Bridging the divide
Exploring the relationship between human rights and conflict management

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Introduction

This paper focuses on the relationship between the fields of human rights and conflict management. It highlights their contradictory and complementary nature and argues that interaction between these fields should take place to a far greater extent than is currently the case. Scholars and practitioners have devoted little attention to the question of how the disciplines of human rights and conflict management relate to one another. As they view conflict from different perspectives, actors in the two fields have traditionally worked separately. At times their efforts may be at odds, as methods and roles can differ considerably from one discipline to the other. Indeed, where human rights and conflict management have been considered in conjunction with one another, this is generally done to show how imperatives of peace and justice are — or can be — in conflict with one another. The fields are often perceived as being in contradiction or competition. Nevertheless, human rights actors and conflict management practitioners have a common interest in promoting sustainable peace with justice. They also frequently operate in the same environment, as many conflicts involve human rights violations of some sort, and activities by actors in the one field may impact on efforts by actors in the other field. It therefore is necessary to explore the relationship between human rights and conflict management in more depth, and to examine whether and how they can contribute positively to one another.

This paper asserts that the two fields are far from being mutually exclusive. It argues that human rights and conflict management practitioners ought to understand one another's fields much better than they do at present, that dialogue and interaction is needed between the fields, and that insights, skills and practices from the one field can strengthen activities in the other field. The main argument is that a synergy exists between the two fields which, if left untapped, complicates and undermines processes that work towards peace, justice, and reconciliation. With regard to conflict management, the paper argues that without a proper understanding of the human rights dimension in conflicts, conflict management is bound to be unsustainable. Not only are efforts to protect and implement human rights essential to the constructive management of conflict, but institutionalised respect for human rights is also a primary form of conflict prevention. Moreover, processes that aim to resolve conflict must take place within a framework in which fundamental rights and freedoms are considered non-negotiable. Concerning the human rights field, this paper argues that conflict management can contribute to the protection and promotion of human rights in a variety of ways. There is much scope for dialogue, negotiation and accommodation in dealing with conflicts. Conflict management can offer alternative and innovative methods of addressing conflicts over rights issues, and can also enhance the capacity of human rights actors to protect rights effectively.

This paper flows from work that the Centre for Conflict Resolution (CCR) has been engaged in since 1997. At that time, the United Nations Centre for Human Rights in Geneva commissioned

CCR to draft a handbook on human rights, minorities, and conflict management. CCR's review of existing literature and training programmes identified a failure in theory and practice to link the two fields. There was a clear need to examine how the fields of human rights and conflict management could positively impact on one another. Its research for the handbook led CCR to establish a human rights and conflict management training programme in 1999. This occasional paper draws on the manuscript prepared for the United Nations and on insights gained from CCR's training programme.[1]

The links between human rights and conflict management will be explored in four sections in this paper. The first section sets out the tensions between the two fields and explains why they are not better integrated. The second section focuses on the relationship between human rights and conflict management through six analytical propositions that highlight the complementarity between the fields. They are the following:

- Human rights abuses are both symptoms and causes of violent conflict.

- A sustained denial of human rights is a structural cause of high-intensity conflict.[2]

- Institutionalised respect for rights and structural accommodation of diversity is a primary form of conflict prevention.

- For the effective and sustainable resolution of intra-state conflict, the prescriptive approach of human rights actors must be combined with the facilitative approach of conflict resolution practitioners.

- Whereas human rights and justice per se are non-negotiable, the application and interpretation of rights and justice are negotiable in the context of a negotiated settlement.

- Conflict management can function as an alternative to litigation in dealing with rights-related conflicts.

The third section of the paper highlights two practical implications of the relationship between human rights and conflict management: the relevance of human rights training for conflict resolution practitioners; and of conflict resolution training for human rights actors. The fourth section records insights acquired from CCR's experience to date in linking human rights and conflict management. It should be noted that this occasional paper does not discuss the Human Rights and Conflict Management Programme of CCR but only sets forth lessons learned since the Programme started. Information on the Programme is provided in a separate box, as are a few exercises developed by the Programme.

Terms and definitions

A primary assumption underlying this occasional paper is that conflict is a natural, normal and inevitable part of life. This implies that conflict as a social and political phenomenon cannot be eliminated, prevented, or resolved. The challenge is to manage it in a constructive way that allows for the expression of discord and legitimate struggle without violence. One can, however, speak of the resolution and prevention of a specific conflict concerning a particular issue or set of issues. By the term "conflict management" I therefore mean addressing, containing, and limiting conflict in such a way that its escalation into a more violent mode is avoided. By "conflict resolution" I therefore mean addressing the causes of a particular conflict and resolving these so that the conflict comes to an end.

A distinction is thus made between the management of conflict as a general phenomenon and the resolution of a specific conflict. Another distinction made here is between "normal" conflict and "violent" or "destructive" conflict. Considering conflict as natural and inevitable means that conflict in itself is not bad or inherently violent. This paper will refer to "violent" or "destructive" conflict if direct, physical violence is involved, and will simply use the term "conflict" if violence is not an issue. Where the term "prevention" is used, it refers to the

prevention of violent conflict. This paper focuses mostly on intra-state conflict rather than inter-state conflict.

"Human rights" are understood here as fundamental rights and freedoms that belong to every person on the basis of his or her inherent dignity as a human being. The primary human rights framework informing this paper is comprised of the Universal Declaration of Human Rights (adopted by the UN General Assembly in 1948) and the African Charter on Human and Peoples' Rights (adopted by the Organisation of African Unity in 1981.) The paper uses the term "human rights" to include civil, political, economic, social, and cultural rights reflected in international and regional instruments, including the fundamental freedoms of speech and expression; belief and worship; and the freedoms from fear and from want. Civil and political rights relate to the freedom and equality of individual citizens, and protect them against unwarranted interference and abuse of power by the state. Examples of such rights include the rights to life, equality, and due process. Social, economic, and cultural rights are concerned with the welfare and well-being of humans. They relate to the socio-economic conditions in which people live and to their participation in cultural life. Examples include the rights to work, an adequate standard of living, education, and the right to take part in the cultural life of a community. This paper considers human rights as universal in nature, as they are derived from the dignity of human beings, but acknowledges that the meaning and relative importance of rights is at times interpreted differently in different social, cultural, and political contexts.

I. The central problem: contradiction and competition?

The lack of integration between the fields of human rights and conflict management is due to a variety of factors. Actors in both arenas have traditionally operated separately in conflict situations, largely because they view conflict from different perspectives. Human rights actors are generally concerned with the application of objective standards to determine issues of justice and establish the extent to which parties have upheld or violated such standards. Conflict management practitioners, on the other hand, seek to reconcile the needs, interests, and concerns of disputant parties in a constructive way, rather than trying to determine who is right and who is wrong. This fundamental difference in perspective creates certain tensions between the two fields. It also leads the two types of actors to emphasise different values, goals, and strategies in their approach to peace and conflict (Arnold 1998, Baker 1996, and Kunder 1998).

Arguably the best known in this context is the "peace versus justice" debate, which has unfolded in various cases all over the world. Conflict management practitioners generally prioritise peace as a basis for justice, arguing that the cessation of violence and resolution of intra-state conflict is a precondition for the establishment of a viable and enduring system of justice. They usually accept that this may necessitate negotiating with parties responsible for atrocities. Human rights actors, however, focus more directly on justice as the foundation for a lasting peace. Their primary concerns are with holding perpetrators accountable, restoring the rule of law, and building democratic institutions. While many conflict resolution practitioners share these concerns, the two fields often differ on the relative priority and importance attached to the various imperatives. As Baker puts it, "[they] share a common concern to end conflict, but favour different strategies in achieving it" (Baker 1996: 565).

The peace versus justice debate played itself out dramatically in the context of Bosnia-Herzegovina, when an anonymous author in a leading human rights journal accused the international human rights movement of prolonging the Balkan war. He claimed that the human rights community had been increasing the death, suffering and destruction in its pursuit of a perfectly just and moral peace that would bring "justice for yesterday's victims of atrocities," but instead made "today's living the dead of tomorrow" (Anonymous 1996: 259). Soon after this, an influential human rights scholar hit back, rejecting the charge that human rights actors disrupt peace processes. She argued that "the human rights community's articulation of concern,

identification and analysis of the facts, and pressure for protection against abuses cannot be subject to the vagaries of international politics or the particulars of negotiations" (Gaer 1997: 7-8). The moral and strategic dilemma of how to balance peace and justice is now a regular feature where a settlement is being negotiated in intra-state conflict.

Human rights actors and conflict management practitioners also differ in their approaches to dealing with conflict. Because of their focus on human rights standards that bind parties to specific behaviour and impose obligations on states to respect rights, human rights actors often adopt an adversarial approach in seeking redress for grievances, and explicitly point out the wrongs committed by states and non-state actors. They may seek recourse through the legal system, and/or may denounce parties in public. In contrast, many conflict management practitioners utilise more co-operative approaches with a view to maintaining or restoring relationships between parties and reaching mutually agreeable outcomes. The normative orientation of human rights actors also means that they may attribute blame, whereas conflict management practitioners usually refrain from judging disputing parties. In addition, human rights actors can be strict or rigid in their endeavours to uphold and abide by human rights norms, whereas conflict management practitioners are more flexible in their search for a resolution that meets the needs and interests of different parties.

Overall, human rights actors are more focused on principles, whereas conflict management practitioners are more pragmatically oriented. Baker has also suggested that the difference between the two sets of actors is one of outcome versus process. In her view, conflict management practitioners are primarily concerned with processes that facilitate dialogue between the parties, whereas human rights advocates are preoccupied with the contents of the parties' agreements (Baker 1996: 568). However, it would be far-fetched to argue that conflict management practitioners are not concerned with the outcome of negotiation processes. Rather, the difference lies in human rights actors being more prescriptive, and conflict management practitioners being more facilitative, in their respective approaches to outcomes. In this sense, the former could be considered "outcome advocates", in that they advocate a particular type of outcome (one that emphasises constitutionalism and the legal protection of rights). The latter, on the other hand, could be termed "process advocates", as they favour a specific kind of process in reaching an outcome (one that is facilitative, all-inclusive, participatory, and develops trust between parties).

Differences between the two sets of actors may also arise over the question of whether and how human rights concerns should be raised in negotiation processes, and whether parties responsible for human rights violations should be excluded from negotiations. Conflict management practitioners aim to make the negotiation process as inclusive as possible in order not to alienate any party that has the potential to derail the process, irrespective of that party's human rights record. Experience indicates that any peace process that does not include all stakeholders is less likely to hold firm. The decision by former South African President Mandela to involve two armed factions in Burundi in the Arusha peace process of 2000, in spite of their earlier exclusion, was based on this concern.[3] Human rights actors, on the other hand, generally wish to exclude perpetrators from such processes, because their inclusion may grant them undue legitimacy and political influence in the post-conflict situation. This, for example, was the motivation for excluding the then President of the Republika Srpska (the Bosnian Serb Republic), Radovan Karadzic, and the chief military commander of the Army of the Republika Srpska, Ratko Mladic, from the Dayton peace process in 1996, following their indictment by the International Criminal Tribunal for the Former Yugoslavia (Holbrooke 1998:107).[4] Human rights actors are keen to raise rights abuses as issues that need to be addressed in a negotiation process and the resulting settlement, whereas conflict management practitioners may try to frame such concerns in ways that make the parties concerned less defensive. In the eyes of human rights activists, however, such an approach may render a negotiation process illegitimate, because justice is deemed non-negotiable and because it may put potential and former victims at continued risk.

A final difference relates to the roles that the actors play in times of conflict and how they position themselves in relation to conflicting parties. Human rights actors are geared towards advocacy, monitoring, and investigation, whereas conflict management practitioners tend to play a more facilitative role in bringing parties together and assisting them to communicate with each other. Actors in both arenas have to take care to ensure that the functions they fulfil and the activities they undertake are in line with their primary roles. Combining roles that are contradictory rather than complementary may well affect their credibility and continued participation in specific processes, especially if the different roles have conflicting principles or objectives. For example, it can be argued that the South African Truth and Reconciliation Commission (TRC) was caught between the roles of a facilitator and an advocate, which put the body under continual tension. It also affected the TRC's credibility as different political constituencies saw the Commission primarily in one role (as a facilitator or an advocate) and objected to the other (Parlevliet 1998: 13).[5] Indeed, the mediating role of a conflict management intervenor may be compromised if he or she is perceived to criticise or blame a particular party because of human rights concerns. For example, the Burundian peace process was put under severe pressure when the mediator, former South African President Mandela, incurred the wrath of the Burundian government through his harsh criticisms concerning political prisoners and their conditions in jail.[6]

It should be acknowledged that neither human rights actors nor conflict resolution practitioners are neutral where issues of rights and justice are concerned. However, while the latter may express their values, they ought to refrain from publicly criticising parties if they wish to maintain their trust and involvement in a negotiation process. As a rule, conflict resolution practitioners carefully guard their impartiality so as to ensure their acceptability to all parties. In contrast, human rights actors will not only express their values, but may also denounce parties guilty of human rights violations. In this sense, they have no compunction about taking sides in a conflict, something conflict resolution practitioners are keen to avoid.

The differences between the two fields in goals, values, roles, focus, and strategies are summarised in the chart below.

The above discussion indicates that several major differences between human rights actors and conflict management practitioners hinge on their different interpretation of moral issues in terms of strategies, focus, and approach. In the words of Nherere and Ansah-Koi, "human rights complicate the conflict resolution process by either bringing in, or, exacerbating the moral dimension in a conflict" (Nherere and Ansah-Koi 1990: 34). To conclude from the above, however, that the fields of human rights and conflict management are necessarily in contradiction or competition with one another, would be wrong. Here, this paper starkly contrasts the two perspectives for illustrative purposes. In reality, the two groups often overlap and share many objectives. Peace processes generally reflect elements of both approaches and often include aspects of both in the form of power-sharing arrangements, institution-building, and mechanisms to uphold accountability (Kunder 1998).

There is also an increasing awareness that peace and justice are inextricably linked. As Baker puts it, "peace is no longer acceptable on any terms; it is intimately linked with the notion of justice. Conflict resolution is not measured simply by the absence of bloodshed; it is assessed by the moral quality of the outcome" (Baker 1996: 566). Nathan posits "the establishment of peace with justice" as the primary goal of efforts to prevent and end civil wars [Original italics] (Nathan 2000b: 191). Moreover, the reality of intra-state conflict necessitates a combination of the two perspectives. If, for example, the hard-line position — that those responsible for rights abuses cannot be involved in negotiations — was adhered to, there could no negotiated settlements in civil wars. After all, it is in the nature of civil wars that no one party can be absolved from responsibility for human rights violations. Consequently, no party would qualify as a legitimate participant in peace negotiations, yet resolving intra-state conflict without their involvement is impossible. South Africa and Mozambique are obvious examples in this regard.

The tensions discussed above highlight that it would be difficult to merge the two fields and that there are strong arguments to keep the fields separate. Nevertheless, they also underline the importance of building greater mutual understanding, as actors in both fields have an interest in achieving sustainable peace with justice, and their activities can profoundly affect one another. Human rights and conflict management need not be mutually exclusive. Their differences provide all the more reason for exploring the relationship between the fields and examining how co-operation between them can help to promote their common goals. Moreover, knowledge of each other's field is necessary for actors in both disciplines to constructively manage the tensions that exist between them.

Figure 1: Differences between human rights actors and conflict management practitioners (adapted from Baker 1996: 567)[7]

	Conflict management practitioners	Human rights actors
Goal	Peace as the precondition for systemic justice (justice through peace)	Transitional justice as precondition for sustainable peace (peace through justice)
	Aiming for the cessation of violence and resolution of conflict so that relati0onships between parties can be repaired and structural causes of conflict can be addressed	Aiming for holding perpetrators accountable, restoring the rule of law, and building democratic institutions
Approach Strategies	C-operative	Adversarial
	Include all relevant parties in the peace process	Exclude parties responsible for gross human rights violations from the peace process
	Flexible: conflict resolution is negotiable - negotiated outcome must be acceptable to local actors and appropriate to local conditions	Strict: justice is not negotiable - outcome must be in line with international human rights standards
	Refrain from judging and criticising parties, especially in public	Judge parties and attribute blame
	Focus on needs, interests, concerns of parties in order to reach mutually agreeable outcomes	Focus on the protection of rights and the extent to which parties have upheld international, regional and domestic human rights standards
Focus	Pragmatic focus	Focus on principles
	Facilitative approach towards outcome and issues	Prescriptive approach towards outcome and issues
	Process advocate; concerned with relationships and dialogue	Outcomes advocate; concerned with constitutionalism and protection of rights
Roles	Facilitator, convenor, reconciler, mediator	Advocate, monitor, investigator, lawyer
Values	Need to remain impartial with respect to all parties	Need to speak out against injustice and human rights violations and denouncing parties responsible

II. Linking human rights and conflict management: Six propositions

1. Human rights abuses are both symptoms and causes of violent conflict

The relationship between human rights abuses and conflict is a useful starting point for assessing how the fields of human rights and conflict management are linked. Violent and destructive conflict can lead to gross human rights violations, but can also result from a sustained denial of rights over a period of time. In other words, human rights abuses can be a cause as well as a consequence, or symptom, of violent conflict. The symptomatic nature of human rights violations is well known, as news agencies continually report on armed conflict around the world and recount its consequences in terms of loss of life and the mass movements of people trying to escape from violence and destruction. The 1994 genocide in Rwanda, in which some 800 000 people died in just 100 days, stands as one of the most chilling illustrations of the scope of atrocities that conflict can generate. The protracted conflicts in Angola and Sudan demonstrate that this kind of abuse does not only flare up in the short-term: in both countries, the population has experienced decades of human rights violations resulting from the wars taking place. One could argue that a culture of abuse has become entrenched (Lamb 2000: 35). At times, specific human rights abuses have deliberately been used as a strategy of war to fight and intimidate opponents and terrorise civilians. The mutilation and amputation of people's hands and other body parts by the rebels of Foday Sankoh's Revolutionary United Front in Sierra Leone is a case in point, as was the systematic use of rape in "ethnic cleansing" in Bosnia.[8] Human rights may also be affected in more indirect ways, through, for example, the destruction of people's livelihoods or the refusal of belligerent parties to allow humanitarian relief activities in areas under their control.

The causal nature of human rights violations, on the other hand, can be illustrated by the case of South Africa under the former apartheid regime. A sustained denial of human rights gave rise to high-intensity conflict, as the state's systemic oppression of the civil and political liberties of the majority of the population, and its restraints on their social, economic, and cultural rights, resulted in a long-lasting armed liberation struggle. Jarman argues that the situation in Northern Ireland was similar. Claims of systematic abuse of the civil and political rights of the Catholic nationalist community after partition in 1921 (related to the manipulation of electoral boundaries, voting rights, access to housing and employment) led to the rise of non-violent civil rights movement in the 1960s. When this failed to generate an adequate response and reforms, violent conflict erupted (Jarman, personal communication). Numerous conflicts have been caused by human rights issues such as limited political participation, the quest for self-determination, limited access to resources, exploitation, forced acculturation, and discrimination (Nherere and Ansah-Koi 1990). For example, the conflict in the Delta Region in Nigeria is not only due to the oil-related pollution in the traditional living areas of the Ogoni people, but also to the fact that they seek a larger degree of autonomy and greater control of the oil production and profit (Rubin and Asuni 1999; Douglas and Ola 1999). Rights-related concerns also motivated the uprising of the Banyamulenge Tutsi minority in Eastern Zaire in 1996 and their overthrow of Mobutu. These included, among other things, discrimination at the hands of Mobutu's regime over three decades, the decision of a provincial governor to expel this minority from Zaire where they had lived for 200 years, and Mobutu's support for Hutu Interahamwe (militia) who had been involved in the Rwandan genocide (Nathan (2000b: 192). It should be noted here that denial of human rights does not only occur through active repression, but can also come about through the inability of the state to realise the rights of its citizens, especially in the socio-economic domain. Such "passive violation" also deepens social cleavages and rivalries, thus enhancing the potential for destructive conflict. In several African countries, this is reflected in the way in which access to the political system is highly contested: in societies marked by abject poverty, control of the state is often the only way to achieve economic security.[9]

For both human rights actors and conflict management practitioners, it matters whether gross human rights violations resulting from conflict is the main concern, or whether the focus is on conflict resulting from a denial of human rights. The problems to be addressed are different and so are the desired outcomes. If human rights violations as a symptom of conflict are the issue, the primary objective is to protect people from further abuses. International humanitarian law is an important instrument in this regard, as it seeks to limit the excesses of war and to protect civilians and other vulnerable groups. Activities of intermediaries are then aimed at mitigating, alleviating, and containing the destructive manifestation of conflict. They include peacekeeping, peacemaking, peace-enforcement, humanitarian intervention, humanitarian relief assistance, human rights monitoring, negotiating cease-fires, and the settlement of displaced persons.

On the other hand, when human rights violations are causing violent conflict, the main objective of activities by both human rights and conflict management actors is to reduce the level of structural violence through the transformation of the structural, systemic conditions that give rise to violent conflict in a society. Galtung (1969: 168-170) introduced the term structural violence to refer to situations where injustice, repression, and exploitation are built into the fundamental structures in society, and where individuals or groups are damaged due to differential access to social resources built into a social system.[10] As explained further below, human rights standards are primary instruments in this regard, as the protection and promotion of human rights are essential in addressing structural causes of conflict. Activities can include peacemaking, peace-building, reconciliation, development and reconstruction, institution-building, and accommodation of diversity by protecting minorities. Thus, whereas direct, physical violence is the main concern when one focuses on human rights violations as symptoms of destructive conflict, considering rights violations as a cause relates to structural violence. The desired outcome of the former is peace in the sense of an absence of direct violence — so-called negative peace. However, in the case of the latter the goal is to achieve positive peace. This refers to the absence of structural violence, or, framed differently, the presence of social justice, including harmonious relationships between parties that are conducive to mutual development, growth, and the attainment of goals (Galtung 1969; Webb 1986; Yarn 1999: 347-348).[11] The above discussion is summarised in Figure 2.

Figure 2: The causal relationship between human rights violations and conflict

	Human rights abuses as symptom	**Human rights abuses as cause**
	Gross human rights violations as a consequence of violent conflict	Violent conflict as a consequence of sustained denial of human rights
	DIRECT VIOLENCE	STRUCTURAL VIOLENCE
Problem to address	Protecting people from gross human rights violations stemming from destructive conflict	Addressing the structural problems that give rise to destructive conflict
Activities	Peacekeeping, peacemaking, human rights monitoring, settlement of displaced people, humanitarian assistance	Peacemaking, peacebuilding, reconciliation, institution-building, development ad reconstruction, protection of rights, accommodation of diversity
Desired outcome	Cessation of hostilities, en to or prevention of abuses, ceasefire agreements	Negotiated settlement, political and socio-economic justice, mechanisms to manage societal conflict constructively
	NEGATIVE PEACE	POSITIVE PEACE

The figure above shows that the distinction between human rights violations as a symptom and as a cause of destructive conflict relates specifically to the focus and the aim of interventions, not to different scenarios. In other words, both aspects of the human rights/conflict relationship can be present in the same situation; this is generally the case in civil wars.

Moreover, it should be noted that these aspects are closely related in a number of ways, even though the distinction between causes and symptoms is made here for analytical purposes. The ways in which human rights abuses as both a cause and a symptom of violent conflict are related are briefly mentioned here, and will be discussed further below. First, violent, high-intensity conflicts are largely manifestations of deeper-lying, structural problems. If the latter are not addressed, people's frustration, anger, and dissatisfaction may rise to such an extent that they mobilise to confront real or perceived injustice. In other words, in situations where human rights violations occur as a consequence of conflict, a sustained denial of rights often lies at the heart of that conflict (as exemplified by the case of South Africa under the apartheid regime). Second, activities aimed at conflict mitigation and alleviation can have an impact on the prospects for longer-term efforts towards peacebuilding and conflict resolution. If the symptoms of conflict are effectively and constructively addressed, this can provide a basis for parties to work on the more structural issues, particularly if trust has developed between them. Third, the desired outcomes for human rights abuses as a cause or symptom of destructive conflict, influence one another. Negotiated agreements that address the symptoms of violent conflict — thus pursuing negative peace — must include provisions for future processes towards institution-building and transformation if they are to be sustainable. If they are merely concerned with ending hostilities but do not address the core causes underlying the conflict, they will only be of temporary value. Fourth, efforts to achieve positive peace are fundamentally tied to the ability of parties to end hostilities and to prevent violations of human rights. Peacebuilding processes and efforts to alter structural conditions in society are long-term undertakings. Securing negative peace is necessary to create the space and stability for such processes to take effect.

2. A sustained denial of human rights is a structural cause of high-intensity conflict

Having observed that a sustained denial of rights generally leads to conflict, it is necessary to analyse why it is a cause of rebellion and civil strife. One conflict management perspective on human rights, put forth by Galtung and Wirak (1977), provides an important theoretical explanation in this regard. This explanation is based on human needs theory as propounded by Burton (1990) and applied by Azar (1986) in his analysis of protracted social conflict. (See also Miall et al 1999.) Burton and Azar focus on the question of how the frustration of human needs generates conflict. Needs, defined by Burton as universal motivations that are an integral part of human beings, relate in this perspective to both material and non-material concerns. They include not only goods such as food and shelter; identity, recognition, and personal growth also constitute human needs (Burton 1990: 37-38; and Miall et al 1999: 47-48). Burton distinguishes needs from values and interests. He defines values as the "norms, customs and beliefs associated with particular social communities" and interests as the "vocational, avocational, political and economic aspirations of individuals or groups" (Ibid.). The primary difference between these three concepts lies in their degree of negotiability. Interests are negotiable; one can bargain over them and they can be exchanged against one another. However, values and needs are generally not negotiable — they cannot be traded or bargained away. Thus, whereas interests tend to be transitory in nature, needs and values have a more permanent character, as needs constitute universal drives for the motivation and mobilisation of people, and values are closely related to the identity of individuals or groups. Needs are so fundamental to human survival, subsistence and development that people will consistently seek ways of meeting them — even if they are frustrated or oppressed. In other words, when individuals or groups find that their needs and values are denied, they will behave in ways that express their frustration, or they will refuse to submit to practices and policies that are not acceptable to them (Ibid.).[12]

In the human rights field, the concept of needs has mostly been considered in relation to socio-economic rights. Needs are primarily conceived of in terms of material and social goods such as food, shelter, clothing, medical care, and schooling (Claude and Weston 1992: 137-211). As indicated above, however, they are understood in a broader sense in the conflict management field. Galtung and Wirak (1977) have highlighted the relevance of this conceptualisation of human needs for human rights in a way that is further explained by human rights scholars Claude and Weston (1992). Galtung and Wirak suggest that needs relate to security, welfare, freedom, and identity. Security- and identity-related needs have an individual and a collective dimension. Security-related needs pertain to protection against attack and destruction, as well as physical and mental preservation. Needs involving welfare fall within the physiological, ecological, and socio-cultural domain (e.g., food, shelter, clean environment, education, cultural preservation), whereas freedom-related needs are concerned with mobility, exchange, politics, and work. Identity-related needs are concerned with self-expression, self-actualisation, affection, association, support, and recognition (Galtung and Wirak 1977).[13] This conceptualisation of needs largely corresponds with the view of Max-Neef (1991: 17), who identifies nine fundamental human needs in the context of human development: subsistence, protection, affection, understanding, participation, leisure, creation, identity, and freedom.

This approach helps to shed light on the relationship between human rights and basic human needs. From this perspective, all needs give rise to certain rights, which help secure the goods or services necessary to meet these needs. As Galtung and Wirak (1977: 254) put it, "[human rights are] instrumental to the satisfaction of … needs". A comparison of the needs listed above with rights contained in the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights, shows that all rights relate to several needs. Rights can be seen as the means to satisfy fundamental human needs; their implementation addresses such needs. For example, the right to take part in the cultural life of a community would meet needs of participation, affection, identity, and understanding. Self-determination, usually conceived of in terms of rights, is a collective need for identity, freedom, and security (Claude and Weston 1992: 142).[14] In the words of Osaghae (1996: 172), "human rights are ... an instrument of individual and collective struggle to protect core interests".[15] Here he echoes Galtung's and Wirak's (1977: 258) conclusion that "the rights are the means, and the satisfaction of needs is the end".[16] The South African Constitutional Court recognised this connection between rights and needs when it ruled that "the right of access to adequate housing is entrenched because we value human beings and want to ensure that they are afforded their basic human needs. A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality" (Chaskalson 2000b).[17]

The direct relationship between rights and needs explains why a sustained denial of rights may cause violent conflict in a society: such denial means a long-term frustration of needs, and people will persist in seeking ways to address their needs if these are not met. If this is possible through peaceful, constructive avenues, individuals or groups will generally engage in conventional forms of political action in order to bring about change. If, however, they are marginalised or excluded, they may eventually resort to armed resistance in the belief that this is the only way to bring about the transformation of society. It is important to note that such exclusion or victimisation can be either real or perceived as such by groups. The latter is often the case when groups experience frustration in realising their political and economic expectations. Such perceived deprivation can also make groups more disposed to violence as a way of achieving their goals (Azar 1986; Gurr 1970: 23).

Deprivation of needs through the sustained denial of rights is a structural cause of violent conflict, because it is generally embedded in structures of governance, in terms of how the state is organised, institutions operate, and society functions. For example, a particular social group may, on the basis of its identity, be systematically barred from participating in the political process through certain laws or policies. Or a state may be characterised by a consistent lack of development in those regions where the majority of inhabitants are members of a social group other than the politically dominant group. Long-standing grievances over land and other

resource allocations can also constitute structural causes of destructive conflict. Nathan identifies four critical structural conditions in Africa: authoritarian rule; exclusion of minorities from governance; socio-economic deprivation combined with inequity; and weak states that lack the institutional capacity to manage conflicts constructively (Nathan 2000b: 188-192). (See also Azar 1986: 30.) The United Nations Secretary-General, Kofi Annan, lists the following as "key structural risk factors that fuel violent conflict": inequity (disparities amongst identity groups), inequality (policies and practices that institutionalise discrimination), injustice (lack of the rule of law, ineffective and unfair law enforcement, inequitable representation in institutions serving the rule of law) and insecurity (lack of accountable and transparent governance and human security) (Annan 2001: 24 par. 100). Each of the causes highlighted by these authors can be traced back to human rights concerns related to security, identity, well-being, and freedom as discussed by Galtung and Wirak. Osaghae (1996: 172) thus argues that "the human rights approach to conflict management [recognises] that conflicts arise from inequalities, discrimination, domination, exclusion and injustices which attend the competition among people and groups for scarce political, social, and economic resources and benefits." The role of the state and issues of governance are essential in this regard as the way the state is organised determines whether needs are frustrated or satisfied: it allows or denies groups access to the resources or processes necessary to address their needs. The state may deny needs out of unwillingness (because it perceives calls for wider political participation, autonomy, or self-determination as a threat) or inability (due to weak state structures, poor societal infrastructure, or lack of resources).

According to Nathan, these structural conditions create tensions in society that provide fertile ground for violent conflict. He suggests that they give rise to a societal propensity to violence, and as such pose a fundamental threat to human security and the stability of the state [Original emphasis] (Nathan 2000b: 192-194). This propensity stems from the non-negotiable character of needs and is enhanced if several structural problems are present simultaneously; for example, when discrimination in one area coincides with marginalisation in another. A pattern of negative interaction between social groups — as manifested in hostility, fear, prejudices, and violent skirmishes occurring over a period of time — can also contribute to a propensity to violence. Thus, the outbreak of destructive conflict in the form of direct, physical violence is generally a symptom of deeper-lying structural problems. For example, violent protests in Mauritius in February 1999 following the death of a popular singer in a police cell, were largely related to a sense of exclusion and socio-economic discrimination felt by certain communities on the island (Republic of Mauritius 2000, Matadeen Report). The Commission of Inquiry established to look into these events concluded in its report that "they are symptoms of latent social problems in the country; they represent the smouldering flames underneath the ashes that may spark off any time. One year after the situation the country is still potentially explosive. The country is sitting on a powder keg. Any minor incident can provide the spark" (Matadeen Report, Chapter 9).

In other words, the absence of justice is often the primary reason for the absence of peace. The presence of justice, on the other hand, can lead to both positive and negative peace (Galtung 1969; Nathan 2000b: 190-191). (See also Harris and Reilly 1998: 20-22.) Thus, a sustained denial of human rights can be a fundamental cause of high-intensity conflict. Violence manifested in such conflict often reflects that needs are frustrated, legitimate aspirations are denied, and obvious injustices are present.

3. Institutionalised respect for human rights and the structural accommodation of diversity is a primary form of conflict prevention

The principle of rights protection and promotion as a form of conflict prevention was recognised in the preamble of the Universal Declaration of Human Rights. It states, "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law ..." (Preamble, Universal Declaration of Human Rights, United Nations General Assembly Resolution 217A (III), UN Doc A/810 1948). The analysis above explains why this is the case. If the sustained denial of

rights is a structural cause of high-intensity conflict, it follows that the sustained protection of rights is essential for dealing with conflict constructively. It is especially critical to the effective prevention of destructive conflict, because it avoids the structural injustices and inequalities in society that give rise to violent conflict.

As the discussion above has highlighted, it is more important to focus on the structural causes of violence than on violence itself if we are to prevent violent conflict in any effective way. Violence, however significant from a humanitarian point of view, is invariably the outward manifestation of a structural crisis. As long as destructive structural conditions remain in place in a society, the potential for violence remains (Nathan 2000b: 193-195). In its efforts to prevent violent conflict, the international community generally seeks to keep a close eye on events that may have a destabilising impact on particular societies, such as a crop failure, a significant currency devaluation, an influx of weapons, or strikes. Extensive databases are thus constructed for the purpose of "early warning", and these monitor a range of factors and events that may trigger or escalate a conflict, so-called accelerators. (See, for example, Davies and Gurr 1998; Miall et al 1999: 94-127.) However, a single event may have very different consequences in different contexts, depending on the structural conditions present. For example, a crop failure or the arrest of a political opponent may lead to the outbreak of violence in some states but go largely unnoticed in others, because they intensify structural tensions in the former but not in the latter (Nathan 2000b: 192-195 and Annan 2001: 7 par. 7). In other words, focusing on emergencies or crises where violence has started to occur, is not sufficient to prevent violent conflict. Relevant in this regard is the distinction the Carnegie Commission for the Prevention of Deadly Conflict has made between operational and structural prevention of violent conflict (Carnegie Commission 1997: 39-102).[18] The former entails actions that can be employed when violence is imminent, and includes diplomatic interventions, fact-finding missions, and preventive deployment of military and civil contingents. Operational prevention therefore aims to prevent latent conflicts with the potential for violence from degenerating into serious armed conflicts. Structural prevention, on the other hand, is meant to address the "deep-rooted socio-economic, cultural, environmental, institutional and other structural causes that underlie the immediate political symptoms" of violent conflicts (Annan 2001: 2). In the case of operational prevention, prevention amounts to fire-fighting; in structural prevention, it means removing the logs that catch fire.

The protection and promotion of human rights addresses structural causes of violent conflict by working towards the satisfaction of basic human needs. Institutionalising respect for human rights — through, for example, constitutional endorsement of fundamental human rights, the independence of the judiciary, and an independent human rights commission — may ensure that such protection is sustained over a period of time and becomes a matter of state policy. It helps prevent high-intensity conflict by limiting the power of the state, affording citizens protection against abuse of rights, and allowing them a large measure of freedom and participation. It is noteworthy in this respect that the introduction of a Bill of Rights was specifically recommended in Nigeria in the 1950s in order to reduce tensions between regions and ethnic groups (Osaghae 1996: 180-181). Root causes can be addressed through measures designed to promote political pluralism, enhance transparency and accountability in governance, enable people to associate freely with groups of their choice, encourage economic growth and equity, facilitate equal access to employment, education, and health care, and strengthen the capacity of the state.

It should be recognised that the state in developing countries may not have the resources necessary for the full implementation of institutionalised respect for rights. Consequently, structural tensions may only be alleviated to a limited extent, which means that the potential for violence remains. The case of South Africa is relevant, as continuing socio-economic deprivation and poverty is an important factor undermining societal stability. The emphasis by the President of the Constitutional Court, Judge Chaskalson, on the need to devote more attention to the realisation of socio-economic rights before dignity, equality, and freedom will be achieved, can be seen in this light (Chaskalson 2000a; 2000b). It should be noted that some

degree of structural tension exists in all complex and heterogeneous societies, but the effects thereof are largely determined by the extent to which a specific society has effective and appropriate coping mechanisms. This is related to, among other things, the available resources and societal norms for dealing with dissatisfaction and dissent. Where a transparent and representative system of governance exists with legitimate institutions, there is a greater capacity to manage such tensions in a constructive way (Annan 2001: 7 par. 7; Webb 1986: 431). Therefore, institutionalised respect for human rights also means that mechanisms are developed within state structures that provide consensual and acceptable ways for dealing with discontent, thus limiting the need to resort to violence. Respect for rights thus enhances the capacity of the state to engage in constructive conflict by facilitating dialogue and participatory decision-making.

Specific attention must be devoted to the structural accommodation of diversity, which means formally entrenching inclusiveness and respect for diversity in the political system, state institutions, and the law (Nathan 2000b: 200-201). This is particularly important, because identity groups tend to be the primary actors in intra-state conflict. A strong sense of identity is often the core around which social groups are mobilised in order to raise grievances related to needs deprivation.[19] The former High Commissioner for National Minorities (HCNM) of the Organisation for Co-operation and Security in Europe (OSCE), Max van der Stoel, emphasised that "the protection of persons belonging to national minorities has to be seen as essentially in the interests of the state and of the majority. As a rule, peace and stability are best served by ensuring that persons belonging to national minorities can effectively enjoy their rights" (Van der Stoel 1999: 73). It is interesting to note his acknowledgement that his work as High Commissioner involved many human rights aspects, and that his activities "may have some positive effect on implementing the rights of persons belonging to national minorities and building respect for human rights in general" (Idem: 69). He emphasised, however, that "this [was] not the purpose of the HCNM's work, which is to try to prevent violent conflict" (Ibid.). Nevertheless, he was effectively working towards conflict prevention through ensuring that minorities could enjoy their rights. This goes to show how the protection of rights is an essential form of conflict prevention. It also highlights how closely linked the fields of human rights and conflict management are in reality.

The accommodation of diversity must entail more than a mere recognition of formal equality between various groups in society. Efforts to treat people from different groups equally can amount to systematically precluding members from disadvantaged groups. Writing on Nigeria, Osagae (1996: 184-186) suggests that that the principle of non-discrimination is most applicable when all groups are similar in size and have reasonably similar levels of development. If, on the other hand, political parties are organised along ethnic lines and the political system is based on a "winner-takes-all" approach, minorities will be completely and permanently excluded from governance in a formal democracy. In such situations of democratic majoritarianism, minorities may come to believe that political institutions and processes do not sufficiently meet their needs and interests, making them more inclined to violence as a means of expression and objection (Nathan 2000b: 200-201; Eide 1995: 97-100). The perception of marginalisation will be even more enhanced in contexts where political power implies privileged access to economic opportunities and resources, which, as UN Secretary-General Kofi Annan (1998: 3, par. 12) has pointed out, is the case in many African countries. Indeed, the fact that the state is often not neutral, but rather controlled by a particular group pursuing its own interests, highlights the need to ensure that respect for the rights of identity groups is institutionalised. Structural accommodation of diversity protects identity groups against biased use of the state machinery by those who control the state.

There are various mechanisms available to this end. These include constitutional rights regarding language, religion, and culture, forms of power-sharing (such as federalism, proportional representation, decentralisation in which the local or regional units have a large degree of autonomy), and so on. As the OSCE High Commissioner for National Minorities points out, realising the aspirations of identity groups does not necessarily require a territorial

arrangement (i.e., secession), but can be realised through legislation providing for the preservation of identity in the areas of culture, education, and language. Other measures include guarantees of effective participation in public decision-making processes, and carefully constructed electoral processes (Van der Stoel 1999: 73-75). At the very least, respect for diversity must be ensured through the formal acknowledgement that identity groups have a right to exist, a right to protect their language and culture, and to participate in public affairs on an equal basis with others. In sum, the process of institutionalising respect for human rights should be concerned not only with individual rights, but also with group rights.

4. For the effective and sustainable resolution of intra-state conflict, the prescriptive approach of human rights actors must be combined with the facilitative approach of conflict management practitioners

The previous discussion has highlighted how the human rights perspective is deeply concerned with substantive issues related to the distribution of political power and economic resources, security, and identity. In the context of negotiation processes aimed at ending a long-term violent conflict in a society, this generally translates into a prescriptive approach towards the outcome or product of negotiations. The outcome must be in line with human rights standards and must embrace constitutionalism and the legal protection of rights. While these are also concerns of conflict management practitioners, the latter generally adopt a more facilitative approach towards the outcome. Their emphasis tends to be more on a particular kind of process — one that is aimed at establishing dialogue, developing relationships, and building trust between the parties. There is great awareness within the conflict management field that the quality of the outcome depends on the process used to achieve it. A process that is flawed in the eyes of involved parties contaminates the product by making its legitimacy questionable, hence undermining its sustainability. If, for example, some parties have experienced a peace process as exclusive, they will not feel that their concerns have been heard, nor will they feel confident that their interests have been taken into account in the settlement reached. Consequently, they have little incentive to co-operate with the implementation of that settlement, and may be inclined to obstruct it. They are also more likely to resort to violence in order to guarantee attention for their case. The point here is not that one aspect is more important than the other; rather, that process and product are so intertwined that they impact on one another, both negatively and positively, and should therefore both be given careful consideration. The sustainability of an agreement depends both on the substance of the outcome and on the process by which it was agreed upon.

The process used in resolving issues between parties is especially significant in the context of intra-state conflict where many groups, all with different needs, values and interests, co-exist within the same territory. The conflictual nature of their relationships may originally stem from their different access to political and economic resources, but it is deepened by feelings of hostility, mistrust, and fear that have become entrenched over long periods of time. In some cases, such polarisation and enemy images become a driving dynamic in fuelling continuous conflict, with violence countering violence, leading Sisk to speak of the "self-perpetuating nature of civil wars" (Sisk 1997: 187). Others have also recognised the significant role of perceptions, emotions, and relationships in contemporary conflicts. Nathan stresses that high-intensity conflict evokes and is fuelled by a range of strong emotions, including fear, insecurity, anger, a sense of grievance, and suspicion. These emotions make the parties resistant to negotiations and inhibit progress once talks are underway because parties view their differences as irreconcilable and fear that a settlement will entail unacceptable compromises. They lack confidence in negotiations as a means of achieving a satisfactory outcome, even if they are unlikely to gain an outright victory on the battlefield (Nathan 1999: 1; and personal communication). Nathan therefore speaks of the "psycho-political dynamics" of civil conflict, a term that reflects that the subjective dynamics of conflict originate from objective conditions related to power and political relationships, such as exclusion, marginalisation, and persecution (Nathan 1999: 19-20). (See also Lederach 1997: 12-15)[20]

Because the negative character of relationships between groups is both a product and a further cause of conflict, attention needs to be devoted simultaneously to addressing root causes and building positive relationships between parties. As long as relationships remain fiercely adversarial, parties — being locked in positions of fear and suspicion — will be reluctant to engage in negotiations towards a settlement. The development of trust between parties in the course of negotiations is therefore essential; as three authors have put it, "negotiations tend to focus on issues, but their success depends on people" (Bloomfield, Nupen and Harris 1998: 63).

Process issues relate to questions of who participates in negotiations; ground rules for talks; the time-table; the structure of the discussion; the size of negotiating delegations and how representation is organised; how deadlocks are addressed; how decisions are made; where the process takes place; and what to do about issues that fall beyond the scope of the process. Whether intervention by a third-party is required is also an important consideration. Depending on the outcome of this assessment, questions arise about whether such an intervening body should be of a governmental, intergovermental, or non-governmental nature, and about the facilitation techniques the intervenor will use. For example, many interventions in African civil wars have been conducted by intergovernmental organisations, both regional and global. These have often relied on a top-down approach where the leaders of parties are coaxed and bullied into negotiations through the use of "carrots and sticks". Nathan has argued, however, that the use of power and coercion by external intervenors in civil wars is problematic. It may well increase the intransigence of parties by heightening their insecurity and causing resentment towards solutions that are imposed on them. A confidence-building approach is therefore likely to yield a more positive result, also with a view to the psycho-political dynamics of conflict referred to above (Nathan 1999). This is a style of mediation that is oriented towards raising the parties' confidence in each other, in negotiations, and in the mediator. It entails non-coercive facilitation of communication and joint problem-solving between parties by an intermediary who has their consent, is not a party to the conflict, and who seeks to facilitate an agreement in an even-handed way and on terms acceptable to the parties. Nathan argues that this approach "render[s] mediation a non-threatening venture and mitigate[s] the pathology of mistrust" (Nathan 1999: 22).[21] Moreover, a process that takes place on this basis also builds norms of dialogue, accommodation, and co-operation among political actors, thus laying the foundation for future political relations between groups and individuals. In other words, the process by which the product is agreed upon should, ideally, embody the values that are to be contained in the settlement, as this will enhance its sustainability.

The emphasis on addressing root causes and building relationships given here implies that the resolution of intra-state conflict is a lengthy process. Short-term interventions are likely to be stop-gap measures with limited long-term effect. The reality of civil wars defies "quick-fixes", as the issues involved are manifold, complex, and deep-rooted, and situations have degenerated over long periods of time. This also means that local actors must play central roles in devising both the product and the process. Local ownership pre-empts the build-up of resentment against solutions imposed by foreign actors. Moreover, local actors have a deep understanding of the causes, dynamics, and issues underlying violent conflict in their context. They are most aware of the needs and interests of various parties, and can thus help to develop an agreement that is appropriate and acceptable in the local context. Most importantly, local ownership of the process is necessitated by basic human needs such as freedom, identity, and especially participation. If such needs are not met when addressing root causes of violent conflict, the foundation is laid for renewed conflict in the future.

Combining the prescriptive focus from the human rights field with the facilitative emphasis from the conflict management field will ensure that peacemaking and peacebuilding processes, both in form and content, are in line with universal human rights standards, and will develop relationships between parties that provide a basis for future co-existence.

5. Whereas human rights and justice per se are non-negotiable, the interpretation and application of rights and justice are negotiable in the context of a negotiated settlement.

Many human rights advocates tend to consider human rights and justice as absolute concepts. Human rights and freedoms, as enshrined in the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights, are fundamental and therefore not negotiable. Rights reflect internationally and/or nationally agreed-upon norms of behaviour between individuals, groups of people, and between the state and its citizens. Moreover, the close relationship between rights and needs as explained above underlines the non-negotiable character of fundamental rights and freedoms. Rights thus set the parameters for the management of conflict.

However, within this framework, there is great scope for variation in how rights are realised in terms of, for example, the electoral system, form of government, degree of autonomy of regional units, constitutional arrangements, and the precise formulation of a Bill of Rights. A useful distinction in this regard is between needs and satisfiers. Basic human needs are considered finite and are generally understood to be the same in all cultures and throughout time. What changes over time and across cultures is the way or the means by which those needs are satisfied. Thus, whereas basic human needs are not negotiable, the possible satisfiers are, and these will vary depending on the context (Max-Neef 1991: 16-28). Similarly, fundamental rights and freedoms are not negotiable, but the manner in which they are recognised is indeed negotiable. There are many different ways in which rights relating to participation, equality, freedom, identity, well-being, and security can be realised without undermining the substance and significance of those rights. Institutionalised respect for human rights, as discussed earlier, strongly points to democratic governance as the necessary basis for the sustainable and effective prevention of destructive conflict and the management of normal political and social conflict. Yet there is no single form of democracy that applies across the globe. On the contrary, the shape and form of democratic institutions has developed according to political, cultural, and historical conditions.

The political structure of the state (i.e., federalism, decentralisation), the form of the state's legislature and executive, and the electoral system are three broad areas of constitutional design that warrant examination in this regard. This entails considering different forms of power-sharing arrangements, federalism and autonomy, parliamentary versus presidential government, electoral system design, and the structure and procedures of legislative bodies, among others (Reilly et al. 1998: 133-259). It is essential that the details of such structural arrangements are worked out by local actors through inclusive negotiations so as to enhance the suitability and sustainability of the mechanisms adopted. Institutions that are transplanted from other contexts or imposed by external intervenors, however democratic they may be, tend to have little staying power, because they may be inappropriate or considered illegitimate by the local population. The importance of local actors in shaping the institutions that regulate their society suggests that the implementation of rights is negotiable and depends on the context, even though the rights themselves are not negotiable.

The same argument can be applied to the concept of justice. Justice is as non-negotiable as human rights are; it is, without doubt, the foundation for a sustainable peace. Yet, the interpretation of "justice" is invariably disputed and the form in which justice is shaped in a particular case, is negotiable. Within the human rights field, there has been extensive debate on the forms justice can take in a transitional situation with regard to accountability for violations committed during the conflict. In exploring the legal, ethical, and political aspects of the quest for justice in transitional situations, questions of punishment and/or pardon, and of establishing the truth and/or establishing criminal responsibility, have received much attention. Much research has focused on various mechanisms for transitional justice — such as truth commissions, war crimes tribunals, and/or purges — and their respective virtues and drawbacks. (See Hayner 1994; 2001; Kritz 1996; Mendez 1997; McAdam 1997; Roht-Arriaza 1995; Baehr 1996; and Bronkhorst 1995.)

Nevertheless, whether the discussion emphasises retributive or restorative justice, in both cases the "justice" concerned is mainly backward-looking. This preoccupation with the past is flawed in several respects. Firstly, it hinges in part on the assumption that holding perpetrators accountable will end a culture of impunity. There is insufficient evidence to support this thesis. Secondly, the threat of prosecution and accountability can inhibit the resolution of the conflict because it can be "a clear disincentive for actors in an armed conflict to give up their resort to violence," as Mendez acknowledges (Mendez 1997: 273). This is not to argue that a blanket amnesty is appropriate or necessary, but rather to acknowledge that the process of addressing past human rights violations must take into consideration the need to consolidate a young and volatile democracy and the need to end hostilities between parties. Thirdly, it raises the impression that justice is dependent on dealing with past atrocities, whereas justice is concerned with both the past and the future. Justice does not only relate to the human rights violations committed during a violent conflict, but equally to transforming unjust structures and to entrenching respect for human rights in state institutions and the societal infrastructure. Bringing those responsible for abuses to book is only one way of establishing the rule of law, legitimising state institutions, and rehabilitating victims in a post-conflict society. Other measures that secure future justice should be taken as seriously and pursued as vigorously. In South Africa, for example, human rights organisations worked hard for the development of an appropriate Bill of Rights and for the establishment of a range of independent bodies tasked with supporting constitutional democracy. (These have become known as the "Chapter Nine" institutions after the relevant chapter in the Constitution (Republic of South Africa, The Constitution, Act 108 of 1996).[22]

Thus, while the attainment of justice is related to the pursuit of accountability for past abuses, it is also dependent on wider processes of transformation, redistribution, and reform. This was the conclusion of a conference focusing on the integration of human rights in peace processes organised by the Fund for Peace and the United States Institute of Peace in 1997. The conference emphasised that the scope and definition of human rights should be expanded to include at least four components: transitional justice (in the sense of prosecutions and/or truth-telling); mechanisms to ensure the personal freedom and security of civilians and identity groups during the transition; mechanisms to prevent the outbreak of future hostilities (including constitutional reforms, restructuring of the government, security forces, and judicial system); and mechanisms aimed at broader social, political, and economic reform (targeting social and economic inequities, redistribution, discrimination, etc.) (Kunder 1998: 4-5). Jean Arnault, the Special Representative of the UN Secretary-General and Chief of Mission for the UN Mission to Guatemala, noted:

> If a "just peace" is understood as focusing on the issue of criminal or moral accountability for past abuses by the leaders of both factions, if the test is a sort of purge and sanction test, obviously the peace process in Guatemala would not meet the criteria ... On the other hand, if the test ... is a comprehensive blueprint that includes not only the end of war, not only human rights provisions, not only institutional changes that consolidate observation of rights, but also socio-economic issues, the bridging of the gap between the ... minority and majority, if this is the test ... [then] the peace process in Guatemala is one of the strongest statements that has ever emerged from the negotiation of an internal armed conflict (Arnault, as quoted in Kunder 1998: 4).

This is not to deny that accountability for past abuses is important and should be given serious consideration in the context of negotiating a settlement. Past human rights violations can undermine future reconstruction by fuelling resentment, triggering revenge, and reinforcing a message of impunity. Rather, the point here is that this is only one aspect of implementing justice, and that justice has multiple components that should be taken into account. Even if rights and justice are non-negotiable, there is no single, absolute way in which they should be applied or implemented in each context. The human rights priorities of local actors should inform their interpretation and application in each case. This approach does not diminish the

critical value of human rights and justice, but ensures that these are implemented in line with the needs and circumstances of particular contexts — within the internationally accepted framework of human rights. It also encourages paying more attention to the question of how justice can be built into settlements in a prospective way (ensuring the protection of rights in a structural, institutional manner) rather than overemphasising its retrospective aspects. Admittedly, human rights actors may take issue with this approach, especially because it has taken so long for human rights issues to be explicitly accepted on the agenda in peace processes. However, it may be a matter of assessing how one makes the most progress: fighting so much over one step forward that one gets stuck — or possibly taking one step back in order to ensure that the path forward remains open.

6. Conflict management can function as an alternative to litigation in dealing with rights-related conflicts [23]

Ury, Brett, and Goldberg distinguish three general approaches for dealing with conflict, namely power-based, rights-based, and interest-based (Ury, Brett and Goldberg 1988: 7-15).

- The power-based approach entails the exercise of power over a weaker party, in which power is defined as the ability to inflict costs on or provide rewards to another party in an attempt to coerce it to do something it would not otherwise do (Ibid.). For example, strikes or demonstrations are actions where power is used to deal with conflict. Peace-enforcement, in the sense of physically separating parties in conflict by international armed forces, is another mechanism that uses power to regulate conflict.

- A rights-based approach to conflict is based on the use of an organisation or society's laws, norms, and values to determine who is right (Ibid.) The legitimacy of parties' claims is decided through the application of an independent set of criteria, made up of formal or informal standards of justice and fairness. This approach often involves using the judicial system to resolve or regulate the conflict. For example, an employee believes that she was unfairly dismissed sues her employer; two countries lay claim to the same territory and bring a case before the International Court of Justice to determine whose it is.

- An interest-based approach to conflict seeks to reconcile the interests and needs of parties with one another. In this approach, parties work together in an effort to negotiate their differences and agree on an outcome that meets their respective interests and needs. Such negotiations are less focused on the positions taken by the parties (what they say they want as the outcome), but rather on the underlying concerns that motivate parties to adopt their positions. It must be noted that even though this approach is called "interest-based" in the literature, it focuses on both the interests and needs of parties.

These three approaches should be assessed to determine which is most appropriate in a specific conflict. Advantages and disadvantages may arise according to the resources that are necessary for implementing a specific approach, and the effect of a particular approach on the relationship between parties. They may also involve parties' satisfaction with the outcome, meaning how well the outcome addresses their concerns, as well as the recurrence of the dispute, referring to the sustainability of the outcome. The use of rights-based methods to deal with conflicts over rights is well established. Cases of sexual harassment, assault, or discrimination are often settled through the use of the judicial system. In some instances, human rights actors may use power — broadly defined as mentioned above — to deal with human rights issues.[24] Letter-writing campaigns by Amnesty International on behalf of political prisoners can be seen in this regard; pressure is brought to bear on another party (a state) in order to force it to release prisoners or at least provide them with better treatment. Publicising the human rights record of a particular state or denouncing a party for its abusive practices are other ways in which human rights advocates may use their power of persuasion or pressure. Of course, in these cases, the use of "power" takes place within a human rights context. Calling public attention to torture is only possible because an international standard that prohibits the use of torture and any other inhumane, degrading, or humiliating treatment exists. While human rights actors are more

inclined to take rights- and power-based approaches when dealing with conflict, conflict management practitioners emphasise the value of interest and needs-based methods. Because of their co-operative nature, focus on the interests and needs of parties and emphasis on joint problem-solving, these methods tend to reduce the strain on relationships and make parties more satisfied with the outcome, thus reducing the chances of renewed conflict. At times, they may also use less resources, both material (financial) and emotional (psychological stress).

In addressing conflicts over rights, actors are not confined to using rights-based methods in order to ensure that human rights are protected. There may be constraints on the use of this approach for safeguarding rights in certain environments. In South Africa, for example, the courts are generally overburdened and it often takes a long time before a case reaches trial or a courtroom. The current crisis in the Legal Aid Board system, moreover, has resulted in many lawyers being unwilling to represent indigent accused because of the low rates of payment and long delays before payments are received. Since November 1999, the scope of work undertaken by the Legal Aid Board has been narrowed, resulting in the effective preclusion of access to legal representation for particular types of problems, including divorce and most civil litigation (suing for damages, which could potentially include many human rights cases). Some non-governmental legal organisations bring human rights cases to court, but they tend to focus on high-profile, precedent-setting cases, as their resources have to be spent strategically. Litigation also often takes more time and resources than people can afford. In short, access to the judicial system is limited for many South Africans —especially for those in marginalised positions who are most vulnerable to violations of their rights. In such a context, it is important to find alternative ways of protecting rights or facilitating access to rights.

Interest and needs-based methods, such as mediation and negotiation, can assist in this regard. In the latter, parties negotiate directly with one another to seek a solution to the conflict, whereas in the former, an outside intermediary assists parties in communicating with one another and engaging in joint problem-solving. While focusing on the interests and needs of parties, such methods can ensure that parties reach an outcome that is in line with the relevant legislation, upholds the rights of parties, meets their interests, and satisfies their needs. This approach requires willingness on the part of parties to negotiate their differences and an awareness of the constitutional and legislative framework within which they must reach agreement — or that they are assisted by a third-party who is a skilled facilitator, negotiator, and mediator. Additionally, this approach can restore, maintain, or even strengthen the relationships between parties as trust develops between them; they may discover that their interests are not mutually exclusive. It can also build their understanding of the value and meaning of rights, because this approach often involves getting parties to understand why rights exist and why it is in their interests to respect rights.

Mediation and negotiation may also assist in balancing conflicting rights. If the rights of both parties are in conflict with one another, negotiation and/or mediation can be a way of reaching an outcome that meets both parties' needs and interests. For example, in the case of land redistribution to people who have been dispossessed of their land, their rights to the land must be balanced against those of the current land-owner. A rights-based approach to the resolution of such a conflict would involve getting a court to decide whether a rightful claim to the land exists. The court would then make a finding on the basis of evidence that is placed before it, e.g., old title deeds, oral history of the parties, whether the claimants are rightful descendants, and so on. Negotiation and mediation can play a role when it comes to determining the award to be made to the claimant, by exploring whether the underlying interests and needs of both parties can be reconciled. For example, if monetary considerations play a large role, compensation may be a feasible means of resolving this conflict. If the claimants require the land for cultural or religious reasons (for example, access to burial sites), it may be possible to provide them with access (for the purpose of visiting and tending to the graves of their ancestors, for example) without necessarily transferring the ownership of the land. If the main concern is with cultivating and living off the land, providing alternative land may be an option. No definitive answer can be given in an example like this, because the outcome of such a mediation or

negotiation process depends on the needs and interests of parties from case to case. In South Africa, the Restitution of Land Rights Act sets out various options for consideration by the parties (Republic of South Africa, Restitution of Land Rights Act, Act 22 of 1994, as amended). In determining an award, the outcome is negotiated or mediated within this framework. The conflict in this example is separated into two stages, in which the first (deciding on the validity of the claim) uses a rights-based approach, and the second uses an interest-based approach. In this way, the rights of both parties are balanced against one another and their interests and needs are taken into account.

It is not that interest and needs-based approaches are necessarily better than rights-based methods in dealing with conflicts over rights issues. Rather, the above discussion is meant to highlight the existence of different approaches to dealing with conflict. Actors addressing rights-related conflict need not rely exclusively on a rights-based approach. Interest and needs-based methods can also promote the protection of rights. Thus, litigation and mediation should be seen as options on a spectrum of conflict management techniques. In each case, actors must carefully consider the different approaches available and determine which is most appropriate. Moreover, as the above example illustrates, within one conflict, different approaches can be used to resolve different parts of the conflict. There may be good reasons for utilising litigation in a particular situation. These may include the gravity of the human rights violation, the need to uphold a standard, or the precedent-setting nature of the case. The power balance between the parties may also be so skewed so as to warrant the intervention of the courts in order to protect the victim. If, on the other hand, the parties will continue to interact, interest and needs-based approaches may be more suitable, as these are less confrontational and adversarial. Moreover, because the outcomes of interest and needs-based processes are not imposed on parties, but rather agreed upon by them, they are less likely be to resented by one party. A key point worth repeating is that negotiation or mediation of rights-related conflict takes place within set parameters consisting of constitutional and international human rights standards; these processes do not require a compromise of fundamental principles.

Negotiating over interests and needs within a human rights framework may be especially relevant on a grassroots level where the limitations of the judicial system are most acutely experienced. It also seems particularly applicable to countries where socio-economic conditions pose constraints on the use of the judicial system (although not exclusively so, as is indicated by the extensive use of alternative dispute resolution — the legal term for negotiation and mediation — in the United States of America, the United Kingdom, and Australia). The question may arise as to whether an interest and needs-based approach to resolving rights-related conflicts is mostly applicable to individual cases, rather than to situations where human rights violations are committed on a wide-spread and systematic scale or where there is a particular pattern of abuses. In the latter cases, one may seek to obtain a legal judgement that acts as a precedent and inhibits further violations of that kind. In mediations, agreements reached often only apply to a particular case and carry little weight beyond that case. No general legal rule is laid down that can prevent such abuses from recurring. In other words, agreements reached in a mediation process usually do not set a precedent, and therefore have limited deterrent value. For example, if several farm-owners demolish informal housing of farm workers living on their farms and each of these cases is mediated separately, there is little to stop another farm-owner from demolishing informal structures on his or her land as well. However, if one of the initial cases were taken to court, resulting in a clear judgement that the destruction constitutes a criminal act, then other farmers will think twice before trying the same thing. Another question for consideration is whether the use of mediation or negotiation in conflicts over rights is confined to democratic contexts. These are questions that require further examination. Generally, the use of mediation and negotiation in conflicts over rights as an alternative to judicial proceedings depends on many factors. These include the nature of the rights involved, the gravity and scale of human rights violations, the nature of the dispute, the parties involved, and the competence and legitimacy of the courts.

The six propositions laid out above have many implications for a variety of actors, including governmental bodies and intergovernmental agencies. Clearly there is a need for dialogue between the fields of human rights and conflict management in order to gain an understanding of one another's mission, guiding principles and methods, and to strengthen efforts towards peace, justice, and reconciliation. Closely related is the need to pursue an integrated approach in dealing with conflicts involving issues of rights. Many conflicts cannot be addressed solely from either a human rights or a conflict management resolution perspective. The two fields should be considered in conjunction with one another because of the close relationship between human rights and conflict management. For example, the high level of xenophobia in South Africa necessitates an integrated approach on the part of the various bodies that deal with migrants, asylum-seekers and refugees. Considering xenophobia only from a human rights point of view fails to engage the needs and interests that make South Africans so reluctant to accept foreigners in their midst. At the same time, focusing exclusively on such concerns with a view to resolving specific disputes between locals and foreigners may give insufficient consideration to the rights of the latter. Only a combination of the two perspectives can ensure that strategies are developed for resolving xenophobia-related conflicts in ways that uphold the rights of various parties, while taking their needs and interests into account as well.

III. Enhancing understanding

In the previous section, this paper argued for the need for human rights actors and conflict management practitioners to be more familiar with each other's principal concerns and methods. In this section, the paper discusses training as a strategy to enhance mutual understanding between and effectiveness of both sets of actors.

1. Conflict management practitioners should be trained in human rights awareness and instruments.

As argued above, there are strong reasons why actors in the conflict management field should acquire greater understanding of human rights and be more knowledgeable about human rights instruments. Conflict management must take place within a framework in which human rights are non-negotiable. While there is much scope for dialogue, negotiation, and accommodation within that framework, practitioners must be aware of its parameters in order to ensure that their interventions are in line with fundamental rights and freedoms. Moreover, instruments such as the Universal Declaration or the African Charter provide internationally accepted principles of freedom, fairness, and respect. Actors within the conflict management field can use such standards to gain a different perspective on possible solutions, assess different options, or lay the foundation for agreements. Human rights standards thus provide practitioners and parties to a conflict with objective measures for understanding the moral and legal consequences of their actions. Individual parties may not always realise that certain activities or practices are violating the rights of other parties. Practitioners with human rights knowledge can assist such parties in making them aware of their obligations and how respect for rights can help to resolve conflictual issues (Arnold 1998: 3-4). Moreover, human rights serve to protect all parties, which means that respect for human rights is pragmatically in everyone's interests (groups, individuals, and political parties). It has also been suggested that, in the context of a peace process, conflict management actors can help conflicting parties understand that supporting human rights may enhance their domestic and international stature, legitimacy, and negotiation position, thus prompting their co-operation with the process (Kunder 1998: 6).

A primary reason for training conflict management actors in human rights is that they need to understand the relationship between rights and conflict, and in particular the conflict-causing potential of rights denial, or they will not act effectively. Their analysis of a conflict helps conflict management practitioners to determine an intervention strategy. If they are insufficiently aware of the conflict's human rights aspects they may focus more on the manifest, visible, issues that trigger conflict rather than on the structural causes that underlie violent

conflict. As indicated earlier, such an approach is likely to be unsustainable; it may merely buy some time before destructive conflict erupts (again). If, however, human rights concerns are identified early on as core causes of conflict, practitioners are more able to integrate these into a negotiation process from the outset, and can develop agreements that address structural inequities.

They can also help parties understand the long-term ramifications of agreements that do not abide by human rights standards. In some situations, parties may be reluctant to accept that their conflict relates to issues of rights. To give an example, this was the case in a conflict in two informal settlements in Cape Town in which South African residents forcibly evicted Angolans and Namibians living in their midst and destroyed their houses and belongings. In an intervention conducted by the Centre for Conflict Resolution, the local residents strongly objected to the possibility that their actions were, at least in part, motivated by xenophobia. In their view, their concerns had nothing to do with prejudices about 'others' or perceptions of threat, but were related only to criminal activities in which the foreigners were allegedly involved. In the course of the process, however, this perspective was challenged by other parties who had also been involved in the conflict in one way or another. Mediators from CCR were able to start building an understanding of the foreigners' rights on the part of the South African residents, and to raise their awareness of why fundamental rights should be upheld.[25] The mediation process thus involved a degree of education, even though this had not been the primary purpose of the intervention. Nevertheless such education was necessary for the success and sustainability of the intervention. Had the mediators not been aware of the relevant human rights standards, the intervention would have been weakened. It would have been superficial to try to sort out the evictions without giving due consideration to the constitutional framework that lays down fundamental rights of all persons in South Africa and getting parties to understand the parameters of that framework.

It should be noted that the relevance of human rights knowledge for conflict resolution practitioners does not only apply in situations where a denial of human rights is a cause of high-intensity conflict. It also applies to instances where gross human rights violations occur as a consequence of violent conflict. In these cases, intervenors must be aware of the rules and instruments that can help to regulate or mitigate conflict. In its 1993 assessment of five large UN field operations (called The Lost Agenda), the international non-governmental organisation Human Rights Watch noted that human rights were often integrated only to a limited extent into peacekeeping efforts, to the detriment of these operations. Only in El Salvador were human rights a high priority in the UN mission. According to Human Rights Watch, the deployment of human rights monitors as part of the peacekeeping mission limited human rights violations and contributed to the peace process by strengthening the prospects for a lasting peace (Human Rights Watch 1993: 1-35). The Sudanese People's Liberation Army (SPLA) in southern Sudan is reportedly engaged in a similar initiative; it wants to have chaplains, trained in human rights standards, located throughout the territory under its control in an effort to limit and prevent abuses of rights.[26] And in co-operation with various actors in Lesotho, the Lesotho Network for Conflict Management is trying to negotiate a National Peace Accord or "Harmony Pact" to guide the behaviour and activities of various parties — including political parties, security forces, traditional authorities, churches, labour, business, and civil society — before and during the next elections in 2002. The Accord is based on respect for human rights (especially civil-political rights) and seeks to limit the potential for violent conflict before and during the elections.[27] In this context, it is important to note that the integration of human rights concerns into efforts to regulate and mitigate violent conflict in the short term, will lay the foundation for their inclusion in activities geared towards the long-term resolution of structural causes of conflict.

Knowledge of human rights and an understanding of the language of rights is also important for conflict management practitioners because they need to liaise with human rights organisations in situations where both sets of actors are involved. Human rights actors can alert conflict management practitioners if a situation seems to be deteriorating; mounting human rights

violations are widely acknowledged as an early warning sign of imminent conflict. Serving as indicators of communities or states in distress, the occurrence and frequency of human rights violations signal the need for timely intervention and constructive methods to address social, political and economic inequities. Conflict management practitioners also need to assure human rights actors that their concerns will be addressed during a peace process, and how this will be undertaken. If they fail to do so, they risk critical, public statements by human rights actors that may affect the process negatively. Moreover, human rights actors are often aware of solutions used in other countries to manage certain rights issues, or they can provide "lessons learned" from elsewhere that may assist the process. Finally, conflict management practitioners need to be able to explain to human rights actors how and why a certain agreement came about, if it is "less than ideal," as Arnold (1998: 3-4) puts it.

2. Human rights actors and humanitarian agencies should be trained in conflict management skills

As much as conflict management practitioners must learn about human rights, human rights actors can also benefit from training in conflict management. They often work in volatile environments characterised by tension, polarisation and violence. They frequently deal with people who are coming to terms with loss, anger and fear, and who may be so distressed, anxious or afraid that facilitated communication is essential to ensure that substantive dialogue can take place about what happened. Human rights activists also often have to deal with conflict in the course of implementing their mandate. For example, gaining access to prisoners, to potential witnesses, or to sites where gross human violations have allegedly occurred, often involves some degree of negotiation. Human rights actors may also encounter officials or non-state actors who try to impede or thwart their work for fear of outside scrutiny, or because human rights activities are seen as "subversive". In addition, human rights actors may be called upon to intervene in conflicts or facilitate meetings with several parties, especially if they enjoy respect in communities because of their principled and independent stance (Arnold 1998: 2-3). This may apply to non-governmental actors, but also to governmental or constitutional bodies. For example, the legislation governing the South African Human Rights Commission provides for the use of mediation to resolve human rights complaints received by the Commission (Republic of South Africa, Act 54 of 1994: section 8).

Techniques for crisis intervention, negotiation and facilitation, problem-solving skills and communication skills are useful for human rights actors. Communication skills are particularly relevant, as these can help defuse tension and prevent confrontation. Conflict management training also enables human rights actors to frame rights issues in terms of interests, meaning that they can explain to others why it is in their interests to respect rights. This enables human rights actors to convey the importance of upholding rights without resorting to bland and categorical statements along the lines that rights must be protected. People are generally more willing and capable of understanding rights issues if these are explained in relation to their own needs and interests, than if they encounter a prescriptive or adversarial stance about what rules apply and what action should or should not be undertaken. For example, insisting to the police that they have to respect human rights may get them to comply but does not necessarily build their understanding of why this is necessary and important. On the contrary, it may cause resentment if rights are perceived as impeding their work and benefiting suspects. However, when it is explained exactly how they can benefit from rights protection, they are more likely to make a genuine effort to comply with an instruction to uphold rights. Such an explanation could include the following points: respecting human rights has the potential to improve their relationships with the communities in which they work; it may strengthen their service delivery; and it may limit civil claims against the police. It would also be important to stress that police officials themselves are also protected by rights. Similarly, defence forces may know that they have to abide by the Geneva Conventions because that is the law, but their compliance is more likely if they understand how international humanitarian law could also benefit them, should they be taken as prisoners of war, etc.

In this sense, the arguments in favour of a confidence-building approach to mediation rather than a power-based one can be extended to the realm of human rights work. Because it relies on coercion to obtain the "co-operation" of parties, power-based mediation often hardens the resistance of parties and leads to resentment against solutions imposed upon them. In contrast, a confidence-building approach seeks to obtain the co-operation of parties through dialogue, relationship-building and the development of trust. As such, it is more likely to secure a lasting agreement (Nathan 1999). Similarly, a confidence-building approach to the protection and promotion of rights tends to make parties less defensive. This approach involves raising human rights concerns in a constructive and non-confrontational way, and developing relationships between parties. In this respect, it is noteworthy that the United Nations High Commissioner for Refugees and the Centre for Common Ground (CCG) in Angola are training internally displaced persons in human rights and negotiation skills. The combination of human rights education with conflict resolution stems from the realisation that "teaching people about their rights without building a capacity to talk about, defend and present those rights in a non-adversarial way is like giving a fisherman a net with gaping holes. Rights have to be respected and if they are not, individuals must be able to demand respect in an appropriate way, i.e. non-violent and strategic" (Utterwulghe 2001: 3-4).[28]

In cases of mediation, such a confidence-building approach is generally preferable. In a human rights context, on the other hand, the most appropriate communication style should probably be assessed on a case-by-case basis in light of the specific situation and the objectives pursued. There may be situations in which human rights actors have to take a strong, confrontational stance in order to emphasise that certain practices are illegal and wholly unacceptable, and that universal standards have to be upheld. Training in conflict management theory and practice helps human rights actors reflect on how their attitude, behaviour and communication style can escalate or defuse conflictual situations. Based on this awareness, they can then determine how best to address certain rights concerns.

The skills mentioned above are as relevant for humanitarian agencies as they are for human rights actors. The humanitarian context is pre-eminently one where the fields of human rights and conflict management intersect. Whether their mandate is to protect refugees, internally displaced people and children, or provide immediate relief, or restore essential services, humanitarian agencies are constantly dealing with conflict. For example, extensive assistance to displaced people often provokes tension amongst local populations because of scarce resources. Aid to civilians in areas under the control of insurgents can feed suspicions of supporting the enemy or pursuing a political agenda, which need to be managed. Mass movements of people require negotiation around issues of settlement, integration, and repatriation. Conflict is also highly likely to erupt in situations where many people of different cultural, ethnic, religious and political backgrounds are thrown together in a confined area, such as a refugee camp. Many acknowledge that humanitarian intervention in war zones is inevitably politicised and that the organisations involved play a number of conflict management roles (Miall et al. 1999: 145-147; Anderson 1996).

Bodies like the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC) may not be conflict-management organisations, but they have to manage conflict continuously in the implementation of their humanitarian mandates (see, for example, Nathan 2000a). For example, the ICRC has had to negotiate ceasefires with belligerent parties at times in order to reach populations affected by the fighting. In 1998, a group of Namibians from the Caprivi region fled to Botswana following violent clashes with government forces, after the group had allegedly called for secession of the region. The group applied for asylum in Botswana on grounds of political persecution, but the Namibian government demanded their extradition to face charges of treason. The regional office of the UNHCR was then asked to intervene in order to resolve the situation (Africa Confidential Vol. 40, No. 1, 8 January 1999). Similarly, the UNHCR office in northern Kenya facilitated an agreement in 1997 between Oromo refugees and local communities after conflicts over livestock had led to fighting and loss of life. In other words, an organisation such as the

UNHCR must address certain types of conflict in order to fulfil its mandate. Thus, training in conflict management skills enhances the capacity of humanitarian bodies to perform their mandated functions and allows them to develop appropriate strategies for conflict situations that they regularly encounter in the execution of their primary humanitarian duties in complex and volatile environments.

IV. Insights gained from linking human rights and conflict management in practice

The previous sections have sought to highlight the analytical, political and strategic linkages between human rights and conflict management and have emphasised the importance of bridging the gap between the two fields. Since 1999, the Centre for Conflict Resolution has made an effort to do so in practice through its Human Rights and Conflict Management Training Programme (HRCMP). This programme was established in order to explore, understand, and promote the relationship between human rights and conflict management.[29] CCR's work in this area challenges the tendency in the literature to make a firm distinction between the two fields, as it confirms the existence of extensive linkages between the arenas of human rights and conflict management. This section of the occasional paper records a number of insights acquired from CCR's experience to date, some of which relate specifically to human rights education. More information on the programme itself can be found in a separate box (see page pp. 6-7).

1. The relationship between human rights and conflict is dialectical.

This paper has shown how gross human rights violations can occur as a consequence of violent conflict, and how a sustained denial of human rights can lead to violent conflict. In working with various organisations in the fields of human rights and conflict management, it has transpired that the relationship between human rights and conflict is more than twofold, especially if one considers "conflict" more broadly than high-intensity conflict. For example, the protection and enforcement of human rights can also lead to conflict. Enforcing the rights of marginalised or disadvantaged groups can threaten the status quo, and may challenge prescribed notions of inferiority and superiority, as well as traditional power relations. The realisation of women's rights in traditionally patriarchal societies constitutes a prime example in this regard. The enforcement of rights can also require societal transformation in the sense of redistribution, as is the case in post-apartheid South Africa where the equality, dignity and rights of all racial groups are now acknowledged. Such change brings the potential for conflict. In this regard, it sometimes seems as if rights are seen as a "pie" with limited "slices"; if the previously denied rights of a specific group are acknowledged, other groups whose rights were previously upheld may perceive this as automatically reducing or limiting their own rights.

Other aspects of the rights/conflict relationship include the possibility that conflict may arise over different interpretations of one single human right and in situations where different rights have to be balanced against one another. Moreover, when expectations about the realisation of rights are not met, this can give rise to conflict. In a training workshop with local conflict resolution organisations, for example, participants shared their impression that human rights education provided by others had at times increased the potential for conflict in the impoverished areas where they operated. In their view, as people became more aware of their rights, the discrepancy between the rights they were supposed to have and the lack of realisation thereof, especially in the socio-economic domain, became glaringly obvious. Conflict resolution fieldworkers felt that rights education had in fact exacerbated existing tensions in these communities by making people more acutely aware of the structural inequities and inequalities in South African society. While acknowledging the importance of human rights education, these fieldworkers grappled with the question of how to deal with the resulting tension and its

negative manifestations (fights, threats, intimidation, etc.). They also indicated a need to discuss this potentially negative effect of such education with human rights organisations, so that joint strategies could be developed for addressing tension and ensuring that rights education would not take place in a vacuum.

These additional aspects of the rights/conflict relationship further underscore the importance of dialogue between the two fields, as they demonstrate the complexities that looking at human rights and conflict management in conjunction may reveal.

2. It may be appropriate to target human rights actors and conflict management practitioners separately for training and capacity-building. However, when developing strategies for dealing with complex issues, it is necessary to bring actors from both fields together.

At its inception, the HRCMP intended to bring practitioners from the two fields together in joint training workshops in order to facilitate "cross-fertilisation", but we soon realised that the needs of prospective trainees differ considerably. Human rights actors generally have a strong need to develop their capacity to deal with conflict in a constructive manner while undertaking activities towards rights protection and promotion. For them, it is important to learn how communication skills, negotiation, problem-solving, and facilitation can strengthen their work. Building their understanding of interest-based conflict resolution also enables them to frame human rights issues in terms of the interests of parties and to assess on a case-by-case basis whether litigation or mediation would be most suitable in a particular situation. The needs of conflict management practitioners, on the other hand, relate more to developing an understanding of the meaning and value of human rights for their work, and identifying human rights aspects in conflicts. They need to be familiar with the constitutional and legislative frameworks, and must be able to conduct their interventions in line with the human rights instruments relevant to the context in which they operate. For example, a conflict resolution practitioner mediating in a conflict over an eviction of a farm worker from a farm in South Africa needs to know what rights and procedures are provided for in the Extension of Security of Tenure Act.

Therefore, targeting actors in both fields separately is most appropriate for the purpose of capacity-building and training, because it allows for in-depth training courses that are tailored to the needs of the specific audience. Nevertheless, bringing practitioners from both fields together may be particularly relevant when developing strategies that require both human rights intervention and conflict management. Input from both perspectives is required to develop strategies for issues such as land reform, the question of traditional leadership in a constitutional democracy, xenophobia, and integrating human rights into peace processes, to name but a few. In such situations, a holistic and comprehensive approach must be adopted that integrates insights, methods and values from both fields, and that ensures that conflicts are constructively addressed in ways that uphold human rights. The challenge of land reform in South Africa, for example, can only be tackled by combining human rights and conflict resolution perspectives, in seeking to reconcile the needs and interests of various parties within parameters laid down by the Constitution and legislation.

3. Communication and negotiation skills are of primary importance in building parties' awareness of human rights concerns and obtaining their co-operation in rights protection.

It is striking to see the impact that conflict management training can have on human rights actors. Communication and negotiation skills are pivotal in building the capacity and confidence of such actors to deal with conflicts and tension concerning rights, and to gain the co-operation of parties with whom they interact. Earlier in this paper, a confidence-building approach was proposed in the context of human rights work. This approach seeks to obtain the co-operation of parties through dialogue, relationship-building and the development of trust, by exploring the parties' needs and interests, and communicating about rights in terms of such interests and needs. Our experience to date indicates that such a confidence-building approach can be very

useful for human rights actors, especially on a grassroots level. In South Africa, many human rights actors take an adversarial stance when encountering real or alleged human rights violations. This attitude generally stems from the country's past, in which most rights were denied and confrontation seemed the only way to challenge injustice. At present, it is at times enhanced by the knowledge that South Africa has a strong constitutional framework that endorses the rights of all people, irrespective of colour and other differentiating features. Human rights actors are therefore sometimes keen to "teach a lesson" to those who currently deny rights. The latter often include people or bodies who had little need to care for human rights in the past, such as the police or landowners, which turns the interaction between such actors and human rights activists into a potentially explosive one.

Exposing human rights activists to the theory and practice of conflict management challenges their adversarial attitude in confronting individuals or organisations allegedly responsible for human rights violations. It makes them aware of the negative consequences of that stance in terms of enhancing the potential for further conflict and for damaging the relationship between parties. For example, if a paralegal Advice Officer in a rural town harshly confronts a farmer about the illegal eviction of a farm worker, the farm worker may eventually be reinstated on the farmer's land. However, in fighting over the validity of the eviction, the relationship between the farmer and the farm worker may have deteriorated to such an extent that their effective co-operation and co-existence on the farm has become problematic. In the end, the farm worker's human rights are enforced, but her living situation may become unbearable.

The communication style adopted by human rights actors thus greatly influences the extent to which other parties are willing to co-operate on issues of human rights. The example used above might develop very differently if the human rights worker takes a different approach and engages the farmer in a more co-operative manner. Negotiation skills are also relevant in this regard, because they enable human rights actors to identify the needs and interests of parties and to address issues of human rights in relation to these. In this example, the farmer might have evicted the farm worker on the basis of specific concerns of which the farm worker and the Advice Officer were not necessarily aware. At the same time, he might be ignorant of the legislative framework that grants the farm worker certain rights. Most likely, he is also unfamiliar with the farm worker's needs and interests that made her determined to remain on the farm. A negotiation process might explore whether the needs and interests of both parties are mutually exclusive, or whether they can be reconciled. It allows for human rights issues to be raised in relation to parties' needs and interests. This may assist in gaining their understanding of human rights concerns and ensuring their co-operation with a conflict resolution process. Engaging parties in such a non-adversarial way makes parties less defensive and more inclined to seek a solution that serves both parties' needs and interests, and that is respectful of rights. Thus, communication and negotiation skills are essential in building parties' awareness of human rights concerns and obtaining their co-operation in rights protection.

4. Conflict resolution is imperative in human rights education and training for participants and trainers.

Traditional human rights education generally focuses on making people aware of their rights and the various instruments and mechanisms available for the protection and promotion of human rights. However, building people's knowledge of rights and enhancing their capacity to identify rights is not necessarily sufficient to ensure that they will be able to enjoy those rights. They also need to gain the capacity and confidence to exercise those rights. The discussion above has already highlighted the usefulness of conflict resolution skills in the areas of negotiation, communication and mediation, in ensuring respect for human rights. Problem-solving skills are also relevant, especially in contexts where serious constraints prevent the full realisation of rights. Problem-solving skills enable people to identify obstacles that exist in their environment and to generate a variety of options that can be employed for the implementation of rights. They also enhance people's ability to assess what actions they can undertake on their

own account, individually or within their communities, rather than relying solely on the state for the implementation of rights.

Including conflict resolution in human rights training and education is not only beneficial to participants, but also to trainers. The Education and Training Officers of the South African Human Rights Commission (SAHRC), for example, encounter conflict on a continuous basis in the training environment. A needs assessment conducted by the HRCMP for the Commission's National Centre for Human Rights Education and Training indicated that significant tension surrounds issues such as homosexuality, sexism, racism, the abolition of the death penalty, the illegality of corporal punishment, abortion, tolerance towards different religions, xenophobia, and so on. The SAHRC trainers often face negative attitudes and sometimes downright hostility from the various audiences with whom they work, because the content of their training challenges people's stereotypes and prejudices. Conflict resolution can help human rights trainers and educators to address such conflict in the training environment and to deal with extreme points of view and strong emotions generated by human rights issues. Again, it is not much use overriding people's opinions and telling them how they ought to feel on certain issues and what the law says, as this often simply fuels resentment and hostility. Rather, trainers and educators must engage their audiences in ways that make them willing to question their own assumptions and perspectives, and this is facilitated by the use of conflict resolution skills. Conflict resolution can thus build the ability and confidence of trainers and educators in managing the tensions and conflicts that arise in the context of training and education of human rights.

5. In training settings, it is at times more strategic to raise human rights indirectly rather than directly

We have found that it is sometimes preferable to raise human rights indirectly in training workshops through notions of "human dignity" and "basic human needs" rather than framing issues directly in terms of "rights". Participants may know of human rights, but do not necessarily have much understanding of what they mean and why they are relevant. Human rights are often seen as legal, abstract concepts with little bearing on the daily lives of people. Participants often find it easier to relate to concepts such as human dignity and basic human needs, which they can link immediately to social, political, economic, and cultural concerns. These concepts thus enable human rights issues to be grounded in the experiences of participants and assist in "demystifying" human rights, as will be illustrated below.

Moreover, human rights are still sometimes seen as subversive or problematic by state officials and politicians. For example, the police may believe that the rights afforded to individuals accused of breaking the law essentially protect criminals and complicate the maintenance of law and order. The government of a country may consider an identity group's right to self-determination subversive, viewing it as threatening the unity of the state. The perception of rights as problematic can lead to defensiveness and hostility. Mentioning "human rights" in certain contexts can cause participants to "shut off" and distance themselves from training and education. Engaging people in discussions about human dignity or basic human needs is generally less threatening, and may ensure that they engage more substantially in training of audiences that consider rights as difficult. A final reason for opting for an indirect approach to rights education relates to the claim that rights are a Western concept. When discussing rights in an African environment, the question is often raised as to what extent human rights are Western or Northern inventions that have little relevance in Africa. Concepts such as needs and dignity, however, are easily located in the local context. Most cultures have a notion of "dignity" included in their norms, customs, and world view. These concepts are therefore helpful in illustrating that human rights are not unrelated to the African context, even though some major human rights instruments were originally drawn up in the West.

The concept of human dignity helps participants in HRCMP workshops reflect on any violations that they may have endured and draws out their ideas as to how people should relate to one

another. Many participants relate the concept to civil and political concerns (such as respect, equality, tolerance, exclusion, or discrimination), but some have also linked it to socio-economic issues. In one workshop, for example, participants sketched vividly how a lack of water could undermine the dignity of people in various ways, by limiting the degree of hygiene available to them, forcing them to stand in long queues in the scorching sun, and provoking tensions amongst people. Through the notion of human dignity, a basis is created for discussing rights, the relevance of rights for the protection of people's dignity, the responsibilities of state and citizens, and the consequences of insufficient respect for rights. It has proved to be an excellent way of building participants' understanding of the origins of human rights instruments such as the South African Bill of Rights, the Universal Declaration of Human Rights, the African Charter of Human and Peoples' Rights, and others. At the end of one training workshop, for example, a Regional Director of the Independent Complaints Directorate commented that he had found the human dignity exercise most useful, because "it showed the purpose of why human rights are codified and protected — for humankind."[30]

As indicated above, the concept of basic human needs has also been useful in building participants' understanding of human rights. The idea of human beings having needs that are fundamental to their survival and development generally resonates immediately with workshop participants. Needs can be introduced through, for example, a discussion of causes of conflict in a particular country or region, through the idea of human security, or by getting participants to generate a list of what people need in order to feel safe and secure. Needs can then be related to rights, and the surprise of participants at finding the close link between rights and needs is often palpable when they compare the list of needs they have generated with an instrument like the African Charter. The idea of needs can also help participants to grasp the relationship between direct and structural violence, or manifest and latent conflict. It enables them to recognise these dynamics in their own country. For example, following a training session, one Member of Parliament from a country in Southern Africa indicated that he had never realised the extent to which the tensions in his country were of a structural nature, and what fertile ground this provided for violent conflict. In another case, a Deputy Minister expressed his astonishment at realising that rights had a direct, practical significance for dealing with and preventing conflict. Indeed, the concept of needs has been particularly helpful in building people's understanding of the consequences of denying rights in terms of increasing the potential for conflict.

The concepts of human dignity and needs thus provide a basis for talking about human rights in a way that helps participants grasp the meaning, value, and relevance of rights. Introducing rights in such an indirect way is not meant to diffuse rights or lessen their importance. Rather, it is a strategy aimed at building understanding of and appreciation for human rights in a way that ensures that human rights education "sinks in" and does not alienate those participating in training and education.

V. Conclusion

This occasional paper has shown that there are so many links between human rights and conflict management that it does not make sense to contemplate these fields in isolation from one another. Human rights are relevant in the generation, manifestation, resolution and prevention of destructive conflict, and must therefore be taken into account throughout the whole conflict management process. At the same time, skills and insights from the conflict management field can make a contribution to the protection and promotion of rights by strengthening the capacity of human rights actors to deal with conflict over rights issues. The six propositions discussed here, as well as their practical implications and the insights acquired by CCR, constitute compelling reasons for actors in human rights and conflict management to explore how they can co-operate with and support one another given their common goal of reaching an enduring and just peace.

The propositions discussed undoubtedly require greater specificity and nuance in different contexts, and they should be pursued through further research and analysis. Nevertheless, it

appears that the fields of human rights and conflict management are far more complementary than contradictory. Certain tensions do indeed exist between them, to the extent that activities or attitudes by one type of actors may negatively affect efforts by actors in the other field. These tensions perhaps demonstrate that the two fields cannot or should not be merged, or that human rights actors cannot become conflict management experts and vice versa. However, these tensions should not cause actors in each field to remain withdrawn from one another as if they were competitors in the pursuit of a sustainable peace. On the contrary, they should be seen as creative differences that prompt human rights actors and conflict management practitioners to interact with one another and understand the mission, methods, and principles guiding each other. This tension encourages them to seek ways of contributing to one another's activities and optimising their efforts towards peace, justice, and reconciliation. Insufficient recognition of the close relationship between human rights and conflict management is detrimental to the objectives pursued by both fields. Peace and justice are inextricably linked. The absence of justice generally leads to an absence of peace. Thus, the fields of human rights and conflict management are inextricably linked.

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NOTES

1. The UN Centre for Human Rights eventually decided not to publish the Handbook due to internal restructuring. However, it remained strongly supportive of the manuscript, and encouraged CCR to seek publication elsewhere. The manuscript will be published by the University of Notre Dame Press (Indiana, USA) in 2003. It is currently being updated and revised. The following people contributed to the Handbook: Kent Arnold, Guy Lamb, Michelle Parlevliet, and Jeremy Sarkin.

2. In the classification used by the Interdisciplinary Research Program on Causes of Human Rights Violations (PIOOM) based in Leiden (the Netherlands), "high-intensity conflict" refers to open warfare among rival groups and/or mass destruction and displacement of sectors of the civilian population, in which 1 000 or more people are killed in a 12-month period. (Jongman 2000). The terms "high intensity", "violent" and "destructive" conflict are used here interchangeably.

3. Mandela has been quoted as saying "this process should be all inclusive — not only government, National Assembly and political parties, but also rebel groups on the ground … these are the people slaughtering civilians … and unless we include them in the negotiations it will be difficult to stop the violence." See http://usinfo.state.gov/regional/af/security/a0022203.htm.

4. In Africa, the debate on whether or not to exclude parties responsible for gross human rights violations has been particularly heated regarding Sierra Leone and the leader of the Revolutionary United Front, Foday Sankoh. (See Human Rights Watch 1999.)

5. On the one hand, the TRC was supposed to act as a non-partisan facilitator, bringing together different actors and parties to share and discuss their views on the past. On the other hand, the TRC, as a body that was to assert the Rule of Law and build a human rights culture, was expected to pass moral judgement on the past and to denounce apartheid as wrong.

6. "Mandela steps up pressure for Burundi to release political prisoners," 13 June 2000; and "Mandela leaves Burundi with prison issue unresolved," both from Hirondelle News Agency, 14 June 2001; at http://www.hirondelle.org.

7. The chart provided in this paper is more extensive than Baker's and organises the information into several categories. Baker distinguishes between "conflict managers" and "democratizers", and identifies the following differences: importance of cultural values/ universal human rights values and standards; inclusive process/ exclusive process; goal is reconciliation/ goal is justice; pragmatic, confidence-building/ principles institutionalising law to build trust in the system; emphasis on process/ emphasis on outcome; moral equivalence of belligerents/ attributing blame; conflict resolution as negotiable/ justice as non-negotiable; political neutrality of outside actors/ outside mediators cannot be morally neutral (Baker 1996: 567).

8.   On Sierra Leone, see Human Rights Watch (1999) and International Crisis Group (1999); on Bosnia, see the International Criminal Tribunal for the Former Yugoslavia, Foca Indictment (IT-96-23), at http://www.icty.org/indictment/english, and Amnesty International (1993).

9.   Examples include Malawi, the Democratic Republic of Congo, Angola, Mozambique, and Zambia. See also Annan (1998: par. 12).

10. Galtung argues that violence exists when human beings are prevented from meeting their full potential. Direct or personal violence occurs when there is an actor that commits this violence (i.e., rape, murder and assault), and structural violence occurs where there is no such actor (i.e., poverty, homelessness and lack of health care). In the latter case, unequal access to power and resources is built into the social system, leading to unequal life chances for individuals or groups. See also Webb (1986: 431-434) for a further discussion of structural violence.

11. Yarn defines positive peace as a situation where states or non-state groups continually engage in the non-violent, constructive management of their differences with the goal of mutually satisfying relations. Yarn also argues that the notion is closely linked to "security" (lack of threats of violence or civil disorder and stable relations among stable societies) and "justice" (the stability is fair, equitable and cognisant of fundamental human rights.)

12. It must be noted that human needs theory has been criticised in the conflict management field. The criticism relates to, amongst other things, the "testability" of basic human needs; their existence cannot be proven. It has also been questioned whether needs are truly universal and fundamental in the sense of not changing over time and in different contexts, and whether a needs hierarchy exist. For critical commentaries on needs theory. See, for example, Mitchell (1990); Roy (1990).

13. Claude and Weston (1992: 138-144) elaborate on these categories of needs.

14. The Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights are included as appendices to this paper. The appropriateness of understanding rights in relation to needs is also reflected by considering the human rights model of McDougal, Lasswell and Chen, discussed by Weston and Claude (1992: 5-6). This model emphasises the values of respect, power, wealth, enlightenment, well being, skills, affection and rectitude as underlying human rights. These values closely relate to basic human needs as conceptualised in this paper.

15. Please note that Osaghae does not distinguish between interests and needs as I have done, following Burton and Azar. He uses the term "core interests" in referring to what have been called "needs" in this paper.

16. They highlight that the relationship is not a simple one: one single need may be satisfied through the implementation of several rights, and one right may satisfy several needs. This underscores the indivisible and interdependent nature of rights.

17. Constitutional Court of South Africa, judgement in Grootboom case, CT 11/00 — as quoted in (Chaskalson (2000b). The nexus between rights and needs has been criticised by some. Manji (1998) argues that the struggle for rights and justice in Africa became transformed and demobilised in post-colonial states as it was increasingly subsumed in the pursuit of "development" by the new nationalist leadership. The focus on development in newly independent states (with its emphasis on attending to the "basic needs" of the population) replaced the earlier popular mobilisation for accountability, democracy and justice. He asserts that this has led to the depoliticisation of poverty, which is no longer seen as a consequence of unjust and illegitimate structures of governance, but as something politically neutral that simply warrants technical expertise to help people cope with impoverishment. This justifies even less political pluralism and popular participation in public affairs. Manji also questions the concept of needs, arguing that they imply a degree of dependency, and portray people as "victims" of lack of development or as "beneficiaries" of aid, rather than as active social and political agents. In this paper, I use the concept of needs as related to security, welfare, freedom and identity, thus locating them in the political, social, economic and cultural domain.

18. The United Nations Secretary-General adopted this distinction in his report on the prevention of armed conflict; see Annan (2001.)

19. The term "identity group" is used here rather than "ethnic group" or "minority" in recognition of two factors. Not only can the identity around which a social group is organised be different from ethnicity (race, religion), but identity groups may also constitute the oppressed majority in a country rather than a minority (as was the case in South Africa during apartheid).

20. Lederach considers social-psychological perceptions critical to the dynamic that drives current conflicts. Other scholars who have written on the social-psychological dynamics of conflict and war include Volkan (1990, 1991); Montville (1990); Volkan, Montville, and Julius (1990).

21. Nathan does not argue against the use of leverage in negotiations per se, but emphasises that it should not be undertaken by the intervenor him- or herself, but rather by outside parties.

22. These state institutions include the Public Protector, the Human Rights Commission, the Commission on Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (not yet established), the Auditor-General and the Electoral Commission.

23. I thank Judith Cohen-Robb for her comments on this section. She is the former Regional Manager of Lawyers for Human Rights in the Western Cape Province and currently Legislation Monitor and Parliamentary Liaison for the South African Human Rights Commission.

24. The definition of power used here is thus broader than that of realists who tend to equate power with force.

25. This case also illustrated a tension between the fields of human rights and conflict management. The South African residents were so adamant that their behaviour was not motivated by xenophobia, that they threatened to walk out of the process if xenophobia were raised as an issue in the conflict. This created a dilemma for the mediators: on the one hand, the intervention could only succeed with the involvement of all parties; on the other hand, not raising xenophobia as an issue would deny the experiences of the foreigners, who had experienced assault, harassment, threats, negative stereotyping, envy, etc. The intervention team then decided that it would not emphasise xenophobia in the beginning of the process, but would increasingly bring it in as the process evolved, so as to challenge the South African residents and build their awareness of what xenophobia involves.

26. Discussion with a senior Kenyan diplomat facilitating Track Two diplomacy in Sudan; March 2001, Cape Town.

27. Lesotho Network for Conflict Management (2001), Draft National Peace Accord, on file with author.

28. Utterwulghe is the Director of the Centre for Common Ground, Angola.

29. The HRCMP has been funded by the Royal Netherlands Embassy in Pretoria for the period 1999-July 2002.

30. The Independent Complaints Directorate is a statutory civilian body that monitors police conduct and investigates complaints about abuse of power by the police.

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