1

Introduction: reconsidering human rights from below

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The last half century has witnessed huge efforts to establish the universality of human rights. Since the adoption of the Universal Declaration of Human Rights (UDHR) on 10 December 1948, numerous international treaties and declarations have reaffirmed human rights as norms applicable on a global scale. Several universal and regional institutions of an expert or governmental nature are now monitoring compliance with human rights norms.

It is, however, unclear whether the global regime that was so painstakingly developed over the last few decades is of much practical use at the local level to people confronted with the abuse of power and/or inhumane living conditions. This question is particularly important in the current era of globalisation, when economic and political institutions of different kinds shape and reshape the world at a rapid pace.

Nevertheless, human rights crises initially emerge at the local level. It is at the local level that abuses occur, and where a first line of defence needs to be developed, first and foremost by those who are under threat. It is when people face abuse in their personal experience and in their immediate surroundings that they feel prompted, even 'obliged', to engage in collective action for the defence of their rights. At that time the efficacy of mechanisms for the protection of human rights is really put to the test. In other words, it is at the local level that the possession of human rights either proves real or illusory.

This book is primarily addressed to scholars and students of human rights, but should also be of interest to those working in the field of human rights and poverty-related issues.

Central theme: how the local and the global interact

The main purpose of this book is to investigate whether the global human rights regime is practical and effective in providing local protection against abuse. We use the term 'local relevance of human rights' as a shorthand formula to express this research theme that relates to the daily experiences of people in their neighbourhoods, villages and towns. By the 'global human rights regime' we refer to current human rights law and institutions, mainly consisting of United Nations core human rights treaty law, but also encompassing the various regional and domestic human rights law and institutions.

The disciplinary lens used to address the main theme is that of law. It is the background of most of the contributors and also the main discipline exercised in this book. At the same time, we are very much aware that research on the local effectiveness of law requires a close interaction between law on the one hand and the political and social sciences on the other hand. Unlike Sally Engle Merry and Mark Goodale's book *The Practice of Human Rights: Tracking Law Between the Global and the Local* (Cambridge: Cambridge University Press, 2007) in which anthropologists have engaged with law, in our book we have invited lawyers to engage with social and political science.

The interaction between law and the social sciences is presented as an important challenge in the more conceptual chapters of the book. Certainly the authors have demonstrated a keen interest in reconsidering and revisiting current law at the various levels, particularly in those instances where empirical findings demonstrate that appeals to human rights law are ineffective. Ideally, the positive and negative experiences of invoking human rights at the local level should have an impact on the further development of laws and legal regimes. In other words, this book is not only concerned with the traditional issue of implementing international and regional human rights at the domestic level, but it also adopts a critical approach to current international and regional norms in the light of domestic experiences based on these norms.

These general themes are illustrated by a number of case studies, in which the editors have asked the authors to pay particular attention to a number of issues. The first was to adopt a bottom-up approach, starting at the level of the local groups who initiate human rights claims from below. Issues that could usefully be addressed included an analysis of the reasons why groups decided to appeal to human rights (rather than, or in addition to some other 'language' of resistance) and of the internal

decision-making process that led to such decision. Also of interest was the question whether the use made of human rights by a particular group coincided with the legal definition of rights (in international or domestic law).

A second issue related to the evaluation of the successes and failures of appeals to human rights. Authors were asked to duly take into account the groups' internal assessment, but also to propose an external assessment of their own based on factors deemed most relevant.

Additionally, as human rights are now part of the global language of the international community, authors were also requested to analyse whether the reference to human rights has allowed groups to pull in external actors in assistance of their claims. In various chapters, the hypothesis that the use of human rights language may help a politically disenfranchised group within its own society to shift the domestic balance of power through networking with external actors was put to the test.

Finally, the authors were asked to address the issue of legal change, that is, whether and how the results of local human rights claims have 'permeated', i.e. have prompted the further development or the elaboration of the global human rights framework.

Chapters

The four opening chapters and the epilogue offer thoughts on the theoretical framework on the localisation of human rights. The remaining chapters analyse country or institutional case studies.

In 'Sites of rights resistance' Koen De Feyter investigates to what extent local practices may contribute to achieving universal protection of human rights, and more broadly, human dignity. His point of departure is that human rights claims originate from a local site but appeal to institutions at several levels, ranging from the local to the universal. Local human rights claims refer to events that take place *somewhere*, in a specific geographic location. Local groups across the globe have used human rights as a counter-hegemonic strategy of resistance in order to challenge social exclusion, insisting on the accountability of agents they hold responsible for a threat to their human dignity. For this reason, supporting individual human rights claims is useful because they not only serve the interests of the claimants themselves but also the interests of all those in similar situations. The author contends that ideally speaking local human rights claims would be accommodated by agents who are geographically close to the area where the claims emerge. In this

respect, the relationship between human rights claimants and local public actors is an important factor in determining whether accommodation will take place. He concludes that the increased effectiveness of the regional and international human rights regime also requires a more intensive engagement with local human rights experiences.

Another aspect of the localisation discourse is developed by Felipe Gómez Isa in his chapter 'Freedom from want revisited from a local perspective: evolution and challenges ahead'. He uses an epistemological perspective to reflect on the relevance of the local in the global process of producing human rights, taking as his point of departure the adoption of the UDHR. The focus is on one human rights category, namely the economic, social and cultural rights (ESC rights), also referred to as 'subsistence rights'. The author explores a number of effective avenues that could help to localise ESC rights better, in particular how local communities, groups, social movements and non-governmental organisations (NGOs) can make use of the existing mechanisms of the United Nations to influence international agendas and to strengthen their capacities to defend such human rights. Of particular importance are the strategic alliances of local actors with international NGOs and transnational advocacy networks. The author concludes that *the local matters*, because the credibility and the effectiveness of the global human rights system rests with its local relevance and the appropriation of international norms and mechanisms by those whose rights are continuously violated at a local level. This implies that local people and communities should be able to participate in the human rights struggle at all levels and to see the impact of human rights in practice. The latter then requires well-designed methodologies for assessing human rights impact, which is a particular challenge in the field of ESC rights.

Antonio Papisca extends the previous analysis by drawing attention to the 'glocal' space of politics in modern-day societies. The main question of his provocative chapter is how to create a strategic alliance between the genuine protagonists of a human-centric peaceful change, i.e. local governments (such as municipalities, regions, *Länder*) and transnational social movements. He argues that a more visible and effective role for local governments in the international arena is indispensable in order to reverse the dramatic regression of international politics in the past decades that are marked by the orgy of deregulation, unilateralism, rearmament and 'easy wars'. The objective is to develop new democratic practices beyond the boundaries of the nation state with the final aim to create a peaceful world order. As a focal point, Papisca calls into question

the current concept of national citizenship that is attached to a specific nation and therefore based on the principle of exclusion and instead he advocates the development of a 'universal citizenship' that is derived from the legal status of all members of the human family and thus inclusive. In his vision, reconstructing the notion of citizenship from its original holders, namely human beings with inherent rights that are internationally recognised, requires a bottom-up approach that is better served by local governments. At the same time, local governments can and should take part in national and international networks and groupings to advance human rights on a worldwide scale.

Gaby Oré Aguilar presents a methodological approach for studying the local relevance of human rights across the globe. She stresses the importance of two neglected questions in human rights research, namely how human rights become relevant to the most excluded individuals and communities, and how to assess local participation in developing and elaborating human rights. The aim of her methodology is to investigate the use and relevance of human rights in local communities in their quest to change the realities of poverty, social exclusion and marginalisation. This conceptual approach called 'localising human rights' is innovative because it takes as its point of departure the needs and claims of human rights as formulated by those affected by the abuse of political or economic powers and emphasises the importance of the *process* of further interpreting and elaborating human rights in the context of economic globalisation. The author provides a thorough literature review of interdisciplinary methodologies and participatory case studies and illustrates how the use of human rights by local communities can be researched in the context of fieldwork. Moreover, she discusses helpful criteria for evaluating the success of human rights claims in the light of each claim's relevance to the local community and to the actors involved, as well as its strategic impact on advancing human rights protection in the context of economic globalisation.

Michelle Farrell's chapter 'Ensuring compliance with decisions by international and regional human rights bodies' is an institutional case study of the European Committee for the Prevention of Torture (CPT). This body was set up in 1989 to monitor the human rights record of states in relation to torture and ill-treatment of persons deprived of their liberty. Unlike the European Court of Human Rights, which can only deal with incoming complaints along judicial procedures, the CPT is entrusted with a preventive task and its members can personally visit all places of detention to report on the situation and to issue non-binding

6   koen de feyter and stephan parmentier

recommendations to the states. The crux of the chapter is to understand to what extent individual states at the national and local level are complying with these recommendations coming from an international monitoring body and to study the underlying barriers that complicate state compliance. The author concludes that in general terms state compliance has been fairly weak, and explains her critical assessment against two overarching tendencies: the first, as exposed by Foucault's thoughts on discipline and punishment of certain groups in society, highlights the paradox that states committed to human rights continue to use the possibility of torture and ill-treatment as the ultimate source of sovereign power; the second trend is related to social justice in the era of the market, and indicates that prisons more than ever operate as zones of exclusion and marginalisation of individuals and groups falling out of the boat of globalisation.

Several chapters then discuss specific human rights crises at the local level.

Alicia Ely Yamin and J. Jaime Miranda analyse the emergence of a multi-issue and multi-group movement for health rights in Peru, where health was defined by multiple actors working in synergy, as a crucial domain through which to struggle for social transformation. Their chapter examines how concepts underlying a framework of rights were taken up in connection with health and played out in the particular context of Peru under the authoritarian regime of Alberto Fujimori with its policy of forced sterilisation of women. They also reflect on challenges to the solidifying of a rights-based health movement in Peru, challenges which contain lessons for the prospects of rights-based health movements elsewhere. The particular confluence of actors and events in Peru at the turn of the century can only partially explain the integration of health into the struggle for democratisation and the shape that the rights-based health movement took. Another element lies in the transnational forces that were also played out on the Peruvian stage, both in terms of political and economic policies conducive to the curtailment of rights and the ensuing reactions to them, and of patterns of funding and institutional support from foreign governments and United Nations procedures available at critical times. They conclude that the process of localising struggles for health rights in Peru cannot be properly understood without the role of these transnational factors. Moreover, the same forces also need to be considered when studying the challenges that rights-based health movements face in sustaining and consolidating themselves, in Peru and elsewhere.

In her chapter 'Defining human rights when economic interests are high', Julie Cavanaugh-Bill analyses the case of the western Shoshone in the United States to defend their land rights before the Inter-American Commission on Human Rights and the United Nations Committee on the Elimination of Racial Discrimination. This came as a reaction to the efforts by corporations and state agencies to use western Shoshone lands for mining, military testing and nuclear waste disposal. The author describes how indigenous communities have resisted in many forms, and within the last decades have taken the role of human rights to a new level both regionally and internationally. This has happened through indigenous peoples themselves demanding a framework of human rights that moves beyond a purely individualised, state-centred definition, to one in which indigenous ways and knowledge are respected. The United States, however, has been heavily resistant to the recognition of indigenous rights. The author traces back the struggle of the western Shoshone to the traditional conflicts over land and resources between the Native American peoples and the white settlers, based on very different world-views. She argues that the endemic and embedded nature of this relationship continues to create problems for the implementation of indigenous rights nowadays; witness the strategy to restrict the definition and the impact of human rights whenever the interests of economic actors are at stake. By giving priority to economic 'development' over human rights, the latter lose a lot of their meaning and this tendency has become stronger with the increase in globalisation and trade. The author concludes by exploring strategies to hold states and transnational corporations accountable for recognised human rights standards and looks in particular at the formation of a global indigenous network on extractive industries.

José Aylwin has written another chapter dealing with the struggles of indigenous peoples to localise, within their lands and territories, the international human rights that concern them. Using the case of Chile, he analyses the policies implemented by the state with regards to the protection of indigenous rights and the many contradictions that continue to exist between a focus on such rights and a competing focus on expanding the global economy into indigenous traditional territories through the imposition of large-scale developments inside their lands. The chapter describes how the lack of reception of indigenous claims by the domestic government and the judiciary, as well as the criminalisation of the social protests, has led indigenous organisations and communities to orient their claims to international human rights entities. Specific

attention is paid to the procedures used by the Mapuche and the Andean peoples before the Inter-American Human Rights System (IAHRS) and the United Nations Human Rights System (UNHRS). While their claims were in general terms accepted, the author argues that the human rights progress achieved has been lower than expected by the claimants, which has caused frustration among local communities. However, he also concludes on a positive note that the process of domestication of international indigenous rights is generating a new scenario for indigenous peoples in Chile, by challenging the restrictive notion of globalisation that prevails in the country and thus bringing hope with regards to the enforceability of human rights at the local level.

The book also contains a case study from Africa. In his chapter 'Enforcing environmental rights under Nigeria's 1999 Constitution' Rhuks Temitope Ako discusses the localisation of human rights in the Niger Delta region. The 1999 Constitution forms the backbone of the current governance regime in Nigeria, and some would argue also its major limitation. The focus lies on the recognition and enforceability of environmental rights under Nigeria's legal regime, as such rights are still undergoing intellectual contestations, particularly over their definition, nature and scope. While environmental rights are conceptualised in intellectual and public discourses relative to prevalent socio-economic and political contexts, the author argues that their common ground in substantive and procedural terms lies in the rights-based approach to environmental protection. Substantive rights expressly provide for legally enforceable standards of a 'healthy environment' and procedural rights are practical processes through which the public is involved in maintaining environmental standards. In Nigeria, however, environmental rights tend to be conceived of as one 'single right', not expressly recognised by the Constitution and consequently unenforceable. For the author, such a claim derives from an acute misunderstanding of section 20 of the 1999 Constitution that reduces the duty of the state regarding the protection of the environment to a 'Fundamental Objective and Directive Principle of State Policy'. The crux is that elements of environmental rights, both in their substantive and procedural form, are legally recognised by the Constitution and thus 'justiciable' under Nigerian law. If this interpretation were to be accepted, he concludes that it would bring some rationality into the present manner in which claims of environmental human rights are exercised and challenged in Nigeria, and the violent discourses they provoke in its Niger Delta region.

The final case study of the book brings us to Europe. Lydia Vicente Márquez, María del Mar Bermúdez and Manuel Calzada Plá study in detail the category of cultural rights and the principle of non-discrimination and apply it to the example of Kosovo. They start with the assertion that cultural rights and their system of protection are often given a 'second-class' status, as they are seen as subdivisions of other rights embroiled in different areas, such as language, religion, education, etc. The result of such an approach is that damaged systems of protection are created and that the promotion of and access to these rights are limited. Moreover, instead of creating a common ground for peace-building and conflict resolution, these partial systems mirror a fragmented society, whose minorities – already disadvantaged and vulnerable – continue to be progressively disempowered of their identity through the state's denial of their cultural rights. Then they focus on the principle of non-discrimination as the first step to integrate diversity and ensure more than just formal equality, and as one of the milestones of many government policies. In their view, the relation between anti-discrimination and cultural rights is usually overlooked and constitutes a 'missing link'. In contrast to the mainstream human rights discourse, the authors warn of a blind application of non-discrimination in cultural issues as this may lead to the 'homogenisation' of all cultures, empowering the assimilating culture and depriving minorities of the full respect of their rights and access to remedies against possible violations. Taking Kosovo as a case study the chapter examines the challenges and benefits that come from bringing the protection of cultural rights into the spotlight in conflict resolution processes. It also expounds how the lack of more effective measures to ensure and favour the expression of minority characteristics may lead to the creation of a deeply divided society that operates according to 'winner takes all' politics.

This collection of essays is concluded by an extensive and thought-provoking epilogue from George Ulrich. 'Epilogue: widening the perspective on the local relevance of human rights' is not only the title of his piece but also contains the main argument. While our authors provide an innovative and coherent account of the importance of localising human rights and specific ways of going about this, he argues that the approach of building a human rights perspective into public policy making and administrative procedures at all levels of governance is not so well developed. A fundamental difference between the two approaches lies in the ways in which they configure the politics of human rights: whereas the first one aligns human rights with oppositional movements

in their struggle for justice and social change, and thus projects an image of human rights as 'counter-culture', the other revolves around the integration of human rights within 'mainstream bureaucratic cultures' and thus renders human rights – also – as a cause to be embraced by powerful elites. Ulrich argues that from the point of view of effecting change in the world and safeguarding human rights, it is equally imperative to engage duty-bearers at all levels, even if this sometimes generates uncomfortable alliances. The notion of localisation must therefore be expanded so as to also take into account the challenge of devising locally specific policies and administrative practices that can effectively address social exigencies and gather popular support while at the same time remaining in compliance with essential human rights standards. For him, this should not be regarded as contradictory to the endeavour of mobilising human rights from below, but rather as a complementary undertaking, although one that fundamentally depends on conveying a sense of political inclusiveness and therefore needs to proceed in a less militant and confrontational manner. Such dual approach to localising human rights – and the sometimes ambivalent political positioning that it entails – ought in principle to be acceptable to many, if not all, scholars and activists in the broad human rights field.