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

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Chapter 7: Navigating Complexity
Chapter 7

This chapter seeks to shed further light on the interplay of human rights and conflict resolution by considering four challenges that regularly arise for organisations and individual practitioners working in these fields. It explores how various actors have sought to engage with these challenges and what this reveals about the relationship between human rights and conflict resolution. The challenges considered mostly stem from the cases discussed in the last two chapters, yet also draw on the contradictions and conundrums identified in the field chapters. The four challenges are: addressing the symptoms or causes of rights abuses and violent conflict; pursuing confrontation or cooperation in conflict contexts marked by structural injustices and power asymmetry; managing tensions between facilitator and advocate roles; and referring to rights violations (and rights concerns more generally) in conflict resolution processes.1

It is easy to conceive of these challenges as dilemmas as they tend to resist easy solutions and “reveal conflicting objectives and difficult orientations between alternatives”, thus reflecting what Klein Goldewijk and De Gaay Fortman call the “paradoxical nature” of reality (1999, 36). As the previous chapters revealed, the challenges considered here, arise out of highly complex and open-ended real-life situations with no clear guidelines, no map or compass to guide us through them. On the contrary, dilemmas that emerge from concrete reality are often confusing and stressful precisely because they are linked to different and conflicting ways of settling matters. Complex dilemmas also reveal a wide ‘grey area’ regarding the appeal to ethical principles. It may be easy to identify right and wrong by relying on general ethical principles and values such as respect, justice, fairness and responsibility, but dilemmas in real life often present open-ended alternatives that are neither wholly right nor wholly wrong (ibid).

Dilemmas are thus challenging in that they present various options for action that are all justifiable. Each has certain consequences, multiple values and conflicting interests are at stake, and a choice is required (idem, 39-40). The Oxford Dictionary concurs, defining a dilemma as “a situation in which a difficult choice has to be made between two or more alternatives that are equally undesirable”.2 Clearly, dilemmas have no real solutions that truly settle the matter; all possible courses of action have undesirable implications. Whatever choice is made, it is inherently unsatisfying. It has hence been argued that it is hard – if not impossible – to resolve dilemmas within their own logic.3

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1 These are obviously not the only challenges faced by organisations and individual practitioners working on human rights and/or conflict resolution; many more questions have surfaced in the previous chapters. The decision to focus on these four stems from the fact that I have observed them arising for actors in widely different contexts, which suggests that these are highly relevant to the relationship between human rights and conflict resolution (even if they are not unique to actors in these fields). This chapter does not seek to address these issues exhaustively but to serve as a first exploration that can be used to identify further lines of inquiry later.


This dilemma notion is helpful in reflecting that the challenges considered here defy easy answers and clear-cut solutions, and involve possibly conflicting values and interests. Understanding them as such also seems appropriate given the fact that the dilemma notion often emerges when human rights and conflict resolution are considered in conjunction; the ‘peace vs. justice dilemma’ is probably the most obvious manifestation of this tendency.\(^4\) Furthermore, several of the above challenges seem to pose outright contradictions for individuals and organisations facing them, as if they force actors to choose between competing impulses or energies (Lederach 2003, 51-52). Should they prioritise advocacy or facilitation, symptoms or causes, cooperation or confrontation?

Such dilemma thinking can be problematic, however. It easily locks actors into what can be called ‘either/or’ thinking, as if there are, as the Oxford Dictionary suggests, only two ‘equally undesirable’ alternatives. This is reflected in Klein Goldewijk and De Gaay Fortman’s assessment that dilemma thinking is “unavoidably constrictive: it reduces the basic options at stake to two”, framed in mutually exclusive terms (idem, 40).\(^5\) Of course, in reality, the options are seldom limited to two (ibid). Dilemma thinking thus disregards the possibility of other alternatives beyond the two that are obvious. It also overlooks the possibility that a combination of the two is possible – ‘both/and’ rather than ‘either/or’.

This chapter examines the four challenges against the background of this discussion. It shows how each can be perceived as a ‘dilemma’ supposedly presenting competing imperatives. It also shows how construing them in this way restricts the options for action available to actors seeking to advance human rights and conflict resolution, and often simplifies the situation and issues at hand. It thus argues that capturing actors’ choices in ‘rigid either/or terms’ (Lederach 2003, 52) has serious limitations, and fails to do justice to the ways in which they try to navigate complex reality. Practical examples and insights from the literature demonstrate that organisations and practitioners may in fact seek to combine the two evident options for action or identify alternatives outside the simplistic binary frame; such approaches essentially entail a process of reframing the challenge at hand to create space for manoeuvring.

The discussion of the four challenges – and the ways in which actors seek to deal with them – reveals a degree of interdependence between the fields’ approaches and ideas; often, these are both necessary but not sufficient in themselves. Such interdependence does not always look the same but may manifest itself, for example, concurrently or sequentially. ‘Interdependence’ does not mean that possible tensions between human rights and conflict resolution are glossed over. Three challenges actually seem to pit the two fields against one another. These are raising rights concerns in conflict resolution interventions (discussed in 7.4), role tensions (7.3), and emphasising

\(^4\) See 1.1.1.

cooperation or confrontation in contexts of severe power asymmetry (7.2). That said, the latter is paradoxical in that it also speaks to a common feature of the fields, namely their mixed relationship with power. A similarity is also at stake in the remaining challenge, tackling symptoms and causes, which is discussed first (7.1).

The chapter has five sections, of which the first four – addressing each of the challenges – follow the same structure: after an introduction, the specific ‘dilemma’ is set out with reference to practical examples and, where relevant, additional literature. A possible approach is then put forth, occasionally with a visual image to clarify matters. The third sub-section contains a discussion, the focus of which varies, providing additional explanation and examples, identifying likely implications, comparing different examples, or engaging with objections to the approach. Each section ends with a summary presenting insights gained about the relationship between human rights and conflict resolution. The fifth section presents an overall conclusion including a summary overview of findings (7.5).

It should be noted that the possible approaches to the challenges outlined in this chapter imply considerable agency on the part of the actors discussed. This is in line with the actor-orientation and constructivist perspective adopted in this study. It also reflects the belief in ‘make-ability’ that is implicit in both fields. Naturally, in reality, organisations and practitioners seeking to advance human rights and/or conflict resolution do not have unlimited agency. Various factors affect their choices and actions – and also how the relationship between human rights and conflict resolution unfolds in a given situation. That is not the focus here, but the discussion will at times highlight how context matters a great deal. More attention will be paid to the issue of context in the next chapter.

### 7.1 Immediate Relief or Long-Term Change? Tackling Symptoms and Causes of Rights Abuses and Violent Conflict

This first section focuses on “the dilemma of balancing short-term and long-term imperatives” (Lutz, Babbit, and Hannum 2003, 184). While not unique to the human rights and conflict resolution fields, it is discussed here in part because it shows that the fields may be less different than is often assumed. It also reveals that combining the respective emphases and approaches of human rights and conflict resolution offers a possible approach to dealing with this dilemma. Overall, the section argues that it is possible to contribute to immediate relief and long-term change at the same time, rather than having to focus on one or the other. It proposes that one way of achieving this is by incorporating elements and strategies usually associated with ‘the other field’. Put differently, part of the ‘solution’ to this dilemma may lie in what the

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6 This challenge is therefore discussed as reflecting both a tension between the fields and a commonality. See 7.2.1.
7 See 1.2.1 (on constructivism and actor-orientation) and 4.2.1 (on the fields’ belief in make-ability), respectively.
other field offers. (This will not suddenly make dealing with this challenge a simple matter, hence the quotation marks around ‘solution.’)

The section outlines the dilemma, noting that short-term goals easily take precedence in the face of real or imminent violence. This has certain shortcomings, but focusing only on underlying problems is also problematic (7.1.1). It then sets out how a few actors have tried to tackle causes and symptoms at the same time, working in a way that is both "short-term responsive and long-term strategic" (Lederach 2003, 50). This is explained through a model put forth by conflict resolution scholar/practitioner Lederach (ibid; 1997), building on work by peace researcher Dugan (1996) (7.1.2).

The subsequent discussion, with further examples, suggests that conflict resolution-focused actors may strengthen the long-term impact of their de-escalation, dialogue, problem-solving and relationship-building efforts by clarifying and institutionalising ‘rules of engagement’ and by enhancing governance and accountability mechanisms. Human rights-oriented actors can probably do the same by complementing their concern with rights and responsibilities with attention to the relational and institutional context in which violations occur and by creating spaces for dialogue and problem-solving amongst diverse groups (7.1.3). The section concludes with a summary presenting insights about the relationship between human rights and conflict resolution (71.4).

7.1.1 The Dilemma

Here, the dilemma is set out with reference to the discussion and examples presented in previous chapters, and some additional literature. The analysis below shows that the two obvious options for action in ‘the symptoms versus causes question’ (Gready and Phillips 2009, 11) are both flawed if pursued in isolation. It argues that construing this dilemma in either/or terms is problematic, given the interdependence of causes and symptoms. Dealing with this challenge thus raises fundamental questions about the focus, scope, and objective of interventions and their ramifications, including unintended ones.

Chapters 2 and 3 demonstrated that both the human rights and conflict resolution fields struggle with balancing short- and long-term goals. Actors in these fields generally seek to support or facilitate structural change, but often use strategies that are primarily geared towards achieving short-term objectives: containing violence, ending abuses, providing redress to individual victims, etc. This contradiction is embedded in both human rights and conflict resolution.

Various examples in chapters 5 and 6 bear out this tendency to focus on addressing symptoms. A case in point is LHR coordinator Magardie’s account of the mediation during a large urban eviction at Hangberg mountain: he was mostly concerned about keeping his clients in their houses, fearing that the mediator’s focus on underlying
problems (e.g. housing, access to schools and other services, community development) would obscure a tangible solution to their imminent eviction. Another example is the response to widespread xenophobic violence in the Western Cape in 2008, which mostly sought to stem the crisis. Conflict resolution practitioners served as "fire-fighters, sent out to quell things, keep it in a holding pattern", as one of them put it. They focused primarily on facilitating the reintegration of those displaced, and little (if any) attention was devoted to developing a more systemic approach to the exclusion, deprivation and racism that had fuelled the violence.

These and other examples reflect that mitigating suffering and containing instability easily take priority over other concerns in the face of real or imminent violence. The limitations of this symptom-orientation are clear: interventions intended to ameliorate conditions in the short-term are likely to be stop-gap measures with limited long-term effect. Situations of rights denial and destructive conflict usually defy quick fixes, being rooted in multiple, interrelated and complex issues (Parlevliet 2002, 24). Also, by constantly reacting to wrongs being committed, actors run the risk of 'failing to see the wider picture' as Churches in Manicaland observed. This emphasis on 'the tip of the iceberg' (Kennedy 2012, 25; Parlevliet 2010a, 14) is thus problematic, irrespective of whether one is coming from a human rights or a conflict resolution perspective.

A focus on treating symptoms carries the additional risk of 'becoming part of the problem' by 'contributing to the underlying causes' (Gready and Phillips 2009, 11-12). Writing by Israeli human rights lawyer Michael Sfard is instructive in this regard. Sfard represents Palestinians living in the occupied territories before Israel's Supreme Court. He argues that bringing individual petitions before the Court helps to challenge the occupation's injustices and has generated some self-restraint amongst the Israeli Defense Forces, but also legitimizes an institution that is a pillar of the very regime and occupation that is being contested (2009). In his view, by lodging petitions, "human rights lawyers act as public relations agents of the occupation by promoting the notion that Palestinian residents have a recourse to justice" (idem, 48). This is worrisome not least because the Court's jurisprudence has "systematically enhanced the power and authority of the Israeli Army and approved a wide range of abuses of the rights of the occupied population" (idem, 39).

The risk of practitioners' strategies feeding into the underlying problems can also be detected in some of the practical experiences discussed previously, two of which will be mentioned here. The review of the CCR intervention in Du Noon and Doornbach in 2001 revealed that the de-escalation resulting from our conflict resolution efforts may

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8 See 5.1.4.
9 Interview Ghalib Galant, 3 June 2011; confirmed by senior civil servant Sifiso Mbuyisa, interview, 7 June 2011.
10 See 5.2.4.
11 Report on Reflection and Strategizing Session with Steering Committee of Churches in Manicaland, Mutare, 9 December 2002, for CIM and CCR, by author and on file with her. See also 6.1.4.
have reduced the pressure on the state to take meaningful action to address the underlying conditions giving rise to the violence (after all, the urgency to do so decreased as the situation stabilised).\textsuperscript{12} Furthermore, the direct interaction between the settlement residents and local government facilitated by the CCR team may have shown the South African squatters that violence against non-nationals pays off by enhancing direct access to public officials and prompting the allocation of additional resources. Thus, however well-intentioned, this intervention arguably ‘contributed to the causes’ in two ways: by enabling the state to shirk responsibility for failing to live up to its rights obligations and for not taking effective measures, and by inadvertently ‘rewarding’ violent approaches to conflict in a society already saturated with violence.

The case of the Northern Ireland Parades Commission provides another insightful example of how strategies to contain symptoms may ‘become part of the problem’. The NIPC’s (mandate-induced) emphasis on resolving such disputes in a way that enables parades to occur with minimal threat to public order, tends to turn the absence of public disorder into the primary indicator of ‘peace and stability’. As a consequence, specific parades may be seen as ‘successful’ or ‘peaceful’ without recognising that an astounding amount of effort and energy is required to stave off any overt violence, masking what is actually a conflict-prone status quo.\textsuperscript{13} An illusion of ‘normality’ can thus gain hold without a substantial change in the dysfunctional nature of social relationships.\textsuperscript{14}

This focus on the absence of direct, physical violence also puts much emphasis on the state as the key actor in addressing societal conflict, since it is the primary duty-holder for maintaining law and order and protecting citizen’s rights. Hence, institutions like the Parades Commission and the police have long been expected to regulate contentious parades in Northern Ireland, as parade organisers and protesting residents take strong positions on what they feel entitled to, with little consideration

\textsuperscript{12} This is the same situation mentioned at the beginning of this study. See also 5.2.3 (and 3.5.2 more generally).

\textsuperscript{13} For example, in spring 2003, I witnessed a ‘junior parade’ of young people associated with the Orange Order in Ardoyne. The responsible Police Commander and a Parades Commissioner afterwards assessed it as ‘peaceful, even ‘normal’. When I asked what they meant, they noted that the event had occurred without violence or massive protest from nationalist residents in the area. They did not pay any heed to what had caught my attention, e.g. that the state had had to mount a large-scale security operation involving several units of riot police and military personnel on the ground and in the air, setting up a command centre with banks of CCTV screens, and installing crowd control obstacles. They also disregarded the fact that the preparations for this operation had lasted three months and that the NIPC’s Authorised Officers had engaged in intensive shuttle diplomacy over weeks and months prior to the event. To my surprise, the parade itself consisted of some ten children between the ages of 6 and 12, accompanied by five adults. My interlocutors overlooked these elements because they had become part of how things are done and what is considered acceptable. Their sense of ‘normality’ and ‘peacefulness’ was only turned on its head when I asked them how ‘normal’ it is that such measures are necessary for a small group of children to walk down a road in a ‘peaceful’ society (personal notes, April/May 2003).

\textsuperscript{14} Report on work conducted with the Parades Commission, May 2003, by author, on file. Based on conversations with various interlocutors in Northern Ireland in 2003, including then Chief Superintendent Irwin Turbitt and Parades Commissioner Peter Osbourne, and Neil Jarman in his capacity as long-term observer of parading disputes.
of how their own attitudes and behaviour may affect their ability to exercise their rights or how they might influence others’ willingness to take their rights into account. Effectively, protagonists’ responsibility for policing their own behaviour and acting within the framework of the law is thus removed (Benington and Turbitt 2007, 384-387; Parlevliet 2009, 279-281).

These three examples – one relating to human rights work, the other two to conflict resolution practice – demonstrate that mostly or exclusively concentrating on alleviating symptoms is clearly flawed in the eyes of the actors concerned. Some actors therefore decide to focus instead on pursuing structural remedies to pave the way for long-term change. For example, LHR changed the strategy of its Security of Farmworkers Project in 2010 to focus more on the state’s obligations to facilitate access to alternative accommodation for persons threatened with eviction and to provide services. In LHR’s view, its approach until then had not fundamentally altered the conditions experienced by farmworkers, even if it had resolved specific cases and been helpful in building the project’s credibility and expertise. In SFP coordinator Magardie’s words:

We’ll do less cases, less run of the mill, and be more strategic in what cases we take on and what we want to achieve. Provision of legal services, dealing with [individual] cases – that was an important strategy, to defend people in their homes. But now we have to go one step beyond. We need to now focus more on [litigation of] test cases to deal with the underlying problems and patterns.15

Yet such an approach – aiming for structural change without addressing immediate problems in a context where violence is imminent and rights abuses are already taking place – has drawbacks too. As LHR shifts towards strategic litigation, what will happen to those situations that do not qualify as test cases? How many farmworkers will be evicted – with little access to legal assistance – before its new strategy produces results?

The ongoing importance of addressing rights violations that are symptomatic of structural conditions emerges from an interview with Undine Whande, a conflict resolution practitioner who worked extensively with a human rights NGO in Zimbabwe between 2010 and 2013. She notes that the organisation’s lawyers realised that their legal representation of activists at police stations and in court has become “about protecting a minimal space [...] – if you do get arrested, you do get out again”:

[They’re] not being able to prevent that you’re wrongfully charged, that some mock prosecutor might end up pursuing the case and that some judge, who’s compromised, might actually end up sentencing you on an unjust charge that was cooked up. (It often happens that people get charged with the very crimes they came to report.) [...] Working in that type of environment, I think there’s a sense that [the organisation] keeps a minimum non-negotiable. Like [X] is a guy who works for a youth network - he says that

15 Interview, 16 Nov. 2010, through skype.
his activism was greatly strengthened by the fact that he knows there is a lawyer if [he] gets arrested.\(^{16}\)

The experiences of the Parades Commission also show that not addressing symptoms is problematic. Ongoing violence and disorder around parading disputes will fuel fear, mistrust and further polarisation between opposing groups, at community level and in the political arena. It is also likely to undermine people’s confidence in the state’s ability and/or willingness to establish the rule of law, protect citizens’ rights and provide public security (Parlevliet 2009, 264-265; Jarman 2009). Former NIPC member Robin Percival thus argues that maintaining public order should remain an important concern for the Commission.\(^{17}\)

This discussion demonstrates that “the conflict between concrete and immediate help [...] versus struggling for structural change at some point in the future” (Greedy and Phillips 2009, 11) is a common and painful dilemma shared by human rights and conflict resolution practitioners. This dilemma raises questions about “the appropriate remit and ambition, and sometimes unintended consequences” of human rights efforts and conflict resolution interventions (ibid).\(^{18}\) Faced with such questions and the contradictions involved, it is easy to get caught in ‘either/or’ thinking, the notion that practitioners must opt for one or the other option – pursuing short- or long-term goals, targeting symptoms or causes, facilitating immediate relief or working towards structural change – also in light of limited resources.

Yet it should be clear by now that both are necessary and important, but neither is sufficient or sustainable in its own right. An ‘either/or’ frame of reference is thus flawed. It disregards the interdependence of symptoms and causes: fire-fighting is ineffective on its own when not coupled with measures to remove the logs that caught fire, but it is hard to get to the logs when the fire is so intense that sparks fly everywhere and one risks being consumed by it. The either/or frame also obscures the question whether the different strategies can be combined – a question echoed in the concern expressed by clergy from the Manicaland Churches, “How can we fit the sprints we are doing into the long-term marathon we’re also running?,”\(^{19}\) and also posed by others (e.g. Greedy and Phillips 2009, 12).

### 7.1.2 Possible Approach

In fact, various actors appear to combine short- and long-term strategies. This is illustrated below by a few examples. This possible approach is explained in terms of an analytical framework put forth by Lederach (2003; 1997), building on Dugan (1996), and with the aid of an image that depicts the distinction between causes and

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\(^{16}\) Interview, 6 June 2011 Cape Town.

\(^{17}\) Personal communication, 15 Sept. 2014, on file with author.

\(^{18}\) Greedy and Phillips’ writing only focuses on human rights practice, yet it is equally relevant to conflict resolution efforts.

\(^{19}\) See 6.1.4.
symptoms, and various ‘levels of response’ at which conflicts can be addressed. While conceived in the conflict resolution field, this framework is relevant for actors in both fields, as will be explained in the next sub-section.

In chapter 6, it was noted how the Kenyan National Commission on Human Rights had started intervening in the Mount Elgon area (which is prone to violent clashes between different ethnic groups), using a combination of human rights- and conflict resolution-oriented strategies. An important component of its intervention was convening 'human rights forums'. At these events, Commission staff facilitated interaction between farmers, law enforcement officers and officials from the Ministry of Agriculture with a view to tackling immediate problems about land allocation and developing more long-term solutions related to access to land, water and food (Nderitu 2010, 58).20

The intervention in a conflict between teachers and the principal at a school in an impoverished township, facilitated by a CCR colleague (mentioned in chapter 5), represents another example of an effort to address symptoms and causes simultaneously. Besides facilitating dialogue between the conflicting parties and providing communication skills training, this conflict resolution intervention included the development of a code of conduct to guide future interactions at the school, and measures to improve the legitimacy and functioning of the school governance systems.21

In a similar vein, the Northern Ireland Parades Commission has issued a code of conduct that protagonists on either side have to abide by. The code includes provisions on stewarding by parade and protest organisers so as to encourage them to assume responsibility for the behaviour of their own supporters.22 The NIPC considers compliance with this code when deciding on imposing conditions on a parade or protest (Northern Ireland Parades Commission 2005a, 7-8; 2005c). It has further made ‘constructive engagement’ between organisers and residents a consideration in its decision-making process; in this regard the NIPC assesses whether the steps taken “by the organisers of public processions or related protest meetings represent a real attempt to address the relevant concerns of others” (Northern Ireland Parades Commission 2005b, 4). These are valuable measures that help mitigate some of the downsides of the Commission’s concern with reducing public disorder in the short term.

20 See 6.2.3. Also conversation with Alice Nderitu, 7 June 2011, Cape Town.
21 See 5.2.5.
22 ‘Stewarding’ refers to the deployment of individuals (‘stewards’ or ‘marshalls’) to assist the organisers of a public event to maintain control over those participating in it. The Northern Ireland practice of stewarding is informed by South African experiences; during apartheid, marshals were used at demonstrations to maintain order and thereby give the security forces less reason to use violence against protesters; personal communication with Neil Jarman, 2001-2003. The NIPC code of conduct further covers the routing of parades (and the importance of giving advance notice), the timing of parades, the involvement of bands in parades, stewarding, and preparing a parade (see Northern Ireland Parades Commission 2005c).
Common to these examples is the effort to be “short-term responsive and long-term strategic” as Lederach puts it (2003, 50). This conflict resolution scholar/practitioner argues that it is possible to conceptualise “change processes that address solutions for immediate problems and at the same time create a platform for longer-term change of relational and structural patterns” (idem, 38, emphasis in original; 1997). The framework he puts forth “emphasizes the challenge of how to end something that is not desired and how to build something that is desired” (ibid, emphasis in original). It reflects an ambition to address, simultaneously, the short-term priority of alleviating – or ‘ending’ – symptoms of destructive conflict, including rights abuses, and the long-term imperative of addressing root causes – ‘building’ the conditions for durable peace and rights.

The framework proposed by Lederach is informed by Dugan’s nested theory of conflict (1996). It asserts that conflicts can be analysed and addressed at four different yet interconnected ‘levels of response’: the issue level (the immediate problems that manifest as a crisis or visible conflict); the relationship level (the relationship context in which the ‘issue’ plays out); the sub-system level (a specific geographical or institutional setting or sector in which the ‘issue’ occurs, which also reflects the larger, structural conditions giving rise to the ‘issue’); and the system level (the larger, structural problems to be addressed, i.e. underlying causes) (Lederach 1997, 55-61; Dugan 1996). By way of illustration, consider the Du Noon/Doornbach example once more:

The ‘immediate, presenting issue’ requiring a response or solution is the eviction of non-nationals from the two informal settlements; this springs from and is embedded, amongst other things, in the relationships between South African residents and non-nationals; the two informal settlements and the governance thereof by local authorities constitute sub-systems, i.e. specific (geographical or institutional) arenas in which society-wide structural problems manifest on a more confined scale; and these in turn are embedded in broader societal conditions, such as xenophobia, economic inequity, poor service delivery, and limited state accountability.23

This framework, or ‘nested’ model suggests a more refined way to understand conflicts and possible interventions, by identifying two intermediate levels that connect symptoms and causes – rather than merely distinguishing between the two, as the discussion thus far has done (in line with much of the literature). Visually, this can be depicted as shown in Figure 1.24

Lederach argues that strategies focusing on the relationship and sub-system levels can "serve as sources of practical, immediate action and sustain long-term transformation

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23 For an example of this analytical framework as applied to complaints handling by national human rights institutions, see Parlevliet and others (2005b, 22-23).
24 Lederach usually depicts the four levels of response (also referred to as ‘nested paradigm’) the other way around (eg. 1997, 55-61), with ‘issue’ at the bottom and the other levels above. I have turned it upside down to illustrate more clearly how this ‘levels of response’ framework can be linked to the distinction between symptoms and causes (as represented in the iceberg image).
in the setting" (1997, 61, emphasis in original). In his view, these can address both the ‘micro’ issues in a particular social political setting (the visible expression of conflict, above referred to as ‘symptoms’) and the more systemic, broader concerns (mentioned above as underlying causes); they connect what he calls a specific conflict “episode” with the “epicentre” of conflict (2003, 31).

The proposed approach thus builds on the notion that the immediate problems present a ‘window’ into underlying structural conditions (Lederach 2003, 48-49), as previously alluded to in the conclusion of chapter 5. In this idea exists in the conflict resolution and human rights fields alike. Human rights reports often include detailed descriptions of individual cases of rights violations that are representative of many more, similar, cases; these may be referred to as ‘window’ or ‘illustrative’ cases. The approach set out here, however, goes further by highlighting levels of response that link symptoms and causes, or issue-level and systemic concerns. Providing additional options for action, these have the potential to offset the flaws of focusing mostly on either causes or symptoms.

**7.1.3 Discussion**

By way of further discussion, this sub-section relates the above-mentioned framework to the earlier examples and to two additional ones. Taken together, these examples suggest that incorporating elements and strategies usually associated with ‘the other

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25 See 5.3.
26 Amnesty International generally speaks of ‘illustrative cases’ (David Petrasek, personal communication, 8 Nov. 2011, Amsterdam). The South African Truth and Reconciliation Commission called them ‘window cases.’
field’ may facilitate working at the two intermediate levels of response and impacting on short-term and long-term goals at the same time.

The examples mentioned thus far illustrate the relevance of this framework regarding ‘levels of response’ for actors in the conflict resolution and human rights fields, and those operating on the interface of the two. The approach adopted by Kenya’s National Commission on Human Rights in the Mount Elgon area – convening ‘human rights forums’ – can be understood as targeting the two intermediate levels of response. It builds relationships between different groups of citizens, law enforcement officials and civil servants, and enhances government accountability in a specific setting. According to Alice Nderitu, the forums also served ‘to make human rights real’ by linking economic, social and cultural rights (related to access to land and water) to civil and political rights (related to freedom of association and information).27

In terms of the school example and the Parades Commission, the development and application of a code of conduct is intended to improve the interaction between different parties (relationship level) through institutionalising rules about acceptable behaviour and dealing with complaints. Its application within a specific context (i.e. parading disputes in a certain locality, a particular school) enhances its sub-system dimension. In the school case, the latter is further targeted by attention to the functioning of the school’s governance systems; this also relates to underlying conditions pertaining to participation, decision-making and leadership. For the Parades Commission, the formal emphasis on stewarding and constructive engagement works in this direction by speaking to systemic concerns about accountability and the reciprocity of rights.

Such strategies have the potential to spread beyond the particular context targeted at a given time (e.g. to interactions between unionists and nationalists in other localities or in contexts other than parading, and in the school case, to other schools in the Western Cape). It is noteworthy in this regard that the Northern Ireland Human Rights Commission has observed a “conceptual shift in Northern Ireland parading discourse towards protecting ‘the rights of others’ from sectarianism” (2011, 42): where restrictions on parades and protests used to be exclusively based on public order grounds, it has become increasingly accepted that “limitations can also be grounded on the basis of advocacy of hatred and discrimination” (ibid).28 While it is questionable whether this shift can be only attributed to the NIPC’s approach, it has probably contributed to some extent.29

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27 Conversation, 7 June 2011, Cape Town.
28 This is modelled “through the prism of [European Convention on Human Rights] ‘rights of others’ limitations, but is not yet reflected in the domestic legal framework” for parading (Northern Ireland Parades Commission 2011, 42). Neil Jarman has also observed increasing recognition of what he calls the ‘mutuality of rights’ (interview, 7 Nov. 2011, through skype).
29 In Derry, for example, the NIPC has supported moves by the Apprentice Boys of Derry Association (which engages in parading) and the Bogside Residents’ Group (through which local opposition to the parades was organised) to gradually loosen restrictions on parades: restrictions that had initially been agreed upon were
The experiences of two human rights-oriented civil society organisations can also be understood in terms of the framework outlined above. They represent additional examples highlighting the validity and usefulness of targeting an intermediate level of response for working towards short-term and long-term imperatives at the same time. The Zimbabwean human rights NGO referred to above was looking for ways to impact more substantially on rights protection than merely providing the legal support necessary when a person came into conflict with the law or the authorities – i.e. doing more than “just bailing people out”, as one observer put it casually.31

Senior members of the organisation realised that they had some links with prosecutors and magistrates – for example, by having gone to law school together. They started developing these relationships, not to influence the outcome of cases or the way in which a client’s matter was handled, but with “the objective to ‘humanise’ the lawyer, the prosecutor, the judicial officer, and make all of them see the importance of their role in the justice delivery system, and the value of cooperating, through complying with their obligations, in order to ensure that rights are protected and justice is done.”32 They anticipated that ‘this would make a difference when a case comes to court. Ultimately, the client is going to benefit’.33

Engaging with magistrates and prosecutors on the professionalism and quality of the judicial services rendered also gave the organisation opportunities to assist them with training and capacity-building on issues of law and human rights protection. Reportedly, such assistance empowered the magistrates and prosecutors and opened up space for them to personally reflect about acting with integrity within the system, prompting some to question orders. The extent to which these spaces became a “site for expression and expansion of agency” of those participating (Cornwall 2002, 9), and had real and transformative potential to shape “policies, discourses, decisions and relationships affecting people’s life and interests” (Gaventa 2006, 25) may be inferred from the fact that after some time, a senior government official sought to prevent further interactions amongst different actors in the justice sector.34

The human rights NGO thus targeted the relationship level so as to facilitate the handling of specific cases (which can be understood as ‘issue’-level interventions) and have a more long-term impact. The training and capacity-building can be understood as steps towards developing a sub-system intervention with the potential for wider

modified each year as relationships consolidated and parading behaviour improved. Personal communication from Robin Percival, former NIPC member, 14 Sept. 2014.

30 The organisation was previously mentioned in 7.1.1. Example drawn from Undine Whande, interview 6 Jun. 2011, Cape Town, and verified with the director of the NGO (name of the person and the organisation withheld at request), both verbally (Jan. 2012, Harare) and in writing (Jul. 2015).
31 Interview, Undine Whande, op.cit. Her phrase is not meant to minimise the value of the NGO’s legal interventions.
32 Written comment by the director of the organisation, 3 Jul. 2015, used with permission.
33 Paraphrased from conversation with director, Jan. 2012.
34 According to Whande, “this means that they touched a nerve, right?” Interview, op.cit.
ramifications, evolving around a common concern with the professionalism of judicial services provided.\textsuperscript{35}

The relevance of such relationship- and sub-system-oriented strategies for human rights actors intent on working towards long-term change while affecting current issues and conditions, also emerges from the example of the Community Self-Reliance Centre (CSRC), an NGO and membership organisation spearheading the land rights movement in Nepal. This organisation, established in 1993, combines grassroots organising, popular education, developing human rights defenders, and lobbying for land and agrarian reform with the national government.\textsuperscript{36}

Initially only working in two village development committees (the Nepali equivalent to municipalities) in 1993, its activities now cover 53 of Nepal’s 75 districts. As part of its general efforts to ensure a more equitable distribution and ownership of land and to protect those farming the land against exploitation by landlords, CSRC undertook a ‘mapping’ of land distribution in 16 districts around the country in 2010-2011.\textsuperscript{37} There are no reliable figures in Nepal of the exact number of rural landless. A true picture of farm distribution is also lacking, due to outdated data, tiny samples, different sets of information providing contradictory results, and wilful concealment of real holding size (Alden Wily, Chapagain, and Sharma 2009, 38).

It is clear, however, that distribution is highly skewed, with a small number of farmers owning vast tracts of land – much above the legal landholding limit – and more than half of rural households being functionally landless.\textsuperscript{38} Landholding is strongly correlated with caste and ethnicity (ibid). Landlessness is prevalent amongst Nepal’s low castes and indigenous peoples; many belonging to these groups work as bonded or semi-bonded labourers, making them very vulnerable to human rights abuses.\textsuperscript{39} Ownership of land thus continues to determine the economic prosperity, social status

\textsuperscript{35} The common concern with the professional nature of the judicial services rendered in Zimbabwe was emphasised by the organisation both because it felt very strongly that this truly was a common concern, but also to take away the suspicion that its actions were politically motivated. Conversation with director, January 2012.

\textsuperscript{36} For more information on the organisation, see its website, \url{http://www.csrcnepal.org/}. The Leitner Center for International Law and Justice at Fordham Law School in New York awarded the organisation its annual Human Rights Prize in 2010. For a historical overview of social activism around land rights in Nepal, see Basnet (2008).

\textsuperscript{37} See Dhakal (2011) for findings and explanation of methodology. The study focused on forms and types of tenure arrangements, different rights allocated to the tillers in various parts of the country, gender patterns in various forms of ownership and tenure arrangements, and land transactions (including inheritance and land fragmentation). The districts selected represent the different areas of Nepal from east to west and from north to south; mapping was done in one village development committee (or sub-district) per district.

\textsuperscript{38} According to Alden Wily and others, about 7.5% of farmers own nearly one third of the country’s farming area, and nearly 60% of rural households are functionally landless (2009, 38) (meaning they own less than 0.5 ha, which is required to meet subsistence requirements) – although real landlessness and land poverty could be much higher since functional landlessness is estimated on the basis of minimum figures (idem, 46). See also Deuja (2008) on causes of landlessness in Nepal.

\textsuperscript{39} While formally outlawed since the 1950s, bonded labour affects an estimated 80,000-100,000 households (Alden Wily and others 2009, 39). Semi-bonded labour affects many more. Also personal notes from discussions with CSRC leadership, 2007-2008. On Nepal’s ethnic, religious and linguistic diversity, see Lawoti (2012).
and political power of individuals and families in Nepal (Dhakal 2011, xiv), also because it is often a precondition for accessing services (Office of the High Commissioner for Human Rights 2007, 15). Land reform was a central Maoist demand during Nepal’s civil war (1996-2006), and it is an important component of the country’s peace agreement and interim constitution. However, in the post-agreement period little progress has been made, and land issues have become an increasing source of tension with frequent forced evictions, conflicts between landowners and landless, and land seizures (idem, 19).

The mapping exercise was intended to generate reliable primary data on forms and patterns of landholdings, ownership and land relations in contemporary Nepal (Dhakal 2011, xiv, 2). This was supposed to enable the organisation and the broader land rights movement to interact effectively with the newly established land reform commission and to feed into the drafting of Nepal’s new constitution and of land-related policies and legislation. Yet through this intervention – which can be seen as a ‘sub-system’ response given its focus on specific districts – CSRC arguably managed to connect its ‘system-level’ objective (changing policy and legislation to facilitate structural change) with its ambition of having an immediate impact on the ground.

According to CSRC director Jagat Basnet and his colleagues Jagat Deuja and Kalpana Karki, the mapping helped to reduce tension at local level and resolve several disputes between landlords and landless labourers. It did so by enhancing relationships between various parties and raising their awareness of local conditions and formal regulations; this apparently prompted some landlords to settle tenants’ ownership claims by handing over part of their land to them. CSRC also used the study’s findings to refute claims by politicians and public officials that the number of unregistered tenants in Nepal is so small that tenancy rights need not be provided for in law. The data compiled have led the authorities to agree on ensuring tenancy rights for unregistered tenants in law after all.

The approaches adopted in the examples above are alike in that they all enable the human rights and conflict resolution actors concerned to work in a way that is simultaneously short-term responsive and long-term strategic (Lederach 2003, 50).

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41 Information obtained from Jagat Basnet, Jagat Deuja and Kalpana Karki, CSRC through personal conversation (2009) and correspondence (2010-2011) (with translation by Mukunda Kattel).
42 Ibid. Deuja is CSRC’s deputy director, having joined the land rights movement in 1996 and working previously as the Centre’s programme manager. Kalpana Karki was CSRC’s campaign coordinator in Dhangadhi, a city in Nepal’s Far Western Development Region, at the time of my work with CSRC; nowadays she is its (national) campaign coordinator.
43 Ibid. CSRC findings in this regard are confirmed by the study by Alden Wily and others, who estimate that the number of farmers operating as tenants is thrice the number of formally registered tenants (2009, 39).
44 Information obtained from Jagat Basnet, Jagat Deuja and Kalpana Karki, CSRC, op.cit.
Yet the approaches differ too, in that the two sets of actors seem to adopt elements and strategies more commonly associated with ‘the other field’ in order to achieve this. Human rights actors pay more attention to the relational context in which rights violations take place and start creating spaces where diverse groups or parties can discuss human rights concerns and work out possible solutions – thus using approaches that are reminiscent of the conflict resolution field. Meanwhile, actors mostly concerned with conflict resolution appear to focus on clarifying and institutionalising ‘rules of engagement’ and enhancing accountability and governance mechanisms, strategies that evoke the human rights field.

7.1.4 In Sum

This section has highlighted that the fields of human rights and conflict resolution are both seriously challenged when it comes to balancing short-term and long-term goals. The fields are very alike in this regard, even if that is not widely acknowledged. The section has argued that dealing with this dilemma need not be a matter of either providing immediate relief or facilitating long-term change – or, in terms of the framework discussed, of pursuing either ‘issue’- or ‘system’- level responses. Such an ‘either/or’ frame fails to appreciate that symptoms and causes present “different but interdependent aspects of a complex situation” (Lederach 2003, 50).

Instead, the dilemma may be better understood as a challenge of doing both at the same time. It can be reframed along the following lines: how can symptoms be tackled in such a way that this has longer-term ramifications and contributes to structural change? And, how can we address the underlying causes giving rise to violence and symptomatic rights violations in a way that also improves conditions in the short term? Such reframing does not miraculously solve the dilemma, but it provides space for thinking creatively about pursuing necessary and interdependent imperatives.

Through various examples, the section has demonstrated that it is indeed possible “to create strategies that integrate short-term response with long-term change” (ibid). Doing so is facilitated when actors design interventions that try to connect these two priorities – and this, in turn, may be aided by incorporating emphases and tactics usually associated with ‘the other field.’ Put differently, combining elements of human rights and conflict resolution may assist actors working in these fields to respond to immediate problems on the ground while also having a longer-term impact. Conflict resolution actors may enhance the long-term ramifications of their efforts towards dialogue, de-escalation, relationship-building and problem-solving by focusing more on rights, rules and responsibilities, both vertically (between state and citizens) and horizontally (between individuals and groups). For human rights actors the reverse appears to apply: relationship-building and creating space for dialogue and problem-

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45 A notable exception is Lutz and others (2003, 183), which refers to this as ‘a shared dilemma’.
46 See Parlevliet (2009) on horizontal and vertical relationships; and 8.1.2 on horizontal and vertical application of human rights.
solving across divisions and perspectives may deepen the impact of their usual strategies.

Overall, the discussion yields two main insights about the relationship between the fields. It brings out that human rights and conflict resolution may be less different than is often presumed. It also points to a certain concurrent complementarity of human rights and conflict resolution. After all, if one way of managing this challenge is to draw on emphases and strategies from the other field, this highlights that combining aspects of both fields can strengthen interventions in either area. This requires a degree of reflection in terms of recognising the limitations of tried and tested methods, and looking for additional ways to enhance the impact of efforts undertaken.

7.2 Confrontation or Cooperation? The Ebb and Flow of Addressing Conflict and Advancing Human Rights

This section reviews the dilemma of pursuing confrontation or cooperation in conflict contexts marked by structural injustices and power asymmetry between opponents. Here, human rights and conflict resolution seem to be at odds as human rights practices are inclined towards confrontation, challenge and critique, while conflict resolution is oriented towards cooperation, negotiation and engagement. Yet the confrontation/cooperation dilemma also evokes a challenge that is common to both fields, namely their mixed relationship with power. A certain paradox is thus at hand in that the dilemma appears to set human rights and conflict resolution apart but also speaks to one of their similarities, namely a tension present in both fields.

Drawing on Curle’s analysis of the dynamics of conflict caused by ‘unbalanced’ relationships (1971) and other literature, the section argues that strategies intended to exert pressure and confront an unjust status quo and those geared towards facilitating dialogue and cooperation are not mutually exclusive but interdependent. As such, the dilemma highlights the need to strive to attain a balance between confrontation and cooperation, rather than making a choice between them (Van der Merwe 1989, 65-66; Kahane 2010, 54). Time is an essential factor in this regard, as confrontational activism and advocacy are probably necessary precursors to facilitating dialogue between conflicting parties in contexts of power asymmetry (Dudouet 2006, 54; Parlevliet 2010a, 27).

The section first sets out the relevance of both cooperation and confrontation in contexts where power is imbalanced, and points to the tension between the two strategies (7.2.1). It then proposes a possible approach to the dilemma, which takes the dynamics of asymmetric conflict into account, recognises the significance of intensifying conflict, and stresses the need to use different strategies at different points in time. This is illustrated with reference to the land rights movement in Nepal (7.2.2). Subsequently, the section discusses some implications of recognising the ‘ebb
and flow’ of asymmetric conflict (Lederach 2003, 33) for conflict resolution and human rights practice (7.2.3). A concluding summary presents insights gained about the relationship between human rights and conflict resolution (7.2.4).

7.2.1 The Dilemma

This sub-section lays out the dilemma of pursuing confrontation or cooperation in conflicts characterised by significant disparity in power, status and resources between opposing parties, with reference to literature and examples from previous chapters. After revisiting the notion of asymmetric conflict, it explains why confrontation and cooperation are both useful and important strategies in such contexts but insufficient in their own right. The discussion thus echoes the line of argument put forth in 7.1, suggesting that an ‘either/or’ frame is unsuitable for understanding the dilemma. It also relates the dilemma to human rights and conflict resolution and explains the paradox that the dilemma reflects both a contradiction and a parallel between the two fields.

Asymmetric conflicts are “not only about religious, ideological or ethnic cleavages, but also and most importantly about the objective, structural repartition of power between the different contentious groups” (Dudouet 2006, 16). Their key feature is a relationship of domination in which one adversary is systematically stronger than the other; this relationship structure constitutes the root of asymmetric conflict, more so than specific issues or interests that may divide the parties. At stake is therefore opponents’ ambition to change or sustain the very structure of their relationship (Ramsbotham, Woodhouse, and Miall 2011, 24; Gallo and Marzano 2009, 2-4).

The term ‘asymmetric conflict’ is usually applied to large-scale conflicts between or within states (e.g. Kriesberg 2009b), but is more broadly applicable. Conflicts over access to and control over land – such as ongoing in Nepal – are usually asymmetric too, with public institutions and policies often being in favour of one side (i.e. landowners) (Gallo and Marzano 2009, ibid). Contemporary grassroots protests by township residents in South Africa about poor service delivery and not being taken seriously except at election time, are also characterised by structural power asymmetry.47 The discussion below draws on such varied examples, both small and large scale.

In contexts of asymmetric conflict, when violence has broken out or threatens to in the near future, conflict resolution is appealing so as to reduce destructive behaviour, decrease tension, and prepare the ground for dialogue and joint problem-solving. However, as noted in chapter 3, with its focus on negotiation and cooperation, conflict resolution may then also play into the hands of the more powerful party, fortifying

47 Since 2004, local protests have become widespread in South Africa, leading Alexander (2010) to speak of a ‘rebellion of the poor’. See also Atkinson (2007). On the emergence of a shack dwellers’ movement in Durban and the anti-eviction campaign in the Western Cape, see Pithouse (2006) and Miraftab/Wills (2005), respectively.
existing inequalities and serving as a tool for pacification.\footnote{Supposedly impartial third-party interventions in unbalanced conflict systems – both latent and manifest – hence run the risk of being used or perceived as a means “for the oppressors to bring about limited change within the boundaries of the status quo” (Dudouet, Schmelzle, and Bloomfield 2006, 31).}

Comments by two South African conflict resolution practitioners validate such concerns. Ghalib Galant for example notes that the question “peacemaking, at this juncture, is that the right thing?”\footnote{Interview, Cape Town, 3 June 2011.} has arisen for him in the context of intervening in service delivery protests in townships around Cape Town:

> If we go in there, because people in Khayelitsha, they’ve blocked [the highway] yet again, and they’re stoning the busses, and anybody coming in, cause they are now sick to death of the pit latrine that they had to live on, you know this dump, [...] the housing hasn’t been delivered, and and and – so they are now burning tyres in the street, stoning vehicles, and you go in, you rush in and you now get them into a [conflict resolution] process. Yeah, so that they don’t square off the police and the police don’t fire water cannons, and what not – what are we actually doing there? These people have been living with this situation for sixteen years, so in terms of your process, are you now saying – well, okay, give us another five? [laughs cynically] That sort of situation for another five years – is that what we’re about, as a conflict resolution person?\footnote{Ibid. Khayelitsha is one of the Cape Town’s largest townships, consisting of both formal houses and shacks.}

Likewise, Andries Odendaal, who helped to provide conflict resolution training to various audiences in Zimbabwe in the early 2000s, admits to having doubted these efforts later, when political change in the country was slow to materialise. Internally, he wondered whether “it wouldn’t have been more relevant to help people in Zimbabwe become effective activists. [...] It is that thin line of whether we promote peace in peaceful ways, or promote peace by strengthening the oppressed”.\footnote{Interview, Stellenbosch, 9 Jun. 2011. According to Odendaal, such comments are “an expression of the doubt that lives within [him], it is not [his] dominant position”.}

Consequently, at times, confrontation and mobilisation may be more appropriate than cooperation in addressing conflict and advancing human rights – or, as Galant suggests only half-jokingly, get ready for revolution, not resolution.\footnote{Interview, 3 Jun. 2011. Sifiso Mbuyisa, senior civil servant in the Western Cape, concedes that demonstrations were needed to get the government to act on its rights obligations regarding service delivery; interview, Cape Town, 7 Jun. 2011.} Francis indeed notes that “it [is] not conflict that [needs] to be prevented but violence, and sometimes conflict [is] needed to bring about change” (2010, 6). She and others thus speak of the need to escalate or intensify conflict, to make it harder for ‘the powers that be’ to maintain their privilege.\footnote{See e.g. Ramsbotham and others (2011), Parlevliet (2010a), Duduoet (2006, 2005), Lederach (1997) and Van der Merwe (1989).} This means that strategies that become relevant in contexts marked by power asymmetry and structural injustices are different from those

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usually associated with conflict resolution, namely ones that seek to challenge the
status quo and exert pressure on the more powerful side.

LHR’s decision in 2010 to focus more on litigation can be seen in this light, as it was
intended to compel the South African government to comply with its statutory
obligations, rather to secure its cooperation through negotiation.54 According to
Sheldon Magardie, the Manager of LHR’s Security of Farmworkers Project at the time,
the government’s ‘intransigence’ has necessitated litigation to enforce dwellers’ rights
in recent years:

There’s no dispute that [local government has] obligations. The Constitutional Court has
declared that the state has a duty to engage meaningfully with people facing evictions.
However, our experience is that [the state] is either not prepared to listen or they don’t
care, [they] have no appreciation of the actual reality [of what it means to be evicted.]
[...] The only time they respond is when we go to court – up to then we’re constantly
ignored.55

Judith Robb Cohen from the SAHRC concurs that “the soft approach, the sort of conflict
resolution approach, has not worked [in getting government to deliver on its rights
obligations] [...] Litigation can be a very powerful weapon if used correctly.”56

Of course, strategies exist other than judicial ones that are similarly geared towards
exerting pressure and confrontation, such as ‘the Gandhian tactic of ‘speaking truth to
power’, mobilising popular movements, increasing solidarity, making demonstrations
of resolve, establishing a demand for change” (Ramsbotham, Woodhouse, and Miall
2011, 25). While many of these constitute non-violent resistance (discussed below),
other strategies may be less peaceful.

For example, the Nepali land rights movement was long internally divided on the use
of violence to move the issue of land reform higher up on the political agenda after the
2006 peace agreement between the Maoists and the government. Many activists
believed that the government would not listen to their concerns unless the movement
were to use violence.57 In South Africa, many local protests have used militant tactics,
often when peaceful methods have not solicited a response.58 Besides forcing non-
nationals out of townships, these have included destruction of buildings, looting and
clashes with the police; some protests reportedly reached “insurrectionary
proportions with people momentarily taking control of their township” (Alexander
2010, 37).

54 See 7.1.1.
55 Interview 16 Nov. 2011, through skype; also discussed in interview 14 June 2011, Stellenbosch.
56 Interview, 10 Jun. 2011, Cape Town. As noted before, she founded the Security of Farmworkers Project at LHR.
57 Jagat Basnet, Jagat Deuja, Kalpana Karki from CSRC, written response to questions, translated by Mukunda
Kattel, Nov 2011; also personal notes taken in workshop with CSRC activists, autumn 2007, both on file with
author.
From both a human rights and conflict resolution perspective, adversarial strategies that are nonviolent are naturally preferable to destructive ones. Yet even then, intensifying conflict may well have drawbacks. In Nepal, for example, regular mobilisation and advocacy tactics used by political and social activists to buttress their demands – such as padlocking public offices with employees inside, or blocking traffic through a transport strike – tend to generate anger and irritation amongst the public at large and often make people in positions of authority reluctant to engage, all the more because they are used so frequently. In South Africa, local protests – including peaceful ones – have met with heavy-handed police responses at times, recalling images of apartheid. Sfard’s assessment of lodging petitions before Israel’s Supreme Court (2009), referred to in 7.1.1, points to a possible catch of judicial strategies in an asymmetric context – the risk that law and judicial institutions may prop up power more than they challenge it.

In general, confrontational tactics risk setting in motion an escalation in which the actions of opponents turn increasingly destructive, their resolve ‘not to give in or give up’ hardens, issues become defined in zero-sum terms, and enemy images consolidate. After all, those who benefit from the status quo will usually resent and resist demands for change. They may use various means to fend off challenges, such as conceding minor improvements, engaging in co-optation, sowing division, or embarking on intimidation and repression. All in all, strategies intended to confront and exert pressure, to force change to occur, may well increase polarisation and undermine prospects for dialogue and cooperation. Nevertheless, at some point, a process of dialogue will probably be needed to figure out a sustainable way forward.

The dilemma thus shows the tension between the need for escalation (to confront the status quo and induce willingness to change) and the need for de-escalation (to stop or prevent violence and induce cooperation). This is why it appears to put human rights and conflict resolution at odds, as human rights practices are generally more comfortable with (and inclined towards) confrontation, challenge, and critique – naming what is wrong and exerting pressure to force those abusing power to change – while conflict resolution is oriented towards cooperation and engagement – looking for common ground and negotiating interests to encourage willingness to change. Even so, the dilemma also touches on a resemblance between these fields, in that the above discussion alludes to the way in which both human rights and conflict resolution may end up sustaining conditions of power asymmetry rather than helping to change them, in practice.

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60 See also 2.5.3, on the human rights field’s ambivalence towards power.

61 See the separate discussions on each field, 2.5.3 and 3.5.3, as well as 4.2.3.
However, the observation that the confrontation/cooperation dilemma suggests a contradiction as well as a similarity between the fields, provides no insight into how to address it. The above discussion highlights that confrontation and cooperation are both necessary in asymmetric conflict yet that neither is sufficient on its own. Thus, rather than presenting a clear choice between these imperatives, or between escalation and de-escalation, the dilemma exposes their interdependence. It brings to mind Martin Luther King's observation that "power without love is reckless and abusive, and love without power is sentimental and anemic" (1967).

This suggests that a balance between power and love, or confrontation and cooperation, must be sought rather than aggressively or exclusively pursuing one or the other (Van der Merwe 1989, 65-66; Kahane 2010, 54). How can actors seeking to advance human rights and address conflict approach this, given the seeming incompatibility of these strategies, and what are the implications for human rights and conflict resolution? These questions are explored in 7.2.2 and 7.2.3, respectively.

### 7.2.2 Possible Approach

The approach to the confrontation/cooperation dilemma outlined here draws on an analysis of the dynamics of conflict caused by ‘unbalanced’ or ‘unpeaceful’ relationships, initially conceived by Curle (1971) and later endorsed or adapted by many other authors. Reflecting the relevance of intensifying conflict, it calls attention to the evolution of asymmetric conflict over time and suggests that different strategies are needed at different times. Below, this approach is first presented conceptually in a simple diagram and then illustrated with reference to the Nepali land rights movement.

According to Curle (ibid) and others, conflict resolution – in terms of interest-based negotiation – is unrealistic and unsuitable in asymmetric conflict as long as power remains highly imbalanced. Meaningful negotiation can only occur when the groups involved realise that they cannot just simply impose their will on (or eliminate) the other side, and can only achieve their respective goals through working together. For this to occur, however, the weaker side must first increase its own relative power and obtain sufficient leverage to be taken seriously and make a difference to the more powerful side. Palestinian activist Zoughbi Zoughbi puts it as follows: "strengthen the weak and bring the strong to its senses" (as cited in Kahane 2010, 102). This requires in turn that ‘the weak’ become aware of the power imbalance and structural injustices affecting them, and that they organise themselves so that they can challenge the status quo and confront ‘the strong’. That involves awareness-raising or ‘conscientisation’ (Freire 1972) and mobilisation amongst ‘the weak’ so that they start

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63 The description in this paragraph and the next draws on the writings of Curle (1971) and those of other authors building on his work, listed in the previous footnote.
articulating grievances, which brings underlying tensions to the surface. Sustained confrontation makes it difficult for ‘the strong’ to “proceed with business as usual” (Dugan 2003, 2), and increases the cost of maintaining the imbalanced relationship. It also heightens the awareness of both ‘top dog’ and ‘underdog’ that they are interdependent. This is considered to help balance the power between them, and to open up the possibility for conflict resolution.

This analysis thus recognises that “the passage from unpeaceful to peaceful relationships may involve a temporary increase in overt conflict” (Ramsbotham, Woodhouse, and Miall 2011, 24). Curle in fact argues that “the greater the unbalance between the rulers and the ruled, and the sharper the conflict of interest, the greater the need for confrontation” (1971, 201). A simple diagram, as shown in Figure 2, captures this progression.

Figure 2: Progression of conflict in unbalanced relationships

<table>
<thead>
<tr>
<th>Balanced Power</th>
<th>Unpeaceful Relations</th>
<th>Peaceful Relations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unbalanced Power</td>
<td></td>
<td>4. Peaceful Development</td>
</tr>
<tr>
<td>Latent Conflict</td>
<td>Overt Conflict</td>
<td></td>
</tr>
</tbody>
</table>

Adapted from Duduoet (2006) and Curle (1971)

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64 In asymmetric contexts, structural injustices may be so embedded that conflict is initially hidden or latent. Also, the ‘weaker side’ or ‘the oppressed’ may see the existing power imbalance as ‘natural’, due to culture, religion, or ideology, and thus fail to perceive a conflict of interest or needs with the dominant side. Hence conscientisation, mobilisation and empowerment become necessary in such contexts to challenge this state of affairs and counter engrained ideas about inferiority and lack of agency; see Curle/Dugan (1982, 23), Francis (2010, 183-184) and Gallo/Marzano (2009, 4-6).
It is of course possible to criticize the above portrayal. In reality, asymmetric conflict does not progress in a neat and linear way from one stage to the next; there is usually “some cycling between successive stages of confrontation and negotiation” (Gallo and Marzano 2009, 5). Furthermore, confrontation does not always lead to meaningful negotiation, and negotiation does not necessarily result in restructured relationships and peaceful development (Lederach 1997, 66). This depiction further overlooks the fact that large-scale conflicts usually involve multiple issues, parties and sub-parties, and often consist of a myriad of smaller conflicts, which are likely to evolve at a different pace than ‘the overall conflict’ (Francis 2010, 182).

Finally, “equity and justice are not always served by increasing symmetry”, as Kriesberg points out with reference to small groups or organisations that advocate “extremely intolerant ideological, religious, or nationalist policies” that could “produce widespread disorder” and “destroy many lives and suppress opponents and resisters” if they were to gain strength (2009b, 5). The above analysis – with its bias in favour of evening out power imbalances and empowering persons and groups who are marginalised – is hence especially or mostly appropriate in contexts where those challenging the status quo are committed to human rights and eschew oppression.

In other words, the diagram only presents some ideas about reality, not reality itself (Francis ibid). Despite its limitations, the analysis is still useful for considering the confrontation/cooperation dilemma, as it recognises the interdependence of these strategies. Van der Merwe thus observes, à la Martin Luther King, that “without coercion, negotiation deteriorates into cheap reconciliation; without negotiation, coercion becomes merely punitive and destructive” (1989, 115-116). As such, the analysis signals that conflict resolution’s traditional belief in negative peace as a precondition for positive peace, may be flawed in asymmetric conflict; in that context, working towards justice and equity is probably necessary for durable conflict resolution (Dudouet 2006, 18).

The analysis further provides an insight into the possibility of balancing in practice what King (1967) referred to as power and love, by calling attention to the factor time. As Hampden-Turner has noted in another context, “what makes contrasting values seem so oppositional is that both are presented to us at one moment in time. In reality, time is used to mediate these contrasts” (as cited in Kahane 2010, 54). The analysis outlined above indeed points to “a temporal complementarity between cross-party dialogue facilitation and partisan advocacy work” in asymmetric conflict (Dudouet 2006, 54; Schirch 2006, 85-87); confrontational activism and advocacy may need to precede interest-based, dialogue-driven and cooperation-focused conflict resolution.

66 For visual images allowing greater complexity, see Francis (2010, 183) and Dudouet (2006, 18-22).
67 See 3.2 for an explanation of negative and positive peace.
68 Interesting in this regard are the findings of a quantitative study on the impact of (international) media coverage of violations on the intensity of large-scale violent conflict over time (Burgoon and others 2014). While
The experiences of the Nepali land rights movement and CSRC bear out the validity of this approach with its recognition of the relevance of conflict intensification and emphasis on preceding negotiation with activism and advocacy to level the playing field. The movement and CSRC have focused much attention on awareness-raising and mobilisation amongst landless Nepalis to help them demand respect for their rights and stand stronger in their interaction with landowners, government officials and politicians. In a society where caste discrimination and Hinduism have long been pervasive, many landless still believe that their plight is God-given rather than a social construction that privileges the upper castes. The ‘people’s organisations’ of the landless take various actions, including making detailed maps of land distribution in their area, and pressing for better working conditions with land-owners.

Beyond seeking to affect the power imbalance between owners and workers, land rights activists also make an effort to raise concerns and exert pressure more widely, at district, regional, and national level. They try to do so in a way that gets their message across and builds broader sympathy for their cause. They have therefore sought to refrain from the typical pressure tactics noted above – transport strikes, padlocking offices. Instead, they have made an effort to use creative means such as cycle rallies in district headquarters, marches of large groups of people ending with sit-ins in front of district administration offices or the Constituent Assembly, building cross-caste alliances, mobilising the media, and enabling local people to make claims on budgets set aside for agriculture and social services.

CSRC has tried to push the envelope in other ways, too, for example by undertaking land invasions during which temporary structures are erected on vacant land. After the first resulted in violent confrontation between activists and law enforcement officials, the organisation has planned them more carefully, with advance warning to the authorities, explaining the purpose to local politicians, and extensive briefing of activists about how to deal with official eviction efforts. Later land invasions have thus proceeded more peacefully, generating much publicity and debate at district level about the need for land reform without many negative ramifications.

CSRC has also contemplated using another adversarial tactic, namely compiling a database detailing land ownership amongst members of the Constituent Assembly to show how many politicians own land above the legal ceiling and to question their willingness to support land reform. It has, however, decided to suspend this for practical and strategic reasons. In the absence of a good land registry, gathering the necessary information would be very difficult, and the fallout from such outing of

recognising that ‘naming and shaming’ may at times hinder peacemaking (e.g. by sparking intransigence amongst parties, the study finds modest support for the hypothesis that human rights-focused media pressure helps to promote peacemaking; it seems to lower the intensity of conflict over time, measured as battle deaths. Such ‘naming and shaming’ may, inter alia, “embolden belligerent parties to make changes in human rights conditions that can serve to improve political legitimacy and stabilize social opposition in ways that promote peaceful transition” (idem, 2).
Assembly members could outweigh the benefits of upping the ante in this way and would probably harm lobby efforts on tenancy and land reform in the constitution-making process.\(^{69}\)

The land rights movement has thus tried to balance confrontation and cooperation, alternating between these approaches as it sees fit depending on the circumstances and specific objectives pursued. In its mobilisation and advocacy efforts, it has mostly used a moral approach to human rights (Chong 2010) although it has also sought to enhance the legal basis of rights claims pertaining to access to and ownership of land. The example of Nepal’s land rights movement thus reflects the relevance of a human rights-driven social movement “in which poor people become their own advocates” (Heywood 2009, 17), in effectuating a change of government policy and practice towards greater equality and dignity.

This discussion illustrates Lederach’s claim that it is possible to envision conflict “as an ecology that is relationally dynamic with ebb (conflict de-escalation to pursue constructive change) and flow (conflict escalation to pursue constructive change)” (2003, 33). Conflict resolution practitioner Chris Spies uses the metaphor of preparing food to convey a similar idea: “If the food is too cold, you’ve got to heat it up. If it is too hot, the food gets burned. So, make sure you’ve got the temperature at a level which will be able to feed you.”\(^{70}\) These images, and the discussion as a whole, highlight that there is much scope for empowerment, mobilisation and advocacy in efforts to address (latent or manifest) conflict in contexts marked by structural inequity and injustice – more so than may be generally recognised in the conflict resolution field (Parlevliet 2010a, 27).

### 7.2.3 Discussion

The realisation that both pressure and negotiation are “proper and useful modes of action” (Van der Merwe, Hendrik W. 1989, 66) (Van der Merwe 1989, 66) in contexts of power asymmetry is likely to have implications for human rights and conflict resolution actors and practices. This section points out some implications for each field, while accepting that they may be relevant beyond that specific field and that there may be others that are not noted here. For conflict resolution, it highlights the importance of ‘staying with conflict’ (Mayer 2009), the value of the radical stance, the relevance of nonviolent resistance, and the possibility of reconsidering one’s general commitment to impartiality and providing support to ‘the weaker party’ (even if this may negatively affect one’s ability to perform an intermediary role at a later stage).

With regard to human rights, the section suggests going beyond the legal realm and recognising the power and potential of ‘community-based human rights advocacy’

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\(^{69}\) Conversations with Jagat Basnet, Jagat Deuja, and Kalpana Karki, CSRC, 2007-2008; personal notes taken during workshop October 2007 and field visits; and correspondence, November 2011 (all on file with author).

\(^{70}\) Interview, 9 June 2011, Stellenbosch. Spies notes that this metaphor is based on the work of Mark Gerzon.
(Heywood 2009, 19). It points to the relevance of engaging with those in positions of power, and of shifting between power-, rights-, and interest-based approaches to conflict. It further raises questions about the style and tone of advocacy used. These two sets of implications are set out below, with reference to practical examples, comments from interviews, and/or literature. At the end, one general implication is noted.

Implications for conflict resolution

The discussion thus far lends credence to Mayer’s appeal that, when addressing entrenched conflict, ‘conflict specialists’ should focus less on resolving conflict and more on “helping people to engage constructively at all phases of the conflict process” (2004, 120). Shifting from resolution to engagement requires being willing to ‘stay with conflict’, and reviewing the suitability of specific roles and strategies at different times (idem, 182-185; 2009). This brings to mind a ‘contingency approach’ to third-party intervention, which matches various strategies to different stages of escalation and de-escalation of conflict (e.g. Fisher and Keashly 1991; Fisher 2011).

The discussion also supports the claim that nonviolent resistance is a necessary complement to conflict resolution given the “need to incorporate constructive methods of waging a structural struggle into the repertoire of peace-making techniques” (Dudouet 2005, 12).71 Including nonviolent protest, non-cooperation and intervention (Sharp 2005, 44), such nonviolent resistance constitutes a response to the challenge of how to wield power in politics effectively (Dudouet 2011, 243).72 It “magnifies existing social and political tensions, by imposing greater cost on those who want to maintain their advantages under an existing system” (idem, 241). Of course, nonviolent resistance is more suited to some circumstances and stages of conflict than to others (idem, 259). Nevertheless, recognising its limitations does not undermine the point that conflict resolution could benefit from paying more attention to nonviolent resistance and social mobilisation. While these domains have long been separate and there is some tension between them, this is not insurmountable and there is much scope for cross-fertilisation.73

The notion of conflict intensification further sheds light on what could be called the ‘value of the radical stance’. A comment from conflict resolution practitioner Undine

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71 See also Francis (2011, 2010), Lederach (1995) and Van der Merwe (1989). Nonviolent resistance differs from pacifism in that it entails direct political action; pacifism is an ethical principle about eschewing the use of physical violence that does not necessarily involve such action (Dudouet 2011, 241, n. 3)

72 Nonviolent protest entails demonstrations and advocacy; nonviolent non-cooperation includes strikes, boycotts, and civil disobedience; and nonviolent intervention disturbs “the normal operation of policies or the system by deliberate interference, either psychologically, physically, socially, economically, or politically” (Sharp 2005, 44).

73 See e.g. Dudouet (2005), Ramsbotham and others (2011, 42), Francis (2011) and Lederach (1995). See also Roy and others (2010), who focus on cross-fertilisation between conflict resolution and social movement scholars.
Whande illustrates this. She observes that working with a human rights NGO in Zimbabwe has taught her that,

There’s something about occupying a more radical position – knowing that you may not get it, but that you have to be off the centre so that the centre can possibly open up. I’ve got increasing appreciation for the way in which [human rights defenders] allow things to move at times, by sticking to a certain stance, by not moving from a position – which is really unfamiliar to someone who’s learned to go beyond positions.74

The ‘radicalism’ of the stance related more to the way in which the NGO held on to its position rather than to the substance of that position; irrespective of political developments, the organisation continued to insist on the need to respect human rights, ensure accountability, fairness and transparency in governance, curb the excessive power of the executive, enhance civilian control over the security forces, and address impunity. Apparently, at some point a group of civil society activists involved in a confidential dialogue process with senior military officials about the country’s future appreciated the NGO’s stance in a similar way: they consciously decided not to ask its director to join the process, feeling that the organisation’s ‘naming and shaming’ might do more to move the dialogue forward than the director’s direct participation in the process could.75

Such ‘anchoring’ by human rights actors – taking a position and refusing to budge, so that any compromise will have to come from the state rather than from those monitoring or advocating human rights compliance (Babbitt 2009a, 617) – is often frowned upon by conflict resolution practitioners. They tend to consider such zero-sum bargaining strategies as counterproductive, fearing that it may lock parties into a process of demand-driven negotiation prone to generating deadlocks (ibid). Yet the example suggests that it can serve a purpose over time. This implies that it may be useful for conflict resolution to gain more appreciation for the value of the radical stance, however risky and uncomfortable it may feel.

The confrontation/cooperation dilemma also has implications for conflict resolution’s emphasis on impartiality. As Babbitt notes, power asymmetry presents “a conundrum for the conflict resolution practitioner who recognises that social justice requires creating a more level playing field, but who needs to maintain evenhandedness to remain credible” (2009a, 619). In particular, it raises the question whether and when it might be appropriate for such practitioners to depart from their general stance of impartiality and ‘side with the weaker party’, as Van der Merwe puts it (1989). This flies in the face of those who argue that activism or advocacy cannot be considered part of conflict resolution since the latter precludes working exclusively with one party, given the need for impartiality (e.g. Fast 2002, 537-539).

74 Interview, 6 June 2011. The phrase ‘going beyond positions’ means focusing on underlying interests instead of on the stated demands. For an explanation of the ‘positions/interests’ terminology, see 3.2.
75 Informal conversation, Undine Whande, 10 February 2011; confirmed in conversation with an international conflict resolution practitioner based in-country who supported the process, name withheld at request, February 2011.
My experiences in South Africa and Nepal however lead me to concur with others who assert that conflict resolution practitioners should go beyond neutrality (Mayer 2004) or consider how to incorporate advocacy in their work (Babbitt 2009a). This is also in line with the normative nature of conflict resolution, as observed before. At times, it makes sense from a conflict resolution perspective to focus one’s efforts on ‘strengthening the oppressed’ and support activism and advocacy. In Nepal, for example, in the post-peace agreement context, it seemed most appropriate to help land rights activists explore how they could connect their drive towards land reform and social justice to larger political developments in the country, such as drafting the constitution and the overall peace process. I also helped them to integrate insights and tools from conflict resolution into their activities, such as analysis of conflict dynamics and parties, communication skills, interest-based negotiation, etc.

Such ‘traditional’ aspects of conflict resolution turned out to be surprisingly useful despite the activists’ concern with challenging the status quo. This related to tensions within the movement, and to activists’ interaction with people outside the movement, which corresponds with research by Roy and others (2010); they observe that conflict resolution ideas and practices can assist social movement organisations in managing internal conflict dynamics around culture, power, doctrine and approach, as well as in making negotiation strategies with adversaries more effective (idem, 351-355). In Nepal, we thus examined patterns of communication and how they played out in the movement, considered different forms of power and how they manifested in various arenas, and used relationship-mapping (e.g. Fisher and others 2000) to discern how to strengthen bonds between different groups of activists. We assessed opportunities for engaging with those deemed more powerful at various levels of society, the impact of existing enemy images on such efforts, and how to deal with such perceptions.

In this process, I also queried the land rights activists on the adversarial style they used as a matter of course in interacting with landlords, politicians and public authorities – not to downplay the importance of confrontation but to help them reflect on when and how they deployed it. According to three CSRC leaders, this prompted many activists to realise “the benefits of a nonviolent movement and the losses of a violent one” in terms of “producing more enemies than friends.” More reflection

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76 Internal tensions stem from the fact that the land rights movement encompasses people from many different (cultural, ethnic and caste) backgrounds; also, local authorities at times try to ‘play off’ different landless groups against one another, for example by settling freed kamaiyas (bonded labourers) on land previously promised to other landless people in the area. Personal communication with Jagat Deuja and Kalpana Karki, and interactions with landless groups during field visits, 2007/2008; also correspondence, November 2011, on file with author.

77 According to Roy and others, social movements often experience internal problems of inequality, and activists’ intensive dedication (and associated burnout) can also cause conflict in progressive organisations (2010, 352-353). See also Merry and others (2010) on tensions arising within New York-based women’s and human rights movements.

78 Correspondence from Jagat Basnet, Jagat Deuja, and Kalpana Karki, with translation by Mukunda Kattel, Nov/Dec 2011; also personal notes taken during workshop in October 2007; both on file with author.
ensued about ends and means, the possible ramifications of various actions, and opening the door to de-escalation (cf. Mayer 2009, 172-178). As a result, few in the movement support the use of violence nowadays; nonviolence has become a conscious “strategy to create moral pressure. [It] does not allow people in authority not to react to the issues before them, and does not allow pretences to be cooked”.79

Thus, conflict resolution does not become irrelevant in contexts of power asymmetry even as conflict is intensified. Yet its focus may shift – from facilitating resolution of issues between opponents to assisting individuals and groups constituting the ‘weaker party’ to engage effectively in conflict; conflict resolution practitioners then serve, for example, as coaches, advisers or strategists, rather than as facilitators or mediators (Mayer 2004, 117-120; also Dugan 2003, 7). It is important to note that such a shift to a more political engagement in support of one party may reduce practitioners’ ability to play an effective intermediary role in future. After all, it will probably generate perceptions of bias, making it difficult to reach out to others and facilitate dialogue later on as an ‘impartial’ intervener.80

**Implications for human rights**

Clearly, the adversarial strategies highlighted before are likely to come more easily to human rights actors than to conflict resolution practitioners, given the latter’s impulse to calm matters down rather than stir them up (Dudouet 2006, 57-58; Dugan 2003, 7). Beyond that, while the above recognises the power of human rights as law, it also highlights the need to go beyond legal strategies when confronting structural injustice. What Heywood calls ‘community-based human rights advocacy’ (2009, 19) is a powerful tool in effectuating a change of government policy and practice towards greater equality and dignity.

This is not to deny the significance of judicial approaches as ‘peaceful change strategies’ (Dugan 2003). LHR’s strategy shift referred to in 7.2.1 shows their relevance in contexts where power is imbalanced and tensions are latent. The experience of the South Africa-based Treatment Action Campaign (TAC) also shows how effective litigation can be in “getting governments to do their duties” (Heywood 2009, 19). TAC has fought several “highly publicized and rightly celebrated judicial victories” (Gready and Phillips 2009, 8) in its lengthy conflict with the South African government about access of persons living with HIV/AIDS to life-saving medication.81

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79 Ibid. CSRC’s homepage contains a strong commitment to non-violence nowadays; see http://www.csrcnepal.org/.
80 See e.g. Fast (2002, 37-541), Meijer (1997) and Mitchell (1992); see also the discussion on role tensions in 7.4.
81 The TAC (together with the Aids Legal Project) has undertaken constitutional litigation on five matters, including on rolling-out anti-retroviral treatment and profiteering by multinational pharmaceutical companies (Heywood 2009, 20-23). Its first victory was in 2002, when the Constitutional Court ordered the government to provide antiretroviral drugs to pregnant women to prevent transmission of the virus to their babies during birth (Constitutional Court of South Africa, Treatment Action Campaign & Others v. Minister of Health & Others, CCT 8/02).
Even so, Heywood notes that “the litigation was not left to lawyers, but used to strengthen and empower a social movement, and backed up by marches, media, legal education and mobilisation” (2009, 22). Pointing to the limitations of what he refers to as “abstract denunciations of justice, however true they may be” (idem, 20), he argues that pressure around rights is more likely to be accelerated through a social movement in which poor people have learned “how to articulate human rights” and “how to apply them as demands in relation to specific social and political issues” (idem, 17). While the right to health may be recognised in international treaties, national constitutions and jurisprudence, community activists can only use it effectively when they can connect it to issues of law, politics, and governance, and have a deep understanding of health itself (ibid).

Heywood’s emphasis on combining social mobilisation, litigation and negotiation in confronting justice and inequality is all the more important when considering that, in many societies experiencing or emerging from violent conflict, activists are unable to take advantage of the law and legal systems for various reasons. In such contexts, referring to rights and international standards remains relevant – it has a symbolic and legitimising function and can help to generate international pressure for change – but banking on a legal approach that requires a functioning judicial system and professional human rights advocates is not enough.

This is also because the existing judicial system and legal framework may sustain structural injustices, as we have seen. It then is vital “to build capacity to pursue human rights entitlements directly among the poor and to catalyse a political movement” (ibid) for change in a particular area, be it health (in the case of TAC), land reform (CSRC), or something else. The combination of a legal approach and broader mobilisation and awareness-raising centring on rights as moral and political claims has been considered effective elsewhere too (Merry and others 2010, 123; Roy, Burdick, and Kriesberg 2010, 356; Dugan 2003, 6).83

Another implication of the previous discussion is that effectuating change requires constructive engagement with the powerful at some point, however important the “escalation and articulation of conflict” (Roy, Burdick, and Kriesberg 2010, 354) and however necessary the empowerment of the powerless may be. After all, they “are the ones who must either agree to changes required for peace, or support (or not oppose) the systems to sustain peace and justice” (Chigas and Woodrow 2009, 52). This may be easier said than done, given the ‘singleness of purpose’ associated with advocacy and activism (Fast 2002, 537). Also, for many human rights organisations ‘the instinct is to back off’ when a state asks them to get involved in shaping policies or reforming

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82 See 2.5.1 on the limitations of law and legal systems relating to access, effectiveness, legitimacy, and implementation.

83 Both Dugan (2003) and Roy and others (2010) refer to the 1955 Montgomery bus boycott by way of example. Others point to the way in which anti-apartheid activists combined legal interventions and social mobilisation during the struggle against apartheid (e.g. Handmaker 2009, 187; Achmat 2004; Abel 1995).
institutions that do not respect rights so as to not compromise on their principled approach. Yet this urge is probably more present amongst international human rights actors than domestic ones; constructive engagement with ‘the powers that be’ is hence not impossible (Putnam 2002; Vuco 2002).

Both the South Africa-based Treatment Action Campaign and the Nepali land rights movement are cases in point. The former has not demonised the South African state despite being at loggerheads with it. It has engaged in civil disobedience and broken the law where it deemed laws unjust and has constructively developed plans and policy proposals when it anticipated that such a strategy would yield results (Gready and Phillips 2009, 8; Heywood 2009; Sleap 2004). In fact, Friedman and Mottiar point to the TAC’s “tactical flexibility” as an important asset in its effective action for equity (2005, 553). In Nepal, CSRC and land rights activists more broadly have started to pay more attention to interacting frequently and constructively with national and local government officials, without compromising on their advocacy. In doing so, they seek to enhance the officials’ understanding of the need for land reform and to obtain their collaboration in practical matters such as data collection, tenant registration and nonviolent evictions.

In other words, ‘education’ or ‘conscientisation’ as envisioned by Curle (1971) and Freire (1972) cannot be confined to the powerless only. In South Africa, raising awareness of the ramifications of apartheid for stability and prosperity amongst “external or internal supporters of the top dog” weakened the regime considerably (Ramsbotham, Woodhouse, and Miall 2011, 25). The various examples above also point to the need to develop a differentiated understanding of power-holders, instead of perceiving them as generally problematic and monolithic (Fisher and Zimina 2009b, 100). It further underscores the importance of appreciating the strengths and limitations of power-, rights- and interest-based approaches, previously discussed in relation to LHR. Being able to shift between these approaches and assess their relative relevance at a given point in time is a valuable competence for actors seeking to advance human rights in situations of power asymmetry.

Finally, the above raises questions about the style and tone of advocacy about issues of rights and justice. Since realising human rights generally requires cooperation from others (whether grudgingly or willingly), it is helpful if people can talk about, defend and present their right claims in a way that makes such cooperation more, not less, likely. Over the years, it has struck me that rights claims are often presented as positions, i.e. what a party wants or believes should be done. This easily triggers a

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84 Interview, Ingrid Massage, 11 November (through skype). She has long worked in the human rights field for both international (Amnesty International, OHCHR) and national organisations (eg. the Nepali NGO Advocacy Forum).
85 Also confirmed by Ingrid Massage, see previous footnote.
86 Personal communication with activists from CSRC, June 2008-February 2009; also confirmed in written comments by Jagat Basnet, Jagat Deuja, and Kalpana Karki, November 2011, with translation by Mukunda Kattel.
87 See 5.1.3.
defensive reaction as it increases recipients’ perception of a threat and tends to reduce their receptiveness to the rights claims being made. At times it may therefore be useful to consider a less adversarial and more confidence-building approach to human rights advocacy in which rights claims are framed in terms of the underlying needs and interests of various groups or parties. This allows human rights actors to convey the importance of realising human rights without resorting to ideal or categorical statements that rights must be protected, in line with Heywood’s concerns about ‘abstract denunciations of justice’ noted above (2009, 20). It is a strategy geared towards rights protection and social change that tries to combine challenging the status quo and a problem-solving orientation (Parlevliet 2010a, 30-31; 2002, 32-34).  

This is not to deny the value of the radical stance outlined before or to downplay the relevance of confrontation, but to suggest that these can be communicated in different ways, with more or less respect for self and others, including adversaries.  

It points to the need to develop a sophisticated approach to advocacy and activism, one that facilitates the articulation of “strongly held views and feelings without losing sight of the humanity of others” (Mayer 2004, 132), and that recognises how “different kinds of pressure might favour different types of outcome” (Roy, Burdick, and Kriesberg 2010, 354). Such consideration for one’s adversaries can help to contain escalation and steer a power exchange in a more productive direction (Mayer 2009, 175).

A last, general point worth noting is that this take on conflict resolution and human rights, flowing from the confrontation/cooperation dilemma and the ‘ebb and flow’ of asymmetric conflict (Lederach 2003, 33), may prompt questions about the commitment of social activists, rights advocates, and/or conflict resolution practitioners to ‘do no harm’ or be ‘conflict sensitive’. Nepali land rights activists often faced such questions from donors and others who feared that the movement’s efforts to empower and mobilise marginalised people would exacerbate local tensions. As a district coordinator from the land rights movement rightfully noted, landlords and other authority figures considered their activism and advocacy by definition as ‘harm’, since ‘it creates trouble’. In response, he asked “But if we don’t do so, surely that does much more harm? That would just maintain the social injustice that exists.”

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88 See also 7.4.3. The notion of a confidence-building or less adversarial approach to rights advocacy draws on the distinction between positions and interests (e.g. Fisher and others 2012) and on Nathan’s argument about the relative strengths and weaknesses of a power-based approach to mediation (1999), which relies on coercion or leverage to obtain the cooperation of parties yet also hardens their resistance and generates resentment against solutions imposed on them. See also Fisher/ Keashly (1991, 33) on the distinction between ‘mediation with muscle’ and ‘pure mediation’.

89 Also relevant here is Augsburger’s notion of ‘carefronting’ (1973), which means confronting others with respect for self while also conveying care for others.

90 See 3.1, for an explanation of ‘do no harm’ and ‘conflict sensitivity’, notably fn. 8.

91 Personal notes, taken at workshop October 2007 with 35 land rights activists, Bhaktapur.
Thus, notions like ‘conflict sensitivity’ and ‘do no harm’ should not hold actors back from undertaking or supporting initiatives that challenge a status quo worth challenging or to shy away from raising critical, justice-related issues in a local context, even if this risks feeding into existing divisions. Instead, such notions raise the question of how to challenge vested interests in a constructive and strategic way, without provoking a repressive or violent response – or rather, with a view to the possible ramifications of one’s actions and the aims pursued. They also point to the need for careful analysis, so that the actors involved can anticipate resistance or outright conflict that may be triggered and contemplate in advance how they will deal with it (Parlevliet 2010a, 29-30; also Wallace 2013).

7.2.4 In Sum

This section has considered the dilemma of emphasising confrontation or cooperation when seeking to address conflict and advance human rights in contexts of power asymmetry. It has argued that both are important and necessary strategies in such settings but that, given their respective strengths and limitations, neither is sufficient in its own right. While confrontation challenges the status quo and increases pressure on power-holders to force them to change, it also tends to exacerbate polarisation and reduce willingness to seek joint, mutually acceptable, solutions. Meanwhile, pursuing cooperation through negotiation may well de-escalate tension and stop or prevent violence, but risks consolidating existing injustices and serving as a tool for pacification.

It has thus been argued that there is often a need for confrontation and cooperation, advocacy and negotiation, escalation and de-escalation when power is structurally imbalanced and injustices are engrained. As such, the dilemma can be best understood in ‘both/and’ rather than in ‘either/or’ terms; it highlights the interdependence of confrontation and cooperation in asymmetric contexts – or what Kahane calls "the essential complementarity of power and love" (2010, 8), following King (1967). This is not to deny that these strategies may be perceived as incompatible at times. After all, actions intended to exert pressure and confront the status quo – advocacy, nonviolent resistance, mobilising marginalised people – are often experienced as increasing tension between opponents, while others – mediation, dialogue facilitation, negotiation – are seen as reducing it.

However, the discussion here suggests that “the longer-term progression of conflict towards increased justice and peaceful relations must integrate and view these activities as necessary and mutually interdependent in the pursuit of just change and peaceful relations” (Lederach 1995, 15; Schirch 2006, 87). Time has indeed surfaced as an essential factor; confrontational advocacy and activism may need to precede cooperation-focused dialogue facilitation in asymmetric conflict so as to address power imbalances between opponents before negotiation takes place. As Van der Merwe notes, “this approach cuts across the false but popular notion that negotiation
and coercion are contradictory and mutually exclusive. [...] We do not have a choice between negotiation and coercion. We must strive to achieve a balance between them” (1989, 65-66).

All in all, the section generates some valuable insights about the relationship between human rights and conflict resolution. Firstly, it points to a temporal complementarity between the former’s adversarial tactics and the latter’s cooperative tactics. This complementarity may mostly emerge in the long term, as the two approaches can seem contradictory at a specific moment in time. Nevertheless, they can be understood as interdependent rather than mutually exclusive, which highlights a challenge of combining and navigating potentially contrasting impulses and imperatives on an on-going basis. This, in turn, draws attention to the inherently dynamic nature of the interplay between human rights and conflict resolution, which corresponds with various examples set out in this and previous chapters.

It has further become clear that the continuous (yet non-mechanical!) alternation of pressure and engagement that is necessary in contexts of power asymmetry may require human rights actors and conflict resolution practitioners to leave their comfort zone – or at least gain appreciation for methods they are less familiar with and recognise that different tactics may be needed at different points in time. For conflict resolution actors, this involves recognising the validity of intensifying conflict (and of ‘the radical stance’) and reconsidering their usual take on impartiality; for human rights actors, this may entail combining legal and moral approaches to human rights and engaging with the powers that be to a greater extent than is common.

That said, combining such diverging tactics and performing different functions is probably easier said than done; as Heywood notes, the space between cooperation and confrontation can be a difficult one to occupy for one and the same actor (2009, 29). The next section will look more closely at the question of combining different roles.

**7.3 To Facilitate or Advocate? Dealing with Role Tensions**

This section builds on the previous one by focusing on the tension individuals or organisations may experience when trying to combine advocacy and facilitation roles: the dilemma of being, in Van der Merwe’s terms, a prophet or a peacemaker (1989, 3). This appears to pit human rights approaches against those of conflict resolution, making them seem truly incompatible. While the literature asserts that these roles should not be combined, this section observes that at times actors end up performing both roles simultaneously. It further notes that they then find different ways to manage the tension between what the Manicaland Churches called their ‘affirming’
and ‘condemning’ functions.\textsuperscript{92} It thus argues that this role combination cannot always be avoided in practice, and is not necessarily experienced as highly problematic.

As before, the section first outlines the dilemma with reference to practical experiences and literature; it also clarifies the terms used (7.3.1). It then describes how the Manicaland Churches in Zimbabwe and Nepali human rights organisation INSEC sought to make their various roles ‘hang together’.\textsuperscript{93} This highlights the importance of reflection, and framing and clarifying roles; it also points to the possibility of devising an internal division of labour or identifying other roles that allow for a way around the facilitator/advocate tension (7.3.2). A subsequent comparison of the experiences of CiM and INSEC sheds light on some factors – both contextual and organisation-related – that appear to affect the feasibility of combining advocacy and facilitation (7.3.3). The last sub-section sums up the discussion, including insights gained about the human rights/conflict resolution relationship (7.3.4).

\textbf{7.3.1 The Dilemma}

It will have become clear by now that different strategies and approaches are often used to advance human rights and to address conflict constructively. It has been observed that these need not be contradictory or mutually exclusive and that they can actually complement or strengthen one another. Nevertheless, when individuals or organisations are trying to resolve conflict and protect and promote human rights at the same time, they are likely to encounter some friction between two primary roles associated with these pursuits: those of ‘facilitator’ and ‘advocate’. The difficulty of one actor combining these two roles is well established in the literature, especially in the conflict resolution field (e.g. Dudouet 2005; Fast 2002; Arnold 1998b). This first sub-section explains what these roles entail and why the combination is considered so challenging. It points to the resulting emphasis in the literature on ‘role clarification’ and ‘role integrity’, and refers to some examples previously discussed by way of illustration.

The Oxford Dictionary defines ‘advocate’ as “a person who publicly supports or recommends a particular cause or policy; a person who puts a case on someone else’s behalf”.\textsuperscript{94} Mayer identifies three key features in the advocate’s role, namely representation, empowerment and substantive focus: an advocate focuses on advancing client interests in a specific substantive area, and provides ‘power, leverage, voice and wisdom’ to this end (2004, 250-251). He also refers to legal academic Anthony Kronman, who notes that an advocate’s duty is ‘not to define the

\textsuperscript{92} The terms ‘affirming’ and ‘condemning’ roles stem from email correspondence from Rev. Shirley DeWolf, Steering Committee member, 2 Dec. 2002, on file with author.

\textsuperscript{93} Expression used by Rev. Shirley DeWolf, correspondence, September 2011, on file with author.

\textsuperscript{94} See http://oxforddictionaries.com/definition/advocate?q=advocate.
collective well-being’ of all those involved, but ‘to get as much as s/he can for his
client’ (ibid).

Taking note of the dictionary definition, this notion of ‘getting as much as possible’ can
also apply to the specific cause or policy an advocate espouses. This is relevant in the
context of human rights work, where a cause – the fight for human rights and justice –
is as important as safeguarding the interests of ‘clients’, i.e. victims of human rights
violations, and persons at risk of being subjected to abuse. In this context, acting as an
advocate is also associated with publicly denouncing violations, and mobilising public
pressure to bring about changes in behaviour, policy or legislation – referred to
previously as ‘naming and shaming.’

The Oxford Dictionary definition of ‘facilitator’ is “a person who makes an action or
process easier”, while the Merriam-Webster dictionary adds that s/he does so “by
providing indirect or unobtrusive assistance, guidance, or supervision.” Cheldelin
and Lyons refer to a commonly used definition of ‘facilitation’ in the conflict resolution
field, which is ‘assisted negotiation’ (2008, 319). Other definitions focus on bringing
parties together, assisting with the communication between them, enabling a fruitful
exchange of visions, aims and versions, guiding the process, and remaining neutral to
solutions (idem, 320; also Mitchell 2011, 20; Arnold 1998b, 15-17). The field
considers ‘facilitator’ and ‘facilitation’ as more flexible terms than ‘mediator’ and
‘mediation’, which refer to a clearly delineated process and focus on achieving a
concrete outcome. By contrast, a ‘facilitator’ acts in a broader range of processes, and
focuses more on aiding the process of dialogue than on obtaining resolution
(Cheldelin and Lyons 2008, 319; Van der Merwe 1989, 95).

The explanations thus far show that the facilitator and advocate’s roles differ in
several ways. This helps to explain the challenge involved in combining the two. The
advocate’s role is essentially partisan in nature, seeking to advance specific interests,
while the facilitator’s role is meant to be non-partisan, and to consider the interests of
all parties. Moreover, while an advocate can be very adversarial – this role requires
readiness to speak out in public and take a strong stance – the facilitator is inclined to
use a more collaborative style, operate out of the limelight, and to refrain from
publicly criticizing parties.

Impartiality, which matters a great deal to both roles, tends to mean something
different for them – either objective application of standards and championing a
certain cause across the board (advocate) or even-handed treatment of all parties and
not promoting any one party’s interests (facilitator) – due to which a facilitator may
perceive an advocate’s impartiality as partisan and vice versa. The two roles thus

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95 See 2.4
96 For Oxford, see http://oxforddictionaries.com/definition/facilitate?q=facilitator#facilitate__4; for Merriam-
Webster, see http://www.merriam-webster.com/dictionary/facilitator.
97 The different meanings of impartiality are derived from Babbitt (2009a, 619); see also 4.1.3.
typify many of the differences that set the human rights and conflict resolution fields apart – prompting some to argue that these roles operate on “fundamentally contradictory principles” (e.g. Arnold 1998b, 16).  

Given the different styles and tasks required from prophets and peacemakers, various authors warn against any one person or group performing both roles simultaneously, noting that this can cause, for example, ‘severe tension’ (Van der Merwe 1989, 3) and ‘serious confusion’ (Meijer 1997). They accept that actors can play multiple intervention roles in a given context, but assert that shifting between facilitator and advocate’s roles is particularly difficult, if not impossible; what Mayer calls ‘third-party’ and ‘ally’ roles do not go well together (2004, 221; also Fast 2002, 537). He thus argues that the challenge is establishing “role clarification from the outset and then maintaining a boundary between those roles” (idem, 240). Arnold speaks of the need to maintain ‘role integrity’, which means ensuring that actors that perform multiple intervention roles do not assume contradictory ones. In his view, failure to do so undermines interveners’ ability to perform their functions effectively:

For example, one of the characteristics of the role of a third-party facilitator is impartiality. If the facilitator is also seen as an advocate or patron for a party to the conflict, other parties may feel the process is biased. There are other role combinations, such as enforcer and reconciler, which can compromise an intermediary’s credibility or continued participation. [...] It becomes necessary for interveners to find ways to decouple actors from roles, which create dissonance for them or the parties (1998b, 16-17, emphasis added).

Several examples recounted thus far are relevant to this discussion. At least two reflect a desire on the part of conflict resolution practitioners not to mix seemingly incompatible roles and ensure role integrity; in both instances, they invited another actor into the process to perform a certain role that they deemed necessary but did not want to assume themselves so as to avoid a perception of bias. In the Du Noon/Doornbach intervention, my CCR colleagues and I requested an information officer from the South African Human Rights Commission to provide an information session on the rights of non-nationals in South Africa.

In the school case, conflict resolution practitioner Ghalib Galant asked the regional Education Department to brief the parties involved in a conflict at a township school on the relevant legislation and human rights standards. The division of labour thus established did not jeopardise the facilitators’ credibility and impartiality in the eyes of the conflicting parties in the two cases – which the practitioners considered a risk even though the additional function did not constitute outright advocacy but focused

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98 See differences discussed in 4.1.3 and overview provided in 4.1.4, respectively.
99 Within the conflict resolution field, several authors have come up with typologies of intervention roles; besides Mayer (2004), see e.g. Ury (2000), Mitchell (2011; 1993) and Laue/Cormack (1978).
100 See 5.2.3 and 5.2.5 respectively.
on education instead. This is not unreasonable, given that the substance of such awareness-raising could be easily construed as being in favour of a certain party.\footnote{It is for example likely that the South African residents of the informal settlements would perceive awareness-raising on the rights of nonnationals as being beneficial to nonnationals and/or implying support for them.}

For the Churches in Manicaland, however, ‘role trouble’ (Curle 1989, xiv) was far harder to avoid. As discussed in 6.1, clergy from this network experienced friction between their facilitator and advocate’s roles, also called their ‘affirming’ and ‘condemning’ roles. The more outspoken and active they were in the latter capacity, the more it affected their ability to act as facilitator because their impartiality was called into question by those with whom they engaged. Yet their facilitation of dialogue between a wide range of actors – which included reaching out to confirmed or suspected perpetrators of abuses – led to pressure to stand up more for justice. This created confusion within CiM, as some members prioritised one role while others focused on the other. Confusion ensued outside CiM too; the public at large and actors involved in the conflict (such as youth militia, war veterans, intelligence operatives, politicians from the ruling party, and opposition politicians) had trouble reconciling CiM’s different modalities.

Yet ‘decoupling’ these roles, casting one aside or transferring it to another actor in the local context, to establish role integrity as suggested by Arnold (1998b), was easier said than done. For CiM, both were integral to the church’s mission. According to Rev. DeWolf, a steering committee member, it was therefore not a matter of making “an either-or decision with regard to roles that appear to be in conflict”.\footnote{Email correspondence, 20 September 2011, on file with author.} Rather,

\footnote{Ibid, emphasis added.}

\[W]ithin the church the potential conflict in diversity of roles must find a way to hang together and form a whole that the public can understand. There is always a tension here for the church - it is built into our nature and our work. […] The binary-thinking public often doesn’t often understand this complexity and wants the church to come down either one way or the other without variety – so we [also] have to grapple with another tension, that of viewing the church from the outside and viewing ourselves from the inside.\footnote{Ibid, emphasis added.}

The CiM case thus confirms the difficulty of one and the same actor playing both facilitator and advocacy roles, but also highlights that avoiding this combination is not always possible.

Another example, from Nepali human rights organisation INSEC, also demonstrates the latter point. Human rights field workers from INSEC served as facilitators at grassroots-level during the 10-year civil war between Maoist rebels and the state, without toning down or giving up on their human rights advocacy. Meanwhile, their activism did not prevent them from being effective facilitators when negotiating with combatants on both sides to assist in the release of abducted or arrested individuals, to relieve a community from being targeted by both sides, or to ensure that schools
were respected as ‘zones for peace’. Role trouble and confusion seems to have been less of an issue for this organisation and its staff members. This raises the question whether combining the roles of facilitator and advocate is invariably experienced as problematic, as implied above.

The CiM and INSEC examples thus illustrate that combining seemingly incompatible roles is sometimes the reality for practitioners on the ground, requiring them to deal with it in some way (e.g. Mayer 2004, 240; Van der Merwe 1989; Laue and Cormick 1978, 216). How did they do so?

7.3.2 Possible Approach

CiM and INSEC used different strategies to address the actual or potential tensions between their facilitator and advocate’s roles. Churches in Manicaland focused on reflection and role clarification as a way of grappling with the dilemma, and identified other relevant roles outside this dualism that provided additional scope for manoeuvre. Within INSEC, a division of labour evolved, and the organisation framed its facilitation role and advocacy messages carefully. Below, these different strategies are described, with CiM’s approach being discussed in more depth than INSEC’s. A few references to interactions with other actors are also included, to support points made.

Once CiM had pinpointed its role trouble as something it wanted to come to grips with, its first step was to explore the various roles played by clergy involved in the network. The hope was that this would help CiM members to understand the nature of some of the tensions experienced and provide some insight into ways of dealing with them. To this end, they used an exercise I had designed with the help of six persons from CiM who served as my co-facilitators and as a sounding board for gatherings with the network.

Rather than focusing solely on the facilitator and advocate’s roles, it highlighted five ‘archetypical’ roles regularly performed by CiM members, so as to reflect CiM’s reality and functioning more fully. These were linked to Jesus, to root the exercise in the clergy’s context and enhance its accessibility: Jesus as one who prays (seeking spiritual guidance and intervention, but not taking any concrete actions oneself); as prophet (advocating for what is right, denouncing what is wrong); as pastor (facilitating dialogue between different parties); as teacher (educating others about the world, norms and values); and as priest (providing counselling and other support to others).

A group of some 60 clergy affiliated with CiM discussed these roles extensively, to develop a common understanding of each role, the values that informed it, the

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104 Conversations with INSEC staff members, Nov 2006, July 2007 in Nepalgunj; correspondence with Bhola Mahat (INSEC) Nov 2011, on file with author (with translation by Mukunda Kattel). See 5.1.6 for previous references to INSEC and information on Mahat’s position.
activities it undertook, the methods it relied on, and its merits and limitations. They also shared experiences of acting in such roles. They explored whether certain roles were more or less easily combined and why, in general terms, and in relation to actual situations encountered. The process culminated in the making of 'human sculptures', in which CiM members positioned persons representing the various roles in situation-specific constellations to depict their understanding of the relative priority of each role, and the relations between them.105

Sculptures were created to analyse past experiences (e.g. the handling of conflicts around food distribution in a particular district), and to reflect on situations in districts that were still being addressed by CiM. In the latter instance, the sculptures provided the clergy with an opportunity to think through different options for approaching the situation, almost serving a problem-solving function: which role might be most appropriate at a given point, how would others come into play, and how did they relate to one another? Could CiM divide these roles amongst themselves or draw on anyone else in the local context to play a particular role that the clergy deemed relevant?106

The process generated much energy and discussion amongst those present, suggesting that it really resonated for them; the CiM Steering Committee continued to use the five roles in their own discussions after this event, to reflect on the network’s actions – past, current, and future. In my own notes, I later wrote:

[It] was very interesting – and the sculptures really work because it’s such a visual way of working and easily prompts discussion. Question to self - Did the exercise TAKE AWAY the difficulty of balancing these seemingly contradictory roles? No, of course not; but my impression is that this was quite useful, in a number of respects: it externalised something they were feeling inside of themselves and in the network (being torn in different directions re. roles); it gave them a handle on what they were experiencing; and it provided a new/different way of thinking about a particular situation. It enabled them to step outside of it, look at it, and say ‘So this is what is going on’ and then ‘What do we want to do about it?’107

In other words, approaching the question of playing multiple roles in this way did not solve the issue of role tension but appears to have made it more manageable. In large part, it appears to have done so by providing space for reflection on what the people in the Manicaland Churches experienced and by devising images and a language to capture this and talk about it.108

105 For a more detailed description of the process with CiM, see Workshop Report, Churches in Manicaland workshop, December 2002, on file with author; see also Galant/Parlevliet (2005). For a general description of the exercise instructions (not relating to CiM), see Parlevliet (2011a, 100-101).
106 Workshop Report, Churches in Manicaland workshop, December 2002, on file with author; and personal notes, undated, on file with author.
107 Personal notes, n.d., on file with author, emphasis in original; impression confirmed in conversations with CiM members.
108 Part of the process also entailed CiM clergy discussing the best vernacular terms for each role in Shona and Ndebele (Zimbabwean languages), and exploring the terms’ connotations.
Specifically, the process made the clergy aware that all five roles served important functions that were required in the Zimbabwean context. None was by definition better or worse than any other, and the relative significance of each role could change over time, depending on the circumstances. This was relevant given the fact that part of CiM’s internal role trouble stemmed from an implicit assumption by some that one role should generally prevail.\textsuperscript{109}

The process also prompted recognition that the various people and churches within the CiM had different affinities and strengths in terms of these roles and that this need not be a problem. On the contrary, it could facilitate a tentative division of labour amongst actors involved with CiM. Finally, the process raised the clergy’s awareness that, even if they individually did not see a contradiction in acting as both pastor and prophet, this was not necessarily the case for other people in the local context. This highlighted the need to pay more attention to expectations and perceptions amongst members of the public and to explain the rationale for playing a particular role or for shifting between roles to reduce confusion.\textsuperscript{110}

In a general sense, it is worth noting that the value of creating space for reflection on playing multiple roles – and combining facilitator and advocate’s roles – has also emerged from other settings since. Other human rights and conflict resolution practitioners who have participated in such a process have shown a sense of relief similar to that which became palpable amongst CiM clergy. While the number and type of roles identified have varied depending on the group of people involved, the outcome has been comparable in making something visible or explicit that is mostly experienced implicitly, in generating appreciation for the interdependency of various roles, and in providing a way to grapple with the tensions that may arise in concrete situations and figure out how to deal with them.\textsuperscript{111} This is also the experience of conflict practitioner Undine Whande, who wrote a story about ‘warriors and weavers’ to help a human rights NGO in Zimbabwe come to terms with the different impulses in the organisation, with some staff members geared for battle in court, while others preferred quiet relationship-building.\textsuperscript{112}

\textsuperscript{109} The creation of sculptures and the ensuing discussion also showed that individual clergy from the same locality might prioritise the various roles very differently, suggesting that there is no one right, or proper, way to approach these situations. (Personal notes, undated, on file with author).
\textsuperscript{110} See also Workshop Report, Churches in Manicaland workshop, December 2002, and personal notes, both on file with author; also confirmed by three members of CiM.
\textsuperscript{111} I have done the same exercise with the Northern Ireland Parades Commission’s Authorised Officers (September 2003), staff members of seven Nepali human rights organisations (July 2009), and practitioners from German development agencies, including the civil peace service (June 2009), and Swiss development organisations (January & June 2013; January 2014). The process used in these instances differed from the CiM exercise in one respect: key roles were identified together with participants as part of the process (rather than in advance, as happened in the case of CiM; that was due to the large number of people expected and the limited time at our disposal.)
\textsuperscript{112} The Warriors and the Weavers, Undine Whande, January 2012; also interview, 6 June 2012, Cape Town.
Such a process of reflection may also lead to surprising insights. In the case of the Manicaland Churches, it seems to have revealed other roles that could provide individual clergy and/or CiM as a whole with a way out of the pastor/prophet dilemma. This was at least suggested by an email sent by CiM sometime after they had engaged in the role exercise. It noted that:

At our last Steering Committee meeting we redid the ‘river of life’ exercise [to reflect on CiM’s evolution]. The river showed us conclusively that the pastor and the prophet roles had been carried consistently throughout [CiM’s life] and we discussed the few incidents when the decision for one or the other had been a matter of contention between us. The river also showed us conclusively that we have not gone far with our priest and teacher work – in fact have even missed opportunities for more effective intervention in certain situations.\(^{113}\)

For CiM, a greater focus on the roles of teacher and priest allowed the associated clergy to intervene effectively in their local setting without getting stuck in the advocate/facilitator dilemma. Their educational and counselling functions made engaging with people responsible for (or involved in) political violence, more legitimate and acceptable to their own communities. They could also still speak out on matters of rights and justice but do so in a way that did not raise questions about their facilitation activities.

Admittedly, CiM’s approach was probably facilitated by its recognition that there were other actors in Zimbabwe (conventional human rights organisations) that could (and did) engage in more ‘hard-hitting’ advocacy.\(^ {114}\) Nevertheless, it brings to the fore how an advocate need not publicly storm the barricades, but can also challenge and confront quietly, out of the limelight. It reflects Lampen’s observation that “the combination of friendship and a moral position may result in the [facilitator] sometimes confronting one party: a criticism may be accepted within a relationship which would be ignored if it was made in public” (1997).\(^ {115}\) This links back to the earlier idea that CiM, through its pastoral approach, may have been able to access and raise rights concerns with persons and groups who were otherwise unresponsive to such issues.\(^ {116}\)

A reflection process meant to facilitate role clarification, may thus point to other roles that lie on the prophet/peacemaker spectrum. These may provide alternative ways of operating, especially if they are also relevant in that context and in line with an actor’s objectives, values and capacities. Likewise the Parades Commission’s Authorised

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\(^{113}\) Email correspondence, 1 March 2003, on file with author. The ‘river of life’ exercise is one in which people chart their evolution (or that of their organisation/network/community) over time, using the image of a river to reflect the ‘life’ under scrutiny and marking key events, obstacles, opportunities, etc. through other visual symbols. See Report on Reflection Session with Steering Committee, December 2002, on file with author.

\(^{114}\) See 6.1.3.

\(^{115}\) ‘Friendship’ is understood here as a relationship built over time, in which the facilitator tries to grasp the concerns and problems experienced by both sides; this does not imply agreement with their actions (Lampen 1997).

\(^{116}\) See 6.1.5.
Officers came to realise through such a process, that they often played a role that was somewhere between 'facilitator' and 'advocate'. Contrary to their expectations and self-perception, they did not serve that frequently as formal mediators, in terms of facilitating negotiations between parties in parading disputes while having no stake in the outcome. What they called their 'adviser' or 'whistleblower' roles were more prevalent than anticipated; in confidential interactions, they regularly warned parties of inappropriate behaviour and pointed out the potential ramifications in terms of restrictions imposed on parading or protests. Again, the facilitator/advocate division turned out to be less absolute and insurmountable than initially perceived and assumed.\(^{117}\)

In sum, the process of examining the roles played assisted Churches in Manicaland to reflect on the question of "how to make choices at certain moments within the wide range of Christian principles that emerge from our understanding of our vocation", as Rev. DeWolf puts it.\(^{118}\) She continues:

> Unfortunately (in my personal opinion) many church leaders take the much easier route of making a "one-size-fits-all" choice, in other words only one role to play and \textit{no situational ethics} to have to bother with. To me the articulation of these paradoxes and tensions in our workshops with you were exciting because they showed that we were deeply aware of the tensions and willing to struggle with them.\(^{119}\)

DeWolf’s comment speaks to the importance of reflection as a way of figuring out how to handle certain predicaments. It also highlights that there probably is no one, single, way to do so; instead, thinking about ‘situational ethics’ may be more useful. In other words, the dualities are there; they can only be contextually reconciled by keeping “one’s eyes on the ball”, as Koskenniemi puts it.\(^{120}\)

The experiences of Nepali human rights organisation INSEC provide other useful insights when it comes to possible approaches to the facilitator/advocate dilemma, all the more so because this actor appears to have experienced less role tension during the civil war between the Maoists and the state. Regional coordinator Bhola Mahat, who is based in the region where much of the fighting took place, attributes this to a division of labour that evolved organically between the organisation’s community activists and its national headquarters’ in Kathmandu.

INSEC’s field workers focused on the facilitator’s role, undertaking conflict interventions and negotiation to provide assistance to individuals wounded or abducted in attacks; the head office emphasised fact-finding, advocacy and denunciations of human rights violations that occurred at grassroots level:

\(^{117}\) Report, on workshop with Northern Ireland Parades Commission, September 2003, on file with author.
\(^{118}\) Email correspondence, 20 September 2011, on file with author.
\(^{119}\) Ibid, emphasis added.
\(^{120}\) Martti Koskenniemi, Masterclass for PhD candidates, Faculty of Law, University of Amsterdam, 11 October 2011.
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This happened many times, especially when the Maoists attacked security personnel or vice versa. Our job in the field was to make sure that those wounded or abducted were treated fairly, and [that] such incidents were not repeated. For this we had to move to the site, see the parties concerned and do all necessary to calm down the tension. Our central office used to do the ‘harsher’ job – denounce the attack etc. If we started denouncing the attack ourselves in the field, we would block our way to reach the incident site, and hence, would fail to assist the wounded and abducted. Empathising with the victims enabled us to be seen as a friend in need by the parties, which was – and is – the only way to adopt to work effectively in the field in times of conflict.  

Mahat notes that public statements on specific incidents by INSEC’s head office had few adverse effects on the organisation’s field workers who engaged with combatants. He says that:

The combatants on the ground would be less reactive to the high-level statement. They would seek our clarification sometimes, and we would tell that what was done [i.e. the statement] was mandated by human rights law which we should abide by.  

Nevertheless, both the Maoists and the state did at times accuse the organisation of bias. According to Mahat, INSEC dealt with this challenge by ensuring that it reported on violence committed by both parties, and “denounced them against international human rights standards to which both parties had committed”. Such standards were presented as objective, external instruments that applied to both sides. Mahat also notes that,

We introduced a shift in the way of presentation. We focused more on the act of offence or violence and less on individual actors. We held the leadership responsible for every breach, and reminded [them] that the leaders should be accountable for the violence. We also repeatedly [stressed] that it was the leaders’ responsibility to make their fighters’ aware of human rights and humanitarian principles, and regulate their conduct accordingly. So we targeted the ‘policy’ or ‘decision’ community, not the rebels seen or met on the ground or the infantry.

It could thus be argued that the internal division of labour allowed the INSEC field workers to project some distance, both figuratively and literally, between themselves and the denunciations made by members of the organisation at higher levels of authority. This allowed the field workers to continue engaging with combatants at grassroots level from both sides without making them feel that they, as human rights activists, were condemning them.

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121 Correspondence, October-December 2011, on file with author (translated by Mukunda Kattel). This division of labour came up previously in conversations with Bhola Mahat and community workers of INSEC, Nepalgunj office, 2006/2007; and in comments from other human rights activists in DanidaHUGOU workshop, July 2007, Nepalgunj.
122 Ibid.
123 Ibid.
124 Ibid.
125 Ibid.
Mahat’s comments also bring out the relevance of framing in dealing with seemingly incompatible roles: INSEC ‘packaged’ its facilitation role and advocacy messages carefully. On the one hand, it framed its facilitation function with reference to the need to attend to victims irrespective of who they were; on the other hand, when speaking out against violence, acts by individual combatants ‘on the ground’ were separated from commitments made by the leadership of the conflicting parties, and human rights standards were emphasised as applicable to both sides.

7.3.3 Discussion

The experiences of INSEC and CiM described above raise the question why the combination of facilitator and advocate’s roles seems to have posed less difficulty for INSEC than for CiM. Space does not permit a thorough exploration of this question here, but some factors that probably affected the feasibility of this role combination are outlined below.

Firstly, context matters. For example, geography probably helped INSEC’s field workers to put distance between their own facilitation efforts and advocacy by the organisation’s head office. There has always been a large divide between Nepal’s centre and its periphery; what happens in Kathmandu only gets through to the country’s outer regions with considerable delay. By contrast, CiM clergy performed their facilitator and advocate’s roles in the same province and may therefore have been less able to separate the two.

In framing its advocacy messages, moreover, INSEC could use the fact that the state and the Maoist leadership had committed themselves – in public and in writing – to respect international humanitarian law and international human rights law. In 2003, for example, Nepal’s conflicting parties came close to signing a human rights agreement facilitated by the national Human Rights Commission. Pledging respect for human rights was a tactic used by the Maoists and the state to enhance their moral credibility and gain support from the international community (e.g. Rawski and Sharma 2012, 177). This greatly facilitated INSEC's advocacy, as it could refer to commitments made by both sides when denouncing violations. In Zimbabwe, CiM faced a very different context during most of the 2000s: human rights concerns were primarily put forth by those in opposition and the ruling party generally regarded human rights activists as critics to be silenced. Advocacy by CiM was therefore easily construed as supporting the opposition. In other words, if human rights discourse is mostly associated with one specific party, this may affect an actor’s ability to combine facilitation and advocacy roles.126

Another contextual factor, the scale and direction of human rights violations, is also relevant. The more asymmetrical the violence in terms of responsibility for abuses,

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126 In this regard, see also 8.2.1, on the possibility of the fields being associated with conflict parties.
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the more likely it is that human rights advocacy will be perceived as support for a particular party (e.g. Felner 2004; Babbitt 2009a). Even though, in both countries, forces supporting the state were responsible for the majority of rights violations, in Zimbabwe the violence was largely unidirectional while in Nepal, the Maoists were also heavily implicated in abuses.

As a result, INSEC’s condemnations of abuses ‘covered’ both parties in Nepal over time, suggesting a certain impartiality. In Zimbabwe, however, most victims of rights violations were not aligned to ZANU-PF.127 This meant that advocacy ran more risk of being perceived as partisan, as speaking out against violence was mostly critical of the regime. Felner thus speaks of a ‘credibility problem’ for actors engaging in rights advocacy, since violations are seldom “equally or proportionally distributed between warring groups”; this ‘disproportion’ leaves them open to accusations of bias (idem, 4).128

Beyond such contextual factors, the varying natures of the two civil society actors considered here may also have contributed to their different experiences in combining facilitation and advocacy. As one of Nepal’s leading human rights NGOs, INSEC was expected to engage in rights advocacy and speak out against violations. Its facilitation function was generated from this human rights platform: its strong and well-known human rights stance enhanced its activists’ credibility amongst communities and combatants, and prompted requests for INSEC field workers to act as facilitators. According to INSEC’s regional coordinator Mahat, they made human rights the basis of their peacebuilding work.129

For CiM, the situation was less straightforward. As a network of churches at the interface of human rights and conflict resolution, its nature was more ambiguous. It functioned in a ‘grey’ zone: the Manicaland Churches were very clear about the gospel values – such as justice, dignity, respect – that informed their activities, but they also emphasised their pastoral approach and willingness to engage with anyone, regardless of possible wrongs committed. In their outreach and educational activities, moreover, they devoted more attention to conflict resolution. As such, CiM’s prophetic voice may have come as an unpleasant surprise to those in Zimbabwe who assumed that the Churches’ focus on ‘the love of Jesus Christ’ would prevent a critical stance.

127 This situation persists to date.
128 This is not to argue in favour of ‘spreading’ critique evenly across the various conflicting parties; if violations are unevenly distributed between them, this would misrepresent what is going on. Also, stressing ‘even-handedness’ in denouncing violations may inadvertently result in downplaying them if the notion is interpreted to mean that abuses by one side can only be condemned if the other side has committed equivalent ones. Keenan argues that such an understanding paralysed critiques of human rights abuses during the Sri Lankan peace process in the early 2000s, as “it was impossible to present a fully balanced list of charges against all the parties the conflict” (2007, 101).
129 Correspondence, October/December 2011, on file with author; information previously obtained through conversations with INSEC staff in Banke, Bardiya and Kathmandu (2006, 2007); and DanidaHUGOU synergy workshop, Nepalgunj, July 2007, with participants from INSEC and six other Nepali human rights NGOs.

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The resulting fall-out may have triggered some of the role tension experienced within CiM. Thus, while no one in Nepal would ever have doubted that INSEC would be critical and outspoken, this was far less the case for CiM in Zimbabwe.\(^{130}\)

As alluded to above, it is likely that notions of partiality/impartiality came into play too. For INSEC, its partiality, based on human rights standards, was a given; its impartiality related to how it applied them across the board. It was therefore relatively easy for the organisation to denounced abuses while facilitating dialogue, since such behaviour was in line with how other actors in the environment understood its goals, functions and actions.

CiM, on the other hand, repeatedly stressed that they were non-partisan. For them, this only related to political impartiality, in that they would not take political sides by endorsing one political party and not another. That this would not hold them back from being “partial to life-giving values”,\(^{131}\) may not have been fully appreciated by all those with whom the Churches engaged. Instead, the network was probably expected to be impartial in terms of keeping equidistant from all parties in the conflict and/or treating them in evenhandedly (e.g. Babbitt 2009a; Fast 2002). Dudouet speaks of ‘multi-partiality’, to capture the notion of empathising with all major parties through trust- and relationship-building, and understanding their respective worldviews (2006, 53). The network’s public stance on issues of justice – which was, as explained above, primarily critical of the regime – seemingly played into the hands of one of the conflicting parties and alienated the other. CiM’s plea not to confuse its “constructive criticism of the government with enmity towards the State as such” (Churches in Manicaland 2006, 71) probably fell on deaf ears, as the harassment of clergy signifies.

All in all, this highlights the importance of paying attention to external expectations and of clarifying expectations when serving multiple functions, especially facilitator and advocate roles – which CiM clergy increasingly realised the more they considered the role question. This discussion also points to the risk that an intervener’s value advocacy may be understood as party advocacy; its championing of certain principles (such as dignity, fair play, rule of law) is then seen as promoting the interests of a specific party. The distinction between these different forms of advocacy stems from Kraybill (1992), who identifies two additional ones, namely process advocacy (promoting a specific way of deciding things or getting things done) and outcome advocacy (pursuing an outcome the advocate considers desirable irrespective of who happens to benefit from it).

Kraybill observes that “[peacemakers] are advocates of something all of the time, whether we are conscious of it or not. The question is not if we are advocates, but rather of what. [We] can choose forms of advocacy that enable [us] to define a clear

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\(^{130}\) For CiM’s own thinking on the role of the church in public affairs, the relationship between state and church, and the positive role of criticism by the church, see Churches in Manicaland (2006, 68-71).

\(^{131}\) Correspondence, 29 December 2011, on file with author. See also 6.1.3.
Chapter 7

perspective without falling into the blind partisanship of party advocacy” (idem, 14; also Mayer 2004, 105-106). He argues that ‘neutrality’ is an illusion for conflict resolution practitioners (idem) – a stance shared by others (e.g. Dudouet, Schmelzle, and Bloomfield 2006). In Kraybill’s view, value and process advocacy go well together with peacemaking; those engaged in conflict resolution must be candid about the values that motivate them and about the nature of processes that they facilitate (idem, 14; also Mayer 2004, 105-106). Transparency about their moral position and approach to process enhances peacemakers’ credibility (also Lampen 1997).

Kraybill’s differentiated understanding of advocacy usefully recognises that conflict resolution is a highly normative undertaking, as set out in chapter 3. It is also helpful in signalling that certain forms of advocacy can be combined with facilitation and conflict resolution. It does, of course, not remove the possibility that some may conflate a facilitator’s value advocacy with party advocacy; this was the problem faced by Churches in Manicaland. Even then, appreciating different forms of advocacy can still serve a function, helping actors like CiM develop more insight into role tensions experienced. Providing another angle on facilitation and advocacy, it can add to their understanding of what is happening and help them think through ways of managing the role dilemma.

The discussion has pointed out various factors that affect how individuals and organisations deal with the thorny role combination of facilitation and advocacy. Some are contextual, such as the physical setting in which actors operate, the scale and direction of abuses committed, and the extent to which human rights discourse is utilised by various parties in conflict or primarily associated with one specific party. Others relate more to the nature of the actor and how others view the organisation or specific practitioners. The discussion thus shows that the agency of individuals and organisations to chart their own course in dealing with the facilitator/advocate role dilemma has limitations; their scope for manoeuvring may be curtailed, for example, by the expectations of others.

7.3.4 In Sum

This section has considered the tension that may arise between facilitator and advocate roles if one and the same actor performs them simultaneously. This tension stems from the different approaches and tasks required from prophets and peacemakers, which seem contradictory. The experiences of Nepali human rights NGO INSEC and Churches in Manicaland in Zimbabwe show that this role combination, while not ideal, cannot always be avoided. The emphasis in the conflict resolution

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132 It has been noted that ‘outcome advocacy’ may not be outside the realm of conflict resolution practitioners either, if it is understood as advocating, in general terms, for an outcome that meets parties’ underlying interests and fits within a rights framework, rather than a precisely defined substantive outcome (Galant/Parlevliet 2005, 117).

133 Following CiM’s positive response to Kraybill’s framework, it has become a regular part of the roles exercise.
literature that these roles cannot and should not be performed by one and the same actor, must thus be qualified. In practice, individual practitioners or organisations seeking to impact constructively on a conflict and the associated human rights conditions may end up performing both roles simultaneously, shifting between them in the same context.

The experiences of CiM and INSEC indicate that they sought to address the role challenge through various strategies. Important measures included acquiring greater clarity on the various roles played, appreciating the strengths and limitations of the roles as well as their interdependence, devising an internal division of labour, and identifying other roles that can offer a way around or out of the facilitator/advocate dilemma – such as that of adviser or educator. The experiences of the actors considered here also draw attention to the possibility of engaging in advocacy behind the scenes. They further highlight the relevance of differentiating advocacy in terms of its focus – i.e. values, process, outcome, or party – since some forms of advocacy are more compatible with facilitation than others. Overall, reflection and reframing proved to be useful practices for these actors as they worked out what a CiM member called the ‘situational ethics’ of balancing their various roles.

At a general level, the section demonstrates that the facilitator/advocate dilemma cannot be resolved by dismissing one or the other role, as both are important when pursuing human rights protection and conflict resolution. Rather, it raises a question of how to ensure that these (and other) functions are performed as appropriate (e.g. Arnold 1998b). Moreover, if a certain actor ends up combining facilitator and advocate roles, the dilemma highlights the need to consider how to deal with the possible confusion that may ensue amongst others in the actor’s environment. After all, it has become clear that the perceptions and expectations of others are likely to affect the ability of an actor to combine these functions. The discussion thus echoes Mayer’s point that, when it comes to roles, “a purist approach in the end serves no one” (2004, 204), as well as his suggestion that:

We will have to work to refine certain role boundary safeguards while maintaining the role flexibility that disputes call for. Transparency will be a key tool in helping us with this. We will need to be clear with the disputants just what role we are in, why we have chosen it, what has gone on before in terms of our contacts with other disputants, and what process we will use to change our role (idem, 240-241).

Role clarity may thus be a greater imperative than role integrity, even if the latter is worth pursuing as far as possible.

When it comes to the relationship between human rights and conflict resolution, the section reveals that there are tensions between the different approaches – as represented in the archetypical roles of advocate and facilitator – but that these are not necessarily absolute or insurmountable; they can be contextually resolved, or rather, navigated. It has also transpired that actors focusing on human rights and conflict resolution certainly have agency in how they deal with challenges like the
facilitator/advocate dilemma, but that they also face constraints. Various factors –
contextual and otherwise – appear to affect their ability to chart their own course.

Finally, it is possible to formulate a tentative claim that warrants further study: the
more explicit and recognised an actor’s ‘rights-oriented’ partiality is up front, the
more feasible it may be for this actor to facilitate dialogue between conflicting parties
– particularly if both (or all) have committed abuses. However, the more conflict
resolution-oriented an actor is (or perceived to be), the more difficult it may be to
combine facilitator and advocate roles, as the actor will be expected to display a
specific kind of impartiality: evenhandedness, refraining from judging parties in
public, etc.

Values advocacy runs the risk of being mistaken for party advocacy, especially when it
is conducted in public and when responsibility for abuses is unevenly divided
between the parties. This tentative claim is based on the comparison of INSEC’s and
CiM’s experiences and resonates with other examples put forth before in chapters 5
and 6. For example, LHR and a few national human rights institutions did not seem
particularly fazed by assuming facilitation functions, while CCR and the Northern
Ireland Parades Commission struggled with human rights to a certain extent.

7.4 To Raise or Not To Raise? Referring to Rights in Conflict
Resolution Interventions

Building on the previous sections, which called attention to the style, tone and focus of
advocacy,134 this section focuses on the question of referring to human rights
violations in conflict resolution interventions. This seems to reflect a tension between
human rights and conflict resolution. From a human rights perspective, raising the
abuses committed as issues to be addressed in a facilitated dialogue process is a
matter of course, something both necessary and inevitable. From a conflict resolution
perspective, doing so may hamper the process in various ways, as explained below.
Thus what is right (from a human rights point of view) and what will work (from a
conflict resolution point of view) seem to clash, suggesting a dilemma of ‘to raise or
not to raise’.

It is argued here that the matter is more complicated. Conflict resolution actors face a
range of questions when facilitating dialogue between parties in conflicts where
human rights abuses have been committed. They not only have consider whether to
raise abuses at all, but also what abuses to raise, when to raise them, who is best
placed to do so, and perhaps most importantly, how to raise them. The section points
to several strategies that may be useful in addressing this last question, including the
possibility of reframing rights violations and rights issues more generally in conflict
resolution interventions.

134 See 7.2.3 (on a confidence-building approach to advocacy) and 7.3.3 (on distinguishing between process-, values-, party-, and outcome-advocacy), respectively.
However, such an indirect approach to communicating about human rights and rights abuses – possibly evading explicit human rights language and referring to notions like human dignity and human needs instead – can prompt misgivings amongst human rights actors. The section therefore also engages with concerns encountered over time, relating them to the ‘vernacularisation’ of human rights (Merry 2006a). Overall, the discussion contends that raising human rights concerns in dialogue and problem-solving processes may be less problematic than conflict resolution actors often believe, and that an indirect approach, including needs terminology, may be more compatible with human rights thinking than those active in that field often perceive.

The section is structured the same way as before. After explaining the dilemma first in general terms and then with reference to the DuNoon/Doornbach case (7.4.1), it discusses a possible approach based on the intervention in that case and on an example from land rights mediation in South Africa (7.4.2). It then considers two objections levelled against this approach (7.4.3), and concludes with a summary that sheds light on lessons learned about the relationship between human rights and conflict resolution (7.4.4).

### 7.4.1 The Dilemma

Various authors and practitioners have noted that raising issues of human rights violations in conflict resolution processes is challenging, especially from the perspective of a third party (e.g. Manikkalingam 2008; Arnold 1998a). Doing so has the potential to negatively affect the process and the parties. However, not raising committed violations is also problematic. This dilemma is explained here with reference to the literature and to an example previously discussed, in which the issue specifically came up. The discussion below shows that framing the dilemma in ‘either/or’ terms – ‘to raise or not to raise’ – is unhelpful and overlooks important aspects that need to be considered. It also casts doubt on the idea that referring to rights violations and rights issues more generally reflects a definite tension between human rights and conflict resolution.

From a conflict resolution perspective, raising violations during a facilitated dialogue process poses the risk of jeopardising parties’ willingness to participate in the process, the interaction between them, their relationship with the facilitator, and the latter’s impartiality. Such undesirable effects link back to the earlier facilitator/advocate discussion, but also relate to the response on the part of individuals allegedly responsible for abuses. Ram Manikkalingam, who served as senior adviser to the Sri Lankan President during peace negotiations in the early 2000s, writes that raising human rights violations can “alienate parties to a conflict” (2008, 7). He explains that raising issues of human rights violations in [the context of resolving conflict] can make it harder to build trust between the parties – whether such issues are raised by the negotiators on behalf of the two parties, or by the mediator. This is particularly true at the initial stages of a peace process, when parties are most sensitive to criticism and most uncomfortable with the change in the political context and their own relationship
with each other. The memory of violations by both sides is still fresh, and raising human
rights violations – even in order to address them – can distance parties from each other
and [from] the mediator in a conflict (2008, 7).

Arnold concurs, noting that “labelling a party as violator of human rights is a weighty
matter. It is likely to escalate the dispute and place the accused in a defensive
position” (1998a, 2). Defensiveness on the part of an alleged perpetrator may be
compounded by a broader ‘image problem’ of human rights, as various actors in
conflict settings tend to reject ‘human rights’ as a foreign imposition or Western
invention with limited or no local relevance – something we will return to below.135

Of the various examples set out thus far, the CCR intervention in DuNoon and
Doornbach in early 2001, after the forceful eviction of non-nationals by South African
residents of these two informal settlements, illustrates the dilemma most clearly. As
described before, the use of human rights language proved contentious: those
responsible for chasing the non-nationals out rejected discussion of what had
happened – violent attack and displacement, destruction and looting of property,
imimidation and harassment – in terms of ‘human rights’ or ‘human rights violations’,
but those evicted asserted that discussing it in any other terms would amount to
further victimisation.136 Consequently, the CCR practitioners (of which I was one)
initially perceived two options for action: we would either raise the alleged human
rights violations as ‘issues to the dispute’ – conflict resolution jargon for including
them in the agenda for discussion – or we would not raise them at all.

These options seemed mutually exclusive and each had merits and flaws. Framing the
events in human rights language – raising what had happened as human rights
violations – could signal to the South Africans that their behaviour was not acceptable
in ‘the new South Africa’. It would highlight that, according to the new Constitution,
everyone, including private persons, had responsibilities in relation to other people’s
rights.137 It could also help the non-nationals who had been subjected to violence gain
confidence in the dialogue process and in us as mediators. Yet we also had to consider
that the South Africans had threatened to walk out of the process if we were to go that
route. What use was a signal if those whom it was intended for, were not there to heed
it? Practically, we were unable to compel the South Africans to participate in the
intervention. We also understood mediation as a voluntary process as a matter of
principle.

The fact that each option for action was associated with one or the other party added
to our dilemma: the parties could easily perceive either course as the mediators siding
with one of them. This was problematic given the importance our organisation

135 The notion that human rights may have an ‘image problem’ is informed by a conversation with Marlies
Glasius, Amsterdam, 17 Feb. 2012. See also below at 7.4.2 and the earlier discussion in 2.5.4 (referring to culture
talk and sensitivity to global values).
136 See the very beginning of the introduction, as well as 5.2.3, respectively.
137 This relates to the horizontal application of human rights in the 1996 Constitution (op.cit.), see further 8.1.2.
attached to remaining impartial. Nevertheless, not discussing the alleged abuses as such might implicitly convey a message that they did not matter or that the mediators did not appreciate the gravity of the situation. It could cause those evicted to distrust the process and the outcome, and undermine our credibility as mediators. In terms of our own values, moreover, we did regard the eviction (and the abuses that came with it) as a serious affair. We also thought the SAHRC had a point when suggesting that this case was an opportunity to enhance understanding of human rights.

However, the value of raising human rights violations in conflict resolution processes is not just a question of whether or not to raise them. The literature shows that what also matters are which and whose violations to raise, when to do so and who should do so. The discussion thus far indicates that it can be hard for conflict resolution practitioners to be the ‘who’ that raises violations. Since this links back to the previous section on facilitation and advocacy, it is not considered any further here. The question of timing is illustrated by Manikkalingam’s comment cited above, suggesting that doing so early in a process is tough as discomfort and sensitivity are high and trust is low (2008, 7).

The questions of which and whose violations to raise warrant more explanation; this is done first on the basis of literature and then in relation to DuNoon and Doornbach. They relate to a lack of ‘symmetry’ in human rights violations, in terms of the scale and type of violations committed. It has already noted that violations are seldom proportional or equal amongst groups in conflict (Keenan 2007, 88-117; Felner 2004, 6). Regarding type of violations, one can differentiate between those that stem from violence itself (e.g. killing, torture, summary execution, displacement, and destruction of property and infrastructure), and those rooted in the political and social structure of the state (e.g. limited political representation, denial of land rights, exclusion of a specific identity group); the former constitute symptoms of conflict, the latter relate to its causes.

While violations caused by direct physical violence can relatively easily be tackled by ceasing hostilities, dealing with the structural violations requires social and political change. In a civil war, this may lead to “asymmetry in the process of addressing rights violations between those that entail long-term reform and those that can be addressed immediately” (Manikkalingam 2008, 8; also Keenan ibid). Such asymmetry in violations is often advantageous to states, since they “can say to the rebel armed actor ‘Halting your rights violations simply requires the political will to issue an order [to stop fighting], addressing ours requires a complicated political process that may even

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138 On CCR’s stance on impartiality, see 5.2.1.
139 Personal notes taken at the time. For the SAHRC’s involvement in this case, see 5.2.3.
140 This also transpires from the discussion of the 2008 xenophobia crisis in 5.2.4; the senior civil servant responsible for appointing the facilitation team in the Western Cape admits having found it hard when facilitators started raising rights questions and referred to the obligations of public officials; he perceived this as a sign of bias.
141 This previously came up in the facilitator/advocate discussion, see 7.3.3.
entail constitutional reform” (ibid). Non-state actors may hence perceive “the use of human rights as a ruse to get them to make concessions [...] while enabling states to return to the status quo ante with no political concessions” (ibid).

Admittedly, these observations relate to a very different situation than that in DuNoon and Doornbach; this was not a protracted conflict on a national scale with periods of intense violence. Yet the distinction between violations directly resulting from physical violence and those associated with long-term non-realisation of rights also applies here. So too does the point about the different types of action required to address either kind of violation – to persuade the South Africans living in the informal settlements to desist from direct violence against non-nationals, and to urge the state to make efforts to address structural violence by introducing reforms to ensure greater allocation of resources and more participatory decision-making.

Our dilemma about whether or not to raise the alleged rights violations in the mediation process thus concealed another challenge: if violations were to be on the agenda, would this address only the abuses committed by the South African residents against the non-nationals, or also the failure of the state to live up to its rights obligations to both citizens and non-nationals alike – which very likely shaped the conditions in which the violence could occur? To be honest, I doubt that we perceived this clearly at the time. This discussion shows that the question of raising rights violations in the context of efforts to address conflict cannot simply be reduced to a dilemma of ‘to raise or not to raise’, as this ignores many other important aspects related to ‘who, what, when and which?’

The notion that the question necessarily reflects a tension between human rights and conflict resolution also merits qualification. Raising violations matters not only from a human rights point of view but also from the perspective of conflict resolution; there are practical and principled reasons for the latter, which will simply be restated here, as several have already been mentioned. Failure to raise committed violations can lead to victims losing trust in a mediator and can raise “concerns about the legitimacy of the process and the determination of a just outcome” (Arnold 1998a, 2) amongst victims and others. It also carries other risks, including neglecting important symptoms and causes of the conflict, conveying an implicit message that such violence is ‘okay’, or overlooking formal legal standards that relate to the matter at hand and thereby reaching an outcome that does not comply with the law. Practically, it may be virtually impossible to avoid raising rights violations in such terms given that conflict parties and other interested actors often use human rights as a frame to understand both the problems and possible solutions.

Thus, the two options for action in the dilemma, simplistically framed as ‘to raise or not to raise’, cannot be exclusively associated with a specific field. While raising violations may be a sine qua non from a human rights point of view, not raising them is unlikely to reflect a conflict resolution stance. This is not to deny the challenges
involved; they are real, as the discussion above made clear. As such, another question emerges, that of how: how can conflict resolution actors raise violations while mitigating at least some of the drawbacks outlined above, such as defensiveness on the part of the alleged violators, polarisation between the parties, and alienation from the mediator? This is the focus of the next sub-section.

7.4.2 Possible Approach

The discussion below highlights some strategies to address the dilemma set out, paying particular attention to what can be called an indirect approach to referring to human rights violations in conflict resolution interventions. Instead of relying on explicit human rights terminology, it uses other concepts to communicate human rights concerns, such as human dignity and basic human needs. This approach thus entails reframing human rights violations rather than refraining from raising them. It is informed by practical experiences gained in the context of CCR’s Human Rights and Conflict Management Programme (HRCMP) and backed up by suggestions from two conflict resolution authors who are both seasoned mediators. This is explained below, first with reference to the literature and then in relation to the intervention in DuNoon/Doornbach. It also offers one other example to illustrate such an indirect approach and other strategies mentioned.

The notion of reframing human rights violations is derived from Arnold, who observes that, “conflict resolution practitioners [may prefer] to reframe human rights issues in ways which make them more easily heard or understood by the accused” (1998a, 2). He does not elaborate, but others have noted that framing and reframing are crucial tools for mediators in their third-party role; they help to provide an alternative way of conceptualising the conflict and the issues at hand, so as to increase the chances of resolution in a way that the parties perceive as fair (Gray 2006; Moore 2003, 232-244). Without speaking of ‘reframing,’ Manikkalingam suggests that practitioners raise rights violations “in more subtle and constructive ways” (2008, 7). He points to the possibility of focusing not only on committed abuses but also on mechanisms for addressing them. Furthermore, he proposes that mediators encourage other actors to raise the issue of human rights violations (ibid).

The CCR intervention following the eviction of non-nationals from the informal settlements of Du Noon and Doornbach in 2002 illustrates such strategies, and provides an example of reframing. Since the intervention process adopted by the mediation team was already set out in 5.2.3, I will not repeat that here but link what we did to this discussion. With hindsight, we seem to have effectively split up the question of whether and how to raise human rights violations into three parts (without necessarily being aware of it at the time). The first entailed deciding on a course of action regarding the use of the inflammatory ‘xenophobia’ label; the second was to create space for immediate past abuses to be raised; and the third was to draw attention to human rights and responsibilities in a more general way, by considering
aspects of structural violence and encouraging parties to consider what they sought to experience in the future instead of only focusing on what went wrong in the past.

As to the first part, we decided to not use the term ‘xenophobia’ to reduce polarisation and defensiveness. Regarding the second, we explained that mediation required that both parties’ concerns had to be raised, implying that ‘process’ rather than ‘bias’ motivated the discussion of alleged abuses; this set the parameters for the victims themselves to raise the direct violence to which they had been subjected, and to do so in terms of human rights violations. We addressed the third part through general awareness-raising – drawing in another actor, the SAHRC, who we thought was better placed to perform this role – and by facilitating interaction between local government officials and the settlement residents (i.e. between duty-bearers and rights-holders).142

The notion of reframing relates particularly to this last part. First, we focused on future measures to be adopted to address underlying concerns. We also framed the concerns put forth by the South African residents and the non-nationals initially in terms of ‘basic human needs’ rather than human rights. Foregoing human rights language in this way was informed by lessons learned in the context of CCR’s HRCMP, relating to the ‘image problem’ of human rights alluded to above. This warrants some explanation before the approach used in the Du Noon/Doornbach mediation can be discussed further.

While working in the HRCMP, my colleague Victoria Maloka and I had observed that we often encountered resistance when engaging people in explicit conversation about human rights. There were some recurrent themes in the concerns they expressed: that human rights are abstract legal concepts with little bearing on people’s daily personal and professional lives; that they are foreign constructs imported from or imposed by ‘the West’ or ‘the North’; and that human rights are problematic because they ‘interfere’ with people ‘getting their job done’.143 Interviews conducted for this study indicate that we were not alone in this experience. For example, Alice Nderitu, who used to head the education department of the Kenya National Commission on Human Rights, recalls that “people just switched off when we’d start speaking of human rights” making her wonder “how can we make human rights real?”144 According to Andries Odendaal, who provided conflict resolution training in Zimbabwe in the early

142 See 5.2.3 for a more detailed description of the intervention process adopted. The decision not to use the term ‘xenophobia’ was probably the mediation team’s most conscious one in relation to the question of how to address the rights violations in the intervention process.

143 The third response was often raised by South African public officials working in correctional services or law enforcement; members of the police would argue that the rights afforded to suspects protect criminals and complicate the maintenance of law and order by enabling suspects to ‘talk back’ at officers or refuse to answer any questions (Parlevliet 2002, 38; see also Hornberger 2007). The second was a concern regularly raised by politicians and senior government officials from various African countries; we encountered the first response more broadly (for a similar observation, see Beirne/Knox 2014, 34).

144 Interview, 7 June 2011, Cape Town.
2000s, “there is a real danger that human rights is still perceived – and it's a perception – as a colonial instrument”.145

To get past such concerns – which suggest that human rights have, at the very least, an 'image problem' – we developed an approach of talking about human rights indirectly, using the notions of human dignity and basic human needs as a starting point. We found that those we engaged with easily related 'dignity' and 'basic human needs' to their professional and personal experiences. They quickly linked them to tangible social, political, economic and cultural concerns, which we could then use as the basis for bringing human rights into the conversation, becoming more explicit over time.

Needs also served as a 'conceptual bridge' that could help us explain the relationship between human rights and conflict, drawing on ideas from conflict resolution that unmet needs tend to be a driver of conflict and that a denial of human rights implies a frustration of needs related to identity, freedom, security and welfare.146 The notions of human needs and human dignity thus helped us to ground human rights in people's life experiences, in a sense 'demystifying' them (Parlevliet 2002, 38), or, as Gready and Ensor put it, conceptualising "human rights as the everyday" (2005b, 10).147 An anecdote from Odendaal reflects the relevance of this approach:

I've done this exercise with the Zimbabwean army, for example – I said to them, 'let's talk about human rights,' and I wrote 'human rights' on a flip chart and asked 'what do you think, when you see these words.' [Out came] just a torrent of abuse – colonial oppression, hypocrisy, all of that – a stream of very negative content. And then we went through the exercise, you know, identify the needs, the dignity, and [at the end] they said 'Oh, okay, if that's what human rights are, it's ours.'" 148

These experiences from the HRCMP informed the approach taken during the intervention in the DuNoon/Doornbach case. The South African settlement residents initially perceived 'human rights' to be only beneficial to 'the foreigners' and associated 'human rights violations' with the large-scale crimes of apartheid.149 Their defensiveness and resistance to human rights prompted the mediators to frame rights issues in terms of basic human needs.

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145 Interview, 9 June 2011, Stellenbosch; emphasis as spoken.
146 This draws on work of Burton (1990), Azar (1990) and Galtung/Wirak (1977), as discussed in Parlevliet (2010a, 20-21; 2002, 16-19). On the relationship of human rights and human needs, see also 7.4.3 and Gasper (2007; 2005).
147 Initially, we did this primarily during training workshops with various audiences; later, I also did so when serving in other capacities (e.g. as an adviser to other organisations, or as a member of intervention teams.)
148 Interview, 9 June 2011, Stellenbosch. The exercise Odendaal refers to was developed by the HRCMP, which prompts people to reflect on their understanding of 'human dignity', identify ways in which human dignity has been disrespected in their context, and develop 'rules' that should ensure protection of human dignity in future; these are then compared with a relevant human rights instrument. The HRCMP developed this exercise and others around human dignity and basic human needs for use in workshops, as a way of getting participants to talk about human rights. For description and instructions, see Parlevliet (2011a, 78-83; 2002, 44-46).
149 Personal notes taken at the time.
This proved useful in several respects. It enabled us to explain to the South Africans that their concerns about jobs, housing, water and safety related to human rights – hence, that ‘human rights’ were not ‘against’ them, but were as relevant for them as they were to the non-nationals (Galant and Parlevliet 2005, 124-125). Needs language also helped make the two parties aware of their common ground: they shared concerns related to subsistence, protection, recognition and participation. In our interaction with local government officials, it helped in explaining the importance of attending to service delivery concerns in terms of the increased potential for conflict when basic human needs are frustrated – without accusing them outright of failing to live up to their rights obligations, which might have reduced their willingness to cooperate.

In other words, raising rights indirectly was a means to an end for my colleagues and myself, aimed at preventing interlocutors from ‘switching off’ when encountering rights language. It was intended to help them ‘grasp the meaning, value and relevance of rights’, as I put it:

[This] approach of raising rights indirectly is not meant to diffuse or silence rights. It is a strategy to ensure [people’s] continued and substantial involvement with human rights. It is primarily relevant in the beginning of [our interaction]; concepts such as human dignity and human needs are not meant to replace rights. Once people have [engaged with] human dignity and/or human needs, it is much easier for them to grasp the notion of rights – the values they represent, the purposes they have, and their regulatory character. The introduction of rights instruments is facilitated in this way: the rights therein have come to life (Parlevliet 2004, 59- 60, emphasis in original; also 2002, 38).

An indirect approach to raising rights violations in a conflict resolution intervention also transpires from experiences recounted by Rodney Dreyer, the practitioner who helped to set up the Mediation Panel for the South African Department of Land and Rural Affairs (described previously in 5.1.5); the question of referring to human rights came up regularly in land mediations. Dreyer explains that he used to get involved as a supervisor if he perceived a mediator as being insufficiently attentive to the violations in a particular case:

Sometimes mediators are really in a difficult situation, when the rights violations issue is of such an extent that it affected the dignity of people, and [the mediators] don’t really realize it, so how do you say this to them? The mediator would push on [to get to an agreement] irrespective of the unjust behaviour of the farm owner particularly. [Since I’m overseeing their work] I’d say to the mediator ‘what about the restoration of that person’s dignity? What about their rights? Is [the owner’s] offer making that possible? My assessment right now, on the telephone, it’s not’. I’d say ‘ask the parties if you can come back tomorrow’ and I’d get on the first plane and the next day I’d be there next to the mediator. The mediator then would say to the parties that ‘he or she has deemed it necessary to invite his or her supervisor and the supervisor would just like to address this issue and that issue, to check in with you, whether you’re aware of these implications.’

And then I’d pick it up. I would not necessarily use the language [of unjust behaviour] – I’d ask the farmlower in the company of the farm owner – when the owner said this to
you, how did you react and why? How did you feel when that was said? [Then] when I’m alone with the owner, I’d use the language [of unjust behaviour]. I’d say, so tell me, the behaviour that the farmdweller was talking about, that lasted over a period of time, would it be correct if I say that that kind of behaviour was unjust towards the farmdweller, unfair towards him? Would I be correct? What’s your take on it? I’m saying it’s my interpretation, my assessment of what I’ve been exposed to now. But to some extent a right has been violated.150

The quote reflects several strategies mentioned before: letting someone outside the mediation process raise the issue of violations (creating a division of labour, preventing questions about the facilitator’s impartiality), creating space for the party negatively affected to speak for himself, and expressing criticism when being alone with the offending party. In terms of reframing, note how Dreyer speaks of ‘unjust behaviour’ instead of ‘abuses’ or ‘violations.’ In addition, he does not directly accuse the farm owner of violating the farmworker’s rights, framing the allegation of ‘unjust behaviour’ as a question and as ‘his interpretation’. He continues:

Often, 60% of the time, the [owner’s] lawyer will also be present. Some [owners] are adamant, ‘This is my farm, and those who live on my farm must live under my rules, and I don’t care if this rule is unjust or not, it’s my rule, it’s my farm.’ Now that’s good, that’s fine – we can agree to disagree on that one. Then [I’d say] ‘But let’s just go to perhaps, the Constitution of our country? Perhaps the lawyer can help us here, which section it is? It does speak of human dignity, a right to residence, to live, the right to education and stuff, the fact that you don’t allow the bus to come onto your farm, deny children [the right] to go to school.’ I’d say ‘Mr. Attorney, this Bill of Rights thing in our Constitution, which section is it, which chapter? Because I have a copy here, you know, spare me the effort’ – and he does not know, I don’t know either, I’d have to look it up, but I’m calling his bluff. Once I’ve done that, I’d say ‘it’s still my assessment that there’s been behaviour that’s treated people unjust. And I’m not denying the fact that it’s your fault.’151

Several aspects are striking. He only attributes blame at the very end, framing this in a roundabout way. His explicit references to rights come gradually, also bringing in the Constitution. The reference to this fundamental standard serves to remind the owner that there are higher rules at stake that require compliance, surpassing the rules set by himself. Drawing the lawyer into the conversation lends additional legal weight to this point – while implicitly alerting the lawyer that he has a professional responsibility to ensure that his client abides by the country’s legal framework.

Of course, whether the approach outlined unfolds in practice exactly as described, is unclear; the quote stems from Dreyer talking about his experiences, not from me observing him in mediation. The main elements are nevertheless remarkably similar to the way we tried to handle the vexed question of raising rights violations in conflict resolution in the DuNoon/Doornbach process. This approach effectively reframes the very dilemma itself: instead of focusing on the question of whether to raise violations,
it considers the question of how to raise them, thereby creating space for manoeuvring.

7.4.3 Discussion

The above discussion shows that an indirect approach to raising rights violations can be very useful from a conflict resolution perspective, to prevent defensiveness, reduce resistance and facilitate cooperation; it serves to "lay a foundation" for human rights that people can "easily relate to and do not consider threatening" (Parlevliet 2004, 59). Yet human rights actors have been critical of such an indirect approach at times, in two respects: the very act of reframing human rights is contentious and doing so in terms of 'needs' is especially controversial. This sub-section reviews such concerns, relating them, amongst others, to Merry's notion of 'vernacularising' human rights (2006a). It argues that reframing is not that foreign to human rights practice and that doing so with reference to needs may be more compatible with human rights thinking than critics realise – although this depends, in part, on the conception of 'human needs' used.

In terms of reframing in itself, I have encountered concerns that speaking about human rights without naming them diffuses them and lessens their significance. Allegedly, doing so backtracks on gains made in getting human rights on the political agenda – certainly when it comes to social-economic rights – and depoliticises rights claims. Such charges seem to suggest that efforts towards rights protection and promotion only qualify as such if named that way explicitly. While it is clear that explicit rights talk has benefits – as Jochnik writes, “rights rhetoric provides a mechanism for reanalysing and renaming ‘problems’ as ‘violations,’ something that needn't and shouldn’t be tolerated” (1997, 3-4) – a review of the literature demonstrates that it is quite possible to talk about or work on human rights without framing efforts in explicit terms.

For example, authors studying the inclusion of human rights in peace agreements note that the scope of an agreement’s human rights component is hard to ascertain; provisions that do not explicitly mention ‘human rights’ can still address rights issues when dealing with reform of the judiciary and police, power-sharing arrangements, civilian control over the military, or elections (International Council on Human Rights Policy 2006a, 3; Putnam 2002, 238; Bell 2000). Meanwhile, Mahony highlights the

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152 I have encountered such criticism mostly in face-to-face interactions, rather than in writing; a South African conflict resolution practitioner interviewed for this study testifies to encountering it as well (Chris Spies). Such critique has mostly arisen in interactions with practitioners and scholars working in an international or ‘Northern’ setting (e.g. European development organisations, human rights officers of the United Nations, American academics, etc.). Apparently, my use of needs language in relation to human rights once prevented an international consultancy assignment being offered to me on the grounds that ‘I wasn’t really doing human rights’.

153 Such provisions address concerns related to procedural fair treatment, participation in the public process, freedom of speech, movement and association, substantive limits on state powers, etc.
use of 'persuasive human rights diplomacy' by human rights monitors in areas affected by violent conflict. This entails using "indirect pressure" and "deliberately 'vague' hinting" to relay rights-related messages to members of government, security forces, and armed groups without alienating them (2006; also 2007, 263).

More generally, Gready observes that many NGOs “engage in dialogue and cultural adaptation as a matter of good basic practice” when promoting human rights in non-Western contexts (2003, 747). Such 'processes of reinterpretation' (ibid) have become known, following Merry (2006a), as 'vernacularisation': local or national intermediaries – activists, lawyers, NGO workers – translate transnational human rights discourse into local idioms and practices, adapting human rights to the normative structures and socio-historical situations that exist in their particular context (Merry and others 2010, 108).154 It thus seems clear that human rights efforts come in a range of forms, which may be more or less explicitly framed as 'human rights'. Put differently, some reframing is relatively common in human rights practice; it may well be intrinsic to it.

That said, Wilson points out that vernacularisation can entail ‘meaningful translation’ but can also involve actors “gesturing towards aspects of human rights talk with very little specificity, or actual content” and with “only a fleeting and expedient commitment to the legitimating mantle of rights” (2007, 358, 359). In this regard, our reframing of rights violations in the DuNoon/Doornbach intervention probably constitutes a mixed bag. On the upside, as mediators we used 'human dignity' and 'human needs' as a stepping stone for talking about rights explicitly, including reference to national instruments; we also sought to enhance the local authorities' responsiveness to the settlement residents, both South African and non-national, by facilitating interaction between them. On the downside, we did not clarify and insist on the legal obligations of local government regarding service delivery to non-nationals.155 So we were not as forthright on accountability as we could have been – although it is doubtful whether this stemmed from reframing as such or rather from our limited knowledge and experience at the time.

In sum, there is a risk of diffusing rights when reframing them, but it cannot be assumed that it occurs as a matter of course. This observation is an important retort to actors critical of reframing or talking indirectly about human rights. Yet it also highlights that conflict resolution practitioners need to consider the possible consequences of reframing, positive and negative, and to anticipate critical questions that may be raised in this regard. Overall, one can distinguish between the empirical observation that reframing rights happens regularly and may serve certain functions when seeking to advance human rights protection, and the value judgement that reframing should not be done given its potentially negative ramifications.

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154 The term 'vernacularisation' was previously mentioned in chapter 2; see 2.5.4.

155 See the assessment at the end of 5.2.3.
As noted, a second type of concern encountered about reframing human rights has been related the use of the concept of ‘basic human needs.’ Three concerns have been encountered in this regard: that the needs concept is too narrow as it refers only to social and material goods; that it presumes a hierarchy that defies the interdependence and indivisibility of human rights; and that it implies a dependency on the part of vulnerable people on institutions that can fulfil their needs. Such charges stem from the increased interaction between human rights thinking and development assistance from the 1990s onwards, in the context of which development is no longer about meeting needs and providing services but about realising rights.

Individuals and groups targeted through development are nowadays ‘rights-holders’ with legal entitlements rather than ‘beneficiaries’ with needs, and public institutions have changed from ‘service providers’ into ‘duty-bearers’ responsible for delivering on rights obligations (e.g. Miller 2010; Gready and Ensor 2005a). Such a (human) rights-based approach to development is thought to counter previous technocratic approaches and to facilitate “a renewed focus on the root causes of poverty and exclusion, and on the relations of power that sustain inequity” (Cornwall 2002, 16; also Jochnick 1997, 4). It is thus supposed to imply a more political appreciation of development, with greater attention for structural conditions of vulnerability, marginalisation and discrimination (Gready and Phillips 2009, 11; Gasper 2007). This evolution explains the resistance from some human rights actors regarding the use of needs language to reframe rights concerns: it seems to set back the clock. The remainder of the sub-section presents an alternative perspective to show that needs language may be less foreign to human rights thinking than critics acknowledge. It draws on a difference between the notions of ‘needs’ prevailing in the human rights and conflict resolution fields, which affects how the relationship of human rights and human needs is conceived. After all, when considering the suitability of needs language in relation to human rights, much depends on the specific conception of needs that is used. The notion of a hierarchy of needs, for example, stems largely from Maslow (1970), who posited that immediate physiological and safety needs take precedence over needs for esteem and self-actualisation.

Human dignity, which I have also regularly used in reframing, has generally not been controversial, although Judith Robb Cohen, the former SAHRC manager in Cape Town, notes that, “human rights practitioners get nervous when you use dignity as a be all and end all of everything, particularly if you start using dignity [as a basis] upon which to make legal decisions because it is so broad – they say because it is so powerful and special, you shouldn’t decide things on the right to dignity; you should rather decide on the actual right in question. Because it almost becomes too easy” (interview, 10 June 2011, Cape Town).

There is a vast literature on (human) rights-based approaches; see e.g. Fukuda-Parr (2009), Gasper (2007) and Alston (2005). Miller (2010) comments on the distinction between rights-based approaches and human rights-based approaches to development; both terms are used in the literature and professional practice in the human rights field.

For criticism of Maslow’s hierarchy of needs, see e.g. Klein Goldewijk/De Gaay Fortman (1999, 45-47).
Exploring the differences between the two fields in this regard is therefore instructive. In the human rights field, the concept of needs has been mostly considered in relation to socioeconomic rights and material concerns; thus, Claude and Weston define needs as encompassing “those ‘social goods’ that are essential to human subsistence – for example, food, clothing, shelter, medical care, schooling” (2006, 161; also Uvin 2004, 34).

By contrast, the conflict resolution field has employed a much broader conception. Burton (1990) and Azar (1986), for example, relate needs to both material and non-material concerns such as security, recognition and participation, and consider them universal motivations that are an integral part of human beings and are fundamental to their survival and development. Others perceive needs as relating to security, identity, welfare and freedom, and as having an individual and collective dimension (Galtung and Wirak 1977), or they distinguish access, acceptance and security needs, which refer to economic and political participation, recognition of identity and culture, and nutrition, shelter and physical security, respectively (Miall 2004).

This understanding of needs is easily related to the full spectrum of human rights, all the more so because it considers needs as interrelated and presumes no hierarchy. An early human needs/human rights approach to balanced human development by peace scholars Galtung and Wirak (1977) thus highlights “the essential interconnectedness of all human rights” by reflecting “the interrelatedness of individual and collective rights and of political liberty and economic equality” (Claude and Weston 2006, 165, 164). It proposes that all needs give rise to certain rights; realising rights helps to secure the goods, services or processes necessary to meet these needs. As Osaghae frames it, human rights are “an instrument of individual and collective struggle to protect core interests” (1996, 172; also Galtung and Wirak 1977, 258). Needs thus conceived encounter human rights through human dignity: "behind human rights are freedoms and needs so fundamental that their denial puts human dignity itself at risk" (Klein Goldewijk and De Gaay Fortman 1999, 1-146, 117; also Gasper 2007, 17).

Hence, reframing human rights by referring to human needs as understood in the conflict resolution field is probably more consistent with human rights thinking than critics from that field recognise. Gasper in fact suggests that the dismissal of basic needs theory as a ‘primitive forerunner’ – “technocratic, commodity-focused, a staging post on the path to right thinking” – stems from ‘scant knowledge of leading basic needs theorists’, many of whom contributed to the development of the human rights-based approach (2007, 17-18). Overall, the presumption that basic needs merely

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160 The work of Max-Neef (1991) is a case in point, identifying nine (categories) of basic human needs that are easily related to the conflict resolution conception outlined above (and to human rights): participation, identity,
mean "a set of commodities that sustain material subsistence" (idem, 16) is flawed, and certainly not reflective of conflict resolution understandings. It is rather a human rights understanding projected onto a conflict resolution use of the concept.

What then of the concern that needs language puts people in a dependent relationship to institutions that can meet their needs because they cannot do so themselves? Underlying this claim is the idea that rights language calls attention to the entitlements that rights-holders can claim from duty-bearers, which enables empowerment and agency. While needs language does, indeed, not have the ‘struggle and empowerment orientations’ (idem, 20) of human rights practice, and also fails to convey the state’s obligations towards its citizens, the reality is that realising human rights also requires action by the state. People depend on the state to protect and secure their rights, for it to “[use] law and public policy to achieve this end” (Nussbaum 2011, 26). It thus seems questionable to only associate the notion of ‘basic human needs’ with dependency.

The above defence of needs discourse is of course not to say that its use is always preferable or that it is without tensions or flaws (Gasper 2007, 19; Francis 2010, 46-48). The discussion has alluded to some of its limitations, which means that it is probably more suitable in some contexts and at some times than others. This points to the relevance of using ‘needs’ and ‘rights’ language strategically (Schirch 2006, 88-89; also Beirne and Knox 2014, 34).

Yet it also highlights that human rights actors’ rejection of needs language may be largely based on a very specific and very limited conception of needs, without them recognising that this is so. It furthermore suggests that conflict resolution practitioners would do well to clarify their notion of needs when using it to reframe human rights concerns – and then to consider concerns of diffusion, depoliticisation and disempowerment as well. It further brings out how one and the same term may have very different meanings in the context of human rights or conflict resolution, which may affect its acceptability across the fields.

**7.4.4 In Sum**

This section has discussed the question of referring to rights violations in conflict resolution processes. While this is a *sine qua non* from a human rights perspective, it often seems difficult from a conflict resolution perspective as it may escalate tensions between the parties and lessen their willingness to seek a mutually acceptable solution. It has been argued here that this dilemma cannot, however, simply be reduced to a question of ‘to raise or not to raise’. This framing in either/or terms

freedom, subsistence, protection, understanding, affection, creation and leisure (also Parlevliet 2002). Yet it is worth noting that Sen, whose work was groundbreaking in its emphasis on the interconnections of political freedoms and fulfillment of economic needs, mainly conceived of ‘needs’ in economic and material terms (e.g. 2000, 147-148).
overlooks other relevant questions that arise for conflict resolution practitioners facilitating dialogue between parties in conflict, such as what violations to raise, when to raise them, and who is best placed to do so. It is thus possible to reframe the dilemma in a way that allows more space for manoeuvring, by shifting away from the question of whether to raise violations and focusing instead on how to raise them.

The discussion here has pointed to various strategies that conflict resolution actors can use to raise violations while mitigating some of the drawbacks associated with doing so. This includes, for example, encouraging other actors to raise abuses or considering mechanisms for addressing past or preventing future violations. Another possibility is reframing violations and rights issues more generally in conflict resolution interventions, using concepts such as human dignity or human needs.

This indirect approach to talking about human rights may make those accused of violating human rights less defensive, and help circumvent what has been called the ‘image problem’ of human rights – the perception that human rights are abstract, irrelevant or foreign. It has the potential to do so by rooting rights concerns in people’s life experiences, thereby facilitating interaction with interlocutors who are inclined to disengage when encountering rights language and whose cooperation is nevertheless required for rights to be respected in practice.

Even though reframing rights concerns can aid conflict resolution in various ways, actors from the human rights field are not always comfortable with the practice. This is informed by fears that not talking explicitly about rights or that using needs language to reframe rights concerns, will diffuse or depoliticise them and/or undermine accountability and empowerment. These risks are not improbable, yet it cannot be assumed that they necessarily occur. It has also become clear that reframing is not alien to human rights work, as rights discourse is adapted (‘vernacularised’) in different cultural contexts. The same applies to needs language, which may be more in line with human rights thinking than is generally recognised, especially when employed as understood in the conflict resolution field. All in all, raising rights indirectly, implicitly or with reference to human needs is probably less inherently problematic than critics have suggested.161

As before, we can glean some lessons about the relationship between human rights and conflict resolution from the discussion. What initially seems an irreconcilable dilemma that pits the fields against one another, turns out once again to be more nuanced: it cannot be assumed that raising rights violations and concerns in conflict resolution interventions is only relevant from a human rights perspective (it also makes sense from a conflict resolution perspective); there is considerable variety in how rights issues are raised or framed within the human rights field (perhaps more so than is generally recognised); and an approach to framing human rights from conflict

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161 Of course, this is not to deny that certain environments require the use of rights language and ‘legalese’ (e.g. formalised court settings).
resolution may be compatible with human rights thinking after all (idem). In that sense, this dilemma does not really reflect a tension between principle and pragmatism, as both human rights and conflict resolution actors are inclined to mix the two.

The discussion also lends further weight to the earlier observation that discourses and tactics from human rights and conflict resolution have certain strengths and limitations, making them more or less appropriate at different times and in various contexts. This points to the potential for cross-fertilisation and mutual learning, rather than the absolute applicability of one or the other approach. The fact that a particular concept may be understood quite differently across the two fields, can pose a challenge in this regard; failure to appreciate – and clarify – the field-specific connotations at stake can generate friction between human rights and conflict resolution actors.

7.5 Conclusion

This chapter has focused on four challenges that regularly arise for organisations and individuals working on human rights and conflict resolution, namely addressing the symptoms or causes of rights abuses and violent conflict, pursuing confrontation or cooperation in conflict contexts marked by structural injustices and power asymmetry, managing tensions between facilitator and advocate roles and, finally, referring to rights violations (and rights concerns more generally) in conflict resolution processes. It has explored what these challenges involve and how actors have sought to approach them, with a view to shedding further light on the relationship between human rights and conflict resolution.

The challenges were initially framed in terms of dilemmas, understood here as a choice between two alternatives that are mutually exclusive and carry adverse implications, after Klein Goldewijk and De Gaay Fortman (1999, 40). This was done to show how easily such challenges can be (and often are) perceived as forcing actors to choose between competing courses of action, a frame that is indeed readily present when human rights and conflict resolution are considered together. It has however become clear that “framing real-life situations as dilemmas may reduce complexity rather than clarifying it” as the above-mentioned authors concede (ibid). Lederach’s observation that “far too often, the way we [pose] our questions limit our strategies” (2003, 51) thus rings true here. The chapter has highlighted that what he calls “narrowly defined dualisms” (2005, 173) often simplify the issues at hand and the options for action available; they capture a complex social reality in artificial and seemingly absolute either/or categories.

A summary overview of the challenges, possible approaches and insights discussed in the previous sections, is provided below. This reflects that organisations and practitioners seldom allowed themselves to be confined by a dualistic frame of
reference; instead, they ended up looking for ways to combine the evident options for action or to work around them by identifying alternatives. It also emerged that grappling with a specific challenge – and the contradictions it seems to project – may highlight the interdependence of various imperatives (addressing symptoms/causes, in 7.1.), strategies (confrontation/cooperation, 7.2), or roles (facilitator/advocate/other roles, 7.3). Such grappling can also bring out how binary framing risks overlooking important aspects of a challenge (as was the case in the question of referring to rights abuses and concerns in conflict resolution interventions, 7.4).

Consequently, the various approaches outlined in the chapter, derived from examples and the literature, usually involved a process of reframing. This often entailed shifting to a ‘both/and’ frame of reference that recognised and reflected the legitimacy of different, but not necessarily irreconcilable, goals and energies in a specific setting, turning a dilemma into a question that "holds both at the same time" (Lederach 2003, 52). Such reframing became especially explicit in relation to the symptoms/causes question and the ‘raise/not raise’ dilemma. It was more implicit in the discussion of the other challenges but can be inferred there too; the overview captures the various reframings that underpin the possible approaches outlined. The approaches also regularly included a degree of reflection on actors’ own practices and a willingness to grapple with the ambiguities, tensions and questions prevalent in lived experience.
## SUMMARY OVERVIEW OF FINDINGS

<table>
<thead>
<tr>
<th>Dilemma in terms of HR/CR relationship</th>
<th>Possible approach derived from examples &amp; literature</th>
<th>Insights re HR/CR relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Symptoms/Causes (7.1)</td>
<td>Tension is common to both fields: balancing short-term and long-term goals</td>
<td>Both/and (concurrently) Targeting symptoms &amp; causes&lt;br&gt;Recognise concurrent interdependence of strategies&lt;br&gt;Reframe: how can symptoms be tackled in way that contributes to long-term change &amp; how can underlying causes be addressed in way that improves conditions in short term?&lt;br&gt;Look for ways to contribute to short-term relief &amp; long-term change at same time</td>
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<tr>
<td>Confront/Cooperate (7.2)</td>
<td>Seems to pit HR &amp; CR against one another, the two strategies seem incompatible&lt;br&gt;&lt;i&gt;But: this dilemma also reflects a shared tension (i.e. the fields’ mixed relationship with power)&lt;/i&gt;</td>
<td>Both/and (sequentially) Targeting symptoms &amp; causes&lt;br&gt;Recognise sequential interdependence of confrontation &amp; cooperation over time in contexts of power asymmetry&lt;br&gt;Reframe: how can pressure be exerted to ‘force’ change without unleashing further violence &amp; how can polarisation be reduced without perpetrating injustices, to induce willingness to change?&lt;br&gt;Balance confrontation and cooperation, to confront unjust status quo and allow for meaningful negotiation</td>
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<tr>
<td>Dilemma in terms of HR/CR relationship</td>
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<td>Facilitator/Advocate (7.3)</td>
<td>Both/and is possible if need be (but may be difficult) importance of clarifying &amp; reflecting on roles Reframe: how can parties be brought together to resolve issues while letting them know some acts are impermissible? Consider possibility of alternative roles allowing for combination or a way around the two roles; create internal division of labour Consider how advocacy is done (in/out of limelight); about what (process, values, party, outcome) &amp; framing of advocacy messages</td>
<td>Tensions do exist between different roles (&amp; associated approaches) but these are not necessarily absolute or insurmountable; they can be contextually resolved or navigated Actors have agency in how they navigate the role tension dilemma but are constrained by contextual &amp; organisational factors; perceptions &amp; expectations from others in environment matter Worth further study: the more explicit and recognised an actor’s ‘rights partiality’ is, the more feasible it may be to assume facilitation function; the more CR-oriented actor is (or perceived to be), the harder it may be to combine the two roles, due to external expectations regarding impartiality.</td>
</tr>
<tr>
<td>To Raise/ Not to Raise (7.4)</td>
<td>Both/and is possible but question itself is framed in flawed manner; dilemma is false Reframe: how can rights violations &amp; concerns be raised in such a way that gets them ‘heard’ while not adding to polarisation or defensiveness or glossing over important issues? Consider indirect approach and reframing, e.g. allowing another actor to raise HR concerns; focus on ways to prevent &amp; address abuse Possibly reframe rights concerns by not using explicit rights language but other concepts (e.g. human dignity, human needs), especially initially</td>
<td>Dilemma reflects no absolute tension between HR &amp; CR; raising rights concerns in CR efforts is important from a HR and a CR perspective There are many more issues to consider re. raising rights concerns beyond should they be raised (e.g. questions of who, what, when, how) Reframing rights concerns happens regularly in HR practice &amp; needs language may be less incompatible with HR than often assumed – but depends on conception of needs used Discourses from HR &amp; CR each have strengths &amp; limitations; making them more or less appropriate in particular circumstances → potential for cross-fertilisation &amp; mutual learning One and same concept may carry very different connotations across the fields; this can create friction if field-specific meanings are not specified and/or implications of specific connotations are ignored</td>
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</table>
The possible approaches identified in this chapter show that the actors discussed displayed considerable creativity and flexibility in their efforts to address the challenges they encountered. It should be noted, however, that these approaches do not present clear-cut solutions. The discussion shows that some contradictions often remain embedded within them and that mitigating adverse consequences entirely may not be possible. As such, the dilemma notion is relevant despite its flaws; it highlights that the questions explored here defy easy answers. They represent difficult situations that different actors may perceive as problematic in different ways, that can "be worked on and through but that keep evolving and never get 'fixed'" (Kahane 2010, 113). Therefore, the recurrent elements in these approaches – respecting complexity, recognising interdependence, creating space for manoeuvring through reframing and reflection, and not getting caught up in 'forced dualistic categories of truth' (Lederach 2005, 36) – can probably best be regarded a 'basic orientation' (Klein Goldewijk and De Gaay Fortman 1999, 43) for navigating the complexity of reality, rather than as a 'how to' guide.162

The chapter also paints a nuanced picture when it comes to the relationship between human rights and conflict resolution. While human rights and conflict resolution seemed to be at odds in three of the four challenges, further exploration called this into question. In the facilitator/advocate dilemma, tensions between these roles were not absolute or insurmountable. It also emerged that they cannot exclusively be ascribed to one or the other field, since conflict resolution practitioners tend to be advocates in some respects too. Also, contrary to first impressions, the issue of raising human rights issues in conflict resolution interventions does not simply pit pragmatism against principle, or conflict resolution against human rights: paying attention to rights concerns is in the interests of human rights and conflict resolution, and reframing rights is a practice used in both domains.

Even where tensions between human rights and conflict resolution approaches remained obvious – in pursuing confrontation or cooperation in asymmetric contexts – closer examination revealed that their adversarial and cooperative tactics may still be complementary in the long term, as effectuating change in such conditions probably requires both coercion and negotiation (Van der Merwe 1989, 115-116). This points to an ultimate paradox, in that compatibility may exist in incompatibility, or that contradiction may still be complementary.

This is not to deny or gloss over contradictions that may arise in concrete situations or at specific moments in time. It does, however, suggest that human rights and conflict resolution may ‘hang together’ in a ‘both/and’ way to a greater extent than is evident at first sight (or is generally recognised) even if tensions remain. It also highlights the need to look “beyond what is visible” and to inquire “what may hold together seemingly contradictory social energies in a greater whole”, as Lederach puts it (2005,

162 Klein Goldewijk and De Gaay Fortman suggest that figuring out a ‘basic orientation’ is what is required in addressing dilemmas, as solutions do not exist in the midst of conflicting values (1999, 43).
Finally, rather than calling on human rights and conflict resolution actors to shy away from using strategies or undertaking initiatives that ‘the other field’ may call into question, it urges them to use the concerns they encounter as a signal – as a basis for considering whether they are overlooking critical issues in the situation at hand, and how to address possibly adverse consequences of their actions.\(^{163}\) Thus, there is value in engaging with the contradictions, rather than wishing them away.

Overall, this chapter shows that human rights and conflict resolution may both support and be in tension with one another. Its findings also provide grounds for the argument that the practice and theory of human rights and conflict resolution have some potential to ‘fill gaps’ in one another’s understanding of and approach to reality. They can draw attention to aspects of reality that may be downplayed in one frame of reference but foregrounded in the other, and can point to strategies beyond those readily known and used within a specific field. This came particularly to the fore in the context of the symptoms/causes discussion, where combining the respective emphases and tactics of human rights and conflict resolution provided a possible approach for actors seeking to impact on both causes and symptoms. It also surfaced in the confrontation/cooperation discussion, as alluded to above (in the ‘taking a leaf out of one another’s book’ observation), and the discussion on raising rights concerns in conflict resolution interventions.

More generally, the chapter’s consideration of the four dilemmas and possible approaches shows how models, theories and concepts from the two fields can help deepen understanding of challenges they face and their options for action. For example, the ‘nested’ paradigm (described in 7.1) stems from the conflict resolution field but it can also serve as a ‘think tool’ for human rights actors, to aid analysis and strategising. Human rights actors’ reservations about the ‘needs’ concept (7.4) can alert conflict resolution actors to the need to pay attention to issues of accountability and empowerment. This suggests that there is substantial potential for cross-fertilisation and mutual learning between the fields, to broaden actors’ horizons, enhance versatility and sharpen reflective practice.

The above references to combining emphases and approaches, mitigating consequences, and cross-fertilisation, while relevant, run the risk of implying that actors seeking to advance human rights and/or conflict resolution have full agency in how they engage with difficult situations. The facilitator/advocate discussion highlighted that this is not the case. Various factors, contextual and otherwise, affected the ability of the Manicaland Churches to perform both roles simultaneously, while Nepali human rights organisation INSEC was far less confined in this regard. This reflects how the relationship between human rights and conflict resolution can manifest in various ways in different contexts, and how its manifestation is contingent on a range of factors. This will be considered in more detail in the next chapter.

\(^{163}\) See the comments at the end of 7.2.3 about conflict sensitivity and do no harm.