The Spirit of the National Peace Accord:

The Past, Present, and Future of Local Forms of Conflict Resolution in the Western Cape

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Abstract

This thesis seeks to examine the evolution of the conflict resolution community in South Africa through a combination of (1) history; (2) case studies; and (3) policy analysis. Each section roughly corresponds to the (1) past; (2) present; and (3) future of conflict resolution in the country. The connection between these sections is at times *causal* – in the sense that some events directly shaped the next – but more often *thematic* – meaning that certain trends may be traced throughout the evolution of the community. Consultation with more than ten conflict resolution organizations and interviews with over twenty leading practitioners lend valuable insight to the investigation.

After offering a general background to conflict resolution theory, the paper analyzes the rise and fall of the National Peace Accord. The study demonstrates that government endorsement of the Accord did not detract from the ability of the peace committees to furnish the nation with a reservoir of practical conflict resolution skills. Communication, aided in part by the South African Council of Churches, helped avert violence and steer the country free of civil war. Peace work worked best when national, regional, and local levels were coordinated. At the same time, the Accord's attempt to resolve greater structural inequalities in its peacebuilding initiatives fell short of its goals. The business community enjoyed managing the process, but offered little in terms of actual resources and training as it high-tailed it "back to the balance sheets".[1]

The examination of *present* NGO trends reveals a local conflict resolution community that is undergoing profound changes. The case study of the Quaker Peace Centre demonstrates that the religious community has all but disappeared from the conflict resolution fold in South Africa. The QPC maintains only one Friend on its staff and has shrunk from thirty-five to six in just four years, with future funding cuts on the horizon. The organization has responded to these changes with the creative strategy of focusing its work on the local community of Delft.

The case study of the Centre for Conflict Resolution offers different insights. The Mediation and Training Service program's facilitation of the taxi conflict shows that a new model of outsourcing work to an experienced resource panel can make up for a

[1] Interview with Peter Gastrow.

dearth of in-house staff. Contracting with the government has enabled the CCR to maintain its ties at all levels of society, true to the spirit of the National Peace Accord. Its stronghold of hands-on training, however, has been sidelined by a new shift towards conflicts concerning the entire continent.

The thesis concludes with a look at the future by analyzing the work of the South African Law Commission's Project 94. This project would mark a shift to the spirit of the National Peace Accord by wedding local conflict resolution mechanisms to the state. The places to which people already go to resolve conflicts – the "other law" – have been providing justice to South Africans for decades. But recognition of these ordering mechanisms is itself bereft with difficulties. The "other law" is pluralistic in nature, making it difficult to conform naturally subversive and organic entities to the formal justice system. The state is under-resourced, but seems wary of granting too much power to unpredictable dispute resolution structures. Guidelines may provide some certainty, but this does not disguise the uncertainty of the political process itself – the Draft Bill may disappear once it enters the legislature. This political reality is compounded by the fact that the Draft Bill itself permits either the government or community dispute resolution structures to end their liaison at any time, undermining commitment. The creation of a new National Peace Accord therefore appears unlikely in the short term.

The hope is that the reader will leave with a better understanding of the conflict resolution community and of the complexity of issues facing South Africa today. If nothing else, South Africa's unbridled forays into conflict resolution will be revealed as incredibly inspiring.

Glossary of Terms

ANC	African National Congress
CATA	Cape Amalgamated Taxi Association
CBM	Consultative Business Movement
CCMA	Commission for Conciliation, Mediation, and Arbitration
CCR	Centre for Conflict Resolution
CDRS	Community Dispute Resolution Structures
CODESA	Conference for Democratic South Africa
CODETA	Congress of Democratic Taxi Associations
Draft Bill	Draft Bill on Community Dispute Resolution Structures
IFP	Inkatha Freedom Party
JOCC	Joint Operations and Communications Centres
MTS	Mediation and Training Services
NPA	National Peace Accord
Project 94	South African Law Commission's Project on Community Dispute Resolution Structures
QPC	Quaker Peace Centre
SACC	South African Council of Churches
SANTACO	South African National Taxi Council
UMAC	U Managing Conflict

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Part I. Introduction

South Africa emerged from apartheid at the forefront of the conflict resolution community. The numerous social and political forces required to shepherd the transition to majority rule had trained people at every level of society. Domestically, labor experts, social activists, clerics, politicians, community leaders, and business gurus had lent their skills to the country. Internationally, practitioners from around the world had seized the opportunity to wed their cutting-edge theories to South Africa in a workable praxis. These efforts were complemented by underground networks of street committees and other popular forms of justice. Nonetheless, over 20,000 people lost their lives between 1985 and 1994 alone. At no time was the seemingly intractable conflict guaranteed to enjoy a peaceful handover.[2] Civil war remained a viable prospect until election day on April 27, 1994, when disappointed journalists packed up their bags and headed to the genocide in Rwanda.[3]

The nation enjoyed a short honeymoon of constitution-making and democratic processes. South Africans adopted to democracy so thoroughly that they could design an inclusive problem solving mechanism at an hour's notice, and became "processed out of their skulls."[4] By 1999-2000, the country's conflict resolution community was at its apogee, possessing an unmatched reservoir of hands-on experience and home-grown theory.[5] Today, the honeymoon has ended. Some government promises were kept, while others were not, and practitioners have been absorbed by politics, business, or scattered across the world in a new diaspora.[6] More than ten years after the transition, 94 percent of land remains in the hands of the white minority and new terrors such as HIV/AIDS

[2] Donald Rothchild, MANAGING ETHNIC CONFLICT IN AFRICA: PRESSURES AND INCENTIVES FOR COOPERATION 194 (1997).
[3] Interview with Roger Lucey, former SABC journalist (Jan. 2006).
[4] Interview with Ghalib Galant, Facilitator, Synergy Works (Jan. 24, 2006).
[5] Interview with Sean Tait, Director: Criminal Justice Initiative, Open Society Foundation for South Africa (Sept. 20, 2005).
[6] Interview with Susan Collins Marks, Executive Vice President, Search for Common Ground (Dec. 22, 2005).

have transformed the political landscape.[7] The conflict resolution community has undergone profound changes in turn.

This thesis seeks to examine the evolution of the conflict resolution community in South Africa through a combination of (1) history; (2) case studies; and (3) policy analysis. Each section roughly corresponds to the (1) past; (2) present; and (3) future of conflict resolution in the country. The connection between these sections is at times *causal* – in the sense that some events directly shaped the next – but more often *thematic* – meaning that certain trends may be traced throughout the evolution of the community.

The first section offers a study of the National Peace Accord, the national mechanism that helped pave the way for the multiparty negotiations and the interim government. Emerging from a joint effort of the religious and business communities, the Accord's system of local, regional, and national Peace Committees furnished conflict resolution skills on an unprecedented level to the entire nation. The successful initiative was hastily dismantled by the interim and elected governments, but certain themes – the "spirit" of the Accord – continue to shape contemporary South Africa.

The thesis will then utilize insights gained from the Accord to examine conflict resolution non-governmental organizations (NGOs) that are currently active in the Cape Town area. After visiting over ten NGOs and conducting more than twenty interviews, it was determined that narrowing the field down to a few particularly representative NGOs would prove more salient. The Quaker Peace Centre and the Centre for Conflict Resolution were selected for their ability to elucidate the lessons learned from the Accord, including their religious and secular approaches, their long histories, their expertise, and their creative strategic decisions. The Delft project at the Quaker Peace Centre and the Centre for Conflict Resolution's recent facilitation of the Western Cape taxi conflict will be analyzed as case studies.

Finally, the thesis will examine the South African Law Commission's Project 94, which is currently assessing the possibility of wedding state institutions to non-state forms of conflict resolution. This section will briefly highlight the vibrant history of non-state justice actors in South Africa. It will then proceed to analyze the legal and political

[7] Centre for Conflict Resolution, "Seminar Report: South Africa in the Post-Apartheid Decade," Centre for Conflict Resolution (Nov. 2004).

questions that arise in extending the reach of the state to areas in which it was heretofore absent. Questions of access to justice, jurisdiction, and service delivery will be discussed to determine whether a kind of "New National Peace Accord" may be fashioned.

The central argument to this paper is that the local conflict resolution community in the Western Cape has undergone significant changes. NGOs, non-state actors, and government conflict resolution mechanisms interact in a complex and fluctuating manner. At times mutually supportive – and at others subversive – local mechanisms form part of a diverse community that has begun to adapt to the new South Africa in surprising ways. More specifically, the National Peace Accord was hastily withdrawn, the religious community has all but disappeared from the field, NGOs face challenges of funding and direction, and the state has not filled the conflict resolution vacuum with adequate service delivery.

But while the National Peace Accord has been wrapped up, its spirit lives on. NGOs and non-state actors are responding to these difficulties by seeking to enhance their relationship with the government with both funding and legislation. Linking with power structures at the local, regional, national, and even *international* levels has been recognized as an important step. Peacebuilding and the elimination of structural forms of violence continue to be targeted as areas ripe for improvement. Although a "New National Peace Accord" seems unlikely, South African conflict resolution will continue to thrive and meet the demands of local communities.

Some Definitions and Background

First, it may prove useful to define the key terms in this paper. Numerous definitions abound in conflict resolution literature, and it seems normal in the field to hazard a new definition with each new work. This stems partly from the field's respect for home-grown solutions, but the variety can be overwhelming. We will therefore rely upon the excellent definitions already advanced by some of its leading practitioners.

One of the most widely accepted definitions of conflict comes from Johan Galtung, a Norwegian mathematician and social scientist who spearheaded the Peace

Studies movement. "A system of actors," wrote Galtung, "is said to be in *conflict* if the system has two or more incompatible goal-states."[8] The term goal-state may be simplified for our purposes to *goals*. A conflict exists, in other words, in the face of two actors and two or more incompatible goals. This is not necessarily a bad state of affairs. Galtung strongly emphasized taking a positive view of conflict. Our negative perception of conflict is culturally based and in many ways does nothing to help deal with its omnipresence:

> A state of conflictlessness is essentially a state of death because of the complete consonance between need and need satisfaction. With this consonance there is no striving, no oscillating pattern of deprivation and gratification, no rhythm. The general activity curve is flat, like the ECG diagram at death. Hence, my point is that conflict satisfies so many basic needs that if it does not exist, it has to be introduced. A social system poor in some conflicts will have to introduce others in order to keep alive, and much the same should hold for intrapersonal conflicts within any single human being. Thus, there seems to be a dialectical mechanism at work here: the state of conflictness itself causes its own destruction, conflictness leads to conflict just as conflict moves towards conflictlessness.[9]

Not only does conflict permeate our lives, Galtung's implication is that we cannot survive without it. His sweeping statement enters into the realms of philosophy and spirituality, which ultimately play, as the National Peace Accord and our case studies will show, a powerful role.

Galtung also provided a relatively simple definition of conflict resolution. Conflict resolution occurs when actors "no longer" have two or more incompatible goals.[10] Sort out the goals, in other words, and the conflict will disappear. Miall, et al.'s definition helps give more shape to the concept. According to their view

> *Conflict resolution* is a more comprehensive term which implies that the deep-rooted sources of conflict are addressed, and resolved. This implies that behaviour is no longer violent, attitudes are no longer hostile, and the structure of the conflict has been changed.[11]

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[8] Johan Galtung, "Institutionalized Conflict Resolution: A Theoretical Paradigm", in PEACE AND SOCIAL STRUCTURE: ESSAYS IN PEACE RESEARCH 434, VOL. III, (1978). Emphasis added.
[9] *Id.* at 491.
[10] *Id.* at 438.
[11] Hugh Miall, Oliver Ramsbotham, and Tom Woodhouse, CONTEMPORARY CONFLICT RESOLUTION 21 (1999). Emphasis in original.

Deep-rooted causes must be addressed and not merely superficial ones. Incompatible goals resonating beneath the surface must be considered and reconciled. Related to this is the increasingly used notion of conflict "transformation," which Miall identifies as the "deepest level of change" in the conflict resolution process.[12] Resolution may occur without transformation, from this perspective, but not the reverse.

Other terms play an important role for the conflict resolution practitioner. These include mediation, good offices, negotiation, conciliation, facilitation, restorative justice, and Track I, II, and III diplomacy. Excellent definitions are available for this nomenclature from Miall, Deutsch, as well as practitioners such as John Braithwaite.[13]

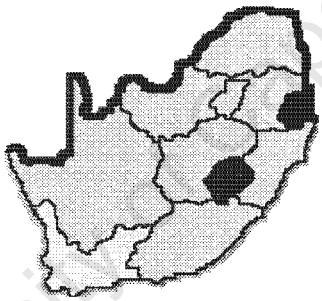
Speaking generally, the essential approach to conflict resolution is that, *rather than conceive of fighting against another actor in a situation in which one party loses and the other wins, it is possible to conceptualize facially incompatible goals as win-win situations for all.*[14] *The conflict should not be viewed as pertaining to the other party, but over the goals.* Attention may then be channeled in a more positive direction.

Home-grown South African experts have also imbued conflict resolution with insights. The nation's – and the world's – interest in South Africa has led to a plethora of valuable analyses. Criminologist Wilfried Schärf and attorney Daniel Nina have virtually pre-empted the field of local conflict resolution with their numerous works on non-state mechanisms in South Africa. These authors tracked the development of the underground street committees in the 1980s and 1990s, culminating in the edited volume The Other Law: Non-State Ordering in Contemporary South Africa (2001). Their investigations revealed that the "ordering" community – which provides conflict resolution as well as justice to South Africans – is extremely diverse and fulfills vital needs to an under-resourced South African state. Restorative justice expert Declan Roche (2001) and criminologist Clifford Shearing (2001) have also provided insight into the role of conflict resolution on the ground, particularly with respect to the Cape Town-based Community

[12] *Id.* at 21.
[13] See. for example, John Braithwaite, "Restorative Justice: Assessing Optimistic and Pessimistic Accounts", 25 Crime and Justice 1 (1999); and Martin Deutsch, ed. THE HANDBOOK OF CONFLICT RESOLUTION: THEORY AND PRACTICE, San Francisco: Jossey-Bass (2000).
[14] Miall et al., at 6.

Peace Programme.[15] This initiative creates "franchises" of peace committees throughout the country that empower communities to resolve their own problems, without resorting to the strong-arm of the state. International perspectives may be found in both Rothchild's (1997) and Rantete's (1998) analyses into the themes of the negotiated settlement. Each work elucidates the strategies that were required to resolve the multiplicity of goals advanced by key stakeholders during the transition. Finally, scholarly efforts have been complemented by journals such as the Centre for Conflict Resolution's *Track Two* and the Institute for Security Studies' *Crime Quarterly*, which offer uniquely South African views.

The Western Cape



The Western Cape contains about ten percent of South Africa's land area and an equal amount of its population.[16] The coastline touches upon the cool waters of the Atlantic and the warmer currents of the Indian Ocean. Eight of ten of South Africa's most popular tourist attractions are found in the province, including Table Mountain, several wine regions, and the dazzling indigenous plant species called *fynbos*.[17]

The provincial capital of Cape Town has a population of over four million people. Nearly 89 percent of the province lives in urban environments.[18] Although previously

[15] Interview with John Cartwright, Communications Director, Community Peace Programme (July 2005). See Clifford Shearing, "Transforming Security: A South African Experiment" in Strang, H. and J. Braithwaite, eds. Restorative Justice and Civil Society (2001). *See also* Declan Roche, "Restorative Justice and the Regulatory State in South African Townships," 42 Brit. J. Criminology 514 (2002).
[16] Lehohla, at 4.
[17] "Western Cape Socioeconomic Review," Cape Town: Western Cape Provincial Treasury (2003), 37.
[18] Pali Lehohla, "Provincial Profile 1999: Western Cape," Pretoria: Statistics South Africa (2004), 1.

coloured communities predominated, an influx of black South Africans and immigrants has shifted the demographics to comprise about 50 percent coloured and a roughly even mix of black Africans and whites.[19] The primary spoken languages are Afrikaans, English, and Xhosa.

During apartheid, ethnic groups in the province were regularly played off against one other to secure votes and political power. The coloured community frequently supported the apartheid government in response, and races continue to be divided along geographical lines. The white beach town of Camps Bay, with its Ferraris and sprawling villas, could be confused with the French Riviera. The coloured community of Atlantis feels like an impoverished mining town, and the primarily black squatter areas of Khayelitsha could melt into the most destitute Brazilian *favela*.

Socioeconomic growth has been mainly driven by the tertiary industries of business services and real estate.[20] Per capita income rested at R20,176 in 2002 (roughly $3,363 at 2006 rates).[21] Foreign direct investment remains small.[22] Unemployment rates are about half the national average, but these reflect significant differences in hiring practices. There has been a marked increase of woman hires,[23] but coloureds are employed 37 percent more than blacks.[24] Education does not appear to have made a difference, as hiring for high school graduates decreased for blacks but rose for whites.[25] There is consequently an enormous population of unemployed black and coloured youths and, perhaps not coincidentally, Cape Town suffers from the highest murder rate in the country.[26]

These fascinating demographics make the Western Cape an instructive place in which to examine conflict resolution methods. Tensions flare up over access to basic resources, transportation, or even ocean views. Its population remains vocal and the thriving press presents a healthy mix of opinions.

We now turn our attention to the first part of this thesis, our historical assessment of the National Peace Accord.

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[19] *Id.*
[20] "Western Cape Socioeconomic Review," Cape Town: Western Cape Provincial Treasury (2003), 18.
[21] *Id.* at 46.
[22] *Id.* at 67.
[23] *Id.* at 21.
[24] *Id.* at 20.
[25] *Id.* at 56.
[26] Anton Du Plessis and Antoinette Louw, "The Tide is Turning: Western Cape 2003/2004 Crime Statistics," *SA Crime Quarterly, No. 12 (June 2005)*, 6.

Part II. Clipped Wings: the Rise and Fall of the National Peace Accord

A solitary gunman walked towards Chris Hani in front of his home in Boksburg, Johannesburg and fired four shots into his head, killing him instantly on 13 April 1993.[27] Hani, South African Communist Party president, guerilla veteran, and leader of the African National Congress, had proven to be one of the lone voices capable of restraining an increasingly militant African youth. An informer revealed the assassin to be a white Polish immigrant and member of the right-wing Afrikaner *Weerstandsbeweging* party, and the nation viewed the event as a deliberate move to destabilize the ongoing negotiation process. The youth bristled and clamored for violence. In response, the ANC leadership organized a series of commemorative marches to prevent retaliatory attacks.[28]

In Cape Town, a Church service predicted to attract 10,000 people swelled to 50,000, and ANC peace marshals found themselves overwhelmed.[29] Unable to hear Archbishop Tutu and party leaders express their recognition of Hani, the marchers turned their eye towards the nervous, inexperienced police, as Marks recalls:

> Leaderless, frustrated, and spoiling for trouble, gangs of youths go on the rampage, stoning the stalls and nearby shops, breaking windows in preparation for looting, and setting fire to parked vehicles, pay-and-display machines, and refuse bins. Others are making mock attacks on the police position. Chanting 'war, not peace,' fists pummeling the air, between two hundred and three hundred youth at a time charge toward the police, toyi-toyiing their challenge, only to disperse at the last minute and then regroup for another pass.[30]

The police were not the only ones charged, however. Standing between them and the youth, a line of peace workers worked to diffuse the looming conflict at key flashpoints throughout the rally. Despite the looting and inflammatory aiming of police weapons at marchers, the peace workers helped the day pass without violence – with one exception. A marcher lost his life and one hundred and fifty were injured when the police lost their calm and peppered the crowd with buckshot, rubber bullets, and tear gas at the close of

[27] Nelson Mandela, LONG WALK TO FREEDOM 599 (1994).
[28] *Id.* at 600.
[29] Susan Collin Marks, WATCHING THE WIND: CONFLICT RESOLUTION DURING SOUTH AFRICA'S TRANSITION TO DEMOCRACY 77 (2000).
[30] *Id.*

the rally. The newspaper headlines displayed bloody pictures of the fallen marcher and the injured the next day, but the efforts of the peace monitors were celebrated.[31]

This incident underscores the complex nature of the National Peace Accord. Signed on September 14, 1991, the Accord established, among other things, a network of peace committees ranging from the national to local level, and represented a pluralistic attempt to shepherd conflict-plagued South Africa towards a democratic future. The agreement provided a needed forum for antagonistic parties to meet, offered insights into halting spiraling violence, and presented a new national vision. Yet the Accord did not even envision the brave role of the peace monitors; their work emerged from extemporaneous problem-solving. Moreover, because of the tendency to measure the success of the Accord by the number of fatalities instead of *averted* fatalities, its accomplishments often go unrecognized. In the Hani rally, for example, one person died, but two hundred youth or more were ready for conflict. It is an unanswerable question how many more lives in South Africa would have been lost without the agreement.

But even the Hani incident barely touches upon the complexity of the agreement. Drawing upon interviews with key actors during the process, this section will examine the nuanced and multifaceted history of the National Peace Accord (NPA), with an emphasis on the effectiveness of the Peace Committees. Part A will examine the formation of the Accord. Part B will discuss the structure of the Accord by analyzing the language and intent of the document. Part C will assess the strengths and weaknesses of the Accord through the use of two analytical frameworks. Throughout this section we will see that the Accord, while flawed, successfully transformed entrenched attitudes in the face of a rapidly changing political landscape. We will then turn to assess its legacy in the next section by examining the local conflict resolution community in Cape Town today.

Part A. Origins of the National Peace Accord

[31] Mark Shaw, "Crying Peace Where there is None?: The Functioning and Future of Local Peace Committees of the National Peace Accord," Centre for Policy Studies Transition Series, Report No.31, 23 (Aug. 1993).

The National Peace Accord must be seen as part of the continuum of the negotiated settlement towards majority rule in South Africa. A multitude of pressures culminated in the unbanning of opposition political parties and the release of political prisoners in the early 1990. However, ongoing conflict and an escalation in violence had resulted in nearly 700 political fatalities in the month of August alone.[32] Discord was fomenting between blacks and whites, between and within political parties, migrant hostel dwellers and communities, Xhosas and Zulus, rival taxi services, and within impoverished townships over scarce resources.

Church and progressive business groups, considering themselves to be neutral mediators, each attempted to launch a negotiating forum to foster needed peace talks. Both efforts floundered. The South African Council of Churches (SACC) declared its intent to hold a national meeting of all "strife-torn" communities in March 1991.[33] Comprised of an alliance between Christian denominations and religious organizations, the SACC had displayed its support for the transition by denouncing the apartheid system, calling for a more egalitarian society, and demanding a democratic constitution at the town of Rustenberg in November 1990.[34] But the failure to alert Inkatha Freedom Party (IFP) Chief Minister Buthelezi, the ANC's chief political rival, resulted in his refusal to participate in the meeting.[35] Similarly, the government feared that since "strife-torn" communities were perceived as being mostly black, it was not expressly invited.[36] Peace talks would have been ineffectual without the participation of these two parties so this meeting and a similar one intended for 9 May 1991 both failed to materialize.[37]

Progressive business forces were also unable to convene a national multiparty meeting. Representing ninety corporate business interests committed to the transfer to majority rule, the Consultative Business Movement (CBM) held a series of exploratory meetings with the government, ANC, IFP, and trade unions.[38] Discussions centered upon

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[32] Nicole Ball and Chris Spies, "Managing Conflict: Lessons from the South African Peace Committees," Overseas Development Council and Centre for Conflict Resolution, 64 (Nov. 22, 1997).
[33] Peter Gastrow, BARGAINING FOR PEACE: SOUTH AFRICA AND THE NATIONAL PEACE ACCORD 15 (1995).
[34] Chris Spies, "South Africa's National Peace Accord: Its Structures and Functions," in *Accord: An International Review of Peace Initiatives*, ed. Catherine Barnes, 20 (2002).
[35] *Id.* at 39.
[36] *Id.* at 38-39.
[37] *Id.* at 39.
[38] *Id.* at 18.

the disruption of violence to the weakened economy and private life.[39] But the spiraling violence derailed any possibility of national talks as the ANC issued demands of the government, alleging covert funding of the rival Inkatha Freedom Party.[40] The CBM had positioned itself as capable of addressing the involved parties, but its preoccupation with maintaining the status quo also made it suspect as a sole mediator.[41]

The unilateral call of a late May peace summit by President F.W. De Klerk was equally unsuccessful. Following the demands issued by the ANC in April, De Klerk announced a national peace summit without consulting the other political parties. ANC leaders accused De Klerk of showboating before embarking on an international sanctions-lifting tour, and did not appreciate the non-consultative decision, which smacked of the authoritative apartheid era he had declared himself willing to leave behind.[42] Moreover, the ANC held the government responsible for causing much of the violence and shunned the lack of transparency behind the decision.[43] Three separate attempts to provide a high-profile negotiating session had failed within a short time.

At this moment the earlier initiatives of the South African Council of Churches and the Consultative Business Movement bore fruit. Church leader Reverend Frank Chikane and CBM organizer Colin Coleman, viewing De Klerk's summit as a potentially destructive development, sprang to action and met with the concerned parties.[44] It was decided that De Klerk's conference would be framed as an "ongoing process", and quickly followed by another, more inclusive one with the SACC and CBM serving as independent mediators.[45] De Klerk's half-baked summit produced two tangible results: Buthelezi's call for a network of "peace action groups"[46] and the appointment of church leader Louw Alberts to spearhead preparations for a new initiative.[47]

We will digress here to note IFP leader Buthelezi's suggestion for a network of peace action groups because they are relevant to our greater examination of local conflict

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[39] *Id.*
[40] The allegations were for the most part true. Nicole Ball and Chris Spies, Managing Conflict, at 6.
[41] Gastrow, Bargaining for Peace, at 40.
[42] Spies, "South Africa's National Peace Accord," at 21.
[43] Gastrow, at 20.
[44] Spies, at 21.
[45] Gastrow, at 22-23.
[46] *Id.* at 24-25.
[47] Spies, at 21.

resolution. Like the National Peace Accord, Buthelezi's idea was culled from an evolving culture of conflict resolution. The deficiencies of the apartheid system had given rise to a thriving 'other law', as Schärf and Nina call it, that provided the country with conflict resolution and justice :

> The 'other law' has been developed and constituted in South Africa through many years of resistance, adaptation and accommodation in relation to the oppression of the apartheid state. It has also emerged as a normal response of a civil society which requires its own micro-level regulatory needs beyond state control and capacity. Last, it is a feature of a diverse society in which value systems and religious beliefs exist which are contrary to the standard western beliefs.[48]

Peace committees had been active as "other law" in South Africa since at least the late 1980s. A loose network of traditional *makogtla* and street committees thrived in the townships at the time Buthelezi demanded them. Non-state ordering mechanisms provided millions of black South Africans with access to conflict resolution on a daily basis.[49] Other community-based and non-governmental organizations complemented the efforts of the *makogtla* and street committees.[50] Buthelezi's suggestion even drew upon the positive contributions of local peace initiatives in his own constituency.[51]

Returning to the formation of the document, the National Peace Accord was nearly completed by September 1991. Louw Alberts formed a thirteen member facilitating team that drew support from three members each from the ANC, IFP, and government. Five working groups hammered out details pertaining to: (1) a political party code of conduct; (2) a security force code of conduct; (3) socio-economic development; (4) implementation and monitoring; and (5) process, the secretariat, and the media.[52] Junior party representatives were charged with fashioning a final agreement in

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[48] See Wilfried Schärf & Daniel Nina, THE OTHER LAW: NON-STATE ORDERING MECHANISMS IN SOUTH AFRICA 13, (2001). We will examine these entities more closely in the final section of this thesis.
[49] See Schärf & Nina, at 7.
[50] For example, ACCORD worked in the Mpumalanga region in reconstructing a community torn by ANC-IFP antagonism. A local peace agreement was signed in 1989 and party leadership established the Mpumalanga Reconstruction Coordinating Committee as a result. Vasu Gounden, "The South African National Peace Accord: A Moment of Peace in a Protracted Process," in PILGRIM VOICES: CITIZENS AS PEACEMAKERS 74.
[51] *Id.* at 75.
[52] Spies, "South Africa's National Peace Accord," at 21.

order to prevent the face-saving stalemates that plagued senior leaders.[53] The representatives reduced numerous draft agreements down to an acceptable document by the time of the widely publicized National Peace Convention on September 14, 1991. Although extreme right and left wing parties did not participate, the Pan African Congress of Azania and Azanian People's Organization endorsed the spirit of the final document, and twenty seven parties signed.

Part B. The Structure of the Peace Accord

The text of the National Peace Accord marked an ambitious effort to stop the spiraling violence in South Africa. Signatories committed themselves to "condemn the scourge of violence" and "consolidate the peace process."[54] An emphasis was placed on socioeconomic reconstruction of violence-plagued areas, the investigation of particular incidents, reigning in the police force, and outlawing private armies.[55] Codes of conduct were established for the political parties and the police, guidelines for socioeconomic development promulgated, and implementation mechanisms approved. These measures were underscored by a declaration of basic democratic principles.[56] The "fundamental" rights of conscience and belief, free speech and association, freedom of movement and assembly, and political affiliation were agreed upon.[57] The media was granted wider freedom, the importance of democratic sovereignty was stressed, and the parties were reminded to behave courteously in public so as to not instigate violence.[58]

The signing of the National Peace Accord also marked the establishment of a new quasi-governmental body. Although various authors have offered diagrams to explain the structure, they are inconsistent and ultimately confusing, so we will confine the discussion to words. The NPA essentially worked at *national, regional,* and *local* levels. Each level contained a particular administrative apparatus.

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[53] *Id.*
[54] Preamble, National Peace Accord (Sept. 14, 1991).
[55] *Id.*
[56] *Id.* at §1.2.
[57] *Id.* at §1.3.
[58] *Id.* at §1.4.

At the *national* level there were three apparati. The umbrella National Peace Committee, comprised of a council of leaders, oversaw the implementation of the entire agreement. Beneath the committee, the National Peace Secretariat, headed by Antonie Gildenhuys, coordinated the peace committees throughout the nation. Parallel to the National Peace Secretariat, and also at the national level, was the Commission of Inquiry (the "Goldstone Commission"), charged with investigating violence and intimidation.

At the *regional* level, three mechanisms functioned. The socio-economic and reconstruction and development sub-committee (SERD) served to address poverty and resource-based conflict. Regional peace committees were tasked with establishing local peace committees and, when possible, helping SERD to fulfill its mandate. The third mechanism of the Justices of the Peace received broad powers to investigate public complaints, mediate disputes, and refer offenses to the government.

The *local* mechanism was arguably the most successful and interesting aspect of the National Peace Accord. At this level, local peace committees (LPCs) served to confront violence and address community concerns.[59] Chapter 7 of the Accord outlined their basic functions. Beginning from the premise that "insufficient instruments exist to combat violence and intimidation... at [the] grassroots level," the document then delineated specific roles.[60] Government involvement was deemed essential, and the National Secretariat's role of establishing peace committees was outlined. Decision making within the Secretariat was to proceed on a consensus basis.[61] Peace bodies were to be established at the regional and local levels, and both kinds of peace committees were to be representative of the communities they served. However, the regional peace committees (RPCs) were required to appoint a variety of church, business, and political organizations while local peace committees (LPCs) were not, only needing to be comprised of representatives "reflecting the needs of the relevant community."[62] The twenty-member regional peace committees also had an extremely broad agenda, including working with the Goldstone Commission, settling disputes, monitoring regional peace agreements, noting breaches of the Accord, establishing LPCs, and consulting with

[59] This explanation is drawn from a Track Two schematic diagram. Laurie Nathan, "An Imperfect Bridge: Crossing to Democracy on the Peace Accord," in *Track Two*, Vol.2 No.2 (May 1993), at 5.
[60] *Id.* at §7.1.
[61] *Id.* at §7.3.3.
[62] *Id.* at §7.4.7.

regional authorities to prevent violence or intimidation.[63] The Local Peace Committee agenda was much looser: creating trust and reconciliation within the community, settling disputes, reporting to the RPCs, establishing rules for rallies and marches, and liaising with local authorities for such events.[64]

Our basic understanding of the structure of the Peace Accord permits us to proceed to examine its workings in practice.

Part C. Assessing the Peace Accord

The National Peace Accord marked a commitment to peace at the highest levels of government. However, the day of its entry into force was not without difficulties, perhaps setting the tone for its three year life. Several thousand IFP supporters rallied outside the day of the Convention, wielding the traditional weapons that their leader had just outlawed with his signature. Mandela rose to the podium and denounced the protesters, while Buthelezi, instead of apologizing, intoned: "Wherever the king is, the people come."[65] Buthelezi then accused Mandela of breaching the code of political conduct after Mandela called him a "surrogate" to the government.[66]

The Accord otherwise got off to an acceptable start. Within a short time, the marketing committee developed the distinctive blue two-dove mark that came to represent the process. Televisions and newspaper advertisements explained the basic mechanisms of the Accord and the parties attempted to fulfill its mandates. The investigatory Goldstone Commission, after launching 467 investigations and filing 46 reports,[67] fostered an agreement for party rules governing mass rallies,[68] and eventually revealed the existence of the government-sponsored "third force" that threatened to derail the negotiations. The National Secretariat held 38 formal meetings in its first year,[69] and spawned eleven regional peace committees and 263 local peace committees by 1994. The regional and local committees absorbed the impact of violence on a daily basis,

[63] *Id.* at §7.4.5.
[64] *Id.* at §7.4.8.
[65] *Financial Mail Survey*, "The National Peace Accord" (Apr. 9, 1993) 7.
[66] *Id.* at 40.
[67] Paul Stober, "Brought to Light," in IN THE NAME OF PEACE 21 (1995).
[68] *Financial Mail Survey*, "The National Peace Accord" (Apr. 9, 1993) 18.
[69] *Id.* at 12.

frequently representing the sole line between, according to Marks, "a fragile equilibrium and chaos."[70] The committees' individual achievements are remarkable but also anecdotal and plagued by the difficulties inherent in measuring the absence of violence. (More on this later.) Except for Mandela's call to revitalize the agreement following negative media coverage in June 1993, most aspects of the Accord functioned well.[71]

The peace monitors served as the Accord's most visible contribution to civil society. Not envisioned within the text of the document, but also not anathema to it, a network of monitors developed along with the Regional and Local Peace Committees. They identified themselves with colorful bright vests and frequently placed themselves in danger at marches and potentially explosive events. A last minute decision by the IFP and an injection of funds from the British government enabled about 18,500 monitors and 1,930 marshals to oversee the April 1994 elections.[72] Their ability to operate communications centers facilitated the distribution of ballot papers and ensured peaceful journeys to the ballot. International observers were obviously impressed. Scotland Yard chief superintendent David Gilbertson, for example, declared that "the peace structures probably saved the electoral process at an operational level."[73] Gerrit Nieuwoudt, a police superintendent who sat on the Western Cape Regional Peace Committee, echoed these sentiments. The police monitors "gave an awareness of being watched," he remembered, "and this helped all the parties in difficult situations."[74]

Interestingly, the stated goal of the Accord to "consolidate the peace process" also resulted in its demise. The start of the CODESA talks immediately following the Accord and the later Multiparty Negotiations Forum sessions both sapped the NPA of momentum. The interim transitional government, without explanation or dialogue, began closing down the National Peace Secretariat as early as 1994.[75] The task of fostering a political climate conducive to the transition had more or less been accomplished. It was presumed that the expected democratic institutions would replace the structures with

[70] Marks, Watching the Wind, at 20.
[71] Ball and Spies, Managing Conflict, at 26.
[72] Hannes Siebert, "Not the Last Word on Peace," in *Track Two*, Vol. 3 Nos 2/3 (May / September 1994) 36.
[73] Phillipa Garson, "The Greatest Gift of All," in In the Name of Peace, at 14.
[74] Interview with Gerrit Nieuwoudt, Police Superintendent of Kraiifontein, South African Police Services (Jan. 25, 2006).
[75] Spies, "South Africa's National Peace Accord," 25.

accountable local governments, but this was never expressly stated.[76] Leaders within the Secretariat lamented the decision and made unanswered pleas for financial support from the business community, hoping to fund a R35 million shortfall.[77] However, by December 1994 the entire apparatus was dismantled. The KwaZulu-Natal Provincial Legislature was the sole government that continued its regional and local peace committees, with an R5,5 million operating budget for 1995.[78] Thousands of volunteer and full-time peace workers scrambled for prized positions in the new "peace industry" or, with luck, returned to their old posts.

It suffices to say that the rich history and structure of the National Peace Accord have been examined at length. Two scholars who participated in the process, Peter Gastrow and Susan Collins Marks, wrote extensive analyses. In Bargaining for Peace, Gastrow offers the perspective of an insider conflict resolution theorist well-versed in the Accord's political development. Marks' Watching the Wind presents a more informal, experiential view of a member of a Regional Peace committee that is invaluable for its practical insight on day-to-day peace efforts. Because of its more systematic analysis we will utilize Gastrow's work as a framework to assess the effectiveness of the agreement, followed by an analysis by another scholar for balance.

Peter Gastrow's Objectives

Gastrow suggests utilizing the main objectives of the Accord as a metric. His reading of the agreement found that it intended to (1) eliminate political violence through the peace committee network; (2) promote democratization by fostering a climate of tolerance; and (3) facilitate reconstruction and development in strife-torn communities.[79]

1. Eliminating political violence.

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[76] *Id.* at 25.
[77] Phillipa Garson, "Out in the Cold," in In the Name of Peace, at 14.
[78] Spies, "South Africa's National Peace Accord," 25. See also Karien MacGregor, "The Work Continues," in In the Name of Peace.
[79] Gastrow, Bargaining for Peace, at 57.

Facially, the first objective of eliminating political violence appears not to have been reached. Statistics indicate that violence was neither eliminated nor lessened. The years 1991-1993 saw an increase in political fatalities from 2,706 in 1991 to 3,347 in 1992, and from 3,347 to 3,794 in 1993.[80] Gastrow notes that most of these deaths were based in the hot zone of KwaZulu-Natal and the PWV area, where "political rivalry is at its fiercest," and this clouds the fact that the rest of the country may have succeeded in stemming violence.[81] But this observation misrepresents the fact that over 60 percent of the national economy was located in those regions at the time.[82] In other words, it seems natural that conflict should also occur where the most resources are at stake, even if most were controlled by the white minority. (It also seems tautological to say that violence happened where violence was at its worst.) Ball and Spies shed some light on this issue with respect to Local Peace Committees:

> Efforts to establish LPCs often ran up against a "Catch-22" situation. Where tensions existed but violence was latent, communities often questioned the need for peace committees. Once violence flared, however, community leaders were often more willing to have committees established, but the polarization resulting from the violence greatly increased the difficulty in establishing committees.[83]

The regions of KwaZulu-Natal and Witsvaal, they observe, were typical of this Catch-22 difficulty. Regional Peace Committees in these areas were fraught with internal politics and accused of partisanship. Because of the reactive nature of Local Peace Committees, which were set up to combat violence as it flared, many were created when the conflict had escalated to intractable levels of conflict and mistrust.[84] In a small town in the Transvaal, for example, some local organizations felt there was no need for a peace committee since there was no violence, but demanded one when violence erupted. By the time it was established it was ineffective against the entrenched positions of the parties involved.[85] Gastrow's regional analysis of the violence also detracts from the fact that, despite this Catch-22 phenomenon, LPCs in those violence-torn regions were often the

[80] Ball and Spies, Managing Conflict, at 64.
[81] Gastrow, Bargaining for Peace, at 78.
[82] *Id.* at 77.
[83] Ball and Spies, Managing Conflict, at 12.
[84] Shaw, "Crying for Peace," at 6.
[85] *Id.* at 7.

most effective committees in the country once operational, as judged by the frequency of participation, frequency of meetings, and success in resolving disputes.[86]

Another, more valid qualification Gastrow makes is that political fatalities are not an adequate measure of violence. The *patterns* of violence changed, particularly in the sense that overt, daytime killings were replaced by underground attacks and massacres perpetrated by the then anonymous Third Force. According to a *Financial Mail Survey*, these were groups of "well-armed, well-organized gunmen who inevitably melted away after the event to spark a wave of retaliatory violence against opponents of those attacked."[87] Revenge killings and assassinations became the norm.[88] The underground violence presented issues of causation and procedure that hampered the Goldstone Commission and prevented the perpetrators from being brought to justice for lack of witnesses.[89] The police and mercenary members of the Third Force also tended to come from outside the communities, and were therefore not possible to confront in local forums.

This observation of the changing patterns of violence is related to a much larger point. The nature of peace work makes it impossible to measure exactly how many political fatalities were prevented. Any attempt would by nature be hypothetical and counterfactual. For example, in the discussion of the Chris Hani marches that opened this section, it seems fairly clear that the intervention of the peace monitors in the face of the toyi-toyiing youth may have prevented a blood bath. But there is also the remote possibility that the youth would not have charged at all if they had not known the monitors would keep things in order. "Generally speaking," Secretariat head Dr. Antonie Gildenhuys explained, "measuring the impact of the peace structures is difficult, because some of our successes are non-events."[90] On the other hand, Justice Goldstone, head of the Investigatory Commission, warned that "if there had not been tens of local dispute

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[86] *Id.* at 30.
[87] The third force was later revealed by the Goldstone Commission to be operated by members of the South African Police. Gastrow, Bargaining for Peace, 80-81, and *Financial Mail Survey* (April 9 1993) 4.
[88] Shaw, "Crying for Peace," at 9.
[89] M. Shaer and S. Nossel, "Groundswell at the Grassroots: the Challenge Posed by Peace Accord Dipute Resolution Committees," in *Fifth Annual Conference on Negotiation and Mediation in Community and Political Conflict in South Africa* (University of Port Elizabeth, 25-28 November 1992) 19.
[90] Phillipa Garson, "Interview of Dr. Antonie Gildenhuys," in In the Name of Peace, at 16.

resolution committees operating throughout the country, I don't think any sensible person could doubt that the level of violence would be much worse."[91]

Efforts are made to assess the potentially "worse" violence by pointing to the number of monitors and Local Peace Committees in existence (about 18,500 and 260, respectively) at the time the Secretariat was closed in 1994. But this argument is also subject to criticism. The mere existence of an institution does not demonstrate its success; the bureaucratic quagmire of the apartheid government can attest to that fact. That the LPCs were voluntary does bolster the point somewhat, but some communities felt the committees were forced upon them.[92] The existence of empirical research might have helped resolve this problem of metrics. However, given the dramatic and sudden closure of the Secretariat, much of the valuable data, such as meeting minutes and local reports, were lost as a handful of officials closed the project down.[93]

2. Promoting democratization and a culture of tolerance

The second goal of the Accord identified by Gastrow pertains to its ability to promote democratization and a culture of tolerance. This goal is inherently less measurable than the goal of eliminating violence, yet it is also the area in which the Accord appears to have met with the most success. The single most challenging and remarkable aspect of the agreement appears to have been the ability to change attitudes. On the national level, the National Peace Committee provided a forum in which opposing leaders could meet informally even after talks had broken down. The mutual commitment to the spirit of the Accord permitted, according to Spies, "channels of communication to remain open."[94] The establishment of face-to-face relationships also proved valuable at the regional and local levels. Political rivals suddenly found a neutral forum in which to express their views without losing face, and community members began a tentative dialogue with the South African Police Services, or addressed non-political problems from a conflict resolution perspective.

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[91] *Financial Mail Survey*, "The National Peace Accord" (Apr. 9, 1993) 20.
[92] Shaw cites the example of Bruntville, Natal, in which the community considered the establishment of an LPC to be an intrusion. Shaw, "Crying for Peace," at 7.
[93] Spies, "South Africa's National Peace Accord," at 25.
[94] *Id.* at 20.

Indeed, the police represent an excellent example of the ability of the Accord to change attitudes. Chapter 4 of the agreement stipulated a detailed code of conduct for the police forces that required, among other things, upholding basic rights and liaising with members of the community when possible, both novel responsibilities. They were also required to wear identifiable badges and patrol in clearly marked cars, removing the ability for surprise attacks and increasing accountability. Minimum force, adhering to unprejudiced conduct, avoiding corruption, and adopting an altruistic, community-oriented attitude were other important tenets.[95] Joint Operations Communication Centres alerted community members to roadblocks and search actions, while political parties informed police of coming rallies.[96] Sometimes the very act of attending regional or local peace committee meetings was enough to break down barriers. Seating arrangements manipulated personal space and placed former enemies next to each other.[97] Marks recalls one particularly revealing incident watching an apartheid activist sit deliberately next to an old enemy:

> Stewart walked in, hesitated, his eyes sweeping the circle, and made his decision. He walked toward a vacant seat next to a police major. He sat down and turned to greet the police major before acknowledging the warm welcome of colleagues and friends. Only a handful of people in the room knew that he had chosen to sit beside his former torturer.[98]

The culmination of encounters such as these was a drive towards community policing. Committed by their leaders to adopt new methods of policing in the spirit of the Accord, dialogue with police increased recognition that they were meant to serve, rather than terrorize their communities.[99] This ran directly counter to their apartheid-era training, which implored them to seek out – and often destroy – government opposition.[100] Yet by the time of the elected constitutional government, community-police bridges had been forged in the New Police Act.[101] A police officer sitting on the Western Cape Regional

[95] Marks, Watching the Wind, at 165.
[96] Ball and Spies, Managing Conflict, at 28.
[97] Marks, at 159.
[98] *Id.*.
[99] *Id.* at 169.
[100] *Id.* at 161-62.
[101] *Id.* at 176.

Peace Committee recalled that "[t]he police were used to being on their own. Now they gathered input from others. This attitude slowly filtered upward to the management."[102]

Local Peace Committees in particular made a variety of differences at the community level. Local politics were made less divisive by the neutrality of the forum.[103] Rumors were dispelled through transparency before they were inflamed.[104] LPCs also provided a needed administrative apparatus in resource deprived communities,[105] furnishing telephones, faxes, and rapid response vehicles.[106] The notorious taxi rivalries of the Western Cape and squatter conflicts in the Transvaal were, at least temporarily, resolved.[107] Several thousand committee members also benefited from training sessions held across the country,[108] learning practical conflict resolution skills that helped increase local empowerment. Again, many of the accomplishments are anecdotal, but on the whole, local and regional committees carried out their mandates, as Ball writes:

> a comparison of the official mandates with the functions actually carried out by the committees clearly demonstrates that despite significant difference in the degree of success registered by individual committees in fulfilling their mandates, as a group, the regional and local peace committees did manage to perform most tasks specified in the NPA.[109]

Most regional and local peace committees were successful in upholding the letter of the agreement, although not all. Some were underinclusive, neglecting the important voices of refugees and migrant workers, as well as youth.[110] But due to the vague language governing the LPCs, flexibility permitted adaptability to fluctuating conflict climates. A committee could oversee the installation of water taps in a squatter settlement, address allegations of police brutality, and resolve hostel disputes at the same meeting.

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[102] Interview with Gerrit Nieuwoudt, Superintendent, Kraiifontein, South Africa Police Services (Jan. 25, 2006).
[103] Shaw, "Crying for Peace," at 8.
[104] Ball and Spies, Managing Conflict, at 20.
[105] Shaw, at 8.
[106] Spies, "South Africa's National Peace Accord," at 25.
[107] Shaw, at 8.
[108] Gastrow, Bargaining for Peace, at 75.
[109] Ball and Spies, at 9.
[110] *Id.* at 37.

However, the ability of the peace committees to foster democratic processes should not be confused with the internal structure of the NPA. The Accord was essentially structured as a top-down mechanism, imposed from the highest levels of society to the local level. In some ways, particularly with respect to the police, this was a positive development because lingering apartheid structures could be resistant to change. But, in a negative sense, this prevented the insights of the local and regional structures from influencing national level decision-making. It would have been simple to include LPC members on RPCs, for instance, and for RPC members to be represented at the Secretariat level. But national level members were appointed, and LPCs were generally *consulted* by RPCs, rather than represented on their structures. This denied the very real impact that these mechanisms were having on the communities, and prevented the adoption of practical insights. Perhaps if members of the local committees had been present at the national level, the interim government would not have been so quick to scrap the Accord.

A successful argument could be made that the Accord suffered from a lack of internal commitment to diversity as well. There was a severe dearth of women within the structures of the Accord.[111] Its facilitation by the Consultative Business Movement also appears to have left its imprint as a top down structure. Different scholars have noted its close resemblance to a corporate board and its failure to incorporate the interests of its consumers.[112] Fund disbursement to local level structures was therefore appallingly low.[113] The national level leadership also seems to have been overwhelmingly white. The key cabinet members Judge Goldstone (of the Investigatory Commission), Gildenhuys (of the National Peace Secretariat), and John Hall (Chairman of the Accord), while progressive, certainly did not reflect the envisioned Rainbow Nation. These leaders were complemented by the appointed representatives of the IFP, ANC, and NP, but non-whites were the *majority* in the country. Perhaps the overall lack of diversity can be explained by the political affiliation of minorities capable of wielding such power, but this is somewhat unlikely, and it does not answer the problem of gender disparity.

[111] Karien MacGregor, "The Work Continues," at 53.
[112] Midgley, "Implementing the National Peace Accord," at 9; Shaw, "Crying for Peace," at 15.
[113] Shaw, at 16.

Despite its shortcomings, the National Peace Accord does appear to have effected widespread change at an institutional and attitudinal level. It readied the nation for coming transformation in a time in which spiraling violence seemed to preclude the possibility.

3. Socioeconomic Development and Peacebuilding

The third and final criterion offered by Gastrow, of the ability of the accord to facilitate reconstruction and development in strife-torn communities, can clearly be answered in the negative. This effort appears to have operated in the arena that Johan Galtung called "peacebuilding." Peacebuilding entails the transformation of the structural conditions that foment conflict.[114] Class violence, entrenched attitudes, and access to resources must be addressed to prevent conflicts from resurfacing in a new form. The Accord does not seem to have satisfied these requirements.

Most studies of the NPA distinguish between its ability to resolve symptoms of violence and resolve structural causes of violence. "The Accord," a monitoring team from International Alert determined, "at best addresses the symptoms of political violence, but it cannot overcome the structural causes of violence."[115] Ball seconded this assessment, writing that "the structural causes of violence and the struggle for power among the major political parties limited the capacity of the committees to significantly reduce violence in South Africa prior to the 1994 elections."[116] The Accord and its foot soldiers the peace committees acted as a temporary band-aid to replace failed apartheid and political party attempts to halt violence.

Yet the Accord did contain textual provisions to combat these structural difficulties. The Accord's original Preparatory Committee boasted that it did "creat[e] the structures" and could serve as "a vehicle which [would] bring peace if all South Africans work[ed] together in those structures."[117] The Socio-economic and Reconstruction and Development sub-committee (SERD) was intended to prevent the

[114] Shaer and Nossel, "The Challenge Posed by Peace Accord Dispute Resolution Committees," 2.
[115] International Alert, "Mission to South Africa to Evaluate the National Peace Accord and its Peace Structures" (1993) 3.
[116] Ball and Spies, Managing Conflict, at 13.
[117] *Financial Mail* (April 9 1993) at 11.

recurrence of violent conflict by repairing communities crushed in its wake, before the resulting resource drain created more conflict. This structure-building activity was to be carried out while simultaneously addressing the other issues covered in their mandate.

However, SERD failed to uphold the letter of the agreement in most respects. The business community, with all the lip-service it paid to economic empowerment, contributed negligible resources.[118] The undivided attention required of the LPCs and RPCs ultimately prevented the initiation of SERD projects, as they were "too bogged down in crisis management to systematically address reconstruction."[119] International Alert pointed to the difficulty of the task without the securing of additional personnel for the express purpose.[120] Mark Shaw also notes that even the presence of personnel and *funds* might not have solved the problem. There was some evidence that development projects were not necessarily "conflict-free", and were capable of fomenting discord, as the death of four on the East Rand over resource distribution demonstrates.[121]

In short, Gastrow's third identified goal of rebuilding strife-torn communities was not satisfied.

Another Assessment

Gastrow's analysis helps shed light on the success of the Accord. By comparing the NPA's stated goals to its actual results, he provides a more nuanced understanding. But other methods of analysis exist. We will now utilize Jacklyn Cock's system of impact assessment and draw upon first-person interviews with key figures from the Accord – including Gastrow himself – to aid in our discussion.

The Centre for Conflict Resolution dedicated an issue of its seminal journal *Track Two* to NGO trends and impact assessment in Southern Africa.[122] Jacklyn Cock proposed a more systematic approach to determining the impact of conflict resolution organizations. Quantitative figures, she explained, are preferred, but in their absence,

[118] Interview with Peter Gastrow, Director, Cape Town, Institute for Security Studies (Sept. 13, 2005).
[119] Garson, "The Greatest Gift of All," at 8.
[120] International Alert, "Mission to South Africa," at 13.
[121] Shaw, "Crying Peace," at 22.
[122] Jacklyn Cock, "Butterfly Wings and Green Shoots: The Impact of Peace Organisations in Southern Africa," *Track Two: Constructive Approaches to Community and Political Conflict*, Vol. 10, No. 1 (July 2001).

certain qualitative indicators may prove useful. Her method entails tracking (1) input indicators; (2) process indicators; (3) output indicators; and (4) outcome indicators. *Input* indicators examine changes in staff, funding, and equipment. *Process* indicators track the numbers of workshops or services provided. *Output* indicators relate to budget changes, government white papers, and the promulgation of legislation. *Outcome* indicators, which are more long-term, pertain to changing perceptions and stereotypes.[123]

1. Input Indicators

Input indicators pertain to changes in staff, funding and equipment. Inputs clearly changed during the Accord in the short term. An entire national apparatus was created with new staff, funding, and equipment. Church and business leaders suddenly found themselves staffed on a nation-wide project. Thousands of peace monitors were deployed nationwide, a $12 million operating budget was earmarked for 1993 alone, and Joint Operations Communications Centres (JOCCs) coordinated the police and peace monitors with sophisticated equipment. In the long term, these structures all quickly disappeared after the Accord had ostensibly served its purpose.

2. Process Indicators

Process indicators generally track numbers of workshops and services provided. In the short term, processes changed significantly. Susan Collins Marks, recalling her experience by telephone, summarized that high levels of trust and skills transfer made peace committee workshops popular:

> Trust is not built by someone agreeing with you but by being true to yourself. At a [Pan African Congress] meeting, we were interviewed before hand. They had the 'One settler, One bullet' slogan. They said 'what do you think of this?' I told them I didn't agree with it, but I could see it from their point of view. I was honest with them. They drove through the night and joined us at a training conference the next day.[124]

[123] Cock, at 16.
[124] Telephone interview with Susan Collins Marks, Executive Vice President, Search for Common Ground (Dec. 22, 2005).

Honesty garnered the respect of even the most militant actors during the NPA. Gerrit Nieuwoudt, then a police commissioner in the black township of Khayelitsha, also has fond memories of his training by Marks' organization, the Centre for Conflict Resolution:

> Different people adapt differently to change. I was fortunate to go on training courses with the Centre for Conflict Resolution, which was then headed by Laurie Nathan. Ron Kraybill ran workshops for us. This personally assisted me with my training skills.[125]

He gathered the skills he learned and attempted to expose his more conservative managers in the South African Police Service to them, inviting them to regional and local peace committee meetings. In the long term, it also appears that the NPA did furnish the nation with measurable processes. Until 1999 or 2000, South Africa's conflict resolution skills were at their apogee.[126] South Africans were "processed out of their skulls," Ghalib Galant, a former Centre for Conflict Resolution staff member, explained. He recalled one event in which a man was killed in a polarized community and a democratic, problem-solving forum was operational by the end of the day.[127]

3. Output Indicators

Output indicators, which relate to budget changes, government white papers, and legislation, also appear to have been high. In the short term, the Accord helped produce a new Constitution and brought tangible changes within government structures, including its total restructuring to an interim government and majority rule. Sector policing and community police forums were introduced by the Joint Forum on Policing and the Police Board. Long term trends are more complicated to assess because of the complexity of the negotiated settlement. Some legislation may have roots in the NPA, but other laws and white papers had nothing to do with the initiative. Ghalib Galant believes that,

[125] Interview with Gerrit Nieuwoudt, Superintendent, Kraiifontein, South African Police Services (Jan. 25, 2006).
[126] Sean Tait, Director, Criminal Justice Initiative, Open Society Foundation for South Africa (Sept. 20, 2005).
[127] Ghalib Galant, Facilitator, Synergy Works (Jan. 24, 2006).

regardless, there has been significant "roll back" of the generous new dispensation. An ambitious new, employee-friendly labor law that passed in 1995, for example, has been amended five times to weigh strongly in favor of employers.[128]

4. Outcome Indicators

Outcome indicators, which track stereotypes and altered perceptions, are probably the most qualitative of Cock's indicators and therefore prove more difficult to measure. Our interviews become useful in this respect. Gerrit Nieuwoudt, then a police officer in Khayelitsha, sat on the Western Cape Regional Peace Committee. Avoidance of violence appears to have been nothing new to him, for he wrestled with it every day:

> It's like crime prevention. It's very difficult to measure. But I personally think that leaders and member of organizations were able to speak to each other in a structured manner.[129]

The important point here is not the challenge of measuring crime prevention, but Nieuwoudt's observation that the level of communication increased in a positive way. His own attitude about the spirit of the NPA changed from one of suspicion to support. Former politician Peter Gastrow served as a member of the National Peace Secretariat and echoed the importance of communication. The NPA "created an environment where chances of real violent conflict were reduced," he explained in his office at the Institute for Security Studies, "even if it just meant picking up the phone."[130] The business and church communities, which previously had little to share, were suddenly working constructively together to confront mutually destructive ills. Police involvement with local communities laid the groundwork for the eventual rise of sector policing initiatives and Community Safety Forums, which continue to operate in the Western Cape today.[131]

Equally significant, the Accord helped South Africa renew communication with the international community. It received extensive support from outside bodies. The

[128] *Id.*
[129] Interview with Gerrit Nieuwoudt.
[130] Interview with Peter Gastrow.
[131] Richard Griggs, "Lessons from Local Crime Prevention," Open Society Foundation for South Africa (2003).

United Nations, European Union, and Commonwealth all provided needed independent monitoring. Their efforts gave an added element of credibility to the mechanisms of the Accord, especially helping the peace monitors whose improvisational roles developed between the lines of the textual agreement.[132] International involvement eased South Africa onto the international scene, where it now mediates with its conflict resolution skills across the continent.

Part D. Concluding Thoughts

While the National Peace Accord steered the nation towards the transitional government, creating needed space for negotiations, it was flawed. The top-down structure was fashioned behind closed doors and created problems of 'ownership' in some communities.[133] Communication was hampered by a failure to use radio and to translate the document into indigenous languages. The initiative also lacked enforcement mechanisms capable of giving it "bite." At best, even for the Goldstone Commission, officers could refer matters to criminal or civil courts to impose fines. This meant that it relied upon opprobrium and condemnation to achieve results, when tougher measures were necessary. Finally, while churches often diffused tensions within their flocks, the business community offered nothing more than management skills and fell short of any other meaningful contributions.[134]

Such flaws were an inevitable manifestation of an improvised negotiation process. At no time was it a monolithic bloc; complexity and fluctuation characterized it from the outset. Nor does any such experiment seem to have been tried before. The initiative changed over time from evolving needs and a structure that placed responsibilities on state and non-state actors.[135] It acted as a stopgap measure to fill a swiftly emptying

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[132] Marks, Watching the Wind, at 123-24.
[133] Chris Mbileni, "Northern / Eastern Transvaal," *Track Two* (May 1993) 16.
[134] Interviews with Gerrit Nieuwoudt and Peter Gastrow.
[135] A few small examples illustrate this point. The annual budget stood at US$12 million by 1993 and was administered by the Department of Justice. However, as delays plagued its implementation, financial control was transferred to the National Peace Secretariat. The agreement was also altered slightly by the passage of the Internal Peace Institutions Act of 1992, which gave it official government recognition. The Internal Act did not mirror the original text nor did the Accord's implementation in practice, with its top-

power vacuum as the apartheid government lost its legitimacy. Measuring the success of the agreement is challenging, but those who participated in the process appear to agree that the peace committees "saved lives."[136]

This testament, of saving lives, makes it especially disappointing that the interim government dismantled the structure in its haste. Countless primary source documents were lost that may have proven useful during the Truth and Reconciliation Commission or, simply, bore witness to a turbulent time. "I thought the Peace Committees should have continued," Peter Gastrow said. "I understand that the new government did not want old vestiges of the previous regime to continue, but that does not mean we should discard conflict resolution in local areas.[137] After the disbursement of nearly R65 million and the creation of an extensive peacebuilding network,[138] committing more effort to understanding the effectiveness of the Accord seemed well within the elected government's grasp.

Themes for the Thesis

For the purposes of the greater thesis, the key themes highlighted by this section are:
(1) the National Peace Accord peace committees operated at the national, regional, and local levels;
(2) this operation left behind thousands of trained conflict resolution practitioners;
(3) the NPA represented a coordinated effort of the church and business communities;
(4) the impact of conflict resolution can prove difficult to measure; and
(5) larger structural conflicts were not resolved by the initiative.

We now turn to assess the legacy of the NPA by examining two organizations active in the conflict resolution community today.

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down management style typical of the outgoing authoritarian regime. The provisions on the regional level Justices of the Peace in particular were especially broad and could have led to the abuse of powers. In addition, certain mechanisms were established before others, further demonstrating its fluctuating nature. Spies, "South Africa's National Peace Accord," 22. J. Midgley, "Implementing the Peace Accord: A Guide to Dispute Resolution Committees," in *Fifth Annual Conference on Negotiation and Mediation in Community and Political Conflict in South Africa* (University of Port Elizabeth, 25-28 November 1992) 1, 7.

[136] Ball and Spies, Managing Conflict, at 20.

[137] Interview with Peter Gastrow.

[138] Ball and Spies, at 65.

The following chapters focus upon the relevance of the National Peace Accord to South Africa in 2006. More specifically, they examine the role of local non-governmental organizations in the Western Cape of South Africa in the context of the themes elucidated by the Accord. The Western Cape possesses a vibrant NGO community, with several specializing directly in conflict resolution. Over ten local NGOs and actors were examined to determine the proper scope of the comparison. These included Peace Jam, Mosaic, U Managing Conflict, the Open Society Foundation for South Africa, the Center for the Study of Violence and Reconciliation, the Institute for Justice and Reconciliation, the Community Peace Programme, the Restorative Justice Initiative, the Institute for Security Studies, the Quaker Peace Centre, and the Centre for Conflict Resolution. Some of these NGOs continue to thrive while others, such as UMAC, have been reduced from several dozen to a handful of staff.[139] Rather than offer a *descriptive survey* of these many organizations, the Quaker Peace Centre and the Centre for Conflict Resolution were chosen for closer examination and analysis.

These two NGOs highlight several key themes present in the National Peace Accord and provide insight into the contemporary conflict resolution community in the Western Cape. Both organizations possess a (relatively) long history in South Africa that has led to practical conflict resolution skills on the ground. Each NGO played some kind of role during the Accord itself, from election monitoring to participation of members on local and regional peace initiatives. They also permit an analysis of the emerging trends of the religious community and the significance of conflict resolution in the Western Cape. We will examine each NGO in turn, utilizing a specific project to aid analysis.

The central argument of these two chapters is that (1) the Western Cape has not fully emerged from the turmoil of apartheid; (2) the religious community has been absorbed by the process of reconciliation and peace building; (3) the miracle of the new South African dispensation has paradoxically provoked both a community-based focus *and* a shift toward regional, international issues; and (4) both organizations seek to establish links with power structures at the local, regional, and national levels.

[139] Interview with Hombakazi (Baba) Zide, Project Manager of WPBP, UMAC (Oct. 7, 2005).

Part III. The Quaker Peace Centre, Religion, and the Delft Project.

Emerging in the mid-1970s from the Quaker Meeting House, the Quaker Peace Centre (QPC) was officially founded by Rommel Roberts in 1988.[140] The QPC proved instrumental in protesting forced removals, monitoring elections, providing principled responses to abuses by the apartheid government, and offering practical hands-on training workshops and manuals. The organization became noted for its activism and received frequent mention of the conflict resolution literature in the period of the transition.

Today the Mowbray-based QPC continues to commit itself to conflict resolution. Its Mission Statement emphasizes diversity, positive transformation of conflict, and democratic rights and participation. This Mission is complemented by attitudes of a religious bent: "Vision" and "Values". The QPC envisions the acknowledgment of diversity; tolerance of views; recognizing needs and human rights; and furthering non-violent problem-solving by all members of society.[141] The Centre values "that of God in everyone"; inherent dignity; integrity and speaking the truth to those in power; restorative justice; opposition to discrimination; non-violence and "living so as to take away the causes of war."[142]

The Centre has tackled a variety of projects, some of which overlap each other in scope. The "Youth at Risk" project encourages young prisoners to pursue alternatives to violence and avoid re-offending. "Positive Discipline" aims to instill a culture of self-respect in students that rewards them for performance.[143] "Herbs and Food Preservation"

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[140] Betty Kathryn Tonsing, THE QUAKERS IN SOUTH AFRICA: A SOCIAL WITNESS 260, unpublished Rhodes University PhD thesis, *available at* Centre for Conflict Resolution Library (Nov. 1992).

[141] Carrie Menkel-Meadow has posited that "[g]ood values enhance human flourishing, promote respect for others, allow us to recognize our human commonalities and connections as well as our individual differences, and enable us, through our own actions, to make the world a better place than we found it." Carrie Menkel-Meadow, "And Now a Word About Secular Humanism, Spirituality, and the Practice of Justice and Conflict Resolution", 28 Fordham Urb. L.J. 1073 (2001).

[142] Quaker Peace Centre website, http://www.quaker.org (last accessed Jan. 29, 2006).

[143] In this project, teachers learn about the importance of avoiding the 80/20 principle in which 80 percent of their resources are spent on 20 percent of the problem learners. Instead, high-performing students are targeted to plow the ground for others to blossom. Interview with Avril Knott-Craig, Quaker Peace Centre (Sept. 6, 2006).

represents an innovative attempt to teach communities about the importance of healthy food preparation for victims of HIV/AIDS.

In order to gain more practical insight into the QPC, we have chosen the "Celebrating Diversity" project as a case-study that encapsulates the issues confronting the Centre today. This project is unique in that it is not just a topical project but also geographical, responding to perceived demand. After identifying its most coveted tenets, the QPC scanned the media to find an appropriate community. The mixed Coloured-Xhosa community of Delft provided the ideal place in which to realize its aims. The QPC has since thrown a significant portion of its resources towards Delft for several reasons. But, before we examine this effort, contextualizing the Delft project within the themes of this greater thesis merits an examination of Quaker history in South Africa.

The Quaker Peace Centre in Mowbray

Part. A. Quaker History

This part does not strive to chronicle the fascinating history of the Quakers, but seeks to identify certain key principles that will provide insight to our understanding of Quaker conflict resolution in the Western Cape.

The Quakers are an undeniably religious body. The Quaker movement sprouted from the political and spiritual crises that plagued England in the mid-seventeenth century. Its founding member is generally accepted as George Fox of Fenny Drayton, Leicestershire (1624-1696). Following a spiritual encounter, Fox began preaching his revelations, garnering support from professionals and laymen.[144] Fox posited that there was "that of God in everyone", or, as one scholar explained, "a spark of the divine, within them, whether it is immediately apparent or not."[145] The presence of God in all people implicitly denied the necessity of clerical intermediaries between God and ordinary people. Priests and ministers became redundant and unnecessary. Instead, these heretics "quaked" in the presence of God, leading to their popular moniker. They donned simple dress, told truth at all times (obviating the need to take oaths), adopted plain speech, cherished patience and responsible accounting, and advanced pacifism.[146] They called their churches "Meeting Houses" and spurned sermons in favor of meditative silence.

These departures provoked the ire of British power. The predominant clergy responded in a heavy-handed way, rounding up and torturing a third of the male membership. Persecution only strengthened their spirituality,[147] but as a point of clarification, Fox and Hubberthone publicly announced their non-violent strategy.[148] Quakers, they wrote, "utterly deny all outward wars and strife and fightings with outward weapons for any end or under any pretence whatsoever."[149]

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[144] Anthony Brownie and Fiona Cownie, LIVING WITHOUT LAW: AN ETHNOGRAPHY OF QUAKER DECISION-MAKING, DISPUTE AVOIDANCE, AND DISPUTE RESOLUTION 23 (2000).
[145] *Id.* at 24.
[146] *Id.* at 25.
[147] Anzulovic observes that spirituality normally grows strongest in the face of prosecution and "losers" in conflicts often require a myth of moral victory. See Branimir Anzulovic, HEAVENLY SERBIA: FROM MYTH TO GENOCIDE (1999).
[148] Sydney D. Bailey, PEACE IS A PROCESS: SWARTHMORE LECTURE 11 (1993).
[149] *Id.* at 12.

The Quakers thrived in the presence of Fox and other founding members until his death. They then spread to the Americas and throughout the world. Their membership has never been significant in proportion to the greater populations, with a worldwide membership approaching 200,000. Nonetheless, their impact has been significant. Their "actions," as one member explained, "outweigh their numerical strength."[150] These actions were engaged in by an illustrious and intrepid membership. Notable "Friends" include William Penn (founder of the American state of Pennsylvania), Sidney Bailey (an international mediator), and a variety of industrialists and entrepreneurs, including the Cadbury and Roundtree families.

Later Quakers wrestled with remaining strict to the original teachings of Fox and his contemporaries or adopting to current issues. A few obvious changes have been effected since Fox's day, including that of plain dress. Quakers no longer look like the flat-capped, red-cheeked man on the famous breakfast cereal.[151],[152] But, generally, the Quakers adhered to pacifism and developed the concept to entail active, rather than passive, resolution of conflicts. Quaker thinker Rufus Jones summarized that:

> Pacifism means *peace-making*. The pacifist is literally a peace-maker. He is not a passive or negative person who proposes to lie back and do nothing in the face of injustice, unrighteousness and rampant evil. He stands for 'the fiery positive.' Pacifism is not a theory; it is a way of life. It is something you *are and do*.[153]

The simplicity of Jones definition should not detract from the practical complexities that developed alongside the Quaker stance. Certain questions remained unanswered. For example, should Quakers pay taxes to governments that intend to use the revenue for war? Could a member lie (and speak un-truth) in the face of human rights violations? Must a pacifist militate against *all* conflicts? Must a Quaker suffer in the face of iniquity? Is the God that flows through everyone Christian or can it be "numinous" or Buddhist? Contemporary Quakers wrestle with many of these questions.[154]

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[150] Tonsing, at 306.
[151] Brownie, at 47.
[152] They also do not utilize the informal "thee" and "thou" forms and have adopted the formal "you" when addressing the second person. *Id.* at 25.
[153] Edward Cell, ed., DAILY READINGS FROM QUAKER SPIRITUALITY 56 (1987). Emphasis in original.
[154] For an interesting discussion of these dilemmas, see Bailey, fn 148 supra, and Brownie, fn 144 supra.

Quaker spirituality and practice led to a strong culture of conflict resolution. Indeed, Quakerism and conflict resolution are directly intertwined. Their attention to pacifism honed their awareness of conflicts and at the same time trained them to think of ways to end them. Sometimes their stance bore similarities to the media: speaking truth to those in power about humanitarian violations. Other efforts included palliative care by offering ambulance services in war zones. By the close of the twentieth century, they had developed practical skills more along the lines of contemporary conflict resolution practice, specializing in mediation.[155] They now enjoy consultative status at the United Nations and have mediated in the Middle East, the Biafran War, Cyprus, Zimbabwe, and Northern Ireland.[156]

Quakers in South Africa

Quakers have a long and significant history in South Africa. Although Quakers first arrived in 1728, their numbers remained small until migration increased in the 1800s, mostly in the Cape Town area.[157] Their population has never exceeded a few hundred Friends. They distinguished themselves during the Anglo-Boer War (1899-1902) by providing relief, along with Gandhi and his Indian ambulance core, to non-combatants 'of whatever race'.[158] These efforts helped garner respect for the movement from Emily Hobhouse, a fervent Anglican critic of the concentration camps, and

[155] Gerard Guiton has identified several ways in which the Quaker mediation process bears similarities to secular mediation. He posits that Quaker mediation benefits from mediation-friendly Quaker practices, support within the Quaker community, a holistic and thereby non-divisive approach to spirituality, a non-ideological stance, and political neutrality. A key difference between secular and Quaker mediation processes is that their a-temporal, religious stance permits them to remain attuned to conflict until it is fully resolved. Their benchmark is the "eternal", as opposed to a yearly grant cycle, and they can maintain a presence beyond most NGO initiatives. Gerard Guiton, MINISTRATIONS OF PEACE: THE HISTORICAL-SPIRITUAL UNDERPINNINGS OF CONTEMPORARY QUAKER APPROACHES TO CONFLICT IN 'THIRD WORLD' MILITARY SETTINGS, WITH SPECIAL REFERENCE TO APARTHEID SOUTH AFRICA 64, Unpublished Dphil thesis presented to the School of Political and Social Inquiry, Monash University, Australia (22 December 1999). Available at the Quaker Peace Centre, Monash University Library, and McCabe Library, Swarthmore College, with different pagination.
[156] See Bailey, *passim*.
[157] Tonsing, at xv.
[158] Bailey, at 41.

statesman Jan Smuts. Later, founder of the Centre for Intergroup Studies Hendrik van der Merwe converted to Quakerism from the Dutch Reformed Church.

Quakers maintained a presence during the struggle against apartheid. Several academic scholars have examined Quaker activity throughout this period and their findings appear more or less consistent.[159] On the positive side, Quakers appear to have played a significant role far greater than their small membership of about twenty in the city of Cape Town would normally imply. They engaged in local community work and paid attention to injustices.[160] Mostly, however, their stance involved non-structural challenges that did not take on the government directly. Their approach was more "quietist" and the membership of the Quakers was not at all diverse, with recorded acts of discrimination occurring within the movement.[161] As Tonsing explained after interviewing dozens of South African Friends:

> I saw no 'Underground Railroads' being formed. No Quaker started an 'abolitionist society' for freedom from apartheid. And worse yet, they were often too polite when dealing with the government. But if South African friends in decades past could have been more courageous, it must be fair to say that they too were victims of the suppression, fear, isolation and censorship the government heaped upon its citizens.[162]

The apartheid state did not respond cordially to structural challenges, so it is understandable that the Quakers did not take the government head-on in their peaceful manner. Any opposition might have entailed torture or even death.[163]

Their quietist stance led to castigation within the international Quaker body. The American Friends Service Committee visited South Africa during the 1980s and professed disappointment at the lack of social activism, particularly for the failure of

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[159] See Guiton, Tonsing, and Petronella Clark, QUAKER WOMEN IN SOUTH AFRICA DURING THE APARTHEID ERA, unpublished Masters thesis, University of Birmingham (Aug. 2003), *available at* the Quaker Peace Centre Library.

[160] Tonsing, at xviii.

[161] Guiton, at 192. Tonsing also notes the denial of membership to black applicant Davidson Don Tongo. Tonsing, at 296.

[162] Tonsing, at 306.

[163] But Quakers have rarely been harmed for their peaceful stance against the government; beyond the movement's early history there is almost no record of death for peace missions. It is also unlikely the Quakers would exist today if Fox and his followers had not endured some suffering. See Bailey, at 156.

South African friends to support economic sanctions.[164] A similar schism had occurred during the Anglo-Boer War, when British Friends wrung their hands over British atrocities and South African Quakers maintained an equanimous stance. The onslaught of the apartheid government may have balanced the views of local Quakers, but from the fear of prosecution – and perhaps when balance was not called for.[165]

Many Quakers became more active after the Sharpeville massacre (1960) and the black consciousness movements of the 1970s.[166] They never achieved a strong justice-oriented stance, but they did become involved in a variety of important projects. The QPC became specialists in election monitoring and in working in the black and coloured townships in the Western Cape. The QPC also helped mediate the local mini-bus taxi wars, an effort they shared with the Centre for Conflict Resolution and which we will discuss in our analysis of that NGO.[167] Many of their peaceful interventions have been effective and the Quakers and the QPC are seen as vibrant members of the conflict resolution community.[168],[169]

Part B. Relationship of the QPC to the Religious Community in the Western Cape

Clearly, the Quaker Peace Centre was not the only religious body functioning in the Western Cape during apartheid. Anglicans, the Dutch Reformed Church, Methodists, Catholics, and African "Indigenous" Churches were all played a strong role. Some of these churches participated in the larger forum of the South African Council of Churches (SACC), which, along with the Consultative Business Movement, helped create the National Peace Accord. The SACC was similar to the Quakers in that it presented few, if any, direct challenges to the apartheid state. It was not until 1986 that some of its more

[164] Tonsing, at 241.
[165] Bailey, at 42.
[166] Clark, from the "Abstract".
[167] Guiton, at 188.
[168] An important qualification is that it is not necessarily fair to demand of the Quakers that they take on *any* structures. Many whites and people in positions of power did nothing to combat apartheid or alleviate the suffering of its victims. A membership of less than 200 people – compared to, say, the more than 3,000,000 of the Catholic Church – can only do so much. Audrey R. Chapman and Bernard Spong, RELIGION AND RECONCILIATION IN SOUTH AFRICA 311 (2003).
[169] Quaker spirituality is also complex, with many facets. Some members may have joined for the spiritual quietude and inner peace that its meditative practices of silence and unadorned ceremonies provide. Tonsing, at 317.

progressive members released the *Kairos Document*, a manifesto that called for a more activist stance from the churches.[170] Only one member of the SACC fully endorsed the document and by then the National Party government had already begun opening its ears to the possibility of a negotiated settlement.[171],[172]

The Quakers preferred to remain independent from the SACC and instead sat as a conditional member of the council.[173] Interestingly, the quietist Quakers even rebuked the SACC for not going far enough in its social activism. The letter *On the need for Truth*, instructed the SACC to alert the government to its "Christian duty towards Truth".[174] Meanwhile, the apartheid government was assassinating opposition leaders and blacks marched in the townships.

Muslims were also active in the Western Cape during and after apartheid. The first Cape Malays arrived in Cape Town in the seventeenth and eighteenth centuries, bringing a vibrant Muslim culture and community. No literature directly compares the Quaker and Muslim communities in South Africa during that period. But we do know is that the Muslim Judicial Council has been active in South Africa since 1945[175] and that the South African Law Reform Commission examined the possibility of linking Muslim structures to the state as early as 1975.[176] History suggests that the Muslim community may have actually supported the National Party government, which played upon fears of black rule to garner their votes. A more detailed study would be useful in our analysis of Quaker spirituality because Muslims constitute a much smaller population – about 1.1 percent – than mainstream Christians and could permit informative comparison.

Confining ourselves to Quakers and Christians, internal squabbles did not prevent the SACC and the QPC from mustering support for the negotiated settlement. The SACC pushed for the National Peace Accord and the Quaker Peace Centre aided in this respect,

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[170] Chapman and Spong, at 8.
[171] There is also evidence that a significant portion of its members tacitly supported apartheid. *Id.* at 6,8.
[172] *Id.* at 6.
[173] Guiton, quoting interview with van der Merwe.
[174] This is a peculiar and un-Quaker-like instance of blaming the other party for actions in which the Quakers themselves should have been engaging. *Id.* at 252.
[175] Najma Moosa, "The Role that Law Muslim Judges Play in State Courts and Religious Tribunals in South Africa: A Historical, Contemporary and Gender Perspective in Jones-Pauly, Christina and Stefanie Elbern," ACCESS TO JUSTICE: THE ROLE OF COURT ADMINISTRATORS AND LAY ADJUDICATORS IN THE AFRICAN AND ISLAMIC CONTEXTS 103 (2002).
[176] Ebrahim Moosa, "Shaping Muslim Law in South Africa: Future and Prospects,"in Schärf and Nina, The Other Law, at 123 and 127.

monitoring elections and fully engaging in the townships. These two bodies undeniably helped move South Africa towards the interim government and its new majority-led dispensation.

Quakers and Christian Spirituality in the post-1994 Period

Both Quakers and mainstream Christian churches have experienced changes since 1994. Quaker membership has diversified to embrace non-whites. The South African Society of Friends now boasts over fifty "African" names on the official roll, bringing total membership to over 250 in 2002, its largest in South Africa in recent history.[177] The Quaker Peace Centre in particular represents many of the changes. The staff is extremely diverse, adhering to the requirements of Black Economic Empowerment. But while all members of the Quaker Meeting House are officially members of the QPC, only one member of the staff at the QPC is a Friend. The staff has fallen from 35 in 2001 to less than ten in 2006.[178] The decline in size has been offset in part by an explosion of interest in helping the community. The QPC now involves itself in projects relating to education, HIV/Aids, troubled youth, and diversity.

The South African Council of Churches has undergone a similar expansion of its projects, but for different reasons. After the transition, the SACC seems to have been almost completely absorbed by the process of the Truth and Reconciliation Commission. Clerics and politicians began seriously considering an amnesty or reconciliation process by 1994.[179] The religious community helped drive the commission, which began in 1996, with Nobel Laureate Archbishop Desmond Tutu serving as chair. The language of the TRC was, on the one hand, steeped in religious language that stressed values and biblical justice, and, on the other hand, crammed with legalistic jargon because of potential prosecution for perpetrators. Not every member of the SACC endorsed the religious participation, nor did all lawyers. However, the SACC was on the whole

[177] Clark.
[178] Cock, "Butterfly Wings and Green Shoots".
[179] Hugo van der Merwe, "The Role of the Church in Promoting Reconciliation in Post-TRC South Africa" in Chapman, at 271.

engaged in the process and its role may have created a failure of purpose when the TRC ended, as Hugo van der Merwe notes:

> The fact that the churches face a crisis of vision after the closure of the TRC is perhaps because of the expectations that they laid at its door and, to some extent, the responsibility which they appeared to have transferred onto this para-religious structure. The TRC has provided the churches with many insights and channels to pursue, but the blurring of the line between politics and religion involved in the process has left churches with little clarity about their responsibilities in the new society.[180]

The mixture of politics and religion, according to this view, resulted in a shifting of responsibility onto the TRC to resolve many of the fledgling nation's woes. The commitment of resources during this period, whether financial capital or political capital, has resulted in a lack of direction. But many members of the SACC recognized the necessity of furthering reconciliation after the end of the TRC. This was seen as vital both within congregations and in greater society. Coupled with this vision was the exposure of the TRC of the abject poverty of blacks. Structural changes and direct approaches for alleviating poverty became necessary. These dual realizations contributed to the expansion of the SACC's projects beyond mere reconciliation.

The SACC's current projects include poverty eradication, reconciliation, ensuring justice, emergency relief, and capacity building. The organization is now active outside of South Africa as well, with a more continental focus. For example, the SACC responded to the humanitarian crisis engendered by President Mugabe's slum-clearance scheme in Zimbabwe by providing 37 tons of food and 5,000 blankets.[181] It also has expressed an interest in conflicts in the Middle East. These new efforts may be viewed, depending on one's optimism, as a multi-pronged attack against the root causes of conflict in Southern Africa or, alternatively, as a diffusion of power along so many projects as to be ineffectual. The Zimbabwe effort, for example, distributed 5,000 blankets to a homeless population of 700,000 people. Humanitarian efforts should be

[180] *Id.* at 280.
[181] Mail & Guardian, "Mugabe hits out at 'coalition of evil,'" Sept. 15, 2005, *available at* http://www.mg.co.za/articlePage.aspx?articleid=251005&area=/breaking_news/breaking_news_international_news (last accessed Jan. 27, 2006).

encouraged but perhaps a more targeted approach to local issues would be more fruitful. This is exactly the stance – of local issues – that the Quaker Peace Centre has adopted.

Part. C. The Delft Project

The Quaker Peace Centre shifted a significant amount of its resources towards the Delft Community in July 2005. Possessing a community of over 50,000, Delft is comprised of a nearly even mix of Black African and Coloured, with a handful of Indian and whites making up the remainder. Unemployment rates hover between 27.6 percent and 56.6 percent of the population, depending on the neighborhood. The overwhelming majority of the population is below the age of 39 and the median monthly income hovers between R801 and R1600 per month (roughly $130 to $280 per month in 2006). The primary languages are Afrikaans and Xhosa, with a smaller percentage speaking English. Delft contains some shanties but the majority of the residents live in homes, with an average household containing about five or six members, although houses holding between eleven and fifteen persons are not uncommon. Most houses have electricity or gas and the vast majority possess household water supplies. There are eleven pre-primary schools, eleven primary schools, and four secondary schools in the community. Between April 2002 and March 2003, the community suffered from 104 murders and 200 rapes or attempted rapes. There were 1,660 common assaults and over 1,132 cases of burglary or attempted burglary.[182] A few organizations serve the Delft community. These include two health clinics, a recreation centre, and five non-governmental organizations. The NGOs are active in the fields of music training, welfare and food provision, as well as other areas.

The QPC appears to have chosen the community as part of a new preventive, as opposed to reactive, approach to its mission. "In the past we used to fight fires,"

[182] South African Police Service, Delft Ward 24 and Ward 20 (Dec. 23, 2003), *available at* the Quaker Peace Centre Library.

explained Director Derek Daniels, "now we try to prevent them."[183] The QPC identified ten issues of paramount importance that adhered to its Mission, Vision, and Values. These included HIV, gangsterism, racism, and poverty. By reading the newspaper and speaking with people, the Centre learned that Delft strikingly met all ten indicators. The QPC then convened a number of focus groups to determine what the community perceived as its needs. It was determined that many of the conflicts in Delft were cross-cultural, so the QPC designed a variety of workshops to be convened in schools in the community. The School Coordinating team now services seven primary schools and two high schools.

The diversity project uses a variety of innovative techniques. Children respond well to the exercises, but must overcome the unsupportive home environments they sometimes encounter after school. "Children are not prejudiced," Project Leader Mlu Dwyili observed, "we as adults spill over to them. Children capture that information and take it outside."[184] The approach is to encourage children to think for themselves. Non-violent communication focuses upon the use of language as a means of promoting diversity. A sentence containing observations, feelings, needs, and a request can help diffuse potentially violent situations. The typical example is:

> Seeing you kick my dog makes me feel angry. My dog has a right to live. Could you please not kick my dog again?[185]

"Seeing" is the observation, "angry" is the feeling, "right to live" communicates a need, and asking the person "not to kick my dog again" relates a request. "Empathy" and "connections" are created that help dispel dangerous myths and misrepresentations.[186] Toyi-toyi, a cultural dance utilized during the struggle, "was the language of apartheid," Mlu summarized. "Today we should call it dialogue."

Peer mediation skills are also taught in the Delft community. An emphasis is placed on self-reliance and helping the parties solve their own problems. "One becomes a good mediator," Mlu explains, "when the parties say we don't need a mediator." Power

[183] Interview with Derek Daniels, Director, Quaker Peace Centre (Sept. 6, 2005).
[184] Interview with Mlu Dywili, Project Director for Delft, Quaker Peace Centre (Sept. 21, 2005).
[185] *Id.*
[186] *Id.*

is shared during the mediation process rather than held over someone because parties will otherwise treat the mediator as a judge.

Diversity workshops are offered for both students and adults that involve a series of thought provoking questions.[187] One question, of asking why participants would cook a particular meal, elicits interesting responses. Xhosa women sometimes explain that they cook the herb-dish *imifino* during social unrest because it was historically prepared on communal land when the men went to battle. Answers to this question also reveal class differences. For example, in one workshop coloured women laughed when a black woman explained that she would eat chicken heads and feet on some occasions. It emerged that the black woman could not afford the same cuts as the coloured participants.

The culture and infrastructure of a school also serve as important indicators of diversity. Textbooks might not be written to encourage diversity and may need to be revamped. Teachers that remain aloof from the exercises may require training:

> You start to learn the school politics. The staff has groupings. Blacks smoke outside together. Whites have tea with the coloureds. Blacks walk often and less have cars. Coloureds and whites have cars and leave the area. If the educators don't buy into the process, we tell them QPC may not continue the project.[188]

Neither does the training end at the school bell. Parents are targeted for training and are informed about the benefits of helping their children with homework. The QPC approach necessitates involving the whole community and not just key decision-makers.

These strategies are not without their shortcomings. Delft is a notoriously conflict ridden community with entrenched problems. Children sometimes learn the benefit of conflict resolution techniques that shatter in the face of real violence:

> Gangsters sometimes threaten school officials. It's tough for kids to use negotiating skills when a gun is held to their head. There are no clear answers. There are times when there is no 'soft' solution. The concept of non-violence is very 'middle-class' and does not necessarily work when the norm is based on outright conflict.[189]

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[187] Note, these diversity workshops are not always confined to Delft. Mlu Dywili offers diversity workshops as part of his Local Agenda 21, a municipality based project, as well.
[188] *Id.*
[189] Interview with Avril Knott-Craig, Quaker Peace Centre (Sept. 6, 2005).

In Delft, some of the gangsters drive BMWs while high-school graduates amble about unemployed. Delft South suffers from a 56.6 percent unemployment rate, nearly sixteen points above the national average.[190] Teachers can get stuck in the old ways and there are attitudinal problems. Classroom numbers may be as high as seventy or eighty children. At home there may be no discipline as well as overcrowding.[191]

It is too early to determine whether or not the Delft project has been successful. The project only officially began in July of 2005, following a year or so of focus groups and consultation with the community. Visible impact will likely be longer term and at this point is qualitative, based on client response. Intervening in schools may help younger children decide to pursue a career instead of entering gangs, but this may take five years to observe. The project should be celebrated, however, for its commitment to a single community. This is in some respects a typically Quaker action – with the "eternal" or "numinous" as the guiding force there is no need to gallivant around Cape Town solving superficial conflicts. Addressing root causes with a multifaceted approach offers the Delft community the possibility of a lasting transformation.

The Mowbray Quaker Meeting House. "Faith without action is dead."

Quaker Peace Centre Structure and Funding

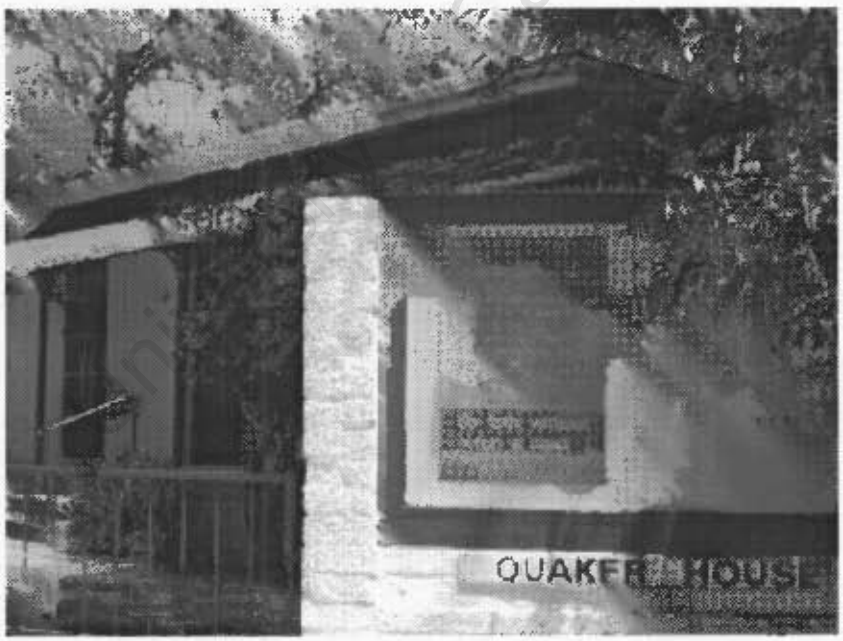
As we have seen above, the Quaker Peace Centre is not what it used to be. This is both a positive and negative assessment. Positively, the QPC is more diverse, leaner, and has thrown itself headlong into a community suffering from structural difficulties. It has demonstrated an active commitment to the local community as a religious body. The internal feel of the organization is also extremely positive and supportive. It appears to have a horizontal structure and there is an open-door policy. Negatively, it suffers from a much smaller staff and fewer Quakers. Indeed, while all members of the adjacent Meeting House are official members of the QPC, only one full-time staff member is a

[190] South African Police Service, Delft Ward 24 and Ward 20 (Dec. 23, 2003), available at the Quaker Peace Centre Library.
[191] Interview with Avril Knott-Craig.

Quaker. "Quakers often focus on inner peace," explained Director Derek Daniels, "but we are interested in establishing outer peace." Faith and conflict resolution do not always coincide.

Funding of the QPC has begun to change in several significant ways. The patina of the miracle of the new South Africa, in which millions of rand were pumped into conflict resolution from Europe and America, appears to have worn off. The QPC is rushing to replace the impending funding of a German grant which provides between 30 and 40 percent of its budget. Its culture of faith and religious trust appears to have caused problems – trust in others resulted in being defrauded out of nearly R1,000,000.

The organization is responding by taking a more business-like approach to its funding. It has hired a full-time grant seeker and has cleaned up its accounting practices. They now consider their operations as a service and have attempted to make their projects more marketable. The government has been targeted as a potential source of funding to relieve dependence upon foreign grantmakers. Projects that fall under the auspices of government service delivery now seek to recoup the costs of operation.



The Quaker Meeting House in Mowbray

The Quaker Peace Centre and the National Peace Accord

The Quaker Peace Centre may be analyzed with respect to the National Peace Accord in several ways. Firstly, it is a regional organization operating primarily within the Western Cape. Its geographical distribution overlaps with many of the areas covered by the Western Cape Regional Peace Committee during the accord. Second, the QPC is undeniably founded upon religious principles. The NPA bears the indelible imprint of the South African Council of Churches. Not only did Quakers sit on the SACC, Quaker peacemaking is strongly influenced by Christian spirituality. The notion of "that of God in everyone", or the presence of God in all persons, seems to have permeated the organization. Third, like the SACC the Peace Centre has undergone a transformation since 1994. The absorption of the SACC by the Truth and Reconciliation Commission left it without an overarching purpose, a reality which confronts the QPC today. But rather than diversify its projects to the point of disutility, the QPC has taken a principled stance on transforming the Delft community, among other things. This stance relates directly to the fifth point, which pertains to peacebuilding. The NPA recognized that violence in transitional South Africa was structural and directly linked to poverty. The TRC further acknowledged the challenges of poverty in its report.[192] However, the NPA's peacebuilding initiatives failed miserably on all accounts. The QPC attempt to address the structural issues affecting the Delft community seeks to resurrect that laudable – and necessary – goal.

Perhaps the most important trend is the QPC's strategic decision to court the government as a potential client. The National Peace Accord demonstrated that an NGO operating in a country like South Africa must establish links at all levels of society to be effective.[193] The Centre historically benefited from the support of influential personages such as Jan Smuts and H.W. van der Merwe to communicate its agenda to national leaders. For example, van der Merwe helped secure contributions to Steve Biko's Black

[192] Truth and Reconciliation Commission of South Africa Report, Vol. 6, Sec. 2, Ch. 4, para 65, at 136 (21 March 2003).
[193] Cock, "Butterfly Wings and Green Shoots," at 11.

Communities Programmes and Winnie Mandela's industries in 1982.[193] In the words of van der Merwe:

> So what I'm saying, in order to have social change, you'll need a multiple approach or input – grassroots, higher levels, various steps up the ladder to the top decision makers. There are few people like that... And the big thing about Quakers is our small numbers, we just haven't got the capacity to exert our influence wider.[194]

Quakers must forge ties with power structure as a community of less than two hundred fifty in a population of nearly forty million people. The government is now considered a possible partner and this marks a remarkable departure from apartheid, when it was viewed with suspicion. The danger is that the organization will lose its independence and become beholden to the government, but this already seems to happen with respect to donors requiring specific activities and services,[195] and Quakers tend to transcend numerical insignificance to effect change.

We now turn to an analysis of an organization with an equally distinguished history of conflict resolution in South Africa.

Themes for the Thesis

(1) The Quaker Peace Centre has a long history of conflict resolution in South Africa and helped bolster the National Peace Accord;
(2) the QPC was a member of the SACC, which helped create the Accord;
(3) the Truth and Reconciliation Commission waylaid the churches and their involvement in local conflict resolution;
(4) the QPC has shifted many of its resources towards a local, community-based peacebuilding project in Delft, which the NPA failed to do; and
(5) the QPC is attempting to liaise with government and all levels of South African society to hedge against a likely pull-out of European funding.

[193] H.W. van der Merwe, PEACEMAKING IN SOUTH AFRICA: A LIFE IN CONFLICT RESOLUTION 55, Cape Town: Tafelberg, 2000.
[194] Guiton, at 366.
[195] As the Reverend Wesley Mabuza, Director of the Institute for Contextual Theology explained, "How can we be an NGO and ask for money from the government? Then we would become a government agent, a GO!" in Chapman, at 79.

Part IV. The Centre for Conflict Resolution and the Western Cape Taxi Conflict

Hendrik van der Merwe founded the Centre for Intergroup Studies to quell the enmity between the Afrikaans and English Communities in 1968. Van der Merwe came from a conservative upbringing in an Afrikaans community, in which he learned of "the *Engelse gevaar*, the *Roomse gevaar* and the *swart gevaar*" (the English, Roman Catholic, and Black dangers, respectively).[196] But encounters with progressive thinking lead to his eventual disavowal of Church views and formal conversion to Quakerism in 1976.

Based at the University of Cape Town, the Centre quickly expanded its scope to facilitate dialogue between banned political parties and the National Party Government. The 1980s brought a flurry of visits by conflict resolution practitioners from around the world, who lent their expertise to the seemingly intractable conflict of apartheid South Africa. Egyptian, British, and American scholars offered insights that spurred the Centre to develop its own theories based on its local experiences.[197] The Centre was rechristened the Centre for Conflict Resolution (CCR) in 1992. During the transition to majority rule, the CCR provided a vital praxis of hands-on work and theory. Staff would plunge into violent conflicts at marches, and then analyze their experiences through the publication *Track Two*. These documents continue to provide some of the most pertinent insights into the negotiated settlement and transition from apartheid.

Staff members sat on local and regional councils of the National Peace Accord. We have already witnessed the important source document of Susan Collins Marks, who participated on the Western Cape Regional Peace Committee, and her seminal work *Watching the Wind*. By the certification of the new Constitution in 1996 and, indeed, well into the latter part of the 1990s, the CCR was perhaps an unparalleled reservoir of hands-on conflict resolution experience.

Today, the Centre for Conflict Resolution has diversified its areas of activity. Its in-house work is conducted in a positive environment. For example, the staff is extremely diverse and meetings are announced through the playing of a *djembe* drum. The Centre's official Mission is to "contribute towards a just peace in South Africa and

[196] Van der Merwe, PEACEMAKING IN SOUTH AFRICA, at 46.
[197] Interview with Renée Ngwenya, Programme Manager in Mediation and Training Services, Centre for Conflict Resolution (Sept. 28, 2005).

elsewhere in Africa" through the promotion of "constructive, creative and co-operative approaches to the resolution of conflict and the reduction of violence".[198] Whereas the Quaker Peace Centre complemented its Mission with Values and a Vision, the CCR's Mission resonates beneath several "Goals". These include (1) offering third party assistance; (2) training individuals and groups; (3) participating in national and regional peace initiatives; (4) conducting outreach; (5) furthering an understanding of conflict and violence; and (6) promoting democratic values.[199]

We will see in the discussion that follows that the reservoir of local hands-on conflict resolution experience may be drying up. While the Centre still possesses some experienced trainers, a new continental outlook appears to have sidelined local work in favor of international theory and training. This section will demonstrate this argument through examining the structure of the Mediation and Training Services department and analyzing the specific case of its facilitation of the recent Western Cape taxi conflict.

The Centre for Conflict Resolution

[198] Http://ccrweb.ccr.uct.ac.za, (last accessed Feb. 6, 2006).
[199] *Id.*

Part. A. Mediation and Training Services

The Centre for Conflict Resolution services are grouped into two broad programs: the Africa Cluster and the National Cluster. Mediation and Training Services (MTS) may be found under the National Cluster. Founded in 1989, MTS was established to provide training and serve as an independent third party. The program specializes in the transformation of violent conflict, designing public policy participation processes, training police personnel, encouraging multi-cultural diversity, and addressing conflicts related to development projects. Similar to Galtung's view of conflict as a "way of life", MTS takes a positive view towards mediation and its ability to foster growth and development.[201] Its geographical scope appears to be more limited to the Western Cape.[202] The program has recently played pivotal roles in working with the Departments of Education and Land Affairs, the building of two major factories, aiding a community with waste management, and securing the 2010 soccer World Cup.[203]

The training service operates in several ways. Following a request, a team will be sent to the site and provide training. Four and five day courses are open to the public at subsidized rates of about R1500. A number of curriculums are on offer: Creative and Constructive Approaches to Conflict, basic and advanced mediation skills, as well as Negotiation. The first course is the most popular and all of them are taught with the goal of permitting the trainees to pass-on their skills. An in-house 12 month training program used to be on offer as well, but has now been shelved.

The MTS' mediation method emerged from a turbulent history in South Africa. During the 1980s, mediation was frequently utilized during labor disputes, but remained marginal.[204] Mandela's release brought renewed energy in mediation and played a critical role from the Groote Schuur Minute (1990), to the National Peace Accord (1991), the CODESA talks (1991), Multiparty Negotiating Forum (1993), and the eventual transition. The National Peace Accord in particular helped popularize the use of

[201] *Id.* See fn 8 above.
[202] Interview with Renée Ngwenya.
[203] *Id.*
[204] Andries Odendaal, "Modelling Mediation: Evolving Approaches to Mediation in South Africa", in Track Two: Constructive Approaches to Community and Political Conflict. Vol. 7, No.1. April 1998. Centre for Conflict Resolution, at 11.

mediation by introducing it to communities throughout South Africa.[204] MTS' basic methodology, which ranges from consultation to monitoring agreement implementation, drew from this rich experience.

The CCR has developed its own particular brand of mediation. MTS defines mediation as "a process of facilitated dialogue and negotiation in which an independent mediator assists parties in conflict, with their consent to reach agreements that they find satisfactory." The key terms in the definition appear to be "independent" and "satisfactory". Independence suggests neutrality but does not necessarily require it from the mediator; what is more important is the satisfaction of the parties. Nor does "independence" rule out possible coercion and strong-arming. Former Executive Director Laurie Nathan summarized that the method

> favours a non-directive approach; embraces neutrality towards parties but not towards justice; appreciates indigenous knowledge, culture and conflict resolution models; empowers people to solve their own problems; encourages self-knowledge on the part of the mediator; acknowledges different values; emphasises relationships; and often includes a spiritual dimension.[205]

Justice, indigenous knowledge, and relationships will likely play an important, if unspoken, role in the mediation process. A sustainable outcome may guide the process so that unrealistic compromises and coercive tactics are avoided.[206]

Training programs are not the only service on offer. The MTS may also receive a request to intervene in a particular conflict. Its Mission statement and funders require that a conflict must satisfy certain criteria. The conflict must have the potential for violence, have a destructive impact on a significant number of people, and exist within a local authority, undermining service delivery. A further stipulation is that parties to the dispute must support an intervention in order to ensure commitment. Assuming the conflict meets the criteria, the in-house mediation team determines who would best be appropriate for the mediation. It may draw from staff members from within the Centre, or select from its Resource Panel. Resource Panelists are typically former CCR

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[204] *Id.*
[205] *Track Two: Constructive Approaches to Community and Political Conflict*, Vol. 7, No.1., April 1998, at 2.
[206] Odendaal, at 11.

employees who have gone on to pursue careers in other aspects of conflict resolution. Clergy, skills trainers, social workers, and lawyers comprise the Panel's membership. They are paid by the Centre to assist in the project and bring many years of conflict resolution experience to a conflict without requiring a full-time salary.[207]

The Centre's intervention in the Western Cape taxi conflict stemmed from this second method, of an outside request, in the fall of 2005. MTS quickly assembled a response team that included in-house staff and Resource Panelist Ghalib Galant. It then engaged in one of the most challenging facilitation projects in the program's history. "I've seen many conflicts before," recalled Programme Manager Renée Ngwenya, "and this is another domain."[208]

Part B. History of the Taxi Conflict

A Minibus Taxi in Cape Town

The Centre for Conflict Resolution's intervention in the Western Cape taxi conflict must be seen as part of a continuum of violence that began during apartheid. The conflict has both economic and political roots. Until the mid-1980s, transportation in

[207] Interview with Renée Ngwenya.
[208] *Id.*

South Africa was highly regulated. The Motor Carrier Transportation Act of 1930 restricted transportation of goods or passengers to permit carriers, and rigid requirements resulted in 90 percent of black applications rejected.[209] Those black applicants that received permits were limited to carrying four passengers.[210] Up to 20 percent of black incomes were spent on traveling on the government's outdated bus and rail systems.[211] The National Party government conceded the need for deregulation of the transport sector as early as 1977, but efforts did not begin until the release of the 1985 National Transport Study, which emphasized the need for open competition.[212] In the next few years rapid deregulation of the industry ensued. Officials issued permits "like confetti" and black entrepreneurs scrambled to enter the marketplace.[213] 16-seater minibus taxis soon emerged as a standard mode of transportation with an official White Paper on Transport Policy.[214]

The resulting free-for-all provided economic opportunities for blacks but at the same time laid the foundation for political manipulation. South Africans enjoyed the convenience of the minibus, which operated long hours and stopped in accessible locations for reasonable fairs. But business quickly became turbulent. Route permits were first offered and then criss-crossed by the issuing of regional radius permits.[215] Local taxi *associations* sprouted to provide some order to the fledgling industry, and in the face of mounting competition, violence followed.[216] Taxi operators strafed rival associations with bullets, with little regard for passenger safety. Associations soon grew into larger *mother bodies* that oversaw thousands of taxi associations across the country. Entities like the Congress of Democratic Taxi Associations (Codeta) offered the prospect of peace, but they quickly splintered into other bodies such as the Cape Amalgamated Taxi Association, for racial and economic reasons.[217] While the associations provided

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[209] Jackie Dugard, "From Low Intensity War to Mafia War: Taxi Violence in South Africa (1987-2000)", Centre for Violence and Reconciliation. Violence and Transition Series, Vol.4, (May 2001).
[210] *Id.*
[211] *Id.*
[212] Makubetse Sekhonyane and Jackie Dugard, "A Violent Legacy: The taxi industry and government at loggerheads", Crime Quarterly, No. 10, (2004).
[213] Dugard, 2001.
[214] Sekhonyane and Dugard.
[215] Interview with Ghalib Galant, Facilitator, Synergy Works (Jan. 24, 2006).
[216] Sekhonyane and Dugard.
[217] Interview with Ghalib Galant.

some practical benefit to operators in terms of securing taxi ranks, mother bodies served a few warlords, who extorted profits and increased the violence.[218] It soon became clear that the government had done nothing to stop the violence, and may have been encouraging it:

> Between 1987 and 1994 official efforts to deal with the taxi industry were almost non-existent. When violence erupted the government invariably became part of the problem instead of the solution. At best, police behaviour during the late-apartheid period was negligent. At worst, the police used their positions of authority to promote rifts between associations and to destabilise black communities. In many areas, the police were implicated in attacks or were in other ways partisan. More generally, by their calculated inaction – which included a failure to disarm attackers or to respond to warnings of immanent attacks – the police fanned the conflict.[219]

Corruption plagued the industry and reports of police involvement in shootings were not uncommon. The Truth and Reconciliation Commission report eventually confirmed allegations of "Third Force" or police involvement in the conflict.[220] Since 1991, over 100 persons have been killed each year from taxi violence. In 1994 alone, 250 people were killed and 372 injured in incidents.[221]

The taxi industry has undergone a variety of transformations since the 1980s, but several themes remain. The minibus taxi industry is big business. Today, over 100,000 minibuses transport more than 60 percent of South Africa's commuters and take in R10 million annually.[222] Key players in the industry, including drivers and operators, are overwhelmingly male.[223] The mother bodies continue to play a significant role and routes are hotly contested. Hit men may be hired by rivals to eliminate competition and are rewarded for killing drivers, owners, as well as passengers.[224] Associations control the ranks and the facilities associated with the ranks, including retail shops. Taxis often own a share of petrol stations and make servicing deals at particular garages. Many enjoy

[218] Dugard, 2001.
[219] Sekhonyane and Dugard.
[220] Interview with Sean Tait, Director of the Criminal Justice Initiative, Open Society Foundation for South Africa (Sept. 20, 2005).
[221] Anthony Minaar and Sam Pretorius, Crime and Conflict, No.1 (Autumn 1995).
[222] Sekhonyane and Dugard.
[223] Meshack M. Khosa, "Sisters on Slippery Wheels: Women Taxi Drivers in South Africa", Transformation 33 (1997).
[224] Dugard (2001).

corporate sponsorships as well, with bright paint jobs and hi-powered stereos to outshine the competition.[225] In addition, taxi-drivers offer justice in the form of vigilante groups against criminals and offenders in the communities. Their form of street justice can be at once brutal and humiliating.[226] One of the few positive developments has been the establishment of Santaco, a national oversight body that, for the moment, purports to speak on behalf of the entire industry.

Attempts to Regulate

The government has initiated steps to regulate the industry. A National Taxi Task Team investigated methods of regulating the minibus industry from 1995 to 1998. The team suggested revamping the industry with 18 and 35 seat, wheelchair-accessible buses, and paying existing taxi owners to get their old minibuses off the road. R7.7 billion was earmarked to pay owners a 20 percent subsidy and 30 percent "scrapping allowance."[227] However, given the estimated 100,000 taxis – and between 7,500 and 12,500 in the Western Cape – the earmarked funds will likely fall short of the target.[228] The new taxis will cost about R300,000 per vehicle and owners may require more incentives to convert.[229] Also, a primary benefit of the minibuses is their nimble ability to squeeze through traffic and pick up customers on demand. Increasing the size of the taxis will make them more cumbersome. Demands for schedules may be misplaced as well – minibuses are on the whole much more reliable than scheduled bus services, an unforeseen benefit of oversubscribed routes.

[225] Interview with Sean Tait.
[226] David Bruce and Joe Kamane, *Crime and Conflict*, No. 17, pp. 39-44 (Spring 1999).
[227] Committee of Inquiry into the Underlying Causes of Instability and Conflict in the Minibus Taxi Industry in the Cape Town Metropolitan Area, "Report to the Premier" (Aug. 31, 2005) [hereinafter "Ntsebeza Report"], at 103.
[228] Ntsebeza Report, at 22.
[229] Sekhonyane and Dugard.

A new minibus taxi

Part C. Crack Down in the Western Cape

Violence flared up in the Western Cape in 2005. For several years, taxi operators had complained of the government's R30 million subsidization of the Golden Arrow Bus Company, and began attacking bus drivers again in earnest.[230] Tensions between the primarily black CODETA and CATA mother bodies and the coloured Mitchell's Plain Taxi Association bristled over new routes, presumably along racial lines.[231] The provincial government launched an investigation in response. Advocate Dumisa Ntsebeza, a former member of the TRC, spearheaded the effort.[232] The Ntsebeza Commission sought to unearth the root causes of the taxi conflict and possessed wide-ranging powers of subpoena and search and seizure. A confidential toll-free number was set up to allow taxi informants to report anonymously. Four police officers were also allotted to ensure prompt criminal investigation of claims.[233]

The Ntsebeza Commission's findings were damning to those in the industry and in government. The 123-page report demonstrated that the taxi industry was even more

[230] Ntsebeza Report, at 88.
[231] Interview with Ghalib Galant.
[232] Premier of the Western Cape (Provincial Government of the Western Cape), Apr. 22, 2005, *available at* http://www.capegateway.gov.za/eng/pubs/news/2005/apr/303419 (last accessed Jan. 27, 2006).
[233] Ntsebeza Report, at 8.

unregulated than had been expected. The government had been totally shirking its responsibilities, as Ntsebeza explained:

> I think there is a lamentable lack of management and there are also allegations among the officials, and there is an absolute negation of duties by the taxi registrar, by the licensing board itself, by the members in the board.[234]

The taxi industry, meanwhile, was riddled with corruption and suffered from warlordism. Revenues of up to R600,000 per week by some taxi associations went unreported to tax authorities.[235] Hit squads, or "iimbovane" continued to be utilized to knock off competition. Routes were found to be as much 70 percent oversubscribed,[236] and CATA and Codeta, the two mother bodies operating in the Western Cape, had no written constitution or guidelines. Taxi ranks (stations) were officially owned by municipalities but completely controlled by taxi associations in reality,[237] and regional regulatory bodies had almost no local presence.[238] Ebrahim Rasool, Premier of the Western Cape, summarized that

> The Ntsebeza Committee of Enquiry Report rings definite alarm bells. The alarm bell of the existence of iimbovane [hit squads], alarm bells on allegations that warlords are in control of the industry and may be behind ordering assassinations and violence, the alarm bell of parallel enforcement by the industry itself [including imposing fines and levies and even death penalties], alerts us to the build up of a warchest [the existence of large amounts of unaccounted money within industry], an alarm bell indicating tax evasion on a massive scale. A further alarm bell is the prevalence of linkages to organised crime within the Coloured Taxi industry, where taxis are often a source often of money laundering, drug dealing, prostitution and are at the service of gangs and gangsterism.[239]

The Western Cape identified several priorities to clean up the industry. These included auditing government books, re-examining license procedures, changing management of taxi ranks, creating a more permanent investigation unit that will link with police

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[234] Wendell Roelf, "W Cape intervenes to quell taxi violence", Sept. 6, 2005, *available at* http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=qw1126010521294B221 (last accessed Jan. 27, 2006).
[235] Ntsebeza Report, at 99.
[236] *Id.* at 11.
[237] Marianne Merten, "Taxi mafia pulls rank", Mail and Guardian (July 18, 2005).
[238] Ntsebeza Report, at 24.
[239] Premier of the Western Cape, Press Release (Sept. 7, 2005). Brackets in original.

services, and rapid deployment of a "multi-nodal" public transport system that would rely upon recapitalization of minibuses and subsidizing the industry. A permanent dispute resolution body was advocated along with an early warning system that would identify potential conflict.[241] The government proposed holding democratic elections within the industry in order to create a constitution and permit negotiation with a credible and accountable leadership. Concerned that the elections might be violence-prone, they called in the Centre for Conflict Resolution to facilitate the process.

The Centre for Conflict Resolution and the Taxi Conflict

The Department of Transport requested an intervention from the Centre for Conflict Resolution's Mediation and Training Services program in the summer of 2005. Since the request met the criteria required for MTS intervention, the MTS agreed to act as a facilitator. The program then conducted exhaustive background research into the taxi conflict and selected a team. Manager Renée Ngwenya and other MTS staff were chosen along with Ghalib Galant from the Resource Panel. Ngwenya offered nearly fifteen years of hands-on experience and Galant came from a distinguished background in conflict resolution. Trained as a labor lawyer (and as an aikido *sensei*), Galant spent several intensive years at CCR before moving on to work as a commissioner at the Commission for Conciliation, Mediation, and Arbitration, South Africa's one-stop government shop for labor disputes. He now runs his own consultancy and assists CCR on occasion. His expertise in the conflict stems from a taxi murder that affected his own family.

The original mandate of the CCR was to facilitate elections for a Western Cape taxi council, but this quickly changed. At the opening meeting between the many associations and mother bodies, an official at the Department of Transportation gave a well-intentioned but provocative speech that nearly resulted in violence. MTS was forced to engage in shuttle diplomacy and end the meeting early. "We learned," explained Ngwenya, "that the constitution in the taxi industry is really just the tip of the iceberg." The MTS team realized that holding elections required laying a strong

[241] Ntsebeza Report, at 11-12.

foundation of trust that would take time. A short-term project developed into "three months of hell."[241]

The team had suspected that the CATA-CODETA-Mitchell's Plain Taxi Association rivalries were racially inspired, but this was not the case. Rather, racial differences were played upon to disguise power struggles by warlords. The taxi industry was a "very particular field with particular dynamics".[242] Much of the violence had emerged from a new route. The Cape Gate commercial project in the Northern Suburbs became swamped with minibuses before the government even issued permits, leading to tensions.[243] The MTS proposed a 24 seat interim council comprised of equal numbers of CATA and Codeta members. One strategy was to give each of the interim council positions a title. "The taxi-industry is very self-aggrandizing," Galant explained. "They love titles and we needed to fluff their tail feathers a bit." The actors responded well to the titles, but what were purportedly unified bodies turned out to be rife with internal factionalism. Each of these internal factions, generally comprised of associations, struggled to shape the eventual constitution at a series of facilitated meetings. Many of their leaders had been nurtured by the hard-ball tactics of the industry and showed themselves to be shrewd politicians. Those factions that revealed their interests too early or too late were sidelined in the process. The toll was especially hard on the mediators themselves – Renée Ngwenya received a number of death threats for her work on the project and took an extended leave following its resolution.

Eventually, the MTS team was able to steer the competing factions towards a regional election to a new Western Cape Taxi Council. The large mother bodies were divided into smaller subregions. Each subregion was required to submit a list of seven nominees and follow certain procedures. Those that did not follow proper nomination guidelines would be disqualified. The participants seized upon this loophole and orchestrated the process so that it unfolded in a very unorthodox manner:

> They managed to elect a new taxi council while undermining their own election. They were divided into eighteen regions and each region needed to nominate about seven positions. But behind the scenes, all the lists were spoiled, so that

[241] Interview with Ghalib Galant.
[242] Interview with Renée Ngwenya.
[243] Ntsebeza Report, at 13, 59.

> only one ballot sheet was valid. Two people lost their lives and now there are seven office bearers recognized by the authorities.[245]

An ostensibly democratic election devolved into a process typical of the warlord-prone industry. Strings were pulled in a manner that baffled the MTS team but managed to satisfy the requirements of their mandate. The government got what it desired, namely the appointment of leadership and a facially democratic process that would permit a fair constitution. Transport and Public Works MEC Marius Fransman hailed the new body as "one voice that is the legitimate, democratically-elected taxi council". An estimated R1.2 million was spent on the election, which concluded in late November 2005. The Western Cape Taxi Council is now moving to consider how to recapitalize the industry and standardize fairs and time schedules.[246]

Assessment and Analysis

The Centre for Conflict Resolution's work in the taxi conflict embodies several important themes. First, facilitation of the taxi conflict stemmed from the under-regulation of the transportation industry. The state is now scrambling to get a foothold in a system unleashed by the destabilizing effects of apartheid. It has attempted to do so through the two-fold approach of launching an investigatory commission and promulgating legislation and policy changes. Second, although CCR was no stranger to taxi violence, and possessed a number of staff members who worked with the conflict in the 1990s, MTS' involvement in the Western Cape Taxi Council elections was novel. "We were requested to facilitate rather than intervene in the conflict," explained Senior National Program Manager Kholisile Mazaza. This marked a departure from times past. A taxi conflict had flared up, but the mandate of the project was to steer the parties towards a previously identified solution. Route-violence influenced the facilitation, but resolving the violence was not the primary concern of the mediation team.

Another characteristic feature of the facilitation was its reliance upon the Resource Panel. Panelist and criminologist Irvin Kinnes worked directly with the

[245] Interview with Ghalib Galant.
[246] Babalo Nzenze, "Former taxi enemies now partners in new alliance". *Cape Times* (Nov. 30, 2005).

Ntsebeza investigation into the conflict prior to the facilitation. The MTS was then significantly strengthened by the presence of Ghalib Galant. Each is an articulate, dynamic practitioner.

The reliance upon panelists is indicative of another, broader change at the Centre for Conflict Resolution. The arrival of Executive Director Adekye Adebajo in 2003 signaled a new effort to disseminate the CCR expertise across the African continent. Adebajo, a former Rhodes Scholar, has spurred a visible shift from on-the-ground work to theory: the Africa program's Policy Research and Development (PDR) project now benefits from the presence of several PhDs who address issues such as gender, regional security challenges, and conflict pertaining to HIV/AIDS. CCR publications reflect this trend, offering insights on the Southern African region and all of Africa. South Africa has a "responsibility", one such pamphlet intoned, "to play a leadership role in the promotion of peaceful political transitions, good governance, and human rights." The "prosperity and stability" of Africa (and South Africa's leadership of it) were "plainly in South Africa's own national interest."[246] Dreams of hegemony would be tempered by "partnerships" with other nations.[247]

The continental drift appears to have had a deleterious impact upon Mediation and Training Services. Hands-on skills are now being absorbed into the Africa programme's Conflict Intervention and Peacebuilding Support (CIPS) project, which offers training for high-level government officials in conflict management and human rights. This has created its own share of difficulties. Senior National Programme Manager Kholisile Mazaza explained that coordinating the National and Africa initiatives may not be easy. The Africa program is currently involved in a multiplicity of international projects and may not be available to share its staff; any cross-pollination will likely be one way, from MTS to the CIPS. He suggests the synchronization of Africa programme and MTS schedules, and the establishment of minimum collaboration requirements.[248] Kholisile's suggestions may be implemented in the long term. But in the short term the result is that the Centre is becoming a recognized authority in policy matters, while potentially losing

[246] Centre for Conflict Resolution Seminar Report, "South Africa in Africa: the Post-Apartheid Decade," Centre for Conflict Resolution (Nov. 2004), at 4.
[247] *Id.* at 9.
[248] Interview with Kholisile Mazaza.

credibility for its training and hands-on work in the local arena. Part of this shift of resources has been driven by donor and grant-maker demand. Now that the miracle of the transition has finished, grant-makers appear to be pushing for South Africa to offer its neighbors its skills.[249] This generous outlook does not change the fact that the taxi conflict appears to have suffered from a lack of expertise.[250]

The MTS program still maintains some exciting initiatives, however. MTS hopes to train 200 police commissioners in the next year. It should benefit from some spill-over from Stan Henkeman's award-winning Prisons Transformation Programme and his recent forays into restorative justice. The Youth Programme, while currently defunct, may be partially resurrected with a restorative justice leaning. Funding comes primarily from a Swiss organization, but this will expire in April 2006. The current strategy is to maintain a presence in the local Western Cape arena but expand to a larger region. Ngwenya hopes that big projects like the MTS taxi facilitation will continue to be outsourced by the government. The difficulty is that MTS prefers not to seek out conflicts because it prefers parties to request a facilitation or intervention themselves; this ensures commitment and aids in the transformation of the conflict.[251]

The Meeting Drum at the Centre for Conflict Resolution

[249] *Id.*
[250] Interview with Ghalib Galant.
[251] Interview with Renée Ngwenya.

Part D. Comparison with the Quaker Peace Centre and the National Peace Accord

The Quaker Peace Centre and the Centre for Conflict Resolution possess a number of similarities. They both have their origins in Quakerism. Hendrik "Harvey" van der Merwe, the Centre for Conflict Resolution's founder, joined the society of Friends in 1976. They also have been involved in conflict resolution together. The Quaker Peace Centre and the CCR were each instrumental in providing peace monitoring during the run-up to the elections. Each centre also played a role in resolving the taxi conflicts of the early 1990s and recent taxi conflicts, which Mediation and Training Services facilitated, spilled over into the Delft community in which the QPC is active. Each organization benefits from a long history of mediation and conflict resolution; the Quakers have been involved in peace work since the mid-1600s and CCR since the late 1960s.

There are notable differences. The CCR is a secular organization, while the QPC is certainly religious. MTS Programme Manager Ngwenya indicated that they are becoming more aware of the spiritual underpinnings to mediation and are now attempting to recognize it as an asset. On the other hand, the QPC was borne out of the Quaker Meeting House in Mowbray, but its staff possesses only one Quaker. Perhaps the two organizations will move towards some kind of comparable spirituality. Another difference involves the strategic positioning of the organizations. QPC identified Delft as a conflict prone community and entered with consultation – but not by invitation. The CCR's MTS has chosen to wait for requests by bodies. Whereas the QPC poured significant resources onto a single community, the CCR appears to be expanding into a more regional and continental agenda. Both strategies have their merits. Galtung suggests a shift from the local to the international may be natural and necessary:

> [E]xperiences at the lower level of social organization will constitute a reservoir that can be drawn upon at the more critical higher levels of social organization, and make people less easily victims to the destructive forces of conflict polarization.[253]

[253] Johan Galtung, "Conflict as a Way of Life" in Galtung, PEACE AND SOCIAL STRUCTURE: VOL. III, Copenhagen: Christian Eljers (1978), at 507.

The CCR's evolution may be seen in this sense in a positive light. The QPC's local peacebuilding efforts, on the other hand, may provide a long-term impact that eliminates the root causes of violence.

Each organization appears to be upholding the spirit of the National Peace Accord. Both the QPC and CCR are courting government as a potential customer. The ongoing threat of the withdrawal of European funding has partly spurred this stance.[253] This strategy, of making contacts at all levels, holds true to the approach of the National Peace Accord to coordinate conflict resolution efforts in local, regional, and national arenas. The organizations may, however, need to inveigh against bottoming out in a purely local structure (QPC) or toppling over from an overly continental outlook (CCR).

Their respective strategies seem to mirror funding trends within South Africa as well. A 2004 survey commissioned by the South African Grantmakers Association found that of the 88 percent of South Africans professing a faith, 96 percent give time or money to charitable causes, which bodes well for the QPC.[254] The Western Cape offered the highest levels of giving at about 88 percent, nearly 40 percent greater than the next greatest province, the Eastern Cape.[255] 75 percent of the money given in the Western Cape goes directly to charities and organizations, another fact that bodes well for the QPC. The South African tendency to give to local causes should benefit the QPC and cut against the CCR, but the popularity of giving to HIV/AIDS causes may potentially make up the difference.[256] The extent to which either organization will initiate local fundraising campaigns is yet to be determined.

Conclusion for Parts III and IV

The Quaker Peace Centre and the Centre for Conflict Resolution represent two unique approaches to conflict resolution in the Western Cape NGO community. Our analysis has noted the changing role of faith in South Africa, as well as the reemergence

[253] The CCR's hopping on the HIV/AIDS funding bandwagon notwithstanding.
[254] David Everatt and Geetesh Solanki, "A Nation of Givers?: Social Giving Among South Africans" South African Grantmakers Association (2004).
[255] This amount of giving was tempered by a comparatively low giving of man-hours to charity. *Id.*
[256] *Id.*

of South Africa as a continental force. Not surprisingly, the country has changed significantly since the transition from apartheid. These organizations have transformed themselves along with it, taking creative approaches to conflicts at the local and national levels. A quick tour of each organization also reveals that both, historically led by whites, have now changed to better represent the Rainbow Nation with a culturally diverse staff. Internal attitudes are positive, and strangers are welcomed in to take a critical look of their work. This is an undeniably laudable development.

Themes for the Thesis

(1) The Centre for Conflict Resolution has a long history in South Africa and, though secular, was founded by a Quaker;
(2) CCR members participated in the National Peace Accord at all levels;
(3) CCR has developed its own conflict and mediation theory;
(4) the Mediation and Training Services facilitation of the Western Cape taxi conflict demonstrates a trend to outsource work to Resource Panelists and contract with government;
(5) the taxi conflict stemmed from under-regulation of a key industry; and
(6) the CCR has shifted its work towards a more continental, international outlook that has created a reservoir of brilliant policy wonks, while likely detracting from its local conflict resolution skills.

Part V. Wedding Non-Governmental Conflict Resolution to the State

The conflict resolution community in South Africa may also be analyzed by reference to its relationship with the state. In the colonial era, indigenous conflict resolution practices were mediated by the state through indirect rule that was further enforced through rural and urban divides.[257],[258] During apartheid, there were several marked shifts by the community in response to state action. Indirect rule persisted in some areas[259] while in others conflict resolution practitioners developed a parallel informal sector. Forms of popular justice, community courts, and NGOs all functioned against a backdrop of state activity. These "other" activities pullulated in

> the economic sphere (the informal sector), informal insurance (burial societies), informal banking (savings clubs), the welfare sphere (informal child- and old-age care), informal health (traditional healers and herbalists), informal housing (sometimes orchestrated by shacklords) among others.[260]

Following the transition from apartheid, discussion began about officially recognizing these formally subversive structures.[261] The new, majority run state offered the possibility of ensuring them a more permanent role. Its command of resources could sustain financially-strapped conflict resolution organizations.[262]

The recognition of the informal dispute resolution sector is relevant to this thesis for several reasons. NGOs in Cape Town have provided local conflict resolution since at least the transition, as Nina notes:

> NGOs have taken many steps to provide conflict resolution at the local level. In the years between 1990 and 1994, NGOs managed to provide access to resources

[257] Wilfried Schärf and Daniel Nina, The Other Law, Introduction (2001).
[258] Jeremy Seekings, "Social ordering and control in the African townships of South Africa: an historical overview of extra-state initiatives from the 1940s to the 1990s", in Scharf and Nina, at 72.
[259] Jacobus Johannes Moses, "People's Courts and People's Justice," Unpublished Masters Thesis available at the University of Cape Town Law Library (1990), at 44.
[260] Schärf and Nina, at 3.
[261] Daniel Nina, "Community Courts in South Africa," Cape Town: Social Justice Resource Project, Institute of Criminology, University of Cape Town (May 1995), at 18.
[262] Vernon E. Jantzi, "What is the Role of the State in Restorative Justice?", in Howard Zehr and Towes, eds., Critical Issues in Restorative Justice (2004), at 194.

> (human and *infrastructural*) which helped to resolve conflicts in many communities. Using mediation, negotiation and sometimes arbitration, NGOs helped to bring peace to many communities that were facing either inter-group conflicts (such as that between two political organizations) or inter-personal conflict (such as that between two people).[263]

As we have seen, the Centre for Conflict Resolution and the Quaker Peace Centre were intimately involved during this period. They have also begun to court local government as a client. CCR's taxi facilitation was wholly funded by the state and QPC is now attempting to charge local government for its work in Delft. Similar to the taxi industry, non-state conflict resolution structures sprang up in the absence of regulation during apartheid and the transition to democratic rule.

State recognition of informal structures would significantly affect the field in which NGOs operate. Community courts and traditional authorities that were historically ignored by the state might come to the fore in conflict resolution. Funding would be dramatically affected through the provision of resources. Themes that affected the National Peace Accord, which we also analyzed, might also become prevalent as state and local structures would begin a concerted effort to resolve disputes and transform conflict. The ephemeral nature of the organizations could shift to one of permanence and peacebuilding.

The South African Law Commission began investigating the possibility of wedding non-state conflict resolution to government structures in 1997. Project 94, "Arbitration: Community Dispute Resolution Structures", sought to consult both South African and international authorities on the appropriate state response to non-state dispute resolution organizations. The Commission held workshops around the country in which practitioners, scholars, traditional African authorities, and jurists voiced their opinions.

This section seeks to explore the *future* of conflict resolution in South Africa. It strives to identify some of the key themes that emerged from the Law Commision's discussions and critically analyze the proposed solutions. It is submitted that state involvement in community dispute resolution structures may improve access to justice and help transform problems, but will be hampered by inherent practical difficulties in standardizing a diverse community. A "New National Peace Accord" is unlikely to arise

[263] Daniel Nina, "Community Courts in South Africa," at 16. Emphasis in original.

in the near future. Part A will *descriptively* highlight some of the important discussions that emerged from Project 94. Part B will *critically* apply different theories relating to non-state justice to these proposals.

Part A. *Description* of Project 94 and its Resolutions

Like the National Peace Accord, there is a danger that the eight-year investigatory efforts of the South African Law Commission will be lost through political compromise. But Project 94's comprehensive study merits documentation. This section will *describe* the investigations of project 94 and will be followed by a *critical analysis* in Part B.

Project 94 marked an effort by the state to include non-state actors in the provision of justice. The investigation evolved as part of an ongoing project initiated by the Minister of Justice in 1994 to assess alternative methods of dispute resolution.[264] Initially convened to study arbitration, the study was broadened to include alternative dispute resolution (ADR) and, by 1997, had evolved into a three-pronged approach.[265],[266] ADR and the civil law, family mediation, and community courts would each be studied separately by a select committee, the Project Committee on Alternative Dispute Resolution.[267] The committee decided to begin its inquiry into community courts first, and forwarded a variety of pertinent questions to the public. "Community courts," were defined as

> popular justice structures, or the many informal tribunals existing outside the formal legal structures, such as street committees and yard, block or area committees operating in urbanised African townships and informal settlements.[268]

Among the committee's concerns were the level of state involvement, public perception of community courts, the general ability of community courts to patch up the justice system's shortcomings, applicable jurisdiction, procedures, and the regulation of interaction between the community courts and the formal judicial system.

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[264] South African Law Commission, "Commission Paper 686: Arbitration: Community Dispute Resolution Structures, Draft Report (For Consideration)," (March 2005) at 1.1.1. [hereinafter "SALC Report"].
[265] *Id.* at 1.
[266] The Commission was also supported by the 1998 White Paper on Local Government. Griggs, "Lessons from Local Crime Prevention," at 129.
[267] *Id.* at 2.
[268] *Id.* at 3.

The consultation process with the greater South African community revealed a diversity of opinions that varied regionally. Workshops and meetings were held to invite comments from across the country, with high-profile workshops held in urban centers followed by smaller workshops in more rural areas.[269] The committee invited a wide cross-section from the community, including police, social workers, churches, NGOs, local government officials, and community based organizations. The report began by assessing the relevant participants in the field. Members of the Johannesberg-based Community Disputes Resolution Trust, established in the early 1990s in Alexandra Township, described their Justice Centres which receive about three thousand visits per year.[270] The Community Peace Programme explained its "franchise" model in which new Peace Committees are established following a blueprint of ethical guidelines.[271] Other notable contributors included the Congress of Traditional Leaders of South Africa, which underscored its emphasis on reconciliation, rather than retribution.[272] The more rural the area, generally, the more clout the traditional leaders possessed.

Several relevant themes emerged from the consultation process. There was an overriding concern with access to justice in the formal system. Access was found to be inadequate along geographical, financial, attitudinal, educational, and cultural lines. Geographically, the formal justice structures were situated too far from popular centers.[273] This was further compounded in rural areas, where participants were forced to travel long distances and attended the committee's workshops at great hardship. The formal courts also demanded financial resources that were beyond the average South African so it was difficult to secure attorneys and pay court fees. Attitudinally, court officials could be dismissive of people's complaints or bungle procedures through improper training.[274] Even functioning well, these procedures also could lead to the "snowballing" of disputes, such that they became larger and more destructive:

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[269] *Id.* at 8.
[270] *Id.* at 11.
[271] *Id.* at 11.
[272] *Id.* at 12.
[273] *Id.* at 15.
[274] For example, in the area of domestic abuse, Zarina Majiet of Mosaic, a Western Cape organization, explains that Xhosa policemen sometimes impute ownership to an abusive husband over a spouse, when they are in fact required by law to press charges. Interview with Zarina Majiet, Director, Mosaic (27 September 2005).

> When someone wants to stab you and you rush to the police to report, they tell you that he must first stab you and only then you can come and report the matter to them. These people are not stopping crime and it is discouraging.[275]

In the area of education, many citizens were lacking in knowledge about their Constitutionally guaranteed rights. Culturally, court officials did not understand witchcraft and other relevant issues and unnecessarily intervened.[276] Their ignorance underscored a general lack of communication with existing non-state dispute resolution structures.[277] Language difficulties also made the courts unappealing. For example, in the North West Province, the participants preferred to use Setswana, their native tongue, and were forced to use an interpreter, which evaded rather than solved the problem.[278] Finally, the courts were overburdened and inefficient and tended to favor whites over blacks, perpetuating class differences.[279]

Non-state, informal dispute resolution mechanisms addressed some of the shortcomings of the formal system. They were trumpeted as more empowering, of adhering to traditional values, of promoting reconciliation and restoration, as being cheaper and speedier, of providing better operating hours, and as possessing a community-wide outlook instead of breaking down grievances into purely individual cases.[280] Procedures were common-sensical and more flexible, and language barriers were not at issue.[281] And, while these community dispute resolution structures were normally utilized by blacks, this was not always the case. For example, in KwaZulu-Natal, white participants professed a preference for the king's traditional courts over the formal state structures.[282]

However, the informal system was not without its own share of problems. Definitionally, the diversity of community dispute resolution structures prevented

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[275] Jeremy Seekings, in The Other Law, quoting Siegfried Manthata, 83.
[276] SALC Report, at 19.
[277] *Id.* at 19.
[278] *Id.* at 22.
[279] *Id.* at 25.
[280] *Id.* at 27.
[281] *Id.* at 31.
[282] *Id.* at 30.

competently addressing them.[283] Traditional courts were found to discriminate against women and vigilantism plagued certain areas.[284] Decisions made in community courts also lacked a necessary coercive element, such that members against whom decisions were made could simply leave the area.[285] Allegations of corruption and abuse of power also undermined the informal systems. Oddly, some participants found that informal structures were not formal enough. Certain structures lacked set guidelines and policies, making outcomes unpredictable and insufficiently coercive.[286] And in some areas, such as the Free State, both informal justice and formal justice were non-existent.[287]

Having consulted the South African community, the South African Law Commission then moved to reduce the multiplicity of suggestions down to a workable praxis. It was necessary to determine the proper amount of state involvement in the structures so as to flush out their best qualities. But this exercise was not without its own difficulties, as the committee wrote:

> The dilemma appeared to be between the obvious need for a measure of state involvement in these structures (to ensure funding, common standards, etc.), on the one hand, and the fear that in the wake of such involvement these structures would lose their more important attributes (flexibility, speed, low cost, informality, etc.) and consequently become less useful to their communities. The danger existed that these communities would then 'vote with their feet' and found yet another series of new structures to considered to be more responsive to their needs.[288]

In urban areas, many of the structures had sprung up in response to a failing of the apartheid state. They were by their very nature subversive and opposed to the infiltration of state power.[289] Official endorsement by the state might take away their creative and flexible approach to resolving disputes or transforming conflicts and restrict them with a

[283] *Id.* at 39.
[284] *Id.* at 75.
[285] *Id.* at 16.
[286] *Id.* at 25.
[287] *Id.* at 33.
[288] *Id.* at 40.
[289] See Schärf and Nina, The Other Law (2001), discussing the ANC's attempt to make the urban townships non-governable, at 7.

legal "straightjacket".[290] Beholden to centralized power, their constituency might flee to a more locally empowering initiative.

With these concerns in mind, the committee evaluated the possibilities of formally linking the state to these structures. The Committee broke into three separate groups to develop suggestions. Commission A addressed issues of nomenclature, procedure, and jurisdiction. A non-adversarial and non-accusative nomenclature was preferred over traditional "offender" / "victim" terminology. Procedures would be standardized so that (1) all present attended voluntarily; (2) had the opportunity to speak; (3) decisions would be reached by consensus; and (4) any agreement would be monitored.[291] Narrative presentation of evidence and an inquisitorial "mediator" would take precedence over formal adversarial modes. Consultation with the broader community, particularly with respect to sentencing, should occur when possible, with an emphasis on restorative principles.[292] Jurisdiction should not be confined to petty cases because any abuse would theoretically be limited by the voluntary nature of the proceedings.

Commission B examined the relationship of peace committees and community structures to other structures. Themes included fostering increased dialogue between (1) the traditional courts and the peace committees; (2) between the police and the community forums so that the peace committees do not receive cases that would never have been prosecuted; and (3) between prosecutors and Community Forums.[293] Paralegals could serve as a bridge between the formal and informal sectors, and an ombudsperson could oversee and coordinate the entire community dispute resolution network.[294]

Commission C evaluated the appropriate administrative and supervisory aspects of a community dispute resolution network. The Commission recommending subsuming the structures under the Department of Justice, but insisted that mediators should not be paid.[295] Rather, training should be offered. Like Commission A's recommendation, it was posited that criminal jurisdiction should be conferred even for petty offenses to

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[290] *Id.*
[291] SALC Report, at 44.
[292] *Id.* at 45.
[293] *Id.* at 47.
[294] *Id.* at 48-49.
[295] *Id.* at 50.

prevent their escalation into more major crimes.[296] To prevent problems of coercion, jurisdiction would be deemed appropriate where the perpetrator confessed guilt.[297]

Following the investigations of the three commissions, written suggestions were solicited that will be discussed only briefly here. Most interesting among them were the very concrete proposals offered by criminology professor Wilfried Schärf. He envisioned four possible policy options for CDR structures: (1) maintaining the status quo and changing nothing; (2) fully incorporating CDRS into formal justice system; (3) combining the benefits of both systems for win-win solutions; and (4) incorporating elements of informal, popular justice into the state courts.[298]

After weighing the merits of each option, Schärf advocated pursuing the latter approach of incorporating popular justice into the formal system, particularly with respect to criminal justice, as the most practicable.[299] The informal justice system could be incorporated by permitting community representatives to speak at bail hearings, arraignment, and sentencing. Evidence could be presented in narrative form with an inquisitorial judge sifting for relevancy. Presiding offers could prevent the defendant from absconding Constitutionally protected rights. A convicted person admitting guilt would be forced to take responsibility for his or her actions, but a sentence stressing "positive skills transfer" would give the offender a sense of self-worth and value in society.[300] (We will analyze Schärf's suggestions in Part B.)

A final suggestion may be found in Annexure C of the Report. This section proposed a two-tiered system of peace committees and community forums. Peace committees would feature the use of locally trained facilitators. Attendance would be voluntary. Community forums would constitute a larger body and agreements would be enforceable by the courts. There would be no appeals between the two forums.[301]

The Draft Bill

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[296] *Id.* at 50-51.
[297] *Id.* at 51.
[298] Scharf, "Policy on Options on Community Justice,"in Scharf and Nina, at 63-69.
[299] *Id.* at 68-69.
[300] *Id.* at 68-69.
[301] SALC Report, Annexure C, at 122.

The combination of professional, juridical, and scholarly contributions was eventually collapsed into a draft bill and several concrete proposals. The Law Reform Commission elected to suggest a loose "framework" within which CDR structures could operate. It opined that

> any attempt to regulate community dispute resolution structures by prescribing to them how the should be formed, how they should operate and by creating a bureaucracy to enforce compliance with these prescriptions would be a mistake. Not only would such a course of action undermine genuine community based initiatives, but also the community support which gives them their strength.[302]

The framework and the related draft bill strongly emphasized training over direct funding and avoided meddling with formal law. The report acknowledged South Africa's lack of state resources and that access to justice was directly linked to class. While some CDRS resorted to vigilantism, most did not and could serve a "useful purpose" in furthering access to justice.[303] Accordingly, the state should grant "explicit recognition" to CDRS "in principle."[304] Recognition would be furthered by:

> (a) asking whether a structure needed assistance in linking with formal structures;
> (b) arranging meetings with formal structures for referral purposes;
> (c) helping CDRS's apply for funding, use of facilities, training, and expanding criminal jurisdiction;
> (d) promulgating a 'code of conduct' by which the CDRS abides;
> (e) attempting to prevent duplicating functions, particularly in rural areas; and
> (f) promoting the Small Claims courts in the townships.[305]

The Draft Bill explicitly attempts to further these aims. The Bill "provide[s] for the recognition by the State of community dispute resolution structures". Its purposes may be bolstered by regulations promulgated by the Minister of Justice and Constitutional Affairs. §1 expressly defines only informal mechanisms as CDRS's.[306] §2 permits any CDRS to apply to the Minister of Justice for recognition by the State and outlines its procedures. The CDRS should serve an identifiable community, demonstrate

[302] *Id.* at 100.
[303] *Id.* at 102.
[304] *Id.*
[305] *Id.* at 103.
[306] *Id.* at 104, Annexure A.

support within that community, and adopt a code of conduct that conforms to the Bill. Failure to do so may result in the withdrawal of recognition.[307] If these requirements are met, the burden shifts to the Minister, who must offer assistance, particularly to facilitate communication with formal structures.[308] Meetings may be requested of the Minister or required by the Minister at any time. The Code of Conduct must be emphasized at each meeting by a CDRS.

Criminal jurisdiction may include intensive consultation with formal prosecutors. Section 6 provides for optional referral to the police in disputes involving criminal matters.[309] This referral triggers a host of responsibilities from the state. A police liaison officer must place a settlement agreement in a docket and the prosecutor may consider the agreement in deciding whether to press charges. If prosecution ensues, the prosecutor is *required* to inform the court of the agreement. Similarly, ongoing prosecutions may be referred by agreement of all the parties to a CDRS, with an ultimate decision made by the court. Trial may then be postponed.[310]

Perhaps the most important section of the Draft Bill pertains to enforcement. A CDRS may turn to the formal courts to have an agreement enforced, following strict procedures. The courts may then make the agreement an order of court and formally demand its execution.[311]

It is uncertain what the outcome of Project 94's recommendations will be. Several of the proposals are insightful and extremely creative. Like the Truth and Reconciliation Commission, South Africa potentially stands to serve as an example of the benefits of linking a formal – and formerly repressive – state government to more popular structures. And, like the TRC, South Africa may be better served by analyzing similar efforts by other peoples around the globe, as the Commission attempted to do with respect to the Phillipines and the Navajo Nation (United States). At the very least, through its consultation with the greater South African community, the Project has upheld the ideals of the burgeoning democracy. Whether its suggestions will be implemented depends upon the quality of the proposals and *realpolitik*.

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[307] *Id.* at 106, Annexure 106, §5.
[308] *Id.* at 105, Annexure A.
[309] *Id.* at 106.
[310] *Id.* at 106.
[311] *Id.* at 106, Annexure A, Section 8.

We now turn to critically analyze the Commission's suggestions, with particular emphasis on relevant theories.

Part B. A Critical Analysis of Project 94

Policy recommendations may be overly ambitious and commit the state to unrealizable goals. This section attempts to critically analyze Project 94, while looking at its practical implications. It argues that the Draft Bill and certain proposals suffer from certain limitations, but may signal the right step in informing decision-making.

1. Is there a real need for access to justice?

A paramount interest in access to justice underlay the South African Law Commission's inquiries. As we saw above, the report deemed access inadequate along geographical, financial, attitudinal, educational, and cultural lines. Rural communities suffered most from travel distances, language barriers, literacy problems, lack of knowledge about rights, and the dismissive attitudes of court officials.[313] But we should not be too quick to assume that state recognition of the non-state community dispute resolution structures will solve these problems. Any treatment of the recommendations of Project 94 must therefore begin by defining and criticizing this goal.

Access to justice is ultimately linked towards democratizing the transformation of conflict. As Jones-Pauly writes:

> In practice, access to justice has meant a movement to widen the scope of persons having their grievances and disputes settled by the state institutions or state-supported institutions. Targeted are especially disadvantaged groups.[314]

Access to justice, in other words, seeks to address grievances and settle disputes. A state that portends to resolve grievances and disputes but does so entirely without the consent of its constituency risks losing its legitimacy. Schärf offers a compatible definition.

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[313] *Id.* at 15.

[314] Christina Jones-Pauly and Elbern, Access to Justice: The Role of Court Administrators in the African and Islamic Contexts vii (2002).

Access to justice includes the provision of a fair set of laws, protection from harm, legal representation, a set of institutions in which problems and disputes can be settled, remedies and solutions to problems, and popular education.[314] These desirable attributes ultimately make the state apparatus work for its citizens and assert reasonable control over their own lives.

South Africa possesses a long history of inadequate access to justice. This history was the result of several factors, which we will only cursorily examine here. These include the legitimating, repressive nature of the apartheid judiciary and a dual system in which non-whites were forced to address grievances through "African" Commissioners Courts and the formal courts, resulting in a 'procedural pluralism' that ultimately furthered substantive inequality.[315] Torn between two systems of law until the mid-80s, justice disappeared in bureaucracy and procedure.[316] As Moses explains:

> [t]he practical effect was that an African person was subject to, on the one hand, the procedural requirements and aspects relating to the hierarchy of special courts... and on the other hand, the procedural requirements and aspects relating to the hierarchy of magistrate's courts, supreme courts and Appellate Division, together with the various specialized and administrative tribunals.[317]

Access was further denied through legislation, such as anti-terrorism bills, States of Emergency, and other devices.[318] The fall of apartheid brought the end of some of these shackles, but difficulties remain. An unspoken aspect of the negotiated settlement to a constitutional democracy was the inheritance of significant international debts and a crumbling infrastructure.

But before we jump on the "access to justice" bandwagon, and take its inadequacy as fact, a word of caution is required. The strongest critic of non-state justice may be found in the theories of Richard Abel. Emerging from the American Critical Legal Studies movement of the late 1970s and 1980s, Abel proved instrumental in questioning the development of new user-friendly dispute mechanisms. He observed that these

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[314] Schärf, "Policy on Options on Community Justice," at 40.
[315] Moses, at 43.
[316] *Id.*
[317] *Id.*
[318] *Id.* at 42-45.

mechanisms were often couched in appealing language but could ultimately make it even more difficult for people to resolve their conflicts. Advocates of access to justice often complain, he wrote, that the "courts are 'overcrowded,' there is 'too much' litigation, crime rates are rising, the prisons are full."[319] Each of these assumptions contains a political component that must be deconstructed according to a particular moment and circumstance.[320]

In South Africa, overcrowding and prisons are perhaps the most relevant concern that pertains to access to justice. A 2004 Department of Correctional Services report found that 54,000 defendants await trial for criminal offenses.[321] But Abel's critique forces us to question why the courts are overcrowded in the first place. For example, if the courts are filled with corporate plaintiffs or cases pertaining purely to the rich, the problem is not in the quantity of cases heard but in the substantive nature of the cases.[322] Certain rights, such as property rights, may be favored over other constitutionally protected rights. Recognizing informal justice systems would do nothing to challenge such a fundamental institutional problem.

It is unfortunately difficult to critically examine the overcrowding assumptions in South Africa. The Department of Justice's 2004/2005 provides some statistics, but these are unhelpful in assessing issues of poverty, class, and rights. South African courts processed about one million cases in 2004/2005. Nearly half of the District Courts' 649,284 cases were settled. The District and Regional courts secured criminal conviction rates of 87 percent and 70 percent, respectively.[323] The report only categorizes the case load before the Supreme Court of Appeal, which held 166 civil appeals and 408 criminal appeals.[324] Waiting times were found to be frequently delayed. The prisons are indeed full, as we have seen above, but that does not permit us to analyze crimes of poverty and other natures that indicate general structural failings either. Without a more detailed analysis, which is not likely forthcoming, we must rely on other sources.

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[319] Richard L. Abel, The Politics of Informal Justice, Vols. 1 & 2, 7 (1982).
[320] *Id.* at 10.
[321] *Services Delivery Review*, Vol.3 No. 2 (2004), at 68-74.
[322] Abel, at 7.
[323] These statistics only reflect cases that were strong enough to prosecute. Department of Justice Annual Report 2004/2005. http://www.doj.gov.za/2004dojsite/reports/anr0405/part2.pdf (last accessed, Dec. 7, 2005). Sec.2 at 4.
[324] *Id.* at Sec. 2, 44.

Widespread recognition of informal structures also may not be necessary if the formal structures of today are doing their job in meting out justice. A typical formal response to inadequate access to justice may be found in legal aid. The National Party apartheid government undertook to provide legal aid to the poor in 1969.[325] The Legal Aid Act permitted partnerships between private law practitioners and the state that provided services to the indigent at fixed rates.[326] In the late 80s, legal aid shifted to focus more primarily on civil matters.[327] However, due in part to the lobbying power of the legal associations and irresponsible accounting, the Legal Aid Board overstretched its resources into bankruptcy.[328] A backlog of cases and R500 million debt forced parliament to dramatically restructure the Board.[329]

The Legal Aid system now functions through formal justice centers with full-time lawyers servicing clients.[330] South Africa's 1996 Constitution guarantees legal representation to the indigent in order prevent substantial injustice from occurring.[331] In 2004-2005, the legal aid board handled 306,654 cases, a small increase over the year prior, with a budget of R464,681,210. 1,142 permanent staff members are complemented by NGO work and contractual arrangements with private practitioners. 88 percent of the board's cases are criminal matters.[332] The activities of the Legal Aid Board are slated to be bolstered by a pending Legal Aid Amendment Bill.[333]

These statistics suggest that access to Legal Aid may indeed be inadequate. Given the 54,000 defendants awaiting trial, it is understandable that the Legal Aid Board has shifted the bulk of its work towards criminal cases. But this leaves a paltry 12 percent for civil matters. The line between civil and criminal jurisdiction often gets crossed by nature of the magnitude of the aggrieved conduct. Many smaller conflicts that have not erupted into criminal cases, as the example of a threat to use force demonstrates

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[325] Mohomed Navsa, "Legal Aid in South Africa: a new direction – towards justice for all" in Sarkin Administration of Justice, in Jeremy Sarkin and William Binchy, THE ADMINISTRATION OF JUSTICE: CURRENT THEMES IN COMPARATIVE PERSPECTIVE 127 (2004).
[326] *Id.* at 129.
[327] *Id.* at 127.
[328] *Id.* at 129.
[329] *Id.* at 130.
[330] *Id.* at 132.
[331] DOJ Annual Report 2003/2004, sec.2 at 79.
[332] DOJ Annual Report 2004/2005, sec.2 at 64.
[333] *Id.* atsec.2 at 20.

above,[334] are being left to fester. Legal Aid also leads to postponements in order to allow a defendant adequate consultation time with a lawyer, increasing the time spent awaiting trial.[335] And, finally, the provision of legal aid can filter out potentially valid legal claims if the legal aid practitioners are improperly trained or overburdened.[336]

Another important formalized institution that provides access to justice may be found in the Small Claims Courts. 156 Small Claims Courts serve the greater South African population.[337] They follow simple procedures and have attempted to expand their service. An amount-in-controversy requirement of R7,000, increased from R3,000 in 2004, governs the cases.[338] A plaintiff may request service from the court that may be served personally or by mail. A case number is issued and a time for hearing set. The judge may enter default judgment in the event of non-appearance by a defendant. A warrant of execution may then be issued at the plaintiffs expense (R250) and a notice to show cause may permit the deduction of the money award's from the defendant's wages. The court extends service hours until after four pm and the maximum turn around time of a case is six weeks.[339] Nationwide, 113,000 inquiries were processed and 23,424 trials transpired in 2004/5.[340]

The small claims courts, then, clearly provide access, but research indicates that they do not provide the right kind of access. Unlike legal aid, which processes mostly criminal matters, the small claims courts seem to be dominated by business claims. This is similar to the United States, in which the small claims courts were expressly created for this purpose.[341] The Cape Town branch may serve as a typical example. According to the head clerk, most cases involve advanced money from unfinished jobs or the converse, nonpayment for finished work.[342] Also, the courts are so far away from the townships that plaintiffs typically arrive to secure a summons, learn that they must travel all the way

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[334] See fn 275, supra.
[335] DOJ Annual Report 2004/2005, sec.2 at 4.
[336] Cf. Abel, at 8 (discussing the use of Nazi legal aid to curb the rights of ordinary citizens by denying certain claims).
[337] DOJ Annual Report 2004/2005, sec.2 at 5.
[338] *Id.*
[339] Interview with Robert Francis, Clerk, Small Claims Court, Cape Town Branch, (Sept. 8, 2005).
[340] DOJ Annual Report 2004/2005, sec.2 at 5.
[341] Abel and Laura Nader, LITTLE INJUSTICES.
[342] Interview with Robert Francis.

back, and give up.[343] The migratory nature of many township residents also permits relocation to other areas, allowing defendants to escape service of process.[344] Taken in sum, the combination of legal aid and small claims courts resolve criminal and business matters, but ignore a host of other civil disputes.

But many other formal institutions also provide access to justice in South Africa. These include family courts, equality courts, sexual offenses courts, and a variety of other specialized institutions dealing specifically with community and family based issues.[345] That these institutions exist, however, does not mean that they are adequately resourced or distributed. Detailed statistics are unfortunately lacking in this area. What we do know is that the most challenging problem appears to be a direct legacy of colonialism and apartheid rule, namely the rural-urban divide. The Project 94 report repeatedly asserts that access to justice in South Africa tends to be determined by distance from the city center. Even then, minibus taxi routes and bus schedules can contribute to the problem.

Summarizing, there does indeed appear to be a lack of access to justice in South Africa. But it is important that the current government is attempting to provide it, at least on paper, in a variety of ways. With this cautionary note in mind, we now turn to analyze the policy recommendations offered by Project 94.

2. A Critical Analysis of Project 94's Specific Policy Recommendations

The most pertinent policy recommendations to emerge from Project 94's investigations may be found in the Draft Bill. The South African Law Commission's recommendations, outlined above, endorse the official recognition of informal, "other law" structures provided they meet certain criteria. These criteria stress accountability and bind the structures with "codes of conduct" that adhere to the Constitution. The state's role becomes facilitative and communicative. Following recognition, the community dispute resolution structure can demand that the state convene meetings with formal structures such as the police and prosecutors in order to coordinate referrals and

[343] i
[344] *Id.*
[345] DOJ Annual Report 2004/2005, Sec.2, 6.

jurisdiction. The informal proceedings must be voluntary and may be halted upon request by a party. Similarly, a structure can refer out an agreement to the courts for later enforcement.

The limited involvement of the state may be seen as a practical compromise. Schärf and Nina have noted that South Africa's Constitution is not accompanied by adequate resources. Designed to cure the maladministration and human rights violations of apartheid, the Constitution provides many "third generation" rights, such as the right to decent housing. These "positive" rights generally require affirmative action on the part of the state and significant resources, but these resources are not likely to be found in the near future.[346] A commitment to funding non-state ordering mechanisms may be impractical and overreach the fisc.

Exit Clause and Resource Drain

The compromise noted, there are still several problems with the Draft Bill. Foremost is the ability of both the state and the parties to the community dispute resolution structures to exit.[347] The state may withdraw recognition at any time if the code of conduct is not followed or the community does not appear to support a structure. Vigilante groups and warlords may be thereby prevented from tyrannizing a community.[348] But community support is not at all easy to gauge and this clause may be subject to abuse. On the one hand, the state may terminate recognition if it disagrees with an outcome. On the other hand, a community may disagree with a particular outcome in a *particular* case and the dissatisfaction may be interpreted as pertaining to the entire structure. Monitoring requires significant resources that the bill does not seem to provide. When is the line crossed between vigilantism and popular justice? Would

[346] The distinction between positive and negative rights seems to have been original made by Isaiah Berlin. Generally positive rights require the furnishing of a right by the state and negative rights prohibit the state from acting. See also Schärf and Nina, The Other Law, at 6.
[347] Abel offers poignant insights on the tendency to exit relationships, but on the *interpersonal* level. Richard L. Abel, "The Contradictions of Informal Justice," in Abel, THE POLITICS OF INFORMAL JUSTICE (1982).
[348] Abel, at 11-12, (writing that "[i]f it is true that informal institutions express and can help to build community, then it is critically important to investigate the qualities of the community they foster. Community, after all, is morally ambiguous").

community support be assessed by a vote? Could the community be assessed by examining postal addresses in squatter communities?

There are other difficulties. While the Law Commission discussed the possibility of a permanent ombudsperson, the Draft Bill seems to subsume the structures under the Minister of Justice. The organic and fluctuating nature of community structures would seem to require more hands-on monitoring and liaison officers. More problematic is the ability of a party to request the use of a formal structure at any time. This option permits forum shopping for a more beneficial outcome. Forum shopping tends to favor parties with greater power and resources;[349] in short, those members of the community that are more capable of exiting it in the first place will do so.

Another challenge with the Draft Bill pertains to enforceability. Community dispute resolution structures may have their agreements enforced by the formal courts according to the bill. This recommendation may be justified on two grounds. First, the state's most desirable attribute is its coercive power and its theoretical monopoly on the use of force. Permitting the state to enforce an agreement would lend the CDRS its support and legitimacy. A second justification may be found in the fact that "other law" ordering mechanisms frequently derive their strength from their opposition to the state and responsibility to the community. The coercive power CDRS emerges from the inability of its constituency to exit and in the predictability of future fact to face encounters. Once the state extends itself into their domain with its official "stamp" it may rob the structures of their coerciveness. Rather than utilize the creative, ad hoc problem solving methods with an eye to the community, it may be easier for the structure simply to "pass the buck" onto a less community-sensitive state. The inability to appeal to the formal system should temper the possibility of abuse in this area.

Guidelines and Codes of Conduct

The proposed codes of conducts also present problems. The Draft Bill requires each CDRS to adhere to a constitutionally linked code of conduct. This code of conduct must be repeated at each meeting to remind both the facilitators and the participants of

[349] Abel, POLITICS OF INFORMAL JUSTICE, VOL. 2, at 5.

the Constitutionally protected rights. For example, Schärf has shown that a code of conduct may prevent a CDRS from ignoring guarantees in criminal procedures. But there is a certain danger that these codes of conduct will be culturally insensitive and perhaps counterproductive. Given the plurality of ordering mechanisms that exist in the country – particularly those involving traditional authorities – these codes of conduct may disrupt the procedures of certain CDRS. Moreover, they risk imprinting liberal values onto more community, group-oriented structures.

The code of conduct was most likely derived from the Community Peace Programme's projects in the Western Cape. Indeed, one of its managers, John Cartwright, was significantly involved in Project 94. Based on a dual peacemaking / peacebuilding model, the CPP runs innovative programs that permit facilitators to be paid for their conflict resolution work, while also helping the community address structural causes of conflict. Participation is voluntary and meetings result in signed agreements. Over 12,000 meetings have been held since its inception in 1998, lending to some insight into guidelines.[350] Each "peace committee" must adhere to a set of guidelines developed by the CPP. Although they have evolved over time, the guidelines are for the most part uniform across committees. A common critique is that while some values are universal, others are culturally relative and may be imposed from above. Faith-based initiatives like the Quaker Peace Centre may not appreciate imposed value-systems. My own personal investigations into the peace committees suggest that this is perhaps an overstated drawback compared to difficulties of training and funding. Coercion instead comes from the voluntariness of the proceedings, the absence of other forms of justice, official bright orange peace monitor's uniforms, and in normal community pressures.

A useful guide to the implications of codes of conduct may be found in the writings of August Reinisch. Although writing about non-state actors in a wider international perspective, his observations are pertinent here. Reinisch defines a legal framework as:

> (1) the standards or behavioral rules themselves, substantive rules in an old fashioned diction;

[350] Interview with John Cartwright, Communications Director, Community Peace Programme (July 2005).

(2) the procedures used in discussing, supervising, and maybe even enforcing compliance with standards; and finally
(3) the institutions, forums, networks, etc. within which procedures are activated to invoke the standards.[351]

The code of conduct in the Draft Bill appears to conform to the first definition. Any code would be a standard that molds the conduct of the particular CDRS. Reinisch has found that these relatively simple devices tend to work. International organizations such as the Organisation for Economic Cooperation and Development and the International Labour Organisation have offered highly useful codes of conduct for businesses and states that tend to shape norms.[352] These have been very successful, despite an absence of coercion:

> [B]roadly speaking, codes of conduct are often relatively effective in spite of the absence of any legally enforceable obligations under the codes themselves... While such a 'realist perspective is surely helpful in explaining much of corporate and other non-state behaviour, it remains an interesting aspect of these developments that the extra-legal 'enforcers' (consumers, contributors, member states, etc.) have been willing to use their leverage.[353]

In combination with the observations of the peace committees, then, it seems that a proposed code of conduct may be an effective tool in South Africa in shaping non-state ordering mechanisms.

Guildelines may also provide an important safeguard against injecting nostalgia into non-state ordering structures that are naturally evolving. It is axiomatic of traditional authorities that they romanticize the structures of the past. Nostalgia can positively provide a community with cultural pride but negatively be used as a rhetorical device to disguise current inequalities. This applies to street committees as well, which provided a specific form of ordering during the 1980s and changed during the 1990s to accommodate the transition. Recognizing these manifold structures may result in significant abuse. Sociology Professor Lungisile Ntsebeza, who has written extensively on the role of traditional authorities in South Africa, explains that guidelines are a prerequisite to state recognition:

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[351] August Reinisch, "The Changing International Legal Framework for Dealing with Non-State Actors" in Alston, Philip, ed., NON-STATE ACTORS AND HUMAN RIGHTS 39 (2005).
[352] *Id.* at 44.
[353] *Id.* at 53.

> My bottom line is that they must be democratic, legitimate, transparent and can be challenged. My own reservations about traditional institutions are that they are undemocratic and not transparent. If they can be made transparent, with competent leaders, not because of birth, they would be fine. But the nature of traditional courts is that they are appointed by birth right. I am sure that they worked for small groups in the past. But if it worked then, you must look at the context... The same holds true for street committees. Many were not democratic or representative. They were kangaroo courts – we cannot beat about the bush about that.[354]

Many CDRS functioned in a particular context that benefited from their activity. But the nation is not the same today as it was before colonialism or during apartheid. Granting widespread recognition of CDRS may potentially ignore *context* and grant power to structures that are no longer even recognized by communities. Police have noted, for example, that the street committees and civic associations such as on SANCO may be on the wane.[355] "Guidelines," added Ntsebeza, "are a very central and necessary condition for democracy and transparency. There is nothing radical about that."

The requirement of codes of conduct in the Bill may also be an attempt to standardize criminal proceedings. Establishing informal justice often hinges upon matters of criminal jurisdiction. As Schärf observes, "when the community courts deal with matters Western justice defines as criminal, the incompatibility of values and procedural rules starts becoming acute".[356] The state, used to its "monopoly" over the use of violence, often tries to prevent relinquishing its power. Extreme cases of vigilantism are cited as being the likely result of expanded jurisdiction. But these cases depart from the normative treatment of criminals in non-state ordering mechanisms and are over-stated.

The Community Dispute Resolution Structures often use rhetorical devices as well. The typical example, as we saw with our "threat" to knife someone above, is to complain that smaller conflicts, if not dealt with will snowball into large scale criminal offenses. But this is not necessarily the case. Just as it is impossible to predict which

[354] Interview with Lungisile Ntsebeza, Associate Professor of Sociology, University of Cape Town (Feb. 6, 2006). For a more detailed expression of these sentiments, see Lungisile, Ntsebeza DEMOCRACY COMPROMISED: CHIEFS AND THE POLITICS OF THE LAND IN SOUTH AFRICA. Boston, MA: Brill, 2005.
[355] Interview with Gerrit Nieuwoudt.
[356] Schärf, at 59.

child who suffered from trauma will inflict similar trauma on others – and some will – so too is it impossible to predict which conflicts will erupt into larger ones.[357] More reliable indicators may be found in structural causes of conflict such as poverty, unemployment, and lack of education.[358] Both the state and informal structures would do well to admit the realities – that informal structures in South Africa tend not to want to deal with murders and serious rapes in the first place, but that it may be practical for them to have the option in order to increase their coercive power and preserve a feeling of community empowerment. Perhaps close consultation should be encouraged in those instances rather than establishing a red-line rule.

Accountability and Extending the State

A further danger may be found in accountability.[359] Official state recognition of CDRS may simply permit it to relax its thrust for increased formal access to justice. By outsourcing justice to non-state ordering mechanisms, it could save itself resources and free itself of accountability.[360] Let us imagine that a non-South African or South African from outside the community might be punished against the principles of the Constitution. The Draft Bill would permit the state to simply take away recognition of the CDRS. In this way the blame will have been effectively shifted to the CDRS, rather than the state which should have been responsible for ensuring justice in the first place. The Bill, as written, provides a very large exit clause for the state.

Conversely, one must also question whether the state should extend itself into the informal sphere at all. If the state created informal structures, as often happens in Western models, it would be deliberately asserting its power into previously untouched areas of the community.[361] The state could also be imposing a new system of indirect

[357] See, e.g., Pumla Gobodo-Madikizela. A HUMAN BEING DIED THAT NIGHT (2003).
[358] Interview with Martin Struthmann, Assistant to the Fundraising Coordinator, Quaker Peace Centre (Dec. 9, 2005).
[359] Reinisch, at 81.
[360] *Id.*
[361] See Abel, (writing that informal justice "satisfies nostalgia for a mythical past, whether imagined as a small town or an urban ethnic enclave that symbolizes homogeneity, and thus security, in a society whose normative and social conflicts are extremely threatening... It locates institutions of social control in residential settings that appear to be as remote as possible from the state, an appearance that is enhanced by

rule, offering "second class" justice to the impoverished while keeping the courts free for the dominant classes.[362] A passivized people would stop clamoring for the more long-term goal of increased access to democratized justice.[363],[364] But in South Africa, as we have seen, the non-state ordering mechanisms have existed for a long time. Recognizing these mechanisms will only increase state power if it is capable of asserting some kind of control over them; right now a mechanism's main incentive appears to be potential networking opportunities and a more coercive judgment. Since the bill does not permit the state to crush un-recognized institutions, as the apartheid government did in 1985-1986,[365] state abuse seems less likely.

Policy Options

The many shortcomings of the Draft Bill may suggest a need to reconsider the policy options presented by Schärf. Repeating, he suggested (1) maintaining the status quo and changing nothing; (2) fully incorporating CDRS into formal justice system; (3) combining the benefits of both systems for win-win solutions; and (4) incorporating elements of informal, popular justice into the state courts.[366] Although the Draft Bill seems to have blended a combination of policy options (1) and (2), Schärf favored the approach (4), of incorporating elements of informal justice into the state courts. This option would prevent the state from absconding its responsibility of providing access to justice. The community would be effectively injected into the justice system by being consulted at different stages of the proceedings. Narrative evidence would be preferred over formal procedures and officials would prevent the defendant from giving up Constitutional rights. The right to remain silent would be denied and sentencing would emphasize "positive skills transfer" back to the community.[367]

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the language and forms of decentralization, which conceal the extent of state direction"). Richard L. Abel, "The Contradictions of Informal Justice," in Abel, THE POLITICS OF INFORMAL JUSTICE 276 (1982).

[362] *Id.* at 275.

[363] *Id.* at 293-94.

[364] Bonnie Price Lofton, "Does Restorative Justice Challenge Systemic Injustices?" in Zehr, et al., CRITICAL ISSUES IN RESTORATIVE JUSTICE 377 (2004).

[365] Seekings in Schärf and Nina, The Other Law, at 93.

[366] Scharf, "Policy Options," at 63-69.

[367] *Id.* at 68-69.

These recommendations appear workable but are not without their own difficulties. For example, where would these proceedings occur? How would one determine when or when not to use narrative evidence? Why should the court coerce a participant into speaking? What about participants who were passing through a community, like migrant workers? How do you delineate the community in the first place? Geographically? Demographically? How do you ensure all interested parties appear?

Similarly the proposed two-tiered system found in Annexure C of a combination of peace committees and community forums also seems flawed. These entities would require a vast restructuring of non-state ordering mechanisms and require a resource intensive bureaucracy of local ombudspersons. Religious bodies and other mechanisms are excluded from this proposal, potentially requiring their own separate apparati.[368]

3. Comparing the Texts of the Draft Bill and the National Peace Accord

In the proceeding sections, we examined the *context* of the Draft Bill and National Peace Accord. Each section identified the events that culminated in the shaping of these documents, described and analyzed their work in practice, and attempted to assess their outcomes. It may prove useful to briefly compare the *cotexts* of each document as well. In other words, based solely on the texts of the Accord and the Draft Bill, are there any insights that may be gained?

The National Peace Accord is a complex document. Its preamble contains a religious component, delineates rights, outlines specific problems confronting the nation, and focuses on local level solutions.[369] It also creates several mechanisms – the Goldstone Commission, peace committees, and Justices of the Peace – and stipulates the means by which the mechanisms may be given effect. A full chapter outlines the rights required of a multiparty democracy and emphasizes consultation with affected communities. More relevant to the Draft Bill, Codes of Conduct are enumerated that

[368] SALC Report, Annexure C.
[369] National Peace Accord (Sept. 14, 1991).

place duties on the police, political parties, and state authorities.[370] Breach of the Accord would be resolved by eventual referral to an arbitrator.

The Draft Bill contains several differences. There is no mention of God or religion. Rights are not discussed. New mechanisms are not created so much as recognized: the Minister of Justice and Constitutional Affairs may grant recognition to a CDRS or withdraw recognition from a CDRS. Police receive mention in both documents, but in significantly varying degrees. The Accord discusses the police in detail, underscoring the importance of their envisioned role. By contrast, there is only very brief mention of the police in the Draft Bill. This is unusual in that both documents express a concern for unusual criminal cases. The Accord provides for "Special Criminal Courts", while the Draft Bill denies jurisdiction to CDRS in major criminal cases.[371] But while the Accord speaks to a clear link between criminal cases and the police, the only role for police in the Draft Bill is for a "liaison officer" to facilitate discussion between the CDRS and the formal court system. Another distinction may be found in the Codes of Conduct. Like the National Peace Accord, promulgating a Code of Conduct is identified as central to the Draft Bill. However, while the Accord stresses the possibility of violations by both the state and political parties, the Bill seems to be wholly suspicious of the CDRS alone, perhaps because the state's underlying Code of Conduct is the Constitution.

Another relevant point is that several political actors signed the Accord. The Draft Bill, which would become democratic law if ratified, would represent an agreement between the state and its people. The Accord stipulated referral to an arbitrator if the signatories acted out of line. The only enforcement mechanism in the Draft Bill appears to be amending the constitution. A sub-agreement, or sub-contract, between the state and the CDRS could be withdrawn by either side, as we have seen.[372]

Revisiting the contextual themes outlined earlier in the paper – for example, the numerous political forces acting in the Accord – may explain some of the distinctions

[370] National Peace Accord, Chs. 3-5.
[371] The Special Criminal Courts never materialized.
[372] The Draft Bill also contains a specific bias against arbitration because of its "inconsistency" with resolving disputes in CDRS.

between the two documents. But the reluctance to relinquish state power to CDRS and the tendency to ignore the role of the police in the Draft Bill are worth noting.

4. Summary

The Draft Bill would result in the recognition of a long-thriving non-state ordering community. These community-empowering mechanisms would be legitimized by the state and acknowledged for their contributions to conflict resolution in South Africa. Criminal jurisdiction would be extended so that communities could nip small disputes before they developed into large scale conflicts. Justice might be better standardized through increased adherence to constitutionally-aligned codes of conduct. Local mechanisms with inadequate coercive power might benefit from state enforcement, and dialogue would be fostered between the informal and formal sectors.

However, the Draft Bill contains significant setbacks. The most common aspect of informal justice is its lack of sustainable funding,[373] which the state would not provide with the Bill. The state would incur few new responsibilities other than the training of formal structures of how to interact with non-state structures. (Indeed, training has become a buzzword in the government with its own inherent difficulties of measurement.) The state would also be officially outsourcing justice to these mechanisms, potentially permitting it to wash over its duty to expand formal justice. The relationship of the informal sector to the existing legal aid, family courts, equity courts, and sexual offenses courts has not been sufficiently determined. The bill also overly permits exit from the spirit of the structures. The state may withdraw recognition at any time and participants may withdraw to formal institutions.

Our examination of the National Peace Accord has shown that many of these difficulties may be fatal to the proliferation of local conflict resolution structures. Significant failings of the Accord pertained to, among other things, peacebuilding and the initiative's hasty demise. Peacebuilding in local communities failed because of inadequate funding. The peace committees were dismantled when they had proven on

[373] Jantzi, "What is the Role of the State in Restorative Justice?", at 194.

the whole successful, against better judgment. The Draft Bill suffers from similar flaws. There is an underlying problem of *rapid exit* of the shared apparatus by either local groups or the government (but more likely the government). The bill also does not seem to adequately mandate communication between formal and informal structures. Communication may need to be required at periodic intervals, with ongoing monitoring. And, ultimately, the bill seems to require de facto subservience by CDRS's to the formal hierarchy. They would still be, it seems, "second class justice".

Perhaps the Bill would be better served by attempting to fill the gaps left by the informal system. Our examination has shown that the formal legal structures address criminal issues and some specific civil matters. Legal aid is heavily weighted towards criminal matters, however, and the civil courts are not as geographically widespread. Compounding this issue is a general lack of access to all of the formal institutions. Perhaps CDRS mechanisms that address the cases that slip between these institutions may be more easily wedded to formal structures. As access expands, these CDRS could be formalized. The difficulty with this approach is that it would deny the flexible nature of many CDRS. Limiting jurisdiction might inhibit both the coercive power of the courts and inhibit its problem solving ability. Searching for root causes of conflict often requires blending remedies across civil and criminal lines.

The thrust of this examination demonstrates that single, blanket approval of non-state ordering mechanisms will not be easy in the Rainbow Nation. Other countries possess relatively homogenous, oppressed cultures that have now been permitted to assert their right to self-determination through homegrown justice. (Even these are not without their problems.)[374] South Africa is remarkably diverse. The Constitution enshrines eleven official languages. Traditional, customary African forms of justice exist next to politically derived ordering institutions that sprung up in response to apartheid. There is therefore a danger imposing nostalgia on structures that were consciously destroyed by

[374] For example, in New Zealand and the Navajo Nation, both traditional forms of justice suffer from their past destruction by the oppressive culture. While the "old ways" are coming back, there is an emphasis now on formal institutions even within these cultures. Deji Olukotun, "The Myths and Realities of Navajo Peacemaking: Past, Present, and Future," (2004) on file with the author.

the state.[375] Those that survived in pure, pre-colonial form are likely in the minority or nonexistent.

Themes for the Thesis

(1) The South African Law Commission is assessing formally linking the state to non-state forms of conflict resolution;
(2) the non-state ordering community has existed for many years, especially during apartheid;
(3) the community is extremely diverse and there is no single representative body;
(4) assumptions about access to justice and inadequate resources must be examined or challenged;
(5) linking non-state systems to the state creates difficulties of administration, co-option, jurisdiction, and political compromise; and
(6) a new government-endorsed structure that would be similar to the National Peace Accord appears unlikely in the short term.

[375] Abel, "Contradictions of Informal Justice," at 103.

Part VI. Conclusion

This paper has attempted to assess the past, present, and future of the local conflict resolution community in the Western Cape. After offering a general background to conflict resolution theory, it analyzed the rise and fall of the National Peace Accord. Our study demonstrated that government endorsement of the Accord did not detract from the ability of the peace committees to furnish the nation with a reservoir of practical conflict resolution skills. Communication, aided in part by the South African Council of Churches, helped avert violence and steer the country free of civil war. Peace work worked best when national, regional, and local levels were coordinated. At the same time, the Accord's attempt to resolve greater structural inequalities in its peacebuilding initiatives fell short of its goals. The business community enjoyed managing the process, but offered little in terms of actual resources and training as it high-tailed it "back to the balance sheets".[376]

Our examination of *present* NGO trends revealed a local conflict resolution community that is undergoing profound changes. The case study of the Quaker Peace Centre demonstrated that the religious community has all but disappeared from the conflict resolution fold in South Africa. The QPC maintains only one Friend on its staff and has shrunk from thirty-five to six in just four years, with future funding cuts on the horizon. The organization has responded to these changes with the creative strategy of focusing its work on the local community of Delft.

The case study of the Centre for Conflict Resolution offered different insights. The Mediation and Training Service program's facilitation of the taxi conflict showed that a new model of outsourcing work to an experienced resource panel can make up for a dearth of in-house staff. Contracting with the government has enabled the CCR to maintain its ties at all levels of society, true to the spirit of the National Peace Accord. Its stronghold of hands-on training, however, has been sidelined by a new shift towards conflicts concerning the entire continent.

The thesis concluded with a look at the future by analyzing the work of the South African Law Commission's Project 94. This project would also mark a shift to the spirit

[376] Interview with Peter Gastrow.

of the National Peace Accord by wedding local conflict resolution mechanisms to the state. The places to which people already go to resolve conflicts – the "other law" - have been providing justice to South Africans for decades. But recognition of these ordering mechanisms is itself bereft with difficulties. The "other law" is pluralistic in nature, making it difficult to conform naturally subversive and organic entities to the formal justice system. The state is under-resourced, but seems wary of granting too much power to unpredictable dispute resolution structures. Guidelines may provide some certainty, but this does not disguise the uncertainty of the political process itself – the Draft Bill may disappear once it enters the legislature. This political reality is compounded by the fact that the Draft Bill itself permits either the government or community dispute resolution structures to end their liaison at any time, undermining commitment. Similar draft legislation by the South African National Civics Association, for example, never bore fruit.[377] "It was overkill," explained Project 94 member John Cartwright. "We could not figure out how to mesh with government structures."[378] The creation of a new National Peace Accord therefore appears unlikely in the short term.

This masters thesis should also be read with some caution. In the "past", we examined a *quasi*-governmental body; our "present" entailed studying two local *non*-governmental organizations; and the "future" assessed linking the state to *community* organizations. A strict analysis might critique this as comparing apples to oranges. The paper essayed to overcome these differences by identifying key themes: geographic differences, religious changes, business efforts, strategic positioning, funding trends, and attempts to eliminate structural challenges. Another critique might be that our reliance upon *specific* case studies to assess present conflict resolution trends prevents us from extrapolating sweeping generalizations. To this it is possible to respond, perhaps unconvincingly, that the preliminary interviews at ten different conflict resolution organizations helped inform the case studies.

The hope is that the reader will leave with a better understanding of the conflict resolution community and of the complexity of issues facing South Africa today. The project on the whole was an edifying and ultimately positive experience. If nothing else,

[377] Nina, "Community Courts", at 18.
[378] Interview with John Cartwright, Communications Director, Community Peace Programme (July 2005).

South Africa's unbridled forays into conflict resolution have been, and continue to be, incredibly inspiring.

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