Embracing concurrent realities: Revisiting the relationship between human rights and conflict resolution

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Chapter 6: Actors on the Interface
Chapter 6

Thus far, we have discussed the experiences of two field-specific actors when exploring the interplay of human rights and conflict resolution in practice. There are, however, many other organisations working to advance human rights or address conflict that are not professional NGOs. This chapter considers how the relationship between human rights and conflict resolution plays out in the practice of actors outside of that category. Focusing on opposite ends of the organisational spectrum, it looks on the one hand at a loosely organised civil society network not especially geared towards human rights or conflict resolution, and on the other hand at a number of independent state institutions with a mandate to protect human rights, safeguard democracy, facilitate dispute settlement and/or ensure fair public administration.

The discussion shows that the fluidity observed in the previous chapter – the way in which human rights and conflict resolution flow into one another – is also manifest in the practice of the actors considered here. It argues that these actors can be understood as operating on the interface of human rights and conflict resolution, as they perform functions and undertake activities usually associated with both fields.  

Distinguishing where human rights and conflict resolution respectively begin and end is difficult in the case of these actors. This is first demonstrated, in 6.1, with reference to a loose ecumenical network of churches that have jointly operated as ‘Churches in Manicaland’ (CiM) since mid-2000 in the easternmost province of Zimbabwe. Clergy from the network began working on rights protection, violence mitigation and dialogue facilitation in response to growing political violence. Initially associating with nothing other than religion, they increasingly realised that they were actually undertaking both human rights and conflict resolution efforts while trying to make a difference in their context. In 6.2 the chapter shows that various independent state institutions also often work in both realms – even if their formal title or mandate may emphasise or refer to only one of the two fields (or neither). The extent to which such statutory bodies recognise this and engage with the interface varies greatly, however.

Overall, the chapter confirms previous findings on the extent to which human rights and conflict resolution are interwoven in practice, and how this brings both opportunities and challenges for the actors concerned. The final section, 6.3, links the discussion in chapters 5 and 6, offers some tentative conclusions as to what these fields may contribute to one another and points to recurrent questions. As with chapter 5, the account provided here draws on my own work with these actors, personal notes, internal reports and correspondence. It however barely places the discussion in a present-day context due to limitations of space and scope. My assessment is that, by and large, the arguments presented here – about fluidity and the interface – still stand and remain relevant to this study's larger narrative about the interplay of human rights and conflict resolution in practice. Feedback from

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1 ‘Interface’ is used here as discussed in chapter 1, referring to the interplay between various life worlds or social fields, while recognising its limitations in suggesting compartmentalisation (see 1.2.2).

2 Correspondence and internal documents are cited with permission and are on file with the author of this study.
interlocutors supports this assessment, which is why these experiences are included here despite some of them occurring long ago and the changes that have taken place on the ground and in the political context since then.

6.1 Churches in Manicaland (Zimbabwe)

This section discusses the experiences of Churches in Manicaland (CiM), a loose ecumenical network that has sought to advance both human rights and conflict resolution from 2000 onwards in the face of a growing political crisis in Zimbabwe, although it did not conceive of its efforts in such terms at first. It first provides some background on the network and the circumstances in which it came into being (6.1.1). It explains how CiM started engaging in various activities, including advocacy, monitoring, support to victims of abuses, shuttle diplomacy and crisis intervention, while drawing on biblical teachings for inspiration, vindication and mobilisation (6.1.2). Such activities can be seen understood as a mixture of human rights and conflict resolution practices, and over time, these notions gained increasing importance for the Manicaland Churches as a way of expressing ‘what they were about’.3 This is the focus of 6.1.3, which sets out how the Churches adopted a ‘pastoral approach’ in engaging with human rights, conflict and violence, meaning that they sought to confront wrongs through direct relationships with victims and perpetrators.

In trying to enhance both peace and justice in the province, CiM experienced two recurrent challenges that are relevant in the context of this study. One concerned tension around its functioning simultaneously as a human rights advocate denouncing abuses and as a facilitator of dialogue reaching out to actors regardless of their involvement in violence. The other related to the fact that many of CiM’s activities focused on alleviating symptoms in the short term, while the underlying problems giving rise to suffering required sustained action to ensure peace and justice on the long term (6.1.4). The section concludes with a summary (6.1.5).4

6.1.1 Background

Churches in Manicaland is an interdenominational forum representing a wide range of churches and Christian organisations in Manicaland, one of Zimbabwe’s eight

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3 I use ‘Churches in Manicaland’ and ‘the Manicaland Churches’ interchangeably, in line with CiM practice. The word ‘churches’ refers to individual Christians/clergy, rather than to the institutional church (Tarusarira 2014, 101).

4 Due to logistical constraints, only two interviews could be conducted with long-term members of CiM to augment and verify the information from my notes and previous correspondence. Both Rev. Shirley DeWolf and Fr. Michael Bennett had been involved in CiM from the very start, and they had been my main contact persons throughout the work with the Churches. At the time of these interviews (which took place through Skype on 9 June 2011 and 18 January 2012, respectively), Rev. DeWolf continued to be a central figure in CiM while Fr. Bennett had moved to South Africa. As such, he was no longer participating in CiM yet kept in touch with former colleagues. Rev. DeWolf also shared the draft text with at least one other long-term CiM member (name withheld on request).
provinces (located in the country’s east on the border with Mozambique).\(^5\) It was formed in May 2000 by a group of church leaders who were concerned about the rising violence in the province in the run-up to a parliamentary election to be held later in June. At the time, this was the first election in which the then ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), would face any real opposition due to the formation of the Movement for Democratic Change (MDC) in September 1999.

Before the election, in February 2000, the government had already suffered a painful defeat in a referendum on a new draft constitution which sought to broaden presidential powers and included a clause allowing for the acquisition of commercial farms without compensation.\(^6\) Despite this defeat, farm invasions began soon after: assisted by state security operatives, landless farmers and veterans of Zimbabwe’s liberation war occupied commercial farms (mostly white-owned) and refused to leave. These occupations became part of a wider campaign of repression intended to eliminate opposition and silence dissent. Amnesty International called the campaign a “deliberate and well-thought out plan of systematic human rights violations with a clear strategy, constituting state-sponsored terror in the run-up to the June elections” (2000, 1).

In a context defined by violence, intimidation and uncertainty about “who they could trust and who would undermine them”,\(^7\) clergy in the province were initially at a loss as to how to make a difference. One of the founding members, Rev. Shirley DeWolf, recalls,

I think the whole story of how we started is important. We started simply as a response, not knowing what to do. It was a situation where the churches were completely without any wind in their sails. We had no energy, no direction, nothing to focus on. In 2000, when all of this violence suddenly came up around the elections – because we now had a new opposition party and the backlash was so extreme – the pastors who knew that this was something we should be engaged in, didn’t know what to do. We felt a real sense of guilt and couldn’t look each other in the eye. We were avoiding each other, it was that bad. There were cartoons coming out in the newspaper, showing three bishops sitting on a bench, with violence all around them. One had the eyes covered, one had the ears covered, and one had the mouth covered. People were phoning into the radio, saying ‘Where are the churches?!’ We did not know where we were.\(^8\)

\(^5\) The number of participating churches fluctuates. Forty-four churches and Christian organisations signed CIM’s foundation pastoral statement *Life in Abundance* (2001). According to Tarusarira, members from some 15 denominations and organisations constantly participate in CIM; he attributes the fluctuating numbers to fear of being identified with a politically critical organisation (2014, 101).

\(^6\) The draft constitution was opposed by the MDC and the broad-based National Constitutional Assembly, a civil society network established in December 1997, including the Catholic Commission for Justice and Peace, the Zimbabwe Council of Churches, the Zimbabwe Congress of Trade Unions, human rights organisations, student organisations and women’s groups; see Sithole (2001) and International Crisis Group (2000a).

\(^7\) “Manicaland Churches: some information on organisation”, n.d. Also recounted in correspondence, July 2001.

\(^8\) Interview, Rev. Shirley DeWolf, emphasis as spoken, 9 June 2011 (skype). One of CIM’s founding members, Rev. DeWolf served as coordinator of its steering committee in the beginning.
A first meeting of three clergy led to a second gathering, attended by fifteen, and a third, in which fifty clergy participated. Thereafter the number grew to over a hundred from all over the province, representing a wide spectrum of churches. The participating clergy agreed that they had “an obligation to do something to stop the violence” and that they wanted to collaborate “for peace and justice in the province”. According to Rev. DeWolf,

We came up with a plan – these people are going to write up a statement, and those are going to take the statement and go out to the bus stops and the petrol stations and ask the people to distribute this as they drive up [country], and we took it to the police commissioner of the province, all of it. That’s how it started, this small group of volunteers, who started running.

A few days before the parliamentary election, the Manicaland Churches issued their first public statement, calling upon people to exercise their right to vote freely and in peace, to respect others’ right to vote according to their own choice, and to refuse to participate in intimidation. They also called upon political party leaders to refrain from using force to gain votes and to present their party’s platform in a non-violent manner and promote dialogue as an alternative to force. By then, the clergy had started a ‘quick action group’, which met with the authorities when hearing of real or potential violence to press for intervention. They were also visiting violence-torn areas to provide support to victims, work with local pastors to identify possible mediators, and advocate on victims’ behalf with local leaders who could stop the violence. Another area of concern was countering misinformation, based on the realisation that “when the churches speak, people listen and believe them”.

For example, when a rumour went around two days before elections that the invisible ink put on people’s hands would show how they had voted, we sent a delegation to the Provincial Administrator and to the Asst. Commissioner of Police to get their statements saying that this was false information. Then we typed up some paragraphs to assure people of the truth on this issue and on several other facts that had been falsely portrayed. We made thousands of copies to spread throughout the province by the bus transport system.

After the election – which ZANU-PF narrowly won – the Manicaland Churches engaged with members of parliament elected from provincial constituencies to highlight important issues warranting attention, such as youth and unemployment, justice and the rule of law, constitutional reform, and land access and management.
In reaching out, the Churches noted that they had erred in the past by failing to provide ministerial care to individuals who had been elected; they indicated that they considered it their responsibility to accompany such persons in future.\textsuperscript{17} They explained that they sought to prevent a situation where it would no longer be possible to jointly address and resolve issues threatening the common welfare of Zimbabweans. CIM stated that,

\begin{quote}
We do not believe that there can be peace in Zimbabwe without deep-rooted examination of the problems that beset us, and without a bold commitment by each one of us to recognise our complicity and to carry our full share of responsibility to right the wrongs. Manicaland, with its diverse political party representation, has a unique opportunity to demonstrate on the political level how pluralism can enrich our national vision-building. Zimbabwe needs to rid itself of the suspicion that tensions that have been allowed to grow up between people of different ages, races, ethnic groups, cultures, religions, socio-economic status, and political persuasions. We need to develop a culture of tolerance based on mutual respect, a sense of need for each other, and a belief in personal freedom of choice and expression.\textsuperscript{18}
\end{quote}

By pointing to the importance of mutual respect, interdependence, political pluralism and personal freedom of choice and expression, the Manicaland Churches alluded to human rights and conflict resolution values without using these notions explicitly. Over time, they started conceiving of their activities more in these terms, as will be set out below. CIM’s suggestion that Manicaland was well-placed to show the value of pluralism stemmed from the fact that it was the only province from which candidates from three political parties had been elected: from the ruling party, the main opposition party, and a small split-off group from ZANU-PF. Moreover, political activism had always been high in the province, which had been a critical military frontline in the fight for liberation from colonial rule. Over time, many senior leaders from the ruling party had come from the province, and opposition seats in parliament had been usually held by politicians elected in Manicaland (e.g. Chimange 2010).

The Churches foresaw the possibility of widespread conflict in the province, notably around elections, and were concerned about various developments.\textsuperscript{19} This included the deployment of uniformed youth brigades affiliated with the ruling party, the deliberate spreading of misinformation, new repressive legislation being prepared by government on public order and access to information,\textsuperscript{20} displacement of thousands of farmworkers and their families due to a ‘fast-track land redistribution scheme’

\begin{footnotesize}
\begin{itemize}
\item[17] Interview Rev. DeWolf, \textit{op.cit}; also mentioned in correspondence July 2001.
\item[18] Quoted from paper presented to newly elected members of parliament (MPs), in correspondence of July 2001. When only opposition MPs heeded CIM’s invitation to attend a meeting with some 100 clergy representing constituencies around the province, CIM visited each individual ZANU-PF MP to draw attention to the churches’ concerns and explain the rationale for the churches’ activity.
\item[19] Correspondence 2001.
\end{itemize}
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Actors on the Interface

started by the government after the parliamentary election, and growing poverty and hardship as a result of reduced food production and the spread of HIV/AIDS.

Reports by international organisations at the time corroborate CiM’s assessment, painting a bleak picture. In April 2001 the International Bar Association found that “the events of the past twelve months have put the rule of law in the gravest peril. The circumstances which have been disclosed show, in our view, conduct committed by government which puts the very fabric of democracy at risk” (2001, 77; see also Amnesty International 2001). In July 2001, the International Crisis Group characterised Zimbabwe as being “in a state of free fall. It is in the worst political and economic crisis of its twenty-year history as an independent state” (2001, ii). Noting the increased use of state-sponsored violence through war veterans, police, army and other ZANU-PF supporters, it observed that “Zimbabwe is descending into a cycle of poverty and repression. [...] [The] ZANU-PF leadership appears willing to do anything to stay in power” (ibid).

A growing food crisis – due to the disruption of commercial farming, political interference in food distribution, and erratic rainfalls – compounded the situation, prompting the UN World Food Programme to launch a large-scale relief food operation aimed at assisting more than half a million people. The fact that a presidential election was scheduled for March 2002 exacerbated the turmoil in the country, as the regime was “emasculating the pillars of independent opposition: media, civil society organisations, student groups, labour and any other constituency from which ZANU-PF might conceivably face a challenge” (International Crisis Group 2002, 2).

6.1.2 Serving the Local Population

In this context of violence, death, poverty and famine, Churches in Manicaland felt morally compelled to react to the political crisis as a way to make faith relevant. Their willingness to challenge irresponsible political practice and behaviour by political leaders set them apart from mainstream religious institutions in Zimbabwe, which mostly kept silent in the face of growing repression or were allegedly co-opted.

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21 In July 2000, the government announced a fast-track resettlement programme in the context of which 150,000 families were to be settled on commercial farms compulsorily acquired by the government. By September, some 350,000 workers on commercial farms were estimated to have been affected, most of whom were reportedly regarded by ZANU-PF as MDC supporters; see International Crisis Group (2000b).

22 This included an invasion of the Supreme Court by war veterans, public criticism of Supreme Court justices by President Mugabe and some cabinet ministers as ‘relics of the Rhodesian era’, and intimidation leading to the resignation of several Supreme Court and High Court judges, including the Chief Justice (International Crisis Group 2001, 12; International Bar Association 2001; International Commission of Jurists, 2002).


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especially in those early days (Tarusarira 2014). They organised themselves as a loose platform with a steering committee but without formal structure or rules of engagement, only agreeing to ‘maintain mutual respect and common purpose’ and to hold consultation meetings at important decision-making times. This mode of operation stemmed from security concerns, and allowed for flexibility and rapid response to issues as they arose.

CiM undertook a wide range of activities. This included providing pastoral support to victims of violence, engaging in discussions with elected politicians, public authorities and traditional leaders on issues of peace and justice, educating congregations regarding ‘responsible civic action’, convening ‘rapid response’ meetings with key leaders to stop or prevent violence and inhumane treatment, undertaking advocacy and lobbying on draft legislation, denouncing human rights abuses, holding public prayer meetings to facilitate reflection, mobilisation and social interaction, and organising grassroots healing workshops. It also issued public statements on various issues stressing, inter alia, the importance of ‘peaceful process’, the need for more respect for the rule of law, and a review of the electoral process. Tarusarira argues that CiM helped people cognitively, emotionally and morally, by providing them with a clear analysis of the crisis in Zimbabwe, offering space and support in dealing with their feelings about the situation, and giving guidance on how to act in the face of crisis (2014, 106).

From the outset, the Churches emphasised that they were non-partisan and were available to offer ‘counselling and vision-building to people of all political persuasions’. According to a former steering committee member, Fr. Michael Bennett, such impartiality “was a sine qua non. To be seen to be taking political sides would have been a recipe for disaster”. CiM countered politicians’ reprimands that ‘churches should leave politics to politicians’ by noting that “the Gospel embraces every aspect of human life, not just the spiritual but also the material, economic, social and political aspects”. Characterising their activities as “evangelical”, CiM stressed that they promoted values of love, peace, truth, justice and liberation and applied these to all that they did, personally and in their public life. Overall, they were...
“seeking the guidance of the Holy Spirit in taking action to promote tolerance in society, to give direction to public decision-makers and to enable our people to live Gospel values and principles” (Churches in Manicaland 2006).

These descriptions reflect how CiM generally rooted its statements and actions in biblical teachings rather than in notions of human rights or conflict resolution. Thus, in reaching out to MPs after the 2000 election, CiM emphasised the “value and worth of the individual as a unique child of God, whose ‘every hair is numbered and known’” instead of speaking of every person’s human rights or human dignity. Its foundational pastoral statement Life in Abundance also reflects this approach. Affirming its commitment to the “central Christian principles of justice, truth, mercy, peace and compassion”, CiM argued that “the struggle for justice and the resulting peace between all people is at the heart of our Christian faith and mission” (Churches in Manicaland 2001).

This framing of CiM’s concerns and activities stemmed in part from security considerations. As Manicaland clergy became more active and outspoken, and encouraged individual Christians to “confront and remove contradictions between what they believe society should be and what it is actually becoming”,30 they were increasingly targeted by local militia and state security operatives for “meddling in politics” (Kaulemu 2007, 8).31 Another contributing factor was the fact that the Churches were initially mostly bound together by a common grounding in Christianity. Coming from different theological backgrounds, they greatly varied in their approach to social action: some had a strong tradition of social justice teaching and activism, while others stressed a spiritual approach to justice.32 At one of my first interactions with a large group of CiM clergy, they thus discussed lessons learned about crossing their own prejudices and denominational differences, and considered how this constituted a basis for trying to address conflicts in the communities they served.33

6.1.3 Advancing Human Rights and Conflict Resolution

The discussion thus far shows how an organisation with no particular affiliation to either the human rights or the conflict resolution field became engaged in activities that – from a field perspective – can be understood as a mixture of the two. Over time, these notions became more important for CiM as a way of capturing what they ‘were about’ and sought to do, even though religion remained the “sentimental pool for motivation, mobilisation and justification” (Tarusarira 2014, 99). This sub-section

30 Section on ‘Our prophetic role’ (Churches in Manicaland 2001).
31 Individual clergy involved in CiM were aware in 2002 that their activities were monitored, and Zimbabwean intelligence interrogated the then coordinator of the steering committee on a number of occasions (personal interaction and correspondence, 2002). Steering committee members also made me aware that intelligence operatives were amongst participants at two workshops I conducted in Mutare in late 2002.
32 Correspondence, July 2001; personal notes from discussion with steering committee members, October 2002.
33 Workshop with some 45 clergy from Churches in Manicaland, Mutare, October 2002.
consider how human rights and conflict resolution emerged more explicitly in CiM’s activism and how they interacted in its approach.

The Churches’ protection work involved efforts to halt violence, calling for a return to legality and for accountability of perpetrators of abuses, and providing sanctuary to individuals subjected to violence. It also comprised visits to arrested persons in prison, arranging for bail, liaising with other actors (notably human rights NGOs) to ensure legal assistance, and monitoring elections. At first, such activities were not necessarily framed in terms of ‘human rights’ even if statements occasionally referred to ‘rights’ or spoke of CiM’s “obligation as religious leaders to be active custodians of the people’s rights in Manicaland”. Yet when CiM set out to formulate a common agenda after the first rush of activities associated with the 2000 parliamentary election had subsided, referring to ‘human rights’ became a conscious decision. According to Rev. DeWolf,

> It was quite some time after [that first election] that we finally said, we need to say who we are. We need to write down who and what we [are] all about. And it was interesting to strike a right balance – because we had been a response and to put that down in words, in terms of an objective, became difficult to do. I remember putting human rights in there, but realising that we’d actually never talked about human rights. We were responding to human rights violations. It was not just the political work that we’d do, we were also working with victims – we were doing human rights protection, but we had never called it that. So we put it down on paper, as one of our intentions for being together.

CiM’s agenda was thus formulated as follows: “to seek together God’s guidance for these difficult times in our country so that we can make common Christian witness; to ensure that rights and safety of our people are protected against violence and exploitation; and to better understand what is contributing to violence in our society and to promote peaceful and effective solutions”.

In engaging with questions of human rights, conflict and violence, CiM adopted what it called a ‘pastoral approach’. This meant that “there is no person and no event taking place in our society which is outside our pastoral duty”, and that “all of our advocacy and confrontation of wrongs in society comes out of direct personal relationship with both victims and perpetrators”. Personal contact was thus seen as the starting or pivotal point for change. Pastoral work was familiar to all clergy involved, and the use of this approach also stemmed from an appraisal of CiM’s strengths and weaknesses. Rev. DeWolf explains,

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34 Correspondence, 2001-2003.  
35 “Message from the Manicaland Churches to Members of Parliament Elected in Manicaland in the Year 2000”, Churches in Manicaland.  
36 Interview, 9 June 2011, skype.  
37 “Notes from Steering Committee Meeting, January 2001”, Churches in Manicaland.  
38 Correspondence, 2001.  
40 Correspondence, 2011.
It started towards the beginning, when we were thinking of who we are – what are our strengths? We were very aware of our weaknesses: we were not economic analysts, we knew there were economic problems but we were not on our own able to analyse things, we were not political analysts. We were having to dialogue with people who knew much more about these areas of work than we did, and yet we brought the moral dimension to that, so wherein lay our strengths? We decided our strengths lay in our relationship to people, our pastoral relationship to people. That pastoral background meant that we had to take a much more counselling kind of approach to things. Where necessary, in our statements, yes, we could come out and state very clearly what it was we were standing for. That was what helped to determine why we had to take a pastoral approach. In the church it will always be the contact, the relationship, and the conversation that takes first priority. If we have to be forceful, it will not be force that will break that relationship.

The pastoral approach’s emphasis on establishing and maintaining relationships and conversation was thus closely linked to CiM’s non-partisan stance. Yet the Churches’ ‘moral dimension’ meant that the pastoral approach was still strongly normative and infused with an on-going resolve to ‘sort out the truth’ and ‘clarify the church’s stance on issues’ to counter the excess of ‘misinformation and carefully manipulated information’ going around. The pastoral approach was thus combined with efforts to break the culture of silence, speak truth to power, and challenge alliance and co-optation. In other words, it did not lessen the importance of human rights for the Churches:

*Human rights abuse is truly at the centre of a lot of what’s happened, and [what makes us] respond to situations on the ground. It’s the human rights abuse that immediately triggers our concerns, because the Churches are concerned with human welfare. That’s our first line of concern. What we’ve never done is to sit down, and actually go through a course on what are human rights, how do you work with human rights, and so on and so on. We have two human rights lawyers in Mutare that we bring in from time to time to our meetings, for advice, and occasionally we’ve asked them to come and speak to us at a larger meeting. So we have close relations with them, but we’ve never done any formal [human rights work].*

CiM’s take on human rights was more social – as embedded in a social context of interdependent relationships and behaviour – than legal:

*Throughout the years we have used the term ‘human rights’ in a social sense rather than a legal sense. We have been carrying out human rights defence work through a theological and social interpretation of it rather than a legal interpretation - not because we were avoiding the latter, but because it did not seem to be a priority.*

This assessment was also based on the recognition that there were other organisations “covering that terrain” (i.e. law-based human rights work). These were

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41 Interview, 9 June 2011, confirmed by correspondence (2001) and records of activities from CiM in 2002.
42 Interview, Rev. Shirley DeWolf, 9 June 2011, skype.
43 Ibid.
44 Correspondence, July 2011.

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Zimbabwean human rights NGOs, with which CiM networked. In the same vein, ‘justice’ was understood as ‘fairness in our dealing with others’ and as relating to ‘equality of opportunity for all members of society’ and to ‘restorative justice’ rather than in terms of legal accountability (Churches in Manicaland 2001; 2006). Nevertheless, in 2005/2006, two clergy involved in CiM took part in a 10-day training course in international human rights law in South Africa. In sum, the term ‘human rights’ was increasingly used or was “added as a catch phrase to portray the central concern and foundational intervention work we did for the security of individuals and communities and for the freedoms that we were advocating in our discussions with officials”.

Yet, while “human rights abuse [being] always what’s motivated” CiM, the network came to focus “much more on the conflict resolution side” in its outreach to people in the province, and in providing training to clergy, lay persons and staff from various faith-based organisations. Conflict resolution, with its emphasis on relationship-building and facilitating dialogue across divisions, breaking down enemy images, and de-escalating tensions, followed on from the pastoral approach adopted by the Churches. It was also in line with their commitment to be available to all, irrespective of political affiliation or involvement in (political) violence, past or present. Overall, CiM believed that its pastors had “access to many people through their churches and [were] socially entrusted with the societal values of peace and reconciliation” (Tarusarira 2014, 102).

CiM started exploring conflict resolution thinking and practices in late 2002, after meeting one of my South African colleagues, Andries Odendaal, who by then was working with various organisations in Zimbabwe in the context of a collaboration between the UN and CCR. Its steering committee expressed an interest in CiM learning more about conflict and how to respond effectively. It also requested assistance with reflecting on its own functioning and that of the overall network, in terms of what it wanted to achieve and the challenges it encountered. That prompted my involvement, as the clergy experienced some tension between their human rights- and conflict resolution-oriented activities and the associated roles (discussed below). My engagement took the form of reflection and strategizing with CiM’s steering committee, three training events with larger groups of clergy, and correspondence before and after these activities (mostly taking place between 2002 and 2003). The precise focus of our meetings was decided on the basis of interests expressed and information provided through the steering committee; my involvement consisted

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46 Correspondence, July 2011. Even so, CiM did not start to explore ‘pastors as human rights defenders’ until 2011.
48 This included a faith-based development NGO and the UN Development Programme, which had contracted CCR to help design and deliver a multi-year ‘social cohesion’ programme (2001-2004) providing conflict transformation training to various audiences, including parliamentarians, security force personnel, civil society organisations, etc.
initially mostly of asking questions, facilitating discussion amongst CiM people, and listening.\textsuperscript{49}

The Churches’ interest in learning about conflict resolution was due to the fact that many clergy were extensively involved in addressing conflict in Manicaland. Church leaders were for example asked to intervene in a crisis in a rural village on the Mozambican border after harsh action by the military when villagers crossed the border to hunt and to trade to obtain cash to buy food.\textsuperscript{50} Following the eviction of 48 people from a farm, CiM engaged in shuttle diplomacy with those responsible and local officials, while temporarily accommodating and feeding those evicted.\textsuperscript{51} They also played a role in distributing food aid, which often involved clashes with local government officials intent on allotting food based on political criteria rather than need. Pastors resisting such interference (or trying to return food to people who had it taken from them) suffered retaliation.\textsuperscript{52} These and other situations placed CiM in the middle of conflict handling, and occasionally caused tension within the network around goals and methods.\textsuperscript{53} Their functioning in a climate of intimidation and fear also meant that the clergy needed “to guard against absorbing the tensions we with
t to deal with in society and allowing them to pull us apart”, as one of them put it.\textsuperscript{54}

Grappling with such situations highlighted for the steering committee a need to enhance the Churches’ ability to handle conflict and aroused a desire to develop such skills amongst many more in the province. From mid-2003 onwards CiM thus embarked on “a drive to conscientise the masses” (Tarusarira 2014, 102) in Manicaland on issues related to conflict resolution, reconciliation, human dignity, truth, justice and freedom. Besides drawing on support from CCR, the network sent two members to a three-month conflict resolution training course in the United Kingdom. This growing emphasis on conflict resolution was further enhanced by CiM members’ participating in meetings at provincial and national level. One such meeting prompted the following reflection from a steering committee member:

\begin{quote}
We listened [to] people who represented the most polarised ends of our political spectrum speaking on the same issues, [and] were able to hear the void between them, and to start some speculation about our roles as churches in bridging this void. X and I came home convinced that CiM has given too little attention to our mediation role and
\end{quote}

\textsuperscript{49} A one-day session was held for a group of some 40 clergy from all over the province; the second was a three-day workshop for 75 clergy (including some thirty delegates from Zimbabwe’s nine other provinces); the third was a two-week workshop for a core group of 25 people. While I took the lead in conducting these events, I worked closely with a group of two to six people associated with CiM to design and facilitate them. After my practical involvement ended, I remained in contact to keep abreast of CiM’s activities and developments.\textsuperscript{50} Correspondence, 6 December 2002. For a discussion of how vulnerable people from Manicaland have exploited opportunities for survival in neighbouring Mozambique in recent years, see Duri (2010).\textsuperscript{51} Correspondence 2003, and “CiM: Brief version of Chimamani conflict story, 2002-2003”.\textsuperscript{52} WFP had contracted a Christian organisation to distribute food relief, which worked through local churches on the ground; see “Report of the Manicaland Churches Provincial Meeting on Food Issues: 2 May 2002”. On the politicization of food aid, see also Howard-Hassman (2010) and Human Rights Watch (2003).\textsuperscript{53} Correspondence, 2011.\textsuperscript{54} Correspondence, 2003.
2003 may be the year we have to change this around. [...] One of the clear developments arising from CiM’s interaction with you/CCR has been this move towards seeking our mediating and reconciling role. It is not a direction that you have suggested to us, but more something we have discovered for ourselves through the prompting of exercises you have conducted with us. What I see now is that we are collectively aware that the extreme polarisation in our society needs mediation. It needs some hard work to help Zimbabweans realise a new form of nationalism, which says we belong to each other and have a common future and therefore must find ways to express that commonality even at points where we disagree. 55

In sum, the Manicaland Churches increasingly started to conceive of their purpose and activities in terms of human rights and conflict resolution, leading them to seek support from practitioners and organisations in both fields to help frame their thinking and practice. Arguably, for CiM, “all of [its] conflict intervention efforts were around human rights protection and vice versa”, 56 even if human rights terminology was not much used at first, and the notion of human rights informing its efforts was social/moral rather than formal/legal.

6.1.4 Two Overall Challenges

The above highlights how human rights and conflict resolution were very intertwined for the Manicaland Churches. They did not consider them as separate domains, but as an integral part of their efforts to address the crisis and support transformation in Zimbabwe. Yet they experienced two recurrent challenges that are relevant in the context of this study: one concerned a tension that seemed to pit human rights against conflict resolution, the other a tension that lies embedded in both human rights and conflict resolution. These challenges are briefly set out here; they will be further discussed in chapter 7. 57

As actors concerned with both rights protection and conflict resolution, CiM clergy found themselves at times caught between roles that seemed to operate on “fundamentally contradictory principles” (Arnold 1998b, 16), in terms of denouncing abuses and reaching out impartially to all actors at the same time:

The churches [wrestle] with that question: how to take a principled stand which often means a stand against the actions of one side or the other, and yet also be impartial enough to mediate between the sides. We see mediators as neutral, even detached from the issues at hand, and maybe that is a mistake. We are deeply involved in the issues that divide our people. Because these issues are so highly politicised we may as individuals be more partisan than we realise. Can we find our mediating and reconciling role even while we are so involved? Does it require some standing back or detachment from the

55 Correspondence, 2003. The ‘you’ referred to concerns this author. The ‘exercises conducted’ included reflection exercises on CiM’s evolution from 2000 onwards, balancing peace and justice, conflict analysis, etc.
56 Correspondence, 2011.
57 Notably in 7.1 and 7.3.
situation, and if so, how do we do that – are we even willing to do that? We really are asking strategy questions over and over again.58

Combining advocacy and mediation (or more generally, facilitation) was particularly hard because the Churches were part of the very context they were trying to alter:

Some of us see that as church leaders we are part of the national conflict here - not only by innocently occupying what we believe to be high moral ground and therefore being directly in the firing line, but also [by] deliberately taking an aggressive stance. We feel no compunction for that, but we also recognise our role as mediators, as people who must represent something beyond the conflict, the positive possibility that lies beyond the present turmoil of conflict-ridden relationships. So in addition to being able to analyse the conflicts, we also need something to clarify our thinking about both the solid ground under our feet and the quicksand spots related to being both a part of the conflict and being the channel through which the conflict can be addressed. [...] Right now we are working hard to tip that [balance of power towards a more equitable distribution of power] because we believe ethically in checks and balances of power in society and in the full rights of all people not to be marginalised on key issues effecting [sic] their lives. [...] Yet we are also pastoral, we have a shepherding relationship towards all people. And we believe theologically that every selfish and hurtful person, hence every selfish and hurtful situation, has the potential to be turned around or converted. We may need to decide whether there is an in-built conflict in our ministerial task - between the urgency and the patience required of us, between the condemning and affirming roles we play. How can we best harness the positive energies that are produced by this inborn friction?59

The friction between the different roles played generated questions amongst the clergy as to which should take precedence, their ‘condemning’ or ‘affirming’ role (also referred to as ‘prophet’ and ‘pastor’ roles). The combination of these roles also prompted confusion and irritation amongst other actors present in CiM’s context. Being very active on the condemning or prophetic side – by denouncing violence and repression and calling for accountability – negatively affected their ability to perform their pastoral role and facilitate dialogue amongst diverse parties, because it meant they were perceived as biased; the publicity associated with the prophet’s role was also at odds with the confidentiality required for the pastor’s role. However, when the Churches sought to intervene in local conflict situations and reached out to individuals or groups engaged in violence, they experienced pressure from citizens to stand up for what was ‘right’ and ‘just’. The Churches were thus torn in different directions, as some prioritised one role, while others preferred the other. With hindsight, it seems to me that a related difficulty was the fact that ‘impartiality’ looks very different from a human rights perspective than it does from a conflict resolution perspective (as explained in chapter 4). CiM’s activism seemed informed by both a human rights- and a conflict resolution-oriented notion of impartiality, but these required quite different tactics

58 Correspondence, 2003.  
59 Correspondence, 2002.
and were hence not easily reconciled – especially because responsibility for abuses was not evenly divided amongst the parties.60

The other recurrent challenge that became a theme in my collaboration with CiM did not concern a tension between human rights and conflict resolution but rather one that runs through both fields, as observed in chapters 2 and 3.61 Illustrated by the above quote, with its reference to ‘an in-built conflict […] between urgency and patience’, this related to the challenge of balancing short-term and long-term efforts. CiM’s steering committee questioned how the network could move from a reactionary mode of operation – intended to alleviate symptomatic rights violations and contain violence in the short-term – to a more pro-active one, addressing root causes and supporting longer-term peace and justice:

We have recently worked ourselves into a rut, constantly reacting to wrongs we see being committed, condemning them, writing public statements, trying to appeal to key government leaders to change what they are doing, etc. But that is all very reactionary and so our rhythm tends to be set by the people we are reacting against. We need to have our own sound direction and agenda. […] The build up to each of the two elections since June 2000 has been a crescendo of activity for all of us, and in the period immediately afterwards we collapse away from sheer exhaustion. We have clearly identified that the in between-crisis period is the most important for our activity, but are not getting as much done as we would like to.62

Sometime later, this was expressed in different terms: “How can we strategize for the long-term journey? Can we be more in charge of that journey rather than letting others determine how we travel?”63 In reflection sessions I conducted with the steering committee, members used a running metaphor to capture what they were struggling with: was Churches in Manicaland a sprinter (involving short bursts of intense activity) or a marathon runner (in it for the long haul, steadily moving towards its desired long-term goal of fundamental change)?64 Again, some in CiM were inclined towards one approach, whereas others felt more strongly about the other. This occasionally caused tension within the network.

My impression from listening to the interaction amongst the clergy on these two challenges was that the options for action in both regards – i.e. which role to perform, what time frame to focus on – were usually (yet implicitly), perceived in either/or terms. During their discussion, another question arose: were these roles or approaches mutually exclusive? Did CiM have to opt for one or the other, or could it do both? These questions – which are explored in the next chapter – speak to CiM’s

60 See 4.1.3 on notions of impartiality. Further discussion will follow in 7.3. For a previous write-up of the role tension faced by CiM, see Galant/Parlevliet (2005, 124-125). On uneven distribution of violations, see 7.4.1.
61 See 2.5.2 and 3.5.2 on the human rights and conflict resolution fields’ struggle to move beyond symptoms.
62 Correspondence, 2002.
63 Correspondence, 2003.
64 Report on Reflection and Strategizing Session with Steering Committee of Churches in Manicaland, Mutare, 9 December 2002, and personal notes during session, both by author.
aspiration to advance both peace and justice in the short- and long-term. They also reflect that progressing in this direction was easier said than done.

6.1.5 In Sum

This section has focused on the experiences of the Zimbabwean ecumenical network Churches in Manicaland in the first few years of its existence as it sought to respond to socioeconomic and political instability. It has described how this civil society actor – which was not associated with human rights or conflict resolution – started undertaking activities related to rights protection, violence mitigation and the non-violent resolution of conflict, aiming to “offer a service to the people of Manicaland in the context of growing violence” (Mkaronda 2003, 30). It has also shown how the Churches increasingly came to conceive of their efforts in terms of human rights and conflict resolution, and started using these notions to explain their rationale, frame their positions, and decide on a program of action.

The Churches thus tried to advance both human rights and conflict resolution from the outset even if they did not name them as such at first. It can hence be argued that CiM has operated on the interface of these fields while responding to developments in its daily environment. Indeed, the discussion has highlighted the extent to which the fields of human rights and conflict resolution may be interwoven in practice. For CiM, there were no boundaries between their rights-oriented and their conflict resolution-focused efforts; both were part of a larger endeavour to challenge inaction by political elites and citizens alike, prevent further violence, and move towards peace and justice in the long term. In fact, many of CiM’s actions were intended to further human rights and conflict resolution at the same time.

Nevertheless, it is noteworthy that CiM’s activism, while motivated by its concern about rights abuses and a commitment to promote ‘God’s Kingdom values’ in Zimbabwe’s polarised context, came to emphasise conflict resolution in its practical engagement on the ground with various actors. This was largely due to the network’s analysis of its strengths in terms of its ability to access people across the political spectrum, and its realisation that other civil society organisations were better placed to do classic human rights work. However, it is not unlikely that CiM’s pastoral approach and conflict interventions enabled it to raise rights concerns with individuals and groups who were otherwise not particularly receptive to them. At the same time, its explicit moral dimension and stance on human rights may have lent its conflict-focused efforts a certain authority and legitimacy.

Hence, the unplanned combination of human rights and conflict resolution probably created some opportunities for the Manicaland Churches. Yet it clearly generated challenges too. It proved difficult to act as prophet and pastor, ‘condemning’ and ‘affirming’ at the same time. This role tension also raises questions about the place of morality or value judgements in conflict resolution, and about the meaning of
Chapter 6

neutrality and impartiality.65 The difficulty of one person or organisation combining the seemingly incompatible roles of advocate and facilitator is well established in the literature. For Meijer, for example, this is likely to result in “serious confusion and potential harm” (1997; Kay 1997) while Van der Merwe writes,

The peacemaker or conciliator must have credibility on all sides of a conflict. Building and maintaining good relations and credibility with all parties is not compatible with attacks on injustice or public confrontation with the perceived perpetrators of injustice. The roles, tasks, and styles of peacemakers and prophets are different. And this difference can cause severe tension within any one person or group, and among persons and groups (1989, 3).

It has been suggested that the ‘role tensions between prophets and peacemakers’ (ibid) may be especially acute for people working as mediators in their own country because, “they are part of the situation they are attempting to alter. How can they balance the necessary impartiality with the equally necessary partisanship of change?” (Curle 1989, xiv).66 The Manicaland Churches surely experienced ‘the inner tensions and contradictions’ associated with such ‘role trouble’ (ibid), given their strong, critical stance in public statements.

The section has further highlighted how CIM struggled with balancing short- and long-term efforts. While this is certainly not unique to the human rights and conflict resolution fields, the CIM example illustrates that this challenge may particularly arise for actors seeking to enhance rights protection and conflict resolution because so many tactics used to further these ends are short-term oriented: speaking out on violence, monitoring abuses, assisting victims, bailing people out of prison, crisis intervention to reduce tension, etc. Consequently, when violence is widespread and polarisation is high, actors working towards peace and justice are easily caught up in short-term fire-fighting. Notwithstanding its significance from a humanitarian point of view, it leaves little time, energy and attention for considering steps towards longer-term change. As a CIM member noted, “continuous reaction can be exhausting – physically and mentally. We become so focused on the immediate event that we fail to see the wider picture”.67

Overall, our consideration of Churches in Manicaland confirms the previous chapter’s finding regarding permeable boundaries between human rights and conflict resolution; efforts to protect human rights and address conflict are closely related. While that chapter made clear that actors focused on one realm might end up dealing with the other (by conscious choice or unintentionally, in response to the situation at hand), this section has highlighted that actors not geared to either may end up doing

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65 In that sense, the CIM example links back to the case discussed in the previous chapter, about CCR practitioners dealing with the eviction of non-nationals from two informal settlements (see 5.2.3).
66 Emphasis in original.
67 Notes from Churches in Manicaland, Steering Committee, reflection and strategising session, 9 December 2002.
both as they seek to make a difference in their specific context. It confirms too how the interplay of human rights and conflict resolution brings opportunities and challenges.

### 6.2 Independent State Institutions

This section considers the experiences of a number of independent state institutions to highlight that the fluidity between human rights and conflict resolution is not confined to civil society actors. The institutions considered here are statutory bodies independent from government. Their mandate often relates to human rights protection, dispute settlement, social cohesion and/or public administration. They usually have review, monitoring and advisory functions regarding the actions and policies of government and public institutions, and interact directly with citizens through, for example, complaints mechanisms or public hearings. Some of these bodies are national human rights institutions (NHRIs), i.e. bodies with a constitutional and/or legislative mandate to promote and monitor the effective implementation of international human rights standards at national level, in line with UN-endorsed principles.\(^{68}\)

While it is beyond the scope of this study to examine such bodies in depth, it is worth devoting some attention to them. This is because many independent state institutions can also be understood as operating on the interface of the human rights and conflict resolution fields, akin to the Manicaland Churches – even if their formal title or mandate may only refer to one field explicitly. This section first outlines this argument (6.2.1) and then illustrates it with reference to a few South African institutions (6.2.2), and to a number of bodies elsewhere, most of which are clearly defined in terms of human rights (6.2.3). Subsequently, to balance such comments on rights-focused bodies, it highlights one independent state institution whose mandate is more oriented towards conflict resolution. This is the Northern Ireland Parades Commission, which facilitates and promotes mediation as a means to resolve disputes regarding public processions (6.2.4). Again, a summary concludes the section (6.2.5).

#### 6.2.1 Background

Thus far, in the previous chapter and the previous section of this chapter, our discussion has focused only on civil society actors. Yet it would be premature to conclude that the boundaries between human rights and conflict resolution are only permeable in the practice of these actors. My observations of and experiences with various independent state institutions in different countries suggest otherwise; they indicate that many such bodies also operate on the interface of the two fields, since

\(^{68}\) Principles relating to the status and functioning of national institutions for protection and promotion of human rights, endorsed by the Commission on Human Rights in March 1992 (Resolution 1992/54); General Assembly Resolution A/RES/48/134 (20 December 1993) (known as ‘the Paris Principles’). For information on NHRIs, see e.g. OHCHR (2010), Parlevliet and others (2005a) and International Council on Human Rights Policy (2004); see also chapter 2, fn. 44.
implementing their mandate requires them to work in both domains. This does not mean that such institutions necessarily consider their work in terms of the relationship between these fields, or recognise the interconnectedness of human rights and conflict resolution in their practice. More often than not they conceive of themselves as focused only on one of these fields, a self-conception that may be fuelled by their formal title. This is especially the case with national human rights commissions, which are charged with rights protection and promotion yet also regularly engage in conflict resolution – including the use of interest-based methods (Parlevliet, Lamb, and Maloka 2005a; 2005b).

This assessment initially emerged in the context of work conducted through CCR’s Human Rights and Conflict Management Programme. Within the first few years of the HRCMP’s existence, my colleagues and I had provided training and other technical support, at their request, to two statutory bodies, namely the South African Human Rights Commission and the Office of the Public Protector (OPP). Theoretically, both are national human rights institutions, provided for in the post-apartheid constitution to support ‘constitutional democracy’. While the SAHRC focuses on the protection and promotion of human rights in general, the OPP is an ombudsman’s office that focuses on administrative justice by investigating and redressing improper and prejudicial conduct, maladministration and abuse of power in state affairs. Both bodies are mandated to handle individual complaints and conduct investigations on their own initiative, as part of their rights protection responsibilities; the SAHRC also provides human rights education to the public at large and within specific sectors.

In separate interactions with senior managers from these institutions, it transpired that staff members regularly acted as intermediaries when dealing with complaints, as this involved facilitating interaction between citizens and public officials to resolve disputes. At other times, they became a party in conflict themselves when conducting investigations or other activities within the scope of their mandate, during which they often encountered lack of cooperation or outright resistance. Generally, their work could generate much hostility, occasionally involving physical aggression. The SAHRC educators also frequently faced tense situations in their awareness-raising efforts, as they challenged existing prejudices and deeply held normative beliefs. Issues like racism, sexism, homosexuality, abolition of the death penalty, prohibition of corporal punishment, abortion and xenophobia were particularly contentious.

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69 Chapter 9, 1996 Constitution, op.cit. All three types of national human rights institutions recognised by the UN (human rights commissions, ombudsmen and specialized institutions that focus on the rights of specific vulnerable groups) exist in South Africa. To simplify matters, the SAHRC is considered the country’s national human rights institution.


71 Personal notes from interactions with the regional coordinators of the SAHRC and OPP in Cape Town; and with senior managers from the national headquarters of both bodies, including the then Director and Deputy Director of the SAHRC’s National Centre for Human Rights Education and Training; see also Parlevliet (2002, 36-37).
Overall these bodies’ experiences resembled those of LHR discussed earlier: the context in which they operated and the nature of their work meant that they were continuously dealing with conflict, broadly defined. In another parallel, the leadership of these two bodies approached the HRCMP with a view to enhancing their understanding of the relationship between human rights and conflict and improving their employees’ capacity to handle conflict constructively. Conflict resolution was also relevant to these independent state bodies for another reason: the laws governing them provide for interest-based, non-judicial approaches to handling complaints, notably mediation, conciliation and negotiation. The use of such methods, aimed at facilitating dialogue and relationship-building, is partly due to the fact that such statutory bodies are meant to function as a bridge between the state and citizens; in the South African context, it has further been motivated by a desire to leave the adversarialism of the apartheid past behind.

The SAHRC and OPP thus served human rights and conflict resolution functions, working to protect rights while seeking to reconcile the interests of conflicting parties through facilitated dialogue and joint problem-solving. Over time, I began to realise that the human rights and conflict resolution practices undertaken by these bodies could go beyond the ‘micro’ level of addressing individual complaints and other small-scale conflicts arising in the context of their work. This particularly applied to the SAHRC, which also works at a ‘macro’ level by trying to address general tensions related to discrimination, marginalisation and exploitation. Through public hearings and systemic investigations into certain rights concerns – such as human rights violations in farming communities, school-based violence, violence against non-nationals and access to healthcare – it has sought to impact on structural conditions that provide fertile ground for abuses and violence in South African society. Such processes have often gained much support, and have provided an arena for wide public debate on problems and possible solutions.

It thus seems appropriate to argue that these independent state institutions operate on the interface of human rights and conflict resolution. Using the terminology introduced at the end of chapter 5, these bodies worked both ‘in’ and ‘on’ conflict (and continue to do so), even though their mandate is not framed in terms of conflict-

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72 In 2001, incidental workshops were conducted with all staff at the Cape Town offices of both institutions. After that, the HRCMP worked with the SAHRC between 2002 and 2004, providing a series of (3-day) training workshops for all its educators on human rights and conflict management and the use of conflict resolution methodology in facilitating education events. Work with the OPP was conducted between 2004-2005, consisting of a series of basic and advanced (3-day) training workshops on human rights and conflict management (for all professional staff) and on mediation in complaints handling (for senior managers and investigators) (4-days). The HRCMP developed institution-specific case studies and role plays based on real-life examples, with information provided by staff members from the two bodies.

73 Human Rights Commission Act (op.cit.), art. 8; Public Protector Act (op.cit.), art. 6.4(b).

74 In fact, the UN-endorsed Paris Principles (op.cit.) relating to national human rights institutions encourage amicable settlement of complaints through conciliation; many bodies hence engage in alternative dispute resolution. On South Africa’s desire to reduce adversarialism after apartheid, see 8.1.2.

75 For reports on public hearings, see ‘hearing reports’ under ‘publications’ at www.sahrc.org.za.
handling but in terms of safeguarding constitutional democracy, human rights protection and/or administrative justice. They work in settings where conflict is very present and where their actions interact with existing societal tensions or conflict dynamics, and they may consciously try to address conflicts, using interest-based methods.

6.2.2 Institutions on the Interface in South Africa

Interviews with South African interlocutors endorse this reading of these independent state institutions as bodies that operate on the interface between human rights and conflict resolution. For example, in separate meetings, conflict resolution practitioner Ghalib Galant and human rights academic Jeremy Sarkin observed that “human rights and conflict resolution come together in a number of institutional ways in South Africa”, as Galant puts it. They refer in this regard not only to the two bodies mentioned above but also to other independent state institutions such as the Independent Electoral Commission (IEC) and the Commission for Conciliation, Mediation and Arbitration (CCMA) which deals with labour disputes.

Yet interviewees also raise questions as to the extent to which this is recognised by these institutions. While conflict resolution may be used to address some rights-related matters, the extent to which the relationship between human rights and conflict resolution is considered in the institutions’ practice may be more a consequence of an individual employee’s experience, interest and capacity than of an institutional readiness to explore the interface and what it means for their work, including capitalising on the respective approaches offered by these fields. This transpires from examples recounted by two senior SAHRC managers based in Cape Town and Johannesburg respectively, and from Galant’s observations on working with the IEC.

Judith Robb Cohen, the regional manager of the SAHRC’s Western Cape office, refers mostly to the 2008 xenophobia crisis when discussing the body’s involvement in conflict resolution. She recalls that much conflict-handling fell initially to the SAHRC because those displaced did not trust any other South African authorities at first. “We had to establish trust with the leadership of the non-nationals and say to them, you need to work with the South Africans,” Robb Cohen says. She speaks of negotiating the end to two hunger strikes, and of defusing tension between displaced people and police officers at a ‘safety site’ where the atmosphere was explosive due to the many people brought together there, the limited facilities, and the general unrest caused by the violence, saying that, “all I would do was facilitate discussions – what we would

76 Interviews with Ghalib Galant, 3 June 2011, and with Jeremy Sarkin, 2 June 2011.
77 See 5.2.4.
78 Interview, Judith Robb Cohen, 10 June 2011. She held this position at the time of the interview, but now works at the SAHRC in another position.
say is that we were there to problem-solve. [...] We negotiated a lot for the non-nationals”.  

Others in the Commission were less comfortable playing an active conflict-handling role. Robb Cohen notes how, after receiving a call for help from non-nationals at a safety site in the Johannesburg area, she urged a colleague based there to go intervene in the situation – only to be told ‘I’ve never been trained, I’ve never been prepared for something like this.’ She attributes her own ability to engage effectively to her previous work at LHR, where she ‘learned conflict resolution’ and ‘negotiated so many eviction conflicts’ before joining the SAHRC. In her view, there were ‘huge analogies’ between her LHR work and what was required during the crisis, so she ‘was just transposing those lessons’. In fact, the SAHRC itself found in 2010 that it had been fairly slow to respond to the 2008 violence and had been uncertain of its role in these unprecedented circumstances. Its report recommended that the SAHRC “prioritise the issues of rule of law, justice and impunity in relation to social conflict in light of the scale and gravity of its potential impact on human rights” (2010, 80).

A senior SAHRC manager based in Johannesburg, Victoria Maloka, illustrates the interface of human rights and conflict resolution in the Commission’s practice by referring to its efforts to combine the two when dealing with a complaint of racism against four white students at a historically white university, the University of the Free State. The complaint related to the release of a racist video protesting against the university’s hostel integration policy, which caused major uproar in the country because it showed the students degrading five black university workers in an initiation-type ceremony. The case was partly addressed through judicial proceedings before the Magistrates’ Court and the Equality Court, which dealt respectively with criminal charges against the students and redress for the university workers. As Maloka explains, the SAHRC considered the court cases inadequate to resolve the matter:

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79 Ibid.
80 Ibid.
81 Ibid. As noted before, Robb Cohen established LHR’s Security of Farmworkers Project (see 5.1). In her view, these analogies stem from the powerlessness experienced by farmworkers and non-nationals alike.
82 Emphasis added. In terms of the SAHRC’s role, it was questioned whether the institution should primarily assist or monitor government in a disaster of such scale; and whether it should become engaged in relief activities; see South African Human Rights Commission (2010, 79).
83 Maloka was the Director of the SAHRC’s Human Rights Advocacy Programme at its national office in Johannesburg at the time of the interview but has since left the SAHRC.
84 The video shows the students instructing the university workers (four female cleaners and one male gardener) to drink beer and do various physical exercises, after which they are forced to eat food that seems to have been urinated on. See “Outcry in SA over “racist” video”, BBC World News, 27 February 2008, at http://news.bbc.co.uk/2/hi/7267027.stm; and Beauregard Tromp, Botho Molosankwe and Nadine Visagie, “University of Free State set to explode”, IOL news, 1 March 2008, at http://www.iol.co.za/news/south-africa/university-of-free-state-set-to-explode-1.391495.
85 In the Magistrate’s Court, they were charged with crimen injuria (unlawfully, intentionally, and seriously impairing the dignity of another) and were sentenced to a R20,000 fine (or 12 months’ imprisonment). In the Equality Court, papers were filed asking the former students to apologise and pay R1m each in punitive damages;
The complaint went straight to court, but we realised that we would not get everything we want out of it. [...] What the court case produced was a public apology, and a compensation package but the workers were still employees of the university, and the court case did not deal with that. There were still rifts between the university and the workers, which needed a completely different process. [Also], the workers felt very seriously violated by boys who they had considered as their own children – [like] ‘I made his bed on a daily basis’ – these personal things wouldn’t have been dealt with in a court of law.86

Consequently, the SAHRC designed and facilitated a ‘reconciliation process’, which involved several counselling sessions with a psychologist, a face-to-face meeting between the workers and the students, and a two-day seminar on reconciliation. It culminated in a ceremony attended by 300 guests at which the students apologised and asked for forgiveness.87

While lauding the SAHRC’s decision to address the matter through a mixture of human rights and conflict resolution, Maloka expresses concern about how the reconciliation process unfolded (she was involved as a senior manager). She trained as a human rights and constitutional lawyer herself but worked in CCR’s HRCMP from 2001 to 2006, before joining the SAHRC, which exposed her to conflict resolution thinking and practice. She argues that members of the Commission, as human rights activists, tend to be very focused on the outcome they want to achieve, and overlook process concerns. In her view, this resulted in a mistake being made in the reconciliation process:

One of the Commissioners wanted to use the platform in the Free State to make a big point about women’s rights. [The Commissioner] wanted the women to speak during the final ceremony [but] the women said [that] they don’t want to speak. [They said] ‘We’ve already spoken so much [at other occasions], why do you want to parade us? We don’t want to come.’ I kept saying ‘the women don’t want to come’ but [the Commissioner] did not want to listen. It was a difficult thing. There I was, caught between a human rights defender who wanted to promote the rights of women [and the women themselves], and between the human rights defender in me and the peacebuilder in me – I kept thinking, ‘you can’t go parade them, that’s violating the very rights of the women you’re trying to promote’. In [trying] to get the voices of the women out, [the Commissioner] ended up speaking for them rather than letting them speak for themselves.88


86 Interview, 13 June 2011, Cape Town.
88 Interview, Victoria Maloka, 13 June 2011.
According to Maloka, greater ‘process sensitivity’ (which conflict resolution practitioners supposedly have) would have ensured more attention for the women’s concerns, which might have avoided them being instrumentalised. She sighs when saying “I so wish that my Human Rights Commission could understand just a little more about conflict resolution theory and practice and how integrating some practices from the conflict resolution field could make our job easier”.89

Conflict resolution practitioner Ghalib Galant, who has worked extensively with several of South Africa’s independent state institutions – notably the SAHRC, the OPP and the IEC – and who served on the Commission for Conciliation, Mediation and Arbitration, doubts whether there is any ‘critical engagement’ in such bodies on how ‘issues around human rights and conflict resolution manifest themselves in their work’. Pointing out that the Independent Electoral Commission establishes a mediation panel at every election, he notes “I’m not yet convinced that the IEC has truly interrogated what mediating for the IEC during an election means, or that the people they get as mediators have [done so]”.90 He illustrates this with an anecdote:

At the national election [in April 2009], I was a mediator and went out to a voting station where you had two parties [...] who had their stands quite close to the voting station. Now that’s okay, except that they were playing competing songs on these huge amps, and these songs could be heard inside the tent where people were casting their vote. So there’s a law – a rule under the regulations, under the Act that you may not interfere with someone making their vote. The presiding officer [at the station] wasn’t doing anything. I then, as the mediator, when coming around with the regional person, went over to both stands and said ‘turn the music down’. They complied with that, but it was interesting talking to the regional coordinator [afterwards], who said ‘why did you do that?’ I said, ‘well, I’m a mediator on behalf of the IEC’. ‘Yeah,’ he said, ‘but no one has declared a dispute’.

So I picked that up with some of the [mediator] colleagues later on, who said ‘yes, there has to be a dispute’. Does that mean that if the two [political] parties are quite happy with whatever it is, that there is no dispute? Surely not, because there is in fact a breach of the regulations, so there is a dispute, it just has not been declared by either of the parties. So, what does that mean for me as a mediator? There is a dispute – but this time it is with the voters, and the legal framework – so not every dispute is going to land up in the election court. Is there a role for [the IEC’s] mediators to play in that sort of scenario?91

He thus questions what IEC mediators consider a ‘dispute’ and whether mediators in a legally regulated context like elections only play a conflict resolution role when there is a recognised dispute between identifiable ‘conflict parties’, or whether they also have a responsibility to act when rules are breached. The latter may well be relevant from a conflict prevention perspective.

89 Ibid.
90 Interview with Ghalib Galant, former CCMA Commissioner, 3 June 2011.
91 Ibid.
Galant hesitates when asked to explain what he calls the ‘lack of critical engagement’ by such state institutions regarding the interaction of human rights and conflict resolution, and says:

There may be something around ‘because there is a law, we think the law says everything’. So, as [the former Chairperson of the SAHRC] often said, ‘the Human Rights Commission is empowered to do [a, b, c]’, and then we just do that. But then there’s not necessarily the question around - how. [In] my experience with [the] IEC mediators [...] this question of mediating within a human rights framework did not even come up – to be asked, or thought about. When I asked the convenors of the [mediation] panel, is that something to consider, the response was ‘well, we’re only here for one day – so why should we bother ourselves too much?’  

By emphasising the ‘how’, Galant also implies that these institutions pay little attention to process matters. Of course, it is debatable whether the reported response (‘we’re only here for one day’) represents the position of the institution as such. It is nevertheless telling, suggesting that the body does not set great store by reviewing how, where and when it uses conflict resolution when implementing its mandate and how its use relates to the legal framework and rights standards to be enforced.

Overall, the examples and observations from interlocutors confirm the interconnectedness of human rights and conflict resolution in the functioning of these independent state institutions. Bodies like the SAHRC and IEC, which are mandated to protect constitutional democracy and/or human rights, seem to recognise the relevance of conflict resolution to their work and may draw on it while implementing their mandate. Yet it is questionable how much such institutions reflect on the interaction of human rights and conflict resolution in their work and what it means for their practice – in terms of, for example, using conflict resolution to address rights-related matters or mediating in a human rights framework, or the extent to which employees can, should or may engage with social conflict, and their capacity to do so effectively.

6.2.3 Beyond South Africa

While South Africa may be exceptional in the number of independent statutory bodies established to protect human rights, the institutions mentioned above are not unique. There are numerous examples of similar institutions in many other countries that also work on the interface of human rights and conflict resolution. As this subsection suggests, this may be especially clear in the case of national human rights institutions.

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92 Ibid, emphasis as spoken.
93 Besides the SAHRC, OPP, and IEC, the 1996 Constitution (op.cit.) also provides for a Commission for Gender Equality and a Commission for the Promotion and Protection of Cultural, Religious and Linguistic Minorities.
94 By 29 May 2015, 72 NHRI s were accredited as being ‘fully compliant’ with the Paris Principles, which speaks to their independence; the remainder of institutions around the globe was either accredited as not fully compliant (26) or non-compliant (10), or was not accredited at all; see International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Chart of the Status of National Institutions, 29 May 2015, at http://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart.pdf.
institutions, both in general terms and in specific instances. It also identifies two institutions that do not belong to this category and are more explicitly oriented towards conflict resolution, to offset the attention devoted to bodies whose mandate is formally framed in terms of human rights.

In general terms, it is worth taking note of the 2004 Seoul Declaration, issued at a global conference bringing together national human rights commissions from across the world. It recognised that national institutions are mandated to protect and promote human rights in conflict situations and have a role to play in early warning, conflict resolution and conflict prevention. At the Seoul conference, the UN High Commissioner for Human Rights also announced the development of a course on conflict prevention for national institutions as part of an effort to strengthen their capacity. Earlier, in 2002, African human rights institutions had already adopted the Kampala Declaration, in which they committed themselves to pay 'greater attention to issues related to peace, conflict resolution, democracy and development'.

Several institutions have gone beyond mere rhetoric and a general recognition of the close relationship between human rights and conflict resolution. They have taken practical action to address concrete conflict situations in their context at national and local level. For example, during the civil war in Nepal, the National Human Rights Commission facilitated negotiations towards a human rights agreement between the government and Maoist rebels in 2003; the then chair of the Commission later explained this as an effort to enhance rights protection and build confidence between the parties to lay the basis for more extensive peace talks which, if successful, should help to protect rights on the long term (Parlevliet, Lamb, and Maloka 2005b, 19).

In Kenya, the National Commission on Human Rights started addressing recurrent 'politically ethnic-based clashes' around Mount Elgon, which were negatively affecting its human rights work there. It did so through a process that combined analysis of conflict dynamics and rights concerns, human rights education, joint problem-solving and visioning. It also involved facilitated dialogue between diverse ethnic groups and

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96 The conflict prevention course was delivered six times to NHRI s across five continents, in English, French and Spanish. The author of this study wrote the course material and tutored the course twice. For more information, see Jha/Parlevliet (2008); ‘Evaluation of Project DDH/2005/112-936, ‘Strengthening National Human Rights Institutions (OHCHR), March 2008’, at http://www.apt.ch/content/files_res/actors-for-change-evaluation.pdf.
98 In the end, no agreement was signed because the government feared signing would convey a notion of parity between itself and the Maoists. Follow-up efforts to get the parties to sign a separate bilateral human rights agreement with the Commission fell through due to a ceasefire breakdown.
between citizens and public officials to address issues around access to land, water and food. According to Alice Nderitu, the former senior manager who spearheaded the process at the time, insights and practices from conflict resolution facilitated a more practical approach to the Commission’s human rights work.99 In Bolivia, the Defensoría del Pueblo (Public Protector) has found that the local ‘Defensores’ based throughout the country are very often called upon to intervene in communal conflicts due to the institution’s high credibility, gained through handling individual complaints; it has therefore sought to enhance the capacity of its staff to address conflict constructively.100

These examples are not to suggest that the engagement of national human rights institutions with conflict and conflict resolution is uncomplicated. Many bodies are rather reluctant to respond directly to conflict beyond handling complaints, viewing it as a politically sensitive act that could jeopardise their relationship with government, human rights protection efforts, or independence. Case studies of five African NHRIs also found that commissions may insufficiently understand that rights violations can be both symptoms and causes of destructive conflict. As such, they do not always grasp how conflict dynamics relate to structural human rights conditions, or how individual complaints may reflect deeper societal tensions (Parlevliet, Lamb, and Maloka 2005a).101 Nevertheless, such examples and case studies show that it is hard for many NHRIs to get ‘around’ conflict since it is so present in their environment and affects the state of human rights that is their primary focus. Several bodies have thus become aware that working explicitly on conflict may be useful in fulfilling their human rights mandate; they also often use interest-based conflict methods, notably dialogue facilitation and mediation, to address rights-related matters (ibid).

The boundaries between human rights and conflict resolution are equally fluid for several other independent state bodies. The National Cohesion and Integration Commission of Kenya is a case in point. Established in 2009 in response to widespread violence following elections in late 2007, it uses various methods to pursue its mandate to promote equality of opportunity, harmony and peaceful co-existence between persons of different ethnic and racial backgrounds. Some are conflict resolution-oriented, such as facilitated dialogue between the main political stakeholders and a travelling television show intended to familiarise Kenyans with

99 Conversation, 7 June 2011, Cape Town; and Nderitu (2010, 58). These efforts in the Mount Elgon area occurred between 2004 and 2007. On Nderitu’s learning of conflict resolution as a human rights activist, see 8.4.1. Nderitu headed the Education Department at the Kenya National Human Rights Commission at the time.

100 Correspondence from Verena Frey, Coordinator of the German-funded Civil Peace Service in Bolivia, 2011; for two concrete examples of interventions by a local Defensor in conflicts over housing between the municipality and a tenants’ association representing over 600 families, see Parlevliet (2011, 40-41).

their compatriots from different parts of the country and deconstruct images of ‘the Other.’ Human rights strategies include human rights education, instigation of hate speech cases in court, advocacy through national media and reviewing legislation.102 Alice Nderitu, who became a Commissioner on this body when it was established, thus argues that it is located “slap-bang in the middle” of a human rights/conflict resolution spectrum.103

The final example noted here is the Northern Ireland Parades Commission (NIPC), a quasi-judicial body that regulates access to public space. While this body is mostly geared towards conflict resolution and interest-based methods, it has found that it cannot avoid human rights for the simple reason that the situations within the confines of its mandate are directly related to rights standards, claims and entitlements. This is set out below.

6.2.4 The Northern Ireland Parades Commission

Because most attention thus far has been devoted to statutory bodies that are mostly defined in terms of human rights, this penultimate subsection discusses an institution geared towards conflict resolution. It shows that human rights are integral to the NIPC’s context and work, although its founding legislation does not refer to human rights once.104 Dealing with human rights has been somewhat challenging for the Parades Commission, however. Its experiences resemble those of other actors discussed previously.

Established in 1997 in response to widespread inter-communal violence and public disorder in Northern Ireland, the NIPC facilitates and promotes mediation as a means to resolve disputes about public processions (referred to as ‘parades’), based on the recognition that there are legitimate interests at stake for parties wishing to parade or remain free from parades. Parading has long been an important feature of Northern Ireland culture. Yet various parades – which often have cultural, religious and political significance – are contentious, partly due to demographic changes along the routes taken, the use of controversial symbols, the impact on community life, etc. The Parades Commission is supposed to consider all parades deemed contentious or offensive.105

103 Conversation, 7 June 2011, Cape Town. See also the Commission’s website at http://www.cohesion.or.ke/.
105 For general background and discussion on parading disputes, see e.g. Jarman (2009), Bell (2007), and Hamilton/ Bryan (2006). Controversial symbols include particular songs, paramilitary paraphernalia and flags. The NIPC considers a parade contentious when it receives concerns about a particular proposed parade through the police. The organisers of parades and of protests against them have to notify the police in advance of their intentions.
The NIPC believes that solutions to parading and related problems in Northern Ireland can best be achieved through meaningful and sustained dialogue. It has thus, from the outset, encouraged dialogue between the organisers of a parade and of protests against it, so as to reach a mutually acceptable agreement. Such dialogue may occur through direct negotiation or through the mediation of NIPC contractors or Commissioners. If the parties cannot reach 'local, horizontal, accommodation', the NIPC will issue a legally binding ruling (a 'determination') specifying whether a parade can go ahead and under what conditions (Hamilton and Bryan 2006). In deciding on a determination, the Commission considers a number of factors, including the risk of public disorder or damage to property, the potential disruption to the life of the community where the parade is to occur, and the procession's potential impact on relationships within the community (Northern Ireland Parades Commission 2005a).

This institutional set-up does not explicitly refer to human rights, but the Parades Commission has become well aware that human rights are central to its work. Consider, for example, this quote from the 'frequently asked questions' page on its website, in response to the question "Why does the Parades Commission allow parades in areas where they are not wanted?":

The Commission operates from the fundamental premise that the rights to freedom of assembly (i.e. to parade) and to freedom of expression (i.e. to protest) are important rights to be enjoyed equally by all. It acknowledges however, that these rights are not absolute and that there are other equally important rights that have to be taken into account when a parade is taking place. In considering whether to place restrictions on a parade the Commission is required to consider certain criteria. [..]

Tolerance and respect for the rights of others is an important responsibility for people living in a free and democratic society. Society seeks to protect the right of peaceful assembly, whether it involves a parade or a protest against a parade. But the Commission considers a number of other rights too, including the rights of people living and working in the area of a parade or in the area of a parade protest. The specific rights the Commission has taken into account in any decision will be documented in the Commission's determination, which is a publicly available document.

While this comment recognises the relevance of human rights to the NIPC's mandate and work, in practice the Commission has found handling contending rights claims challenging at times. This surfaced particularly in the early 2000s, when its fieldworkers, the Authorised Officers (AOs), observed a growing reliance on human

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106 The NIPC used Authorised Officers for its fieldwork during the first 13 years of its existence; they were not formal staff members but self-employed conflict resolution practitioners contracted by the Commission. They worked in teams of two, which were balanced as far as possible in terms of gender and religion. The NIPC in office between April 2011-April 2012 dispensed with AOs and members of the Commission took on their role themselves. Communication from Robin Percival, former Commissioner, 14 September 2014, on file with author.

107 Conditions may include modifications to the route and timing of the parade, prohibition of certain sectarian songs or paramilitary displays during the parade, or banning of certain participants who have previously been involved in breaches of its determinations.

rights language in parading disputes following the introduction of the 1998 Human Rights Act, and the signing of the 1998 Good Friday Agreement, which makes explicit reference to human rights. The remainder of this section refers largely to this period and is mostly based on work conducted with the NIPC in 2002 and 2003.

The AOs perceived the increased use of human rights discourse as fuelling polarisation in parading disputes. In their view, it fortified the positions taken by the parties, who were becoming more adamant now that they could stake their claims with reference to human rights contained in the Good Friday Agreement and the European Convention on Human Rights. This juxtaposed the ‘right to parade’ and the ‘right to remain free from parades’. The former was grounded in the right to peaceful assembly and the right to freely participate in the cultural life of the community; the latter was linked to the right to freedom of expression, the right to dignity, the right to freedom of movement, and to the right to ‘remain free from sectarian harassment’, which is contained in the peace agreement.

For the AOs, human rights claims were thus another form of ammunition thrown back and forth between those in favour of parading and those protesting against it; rights talk only seemed to make the parties more convinced that they were in the right and the other party in the wrong. Consequently, the AOs were reluctant to engage with human rights, either in terms of formal standards or loose ‘rights talk’. They also questioned whether it was actually possible to engage with human rights in a way that would defuse rather than escalate tensions between parties, and raised concerns about working in a legalistic framework, given that their responsibilities were mostly geared towards improving community relations – the term generally used in Northern Ireland to refer to conflict resolution. They further pointed out that rights discourse had historically been mostly used by the Catholic/nationalist minority in Northern Ireland; if they were to use this language, they might risk being perceived as biased.

My interactions with the Executive Secretary, AOs and some members of the Commission, suggested that the AOs were not alone in their concerns – allegedly a few

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110 Following an introductory session on human rights and conflict resolution as pertaining to the NIPC, requested by the then Executive Secretary, Andrew Elliott, the Commission contracted me to conduct some training and reflection sessions with the AOs in late 2002 and early 2003 (which a few Commissioners attended at times), and a debriefing session after the 2003 parading season (of 2 to 4 days each). I undertook this work in my capacity as manager of CCR’s Human Rights and Conflict Management Programme.
112 The appeal to the right to freedom of movement and the right to dignity by those protesting parades is related to the possibility that a strong police presence may be deployed at parades that have caused major disorder in the past.
113 For an early review of legal principles and human rights standards pertaining to parading (commissioned by the Northern Ireland Human Rights Commission), see Hamilton and others (2001); for a more recent and more extensive review, see Northern Ireland Human Rights Commission (2013).
114 See further below at 8.1.1 and 8.2.1.
Commissioners deemed ‘human rights’ even more problematic than they did.\textsuperscript{115} Separate meetings with two researchers who had long focused on parading disputes and regularly consulted for the NIPC shed further light on such concerns. According to the researchers, these concerns were not just due to the perceived impact of human rights on conflict dynamics, but also to doubts amongst AOs and Commissioners about their own abilities regarding human rights.\textsuperscript{116}

In various ways, the discomfort observed amongst various people working with the Parades Commission resembled that amongst my CCR colleagues, discussed in the previous chapter, when undertaking a conflict resolution intervention following the eviction of non-nationals from two squatter settlements in Cape Town. They too encountered human rights language that they were not wholly prepared (or equipped) for, saw rights claims as polarising, and feared perceptions of bias if they were to take up human rights concerns. In both instances, the issue of whether and how to engage with human rights when facilitating dialogue between conflict parties, proved challenging – or, as I wrote in my notes while at the NIPC, the question was “how to move from rights as a polarising discourse to a unifying one”.\textsuperscript{117}

Yet it seemed to me that not engaging with human rights was not feasible for the Parades Commission, as I wrote in a report to the body in May 2003:

Human rights have increasingly become part of the vocabulary of the parties in the parading context, and it is essential that the various actors within the Commission develop a common understanding of and approach to human rights concerns. […] Some may be reluctant to engage in discussions on human rights, also because of their polarizing nature in the parading context. [Yet] the Commission may have little option in this regard. Even if it were to refrain from engaging in the rights discourse, parading and protesting communities will continue to yield the language of rights to support their demands. Standing back from the debate therefore would not mean that the rights claims go away – on the contrary, it would allow parties to [get] away with what seems at times a fairly simplistic understanding of rights.\textsuperscript{118}

My work with the AOs thus included helping them to examine and deconstruct their concerns and perceptions about human rights, and facilitate understanding that human rights and conflict resolution need not be as irreconcilable as they thought.\textsuperscript{119}

It is matter of debate whether the Parades Commission has dealt with human rights more extensively or effectively in subsequent years. Long-term observers Hamilton and Bryan have criticized the NIPC “for failing to clearly enunciate the boundaries of the human rights claims made by the parties” (2006, 169); for example, it has not

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\textsuperscript{115} Personal notes, recorded while at the Northern Ireland Parades Commission, May 2003.
\textsuperscript{116} Meetings with Dominic Bryan, Queen’s University, Belfast; and Neil Jarman, Institute for Conflict Research, 25 and 26 May 2003, Belfast.
\textsuperscript{117} Personal notes, May 2003, on file with author. For the discussion on CCR practitioners, see 5.2.3.
\textsuperscript{118} Report to the Northern Ireland Parades Commission, 2003, for NIPC and CCR by author (on file with her).
\textsuperscript{119} Ibid; for information on how this was done, see also typed up flipcharts from May 2003 workshop and training notes prepared for various sessions, both on file with author.
\end{flushright}
Actors on the Interface

clarified what constitutes a ‘peaceful’ assembly or the “precise circumstances when ‘the right to private and family life’ would be engaged on the part of local residents in the vicinity of a parade” (idem, 170, fn. 170). According to them, this “timidity in not explicitly ruling on the validity of [such] claims allows the vocabulary of rights to be used rhetorically in defence of entrenched positions”, which reduces the potential for local accommodation of parading disputes (idem, 170-174). This suggests that a failure to establish ‘the legal default position’ (Hamilton 2003, 290) may allow ongoing competing opinions on the scope of parties’ entitlements to continue to fuel disputes, since the parameters for conflict resolution are not clear (Parlevliet 2009, 284).120

Neil Jarman, the Director of the Institute for Conflict Research in Northern Ireland and co-author of an early review on legal principles and standards relating to parading (Hamilton, Jarman, and Bryan 2001), argues that the NIPC still fails to apply a series of principles to all parades across Northern Ireland but continues to consider parading disputes on a localised basis. He describes its approach as a “muddle-through, a mixture of community relations and human rights [...] with an emphasis on reducing the risk to public order, rather than a principled approach”.121 Robin Percival, who served on the Commission between 2011 and 2013, points out however that the body is legally required to take public order into account and to consider each parade separately. He also notes that the NIPC pays more attention to human rights legislation than may be recognised, and that human rights and community relations approaches have been combined in dealing with various parading disputes outside of Belfast.122

In sum, it is clear that human rights are essential to the Parades Commission’s work as its conflict resolution efforts revolve around competing rights claims – even if its approach to human rights has been generally mixed and uneasy at times. Before concluding, it is worth noting two other challenges that became themes in my interaction with the NIPC, besides the question of turning rights into a ‘unifying rather than polarising’ discourse. Echoing the discussion on Churches in Manicaland, these related to balancing the multiple roles played by Authorised Officers and to a desire to become less crisis-oriented.

The role challenge stemmed from the fact that the NIPC had both adjudicative and mediating functions. The AOs aimed to build relationships and facilitate mediation, but they were also meant to report on the potential for local accommodation. Their reporting responsibility could negatively affect their ability to mediate: the Commission used the information reported to devise determinations when parading and protesting groups could not agree amongst themselves, and an observed lack of

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120 This contrasts with LHR’s desire to obtain a clear legal ruling and reject mediation in a certain case, so as to prevent similar infractions in future (see 5.1.3). Establishing the ‘legal default position’ may thus serve a conflict prevention purpose.

121 Interview, on skype, 7 October 2011. For a suggestion of basic principles that can enable local accommodation of parading disputes, see Jarman and others (2009, 65-66).

122 Correspondence, 14 September 2014, on file with author; a prime example is Derry Londonderry. See also Jarman and others (2009, 21-22).
‘constructive engagement’ was likely to affect the conditions imposed (Hamilton and Bryan 2006, 176-182; Northern Ireland Parades Commission 2005b, 4-5).

In terms of the desire to become more proactive, the AOs had found that they were so busy preventing violence and disorder during the parading season that they could not take any steps with a more long-term impact. They identified the winter season as a great opportunity for working with various groups on, for example, exploring rights and responsibilities in the parading context or developing a joint vision of what parading could look like in the long term. However, at the end of the parading season, all actors concerned – themselves included – were so exhausted that little was done until they had to get ready for the next season.123 This was surprisingly similar to what the Manicaland Churches had highlighted halfway across the world, in terms of being caught up in containing symptoms. It made me think that certain challenges might be recurrent when working on human rights and conflict resolution, despite the different contexts in which actors may operate.

6.2.5. In Sum

This section has considered the experiences of several independent state institutions. It has argued that the interconnectedness of human rights and conflict resolution is as manifest in their practice as it may be for civil society actors. This is the case for various statutory bodies whose formal title and mandate are mostly framed in human rights terms, and also applies to an institution focusing more on conflict resolution. It has thus suggested that the bodies discussed here can be understood as operating on the interface of the two fields, since the implementation of their mandate may require them to engage in both human rights and conflict resolution efforts and use approaches from both fields.

With regard to national human rights institutions, the discussion has shown that such bodies often have to engage with conflict by virtue of their human rights mandate and in order to fulfil that mandate. This partly stems from their responsibility to handle complaints and the legislative requirement to use alternative dispute resolution – i.e. interest-based approaches – to address them. It is also due to the impact of social conflict on human rights conditions; this may prompt such bodies to undertake outright conflict resolution initiatives so as to enhance human rights protection.

Their credibility as a human rights institution can be another contributing factor, generating requests for institutions to play a mediating role in social conflict. Finally, the issues dealt with by such bodies are often contentious, which means that their staff and commission members have to overcome resistance and hostility while implementing the institution’s mandate. This of course constitutes ‘conflict’ of a very different nature than the social conflict referred to above, but still reflects the

123 Personal notes, May 2003, on file with author.
prevalence of conflict as a phenomenon faced by such institutions and the reality that they regularly handle conflict in some form or another.

Overall, these bodies tend to work ‘in’ and ‘on’ conflict to a fair degree, and conflict resolution is often more present in their practice than is recognised. Hence, where human rights and conflict resolution respectively end and begin is hard to separate when it comes to such institutions. The fuzzy boundaries between human rights and conflict resolution have also come to the fore in our consideration of a more conflict resolution-oriented statutory body, the Parades Commission in Northern Ireland, for the simple reason that the conflicts it is supposed to address relate to contending rights claims. Hence, its efforts are affected by human rights standards and impact on human rights conditions although it has no explicit human rights responsibilities. It has therefore not been able to get ‘around’ human rights, even if some in the institution may have been inclined to do so at times.

The discussion has further shown that independent state institutions vary greatly in the extent to which they recognise the interconnectedness of human rights and conflict resolution in their practice. Some that do, may try to combine insights and practices from both fields when addressing situations within the confines of their mandate, or seek capacity-building for their staff in the domain they are relatively unfamiliar with (e.g. conflict resolution training for staff of a human rights commission or ombudsman’s office). Other institutions seem less conscious of and/or comfortable with the close relationship between human rights and conflict resolution. These tend to approach ‘human rights’ or ‘conflict’ and ‘conflict resolution’ with reluctance or anxiety, fearing that it may compromise their independence, the implementation of their mandate, or relationships with important actors (e.g. government or specific identity groups).

On the whole, it is doubtful whether any of the independent institutions considered in this section have explored the human rights/conflict resolution interface (or the implications for their practice) in any thorough or systematic manner. As such, they may miss opportunities to use the interface to their advantage by drawing on approaches from either field. They may also fail to engage with important questions about mediating in a human rights framework, handling human rights talk in conflict resolution interventions, balancing different roles, or the range of skills and knowledge required to implement the institution’s mandate. It should be noted that the thesis set out here – that many independent state institutions operate on the interface of human rights and conflict resolution – is empirical rather than normative. It is intended to depict what is rather than what ought to be. Any associated normative suggestions are left to this study’s conclusion.\textsuperscript{124}

\textsuperscript{124} See further 9.5.
6.3 Conclusion

This chapter has sought to examine how the relationship between human rights and conflict resolution plays out in the practice of actors that are not field-specific, professional, NGOs, recognising that much valuable work in these areas is done by organisations of a different nature. It has focused on a civil society network of churches that cannot be defined as either a human rights or a conflict resolution actor, and has looked at experiences of some independent state institutions in South Africa and elsewhere. Because the question underpinning this chapter and the previous one is the same, this conclusion revisits the main findings of chapter 5 with a view to expanding on them.

The discussion on Churches in Manicaland and statutory bodies like the SAHRC and NIPC has highlighted once more the close relationship between human rights and conflict resolution in practice. In the case of CiM, it showed how an actor that was not very focused on either human rights or conflict resolution was effectively trying to impact on both domains while responding to political violence. It has thus been asserted that CiM found itself operating on the interface of human rights and conflict resolution – even if it did not conceive of its efforts as relating to these fields at first. Arguably, the independent state institutions considered here can also be seen as ‘operating on the interface’, even though their title or mandate may only explicitly refer to one or the other field. Working in both realms often seems integral to their mandate, whether explicitly or implicitly – for example, the use of interest-based methods is stressed to address complaints of rights violations, or a body’s conflict resolution work revolves around balancing conflicting rights claims.

This chapter thus confirms the permeable boundaries between human rights and conflict resolution, suggesting that this may be inherent to these fields. It confirms other findings too: that the fluidity of human rights and conflict resolution may especially come to the fore as actors face and respond to concrete situations on the ground; that this fluidity may stem from the nature of the work they do, the context in which they operate and the type of problems addressed; that encountering a certain phenomenon (e.g. human rights claims or conflict) – earlier referred to as working ‘in’ human rights or conflict – may make actors realise that they cannot get ‘around’ this phenomenon and may prompt them to try to address it directly; and, that learning and exposure to insights and methods from both fields and reflection on challenges experienced may be useful in handling the fuzzy boundaries between the fields.

The ‘response’ element is particularly obvious in the case of the Manicaland Churches, but also emerges in the case of the SAHRC and some other independent state bodies referred to here. The experiences of the Parades Commission perhaps most clearly illustrate the ‘context’ element, as the body found that it could not avoid engaging with human rights given the increased prominence of human rights discourse following the adoption of the UK Human Rights Act and the Good Friday Agreement. This reflects
the ‘human rights homecoming’ dynamic noted previously in relation to CCR and LHR. The relevance of context and the type of problems addressed also becomes evident when considering how intertwined human rights and conflict resolution are in situations of widespread political violence (as faced by CiM) or in contestation over the use of public space (as addressed by the NIPC). Understanding such situations only in terms of either ‘human rights’ or ‘conflict resolution’ fails to do justice to their complex nature. The ‘learning and reflection’ element has not been discussed in great detail here but emerges nevertheless: the SAHRC and OPP leadership wanted their staff members to learn about conflict resolution as they anticipated this would benefit their human rights work; several interviewees raise the question whether these and other statutory bodies sufficiently consider how human rights and conflict resolution ‘come together’ in their practice; and both CiM and the NIPC felt the need to reflect on their practice in light of the challenges faced.

Overall, chapters 5 and 6 provide clues as to what conflict resolution and human rights may contribute to one another. For human rights-focused actors like LHR and the SAHRC, conflict resolution offered additional methods and tools to address rights-related conflict. This reflects the relevance of non-legal solutions to rights violations (e.g. International Council on Human Rights Policy 2009, 17; Parlevliet 2002, 27-30). The appeal of interest-based methods for these actors was enhanced by their potential to deal with the relationships between parties and emotions such as mistrust, fear, hurt, anger and insecurity.

This suggests that conflict resolution brings to human rights an awareness of the broader social and political context in which rights-related conflict takes place, so that human rights become alive. It highlights the importance of considering relational and emotional dynamics besides the formal legal entitlements that exist. Quotes by practitioners also suggest that conflict resolution may bring an appreciation of ‘process’ to human rights, as it stresses the need to consider how best to approach a given situation. It is noteworthy that several interlocutors associate ‘process’ concerns mainly with conflict resolution, even though these have gained weight in the human rights field over time.125 This suggests that practitioners – both within and outside a specific field – may not be fully abreast of a field’s evolution and have a dated understanding of its thinking and practices.

As regards the contributions of human rights to conflict resolution, it has become clear that human rights set parameters within which conflict resolution is to take place, and that conflict resolution occurs ‘in the shadow of the law’. Ignorance or neglect of the law may have negative ramifications, as agreements negotiated may flout legal standards or be unsustainable. Clarity on the scope and limitations of entitlements also has the potential to function as a tool for conflict resolution by laying down a bottom line of what is allowed (referred to as the ‘legal default position’ in the context

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125 This relates to the emergence of the human rights-based approach to development; see 2.1 and 4.1.3.
Chapter 6

of the NIPC) or by identifying commonalities in the parties’ underlying grievances. Moreover, considering human rights in the context of conflict resolution efforts may draw attention to the role and functioning of public authorities and the extent to which their own action or inaction fuels conflict in a given context; this transpires most clearly from the review of the conflict resolution intervention in the eviction of non-nationals from two squatter camps around Cape Town. It also may highlight the importance of considering what (governance) structures exist that can help in addressing conflict in a constructive manner and how the functioning of such structures can be improved.

While such mutual contributions can be understood as opportunities brought by the encounter of human rights and conflict resolution, both chapters also indicate that dealing with this fluidity can be confusing, frustrating and challenging. Genuine questions emerge for organisations and individual practitioners that experience the permeable boundaries of human rights and conflict resolution in their practice. For example, what is the role of mediation in a legal setting, and what does it mean to do conflict resolution in a human rights framework? How can conflicting rights be balanced, and the contending rights claims of parties in a conflict resolution process be dealt with? Also, when and how should human rights concerns be raised when engaging with conflicting parties, and who should do so? If ‘human rights’ are experienced as a polarising discourse, can they be turned into a unifying one and how?

Moreover, while it seems relatively easy for human rights actors to take on conflict resolution functions, such as dialogue facilitation or mediation, conflict resolution actors appear to have more difficulty raising issues of human rights. Doing so raises questions about impartiality and neutrality, and combining advocacy and facilitative roles in particular seems to spell role trouble. How do actors that combine ‘condemning’ and ‘affirming’ roles – either by mandate or by choice – deal with this? Such questions seem to pit human rights and conflict resolution against one another, while other challenges relate to tensions embedded in both fields. How can actors concerned with ensuring respect for rights and resolving conflict peacefully go beyond reacting and have a more lasting impact? Is it possible to balance short-term and long-term efforts, to address both the immediate issues at stake and the underlying structural causes? What is the scope for addressing power imbalances, so that well-intentioned interventions to prevent violence and contain abuses go beyond mere pacification? Questions such as these are the focus of the next chapter.