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# Human Rights Nongovernmental Organizations and the Problems of Transition

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## ABSTRACT

Human rights protections are often a key dimension in peace agreements and settlements. One would expect the human rights nongovernmental organizations who worked to ensure such protection, to play a primary role in ensuring the implementation of human rights commitments. However, the same transitional landscape which holds out opportunities for improved human rights enforcement, also gives rise to problems for domestic human rights NGOs. Post-agreement, patterns of conflict, the human rights mechanisms available, and the human rights “players,” all mutate. This can create difficulties for human rights NGOs with respect to their mandate,

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Individuals interviewed for this research were questioned in a personal capacity, although their institutional affiliation is given. A number of interviewees remain anonymous in order to protect the work of the individuals involved.

priorities, funding, recruitment, and their relationships with other groups. This article describes and analyzes how transition affects domestic human rights NGOs using examples from different countries. In conclusion, a number of recommendations are made to improve human rights protection post-conflict.

## I. INTRODUCTION

Since the end of the cold war, both internal conflict and its corollary the negotiated agreement, have come to rival inter-state conflict in terms of deaths caused, and as a focus for concern, intervention, and study. Since 1990 over 300 peace agreements have been signed between adversaries in over forty jurisdictions.<sup>1</sup> These conflicts were internal in nature and fall within three overlapping categories: centralist/revolutionary, regional/identity, and economic/criminal.<sup>2</sup> Typically peace processes across these types of conflict aim towards a peace agreement which documents a new political compromise addressed at eliminating violence.

Despite the differences in the conflicts there are “design features” common to many of the agreements. Thus, peace processes often move towards agreements which set out a constitutional framework defining access of different groups to power, coupled with protection of human rights through bills of rights, human rights commissions, and new or reformed judiciaries, police (and other military/security forces), and criminal justice systems. The new arrangements for holding power in some cases are aimed at moving from a failed state or an undemocratic state to coherent and accountable political structures. In others they are aimed at including previously excluded minority groups in government in an attempt to address self-determination claims, through mechanisms such as territorial divisions of power and/or consociational forms of government. In each case human rights institutions are included, if at all, as part of a broadly liberal democratic package, tweaked by a group-rights dimension in cases of

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1. CHRISTINE BELL, PEACE AGREEMENTS AND HUMAN RIGHTS (2000). While some agreements are negotiated, in other cases, such as Kosovo and East Timor, the framework for the post-conflict stage was imposed through UN Security Council Resolutions.
  2. See Mary E. Mulvihill & George A. Lopez, *The Human Rights Dimensions of Peace Accords in Internal Conflicts: Insights for a Research Design*, paper prepared for the panel of *Do Good Things Go Together? Rights and Resolution* at the 43rd Annual Meetings of the International Studies Association, New Orleans, LA, 24 Mar. 2002 (copy on file with the authors). *Cf. also*, INTEGRATED NETWORK FOR SOCIETAL CONFLICT RESEARCH, STATE FAILURE PROJECT: INTERNAL WARS AND FAILURES OF GOVERNANCE 1955–2001 (2003), available at [www.cidcm.umd.edu/inscr/stfail/sfdata.htm](http://www.cidcm.umd.edu/inscr/stfail/sfdata.htm) (categorizing revolutionary wars and ethnic wars); WILLIAM ZARTMAN, *ELUSIVE PEACE: NEGOTIATING AN END TO CIVIL WARS* (1995) (categorizing centralist and regionalist types of internal conflict).

ethnic conflict. There are of course exceptions to this; some framework peace agreements sideline human rights issues, often for geo-political reasons (see Israeli-Palestinian Oslo and Interim Agreement).<sup>3</sup> However, for the most part, peace agreements make provisions for human rights protection.

This article aims to initiate discussion about the pressures which transitions from conflict exert on domestic human rights nongovernmental organizations (NGOs). This discussion emerges from a larger ongoing cross-jurisdictional study, and forms a preliminary summary of emerging insights. While all transitional situations are different, the common factors of internal conflict and a negotiated agreement, often with a human rights dimension, mean that while specific problems will differ there are some common issues for human rights NGOs.

The article begins by locating consideration of the relationship between peace agreements and human rights in what is asserted to be a complex transitional justice landscape. This context sets the scene for some of the difficulties of transition for human rights NGOs. The article then sets out in general terms the types of practical problems transitions raise for domestic human rights NGOs. These problems are illustrated using a number of examples and drawing on interviews with human rights activists and other nongovernmental actors, in particular from Northern Ireland. The issues raised have relevance for human rights organizations involved in transitional situations, for funders, and indeed for the negotiation and design of peace agreements themselves. It is argued that many of the practical issues which impact human rights NGOs have their roots in the broader conceptual dilemmas of transition, and in particular in the highly contested and visibly politicized role of rights discourse at such times. This article concludes by sketching out some possible responses to the issues which arise for a range of different actors.

### **A. The Difficulties of Transitions from Conflict**

One would expect the human rights nongovernmental organizations, who often played a part in ensuring that human rights provisions were inserted into a peace agreement's text, to have a primary role in ensuring monitoring and lobbying for implementation of the agreement's human rights commitments. Indeed, this role would seem crucial given the fact that the post-agreement terrain by mainstreaming human rights discourse will inevitably also subject it to new political pressures and difficulties. However, paradoxically, the very inclusion of a human rights agenda in an

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3. See BELL, *supra* note 1.

agreement creates a new and complex set of challenges which impact the effectiveness of human rights NGOs. These challenges often appear as practical. A peace agreement signals a dramatic change in the political and legal institutions and, if moderately successful, in the scale and nature of violent conflict itself. This affects human rights NGOs in all aspects of their work.

The types of issues and the players they must deal with change. Patterns of human rights abuse change, who is legally accountable may change, the legal basis for monitoring human rights abuse may change, the field of international and domestic human rights institutions, and of NGOs themselves, all may change. These shifts in turn can affect whether an NGO continues to exist, what mandate it works under, its priorities, its ability to recruit and retain staff, the types of intervention which it finds effective, its funding base, and its institutional capacity.

Many of these challenges are faced by civic society in general during transitions. Some of these difficulties are faced by human rights NGOs at times other than transition. But these difficulties often take on a particular complexion as regards human rights NGOs during times of transition, given the centrality of justice institutions to the transitional landscape. It is suggested that the conceptual complexities of the transitional justice landscape underlie and underwrite the practical difficulties which human rights nongovernmental organizations face in the aftermath of a peace agreement.

Human rights protections do not enter an agreement as a result of principled design and a clear cross-party commitment to implementing the normative demands of international human rights law. Human rights enter peace agreements when political elites agree to their presence. Political elites typically disagree over whether and how human rights standards apply during a conflict. The reasons why they agree to including human rights standards as part of a peace agreement are many and varied, evidencing a dialectical relationship between principle and pragmatism. A full description of the dynamics of this relationship is beyond the scope of this article, save to note that it results in part from a range of international pressures on domestic parties, which propel them towards a standard set of human rights institutions; in part from the need for compromise between domestic parties; and in part from changing notions of "self-interest" for local political elites with relation to human rights.<sup>4</sup> These reasons result in what can be argued to be a distinctive relationship between rights and politics in transitional periods.

The very inclusion of human rights provisions in a peace agreement

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4. *Id.*

places human rights issues at the center of ongoing debate and controversy as to what implementation of an agreement means and requires. Where political institutions collapse or reach stalemate through vetoes, human rights institutions may become the primary site of post-agreement tension around the meaning and direction of transition. Furthermore, human rights institutions may be the inevitable site of such tensions in any case. Ruti Teitel has argued for a transitional understanding of legal institutional reform, which sees such institutions as simultaneously “constituted by, and constitutive of” transitional change.<sup>5</sup> However, the movement of transition in a liberalizing direction cannot be presumed.<sup>6</sup> Opposing parties often push for particular institutional arrangements, precisely in order to pre-determine the direction and outcomes of transition.

Throughout a peace process, human rights NGOs, who by their very nongovernmental nature claim not to be “doing” government, must negotiate this difficult terrain. Central to the work of human rights NGOs is the notion of accountability.<sup>7</sup> The basic concept of human rights protection is that governments are accountable for upholding citizens’ rights, and that human rights NGOs have a particular role to play in ensuring that this accountability happens. This function is fairly clear cut in times of conflict and in times of peace. In times of transition, however, how to best achieve accountability is more contested and a series of related dilemmas emerge around how best to hold governmental power to account. Government and governance will be changing in fundamental ways, posing the question for human rights NGOs as to how they can best facilitate “human rights” change—when does the NGO demand flexibility in pursuing human rights claims before holding governments to account for what they have not (yet) achieved? This dilemma has been thoroughly interrogated with respect to how and when to deal with past human rights abuses—a particularly difficult issue for human rights NGOs.<sup>8</sup> However, it impacts more broadly on a range of dilemmas relating to legal institutional change. In making any move from adversarial critical positions as regards official processes, to constructive engagement aimed at addressing what might work, human

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5. RUTI TEITEL, *TRANSITIONAL JUSTICE* 6 (2000).

6. Teitel appears to make this presumption, *id.* at 5. *But see* Ruti Teitel, *Transitional Justice in a New Era*, 26 *FORDHAM INT’L L.J.* 893 (2003) (Teitel takes a more critical stance with respect to any assumption of a liberalizing direction to transition).

7. *See* Laurie S. Wiseberg, *Human Rights Nongovernmental Organizations*, in *HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION*, 373 (Bruce Weston & Richard Claude eds., 1992).

8. The literature is too extensive to deal with here, *but see, e.g.*, PRISCILLA HAYNER, *UNSPEAKABLE TRUTHS* (2001); *IMPUNITY AND HUMAN RIGHTS IN INTERNATIONAL LAW AND PRACTICE* (Naomi Roht-Arriaza ed., 1995); Stanley Cohen, *State Crimes of Previous Regimes: Knowledge, Accountability and the Policing of the Past*, 20 *L. & SOC. INQUIRY* 7 (1995).

rights NGOs must be careful not to abandon the very concept of accountability they seek to promote. NGOs have to learn how to co-operate without being co-opted.

Furthermore, the political context in times of transition is different from that of the conflict and that of peaceful liberal democracy. Crucially for human rights NGOs, implementation of the human rights commitments of peace agreements is not neutral as regards the parties to those agreements.<sup>9</sup> If the commitments deliver rights in practice, this signifies a re-allocation of power which is visibly political. If rights institutions are ineffective in addressing ongoing human rights abuses, it signifies a failure of an element of the peace agreement, again with highly visible political implications. In any case, human rights lobbying will be evaluated in terms of contested notions of what a peace agreement is designed to achieve. While enforcement of human rights commitments can be analyzed to always be "political" in a broad sense,<sup>10</sup> outside of transitions this politics is buried in legal processes and easy to deny. Post-agreement, political challenge operates in a new context. That context is one where a plethora of agreed human rights commitments and institutions are instituted over a short space of time in a divided and politicized community looking for winners and losers. In this context, human rights NGOs can be charged with explicitly and directly "doing politics."

What follows is an attempt to map some of the transitional issues which arise for human rights NGOs. The problems of transition often appear as a series of practical changes and challenges. In practical terms, human rights NGOs must deal with two types of changes: changes in the human rights issues to be addressed and changes in the players with whom to interact. These are considered in turn. The changes play out in resultant organizational difficulties, which are then considered using examples drawn particularly from Northern Ireland.

## B. Human Rights NGOs: Initial Definitions

Before moving to consider these interlocking sets of changes and difficulties, some definitions are called for. Human rights NGOs come in many shapes and forms. There are a number of ways to define such groups based on the degree to which their work addresses "human rights" issues, how

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9. Eva Bertram, *Reinventing Governments: The Promise and Perils of United Nations Peacebuilding*, 39 J. CONF. RES. 387 (1995).

10. See, e.g., Richard Rorty, *Human Rights, Rationality and Sentimentality*, in *ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES 1993*, 111 (Stephen Shute & Susan Hurley eds., 1993).

they self-define, and their modes of working or types of intervention; however, most commentators acknowledge the impossibility of definition.<sup>11</sup> Our own research has found a three-way categorization of groups, based on self-definition, to form a useful starting point in understanding and comparing human rights NGOs.

Most centrally, for the purposes of the study, there are human rights groups whose core mandate is the promotion and protection of human rights, as defined internationally.<sup>12</sup> They clearly self-identify as human rights groups first and foremost. These groups tend to be internationally networked, to have consultative status at the United Nations, or to be affiliated with a group with such status. They work on a range of issues often affecting a range of communities. They use characteristic modes of working such as monitoring, reporting, lobbying, and education. It is worth noting that even for “core mandate” human rights NGOs located in conflict situations, there are often quite different conceptions of the relationship of human rights work to the conflict, and different underlying motivations prompting activists to become involved in human rights work. For some NGOs, human rights advocacy is part and parcel of a larger struggle, for example, democratization. For others, it is a more straightforward project of accountability, such as exists in any society, but made more acute given the existence of violent conflict. These differences, which are often not evident during a conflict, may come to the fore during a peace process where they generate debate about the appropriate role for human rights NGOs in the new political climate.

Beyond this “classic” form, there are a range of other groups with varied connections to human rights. In a second category are “equality” NGOs, whose work is focused around the equality claims of a specific marginalized community, where the community is defined around an aspect of identity, such as gender, sexuality, ethnicity, disability, or age. These groups may be indistinguishable from core mandate human rights NGOs (which may not in

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11. See, e.g., STANLEY COHEN, DENIAL AND ACKNOWLEDGMENT: THE IMPACT OF INFORMATION ABOUT HUMAN RIGHTS VIOLATIONS (1995) (identifying different types of human rights discourse used); Felice D. Gaer, *Reality Check: Human Rights Nongovernmental Organizations Confronting Governments at the UN*, 16 *THIRD WORLD Q.* 389 (1995) (using a distinction between human rights with primary goals of monitoring and reporting of government behavior, and those with broader goals, but noting the impossibility of classification); Leon Gordenker & Thomas G. Weiss, *NGO Participation in the International Policy Process*, 16 *THIRD WORLD Q.* 543 (1995) (looking at function as basis for definition, noting the impossibility of an immutable definition); Paul F. Ramshaw, *Ethical Investment: Retail Ethics and Participatory Democracy?* 29 *CAMBRIAN L. REV.* 105 (1998) (noting impossibility of definition); Wiseberg, *supra* note 7 (drawing distinction between “ideal” or “exclusive” human rights NGOs, and NGOs with broader goals but which devote substantial resources to human rights struggle).

12. Cf. Wiseberg, *supra* note 7; COHEN, *supra* note 11.



practice be as inclusive as their mandate suggests) in their ways of working, but will self-define with primary reference to equality for a constituency from whom their main membership is drawn rather than to human rights.

In a third category are groups whose core mandate is something other than "human rights," but where the group sees human rights as either a sub-issue within their broader mandate, or a way of characterizing their work. This covers a broad range of very different groups, from those dealing with issues such as democracy or development, to single issue groups, such as campaigns against land mines or plastic bullets, or for adequate housing. Groups dealing with the needs of victims, or ex-prisoners, or refugees, can be included in this category.

This study focuses on the impact of transition on groups in the first category: "core mandate" human rights NGOs. The broader landscape of human rights NGOs, however, remains relevant to that focus in several ways. First, the proliferation of groups who could be described in some sense as "human rights NGOs" and the very difficulties of defining what constitutes a human rights NGO itself indicates an expansion in the human rights project. Human rights are increasingly broadly defined to cover civil, political, social, economic and cultural, and now a range of third generation "solidarity" rights. Furthermore, the perceived strength of rights claims as opposed to merely "political" claims, coupled with the international legitimacy of human rights discourse, means that "human rights" is increasingly seen as a useful label under which to do business.

This trend, which can be identified globally,<sup>13</sup> is often accentuated in times of transition where human rights discourse moves in a short space of time from being marginalized to being mainstreamed. Proliferation of "human rights NGOs" is one of the very changes which must be considered as part of the transitional justice landscape, and it is for this reason that self-definition has centrally been used in identifying "human rights NGOs" for this study. However, it should also be pointed out that the use of self-definition is also problematic in including as human rights NGOs groups who use the label "human rights" as part of an essentially "supremacist" paradigm which conflicts with human rights standards. This will be dealt with as also important to the transitional justice landscape.

## II. CHANGES IN THE ISSUES

A peace process and peace agreement often mark a distinct set of changes to which human rights NGOs must respond. While the general patterns are

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13. See Peter Van Tuijl, *Entering the Global Dealing Room: Reflections on a Rights-Based Framework for NGOs in International Development*, 21 *THIRD WORLD Q.* 621 (2000).

predictable, the precise issues arising are not, and cannot therefore be planned for. Human rights issues change over time in any jurisdiction, whether it is experiencing conflict or not. However, these changes will be dramatic in a jurisdiction experiencing violent conflict which embarks upon a peace process resulting in a cease-fire and a framework peace agreement.

### A. Changes in Patterns of Conflict Violence

Changes in patterns of violence produce changes in the human rights issues which must be addressed by human rights NGOs. The initial aim of a peace process is usually to get a cease-fire in which further negotiations can take place.<sup>14</sup> A cease-fire will change patterns of violence, and with it patterns of human rights abuse. These changes are often a result of attempts to limit the conflict to enable military players to come to the negotiating table, and to build confidence in the peace process. Some prevalent forms of human rights abuse, such as arbitrary killing, disappearances, and torture, will greatly diminish or disappear, and subsequently the peace process may begin to deliver structural changes that prevent other abuses, such as lifting emergency legislation or outlawing the death penalty.<sup>15</sup> Limits on the conflict will often be accompanied by independent monitoring, either of human rights abuses and/or the cease-fire itself.<sup>16</sup> As the process progresses, these types of changes will be consolidated and eventually confirmed and extended by a framework peace agreement aimed at institutionalizing structures aimed at ending the violent conflict.

However, the changes in conflict during a peace process are not one-way from more to less violent. Negotiations may bring particularly violent periods of conflict, as the South African conflict illustrated. Those involved in a process may attempt to make gains at the negotiating table by dramatic military actions away from it. Thus violence aimed at population transfer or consolidating power bases may be characteristic of this period. Those who stay outside the process to "outbid" those within may also embark on violent sprees aimed less at strategic goals and more at general political

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14. Not all peace processes follow this pattern. For example, in the El Salvador process, the human rights agreement preceded the cease-fire. See, e.g., HUMAN RIGHTS WATCH, *THE LOST AGENDA: HUMAN RIGHTS AND UN FIELD OPERATIONS* 13 (1993).

15. See, e.g., the preliminary agreements in the South African peace process, documented in BELL, *supra* note 1, at 46–47.

16. See, e.g., Agreement on Human Rights, 26 July 1990, El Sal.–FMLN, in *THE UNITED NATIONS AND EL SALVADOR 1990–1995*, 4 UNITED NATIONS BLUE BOOK SERIES 108–109 (1995), UN Doc. NO. A/44/971-S/21541; Comprehensive Agreement on Human Rights, 29 Mar. 1994, Guat.–UNRG, available at [www.incore.ulst.ac.uk/cds/agreements/pdf/guat13.pdf](http://www.incore.ulst.ac.uk/cds/agreements/pdf/guat13.pdf).

destabilization and maximizing division between communities. This strategy can result in violence which is more random and which targets broader sections of the community and in particular civilian populations. The project of monitoring human rights violations and/or violations of the cease-fire can become a critical project, taking up significant time and costs. The distinction between human rights monitoring and cease-fire monitoring can become unclear, with pressures towards "balancing" condemnation with relation to the different sides in the conflict, regardless of imbalances in who is actually using violence.<sup>17</sup>

The very existence of a peace process may also, paradoxically, increase the threat to human rights defenders. With political and military leaders being unable to be seen to attack their counterparts, targeting may shift to those perceived as promoting opposition agendas more generally. Thus targeting may be focused against those who are critical and effective, rather than those who are politically engaged or linked to violence. The murder of defense solicitor and human rights defender Rosemary Nelson after the Belfast Agreement in 1999 in Northern Ireland provides some evidence of this type of dynamic. In the very different context of post-Taliban Afghanistan, Caroline Moorehead has noted how aid workers "once respected as neutral players" have been made the target of attack by rebel armies whose presence blurs any distinction between war zone and zone of relief.<sup>18</sup>

The signing of a peace agreement will seldom herald the end of conflict, even in a relatively successful peace process. While violent manifestations of conflict may change, they rarely simply end. Little work has been done describing or establishing measurements of change in patterns of violence. The South African transition has a much clearer beginning and end than other transitions, and was successful in ending the apartheid conflict as then understood. However, the rise of violent crime and security responses to it, together with continuing political violence, for example in Kwazulu-Natal, poses the question of whether the conflict has ended or just mutated.<sup>19</sup> Furthermore, if the notion of violence is expanded,

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17. See HUMAN RIGHTS WATCH, *supra* note 14, at 13–35 (criticizing UN (ONUSAL) human rights monitoring in El Salvador for refusing to condemn government human rights abuses, under constraint of its mediation role).

18. Caroline Moorehead, *At the Limits of Aid*, 32 INDEX ON CENSORSHIP 148, 154 (2003).

19. Interview with Graeme Simpson, Executive Director, Centre for the Study of Violence and Reconciliation, in Johannesburg, S. Afr. (Aug. 2003) (citing CSVr's research as indicating that there has not been an increase in violence post-apartheid, but rather a change in violence perceived as socially functional and political, to violence as anti-social and criminal). See further, Brandon Hamber & Sharon Lewis, *An Overview of the Consequences of Violence and Trauma in South Africa (1997)*, available at [www.csvr.org.za/papers/papptsd.htm](http://www.csvr.org.za/papers/papptsd.htm); Brandon Hamber, *Have No Doubt it is Fear in the Land: An Overview of the Continuing Cycles of Violence in South Africa*, 12 S. AFR. J. CHILD & ADOLESCENT HEALTH 5, 5–18 (2000) (both dealing with patterns of post-apartheid

as Johan Galtung expands it, to “structural violence” involving denial of socio-economic goods such as food, housing, and education, the conflict may remain strongly in evidence, as South Africa also demonstrates.<sup>20</sup> Post-agreement old patterns of violence may linger, albeit to a lesser extent or in a mutated way. Yet, whether a human rights response is necessary, and what that response should be, may be less clear.

## B. Changes in Patterns of “Other” Violence

A peace process and agreement may change patterns of human rights abuses in other ways. Post-agreement, human rights abuses which were obscured by the dynamics of violent conflict, such as racist attacks or violence against women in the home, may increase, or at least become more visible.<sup>21</sup> Indeed, it is often difficult to quantify whether the end of the dominant conflict increases levels of “non-conflict” violence, or merely appears to. Cease-fires may create a space within which other forms of violence can be reported, by individuals to the authorities, or by the media. Alternately, diverse and new patterns of violence may well be the consequence of a society brutalized by a legacy of violence. Activists in Northern Ireland, for example, argue that crimes against ethnic minorities such as the Chinese community have increased post-agreement, and changed in their patterns.<sup>22</sup> Similarly, there have been suggestions that domestic violence has increased post-agreement.<sup>23</sup>

As the reactive priorities created by violent conflict fall away, they reveal a more diffuse landscape of human rights abuses. Changing patterns in violence and human rights abuses post-agreement create difficult choices

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violence); see also Brandon Hamber, *Dr Jekyll and Mr Hide: Problems of Violence Prevention and Reconciliation in South Africa's Transition to Democracy*, in *Violence in South Africa: A Variety of Perspectives* 349 (Elireza Bronman et al. eds., 1997) available at [www.csvr.org.za/papers/papjeck](http://www.csvr.org.za/papers/papjeck); Alex Butchart et al., *From Violent Policy to Policies for Violence Prevention: Violence, Politics and Mental Health in Twentieth Century South Africa*, in *Mental Health Policy Issues for South Africa* (Don Foster et al. eds., 1997) available at [www.csvr.org.za/papers/papbh&ab](http://www.csvr.org.za/papers/papbh&ab) (both papers making links between post and pre-apartheid violence); ADRIAN GUELKE, *SOUTH AFRICA IN TRANSITION: THE MISUNDERSTOOD MIRACLE* 45–66 (1999) (documenting the levels of violence and some of the causal factors during the transition).

20. JOHAN GALTUNG, *PEACE BY PEACEFUL MEANS: PEACE AND CONFLICT, DEVELOPMENT AND CIVILIZATION* 197 (1996).
21. See Jenny Pearce, *From Civil War to “Civil” Society: Has the End of the Cold War Brought Peace to Central America?* 74 *INT’L AFF.* 587, 591 (1998).
22. Interview with Patrick Yu, Director, Northern Ireland Council for Ethnic Minorities, in Belfast, N. Ir. (Jan. 2002).
23. Interview with Staff Member, Women’s Aid, in Derry, N. Ir. (Dec. 2002).

for NGOs and new human rights institutions over how to prioritize their interventions. In particular, there is a tension between extending mandates to go beyond the traditional “conflict-related” issues and the need for continued pressure around “conflict related” human rights abuses.

### C. New Constituencies, New Human Needs, and New Human Rights

The existence of the peace process may itself give rise to new human rights issues requiring attention from human rights NGOs. Victims’ needs, for example, frequently emerge or are articulated differently consequent to a peace agreement. While victims will have existed throughout a conflict, evidence suggests that often a cease-fire or peace process proves a cathartic moment, galvanizing victim responses. Emotions and needs which have been submerged during the conflict can be triggered both by an increasingly safe climate in which to talk about the experience of victimhood, and/or by the compromises of the peace process itself. Victims who had accepted their victimhood as a sacrifice to a larger goal may be forced to re-evaluate if this goal is not achieved in the political compromise. Similarly, issues such as prisoner release, or those responsible for the conflict being given a place at the negotiating table, may also cause such a re-evaluation.

Victim disillusionment with peace processes may go deeper than this. Pain which could be endured in a conflict situation as part of a common suffering may be harder to endure at conflict’s end, when it becomes clear that not everyone has suffered equally. In Northern Ireland, one of the most significant dimensions of the peace process has been the rise of a “victims agenda” and the emergence of a range of victims groups representing victim needs and conflicting victim perspectives on the peace process.<sup>24</sup> As Mike Morrissey and Marie Smyth note, the polarization of victim issues coincided with early release of prisoners; although they suggest that this perhaps “crystallized” rather than caused the polarization.<sup>25</sup>

Peace process mechanisms designed to deal with the past, such as truth commissions, will create new needs for NGO support, but also may themselves create new trauma. Brandon Hamber and Richard A. Wilson note that “nation-building discourses of truth commissions homogenize disparate individual memories to create an official version, and in so doing

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24. See, e.g., *Relatives For Justice*, available at [www.relativesforjustice.com](http://www.relativesforjustice.com); SAVER/NAVER, available at [saver-naver.rosa.ie](http://saver-naver.rosa.ie); Families Acting for Innocent Relatives, available at [www.victims.org.uk](http://www.victims.org.uk). Details of other victims organizations, available at <http://www.cain.ulst.ac.uk/issues/violence/victims/victimgroups.htm>.

25. MIKE MORRISSEY & MARIE SMYTH, *NORTHERN IRELAND AFTER THE GOOD FRIDAY AGREEMENT: VICTIMS, GRIEVANCE AND BLAME* 8 (2002).

they repress other forms of psychological closure motivated by less ennobled (although no less real) emotions of anger and vengeance."<sup>26</sup> Expecting victims to give up retributive desires in favor of reconciling narratives may not contribute to their "healing" at all. Furthermore, this new trauma may itself be considered a human rights abuse—provision for impunity is often accused of running counter to treaty-based and customary human rights law.<sup>27</sup> Resultant debates about the tensions between "justice and peace" or "impunity and reconciliation," have proved difficult for human rights NGOs.<sup>28</sup>

Other new constituencies may be created by the peace agreement, such as returned refugees and displaced persons, or those seeking return, and ex-combatants or ex-prisoners. These groups will have a spectrum of needs with human rights implications. The reintegration of refugees, displaced persons, ex-prisoners or ex-combatants into the reconstructing society raises issues around housing and land rights, socio-economic well-being, personal security, and discrimination.<sup>29</sup> Failure to address these needs may ignite the conflict in two converse ways. Either it may enable the conflict to continue through continued acts of violence against these groups, and/or these groups may themselves become involved in ongoing patterns of violence and human rights abuse as members of dissident groups, or through increased domestic violence, or organized crime. Human rights NGOs in the broadest sense, may be faced with choices over how far they should enter the service provision field and meet needs directly—for which funding will often be readily available—or the extent to which they should remain in an advocacy/campaigning role. The two will not always be compatible.

Finally, new human rights abuses may enter the field with the entry of peace-keepers and the international community itself. Problems of accountability of international personnel involved in governance more generally have emerged in Bosnia, and to a greater extent in the United Nations administrations in Kosovo and East Timor.<sup>30</sup> Problems of trafficking against women, sexual slavery and rape have all been well documented as issues that accompany armies, including peace-keepers.<sup>31</sup> International personnel

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26. Brandon Hamber & Richard A. Wilson, *Symbolic Closure Through Memory, Reparation and Revenge in Post-conflict Societies*, 1 J. HUM. RTS. 35, 36 (2002).

27. See, e.g., Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537, 2541–2551 (1991).

28. See references, *supra* note 8.

29. See, e.g., UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *THE STATE OF THE WORLD'S REFUGEES: A HUMANITARIAN AGENDA* 159–64 (1997).

30. See *CONFLICT SECURITY & DEVELOPMENT GROUP, KING'S COLLEGE, LONDON, A Review of Peace Operations: A Case for Change* (2003), available at [ipi.sspp.kcl.ac.uk](http://ipi.sspp.kcl.ac.uk) (in particular country reports); see also Joel C. Beauvais, Note, *Benevolent Despotism: A Critique of U.N. State-building in East Timor*, 33 N.Y.U. J. INT'L L. & POL. 1101 (2001).

31. See, e.g., INTERNATIONAL COMMITTEE OF THE RED CROSS, *WOMEN FACING WAR* (2001).

involved in human rights and humanitarian aid work do not emerge unscathed. As Moorehead notes, much of the money pledged to reconstruction in Afghanistan “has gone on paying salaries and on the international community itself”; whether true or not, “[r]umours of greed, exploitation and straightforward inefficiency abound.”<sup>32</sup> For domestic human rights NGOs, the holding of international actors to account is difficult legally, but also given capacity constraints, and the dependency of their relationship to international actors.

#### D. Changes to Who is Abusing Who

Who is abusing who may also change throughout a peace process and particularly on the signing of a peace agreement, both as a practical matter, but also as a technical legal matter. New territorial boundaries, in the form of new state or internal borders, can create new minorities, and/or establish what were armed opposition groups in power as state actors. The entity division in Bosnia Herzegovina into the Republika Srpska and the Federation of Bosnia and Herzegovina, in confirming new boundaries confirmed new minorities, who were more likely to experience exclusion, domination, and discrimination.<sup>33</sup> In the Israeli/Palestinian peace process, the creation of the Palestinian Authority (PA), with a degree of autonomy in certain areas, gave a governmental role to the Palestine Liberation Organization (PLO). Allegations of PLO abuses against Palestinians, such as the torture and murder of informers, had always pertained; however governmental capacity fundamentally changed the human rights picture. The holding of power and responsibility for matters such as policing, criminal justice, and detention, created a new spectrum of human rights abuses perpetrated by the PA/PLO, and an increased need and opportunity for traditional notions of governmental accountability to apply.<sup>34</sup>

#### E. Changes in What Can be Done about Human Rights Abuses

More technically, as conflict decreases, the international mechanisms for raising human rights concerns will usually change. The humanitarian law

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32. Moorehead, *supra* note 18, at 152.

33. See, e.g., INTERNATIONAL CRISIS GROUP: SARAJEVO, IS DAYTON FALLING? BOSNIA FOUR YEARS AFTER THE PEACE AGREEMENT (28 Oct. 1999) available at [www.monde-diplomatique.fr/cahier/kosovo/bosnie-icgoct99-en](http://www.monde-diplomatique.fr/cahier/kosovo/bosnie-icgoct99-en).

34. See, e.g., B'TSELEM, OSLO, BEFORE AND AFTER: THE STATUS OF HUMAN RIGHTS IN THE OCCUPIED TERRITORIES (1999) available at [www.btselem.org/english/publications/summaries/oslo\\_before\\_and\\_after\\_1999.asp](http://www.btselem.org/english/publications/summaries/oslo_before_and_after_1999.asp).

regime may become less clearly applicable, or clearly not applicable, and human rights norms more applicable, as treaties are signed and derogations lifted. A peace agreement and/or a change in regime often results in the undertaking of new international human rights commitments, including ratification of treaties. The Dayton Peace Agreement purported to incorporate thirteen human rights conventions into domestic law.<sup>35</sup> In South Africa the six main international human rights conventions have all been signed, acceded to, or ratified since 1994.<sup>36</sup> Even in Northern Ireland, where most of the major human rights treaties had long been ratified, the peace process saw the ratification of the Council of Europe's 1995 Framework Convention on National Minorities and the two 1977 Protocols to the 1949 Geneva Conventions on 28 January 1998, in the run up to the Belfast Agreement.<sup>37</sup> The move towards human rights law, while reflecting a move towards increased human rights standards, will often leave monitoring of non-state forces in unclear legal territory.

Furthermore, which legal regime applies to whom may be extremely unclear both in practice and in law. The very shifting of power through

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35. See generally Dayton Peace Accords, Annex 4: Constitution of Bosnia and Herzegovina, signed in Paris Dec. 14, 1995, Bosn. & Herz.-Croat.-Federal Republic of Yugoslavia; see also Dayton Peace Accords, Annex 6: Agreement on Human Rights, signed in Paris Dec. 14, 1995, Bosn. & Herz.-Republika Srpska (reiterates the commitment to the European Convention on Human Rights and its protocols, and the list of international human rights and humanitarian law instruments).
36. International Covenant on Economic, Social and Cultural Rights, adopted 16 Dec. 1966, G.A. Res. 2200(XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force 3 Jan. 1976) ratified by South Africa 3 Oct. 1994; International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976, Optional Protocols I and II acceded to 28 Aug. 2002) ratified by South Africa 10 Mar. 1999; International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 Dec. 1965, 660 U.N.T.S. 195 (entered into force 4 Jan. 1969), reprinted in 5 I.L.M. 352 (1966) communication mechanism recognized by South Africa 9 Jan. 1999; Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR 34th Sess., Supp. No. 46, U.N. Doc. A/34/36 (1980) (entered into force 3 Sept. 1981), reprinted in 19 I.L.M. 1027 (1984), substantive changes noted in 24 I.L.M. 535 (1985) communication mechanism recognized by South Africa 9 Jan. 1999; Convention on the Rights of the Child, adopted 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp., No. 49, U.N. Doc. A/44/49 (1989) (entered into force 2 Sept. 1990), reprinted in 28 I.L.M. 1448 (1989) ratified by South Africa 16 Jul. 1995 (Optional Protocol on Armed Conflict signed Feb 8 2002).
37. This was not acknowledged to be a peace agreement development.



gradual processes, and novel interim arrangements for administering peoples and territory, may produce governance which does not “fit” into the international law’s assumption of unitary states who sign treaty commitments. This is perhaps most dramatically illustrated by the new UN Interim Administrations in Kosovo and East Timor, where the accountability under human rights law of the United Nations, of any residual state, and of a range of other groups and nongovernmental actors who undertake de facto government and sometimes judicial or legislative functions, is unclear. However, this problem is not confined to UN administrations. In the Israel/Palestine peace process, post-Oslo, there was strenuous debate about the extent to which the Agreements had “ended occupation” and, with it, the applicability of the Fourth Geneva Convention 1949.<sup>38</sup> Relatedly, the ambiguous international legal status of the Palestinian Authority, coupled with questions over whether Israel remained an “occupier” in autonomous areas, meant that it was unclear who was responsible for human rights violations and indeed who, if anyone, could sign human rights conventions with regard to the autonomous areas.<sup>39</sup>

Most significantly perhaps, the role of advocating and monitoring human rights protections is also changed as new domestic remedies become available. A range of national institutions and domestic mechanisms are often established in a peace agreement in an attempt to prevent the human rights abuses of the past re-occurring in the future. These institutions create new issues and new lines of work for human rights NGOs, as discussed below (III). At the very least, using these mechanisms becomes necessary to exhaust domestic remedies en route to international human rights enforcement.

### III. CHANGE IN THE “PLAYERS”

Related to the changes in issues, are changes in the “players” with whom human rights NGOs must engage, both domestically and internationally.

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38. See, e.g., Eyal Benevinisti, *The Israeli-Palestinian Declaration of Principles: A Framework for Future Settlement*, 4 EUR. J. INT’L L. 542 (1963); Colm Campbell, *A Problematic Peace: International Humanitarian Law and the Israeli/Palestinian Peace Process*, in NATIONALISM, MINORITIES AND DIASPORAS: IDENTITIES AND RIGHTS IN THE MIDDLE EAST 39 (Kristen Schulze et al. eds., 1996); Paul Malanczuck, *Some Basic Aspects of the Agreements Between Israel and the PLO from the Perspective of International Law*, 7 EUR. J. INT’L L. 485 (1996).

39. See BELL, *supra* note 1, at 186.

## A. New Governmental Structures

As already discussed, peace agreement provisions for constitutional settlement will usually create new levels of government (for example, federal, confederal, provincial, and even city) with which NGOs must interact. This increases the numbers of politicians, bringing new personnel who may have new approaches to holding political power, and new layers of government to deal with. The new political dispensation may hold new political problems. Human rights work will no longer be related to regime change, but will represent an ongoing move towards accountability through emerging liberal democratic structures. Where a clear transfer of power has taken place, NGOs who once worked alongside opposition politicians and groups as part of a common project such as "democratization," will be faced with monitoring former colleagues and reconceptualizing the link between human rights and the political sphere.

"Old friends" are often surprised and very unwilling to be monitored, after all they were the "good guys" during the conflict. Whatever the motivation of human rights activists, politicians espousing human rights during conflict almost invariably see human rights as instrumental to power changes, often failing to think through the future consequences for themselves should they attain power. Luis Roniger and Mario Sznajder, in reviewing the long-term human rights implications of Southern Cone Latin American peace processes, have noted that a decade or more on, continued threats of instability and new human rights violations have been the consequence of a failure to implement human rights practices post democracy.<sup>40</sup> This failure occurred despite widespread acceptance of human rights language throughout the peace processes. The view of human rights advocacy as instrumental to regime change led such advocacy to falter post democratization.

Debates about the relationship between rights and politics, long the stuff of philosophical debate, will often come to the fore in the guise of popular debates over the place and role of human rights in the new order, and the relationship between civil society (including human rights NGOs) and the new government. South Africa again provides an illustration of how such debates can work to complicate and undermine the role of human rights NGOs. The consolidation of ANC power which took place after the second democratic elections led to assertions that the human rights agenda could now be forwarded by ANC politicians in power, and that the need for civic society and NGOs had subsided. Indeed, in a speech that brought this

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40. LUIS RONIGER & MARIO SZNAJDER, *THE LEGACY OF HUMAN RIGHTS VIOLATIONS IN THE SOUTHERN CONE: ARGENTINA, CHILE AND URUGUAY* 312 (1999).

to a head, Mandela—a “human rights”-friendly politician—made an unprecedented attack on NGOs, alleging that “many of our nongovernmental organizations are not in fact NGO’s, both because they have no popular base and the actuality that they rely on the domestic and foreign governments, rather than the people, for their material sustenance.”<sup>41</sup> This was to trigger ongoing debate as to the role and direction of civic society. Similar tensions emerged between the PLO/PA and Palestinian human rights NGOs. Key human rights activists soon found themselves detained by the PLO, and a tussle began over a draft basic law relating to NGOs. By 1999 an external audit of “rule of law” funding was used by a PA official to argue that human rights NGOs were working to an externally funded agenda and were corrupt, in what amounted to not only an attempt to undermine human rights NGOs, but also to detract from PA corruption.<sup>42</sup>

Where the agreement institutes newly democratic government and a legislature which purports to be accountable, entirely new forms of NGO intervention become possible and also necessary. The work of many human rights NGOs in South Africa post-transition had a clear focus on education and on assisting groups to access legislative processes. Matters such as proofing draft laws, ensuring the openness and accessibility of legislative processes, and public education, emerge as post-agreement issues and will require new skills and forms of intervention from NGOs. In particular, they may require a partnership approach with government which differs from the confrontational tactics of both human rights groups and opposition groups during the conflict.

However, other changes may impact on the ability to foster a “partnership” approach. The relationship between NGOs and the civil service will in all likelihood also be affected. Some agreements, such as that in South Africa, provide for reform of the civil service.<sup>43</sup> Reform aside, new layers of government often produce additional civil servants, and even if they do not, new politicians are likely to bring some new party-political appointments. This may enable new partnerships as NGO actors move into the civil service, as they did in South Africa. More negatively, human rights NGOs may find that their knowledge and expertise in terms of informal contacts, sources of information, means of effective intervention, and mechanisms for raising concerns, are virtually erased within a short time space.

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41. Report by the President of the ANC, Nelson Mandela to the 50th National Conference of the African National Congress, 16 Dec. 1997, available at [www.anc.org.za/ancdocs/history/conf/conference50/presaddress.html](http://www.anc.org.za/ancdocs/history/conf/conference50/presaddress.html); see further, SANGOCO/INTERFUND, *Does Development Have to be Democratic?: Community, Accountability and the Voluntary Sector in South Africa*, 2 DEVELOPMENT UPDATE (1998) (volume dealing with the debate around civic society in the wake of Mandela’s speech).

42. BELL, *supra* note 1, at 204 n.51.

43. See S. AFR. CONST. OF 1993, ch. 13, § 210 (Interim Constitution).

## B. New Human Rights and Justice Institutions

New legal and human rights institutions also provide new structures with which human rights NGOs must interact, as touched on above. National institutions for promoting and protecting rights are typically established to take on a form of human rights enforcement. Human rights NGOs will have to work out a relationship with these bodies, which often occupy a conceptually difficult space between governmental and nongovernmental spheres.<sup>44</sup> Peter Van Tuijl has noted that even when a national human rights commission is ineffective, its existence can open up space for NGOs to talk about human rights.<sup>45</sup> However, these national institutions, paradoxically, may prove difficult to engage with as turf wars and mutual fears over independence—of NGO and institution from each other, and of each from “government”—are worked out.

In Northern Ireland, the relationship between the new Human Rights Commission and human rights NGOs was a matter of internal and external debate. Some (particularly from the Unionist community) criticized the appointment of members from the main human rights NGO,<sup>46</sup> and later a report indicated that “there is some evidence that [the Commission] attempted . . . to detach itself a little from these individuals and organisations, in a sense being embarrassed of its connection.”<sup>47</sup> A similar wish to distance their work from that of NGOs was in evidence in the Truth and Reconciliation Commission in South Africa.<sup>48</sup> Rachel Murray, evaluating the Human Rights Commission in South Africa, has noted a tension between viewing a Commission as different from a human rights NGO, and therefore to be distanced from NGO activity, and viewing a Commission’s legitimacy as integrally connected to the strength of its relationship with human rights NGOs.<sup>49</sup> NGOs will usually

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44. For a critique of national institutions including examination of relationship to human rights NGOs, see INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *PERFORMANCE AND LEGITIMACY: NATIONAL HUMAN RIGHTS INSTITUTIONS* (2000).

45. Van Tuijl, *supra* note 13, at 623.

46. See HOUSE OF LORDS, HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, *WORK OF THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION; FOURTEENTH REPORT, 2002–03*, 14 (HL Paper 132, CH 142), available at [www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/132/2112801.htm](http://www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/132/2112801.htm).

47. STEPHEN LIVINGSTONE ET AL., *EVALUATION OF THE EFFECTIVENESS OF NATIONAL HUMAN RIGHTS COMMISSIONS: THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION WITH COMPARISONS FROM SOUTH AFRICA’S REPORT FOR THE NUFFIELD FOUNDATION, INTERIM FINDINGS OF RESEARCH 27* (Oct. 2003) (copy on file with the authors).

48. Interview with Brandon Hamber, former Manager of Truth and Reconciliation Unit, Centre for the Study of Violence and Reconciliation, Johannesburg, in Belfast, N. Ir. (July 2003).

49. Rachel Murray, *Lessons from the South African Human Rights Commission: An Examination of a National Human Rights Institution 30–32* (2003) (unpublished manuscript, on file with authors).

wish to play some role in ensuring the effectiveness of bodies such as human rights commissions, and this will involve testing their effectiveness by passing on concerns and liaising with them over interventions, while also critiquing their performance. The dual role of NGO as partner and monitor itself can lead to tensions between NGO and national institution. Where national institution members are also members of human rights NGOs, there may also be internal tensions for both national institution and NGO.

While national institutions offer the possibility of long-term improved human rights protection, in the short term they may not deliver much change at all and, in fact, may complicate an NGO's day-to-day work of addressing human rights abuses. Peace agreements which produce institutions as a result of negotiations seldom do so entirely coherently. Many different institutions may be provided for, such as in South Africa where there were six institutions established as "state Institutions Supporting Constitutional Democracy."<sup>50</sup> The mandates of different human rights institutions may overlap with institutions replicated at national and regional levels. In Bosnia, a Constitutional Court was provided, but also a Human Rights Commission, divided into an Ombudsman, with reporting powers, and a Human Rights Chamber, with investigation and decisionmaking powers. The Ombudsman, the Human Rights Chamber, and the Constitutional Court all had jurisdiction over human rights issues with unclear delimitation between them.<sup>51</sup> Further complicating this were the institutions at the entity level, such as the Federation Ombudsman, Federation Constitutional Court, Federation Human Rights Court (whose establishment was repeatedly opposed by the international community),<sup>52</sup> the Republika Srpska Constitutional Court, and Republika Srpska Ombudsman.<sup>53</sup> These institutions had different but overlapping mandates and different rules as to

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50. S. AFR. CONST. ch. 9. These institutions are: the Public Protector; the Human Rights Commission; the Commission for the Promotion of and Protection of the Rights of Cultural, Religious, and Linguistic Communities; the Commission for Gender Equality; the Auditor-General; the Electoral Commission, and the independent authority to regulate broadcasting.
51. BOSN. & HERZ. CONST. art. VI (providing for Constitutional Court); and Annex 6: Agreement on Human Rights, Dec. 14, 1995 (providing for Commission on Human Rights).
52. See, e.g., *Opinion On The Setting Up Of The Human Rights Court Of The Federation Of Bosnia And Herzegovina*, Venice Commission, 31st Plenary, Doc. No. CDL (1997) 021rev, available at [www.venice.coe.int/](http://www.venice.coe.int/); *Opinion On The Reform Of Judicial Protection Of Human Rights In The Federation Of Bosnia And Herzegovina*, Venice Commission, 41st Plenary, Doc. No. CDL (1999) 078, available at [www.venice.coe.int/](http://www.venice.coe.int/).
53. For Federation institutions, see FED'N OF BOSN. & HERZ. CONST. Ch. II, § B; ch. IV, § C(5). For Republika Srpska institutions, see REPUBLIKA SRPSKA CONST. ch. IX; Republic Srpska Government Law on RS Ombudsman, Banja Luka, Oct. 1999, available at [http://www.omnieurope.info/uk/gesetz\\_bosnia\\_reg\\_uk.htm](http://www.omnieurope.info/uk/gesetz_bosnia_reg_uk.htm).

who could access them, thus presenting a confusing set of choices for victims and activists.

NGOs may find that new institutions mean that it is unclear where to take a case, and that they have to pursue cases through several different fora simultaneously. While this may serve to clarify the role of new institutions in the medium-to-long-run, in the short-run it impacts not only negatively on the new institution, but also on the perceived effectiveness of the human rights NGO in terms of its own client base. In Northern Ireland and South Africa the broad mandate of the Human Rights Commissions where almost anything could potentially be framed as a "human rights" issue meant that both Commissions had to work out the boundaries between their work and that of other national institutions with rights mandates. Memoranda of understanding have been signed with a range of other statutory bodies, but not always in a timely or adequate manner. In Northern Ireland, for example, applicants to the Commission for financial assistance for human rights cases, who would have been entitled to legal aid in the absence of a Commission, found themselves bounced between the Commission and the Legal Aid Board because both had a criteria for funding which specified refusal of funds if there was another, better placed funding body.<sup>54</sup> This was not addressed by the relevant memorandum of understanding until three and a half years into the Commission's operation, and even then were charged as being ineffective.<sup>55</sup> In South Africa, memoranda of understanding were criticized for dealing with technical matters only and failing to encapsulate a clear strategic direction for the human rights commission.<sup>56</sup> Such memoranda are not always available publicly, or to the relevant NGOs.

New legal institutional provisions, as with new political institutions, may create new types of work. Peace agreements tend to provide a broad brushstroke approach to institution-building, leaving the details to be fleshed out in post-agreement negotiations. Thus, human rights NGOs may become involved in inputting to the design of bills of rights, or criminal justice systems, judicial reform, or public education around the new human rights protections and how to use them. A range of temporary bodies may be created with whom the NGO needs to quickly establish working relationships. In South Africa, the Constitutional Assembly with its different

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54. See NORTHERN IRELAND HUMAN RIGHTS COMMISSION, REPORT TO THE SECRETARY OF STATE REQUIRED BY SECTION 69(2) OF THE NORTHERN IRELAND ACT 1998, 21 (2001).

55. Memorandum of Understanding between the Northern Ireland Human Rights Commission and the Legal Aid Department for Northern Ireland (Sept. 2002) (on file with authors); See Murray, *supra* note 49 (noting that memoranda of understanding have been signed in South Africa with the so-called 'Chapter 9 Institutions').

56. See Murray, *supra* note 49, at 20.

committees, and in Northern Ireland, the Patten Commission on Policing and the Criminal Justice Review Group, provide examples.

Truth and Reconciliation mechanisms are another example of commissions with finite tasks and duration. NGOs' interventions will include lobbying around their remits before formation, interacting with them, and lobbying for or against the implementation of any recommendations they make. This type of work will often involve the NGO re-imagining its work and using its practical knowledge as to how human rights abuses are enabled so as to imagine the institutional reforms necessary for preventing them in the future. It represents a shift in emphasis from reactive advocacy work to pro-active lobbying and "academic" type work, which may draw the NGO into debates which are highly "political." This type of work is not always easy to create space for and requires some vision and leaps of faith for both the NGO and funders. However, it may be crucial not only to building the human rights dimension to a peace process, but also to facilitating agreement between opposing positions. In Northern Ireland, the Committee on the Administration of Justice's (CAJ) input in policing discussions forms a good example of both leaps of faith and positive outcomes from making those leaps.

The CAJ had long been engaged in lobbying for changes to policing as a response to human rights abuses. The context of the peace process made change more likely. As Research Officer Maggie Beirne noted:

After the republican and loyalist cease-fires were announced debates took place around the need to reform policing. These debates focused around polarities of "disband the Royal Ulster Constabulary (RUC)" to "do nothing it is fine already." CAJ decided at the end of 1994, beginning of 1995, that we should commission a piece of international comparative research to focus on how best to design police forces which conform to human rights standards as a useful contribution to the debate. However it took some time to get funding, ages to get researchers appointed, and a lot longer than we thought to do the work. In the meantime the peace process collapsed and no one was talking about policing. We worried about bringing out the report and it being a dead-letter, but we carried on regardless saying it is a useful piece of research and perhaps people will return to it. Eventually the report "Human Rights on Duty" was published at the end of 1997, which turned out to be just four months before the Good Friday Agreement was signed and reform of policing was included. We were then in the position of being really clear about what we wanted and impacting on debates. But in ways this was planned, and in ways the timing was accidental.<sup>57</sup>

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57. Interview with Maggie Beirne, Research and Policy Officer, Committee on the Administration of Justice, in Belfast, N. Ir. (May 2002).

In focusing on human rights concerns, the resultant report “Human Rights on Duty,” touched on issues key to broader debates of composition, training, legal and democratic accountability, police structures, and policing in transition.<sup>58</sup> In providing models of how change had been achieved in other situations it played an important role in shaping the Patten recommendations but, more than that, has since been widely used in many processes beyond that of Northern Ireland, such as East Timor, Guyana, Mozambique and Sri Lanka.

### C. Changes in the NGO landscape

A peace agreement may also be linked to changes in the human rights NGO landscape itself. Mainstreaming of human rights discourse may dramatically increase the number of human rights NGOs (using the term in its broadest sense), through new NGOs emerging, and through changes in the mandates of existing NGOs to include human rights issues or approaches. This may signal an abrupt *volte face* in prevailing hegemonies. The inclusion in a peace agreement of human rights discourse and mechanisms as “part of the solution,” can signal a dramatic shift from an environment where human rights NGOs were asserted domestically to be partisan, divisive and illegitimate, to one where they are seen as a “good thing.” However, use of the label “human rights” does not signify consensus over what human rights are, and the international law basis for defining human rights may be challenged by uninformed, or even overtly political or partisan, definitions. These are the problems of mainstreaming of human rights, rather than a problem peculiar to transitions. However, in transition, mainstreaming itself may happen quickly and dramatically, with emerging debates inextricably tied up with political struggles over the meaning of the Agreement.

For core mandate human rights NGOs who have existed throughout the conflict, the emergence of multiple groups which embrace the label “human rights” raises some difficulties. On one hand, the mainstreaming of human rights groups and the legitimizing of human rights discourse clearly constitutes success and the achievement of key goals. Human rights discourse may create an important space for diverse groups to engage with each other over the nature of core values. However, a coherent and informed vision of what constitutes “human rights,” some of the oppositional power of the discourse, and avenues of funding, may all be reduced or lost.

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58. MARY O’RAWE & LINDA MOORE, HUMAN RIGHTS ON DUTY: PRINCIPLES FOR BETTER POLICING—INTERNATIONAL LESSONS FOR NORTHERN IRELAND (1997).



One phenomenon post-agreement in Northern Ireland has been the new-found use of human rights language by a range of different “professionals” involved in civil society and in the new human rights institutions. Another phenomenon has been the increased use of human rights language by the Protestant/Unionist community, including groups and individuals who oppose the direction of the peace process and the Belfast Agreement. Ulster Human Rights Watch (UHRW) was formed after the Agreement, in opposition to it, with the aim of inputting to the bill of rights process. Their key demand with regard to the Bill of Rights is that it should prevent terrorists from entering government, and as a consequence prevent Sinn Féin’s participation in the power-sharing executive.<sup>59</sup> The group, which was predominantly Protestant/Unionist, grew out of The Long March, a grouping which represented victims of paramilitary violence who opposed the direction of the peace process and, in particular, prisoner release.<sup>60</sup> UHRW’s description of why they developed into a human rights group focused on the Bill of Rights, provides an interesting example both of the power of human rights discourse but also its malleability:

Politics is dirty, whereas when you talk about human rights the door is opened like that. People are beginning to realise that they must stand up for themselves and that they can do it without being ashamed under the title of human rights. . . . We have believed for many, many years, and in particular for the last three years, that a lot of pro-union people are totally against the peace process. They were encouraged to come into the system and participate in it from inside, under the process. Many pro-unionists decided to do that and have gone into the process and the process has gobbled them up. The people who didn’t join it were very vociferous and outside [the process] and they didn’t get anywhere anyway either. The answer would appear to be that you don’t get involved in the process unless it is right, but you don’t stand outside and be vociferous either. You actually do something positive as an alternative to what is there. . . . We took exactly that view; that human rights was the place to be, and that that place was in the process.<sup>61</sup>

New human rights issues will often result in new NGOs to address them. Furthermore, new human rights mechanisms themselves may create new forms of activism. In Northern Ireland, provision for an “equality” duty

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59. Press Release, Human Rights Watch, The Bill of Rights Proposed by the Ulster Human Rights Watch (UHRW): A Charter For Democracy (15 Feb. 2004) *available at* [www.humanrights.uk.net/Charter%20for%20Democracy%20or%20Terrorism%203.php4](http://www.humanrights.uk.net/Charter%20for%20Democracy%20or%20Terrorism%203.php4).

60. Interview with Bertie Campbell, Member, Ulster Human Rights Watch, in Lisburn, N. Ir. (Mar. 2002) (the Long March deliberately fashioned its strategy around imitating the 1960s civil rights movement march from Derry to Belfast, with a march from Portadown to Derry).

61. *Id.*

aimed at mainstreaming equality issues in governmental decisionmaking included a provision requiring public bodies to consult with potentially marginalized groups.<sup>62</sup> This completely changed the working practices of equality NGOs, giving them a whole new process to work with and expanding the size and importance of those NGOs. It also gave birth to at least one new equality NGO, the Coalition on Sexual Orientation (CoSO). The equality duty includes sexual orientation as a relevant category, and while NGOs in this area existed prior to the Agreement, the consultation around the role of the new Equality Commission saw the birth of a new umbrella organization, CoSO, formed as a meeting place for lesbian/gay/bisexual groups to formulate policy.<sup>63</sup> While in the past the problem may have been getting government to consult, the new equality duty has resulted in the new problems of making consultation effective.

Peace process funding may itself shape or create the NGO field, and its relationship with human rights. Some sectors may be funded more than others, funding may be more or less directive as to the relationship of sectors to human rights, and funders may make choices as to what types of human rights work they support, as discussed further below (III, E and IV, C).

#### **D. Changes in “International Players”**

Finally, international players may change. The most internal of peace processes has key international players, many of whom exert pressures towards human rights. These include, in particular, international human rights bodies, other states who may act as mediators or exert pressure for “human rights,” international organizations, international NGOs, international “human rights” figures, and funders. International human rights bodies with specific treaty responsibilities will have an ongoing mandate for involvement post-agreement. However, international NGOs and organizations may simply not have the expertise to address detailed reform of local police or constitutions, and may themselves have complicated internal processes for deciding whether to move into what are essentially new areas of work.

More politically controlled forms of human rights intervention may decrease or be diverted as human rights abuses decrease. Post-agreement states and international players significant to achieving the human rights

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62. See Belfast Agreement, 15 Apr. 1998, § 6 “Human Rights Safeguards and Equality,” ¶ 3; see also Northern Ireland Act (1998), ¶ 75 & schedule 9.

63. Interview with Barbary Cook, Spokesperson, Coalition on Sexual Orientation, in Belfast, N. Ir. (May 2002).

dimension of the agreement may view the conflict as solved, or be forced to place a conflict lower in their priorities.<sup>64</sup> The relevant individuals may merely get older, more tired, and walk away. In South Africa during the conflict, moral and financial support from other states for opposition groups, including those working on human rights issues, was seen as a way of legitimately supporting the anti-apartheid struggle; human rights support aimed at government, such as funding for training, was seen as inappropriate.<sup>65</sup> Once multi-party elections took place support was diverted to include governmental justice institutions.

International players may make more subtle shifts as regards human rights post-agreement. Individuals and states who raised human rights concerns and asserted the primacy of human rights protections to any solution to the conflict, may shift the focus of their interventions post-agreement to “preserving the agreement.” Indeed, it can and will be argued that “preserving the agreement” is the best way to protect human rights, as any return to war will collapse new institutions and escalate abuses. Paradoxically, this shift may mean that the international pressure which ensured that human rights were written into an agreement may lift post-agreement. Domestic attempts to essentially re-negotiate human rights commitments may be enabled by the disengagement of international players or by their willingness to barter human rights, by linking increased human rights protections to progress in other areas.

In Northern Ireland, during the negotiations leading to the Belfast Agreement, both the Irish and American governments asserted the centrality of human rights to “confidence building,” and this was key to the inclusion of a human rights stream within the negotiations.<sup>66</sup> However, when the IRA cease-fire collapsed in February 1996, both governments conditioned all-party negotiations to renewal of the cease-fire<sup>67</sup> and often appeared to condition addressing government human rights abuses on this as well. In addition to impacting “confidence building” this caused future negotiation problems for human rights. It undid attempts to reframe human rights issues

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64. See INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *LOCAL PERSPECTIVES: FOREIGN AID TO THE JUSTICE SECTOR* (2000) (noting the conflict hopping of donors and problems of sustainability).

65. *Id. passim*.

66. See, e.g., John Shattuck, *Key Note Address*, in COMMITTEE ON THE ADMINISTRATION OF JUSTICE, *HUMAN RIGHTS: THE AGENDA FOR CHANGE—HUMAN RIGHTS, THE NORTHERN IRELAND CONFLICT AND THE PEACE PROCESS* 17–22 (1995); see also Report of the International Body on Arms Decommissioning, 22 Jan. 1996, available at [www.cain.ulster.ac.uk/events/peace/docs/gm24196.htm](http://www.cain.ulster.ac.uk/events/peace/docs/gm24196.htm). Human rights measures began to be formally dealt with under the rubric of “confidence building” following the Report of the International Body on Arms Decommissioning that was chaired by Senator George Mitchell. The Report included some human rights issues in a section entitled “Further Confidence Building.”

67. BELL, *supra* note 1, at 60–61.

as cross-community issues related to good governance which it was reasonable to expect Unionists to accept, rather than merely “concessions to Nationalists” which could continue to be resisted as such.

International players may have a clearly political vision of why they support human rights during a conflict, for example because they want to support a particular community, which then impacts on whether and how they continue to support human rights issues post peace process. Human rights NGOs who are seen as key allies during a conflict may come to be seen as opponents even though articulating consistent positions over time. Short term international fluctuations in analysis of what is the current “problem,” impact on who is perceived as holding “solutions.” This can both help and hurt human rights activists at different points in a peace process.

### E. Changes in Funders and Funding

With a peace process and agreement, permutations of funders and patterns of funding will themselves change. The significance of funding to the NGO field already has been mentioned. Funders may stop funding a transitional jurisdiction altogether, shifting their attention to situations where more dramatic human rights abuses prevail. This appears to happen less in the short term than groups sometimes fear. However, as South Africa illustrates, changes in *how* funding takes place can be just as significant. Flexible funding during apartheid delivered outside normal “development” tracks and directed at civil society post-apartheid was rediverted to “normal” bilateral aid agreements with government. Assumptions that partnership agreements would ensure that the government continued to support civil society, were not always born out in practice, leading to a move away from this approach further down the line.<sup>68</sup> Funders who remain committed in the medium term will look to local sustainability for the future, and in turn prompt human rights NGOs to look for other long-term sources of funding, including service provision funding or governmental sources. Funders may impose their own notion of what the “real human rights problems” are post conflict, prompting shifts from civil and political rights to socio-economic

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68. Interview with Geoff Budlender, Acting Director of Constitutional Litigation Unit, Legal Resources Centre, in Cape Town, S. Afr. (Aug. 2003); Interview with Rupert Taylor, Professor, University of Witwatersrand, in Johannesburg, S. Afr. (Aug. 2003); Interview with Brandon Hamber, *supra* note 48; Telephone Interview with Gerald Kraak, Human Rights and Reconciliation Programme Executive, S. Afr., Atlantic Philanthropies (Sept. 2003).

rights which, while legitimate, may leave civil and political rights prematurely abandoned.

Conversely, a new range of funders may arrive as part of a peace process package. In internationally driven processes the international community will often work to jump-start civic society as a way of bolstering local "ownership" of liberal democratic structures which are culturally "foreign," as the cases of Bosnia and Cambodia, mentioned below, illustrate in different ways. International organizations may also see the NGO community as the only effectively functioning sector post-agreement, capable of being used as a cheap and speedy way to achieve service delivery.<sup>69</sup> In this situation, an unsustainable explosion of an NGO sector, entirely dependent on international funding, occurs. Often international notions of what civic society should look like mesh uneasily with local notions of what is worthwhile.<sup>70</sup>

New funders will often come with a pre-set agenda, which may or may not fit the pattern of needs. These packages are explicitly aimed at building the peace, but in so doing will work within notions of what it is that builds the peace, and what it is that undermines it. This may or may not lend support to human rights activism, but in either case conditions such support fluctuating and political notions of what it is that builds peace, rather than acceptance of the need for human rights monitoring as having an ongoing importance.

"Peace-building" may be defined by the peace agreement and this may skew priorities in problematic ways; for example, the failure of the Dayton peace agreement to address gender issues led to difficulties in funding gender issues, which although eventually addressed, proved difficult to overcome.<sup>71</sup> A "support the agreement" approach to funding can also mean that NGOs who are against aspects of the process (such as victims opposing prisoner release), or who do not have much to say about how their work relates to peace-building (such as NGOs representing minorities other than the "main" ones), may not benefit. This in turn can affect how groups approach and present their work.

Even where human rights activism is seen as key to "building the peace," funding policies may be problematic. In Cambodia, the UN

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69. JULIE MERTUS, *WAR'S OFFENSIVE ON WOMEN: THE HUMANITARIAN CHALLENGE IN BOSNIA, KOSOVO, AND AFGHANISTAN* 31–32 (2000).

70. *Id.* See also Steve Heder & Judy Legerwood, *The Politics of Violence: An Introduction, in PROPAGANDA, POLITICS AND VIOLENCE IN CAMBODIA, DEMOCRATIC TRANSITION UNDER UNITED NATIONS PEACE-KEEPING* 15 (Steve Heder & Judy Legerwood eds., 1996); INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 64 (arguing for a "beneficiary perspective" to aid).

71. Madeleine Rees, *International Intervention in Bosnia-Herzegovina: The Cost of Ignoring Gender, in THE POST WAR MOMENT: MILITARIES, MASCULINITIES AND INTERNATIONAL PEACEKEEPING, BOSNIA AND THE NETHERLANDS* 51 (Cynthia Cockburn & Dubraka Zarkov eds., 2002).

Transitional Administration for Cambodia (UNTAC), bolstered human rights NGOs as a way of combating what they saw as a cultural resistance to the concept of human rights and a threat to peace-building envisioned internationally as requiring a move towards liberal democracy.<sup>72</sup> International support for human rights led to some scepticism as to whether involvement in human rights NGOs represented internalized activism, or local opportunism aimed at fitting the image held out by UNTAC. Paradoxically, funding for human rights NGOs, coupled with international notions of what a good human rights NGO looked like, led to a situation where the very pressures supposed to ensure the internalization of core values became self-negating as local players presented what they thought international players wanted to see.<sup>73</sup>

#### IV. RESULTANT PRACTICAL PROBLEMS

The changes described above occur throughout a peace process, and are dramatically consolidated with a peace agreement. They in turn present a range of new overlapping challenges and problems for human rights NGOs. These issues appear to be practical, but are generated by the conceptual dilemmas of the transitional justice landscape, and in particular the nature of the transitional interface between politics and human rights.

##### A. Mandate Issues

First and foremost, a human rights NGO may face a question as to whether it is needed in the new context, whether it should stay open or should close. Institutions often work towards their own self-preservation but this is not always so, and not always a good course of action for an NGO. In South Africa, the United Democratic Front emerged in the late 1980s as a broad coalition of over 600 anti-apartheid civil, church, labor, and women's organizations and organized mass mobilization against apartheid as part of the pressure for a multi-racial elections. This organization took a conscious decision to dissolve in 1991 on the basis that its aims had been achieved with multi-party democracy and the election of the ANC (with whom it was closely allied) to government, even though some argued that its role could

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72. See Heder & Legerwood, *supra* note 70.

73. Cf. the harsh critique of David Chandler, arguing that there are inevitable anti-democratic tendencies to foreign-funded civic society, in DAVID CHANDLER, BOSNIA: FAKING DEMOCRACY AFTER DAYTON 135–53 (1999).

have mutated and continued to be valuable post-apartheid.<sup>74</sup> NGOs may disappear in ways more subtly related to transition. In Northern Ireland, the Centre for Research and Documentation (CRD) was formed in 1988 by Irish people who had worked in conflict situations elsewhere, particularly central America, to make links between Northern Ireland and these situations, based on a political analysis of the Northern Ireland conflict as having its roots in colonialism and denial of human rights. CRD was self-consciously located in West Belfast and saw its base as being the Republican (predominantly Catholic) community in which it was located.<sup>75</sup> CRD closed in 1998 just after the Agreement. While not ostensibly related to the peace process, on closer examination its closure had a clear relationship. In the words of a former staff member:

The organization was destroyed, not by the peace process but because the context changed so radically. . . . Once there was a transformation in the nature of the conflict, the way that we had situated ourselves changed so radically that I don't think it could be sustained in the same way. . . . A lot of the work that we did became mainstream. On one level it should have been viewed as a glorious opportunity to milk that in terms of resourcing, but the other side of that was that it was not at the cutting edge in the way it had been. . . . Another element was that there was a withdrawal from internationalism and I think, particularly in republican communities in the North, there had been a very explicit international element as part of the conflict. That's why there were solidarity murals all over the place and it just wasn't there after the peace process to the same degree. Part of that was because people were involved in much more complex political negotiations, but I think there was certainly a sea-shift in terms of our own base and in terms of what we were looking at—there was just less of a dynamic. We found it very hard to get money but I think if we had skewed the work we were doing we could have done it. If we had pretended that we were a development education organization (that sometimes we were) with an interest in the rest of the world, or if we had reinvented ourselves as a community relations organization that didn't have a more radical analysis of the conflict as part of our project, then we could have got funding.<sup>76</sup>

Slightly less dramatically, a human rights NGO will at least face questions about the relevance of its mandate, and undergo internal debates and external challenge as to whether or how that mandate should change. What generations of human rights abuses should be covered in the new

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74. JEREMY SEEKINGS, *THE UDF: A HISTORY OF THE UNITED DEMOCRATIC FRONT IN SOUTH AFRICA, 1983–1991* (2000); INEKE VAN KESSEL, "BEYOND OUR WILDEST DREAMS": *THE UNITED DEMOCRATIC FRONT AND THE TRANSFORMATION OF SOUTH AFRICA* (2000).

75. Interview with Robbie McVeigh, former Research Officer, Centre for Research and Documentation, in Derry, N. Ir. (Oct. 2001).

76. *Id.*

situation: civil and political, or also socio-economic? In South Africa the delivery of political power and new institutions of democracy delivered civil and political rights on paper at least. This immediately pointed to socio-economic rights as a primary focus of future concern, as was underwritten by the new Constitution's novel provision for such rights.<sup>77</sup> Other mandate questions include whether a new position should be taken on issues of self-determination with reference to the peace process. What territory should be monitored? What groups should be monitored? The state is the most obvious target of monitoring, but what constitutes the state? Should non-state groupings be monitored as well as the state? Armed opposition groups, some perhaps with official policing functions, international organizations with administrative functions (such as the UN), other NGO service providers, private companies, or even funders themselves, all of whom may have quasi-governmental functions, may need to be held accountable through monitoring. Monitoring these non-state groups will necessarily take place without the same clarity of applicable international legal standards as exists with reference to states.

Decisions both to change and to maintain a mandate are fraught with difficulties. In the Middle East, B'Tselem, a human rights NGO based within Israeli society with credibility internationally for monitoring human rights abuses in the Occupied Territories particularly during the first *Intifada*, continued its work after the Oslo agreements. By keeping a geographical mandate which included the occupied territories, it started to monitor the new Palestinian Authority, as well as Israeli Defense Forces.<sup>78</sup> Selective monitoring of Israeli forces but not Palestinian ones would have quickly led to challenges of partiality from the Israeli government, the Israeli public, and the international human rights community. However, monitoring Palestinian self-government, which itself was a product of Palestinian self-determination claims for a separate state, was also problematic for an Israeli NGO. While key Israeli human rights activists anticipated that Oslo would herald increased co-operation with their Palestinian counter-parts, many key

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77. S. Afr. CONST. ch. 2, §§ 26–29. Interviewees repeatedly stressed the importance of addressing socio-economic rights. Interview with Teboho Mpondo, Membership Officer, South African National NGO Coalition, in Johannesburg, S. Afr. (Aug. 2003); Interview with Dinah Maanda, Co-ordinator of Gender Project, Lawyers for Human Rights, in Johannesburg, S. Afr. (Aug. 2003); Interview with Graeme Simpson, *supra* note 19; Interview with Venitia Govender, former Director, Human Rights Committee, in Johannesburg, S. Afr. (Aug. 2003); Interview with Geoff Budlender, *supra* note 68.

78. See, e.g., B'TSELEM, *supra* note 34. The current mandate, which appears on the website, evidences a degree of compromise: "B'Tselem affirms the mandate as monitoring the activities of the Palestinian Authority affecting human rights," but states that "as an Israeli organization, the majority of its efforts is directed at violations committed by our government on behalf of all of us." Available at [www.btselem.org](http://www.btselem.org).



Palestinian activists viewed the need for most aspects of co-operation as at an end: at best unnecessary given the existence of several strong Palestinian human rights NGOs, and at worst, colonial and replicating occupation itself.<sup>79</sup> The territorial scope of the mandate remained the same, and in so doing the political import changed completely.

## B. Prioritizing

Even if the mandate does not change, priorities within that mandate will change. This will not be a once-off set of changes, but will reflect a constant need to remain relevant and effective in a rapidly changing and unstable political context. Changes in the human rights issues, new forms of abuse, new opportunities for addressing abuses, and changes in the actors, all prompt consequent changes in the way human rights NGOs work. New issues will require to be addressed, new relationships built up, and new types of intervention undertaken. New skill bases will be needed as work moves from advocacy to lobbying, from confrontation to partnership, and back again. Abrupt changes in patterns of conflict will require abrupt changes in the type of work that human rights NGOs do. Fundamental choices as to whether service provision will be an aspect of work may present for decision under the pressure either of new needs (such as the needs of refugees, victims or prisoners), or under the pressure of funders. A decision to move towards service provision will have an impact on other areas of work. As an activist from the Coalition on Sexual Orientation (CoSO) in Northern Ireland describes:

The concept of pure activism in the North has been completely neutralised by funders. This has led to the creation of service providers who were activists . . . service provision and activism do not merge. . . . You can make a future if you develop a training side but you lose your shock value.<sup>80</sup>

While CoSO provides briefings on equality issues, they made a clear decision not to undertake broader education work which they felt could eclipse all other work.<sup>81</sup>

The impetus of the peace process, together with other developments, may itself create a form of prioritization. The Pat Finucane Centre (PFC), a Derry-based human rights group operating within the Irish Nationalist

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79. Interviews with Israeli human rights activists (names withheld for confidentiality reasons), in Jerusalem (July 1999); Interviews with Palestinian human rights activists, in Ramallah and Jerusalem (July 1999).

80. Interview with Barbary Cook, *supra* note 63.

81. *Id.*

(predominantly Catholic) community found that some areas of work disappeared and other areas of work grew. Their conflict-focus on trying to stimulate cross-community engagement on human rights issues became unnecessary given that this dialogue was taking place relatively easily post-peace process and agreement. However, work with families whose relatives had been killed by security forces or by loyalists with alleged security force collusion dramatically increased. This was in part because judgements from the European Court of Human Rights had opened new lines of activism.<sup>82</sup> However, the peace process had also played a part, both in providing new mechanisms such as the Police Ombudsman's office, and by creating a particular space and a particular need:

The whole context of the cease-fire affected victims in both positive and negative ways. Positively, victims now feel more free to ask questions due to a lack of fear. Negatively, the entire nature of debate around policing and decommissioning which dominates the political developments emphasises to victims of state violence that their story has never been told. They are being left out of the picture while the RUC [Royal Ulster Constabulary] get the George Cross.<sup>83</sup>

The Belfast-based CAJ, who had played a key role in the mainstreaming of human rights in the Agreement, noted that to some extent the Agreement created its own set of priorities.<sup>84</sup> Accordingly, the aims and priorities of the organization had become more focused on the achievement of the human rights commitments in the Agreement. As one staff member put it: "there is a clear agenda which hopefully we contributed to creating, but that means we have a responsibility to address it; we can't just walk away from it; more importantly, it has created a whole new political space in which to have these discussions."<sup>85</sup> CAJ's response to the Agreement marked a partial shift from lobbying for changes to monitoring implementation of agreed upon changes. However, interestingly, CAJ also noted that the human rights changes had not in practice been as radical as had at first been thought, meaning that radical changes to mandate and focus had not been as central a feature of their own organizational planning as they had anticipated.<sup>86</sup> In particular, the CAJ noted

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82. *Jordan v. The United Kingdom*, no. 24746/94, Eur. Ct. H.R. 2001-III (unpublished); *McKerr v. The United Kingdom*, no. 28883/95, Eur. Ct. H.R. 2001-III (published); *Kelly & others v. The United Kingdom*, no. 30054/96, Eur. Ct. H.R. 2001-III (unpublished); *Shanaghan v. The United Kingdom*, no. 37715/97, Eur. Ct. H.R. 2001-III (unpublished) (all cases available at [www.echr.coe.int](http://www.echr.coe.int)).

83. Interview with Paul O'Connor, Project Co-ordinator, Pat Finucane Centre, in Derry, N. Ir. (Oct. 2001).

84. Interview with Martin O'Brien, Director, Committee on the Administration of Justice, in Belfast, N. Ir. (Nov. 2001).

85. Interview with Maggie Beirne, *supra* note 57.

86. Interview with Martin O'Brien, *supra* note 84.

that the resistance of the civil service to change had proved an obstacle in implementing the Agreement's human rights commitments.<sup>87</sup>

Again, attempts to prioritize reveal the changing politics of human rights activism in a transitional situation. In South Africa it is difficult to find human rights NGO monitoring of civil and political rights and issues such as death in custody, arbitrary execution, and torture despite the fact that these things clearly occur.<sup>88</sup> The explanation of a South African activist reflects not only the importance of socio-economic rights post-transition, but complex underlying assumptions about the relationship of human rights activism to conflict. When questioned about the civil and political rights gap in South Africa, he noted that in one sense "civil and political rights were quite well protected."<sup>89</sup> When challenged about ongoing issues of lethal force and torture he explained:

The socio-economic disparity is the biggest apparent problem, and one of the major consequences of that is crime. Beside AIDS, the issue which is probably impeding on our country the most, impeding investment and stopping tourism, is violent crime. I think you would find that the vast majority of Africans, black and white, including those who were heavily involved in the issue of the way in which the police used to do things, are so angry about the violent crime and how it is destroying the country that we are inclined almost to overlook and forget what is happening on that level. There is almost an attitude that these hijackers, these criminals, almost deserve what they get and that police need to take a hard line. . . . Prior to 1994 it was easy to identify the enemy and throw everything at them, because one was fighting for a just cause. . . . When I was with Lawyers Committee for Human Rights, if three robbers were killed we would have immediately called in witnesses . . . we were there to monitor and to call for an investigation and a prosecution. Now there is an acceptance that if these robbers were shot and they are armed, they deserved to get shot, . . . No-one is doing monitoring and it is amazing.<sup>90</sup>

### C. Funding Issues

Changes in the funding base will affect the priorities and even the existence of human rights NGOs, as has been touched on already. While these changes affect civic society in general, there are particular implications for

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87. *Id.*

88. The Centre for the Study of Violence and Reconciliation (CSV) provides a partial exception, in particular with its monitoring of the Independent Complaints Directorate's investigations of deaths in custody.

89. Interview with Brian Currin, former Director, Lawyers for Human Rights, in Belfast, N. Ir. (May 2002).

90. *Id.*

changes in the funding base for human rights NGOs. New sources of funding may need to be accessed for the new types of work, such as work in South Africa around socio-economic rights and issues such as HIV infection. Decisions will have to be taken as to what sources of new funding are appropriate for a human rights NGO—those explicitly tied to political projects such as the success of the peace process, those requiring service provision, or those which require matching government funds, may compromise independence, in particular with regard to advocacy work. Moreover, core human rights activity, such as monitoring, reporting, and lobbying may not easily fit into the “project” funding model which funders hold out. For an NGO, obtaining funding may involve a complex game of working within the funder’s notions of what is valuable, while trying to undertake quite different work which the NGO views as valuable. Julie Mertus notes in Bosnia a practice whereby local women became savvy about the aid process, adopting a “take the money and do what you have to do” approach.<sup>91</sup> As one activist in Northern Ireland put it, “When you get funding you need an exit plan—how do you use the funding to develop another new project?”<sup>92</sup> Reliance on international funding coupled with local suspicion over international agendas may play into the hands of political opposition to the work of human rights NGOs, as already illustrated.<sup>93</sup> Finally, funding patterns and funders’ ideas of what issues are important may mean that human rights gaps occur, such as around civil and political rights.

Funders may also cause organizational changes such as increased training, clearer line management, and fuller accounting processes, both directly by conditioning funding on them and indirectly by the technicality of their application processes.<sup>94</sup> This is not always valuable for local NGOs. Mertus documents how NGOs in Bosnia were routinely required to undergo “culturally inappropriate training” as a condition of funding.<sup>95</sup> Avila Kilmurray, the Director of Northern Ireland Voluntary Trust (NIVT), a major local conduit of peace process funding, noted how increased bureaucracy had made it harder rather than easier for smaller groups to get funding.<sup>96</sup>

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91. MERTUS, *supra* note 69, at 30; see also, Pearce, *supra* note 21, at 613–14.

92. Interview with Human Rights Activist, in Belfast, N. Ir. (Mar. 2002).

93. See Ian Smillie, *At Sea in a Sieve? Trends and Issues in the Relationship Between Northern NGOs and Northern Governments*, in *STAKEHOLDERS: GOVERNMENT-NGO PARTNERSHIPS FOR INTERNATIONAL DEVELOPMENT* 6, 13–14 (Ian Smillie & Henny Helmich eds., 1999).

94. Interview with Brian Currin, *supra* note 89.

95. MERTUS, *supra* note 69, at 29.

96. Interview with Avila Kilmurray, Director, The Community Foundation for Northern Ireland, in Belfast, N. Ir. (Mar. 2002) (The Community Foundation for Northern Ireland was previously called The Northern Ireland Voluntary Trust. Avila Kilmurray served as Director of The Northern Ireland Voluntary Trust prior to the name change.).

Key questions must be asked about funders' approaches to sustainability, and how funders should marry their own ambitions as regards human rights with locally perceived needs and notions of effective action. Many commentators have noted how international funding often fails to capacity build or to create self-sustaining groups.<sup>97</sup> Some have even argued that such funding shifts civic society in an anti-democratic direction by creating and sustaining groups who do not have to make their case to politicians or popular opinion.<sup>98</sup> This connects to a broader debate over the accountability of civic society itself, and suggestions that nongovernmental organizations have a "democratic deficit" which impacts their legitimacy and which requires remedy.<sup>99</sup>

However, the question must be asked as to whether core mandate human rights groups can or should aim to be accountable to a representative constituency, and if so, what this accountability would look like. While there are ways of popularizing campaigns, which human rights groups use, often the starting point is one of popular opposition. As Ian Smillie argues,

The problem for many NGOs is not a lack of accountability, but *balancing* accountabilities, and keeping the ultimate impact of their work at the top of the agenda. While it is the beneficiaries to whom the accountability is pledged, the greatest effort to explain, report and justify is usually made to the donor in the North, both individual and institutional.<sup>100</sup>

The question of accountability in turn has funding implications. Core mandate human rights groups, unlike some other elements of civic society, usually cannot look to government to resource its oppositional work. Indeed, one problem for human rights NGOs in obtaining funding is the fact that funders often will not have squarely addressed the tensions between civic society directions and the directions of elected politicians. In Northern Ireland, NIVT director Avila Kilmurray noted an increased difficulty in funding issues which were controversial, such as with abortion legislation, in a context of devolution of power to an elected Assembly.

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97. See, e.g., MERTUS, *supra* note 69.

98. CHANDLER, *supra* note 73, at 135–53.

99. See, e.g., Kenneth Anderson, *The Ottawa Convention Banning Landmines, the Role of International Nongovernmental Organizations and the Idea of International Civil Society*, 11 EUR. J. INT'L L. 91 (2000); Gordenker & Weiss, *supra* note 11; MERTUS, *supra* note 69; Julie Mertus, *From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society*, 14 AM. U. INT'L L. REV. 1335 (1999); SANGOCO/INTERFUND, *supra* note 41; Smillie, *supra* note 93; Van Tuijl, *supra* note 13.

100. Smillie, *supra* note 93, at 21 (emphasis in original). See INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *DESERVING TRUST: ISSUES OF ACCOUNTABILITY FOR HUMAN RIGHTS NGOs, DRAFT REPORT FOR CONSULTATION* (2003) for a more detailed discussion of the concept of accountability for human rights NGOs.

I would have held that one of the claims for NIVT's credibility as an independent funder came from the fact that in the 1980s we funded those groups that were blacklisted by government. We probably find it harder to do that now with local government coming out of the Good Friday Agreement. . . . In the 1980s you could say that we were doing it within a democratic deficit. When we actually have an elected democracy then taking independent action is less acceptable particularly when that elected democracy is itself still rather tenuous. People don't want to be seen to be undermining it, for the best reasons. So, for argument's sake, we would have funded groups around some of the abortion legislation debates. Taking that as an example, it is probably easier to do that in a situation where you have direct rule than in a situation where 99% of the [Northern Ireland] Assembly votes "no" about it, in that local politicians will then say, "who are you to oppose us when we are the elected representatives?"<sup>101</sup>

Human rights are likely to remain contentious during and post-transition. Studies have shown the "safe-aid" tendency of funders who consider some areas safer than others, even within the area of justice.<sup>102</sup> One study notes a South African beneficiary's observation that "donors neglect prisons and prosecutors and opt for 'safe courts and trendy police.'"<sup>103</sup> A study of NGOs in Central America similarly notes how the more "political" NGOs can be marginalized by larger donors, or made the subject of donor capacity-building projects.<sup>104</sup> Safe-aid approaches militate against hard-hitting advocacy work.

#### D. Personnel Issues

The changes in human rights issues and political context may manifest themselves in a series of personnel issues for human rights NGOs. The mainstreaming of human rights would seem to create the possibility of a broader based constituency from which to draw staff. However, in practice human rights NGOs may be more likely to face difficulties in staff recruitment. They may lose highly qualified leaders to the new political and legal structures. This happened particularly in South Africa where, post-elections, many able black lawyers moved into politics, private business, or national human rights institutions.<sup>105</sup> In combination with other factors this

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101. Interview with Avila Kilmurray, *supra* note 96.

102. See Smillie, *supra* note 93, at 21.

103. INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 44, at 41.

104. Pearce, *supra* note 21, at 612.

105. Cheyenne Church & Anna Visser, *Civil Society in Transition and the Role of Civic Forums* (INCORE ed., n.d.) (copy on file with authors); Interview with Geoff Budlender, *supra* note 68; see generally SANGOCO/INTERFUND, *supra* note 41.

had the side effect of leaving white people over-represented in the leadership of human rights NGOs precisely when they had to police the first majority black government. Interestingly, as time progresses, there is some evidence of a reverse trend with people, somewhat disillusioned with their capacity to effect positive change in government and civil service, returning to NGOs.<sup>106</sup>

Human rights NGOs may lose personnel to politics in a more general sense—not to political structures or parties, but to the changed politics of what it means to be a human rights activist in the new context. In the words of a former director of a human rights NGO in South Africa:

I felt that after 1994, due to the association that I had with the liberation movement and the new structures within the country, that it would be very difficult for me to absolutely objectively and honestly play the role that I had played prior to 1994 against the same people that were very much my colleagues and comrades. So I wasn't sure that my discretion would be completely honest and unfettered. The other consideration was that I felt that the particular position that I occupied in the new South Africa should be held by a person of colour, because I was concerned that the moment one started to take up difficult and contentious issues it would be very easy to discredit the view by a white liberal who was now shouting the odds, and that could undermine the message and the lobby. Plus I felt that the position should in any case be held by a person of colour.<sup>107</sup>

Human rights promoters have been likened to “moral entrepreneurs,” articulating a moral and ethical vision for society which is not yet accepted. Personal motivation for getting involved in this type of work usually relates to a vision of progressive social change. As human rights are mainstreamed those who see themselves as entrepreneurial in this way may themselves move to new agendas as representing a new dynamic for further change. Furthermore, if human rights mechanisms are not implemented, or inadequately established, the resulting “wasted time” of engaging in the bureaucratic game-playing required to demonstrate that they are not working effectively can be demoralizing. As one activist in Northern Ireland, commenting on the ineffectiveness of new human rights institutions, put it, “there is a real loss of direction, and a loss of the belief in the ability to transform anything at all.”<sup>108</sup>

Human right activists, like others, get old. Peace processes, even when successful, last many years. Life is short, and a fifteen-year-old cease-fire means a new generation with no experience of conflict or its abuses, and a

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106. Interview with Brandon Hamber, *supra* note 48.

107. Interview with Brian Currin, *supra* note 89.

108. Interview with Robbie McVeigh, *supra* note 75.

generation of young adults who remember it through a child's eyes. Many people get involved in human rights work through exposure to human rights abuses. As a consequence, new generations may direct their human rights energies towards the abuses that they see around them, and new areas of activism, such as environmentalism or anti-globalization, rather than building institutions designed to address a conflict which is a memory more than a lived experience. Human rights NGOs under pressure of work are often not good at institution building or preserving institutional memory, and, when work is going well and evolving organically around clear human rights violations, will not see the need for organizational development, or will not have time or funding to undertake it. Personnel changes may lead to an organization having to re-invent itself, not knowing why it took certain actions in the past, and losing the experience of its own trial and error as regards effective interventions.

Increases in personnel also have management implications for an organization. Organizations which were dependent on voluntary contributions, both financial and in kind through volunteer staffing, move to a system of paid workers. Those with organizational history and evidenced long-term commitment to the issues can lose out to paper qualified NGO professionals whose commitment is questioned. Staff and management lines between volunteers which were flexible and relatively flat managerially, will need to be made more hierarchical with clearer management roles emerging, possibly causing new organizational tensions.

### **E. Inter-Organizational Issues**

Inter-organizational issues may also impact the work of human rights NGOs. These changes can be positive. In Northern Ireland, the Agreement's human rights mechanisms have enabled new inter-communal relationships. In particular, the Equality duty and the Bill of Rights project have generated some broad-based, rainbow coalitions across sectarian and other divides, most notably an Equality Coalition and an Ad Hoc Bill of Rights Consortium. The Bloody Sunday Trust, established to lobby for justice for the relatives of those killed by British Soldiers in 1972, noted that it was easier to engage in cross community dialogue since the peace process and the establishment of a new Bloody Sunday Inquiry.<sup>109</sup> Similarly, the Bogside Resident's Group, a group from a Nationalist/Republican community who oppose "Apprentice Boys" (Protestant) marches through their district, noted

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109. Interview with Patricia McBride, Manager, Bloody Sunday Trust, in Derry, N. Ir. (Jan. 2002).



the positive impact of the peace process on how they mediated the rights issues at the center of this marching dispute. One activist argued that as a result they:

were more committed to a long term resolution of the [marching] issue. We know this is about relationships between communities, it is about people's rights. So it is not about some sort of victory, it is about trying to come out with a win-win situation for everyone . . . the fact that there is a political process there encourages groups like ourselves to try for a similar situation where you can actually see that a negotiation process can work. . . . The process has given us space to engage with people within the unionist community. Ten years ago we would not have got that, but more and more people within the Unionist community are willing to become engaged and to talk about issues.<sup>110</sup>

However, more negative inter-organization issues can also emerge. The expanding field of groups operating under the human rights banner may create competition for funding. Often more significant to the work of core mandate human rights NGOs is the emerging struggle over the meaning and content of "human rights work." As everything becomes "human rights" so the term loses the power it once had. Core mandate human rights NGOs will want to avoid categorizing other groups as "proper" human rights NGOs or not, but similarly will want to maintain a notion of human rights as based on international standards. Accordingly, embracing groups who raise human rights concerns in ways that are antithetical to human rights principles, for example, because they are being used to underwrite supremacist/racist claims or who are explicitly politically aligned, will be problematic. However, opposing these groups and articulating why may be itself inappropriately political, may undermine a move towards human rights discourse which can be worked with, and may open groups up to accusations of rivalry, possessiveness, and control.

Within and between organizations who worked together during the conflict, relationships which seemed well cemented may come under strain post-agreement. These strains cut across relationships in many different ways, and, it is argued here, must be understood as reflecting structural problems rather than merely inter-personal ones. The Israeli/Palestinian conflict provides an example of the cross-cutting currents whereby the impetus for organic contacts and friendships between Palestinians and Israelis supportive of Palestinian human rights was removed, through the changing nature of activism and through the political re-situating of the meaning of cross community relationships. During the first *intifada* radical

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110. Interview with Donncha MacNiallais, Spokesperson, Bogside Residents Group, in Derry, N. Ir. (Jan. 2002).

Israeli activists and lawyers worked in partnership with Palestinian activists and lawyers around a range of issues, particularly when recourse to Israeli courts was needed. However, the structures of Oslo removed the need for much of this co-operation. For example, Israel's reduced use of administrative detention reduced the need for co-operation over legal challenges to it; other issues such as family reunification were adjudicated post-Oslo to be beyond the jurisdiction of the Israeli High Court.

Similarly, co-operation between Palestinians in occupied territories and Palestinians or Arab Israelis within pre-1967 borders also became more difficult after Oslo. Lisa Hajjar notes the "green line mentality" whereby Palestinians within pre-1967 boundaries and Palestinians within occupied territories saw little reason to cooperate.<sup>111</sup> Coupled with this, the provision in the Oslo accords for Norwegian funded "people-to-people" projects aimed at building relationships between Israelis and Palestinians also changed the political meaning of Israeli/Palestinian relationships. Some activists (both Palestinian and Israeli) viewed people-to-people contacts as bolstering Israeli attempts to "normalize" occupation through the interim accords and "paying Palestinians to play at peace."<sup>112</sup> Groups whose work had focused on building up contacts deliberately changed direction, while other groups whose commitment to such contacts, and indeed to the peace process, was tenuous, applied for funding.<sup>113</sup>

## V. TRANSITIONAL JUSTICE REVISITED: THREATS AND OPPORTUNITIES

The discussion thus far illustrates the increased difficulty of navigating the relationship between rights and politics in a transitional environment. However, any "before the peace agreement" and "after the peace agreement" analysis can be charged with being somewhat artificial. It bears reiteration that human rights NGOs have complex relationships with politics both during conflict and indeed in a more straightforward liberal democratic setting. However, in both situations there are fairly well-accepted methods of working for human rights NGOs which obscure this relationship and present it as largely unproblematic. Centrally, in both

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111. Lisa Hajjar, *Cause Lawyering in Transnational Perspective: National Conflict and Human Rights in Israel/Palestine*, 31 L. & SOC. REV. 473 (1997).

112. Interviews with Israeli human rights activists, *supra* note 79; interviews with Palestinian human rights activists, *supra* note 79.

113. Interview with People-to-People administrator (name withheld for confidentiality reasons), in Ramallah (July 1999).

situations what is perceived as the “political” sphere of operation and what is perceived as the “human rights” sphere of operation appears obvious. Difficult questions of the role of human rights within the broader political context, and the extent to which rights are prior values or instrumental to some other end, are left to academic theorists. During a transitional situation political, military, and human rights changes leave the rights and politics interface exposed and contested, placing questions about the relationship of human rights to conflict center stage. A constant interrogation of how “human rights” issues relate or not to “ending the conflict,” and whether they should, plays out in sub-issues of what human rights issues are important post-agreement and what the relationship to the new political dispensation should be.

A peace process and peace agreement offer real and undeniable opportunities for improving human rights protections and reducing conflict. Most human rights NGOs recognize this and find creative ways of surviving a peace process, positively influencing it, and playing a coherent role as regards post-agreement peace-building. In Northern Ireland CAJ provides a good example of an NGO which maintained a monitoring and advocacy role that responded to the changing patterns of conflict while also using its expertise in human rights abuses towards contributing thought-out suggestions for structural changes aimed at preventing those abuses. A key dynamic was the organization’s ongoing internal strategizing as to how the peace process might enable change, and how human rights issues could be inserted into a peace process then framed around a clash of sovereign aspirations. Public debate was also an important element of the strategy. The organization held a conference in 1995 which produced a report entitled “Agenda for Change” which brainstormed five key areas where change was thought more likely as a result of the peace process: policing, criminal justice/emergency legislation, equality, bill of rights, and dealing with the past.<sup>114</sup> The first four of these were addressed in the eventual Belfast Agreement.<sup>115</sup> In the area of equality, CAJ work focused on nurturing an equality coalition which included representatives from Protestant, Catholic, and a range of other marginalized communities. This group demonstrated how equality issues cut across the traditional Protestant/Catholic division, and in so doing contributed to the implementation of a new equality duty. Through both the substantive change pushed for and the methods of lobbying, the CAJ was able to use the concept of human rights to provide

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114. COMMITTEE ON THE ADMINISTRATION OF JUSTICE, *HUMAN RIGHTS: AGENDA FOR CHANGE: HUMAN RIGHTS, THE NORTHERN IRELAND CONFLICT AND THE PEACE PROCESS* (1995).

115. For detailed discussion of why the “right to truth” was not included see Christine Bell, *Dealing with the Past in Northern Ireland*, 26 *FORDHAM INT’L L.J.* 1095 (2003).

substance to what “conflict resolution” might look like. In proffering institutional change which offered practical non-violent avenues for dealing with issues at the heart of the conflict, these strategies turned the oft-asserted clash between principle and pragmatism on its head.

There are also clear threats for human rights NGOs in the post-agreement environment. Throughout a peace process, and consequent to a peace agreement, a human rights NGO will in effect find itself in a change management situation forced on it by external forces. The pace of post-agreement change will be dramatic, and the direction and results of the process uncertain and unpredictable. There is often little the NGO can do to plan for these changes. Furthermore, the drama of the situation may mean that the time available for self-reflection as to the nature of the changes and how best to handle them is limited. At the very time when new opportunities present themselves, often reflecting the fruition of years of human rights campaigns, the NGO may find itself beset by internal strife with relationships and coalitions forged in the darkest days of the conflict imploding.

Human rights activists do not stand outside of the conflict immune to its human cost, indeed often they are particularly immersed in it. Personal issues of burn-out, stress, trauma, and illness may emerge with human rights defenders as with other conflict victims, compounding organizational problems. Quarrels over mandate, priorities, the relationship of the work to the political context, funding, salaries, corruption, and leadership may turn what appeared to be a highly functional and effective NGO into an apparently dysfunctional one. The structural causes can be left unanalyzed in the downward spiral of inter-personal recriminations accompanied by flight of funders. One final point to note is that all this applies when the peace process is relatively successful. Where the process is unsuccessful, human rights activists reeling from the above changes will find themselves plunged into reactive work, and often particularly under physical attack, not least because they have played a more visible “political” role during the process. The destruction of human rights NGO offices by the Israeli Defense Forces upon the break-down of the Oslo Middle East peace process stands as evidence.

## VI. CONCLUSIONS

The opportunities and dangers of transitions for human rights NGOs suggest a number of initial responses for both human rights NGOs and those who would support them in funder or academic communities. First and foremost, all those actors concerned with human rights protection, internal and external, should recognize that a peace process contains both opportunities and threats for the protection of human rights. It should be recognized that

many of these opportunities and threats cannot be appropriately planned for, and that difficulties and mistakes are inevitable. Accordingly, perhaps the best human rights NGOs can do is to have an open approach to their mandate and priorities which enables flexibility. They can perhaps do little more than to build internal planning processes which enable them to be self-reflective about their role and what they can achieve in a peace process context. This involves anticipating possible opportunities and problems and creating time and space to step back to evaluate “the big picture.” Funders and other external actors also need to be particularly sensitive to the problems for human rights NGOs in transition. The risks for funders are huge, but often are less so than for actors on the ground. Funders should recognize the complexities of the transitional landscape for human rights work, and that this will pose strain on human rights NGOs. Funders and other external supporters of human rights NGOs should recognize the long-term nature of the peace-building project, and that walking away from it may undo gains, with consequences for any peaceful settlement. Apparent NGO “disfunctionalism” should not result in quick withdrawal of funds, but assessment of the further support necessary.<sup>116</sup> Both NGOs and funders should continue to recognize the importance of ongoing monitoring of both civil and political rights post-transition, and that the need for such monitoring will not be negated by regime change, even to the most “human rights friendly” government.

The above study also indicates that legal developments could assist the implementation of human rights protections. First, further development of the “Fundamental Standards of Humanity” could assist monitoring by bridging the transition gap between human rights and humanitarian law which arises as conflict wanes.<sup>117</sup> Furthermore, some of the difficulties

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116. Cf. Michael Shifter, *Weathering the Storm: NGOs Adapting to Major Political Transitions*, in *MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD* 337 (Ford Found. ed., 2000).

117. See *Advisory Services In The Field of Human Rights*, U.N. ESC, Comm’n on Hum. Rts., 54th Sess., Agenda Item 17 & Add. 1, U.N. Doc. E/CN.4/1998/97 (1998); *Promotion and Protection of Human Rights: Fundamental standards of humanity, Report of the Secretary-General submitted pursuant to Commission resolution 1998/29*, U.N. ESC, Comm’n on Hum. Rts., 55th Sess., Agenda Item 17, U.N. Doc. E/CN.4/1999/92 (1998); *Promotion and Protection of Human Rights: Fundamental standards of humanity, Report of the Secretary-General submitted pursuant to Commission resolution 1999/65*, U.N. ESC, Comm’n on Hum. Rts., 56th Sess., Agenda Item 17, U.N. Doc. E/CN.4/2000/94 (1999); *Promotion and Protection of Human Rights: Letter dated 30 March 2000 from the head of the delegation of Sweden to the fifty-sixth session of the Commission on Human Rights, addressed to the Chairman of the Commission of Human Rights*, U.N. ESC, Comm’n on Hum. Rts., 56th Sess., Agenda Item 17, U.N. Doc. E/CN.4/2000/145 & Res. 2000/69 (2000); *Promotion and Protection of Human Rights: Fundamental standards of humanity, Report of the Secretary-General submitted pursuant to Commis-*

around the relationship between international NGOs and local human rights NGOs could perhaps be progressed through codes of practice aimed at integrating beneficiary perspectives into funding decisions.<sup>118</sup> Funders should examine their relationship to those funded, recognizing that funders do not stand outside the conflict but shape priorities, adopt particular analyses of conflict resolution which local players interact with, and even create and shape the field of local players itself. Finally, institutional reform in times of transition remains relatively little explored. Further comparative studies on human rights commissions, change in policing, criminal justice reform, and judicial reform are vital. Conflict situations have often evolved vibrant and transnational civic groups. Paradoxically, during a peace process the very specificity of negotiations often localizes issues, even for a civic society with a transnational approach and international networks. As a consequence, “legal transplants” are often the result of imposition by international mediators.<sup>119</sup> Working towards transnational interchange which facilitates civic society to fashion “legal transplants” in an organic and creative way would not only stand a better chance of producing effective institutional change, but could prove a useful solidarity tool during the particularly dark days which occur in any peace process—days which can crush hope in a way which outright conflict did not.

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*sion on Human Rights decision 2001/112*, U.N. ESC, Comm’n on Hum. Rts., 58th Sess., Agenda Item 17, U.N. Doc. E/CN.4/2002/103 (2001); see also Jean-Daniel Vigney & Celia Thompson, *What Future for Fundamental Standards of Humanity?* 82 INT’L REV. OF THE RED CROSS 917, 917–38 (2000).

118. See, e.g., INTERNATIONAL ALERT, CODE OF CONDUCT: CONFLICT TRANSFORMATION WORK (1998) available at [http://www.international-alert.org/pdf/publA/coc\\_full.pdf](http://www.international-alert.org/pdf/publA/coc_full.pdf); SANGOCO/INTERFUND, *supra* note 41, at 69–79; Smillie, *supra* note 93, at 26.
119. See Mertus, *supra* note 69.