

# National Human Rights Institutions, Conflict Management and Peacebuilding in Africa

TECHNICAL SEMINAR REPORT  
CENTRE FOR CONFLICT RESOLUTION, CAPE TOWN

# National Human Rights Institutions, Conflict Management and Peacebuilding in Africa

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**TECHNICAL SEMINAR REPORT**

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## About The Centre For Conflict Resolution

The Centre for Conflict Resolution is a leading pan-African organisation which seeks to contribute towards a just and sustainable peace in Africa by promoting constructive, creative and co-operative approaches to the resolution of conflict and the reduction of violence.

## Acknowledgements

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## About the Facilitators and Rapporteurs

Michelle Parlevliet is the Manager of the Human Rights and Conflict Management Project at the Centre for Conflict Resolution.

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# Executive Summary

**The Human Rights and Conflict Management Project (HRCMP) of the Centre for Conflict Resolution (CCR), based in Cape Town, South Africa, hosted a five-day technical seminar from 29 November to 3 December 2004 in Cape Town.**

Established in 1999, the project has been lauded for its pioneering work on enhancing the protection and promotion of human rights by utilising approaches and insights from the conflict management field, and on integrating rights in conflict interventions. It has gained extensive experience in assisting partners and clients that are strategically placed to impact on the development of a human rights culture and the transformation of their society, and that operate on the intersection between rights and conflict management. This has entailed, in particular, a focus on statutory bodies which have an oversight function and serve to strengthen the developing culture of human rights in their societies. Based on its work thus far, and recognising the value of national human rights institutions, the Centre for Conflict Resolution hosted a technical seminar on "Conflict Resolution, Peacebuilding and National Human Rights Institutions in Africa". The purpose of the seminar was to explore the relevance of conflict management and peacebuilding for national human rights institutions in Africa, and to consider the contribution such institutions can make to constructive conflict management and peacebuilding in their societies. The seminar examined the role and mandate of national human rights institutions and the context in which they operate from a conflict resolution perspective, and familiarised delegates with approaches and frameworks from conflict resolution and peacebuilding that relate to human rights.

Participants were drawn from senior officials of national human rights institutions in southern, East and West Africa. The African Union and the National Institutes Unit of the Office of the United Nations High Commissioner for Human Rights were also in attendance.

The seminar was divided into five themes and each day focused on a specific theme. The first day laid the foundation for deliberations throughout the seminar by mapping out the context in which national institutions in Africa operate. Through a facilitated exercise, delegates identified, among others, conflicts encountered by national institutions in the course of implementing their mandates and the strategies used to respond to those conflicts. In that regard, delegates came to a common understanding that while their mandates may not explicitly provide for conflict management and peacebuilding, they nonetheless engage in activities that are meant to contribute to the resolution of conflict and the building of peace in their societies. The presentations, including one by the Chairperson of the South African Human Rights Commission, Mr Jody Kollapen, sketched a comprehensive background of the challenges facing the continent and specifically by national human rights institutions in conflict resolution and peacebuilding.

The focus of the second day was to build a framework for understanding conflict and its causes and to develop an appreciation of the relationship between human rights, conflict and the management thereof. An underlying objective was to facilitate an appreciation by national human rights institutions of how respect, promotion and protection of human rights instruments may be used as tools or mechanisms for conflict management.

The third day focused on conflicts at a micro-level. National institutions are engaged in conflict management at a micro-level through their complaints-handling mechanisms which mandate them to resolve disputes or complaints over alleged human rights violations. The day explored different approaches to handling conflict and the application of those approaches by national institutions. Delegates also delved into how best to communicate about human rights in a non-threatening manner using conflict resolution techniques.

On the fourth day, the seminar focused on conflict at a macro-level. The objective was to explore the contribution of national institutions to peacebuilding at a societal level. Delegates discussed the role of national institutions in peacebuilding through two models, namely the "Nested Paradigm" by John Paul Lederach and the "Four Dimensions of Human Rights" framework designed by the HRCMP.

The fifth day examined ways in which national institutions could integrate lessons learned and insights gained from this meeting into their work. At a regional level, national institutions called for, among others, more collaboration in order to strengthen their capacity to deal with conflicts and to contribute to peacebuilding initiatives. In addition, national institutions recommended that relationships with the African Union and New Partnership for Africa's Development should be strengthened to allow for national institutions to contribute to peace initiatives on the continent, such as through the African Peer Review Mechanism.

A presentation was made by the Chairperson of the Tanzanian Commission for Human Rights and Good Governance, Mr Justice Robert Kisanga, on the capacity-building programme between the Commission and the CCR.

# 1

## Introduction

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**T**he intersection of human rights and conflict management has become highly relevant in the African context - all the more so since the establishment of the African Union (AU), the New Partnership for Africa's Development (NEPAD) and related organs.

Recent developments in Africa have highlighted the importance of peace and security as the foundation for development and integration on the continent. Increasing emphasis is placed on good governance as a key factor in ensuring healthy, stable societies, with state institutions that are legitimate and capable.

The emerging security and governance architecture in Africa highlights the need to ensure human security and social justice; democracy, transparency, accountability and the rule of law; peacemaking, peacebuilding and post-conflict reconstruction; and conflict prevention and early-warning. The promotion and protection of human rights and the constructive management of conflict are thus at the core of efforts to develop "African solutions to African problems". They are imperative for the creation of environments in which the dignity of citizens is respected, their relationships and interactions are constructive and their potential can be developed.

Yet, moving in this direction is not without challenges, given, for example, the scarcity of resources and the magnitude of issues that need to be addressed. Awareness of such challenges does not, however, diminish the necessity to continue to link human rights concerns to efforts - including conflict interventions and peacebuilding processes - aimed at strengthening peace, security and governance on the continent.

The causes of conflict in Africa, while complex and diverse, are often related to human rights issues (for example, minorities, access to socio-economic resources and development, and the nature of the state). As human rights are important in the generation and manifestation of violent conflict, they need to be taken into account in the management, resolution and prevention of such conflict. Furthermore, while continental mechanisms are developed in the context of the AU and NEPAD, actors that can make important contributions also exist at the national level.

At the national level, national human rights institutions (NHRIs) are key actors in securing the protection and promotion of human rights, assisting states in upholding their responsibilities, strengthening democracy and governance, and facilitating the implementation of rights standards. The increasing presence of such institutions on the African continent raises the question of what role they can play in facilitating constructive conflict management, peacebuilding and good governance in their own societies, and how their efficacy can be enhanced. The 2002 Kampala Declaration flowing from the fourth meeting of African NHRIs called on these bodies to strengthen their peacebuilding capacity.

Traditionally, the mandate of NHRIs has not been understood or conceived of in terms of conflict resolution or conflict management. The focus of national institutions has been on the protection and promotion of human rights; dealing with conflict has generally not been considered part of their mandate. In part, this is the case because “conflict resolution” is often understood as a matter of politics, and the position of NHRIs generally does not lend itself to involvement in affairs of a political nature.

There is, however, increasing recognition that there is a synergy between human rights work and efforts towards the constructive management of conflicts. The relationship between rights and conflict is a close one: not only can human rights violations result from violent conflict, but they can also lead to such conflict. Internationally, it is thus increasingly acknowledged that durable peace and respect for human rights go hand-in-hand. Indeed, human rights actors have a vital role to play in the attainment of peace with justice, that is, a justice that is not only characterised by the absence of violence but also includes conditions for social justice, political equality and the rule of law. In other words, NHRIs, through their protection and promotion mandate, can make a significant contribution to strengthening the conditions for sustainable peace in their societies. They can serve as mechanisms for constructive conflict management at the national level, and can also work towards the prevention of (violent) conflict by ensuring that human rights are respected.

On a practical level, moreover, NHRIs generally are involved in conflict management in a variety of ways – they can play an early-warning role; may act as monitors of peace agreements; can promote measures to assist national reconciliation in a post-conflict context; and are at times called upon to act as mediator or intervener, or to facilitate dialogue between parties. Addressing complaints of human rights abuse also generally involves a certain degree of managing conflict while investigating and reporting on findings. NHRIs may also have an interest in seeking alternative methods of addressing rights-related conflict which are less adversarial and less costly than, for example, litigation. NHRIs are, therefore, often compelled to engage with conflict by virtue of their human rights mandate and in order to fulfil that mandate.

It is thus important to consider how skills, strategies and insights from the conflict resolution field can assist NHRIs through strengthening their capacity to implement their mandate effectively. The possibilities vary from enhancing technical skills (for analysis, negotiation, mediation and crisis intervention) to exposing NHRIs to the notion and perspective of peacebuilding, with a view to directing short-term activities towards long-term goals of building rights-respecting societies and legitimate institutions.

In sum, exploring the role of NHRIs in constructive conflict management and peacebuilding is an effort to assist such institutions in implementing their mandate effectively and strategically. Rather than a diversion from their mandate, it is an effort to enhance their ability to protect and promote human rights by utilising relevant skills, strategies and approaches from the conflict resolution field.

From 29 November to 3 December 2004, the Human Rights and Conflict Management Project (HRCMP) of the Centre for Conflict Resolution (CCR) hosted the first technical seminar on “African National Human Rights Institutions, Conflict Management and Peacebuilding”. The seminar brought together senior members of African national institutions, including chairpersons, deputy chairpersons, executive secretaries and commissioners from southern, East and West Africa. The seminar also attracted representations from the Office of the Chairperson of the African Union Commission and the National Institutions Unit of the UN High Commissioner for Human Rights.

The seminar explored the role and mandate of NHRIs, and the context within which they operate, from a conflict resolution perspective. It also sought to familiarise delegates with approaches and frameworks from conflict resolution and peacebuilding that relate to human rights.

The seminar defined its primary objectives as follows:

- To explore the relevance of conflict management and peacebuilding for NHRIs in Africa; and
- To consider the contributions such institutions can make to constructive conflict management and peacebuilding in their societies.

Over the course of five days, delegates were provided with the opportunity to:

- Increase their awareness of peacebuilding and the resolution of conflict, as well as examine the relevance of these disciplines to the work of NHRIs;
- Reinforce the value of human rights, especially as tools in the management of conflict;
- Explore if, and how, NHRIs can contribute to peacebuilding and the resolution of conflict;
- Facilitate the exchange of ideas and experiences among national institutions on the African continent;
- Identify specifically the stakes, challenges and possible strategies for strengthening the role of national institutions.

# 2

## Mapping the Context

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**The first day of the meeting was spent setting the context for the five days of the seminar. Two keynote presentations were made that framed the discussions throughout the seminar.**

The two presentations sketched a comprehensive background of some of the security and governance challenges facing the continent and, more specifically, national human rights institutions as the bearers of human rights promotion and protection at a national level.

A comprehensive overview of Africa's security architecture was presented, highlighting some primary security and governance challenges encountered in each of the continent's sub-regions. Delegates then identified ways in which African human rights institutions could complement efforts of the AU and sub-regional bodies in promoting human rights and peacebuilding. For example, national institutions identified NEPAD's African Peer Review Mechanism (APRM) as a possible platform for more collaboration with Africa's regional and sub-regional bodies.

A second presentation, by Mr Jody Kollapen, Chairperson of the South African Human Rights Commission, focused on national institutions, conflict management and peacebuilding. The presentation shared developments and challenges of the African human rights regime. It further examined the role of national institutions in relation to conflict management and peacebuilding, and raised critical questions for consideration by national institutions as they embark on this role. Questions included:

- What the political consequences of embarking on conflict management and peacebuilding would be, and how best to manage this;
- What impact such a role would have on other functions and competencies of NHRIs;
- How NHRIs would build credibility and trust to work in this role;
- How NHRIs could cope with the questions around amnesty and total forgiveness of perpetrators;
- What NHRIs could do in respect of victims;
- What kinds of conflicts NHRIs should engage in and how best to prioritise;
- What skills and resources were needed for an NHRI effectively to engage in conflict management and peacebuilding;
- How explicitly defining their mandate as conflict management and peacebuilding would impact on the scope of interventions of these institutions; and
- What their relationships with other dispute resolution mechanisms such as the courts or special tribunals would entail.

During a discussion that followed, delegates suggested that their mandates should be creatively interpreted to widen their scope of work. This was in recognition of the fact that while their mandates may not specifically be defined as conflict management and peacebuilding, their work nonetheless entails conflict management and peacebuilding. For instance, their complaints-handling mechanisms requiring them to resolve disputes of human rights violations are part of conflict management and peacebuilding work.

As part of context mapping, and also to have a better understanding of the specific context in which national institutions work and the issues they encounter, delegates discussed in more detail what their mandates entail; the kinds of conflict they encounter; strategies they have in place to address those conflicts; and their relationships with government, civil society organisations and other actors. Below is a summary of the feedback received.

## Mandate

Internationally, human rights institutions derive their mandates from the Paris Principles, which are international standards set by the international community for the establishment of national institutions for the promotion and protection of human rights (see Annex V). The Paris Principles prescribe, among other things, the competence and responsibilities of national human rights institutions, the composition, guarantees of independence and pluralism, and the methods of operation of these institutions.<sup>1</sup> Therefore, for national institutions to be recognised

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<sup>1</sup> United Nations, 1999, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, Professional Training Series No 4, UN Sales No E.95.XIV.2, New York and Geneva: United Nations.

internationally, they must comply with requirements as set out in the Paris Principles. At a national level, national institutions derive their mandates from national constitutions, their founding statutes and any other regulations established under their founding statutes.

National institutions have different mandates, depending on the country of origin and its legal system. In addition, due to historical developments on the continent, Francophone legal systems differ from Anglophone legal systems. For instance, tribunals under the French legal system were traditionally more inquisitorial than those of the English legal system. This has influenced the shaping of the mandates of national institutions under the French legal system.

However, since all national institutions have to meet the international criteria under the Paris Principles, some of the common aspects of their mandates include:

- Complaints-handling that involves receiving and investigating human rights complaints;
- Monitoring of human rights;
- Harmonising and ratifying national laws with international human rights standards;
- Visiting places of detention;
- Public and civic education;
- Disseminating information;
- Recommending and advising government or parliament on human rights matters related to policies and legislation;
- Assisting government in preparing reports on its human rights report to international human rights bodies;
- Administrative justice; and
- Initiating public hearings on specific human rights issues.

## Conflicts encountered

As already mentioned elsewhere in the report, national institutions do not necessarily define their mandates as conflict management and peacebuilding. However, delegates have acknowledged that the nature of the work of national institutions as human rights defenders expose them to various conflict situations. For example, those national institutions which have complaints-handling mechanisms are mandated to resolve complaints of human rights violations. As such, national institutions would deal with a variety of concerns, ranging from individual to societal issues. The conflict issues encountered by national institutions in the course of their work include:

- Children's rights
- Child soldiers
- Delayed justice

- Discriminatory traditional practices
- Environmental issues
- Excessive use of force by police or army
- Gender discrimination
- HIV and AIDS
- Inheritance
- Labour matters (especially disputes over benefits)
- Land disputes and land-related conflicts
- Pastoralists and farmers' disputes
- Professional negligence
- Racism/ethnic discrimination
- Religious and ethnic conflicts
- Retirement benefits/pensions

In addition to the above, national institutions also encounter conflicts over their role as national watchdogs for the promotion and protection of human rights. For many delegates, this was the first time they had critically considered how their work might result in conflict. For example, national institutions felt that the regular application of international human rights standards was unrealistic in light of socio-economic conditions in Africa. In addition, government officials are often hostile to members of NHRIs, especially where national institutions were critical about their government's human rights record. Conflicts sometimes emerge as a result of different interpretations of the mandate of the Commission. During the elections in Chad, for example, the Human Rights Commission (HRC) was barred by the executive from conducting voter-education because it was interpreted as falling outside the Commission's mandate. In Benin, the HRC was denied access to investigate conditions under which some Togolese refugees suspected of plotting a coup against the government were held, as it was felt the mandate of the Commission did not cover activities of the secret service.

## Strategies

National institutions use a variety of strategies to fulfil their mandates and to deal with conflicts they encounter. Some of these strategies include mediation, dialogue, conciliation, hearings, public enquiries, investigation, awareness-raising workshops, press briefings, periodic reporting to authorities and international bodies, lobbying, restorative justice and community peacebuilding initiatives. Among these strategies are some that are adversarial, such as investigation and reporting to international human rights bodies, while others, such as mediation and conciliation, are collaborative. These strategies are also some of the standards set under the Paris Principles, which require national institutions to resolve complaints of human rights violations in an amicable and speedy manner.

# Relationships

Due to their nature, NHRIs work with a variety of actors. These include:

- Government (for funding and staffing purposes);
- Members of the media (to assist with information dissemination);
- International donors (for resources and to act as pressure groups on governments with poor human rights records);
- Civil society organisations (for referrals, advocacy and collaboration on a variety of projects);
- Regional and international bodies; and
- Members of the public.

# 3

## Understanding conflict and its relationship with human rights

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**The main focus of the second day of the seminar was to build a framework for understanding conflict and its causes and to develop an appreciation of the relationship between human rights, conflict and the management thereof.**

An underlying objective was to facilitate an appreciation by national institutions of human rights instruments as a tool or mechanism for conflict management.

### The nature of conflict

Conflict is normal and natural. It is an inevitable part of our lives and cannot be completely eradicated. However, it is important to manage it constructively and more creatively so that it does not escalate into violence. Viewed in this positive light, conflict may present opportunities for change, growth, development and creative problem-solving.

As a way of building a common understanding of conflict, delegates were asked to share their perspectives of how they view conflict. The images of conflict presented by delegates were largely negative and related to, among others, violence, catastrophe, destruction, tragedy, chaos and bloodshed. This negative understanding of conflict is often reflected in how national institutions respond to those conflict situations they encounter. For example, many national institutions represented at the meeting use adversarial and legalistic approaches that rely mainly on

the interpretation of statutes or the constitution to deal with situations of conflict. This inherently negative view of conflict limits the scope of national institutions to engage, for example, with some of the structural and often invisible conflict situations that are not necessarily violent, destructive, catastrophic or chaotic.

An understanding of conflict that is inherently negative would elicit responses that seek to suppress or completely eliminate conflict. More often than not, this is not possible because not all conflict lead to bloodshed, destruction and catastrophe. For instance, at an intra-personal level, people often experience internal conflict over certain decisions that affect their lives. However, the conflict does not always lead to violence. Similarly, at an inter-personal level many conflict situations are often encountered, such as an argument with a colleague that does not necessarily lead to violence. At a community level, conflict and competition may arise over power, sharing of resources, etc, without leading invariably to violence. Therefore, it is important to distinguish between conflict and violence as this would impact on the intervention strategies put in place by national institutions to respond to those conflicts.

This new understanding of conflict and its distinction from violence was an important one for national institutions as they encounter conflict situations daily. At a micro-level, through their complaints-handling mechanisms, NHRIs deal with disputes over rights concerns. Therefore, the mechanisms that national institutions employ to respond to those disputes should not be directed at suppressing or eliminating those concerns, but at managing them to ensure that there is no violence. Indeed, national institutions cannot escape dealing with disputes over rights because the very notion of human rights is conflict-laden. For instance, national institutions encounter conflict over interpretations of human rights, or balancing of rights, which do not necessarily lead to violence.

## The relationship between human rights and conflict management

The main objective of this session was to build an understanding and appreciation of the relationship between human rights and conflict management. By providing the link between causes of conflict and denial of basic human needs, delegates were able to understand how unmet needs may lead to violations of human rights which, in turn, may heighten the potential for conflict. According to John Burton, a conflict resolution theorist, basic human needs are universal motivations that are an integral part of human beings and they relate to both material concerns such as food, clothing and shelter, and non-material concerns such as dignity, respect and affection.<sup>2</sup>

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2 Burton, J, 1990, *Conflict: Resolution and Prevention*, London: Macmillan, pp. 37 – 38.

Another conflict resolution proponent, Manfred Max-Neef, has developed a theory of basic human needs that clusters human needs into the following nine categories: understanding, freedom, leisure, identity, protection, creation, affection, participation and subsistence.<sup>3</sup> Accordingly, all needs are not linear in application. All the needs are inter-related and denial of one may affect the enjoyment of others. For instance, a denial of the need for freedom would automatically impact on the need for participation, identity, subsistence and so forth. Similarly, the fulfilment of one basic need would impact on the other needs. Enjoyment of the need for protection, for example, would impact on other needs such as participation, identity, recreation, subsistence and so forth.

The relevance of the basic human needs theory for human rights is that every basic need - material and non-material - is directly associated with basic human rights. By comparing the needs stated above with the Universal Declaration of Human Rights, one would be able to identify direct linkages with the provisions of this international statute. For instance, a need for freedom may be linked to the rights to freedom of movement and expression, the right to participate, dignity, etc. In addition, a need for protection may be linked to the rights associated with security of the person. Therefore, frustration of basic human needs leads to violations of human rights, which, in turn, heightens the potential for conflict. In that sense, denial of basic human needs may be said to be the root cause of violent conflicts.

The relationship between conflict and human rights is two-fold. Firstly, sustained denial of human rights can lead to violent conflict such as a militia group taking up arms because its demands for power-sharing are not met. In turn, violent conflict may lead to human rights violations such as the loss of limbs, life, property and dignity during a war. Therefore, human rights can be both a cause and a consequence of violent conflict. Seen in this light, the promotion and protection of human rights would then lessen the potential for violent conflict. Human rights can, therefore, be used as a mechanism or framework for conflict management.

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3 Max-Neef, M A, 1991, *“Human Scale Development: Conception, Application and Further Reflections”*, New York, London: The Apex Press, p. 17.

# 4

## Conflict at a Micro-Level

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### Approaches to conflict

National institutions are involved in conflict management at a micro-level through individual complaints-handling mechanisms. They may use different approaches according to stipulated requirements in their mandate. Some approaches are interest-based and geared towards building relationships between disputing parties and help to restore trust in the institutions of the state. Other approaches may be rights-based, and others power-based. The focus of this half-day session was to enhance a better understanding of these different approaches and to explore how they may arise in the context of the work of national institutions. In addition, the various applications of these approaches in communicating about human rights were explored.

The table below outlines the three approaches to conflict, namely, interest-based, rights-based and power-based.

APPROACH	EXPLANATION	EXAMPLES
Interest-based approaches	Interest-based approaches seek to reconcile the needs, desires and concerns of the parties involved.	Facilitating dialogue. Mediation. Making recommendations for law reform.
Rights-based approaches	Rights-based methods are based on an organisation's or society's laws, norms and values in a given situation. The decision is made by using some independent set of criteria to determine fairness, or which party's claim is more legitimate.	Prosecution. Resort to justice system. Recommendations for disciplinary action. Litigation. Checking the constitutionality of a law or law reform proposals.
Power-based approaches	Power-based approaches determine who is more powerful, implying that the stronger party determines the outcome. Parties rely on their power (whatever the source) to promote or agitate for their position.	Regular reporting to governance structure. Lobbying for change. Investigation. Uganda: free parties being held in gazetted locations and being tortured.

Power-based approaches refer to a situation where there are clear power imbalances between the disputing parties. Sources of power relevant to human rights disputes include systemic power in which the assumptions of an institution's policies subtly favour one party over another. Personal power may exist, for example, where one party's personal attributes, such as the level of education or degree of assertiveness, are more honed than those of the other party. The

more powerful party may use their power to determine the outcome of the complaint. They may use force to intimidate or manipulate the less powerful party to agree to a settlement. The power-based approach may entail 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 act in a way it would not otherwise do.<sup>4</sup>

Rights-based approaches, as opposed to interest-based approaches, may imply methods that are based on laws, rules, norms, traditions or values within a community. In this case, the decision is made by applying some independent set of criteria to determine fairness on which party's claim is more legitimate. Litigation therefore becomes the mechanism used to deal with the dispute. For example, a party may decide to sue another for defamation. Rights-based approaches exist at three levels - national, regional and international. At national level, domestic laws and policies, like a country's constitution, may be used as a framework to decide on a particular matter, while at a regional level, a party may, for example, decide to submit a complaint to the African Court on Human and Peoples' Rights as soon as it becomes functional. At an international level, however, a complaint may be lodged with the International Court of Justice to decide on a particular matter.

The basic problem in most disputes lies not in conflicting positions, but in the conflict between each side's needs, desires, concerns and fears.<sup>5</sup> Such desires and concerns are interests and they are the silent movers behind the hubbub of positions; they define the problem. Interest-based approaches to a dispute seek to reconcile those needs, desires, concerns and fears of parties. This approach is mostly concerned with understanding the underlying needs that a party may have, or why a party desires a particular outcome.

During a conflict situation, parties may use different approaches to resolve their dispute. Each has advantages and disadvantages, and it is important to assess which approach would be appropriate and most useful. In instances where the dispute intensifies or escalates, parties tend to resort to more powerful techniques to get their demands met. Disputants may move from interest-based approaches to more rights-based and power-based techniques to get their message across. This usually results in the following problems:<sup>6</sup>

- An increase in the frequency of disputes.
- A decrease in the satisfaction of outcomes. Dissatisfaction may lead to the same dispute recurring, or parties reporting the same dispute repeatedly. It does not, therefore, encourage sustainability.

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4 Ury, W L, Brett, J M and Goldberg, S B, 1998, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*, San Francisco: Jossey-Bass Inc. Publishers, cited in Parlevliet, M, 2002, *Bridging the Divide: Exploring the Relationship Between Human Rights and Conflict Management*, Track Two, Volume II, No 1, March 2002, p. 27

5 Fisher, R, Ury, W, Patton, B, 1997, *Getting to Yes, Negotiating an Agreement Without Giving In*, Arrow Books Limited, p. 42.

6 Centre for Conflict Resolution, 2000, *The Human Rights and Conflict Management Programme Training Manual* p. 18.

- Greater strain on inter- and intra-relationships. Because tensions are still high, it would be difficult to build any relationships under the circumstances.
- Higher transaction costs (such as time, resources and emotional energy).

On the other hand, interest-based approaches encourage relationships as they lessen the potential for more disputes. They also focus on confidence and trust-building between the disputants. Some of the benefits of interests-based approaches include that:

- They are less costly in terms of time, money and human resources;
- Parties take ownership of both the process and outcome and as a result the decision is sustainable; and
- They are more sustainable in the long-term.

Where human rights disputes are concerned, it is possible to use a variety of approaches in a given situation. Most human rights disputes are concerned with values that include interests. For instance, a case of discrimination based on sexual orientation also touches on the interests of identity and self-determination of a person. Therefore, even if it is possible to bring the case before a court of law, it is ultimately the interest-oriented considerations that influence the form of resolution sought. Accordingly, it would be the inter-play between rights and interests that would ultimately best serve the ends of justice.

In addressing imbalances of formal power, interest-based approaches ensure that parties participate in the proceedings on an equal basis. They are both given similar degrees of control over the proceedings to ensure equality at all times. While litigation or laws and policies may prevent retribution, the enhanced personal contact and communication of interest-based mechanisms, such as mediation, may engender a more sincere and honoured resolution than the confrontational and adversarial adjudication process.

## Communicating about rights

The purpose of this session was to explore how conflict resolution approaches may be used in communicating about human rights. In many instances where rights are communicated to people, it is often in an adversarial, rights-oriented and power-focused manner. Often people are told to "respect rights or else...". The focus is always on legal instruments that must be complied with, without helping people understand how it is to their benefit to comply or uphold those instruments. Often communicating about human rights is very positional, with limited sharing of why it is in the interest of people to promote and protect human rights.

In order to illustrate the application of the different conflict resolution approaches in communicating about rights, a role-play was set up between an army colonel and a commissioner of a national institution. The human rights commissioner met with the army colonel to discuss with

him recent human rights violations by the army and to bring to his attention what consequences of such violation may be.

The discussion started on a positional note, with the human rights commissioner accusing the army colonel of failing to uphold human rights instruments in the army, thereby perpetuating situations of violations of rights by members of the army. Naturally, the colonel became defensive, citing the mandate of the army as his defence. The positions of the parties became progressively intractable and more reliant on their respective authority. The language became harsher, more aggressive, parties started to blame each other, the postures and body language mirrored the aggression in their voices. Both parties relied solely on exercising their (perceived) power over the other, but because their mandates clashed (and were, on the face of it, valid), neither was able to force the other to concede.

The role-play was debriefed, with delegates discussing how an interest-based approach to communicating about human rights could have yielded a more positive response from the army general. Interest-based approaches are geared at paraphrasing, laundering the hurtful speech, increasing the understanding of the positions of parties and opening dialogue that could lead to more co-operation and joint problem-solving. Instead of focussing on stated (and strongly-held) positions, interest-based approaches focus on moving parties towards identifying and addressing underlying interests and needs.

Some of the shared insights were:

- Relying on power in engaging another party, one will invariably meet the power of the other party;
- As representatives of NHRIs, delegates relied too heavily on the law; a more practical or common sense approach was needed to deal with the realities of the different situations with which the NHRI became involved; and
- Understanding often requires time – if someone does not understand something, they should be afforded more time and, if possible, reconvene at a later stage.

# 5

## Conflict at a Macro-Level: Peacebuilding

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**N**ational institutions work on conflict issues at a macro-level when their activities are meant to have a direct impact on peace and stability at a broader societal level. Through their work in promoting and protecting human rights, national institutions may simultaneously impact on broader societal issues that affect peace and stability.

In order to better understand the role of national institutions in peacebuilding, delegates explored their understanding of the two terminologies, “peace” and “peacebuilding”.

Peace was viewed in both the negative and the positive sense. By negative peace, it is meant a situation where there is an absence of direct, physical violence. In that sense, national institutions contribute to bringing about negative peace where their work requires them to advocate against, among others, the physical abuse of women and children, the torture of prisoners, and the application of inhumane punishment such as corporal punishment and the death penalty. Positive peace, on the other hand, implies a presence of conditions for political equity and social justice, such as respect for rights and constructive dispute resolution mechanisms.

Delegates observed that it is difficult to measure the degree of peace and questioned whether peace was measured in terms of political freedom or economic prosperity. For instance, would Singapore, a one-party state that has provided great economic stability for its citizens, be regarded as a peaceful nation? Or would South Africa, with its most progressive constitution but with a slow rate of service delivery and high rate of crime, be regarded as peaceful?

Delegates also acknowledged that the achievement of peace is an ongoing process and a national project. The responsibility for the achievement of peace rests with everyone in society, though different groups in that society have different levels of responsibility. This means that those in leadership positions or in civil society have a greater level of responsibility due to their role in society. The term “peacebuilding” was first introduced by the former United Nations Secretary-General, Boutros Boutros-Ghali, in his “Agenda for Peace”, as one of the proposed intervention strategies in responding to violent conflict.

According to Boutros-Ghali, peacebuilding is an “action aimed at identifying and supporting structures which will tend to strengthen and solidify peace in order to prevent a relapse into conflict”.<sup>7</sup> In recent years, this limited view of peacebuilding has changed with the recognition that peacebuilding is not only a post-conflict phenomenon since the aftermath of one violent conflict might be the prelude to the next. For instance, the United Nations Security Council has recognised that peacebuilding is “aimed at preventing the outbreak, the recurrence or continuation of armed conflict”.<sup>8</sup>

Peacebuilding involves undertaking programmes designed to address the structural causes of conflict, the grievances of the past and building sustainable relationships in order to promote long-term stability and justice.<sup>9</sup> Some of the methods involved in peacebuilding activities may include economic restructuring, institution-building, education, building a rights culture, political reform and strengthening relationships. Some of the legal provisions that may be used in peacebuilding efforts include national constitutions, bills of rights and international human rights instruments. Seen in this light, peacebuilding may strengthen negative peace by ensuring an absence of direct physical violence. It can also contribute to building positive peace by transforming structural causes of conflict.

There are three major aspects of peacebuilding that are of relevance and particular importance for national institutions:

- Peacebuilding aims to reduce structural violence by putting in place institutions and mechanisms to provide for constructive resolution of disputes and for institutionalised respect for human rights - measures to transform the structures of socio-economic and political governance.
- Peacebuilding measures also proceed on a second track – pro-actively enhancing relationships between different groups in society to minimise the negative expression of differences. This means that peacebuilding also attempts to address the needs of various parties and to establish a common set of values on the basis of which people interact with each other and the state.
- Peacebuilding looks both backwards at the past, as well as forward<sup>10</sup> to the future; peacebuilding measures seek to learn from a violent past to ensure that the same mistakes are not made in the future.

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7 Boutros-Ghali, B, 1992, “*Agenda for Peace*”, UN Document A.47/277-S/24111, June (available at [www.un.org/Docs/SG/agpeace.html](http://www.un.org/Docs/SG/agpeace.html)).

8 UN Security Council, 2001, S/ PRST/2001/ 5, Of 20 February 2001.

9 Miall, Hugh, Ramsbotham, Oliver, and Woodhouse, 1999, “*Contemporary Conflict Resolution*”, Cambridge: Polity Press, pp. 186 – 188.

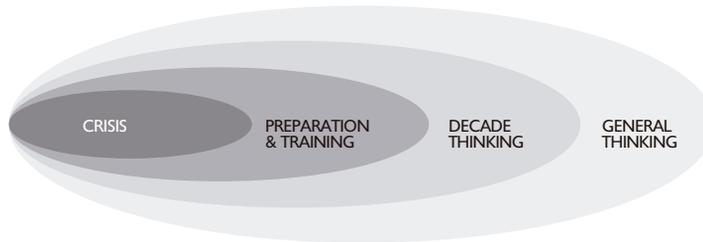
10 Parlevliet, M, 2002 , “*Bridging the Divide: Exploring the Relationship between Human Rights and Conflict Management*”, Track Two, Vol. II, No 11, March 2002.

# The Nested Paradigm Model

This model was developed by John Paul Lederach, a conflict resolution theorist and practitioner.<sup>11</sup> It is useful in understanding the various levels at which peacebuilding needs to take place. The Nested Paradigm was used to illustrate the relevance of peacebuilding for national institutions and the roles these institutions can play in contributing towards peacebuilding at both micro- and macro-levels.

According to Lederach, peacebuilding happens along a timeline with four reasonably distinguishable phases. These phases are:

- Crisis: 0-6 months (immediate action required)
- Preparation and training: 1-2 years
- Decade thinking: 5-10 years (the medium-term future)
- Generation thinking: 30 years (long-term future vision)



THE NESTED PARADIGM MODEL (I)

These zones are not mutually exclusive, nor could one consider progress along the timeline linear by any means. Thus, preparation and training could start even if the crisis has not been completely resolved. Similarly, preparation will not only be for the short-term, but has to take into account medium- to long-term needs.

Some of the roles that national institutions may play at each of the different levels may include:

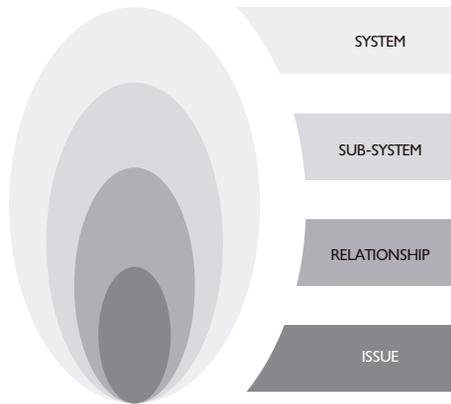
- Containment (for the crisis phase);
- Mediation, education and awareness-raising initiatives (for the preparation and training phase);
- Institutions and structures (for the “decade thinking” phase); and
- Constitution-making (for the “generation thinking” stage).

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<sup>11</sup> Lederach, J P, 1997, *Building Peace: Sustainable Reconciliation in Divided Societies*, Washington, D C: United States Institute of Peace, p. 55.

The second level of Lederach’s model illustrates the different levels of intervening in a conflict situation and some of the mechanisms available to national institutions that may be employed to contribute to peacebuilding:

- **Issue level:** For example, torture in places of detention. In this case, national institutions may investigate the complaint and produce a report or recommendation to the relevant authorities.
- **Relationship level:** This may include relations between prisoners and warders; prisoners and gangs; prisoners and other prisoners; etc. National institutions may try to conciliate or mediate between the parties as a way of rebuilding trust and confidence.
- **Sub-system level:** The detention centre may be viewed as the microcosm of the larger system. In this case, national institutions may want to investigate the management systems to determine how this may have allowed conditions that resulted in the violations of human rights.
- **System level:** This would involve the government and the entire criminal justice system, including laws and regulations that govern the system. In this case, national institutions may intervene to ensure that national laws are in line with international human rights standards.



THE NESTED PARADIGM MODEL (2)

Delegates found the above framework useful as an analysis tool. For example, when a complaint is received, analysing it in terms of the Nested Paradigm model above would assist in designing intervention strategies that would impact at different levels of society. The model also helps to determine appropriate activities for specific scenarios. Furthermore, the model allows national institutions to be more strategic in their interventions as it helps to clarify at which level to intervene and at which not.

## Four Dimensions of Human Rights Framework

This framework was developed by the Human Rights and Conflict Management project as an attempt to integrate human rights into peacebuilding interventions. According to this model, human rights have four dimensions, namely: **rules, relationships, structures and processes**. Conflict resolution practitioners tend to focus more on the relationship and process levels, whereas human rights actors focus their attention more on rules and institutions. The Four Dimensions of Human Rights Framework attempts to bring together all these dimensions and illustrates the relevance of a more integrated and holistic approach to conflict intervention. The framework further highlights the benefits of multi-dimensional strategies when intervening for long-term sustainable peacebuilding.

- **Rights as Rules** implies those standards that should be upheld that outlaw certain behaviour and encourage others. These rules are contained in international instruments, constitutions, statutes, policies or contracts. They also include customary practices and traditions. The violation of these rules could heighten the potential for violent conflict.
- **Rights as Relationships** is located in a social context. They may be expressed in the relationships between the state and its citizens, as well as among citizens themselves – the so-called vertical and horizontal application of rights. As much as rights govern relationships, they also carry responsibilities. In that respect, the African Charter on Human and Peoples' Rights was the most progressive embodiment of human rights in that it not only recognised individual and group rights, but it also recognised duties/responsibilities that accompany the enjoyment of those rights.
- **Rights as Structures** and institutions recognises that the exercise and enjoyment of one's rights are dependent on the structures set up by society to facilitate the exercise and enjoyment of those rights. These structures also include mechanisms that are put in place to respond to conflicts in a more constructive and co-operative manner. Again, the African Charter recognised this important dimension by stipulating that all domestic remedies should have been exhausted before regional and international dispute resolution mechanisms are considered. In that sense, the Charter encouraged governments to create institutions and structures at a domestic level that can best facilitate the exercise and enjoyment of rights, and constructive conflict management.
- **Rights as Processes** are expressed in the range of processes available to deal with conflict both adversarial and co-operative. This dimension of rights advocates conflict resolution processes that are participatory, inclusive and people-centred. The processes must be geared to the promotion of human rights.

The Four Dimensions of Rights Framework may be applied alongside the Nested Paradigm. For instance, when intervening at the “issue” level, national institutions may want to ensure that the processes used are geared towards co-operative problem-solving that take into account the needs and interests of the parties concerned.

# 6

## Looking Ahead

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**The fifth and final day of the seminar was spent attempting to synthesise the lessons learnt and to consider ways in which delegates could apply those lessons in their practice, both in their individual institutions and collectively on the continent.**

In addition, delegates allocated time to consider some of the questions raised on the first day by the Chairperson of the South African Human Rights Commission, Mr Jody Kollapen, in his presentation. The questions considered include:

- What are the political consequences of embarking on a conflict resolution and peacebuilding role and how do we manage those?
- What should be the relationship between NHRIs and other actors included in conflict resolution, peacebuilding and addressing conflicts?
- How can NHRIs cope with the questions around amnesty and total forgiveness of perpetrators, and what could they do in respect of the victims?

In considering the political consequences of adopting a conflict resolution role, delegates focused on election-related conflicts and how they would handle the potential violation of freedoms, especially the freedoms of choice and association. Measures include that NHRIs could evaluate how the election was organised. They could run civic education programmes and even arrange meetings between conflicting parties to emphasise their joint interest in ensuring free and fair elections (if the NHRI was deemed to be an honest broker by both parties).

The NHRI should promote constant dialogue, consultation and explore meaningful partnerships in building and strengthening relationships with political parties, the media, NGOs, local

community groups, international and other observers and local administrative bodies and authorities. The aim would be to build credibility and trust in the institution. NHRIs need to work on public and government perceptions of them, and their impartiality and fairness. Often the impartiality and fairness of the NHRI was the goodwill upon which its effectiveness was built; it was also the way in which the discharge of its mandate would be accepted by the widest range of people. Other relationship-building strategies would include publicity of the work of the NHRI (through media or other public fora), collaboration with NGOs and co-operation with government departments and parliament.

On the question of amnesty, the overwhelming feeling among delegates was that NHRIs should become involved in discussions around amnesty as part of their mandate to promote and protect the human rights of both victims and perpetrators. NHRIs should not lose sight of the necessity for reparations in the process of national healing. In pursuing the issue of amnesty, it was felt that NHRIs could partner with international agencies and organisations in this regard. Work could also be done to ease the pain and trauma of the victims who had to relive their anguish. In respect of perpetrators, there was much support for making greater use of public apologies as a means of persuading perpetrators to own up to their deeds.

## Recommendations and Way Forward

Delegates discussed steps they would like to take to implement some of the lessons and insights learned during the seminar. The recommendations were deliberated under three topics, namely: (1) how to impact at an institutional level; (2) what efforts and support were needed to put in place at a regional level; and (3) what efforts could be made at a continental level.

### I. Own institution

- NHRIs from Malawi, Tanzania and Zambia would look into politically-motivated violence in each of their countries.
- The Malawi Commission would look at communal land disputes and would monitor the implementation of policy in this regard.
- In Zambia, the issue of child abuse warranted a public enquiry.
- In East Africa, NHRIs would ensure the internal dissemination of learnings from the seminar.
- A permanent consultative network should be created for West Africa.

### 2. Efforts and support at sub-regional level

SADC:

- NHRIs from the SADC countries would look at the pressing issue of child trafficking (especially young girls) among Malawi, Tanzania and Zambia.

## East Africa:

- Delegates from East Africa would endeavour to set up a sub-regional forum for NHRIs.
- The issue of how best to co-operate in respect of some cross-border conflicts would be one the forum would address. The NHRIs would explore how best to utilise international conventions to impact positively on these conflicts.
- As an additional step, the NHRIs would seek accreditation as observers at the sub-regional mechanism.

## West Africa:

- Delegates undertook to reinforce or develop networks and networking by using the Economic Community of West African States (ECOWAS) forum of national institutions, which is currently dormant. They undertook to meet in Dakar to reactivate the forum.
- Furthermore, a focal point for each ECOWAS country would be identified. There was an undertaking to set up a website in partnership with CCR and the Office of the High Commissioner for Human Rights (OHCHR) on the issue of peacebuilding, and the NHRI contribution to that endeavour.
- Delegates would consider organising a regional conference to disseminate concepts on conflict management and conflict resolution; and also use the Kampala Declaration to build partnerships with NGOs and civil society.
- Delegates undertook, at the level of the African Commission on Human and Peoples' Rights (ACHPR), to strengthen their capacity with new ideas on conflict management and conflict resolution.
- Delegates also resolved to co-ordinate the activities of NHRIs in the sub-region and urged the committee to take a clear decision on including conflict management and conflict resolution in the mandate of NHRIs.
- The situation in Côte d'Ivoire was identified as a focus of concern and delegates expressed the desire to seek positive solutions using some of the frameworks discussed at the seminar.

## 3. Efforts at continental level

Delegates decided that they would take advantage of the upcoming Africa national institutions conference scheduled to take place in Mauritius in early 2005 to discuss some of the issues raised at the seminar. Delegates undertook to put the issue of capacity-building (in relation to conflict management and peacebuilding) on the agenda of that meeting. In addition, delegates decided to put on the agenda the issue of more co-operation between the AU, national institutions and the ACHPR.

National institutions undertook to correspond with each other via email. In addition, they would explore the possibilities of setting up an NHRI Forum website link on conflict prevention and a

bi-weekly email newsletter. At an international level, a representative of the OHCHR highlighted that the OHCHR is involved in a 28-month project on the prevention of torture and conflict prevention. She indicated that she would recommend to the OHCHR office in Geneva that seminar delegates should be invited to participate in the project.

## Conclusion

At the end of the seminar, the Chairperson of the Tanzanian Commission for Human Rights and Good Governance (CHRAGG), Mr Justice Robert Kisanga, gave a presentation about the successful partnership between CHRAGG and CCR in the course of 2004. The partnership entailed an intensive capacity-building programme during which senior CHRAGG members received training in conflict management, human rights and peacebuilding. He highlighted the relevance and importance of such training for national institutions. (See Annex II)

The first Technical Seminar of African National Human Rights Institutions hosted by the Human Rights and Conflict Management project of the Centre for Conflict Resolution was a great success. It managed to draw together leaders of national institutions from across the continent to explore their role in conflict management and peacebuilding. At the end of the five-day programme, delegates felt that national institutions had definite roles to play in conflict management and peacebuilding, and that their mandates should be creatively interpreted to allow for more active engagement with these issues.

# Annexes

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## Annex I

Mr Jody Kollapen

Chairperson of the South African Human Rights Commission

Thank you for the invitation to address you on this important seminar. This is a critical time for our continent, but also a time of great promise and expectation. The Constitutive Act of the African Union displays a powerful commitment to the creation of conditions that would foster peace, development, human rights, good governance and the rule of law. However, its preamble is acutely conscious of the “fact that the scourge of conflicts in Africa constitutes a major impediment to socio-economic development of the continent and the need to promote peace, security and stability as a pre-requisite for the implementation of our development and integration agenda”.

The positive political developments we see in various quarters, the positive developments on the human rights front which we hope will see the establishment of the African Court on Human and Peoples’ Rights, and the economic development evidenced through, amongst other initiatives, the NEPAD process, must all augur well for us. We also increasingly see the African leadership engage robustly and with urgency the problems that, from time to time, emerge, including Darfur, the Ivory Coast and Burundi, to name a few. If we are to determine our own destiny then it is precisely this kind of leadership, initiative and boldness that is required.

Yet, all too often and with regularity that is depressing, conflict, instability and war tears asunder that which we painstakingly need to build. When that happens there is little that can be done to advance development, and there is little that can be done to advance human rights. Under such circumstances and within a prevailing environment that is riddled by destructive conflict we reduce our ability to build our societies.

Democracy, we are told, is spreading across the globe and indeed on our continent. While we should obviously welcome this development, it is important that we retain an agreed understanding on what precisely this means. A UNDP report released earlier this year and focusing on Latin America found that, notwithstanding the growth of formal democracy in the region, a substantial number of Latin Americans (some 55%) said they would support an “authoritarian” regime over democratic government if authoritarianism could resolve their economic problems. Slow growth, the inability of governments to effectively manage conflict and deepening disparities were some of the main reasons why people had become disillusioned with democracy. I am not suggesting that the time has come to reject democracy in favour of some other system, but rather point out that the kind of issues raised in the UNDP report exist in similar form on our continent and that we must seriously engage the issue of how democracy, in the words of Amartya Sen, has not only a public ballot perspective but also a public reason perspective. The former speaks to the adequacy of the ballot and the integrity of the vote-counting process, while the latter speaks to the ability of government and institutions to effectively respond to public reasoning – what Sen refers to as government by discussion.

It is against this background, this context and indeed this expectation of what democracy means and what it must be able to deliver that we may proceed to examine the role of national institutions (NIs).

### **The role and place of national institutions (NIs) in a crowded democratic landscape**

There is little doubt that the past 20 years or so has seen a phenomenal growth in national institutions (NIs). Every country has to have one and very often governments use the existence of NIs as irrefutable evidence of their commitment to democracy and human rights. The situation may well be more complex than that.

Given that NIs are relatively new institutions, there cannot simply be an assumption that they are necessary or a precondition to the growth of democracy and human rights. An NI would, I believe, have to “earn” its place amongst other institutions. In this regard, issues relevant to its independence, how it uses its mandate in dealing with national issues, its responsiveness to public reasoning, the contribution it is able to make in advancing human rights while navigating the complexities created by culture, religion and language; its ability to work with other role-players, including government and civil society, and its ability to enjoy the respect and support of diverse sectors within a nation all ultimately determine whether it will have a relevance in a country and precisely what that relevance will be. It is exactly these kind of considerations that distinguish NIs from each other, and one of the most testing questions I often have to ask of the institution of which I am the chairperson is: “If the Human Rights Commission were to close its offices tomorrow – who would notice; would sufficient numbers notice...would it leave a significant gap?”

I have little doubt that NIs can indeed become indispensable in supporting democracy and some have already demonstrated this. With an effective legal mandate, adequate resources and a commitment to doing their core business with efficiency and commitment, we see progress on many fronts. And it is precisely the understanding of what this “core business” means that will engage us for the next few days.

This seminar seeks to examine the role (if any) of NIs in peacebuilding and conflict resolution. Some would balk at the idea of an NI being involved in conflict resolution, arguing cogently that human rights work is based on clear principles and that the approach is to investigate human rights violations, determine accountability and provide redress. In all of this the principle cannot be compromised.

On the other hand, it is said that conflict management and peacebuilding is about seeking compromises and finding accommodation – it allows principle to yield to pragmatism. I would imagine that many NIs have defined their roles as excluding conflict management and peacebuilding for reasons that include the above. In an excellent exposition of the matter, Michelle Parlevliet, of CCR, writing in Track Two (Vol II No 1 March 2002) - while accepting that it would be difficult, if not impossible, to merge the areas of human rights and conflict management - argues strongly that these need not be mutually exclusive, and proceeds to provide some very cogent reasons for the linkage between human rights and conflict management. They include:

- 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
- Institutionalised respect for human rights and the structural accommodation of diversity is a primary form of conflict prevention
- In many instances there is a need for the combination of the prescriptive approach of human rights practitioners and the facilitative approach of conflict management practitioners
- 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
- Conflict management can function as an alternate to litigation in dealing with rights-related conflicts

Thus, despite the significant differences in approach to dealing with human rights issues and the resolution of conflict, there are considerable areas of overlap. The reality indeed is that when NIs deal with human rights-related disputes they invariably become involved in dealing with conflict simply on account of the fact that conflict is both a cause and symptom of human rights violations and seeking to carve a clear and distinct path between the two is simply not possible nor practical.

The challenge which faces NIs is that in order to create the conditions within their societies in

which human rights are protected and respected, they must have an abiding interest in dealing with and managing - to the extent that they are capable and to the extent that it is possible - the various issues that generate conflict. Of course, the matter becomes considerably complex when we accept that many of the conflicts that characterise our nations are political, are rooted in disputes about resources, identity, belonging, the quest for power, identity, self-determination, etc. However, it would be difficult to argue that an NI can insulate itself from these processes that have a direct impact on its work.

Thus, while many NIs see their core business as creating awareness and educating the nation about human rights, receiving and investigating complaints and undertaking research and monitoring, the reality is often that such processes, even if they were optimally discharged, may not make a significant positive impact if the root causes of what generates the human rights violation is not addressed.

By way of example - in South Africa, non-nationals often complain about prejudice and discrimination they experience at the hands of South African nationals and institutions, and speak of conflict between themselves and citizens. While an NI may well be equipped to deal with the consequences of that conflict by investigating instances of discrimination and providing relief, the problem is unlikely to dissipate unless the underlying causes of the conflict is addressed. It may lie in the competition for scarce resources, it may well lie in the relative ignorance, perceptions and stereotypes the different groups hold about each other. Whatever the case may be, if the NI is able to use its powers and authority to attempt to resolve the underlying conflict, the prospect of an enduring and lasting peace is enhanced, as opposed to the NI simply narrowly focusing on the human rights violations and dealing with them. Under such circumstances the possibility of further human rights violations are significantly reduced.

In this regard one must, of course, be mindful and sensitive to the fact that, should NIs embark on a substantive role with regard to conflict management and peacebuilding, it cannot simply be achieved through taking a policy decision to do so. What it will entail is a careful consideration of the political consequences of such a decision and how to manage those, the skills and resources that such a role will require, the relationship between the NI and other players who may traditionally see the management of conflict as their forte (here the principle of complementarity should be considered), the kind of focussed/limited areas within the conflict management scenario they would chose to become involved in and, finally, the possible impact such a role may have on the other functions and competencies of the NI.

These are no doubt formidable obstacles/challenges but I do not see them as insurmountable. If NIs are to continue remaining relevant in the context of their nations, they need to ensure that how they interpret and discharge their mandate has a relevance and a synergy with the reality on the ground. On our continent, conflict in all its forms continues to remain a barrier to citizens accessing and enjoying the rights so eloquently exposed in the African Charter on

Human and Peoples' Rights. If that barrier is to be overcome, then, without doubt, NIs need to seriously consider the role they may well perhaps play in this area.

The role of NIs in conflict management and peacebuilding is not a novel suggestion. When NIs met during the 4th Conference of African National Institutions in Kampala, Uganda, in 2002, they unanimously approved the Kampala Declaration which, amongst other things, committed African NIs to “pay greater attention to issues related to peace, conflict resolution, democracy and development”, and to “play a greater role in peace and education, the importance of tolerance and the greater ideal of peaceful co-existence” (Kampala Declaration 2002:2(b) I, III.). It also called on NHRIs to urge their governments to, amongst other things, “institute deliberate plans for peaceful resolutions of conflicts in their respective countries (...), put in place mechanisms for early warning and action to address intra-state and intra-community conflicts that could lead to genocide and other grave violations of rights” and to “design methods for timely national management of conflicts, including methods for effectively dealing with after-effects of conflict, with emphasis on addressing and eliminating the root causes of conflicts..” (ibid: 2[a] I, IV).

More recently, in terms of the Seoul Declaration adopted at the Seventh International Conference for NIs held in Seoul, Republic of Korea, NHRIs and states should provide advice on human rights and humanitarian law to conflicting parties, or otherwise apply, facilitate and support the utilisation of alternative as well as traditional methods of dispute resolution, including mediation.

NHRIs and states should integrate these conflict resolution tools into plans, strategies and mechanisms for the peaceful and negotiated resolution of conflict. These strategies should include elements of truth and reconciliation processes and define the role that NHRIs should play in this respect. Particular attention should be paid to the establishment of a victim's fund and payment of appropriate compensation.

## Conclusion

I think that the issues before us are weighty and daunting. What has been suggested requires of many NIs to think differently about their roles and their place within the democracies we are working hard to create and sustaining on our continent. What is clear, however, is that NIs, given their growing credibility, given the growing recognition to the facilitative, catalytic role they can play in building bridges and healing divisions, must seriously consider whether they become involved in the challenges of conflict resolution and peacebuilding. If they do, a new set of challenges, not insurmountable I may add, have to be negotiated, but at the end of the day, if they do not, they run the risk of remaining spectators in the issues of human rights that impact on the citizens whose rights they are enjoined to protect.

## Annex II

**The Hon Justice Robert Kisanga**

**Chairperson of the Tanzanian Commission for Human Rights and Good Governance**

Allow me to take this opportunity to thank the Centre for Conflict Resolution for inviting us to attend this important seminar and for facilitating our travel and stay in Cape Town, South Africa.

### **The Tanzania Commission for Human Rights and Good Governance (CHRAGG)**

The Tanzania Commission for Human Rights and Good Governance is a Constitutional creature established under Chapter Six, Part One, Articles 129-131, of the Constitution of the United Republic of Tanzania, 1977, as amended by Act No. 3 of 2000.

In addition to the Constitution, Parliament enacted Act No. 7 of 2001, which elaborates on the functions, powers, privileges and other matters of the commission, which started to operate after the appointment of commissioners in March 2002. It has been in operation for about two years and eight months now. It is, however, worth mentioning that prior to the establishment of the commission, there was an oversight institution known as the Permanent Commission of Enquiry - the first ombudsman institution in Africa which was established in 1966. That commission was disestablished on the establishment of the present commission, which carries out the functions of human rights as well as those of ombudsman/administrative justice.

### **The training conducted by the CCR and its impact on CHRAGG**

The CCR has conducted a training programme for commissioners and senior staff of the commission between February and September 2004. The training was conducted in three phases, which covered the following areas:

- Basic course in human rights and conflict management and peacebuilding;
- Human rights and conflict management; and
- Mediation for national human rights institutions.

Each module was conducted in Tanzania for five days.

### **Why the training?**

Training has been defined by one authority as the “development of a person’s knowledge, skills and attitudes for a vocational purpose” (W Reilly, 1979). The main objective or end-result is to assist the person trained to be more effective and efficient in the performance of a specific job. Organisations are manned or depend on the human beings that comprise, and the quality of the people who run, them. Therefore, the need for training of commissioners and senior staff of

a young commission like ours cannot be over-emphasised. In order to help carry out its functions properly, the commission has been granted a mediation, negotiation and conciliation mandate. This is what is commonly referred to as "Alternative Dispute/Conflict Resolution". Section 28 (4) of the Commission for Human Rights and Good Governance Act No. 7 of 2001 states that:

"The provisions of this section shall not be construed as precluding the Commission from resolving any complaint or rectifying any act or omission emanating from a violation of any fundamental right or acts of maladministration in any other manner, including mediation, conciliation or negotiation."

From the above provision, it was important for the commission to have a training programme to equip commissioners and senior staff with the necessary skills, techniques and best practises involved in conflict resolution through mediation, negotiation and conciliation in resolving disputes or complaints lodged before the commission.

The commission has a broad-based mandate. Under Article 130 (I) of the Constitution of the Republic of Tanzania, 1977, as amended by Act No. 3 of 2000, and section 6(I) of its enabling statute (Act No. 7 of 2001), the commission combines the functions of human rights and good governance. Generally, the commission is empowered to promote, protect and preserve human rights and principles of good governance/administrative justice.

In view of that broad mandate, the commission was aware from its inception that the notion of conflict that is always associated with wars and similarly glaring confrontational situations. Conflict management helps people recognise their rights and duties and popularise the tools needed to resolve conflicts in peaceful ways. The violation of human rights and good governance principles that the commission deals with have in-built conflicts - for instance, one side putting pressure on the other - and many times encompassing incompatible goals and expectations, tension, uncertainties, disagreement and fear.

When all the functions of the commission are summarised, it means any conflict handled by the commission has to be resolved through constructive conflict management which addresses the protection and promotion of human rights and principles of good governance. The procedures adopted by the commission are also part of peacebuilding as it implements follow-ups, discussions and advocacy work to put back into place the foundations of normal life where human dignity is respected, human rights are observed and principles of good governance and administrative justice form part of both public and mainstream activities.

It is in the light of the above grounds and reasons that the commission sought the support of CCR to build the capacity of its commissioners and senior staff in conflict management, mediation and conciliation.

## Impact of the Training

As mentioned before, the tailor-made training done by the CCR was presented in three modules that specifically covered a basics course in human rights and conflict management and peacebuilding; human rights and conflict management; and mediation for national human rights institutions.

The training provided most valuable lessons to the commissioners and staff of our young commission. The CCR opened the way for a theoretical understanding of manifestations of conflicts, causes and ways of resolving them. The commission was introduced to best practises and techniques for coping with conflict from a human rights perspective through practical examples emanating from the commission itself. The training further enhanced ways of using conflict management skills back in the workplace and other situations. After the three training workshops, representatives from the CCR, commissioners and senior staff of the commission met to put together (synthesise) what was learnt, and developed an action planning with the aim of enabling the commission to deal with some of the future challenges, with the support of the CCR.

Areas identified included:

- Advanced training in mediation;
- Developing manuals for conducting mediation, conciliation and negotiations;
- Training of trainers in augmenting the learning environment in a sustainable fashion; and
- Exchange of information.

## Concluding remarks

Once again, I wish, on behalf of the Commission for Human Rights and Good Governance, to express our sincere thanks to our colleagues of the CCR for the good work they have done for the commission during this short period. We look forward to the strengthening of this partnership in the days to come.

## Annex III

### Agenda

Day One:	Monday 29 September 2004 Setting The Stage / Mapping The Context
9h00 – 9h30	Welcome Dr Adekeye Adebajo, Executive Director, Centre for Conflict Resolution, Cape Town
9h30 – 10h15	Introductions and Expectations Outline of Programme Objectives Agenda
10h15 – 10h45	Tea
10h45 – 12h00	The Hon Mr Justice Robert Kisanga, Chair, Commission for Human Rights and Good Governance (CHRAGG), Tanzania, <i>National Human Rights Institutions in Africa, Conflict Resolution and Peacebuilding</i>  Discussion
12h00 – 13h15	Lunch
13h15 – 14h30	Mr Jody Kollapen, Chair, South African Human Rights Commission, <i>National Human Rights Institutions, Conflict Management and Peacebuilding</i>  Discussion (plenary and set up of small group discussions)
14h30 – 14h45	Tea
14h45 – 15h30	Mapping the Context: African NHRIs <ul style="list-style-type: none"><li>• Objectives</li><li>• Conflict situations and issues encountered</li><li>• Strategies and activities</li><li>• Actors and relationships</li></ul> Group discussions

15h30 – 16h45 Mapping the Context: Plenary

- Themes and patterns
- Clustering of issues

16h45 – 17h00 Evaluation of the day

17h00 Close of day

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**Day Two: Tuesday 30 November 2004**  
**Understanding Conflict and its Relation to Human Rights**

9h00 – 9h30 Opening: Insights and Reflections

9h30 – 10h45 Understanding Conflict

10h45 – 11h15 Tea

11h15 – 12h15 Concept and Term Clarification

- Conflict management, resolution, transformation, prevention, peace-building
- Discussion - relevance

12h15 – 13h30 Lunch

13h30 – 14h45 Causes of Conflict

14h45 – 15h00 Tea

15h00 – 16h30 Human Rights and Conflict

16h30 – 17h00 Evaluation of the day

17h00 Close of Day

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**Day Three: Wednesday 1 December 2004**  
**Conflict at Micro-level**  
**Approaches to Conflict / Communicating about Rights**

9h00 – 10h30	Approaches to Conflict <ul style="list-style-type: none"> <li>• Power-, rights- and interest-based</li> <li>• Spectrum of approaches</li> <li>• Relevance for NHRIs</li> </ul>
10h30 – 11h00	Tea
11h00 – 13h00	Communicating about Rights <ul style="list-style-type: none"> <li>• Positional bargaining vs interest-based bargaining</li> </ul> <p>Application and Discussion</p>
13h00 – 14h15	Lunch

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**Day Four: Thursday 2 December 2004**  
**Conflict at Macro-level**  
**Peacebuilding / Dimensions of Human Rights**

9h00 – 9h45	Opening: Reflections and Insights
9h45 – 11h00	Peacebuilding <ul style="list-style-type: none"> <li>• Nested Paradigm model</li> <li>• Discussion and application</li> </ul>
11h00 – 11h30	Tea
11h30 – 12h45	Peacebuilding continued <ul style="list-style-type: none"> <li>• NHRI situations</li> </ul>
12h45 – 14h00	Lunch
14h00 – 15h15	Dimensions of Human Rights <ul style="list-style-type: none"> <li>• In relation to managing conflict and building peace</li> </ul>
15h15 – 15h30	Tea
15h30 – 16h30	Dimensions continued
16h30 – 17h00	Evaluation of the day
17h00	Close of day

19h30 Seminar dinner

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Day Five: Friday 3 December 2004  
Looking Forward

9h00 - 9h30 Opening: Reflections and Insights

9h30 - 11h00 Overcoming challenges: NHRIs in Africa, conflict management and peacebuilding

11h00 - 11h30 Tea

11h30 - 13h00 The way forward: Identifying vision, needs and strategies

- NHRIs
- Other actors

13h00 - 14h00 Lunch

14h00 - 14h45 Personal Reflections and Overall Lessons Learned

14h45 - 15h30 Seminar Evaluation  
Closing Comments

15h30 Closure

## Annex IV

### List of Participants

#### **BENIN**

Mr Dominique Adjahouinou  
Commission Béninoise Des Droits de  
L'Homme  
Benin

#### **BURKINA FASO**

Mr François de Salle Bado  
Commission Nationale de Droits  
Humains  
Burkina Faso

#### **CHAD**

Mr Djounfoune Adja  
Commission Nationale de Droits  
Humains  
Chad

#### **ETHIOPIA**

Mr Adam Thiam  
Attache to the AUC Chairperson  
Ethiopia

#### **GHANA**

Ms Nana Yamfoah Amua-Sekyi  
Commission on Human Rights and  
Administrative Justice  
Ghana

#### **KENYA**

Ms Fatuma Ibrahim Ali  
Kenya National Commission on Human  
Rights  
Kenya

MsCarolyn Abong  
Kenya National Commission on  
Human Rights  
Kenya

#### **MALAWI**

Mr Samuel Tembenu  
Malawi Human Rights Commission  
Malawi

Dr Hermes Frank Chidam'modzi  
Malawi Human Rights Commission  
Malawi

#### **MAURITANIA**

Mr Ould Mohammed Cheikh Tourad  
Commissariat aux Droits de l'Homme à  
la Lutte Contre la Pauvreté et à l'Insertion  
Mauritania

#### **MAURITIUS**

Mr Dheerujall Baramlall Seetulsingh  
National Human Rights Commission  
Mauritius

## **NIGER**

**Mr Saidou Waliakoye**  
Commission Nationale Des Droits de  
l'Homme et des Libertés Fondamentales  
Niger

## **NIGERIA**

**Mr Bukhari Bello**  
National Human Rights Commission  
Nigeria

## **SENEGAL**

**Mr Sadikh Niass**  
Commission au Comité Sénégalais des  
Droits de l'Homme  
Senegal

## **SIERRA LEONE**

**Mr Edward Joseph Sam**  
National Commission for Democracy and  
Human Rights  
Sierra Leone

## **SOUTH AFRICA**

**Mr Ashraf Mahomed**  
South African Human Rights Commission  
South Africa

**Mr Mbedle Lawrence Mushwana**  
Public Protector of South Africa  
South Africa

## **SUDAN**

**Mr Mustafa Matar Yagoub**  
Ministry of Justice  
Sudan

## **SWITZERLAND**

**Ms Marianne Haugaard**  
Office of the UN High Commissioner for  
Human Rights  
Switzerland

## **TANZANIA**

**The Hon Robert Kisanga**  
Commission for Human Rights and Good  
Governance  
Tanzania

**Mr Gad John Kimweri Mjemmas**  
Commission for Human Rights and Good  
Governance  
Tanzania

## **TOGO**

**Mr Koum-Miguiba Djobo**  
Commission Nationale Des Droits  
l'Homme  
Togo

## **UGANDA**

**Ms Veronica Isala-Bichetero Eragu**  
Uganda Human Rights Commission  
Uganda

## **ZAMBIA**

**Mr Kenneth Maduma**  
Human Rights Commission  
Zambia

### **Seminar Team and Resource Personnel**

**Dr Adekeye Adebajo**  
Centre for Conflict Resolution  
South Africa

**Mr Ghalib Galant**  
Centre for Conflict Resolution  
South Africa

**Mr Stanley Henkeman**  
Centre for Conflict Resolution  
South Africa

**Mr Claude Kagabo**  
Centre for Conflict Resolution  
(French translator)  
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**Mr Jody Kollapen**  
South African Human Rights Commission  
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**Mrs Bulelwa Makalima–Ngewana**  
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**Ms Victoria Maloka**  
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# Annex v

## The Paris Principles

### Principles relating to the status of national institutions

#### Competence and responsibilities\*

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicise them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organisations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
    - (ii) Any situation of violation of human rights which it decides to take up;
    - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
  - (b) To promote and ensure the harmonisation of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (e) To co-operate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

### **Composition and guarantees of independence and pluralism**

- I. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective co-operation to be established with, or through the presence of, representatives of:
  - (a) Non-governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organisations, for example, associations of lawyers, doctors, journalists and eminent scientists;
  - (b) Trends in philosophical or religious thought;
  - (c) Universities and qualified experts;
  - (d) Parliament;
  - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate.

This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

### **Methods of operation**

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organisations in expanding the work of the national institutions, develop relations with the non-governmental organisations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas.

## Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorised to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

\*Paris Principles defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

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## The Paris Principles

The Paris Principles are the principal source of normative standards for national human rights institutions. Adopted by NHRIs at an international workshop held in Paris in 1991, they marked the beginning of serious international co-operation and standardisation of NHRIs. Both the United Nations Commission on Human Rights and the General Assembly later endorsed them.



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