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The Role of National Human  
Rights Institutions in  
Peacebuilding  
The Case of the Commission on  
Human Rights and  
Administrative Justice in  
Northern Ghana

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# Summary

The main purpose of this thesis was to analyse whether national human rights institutions (NHRIs) could work with peacebuilding and conflict transformation while following their mandate. The Commission for Human Rights and Administrative Justice's (CHRAJ) work in the Northern Region of Ghana was studied as a starting point. CHRAJ, as well as other NHRIs working in conflict prone areas, can use their mandate to both prevent the spread of violent conflict through the promotion and protection of human rights and to transform conflict, building sustainable peace.

NHRIs can engage in strategic activities that have as a goal the transformation of violent structures that contribute to conflict. They can also use their mandate to lobby the government into signing relevant human rights conventions; they can monitor the human rights situation at the national level and use the results of this monitoring exercise to promote activities that will positively affect the conflicting parties; they can cooperate with international organizations and other NHRIs that also work with peacebuilding to share experience, build capacities and develop partnerships; NHRIs can also use human rights education (HRE) as a tool to promote human rights and to change people's perceptions and prejudices. HRE can be used in all levels of the educational system (helping young people change their perceptions and creating a more respectful and tolerant society), but it can also be used as a tool to address adults and make them perceive how their attitudes can contribute to either transforming conflict or maintaining the violent structures. NHRIs can also use their mandates to increase awareness of the population on both the importance of the promotion and protection of human rights as a whole, but also awareness-raising campaigns can focus on discrimination patterns and prejudices that are an underlying cause for conflict. Lastly, those NHRIs that also work as quasi-judicial bodies and receive complaints from individuals can use these complaints to map the situation in a precise area and draw activities that will assist in the peacebuilding process by addressing the most common human rights violations and their root causes.

CHARJ, as an NHRI, can use its mandate to address human rights violations in the Northern Region that can be said to have contributed to the explosion of the violent conflicts. CHRAJ can focus on the human rights complaints coming from the Northern Region and address them strategically, so that the measures taken can address the issues. Moreover, CHRAJ should use its education mandate to educate chiefs and work with them. Chiefs occupy a very important position in Ghanaian society and therefore they should be involved in peacebuilding activities in the Northern Region. Finally, CHARJ should conduct an awareness-raising campaign in the whole country to try to change the misperception that people from the north are naturally violent.

# Preface

The most intellectually challenging two years of my life. This thesis reflects all the influences from persons and texts that have changed me so much.

# Abbreviations

ADR	Alternative Dispute Resolution
CAT	Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CMW	Convention on the Protection of All Migrant Workers and Members of their Families
CRPD	Convention on the Rights of Persons affected by Disabilities
CHRAJ	Commission on Human Rights and Administrative Justice
CHRGG	Commission for Human Rights and Good Governance
CPED	Convention on the Protection of All Persons from Enforced Disappearances
CRC	Convention on the Rights of the Child
DANIDA	Danish Development Agency
DRC	Democratic Republic of Congo
HRBA	Human Rights-Based Approach
HRE	Human Rights Education
ICC	International Coordinating Committee of National Human Rights Institutions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council for Human Rights Policy
IHL	International Humanitarian Law
IJS	Informal Justice Systems
KOYA	Konkomba Youth Association
NCCE	National Commission for Civic Education

NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
NLC	National Liberation Council
NRC	National Reconciliation Commission
OHCHR	Office of the High Commissioner for Human Rights
PCE	Permanent Commission of Enquiry
PESTEL	Political, Economic, Social, Technology, Environment and Legal
TRC	Truth and Reconciliation Commission
UHRC	Uganda Human Rights Commission
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
WDR	World Development Report

# 1 Introduction

## 1.1 Research Questions

Can national human rights institutions work within their mandate in order to transform conflict and promote peacebuilding?

Can the Commission on Human Rights and Administrative Justice in Ghana use its mandate to transform the conflicts in the Northern Region?

## 1.2 Delimitations

Looking into the mandate of national human rights institutions (NHRIs) alone without analysing the context and work of one NHRI would have made the thesis less complete. When the first research question was decided it was necessary to find which NHRI would be the object of study. The author's first choice was the Uganda Human Rights Commission (UHRC). The idea would be to study UHRC's work in Uganda and more specifically its work on the conflict in the north. A quick look into the literature showed that a lot had already been produced about that conflict and about UHRC, therefore it would be a better idea to look into another country.

Ghana was the suggestion of a conflict expert working at the Danish Institute for Human Rights, Ms. Mie Roesdahl. She had just taught a course on conflict management that had three participants from Ghana. All three of them worked at the Commission on Human Rights and Administrative Justice (CHRAJ) and had mentioned the conflicts in the north as a problem for the Ghanaian society. This suggestion fit very well with the author's wish to work with conflict related issues, the African context and national human rights institutions.

A first look into the Ghanaian context had shown the "Guinea-Fowl War" as the biggest and most violent conflict of that country, therefore, that was the conflict chosen. Nonetheless, a deeper study of the Northern Region (and the other two regions in the north Upper West and Upper East) has shown that the "Guinea-Fowl War" is not a single conflict and that the ethnic groups involved in the conflict are also involved in other conflicts relating to similar issues (chieftaincy, land disputes, participation, etc). As the purpose of the thesis is to look into the work of CHRAJ in the Northern Region, the thesis only analyses the "Guinea-Fowl War".

The choice of authors is based on the author's experience working as a course assistant at the Danish Institute for Human Rights. The author has been an assistant for, among others, a five-week conflict management course to DANIDA Fellowship Centre partners and a weekend-long conflict management course for volunteers at the International Humanitarian Brigade. In these courses the author was introduced to the work of Johan



Galtung and John Paul Lederach, which are the main authors, used to explain basic ideas involving conflict transformation and peacebuilding. Ms. Michelle Parlevliet taught both courses and her work has been used because it presents a good mixture between theory and practice. Ms. Parlevliet has worked in the Truth and Reconciliation Commission in South Africa, at the International Tribunal for the Former Yugoslavia and she has worked in Nepal as an adviser for DANIDA, further she was written extensively on issues connected to conflict transformation and peacebuilding. Her work has also been used because she is one of the first authors in the conflict field to try to use human rights principles and instruments to explain the root causes of conflict and how to transform conflict.

Out of the nine human rights conventions within the United Nations (UN) only two were not mentioned as relevant instruments for peacebuilding and conflict transformation, namely the Convention on the Protection of All Migrant Workers and Members of their Families (CMW) and the Convention on the Rights of Persons affected by Disabilities (CRPD). There are several reasons for that. CMW is a very new convention with not so many ratifications and many of the “receiving” countries of migrant workers are not parties to the convention. Further, even though it can be found in the literature that migration may be a root cause of future conflicts, for the purpose of the thesis CMW has not been studied. CRPD was left behind mostly due to its very specific obligations put on states in relation to persons affected by disabilities than due to its utility for peacebuilding. This does not mean that the author thinks that including persons with disabilities is less important for the process of building peace.

### **1.3 Methodology**

In order to write the thesis more than regular dogmatic method was used. This thesis contains an analysis of soft law (namely the Paris Principles), hard law (basically human rights conventions within the UN system and national law from Ghana). The work of law scholars is also used to explain the relations between law and social structures and to explain national law issues in Ghana.

This thesis has also relied on conflict management, conflict transformation, conflict resolution and peace studies literature. The choice of materials on these fields was based on the author’s experiences as a course assistant at the Danish Institute for Human Rights and informal conversation with conflict practitioners.

In order to write the chapter concerning the situation in Northern Ghana the author also had to rely on history and political science literature on Ghana.

The last method used was interviews. The author went on a field research trip to Ghana where she interviewed mainly persons working at the Commission on Human Rights and Administrative Justice. The persons

interviewed were the persons available at the moment of the visit and that had some knowledge of the situation in the Northern Region. The author is not very familiar with interview techniques and how to go about in doing field studies, therefore, the interviews obtained are mainly of a qualitative nature and not quantitative. Further they have been used as inspiration for writing and as a reality check.

## 1.4 Human Rights and Conflict

*“Suicide bomber kills scores in Iraq”* (Aljazeera, 18 January 2011), *“In Afghanistan, Insurgents let Bombs do Fighting”* (The New York Times, 17 January 2011), *“Israeli tanks in fatal Gaza raid”* (BBC News, 18 January 2011), *“Libya exodus sparks border crisis”* (BBC News, 27 February 2011), *“Deaths in DRC ‘failed coup attempt’”* (Aljazeera, 27 February 2011).

Everyday world newspapers are replete with news of conflict. Civilians being killed in so called collateral damages, governments erupting in genocidal violence, refugee camps lacking sanitation, water and food supplies, “failed states collapsing in chaos”<sup>1</sup>, rival groups taking up arms, and so on. All these situations point out to the complicated relationship between human rights and conflict; how human rights violations can be both causes and consequences of violent conflict<sup>2</sup> and how challenging this theme is. Exclusion of societies from enjoyment of human rights can lead to an atmosphere of conflict – this illustrates causes; killings, disappearances and torture illustrate consequences. This thesis’ purpose is to analyse this relationship between human rights and conflict, focus on how human rights can be an instrument in conflict prevention and transformation, and how National Human Rights Institutions can play an important role in order to prevent the explosion of violent conflict.

It is important to clarify here that the study of conflict relates to human rights promotion and protection, conflict management and implementation of international humanitarian law (IHL). Nonetheless this thesis will not focus on the phases of conflict where IHL would be applicable, this means that armed conflict, as defined in the Geneva Conventions will not be a direct object of study. This however does not mean that armed conflict will be left behind. There are other situations that can be considered conflict and that are not regulated by humanitarian law. Nevertheless some features of international humanitarian law might become an object of study, even if the aim is to determine the non-applicability of IHL.

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<sup>1</sup> Mertus, Julie A. and Helsing, Jeffrey H. (eds), *Human Rights and Conflict – Exploring the Links between Rights, Law, and Peacebuilding* (United States Institute of Peace, Washington, 2006), p. 39

<sup>2</sup> Parlevliet, Michelle, ‘Rethinking Conflict Transformation from a Human Rights Perspective’, *Berghof Handbook for Conflict Transformation* (Berghof Research Center for Constructive Conflict Management 2009)

Michelle Parlevliet<sup>3</sup> uses the metaphor of an iceberg to explain how human rights can be both cause and consequence of conflict. The top of the iceberg symbolises the symptoms of conflict, with human rights violations that are very visible, as forced disappearances, torture as a political tool, rape and summary executions. The bottom of the iceberg, the hidden part, symbolises human rights violations that can be causes of conflict. “It represents situations where denial of human rights is embedded in the structures of society and governance, in terms of how the state is organised, how institutions operate and how society functions.”<sup>4</sup> An example would be the constant marginalization of a certain group by civil servants and police officers, or the repeated legislative process that excludes or denies access to certain goods to specific groups.

“Denial of human rights as a cause of conflict gives rise to (symptomatic) human rights violations. Yet, a pattern of specific violations may, if left unchecked, gradually become a structural condition in itself that fuels further conflict – this is the case with systematic torture, indiscriminate killings and widespread impunity.”<sup>5</sup> These structural problems can characterize structural violence and be one factor that contributes to the explosion of violent conflicts.

This idea presented by Parlevliet is closely connected to the idea of human needs. As Mertus and Helsing<sup>6</sup> note, unsatisfied human needs can be a root cause to conflict. “Human rights abuses, like unmet human needs, threaten the security of individuals and social groups and, in so doing, create cycles of dehumanization based on fear.”<sup>7</sup> To many of the human needs there can be found correspondent human rights and it is “the state’s inability or unwillingness to protect human rights and provide mechanisms for the civil resolution of conflict [that] may prompt groups to use force in pressing their demands for such rights, resulting in violent conflict both within and between states”<sup>8</sup>.

In order to build upon these ideas and use the interrelation of human rights and human needs, this thesis will also closely look into central definitions in conflict transformation and resolution research to be able to explain how a National Human Rights Institution (NHRI) can play a vital role in the transformation of conflict. More specifically, this thesis will look into structural violence as a violation of human rights and for that reason the area of work of NHRIs.

The Ghanaian Commission for Human Rights and Administrative Justice’s (CHRAJ) work in the Northern Region of Ghana will be used as an example to illustrate how a NHRI can/should work on structural violence in order to

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid, p. 5

<sup>5</sup> Ibid.

<sup>6</sup> Supra note 1.

<sup>7</sup> Ibid, p. 4

<sup>8</sup> Ibid.

construct positive peace. CHRAJ, a National Human Rights Institution set forth in accordance with the Paris Principles (1993) by the Constitution of the Republic of Ghana (1992) and the Commission on Human Rights and Administrative Justice Act (Act 456 of 6 June 1993), has a mandate that can be used to work in peacebuilding in Ghana's Northern Region. This thesis will, therefore, address peacebuilding as an attempt "to transform the underlying issues that give rise to violent conflict and therefore [focus] on the 'structural, relational and cultural roots of conflict'"<sup>9</sup>. The Commission can use its mandate regarding education ("to educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia") as prescribed by Article 218 (e) of the Constitution to approach the conflict related issues using conflict transformation methods in order to change the suppressing and discriminating societal structures. Further, the use of conflict management tools, such as mediation and negotiation, will be used in the analysis of CHRAJ's work.

Chapter Two will consequently focus on structural violence and human rights and try to provide a comprehensive analysis of structural violence as a cause of conflict. Furthermore, this chapter will present the current situation in Northern Ghana through a historical analysis of the area and the 1994-1995 conflict, its causes and the present situation. Even though Northern Ghana is an area prone to violent conflict, it was necessary to delimit the subject of study. Due to the composition of the Region, its lack of development, the exclusion of certain groups, the high level of illiteracy, the centralisation of power within a few selected groups and the complicated procedures related to chieftaincy the Northern Region has experienced many different conflicts. Some of the most notable ones include "the Bimoba war against the Konkomba in 1986 and 1989; the violent clashes between the Nawuri and the Gonja ... in 1991; the succession dispute among the Dagomba in 1991 and 2001...; and the protracted conflict between Mamprusi and Kusasi ... in 2000"<sup>10</sup>. All these conflicts are relevant, however the most devastating and extensive one was the Konkomba vs. Dagomba war in 1994-1995. Due to that and also due to the fact that many of the circumstances that were into place then are still present today, the latter was chosen as an object of study.

In Chapter Three conflict resolution/transformation will be studied focusing on methods available to NHRIs as negotiation and third-party interventions. This chapter will provide the thesis with its theoretical backbone, as these are tools already used by NHRIs to transform conflict.

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<sup>9</sup> Khan, Naefa, "The Commission on Human Rights and Administrative Justice in Ghana: Working in the micro and around the macro", Parlevliet, M., Lamb, G. and Maloka, V. (eds.) *Defenders of Human Rights, Managers of Conflict, Builders of Peace? National Human Rights Institutions in Africa* (Centre for Conflict Resolution, University of Cape Town, 2005), p. 65

<sup>10</sup> Tonah, Steve, "Theoretical Comparative Perspectives on Ethnicity, Conflicts and Consensus in Ghana", Tonah, Steve (ed.), *Ethnicity, Conflicts and Consensus in Ghana* (Woeli Publishing Services, Accra, 2007), p. 4

Chapter Four will concentrate on peacebuilding: definition, elements and actors and NHRIs mandate to work in this area. It is important to understand what peacebuilding is in order to establish how NHRIs can contribute to it.

Lastly, Chapter Five will be dedicated to CHRAJ in Ghana and its previous work in the Northern Region conflict and the challenges presented upon it.

## 1.5 Terminology

### 1.5.1 Conflict Management, Conflict Resolution and Conflict Transformation

The terms conflict management, conflict resolution, and conflict transformation refer to tools and fields of study that relate to how peace can be achieved. They are terms that describe the various approaches to addressing conflict. The explanations and characteristics of each field differ also within the different areas. Here a few possible definitions have been selected in order to provide the reader with an idea of what these terms refer to. Conflict management “aims to limit and avoid future violence by promoting possible behavioural changes in the parties involved”. Conflict resolution, on the other hand, “addresses the causes of conflict and seeks to build new and lasting relationships between hostile groups”<sup>11</sup>.

Conflict transformation, nevertheless, is based on social justice and therefore more easily connected to human rights and the human rights discourse. “Placing constructive social change at its core, conflict transformation acknowledges the need for addressing power imbalances and recognizes a role for advocacy and the importance of voices that challenge the status quo”<sup>12</sup>. Conflict transformation is about using conflict in order to change the power imbalances of a society making it a more just one.

Lederach uses the term conflict transformation because it goes beyond the mere resolution of problems; the idea is to create a constructive change through conflict. He proposes the following definition: “conflict transformation is to envision and respond to the ebb and flow of social conflict as life-giving opportunities for creating constructive change processes that reduce violence, increase justice in the direct interaction and social structures, and respond to real-life problems in human relationships”<sup>13</sup>.

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<sup>11</sup> Fisher, Simon; Abdi, Dekha Ibrahim; Ludin, Jawed; Smith, Richard; Williams, Steve; and Williams, Sue, *Working with Conflict – Skills and Strategies for Action* (Responding to Conflict, London, 2000), p. 7

<sup>12</sup> Supra note 2, p. 2

<sup>13</sup> Lederach, John Paul, *The Little Book of Conflict Transformation* (Good Books, Intercourse, 2003), p. 14

The term conflict transformation is seen as a wider and more comprehensive one, while conflict management is one of the first terms used in this field of study, and conflict resolution has in it an idea of ending, terminating, and not necessarily changing. Therefore, this thesis will use the term conflict transformation because it is in accordance with the issues it intends to address. However, some of the terms better relate to conflict management, when that is the case, the latter will be used instead.

### 1.5.2 Understanding Conflict Transformation – An Overview of Key Terms and Expressions

Firstly it is necessary to establish that conflict is not necessarily a bad and abnormal thing, nor are all conflicts violent ones. Conflict can be the fuel for change, positive change, and it is the way we deal with conflict that will determine its outcome. Conflicts are a fact of life and most of the times they are resolved without the use of violence. “Conflict is a relationship between two or more parties (individuals or groups) who have, or think they have incompatible goals”, whereas “violence consists of actions, words, attitudes, structures or systems that cause physical, psychological, social or environmental damage and or prevent people from reaching their full human potential”<sup>14</sup>.

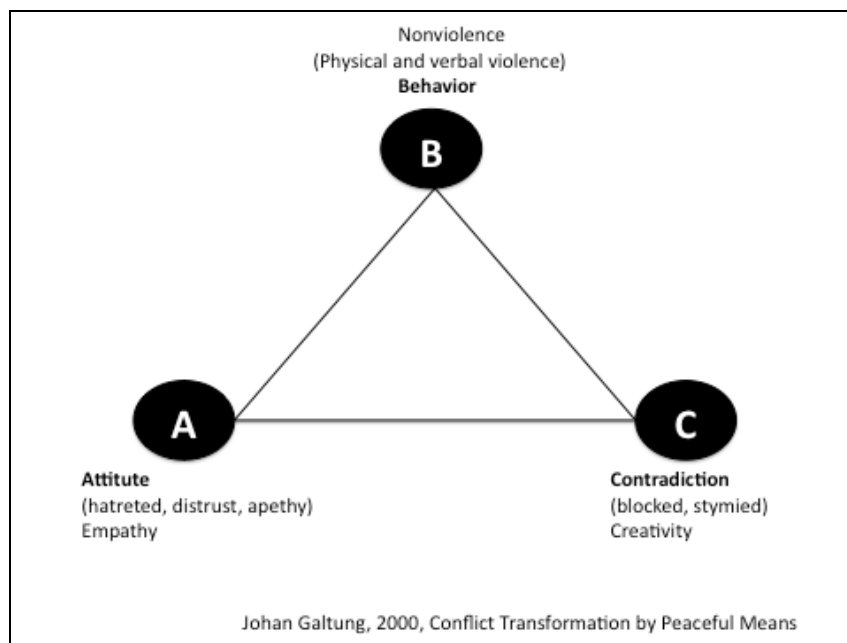


Figure 1.1 – The ABC Triangle – Johan Galtung

The issue at point here is that all human relations – economic, political, social – experience growth, change and conflict. Conflicts are the result of imbalances in these relations, as for example unequal wealth and access to

<sup>14</sup> Supra note 11, p. 4

resources, unequal power and unequal social status. These inequalities can lead to problems such as discrimination, unemployment, poverty, oppression and crime. “Each level connects to the others, forming a potentially powerful chain of forces either for powerful change or for destructive violence”<sup>15</sup>.

Conflict researches affirm that suppressing conflict is negative, because it leads to future problems. They point out to the fact that conflict can be as much part of the solution as of the problem. Fischer et al. explains that a conflict becomes violent when “there are inadequate channels for dialogue and disagreement; dissenting voices and deeply held grievances cannot be heard and addressed; [and] there is instability, injustice and fear in the wider community and society”<sup>16</sup>.

Galtung<sup>17</sup> has suggested that conflict involves three key elements: contradiction (the actual or perceived incompatible goals between the parties), attitude (parties’ perceptions and misperceptions of themselves and of others), and behaviour (how parties treat and interact with each other) (p. 72). He explains that individuals and groups have goals that can become incompatible. When this happens there is a *contradiction*. “Any actor/party with unrealized goals feels frustrated and more so the more basic the goal, like needs and basic interests; frustration *may* be directed toward the holders of the goals, turning inwards as *attitudes* of hatred, or outwards as *behavior* of verbal or physical violence”. This violence may be directed at those persons “standing in the way of the goals” and it may also create a spiral of counter violence. “The spiral of counter-violence becomes a meta-conflict (like meta-stasis related to cancer) over the goals of preserving and destroying”<sup>18</sup>.

In the conflict management literature one of the common terms to be found is conflict escalation. Conflict experts use a ladder as a metaphor to explain how conflict evolves and define escalation as the increase in intensity of a conflict. Else Hammerich<sup>19</sup> explains that even though all conflicts are different, there is a pattern for destructive escalation that can be found in all conflicts. The conflict ladder presented by her is divided in seven stages, namely disagreement, personification, expansion, communication stop, enemy images, open hostility, and polarisation. It is important to note here, that this model was designed mostly for inter-personal conflicts; however, it can easily be applied to social conflicts. The following illustration shows another possible model for conflict escalation:

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<sup>15</sup> Ibid.

<sup>16</sup> Supra note 11, p. 6.

<sup>17</sup> Galtung, Johan, “Violence, Peace, and Peace Research”, (*Journal of Peace Research*, Vol. 6, No. 3, pp. 167-191, 1969)

<sup>18</sup> Galtung, Johan, *Conflict Transformation by Peaceful Means (the Transcend Method)*, (United Nations Disaster Management Training Programme, UN, 2000), p. 1

<sup>19</sup> Hammerich, Else, *Meeting Conflicts Mindfully* (Tibetan Centre for Conflict Resolution and Danish Centre for Conflict Resolution, Copenhagen, 2001).

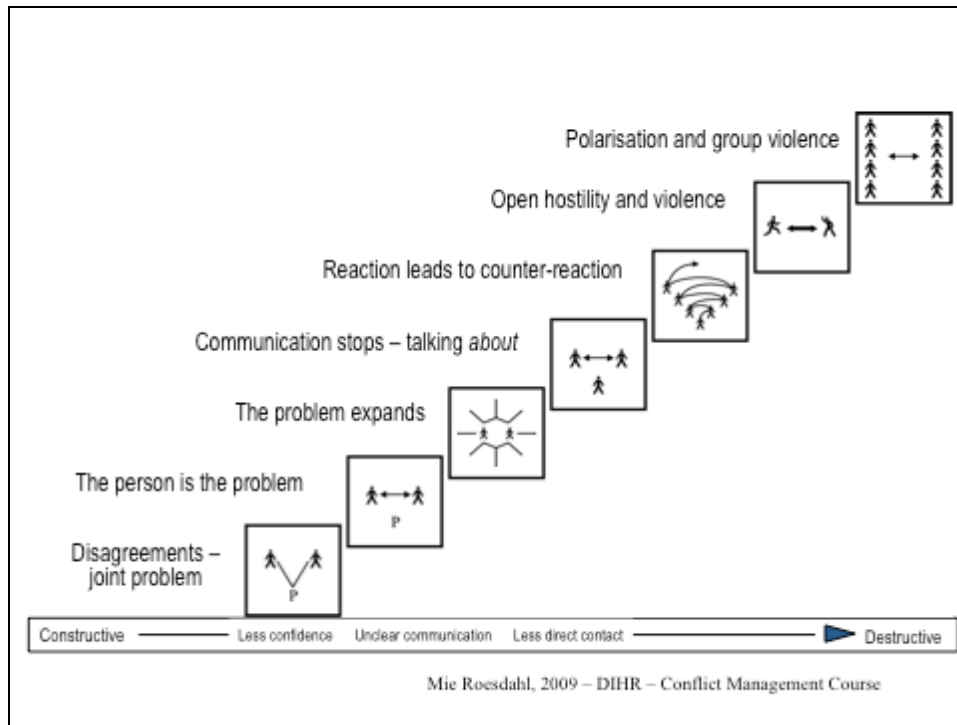


Figure 1.2 – Conflict Escalation

Druckman<sup>20</sup> uses Fisher’s models to explain the escalation of societal conflicts, especially international ones, namely: discussion, polarization, segregation, and destruction. “At each stage the relationship between disputants changes. The preferred method of conflict management becomes increasingly competitive, going from joint decision making in stage one to attempt at destruction on stage four.”<sup>21</sup> Understanding escalation and the different stages of conflict is relevant because these different stages determine also the type of intervention and what should be done in order to prevent violent acts, or try to stop them.

Together with conflict escalation it is important to mention conflict de-escalation, which is the reverse phenomenon. As in conflict escalation, de-escalation is not a linear process. During conflict new issues and conflict parties can emerge, power struggles can alter, the dynamics of the conflict and secondary conflicts and spirals can further complicate the situation. “The same is true for de-escalation, with unexpected breakthroughs and setbacks changing the dynamics, with advances in one area or at one level, being offset by relapses at others, and with actions of third parties influencing the outcome in unforeseen ways.”<sup>22</sup>

When referring to violent conflict it is also important to mention peace.

<sup>20</sup> Druckman, Daniel, “Negotiating in the International Context”, Zartman, I. William and Rasmussen, J. Lewis, *Peacemaking in International Conflict: Methods and Techniques* (United States Institute for Peace, Washington, D.C., 2005)

<sup>21</sup> Ibid, pp. 92-93

<sup>22</sup> Ramsbotham, Oliver, Woodhouse, Tom and Miall, Hugh, *Contemporary Conflict Resolution: The prevention, management and transformation of deadly conflicts* (Polity Press, Cambridge, 2005), p. 11



More than that, it is important to differentiate between positive and negative peace. Negative peace is the absence of direct, physical violence. It refers to the end of abuses, such as rape, torture, killings, mutilation, displacement of people and destruction of property. Positive peace, on the other hand, “refers to the presence of social justice and political equality, including harmonious relationships within society that are conducive to mutual development, growth and the attainment of common goals”<sup>23</sup>. Peace can therefore be defined as absence of personal and structural violence<sup>24</sup>.

A few other terms deserve attention here. Parlevliet et al.<sup>25</sup> use the framework outlined by the Department of International Development of the United Kingdom to explore how NHRIs can work *around*, *in* or *on* conflict. This terminology will later be used to explain the work of CHRAJ, and therefore it needs to be clarified here.

- *Working around conflict* – is treating conflict as an impediment or negative externality that is to be avoided. “The unwillingness of national human rights institutions to engage in conflict-related issues or situations, out of concern that such involvement may interfere with [the NHRI’s] activities.”<sup>26</sup> When NHRIs work around conflict “the interaction between human rights promotion and protection and conflict issues and dynamics is [...] not recognized”<sup>27</sup>.
- *Working in conflict* – when NHRIs work in conflict they recognize that the implementation of their mandate “often involves addressing conflicts related to human rights concerns, and may take place in environments defined by conflict. This approach appreciates that the protection and promotion of human rights is inherently contentious and political, as it relates to the organisation of, and power-dynamics within, the state and society”<sup>28</sup>. NHRIs main objective is the protection and promotion of human rights, thus any impact on the issues and dynamics of a specific conflict happens indirectly. “Conflict is dealt with as it arises in the course of undertaking rights-related activities, but is not a focus or objective of such efforts.”<sup>29</sup>
- *Working on conflict* – if an NHRI works on conflict it recognizes that the promotion and protection of human rights can directly relate peacebuilding efforts.

The last terms to be dealt with here are protracted or deep-rooted conflict. Protracted conflict can be defined as “a conflict in which the issue(s) under

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<sup>23</sup> Parlevliet, M; Lamg, G and Maloka, V., “Introduction: Understanding conflict and its relationship with human rightst”, Parlevliet, M., Lamb, G. and Maloka, V. (eds.) *Defenders of Human Rights, Managers of Conflict, Builders of Peace? National Human Rights Institutions in Africa* (Centre for Conflict Resolution, University of Cape Town, 2005), p. 20

<sup>24</sup> Supra note 17.

<sup>25</sup> Supra note 23

<sup>26</sup> Ibid, p. 18

<sup>27</sup> Ibid, p. 19

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

contention are perceived by *both* adversaries to be *significantly linked to existential group needs*<sup>30</sup>. It can also be defined as a long-term, ongoing conflict that permeates all aspects of society. In a protracted conflict, structural behaviour (ethnic, religious, linguistic, economic) affects obvious hostile behaviours (interaction) creating a complicated casual network that makes conflict difficult to “solve”<sup>31</sup>.

Deep-rooted conflict can be defined as “conflict, originating largely within states, which combines two powerful elements: potent identity-based factors, based on differences in race, religion, culture, language and so on, with perceived imbalance in the distribution of economic, political and social resources”<sup>32</sup>. It is primordial to explain here that identity in itself is not a cause for conflict, nonetheless, identity issues are more often than not very emotionally charged as “they go right to the heart of what gives people their sense of themselves, defining a person's bond with her or his community and defining the source of satisfaction for her or his need for identity”<sup>33</sup>.

## 1.6 The Paris Principles

The United Nations General Assembly has adopted global principles governing the status and functioning of independent NHRIs. These principles are popularly known as the Paris Principles. They were adopted in 1991 and approved in 1993 by the General Assembly and are the universally accepted framework for NHRIs. According to them NHRIs shall ensure the effective implementation of international human rights standards and work to ensure that national legislation, regulations and practices conform to the fundamental principles of human rights. NHRIs have to work to promote and protect human rights and fundamental freedoms.

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<sup>30</sup> Friedman, Gil, “Conceptualizing Protracted Conflict and Protracted Conflict Management”, Starr, Harvey, *The Understanding and Management of Global Violence: New Approaches to Theory and Research on Protracted Conflict* (St. Martins Press, New York, 1999), p. 36

<sup>31</sup> Starr, Harvey, “Introduction: A Protracted Conflict Approach to the Study of Social Conflict”, Starr, Harvey, *The Understanding and Management of Global Violence: New Approaches to Theory and Research on Protracted Conflict* (St. Martins Press, New York, 1999), p. 4

<sup>32</sup> Harris, Peter and Ben Riley (eds.), *Democracy and Deep-Rooted Conflict: Options for Negotiators*, (International Institute for Democracy and Electoral Assistance, Stockholm, Sweden, 1998), p. 3

<sup>33</sup> *Ibid*, p. 2

## 2 Structural Violence and Human Rights

This chapter will study the relationship between structural violence and human rights and analyse the situation in Ghana's Northern Region as an example of structural violence. Here the issue of unaddressed needs and rights as an element that can contribute to the escalation of conflict will also be studied. In the conflict literature, a lot of emphasis is put into human needs and how unaddressed human needs can contribute to the escalation of conflicts, this is why it is necessary to relate human needs to human rights. Further, as ethnicity is one form of identity and it plays such an important role in the Northern Region conflicts, it is necessary to explain what both identity and ethnicity mean.

### 2.1 Human Rights and Human Needs

Galtung and Wirak<sup>34</sup> studied the relationship between human rights and human needs where they determined that human rights and human needs are two different things; nonetheless, they also showed that human needs can be fulfilled through human rights, but there is not a one-to-one relationship between a human right and a human need. The fulfillment of a human need might require that a broad range of human rights be realized. This points to the indivisibility and interrelatedness of human rights, which cannot be seen alone, but must be studied as an indivisible group.

One of the criticisms presented by the authors, is that the human rights discourse and human rights norms as a whole focus too much on punishment, and on the negative obligations of states. As stated by them "a typical aspect of the legal paradigm is that there is a reaction only in case of infraction of a legal norm. The public machinery is usually far richer in punishment than in rewards."<sup>35</sup> Even though this assertion proceeds, it is relevant to emphasise that human rights norms go beyond punishment, they also require positive action from states (and contrary to Galtung and Wirak's thesis, the state here is represented not only by the national government, but also by the lower level, community based governmental institutions). Norms dictated by the human rights machinery (UN treaties and regional ones) not only call for states to punish those who do not respect the norms, but they also call for states' positive action in order to guarantee these rights. Furthermore, they create a channel for the citizenry to look for redress when the human rights "violator" is the state itself.

Another point made by the authors is that the "human rights approach to implementation of human needs is institutional rather than structural. It is based on the 'freedom from' approach of protecting citizens against types of

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<sup>34</sup> Galtung, Johan and Wirak, Anders H., "Human Needs and Human Rights – A Theoretical Approach", (*Security Dialogue*, pp. 251-258, 1977)

<sup>35</sup> *Ibid*, p. 255

insecurity...”<sup>36</sup>. However, human rights are about more than creating institutions, they are also about producing structural changes in society (like in the human rights-based approach to development context, that puts discriminated and vulnerable groups in the centre of development in order to build new structures that do not discriminate and exclude). It is true that “the state can build institutions referred to as the military and the police, to guard against external and internal sources of insecurity to citizens”<sup>37</sup>, nevertheless the state can also create policies and encourage actions that are focused on the fulfilment of citizens’ needs based on the implementation of human rights and the punishment of those who disrespect the rules.

The point made by Galtung and Wirak is that using human rights as an institutionalized way of fulfilling human needs can compromise some human needs in favour of others. “The formal, institutionalised human rights approach is one approach to the satisfaction of human needs, but these institutions may in turn be a source of institutionalized non-satisfaction, often of the more non-material needs”<sup>38</sup>. For them, it is necessary that all persons participate in the formulation of human rights norms and that all persons can reach the machinery, because human rights are built in the structure of the state.

The institutional approach is distant, the structural would be more based on closeness, on making small units surrounding the individuals into major sources of need satisfaction, reducing the significance of such higher levels of social organization, as the national, regional, and global level. (...) smaller units may be much better at providing identity or at least major forms of identity; and – if they have adequate control over the factors of production – also of providing for the satisfaction of basic human needs.<sup>39</sup>

The human rights system does not contradict what Galtung and Wirak propose, on the contrary, they support each other. In human rights language it is necessary that the law that regulates both the state and its citizens needs to be made by the citizens. The big institutional human rights framework proposed by them requires “small” community based rights to be into place. “Citizens can make an *appropriate* use of their autonomy, as guaranteed by political rights, only if they are sufficiently in virtue of an equally protected private autonomy in their life conduct”<sup>40</sup>. Every citizen, in every community, must have his/her human rights respected and protected in order to be able to participate and create new rights in the form of positive law.

This idea is very closely connected to a human rights-based approach (HRBA) to development. HRBA seeks putting each individual and their community in the centre of development; it favours the smaller units and

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<sup>36</sup> Ibid, p. 256.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid, p. 257

<sup>39</sup> Ibid.

<sup>40</sup> Habermas, Jürgen, “Constitutional Democracy: A Paradoxical Union of Contradictory Principles?” (*Political Theory*, 29, pp. 766-781, 2001), p. 767

gives room to the development of identity. According to the UN<sup>41</sup> there are several principles connected to HRBA; here emphasis will be given to participation and inclusion (empowerment), equality and non-discrimination, and accountability and the rule of law. It is essential in development initiatives and in all human rights related programmes that individuals are empowered and are able to participate in decision-making processes. Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized<sup>42</sup>.

Participation and empowerment are interrelated. Participation is not only about consultation, but actual empowerment of citizens. It is necessary to create specific channels for participation throughout the programming processes focusing especially on the poorest of the poor and the marginalized. Through participation, it is possible to create meaningful channels for the individual to influence local and national politics. It is through participation that a real democracy is maintained.

Empowerment is connected to inclusion, participation and accountability and therefore must include beneficiaries, stakeholders and partners when deciding development strategies and goals. Participation should be regarded as a tool and as a goal for development because the affected peoples need to own their project. Participation is closely connected to ownership and is therefore paramount in implementing human rights and fulfilling human needs. Empowerment should not only be a concern for the outcome of development, but also for the *process* by which it is achieved and for the organizations implementing it. It is through empowerment that the needed structural changes can come into reality.

States and other duty-bearers have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, rights-holders are entitled to institute proceedings for appropriate redress before a competent court or similar body in accordance with the rules and procedures provided by law. Duty-bearers can be held accountable for the non-compliance with human rights norms and standards. Accountability is essential in the maintenance of the rule of law and the rule of law requires a system that respects and protects human rights.

The community needs information on what was done and how it was done, which requires transparency and openness. Information and free will- and opinion-formation are essential in a democracy where all individuals have their human rights and human needs fulfilled. Accountability and transparency are principles that walk hand-in-hand. They complement each

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<sup>41</sup> United Nations Development Group (UNDG). 2003. *UN Statement of Common Understanding on Human Rights-Based Approach to Development Cooperation and Programming*, UNDG

<sup>42</sup> United Nations General Assembly (UNGA). 1986. *Declaration on the Right to Development*, General Assembly Resolution 41/128 of 4 December 1986

other. Right-holders need to know what the government has done and how it has been done, in order to be able to claim their rights and hold the decision-makers accountable. Moreover, it is necessary that the citizenry know the processes and ways to contact the government and the use of the state machinery to assert their rights. That is why the local and the national must supplement each other, in accordance with the principle of subsidiarity<sup>43</sup>.

Accountability mechanisms are supposed to mediate relationships between two unequal partners with the aim of redressing the imbalances between them (as is the case of states and its citizens). That is why this thesis affirms that governments are to be held accountable for human rights violations. In order to do this accountability measures must contest power relations, legitimize marginalized groups, and transform the actors and structures involved. These elements endear accountability to people at the margins of society, providing them with a chance to be part of their own governments and claim their rights.

Finally, in order to make human rights an instrument of change and actually a way of transforming government structures, it is necessary to follow the principles of equality and non-discrimination. Non-discrimination is a principle surrounding the whole human rights system and it is also a right in itself. Therefore, it is paramount that state institutions have mechanisms that can be used by all citizens without any form of discrimination (gender, age, sex, sexual orientation, marital status, colour, race, nationality, and so on). Additionally, the fulfilment of human needs might require that states take positive actions to empower groups that have been historically discriminated so they too can have their needs fulfilled. A good example of this kind of initiative can be found on the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which imposes an obligation on states that will help creating *de facto* and *de jure* equality between men and women in society.

It is through “the *inclusion of marginalized groups* and with the *empowerment* of deprived classes, the hitherto poorly satisfied presuppositions for the legitimacy of existing democratic procedures are

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<sup>43</sup> The principle of subsidiarity has been part of Western legal and social culture for centuries; however, it is only with the advent of the European Union and the formal establishment of the principle in treaty law that it became popular in legal theory. One of the first manifestations of the principle can be found in the papal encyclical *Rerum Novarum* of 1891. The subsidiarity principle then, was established as the state should interfere in workers and families’ private lives in order to prevent the abuses of capitalism, however, there should also be room for the individuals and groups to make their own decisions. According to Carozza (2003), the basis of the subsidiarity principle is personalistic, and therefore “its first foundation is a conviction that each human individual is endowed with an inherent and inalienable worth, or dignity, and thus that the value of the individual human person is ontologically and morally prior to the state or other social groupings. Because of this value, all other forms of society, from the family to the state and the international order, ought ultimately to be at the service of the human person. Their end must be the flourishing of the individual.” (p. 42) The subsidiarity principle can also be found in German Constitutional Law and in EU Law, however, Carozza’s explanations are sufficient here.

better realised”<sup>44</sup> (emphasis added). It is through the implementation of rights and the respect for human rights (based on HRBA) that human needs are met. This is how the human rights system can work beyond the institutionalized manner proposed by Galtung and Wirak.

### 2.1.1 Issues of Identity

It is appropriate to look into issues of identity here because one’s identity is closely connected to one’s needs, and therefore it is connected to human rights and the way the human rights system can be used to prevent violent conflict.

Identity is a complex concept. It is difficult to talk of one identity when human beings are composed of several identities. “Identity is a set of meanings that define who one is when one is an occupant of a particular role in society, a member of a particular group, or claims particular characteristics that identify him or her as a unique person”<sup>45</sup>. Every person has multiple identities because everyone has multiple roles in society, is part of different groups and has different personal characteristics. A law student can also be a girlfriend, an intern, a Brazilian national, an immigrant to another country, a member of a gym and a researcher of conflict related issues, for example.

Identities are connected to positions in society and therefore, both individual and society are important concepts for understanding identities. Individuals exist within the context of society. “No man is an island”. The relationship between society and individuals is of mutual influence. The society where the individual is influences his or her identity, as well as identity is influenced by the society surrounding the individual.

Furthermore “[t]he formation of personal and group identity is a complex phenomenon, a mixture of psychological, biological, social, cultural, and environmental factors”<sup>46</sup>. The minds of people have developed to respond to the environment, to the relationships between them and the environment and minds are also capable of adjusting to needs, goals and desires<sup>47</sup>.

Issues of identity are fundamental in protecting a sense of self and group survival, and they become particularly important during conflicts. Identity shapes and moves an expression of conflict, often in terms of deeply felt demands and preferred outcomes, to presenting issues. At the deepest level, identity is lodged in the narratives of how people see themselves, who they are, where they come from, and what they fear and will become or lose. Thus, identity is deeply rooted in a person’s or a group’s sense of how that

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<sup>44</sup> Supra note 40, p. 775.

<sup>45</sup> Burke, Peter J. and Stets, Jan E., *Identity Theory* (Oxford University Press, 2009), p. 3

<sup>46</sup> Mann, Mali A., “The formation and development of individual and ethnic identity: insights from psychiatry and psychoanalytic theory” (*The American Journal of Psychoanalysis*, Vol. 66, No. 3, PP. 211-224, 2006), p. 211

<sup>47</sup> Supra note 45.

person or group is in relationship with others and what effect that relationship has on its participants' sense of self and group. Identity matters are fundamental to conflict, yet they are rarely explicitly addressed in the conflict.<sup>48</sup>

The relation between role identity (“the internalized meanings of the role that individuals apply to themselves”) and group identity or social identity (“based on individual’s membership to certain groups”) is crucial in understanding how, sometimes, conflicts involving identity can escalate into violence<sup>49</sup>. Role identity and social identity are different, however they are both important in “understanding the types of identities that serve as basis for one’s identity standard in interaction”<sup>50</sup>.

It is critical here to clarify what role is. “A role is a set of *expectations* tied to a social position that guide people’s attitudes and behaviour.”<sup>51</sup> The role of an employee for example is connected to doing its job properly, arriving on time, working hard, etc. The roles people have in society are constantly tested and verified. When two persons interact, it is not their entire persons who are interacting, but they interact with each other in terms of specific roles. “Interaction is guided by the principle of role reciprocity. For every role that is played out in a situation, there is a counter role to which it is related”<sup>52</sup>. The role of teacher, for example, requires the role of student, as the role of mother requires the role of son or daughter.

Social identity, on the other hand, is based on a person’s identification with a social group.

A social group is a set of individuals who share the view that they are members of the same social category. Through a social comparison and categorization process, persons who are similar to the self are categorized with the self and are labeled the ingroup. Correspondingly, persons who differ from the self are categorized as the outgroup. Having a particular social identity means being like others in the group and seeing things from the group’s perspective. It is assumed that individuals as groups members think alike and act alike. Thus, there is uniformity in thought and action in being a group member. Individuals do not have to interact with other group members in order to think and act alike the group. Simply identifying with the group is enough to activate similarity in perceptions and behavior among group members.<sup>53</sup>

The fact that members of a group do not need to interact with other groups to recognize them as the ingroup, does not mean that the sense of “us” and “them” does not exist. Due to the fact that their similarities are so many, all others who do not fit in that group are part of the outgroup.

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<sup>48</sup> Supra note 13, p. 55

<sup>49</sup> Supra note 45.

<sup>50</sup> Ibid, p. 113.

<sup>51</sup> Ibid, p. 114.

<sup>52</sup> Ibid, p. 115.

<sup>53</sup> Ibid, p. 118



The set of features that distinguishes ingroup members from outgroup members also allows some differentiation among ingroup members. The idea of a group *prototype* contains these features and is therefore central in understanding this internal differentiation. Prototypicality represents the degree to which a group member exemplifies or is representative of the stereotypical attributes of the group as a whole by being most like ingroup members and simultaneously most different from outgroup members. The prototype is the interrelated set of perceptions, attitudes, feelings, and behavior that captures similarities among ingroup members and differences between ingroup members and outgroup members.<sup>54</sup>

Sometimes what can happen is that individuals see themselves as only part of the ingroup and not as unique individuals. When this happens there is what Burke and Stets<sup>55</sup> call depersonalization. This means that individuals take the group's identity as their own. When this happens, individuals act in concert, identifying themselves and others in terms of group membership. This process intensifies the production of the ideas of "we" versus "them". Further, group identity plays a very important role in conflicts, as they are such a big part of it.

People are always simultaneously in a role identity and a group identity; therefore both role identities and social identities are relevant to the individual's perceptions and actions. Understanding identities is relevant because they play a fundamental part in conflict, as it will be seen in the example of the conflicts in the Northern Region of Ghana.

### 2.1.2 Ethnicity as Identity – A way of understanding pre- and post-colonial African agency

The use of the word ethnicity as an element of identity is fairly recent in social sciences. It was first in the 1960's that the term became recurrent in this area of studies. In the immediate post-independence period groupings of people were commonly called tribes<sup>56</sup>. Tribe referred to a group of people who shared the same language, tradition and territory. However, by the late 1970's the term was replaced by ethnicity. The latter kept some of the same elements and expanded in others.

Ethnicity is one in many social categories, which is used to create real or imaginary distinctions among different groups. It is a concept closely connected to ideas of identity. It is another way to differentiate the "we" from the "them". Ethnic identity is a form of social organization.

Ethnicity is an enigmatic, unstable and problematic notion. Like other key terms in the social sciences and history, it is at once a category 'of social and political *analysis*' and a category of 'social and political *practice*'. It belongs not only to the theoretical repertoire of social scientists but also to the vocabulary of chiefs, politicians, local intellectuals, labour migrants and social movements. Unlike other basis of group cohesion such as class,

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<sup>54</sup> Ibid, pp. 118-119.

<sup>55</sup> Ibid.

<sup>56</sup> Supra note 10

religion or membership of a political community, it is a protean and polythetic category which rests on no single essential trait. It may be drawn on traditions of origin or descent, possession of any number of cultural or social traits, language, religion, membership of (or opposition to) a polity or religion, or any combination of these; but at the same time it need not involve any particular one of these bases. This is why ethnicity, while having immense power to command subjectivities and hence to generate 'real' social and political effects, is also a 'shadow theatre' as Bayart put it. Thus while ethnic discourse argues in an essentialist manner and naturalises social relationships, the 'content' of any particular ethnicity is historically contingent.<sup>57</sup>

This is the reason why ethnicity in Africa had to be understood as part of African history. As it is only one of the several bases of identity – existent before colonial times and used during them by both colonialists and Africans. Ethnicity has to be analysed together with the various other basis of identity. Ethnicity is connected to several other identities, such as religion, class, status, and place of origin, but it is somehow stronger than they are. Ethnicity is dictated by birth and is therefore non-negotiable, and yet it is very fluid – changing a lot throughout history.

Ethnic groups or tribes are said to be a creation of the colonizer. Nonetheless, to say that such groups did not exist in pre-colonial times is to try to invent history. What did happen with colonization is that groups that lived in clan basis and had almost no contact with their neighbour class were all of a sudden arbitrarily put to live together under the leadership of a ruler. "With time some of these amalgamated clans constituted themselves into the 'ethnic groups' as we know them today"<sup>58</sup>.

During colonial times different groups were gathered under the same colonies without any respect for their traditional socio-cultural boundaries, resulting in colonies replete with multiple traditional cultural entities. "These different groups within the colonies remained conscious of their different ancestral and historical origins; and over time, especially in the post colonial era, their political interests became intertwined with their ethnic identity."<sup>59</sup>

Ethnicities as known today are neither "a hangover from a pre-colonial past", nor are they "simply plucked from the air". Even though colonialism might have modified the limitations for what an ethnic group is, they have not created a new institution. "Indeed there is good evidence to suggest that colonial administrators borrowed from African conceptions of political space as much as they reshaped it."<sup>60</sup>

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<sup>57</sup> Lentz, Carola, *Ethnicity and the Making of History in Northern Ghana* (Edinburgh University Press, Edinburgh, 2006), p. 3

<sup>58</sup> Supra note 10, p. 8

<sup>59</sup> Ametewee, Victor K., "Ethnicity and Ethnic Relations in Ghana", *Ethnicity, Conflicts and Consensus in Ghana* (Woeli Publishing Services, Accra, 2007), p. 27

<sup>60</sup> Lentz, Carola and Nugent, Paul, "Ethnicity in Ghana: A comparative perspective", Lentz, Carola and Nugent, Paul (eds.), *Ethnicity in Ghana: The Limits of Invention* (Macmillan Press Ltd., London, 2000), p. 6

Lentz and Nugent use the metaphor of cards to explain how ethnicity works. For them, ethnicity functions as a joker in a game of cards, because “it can be introduced into various play sequences, taking on the characteristics of the ‘card’ (concept) it replaces”<sup>61</sup>. It is due to the fact that it can be associated with a wide range of different collectivities that ethnicity became such an important political resource in Africa.

This volatile nature of the term ethnicity and its use can be partly explained by the debates surrounding it. For some researchers (primordialists), ethnicity is connected to the primary bonds, the primordial ties that are deeply rooted in the past and “turn on a common history, culture and language”. On the other hand, constructionists understand that ethnic groups focus on the “manipulability and strategic character of ethnicity often seeing it as a grab for the pursuit of self interest”<sup>62</sup>.

In Ghana, for example, the ethnic groups “created” or reinforced by the colonizer have been used by the Ghanaian elites to establish their political base. The same ethnic groups that were excluded for the division of power during the colonial era have used this “ethnicity” to establish themselves in the political arena of modern Ghana and achieve their goals using the same methods used by the colonizer to alienate them.

Ametewee explains that ethnicity has been used by Ghanaian elites to achieve their own goals. According to him, social class is more important in Ghana today than ethnicity is. Nonetheless, “when the elites have problems attaining their personal dreams they become the ardent advocates of ethnic equality”<sup>63</sup>. Aapengnuo supports this view when he explains that ethnicity is not a source for conflicts in Africa.

In fact, ethnicity is typically not the driving force of African conflicts but a lever used by politicians to mobilize supporters in pursuit of power, wealth, and resources. While the ethnic group is the predominant means of social identity formation in Africa, most ethnic groups coexist peacefully with high degrees of mixing through interethnic marriage, economic partnerships, and shared values. Indeed, if they did not, nearly every village and province in Africa would be a cauldron of conflict.<sup>64</sup>

## **2.2 Structural Violence and the Root Causes of Conflict**

The previous analysis of identity and ethnicity are necessary to understand how these concepts relate to structural violence. It is clear that identity and ethnicity do not determine whether a society has violent structures or not,

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<sup>61</sup> Ibid, p. 4

<sup>62</sup> Ibid.

<sup>63</sup> Supra note, p. 37

<sup>64</sup> Aapengnuo, Clement M., “Misinterpreting Ethnic Conflicts in Africa” (*Africa Center for Strategic Studies*, Africa Security Brief No. 4, ND4 Press, April 2010), pp. 13-14

nonetheless, in several circumstances marginalized groups and the ones in power do not share the same group identity. Further, horizontal inequalities (between regional, ethnic or religious identity) can lead to political violence.

The analysis of structural violence and human rights will be made based on Johan Galtung's text "Violence, Peace and Peace Research" of 1969. Galtung's text will be used to guide the understanding of structural violence as a possible element in the escalation of conflicts into violent conflicts. Moreover, there will be an attempt to connect Galtung's theory to human rights and democracy, in order to explain how the protection and promotion of human rights can prevent the explosion of violent conflicts.

The idea of human rights as principles to be universalized throughout the world taking different cultures and histories into consideration are closely connected to ideas of justice and fairness. "When fairness is absent, injustice and exclusion can act as stresses." If the people feel that their reality and their surroundings are unfair there violence is more likely to occur. Even though "[j]ustice and fairness are difficult concepts to measure, (...) psychological experiments show that they can have value beyond pure material self-interest"<sup>65</sup>. These ideas are closely connected to structural violence as an element that contributes to the escalation of conflict. The marginalization of certain groups, their repression and the suppression of their rights constitute indirect violence and can contribute to acts of direct violence.

Violence and peace are correlated terms. According to Galtung, peace is the absence of violence. Therefore, the first task here is to define violence. "[V]iolence is present when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations"<sup>66</sup> (p. 168).

The potential level of realization is that which is possible with a given level of insight and resources. If insight and/or resources are *monopolized* by a group or class or are *used for other purposes*, then the actual level falls below the potential level, and violence is present in the system. In addition to these types of *indirect* violence there is also *direct* violence where means of realization are not withheld, but directly destroyed. Thus, when a war is fought there is direct violence since killing or hurting a person certainly puts his 'actual somatic realization' below his 'potential somatic realization'. But there is also indirect violence insofar as insight and resources are channeled away from constructive efforts to bring the actual closer to the potential.<sup>67</sup>

Here, to the effects of this thesis, the most important kind of violence is the indirect one, which is in the roots of structural violence. Structural violence can be defined as violence directed at groups making them unable to fulfil their potentialities. In this case the agent of the violence cannot be directly

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<sup>65</sup> World Bank, *The World Development Report 2011* (The World Bank, Washington, DC, 2011), p. 81.

<sup>66</sup> *Supra* note 17, p. 168

<sup>67</sup> *Ibid*, p. 169.

identified. “The violence is built into the structure and shows as unequal power and in consequence as unequal life chances.”<sup>68</sup> Structural violence is not very easily seen or perceived, especially because many times the subject of structural violence is persuaded not to perceive the violence at all. (This is the case of, for example, domestic male violence against women, who are marginalized and have their rights suppressed and the rule of silence as a form of discrimination imposed upon LGBT persons all over the globe.)

As proposed above, structural violence is connected to unequal distribution of power, of resources, and of opportunities. *Inequality* is behind structural violence. When one group holds all resources in detriment of another group, structural violence is present. Feudal-like systems perpetuate inequality patterns and many of the actors in these kinds of systems are deprived not only of their potential, but are indeed set to live under subsistence levels.

Inequality then shows up in differential morbidity and mortality rates, between individuals in a district, between districts in a nation, and between nations in the international system - in a chain of interlocking feudal relationships. They are deprived because the structure deprives them of chances to organize and bring their power to bear against the topdogs, as voting power, bargaining power, striking power, violent power - partly because they are atomized and disintegrated, partly because they are overawed by all the authority the topdogs present.<sup>69</sup>

Structural violence and direct violence can be connected but this is not necessarily true. Both seem to be more “natural” to humans and human societies than direct and structural peace are. Even if one type of violence does not presuppose the other, “there is the possibility that manifest structural violence presupposes latent personal violence”, as it can be seen if the structure is being threatened. If this happens, those who benefit from the structure will try to preserve the status quo. However, “those most interested in the maintenance of the status quo may not come openly to the defence of the structure: they may push their mercenaries in front of them.” In other words, they may send the police, the army or other forces to “deal with” the situation. Even though the violence committed by the police forces, for example, is direct, it is the result of deeply rooted structural issues<sup>70</sup>.

Structural violence, or social injustices, is maintained by the use of manifest personal violence. The persons in the top, the ones who benefit from the structure, try to keep their status quo using force. Whether “it means forceful maintenance of traditional social injustice that may have last for generations, or the forceful maintenance of some new type of injustice brought in by the attempt to overthrow the old system”.<sup>71</sup>

The repressed groups also use direct violence in order to try to achieve equality and better systems – in the popular named revolutions. However,

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<sup>68</sup> Ibid, p. 171

<sup>69</sup> Ibid, p. 177

<sup>70</sup> Ibid, p. 179

<sup>71</sup> Ibid, p. 184

the answer to these “revolutions” is usually more violence, which might create new forms of inequality and perpetuation of social injustices.

Using the iceberg metaphor can be helpful to understand the relationship between human rights promotion and protection and structural violence. Referring to the causes of the conflict (the part of the iceberg, which is under the water), it can be said that the goal is to change the underlying conditions that have caused (are a cause) the violent conflict. The focus is then on structural violence, as presented above. The activities here are related to “institution-building, accommodation of diversity by protecting minorities, development and reconstruction, and strengthening the rule of law”<sup>72</sup>. Structural violence is therefore deeply connected to malfunctioning states where rights are not respected and where there is no real democracy.

In a system of rights, be it national or international – regulated by constitutional law or by internationally agreed laws, the state is the main actor regulating the conduct of individuals in matter of rights, liberties and powers<sup>73</sup> and, therefore, somehow accountable for patterns of structural violence and social injustice.

States must have a system where citizens are right-holders, which means that citizens not only have a substantive right, “which is concerned with the practical purpose, namely the use, advantage or gain guaranteed by the right”, but also with procedural rights “which is a means of achieving that purpose, namely legal protection or cause of action”<sup>74</sup>. The structure of the state, its apparatus, has to be in place, in order to allow for citizens to really have rights. The mere legal text without possibility of having rights in reality is merely symbolic<sup>75</sup>.

Within any legal system it is crucial that individuals have the legal capacity (power or competence) to enforce a right<sup>76</sup>. The texts of regional laws, constitutions, and international treaties must be enforceable and enforced in order to break patterns of discrimination and social injustices. Accountability mechanisms must be at place and the right to access to court and the right to fair trial must be more than just legal text. These mechanisms will assist those being discriminated (the victims of social injustices) in claiming their rights.

The right to fair trial is paramount for the realization of human rights and also for the diminishing social injustices. Human rights as a legal system

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<sup>72</sup> Supra note 2, p. 11

<sup>73</sup> Alexy, Robert, *A Theory of Constitutional Rights* (translated by Julian Rivers, Oxford University Press, New York, 2010)

<sup>74</sup> Ibid, p.115

<sup>75</sup> The term symbolic here is used in accordance with Marcelo Neves’ (2005) definition of it. He refers to the lack of normative power of the rights (be them constitutional or present in human rights law) and the abuse of the juridical terms by the political powers. When emphasising the symbolic nature of rights Neves emphasises how the lack of implementation of these rights can conduct people to political apathy and cynicism.

<sup>76</sup> Supra note 73.

consist of holding governments accountable for their actions, especially those actions which violate individuals' rights and perpetuate structural violence. Therefore it is crucial for the functionality of the system that individuals can actually rely on judicial mechanisms in order to have their rights fulfilled. As in Luhmann's social systems' theory, the right to fair trial, which is to say, the right an individual has to go to a court of law to reestablish a violated right to the *staus quo ante*, or the rights that secure that an individual brought to a court of law by the state (as is the case in criminal proceedings) is respected, is the human rights system way of testing its statements against its reality<sup>77</sup>.

The right to fair trial is connected with the procedural due process and the process as an institution created by the juridical order of a state or a community of states<sup>78</sup>. This connection exists because it is within a state (or a community of states) that is freely established by the people (who recognize themselves as the authors of the law that guide their actions<sup>79</sup>) that the due process regulates the states in accordance with principles of fair trial. Due process (both procedural and substantial) regulates the entire governmental machine.

As mentioned above, according to Alexy<sup>80</sup>, the state not only regulates individuals' rights, but also their liberties. He explains liberties in the sphere of the constitution as constitutionally protected and guaranteed by the state. The main issue here is legal liberties – “a bundle of rights to do something and other objective norms which together secure to the constitutional right-holder the possibility of carrying out the act permitted”<sup>81</sup>.

When constitutional rights are treated as defensive rights, then generally what it is meant is that they are constitutional liberty-protecting rights to omissions on the part of the state. These rights are combined with the *power* to challenge their infringement before the courts. When these three positions come together: a legal *liberty*, a *right* against the state to non-obstruction, and a *power* to challenge infringements before the courts, one has a completely constituted negative liberty right against the state.<sup>82</sup>

A negative right is *essential* for changing and challenging violent structures. It is only when individuals can act both individually and collectively against the oppressing state that structural changes can happen. Nonetheless, the state's apparatus has to be in place (functioning state, access to courts guaranteed, and procedural and substantial rights in place) in order to allow for the exercise of negative liberty rights.

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<sup>77</sup> Luhmann, Niklas, *Social Systems*. Translation by John Bednarz, Jr. with Dirk Baecker. (Stanford University Press, California, 1984)

<sup>78</sup> Leal, Rosemiro Pereira, *Teoria Geral do Processo*. 5. Ed. (Thomson-IOB, São Paulo, 2004)

<sup>79</sup> Habermas, Jürgen, “O Estado Nação Europeu Frente aos Desafios da Globalização” (*Revista Novos Estudos*. CEBRAP, Nov., 1995)

<sup>80</sup> Supra note 73

<sup>81</sup> Ibid, p. 148

<sup>82</sup> Ibid, p. 149

Guaranteeing rights, liberties and powers is however not sufficient to achieve social justice, it is also necessary to guarantee democratic and inclusive processes that challenge the structures present in states and allow for people to actually participate in their government. These rights (human rights as recognized today) need be practiced in order for the people of that state to live in a democracy that can be justified and also where “the people” can act in the global plan<sup>83</sup>.

Structural violence is also seen when one sector of a society is left behind in development (the same being true for countries in the global sphere), which leads this society to a “chain of exclusion” and consequently to political and economic poverty<sup>84</sup>. What happens to these “excluded people” is that, their dignity is removed from them, their quality as human beings is removed from them, “and as it is seen from the repression machinery: there is systematic non-application of fundamental rights and other juridical guarantees, physical persecution, ‘execution’ without accusation or due process, impunity of state officials, oppression and assassination”<sup>85</sup> – structural violence and direct violence meet.

It is through a constitutional democracy that respects individuals’ rights, liberties and powers and works with factual and legal equality based on human rights that social injustices can be challenged and potentially direct violence too, creating more equal and justice societies where the likelihood for direct violence is diminished.

## 2.3 The Situation in Northern Ghana

The Northern Region of Ghana is a creation of British colonial rule and the largest region in the country. It has over two million inhabitants, according to the latest population census (2010). It is within the savannah belt and therefore it has a vegetation and climate much different from that of Southern Ghana. Northerners do not see themselves as the same as the people in the South and vice versa<sup>86</sup>. Moreover, they speak different languages from those spoken in the South. Yet, the physical differences are not the most important aspect that divides south and north, the Northern Region lacks economic and political development – and that is a reality that goes beyond colonial times.

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<sup>83</sup> Müller, Friedrich. *Quem é o povo? A questão fundamental da democracia*. (Tradução: Peter Naumann. Editora Max Limonad: São Paulo, 2003)

<sup>84</sup> Ibid.

<sup>85</sup> Ibid, p. 94.

Free translation from the Portuguese text: “*Na prática se retira aos excluídos a dignidade humana, retira-se-lhes mesmo a qualidade de seres humanos, conforme se evidencia na atuação do aparelho da repressão: não aplicação sistemática dos direitos fundamentais e de outras garantias jurídicas, perseguição física, ‘execução’ sem acusação nem processo, impunidade dos agentes estatais da violação, da opressão ou do assassinio.*”

<sup>86</sup> Talton, Benjamin, *Politics of Social Change in Ghana – The Kokomba Struggle for Political Equality* (Palgrave Macmillan, New York, 2010)



The British carried out an explicit program to isolate the north from the south. They turned the north into a vast “labor reserve”, because manpower was the only exportable commodity that the British immediately recognized.<sup>87</sup>

Today the north (which includes the Northern Region, the Upper West Region and the Upper East Region) is still the least developed part of Ghana. “Poverty is still endemic and the vagaries of the weather still pose perennial difficulties for the people and their communities”<sup>88</sup>. Most women in the region are illiterate and youth unemployment is severe. Furthermore, the Northern Region has been the most violent area of Ghana. From 1980 to 2001 the region experienced twenty inter-ethnic or intra-ethnic conflicts<sup>89</sup>.

The population of the Northern Region is divided “between at least seventeen autochthonous and linguistically distinct ethnic groups”<sup>90</sup>. These groups are organized in different forms, some of them have chiefs some of them do not even recognize the institution of chieftaincy<sup>91</sup> and these conditions overlap with their self-recognized ethnical identity<sup>92</sup>. Amongst the several ethnic groups are the Konkomba, Nanumba, Gonja and Dagomba, the groups involved in the 1981 (Nanumba versus Konkomba) as well as the 1994 (Konkomba versus Dagomba, Nanumba and Gonja) conflicts.

The Dagomba group, together with the Gonja and Nanumba, is centralized and recognizes the institution of chieftaincy. They are also called majority groups. George Ekem Ferguson, a British official that travelled to the Northern Region between 1892 and 1894, described Dagbon (the region of the Dagomba) along with Gonja and Maprugu (region of the Mamprusi) as “countries with an organized government”<sup>93</sup>. The Konkomba, on the other hand, were described as “wild tribes, naked and living in independent family communities” because they were a non-centralized group together with the Lobi, Grussi, Dagarti, and Kusasi. These groups are also known as minority groups. The history and relations between the centralized and non-centralized groups influenced their political identity and their notions of social and political difference.

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<sup>87</sup> Ibid, p. 15

<sup>88</sup> Awedoba, A. K., *An Ethnographic of Northern Ghanaian Conflicts: Towards a Sustainable Peace* (Sub-Saharan Publishers, Accra, 2009), p. 2

<sup>89</sup> Brukum, N. J. K., *The Guinea Fowl, Mango and Pito Wars – Episodes in the History of Northern Ghana, 1980-1999* (Ghana University Press, Accra, 2001), p. 1

<sup>90</sup> Pul, Hippolyt A. S., “Exclusion, Association and Violence: Trends and Triggers in Northern Ghana’s Konkomba-Dagomba Wars”, (*The African Anthropologist*, Vol. 10, No. 1, 2003)

<sup>91</sup> “During the early colonial period the language, social and political groups of the North were classified according to a chief/acephalous binary and attempts were made to standardize and formalize ethnic categories.” (Jönsson, 2009, p. 509)

<sup>92</sup> Jönsson, J., “The Overwhelming minority: Inter-ethnic Conflict in Ghana’s Northern Region”. (*Journal of International Development*, 21, pp. 507-519, 2009)

<sup>93</sup> Supra note 86.

Another relevant aspect to be pointed out is that of religion. When leaving the bus in Tamale (the capital city of the Northern Region) one can see a large concentration of Muslims. According to Katanga<sup>94</sup>, more than fifty percent of the Dagombas were Muslims in 1984. Even though these numbers are likely to have changed in these 26 years, the signs of Islam are easily found in Tamale. On the other hand, many of the Konkombas are Christians – however not as many as they are Traditionalists, according to Katanga. Although the conflicts were not religiously motivated, the religious element was part of it. Katanga explains that the conflicts gained lots of religious labels. Dagombas, Gonjas and Nanumbas were labelled Muslims, whereas Konkombas were labelled Christians. “The pastor of the Presbyterian Church in Salaga was murdered by Gonjas at the outbreak of the war. As an Nchumuru, the Gonjas saw him as an enemy, not a pastor. The Catholic Church and mission compound in Yendi was burnt and looted... In the first four weeks of hostilities... a common outcry was that ‘the churches are supplying arms to the Konkombas’”<sup>95</sup>. Religion played a role in the conflicts and also in how the other peoples of Ghana saw and perceived the conflicting parties.

“The noble elites of chiefly groups had increasingly converted to Islam on the course of the previous five decades, whereas most ‘educated’ members of their enemy groupings – the Konkombas and the Nawuri – had adopted Christianity in the same time period”<sup>96</sup>. That is one of the reasons why the conflicting parties received the aforementioned labels.

Land disputes and chieftaincy are also part of the “ethnic”<sup>97</sup> conflicts in the Northern Region. The ethnic groups that did not have a chief, especially the Konkombas, started seeing chieftaincy as a way of emancipating themselves and achieving political independence. The 1994 conflict is known for, among other reasons, have initiated when the Konkombas presented a petition for paramountcy in the National House of Chiefs.

Land issues are closely connected to chieftaincy as from 1992 with the new Constitution; the chiefs became the owners of the traditional territory they occupied. The fact that other ethnic groups also lived in that territory was not considered in the constitutional text. This left the “acephalous” groups without a territory they could call their own.

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<sup>94</sup> Katanga, Justice, “An Historical and Ethnographic Commentary on the Northern Conflict”. Unpublished. Hardcopy available at the library of the Tamale Centre for Cross-Cultural Studies, Tamale, Ghana, (Undated)

<sup>95</sup> Ibid, p. 15

<sup>96</sup> Bogner, Artur, “The Peace Process in the Wake of Ghana’s Northern Conflict: Its Course and Its Conditions for Success”, Rosenthal, Gabriele and Bogner, Artur (eds.) *Ethnicity, Belonging and Biography* (Lit. Verlag, Berlin/Münster, 2009), p. 50.

<sup>97</sup> Conflicts are so dynamic and have so many elements that calling a conflict “ethnic” oversimplifies its reality.

### 2.3.1 Historical Background

The pre-colonial narratives of the peoples of Northern Ghana illustrate how they arrived to their region and how the relationship between the different “tribes” was established. These narratives show mainly “arrival and settlement, thus providing a charter for present land boundaries and for social relations among villagers and with their neighbors”<sup>98</sup>.

During the colonial period, the British stationed in the North sought to maintain law and order and to do so they thought more convenient to leave the power in the hands of the people in its “traditional” way. Therefore the traditional tribal structures were maintained, each headed by a chief<sup>99</sup>. However, not all groups had chiefs and were centralized, some of the so-called “tribes”<sup>100</sup> had non-centralized governments and because of that no chiefs, which contributed to marginalization and non-participation of some groups in the political sphere.

Narratives and stories were and are a central part of the history of the peoples of the Northern Region. When the British arrived they used these stories to construct their colonies. Nonetheless, some stories were more relevant than others, and among those there are the stories told by the Dagomba people. Talton affirms that the Dagomba stories and narratives were the ones used by the British and “Dagomba efforts to associate Konkomba with a history in the region as conquered and enslaved peoples reflects the political weight that these labels acquired under colonial rule”<sup>101</sup>.

Even though these assertions from Dagombas seemed to be untrue. According to Brukum, Dagombas appear “never to have exercised control over Konkomba: administration took the form of slave raiding and punitive expeditions. The Konkombas were by no means assimilated”<sup>102</sup>. Nevertheless, the British chose to ignore these evidences and use the Dagomba narratives to settle in the north.

In 1897, Lieutenant-Colonel H. P. Northcott was appointed first chief commissioner of the Northern Territories. “In acquiring the territory the British sought to limit the influence of rival European powers along the trade routes” in the north<sup>103</sup>. Northcott wanted to incorporate local rulers into the colonial administration and to do that he departed from the idea that “chiefs were the centre of power for all tribal groups, and each individual

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<sup>98</sup> Supra note 86, p. 29

<sup>99</sup> Ibid.

<sup>100</sup> Benjamin Talton (2010) explains that “the tribe” itself is a creation of the colonial power combined with African agency. In the case of Ghana, “the relationship between the British and Dagomba demonstrates colonial powers’ link with chiefly power in producing and perpetuating a highly politicized form of tribalism” (p. 20).

<sup>101</sup> Supra note 86, p. 36.

<sup>102</sup> Supra note 89, p. 5

<sup>103</sup> Supra note 86, p. 39

and community was part of a tribe”<sup>104</sup>. His idea was to plant chieftaincy as the British strategy to govern the north.

The British desired political stability, and they rationalized their strategy of political incorporation with the belief that Africans who lived in noncentralized societies were actually quite amenable to aligning themselves with centralized polities or that colonial rule was restoring the “traditional” political relationships. This was the political terrain that the British constructed from their own prejudices and information from informants among the centralized polities.<sup>105</sup>

Skalnik also affirms that the British preferred the centralized groups. According to him, “[t]he colonial administration and post-colonial regimes, not only in Ghana, were known for siding with those groups which had chiefs and ‘states’ and centralisation of political office”<sup>106</sup>. The colonial regime, therefore, focused its policies on the centralized groups. The power of chiefs was increased as the British allowed “them to rule their subjects as far as was compatible with equity and good government. They were allowed to try matrimonial, land and farm disputes and petty assaults in their courts”<sup>107</sup>; independently of their knowledge of the traditional rules of the non-centralized groups.

It was only on 1 January 1902 that the British formally incorporated the Northern Region, then known as Northern Territories (which also incorporated what is now known as Upper West and Upper East Regions), to the Gold Coast Colony (known today as Ghana). The incorporation also stipulated that the African societies were supposed to maintain their own traditional practices “as long as they did not result in violence, involve practices repugnant to British laws, or impede the administration of the territories”<sup>108</sup>. The British expected that the centralized powers would assert themselves upon the non-centralized ones. Conversely, centralized kingdoms exercised little influence on non-centralized communities.

On August 6, 1914 the British and the French divided between themselves the German Togoland, which meant that a number of African societies came under the British domination, including the Konkomba, Chakosi, Nanumba, and Dagomba. After 1916, the British regarded Dagomba political authority as the traditional power and they hoped for an inclusion of the Konkomba under Dagomba rule. The British wanted to exercise political control by relying on the power of the chiefs. However, it was very difficult for Dagombas to impose themselves on Konkombas, as the latter did not see Dagombas as their authority.

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<sup>104</sup> Ibid, p. 40

<sup>105</sup> Ibid, p. 42

<sup>106</sup> Skalnik, Peter, “Questioning the Concept of the State in Indigenous Africa”, (*Social Dynamics* 9, 2, pp. 11-28, 1983)

<sup>107</sup> Supra note 89, p. 7

<sup>108</sup> Supra note 86, p. 43

In the 1920s British authorities proposed a ban on bows and arrows – weapons commonly used by Konkombas. The Chief Commissioner at the time “gave Dagomba nas a central role in its enforcement. He made the Nas, with police support, responsible for collecting Konkomba weapons and imposing fines in all culprits”<sup>109</sup>. It was the first time that Dagomba actually had a mandate to assert their power over Konkomba.

When the British introduced indirect rule in the Northern Territories in 1929, it marked a turning point in the relationship between Konkomba and Dagomba. As part of implementing indirect rule, colonial officials recasted African traditions, which led to the construction of customary law, a stronger chieftaincy, and finally courts.<sup>110</sup>

This indirect rule, named Native Authority, gave more power to Dagombas who could control not only the territories, but also the educational system and the courts system. “The British established native tribunals to operate along with magistrate courts. They did not base their concept of Native Authority on historical and empirical realities. Rather, they perceived the political realities that they confronted as aberrations of what ought to exist”<sup>111</sup>.

The chiefs could try all cases except criminal ones while the Native Authority system was in place. The centralized chiefs were also given “treasuries into which they collected taxes supposedly to be used for the development of their ‘native authority’ areas... British support for chiefs reached its apogee in 1938 with the creation of the Northern Territory Council which was a Chief’s Council”<sup>112</sup>.

These Native Authorities were reinforced in the 1930’s and 1940’s in the Northern Territories. The chiefs of centralized societies, as the Dagombas, for example, were brought to the centre of colonial administration and gained more power. Non-centralized communities had to come together around the symbols of power that were important to the British, namely, ethnic unity and chieftaincy. “Ethnicity was the means through which the British and Dagomba defined and disfranchised Konkomba, and it became the means through which Konkomba challenged Dagomba power, and by extension British policies”<sup>113</sup>.

By supporting one ethnic group over the other, the British intended to prevent the emergence of detribalized Africans. The British, as well as other Europeans in Africa, thought that by supporting the chiefs they would prevent the development of the territory-wide political consciousness. These

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<sup>109</sup> Ibid, p. 59

The Na, is the chief in the Dagomba society.

<sup>110</sup> Ibid, p. 63

<sup>111</sup> Ibid, p. 66

<sup>112</sup> Supra note 89, p. 8

<sup>113</sup> Supra note 86, p. 79

policies were in line with the British believe that, “if ever power were to be divulged at all in Afirca, it was to its natural rulers who were the chiefs”<sup>114</sup>.

Among the administrative measures adopted by the British in the Northern Territories, was, as mentioned above, the creation of courts – giving the chiefs powers to act as judges. Talton argues that these powers, together with the regular administrative powers, allowed chiefs to “exploit their neighbors with the support of the British colonial administration. They simply had to claim that their actions was a customary right or that they act on behalf of the district commissioner”<sup>115</sup>.

During the 1940’s greater Dagomba control and increased exploitation of the Konkomba influenced the development of a nascent Konkomba political identity as the many historically disunited Konkomba clans of the Oti Plain began to identify the Dagomba as their common subjugator and Dagomba exploitation as their common plight.<sup>116</sup>

After three decades of British rule excluding Konkombas, in 1945 the British started to change their tactics towards them; however the British needed the Konkomba to present themselves as a centralized polity in order to provide them with political power. The Konkomba started than to organise themselves in youth associations.

In the pre-independence years youth associations were gaining ground in Ghana. Their struggle with other regional associations was “recruiting grounds for nationalist political parties”<sup>117</sup>. Many of those who were not part of the chiefs or the elders groups formed youth associations. They were the representatives of the commoners and their main goal, especially after World War II, was to advance education. “Individuals and groups had begun to regard education as an asset to the group as well as the individual.”<sup>118</sup> The youth associations combine characteristics and functions of voluntary association, though membership is based either on territory of origin or ethnic affiliation. “The category ‘youth’ refers to the politically active, who regard themselves as being the public opinion leaders in their communities, and include biologically young males only in the very widest sense of the word.”<sup>119</sup>

In 1957 Ghana became independent from Britain, however “[t]he postcolonial state continued, and in many cases expanded, the institutional arrangements and administration of colonial rule”<sup>120</sup>. The first Ghanaian president was Kwame Nkrumah and one of his main goals was to detribalize Ghanaian society. In order to do that he increased the number of districts in

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<sup>114</sup> Supra note 89, p. 8

<sup>115</sup> Supra note 86, p. 89.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid, p. 122

<sup>118</sup> Ibid, p. 124

<sup>119</sup> Lentz, Carola, “Youth Associations and Ethnicity in Northern Ghana”, *Ethnicity, Conflicts and Consensus in Ghana* (Woeli Publishing Services, Accra, 2007), p. 42.

<sup>120</sup> Supra note 86, p. 127

the country, dividing ethnic groups between two or more districts to reduce the influence of tribalism. His administration also appointed Konkomba leaders to head districts – as it was the case with the creation of the Saboba district in 1963 and the appointment of Isaac Bawa as commissioner. The Saboba district was the first autonomous Konkomba political entity.

From 1966 to 1969 Ghana was governed by the National Liberation Council (NLC), the party that took power from President Nkrumah in a coup. The NLC, contrary to Nkrumah, was not anti-chieftaincy. President Nkrumah saw chieftaincy, ethnicity and tribalism as sources of dispute in Ghanaian society, whereas the NLC gave room to chiefs and coupled districts created by the former leader together. In some cases, as in the case of Saboba and Zabzugu, uniting two districts was a source for dispute.

Nonetheless, it is from 1969 to 1972, during the government of the second democratically elected leader, Prime Minister Kofi Busia, that the groundwork for the Konkomba conflicts with their centralized neighbours takes place. Busia was even more pro-chieftaincy than the NLC was. In 1971 he passed Act 370, the Chieftaincy Act, which created the National House of Chiefs – “composed of all of the nation’s existing paramount chiefs, and chieftaincies, and [it] adjudicated particular land and chieftaincy disputes”<sup>121</sup>.

By creating the House of Chiefs, Busia did not increase the political voice and influence of every local society. Enhancing the role of chieftaincy in local affairs further institutionalized tradition, authority, and ethnic difference, which excluded most noncentralized societies and further entrenched common notions and practices that presented tradition and history as the exclusive domain of centralized societies.<sup>122</sup>

In 1972 there was another military coup in Ghana and Colonel Ignatius Acheampong came to power and ruled until 1978. In 1979 Hilla Limann was democratically elected. His most significant gesture was the promulgation of land reforms, which gave land ownership rights to Northern chiefs of centralized societies. One of the main setbacks of the reforms was the fact that “land historically occupied by groups that lacked an officially recognized chief legally became part of the domain of the neighboring chief”<sup>123</sup>.

In 1978 the government of Colonel Acheampong established the Committee on Ownership of Land and Positions of Tenants in Northern and Upper Regions, popularly known as the Alhassan Committee. “The Alhassan Committee was shouldered with the responsibility to create a uniform system of land tenure for the entire nation”<sup>124</sup>.

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<sup>121</sup> Ibid, p. 133.

<sup>122</sup> Ibid, p 134.

<sup>123</sup> Ibid, p. 135.

<sup>124</sup> Ibid, p. 147.

The Konkomba Youth Association (KOYA) “submitted a memorandum [to the Alhassan Committee] laying claim to part of Dagbon, which [had been identified] as ‘belonging to Konkombas by right’. The memorandum was submitted ‘on behalf of the Chiefs and the people of Konkomba Traditional Area’”<sup>125</sup>. The recognition of this land as Konkomba land would confirm the status of Konkomba as a legitimate Ghanaian tribe.

The Committee dismissed the Konkomba claim in the following terms:

We are therefore of the opinion that the land the Konkomba now claim should be vested in them is under the Ya-Na by conquest but is currently predominantly inhabited by Konkombas, thus their demand for lesser area than they once possessed. We therefore accept the claim of the Dagombas that the area claimed by the Konkombas is Dagomba land.<sup>126</sup>

This decision of the Committee further disempowered Konkombas and other non-centralized communities. It maintained the system created by the British, which recognized tradition and the history and stories of the centralized communities to be superior to those of the non-centralized ones. The decision also influenced the work and political strategies of KOYA.

KOYA is a central organization to the comprehension of the Konkomba political structure and to understanding the 1994 conflict. The constitution of KOYA proclaimed the Konkomba unity, the district of Saboba as Konkomba traditional land, and asked for a Konkomba Paramount Chief<sup>127</sup>. KOYA was especially active in the district of Bimbilla, where Joseph Ali Kamshegu, the headman of the Konkomba community in that district took an active role to diminish Nanumba<sup>128</sup> influence in Konkomba matters.

Kamshegu’s active role, together with the Konkomba social and political change (influenced by their growing economic power connected to yam farming) created dissonance in the social hierarchy of Northern Ghana. Moreover, in the beginning of the 1980s there was an escalation of tension between Konkomba and Nanumba in the Bimbilla District. Even though the government was aware of such occurrence it did not intervene. According to Talton, the government’s reluctance to act “was tantamount to a green light for violence”<sup>129</sup>.

### 2.3.2 The Pito<sup>130</sup> War – 1981 Conflict

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<sup>125</sup> Mahama, Ibrahim, *Ethnic Conflicts in Northern Ghana* (Cyber Systems, Tamale, 2003), p. 155

<sup>126</sup> Ibid, p. 157

<sup>127</sup> See Talton, 2010 and Mahama, 2003

<sup>128</sup> Alike the Dagomba in Dagbon, the Nanumba were the centralized power in the Bimbilla area. As a centralized power they could decide upon conflicts relating to marriage and land disputes.

<sup>129</sup> Supra note 86, p. 160

<sup>130</sup> Pito is a kind of beer produced by Konkombas in the Northern Region.



In March 1981 Kamshegu was kidnapped and threatened. He reported this to the regional commissioner in Tamale, who sent orders to the Bimbilla Na to guarantee Kamshegu's safety. In the Bimbilla Na's perspective the government was siding with Konkomba in the escalating conflict. After this episode KOYA and the Nanumba Youth Association got together to discuss the situation in the Bimbilla District. After a meeting took place on 23 March 1981 both sides left hoping that they could resolve the issue peacefully. Even though the situation remained tranquil in the District the disputes between Kamshegu and the Bimbilla Na were not close to an end.

Their dispute trickled over into the wider Nanumba and Konkomba communities; after their sons had a fight in a pito bar, on April 23, 1981, Kamshegu's son stabbed Mamadu's [the Bimbilla Na] son. Later, while a group of Nanumba men searched for Kamshegu's son they attacked and ultimately killed three Konkomba men and a young Nanumba woman who they mistook for a Konkomba. On April 28, as a search party combed Konkomba villages in the vicinity of Bimbilla looking for Kamshegu's son, Hamilton Salifu, a Nanumba, entered a compound and peered through one of its windows and was met by a bullet in the head that killed him instantly. The death toll in the conflict rose slowly at first, while the fighting remained limited to attacks on individuals, before Nanumba and Konkomba men organized to attack entire villages.<sup>131</sup>



Figure 2.1 – Daily Graphic, 14 February 1994 – Author's collection

With the “encouragement” of the national media the conflict became more and more violent, as more men organized themselves against the other group. In the beginning the casualties against Konkomba outnumbered the ones against Nanumbas, however Konkombas from the other Regions gathered the fight and made the Konkomba victories outnumber those of Nanumbas. As Konkombas took over villages they installed their own chiefs, in order to have their society recognized in the Ghanaian context.

The national government interfered, especially in order to avoid that the conflict could spread to Tamale. They sent army troops to the conflict areas. “By the first week of July, the military had established itself throughout the Northern Region, with a especially strong presence in and around Bimbilla”<sup>132</sup>. As order seemed to come to place again, the national government began to investigate how to address the issues highlighted by the conflict and which course of action to take.

Limann, the president at time, convened a commission of inquiry to investigate the causes of the conflict and the possibility of reconciliation.

<sup>131</sup> Ibid, pp. 160-161

<sup>132</sup> Ibid, p. 164

However, on New Year's Eve 1981, Flight Lieutenant John Rawlings carried a coup and removed Limann from power. He also suspended the work of the commission that never was reestablished. "The absence of enquiry to establish who was right, left the matter at large and provided a potent condition for [the 1994] war"<sup>133</sup>.

According to Brukum, after the Pito War Nanumbas were seeking to avenge their defeat. "Both Nanumbas and Konkombas were secretly arming themselves and looking for an opportunity to start a war"<sup>134</sup>. The opportunity came in 1994.

### 2.3.3 The Guinea-Fowl War and the Peace Process

The 1994 conflict is Ghana's most violent conflict and it was "the longest running and the widest spread ethnic conflict witnessed in modern Ghana"<sup>135</sup>. Although the conflict is known for its chieftaincy matters, and was called an "ethnic" conflict, it was much larger than chieftaincy and ethnicity. The conflict revolved around the economic growth of Konkomba; their lack of political participation in an area where tradition and chieftaincy shaped local politics; Konkomba social change influenced by Western education; migration; commercial farming; communal associations<sup>136</sup>; and land related issues connected to the Land Tenure Act of 1979.

In 1994 the "Guinea Fowl War", as it is popularly known, exploded proving that there were still several issues to be dealt with when chieftaincy and issues connected to this institution are concerned. The root causes of the conflict are, nonetheless, yet to be tackled. "Although violent fighting is suppressed, the underlying causes of violence remain largely unaddressed."<sup>137</sup>

Perhaps the most important (but certainly not the only) cause of the conflict is the economic marginalization of the Konkomba as well as their lasting cultural marginalization in the eastern peripheries of the Northern Region, which remain among the least developed parts of this massively disadvantaged region in terms of infrastructure and all other relevant indicators until at least the late 1990s.<sup>138</sup>

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<sup>133</sup> Supra note 125, p. 2

It is necessary to clarify here that determining who is right and who is wrong is not necessarily the most important activity to be undertaken in the aftermath of conflict. It is important to think about justice (punishing the guilty individuals) and reconciliation. The point is, though, that the Ghanaian government did nothing at the time.

<sup>134</sup> Brukum, N. J. K., "Chieftaincy and Ethnic Conflicts in the Northern Region of Ghana, 1980-2002, *Ethnicity, Conflicts and Consensus in Ghana* (Woeli Publishing Services, Accra, 2007), p. 109

<sup>135</sup> Supra note 125, p. v

<sup>136</sup> Supra note 86.

<sup>137</sup> Kaye, J. and Béland, D., "The politics of ethnicity and post-conflict reconstruction: The case of Northern Ghana", (*Journal of Contemporary African Studies*, Vol. 27, No. 2, PP. 177-200, 2009), p. 180

<sup>138</sup> Supra note 96, p. 46

The issues at hand involve access to land and political participation, as chiefless societies do not have access to these goods. In the conflict resolution/transformation literature it is said that issues of *social justice* have not been addressed. As Bogner states, the result of Konkombas' history is that they lacked "ways and means of conflict management and institutionalized social mechanisms or procedures that could have prevented the violent escalation of collective grievances between the Konkomba and their neighbors"<sup>139</sup>.

In their effort to conquer more political participation the Konkombas envisaged the solution for the problem in having a paramount chief in the Northern Region. Following the rules of the 1992 Constitution, KOYA presented a petition to acquire a Paramount Stool to the National House of Chiefs. The basic demand of the petitioners was for Paramountcy and Traditional Council, they also wanted a defined area of their own, the Konkomba traditional land<sup>140</sup>.

The Ya Na only heard about the Konkomba petition after approximately two months – as it was sent directly to the National House of Chiefs, and he declared the petition void, as according to the rules of chieftaincy the petition should have met him first. Moreover, the Ya Na was not satisfied with the fact that the Konkomba claimed ownership of land. The Ya Na said that the Konkombas had no land of their own in Dagbon.

By December 1993 the tension between the Ya Na and Konkombas had increased. On 31 December 1993, two Konkomba men were bargaining over the price of a guinea fowl, when a Nanumba man over bid the Konkomba buyer. The two men, Nanumba and Konkomba, started a quarrel that escalated to physical violence. It is reported that on the following day the son of the Konkomba man murdered the Nanumba one in order to avenge the humiliation. "News of the murder spread, and both communities gathered to prepare for a fight"<sup>141</sup>. The conflict had begun.



Figure 2.2 – Daily Graphic. 11February 1994 – Author's private collection

During the first three months of 1994 fighting was intense. The government had sent representatives of the armed forces to the region; however, in small numbers they could only secure the

<sup>139</sup> Ibid, pp. 47-48

<sup>140</sup> Supra note 125

<sup>141</sup> Supra note 86, p. 173

areas of the districts capitals. The killing, burning of property and looting of animals was widespread in the other areas.

Peace talks started already in April 1994, however these were not very successful, since Konkombas and Dagombas blamed each other mutually for having started the conflict. It was only on 9 June 1994, that a cease-fire accord was signed<sup>142</sup>. Rawlings, the President of Ghana at the time, went to the Northern Region in November 1994 to converse with the parties. His visit is reported to have taken peace process forward.

After the end of the first phase of armed fighting in 1994, the national government and – in an additional separate attempt – an informal consortium of international and local NGOs tried to bring about negotiations and a reconciliation between the ethno-political groupings involved in the armed conflict. This attempt resulted in the peace treaty in the year 1996 known as “Kumasi Peace Accord”<sup>143</sup>.

There were outbreaks of violence in 1995 in the Bimbilla District and also in the north of the Region. Nonetheless, the massive violence in the region had already ceased. NGOs, “religious organizations, and peacebuilding teams were at the forefront of sustaining peace in Northern Ghana. There were six peace meetings before the ‘Kumasi Accord’”<sup>144</sup> came to place.

The text of the peace accord admits that the Konkomba are subjects of the kings of Dagomba and Nanumba in the respective parts of the conflict zone. It also confirms that Dagomaba and Nanumba kings hold, as their subject’s trustees, the allodial property rights for the lands inhabited by the Konkomba in the conflict zone. The Kumasi peace accord is most probably the first document signed by prominent representatives of the Konkomba that recognizes the Dagomba king’s claim to property rights regarding the land within their ancestral area of settlement.<sup>145</sup>

The Kumasi Accords brought about negative peace; nevertheless the situation for the Konkomba did not improve much after the conflicts. The Konkombas continued looking for a paramountcy; however, the problem in achieving it was not only related to the authorization of the Ya Na, but also, it was connected to the lack of consensus within Konkombas, as to whom ought to be the paramount chief. Even though the KOYA enjoyed broad respect in the political realm it lacked such influence when the issue was land, social relations and death, all linked to traditional matters and chiefs in the Northern Region. Many of the issues that triggered the conflict have not been addressed by modern Ghana; issues between Konkombas and their centralized neighbours are yet to be dealt with.

One of these issues relates to paramountcy. Konkombas have been given three paramount chiefs nominated by the Ya Na. However this is not what the Konkombas were fighting for. “The unity that paramountcy was meant

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<sup>142</sup> Supra note 125.

<sup>143</sup> Supra note 96, p. 41

<sup>144</sup> Supra note 86, p. 175

<sup>145</sup> Supra note 96, p. 55

to bring about still remains an elusive dream”<sup>146</sup>. The three paramount chiefs could never agree with each other one who was to be the chief of Konkombas and how to divide traditional power. The disagreements among the Konkombas grew worse and in the end the Konkombas were left in the same situation as before the conflict. “Konkombas still do not have a single paramountcy, although the chief of Saboba enjoys what seems to amount to *primus inter pares* status.”<sup>147</sup>

Several people died during the conflict (numbers can reach up to two thousand, however they vary considerably), the government claims to have used more than six billion cedis<sup>148</sup> in trying to establish peace, houses were destroyed, animals looted and public buildings were burnt. Nevertheless, the consequences of the conflict go beyond material lost. According to Brukum, the militarization of youth is also a consequence from the war. “But even more alarming is the atmosphere of insecurity and distrust that the conflicts have engendered which has affected all socio-economic activities in the region. The disruption of the normal functioning of Northern societies still persists.”<sup>149</sup>

### 2.3.4 The Land Disputes and Chieftaincy

After the independence in 1957 many attempts were made to try to coordinate the traditional structures with the “modern” British organization of the State. Nkrumah, the first Ghanaian president, wanted to “modernize” the country and he thought that chieftaincy stood in the way. However, modernizing the country proved to be a bigger challenge than expected as it became difficult for authorities to share the power with the traditional authorities (the paramount chiefs) and change the system. The chieftaincy institution was completely re-established in 1971 with the Chieftaincy Act (Act 370 of 1971)<sup>150</sup>. The act nonetheless did not come to take a critical look at the chieftaincy institution and historical discrimination and non-inclusion patterns were maintained.

During the presidency of Limann land reforms were promulgated. These reforms “institutionalized control of the land under the authority of the ‘original owners’, which with few exceptions was a position claimed by the chiefs of the historically centralized societies on behalf of their constituents”<sup>151</sup>.

The 1979 Constitution illustrates these policies. As it can be read in Article 188, paragraphs 3 and 4, which stated that all lands in the Northern and Upper Regions in Ghana should be vested in any such person as who was the owner of any such land. This constitutional decision connected the

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<sup>146</sup> Supra note 88, p. 222

<sup>147</sup> Ibid, p. 227

<sup>148</sup> Supra note 134

<sup>149</sup> Ibid, p. 99

<sup>150</sup> Supra note 90, p. 46

<sup>151</sup> Supra note 86, p. 135

political power already vested in chiefs with land control enforcing the kind of administration present in the Northern Region since colonial times.

The 1992 Constitution maintained the connection between chieftaincy and land ownership. Article 267 of the constitutional text vests all stool property in the recognized stools. The lands controlled by the stools are regulated by traditional rules and there is a special governmental commission monitoring the stool lands.

The 1992 Constitution also addresses the issue of Chieftaincy coordinating the institution in Articles 270 to 277. According to Article 277, a chief is “a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queenmother in accordance with the relevant customary law and usage”. This was yet not sufficient to deal with the problem of the exclusion of certain groups from the political life, especially because chiefs and queenmothers are not democratically chosen, as they have to be part of the right family and lineage. Moreover, they are the “owners” of traditional land – as read in Article 267, and all non-centralized peoples living in that area are subjects to the chief.

In line with widespread although not entirely undisputed legal opinion, the two constitutions of 1979 and 1992 created (or re-established) a legal situation in which the kings of these four groups [Dagomba, Numba, Gonja and Mamprusi] are regarded as the owners of all land in the Northern Region. Essentially, there neither has been nor is there at present any individual ownership of land in Northern Ghana, but only a form of corporate ownership of land. This means that the owner is a social group or collectivity, the rights of which are administered in trust by their traditional representatives. How these groups or collectivities are to be legitimately defined and delimited – whether as settlement group, a local genealogical group or a local cult association, a political collectivity (a dynastic polity, for example), or an ethnic group – was the precise subject of dispute at the time of the 1994 war (and in part until today).<sup>152</sup>

Article 270 of the Constitution establishes the institution of Chieftaincy, together with traditional councils, as it is recognised by customary law. Each region is to have a House of Chiefs, which elects five paramount chiefs from the region to the National House of Chiefs, as established in Article 271 of the Constitution. This constitutional provision impedes that any other ethno-political group who do not recognize the institution of paramount chieftaincy make themselves present in the National House of Chiefs.

According to Brobbey, “there is no single indigenous Ghanaian who can deny as a fact that he belongs to a tribe or he is a member of a traditional area with a chief he owes allegiance. The chief is the unifying force in his society. He leads his people in times of war (as in the past) and in times of

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<sup>152</sup> Supra note 96, p. 43

crisis”<sup>153</sup> (p. 33). From the author’s point of view, this affirmation by Brobbey shows how outdated and sexist the institution is. Even though the Constitution recognizes that queenmothers can act like chiefs, most of the leaders in Northern Ghana are male. Moreover, the position attributed to the chiefs as the guide and decider, removes autonomy and the possibility of agency from the people living within the chief’s kingdom. Furthermore, the fact that it is only the chief who controls traditional areas removes autonomy and political agency from groups who are nothing else but subjects of the king.

This customary land tenure based on chieftaincy is a heritage from colonial times (as it has previously been shown), it is a strategic way for the government to gain control over land, natural resources and agricultural production to the expenses of the poor peasantry<sup>154</sup> (Amanor and Ubink, 2008). The entire chieftaincy and land tenure system is also detrimental to women as it can be read from Amanor and Ubink.

[C]ustomary systems often embody patriarchal values and power, which seeks to exclude women from land. Women are not well positioned within customary political institutional frameworks or within local government frameworks to represent their own interests. Thus, the harmonisation of the customary with the formal, and the turn to the customary, often marginalise women’s rights, and serve to legitimate institutions that undermine women’s rights to land.<sup>155</sup>

Even though chieftaincy poses all these challenges to democracy, it is still a paramount institution in the Ghanaian context, as it has been shown above. In recent years there has been a movement in Africa to decentralise administration from national state agencies to community-based institutions. In Ghana this decentralisation process revolves around chieftaincy<sup>156</sup>. Chiefs are not only responsible for their traditional duties, but also for development initiatives – donors and the World Bank have been funding foundations established by chiefs. Therefore chieftaincy has re-gained a lot of power recently. This can be explained by the way the chiefs administrate land tenure.

Within the state sector, customary land relations in Ghana are based on a formulation that differentiates allodial and user (usufructuary) rights. Allodial rights are vested in chiefs who through their political hegemony are granted ultimate control over the land. This concept is ultimately derived from some notion of communal land tenure in which the land is vested in chiefs to manage on behalf of the community, or in which, the founder of the polity

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<sup>153</sup> Brobbey, S. A., *The Law of Chieftaincy in Ghana – Incorporating Customary Arbitration, Contempt of the Court, Judicial Review* (Advanced Legal Publication, Accra, 2008), p. 33

<sup>154</sup> Amanor, Kojo and Ubink, Janine, “Contesting land and custom in Ghana: Introduction”, Amanor, Kojo and Ubink, Janine (eds.) *Contesting land and custom in Ghana: State, Chief and the Citizen* (Lieden University Press, 2008)

<sup>155</sup> *Ibid*, p. 13

<sup>156</sup> Amanor, Kojo, “The changing face of customary land tenure”, Amanor, Kojo and Ubink, Janine (eds.) *Contesting land and custom in Ghana: State, Chief and the Citizen* (Lieden University Press, 2008)

and the political order, chiefs acquired rights to the political allegiance of subject on their land. This is essentially a political definition of land rights, which empowers chiefs as the trustees of communities to control land. The ‘subjects’ (the peasantry) only hold users rights in land, which confer on them rights to use the land to make a livelihood, but not rights to sell land. Only the products emerging from the use of land and from their labour belong to the subject of the chief, such as the farm plot, but the actual land belongs to the chief. This framework ultimately denies the peasantry secure rights in land by enabling them to be ‘extinguished by the action of a paramount power which assumes possession of the entire control of the land’.<sup>157</sup>

Economic matters aside, control over land also represents “judicial power”, in the sense that land disputes are usually arbitrated by the chiefs in the area disputed, especially if the parties in disagreement cannot afford to go through the state’s land sector agencies or courts. In the Northern Region there are only four kingdoms (Nanumba, Dagomba, Mamprusi e Gonja) that control all the land in the largest region of the country<sup>158</sup>.

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<sup>157</sup> Ibid, p. 57

<sup>158</sup> Supra note 88.



### 3 Conflict Management Tools

Before analysing the work of the Commission in Ghana relating to the conflicts in the Northern Region, some clarifications on the meaning of conflict management tools and peacebuilding are needed. This chapter will concentrate on conflict management tools.

As proposed above conflict is always dynamic, multifaceted, involves many actors and circumstances and therefore there are many ways to manage<sup>159</sup> conflict. The approaches to conflict management are various and their use is connected to the kind of conflict, its escalation level, and the goal to be achieved. The image below illustrates some of the approaches to conflict and their “timing”. It also indicates the nature of the efforts (judicial or extra-judicial) and how they influence conflict.

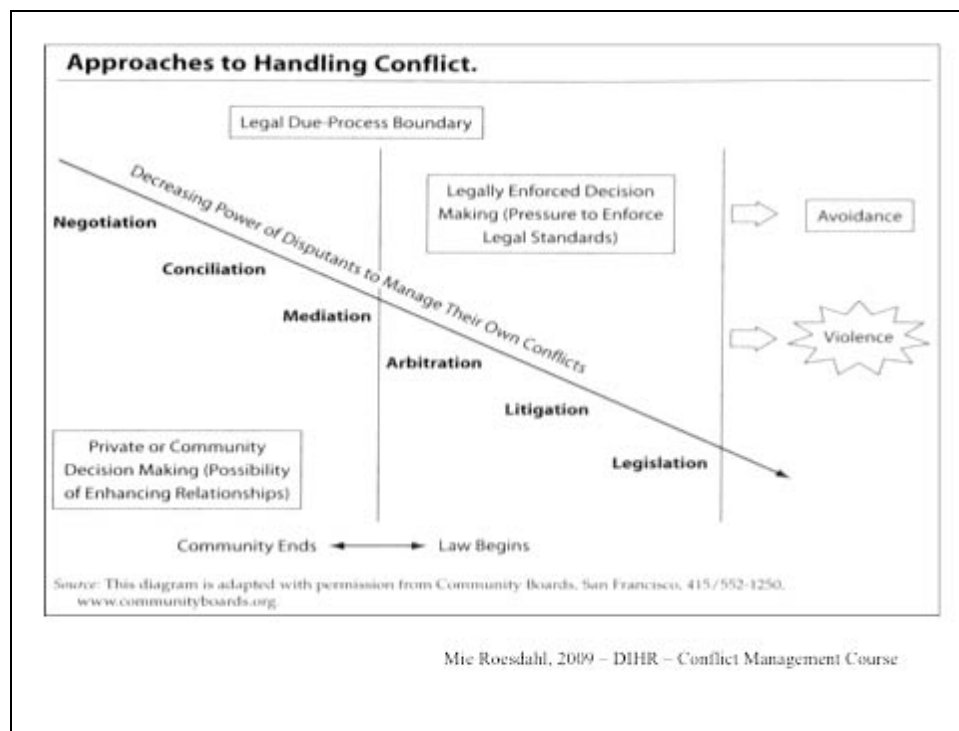


Figure 3.1 – Approaches to Handling Conflict

The ways of dealing with conflict presented above can be divided in bilateral (negotiation) or third-party intervention (conciliation, mediation and arbitration). According to Bercovitch<sup>160</sup> these are two out of the three basic methods of conflict management.

<sup>159</sup> The literature is extremely diverse in terminology, especially when the ways to deal with conflict are presented. As mentioned before, conflict transformation can be considered to be the deepest level of conflict resolution (Ramsbotham et al., 2005) or an entire process of its own (Lederach, 2003). This thesis will use the term “manage” at this point because the tools presented might not be sufficient to transform the conflict as it should be goal of the efforts, but they are, nonetheless, important mechanisms to be used throughout the process.

<sup>160</sup> Bercovitch, Jacob, “Third parties in conflict management: the structure and conditions to effective mediation in international relations” (*International Journal*, 736, 1984-1985)

The first method would be the use of violence and coercion, both physical and psychological (the unilateral method). The other methods shown in the illustration, namely, litigation and legislation are not going to be dealt with at this point, especially because these are beyond the direct mandates of most NHRIs. Even though it is known that NHRIs can influence the legislative process through lobbying and advocacy.

“Negotiation and mediation are the primary noncoercive methods by which actors in conflict settle their disputes. This holds true for all levels of conflict, from the individual to the international.”<sup>161</sup> Because of their importance and range of applicability focus will be set on mediation and negotiation. This chapter will also discuss how NHRIs can work with these tools in order to transform conflict and build positive sustainable peace.

### 3.1 Negotiation

“According to *Webster’s Collegiate Dictionary*, to negotiate is ‘to hold intercourse with a view of coming to terms; to confer regarding a basis of agreement’.”<sup>162</sup> Even though this definition is very straightforward, the meaning of negotiation has changed a lot throughout the years. Game theory, social psychology, international relations and organizational behaviour are some of the fields of study that have influenced the meaning of negotiation and its use in conflict transformation. It is important to emphasise here that negotiation is a *process* through which two or more parties to the conflict try to reach an agreement through their own efforts.

Negotiation can happen bi-, tri-, or multilaterally. Communication can happen face-to-face or at distance, it can involve a great deal of subjects and therefore it is very difficult to talk about a general theory of negotiation, therefore some possible theories will be briefly explained.

Negotiation can be seen as a “bargaining game”. “According to this view, negotiation is a process by which parties move gradually from their own initial positions toward the position of others.”<sup>163</sup>

The bargaining process can be characterized in the following steps: firstly, each of the parties make their initial offers; secondly, the parties make commitments to certain positions in an effort to hold firm; after that “promises of rewards and threats of sanctions are issued to induce other parties to make concessions”; following that, one party moves closer to another as concessions are made; the next step is the retractions of previous concessions and offers as the parties draw apart again, lastly, “when the dynamics of concession making overcome the pressures to diverge, the

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<sup>161</sup> Bercovitch, Jacob and Jackson, Richard, “Negotiation or Mediation? An Exploration of Factors Affecting the Choice of Conflict Management in International Conflict” (*Negotiation Journal*, pp. 59-77, January 2001), p. 60

<sup>162</sup> *Supra* note 20, p. 81

<sup>163</sup> *Ibid*, p. 87

parties tend to converge upon agreement somewhere between their opening offers”.<sup>164</sup> The “Negotiation Diamond” below can illustrate the bargaining process.



Figure 3.2 - The Negotiation Diamond

Research into negotiation has shown that there are different rhythms and patterns to negotiations. In the literature there are many different stages and turning points to the negotiation process, Roesdahl’s<sup>165</sup> Diamond is a good illustration of these different stages. One of the most important stages (or phases) of the negotiation process is setting the agenda, as this will be the guide for the entire procedure. It is important to guarantee that all parties have equal opportunities to present their arguments and demands, so that an agreement can be reached at the end.

Another important phase of the negotiation process is the prenegotiation. “Experimental evidence suggests that prenegotiation activities affect both the prospects for entering negotiations and the ease with which parties negotiate.”<sup>166</sup> The prenegotiation phase can be a study of the issues to be dealt with in the negotiation and a study of the other parties to the process, but it can also be a way of preparing the physical setting where the negotiation will take place. “Effective use of prenegotiation preparations may spell the difference between successful and unsuccessful outcomes.”<sup>167</sup>

<sup>164</sup> Hopmann, P. Terrence, “Two Paradigms of Negotiation: Bargaining and Problem Solving” (*Annals of the American Academy of Political Science*, Vol. 52, Nov. 1995), p. 26

<sup>165</sup> Roesdahl, Mie, *Negotiation*, PowerPoint Presentation, Conflict Management Course (DIHR, 2009)

<sup>166</sup> Supra note 20, p. 95

<sup>167</sup> Ibid, p. 97

## 3.2 Third-Party Intervention

Third-party interventions have proven themselves to be helpful in the transformation of conflicts, even though neither researchers nor practitioners have agreed upon its precise content. There have been debates over whether third-party intervention should be impartial or partial, coercive or non-coercive, state-based or non state-based, carried out by outsiders or insiders, but no consensus has been achieved. It can be said, nonetheless, that one way or another, third parties have helped conflicting parties by putting them in contact to one another, clarifying issues, setting agendas and formulating agreements<sup>168</sup>.

The thesis will shortly exemplify the different, more common types of third-party interventions. As these interventions are not the main goal of this thesis the explanations provided will be concise and merely illustrative.

### 3.2.1 Conciliation

Conciliation is a type of third-party intervention. The peculiarity about conciliation is that it targets communication and information. Conciliation is a process to facilitate communication between adversary parties – the focus of conciliation is to define the terms of a potential settlement. It is a process very close to mediation that “refers to the intermediary efforts to encourage the parties to move towards negotiations”<sup>169</sup>.

Conciliation is particularly beneficial at the pre-negotiation stage, “where it has the effect of clarifying the agenda for subsequent discussion, encouraging the building of a ‘common mental map’; reducing tensions and facilitating greater understanding of each other’s aims and goals”<sup>170</sup>.

### 3.2.2 Mediation

As the other methods presented (negotiation and conciliation), mediation is a process. A process by which a third party intervenes and tries to assist the conflict parties to come to an agreement. It is another peaceful way to approach conflict. Mediation involves the “intervention of an outsider – an individual, a group, or an organization – into a conflict between” two or more actors. Mediation can also be seen as “the process by which the participants, together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives and reach consensual settlement that will accommodate their needs”<sup>171</sup>. “In conflict resolution literature, mediation is generally seen as a

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<sup>168</sup> Supra note 22

<sup>169</sup> Ibid, p. 30

<sup>170</sup> Supra note 32, p. 106

<sup>171</sup> Folberg, J., and A. Taylor. *Mediation: A Comparative Guide to Resolving Conflicts without Litigation* (San Francisco: Jossey-Bass, 1984), p. 7

process facilitated by an impartial, independent third party who has no stake in a specific solution to the conflict, and no bias towards any of the parties. The mediator seeks to facilitate an outcome to the conflict that is acceptable to all parties.”<sup>172</sup>

More importantly, mediation is a “noncoercive, nonviolente and ultimately, nonbinding form of intervention”<sup>173</sup>. Mediation is a “voluntary process in which the parties retain control over the outcome (pure mediation), although it is sometimes combined with positive and negative inducements”<sup>174</sup>. The most relevant aspect of mediation is, nonetheless its *voluntary* nature. Conflicting parties voluntarily enter a mediation process.

Mediation is especially important at the stage where at least one of the conflicting parties has realized that the continuation of the conflict will not help them achieving their goals, but where they are not capable of having formal negotiations yet. “At this point, face-to-face meetings may be very difficult to arrange, and mediation and ‘back channels’ become important.”<sup>175</sup> Nevertheless, it is imperative that the parties in conflict have tried their own conflict management tools before they enter into mediation.

A successful mediation process requires that the parties at dispute want to resolve the conflict and that the mediators have an opportunity to get involved. It also relies on the skills of the mediator. Timing is another key issue when mediation is concern. “The most propitious time to initiate mediation is roughly halfway through the life cycle<sup>176</sup> of a conflict, and certainly after the parties own efforts have failed.”<sup>177</sup>

Also relevant to the mediation process is when to mediate. Mediation might be more important/relevant, depending on the intensity of the conflict.

Conflict intensity usually refers to such factors as the severity of the conflict, the level of hostilities, the number of fatalities, the level of anger and intensity of feeling, the type of issues at stake, and the strength of the parties negative perceptions. When conflict intensity is low, Rubin suggests that the parties are concerned with ‘mending their own fences’ and do not want third-party intervention. Low intensity conflicts can usually be dealt with by the parties themselves. If the parties cannot do so, a mediator will come in as a

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<sup>172</sup> Maloka, Victoria, “Paradigm Shift? Building Capacity for Conflict Management and Peacebuilding: The Tanzania Commission for Human Rights and Good Governance”, Parlevliet, M., Lamb, G. and Maloka, V. (eds.) *Defenders of Human Rights, Managers of Conflict, Builders of Peace? National Human Rights Institutions in Africa* (Centre for Conflict Resolution, University of Cape Town, 2005), p. 141

<sup>173</sup> Bercovitch, Jacob, “Mediation in International Conflict: An Overview of Theory, A Review of Practice”, Zartman, I. William and Rasmussen, J. Lewis, *Peacemaking in International Conflict: Methods and Techniques* (United States Institute for Peace, Washington, D.C., 2005), p. 127

<sup>174</sup> Supra note 22, p. 29

<sup>175</sup> Ibid, p. 169

<sup>176</sup> Ramsbotham et al. (2005) also see conflict as a cycle. According to them conflict follows a progression from peaceful social change to conflict formation to violent conflict and then to conflict transformation and back to peaceful social change.

<sup>177</sup> Supra note 173, p. 145

catalyst for negotiations. In contrast to that, in high-intensity, dangerous conflicts, a primary task is to prevent further escalation, and to achieve this, mediators may adopt more active forms of intervention. High-intensity conflicts are associated with higher levels of mediation involvement.<sup>178</sup>

### 3.2.3 Alternative Dispute Resolution (ADR)

Alternative dispute resolution (ADR) is a general term, used especially in internal and international law, which refers to any kind of dispute resolution outside a court of law. In the literature, it is possible to find references to mediation under ADR. Here, the use of ADR will emphasise arbitration and binding decisions. However, it will be noted that, even though these decisions are binding, mediation principles might be used to reach a decision. Furthermore, in many cases, ADR decisions do not exclude the possibility of going to court.

Alternative Dispute Resolution (ADR) is primarily seen as a method for relieving the crisis of overburdened state courts facing impossible backlogs of unresolved cases. More positively it is also advocated as offering a cheaper, faster and more accessible form of justice for ordinary citizens, particularly the rural and urban poor, who do not have access to state justice either because of lack of resources, social exclusion or lack of physical access (distance).

The essence of the modern ADR concept, as developed by its European and North American advocates, is the idea that a better form of justice can be obtained by focusing on mediation or the search for an agreed settlement, rather than binding adjudication by an external (usually state) authority. Both state and non-state institutions or mediators can offer ADR; what makes it different from the practice in formal courts is the procedure, which is 'de-legalised', relying on an informal search for an agreed and just solution, as opposed to deciding who has won or lost. This emphasis on 'better' and 'non-compulsory' justice distinguishes the recent ADR movement from the already well-established contractual forms of commercial ADR, which rely on binding arbitration and may exclude the right to go to court.<sup>179</sup>

In the European and North American comprehension, ADR has three main pillars:

- 1) Disputes are related to individual rights and an agreement has to be reached by the individual parties. The parties are responsible for upholding the agreement, as there is no public authority to guarantee it – however courts can be assessed for the enforcement of the decisions;

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<sup>178</sup> Bercovitch, Jacob, "Mediation and Conflict Resolution", Bercovitch, Jacob; Kremenyuk, Victor and Zartman, William, *The SAGE Handbook of Conflict Resolution* (SAGE Publications, London, 2009), p. 348

<sup>179</sup> Crook, Richard C., "Customary justice and local Alternative Dispute Resolution: What kind of protection can they offer to customary landholders?", Ubink, Janine M. and Amanor, Kojo S., *Contesting Land and Custom in Ghana: State, Chief, Citizen* (Leiden University Press, Leiden, 2008), pp. 132-133

- 2) ADR has to respect the due process – the procedure has to be fair and cannot deter individuals’ right to access to court;
- 3) ADR is about reaching “win-win” situations, possibly with the assistance of a mediator who will assist the parties in finding a solution without intimidation or pressure (Crook, 2008).

In many Western systems, ADR is closely connected to the Court systems. In the United States for example, both Federal and State Courts have mediation and arbitration programmes connected to the Court procedures. ADR can additionally be used as a strategy of NHRIs which have quasi-judicial functions to address conflicts.

Both arbitration and mediation are part of ADR. The arbitration process is closer to the court systems, the parties have little control over the process and little control of the outcome too. The “problem” with arbitration is that the parties lack ownership and in case of deep-rooted conflicts in society, this kind of decisions are usually inappropriate. “The legal nature of arbitration can, however, be useful in contributing to a settlement.”<sup>180</sup>

### **3.3 The Use of Third Party Intervention and Negotiation by NHRIs**

According to the Paris Principles<sup>181</sup>, if NHRIs have quasi-judicial functions they should seek “an amicable settlement through conciliation or, with the limits prescribed by the law, through binding decisions, or, where necessary, on the basis of confidentiality” (4. a). This means that NHRIs can use conflict management tools to exercise their mandate. Even though the legal text only explicitly refers to *conciliation*, it can be inferred that *negotiation, mediation and arbitration (binding decisions)* are part of the repertoire of possible measures to be taken by NHRIs.

According to the Office for the High Commissioner on Human Rights (OHCHR), some NHRIs are themselves a form of ADR, as “they were created to offer alternative redress mechanisms to the courts. In the event, many institutions, even those that do not handle complaints, use conciliation and/or mediation”<sup>182</sup>.

As this thesis focuses on the Commission for Human Rights and Administrative Justice (CHRAJ) in Ghana, this sub-chapter will focus on two other African NHRIs and their use of conflict management tools in order to 1) exemplify how NHRIs can work on conflict and 2) provide relevant information for a later comparison.

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<sup>180</sup> Supra note 32, p. 108

<sup>181</sup> United Nations General Assembly (UNGA). 1993. *Principles relating to the Status of National Institution*, General Assembly Resolution 48/134 of 20 December 1993

<sup>182</sup> Office for the High Commissioner for Human Rights (OHCHR), *National Human Rights Institutions: History, Principles, Roles and Responsibilities* (Professional Training Series No. 4, Rev. 1, United Nations, New York and Geneva, 2010), p. 93

The Uganda Human Rights Commission (UHRC) was established in 1995 by the Constitution of Uganda. It can, according to its mandate, receive individual complaints on human rights violations and work as a quasi-judicial body.

The commission handles complaints through its Complaints and Investigations Department, which interviews the complainant, takes a statement, and opens a file. The respondent is contacted by the commission to provide a statement, after which the complainant is asked to respond to this statement. If there are disparities between the accounts of the complainant and respondent, the commission will conduct an investigation. Following the investigation, the matter will be referred to the Legal and Tribunal Department [which has quasi-judicial powers] to decide whether the matter should be heard before a tribunal, or whether it could be settled through mediation.<sup>183</sup>

UHRC operates at both the micro and the macro levels of conflict. Its work at the micro level relates to small-scale conflicts or disputes, such as issue-specific, individual complaints, where mediation and arbitration (Legal and Tribunal Department) are the tools used to deal with the complaints. “At the micro level the commission directly intervenes in conflict situations by initiating a mediation process to resolve the conflict between two parties as an alternative to the tribunal process.”<sup>184</sup>

Another relevant activity of UHRC has been its involvement in the disarmament process in the Karamoja community working in the macro level. The Commission has worked together with the government to facilitate the process. Nor mediation or arbitration was used at this level, however, the role played by UHRC was essential to support the government and increase the Commissions visibility.

It is important to mention here that the Commission in Uganda combines other peacebuilding and conflict transformation strategies to its mediation, arbitration and facilitation activities. UHRC is involved in civic education initiatives and sensitization workshops throughout the conflict prone areas of the country. This kind of initiatives help support peace talks and promotes an environment of peace. Further, they “promote” the Commission as a body equipped to deal with conflict.

The Commission for Human Rights and Good Governance (CHRGG) in Tanzania also uses conflict management tools (mediation and arbitration – ADR) in its peacebuilding and conflict transformation strategies. “CHRAGG, like other national human rights institutions, works in conflict at a micro level through receiving and investigating complaints of violations of human rights and principles of good governance. In addition, it works on

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<sup>183</sup> Mottiar, Shauna, “The Uganda Human Rights Commission: Beyond protection and promotion of human rights”, Parlevliet, M., Lamb, G. and Maloka, V. (eds.) *Defenders of Human Rights, Managers of Conflict, Builders of Peace? National Human Rights Institutions in Africa* (Centre for Conflict Resolution, University of Cape Town, 2005), p. 115

<sup>184</sup> *Ibid*, p. 118



conflict through its public hearings and other activities and strategies that have an impact on peacebuilding at a macro level.”<sup>185</sup> Alike UHRC, CHRGG sees conflict as a part of life and relevant for human rights protection and promotion.

CHRAGG is an independent statutory body and the national focal point for the promotion and protection of human rights and good governance in Tanzania. It was formally established in March 2002, and replaced the Permanent Commission of Enquiry (PCE), which was formed in 1965 to guard against the possible misuse and abuse of power by public bodies. In fact, the PCE was the very first Ombudsman’s Office in Africa. While the PCE dealt primarily with administrative justice, CHRAGG engages with broader issues of human rights, as well as the contravention of the principles of administrative justice and good governance.<sup>186</sup>

CHRAGG, as several other NHRIs, has quasi-judicial powers. “CHRAGG is empowered to resolve complaints relating to human rights violations through conciliation, mediation and other forms of alternative dispute resolution. In practice, despite these provisions, CHRAGG conducts most of its work, particularly public hearings, through quasi-judicial means and follows the same procedure as an ordinary court of law.”<sup>187</sup> This characteristic of CHRAGG has been criticized because it makes the procedures conducted by the Commission very slow. Furthermore, they focus on the adversarial aspects of conflict resolution and do not work on building new understanding of the situation.

In 2004, CHRAGG went through a capacity building session to improve its capacity to use ADR in its work. By using mediation, conciliation and arbitration the Commission is contributing to a broader culture of human rights and peace in society. Complaints handling and investigation are not an end in themselves and due to that, these activities can be used to enhance people’s understanding of rights and responsibilities, to analyse “how people’s relationships unfold, how the rule of law is upheld, and how larger issues of security, justice, equality and equity are affected”<sup>188</sup> (Maloka, 2005, p. 147). The use of these methods has an impact on human rights promotion and protection as a whole.

Where the mechanisms and processes used are adversarial, prescriptive, intimidating, and not conducive to rebuilding broken relationships, this may hamper the development of conditions leading to sustainable peace founded on human rights. In contrast, where methods are reconciliatory in nature, and provide space for raising awareness about the value of respecting human rights, these may contribute greatly to the end goal of complaints-handling and of peacebuilding, with respect for human rights.<sup>189</sup>

The examples presented illustrate how NHRIs can use conflict management tools to address both interpersonal and deep-rooted societal conflict. As

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<sup>185</sup> Supra note 172, p. 127

<sup>186</sup> Ibid, p. 131

<sup>187</sup> Ibid, p. 133

<sup>188</sup> Ibid, p. 147

<sup>189</sup> Ibid.

shown elsewhere in this thesis, societal conflicts have a strong relationships element. Using conflict management tools to re-build these relationships can help in the conflict transformation process as a whole and it can improve NHRIs' work in peacebuilding.

In order to better understand the work of NHRIs as quasi-judicial bodies, it is appropriate to explain here what this “quasi-judicial” function represents to NHRIs. In the present work, quasi-judicial bodies are understood as legal entities (created by law) that decide in a manner that cannot be considered “*stricto sensu* legally binding” and emit decisions that “do not constitute an enforceable legal title”<sup>190</sup>.

The term “quasi-judicial” is defined as “having characteristics of a judicial act but performed by an administrative agency or official”, and as “describing a function that resembles the judicial function in that it involves deciding a dispute and ascertaining the facts and any relevant law, but differs in that it depends ultimately on the exercise of an executive discretion rather than the application of law”. In those situations the particular procedural rules laid down by the institution itself or in its founding legislation, as well as principles of natural justice, apply. The latter is understood as rules of such a fundamental nature that they do not need a statutory basis, the two most important of which are *nemo iudex in parte sua*, that nobody can judge a case in which he or she is a party, and *audi alteram partem*, that all parties in a dispute have the right to be heard.<sup>191</sup>

Alike national courts, NHRIs have to be independent in order to carry out their quasi-judicial mandate. Nonetheless, this does not mean that NHRIs can replace or substitute the ordinary justice system. They function by the side of the courts and represent an extra institution in the system for protection and promotion of human rights. Due to this, some core principles have to be carried out by NHRIs. These are: “the concept of *ne bis in idem*; respect for norms of due process, relating to impartiality, examination of evidence, witnesses, competence; confidentiality; and the right to compensation”<sup>192</sup>.

The quasi-judicial decisions of NHRIs can take different forms. They can be *mediations*, where no decision on the merits of the case is taken by an NHRI. “The procedure is optional, but once it has been accepted by the parties, they will also usually have agreed before hand that the decision must be followed; or in any case the agreement may state that either of the parties may appeal to court if not satisfied; the proceedings and outcome of the case

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<sup>190</sup> Schmidt, Markus, “Follow-up Activities by the UN Human Rights Treaty Bodies and Special Procedures Mechanisms of the Human Rights Council – Recent Developments”, Alfredsson, Gudmundur; Grimheden, Jonas; Ramcharan, Bertrand G. and Zayas, Alfred, *International Human Rights Mechanisms – Essays in Honour of Jakob Th. Möller, 2<sup>nd</sup> Revised Edition*. (Mrtinus Nijhoff Publishers, 2009), p. 25

<sup>191</sup> Kerrigan, Fergus and Lindholt, Lone, “General Aspects of Quasi-judicial Competences of National Human Rights Institutions”, Lindsnaes, B, Lindholt, L. and Yigen, K. (eds.) *National Human Rights Institutions: Articles and Working papers*, (The Danish Institut for Human Rights, Copenhagen, 2001), p. 92

<sup>192</sup> *Ibid*, p. 94

may be either confidential or public.”<sup>193</sup>

OHCHR explains, that mediation “in the human rights process requires the NHRI to take an active role in settling the dispute. The mediator has a structured role in allowing the parties to tell their side of the story, ensuring that the balance of power between the parties is equitable and facilitating the resolution of the dispute”<sup>194</sup>.

They can also be *conciliations*, where the NHRI takes a decision on a material subject matter, followed by the issuing of recommendations to the parties, optional for them to follow. “For instance the Commission may investigate a case concerning discrimination on the base of sex or ethnic origin in relation to employment and dismissal policies of a public institution, and suggest compensation in the form of employment or the payment of financial compensation in proportion to the actual effects for the person involved.”<sup>195</sup>

Lastly, the decision can be the result of *arbitration*, with legally binding force for all involved parties and enforceable by the NHRI itself.

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<sup>193</sup> Ibid.

<sup>194</sup> Supra note 182 p. 93

<sup>195</sup> Supra note 191, p. 94

## 4 Peacebuilding

Chapter 4 will explore the meaning of the term peacebuilding and how NHRIs can work towards building peace. It is important to study peacebuilding here because it is a way through which NHRIs can approach violent structures in order to transform conflicts.

Post-conflict peacebuilding can be defined as an “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict”<sup>196</sup>. This definition comes from the UN Agenda for Peace, an initiative of the UN Secretary General after noticing the deep changes happening in the world after the end of the Cold War. In 1995, the Supplement to An Agenda for Peace extended this definition. Peacebuilding was then defined as:

Comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well being among people. Through agreements ending civil strife, these may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening government institutions and promoting formal and informal processes of political participation.<sup>197</sup>

In 2001 the UN Security Council stated that peacebuilding is aimed at “preventing the outbreak, recurrence and continuation of armed conflict and encompasses a wide range of political, developmental, humanitarian and human rights programmes and mechanisms”<sup>198</sup>.

Taking the UN definitions as a starting point, peacebuilding can be defined as a process that envisages the changing of the structures that have contributed to the outbreak of the conflict. Peacebuilding is about constructing or reconstructing democratic institutions, accommodating the excluded, and building a more just and fair society.

The importance of transforming institutions can be emphasised by looking at the relationship between weak institutions and violence. The World Bank uses a very helpful metaphor to explain this relationship.

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<sup>196</sup> United Nations. 1992. *An Agenda for Peace – Preventive diplomacy, peacemaking and peace-keeping*, Report of the Secretary-General A/47/277 - S/24111 17 June 1992. Available at <http://www.un.org/Docs/SG/agpeace.html>

<sup>197</sup> United Nations. 1995. *Supplement To An Agenda For Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, Report of the Secretary-General A/50/60 - S/1995/1, 3 January 1995. Available at <http://www.un.org/Docs/SG/agsupp.html#POSTCONFLICT>

<sup>198</sup> United Nations Security Council (UNSC). 2001. Security Council addresses comprehensive approach to peace building in presidential statement. Press release SC/7014 on a statement by UNSC President Said Ben Mustapha at the 4278th meeting of the Council. <http://www.un.org/news/Press/docs/2001/sc7014.doc.htm>

The causal relationship between weak institutional legitimacy and violence may be compared to the relationship between the human body's immune system and disease. Weak institutions make a country vulnerable to violence, just as a weak immune system makes a body vulnerable to disease. To restore a body to health means not only treating the disease but also restoring the body's ability to fight off disease. Similarly with weak institutional legitimacy and governance. The cause of each outbreak of violence may vary, but the underlying reason for societies' inability to resist stresses is that their institutions are too weak to mediate them peacefully. Durable solutions to violence, therefore, require more than addressing each individual stress—they require action to address the underlying weaknesses in institutional legitimacy.<sup>199</sup>

Following this line of thought, this thesis will adopt Lederach's approach to building peace. According to him, peacebuilding is more than the post accord reconstruction. Peacebuilding "is understood as a comprehensive concept that encompasses, generates, and sustains the full array of processes, approaches, and stages needed to transform conflict toward more sustainable, peaceful relationships."<sup>200</sup> It integrates different roles, functions and activities.

The World Bank has developed a similar framework on how states can respond to conflict, escape from violence and develop resilience. The bottom line is: institutions have to change (transformation) together with structures. The World Bank's approach to these kinds of changes can be divided into four steps.

The first is the need to *restore confidence* in collective action before embarking on wider institutional transformation. Second is the priority of *transforming institutions that provide citizen security, justice, and jobs*. Third is the role of regional and international action to *reduce external stresses*. Fourth is the *specialized nature of external support needed*.<sup>201</sup>

Peacebuilding is a complex and long process that needs to focus on transforming institutions, changing patterns of behaviour, rebuilding relationships, making room for marginalized groups, including women, and looking for the necessary external support.

Peacebuilding has to be thought beyond the big civil war destruction scenario. It should be thought as a strategy to deal with all forms of violence. After all, as the World Bank puts it, "the organized violence that disrupts governance and compromises development also includes local violence involving militias or between ethnic groups, gang violence, local resource-related violence and violence linked to trafficking (particularly drug trafficking), and violence associated with global ideological struggles"<sup>202</sup>. Peacebuilding as a process that transforms relationships and institutions has to be thought in all these contexts.

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<sup>199</sup> Supra note 65, p. 86

<sup>200</sup> Lederach, John Paul, *Building Peace: Sustainable Reconciliation in Divided Societies* (United States Institute of Peace, Washington D.C., 1997), p. 20

<sup>201</sup> Supra note 65, p. 103

<sup>202</sup> Ibid, p. 53

## 4.1 Elements and Actors

### 4.1.1 Reconciliation

One of the main elements of peacebuilding is reconciliation. Reconciliation can be defined as the restoration of broken relationships and learning to live non-violently with radical differences<sup>203</sup>. Reconciliation is about rebuilding these connections and dealing with the violent past – more than looking at the acts of direct violence, peacebuilding must look into the violent structures and try to transform them. Lederach defines reconciliation as a place and a process where three paradoxes meet.

First, in an overall sense, reconciliation promotes an encounter between the open expression of the painful past, on the one hand, and the search for the articulation of a long-term, interdependent future, on the other. Second, reconciliation provides a place for truth and mercy to meet, where concerns for exposing what has happened *and* for letting go in favor of renewed relationships are validated and embraced. Third, reconciliation recognizes the need to give time and place to both justice and peace, where redressing the wrong is held together with the envisioning of a common connected future.<sup>204</sup>

Reconciliation is about dealing with the present, recognizing the painful past and building a new future. Ramsbotham et al. (2008) explains that the process of reconciliation has four phases. Firstly it is important to accept the status quo, in order to end violence; secondly it is necessary to correlate accounts, people who have been through conflict have probably been through similar processes of discrimination and exclusion and have been victims of similar forms of violence, therefore it is important to see that the stories are not that different, in a way of overcoming polarization; the third phase constitutes that of building bridges, accepting diversity and starting opening channels for communication; lastly enmity should be put aside and new relationships should be built while the old ones are restored.

Although there is a continuing general need for reconciliation within and between all societies in order to sustain social cohesion, the greatest difficulty from a conflict resolution perspective comes when conflict has escalated through the stages of difference, contradiction, polarization and violence to the point where atrocities have been perpetrated and deep injuries received. It is reconciliation after violent conflict that poses the most acute challenge. In this circumstance it is rarely a case of 'putting Humpty Dumpty together again' in any simple sense. Too much has happened, too many relations have been severed, too many norms violated, too many identities distorted, too many traumas endured. To reach transformative levels of bridging differences and restoring trust requires a capacity of innovation and creative renewal likely to be beyond the capacity of many societies in the immediate aftermath of violence.<sup>205</sup>

Therefore, reconciliation is so important. It is important to deal with the past, be it by punishing perpetrators and redressing victims or by

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<sup>203</sup> Supra note 22.

<sup>204</sup> Supra note 200, p. 31.

<sup>205</sup> Supra note 22, p. 233.

collectively choosing to “forgive and forget” as proposed by Hannah Arendt (the case of Spain post Franco, for example). The importance of reconciliations resides on the fact that divided societies have to think of new paths to build a peaceful future.

Reconciliation can also be defined as “a societal process that involves the mutual acknowledgement of past suffering and the changing of destructive attitudes and behavior into constructive relationships toward sustainable peace”<sup>206</sup>.

The author of the present thesis would add to this definition that it is crucial that structural inequalities and inequities are addressed during the process of reconciliation, emphasizing the need for the fulfilment of economic and social rights. Further, the change of attitudes and behaviours must include the destruction of old patterns of discrimination. Emphasis must be put on the importance of non-discrimination and equal treatment, in order to reshape the post-conflict society into a society where *all* individuals are able to participate.

Reconciliation has acquired many shapes throughout modern history, the most popular of these being “truth commissions”. Truth commissions became particularly popular after the work of the Truth and Reconciliation Commission (TRC) in South Africa in the 1990’s. Freeman uses the definitions presented by Priscilla Hayner to explain what these commissions are. According to them, truth commissions are bodies that share the following characteristics: “(1) they examine only past events; (2) they investigate patterns of abuse committed over a period of time, as opposed to a particular event; (3) they are temporary bodies that finish their work with the submission of a report containing recommendations; and (4) they are officially sanctioned, authorized or empowered by the state”<sup>207</sup>.

Truth commissions have had different mandates and constitutions in the different contexts where they have operated. Especially relevant for this thesis is the fact that Ghana has had a truth commission. The National Reconciliation Commission (NRC) was established by Act 611 in 2002 to “investigate violations and abuses of human rights relating to killings, abductions disappearances, detentions, torture, ill-treatment and seizure of property suffered by any person within the specified periods”. The Ghanaian NRC was established to investigate human rights violations committed between 1957 and 1993, especially during periods of military rule<sup>208</sup>. Due to the focus on military rules, the commission was criticised for being partisan.

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<sup>206</sup> Brounés, Karen, “Reconciliation and Development”, Ambos, Kai; Large, Judith; and Wierda, Marieke (eds.), *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development. The Nuremberg Declaration on Peace and Justice* (Springer-Verlag, Berlin and Heidelberg, 2009), p. 205

<sup>207</sup> Freeman, Mark, *Truth Commission and Procedural Fairness* (Cambridge University Press, New York, 2006), pp. 12-13

<sup>208</sup> *Ibid*, p. 323.

The Ghanaian NRC did not investigate the wars in the Northern Region, nor did it focus on any of the “ethnic” conflicts. The focus of NRC was the undemocratic governments, namely those between 4 February 1966 to 21 August 1969; 13 January 1972 to 23 September 1979; and 31 December 1981 to 6 January 1993<sup>209</sup>.

Another possible path to reconciliation is that of trials. The crimes and atrocities of the past can be brought to courts of law that will judge the perpetrators. Trials can happen together with truth commissions, they are not necessarily institutions that excluded one another. Trials should be considered in order to judge the most serious violations of human rights, as stated in the Rome Statute.

Reconciliation, be it through truth commissions, trials or other forms of dealing with the past is a way of going down the escalation ladder. It requires, nonetheless, some sort of political closure and acceptance in order for it to take place – “at least to a point where return to violence has become unlikely”,<sup>210</sup>.

#### 4.1.2 Approaches to Peacebuilding

In order to establish where NHRIs can work when peacebuilding is concerned – reconciling the divided society where they operate, some explanations are required. Here Lederach’s (1997) pyramid will be used to illustrate who are the actors and which approaches can be used in peacebuilding.

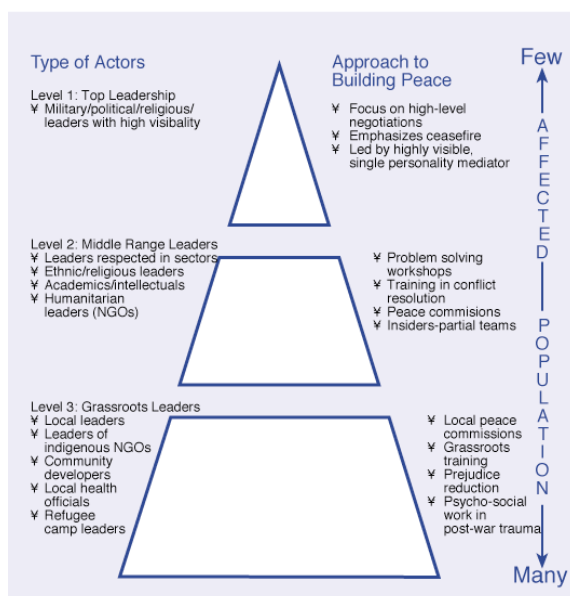


Figure 4.1 – Actors and Approaches to Peacebuilding – Lederach, 1997

<sup>209</sup> Ibid.

<sup>210</sup> Supra note 22, p. 243



The pyramid shows the affected populations in conflict situations and the different approaches to peacebuilding to be held at each level. On the left side, there are the kinds of leaders and the sectors where they come from, and on the right side, there are the conflict transformation activities that the leaders on each level might undertake.

In the top of the pyramid there are the military and political leaders – who usually monopolize media accounts of conflict. In the middle, “are regional political leaders, religious and business leaders, and those who have extensive influence in sectors such as health, education and also within military hierarchies”<sup>211</sup>. The bottom of the pyramid has the vast majority of the affected population at the grassroots level. Because the different groups of people found in each level of the pyramid can influence the conflict differently there are specific approaches directed at each of them.

*Top-Level Approaches:* this represents the “top-down” approach. Here the peacemakers are usually public figures that have a public profile. Further, “the goal is to achieve a negotiated settlement between the principle high-level leaders in the conflict”<sup>212</sup>. Another characteristic of the top-level peacebuilding approach is that it is often “focused at achieving a cease-fire or a cessation of hostilities as a first step that will lead to subsequent steps involving broader political and substantive negotiations”<sup>213</sup>.

*Middle-Range Approaches:* the middle group contains several different leaders present in different locations in the conflict. If they are integrated properly, these leaders might “provide the key to creating *infra-structure* for achieving and sustaining peace”<sup>214</sup>. Due to its strategic importance the middle-range approach seems to be the most relevant and compatible with the mandate of NHRIs. The different approaches used at this level will be studied below.

- 1) Problem-solving workshops: these are “informal, week-long meetings of the representatives of parties in protracted, deep-rooted, and frequently violent conflict in an informal, often academic, setting that permits the re-analysis of their conflict as a shared problem and the generation of some alternative courses of action, together with new options for a generally acceptable and self-sustaining resolution”<sup>215</sup>. These workshops are relevant because they broaden participation in the peacebuilding process, allowing for a new “democratic culture” to evolve, while deepening participants’ analysis of the problem.

These workshops should also be planned to happen in an informal and off the record way. This allows for participants to interact in ways that they had not tried before. The workshop also happens in a new

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<sup>211</sup> Supra note 22, p. 221

<sup>212</sup> Supra note 200, p. 44

<sup>213</sup> Ibid.

<sup>214</sup> Ibid, p. 46

<sup>215</sup> Ibid.

environment where interaction with adversaries and development of relationships is encouraged. “The workshop provides a politically safe space for floating and testing ideas, which may or may not prove useful back in real life.”<sup>216</sup>

These types of workshop can be used by NHRIs in their mediation capacities. NHRIs can work as a third-party team that provides participants with an opportunity for a different and possibly more effective mode of interaction. Participants are also given tools to look into conflict with analytical and not coercive lenses.

- 2) Conflict resolution training: NHRIs can also use their mandate to do trainings as they have two aims, the first one being awareness-raising and the other imparting skills. Even though conflict resolution training can be within NHRI’s mandate they do contrast to problem-solving workshops. “[T]he focus of training is internally rather than externally oriented. For the most part its purpose is to develop participants’s skills, not deepen their analysis of a given conflict situation.”<sup>217</sup>

Training can also be a *strategic tool* because it promotes peacebuilding capacities within the middle-range leadership. Training allows for knowledge to be transferred to those who might have a real influence in transforming the conflict. Further, planned having its strategic characteristics in mind, it might be a place for leaders from different sides of the conflict to meet.

*Grassroots Approaches*: these are the most challenging of approaches (and also the most difficult for NHRIs’ work) as they face many challenges. The first difficulty is the sheer number of persons. The other challenge is that, “many of the people at this level are in survival mode in which meeting the basic human needs of food, shelter, and safety is a daily struggle”<sup>218</sup>. Therefore, conflict transformation tools and peace talk is not likely to a priority to them. This does not mean, however, that there is no room for the work of NHRIs.

Lederach presents the case of Somalis, who have a rich history of traditional mechanisms for dealing with interclan disputes. Many societies have these kinds of traditional systems and what NHRIs could do is support these existing informal justice systems to deal with conflict related issues. NHRIs could, for example, educate these “traditional judges” in how to take decisions in accordance with human rights principles and standards, so that they could also approach those issues lying at the bottom of the iceberg.

After looking into the pyramid, it is necessary to look into the systems surrounding conflicts. Here another of Lederach’s tools will be use: the nested paradigm. This model postulates that conflicts can be addressed at

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<sup>216</sup> Ibid, p. 47

<sup>217</sup> Ibid, p. 48.

<sup>218</sup> Ibid, p. 52.

four dimensions or ‘levels of response’ which are interconnected, namely: the issue level, the relationship level, the sub-system level, and the systemic level. For peacebuilding to be successful all levels must be addressed.

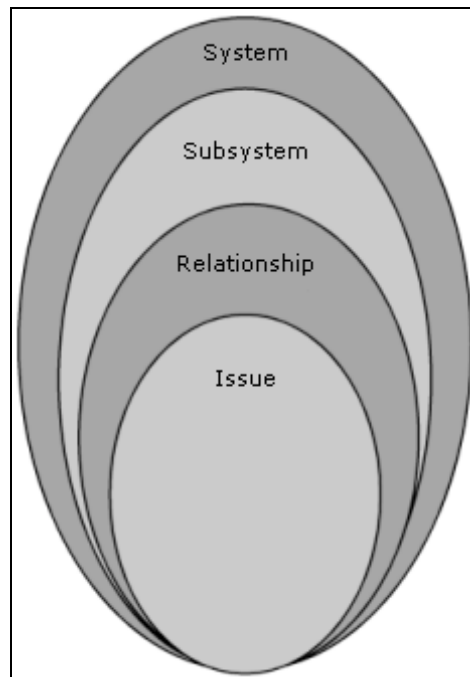


Figure 4.2 – Lederach’s nested paradigm

Parlevliet et al. synthesizes Lederach’s example of youth armed gangs in Somalia.

In this case the following must be taken into account: the specific gangs and their activities when yielding weapons (issue level); the relationship between these gangs and other social structures in the area in question (relationship level); the immediate political, social, economic and physical conditions in the geographical area in question that contributed to the creation of the gangs (sub-system level); and the overall structural conditions, including arms proliferation, power relations and distribution of political and economic resources (systemic level).<sup>219</sup>

When including peacebuilding in its activities, NHRIs will have to determine which level they will address and also in which way they will act. Concentrating at the issue level might be unproductive, as it will only affect the circumstances of a limited group of persons. When receiving complaints, NHRIs should evaluate in which level to act, further the kind of activity to be undertaken has to be thought strategically in order to contribute to structural change. Parlevliet et al. gives the example of an NHRI that receives a complaint about torture in detention facilities. Investigating the

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<sup>219</sup> Parlevliet, M; Lamg, G and Maloka, V., “Introduction: Understanding conflict and its relationship with human rights”, Parlevliet, M., Lamb, G. and Maloka, V. (eds.) *Defenders of Human Rights, Managers of Conflict, Builders of Peace? National Human Rights Institutions in Africa* (Centre for Conflict Resolution, University of Cape Town, 2005), p. 22

complaint and providing redress for the victim does not involve the other levels of the problem.

An NHRI can look at the complaint as a sign of issues involving the police and detained persons, especially if similar complaints have been received before, analyzing the problem in the relationship level. In this case the NHRI may note that:

[T]he issue of torture is embedded in relationships between the police and civil society, or between the police and a particular identity group, and may involve police perceptions that certain citizens who are politically active are ‘subversive’ and ‘threaten national security’. Consequently, it may decide to employ particular strategies to deal with these concerns, such as establishing and facilitating regular meetings between the local police and members of civil society or a cross-section of the community, or organising educational workshops for the local police on human rights and responsibilities.<sup>220</sup>

Further, an NHRI can decide to approach the issue by focusing on the sub-system level. By doing this, an NHRI might notice that many of the complaints relate to a particular institution or detention facility, and that no proper command and oversight structures appear to exist there, for example.

Alternatively, it might find that transparency and accountability is absent in the policing sector as a whole. Interventions at this level might entail investigating and compiling an extensive report on human rights violations by the police over a specific time period, and tracing lines of responsibility and accountability. In addition, there might be issues on the systemic level that are of concern to an [NHRI] and need to be addressed, such as: government’s use of security forces to repress civilians who are perceived to be in opposition to government; the role of the security forces in the political sphere; or the lack of civilian oversight over the security forces. National institutions may thus lobby for the creation of legislation, policies, codes of conduct and institutions (such as an ombudsman’s office) that will contribute to governing affairs related to the security forces in a more effective manner, and enhance their accountability to the civilian population.<sup>221</sup>

There are many ways in which NHRIs can address issues of conflict transformation and peacebuilding. These activities and their extent will depend however on the NHRI’s mandate and how this mandate is strategically used. Below, NHRI’s mandate and its applicability to peacebuilding will be studied.

## 4.2 NHRI’s Mandate

National Human Rights Institutions (NHRIs) are within the context of the state apparatus. They exist as a part of the state nonetheless they are somehow independent from it<sup>222</sup>. Due to that, before discussing NHRIs

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<sup>220</sup> Ibid, p. 23.

<sup>221</sup> Ibid.

<sup>222</sup> The characteristics of NHRIs presented here are, in the eyes of the author, very much similar to those of the Brazilian *Ministério Público*. The difference between them resides in

mandate and their work with peacebuilding, it is necessary to contextualise the space in which they operate.

First and foremost, it is paramount to emphasise that states are the ones responsible for respecting, protecting and fulfilling human rights – they are the duty-bearers. The Administration, the Parliament and the Judiciary are the responsible for enacting laws, setting policy frameworks, taking judicial decisions, and monitoring the impact of their programmes and policies. The Judiciary enforces the rule of law and controls (in some countries) the constitutionality of the acts of the administration and of Parliament.

Civil society plays a central role, whether through the dedicated work of NGOs at the grassroots level, or through religious institutions, community service organizations, professional groups or associations and trade unions. The media brings human rights issues and concerns to the attention of the broader public and provides a forum for discussion and debate. The education system ensures that students at all levels are exposed to human rights through awareness raising, sensitisation and courses. Business (the private sector) plays an increasingly important role as well.<sup>223</sup>

NHRIs exist in the midst of all these actors and therefore they are unique: “they exist in a dynamic position between States, civil society and other actors, offering a neutral and objective space in which to interact, develop human rights laws and policy, and exchange ideas”.<sup>224</sup>

The United Nations General Assembly has adopted global principles governing the status and functioning of independent NHRIs. These principles are popularly known as the Paris Principles<sup>225</sup>. They were adopted in 1991 and approved in 1993 by the General Assembly and are the universally accepted framework for NHRIs. According to them NHRIs shall ensure the effective implementation of international human rights standards and work to ensure that national legislation, regulations and practices conform to the fundamental principles of human rights. NHRIs shall protect and promote universal respect for and observance of human rights and fundamental freedoms<sup>226</sup>.

NHRIs work both in accordance with human rights policies (soft law) and human rights legislation (hard law). The Paris Principles set the general rules of the functioning of NHRIs; nonetheless states can adopt different shapes in order to better work at the national level. It is in fact the right of each state to choose the framework that is best suited to its particular needs at the national level. There are no uniform rules for how an NHRI is to

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the fact that the Brazilian institution also functions as the Prosecutor’s Office, and NHRIs do not have this function.

<sup>223</sup> Office for the High Commissioner for Human Rights (OHCHR) and United Nations Development Programme (UNDP), *UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions* (UNDP, OHCHR, New York, Geneva, 2010), p. 3

<sup>224</sup> *Ibid.*

<sup>225</sup> *Supra* note 181

<sup>226</sup> Danish Institute for Human Rights (DIHR), *DIHR Planning System*, Draft, Unpublished, 2011

work, nor are there rules of which roles are they to play in order to promote human rights, social justice and sustainable peace. Diverse approaches have been adopted throughout the world for the promotion and protection of human rights at the national level.

OHCHR-UNDP defines an NHRI as institutions “with a constitutional and/or legislative mandate to protect and promote human rights. (...) NHRIs are cornerstones of national human rights promotion and protection systems.” They also “serve as relay mechanisms between international human rights norms and the national level”<sup>227</sup>.

According to the Paris Principles NHRIs’ composition has to guarantee a pluralistic representation of society (this pre-requisite has been criticised<sup>228</sup> because not that many NHRIs have staff that actually represent the plurality of the society where they are). The members of NHRIs have to be appointed through an official act that has a precise mandate, so that there is a guarantee of independence of its members. Furthermore, NHRIs have to have adequate funding (not that many NHRIs have the adequate funding to exist). The purpose of this funding is to enable it to have its own staff and premises, in order to be independent from the Government and not be subject to financial control, which might affect its independence.

NHRIs operate as a bridge for dialogue and cooperation between national and international bodies, as well as between various national actors. The Paris Principles accordingly stipulate that National Human Rights Institutions shall be competent to engage in international cooperation with the United Nations and any other organization in the United Nations system – including those involved in peacebuilding efforts, the regional institutions and the national institutions of other countries.

NHRIs are supposed to play a key role in both the promotion and the protection of human rights in their respective countries. NHRIs can take numerous steps to further the relationship between human rights protection and promotion and conflict transformation and peacebuilding; the mere fact that an NHRI takes on this area helps to give this relationship more credibility in accordance with human rights standards, thus something that can rightfully be demanded by citizens.

NHRIs may also be given the authority to hear and consider complaints in individual cases, as it can be seen in the last part of the Paris Principles. In many countries, this is considered the most important part of their work. In many developing countries, NHRIs’ quasi-judicial activities are another means for the population who cannot afford litigation to have access to justice.

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<sup>227</sup> Supra note 223.

<sup>228</sup> International Council on Human Rights Policy (ICHRP), *Performance and Legitimacy: National human rights institutions* (ICHRP, Vesoix, 2004), p. 2

As presented above, NHRIs are very unusual institutions – “they are part of the State but are not part of the executive, legislative or judicial branches. They are arm’s length of national authorities and are funded primarily by the state”<sup>229</sup>, and yet, they are independent from the state.

#### 4.2.1 Applying the mandate to peacebuilding

In order to be able to effectively work with peacebuilding, there are some preconditions that an NHRI has to fulfil.

1. “The main precondition is *knowledge*. The first step is to make sure that the NHRI has the necessary knowledge in house.”<sup>230</sup> The NHRI must take action to ensure that there are staff members with knowledge of conflict transformation and peacebuilding. Ideally all professional staff members should have basic knowledge of conflict transformation, not only to identify its possible use in the context of the NHRI work, but also as a tool for dealing with conflict within the organisation<sup>231</sup>. “In addition, some staff members should be designated as experts on this field and receive the necessary training.”<sup>232</sup>
2. Another question concerns the *administrative assignment* of the responsibility of conflict transformation and peacebuilding. As shown above (the cases of the Tanzanian and Ugandan NHRIs), staffs working with complaints and settlement of disputes are familiarized with conflict management terminology and tools. Therefore, it would seem logical to have the conflict transformation and peacebuilding under this department. Another possibility would be to have the peacebuilding activities under the education department, because, as it has been shown above, a lot of the peacebuilding activities are related to education, sensitization, information and awareness-raising.
3. Many NHRIs have incorporated the practice of making periodic *strategic plans*. Working through a strategic plan might be more productive and realistic rather than carrying out individual activities that might each be worthy and good, but not aim at changing the big picture. An NHRI that decides to really take on the challenges of peacebuilding and conflict transformation should consider making some sort of plan for the various activities it intends to carry out in

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<sup>229</sup> Supra note 223, p. vi.

<sup>230</sup> Spliid, Ulrik, *UNFPA Handbook on Reproductive Rights for National Human Rights Institutions* (The Danish Institute for Human Rights, Copenhagen, 2011 – Unpublished), p. 14

<sup>231</sup> Organisational conflict management and societal conflict management are different and involve different procedures and activities, nevertheless, knowledge of conflict management tools can come in hand to employees of NHRIs.

<sup>232</sup> Supra note 230, p. 14.

this respect. “This makes it easier to assess if each of the planned activities are the most effective to achieve the desired goal and to plan the activities in such an order and manner as to maximise synergies.”<sup>233</sup> These strategic plans should also consider the need to address complaints received by the NHRI as a whole, instead of dealing with them one by one. Complaints might indicate certain areas that need attention relating to conflict transformation and peacebuilding.

- a. Some remarks must be made considering strategic plans. First and foremost, it is paramount to explain what is meant by the term strategy. According to Johnson et al., “strategy is the *direction* and *scope* of an organization over the *long term*, which achieves *advantages* in a changing the *environment* through its configuration of *resources and competences* with the aim of fulfilling *stakeholders expectations*”<sup>234</sup>. This definition is very helpful in understanding how NHRIs can work on conflict. It is important for the NHRI to envision a peaceful society (direction) to be reached in the future (long term). The NHRI also has to use its mandate and experiences (advantages) to positively impact its surrounding environment, having in consideration both its financial and human resources in order to be able to promote and protect human rights of all persons living in that state (stakeholders).

#### 4.2.2 Legislative and administrative provisions of the country

As set out above, NHRIs are meant to play a major role when it comes to ensuring that laws and administrative provisions and practices not only adhere to the minimum standards of human rights but both preserve and extend the protection of human rights. They shall ensure the harmonisation of national legislation and regulations with the international human rights instruments. In that connection NHRIs shall examine and report on legislation and administrative provisions in force and, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.<sup>235</sup>

There are no legally binding treaties that deal directly with peacebuilding; nonetheless, if understood in the context of structural violence, peacebuilding is related to guarantying fundamental rights and promoting democracy in egalitarian societies. Therefore, all main human rights conventions can assist NHRIs in working on conflict. The International Covenant on Civic and Political Rights (ICCPR), for example, establishes on its preamble that the “recognition of the inherent dignity and of the equal

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<sup>233</sup> Ibid.

<sup>234</sup> Johnson, Gerry; Scholes, Kevan and Whittington, Richard, *Exploring Corporate Strategy* (Pearson Education, Edinburgh, 2008), p. 3

<sup>235</sup> Supra note 230, p. 15



and inalienable rights of all members of the human family is the foundation of freedom, justice and *peace* in the world”.

The text of the preamble of ICCPR is repeated on the preamble of the International Covenant on Economic, Social and Cultural Rights (ICESCR). ICESCR is especially relevant for the work of NHRIs, as Article 13 imposes an obligation on states to educate their citizens to, among other things, achieve peace. The Article reads:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that *education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*, and further the activities of the United Nations for *the maintenance of peace*. (Emphasis added)

The Convention on the Elimination of all forms of Racial Discrimination (CERD) can also be of assistance for NHRIs dealing with conflict, as its preamble reads that “discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and *is capable of disturbing peace and security among peoples* and the harmony of persons living side by side even within one and the same State” (emphasis added). The preamble of CERD is in close line with the ideas presented in Chapter 2. Discrimination is a form of structural violence and social injustice. Therefore, NHRIs should approach issues of discrimination as a form of addressing Parlevliet’s bottom of the iceberg. Further, the promotion of horizontal equality has been shown by the recent World Development Report (WDR) of the World Bank to be an element that diminishes the probability of violent conflict.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) recognizes in its preamble that equality between men and women is required in order to achieve peace. Further, it states that women must participate in equal terms with men. NHRIs can, as part of their peacebuilding and conflict transformation efforts promote women’s rights and women’s participation in reconstruction and democratization initiatives. Promoting equality between men and women is also working to change the patterns present in the bottom of the iceberg, challenging power inequalities and violent structures. Further, the participation of women in peacebuilding has been recognized as a fundamental part of peacebuilding, conflict prevention, management and resolution by UN Security Council Resolution No. 1325.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) can also be an instrument for NHRIs working on conflict. However, the emphasis of CAT is on the top of the iceberg. Torture can be seen as a “symptom” of conflict. Nonetheless, as the Committee against Torture has expressed torture, cruel, inhumane or degrading treatment can also be part of the structure, as it occurs with

violence against women. In its recommendations to Switzerland, the Committee emphasises the importance of dealing with violence against women and having redress mechanisms at place for victims<sup>236</sup>.

The Convention on the Rights of the Child (CRC) repeats in its preamble the text of the preamble of ICCPR and ICESCR. When peacebuilding and conflict transformation are at stake, CRC is of especial relevance as it imposes an obligation on states to educate children to live in a peaceful world. Article 29 of the Convention on the right to education is applicable to the work of NHRIs, as they can use their education mandate to emphasise the importance of respect and equality.

Another important document related to the rights of children is the Optional Protocol (OP) to the Convention on the Rights of the Child on the involvement of children in armed conflict. The Optional Protocol is relevant as it imposes an obligation on states to impede the recruitment of children and also an obligation to rehabilitate those children who have been child soldiers during conflict.

The last Convention of special relevance to the work of NHRIs with peacebuilding and conflict transformation is the International Convention on the Protection of all Persons from Enforced Disappearances (CPED). As CAT, CPED emphasises the human rights violations on the top of the iceberg. Nonetheless, to stop them, structural changes must be made, and issues involving the armed forces and the police must be addressed. The police and the armed forces of countries that are going through a process of democratization might have been accustomed with patterns of violence and use of force that are not in accordance with human rights standards.

There are several ways in which NHRIs could use this part of their mandate (influencing administrative and legislative provisions in accordance with international human rights law) to further the cause of peace building and conflict transformation. Remembering that the transformation of social conflict and building of peace require participation of the population affected, democratic decision making processes and most importantly, respect for human rights:

1. NHRIs could decide to make a *review of legislation and administrative regulations* specifically focusing on building peace. The focus could be on areas of legislation that would seem particularly relevant for the enhancement of democratic institutions and mechanisms, as well as improvement of equal treatment and non-discrimination. The provision of effective remedies within the Judiciary is also part of the initiatives that can be undertaken by NHRIs.

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<sup>236</sup> Concluding Observations of the Committee against Torture – Switzerland. Committee against Torture, forty-fourth session, 25 May 2010 CAT/C/CHE/CO/6, para. 20

- a. One such area is *non-discrimination and equal treatment legislation* where the NHRI could for instance look at provisions on equal treatment and equal access to justice to men and women, to marginalized groups and ethnic and religious minorities;
- b. Another area is laws on *property rights and access to land*; such laws should allow for women and minority groups to have access to property and land without any form of discrimination;
- c. Laws considering *natural resources*, should also be the focus of NHRIs scrutiny, as they should include consultation processes involving the population residing in the area where these resources are;
- d. NHRIs can also look into *criminal legislation* to ensure that there are provisions in place prohibiting torture and other cruel, inhumane or degrading treatment; punishing violence against women, criminalizing enforced disappearances, criminalizing hate crimes, and punishing the perpetrators of gross human rights violations;
- e. Lastly, NHRIs should take look at *legislation connected to participation*. NHRIs should be a part of the elections process, ensuring that elections are free, just and respectful of democratic principles.

“In this respect, the NHRI should not only indicate problematic provisions but also *propose the necessary changes*.”<sup>237</sup> (Spliid, 2011, p. 16)

2. NHRIs are supposed to examine all *pending legislation* in addition to legislation already on the books to ensure adherence to human rights provisions – making sure that the legislation is in accordance with international human rights law. “Ideally, there should be systems in place to ensure that legislation is never passed by parliament without having been subject to scrutiny by the NHRI. If such systems are not in place, the NHRI should address government to ensure that all bills are transmitted to the NHRI for comments before or at the latest simultaneously with being presented to parliament.”
3. Preferably, an NHRI should scrutinise all *new administrative regulations*, in addition to scrutinising the proposed bills. However, this might in itself be a too big of a challenge for the NHRI. The sheer volume of administrative decisions taken by the state might constrain the work of the institution. Nonetheless, it might be of critical importance for the NHRI to look into administrative measures connected to initiatives surrounding peacebuilding.

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<sup>237</sup> Supra note 230, p. 16

### 4.2.3 Monitoring and reporting at national level

Monitoring is not an obligation of NHRIs according to the Paris Principles; however, “monitoring is an important means of ensuring that legislative and policy initiatives are being successfully implemented. NHRIs can use the results of monitoring activities to promote more effective implementation measures”<sup>238</sup>. “Monitoring is important because it provides concrete evidence of what is occurring. [It] also provides periodic and regularly collected data, sheds light on trends, signals progress or deterioration, and suggests areas for priority action.”<sup>239</sup> In order to effectively monitor how peacebuilding and conflict transformation initiatives are being implemented nationally, an NHRI could consider the following steps:

1. “When receiving *individual complaints* the NHRI should not simply treat these on an individual basis but also consider them as a means of getting information on what goes on in the country. Information from individual complaints, respecting the tenets of confidentiality, should be systematised and taken into account as part of monitoring.”<sup>240</sup>
2. The Paris Principles require that NHRIs develop ties with *civil society*. Civil society is a primary source of information and human rights NGOs are knowledgeable about the human rights situation in the area where they operate. If an NHRI has close ties and regular interaction with civil society, it can obtain a lot of information about the general situation in the country. This relationship has to go beyond the mere contact with human rights NGO’s and also include other representatives of the society, such as women’s organisations, children’s organisations, community based organisations, rural organisation, trade unions, professional bodies (including law and medical societies), churches etc. “In addition to making sure that all kinds of reports from said groups are conveyed to the NHRI, the NHRI should also meet up with these groups to share information.”<sup>241</sup>
3. Another way of obtaining information on the human rights situation of the country is *using the press*. Not all the information used by NHRIs should come from the press, nevertheless, press releases, be they through the radio, TV or newspapers might given useful information on the general situation in the country, especially if done in a systematic way.
4. Another important part of the monitoring process is *going on visits* around the country “Based on information from civil society and the

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<sup>238</sup> Supra note 223, p. xiv.

<sup>239</sup> Ibid, p. 37

<sup>240</sup> Supra note 230, p. 16-17

<sup>241</sup> Ibid, p. 17

press an NHRI should be able to decide where to go and whom to visit.”<sup>242</sup> NHRIs should visit schools and other places where youth gather, as they should be involved in peacebuilding initiatives. According to a UNICEF report “whether the community is a war-torn village or a refugee camp, young people will need encouragement and guidance to develop their potential and contribute to their communities. With adequate support and access to necessary resources, they can become agents for change and provide a foundation for rebuilding lives and communities, contributing to a more just and peaceful society”<sup>243</sup>. Therefore it is crucial for NHRIs to visit the places where young people are, not only to certify if their human rights are being respected, but also to ensure that they are involved in peacebuilding initiatives. NHRIs’ representatives should also visit prisons and detention facilities and any other places where gross human rights violations are reported to be occurring.

5. NHRIs should also monitor *state policy* connected to development and poverty reduction. Peacebuilding should not only focus on redress and punishment for violation of civic and political rights. After all, “if economic and social inequalities go unaddressed and the grievances of the poor and marginalized go unheard, we are left with only uncertain guarantees of nonrepetition. It is like treating the symptoms while leaving the underlying illness to fester”<sup>244</sup>. Sustainable peace is closely connected to respect for human rights, including economic and social rights. Therefore NHRIs should monitor Poverty Reduction Strategies in order to ensure that excluded and marginalized groups are included and that their voices and claims are being heard. As Kofi Annan said “[i]n an increasingly interconnected world, progress in the areas of development, security and human rights must go hand in hand. There will be no development without security and no security without development. And both development and security also depend on respect for human rights and the rule of law”<sup>245</sup>. Strategies to development and development policies should also be addressed by NHRIs in order to make an “equality check”. Development has to include all the population without any form of discrimination following a human rights-based approach.

NHRIs shall make *reports* and advise the government, parliament and any other competent body on the national situation for human rights in general

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<sup>242</sup> Ibid.

<sup>243</sup> UNICEF, *Map of Programmes for Adolescent Participation During Conflict and Post-Conflict Situations* (UNICEF, 2003), p. 3

<sup>244</sup> Laplante, Lisa J., “Transitional Injustice and Peacebuilding: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework” (*The International Journal of Transitional Justice*, Vol. 2, Issue 3, 2008), p. 333.

<sup>245</sup> Annan, Kofi, “In larger freedom: towards development, security, and human rights for all”, (UNGA, A/59/2005), Annex 2, para. 2

and with respect to specific matters; on situations of human rights violations in any part of the country with proposals for mitigating actions; and on any human rights violation, in accordance with the Paris Principles. On the basis of monitoring as just set out, an NHRI should include matters with respect to peacebuilding in general reports on human rights to the relevant competent bodies. All such reports should in ordinary cases be shared with civil society and be disseminated via the press.<sup>246</sup>

#### 4.2.4 Ratification of international human rights instruments

NHRIs shall encourage ratification of international instruments. The UN human rights treaties, as cited above, are of key importance in building a just and peaceful society and NHRIs should take steps to encourage the ratification of these treaties. It is important not only to focus on the ratification of treaties and similar instruments but also on the scope of the reservations being made, as they should not diminish the impact and range of the treaties. NHRIs should encourage the withdrawal of reservations and the making of declarations that are against the purpose of the treaty just as much as they should encourage ratification of human rights instruments.

An NRHI can use various methods to encourage ratification of international instruments:

1. When making *reports on specific areas* of human rights, such as torture or enforced disappearances, or social and economic rights, an NHRI could include a section on international instruments that have not been ratified and that are relevant for this particular area of human rights.
2. If the NHRI makes annual or other *periodic reports* on the general human rights situation in the relevant country – be it to parliament or to regional (like the African Commission) or international human rights bodies. A section on international instruments not yet ratified in such reports should be included.<sup>247</sup>
3. “In its formal and informal contacts with government and parliament, a NHRI can *lobby* for the ratification of international instruments.”<sup>248</sup>
4. When providing *input to international examinations*, especially of the more general kind such as the examination before the UN Human Rights Council (the Universal Periodic Review – UPR), an NHRI could highlight lack of ratification, as well as the reservations made and declarations not yet made.

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<sup>246</sup> Supra note 230, p. 18

<sup>247</sup> Ibid.

<sup>248</sup> Ibid, p. 18

5. “As part of its research mandate, the NHRI could do *research into the consequences of ratification*, in particular the extent to which the relevant country already adhere to the provisions of the treaties and what further would need to be done to ensure full compliance.”<sup>249</sup>  
The NHRI could also obtain information on the ratification status for countries in the same region and that are also going through peacebuilding. In case a state has not ratified a determined treaty yet, the process of implementation of the obligations imposed by the treaty in similar countries can be studied and used by the NHRI to show the consequences of ratification.
  
6. NHRIs should keep in mind that even if a treaty, including a human rights instrument, has only been *signed and not ratified*, it still entails some obligations for the country. According to Article 18 (a) of the Vienna Convention on the Laws of Treaties, “a State is obliged to refrain from acts which would defeat the object and purpose of a treaty when” it has signed a treaty but not yet ratified it. “The extent of this provision is not clear in international law but it can be argued that taking conscious steps that significantly deteriorates the situation with respect to a right in a convention that has been signed but not ratified is contrary to article 18.”<sup>250</sup>

#### 4.2.5 International reporting

The Paris Principles set out that NHRIs should contribute to state reports to United Nations bodies and to regional institutions and, where necessary, express an opinion in this respect, however with due respect for their independence. In some countries there is lack of clarity on the *exact role of NHRIs* with respect to state reporting to the various UN human rights committees and regional mechanisms like the African Commission on Human and Peoples’ Rights. Some governments believe that since they have established and are paying for NHRIs, NHRIs should be responsible for preparing the state reporting. In some cases this view is very much based on practical considerations. For countries with limited capacity there might not be the necessary human rights capacity in any state organ other than in the supposedly independent NHRI. In other cases, it is due to lack of understanding of the role of the NHRI, namely that being an independent institution it cannot be expected to uncritically defend the record of the state vis-à-vis various international bodies.<sup>251</sup>

NHRIs can play a role in reporting to international human rights bodies, however these activities should not interfere with their independence, this is what is meant in the Paris Principles. Governments cannot outsource *their* responsibility to report to NHRIs. State reports should, nonetheless, have *input from the NHRI and representatives from civil society*. States can receive this kind of input by organizing public hearings, sending questionnaires to different NGOs around the country and requesting direct

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<sup>249</sup> Ibid.

<sup>250</sup> Ibid, p. 19

<sup>251</sup> Ibid.

input from professional organizations, such the bar association of that country. If the country does not take any of these initiatives, it might become NHRIs responsibility to do so. “The results of such input could then be transmitted to the government to enable it to include it in its state report and be transmitted directly to the international human rights body in question; the UN human rights committees and the various regional bodies all welcome such shadow reporting.”<sup>252</sup>

After the report (or reports, including the shadow reports) is presented to the human rights treaty body, the Committee will come up with its *concluding observations*. It is part of NHRIs’ responsibilities to analyse these and monitor to what extent the state is implementing the concluding observations. This exercise should be part of the periodic reports of NHRIs. Additionally, NHRIs should use the contents of the concluding observations in its ordinary work. If the state is ignoring recommendations by international human rights bodies, NHRIs should make this information available to the correspondent human rights treaty body. In addition, the concluding observations can be used in the strategic planning of the NHRI. Concluding observations can shed light on the topics that need more attention by NHRIS.

Some of the UN human rights committees request the state being examined to revert with comments to certain specific observations within a given time, typically within one year of the issue of the concluding observations. If the concluding observation in question contains any such requests, information from the NHRI will be welcomed by the UN human rights committee; lack of independent information makes it very difficult to gauge the veracity of any claims by the state. The NHRI can also play a role in assuring that civil society takes steps to play a similar constructive role when it comes to examination by UN human rights committees.<sup>253</sup>

#### 4.2.6 International cooperation

NHRIs have to cooperate with UN and its various agencies, regional institutions and other NHRIs, according to the Paris Principles. Part of such cooperation can be seen in the reporting done to human rights treaty bodies and to regional institutions, such as the African Commission. But there are also other ways in which NHRIs can use international cooperation to further peacebuilding and conflict transformation:

1. The UN and the various regional organizations and human rights bodies have *Special Procedures (Mechanisms)*<sup>254</sup>, such as working

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<sup>252</sup> Ibid.

<sup>253</sup> Ibid, p. 20

<sup>254</sup> *Special procedures* is the general name given to the mechanisms established by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Currently, there are 33 thematic and 8 country mandates. The Office of the High Commissioner for Human Rights provides these mechanisms with personnel, policy, research and logistical support for the discharge of their mandates. The African



groups and special rapporteurs. None of these special procedures are specifically focussed on peacebuilding. Nonetheless, there are many special rapporteurs within the UN system that work on issues that can directly impact the work of NHRIs that are involved in peacebuilding and conflict transformation initiatives. Referring back to Parlevliet's<sup>255</sup> iceberg metaphor, these rapporteurs and working groups work both on issues that are considered to be consequences of conflict (like the Special Rapporteur on the human rights of internally displaced persons, the Special Rapporteur on torture, inhumane and degrading treatment, the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions) and those considered to be the causes of conflict (like Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Independent Expert on the question of human rights and extreme poverty, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences, to name a few). If an NHRI has become aware of an urgent issue with respect to peace building and "has not been able to get anywhere with the relevant authorities, it is possible to contact the Special Rapporteur and ask him or her to intervene. Unlike the various UN human rights committees, a Special Rapporteur can take steps immediately if he or she suspects that there are some important issues at stake. In such case the Special Rapporteur will normally open a dialogue with government"<sup>256</sup>.

An NHRI can also use Special Rapporteurs in less urgent circumstances. The Special Rapporteurs normally do *country visits*. When visiting a country the Special Rapporteur will normally want to visit the NHRI in that country; briefing the Special Rapporteur on the situation with respect to peacebuilding initiatives can be a very good way to put this issue on the agenda (if this is within the mandate of the Special Rapporteur).

2. Despite differences in structure and capacity, all NHRIs work on the basis of the Paris Principles and face many of the same issues and challenges; therefore they should *cooperate with other NHRIs*. There are structures in place that can facilitate such cooperation, as for example the International Coordinating Committee of National Human Rights Institutions (ICC), the African, the American and the Asia-Pacific regional organisations of NHRIs. Consequently, if an NHRI decides that it wants to commence work within the field of peacebuilding or carry out special activities in this respect, it should contact other NHRIs, especially in countries that are

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Commission on Human Rights has similar working groups or rapporteurs, however they are called special mechanisms in the African context.

<sup>255</sup> Supra note 2.

<sup>256</sup> Supra note 230, p. 20.

facing or have faced similar challenges, and the relevant regional organisation of NHRIs for inspiration and information on experiences. Further, “the development consequences of violence, like its origins, spill across borders, with implications for neighbors, for the region and globally”<sup>257</sup>, this in itself invites NHRIs to work together regionally to promote peace and development. Inviting colleagues from other NHRIs to provide experiences at workshops and similar gatherings is one possibility of promoting these meetings. “Another possibility is for NHRIs in the same area to come together and discuss issues of peacebuilding, share experiences and agree on the best step forward. The relevant UN institutions and agencies will normally be willing to provide assistance and expertise to such gatherings.”<sup>258</sup>

#### 4.2.7 Teaching and research on human rights issues

The Paris Principles provide that NHRIs should promote human rights, and one way of doing it is by using education as a tool. NHRIs can assist in formulation programmes for the teaching and researching human rights related issues. NHRIs can focus on equal treatment and non-discrimination as an approach to creating a culture of respect, and can they also initiate, in immediate post-conflict situations “problem solving workshops” and “conflict resolution training” involving middle-range leaders in the affected communities<sup>259</sup>. NHRIs can also direct education initiatives to children and youth and empower them to be the drivers of change. There are various activities that an NHRI could decide to carry out within teaching and research:

1. *Human rights education (HRE)*. HRE is a fundamental tool for the promotion of human rights, and consequently for the promotion of understanding, respect and sustainable peace. According to the plan of action for the first phase (2005-2009) of the World Programme for Human Rights Education human rights education can contribute “to the long-term prevention of human rights abuses and violent conflicts, the promotion of equality and sustainable development and the enhancement of people’s participation in decision-making processes within a democratic system”<sup>260</sup>. HRE should start in school as it is a part of the right to education, as it can be read in General Comment No. 1 of the Committee on the Rights of the Child which states “the education to which each child has a right is one designed to provide the child with life skills, to strengthen the child’s capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values”<sup>261</sup>. NHRIs can support HRE initiatives in primary and

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<sup>257</sup> Supra note 65, p. 65

<sup>258</sup> Supra note 230, p. 21.

<sup>259</sup> Supra note 200.

<sup>260</sup> Plan of Action for the first phase (2005-2009) of the World Programme for human rights education (A/59/525/Rev. 1), 2 March 2005, para. 1

<sup>261</sup> General Comment No. 1, Article 29 (1): *The General Aims of Education*, Committee on the Rights of the Child, CRC/GC/2011/1, 17 April 2001, para. 1

secondary schools by training teachers, giving support to the development of curricula and educational materials, and working together with the competent authorities to promote an adequate HRE agenda.

2. According to Spliid<sup>262</sup>, in some countries *human rights clubs* have been established at schools. This can be a good way to encourage open discussions on human rights among children and adolescents. Especially when peacebuilding and conflict transformation are concerned, it is important to provide a safe environment for discussions. Consequently, NHRIs should consider steps to support the establishment of such human rights clubs and assist in providing material that can be used to stimulate constructive discussions relating to issues considered to be the causes of conflict, such as discrimination, marginalization and exclusion of certain groups in that society in the clubs.
3. Human rights should also be taught at *universities*, in particular as part of the curriculum of law faculties. NHRIs should work with law faculties to ensure that peace education; basic principles of democracy and participation, and especially non-discrimination and equal treatment are part of the human rights curriculum. NHRIs should push for basic human rights being taught to all law students and more advanced training being available additionally. NHRIs should offer to assist in providing teaching materials and to provide guest lecturers for such teaching.<sup>263</sup>
4. “The Paris Principles also mention the participation in *programmes for research* in human rights matters. Proper and in-depth knowledge is an important steppingstone for all other activities, also when it comes to human rights.”<sup>264</sup> If it has the necessary resources, an NHRI can carry out its own research into matters relating to peacebuilding. If not, it can work with universities and other research institutions to further such research. One relevant study to be conducted by NHRIs in conflict prone areas could be on informal justice systems (IJS). NHRIs could try to identify how IJS in place can contribute to conflict transformation. Access to justice is fundamental in post-conflict and peacebuilding contexts. If the state is not well equipped to provide its citizens with access to the courts other possible initiatives must be taken into consideration, therefore the need to know IJS in place and ensure that those IJS comply with human rights.

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<sup>262</sup> Supra note 230.

<sup>263</sup> Ibid, p. 31.

<sup>264</sup> Ibid, p. 22.

#### 4.2.8 Increase awareness of human rights

NHRIs should take steps to increase public awareness about human rights and efforts to combat all forms of discrimination, especially through the dissemination of information and by making use of the press, as it can be read in the Paris Principles.

1. NHRIs can initiate prejudice reduction programmes to address issues underlying the conflict and prejudices created or reinforced in the conflict aftermath. “This would point towards *broad information campaigns*, targeting all of the population. Such campaigns are often most efficient if planned and carried out in partnership with civil society and with relevant government structures”<sup>265</sup>. These campaigns can have many elements:
  - a. NHRIs can print and make available reading materials such as *pamphlets and posters*, for example. Depending of the national context, these should be available not only in the official language but also in the most common other languages. “It is important not just to print pamphlets and posters but also to have a clear plan from the outset on how the material will be disseminated.”<sup>266</sup> Civil society organisations should be involved in both the material development process and the dissemination of the material created.
  - b. “A broad information campaign should include a *media strategy*. This includes both the more traditional media like radio, television and newspapers, and modern media like the Internet.”<sup>267</sup> It is reported that in many developing countries radio still is the most accessible media. Consequently, it might be a good idea for NHRIs to focus on disseminating the message through the radio. Dramatised radio series have been used to “discuss difficult and sensitive subjects in various countries, e.g. to promote reconciliation in post-genocide Rwanda”<sup>268</sup>.
  - c. Ideally *community outreach* should be part of broad information campaigns. In addition to ordinary meetings with presentations and discussions, alternative ways of communication should be considered, such as drama and other kinds of performance. Forum theatre can be used as a technique to talk about conflict related issues. In forum theatre the actors (who are part of the community) perform a short scene; then the action is stopped as it reaches a crisis or a climax. Then members of the audience are encouraged to take up a role and to change the direction and the outcome of

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<sup>265</sup> Ibid, p. 23

<sup>266</sup> Ibid.

<sup>267</sup> Ibid.

<sup>268</sup> Ibid.

the action. This method is used for developing alternative ways to solve problematic issues and can be very helpful in conflict transformation. Further, the use of forum theater gives opportunities to community members to address issues and persons in a different manner, helping in the constructing of new perceptions.

#### 4.2.9 Human Rights Complaints

Even though considering individual complaints is not mandatory for NHRIs, it is arguably the most *important role for NHRIs* in many countries, especially in countries where other avenues to access justice are in reality closed for most people. In many countries taking matters to court is complicated, slow and/or prohibitively expensive, and in such countries organs like NHRIs are the only realistic routes to justice. If an NHRI has the mandate to receive and consider individual complaints, there is no reason why it should not be willing to receive and consider them.<sup>269</sup>

The complaints handling mechanisms that are used by NHRIs have been explored in Chapter 3 where the quasi-judicial functions of NHRI were studied. One point that deserves attention here though is that the population must be aware of the work of NHRIs as a body that accepts individual complaints. It has been proven very helpful to use paralegals in countries where the regular judicial system does not work properly. NHRIs can provide the same kind of “services” in many countries where they operate.

In Sierra Leone, an NGO has trained paralegals all over the country to assist communities to address disputes and grievances. These initiatives are reported to “have empowered clients (especially women) to claim their rights”. Additionally, “community perceptions of institutional fairness and accountability of the police, traditional leaders, and courts also improved”<sup>270</sup> as a result of the work of the NGO. NHRIs can work following the same principles.

#### 4.2.10 International Commitments and Initiatives to work on Peacebuilding

The international community has seen the positive relations between the work of National Human Rights Institutions and the prevention of violent conflict. During the 4<sup>th</sup> Conference for African Human Rights Institutions in Uganda, the Kampala Declaration was signed and among the resolutions and recommendations was the need for NHRIs to work with peacebuilding and conflict transformation.

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<sup>269</sup> Ibid, p. 24

<sup>270</sup> Supra note 65, p. 154

In September 2004, during the 7<sup>th</sup> International Conference for National Human Rights Institutions held in Seoul, emphasis was given to the role NHRIs can play in conflict situations.

[National institutions] can play a crucial early warning and mediation role to prevent conflict. During conflicts they can continue to monitor respect for human rights to ensure accountability. They can play a mediation role and monitor respect [for] peace agreements and promote the adoption of measures for national reconciliation. They can serve a vital role in helping States to identify security measures which both address legitimate security threats and ensure respect for fundamental rights and freedoms. They can review and analyse proposed legislation. They can engage in dialogue with governments and legislatures to find the best way forward. They can promote respect for human rights in times of crisis through public education campaigns and outreach. Because of their institutional role, they can raise sensitive questions that private citizens, standing alone, might hesitate to express publicly.<sup>271</sup>

The OHCHR book on National Human Rights Institutions published in 2010, also emphasizes the important roles that NHRIs can play during and after conflict. OHCHR highlights some of the efforts that the NHRI can pursue during conflict, as promoting “dialogue between combatants”; promoting “the establishment and growth of peacebuilding mechanisms among representatives communities”; and encouraging “acceptable and necessary accommodation to deal with underlying human rights issues that may be at the root of the conflict”<sup>272</sup>.

In post-conflict situations the roles played by NHRIs might be different, especially because efforts connected with ensuring justice and reconciliation will be needed. OHCHR enumerates some of the initiatives that can be undertaken by an NHRI after conflict (especially those institutions established in the aftermath of the conflict as a part of the peace agreements). The NHRI can, for example, document past abuses, giving “victims a chance to be heard”, facilitating “the development of a databank that might be useful if a special process were put in place to deal with such abuses”, and by establishing a “historical record”<sup>273</sup>.

The NHRI can also support reintegration.

With peace comes the demobilization of combatants, and with demobilization comes the need for rehabilitation and reintegration. National human rights institutions can play a role by preparing the terrain through community-centred awareness programmes, lobbying the Government and others to financially support the initiative to ensure that ex-combatants are trained and supported in their reintegration. Allegations of abuse should be dealt with quickly and effectively. Given the overwhelming need to support reintegration and harmony, non-adversarial approaches might be the most appropriate for dealing with potential problems.<sup>274</sup>

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<sup>271</sup> Supra note 219, p. 11

<sup>272</sup> Supra note 182, p. 139

<sup>273</sup> Ibid, p. 143

<sup>274</sup> Ibid.

Other efforts relating to integration are land distribution and returning refugees. In both cases NHRIs can play a role by using non-adversarial strategies (ADR) to approach the conflict. The NHRI can also support efforts to reintegrate child soldiers and child abductees.

# 5 Commission on Human Rights and Administrative Justice's role to play in Northern Ghana

The previous chapters have demonstrated that violence can be found at the structures of societies and how the case of the “ethnic” conflicts of the Northern Region are deeply connected to it. They have also shown how NHRIs can use their mandate and work on conflict in order to build peace.

This chapter will focus on the Commission on Human Rights and Administrative Justice, Ghana's national human rights institution and ombudsman, its mandate and the possibilities for concrete efforts towards building sustainable peace in the Northern Region.

## 5.1 The Commission on Human Rights and Administrative Justice

The Constitution of Ghana established the Commission on Human Rights and Administrative Justice (CHRAJ) in 1992; Chapter Eighteen of the constitutional text determines the mandate and rules regulating the Commission (Articles 218 to 230). CHRAJ is therefore a constitutional body, created as an independent institution, and “answerable neither to the Executive nor to the Judiciary, and to the Legislature only to the extent that it is required in Article 218 (g) of the 1992 Constitution to submit annual reports to Parliament”<sup>275</sup>. The independence of CHRAJ is clearly stated in Article 225: “Except as provided by this Constitution or by any other law not inconsistent with this Constitution, the Commission and the Commissioners shall, in the performance of their functions not be subject to the direction or control of any person or authority”.

Article 218 of the Constitution institutes the functions of the Commission. These are as follows:

- Investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;
- Educate the public as to human rights and freedoms.

According to its Annual Report “the Commission's vision has always been that of creating a free, just, and equitable society where human rights and

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<sup>275</sup> Quashigah, E. K. “The Ghana Commission on Human Rights and Administrative Justice”, Lindsnaes, B, Lindholt, L. and Yigen, K. (eds.) *National Human Rights Institutions: Articles and Working papers*, (The Danish Institute for Human Rights, Copenhagen, 2001)



human dignity are respected and power is accountable”. Furthermore, the Commission’s Mission Statement reads:

The Commission on Human Rights and Administrative Justice exists to enhance the scale of good governance, democracy, integrity, peace and social development by promoting, protecting and enforcing fundamental human rights, freedoms and administrative justice for all persons in Ghana. These objectives will be achieved by:

- Ensuring a culture of respect for the rights and obligations of all people in Ghana;
- Dispensing and promoting justice in a free, informal and relatively expeditious manner;
- Ensuring fairness, efficiency, transparency and application of best practices;
- Using a well-trained and motivated workforce and the most modern technology.<sup>276</sup>

These statements are part of CHRAJ’s strategic vision and can be positively used in designing a satisfactory strategy for dealing with peacebuilding and conflict transformation, especially as emphasis is put on respect for people’s rights and on access to justice.

As mentioned above, the Commission is a two-folded body that works as an ombudsman and a national human rights institution. Its human rights functions can be divided into two categories: protection and enforcement, and promotion and prevention.

In order to protect and enforce fundamental freedoms, the Commission investigates individual complaints of human rights violations by persons and institutions. It is mandated to resolve these complaints through various methods, including *mediation, negotiation and formal hearings*.<sup>277</sup> (Emphasis added.)

In order to promote human rights the Commission has to sponsor public education programmes, as mandated by Article 218 (f) of the Constitution (“the functions of the Commission shall be defined and prescribed by Act of Parliament and shall include the duty *to educate the public as to human rights and freedoms* by such means as the Commissioner may decide, including publications, lectures and symposia”). (Emphasis added)

The Commission has the constitutional authority to establish regional and district branches throughout the country as established in Article 220 of the Constitution. The Commission has regional offices in all ten capitals of the regions and has offices in 100 districts. The wide presence of the Commission throughout the country can assist it in its capacity of using its mandate to work on peacebuilding and conflict transformation.

The Commission on Human Rights and Administrative Justice Act (Act

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<sup>276</sup> Commission on Human Rights and Administrative Justice 2005 Annual Report, CHRAJ, Accra, Ghana (2006)

<sup>277</sup> Ibid.

456) formally established CHRAJ in 1993. The human rights mandate of the Commission is established in Section 7 (a), (c), (d) and (f) as it can be read below.

The functions of the Commission are:

(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;

(c) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution;

(d) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this subsection through such means as are fair, proper and effective, including:

(i) negotiation and compromise between the parties concerned;

(ii) causing the complaint and its finding on it to be reported to the superior of an offending person;

(iii) bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and

(iv) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;

(g) to educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia; (Act, 456)

As it can be seen, the Commission's mandate is broad and allows for investigators to take action by calling parties to settle the dispute. The author's short experience at the Commission's offices (the Head Quarters in Accra, the Office for the Great Accra Region, the Head Office for the Northern Region in Tamale, and the District Office in Yendi) has shown that most of the time, when complainants come to CHRAJ, a common dispute resolution mechanism used is mediation and not negotiation. CHRAJ uses its officers and mediators in many of the cases brought in.<sup>278</sup>

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<sup>278</sup> One case witnessed by the author goes as follows: A man, aged 53 who lived in the same house with his 4 siblings, all married and with children of their own. The complainant was adopted as a child, however his wife and children are unaware of this fact. It looks like one of his brother's wife knows that he is adopted. One day, in a quarrel, she called him a slave. She clapped her hands and called for the whole neighborhood's attention and said the complainant did not deserve to carry the last name he had and that he was a slave.

The complainant then came to the Commission saying that his human rights had been violated and he asked the Commission to intervene and make his brother's wife apologize. The Regional Director and three of his employees sat together and discussed for 45 minutes whether or not this was a human rights issue and whether the Commission had mandate to interfere. They decided unanimously that there had been a human rights violation because calling someone a slave constitutes a very serious offense to a person's dignity. They also decided that the Commission had a necessary mandate to interfere. The parties were contacted and a mediation session should have taken place by now.

The Manual on Procedures for Investigations<sup>279</sup> establishes that “ADR can be used to resolve complaints relating to administrative injustice (unfair treatment, victimization, etc.), family/child maintenance, personal dignity and integrity (e.g. discrimination), community disputes, etc and when a complaint/dispute is likely to be straightforward and relatively less contentious/litigious.”<sup>280</sup>

In its 2008 Annual Report the Commission gives a sample of some of its cases. Eight cases are listed and four of them are related to human rights issues. It is interesting to note that, the Commission functions as a first instance for cases where people either want to avoid the courts system or they are too poor to use it.

## **5.2 The Commission Limitations in Working on the Conflicts in the North**

The Commission’s mandate limits its possibility to take action. It can only investigate complaints brought to it, or use education as means of promoting positive change. According to Mr. Al-Hassan Siedu, acting director of CHRAJ’s Northern Office, the Commission has chosen the latter as a way of acting, in order to promote human rights and create a society where individual differences are respected.

In 1994, when the Guinea Fowl Conflict started, the Commission had only existed for one year, which in itself limited its capacity to work on the conflict. In addition, Mr. Siedu explains that in the aftermath of the conflict (and during the peace negotiations) there were several national commissions and NGOs more capable of dealing with complaints than CHRAJ. Further, these institutions were better known to the Ghanaian public at the time than CHRAJ was. Some examples are the Red Cross and UNHCR (which assisted the displaced).

During the interviews, many of the Commission’s employees affirmed that CHRAJ has never intervened in the Northern conflicts because it has never received a complaint relating to it. One of the Directors interviewed affirmed that one single complaint was received in the Accra Region relating to the conflicts in the north, however the demand of the complaint went beyond the Commission’s mandate.

Another limitation to the work of CHRAJ in the Northern Region rests on constitutional law. As explained in Chapter 2, the conflicts in the north are connected to chieftaincy matters and issues connected to chieftaincy are under the jurisdiction of the judicial committees of the Houses of Chiefs. According to Articles 273 and 274 of the Constitution chieftaincy related

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<sup>279</sup> Commission on Human Rights and Administrative Justice, *Manual on Procedures for Investigations*, CHRAJ, Accra, Ghana (28 April 2008)

<sup>280</sup> *Ibid*, p. 46

matters are under the jurisdiction of the National House of Chiefs, the Judicial Committee of the National House of Chief and the Traditional Council. Because of that many of the complaints never even reach CHRAJ, and the ones that do are refused.

Yet another issue that might be a constraint to the Commission's work in the Northern Region is its budgetary limitations. According to Khan, "over the past few years, the Ministry of Finance has significantly reduced CHRAJ's budget, which is a concern that has been raised in a number of CHRAJ annual reports"<sup>281</sup>. In the last years CHRAJ has also relied on funds from donors like UNDP and DANIDA (CHRAJ, 2007). The budgetary constraints are very visible in the District Office in Yendi – the bailiff at the Office has to borrow the motorcycle from the National Commission for Civic Education (NCCE) in order to summon persons to appear before CHRAJ, as CHRAJ has no vehicle.

The literature also points out to the high turnover of staff as a limitation for CHRAJ's more comprehensive and strategic work relating to peacebuilding. The fact that CHRAJ devotes most of its time and energy to dealing with individual complaints, without using them strategically might also hinder the expansion of conflict transformation work in the Northern Region.

### **5.3 The Work of the Commission using Conflict Management Tools**

As mentioned in the previous section, CHRAJ is familiar with the use of ADR as part of its work. Any person in Ghana can lodge a complaint to the Commission, on its own behalf or on behalf of another person. According to the Manual on Procedures for Investigations "complaints must be lodged with the Commission not later than 12 months after the Complainant has had knowledge of the occurrence of the conduct/event complained of (Period of limitation)"<sup>282</sup>.

A complaint received by the commission will in all cases be logged by the registrar of the office. The complaint can be received in written or oral form and can, in practice, be in any of the major languages spoken in Ghana. Although the district and regional offices are not entirely staffed by local people, the practice is to ensure that every office has someone capable of speaking local languages who can receive complaints.<sup>283</sup>

After the complaint has been received the Director and the Investigator will sit together and discuss whether the complaint falls within the mandate of CHRAJ and the possible course of action to be used. This is called the

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<sup>281</sup> Khan, Naefa, "The Commission on Human Rights and Administrative Justice in Ghana: Working in the micro and around the macro", Parlevliet, M., Lamb, G. and Maloka, V. (eds.) *Defenders of Human Rights, Managers of Conflict, Builders of Peace? National Human Rights Institutions in Africa* (Centre for Conflict Resolution, University of Cape Town, 2005), p. 67

<sup>282</sup> Supra note 278.

<sup>283</sup> Supra note 228, p. 13

Directors Meeting, and as the Manual on Procedures for Investigations explains it:

The Directors' Meeting is to consider complaints or information received for the purposes of determining jurisdiction, to allocate the complaints for investigations and to consider any other issues relevant to the complaints. These Meetings are convened two times a week: on Tuesdays and Thursdays or any other day that the circumstances of the time may determine. In the regions, the Regional Director and the legal officers shall attend, while in the Districts, the District Director and the Assistant Registrar shall attend.<sup>284</sup>

After the Directors' Meeting an Investigator is assigned to the case and the Commission contacts the Correspondent. The Correspondent is provided with sufficient time to respond. If he/she denies the accusation, both parties are brought in for ADR – conciliation or mediation. If this proves unsuccessful, the Commission decides whether a panel hearing is required and if so, a panel is constituted, chaired by a lawyer to consider the matter and issue its finding and recommendations back to the Commission.

Even though the Commission is familiarized with typical conflict transformation terminology and it is used to work with ADR, "CHRAJ staff do not see 'working with conflict' to be a key component of their work. This is despite the fact that mediation is the dominant form of dispute resolution used by the commission in the handling of individual complaints", and the fact that extensive training has been provided for CHRAJ staff in this regard"<sup>285</sup>.

"Neither the constitution nor the enabling legislation explicitly give CHRAJ the authority to conduct an investigation without receiving a complaint, although in practice it has done so."<sup>286</sup> CHARJ has conducted investigations concerning the rights of sick children whose parents refuse adequate medical treatment on the grounds of religious beliefs<sup>287</sup>, on *trokosi*<sup>288</sup>, and on the conditions in detention facilities.

Since 1995, the Commission has been conducting a nation-wide investigation of the conditions of prisons and police detention facilities<sup>289</sup>.

This exercise was also intended among other things, to find out the details and particulars of suspects who have been remanded into custody pending trial for an unreasonable period of time. The Commission publishes an Annual Prisons Report which is widely circulated and submitted to the relevant authorities.<sup>290</sup>

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<sup>284</sup> Supra note 279, p. 40

<sup>285</sup> Supra note 281, p. 72

<sup>286</sup> Supra note 228, p. 15

<sup>287</sup> Ibid.

<sup>288</sup> The *trokosi* is explained below.

<sup>289</sup> See: ICHRP, 2004; Khan, 2005; Bossman, 2006

<sup>290</sup> Bossman, Anna, *The Anti-corruption Mandate of Ghana's Commission on Human Rights and Administrative Justice* (United Nations Conference on Anti-Corruption Measures, Good Governance and Human Rights, 8-9 November 2006. Panel 2: How Human Rights and Good Governance Principles can help in Fighting Corruption)

More recently the Commission decided to investigate the situation of the human rights of persons in the mining communities of Ghana. Due to allegations of “violent, illegal arrest and detention”; “torture of persons illegally arrested and detained”; “assault and battery”; and “interference against citizens in public protests against activities of mining companies”, CHRAJ “decided to conduct a nation-wide investigation to determine in a systematic manner the nature and causes of these violations”<sup>291</sup>. The investigation’s foremost aim was to examine the state of human rights in the mining communities and the reasons for the increase in the number of reports.

Even though the investigation is not a fault-finding one, it does not overlook the obligations and responsibility of any of the stakeholders as it explores ways of advancing human rights in mining areas. All role players had an opportunity to address the issues in a co-operative manner. The investigation also seeks to protect the rights and fundamental freedoms of people affected by mining operations across the country (...). It further aims to *restore cordial relations between all groups* in areas where mining takes place in the country and create a more conducive atmosphere for development.<sup>292</sup> (Emphasis added)

All these illustrate how the Commission has actually taken an active role (beyond the mere investigation of complaints and without being requested) in order to promote human rights. The lack of formal complaints has not impeded CHRAJ from taking up investigations and making recommendations when the Commission has seen it suitable.

The more significant efforts of the Commission regardless of a formal request for investigation can, nevertheless, be seen in its work against harmful traditional practices, especially those that violate children’s and women’s rights. CHRAJ has effectively worked in the promotion of girls and women’s rights that were victims of *trokosi*. *Trokosi* literally means “slaves of gods”. “*Tro* means god and *Kosi* can be translated as virgin, slave or wife.”<sup>293</sup>

“*Trokosi* is a system in which a young girl, usually under the age of 10, is made a slave to a fetish shrine for offenses allegedly committed by a member of the girl’s family, like stealing or improper sexual relations.”<sup>294</sup>

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<sup>291</sup> Commission on Human Rights and Administrative Justice, *The State of Human Rights in Mining Communities in Ghana*, CHRAJ, Accra, Ghana (2008), p. 17

<sup>292</sup> *Ibid.*

<sup>293</sup> Bilyeu, Amy Small. “*Trokosi – The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedoms vs. Human Rights*” (*Indiana International and Comparative Law Review*, No. 9, 1998-1999), p. 466

<sup>294</sup> *Ibid.*, pp. 469-470

Traditionally the offerings took the form of cattle, money, and liquor, but over time the practice changed from offering animals to offering girls. The practice changed due to the priests’ belief that only virgins could appease the gods. The change may also have been economically based. Long ago, family starting giving their daughters to the shrine because a girl was cheaper than a cow. (Bilyeu, 1998-1999, p. 472)

For it being a violation of girls' human rights and for being a dehumanizing traditional practice, CHRAJ has decided to act upon the practice even if no complaints regarding *trokosi* have been brought to the Commission.

CHRAJ worked with a local NGO, International Needs, to undertake public education on this matter, and engage in a dialogue with those who practise *trokosi*. CHRAJ was also involved in negotiating payment for the release of two thousand women from certain fetish shrines. CHRAJ tried to help these women reintegrate into society by facilitating life-skills training workshops. Some women had lived in the shrine for most of their lives: for example, CHRAJ found women over the age of 65 living in these shrines. According to Bossman, a purely legalistic approach would have been counter-productive in dealing with the practice of *trokosi*, as the tradition is well entrenched in certain sectors of Ghanaian society. Even if a court ruling existed that ordered the release of these women, they would not be accepted back into their families until the debt was paid or adequate compensation provided.<sup>295</sup>

The education process, nonetheless, went beyond the mere enlightenment of the priests towards human rights. The focus was also on teaching the priests and the community about the illegality of *trokosi* according to Ghanaian law and the actual criminal liability that would come with its practice. CHRAJ also emphasised the need to completely abolish the institution. According to Emile Short (the Commissioner), the practice was going on for so long that it was necessary to enter into dialogue first<sup>296</sup> before enforcing the law.

The work of the Commission did not stop there. CHRAJ also worked in partnership with certain chiefs in its *trokosi*-related efforts. According to Commissioner Short "the chiefs were essential in facilitating the discussions that took place with the priests in order to negotiate the release of girls under their control"<sup>297</sup>. Chiefs, as well as other respected leaders, are still an essential part of the rural systems of Ghana and therefore central actors in activities to promote change. Chiefs were therefore "engaged in direct dialogue with perpetrators, victims, other community leaders, and the community at large to facilitate understanding of the practice, while providing alternatives and avenues for abandoning the practice without losing status"<sup>298</sup>. CHRAJ made an effort to respect tradition and culture while challenging belief systems. Utilising reputable human resources

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The tradition requires that girls start their bondage as virgins. Once at the shrine, the priest is the only one who can decide when the girls have atoned for their sin and free them. They are expected to stay with the priest from the age of about eight to 15 and sometimes much longer. Sometimes, even lifelong servitudes may not settle the debt to the gods. (Bilyeu, 1998-1999, p. 472)

Trokosi are the sexual property of priests, so by night, they are sex slaves. When a fetish slave starts menstruating, she undergoes an initiation ceremony after which the priest, or the custom would have it, the god through the human channel of the priest, can have sex with her whenever he wants. (Bilyeu, 1998-1999, p. 473)

<sup>295</sup> Supra note 281, p. 75

<sup>296</sup> Supra note 293

<sup>297</sup> Supra note 281, p. 75

<sup>298</sup> Ibid.

within the communities practising *trokosi* achieved this.<sup>299</sup>

CHRAJ has also used its mandate to influence the Legislative. Teams of investigators were sent to the shrines to study the practice. The investigators made recommendations to parliament to change the law in order to abolish *trokosi*. The Ghanaian Parliament enacted a new provision in the end of the 1990's changing the criminal code of 1960. The provision "specifically outlaws the practice of sexual slavery" and "refers to the Trokosi system and like practices as 'customary servitude' and imposes a minimum three year sentence for the violators"<sup>300</sup>.

An additional harmful traditional practice found in Ghana (especially in the Northern Region) is that of witch camps. These camps are created to house women (there is a very small number of men who are sent to witch camps) who are accused of witchcraft in their villages.

When crops fail or children die of mysterious illnesses, the villagers of northern Ghana usually suspect that a witch is to blame. The accusation is most likely to come from within a family - the same feeling that binds a village together in adversity can be turned ruthlessly against a scapegoat, and it takes little more than suspicion for a witch to face death at the hands of a lynch mob. Fearing for their lives, hundreds of elderly women in northern Ghana have banded together for protection in sanctuaries known as "witch camps".<sup>301</sup>

Regarding the witch camps the Commission has not been so active. The main concern of CHRAJ is with keeping the women in the camps safe and making sure that their basic rights are respected. No action towards changing beliefs or showing how the practices connected to accusing women of witchcraft violate women's rights has been taken. According to Mr. Siedu, CHRAJ cannot act because attitudes towards peoples' beliefs would violate the right to religion, and Ghana is a secular state that respects freedom of religion.

A different way for CHRAJ to act is through education. The Commission itself says that public education has been a central part of its activities from the outset (as it is part of the constitutional mandate), however, this statement has been challenged by some organizations. ICHRP, for example says that it is clear that this aspect of CHRAJ's work has been less

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<sup>299</sup> Notwithstanding CHRAJ's relative success in addressing *trokosi* practices, questions can be raised as to whether such an approach undermines human rights standards, and whether issues of justice and accountability are compromised. However, the story of Abla Kotor illustrates the cultural hurdles faced by institutions such as CHRAJ, and lends credence to the methods adopted by CHRAJ and International Needs. Abla was sent to a fetish shrine at age twelve. After her release was negotiated from the shrine, no one from her family came to claim her due to fears that retribution from the gods might follow. Abla now attends school, but sleeps at the shrine at night, as she has no home. This is also the case with several other women. (Khan, 2005, p. 75)

<sup>300</sup> Supra note 293, p. 500.

<sup>301</sup> Vasagar, Jeevan, *Witch Hunt* (Guardian.co.uk, Tuesday 6 December 2005, 12.20 GMT)



prominent than in many other NHRIs. The reasons for this are probably connected the constant lack of resources. “In practice many educational activities have been funded by external donors rather than from the commission’s core budget.”<sup>302</sup>

## **5.4 Steps forward – Possibilities for CHRAJ to transform the conflicts in the Northern Region**

It is extremely difficult from an outsider’s point of view to try to propose suggestions that can effectively work. However, an attempt will be made here based on the matters presented above. The first action to be taken by the Commission in order for it to be able to work on the conflicts of the North is to allocate financial resources. “Easier said than done”, one would say, however small improvements could already contribute a lot to the big picture. A motorcycle for the Yendi District Office is one of the things that the Head Office should consider. This would make accessibility to remote areas around Yendi easier and could possibly contribute to CHRAJ’s visibility in the North. Moreover, the time saved between journeys would allow the personnel to think strategically about the complaints arriving at CHRAJ.

Concerning the Dagomba vs. Konkomba conflict specifically, the following observations could be made. The way the media presented the conflict between Konkombas and Dagombas in the 1990’s has contributed a lot to create an image of the peoples of the North as being violent. Ghana had been relatively peaceful until the conflicts in the Northern Region began to explode and therefore this association by the people of the South became the way the peoples of the North are seen. Another initiative that CHRAJ should take is a process of demystification of the peoples of the North. CHRAJ could use its education and awareness-raising mandate to do this.

Further, CHRAJ should consider working closely with NCCE (the National Commission for Civic Education) in order to promote this demystification process. The functions of NCCE, as established in Article 233 of the Constitution, are compatible with CHRAJ’s when it comes to human rights education. Therefore the two institutions should work together in order to avoid overlapping and to save resources.

Labeling the people of the Northern Region will not help in a process of creating a more peaceful society. Moreover, it removes the responsibility of all state actors from acting in the North when a new conflict appears. If statements such as “the people of the north are violent” and “that is their nature” are seen as truthful by the other inhabitants of the country, there is no reason for any one to look into the structures that have contributed to the escalation of the conflicts to violence. Of course, it is not within CHRAJ’s mandate to take this kind of initiatives isolated. Nonetheless, as part of its

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<sup>302</sup> Supra note 228

civic education initiatives (together with NCCE) the Commission could address patterns of discrimination, why they exist and how they contribute to the exclusion of certain groups.

Middle-range strategies, as proposed in Chapter 4, should also be used in order to build peace, especially to address the chiefs. It is the view of the author that chieftaincy is an outdated, undemocratic, sexist and discriminatory institution. However, chieftaincy is there, it exists and it is protected by the Constitution. Problem-solving workshops involving chiefs from conflicting groups and their legal advisers should be considered by CHRAJ.

Further, it is important to educate the chiefs on human rights issues and conflict management tools, as many people look for the chiefs' assistance when they are faced with smaller conflicts. Chiefs should also be educated on the roles and functions of CHRAJ, so that they can refer complainants to CHRAJ's offices, if more suitable.

Capacity building, in line with what was done in Tanzania (as presented in Chapter 3) should also be considered by CHRAJ. The staff in CHRAJ is already familiar with mediation and conciliation and the positive aspects of these ADR methods to deal with conflict, therefore they would only benefit from capacity building sessions that focuses in the connections between violent societal conflicts and human rights violation and structural violence.

It has been reported (private conversation with an NCCE employee) that the Konkombas are getting armed. In an area where conflict is recurrent and where the inequalities and inequities have not been addressed, having excluded groups being armed is a serious issue that must be dealt with. Disarmament is not part of CHRAJ's mandate and it should not be only CHRAJ's initiative. But the Commission could follow the example of UHRC and coordinate together with the police and other national authorities a disarmament programme for the Northern Region.

CHRAJ should consider using the PESTEL framework to analyse its environment and to determine how it can work on conflict in the Northern Region specifically and in Ghana generally. More importantly, CHRAJ should consider designing a strategic plan for the north (which would include both the Northern Region and the two Upper – East and West – Regions).

The PESTEL framework provides a comprehensive list of influences on the possible success or failure of a strategy. "PESTEL stands for Political, Economic, Social, Technological, Environmental and Legal."<sup>303</sup> Politics highlights the roles of the government and is important for CHRAJ's work both because of its financial implications, but also, because of the possible choice of partners for working on conflict to build peace in the North.

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<sup>303</sup> Supra note 234, p. 55

Economics refers to the macro-economic factors that can affect both CHRAJ, and the populations of the North – exchange rates can, for example, affect the prices of yams and consequently the economic situation of the peoples of the North. Social influences include changes in demographics. Slowly more and more girls are being educated in the North and the difference between the number of girls and boys that go to schools is still very big. CHRAJ has to take this into account, as women have to be involved in peacebuilding initiatives. Technology influences refer to innovations such as the Internet and therefore democratic digital inclusion, and also new weaponry. Both are issues that have to be taken into account. In the business language environmental refers to “green” issues, which are a different shade of green when conflicts are at hand. The environment has to be thought into the strategy in two ways: 1) the environmental costs of violent conflicts and 2) the environmental problems that can be at the bottom of the iceberg and contribute to causing conflict<sup>304</sup>. Lastly, legal embraces legislative constraints and it can be exemplified here by both CHRAJ’s mandate and the National House of Chiefs jurisdiction on chieftaincy matters. PESTEL is used in companies and enterprises strategies and it can easily be used by CHRAJ to determine a more precise course of action in the North.

The PESTEL framework should be combined with an analysis of CHRAJ’s core competences and resource. By doing this CHRAJ could think of a strategy that would address the following questions: 1) what can CHRAJ do that nobody else does? 2) Who can CHRAJ work with in order to build sustainable peace in the North? CHRAJ has to focus on their “best trait” (core competencies – the reason why they exist) in order to transform the conflicts in the North while working with other stakeholders.

“According to Professor Quashigah, CHRAJ is better known among Ghanaians than the Legal Aid Board. A similar comment was made by a district officer, who maintained that CHRAJ is better known and perceived by ordinary Ghanaians to be more competent and capable in terms of service delivery than the Department of Social Welfare”<sup>305</sup>. CHRAJ should use these advantages and design a strategy to building sustainable peace in the North.

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<sup>304</sup> The environmental degradation of Ogooni Land in Nigeria, is one, out of several examples, of how environmental destruction can be one of the issues that make conflicts escalate into violence.

<sup>305</sup> Supra note 281, p. 69

## 6 Conclusion

The relationship between human rights and conflict transformation is a very close one. It is impossible to talk about transforming conflicts and building sustainable peace without addressing previous human rights violations, not only those violations at the top of the iceberg, but also and most importantly those at the bottom. Violence, be direct or indirect, is recurrent if human rights are not protected and respected.

It has been demonstrated that there are several links between Galtung's (1969) structural violence and human rights promotion and protection. It is crucial to address issues of marginalization, exclusion and discrimination in order to promote sustainable peace. Further, it has been shown that the promotion of human needs can benefit from a human rights-based approach (HRBA). By using a HRBA individuals are put in the centre of policies, they are empowered to participate and they are given the tools and the knowledge necessary to hold their governments accountable. More than that, through HRBA discrimination patterns historically built can be addressed and the most vulnerable and discriminated groups are allowed to participate. Lastly, as Habermas (2001) puts it, a HRBA allows for the inclusion of the marginalized in a process that reinforces democracies and democratic principles.

It is also been displayed that issues of identity are crucial in conflict related situations, as many times group identity is used as a tool for acting violently against other groups. The dichotomy "us" versus "them" is part of the process of formation of the self and gets stronger in groups. In these lines, it has been shown that ethnicity is one form of identity that somehow, mixes several types of identity within it and is used by different groups to achieve different goals.

In the African context, ethnicity has been used both by the colonizer as a form of exploitation of certain ethnic groups, but it has also been used as an instrument for African agency. Especially in Ghana, ethnicity has been used to confirm histories of groups and to maintain patterns of subordination of a group over another. Ethnicity has been especially used by some African elites to channelize and promote their interests and to keep the most underprivileged people outside the political sphere. The constant marginalization of some groups has diminished their potentiality and therefore they constitute structural violence.

The Northern Region of Ghana illustrates cases of structural violence, be it through the entire region's exclusion, be it in the pattern of exclusion of certain ethnic groups. The Region's conflicts between the Konkombas and the majority groups (especially the Dagombas) show how the combination of exclusion from the political structure, lack of development, and weak state institutions can be a trigger for violent conflict. Further, the conflicts in

the Northern Region demonstrate how there is no one cause for conflict and how unequal power structures are always an underlying cause for violence.

Lessons learned from the conflict and the peace process are also related to the fact that, peace, sustainable, positive peace will not be achieved if issues related to social, economic and cultural rights are not addressed. Chieftaincy related issues and access to land rights have to be dealt with in order to prevent the escalation of social disturbances into violent conflict.

In order to reach this conclusion some key processes were presented. Negotiation and different types of third-party intervention have illustrated different approaches to handling conflict. These approaches have been presented as peaceful ways of addressing conflict, each one of them having its advantages and drawbacks in different phases of the conflict. Some NHRIs are used to applying mediation, conciliation and negotiation as tools to address conflict, be it interpersonal or societal conflict.

Peacebuilding has been explained as a process needed to transform conflict and build sustainable and lasting peace. In this process past differences and atrocities must be addressed, people must get the chance to talk about their pain their suffering and how difficult and challenging it is for them to forgive and forget what has happened. These processes have to be accompanied by punishment of perpetrators of gross human rights violations while also looking into processes that re-humanize conflicting parties and making room for differences.

There are several different approaches to peacebuilding. It has been discussed how in the case of NHRIs the best approach might be that of addressing the middle range leaders, as they are more capable of addressing the problems in their communities. It is also through the middle-range leaders that strategic plans can be developed to think on how discrimination and inequality issues can be addressed.

Even though the framework of action of NHRIs, the Paris Principles, do not explicitly say that these institutions have to work towards building sustainable peace, it has been proved that NHRI's mandate can be used in this relation. NHRIs can use their capacities to influence the government to change legislation that is not in accordance with human rights principles and standards (and therefore can jeopardize peacebuilding processes). Further, NHRIs can examine pending legislation in order to certify that new laws are in accordance with human rights principles and standards and address discrimination issues. This exercise can be useful in preventing the explosion of violent conflict and also in transforming violent structures.

NHRIs also have a paramount role to play in monitoring and reporting both in the national and international levels. This part of NHRIs mandate can be used to report on human rights violations and the actions governments are taking in order to improve their human rights records. NHRIs dealing with

conflict can put emphasis on the human rights issues that are connected to structural violence and work as stress factors for already fragile situations.

NHRIs can also use their mandates to pressure their governments into ratifying human rights instruments, removing reservations and declarations that go against the treaty's purpose and object. Another way of using NHRIs mandate in order to promote peacebuilding is by working with the media and civil society in reporting internationally. International pressure and support are important elements in the process of building peace.

A key element of NHRIs' mandate that can be used in peacebuilding is their education and information mandate. Human rights education can be used as a channel to promote an egalitarian society and also to promote peace. Educating through human rights, about human rights and for human rights can help in the establishment a culture of respect and it can also help prevent violent conflict in the long term. Along with education NHRIs can promote awareness-raising campaigns to address the underlying issues of the conflict and how they can be overcome in order to promote peace. These processes should also focus on promoting a better understanding of human rights and non-discrimination issues.

Lastly, NHRIs should use their capacity as quasi-judicial bodies to address the conflicts that are presented by individuals, but they should also use the complaints brought as a way of analyzing societal issues as a whole. The complaints presented to NHRIs can draw a good map of the kind of violations happening in the country and assist NHRIs in designing strategies to address these conflicts.

After the questions presented, this thesis can conclude that the Commission on Human Rights and Administrative Justice in Ghana, a National Human Rights Institution operating in accordance with the Paris Principles, can use its mandate to address issues of structural violence in the Northern Region of Ghana.

CHRAJ as a Ghana's NHRI can use its mandate to address the conflicts in the North. CHRAJ is already used to starting investigations on issues that are considered of importance to the Commission, such as *trokosi* and the situation in prisons. Therefore, the Commission should investigate the human rights violations connected to the conflicts in the Northern Region in order to design a strategic plan to operate in that region. CHRAJ needs to address the human rights violations at the bottom of the iceberg, such as the marginalization of the Konkomba, the Northern Region's lack of economic development, and the discrimination of the peoples of the North. It is also crucial that the Commission thinks of ways of working with other state institutions, such as the NCCE in order to promote both human rights and peace education. Further, the Commission should especially consider involving chiefs in its operations in the north, as they still are very important figures in that region.

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