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

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Chapter 2: The Human Rights Field
Chapter 2

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. 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. 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. 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

the emergence of activism in Chile and Argentina against the abuses of the respective military regimes in these countries.

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 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 10).

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 10).

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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’\(^\text{12}\) – 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\(^\text{13}\) 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.\(^\text{14}\) It also includes international criminal tribunals,\(^\text{15}\) 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).

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\(\text{12}\) 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 (NCOD) 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).


\(\text{14}\) 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.

\(\text{15}\) 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. Parvellet 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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16 This doctrine holds that states may intervene in another state’s territory if the latter does not meet its obligation to protect its population from such crimes. See also Freeman (2011, 113, 208), Dunne/Hanson (2009, 69-71), Chandler (2009, 119-120), Bellamy/Wheeler (2008). International Commission on Intervention and State Sovereignty (2001).


19 Long-standing scepticism about human rights was in part reinvigorated by American military action in Iraq and Afghanistan and the claim that this was motivated by a desire to spread democracy and human rights (Langlois, “Human Rights in Crisis?”, op.cit.; Brown 2004). Resentment about the perceived double standards of Western states regarding human rights also plays a role; see interview by Gie Goris with the former UN High Commissioner for Human Rights, Louise Arbour, at MO, 24 April 2012, http://www.mo.be/en/article/louise-arbour-west-very-ambiguous-about-human-rights. Such sentiment also builds on concerns about the universal nature of human rights (a key feature of the human rights orthodoxy); see further below at 2.2 and 2.5.4.

20 Resistance in countries like the United Kingdom and the Netherlands is related to the ‘home-coming’ of human rights and the impact of European human rights institutions on domestic affairs; see Oomen (2013a; 2011).
interdisciplinary research and a greater emphasis on assessing impact within the field.  

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. 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 legal 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.

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). 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).
too\textsuperscript{25} and that there are duty-bearers beyond the state.\textsuperscript{26} 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,\textsuperscript{27} 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”.\textsuperscript{28} 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).\textsuperscript{29}

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).\textsuperscript{30} This is accompanied by a strong emphasis on protecting ‘the

\begin{footnotes}
\item[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.
\item[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.
\item[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).
\item[28] See OHCHR, “Human Rights?”, op.cit. Concerns about universalism have been with the human rights project since the 1948 Universal Declaration, manifesting in demands for relativism and in claims that human rights is a form of neo-imperialism; e.g. Langlois, “Human Rights in Crisis,” op.cit., Oomen (2011), Halme-Tuomisaaari (2010), Donnelly (2008), Dembour (2006), Cowan and others (2001, 4-8), Douzinas (2000) and Shivji (1989).
\item[29] See also the discussion at 2.5.4.
\item[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
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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.

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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).33 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,34 states sign treaties to ‘eliminate’ all forms of discrimination,35 and persons seeking to protect rights are human rights ‘defenders’.36 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; Ibhawoh 2007).37 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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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).

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). 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 (Gladius 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).\(^51\) 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).\(^52\)

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).\(^53\) 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

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\(^52\) 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).
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).59

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.60 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 2004a).

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.61 Many authors hence advocate a participatory and experiential methodology to enhance people’s ability to take action.62 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).63 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).64 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
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

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

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).
Chapter 2

‘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.71

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).72

71 This distinction emerges, for example, in an exchange between Nouwen/Werner (2011, 2010) and Schotel (2011) on whether the International Criminal Court can become an actor in political struggles.
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).73 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).74

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).75

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.76

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

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). 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).

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

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).

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 Gready (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).
(2011, 156-157). 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.\footnote{This relates mostly to international rights actors, rather than national or local ones.} This relates to international rights actors, rather than national or local ones.\footnote{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.\footnote{Remarks at the presentation of In Your Hands: A Guide for Community Action for the Tenth Anniversary of the Universal Declaration of Human Rights, 27 March 1958, at http://www.udhr.history/inyour.htm. Roosevelt chaired the UN Commission on Human Rights that drafted the 1948 Universal Declaration of Human Rights.}
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).

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.