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Parlevliet, M.

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Briefing Note: Human Rights and Conflict Transformation

Michelle Parlevliet, PhD

I. Introduction

1. The aim of this note is to provide a summary of key arguments relating to the link between human rights, prevention and conflict transformation (including conflict recurrence and post-conflict criminal violence, ie transmutation and transformation of violence over time). It seeks to inform efforts by the Special Rapporteur (SR) on the Promotion of Truth, Justice, Reparation and Guarantee of Non-Recurrence to advance conceptual and practical work on prevention as part of his mandate on non-recurrence. In the context of this note, 'prevention' in the context of this note is primarily understood as relating to the prevention of violent, destructive conflict. Submitted with this note is also a bibliography of selected readings on human rights and conflict transformation.
2. The note first provides some general information on the notion of conflict transformation. It then sets out three key arguments in the literature on contributions of human rights to conflict transformation (human rights as enhancing analysis and understanding of underlying causes of conflict; human rights as providing standards, models and mechanisms for addressing causes and handling conflict non-violently; and human rights as informing the process of addressing and transforming violent conflict). It subsequently summarises some insights on the transmutation of violence in times of transitions from war to peace, and briefly outlines important caveats when considering human rights in relation to conflict prevention and transformation. Discussion of the latter is included to pre-empt claims of naïveté and rose-tinted glasses about the potential of human rights and to ensure that this discussion and any future activities by the SR are grounded in reality.
3. This briefing note is not meant to provide a comprehensive overview of literature to date on the topic in focus. In particular, it does not include discussion on transitional justice as a form of peacebuilding and conflict transformation, given the assumed familiarity of the Special Rapporteur (and those who assist him) with this literature. For the same reason, the note excludes review of relevant UN documents. It also does not engage in conceptual discussion on the notion of 'prevention' as such. It must further be noted that discussion on human rights in relation to prevention and conflict transformation touches on many other areas of scholarship, policy and programming. This includes more general literature on conflict prevention; democracy as a form of prevention; the impact of social-economic inequalities; issues of natural resource management, including land distribution and reform; minority rights; the role of civil society in conflict prevention and conflict transformation, etc. While brief references to insights from such literature may be included, a more in-depth discussion thereof is beyond the scope of this note.

II. Conflict Transformation: an introduction

4. The term 'conflict transformation' has gained considerable traction since the late 1990s in relation to efforts to address conflict in divided societies. It reflects the insight that addressing such conflict in a sustainable and effective manner requires fundamental social, political and cultural change. Conflict in a divided society tends to be both protracted and complex, with dynamics that have developed over long periods of time. Issues of identity, security, access to the political process and to economic

resources and opportunities are generally at the core of such conflict, and compounding the situation are often weak state institutions. Relationships between different social groups tend to be highly polarised, characterised by mistrust, fear and enmity. Issues are defined in zero-sum, or win/lose terms, where one side's gain is perceived as another side's loss; opportunity and advantage for the one comes at the expense of others.

5. In contexts like these, 'conflict transformation' has been thought to be a more appropriate notion than terms like conflict resolution, mitigation, management, or peacemaking. It highlights that substantial change must take place at multiple levels (including the behavioural, attitudinal, and structural), and in a range of spheres, to transform (actually or potentially) violent conflict into peaceful processes of social and political change.¹ Thus, conflict transformation refers to the most comprehensive level of change in dealing with conflict. It may involve change within the broader socio-political context; change to fundamental social, economic, political or cultural structures in society; change in values and world-views; change of or within main actors; a re-framing or transformation of issues; and change in the dysfunctional nature of and communication styles within relationships.
6. The notion of conflict transformation relates, in part, to a distinction in the conflict studies literature between 'negative' and 'positive' peace² (Galtung 1969). The former refers to 'peace' understood as the absence of physical violence, while the latter defines peace in terms of achieving social justice, political equality, constructive co-existence between groups, mutual development and growth. In this regard, it is worth noting that efforts geared towards conflict transformation do not envisage or aspire to the eradication or elimination of conflict as a general social and political phenomenon, considering this an inevitable part of human rights and society; in other words, it distinguishes between 'conflict' and '*violent* conflict' and focuses attention on seeking processes and solutions to address the latter and to ensure that relationships, practices and institutions are developed that facilitate the channelling and handling of grievances in non-violent ways.
7. A third distinction that is relevant to conflict transformation is that between *direct*, *structural*, and *cultural violence* (Galtung 1969). The first refers to physical violence, committed by a specific, identifiable perpetrator against a victim. The second refers to situations where violence is perpetrated not by an identifiable person but indirectly through a system, i.e. situations where injustice, repression, and exploitation are built into the fundamental structures in society, and where individuals and groups are damaged due to differential access to social, political and economic resources built into a societal system. Finally, cultural violence refers to those beliefs, prejudices and norms relating to self and others that facilitate or condone both direct and structural violence against people. Transforming conflict involves addressing all three forms of violence.
8. Current thinking and practice regarding conflict transformation has in large part been informed by the work of scholar-practitioner John Paul Lederach.³ This includes the following key points:

¹ See H. Miall, O. Ramsbotham and T. Woodhouse, (1999), *Contemporary conflict resolution*. (Cambridge: Polity Press), pp. 21, 156-158; J.P. Lederach (1997), *Building peace: sustainable reconciliation in divided societies* (Washington DC: United States Institute of Peace), pp. 35-48. For a discussion of protracted social conflict, see E. Azar, (1986), "Protracted international conflicts: ten propositions." In Azar, E. and Burton, J. *International Conflict Resolution: Theory and Practice* (Sussex: Wheatsheaf), pp. 28-39; as well as Miall et al, pp. 68-91.)

² Johan Galtung, "Violence, peace, and peace research," *Journal of Peace Research* 6 (1969) 6 (3): 167-191.

³ Based on Lederach (1997); and Lederach (2005), *The Moral Imagination. The Art and Soul of Building Peace* (Oxford: Oxford UP). Drawn from concept note prepared for UNOGBIS by Michelle Parlevliet and Andries Odendaal, 2005 and 2006.

- 8.1. Given the complex and multi-layered nature of the change sought, transforming conflict is a developmental process: change is not a once-off event but a long-term process, which should be driven by a locally/nationally owned vision of a shared or inclusive future; transformation can only take place if those affected by conflict own the problems, processes and desired outcomes. This highlights the need to look for, build on, and strengthen local capacity for constructive change, and to sustain strategies and activities over a long period of time (ie think beyond 1-2 yr time frames but consider 3-5, 5-10, and 10-15 yr timeframes); short-term time frames are unrealistic and potentially dangerous.
- 8.2. Immediate problems in a given conflict-affected context can be viewed as ‘windows’ on larger, structural problems, as they are embedded in larger, more systemic factor and conditions. As a result, interventions must seek to be short-term responsive and long-term strategic: immediate problems are to be addressed in a way that is simultaneously oriented towards long-term change by considering the structural factors, patterns and relationships out of which such problems arise.
- 8.3. The design of specific interventions in key sub-systems of society (e.g. parliament, the security sector, education, health) presents a manageable way of working towards addressing root causes of conflict while having a short-term impact at the same time. (Sub-systems are institutions and social spaces established to order and structure political, economic and social life, and reflect the core structural realities in a society – interventions targeting this level can provide access for actions or strategies into the wider or underlying systems underpinning the functioning of society and organisation of the state.) At the same time, attention must be devoted to developing trust and building relationships horizontally (between key groups in society) and vertically (between the state and citizens), as conflict is an expression of the nature of such relationships and also feeds into them.
- 8.4. How immediate issues are addressed has the potential to impact positively on root causes or it can exacerbate them. Hence, it matters both what is done by way of conflict transformation (choice and substance of activity) but also how activities or interventions are undertaken. The process of implementation matters for both the legitimacy and sustainability of what is done.
- 8.5. In seeking to facilitate change, it is essential to look for key agents of change. Focus should lie on quality rather than quantity - who is involved (and how they are connected to others) matters more than how many are involved. In this regard, it’s particularly important to look for actors that have both vertical and horizontal capacity: the former refers to ability to move up and down between levels of authority (grassroots, middle level, top-level leadership), the latter to the ability to move horizontally across conflict lines, between communities/ groups.
9. By way of final comments to this section, it is worth noting that conflict transformation literature tends to make little if any explicit reference to human rights. Characterisations of ‘positive peace’ however suggest that the realisation of human rights – in terms of individuals and groups being able to exercise their rights and the state being accountable and responsive to its citizens – is integral to conditions of positive peace. In addition, the different forms of violence recognised in conflict studies literature are clearly relevant from a human rights perspective (Parlevliet 2010). The rights of an individual or group are violated by the state or abused by a non-state actor (direct violence, civil and

political rights); the rights of an individual or group are denied by the way society functions, the state is organised and exercises power (structural violence, civil, political, economic, social and cultural rights); the humanity and dignity of individuals or groups is denied, meaning they are not afforded the respect and treatment due to them as human beings and are instead subject to discrimination, exclusion and/or exploitation (cultural violence).

10. Finally, the way in which conflict transformation is conceptualised makes it difficult to assess whether and when conflict has been 'transformed' in a conflict-affected context. In fact, it is questionable whether one can ever speak of an 'end state' in transforming conflict, especially given the long-term nature of the changes sought and the structural conditions to be addressed in various realms (political, economic, social, etc.) in societies where large-scale political violence has taken place. As a corollary, it is difficult to establish in any 'hard', conclusive, empirical terms, the extent to which the protection and promotion of human rights facilitates the transformation of conflict and prevention of violent conflict. Instead, more conceptual and normative claims can be discerned in the literature as to how human rights may contribute to the transformation of violent conflict and its long-term prevention.
11. Three recurring claims are covered in the next three sections: that considering human rights deepens understanding of underlying causes of conflict (thereby facilitating better responses to such causes); that human rights provide standards, models and mechanisms for addressing causes and handling conflict non-violent (thus improving the substance of responses); and that they inform the process of addressing and transforming violent conflict (making the process of implementing strategies and responses, better).

III. Human rights as enhancing understanding and analysis of causes of violent conflict

12. Over time, it has been increasingly recognized that human rights violations do not only result *from* destructive conflict, but can also *give rise to* such conflict, both latent and manifest.⁴ Of course, conflicts are never mono-causal; a more precise formulation is thus that "human rights violations do not *cause* conflict in the strict sense of the word, but they *contribute* as part of a larger mechanism."⁵
13. Rights violations can trigger unrest and violence on the short-term (think of a police crackdown on an anti-government protest or outlawing of an important minority language), but also on the long-term when rights are denied over a sustained period of time. Apartheid in South Africa remains a prime example: the state's systemic oppression of the civil and political liberties of the majority of the population, combined with its restraints on their social, economic and cultural rights led to a long liberation struggle (1948-1994). The civil war in Nepal (1996-2006) had its origins in the sustained social, political, and economic exclusion of low caste groups, ethnic minorities, women and youth,

⁴ Such recognition has been more forthcoming in the human rights literature and policy documents than in conflict studies literature. Conflict researchers have focused more on investigating other factors in explaining the onset of civil war, such as economic underdevelopment (measured as a low GDP), regime type, regime transitions, ethnic groups, previous conflicts and natural resource dependency; see Kjersti Skarstad and Havard Strand, "Do Human Rights Violations Increase the Risk of Civil War?" *International Area Studies Review* 19, no. 2 (2016): 107-130

⁵ Skarstad and Strand, *op.cit.*, 111.

reflected amongst other things in an uneven distribution of land and prosperity and limited access to the political process.⁶

14. A 2007 study, based on a review of quantitative and qualitative literature, finds that proximate (i.e. short-term) causes of violent conflict are often linked to abuses of civil and political rights, while structural, underlying causes tend to be more associated with violations of economic and social rights. Discrimination and violations of social and economic rights create grievances and group identities that may generate civil violence under certain circumstances.⁷ The main finding of a thorough 2016 study is that violations of economic and social rights, and of physical integrity rights, increase the risk of civil war while violations of other civil and political rights (relating to empowerment of individuals and groups, for example) only play a minor role. It also finds some empirical support for the thesis that fulfilling civil and political rights, while violating economic and social rights, increases the risk of civil war.⁸
15. There has been considerable debate in the literature on the question of whether socioeconomic inequality constitutes a definite cause of violent conflict in and of itself. For one, it has been observed that such inequality does not necessarily entail human rights violations per se given the fact that there is no established right to equality of socioeconomic *outcomes*; what exists is a clear right to equal *access* to key opportunities and social services.⁹ It has further been noted that inter-group differences matter more than inequalities between individuals, which many scholars have focused on; research on horizontal inequalities has gained considerable traction in this regard. These are inequalities among identity groups, along four dimensions: socio-economic, social, political and cultural; these reinforce one another.¹⁰ Severe socio-economic inequalities are likely to make a group more prone to political mobilisation as they generate a grievance shared amongst most members of the group.¹¹
16. Economic differences between groups are widely considered relevant, especially together with political factors: “many researchers agree that politics –activities around, through, and with the state– can transform economic conditions into conflict-producing grievances and strategies.”¹² Issues of governance are thus crucial: the organization and functioning of the state largely determines who has access to matters such as employment, freedom of expression or religion, a fair trial, education, healthcare, or police protection – thus, which individuals or groups can access the resources and

⁶ Deepak Thapa, “The Making of the Maoist Insurgency,” in *Nepal in Transition*, eds. Sebastian Von Einsiedel, David M. Malone and Suman Pradhan (Cambridge: Cambridge University Press, 2012), 37-57; Drew Cottle, Angela Keys, “The Maoist conflict in Nepal,” *Australian Journal of International Affairs* 61, no. 2 (2007): 168-174.

⁶ Ibid; Oskar Thoms and James Ron, “Do Human Rights Violations Cause Internal Conflict?” *Human Rights Quarterly* 29, no. 3 (2007): 674-705, p. 695; and Julie Mertus and Jeffrey Helsing, “Introduction,” in *Human Rights & Conflict. Exploring the Links between Rights, Law, and Peacebuilding*, eds. Mertus and Helsing, (Washington DC: US Institute of Peace Press, 2006), 4-5.

⁷ Thoms and Ron, *op.cit.*, 683.

⁸ Skarstad and Strand, *op.cit.*

⁹ Thoms and Ron, *op.cit.* 691; see pg. 686-692 for a summary and discussion of literature on inequality as a cause of conflict, and Skarstad and Strand, *op.cit.*

¹⁰ Frances Stewart, ed., *Horizontal Inequalities and Conflict: Understanding Group Violence in Multi-ethnic Societies* (Basingstoke: Palgrave Macmillan, 2008); Arnim Langer and Frances Stewart, *Horizontal Inequalities and Violent Conflict: Conceptual and Empirical Linkages*, CRPD Working Paper no. 14, Centre for Research on Peace and Development. (Leuven: KU Leuven, 2013).

¹¹ Langer and Stewart, *op.cit.*, 4.

¹² Thoms and Ron, *op.cit.*, 691-692; on inequality as violation of social and economic rights, see 686-687; on economic inequality as a cause of conflict, see also Cecilia Albin and Daniel Druckmann. 2012. “The Role of Equality in Negotiation and Sustainable Peace.” In: P.T. Coleman and M. Deutsch (eds.), *Psychological Components of Sustainable Peace*, 131 Peace Psychology Book Series, DOI 10.1007/978-1-4614-3555-6_7. New York: Springer Science and Business Media (2012): 147.

processes required to address key concerns regarding identity, freedom, security, and welfare.¹³ One 2012 study observes for example that political and violent conflict in ethnically divided societies “has often been preceded by a failure on the part of the ruling majority to tend to minority requests for more equality and less discrimination in resource distributions.”¹⁴

17. In states with effective and legitimate institutions, people are likely to raise their grievances, both real and perceived, through ordinary forms of political action; their concerns may be handled through various peaceful means, including litigation, legislative reform, or administrative policy change. Yet when such avenues are absent or when institutions are weak, corrupt, politicized, or abusive, socio-political tensions around systematic discrimination, differential access, or curtailed freedoms can turn violent – especially when people’s expression of discontent or demands for human rights meet with repression.¹⁵ A history of repression or communal violence exacerbates this risk. Past levels of repression affect present government behaviour; political elites have been known to manipulate collective memories of suffering and abuse to mobilize their constituency for violence.¹⁶
18. The 2016 study referenced above indeed highlights ‘legitimacy’ as the central factor in explaining the extent to which human rights violations function as a conditioning factor for serious violent conflict. It argues that violations lead to a lack of legitimacy for a government (which then facilitates the creation of violent rebel groups and increasing support for such groups). This may explain why violations of economic and social rights may be such an underlying cause of conflict because protection of such rights constitutes a functional source of legitimacy. The latter also applies to physical integrity rights; violation thereof signals the government’s willingness to respond violently to opposition. Physical repression tends to harden and escalate conflicts.¹⁷
19. The above discussion highlights how human rights violations may be an important factor in the generation and evolution of destructive conflict. Failure to take this into account may well undermine efforts towards conflict transformation. Considering human rights focuses attention in analysis and action on underlying structural conditions that are pivotal in generating, escalating and changing such conflict over time. It especially underscores the need to address the role of the state, systems of governance, and issues of power; socio-economic inequalities; and other underlying causes. This is not to say that actions, policies, and attitudes on the part of state and government are solely responsible for violent conflict or the outbreak of violence. Other factors matter too, including opportunity structures, the choices made by non-state actors, demographic developments and the regional and international context. Yet clearly “these deeper questions of structural violence and socioeconomic injustice” cannot be tackled “without paying attention to the institutions, mechanisms and processes that [are supposed to] generate order and effective participatory governance.”¹⁸

¹³ Parlevliet, “Rethinking Conflict Transformation,” 20-21; “Bridging the Divide,” 18; and Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights. Theory and Practice* (London: Routledge, 2010), 4

¹⁴ Albin and Druckmann, *op.cit.* 147.

¹⁵ Parlevliet *op.cit.*; Sriram et al, *op.cit.*

¹⁶ *Ibid*; Thoms and Ron, “Do Human Rights Violations Cause Internal Conflict?,” 695; and Julie Mertus and Jeffrey Helsing, “Introduction,” in *Human Rights & Conflict. Exploring the Links between Rights, Law, and Peacebuilding*, eds. Mertus and Helsing, (Washington DC: US Institute of Peace Press, 2006), 4-5.

¹⁷ Skarstad and Strand, *op.cit.* 111-114.

¹⁸ Kevin Clements, “Towards Conflict Transformation and a Just Peace,” in *Transforming Ethnopolitical Conflict*, eds. Alex Austin, Martina Fischer and Norbert Ropers. Wiesbaden, Germany: VS Verlag für Socialwissenschaften (2004): 3.

IV. Human rights as providing standards, models and mechanisms for addressing causes, handling conflict non-violently, and preventing violence

20. Another way in which human rights may aid the transformation of conflict is by providing standards, models and mechanisms for addressing causes and handling conflict non-violently. This follows in part from the previous discussion, in that considering human rights underscores the significance of issues of vulnerability, marginalisation and freedom in terms of substantive responses to destructive conflict. Research further shows that the use of human rights standards may assist in assessing the legitimacy of demands put forth by representatives of various groups during negotiations and the transition more generally, as such standards are independent of any specific conflict context; the rights framework constitutes an external, internationally agreed upon, frame of reference to balance these self-interested claims.¹⁹ Rights norms are probably particularly salient when power between the parties is seriously imbalanced. They are thought to help to empower the weaker party to negotiate from a more equitable vantage point, facilitating a levelling of the playing field.²⁰
21. In addition, knowledge of human rights can help with identifying mechanisms for addressing and transforming conflict. Relevant in this regard are the many options and instruments available for the protection of minority rights. Over time, many instruments have evolved to facilitate the structural accommodation of diversity, understood here as formally entrenching inclusion and respect for diversity in the political system, state institutions and the law.²¹ These may relate to the organization of the electoral system; participation of minorities in governance; realisation of minority rights regarding language, culture and education; regional autonomy; and various kinds of anti-discrimination legislation. As disregard for minority issues is at the heart of many contemporary conflicts, such mechanisms have great significance for conflict resolution in the short-term and for transformation and prevention in the long term.²²
22. Valuable experiences in this regard have been gathered by, amongst others, the High Commissioner on National Minorities (HCNM) of the Organisation for Security and Cooperation in Europe (OSCE).²³ Throughout the tenure of various HCNMs, multiple guidelines have been developed to help prevent conflict and facilitate peaceful coexistence in ethnically diverse societies, for example relating to participation of minorities in public life, policing, education rights of minorities etc. Interestingly, while

¹⁹ International Council for Human Rights Policy (ICHRP), *Negotiating Justice?* (Versoix, Switzerland: ICHR, 2006), 110-111; and Ram Manikkalingam, "Promoting Peace and Protecting Rights: How are Human Rights Good and Bad for Resolving Conflict?" *Essex Human Rights Review* 5, no. 1 (2008): 5.

¹⁹ ICHR, *Negotiating Justice*, 110; and Parlevliet, "Bridging the Divide," 30.

¹⁹ "It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression that human rights should be protected by the rule of law." See Preamble, *Universal Declaration of Human Rights. General Assembly Resolution 217A (II)* (General Assembly document A/810 at 71), 10 December 1948.

¹⁹ Hugh Miall, "Conflict Transformation: A Multi-Dimensional Task," in *Transforming Ethnopolitical Conflict*, eds. Austin and others, 67-89; and Parlevliet, *Bridging the Divide*, 20-21.

²⁰ Eileen Babbitt, "Conflict Resolution and Human Rights: The State of the Art," in *The SAGE Handbook of Conflict Resolution*, eds. Bercovitch and others, 619.

²¹ Laurie Nathan, as referenced in Parlevliet 2002, *op.cit.*

²² Clive Baldwin, Chris Chapman and Zoe Gray, *Minority Rights* (London: Minority Rights Group, 2007).

²³ For information, see website of OSCE <http://www.osce.org/node/107881>.

the mandate of the High Commissioner is framed in terms of conflict prevention, much of the work has involved ensuring that minorities can enjoy their rights. According to the first High Commissioner, “the protection of persons belonging to national minorities has to be seen as essentially in the interests of the state and the majority. As a rule, peace and stability are best served by ensuring that persons belonging to national minorities can effectively enjoy their rights.”²⁴

23. More generally, the protection and promotion of human rights is thought to address structural causes of conflict by responding to basic universal needs for dignity, equality, and freedom,²⁵ especially if respect for human rights is institutionalised. Such institutionalisation may occur through, for example, constitutional endorsement of rights and the independence of the judiciary, or establishing an independent national human rights institution. Institutionalizing respect for rights and enhancing the rule of law in the aftermath of violent conflict serves as a form of structural prevention by limiting the power of the state and prompting it to attend to citizens’ concerns related to welfare, security, identity, and other aspects reflected in the full spectrum of rights. It also affords people protection against abuse and a fair measure of freedom and participation.
24. Empirical studies have found that full democracies experience less conflict, in part because they are usually better at protecting the full range of human rights, including personal integrity and socio-economic rights – violation of which is, as noted above, associated with internal conflict. That said, processes of democratisation have been found to be dangerous, in that they carry considerable risk for a rise in human rights abuses, although it is not clear why this is the case.²⁶ A considerable body of (political science) literature exists on the preventive value of democracies.²⁷ Literature also exists on the relevance of gender equality in reducing the risk of violent conflict within countries – this relates to the very existence of gender equality as such and to belief in its importance. A possible explanation for this relationship is societal norms of violence behind gender discrimination. However, systematic empirical evidence of the role of gender equality in facilitating or contributing to positive, sustainable peace beyond the mere absence of armed conflict and direct violence, is more scarce.²⁸
25. Besides enhancing the state’s legitimacy, institutionalized rights protection is likely to facilitate the constructive handling of conflict by providing mechanisms for raising grievances and seeking redress, and for facilitating a degree of public participation in decision-making. This is likely to strengthen society’s faith in its civic institutions, culture, and capacity to manage conflict and change peacefully. It may thus help to transform societal relationships.²⁹ The importance of constructive conflict handling mechanisms cannot be overstated, since some degree of structural tension exists in all complex and heterogeneous societies. The effects thereof are, however, largely determined by the extent to which a specific society has effective and appropriate coping mechanisms. The preventive value of human

²⁴ As quoted in Parlevliet 2002 *Bridging the Divide*, *op.cit.*, 21.

²⁵ It is worth noting in this regard that the notion of ‘basic human needs’ has different connotations in the human rights and conflict studies fields, with the latter considering needs in broader terms than the former; see Parlevliet 2015, *Embracing Concurrent Realities*, *op.cit.* 277-278; for a more extensive discussion as needs relating to rights, see Parlevliet 2002, *op.cit.*

²⁶ For a good overview of the literature and empirical findings, see Thoms and Ron, *op.cit.* 698-702. There is a considerable (political science) body of literature on the preventive value of democracies (including more recent studies) which has not been reviewed for this assignment.

²⁷ This has not been reviewed for this assignment due to limitations of time and scope.

²⁸ For a review of this literature, see Albin and Druckmann, *op.cit.*, 147-148.

²⁹ Hugh Miall, “Conflict Transformation: A Multi-Dimensional Task,” in *Transforming Ethnopolitical Conflict*, eds. Austin and others, 67-89; and Parlevliet, *Bridging the Divide*, 20-21.

rights protection was of course already noted in the 1948 Universal Declaration of Human Rights (preamble).

26. *Additional points, not worked out at this point:*

- *Human rights-based monitoring of change initiatives (and its emphasis on disaggregated data) is valuable for revealing who's benefiting from such processes and who's not; this in turn is important for the legitimacy and sustainability of efforts.*
- *Change initiatives in various sectors are also relevant from a human rights perspective, even if they are not explicitly framed in terms of 'human rights' – in that reform may contribute to greater protection of human rights, but also that useful guidelines exist within the human rights framework that are likely to have a bearing on such reform processes (e.g. general comments from treaty bodies). This applies to reforms in sectors usually considered as relevant in times of transition (e.g. security sector reform, justice sector reform, etc.) but also to many other sectors – incl. health, education, housing, natural resource management, service delivery etc.*

V. Human rights as informing the process of addressing and transforming violent conflict

27. A third way in which human rights may facilitate the transformation of conflict and violence on the long term is by informing not just *what* is done in terms of substance of interventions, but also *how* these are undertaken. In other words, human rights can enhance process design by prompting critical reflection on how processes of reform are conducted and who participates. This usually results in participation of voices outside political and military elites, including women and civil society groups. In the context of peace negotiations, it has been noted that broader participation is not only 'the right thing to do' but also generally leads to better and more lasting outcomes by facilitating attention to issues affecting marginalized groups and enhancing the legitimacy of the process.³⁰

28. Much literature exists on the relevance of civil society in conflict prevention and peacebuilding.³¹ A large, three-year comparative research project consisting of multiple case-studies has found that civil society has achieved considerable success in five key functions (protection, monitoring, advocacy, facilitation, and service delivery) but that it has struggled in performing other functions successfully (socialisation leading to sustainable peace, encouraging inter-group social cohesion). It also found that context matters, in that this strongly affects the space for civil society to act. Particularly important are the behaviour of the state; the level of violence; the role of the media; and the behaviour and composition of civil society itself (including diaspora organisations) and the influence of external political actors and donors.³² Caution is warranted, however, as civil society is not per se ethically inclined or geared towards good governance. It is also far from monolithic; in polarised and unstable

³⁰ International Council for Human Rights Policy, *Negotiating Justice*, 112.

³¹ See for example Willemijn Verkoren and Matthijs van Leeuwen, "Civil Society in Peacebuilding: Global Discourses, Local Reality," *International Peacekeeping*, 20 (2013): 159-172; Thania Paffenholz, *Civil Society and Peacebuilding: A Critical Assessment* (Boulder, Colorado: Lynne Rienner Publishers, 2010); Thelma Ekiyor 2008, 'The role of civil society in conflict prevention: West African experiences', United Nations Institute for Disarmament Research (UNIDIR), Disarmament Forum: The complex dynamics of small arms in West Africa, Number 4, pp. 27-34; Andrés Serbin (ed), *Paz, Conflicto y Sociedad Civil en América Latina y el Caribe* (CRIES, Icaria, IDRC 2007).

³² Paffenholz, *op.cit.*; Paffenholz, T., 'Civil Society and Peacebuilding', *Working Paper*, The Centre on Conflict, Development and Peacebuilding, Graduate Institute of International and Development Studies, Geneva (2009).

countries, civil society is likely to be divided itself, and competition amongst civil society actors for funding and influence may undermine their effectiveness.³³

29. *More discussion on the possible contributions to process design (e.g. informed by for example human rights based programming in development) is possible but not included at this time.*

VI. Transmutation of violence

30. It has increasingly been acknowledged that violence, in multiple forms, is a key feature of transitional societies.³⁴ In particular, “violence in and through transition displays continuities and changes with its past expression, patterns and forms.”³⁵ As such, violence in or during transition is not to be viewed as being completely new or separate from its past trajectory, as past patterns of violence and social and political conflict are reconfigured during a political transition: “violence and conflict that may appear new is often historically informed and rooted in ongoing experiences of social marginalisation, political exclusion and economic exploitation.”³⁶ Failure to recognise this may well result in a flawed dichotomy, in which all past violence is conceived of in political terms (as related to political conflict, and to be addressed through political solutions) and all contemporary violence, or violence in transition, is exclusively understood as being criminal in nature (and hence to be treated through the criminal justice system). This downplays the criminal nature of (part of) past violence as well as the extent to which violence in transition may still be related to and grounded in past politics and related conflicts over accumulation and distribution of wealth.³⁷
31. The transmutation and continuation of violence during transition has gender dimensions. It has been noted, for example, that the impact of violent and militarised identities taught through conflict is seldom taken into account in demobilisation, demilitarisation and reintegration processes. As a result, identities of militarised masculinity often continue to play out in the domestic setting, resulting in high levels of violence against wives, partners and children; one author speaks of the ‘domestication of violence’ following war.³⁸ For former combatants, this may be exacerbated by the loss of social status and purpose resulting from demobilisation, combined with inability to find employment.³⁹ The

³³ Michelle Parlevliet, “Containment or Change? Civil Society’s Role in Conflict Prevention in Africa,” in: Elizabeth Sidiropoulos, *A Continent Apart. Kosovo, Africa and Humanitarian Intervention* (Johannesburg: South African Institute of International Affairs, 2001): 61-88; and Ekiyor, *op.cit.*

³⁴ Paul Gready and Simon Robins, “From Transitional to Transformative Justice: A New Agenda for Practice,” *International Journal of Transitional Justice*, (2014) 8 (3): 339-361, p. 349. They provide a summary of explanations for such violence, which is not reproduced here due to limitations of scope and time.

³⁵ Bronwyn Harris. *Between a Rock and a Hard Place: Violence, transition and democratization. A consolidated review of the Violence and Transition Project*. Report written for the Centre for the Study of Violence and Reconciliation (CSVR) (2006), available online. Braamfontein: CSVR: 10.

³⁶ Gready and Robins, *op.cit.* 349-350.

³⁷ Harris, *op.cit.*, 11; Graeme Simpson, “A snake gives birth to a snake’: Politics and crime in the transition to democracy in South Africa.” In: Dixon, W. and Van der Spuy, E. (eds). *Justice Gained? Crime Control in South Africa’s Transition*. (Cape Town: Cape Town University Press 2004).

³⁸ K. Theidon, “Reconstructing Masculinities: The Disarmament, Demobilization, and Reintegration of Former Combatants in Colombia.” *Human Rights Quarterly*, 31(1) (2009), 1–34, p. 21; and N. Cahn and Fionnula Ni Aolain, (2009). Gender, Masculinities, and Transition in Conflicted Societies. *New England Law Review*, 44(1) (2009), 1-23.

³⁹ Harris, *op.cit.*, 15-16, 39-41; Sasha Gear, *Wishing us away: challenges facing ex-combatants in the ‘new’ South Africa*. Violence and Transition Series (8). Braamfontein: Centre for the Study of Violence and Reconciliation (2002); Antonia Porter, “What is Constructed can be Transformed: Masculinities in Post-Conflict Societies in Africa.” *International Peacekeeping*, 20(4) (2013), 486–506; and Theidon, *op.cit.*

domestic nature of such violence means that it is likely to go unaddressed, due to, amongst other things, underreporting and a criminal justice system that is likely to be weak and gender-insensitive.

32. Research from South Africa (conducted in the early 2000s) which highlights the discursive shift from political to criminal violence, also devotes attention to the way in which a violent culture may intersect with the appropriation of a human rights discourse (if adopted as part of the settlement and transitioning 'out of' large-scale political violence). It observes that the public perception of in-transition, contemporary, violence as being primarily criminal in nature and on the rise, is likely to result in a notion that 'criminals have more rights than victims.' This in turn can facilitate violent vigilantism in the name of 'fighting crime' and 'protecting ourselves' and may also allow for the continuation of abuses by members of police officers against suspected criminals.⁴⁰ At the same time, the criminal justice may be subject to serious limitations (in terms of capacity and legitimacy, if the system was used to perpetrate, promote, administer and support past injustices). Such flaws are likely to negatively affect the system's ability to address violence in transition – as a result of which the public may end up blaming the state and the new democracy for high levels of violent crime.⁴¹
33. The continuities and transmutation of violence in transition seem to warrant further research, as few studies could be identified beyond the excellent 'Violence in Transition' research series produced by a South African non-governmental organisation, the Centre for the Study of Violence and Reconciliation with financial support from the International Development Research Centre over a 7-year period. The studies in this series are qualitative rather than quantitative in nature, suggesting that more quantitative studies would be useful. In addition, as part of further research, more explicit attention would need to be given to the extent to which human rights mechanisms and practices can contribute to addressing and transforming such violence. This is under-explored in the literature reviewed; at the same time, consideration would need to be given to the possible unintended consequences of increased reliance on human rights discourse and mechanisms, including negative ones.
34. It is worth noting that violence in transition is probably of a different scale and intensity than mass atrocities conducted during civil war, or gross abuses committed by an authoritarian regime. Whether and how this falls within the scope of the mandate of the Special Rapporteur may thus be subject to debate, although it seems clear that the blurred boundaries between past and present violence, and the propensity of violence during transition warrants attention in the context of transitional justice mechanisms.⁴²

VII. Caveats: Limits to human rights in transforming conflict

⁴⁰ Harris, *op.cit.* 18-19, 23-5.

⁴¹ Harris, *op.cit.* 18-19; 22-25.

⁴² See Gready and Robins, *op.cit.*; references to flaws in the South African transitional justice process and mechanisms in Harris, *op.cit.*; and Graeme Simpson. "A snake gives birth to a snake": Politics and crime in the transition to democracy in South Africa." In: Dixon, W. and Van der Spuy, E. (eds). *Justice Gained? Crime Control in South Africa's Transition*. Cape Town: Cape Town University Press (2004)

35. Notwithstanding the significant potential of human rights to contribute to the transformation of violence and violent conflict, certain caveats must be pointed out. As noted in para. 10, proving the above-mentioned three claims is easier said than done. Conclusive empirical evidence is lacking (even if evidence and statistical data is available on elements of the discussion thus far, as illustrated by references to some relevant studies),⁴³ and assessing impact of human rights initiatives is notoriously difficult. Beyond that, human rights are subject to various limitations that may challenge their potential as a force for conflict transformation. These relate, *inter alia*, to the conceptual focus of human rights, how this focus manifests in practice, and the fact that human rights are more ambiguous than often assumed.⁴⁴ Human rights have historically focused on the state, but realities and understandings of governance, power, and sovereignty are very different nowadays given the proliferation of non-state armed actors and cross-border conflict dynamics.⁴⁵ Also, the individualism long inherent in human rights discourse clashes with the reality that violations often arise in 'collective' situations, involving large numbers of people and flawed systems of governance.
36. The human rights focus on individual victims and perpetrators risks prioritizing individual criminal accountability over other measures needed to make power accountable and prevent the future recurrence of serious abuses. The long-standing privileging of civil and political rights in international rights discourse feeds into this problem, as issues of structural violence, marginalization and inequality may be overlooked, neglecting the underlying conditions needed for rights to thrive.⁴⁶ The dominant human rights paradigm is usually reluctant to engage with the possibility that 'justice' may mean different things to different people at different times or in different contexts, and that it can be conceived of in terms other than retributive justice meted out by formal, state-sponsored, institutions (e.g. restorative or redistributive justice). The human rights paradigm generally prefers global norms to prevail upon local particularities; this does not suit the need for and importance of context-specificity and local ownership for the purpose of conflict transformation. In addition, its binary frame (conceiving situations in terms of victims and perpetrators) is not well-suited to the likelihood that boundaries between these categories are blurred, and that beneficiaries and bystanders must be considered as well if large-scale violence is to be prevented in the future.⁴⁷
37. Furthermore, the legal nature of human rights and their focus on holding the state accountable means that a human rights perspective puts much emphasis on legislative and justice sector reform in practice. While important, this may overlook the limitations of law and legal systems in conflict-

⁴³ Such references are illustrative rather than representative, not least because of the extent to which the discussion above touches on many other bodies of literature that cannot not be reviewed within the scope of this note and assignment.

⁴⁴ This remainder of this section is largely excerpted and adjusted from Michelle Parlevliet, "The transformative potential of human rights in conflict resolution." In: Claudia Fuentes-Julio and Paula Drumond (eds), *Human Rights and Conflict Resolution: Bridging the Theoretical and Practical Divide* (London, New York: Routledge, forthcoming).

⁴⁵ Ron Dudai and Kieran McEvoy, "Thinking Critically about Armed Groups and Human Rights Praxis," *Journal of Human Rights Practice* 4, no. 1 (2012): 1.

⁴⁶ David Kennedy, "The International Human Rights Regime: Still Part of the Problem?" in *Examining Critical Perspectives on Human Rights*, eds. Rob Dickinson, Elena Katselli, Colin Murray and Ole Pedersen (Cambridge: Cambridge University Press, 2012), 25; and Paul Gready, "The Politics of Human Rights," *Third World Quarterly* 24, no. 4 (2003): 62. See also the discussion (including further references) on a contradiction in human rights thinking and practice regarding the (theoretical and rhetorical) emphasis on addressing deep-rooted problems and creating institutional solutions, and the reality that much rights work in practice tends to focus on documenting and addressing (symptomatic) human rights violations, i.e. manifestations of violent conflict; in Michelle Parlevliet, *Embracing Concurrent Realities. Revisiting the Relationship between Human Rights and Conflict Resolution*. PhD dissertation (Amsterdam: University of Amsterdam 2015), 62-64.

⁴⁷ Undine Kayser-Whande, and Stephanie Schell-Faucon, "Transitional Justice and Conflict Transformation in Conversation." *Politorbis* 50 (3) (2010): 97-111.

affected contexts relating to access, legitimacy, effectiveness, and implementation. Many settings are also legally pluralist. Formal law and rights standards function alongside other normative frameworks that may appeal as much to local populations if not more. For this reason, some conflict studies authors have stressed the need to take ‘hybrid forms of governance’ much more seriously than has been done to date.⁴⁸ In addition, legal and judicial approaches – or what has been called “throwing law at human rights problems”⁴⁹ – to address politically driven violence may disregard both the significance of social and political processes in ensuring human rights and the relevance of non-formal mechanisms to facilitate protection and redress; the latter have often been suspect from a human rights perspective, however. All in all, the ‘legal reflex’⁵⁰ at play in much human rights discourse and practice may raise questions about the relevance and feasibility of rights-related counsel when considered from a conflict transformation perspective.

38. Further, rights are less all-encompassing and less unequivocal than they seem, in several respects.⁵¹ The concrete meaning of a specific right depends in part on the specific context; formal standards often contain open-ended language warranting interpretation; and human rights claims can back up very different ideological projects. ‘Human rights’ may be used to highlight the plight of the marginalized and challenge economic privilege (referencing non-discrimination and equal access), but they can also help to preserve such privilege (given individual property rights). As a result, outcomes may be legally valid and in line with rights standards, but may not be viewed as ‘fair’ in terms of social justice, which matters for conflict transformation.
39. A related hurdle is the potential conflict between rights. In many conflicts, it is possible to frame the concerns and demands of opposing sides as human rights claims, yet formal standards do not per se clarify the relative weight of the different interests involved. This often arises in contexts where access to natural resources and uneven distribution of land are drivers of conflict. ‘Solving’ such conflicts of rights tends to involve ad-hoc balancing informed by an appreciation of the context and political, social, economic and cultural considerations about the meaning and use of such resources, including expectations about benefits to be yielded from such resources and the allocation thereof. In such instances, it is not necessarily possible to draw the entitlements’ boundaries from the rights themselves, which means that rights-talk alone cannot resolve the challenge of conflicting rights.⁵²
40. Another caveat noted here relates to the normativity and political nature of human rights discourse and practice.⁵³ In contrast to conflict transformation thinking, human rights discourse and practice is explicit about its normativity, but frames it as ‘objective’ with reference to its grounding in legally

⁴⁸ Volker Boege, Anne Brown, Kevin Clements and Anna Nolan, “Building Peace and Political Community in Hybrid Political Orders.” *International Peacekeeping* 16(5): 599-615.

⁴⁹ Beth Simmons, *Mobilizing for Human Rights* (Cambridge: Cambridge University Press 2009), 7.

⁵⁰ This is “the automatic and unthinking resort to the law in the belief that it is the most effective and perhaps only form of protection and remedy;” Paul Gready and Jonathan Ensor, eds., *Reinventing Development? Translating rights-based approaches from theory into practice* (London: Zed Books, 2005), 9; and Parlevliet, *Embracing Concurrent Realities*, 59-61.

⁵¹ Martti Koskenniemi, *The Politics of International Law* (Oxford: Hart Publishing, 2011), 147-148; and Hannah Miller, “From ‘Rights-Based’ to ‘Rights-Framed’ Approaches,” *The International Journal of Human Rights* 14, no. 6 (2010): 380.

⁵² Koskenniemi, *The Politics*, 143-145, 159.

⁵³ This is not to revisit a long-standing debate in the literature about the potential clash between human rights’ principled and normative orientation, and the more pragmatic, supposedly non-normative outlook of conflict transformation efforts, in part because this overlooks the normativity of conflict transformation thinking and practice itself (in emphasising non-violence, inclusion, tolerance, participation, trust-building). This normativity is however largely implicit and more connected to moral notions of what is right, fair, and just, rather than being grounded in formal legal standards as is the case for human rights.

binding instruments that have been internationally agreed upon. This downplays the politics behind definitions of what constitutes human rights, what gets codified in international standards, and what is prioritised in enforcement and implementation. It also downplays the power dynamics in the international sphere and the bodies that created many of these treaties, including the ongoing dominance of American and Western European values and interests in these arenas. As a result, the extent to which human rights serve as an 'objective,' 'independent' or even 'neutral' frame of reference for addressing and transforming violent conflict, free of particularities and politics, may be called more into question than rights advocates appreciate.

Biographical note on author:

Dr. Michelle Parlevliet (PhD Law; MA Political Science/International Relations, both Un. of Amsterdam; MA International Peace Studies, Un. of Notre Dame) has been working on the nexus of human rights and peace and conflict work since the mid-1990s in various capacities and contexts in Southern Africa, South Asia, and Western Europe. Her work has entailed process facilitation, design and delivery of training programmes, research, and various (other) forms of technical assistance, with multiple organisations and networks at grassroots and senior policy-making level. She has published widely on the relationship of human rights and conflict transformation and related ones (incl. transitional justice, human rights and peacebuilding, civil society involvement in conflict prevention, national human rights institutions, conflict management and peacebuilding, etc.). Since September 2016, she has served as Assistant Professor Conflict Resolution and Governance in the Political Science Department at the University of Amsterdam. She is a member of the Board of London-based international peacebuilding NGO Conciliation Resources and also serves on the International Advisory Board of the Centre on Human Rights in Conflict (University of East London), the editorial board of the *Journal of Human Rights Practice* (Oxford Journals), and the Advisory Committee of the Cultural Emergency Response Program of the Prince Claus Fund for Culture and Development. More information on her background and past positions of employment can be found at <http://uva.nl/profile/m.b.parlevliet>. Contact @ michelle.parlevliet@gmail.com and m.b.parlevliet@uva.nl.