Future-proofing human rights

Developing thicker forms of accountability

PROJECT OVERVIEW

Human rights are increasingly described as in crisis. One reason for this is that current accountability mechanisms cannot adequately deal with intricate and multilayered human rights violations that occur in rapidly changing and vastly complex social contexts. Thus, if human rights are to continue to offer a widely accepted framework for thinking about (social) justice, we urgently need to reconstruct the very notion of accountability on which it is pinned, so that better protection is offered. This project revisits the questions of what counts as a human rights violation, who holds human rights duties and how to actually deliver human rights accountability, in the context of pressing and complex challenges. Harnessing the legal, sociological, anthropological and criminological expertise of the consortium's members, it finds resources and strategies for thicker human rights accountability within human rights law, from other domains of law, and beyond the legal realm. The identification of a variety of avenues for achieving better human rights protection will provide the basis for a thicker conceptualization of the notion of (human rights) accountability.

GOALS

In spite of a relatively robust legal framework there is a continued reality of human rights violations and rather low degrees of accountability. Our aim is therefore to strengthen human rights law by identifying means or mechanisms that ensure a thicker form of accountability. This project proposes to further develop the concept of accountability so that it can face up to current social challenges, such as COVID-19, corporate abuse or surveillance dilemmas. Our particular concern is with the disconnect between the formal legal system and the lived experiences of those who suffer harms that could logically be – but are not yet - understood as a human rights violation.

Our overarching research question is: **How can thicker accountability for human rights violations be achieved, so as to ensure better human rights protection in line with the everyday experience of rights holders?** This question breaks down into three sub-questions:

1. What counts/should count, as a human rights violation, i.e. what types of substantive wrongs (do not) trigger accountability in practice?
2. Who can/should be held accountable (i.e. who is a duty-bearer), but now slips through the net?
3. How can the human rights framework be altered to accommodate this, i.e. what are good practices?

SPECIFICATIONS

This multi-disciplinary project looks for answers to these questions within, around and beyond human rights law. Since we do not believe that legal structures can or should be bypassed in the quest for thicker accountability, we first explore how accountability can be reinforced from within human rights law. At the same time, we position ourselves against analyses that aim to 'rescue human rights' by defending the legal status quo in terms of what counts as a human rights violation (only those recognized in current human rights law), who is considered a duty-bearer (only states) and which kind of accountability is appropriate (only legal). Instead, we believe that a more comprehensive and satisfactory kind of human rights accountability is needed and that this can be developed progressively including by borrowing from other fields of law. Other legal fields are therefore the second place where we will look for answers. Finally, it is crucial to also look beyond the legal domain to discover promising approaches to accountability that capture the experiences and lived realities of rights-holders who have been bypassed by the legal framework altogether. This project therefore adopts a research design that looks for answers to our research questions within human rights law (track 1), in the broader legal system (track 2), and in broader social and political domains (track 3), before forming an integrated understanding of how various approaches to accountability reinforce and enrich one another (track 4).

Within HR law
How can thicken accountability within the existing HR legal framework

Around HR law
How can we learn from other fields of law to thicken accountability for HR?

Beyond the law
How can we learn from other (extra-legal) disciplines and from practice to thicken accountability for HR?
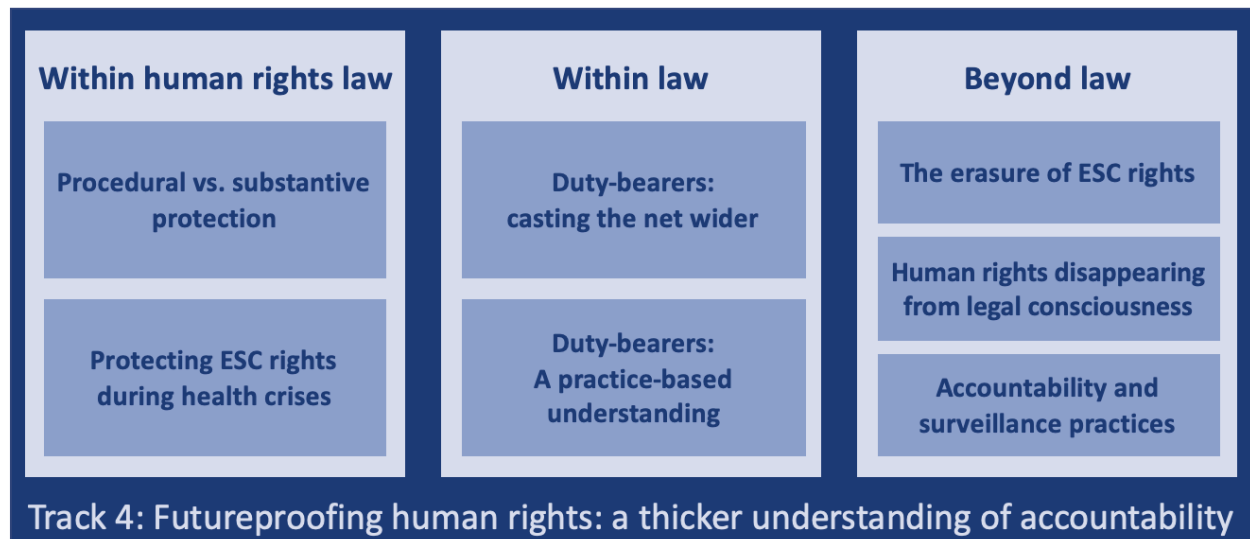
This project starts from the anthropological and socio-legal understanding that no one part of this complex question can be studied in isolation from its relation to the whole, i.e. if we want law to work for those in need of its protection, it does not suffice to only study law and the courts, but neither does it suffice to only study those in need of protection. We need both, and we need to understand how they influence each other. This focus on 'law in context' has implications for our epistemological position (critical legal studies), as well as our methodological choices (multi-disciplinary & multi-method). It also shapes our choice of topics and actors to be researched (both 'classic' and 'unconventional' legal practitioners and debates).

Our methodology therefore includes critical legal doctrinal analysis, but also goes beyond it to encompass more challenging methods, including qualitative emancipatory fieldwork methods, large-n text mining, (expert) interviews and focus groups, Dembour's anthropological dissecting analysis, participant- and direct observation, and surveys. These methods are rooted in legal studies, social and political science, criminology, public administration and (legal) anthropology. These (sub)disciplines and multiple methods are all present in the expertise of the promotors, who will rely on each other's expertise and build on each other's findings.

Research components

The project is organized into three tracks, structured around the three places where we look for thicker accountability and which go from a more classical legal doctrinal analysis in track 1 to a more multi-disciplinary analysis in track 3. Each track is further divided into work packages (WPs). A fourth track integrates the research findings to examine how a thicker kind of accountability for human rights can be achieved across the various realms we examined.

Within human rights law	Within law	Beyond law
Procedural vs. substantive protection	**Duty-bearers: casting the net wider**	**The erasure of ESC rights**
Protecting ESC rights during health crises	**Duty-bearers: A practice-based understanding**	**Human rights disappearing from legal consciousness**
		Accountability and surveillance practices

Track 4: Futureproofing human rights: a thicker understanding of accountability

The first three tracks take a descriptive approach to the question of what counts as a human rights violation (RQ1), who can be held accountable (RQ2), and what best practices are (RQ3), and look for answers in human rights law itself (track 1), around it (track 2), and beyond the legal realm (track 3). Track 4 takes a helicopter view: it will first engage in a further conceptual analysis of accountability on the basis of existing materials, and will then adopt a user perspective as an analytical lens to integrate the insights from tracks 1-3, and to build on these insights to formulate an overarching answer to the three sub questions (what, who, how), thereby answering the central question of **How can thicker accountability for human rights violations be achieved,** so as to ensure better human rights protection?

This project seeks to arrive at a conceptualization of accountability that is more reflective of rights-holders' lived experiences of injustice.

More information?

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