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**Analysing users' trajectories in human rights:
a conceptual exploration and research agenda**

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Ellen Desmet

Post-doctoral fellow at the Human Rights Centre, Ghent University, and the Law and Development Research Group, University of Antwerp

Abstract

This article develops a research approach which can be summarised as 'analysing users' trajectories in human rights'. The key element of this approach, adopting a users' perspective on human rights, implies a shift in analytical focus. Instead of analysing a specific legal instrument, topic or enforcement mechanism, one puts oneself in the shoes of those who engage with (use) human rights. The article explores the implications of adopting such a users' perspective on human rights and introduces and reflects upon a categorisation of human rights uses and users. It proposes a broad understanding of human rights users, including rights claimants (who invoke human rights), rights realisers (who give effect to human rights), supportive users (who support the realisation of human rights) and judicial users (who impose the implementation of human rights), and argues that a possible way of adopting a users' perspective is through analysing the 'trajectories' of users in relation to human rights.

Keywords

human rights – human rights law – human rights research – trajectories – users' perspective

1. Introduction

In recent decades, the focus in human rights research has to some extent shifted from studying human rights in an abstract, doctrinal and depersonalised manner to a more grounded and contextual approach. This change can be at least partially explained because (legal) anthropologists and sociologists, overcoming their initial reluctance to engage with human rights both as concept and as topic of enquiry, are now increasingly involved in human rights research.¹ One of their contributions has been to enlarge the visibility of the actors involved in human rights struggles.²

Building on this actor-oriented approach, this article develops and substantiates a particular way of doing human rights research, which can be concisely referred to as *analysing users' trajectories in human rights*. The central feature of this approach is the adoption of a 'users' perspective' on human rights.³ It is submitted that such a perspective entails a shift in analytical focus, a different point of departure for human rights analysis, through which one adopts the viewpoint of one or more users of human rights instead of focusing on a particular topic or legal instrument.

The article is structured on the basis of the two main constitutive elements of the proposed approach. First, it explores the meaning and implications of adopting a users' perspective on human rights and introduces and reflects upon a categorisation of human rights uses and users. It then examines the concept and consequences of a 'trajectories' approach. The order in which these components are discussed is intentional. A users' perspective on human rights is broader and more widely applicable than a trajectories approach, since trajectories are only one way of engaging with a users' perspective.

The approach introduced here as 'analysing users' trajectories in human rights' is not an 'all or nothing' proposal. One can adopt a users' perspective without embarking on trajectories research, for instance by studying the position of a human rights user at one point in time. Moreover, although a broad understanding of the notion of users is suggested, various other scenarios of dealing with the concept of users are implicitly incorporated, such as limiting the concept to 'direct users'.

¹ See E. Messer, *Anthropology and Human Rights*, 22 *Annual Review of Anthropology* 221-249 (1993); M. Deflem and S. Chicoine, *The Sociological Discourse on Human Rights: Lessons from the Sociology of Law*, 40(1) *Development of Society* 101-115 (2011).

² See B. Oomen, *The Application of Socio-Legal Theories of Legal Pluralism to Understanding the Implementation and Integration of Human Rights Law*, 3(4) *European Journal of Human Rights* 471-495 (2014). See also the special issue on 'the actor as factor in legal development': A. Jettinghoff and L. de Groot-van Leeuwen, *De actor als factor in de rechtsontwikkeling*, 34(3) *Recht der Werkelijkheid* (2013).

³ The seeds for this article were sown during a meeting with colleagues in January 2013 – many of whom have contributed to this special issue – on a research project that aims to study human rights law 'as an integrated whole *from a users' perspective*' (see Brems and Desmet in this issue). During that meeting, various questions about this 'users' perspective' arose regarding, among others, the identification of users and the implications of adopting a users' perspective in human rights research.

2. A users' perspective on human rights

In current research, the conceptualisation and study of individuals, groups, organisations and institutions that are engaging with human rights appears to leave room for improvement. In legal human rights scholarship, efforts are often confined to the analysis of a specific text, topic, type of rights holders, or monitoring mechanism.⁴ Human rights handbooks and scholarly analyses are frequently structured on the basis of a legal instrument (eg the European Convention on Human Rights), generations of rights (eg civil, political, economic, social, cultural rights), rights for specific groups of persons (eg women, children, persons with disabilities, indigenous peoples, migrants), thematic approaches (eg the right to health, the right to education) or the different human rights regimes (African, Asian, European, Inter-American, United Nations).

From a social science perspective, Landman describes the 'terrain of human rights' as 'actors, organizations and institutions whose actions, structures, and behavior may have a direct and indirect impact on human rights'⁵ and catalogues these in organisational fields.⁶ Here, rights claimants seem largely absent from the picture. There is also a strong focus on organisations, although individual human rights defenders are understood as being included in private not-for-profit domestic organisations.⁷

2.1. A shift in analytical focus

Adopting a users' perspective on human rights implies, in my view, that one puts oneself in the shoes of a human rights user, thus an empathic approach. This means first and foremost a shift in the analytical angle adopted: the perspective from which the analysis is undertaken is that of the person, group, organisation or institution engaging with ('using') human rights – and thus not the perspective of a specific legal instrument, theme or right that is often adopted in legal scholarship. In other words, instead of analysing a human rights issue from the viewpoint of a lighting technician who chooses one particular spotlight to illuminate the scene, one adopts the position of an actor or musician who is simultaneously illuminated by an array of lights coming from different corners and with a range of strengths and colours. It concerns knowledge 'from within', an insider's perspective based on the experience of effective engagement with human rights.

More important therefore than the exact definition or delimitation of the concept of 'users' is the different way of thinking that is implied by adopting a users' perspective. Instead of

⁴ See E. Brems, Should Pluriform Human Rights Become One? Exploring the Benefits of Human Rights Integration, 3(4) European Journal of Human Rights 447-470 (2014).

⁵ T. Landman, Studying Human Rights 19 (London: Routledge, 2006).

⁶ He distinguishes between public international organisations, private not-for-profit international organisations, private for-profit international organisations, public domestic organisations, private not-for-profit domestic organisations and private for-profit domestic organisations. *Ibid.*, pp. 19-34.

⁷ *Ibid.*, p. 31.

asking what does international human rights law say on the right to health, one asks how do community members in Cambodia, whose health is endangered by a polluting factory, make use of human rights? Instead of wondering which state obligations can be derived from the Convention on the Rights of Persons with Disabilities, one asks how do Belgian state authorities manage their multiple human rights obligations arising from the ratification of various treaties at the international and European level? Instead of asking which socio-economic rights are guaranteed by the International Covenant on Economic, Social and Cultural Rights, one asks how does a development NGO engage with human rights in its advocacy work?

At least four characteristics and consequences of adopting a users' perspective on human rights can be identified. First, a users' perspective is necessarily context-specific. Given that the relevant human rights norms differ by legal subject, topic and region, a human rights analysis from a users' perspective will automatically be tailored to that particular context. Ethnographic studies, among others, have long demonstrated the importance of context in understanding evolutions in law and society.

Second, adopting a users' perspective leads to a more direct confrontation with the complexities caused by the multi-layered nature of human rights law.⁸ For a human rights user is simultaneously confronted with a multiplicity of human rights norms, often both general and specific, coming from different institutions, situated at different geographical levels and operating with different legal force. A user must attempt to find her way through this 'jungle' of human rights norms. One cannot but observe that the light of human rights law is not one homogeneous beam of rays that equally and evenly illuminates the leading figures, ie the users of human rights. Human rights law often more resembles a jumble of lights, as it consists of a diversity of norms, with differing scope and legal force.

Third, the proposal to adopt a users' perspective on human rights as a particular research approach is grounded in a social-constructivist understanding, viewing human rights as shaped and realised (or not) through their use – as socially and culturally constructed. Law is thus conceived as a living thing rather than an abstract given. The outcome of a case is neither self-evident nor inherent in the logic or structure of human rights law, but determined by how human rights are used.

When researching how human rights are actually used, it will become clear that different users have a variety of perceptions and understandings of human rights (which may be social constructivist or not). Nevertheless, recent research has shown that there may be a 'finite diversity'⁹ in the forms in which people think about human rights, showing a comparable and limited number of ways in which both professional experts in the human rights domain¹⁰ and non-experts¹¹ understand human rights. At least four different ways of understanding human

⁸ See Brems, *supra* note 4.

⁹ See P. Stenner, Subjective Dimensions of Human Rights: What Do Ordinary People Understand by 'Human Rights'? 15(8) *The International Journal of Human Rights* 1217 (2011).

¹⁰ See M.-B. Dembour, What are Human Rights? Four Schools of Thought, 32(1) *Human Rights Quarterly* 1-20 (2010).

¹¹ See Stenner, *supra* note 9.

rights have been identified: as grounded universals (cf. the natural school proposed by Dembour in relation to human rights scholars); as a focus for radical political action (cf. the protest school); as socio-political constructions (cf. the discourse school); and as agreements balanced against responsibilities (cf. the deliberative school).¹² Where feasible and relevant, a research project may envisage to situate users' conceptions of human rights within these categories of understanding.

Lastly, a users' perspective leads to questions about the effectiveness of the human rights system. From the perspective of rights claimants, it becomes painfully clear that human rights in most cases are not realising their potential. Baumgärtel has rightly pointed to structuralist challenges to the realisation of human rights.¹³ Adopting a users' perspective does not need to imply, however, that structural factors impeding human rights realisation are being ignored. On the contrary, looking at a human rights issue from the perspective of a particular user in a concrete situation may show that this user is confronted with obstacles that she cannot cope with alone.

2.2. A working definition of 'human rights user'

Talking of 'users' in relation to human rights appears to be quite a new language. The following working definition of 'human rights user' is proposed: *A human rights user is any individual or composite entity who engages with (uses) human rights.* The demarcation *ratione personae* of human rights users is comprehensive, ranging from individuals to formal and informal composite entities, such as groups, organisations and institutions. Within a composite entity, a distinction can be drawn between the composite and its component members, whereby the latter are also users in their own right. For instance, within a court as institutional user, the judges are individual users of human rights. The possible divergence between the institutional user (the court) and its component judges may then become evident in dissenting or separate opinions.

The scope *ratione materiae* is 'human rights'. Human rights are broader than human rights law, ie those human rights that have been codified in a legal instrument. Looking at social movements, Merry et al. have demonstrated that 'human rights offer a variety of discursive, political, and strategic benefits to social movements *even when they do not mobilize them as law*'.¹⁴ The authors distinguish three interrelated dimensions of human rights, namely law, values and good governance, and conclude that marginalised people have easier access to the non-law dimensions of human rights.¹⁵ A users' perspective on human rights includes these different legal and non-legal dimensions of human rights.

¹² *Ibid.*, p. 1219.

¹³ Baumgärtel in this issue, pp. 150-154.

¹⁴ Emphasis added. S.E. Merry, P. Levitt, M.S. Rosen and D.H. Yoon, Law from below: Women's Human Rights and Social Movements in New York City, 44(1) Law & Society Review 101-102 (2010).

¹⁵ *Ibid.*, p. 125.

The nature of the relationship with human rights, which is required to qualify as a human rights user, is described as ‘engaging with’ (‘using’) human rights. The notion of ‘use’ should thus not be interpreted in a utilitarian or consumerist way, but is intended to convey a more neutral approach of ‘engaging’/‘interacting’. From the moment there is an explicit interaction with human rights, in whatever form, one can be identified as a human rights user.¹⁶ Merry has shown that actions at the local level can equally, and sometimes more effectively, contribute to the realisation of human rights when they are not framed as human rights work.¹⁷ Since this article focuses on the ‘use’ of human rights in the realisation of human rights objectives, the interaction with human rights should, however, be explicit. This is in line with the position of De Feyter, who states that for a claim to qualify as a human rights claim, it should employ human rights language.¹⁸

The users’ perspective proposed here is inclusive, since it covers all individuals and entities that engage with human rights in one way or another. A possible disadvantage of such a broad working definition of the human rights user is the risk of equalisation (ie that all users are considered as ‘similar’) and lack of nuance. This risk is mitigated by introducing different categories of human rights user, distinguishing between rights claimants, rights realisers, supportive users and judicial users. Such a categorisation allows distinctions to be made within the broader umbrella concept of ‘users’, leading to an ‘inclusive, but differentiated approach’¹⁹ to human rights users. The categories introduced are empirical rather than legal: they aim to differentiate between users on the basis of actual behaviour rather than legal classifications or attributions. These empirical categories (such as rights claimants and rights realisers) may, however, be related to legal categories (such as rights holders and duty bearers).

¹⁶ In access to justice research projects, the term ‘users’ is similarly limited to those who have actually used mechanisms of dispute resolution. See eg K. Himelein, N. Menzies and M. Woolcock, *Surveying Justice: A Practical Guide to Household Surveys*, 11 Justice and Development Working Paper Series 6 (2010), regarding household surveys on justice: ‘User Surveys are conducted to assess the experiences of those who come into contact with formal institutions and processes. By their very nature they exclude those who may have a justice issue but are denied access.’ Footnote omitted. See also M. Gramatikov, M. Barendrecht, M. Laxminarayan, J.H. Verdonchot, L. Klaming and C. van Zeeland, *A Handbook for Measuring the Costs and Quality of Access to Justice* 28 (Apeldoorn: Maklu Uitgevers NV, 2010), describing ‘the User of Justice’ as ‘the party that starts the process as a response to her legal needs, otherwise known as the active party’. In its handbook for conducting satisfaction surveys aimed at court users in the Council of Europe’s Member States, the European Commission for the Efficiency of Justice (CEPEJ) also restricts the interpretation of users to those who actually come into contact with the court. CEPEJ, *Handbook for Conducting Satisfaction Surveys aimed at Court Users in Council of Europe’s Member States 2* (Strasbourg: European Commission for the Efficiency of Justice, 2010). In human rights research, the focus of a research project can, however, be extended towards *potential* users of human rights, *infra*.

¹⁷ S.E. Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006).

¹⁸ K. De Feyter, *Sites of Rights Resistance*, in: K. De Feyter, S. Parmentier, C. Timmerman and G. Ulrich (eds), *The Local Relevance of Human Rights* 20 (Cambridge: Cambridge University Press, 2011).

¹⁹ Inspired by the approach adopted regarding the relationship between indigenous peoples and local non-indigenous communities in the context of nature conservation initiatives in E. Desmet, *Indigenous Rights Entwined with Nature Conservation* (Cambridge/Antwerp/Portland: Intersentia, 2011).

3. Categorising

3.1. Categorising human rights uses

In order to arrive at a categorisation of human rights *users*, it appears relevant to differentiate between various ways in which human rights are *used*. Four categories of uses of human rights can be analytically distinguished: invoking, giving effect, supporting and imposing human rights.

The first category of human rights use, *invoking* human rights, aims at changing one's own (potentially) unsatisfactory situation by appealing to human rights. This may result in preventing human rights violations, putting a halt to such violations, or holding human rights offenders accountable. The second category, *giving effect to* human rights, refers to the realisation of human rights. Human rights may be realised through actions or by non-interference. Rights-realising behaviour may follow from a legal obligation to respect, protect and fulfil human rights. Human rights may also be given effect, though, out of considerations of, among others, humanity, public image, media coverage or funding opportunities. The role of 'legal obligation' may thus not be as determinative as often presumed: 'Non-legal factors such as perceptions of self-interest, including the notion of reciprocity, and culturally established notions like self-image, are often more important.'²⁰

Invoking and giving effect to human rights are considered *direct* (or primary) uses of human rights – the term 'direct' indicating an immediate connection with the realisation of human rights. In contrast, *indirect* (or secondary) uses of human rights imply a more distant relationship with human rights realisation. Here, two categories are also distinguished. *Supporting* human rights occurs in a variety of ways, such as awareness raising, advocacy, lobbying, assisting and monitoring the implementation of human rights, documenting and denouncing human rights violations suffered by other persons or groups, representing rights claimants, (strategically) litigating human rights cases, carrying out human rights research and engaging in standard setting. According to the mission statement of Human Rights Watch, for instance, they 'scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice'.²¹ A second category of indirect human rights use concerns *imposing* the implementation of human rights upon others, most commonly those bearing a legal obligation to give effect to human rights. This category of human rights use could also be seen as a subcategory of supportive use, but is distinguished on the basis of its intended directive/steering nature. The fact that the realisation of human rights is 'imposed', for example through the judgment of a court, does not imply that these rights will be actually realised, though.

The categorisation of human rights uses is based on *how* human rights are engaged with (a functional approach). In the analysis of human rights uses in concrete settings, the boundaries between these different categories may not be clear-cut. Moreover, the underlying *motivations*

²⁰ D.P. Forsythe, Human Rights Studies: On the Dangers of Legalistic Assumptions, in: F. Coomans, F. Grünfeld and M.T. Kamminga (eds), *Methods of Human Rights Research* 74 (Antwerp: Intersentia, 2009).

²¹ Human Rights Watch, <http://www.hrw.org/about> (visited on 30 August 2014).

of using human rights cannot be determined through this scheme: human rights may be used legitimately, rhetorically or strategically. They may be genuinely employed in a struggle towards human dignity or instrumentalised – and thus ‘abused’ – for less laudable purposes. The *outcome* of human rights uses is a matter for empirical investigation.

Various relationships between these categories of human rights use, and the directions they take, may be mapped. Human rights can be invoked either straightforwardly, to claim human rights realisation, or indirectly, to induce the imposing of human rights implementation or to receive support in the human rights battle concerned. Imposing human rights aims at giving effect to human rights. Finally, human rights can be used in a supportive way in relation to the three other categories of use.

3.2. Categorising human rights users

Following the approach to human rights uses, a similar categorisation of human rights users can be developed. Here, a distinction is also proposed between direct (or primary) users and indirect (or secondary) users of human rights. *Direct* users of human rights are individuals, groups of individuals, organisations or institutions who engage with human rights in an immediate way: they invoke human rights to prevent or stop a violation of human rights, or they give effect to human rights. Direct users thus include two categories of user: rights claimants and rights realisers. *Indirect* users are individuals or composite entities who engage with human rights from a more distant stance by supporting or imposing human rights. They are named supportive users and judicial users respectively.

In a human rights context, the term ‘users’ is often understood as referring only to rights claimants or – even more restrictively – to the legal category of rights holders. Interpreted in this way, the added value of the concept could be seen as low, as ‘users’ would signify the same as ‘rights claimants’. I therefore propose to extend the concept of users to include both rights realisers and indirect (supportive and judicial) users, in order to arrive at a more comprehensive view and understanding of who is engaging with human rights.²² Moreover, even when talking about rights claimants as users the concept of user is ‘useful’ *per se*, since it draws attention to the fact that human rights are being shaped through their use. The four categories of human rights user are now discussed in more detail.

Rights claimants are those individuals, groups of individuals and legal persons who invoke human rights in relation to their own situation. The rights at stake for groups may be their collective rights or the individual rights shared by their members. Legal persons may also claim human rights, as has been demonstrated in the jurisprudence of the European Court of

²² CEPEJ also adopts a broad understanding of ‘users’ that includes ‘citizens who have had dealings with the courts’ and ‘legal professionals’, distinguishing between ‘professionals belonging to the public service of justice’ and ‘professionals who are essential partners of the courts, especially lawyers’. CEPEJ, *supra* note 16, p. 2. In our scheme, the two categories of legal professional would qualify as judicial users and supportive users respectively.

Human Rights.²³ Rights claimants will often invoke human rights that are already more or less firmly recognised in international human rights law. They may, however, also allege a threat to or a violation of human rights in a way that does not seem to be supported by the current state of human rights law. Their struggles may then result in changes in or evolutionary interpretations of human rights law.²⁴ For instance, at present international human rights law does not recognise a general right of children to work, but focuses on tackling the worst forms of child labour. Both in developing and developed countries, however, various groups of children are claiming a right to work in dignity.²⁵

Rights claimants are the intended beneficiaries of human rights. Looking at human rights from the perspective of rights claimants thus brings human rights back to where they belong – with those whose human rights should be respected and realised – and emphasises their agency. Conventional human rights scholarship has been criticised as offering a one-sided perspective on the evolution of international human rights law.²⁶ Baxi has noted that ‘people in struggle and communities of resistance’, who are the ‘originary authors of human rights’, are not given appropriate weight by scholars.²⁷ Similarly, Sano and Thelle have argued that ‘people – individuals and groups – have often entered as shadow images [in human rights studies] where the real actors have been lawmakers, judges, politicians, bureaucrats and organizations’.²⁸ A users’ perspective explicitly focuses on these people in the shadows – the rights claimants.

Realisers of human rights are those who give effect to human rights. They include national state authorities, who from a legal perspective are the primordial duty bearers of human rights.²⁹ Realisers of human rights do not always act upon or because of a legal obligation,

²³ Legal persons have claimed violation of, among others, the right to freedom of expression (Article 10 ECHR), see eg ECtHR 26 April 1979, *Sunday Times v. the United Kingdom* (no. 1), www.echr.coe.int (visited on 30 August 2014) (newspaper); the right to freedom of association (Article 11 ECHR), see eg ECtHR 10 June 2010, *Jehovah’s Witnesses of Moscow v. Russia*, www.echr.coe.int (visited on 30 August 2014) (association); the right to a fair trial (Article 6 ECHR) and the right to property (Article 1 Protocol 1 ECHR), for the latter two provisions see eg ECtHR 9 December 1994, *Stran Greek Refineries and Stratis Andreadis v. Greece*, www.echr.coe.int (visited on 30 August 2014) (corporations).

²⁴ See eg C. Bob (ed.), *The International Struggle for New Human Rights* (Philadelphia: University of Philadelphia Press, 2009).

²⁵ See K. Hanson and A. Vandaele, *Working Children and International Labour Law: a Critical Analysis*, 11 *International Journal of Children’s Rights* 73-146 (2011); M. Leonard, *Children’s Views on Children’s Right to Work. Reflections from Belfast*, 11(1) *Childhood* 45-61 (2004).

²⁶ See B. Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (Cambridge: Cambridge University Press, 2003).

²⁷ U. Baxi, *The Future of Human Rights vi* (New Delhi: Oxford University Press, 2002).

²⁸ H.-O. Sano and H. Thelle, *The Need for Evidence-based Human Rights Research*, in: F. Coomans, F. Grünfeld and M.T. Kamminga, *supra* note 21, p. 91.

²⁹ In today’s globalised world, transnational corporations, NGOs and international financial institutions play an increasingly influential role, impacting consequently on the human rights situation of natural and other legal persons. To maintain the relevance of human rights, endeavours are therefore being made to extend human rights obligations to the home states of corporations operating abroad (extraterritorial obligations), on the one hand, and to non-state actors, on the other. See eg Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011), and in relation to business actors UN Human Rights Council, *Protect, Respect and Remedy: a Framework for Business and Human Rights*. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (A/HRC/8/5) (2008); UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other

though, as was discussed above in relation to the category of ‘giving effect to’ human rights. They may feel a moral obligation to do so or act out of other, more instrumentalist considerations.

Turning towards the group of indirect human rights users, *supportive users* assist in the realisation of human rights. The category encompasses a broad variety of actors who primarily (but not necessarily exclusively, *infra*) engage with human rights from a supportive standpoint. It includes grassroots organisations, NGOs, media, human rights defenders, lawyers, national human rights institutions and human rights bodies (eg the charter- and treaty-based bodies of the United Nations). *Judicial users* impose the implementation of human rights; this category includes courts and tribunals. The relationships between the different categories of user are similar to those identified above between the various categories of use.

4. Reflecting

Both the users’ perspective on human rights and the categorisation of human rights uses and users introduced above call for some further clarification and a more sophisticated interpretation. The first section below undertakes a brief comparison with the concept of human rights actors and the research approach of studying the practice of human rights. The second further reflects on the categorisation of human rights uses and users. The final section explores some implications for human rights research of adopting a users’ perspective and working with these categories of human rights use and user.

4.1. Comparing with a related concept and approach

In this section, a related concept, human rights actor, and a related approach, studying the practice of human rights, are briefly discussed and compared with the concept of human rights user and the adoption of a users’ perspective. The confines of this article do not allow for an in-depth consideration; only some characteristics that seem particularly relevant are touched upon.

First, as regards human rights actors, a shared feature of the concepts of ‘human rights users’ and ‘human rights actors’ is their emphasis on agency, expressing an active interaction with human rights, in contrast to ‘objects’ or – to a lesser extent – ‘subjects’ of human rights. The concept of human rights actors is, however, rarely explicitly defined in the human rights

business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework (A/HRC/17/31) (2011); UN Human Rights Council, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (A/HRC/26/L.22/Rev.1) (2014).

literature.³⁰ One therefore has to look at who is included under the term. For instance, in its chapter on human rights actors, the Human Rights Reference Handbook discusses states, the European Union and non-state entities.³¹ The categories distinguished within the concept of human rights actors are made with the state as point of reference: a distinction is made between states, supranational organisations (such as the European Union) and non-state actors. In other human rights scholarship, a distinction is also regularly made between ‘state actors’ and ‘non-state actors’. The categories within ‘human rights actors’ thus appear to carry a state bias; they are based on institutional or organisational capacity, or on legal considerations.

The term ‘human rights actor’ and its categories thus do not make clear that the same actor may, depending on the situation, stand in a different functional relationship with human rights, ie make a different use of human rights. They obscure, for instance, the fact that even though in most cases a NGO is a supportive user, it may also be a rights claimant or a rights realiser. In contrast, the concept of human rights user and its categories are contextual and based on a functional approach, dynamically emphasising *how* human rights are engaged with – which will often be in multiple and changing ways.

Second, in recent years a growing body of literature, with many contributions from anthropologists, has focused on studying ‘the practice of human rights’.³² From an interdisciplinary but anthropologically inspired perspective, Goodale has described the practice of human rights as referring to ‘all of the many ways in which social actors across the range talk about, advocate for, criticize, study, legally enact, vernacularize, and so on, the idea of human rights in its different forms’.³³ By ‘social actors’ he means ‘all of the different individuals, institutions, states, international agencies, and so on, who practice human rights within any number of different social contexts, without privileging any one type of human rights actor’.³⁴ ‘Practicing’ human rights seems to be similar to ‘using’ – in the sense of ‘engaging with’ – human rights.

What then are the similarities and differences between ‘studying the practice of human rights’ and ‘adopting a users’ perspective on human rights’? Both approaches are obviously closely linked to each other, but – I would submit – are not the same. Commonalities include their contextual orientation and an inclusive approach towards human rights actors (‘without privileging any one type of human rights actor’) and users (‘[covering] all individuals and entities that engage with human rights in one way or another’, *supra*).

³⁰ In the field of international relations, an ‘actor’ has been defined as ‘any entity which plays an identifiable role in international relations’. G. Evans and J. Newnham, *The Penguin Dictionary of International Relations* (London: Penguin Books, 1998).

³¹ M. Sepúlveda, T. van Banning, G.D. Gudmundsdottir, C. Chamoun and W.J.M. van Genugten, *Human Rights Reference Handbook* (Ciudad Colon: University for Peace, 2004).

³² See eg M. Goodale and S.E. Merry (eds), *The Practice of Human Rights: Tracking Law between the Global and the Local* (Cambridge: Cambridge University Press, 2007). A research interest in the practice of human rights has also emerged in international relations, political philosophy and the philosophy of human rights. See J.K. Schaffer, *A Pluralist Approach to the Practice of Human Rights* (working paper, September 2014). Available at SSRN: <http://ssrn.com/abstract=2490964> (visited on 5 September 2014).

³³ M. Goodale, *Locating Rights, Envisioning Law between the Global and the Local*. In Goodale and Merry, *supra* note 32, p. 24.

³⁴ *Ibid.*

In their edited volume *The Practice of Human Rights*, Goodale and Merry adopt a thematic approach, focusing on four themes that emerge from the study of the practice of human rights (violence, power, vulnerability and ambivalence). In contrast, a users' perspective on human rights takes an actor-oriented approach. The starting point of analysis, the perspective taken, is that of a certain user (or different users), not a particular theme. A users' perspective could thus be considered to be 'another point of entry' or 'another window' (rephrasing Goodale) into the practice of human rights.³⁵ In this sense, a users' perspective on human rights can be understood as a particular way of studying the practice of human rights, ie as 'a users' perspective on *the practice of human rights*'.

On the other hand, a users' perspective appears to be more flexible from a methodological point of view. The study of the practice of human rights seems to be undertaken preferably through empirical, and in particular ethnographic, research. Although empirical research is also a suitable way of doing research from a users' perspective, one can also adopt a users' perspective on human rights in desk studies, for instance by analytically adopting the perspective of certain rights claimants (eg older persons, migrants, indigenous peoples) or judicial users (the judges of the European Court of Human Rights) – as is demonstrated by the contributions in this special issue.³⁶

Finally, the categorisations of uses and users proposed here are a modest attempt to contribute to an enriched analytical understanding of the practice/use of human rights, by crystallising from the ways human rights are practised/used ('talk about, advocate for, criticize, study, legally enact, vernacularize, and so on') different categories of use (invoking, giving effect to, supporting and imposing). Similarly, it is suggested that the range of social actors practising or engaging with human rights ('all of the different individuals, institutions, states, international agencies, and so on') can be divided into different categories of user (rights claimants, rights realisers, supportive users and judicial users).

In sum, close connections exist between the two approaches of 'studying the practice of human rights' and 'adopting a users' perspective on human rights'. A users' perspective can be considered as an alternative, actor-oriented entry point into the study of the practice of human rights. On the other hand, a users' perspective seems methodologically more flexible and the proposed categorisations of uses and users may also be relevant for the study of the practice of human rights.

4.2. Reflecting on the categorisations

Three considerations seem pertinent to the categories of human rights use and user proposed above. To start, these categories are contextual, ie they are determined by and vary with concrete settings. The identification of human rights uses and users cannot be done *in abstracto*, but is necessarily related to a specific issue or case. One individual can – depending

³⁵ *Ibid.*, p 27.

³⁶ See Baumgärtel and Ganty, Inman, De Pauw and Staes in this issue.

on the situation – be a rights claimant (eg when invoking respect for her own right to privacy), a rights realiser (eg to fulfil the right to education of her children) and a supportive user (eg working as an employee of a NGO that defends the rights of undocumented migrants). Another example constitutes NGOs as entities in themselves: in most circumstances, they will be supportive users of human rights, engaging in advocacy work and awareness raising. But they may also invoke human rights in relation to their own situation (thus acting as rights claimants), for example when their right to freedom of expression or association is under threat or violated. An overlap is thus possible *in personae* between the categories of user: one individual, organisation or institution may be qualified in different user categories, depending on the situation.

Second, it is possible that in certain situations a user will make, in addition to her principal use of human rights in one category, another use of human rights in a subsidiary way. For instance, to support the invoking of human rights in relation to her own situation, a rights claimant may *herself* engage in lobbying, advocacy or the documentation of human rights violations (ie actions that are categorised as ‘supportive uses’), with or without the help of a (principal) supportive user, such as a NGO. In such cases, a distinction can be made between principal and subsidiary uses of human rights.

Third, two particularities may be noted regarding the supportive category of human rights uses and users. The supportive *use* of human rights differs from the other uses because it is a broad and open category, encompassing a wide variety of human rights-related activities, ranging from advocacy to taking up the legal representation of a rights claimant in court and to standard setting. The other categories of human rights use – invoking, giving effect and imposing human rights – are more specific and clearly demarcated. Consequently, the category of supportive *users* includes very diverse kinds of individual, group, organisation and institution acting in a supportive capacity, and may be considered to be an overarching category.³⁷

The other particularity is that supportive users may carry out their supportive function spontaneously or upon request from one of the other categories of user. In relation to a judicial user, examples of the spontaneous exercise of the supportive function are third party interventions before the European Court of Human Rights. Being appointed as an expert by a court is an illustration of the exercise of the supportive function upon request. Similarly, grassroots organisations and NGOs may accompany rights claimants on their own initiative or upon the latter’s request. With respect to rights realisers, supportive users may, for instance, communicate a policy note regarding the promotion and protection of human rights of their own accord, or subscribe to a tender issued by a governmental actor to carry out human rights research.

³⁷ A way of doing justice to this diversity of supportive uses/users would have been to devise ‘sub-categories’. This option was not pursued because the boundaries between these sub-categories would often have been difficult to draw, because supportive users frequently combine various forms of supportive use in their daily activities, and for the sake of analytical simplicity. NGOs, for instance, often combine advocacy work and awareness raising activities with strategic litigation. The United Nations treaty-monitoring bodies assist the realisation of human rights through the adoption of general comments, and monitor the implementation of human rights through their review of initial and periodic reports from States and the consideration of complaints.

4.3. Implications for human rights research

Adopting a users' perspective on human rights and working with the human rights user categories open up a diversity of avenues for designing human rights research. A wide palette of options emerges, including the choice between a single, dual or multiple users' perspective; the degree of attention paid to diversity within users and user categories; the level of analysis of the interaction between various users and user categories; and the broadening of the research topic towards potential users of human rights.

A choice to be made when embarking on human rights research from a users' perspective concerns the breadth of the users' perspective that will be adopted. Research can mainly zoom in on one user or user category, and thus adopt a *single user's perspective*. This could be compared to studying the experience of one musician: which instrument does he play? How is he illuminated from various corners (ie human rights systems or organisations) with different lights (ie human rights instruments or standards)? How does he assess the audience? Does he form part of an orchestra (ie is there interaction with other human rights users?) or does he play solo? Other analyses may zoom in on two users or user categories, such as indigenous peoples (as rights claimants) and NGOs working on indigenous rights (as supportive users). Such a *dual users' perspective* is similar to researching the experience of a couple of musicians on the scene. Still other research designs may adopt a *multiple users' perspective* and study a human rights issue from the viewpoints of different users and user categories. In this situation, the experiences of multiple musicians, who may be illuminated in different ways (ie some human rights standards may be relevant for one user or user category, but not for another) as well as interact with the audience and each other in different ways, are researched.³⁸

This choice as regards the width of the users' perspective is not without importance, since methodological decisions inevitably impact on the nature of the findings. Adopting a multiple users' perspective will generally lead to a more balanced appraisal of a human rights issue, since the viewpoints of different users will have been taken into account. A single user's perspective, on the other hand, will provide a thicker analysis and deeper understanding of the predicaments of one particular user or user category, but will inevitably result in a more one-sided vision.

An implication of the proposed categorisation of human rights users is that the focus on categories of user entails the risk of obscuring power, economic, cultural and social differences *within* one user category. It will therefore be important to disaggregate each category of user carefully and look for differences between the various individuals, composite

³⁸ The distinction between single, dual and multiple users' perspectives is an analytical device; the boundaries between these perspectives may not be clear-cut. As such, it is possible that the viewpoints of various users or user categories are examined (a multiple users' perspective), but that most emphasis is put on the perspective of one particular user or user category (leaning towards a single user's perspective). Such an approach can be qualified as a *differentiated multiple users' perspective*.

entities and their component members that belong to the same user category (a dissecting approach). ‘The state’, for instance, is frequently perceived as a monolithic entity, whereas it is actually a complex construction of often competing agencies and individuals, at both the national and the local level (hence the reference to ‘state authorities’, hinting at this complexity).

This concentration on the diversity within one category of user will probably be more easily realised within a single than a multiple users’ perspective. Given the focus on one category of user in the former case, it may be presumed that one will be more sensitive to differences and similarities between the persons, groups, organisations and institutions belonging to it. When a multiple users’ perspective is adopted, the danger seems greater that one stays at the level of the user category, without delving into possible variations within the category. In human rights research from a users’ perspective, particular attention should thus be paid to diversity within the user categories.

Adopting a users’ perspective also brings the opportunity to study the interaction between users. There are necessarily different users involved in a particular human rights issue given the inherently dual design of human rights law, which distinguishes between rights holders and duty bearers. So it becomes interesting to examine, first, how human rights may be interpreted and employed differently by different users in relation to a certain topic, and second, whether and how a user’s interpretation and use of human rights changes as a result of the interaction with other human rights users. For instance, a state government may adapt its human rights policy due to lobbying or a judgment. A court may develop its jurisprudence on the basis of the lawyers’ pleas or third party interventions. So-called ‘failed cases’ may be even more revealing to study: why was a law suit lost which aimed to advance a progressive interpretation of human rights law; or why did a particular lobbying campaign fail?

The study of the interaction between various users of human rights and the impact of this interaction on the development of human rights law could thus be an additional line of enquiry. Examining the interaction between users seems particularly relevant when a multiple users’ perspective is adopted. It is also feasible, however, in analyses taking a single user’s perspective: then, the focus could be on the influence of other human rights users on the user who is the primary subject of the study and/or on the impact of this ‘central’ user on other human rights users – but where the ultimate objective of the analysis is to increase understanding of the situation of the ‘central’ user.

Lastly, the subject of an enquiry may be extended towards *potential* users of human rights, ie those who are in a position where they could use human rights but have not taken this step, whether on the basis of a conscious decision or not. Such an approach triggers interesting questions: why do certain persons or groups *not* make use of human rights language to attempt to enhance their well-being or improve their living conditions? What are inhibiting factors, such as lack of awareness, limited resources or a constraining environment? Why do certain states choose *not* to make use of human rights law, eg by not ratifying a treaty or by not implementing the standards of a ratified treaty? These questions regarding potential users

link to Baumgärtel's observations on the capabilities of users,³⁹ as well as to structural factors that may impede successful human rights use.⁴⁰

A concluding word on methodology: a users' perspective on human rights can be adopted in both desk studies and empirical research. For instance, a desk study of a court's jurisprudence can adopt a users' perspective by analysing the case law from the viewpoint of one or more of the users involved (eg plaintiffs, defendants, judges or intervening parties). Qualitative social science methods are obviously also well suited to engaging in human rights research from a users' perspective. They enable the researcher to dig into the perceptions and motivations of users and to acquire a thicker understanding of the way human rights are being used and the impact on the users concerned. It is submitted, however, that empirical research is not a necessary requirement and that – as various contributions in this special issue demonstrate – a users' perspective may also be adopted in desk studies.

A particular way of implementing a users' perspective in human rights research is through analysing the *trajectories* of human rights users. The next section explains what such an approach could entail.

5. Trajectories

To be able to examine 'trajectories' of human rights users – as one possible way of implementing a users' perspective on human rights – a clear understanding of what is meant by the concept of 'trajectories' is necessary. The Merriam-Webster dictionary provides an *ordinary* definition of 'trajectory' as '(i) the curve that a body (as a planet or comet in its orbit or a rocket) describes in space; (ii) a path, progression, or line of development resembling a physical trajectory <an upward career *trajectory*>'.⁴¹ A *technical* definition, to be employed in research, 'should not be slavishly bound to ordinary speech; otherwise it will lack the necessary precision to do the systematic intellectual work [required]'.⁴²

It is suggested that a technical definition of trajectory, to be used in human rights research, differs from the ordinary understanding in three ways. First, a trajectory in human rights only comes into being through a succession of human rights-related actions undertaken by users, and thus necessarily consists of many small steps and actions. The operationalisation of the concept of trajectory in 'steps and actions' detracts from the fluency implicit in the curve concept of the Merriam-Webster definition. Second, a common sense understanding of

³⁹ Baumgärtel in this issue, pp. 146-150. See also Ganty and Baumgärtel in this issue.

⁴⁰ *Ibid.*, pp. 150-154.

⁴¹ Merriam-Webster, www.merriam-webster.com/dictionary/trajectory (visited on 30 August 2014).

⁴² See J.M. Donovan, *Legal Anthropology: an Introduction* 9 (Lanham: Altamira Press, 2008). In his search for a definition of 'law', Donovan also refers to Wittgenstein, for whom all meaning was rooted in ordinary use. As a consequence, 'technical language [can]not diverge too drastically from common understanding without becoming incomprehensible or counterintuitive. A middle ground must be sought when attempting to attach technical meanings to common words.' *Ibid.*

‘trajectory’, for instance that of a rocket, may include a beginning (the rocket’s launching) and an end (the landing). It may be possible to identify the beginning of a certain human rights trajectory, eg the moment at which a person first undertakes a human rights-related action or the establishment of a human rights institution. Especially in relation to more complex human rights issues, however, it will not always be feasible to pinpoint the start of a particular human rights trajectory. Moreover, human rights trajectories rarely ‘end’, as users most often continue to engage with human rights. Human rights trajectories should therefore not be understood as always having clear start and end points, but as continuous (and frequently never-ending) processes – thus comparable to the trajectories of planets or comets rather than those of rockets. Third, a human rights trajectory will not necessarily lead to the increased realisation of human rights: one might get lost in the jungle of human rights norms or be confronted with serious or insurmountable obstacles on one’s path (eg a court’s rejection of one’s application as ill-founded). The evolutionary approach implied in the second part of the Merriam-Webster definition should therefore not be transposed to the understanding of human rights trajectories.

With these three caveats in mind, the following working definition of ‘trajectory in human rights’ is proposed: *A trajectory in human rights refers to the steps and actions that a human rights user undertakes in relation to human rights.* The adoption of a users’ perspective is inherent in this definition. The object of a trajectory (‘in relation to human rights’) may cover the whole array of human rights or be confined to a specific right, issue or situation. Wherever possible, the analysis of the trajectory of a human rights user should also include an examination of the motivation of a particular action as well as the reactions of other users.

A trajectory approach thus analyses how users walk through the forest of human rights:⁴³ which paths do they make or take? Which tools do they utilise to force their way through thickly wooded areas? When obstacles are encountered, do they build bridges (eg referring to the jurisprudence of another judicial user) or take a roundabout (eg submitting a complaint to another institution)? Roads may also bifurcate when different strategies are simultaneously employed. Or invoking another metaphor: which rooms do users enter in the castle of human rights, and why? Which doors do they open or close? Where do they find the keys (ie the human, technical and financial resources needed)? When do they take the stairs to another floor and when do they tumble down? When and why do they get lost in the castle’s musty cellars?

The steps or actions in a trajectory will often be related to particular uses of human rights, such as filing a court case (*invoking* human rights), making a domestic law human rights compliant (*giving effect to* human rights) or engaging in advocacy and lobbying (*supporting* human rights). The scope of the trajectory concept should not be limited to actions in the legal and judicial sphere, but include social, political, media and other types of action that aim to contribute to an effective enjoyment of human rights. In this sense, human rights trajectories

⁴³ When human rights are not yet available, the landscape that users walk through may appear more like an empty field.

will often have a mixed nature, combining judicial and legal actions with other types of action.⁴⁴

The analysis of trajectories implies a historical and/or longitudinal approach. It is necessary to go back in time, trying to identify and assess the steps taken by one or various⁴⁵ human rights users in relation to human rights in general or a specific human rights issue in particular. In addition to a historical point of view, it would be interesting to carry out longitudinal research on human rights trajectories, through which human rights users are followed over protracted periods of time. The ‘trajectories’ approach in human rights research could be compared to the use of ‘life histories’ in ethnographic research.⁴⁶

Human rights trajectories can be analysed with a wide focus or a narrow, human rights integration focus.⁴⁷ Employing a wide focus implies the question: which steps do users take in relation to human rights? Taking a narrower, human rights integration focus, the following questions arise: which steps, if any, do users take to deal with the simultaneous applicability of different human rights norms? Do they employ strategies to arrive at a more integrated experience of human rights or do they take ‘advantage’ of the fragmentary state of human rights law? Looking at users’ trajectories through a human rights integration lens draws attention to the coping strategies of users who are confronted with many, sometimes divergent, standards of human rights law. From the perspective of a state authority, for instance, possible ways of dealing with the multitude of human rights norms include elaborating a national Bill of Rights, as a means of synthesising the contributions of various branches of human rights law;⁴⁸ drafting guidelines that reflect the state of the art of international human rights law;⁴⁹ and carrying out or commissioning research, as a means of obtaining a clearer view of the different obligations.⁵⁰ These and other ‘coping strategies’ should be further investigated with a human rights integration focus.

⁴⁴ Nevertheless, the core actions of judicial users will mainly be situated within human rights law.

⁴⁵ Depending on whether a single or multiple users’ perspective is adopted, *supra*.

⁴⁶ See eg A. Griffiths, Using Ethnography as a Tool in Legal Research: an Anthropological Perspective, in: R. Banakar and M. Travers (eds), *Theory and Method in Socio-Legal Research* 113-131 (Oxford: Hart Publishing, 2005).

⁴⁷ On the concept of human rights integration, see E. Brems, *supra* note 4.

⁴⁸ See eg R. McQuigg, *Bills of Rights. A Comparative Perspective* (Cambridge: Intersentia, 2014).

⁴⁹ See eg the Guidelines on the Use of Minority Languages in the Broadcast Media, which aim ‘to provide States with some practical guidance in developing policies and law which fully respect the letter and spirit of internationally agreed standards and which can balance and meet the needs and interests of all sectors of the population, including those of persons belonging to linguistic minorities’. OSCE, High Commissioner on National Minorities, *Guidelines on the Use of Minority Languages in the Broadcast Media* 4 (The Hague: OSCE High Commissioner on National Minorities, 2003). See T. McGonagle, Freedom of expression, minorities and digital media: the methodological strategies and challenges of multi-disciplinary and user-oriented approaches. Presentation at the Human Rights Integration PhD Seminar ‘Adopting a users’ perspective in human rights research’ (Ghent: Human Rights Centre, 23 January 2013). See also UNGA, *Guidelines for the Alternative Care of Children* (A/RES/64/142) (2009).

⁵⁰ The challenge of multiplicity is at play regarding not only human rights norms but also policy agendas. With respect to children and young people, for instance, EU Member States are confronted with policy agendas coming from different institutions (European Union, Council of Europe, United Nations) and in two mostly separated policy domains (children’s rights and youth), which, however, at least partly apply to the same age group. In the framework of the Belgian EU Presidency in 2010, the Flemish Government asked the Children’s Rights Knowledge Centre to map the different policy agendas on children’s rights and youth at the European and international level. The Belgian EU Presidency then provided this information to the Council of the European

6. Conclusion

This article set out a research agenda by exploring an approach described in brief as ‘analysing users’ trajectories in human rights’. Its central tenet, a users’ perspective on human rights, requires the adoption of the viewpoint of those who engage with (use) human rights. This entails a shift in analytical focus, given that legal scholarship today often focuses on the study of one specific instrument, theme or system.

A broad understanding of the concept of ‘human rights user’ was proposed. Based on a categorisation of human rights *uses* (as invoking, giving effect to, supporting and imposing human rights), a distinction was proposed between different empirical categories of human rights *users*. Direct users include rights claimants (who invoke human rights) and rights realisers (who give effect to human rights), whereas indirect users are either supportive users (who support the realisation of human rights) or judicial users (who impose the implementation of human rights). A possible way to study human rights from a users’ perspective is through analysing the so-called ‘trajectories’ of these users.

It does not seem feasible to analyse with the same depth and detail the perspectives and/or trajectories of all the users involved in a particular human right issue. In many cases, research designs will have to be narrowed down to certain (categories of) users and/or trajectories. In this sense, the conceptual tools (working definitions and categories) proposed here can contribute to a clearer demarcation of the scope and objectives of a research project.

Adopting a users’ perspective on human rights and working with the proposed categories of human rights users offer a fresh way to analyse human rights dynamics by taking an actor-oriented perspective and providing analytical distinctions in apprehending the dynamic ways in which users engage with human rights. Nevertheless, the real relevance of the conceptualisations of ‘users’ and ‘trajectories’ will only become clear through their application in research. In this way, the working definitions and categories will be tested, possibly rejected and hopefully refined. The articles in this special issue constitute a first step in this direction.

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Union (Doc. 14855/10), in this way disseminating the study to the other Member States. This is an example of how the Flemish Government attempted to deal with the challenge of multiple policy agendas in the fields of children’s rights and youth. See E. Desmet, Implementing the Convention on the Rights of the Child for ‘Youth’: Who and How?, 20 *The International Journal of Children's Rights* 3-23 (2012).

meeting of the Human Rights Integration project, where an earlier version of this article was presented on 12 March 2013.