen.

In dat opzicht bevat de relatie tussen de velden haar eigen conflictdynamiek waarop grondbeginselen van conflictoplossing van toepassing zijn – zoals het belang van begrip vergroten tussen voorstanders van mensenrechten en conflictoplossing. Toch is het belangrijk te erkennen dat enige spanning waarschijnlijk zal blijven bestaan daar inhoudelijke verschillen in interpretatie en benadering van de sociale werkelijkheid niet zullen verdwijnen. Deze kunnen het beste begrepen worden als verschillende perspectieven op de wereld met specialistische kaders en terminologieën, waarvan elk meer geschikt is voor sommige doeleinden en minder voor andere. Deze perspectieven kunnen ook als waarschuwingssignaal dienen, om te
voorkomen dat belangrijke aspecten van de werkelijkheid of alternatieve handelingswijzen over het hoofd gezien worden.

Het idee van herdefiniëren of herformuleren komt ook terug in de conclusie. Uit de studie blijkt dat het riskant is als actoren slechts handelen op basis van hun eigen referentiekader maar er niet op reflecteren. Het is echter wel mogelijk om bestaande kaders om te vormen of aan tot passen. Dit kan op drie manieren: aanpassing kan plaatsvinden als een specifiek kader dominant wordt. Ook kan het een gevolg zijn van reflectie. In dat laatste geval heroverwegen beoefenaars hun bestaande perspectief en aanpak nadat ze problemen hebben ondervonden in hun manier van problemen of oplossingen definiëren of wanneer ze niet de beoogde resultaten hebben bereikt. Het kan dan aantrekkelijk worden om te experimenteren met nieuwe kaders en praktische benaderingen. Een derde manier om bestaande kaders aan te passen komt op wanneer deze gedestabiliseerd raken door praktische complicaties of onvoorziene omstandigheden. Dit kan ertoe leiden dat actoren hun perspectief en benaderingen gaan aanpassen – tenminste, als zij een mate van verwarring en kwetsbaarheid kunnen en willen verdragen, en als zij de verleiding kunnen weerstaan om de stabiliteit van hun overtuigingen zeker te stellen door empirisch bewijs te ‘masseren’ of bepaalde informatie te negeren.

Een overkoepelend inzicht is dat het beschouwen van de relatie tussen mensenrechten en conflictoplossing het bestaan onthult van meerdere, gelijktijdige, realiteiten. Organisaties en mensen die zich bezighouden met deze relatie moeten daarom erkennen dat deze verschillende realiteiten tegelijkertijd gelden en wederzijds afhankelijk van elkaar zijn, ook al botsen ze soms. De studie benadrukt dus hoe noodzakelijk (en uitdagend) het is om deze gelijktijdige werkelijkheden – zoals naar voren gebracht door de perspectieven van mensenrechten en conflictoplossing – te bevatten en te omarmen, en op basis daarvan actie te nemen. Dat dit belangrijk is voor organisaties en beoefenaars die werkzaam zijn in deze gebieden blijkt duidelijk uit dit onderzoek. Voorbij gaan aan de samenhang tussen mensenrechten en conflictoplossing kan hun werk schaden.

Er is geen blauwdruk voor het verbinden van mensenrechten en conflictoplossing in praktische initiatieven, omdat is gebleken dat de interactie tussen deze twee terreinen er elke keer anders uit kan zien. Toch geeft de studie wel enige aanwijzingen omtrent gedrag en houding, welke het beste te vermijden zijn. Ook zijn er drie algemene implicaties voor praktisch werk in de toekomst te onderscheiden:

Ten eerste is het belangrijk dat actoren die in deze vakgebieden werken erkennen dat hun werk, ook al is het vooral gericht op een van de twee verschijnselen (mensenrechten of conflict), meestal plaatsvindt in een omgeving waar het andere verschijnsel ook aanwezig is – waarmee het andere denkraam ook relevant is. Het is daarom zinnig na te denken over de wisselwerking tussen hun eigen activiteiten en het verschijnsel en perspectief die traditiegetrouw buiten hun referentiekader vielen.
Samenvatting

Dit betekent niet dat ze zouden moeten afzien van initiatieven die wellicht controversieel zijn; in plaats daarvan is het verstandig als ze van tevoren bedenken of hun activiteiten mogelijke negatieve gevolgen kunnen hebben en kritische reacties kunnen oproepen – en zo ja, dan moeten ze vooraf overwegen hoe ze zulke effecten en reacties kunnen opvangen en verzachten.

Ten tweede is het belangrijk om een meer geïntegreerde opvatting van mensenrechten en conflictoplossing te hanteren. De beperkte, traditionele manier waarop beide kernbegrippen lang zijn geïnterpreteerd doen geen recht aan de ontwikkeling die beide velden hebben doorgemaakt in theorie en praktijk. Daarnaast zijn deze traditionele opvattingen niet geschikt in het kader van asymmetrisch conflict en ze gaan ook voorbij aan de nauwe relatie tussen mensenrechten, conflict, vrede en rechtvaardigheid. In plaats daarvan is het zinnig om een aantal dimensies te erkennen op beide terreinen (en op hun gezamenlijke snijvlak). Wanneer organisaties en individuele beoefenaars proberen mensenrechten te realiseren en (potentieel) gewelddadig conflict om te buigen in processen van sociale en politieke verandering zonder geweld, is het van belang om aandacht te besteden aan regels, structuren en instituties, relaties, en processen.

Ten derde is het waardevol om meer te leren over het ‘andere’ veld en ook na te denken over de inhoud, reikwijdte en beperkingen van het eigen referentiekader. Dit betekent niet dat mensenrechtenactivisten opeens beoefenaars van conflictoplossing moeten worden en vice versa. Het betekent wel dat erkend moet worden dat specialisatie bepaalde risico’s met zich meebrengt die goedbedoelde pogingen om de bescherming van rechten te vergroten of duurzame oplossingen voor conflict te bewerkstelligen, kan schaden. Meer inzicht in andere manieren om de wereld te begrijpen, en hoe te handelen en te zijn in de wereld, vergroot de veelzijdigheid van actoren om actie te ondernemen om zowel de levensomstandigheden van mensen als de wereld zelf, te verbeteren.

De kern van deze studie is dus een roep om nuancering en om meer interactie tussen mensen en organisaties die zich met verschillende achtergronden bezighouden met conflict, mensenrechten, vrede en gerechtigheid. Dit onderzoek laat duidelijk zien hoe relevant en noodzakelijk het is om de samenhang tussen mensenrechten en conflictoplossing meer aandacht te geven dan tot nu toe in theorie en praktijk het geval is geweest.
Curriculum Vitae
Curriculum Vitae

Michelle Parlevliet (1971) was born in Almelo, the Netherlands. She obtained an MA in Political Science, specialising in International Relations, from the University of Amsterdam in 1996, *cum laude*. An edited version of her MA thesis, ‘Considering Truth: Dealing with a Legacy of Human Rights Violations’, was published in the *Netherlands Quarterly of Human Rights*. She also obtained an MA in International Peace Studies from the Joan B. Kroc Institute at the University of Notre Dame, United States, for which she was awarded a full scholarship and tuition waver (1994-1995).

In the beginning of her career, Michelle worked in the Prosecutor’s Office at the International Criminal Tribunal for the Former Yugoslavia in The Hague (1995-1996; 1998) and as a researcher for the South African Truth and Reconciliation Commission in Cape Town (1997-1998). In 1999, she helped to establish the Human Rights and Conflict Management Programme at the Cape Town-based Centre for Conflict Resolution, managing the programme until early 2005. After short stints as Alumni Visiting Fellow at the University of Notre Dame and as a consultant for the World Bank in Aceh, she moved to Nepal to work as senior conflict transformation adviser for the Danish Ministry of Foreign Affairs. She supported the Ministry-funded Human Rights and Good Governance Programme and several programme partners in the country, and advised the Embassy of Denmark on its support to Nepal’s peace process (2006-2009). Between 2010 and 2015, she pursued her Ph.D. at the Faculty of Law at the University of Amsterdam while still engaging in practical assignments from time to time.

Over the years, Michelle has published widely on human rights and conflict resolution, national human rights institutions, conflict prevention and transitional justice, and has provided facilitation, training, research and technical assistance to multiple organisations and networks at grassroots and senior policy-making level. These include civil society organisations in several African countries and Nepal, development organisations in Europe and various bodies of the United Nations. She is a member of the Board of Trustees of Conciliation Resources (an international peacebuilding NGO based in London) and also serves on the International Advisory Board of the Centre on Human Rights in Conflict (University of East London), the Editorial Board of the Journal of Human Rights Practice (Oxford Journals), and on the Steering Committee of the Cultural Emergency Response Programme of the Prince Claus Fund for Culture and Development. She continues to combine practice and scholarship in her work and lives with her partner Philipp Wolff in Bosch & Duin, the Netherlands.
Embracing Concurrent Realities. Revisiting the Relationship between Human Rights and Conflict Resolution

1. A better understanding of the relationship between human rights and conflict resolution contributes to improved practice in both areas.

2. The ability of human rights and conflict resolution practitioners to act effectively and appropriately is enhanced by learning more about one another’s perspective and approach.

3. The legal reflex that exists in much human rights thinking and practice fails to recognise the limitations of law and legal systems, as well as the importance of social and political processes in ensuring human rights.

4. Conflict resolution’s concern with preventing and limiting (physical) violence runs the risk of turning conflict resolution efforts into means of pacification.

5. The boundaries between human rights and conflict resolution are far less distinct in practice than has been recognised thus far; considerable fluidity exists.

6. The relationship between human rights and conflict resolution is best understood as being dynamic and contingent rather than being exclusively complementary or contradictory and static over time.

7. Much goes missing when the relationship between human rights and conflict resolution is discussed in terms of ‘peace’ and ‘justice’.

8. The current refugee crisis aptly illustrates Einstein’s saying that problems cannot be solved in the same mindset in which they were created.

9. The participant-insider perspective adopted in this study offers an opportunity to highlight the interdependence of doing and thinking, and the validity of practice-informed theory.

10. The way the relationship between human rights and conflict resolution unfolds in practice contains its own conflict dynamics, in which objective and subjective elements interact over time.

11. While there are dilemmas to navigate and polarities to manage, there is also life to be lived.
This study focuses on the interplay of human rights and conflict resolution in the practice of civil society organisations and independent state institutions, so as to enhance understanding of the relationship between these fields and contribute to improved practice. It has been recognised that human rights, justice, conflict and peace are closely linked. Yet for many years these bodies of theory and practice have remained surprisingly separate in conceptual and practical terms. Those working on these issues have been known to strongly disagree about the most suitable response in specific instances. At times they may even perceive one another’s actions as hampering their own.

By considering the practical experiences of specific non-governmental organisations and state institutions in South Africa, Northern Ireland, Nepal and Zimbabwe, the study deviates from much of the existing literature; that focuses extensively on the so-called ‘peace versus justice’ debate. As such, it recognises that ‘conflict resolution’ entails more than reaching a settlement to end violence or repression. It also appreciates that efforts to advance ‘human rights’ go beyond pursuing individual criminal accountability for serious abuses. The study is based on some eighteen years of personal practical experience, a review of relevant literature and key informant interviews.

Michelle Parlevliet (MA Political Science, MA International Peace Studies) has worked on the nexus of human rights and conflict resolution in various capacities since 1997. She has published widely on this theme and related topics, and has provided facilitation, training, research and technical assistance to multiple organisations and networks at grassroots and senior policy-making level in Africa, Asia, and Europe. Between 2010 and 2015, she pursued her PhD at the Faculty of Law at the University of Amsterdam.