National Human Rights Institutions in post-conflict situations: mandates, experiences and challenges

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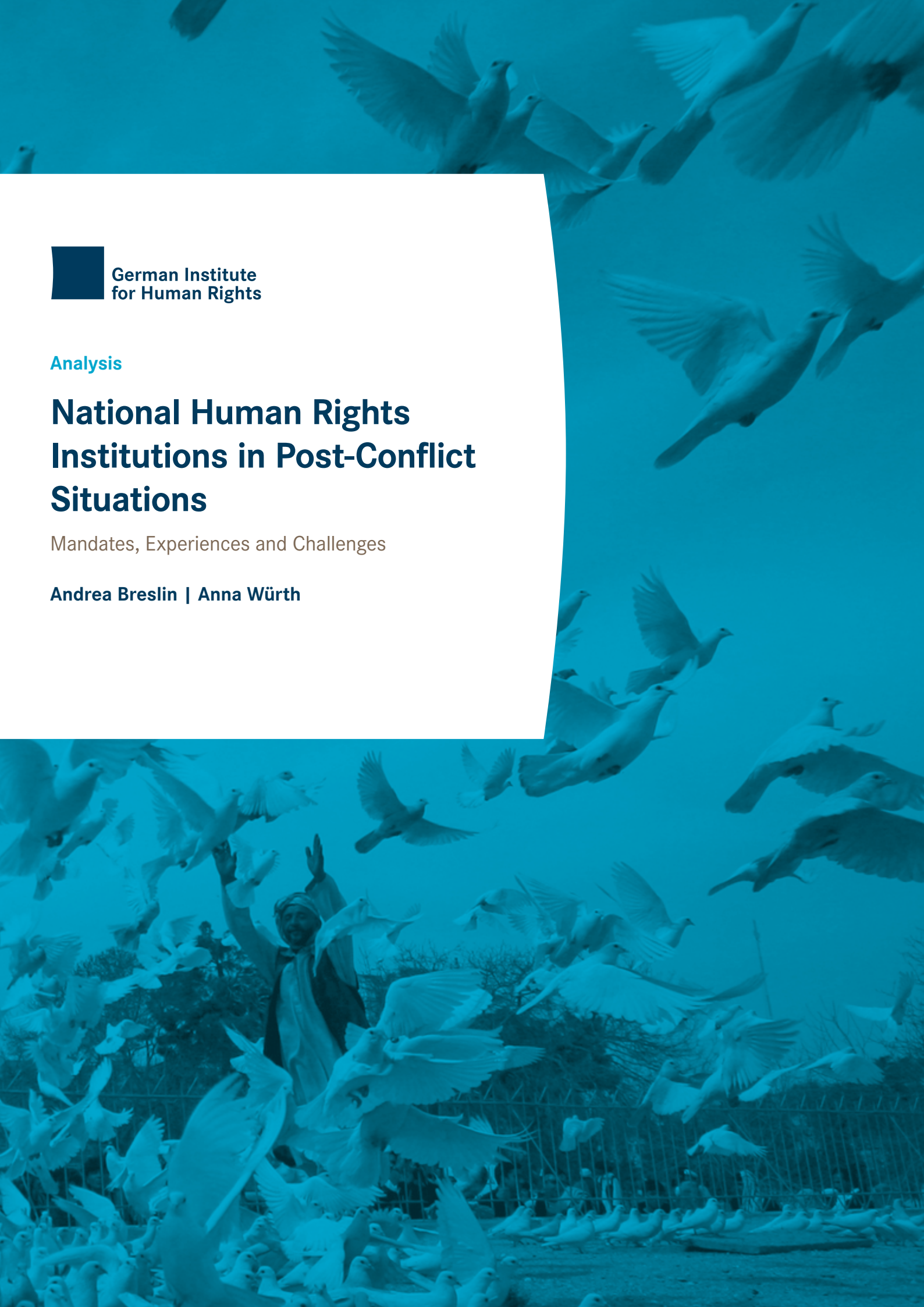

German Institute for Human Rights

Analysis

National Human Rights Institutions in Post-Conflict Situations

Mandates, Experiences and Challenges

Andrea Breslin | Anna Würth

The Institute

The **German Institute for Human Rights** is the independent National Human Rights Institution in Germany. It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations. It is supported by the German Bundestag. The Institute was mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and established Monitoring Bodies for these purposes.

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Foreword

National Human Rights Institutions (NHRI) are independent state-mandated institutions tasked with the promotion and protection of human rights in and by their own countries. Their role and functions are governed by the Paris Principles, adopted by the United Nations General Assembly in 1993. This international standard for NHRIs applies to all, irrespective of the political situation within the country. This has proven to be the right approach, because realising the human rights of all people in a state is essential both to sustaining peace within a society and to re-establishing peace, including through a successful process of transitional justice. In fact, human rights violations are often among the core underlying causes of conflicts. Violations that are not addressed and resolved in a just and inclusive manner continue to provoke societal frictions, mistrust and hatred, which can result in the re-emergence of violence, other widespread human rights violations and conflicts. Similarly, impunity for human rights violations and injustice under a dictatorial regime will prevent the establishment of a new culture of accountability and of human rights, thus resulting in an ongoing weakness of the rule of law and of respect for human rights.

Hence, the mandate of NHRIs to promote and protect human rights takes on particular importance within the framework of post-conflict environments and newly established democracies. How do NHRIs address the negative human rights impacts of violent conflicts or dictatorial regimes in such environments? How can NHRIs contribute through their unique mandate to the success of transitional justice processes? And finally, what lessons can other NHRIs and the international human rights community learn from such processes?

The Global Alliance of National Human Rights Institutions (GANHRI) has addressed some of these issues over the past years, further defining the role of NHRIs in conflict and post-conflict situations, in early warning, conflict prevention and the re-establishment of peaceful societies and their contribution to peaceful, just and inclusive societies (see GANHRI 2017). Working on how to deal with the ongoing consequences of war and post-war situations as well as of totalitarian dictatorships is part of the mandate of the German Institute for Human Rights, Germany's NHRI. The present study builds on the discussions within GANHRI and shows how NHRIs have used their mandate to respond to the challenges of transitional justice processes. The lessons learned in the three countries examined in this study, namely Afghanistan, Georgia, and Uganda, provide valuable insights for all NHRIs. We are grateful to our colleagues in these institutions for having shared their experience and views with us.

The mandate of NHRIs is first and foremost a human rights mandate, in other words, it encompasses all human rights issues, not only those associated with violent conflict and transitional justice. It is precisely this broad human rights mandate that enables NHRIs to consider human rights violations in a comprehensive way, allowing them to show how human rights issues are interconnected, and thus to propose holistic solutions. In addition, NHRIs are required to monitor the implementation of human rights. Hence they can help ensure that the – inevitably lengthy – transitional justice processes remain under observation. In all this, they can apply their particular powers of inquiry, such as the power to access records, summon witnesses, or hold public hearings, and to report to domestic and international bodies. We hope that the present study will help NHRIs and states alike to better leverage the unique mandate of NHRIs to ensure the promotion and protection of all human rights in transitional justice processes.

Professor Dr Beate Rudolf
Director of the German Institute for Human Rights

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How do National Human Rights Institutions (NHRIs) address the negative human rights impacts of dictatorial regimes and violent conflict, and thus successfully contribute to transitional justice? This is the focus of this study, which presents examples from the experiences of the NHRIs in Afghanistan, Georgia and Uganda, who kindly shared them with the authors.

The provision of justice for past and present violations of human rights is intended to reduce the culture of impunity, in the country in question, as well as in the respective world region or even on an international scale. Addressing the issue of transitional justice facilitates peace processes, but requires strong state institutions and the political will to act. When justice for past and present abuses is denied, conflicts linger on, as colleagues from Afghanistan pointed out during the research for this study. 'Peace-versus-justice', they reminded us, is a false dichotomy, and one that the international community has rightly left behind, at least in its rhetoric.

The study shows how three NHRIs, each performing their essential functions in its own country-specific context – promotion and protection of human rights – have interacted with transitional justice aims and processes and draws lessons from what the NHRIs have learned while doing so.

1 Transitional Justice and National Human Rights Institutions: An Overview

Transitional justice as a discipline and as a concept in academic and practical inquiry is relatively recent. A 2004 Report of the UN Secretary-General describes transitional justice as the full range of processes and mechanisms that are:

> associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all), and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.[1]

Since the Secretary-General's report was published, experience with transitional justice has grown vast and chequered,[2] but the definition of transitional justice and what it comprises has remained largely unchanged.[3]

National Human Rights Institutions (NHRIs) have a mandate to protect and promote human rights. They are financed by their respective states and yet act independently of them. The autonomy to set their own priorities is inextricably bound up in the raison d'être of the NHRIs, which require this freedom in order to promote and protect the full range of human rights. NHRIs introduce human rights debates into the domestic realm, rendering them more tangible for the population and state alike as they do so. In addition, their geographical proximity enables NHRIs to monitor the national implementation of human rights obligations more closely than regional and international institutions. NHRIs are thus positioned between civil society and the state, between the national, regional and international level. Conformity with the Paris Principles that regulate NHRIs is assessed regularly in a peer review acknowledged by the UN.[4]

The Paris Principles do not speak to how NHRIs should approach contexts of transitional justice or post-conflict or post-dictatorial regimes. They require that NHRIs be vested with the competence to promote and protect human rights, and that their mandates should be as broad as possible.[5] Thus the Principles allow for a wide range of approaches and forms of coordination between NHRIs and mechanisms and processes of transitional justice. The General Observations on the Paris Principles, which provide interpretation and guidance to NHRIs and states concerning their obligations under the Principles, address the situation of NHRIs during a coup d'état or a state of emergency. Under such circumstances, an NHRI is expected to "conduct itself with a heightened level of vigilance and independence, and in strict accordance with its mandate."[6] The General Observations further highlight that while the impact of a state of emergency varies from one situation to another, all emergency situations invariably have a dramatic impact on human rights, and in particular on vulnerable groups. Disruptions to peace and

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1 UN, Secretary-General (2004), para 8. See also UN, Secretary-General (2010) for an updated guidance note.
2 For a recent overview and bibliography see: Haider (2016); Nesiah (2016); International Journal of Transitional Justice (2015).
3 See e. g. the mandate of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. http://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Mandate.aspx (accessed 24.09.2016).
4 For a good introduction: Linos / Pegram (2016).
5 UN, General Assembly (1993), para 1–2.
6 ICC-SCA (2013), p. 50.

security therefore do not diminish the obligations of the NHRI. These institutions play a key role in investigating allegations of violations "promptly, thoroughly, and effectively".[7]

In addition to the Global Alliance of National Human Rights Institutions (GANHRI), whose Subcommittee on Accreditation (SCA) issues the General Observations, NHRIs can also look to regional networks for technical and operational guidance.

- In its 2009 Rabat Declaration, the Network of African National Human Rights Institutions (NANHRI) resolved to continue to contribute to the mechanisms and processes of transitional justice and to support societies in transition through a broad range of approaches to and forms of engagement with the mechanisms of transitional justice.[8] NANHRI also commissioned a baseline assessment on East-African NHRIs active in conflict management and peacebuilding in 2012. The report found capacity weaknesses, lack of human and financial resources, frequent deficits in the coordination of activities, and a lack of proactive engagement with conflict-related issues on part of the NHRIs.[9]

- In 2012 and 2013, the Asia Pacific Forum of NHRIs discussed strategies for NHRIs to work towards supporting genuine and inclusive transitions to democracy in Asia.[10] The network focused on the role of women in political and democratic reform, how NHRIs can work with police and security forces, and how they can engage in the promotion of democracy and good governance.

- The European Network of NHRIs (ENNHRI) has started to work on the issue of NHRIs in conflict situations and initiated a survey among its members in mid-2016 to gauge their views with respect to NHRI modes of operation, mandates and key activities in such situations. The 2015 Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations outlines tasks and responsibilities of NHRIs, states and the international community in times of violent conflict.[11]

A Guidance Note issued by OHCHR in 2008 enjoins NHRIs "to support processes that ensure accountability and combat impunity, provide remedies to victims, promote respect for the rule of law, and strengthen democracy and sustainable peace"[12] and gives numerous examples of how NHRIs have already been doing so. NHRIs may also help lay the groundwork for a phase of transitional justice by monitoring and recording violations during periods of conflict and authoritarian rule and the transitional periods that follow. At some point in the future these efforts can support initiatives involving prosecution, truth-seeking and truth-telling mechanisms, reparations and/or vetting. NHRIs can assist victims by ensuring that they have access to adequate justice mechanisms, and helping them go gain access to reparations and to information on the remedies available through transitional justice mechanisms. NHRIs can also play a part in arranging appropriate relocation and resettlement measures for victims and survivors.[13]

In what follows, the functions that NHRIs most commonly perform to address the negative human rights impacts of dictatorial regimes and wars are analysed with reference to examples from the work of selected NHRIs, taken from publicly available NHRI documentation.

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7 ICC-SCA (2013), p. 49.
8 Raoul Wallenberg Institute (2009).
9 NANHRI (2014), p. 32 ff.
10 Asia Pacific Forum (2013); Asia Pacific Forum (2012).
11 See for an overview ENNHRI (2016) and ENNHRI (2015).
12 OHCHR (2008), para 1.
13 UNDP / OHCHR (2010), p. 48.

2 How NHRIs Engage

NHRIs operating in fragile situations, such as post-conflict situations, face greater challenges in their efforts to promote and protect human rights as it is during conflict and post-conflict periods "that human rights are most in jeopardy".[14] In addition, post-conflict settings are a drain on states' budgets, so NHRIs in such settings can find themselves bearing the double burden of reduced funding and additional, urgent responsibilities. In transitional contexts, it is not uncommon for donors to step in to provide funding for NHRI activities; donors active in this area include the UNDP / OHCHR and some bilateral donors, often one or more of the Nordic countries. However, foreign funding brings its own challenges with respect to independence, autonomy and sustainability.[15]

One of the challenges faced by NHRIs in transitional settings lies in the fact that the mandates they are given are often limited to addressing issues and violations that arose after their establishment, i. e. they do not have the authority to deal with past abuses. For example, legislation empowering an NHRI to investigate complaints sometimes includes a time limitation, as is the case in the relevant Indian legislation, which stipulates that complaints must be lodged within one-year of the triggering event in order to be eligible for investigation;[16] in contrast, the Iraqi NHRI is mandated to investigate all human rights violations in Iraq, including those committed before the promulgation of the legislation that established it.[17]

NHRIs that are established in the wake of a conflict or as part of a conflict settlement sometimes receive a specific mandate to inquire into past abuses. In this case, "consideration should be given to creating special bodies to deal with past abuses or to ensure that a transitional justice mandate is legally conferred" on the NHRI in question.[18] Looking into past abuses, especially those lying a number of years in the past, can pose a particular set of additional challenges in situations where evidentiary records are poor or even lacking entirely.[19] The sensitive political aspects of transitional justice, such as issues of amnesty, impunity, and the implications for political stability and human security, also pose some serious questions for NHRIs that become involved in these processes.[20]

A number of NHRIs have been established as part of peace agreements (for example in El Salvador in1992), and the peace agreements of Guatemala, Bosnia-Herzegovina, Sierra Leone, Northern Ireland, South Africa, Rwanda, and Afghanistan also included provisions relating to NHRIs.[21] Parlevliet noted back in 2006 that greater attention was being given to strengthening national justice systems and creating human rights monitoring and enforcement mechanisms in the aftermath of conflict or authoritarian rule, and that NHRIs had in fact become one of the most common mechanisms to figure in peace agreements in this regard.[22] However, NHRIs created in this way have rarely been given "direct or explicit responsibility"

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14 OHCHR (2010), p. 146.
15 For an example with respect to Uganda see: Wielders / Amutjojo (2012), p. 5, 6, 17; ICC-SCA (2013), p. 52–53 and for the Afghan and Danish examples see: ICC-SCA (2013a), p. 18; ICC-SCA (2007), p. 3–4.
16 Linos / Pegram (2015), p. 29, note 41.
17 Law 53/2008 on the Iraqi High Commission on Human Rights, Art. 5 (1) at http://ihchr.iq/upload/upfile/en/7.pdf (in Arabic) (accessed 18.11.2016).
18 OHCHR (2010), p. 34.
19 UNDP / OHCHR (2010), p. 47.
20 UNDP / OHCHR (2010), p. 47.
21 Parlevliet (2006), p. 8.
22 Parlevliet (2006), p. 1.

for monitoring the human rights provisions contained in such peace agreements.[23]

NHRIs are permanent institutions in their countries. If supported by adequate resources, they are a strong voice to follow up on the recommendations of mechanisms granting reparations or the implementation of long-term reforms – something that is often neglected once the focus of the international community and the funding associated with that has shifted from a violent conflict or post-conflict reconstruction to some other area.

2.1 Promotion of human rights

NHRIs have a mandate to promote human rights. The Sub-Committee on Accreditation (SCA) defines promotion to include "those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy."[24] In order to be effective, activities aimed at promoting human rights must be strategically designed, and encompass both outreach activities and an assessment of their impact on attitudes and behaviour. Otherwise they function as one-off measures serving only a small group of people. One strategy is to tie promotional activities closely to the protection function of an NHRI, for example, by targeting specific professional groups who are in a position to influence human rights protection, like law enforcement officers, doctors, nurses and teachers, judges and lawyers. Other strategies may involve targeting disseminators and opinion shapers, for example in the media or among civic educators, and/or institutionalising human rights education in the respective training programs, for example for teachers or law enforcement.

In a transitional context, promotion of human rights will necessarily include reflection on the past since a future "society where human rights are more broadly understood and respected" (see above) cannot be created without such reflection and the gradual change of attitudes and behaviour, which has, in many cases, been shaped by decades or years of violence, brutality, and impunity. However, since the past is always contested territory in post-conflict societies, promotional activities are a delicate endeavour.

Box 1: Georgia: Post-conflict and transitional justice context

Georgia must cope with overlapping legacies of abuse stemming from a repressive Soviet past, a turbulent democratic transition, and violent conflicts with Abkhazia, Ossetia (both in the 1990s), and Russia (2008). These conflicts had an enormous impact on civilians, involving thousands of killings and injuries, displacement and the destruction of property and infrastructure. After the 'Rose Revolution' in 2003, some attempts were made at political and economic reform, but the new Government's predisposition towards maintaining a strong state is thought to have undermined the effort to complete democratisation.[25] Parliamentary elections – hailed as marking the beginning of the second transitional process since independence – were held in October 2012.[26] In January 2016, the International Criminal Court decided to open an investigation into the situation in Georgia in view of the evidence of international crimes committed during the conflict periods.[27]

Transitional justice approaches have not been pursued in a strategic or systematic way, but rather in a fragmented and frequently sporadic fashion.[28] Within the wider scope of peace-building efforts, the search for justice

23 Parlevliet (2006), p. 10.
24 ICC-SCA (2013), p. 9. See also OHCHR (2010), p. 55ff.
25 Frichova (2009), p. 4, 8.
26 Hammarberg (2013), p. 5.
27 International Criminal Court, Situation in Georgia, ICC-01/15, https://www.icc-cpi.int/georgia?ln=en (accessed 02.10.2016).
28 Frichova (2009), p. 25 for a critical assessment.

has frequently taken a back seat to 'protracted negotiation processes' on multiple fronts: While civil society groups and opposition politicians have repeatedly called for a thorough airing of contentious aspects of the past, others argue that their demands are selective in nature.[29]

Human Rights Watch has described Georgia's human rights record in 2015 as uneven, stating that the numerous investigations into alleged crimes by former officials have raised questions of selective justice and the political motivation of prosecutions.[30] Concerns about the levels of impunity in Georgia remain at the UN Human Rights Committee.[31]

The Public Defender of Georgia engages in a wide range of activities intended to promote human rights, such as hosting public debates, providing capacity-building training and promoting trust-building dialogue in the context of transitional justice. It also works to promote reconciliation. Many of the issues explored in these activities relate to the effects of conflict and violence, displacement, the justice system, and ethnic minorities in Georgia. Examples of public debates hosted by the PDO are the Constitutional Court, violence against children, challenges to tolerance, and human rights in the conflict-affected regions. In addition, the PDO engages with the public through a number of competitions, with themes like ethnic groups and religions, tolerance and diversity, women's rights, and Georgian conflicts and policies aimed at resolving them. These initiatives target the media, journalists, and other sectors of society. A lot of this public engagement includes aspects of truth-seeking, participation, dialogue, empowerment, addressing marginalisation and giving a voice and a platform to those affected by past and present abuses to raise their concerns.[32] The PDO's public engagement opens up a space in society in which to consider what mechanisms of transitional justice are most appropriate in the particular circumstances.

Box 2: Georgia: The National Human Rights Institution

The Georgian NHRI – the Public Defender and the Public Defender's Office (PDO) - is defined under the 1996 Organic Law on the Public Defender of Georgia and anchored in the constitution.[33] The PDO was last re-accredited with A-status in 2013. It oversees the observance of human rights and freedoms in Georgia, and advises the Government on necessary steps to be taken to fully protect and respect human rights, including with respect to national laws, policies and practice.

The PDO is entitled to receive complaints and investigate them; it can also lodge complaints with the Constitutional Court of Georgia and submit third party interventions to the courts. The PDO can also undertake awareness raising and educational activities in relation to human rights.

The PDO has performed the functions of the National Preventive Mechanism of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) since 2009. Since 2014, the PDO has also been designated as an Equality Body, and as a Monitoring Body for implementation of the UN Convention on the Rights of Persons with Disabilities.

29 Frichova (2009), p. 22.
30 Human Rights Watch (2016).
31 UN, Human Rights Committee (2014), para 11ff.
32 See Public Defender of Georgia (2017), p. 31ff.
33 The Constitution emphasises that any obstruction of the Defender's work is a punishable offence; the Public Defender's work cannot be suspended or restricted during a state of emergency or a state of war. In 2015, the PDO had 143 persons on staff, about 75% of whom were on fixed contracts. The PDO operated on a budget of 4.7 million euro, see Public Defender of Georgia (2016), p. 5–6.

Box 3: Uganda: Post-conflict and transitional justice context

Uganda suffered almost two decades of civil strife, from 1962 to 1985. When the current president, Yoweri Museveni gained control of the country in 1986, his movement fought, defeated, and made deals with many resistance movements. A (chronically underfunded) Commission of Inquiry documented human rights violations that occurred between1962 and 1986, including many committed by police and other law enforcement bodies.[34]

The most protracted struggle, the conflict with the Lord's Resistance Army (LRA), which is confined to the northern areas of the country[35], remains unresolved. Both the insurgent and counterinsurgency tactics have caused widespread suffering among civilians, including that associated with the extensive recruitment of child soldiers. They have also resulted in the internal displacement of millions of northern Ugandans.[36] Uganda's conflict and post-conflict narrative and the transitional justice discourse and efforts associated with it have focused primarily on the conflict with the LRA in the decades since 1986.[37] The Juba Talks, held between 2006 and 2008, led to a number of important protocols, but ultimately failed to achieve a peace agreement.

A range of stand-alone transitional justice initiatives (for example commissions of inquiry, an amnesty law, international investigations, and national policies, on IDPs, for example) were implemented after 1986. A coherent strategy or overarching framework for transitional justice has been lacking, however, and this, coupled with a lack of commitment from the Government, has resulted in clashes between different transitional justice mechanisms, impairing their capacity to operate effectively.[38] A total of 26,000 persons, half of them from the LRA, benefitted from an Amnesty Act enacted in 2000.[39] National efforts to render retributive justice include the establishment of an International Crimes Division at the High Court of Uganda.[40]

In May 2013, the Ugandan Government released a draft transitional justice policy. Based on a number of studies and consultations dating from as far back as 2008, the policy envisioned truth-telling processes, reparations, re-integration and reconciliation and traditional justice mechanisms. The draft policy gave an assessment of the current practice, which focussed on retributive justice. Critics pointed out a lack of victim-centeredness and of attention to community issues (for example land justice, communal and family conflicts) and the difficult line between reintegration and reconciliation, as seen in the divides between persons abducted during the conflict and their communities.[41] As of this writing, the transitional justice policy has not been adopted, but parts of it are being implemented.

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34 On the Commission and its monumental report: http://www.hpcrresearch.org/mrf-database/mission.php?id=114 (accessed 01.10.2016).

35 See the Refugee Law Project (2004). On the cases investigated by the International Criminal Court against LRA leaders, see https://www.icc-cpi.int/uganda?ln=en (accessed 01.10.2016).

36 UHRC / OHCHR (2011).

37 Avocats Sans Frontières (2013), p. 30.

38 Avocats Sans Frontières (2013), p. 36.

39 Figures quoted by ICTJ, Is Uganda's Judicial System Ready to Prosecute Serious Crimes? https://www.ictj.org/news/uganda-kwoyelo-case (accessed 01.10.2016).

40 Very few cases have been adjudicated by the division; see http://www.ulii.org/ug/judgment/high-court-international-crimes-division (accessed 01.10.2016). For more detail on one of the cases involving an LRA rebel leader and the question of whether he was entitled to amnesty under the Amnesty Act, see ICTJ (2015) and the Court's Statement on the progress of the Thomas Kwoyelo trial at https://www.jlos.go.ug:442/index.php/news-media-events/newsroom/latest-news/item/558-icd-statement-on-the-progress-of-the-thomas-kwoyelo-trial (accessed 01.10.2016).

41 Transitional Justice Working Group (2013), p. 17–18.

Box 4: Uganda: The National Human Rights Institution

The Uganda Human Rights Commission (UHRC) was established and mandated under the provisions of articles 51–58 of the 1995 Constitution of Uganda.[42] Its establishment can be traced back to one of the recommendations issued by the earlier Commission of Inquiry into violations of human rights.[43] The range of the UHRC's functions is extremely broad and includes the right to investigate, at its own initiative or based on a complaint, the violation of any human right; to visit jails, prisons, and places of detention or related facilities; to monitor the state's compliance with its international obligations; and to educate the public. Quite unlike other NHRIs, the UHRC is vested with court-like powers. The UHRC was re-accredited with A-status in 2013. The Commission has ten regional offices, and a further ten field offices.

In Article 5.5 of the Juba Agreement on Accountability and Reconciliation (2007), the Parties stated that they consider the UHRC to be capable of implementing relevant aspects of the Agreement, but did not specify which aspects.

The UHRC was represented on the committee that drafted the transitional justice policy (see above, Box 3) and is one of the key actors in its implementation, in particular through suo moto investigations, investigating complaints made by any person or group of persons against the violation of any human right, and capacity-building in human rights investigations, documentation, and reporting.[44] Since 2016, the UHRC has been the lead implementer of the Human Rights Documentation Programme, which was established to document violations and provide consolidated, accessible, reliable, and accurate information on the nature and scale of conflict-related human rights and humanitarian law violations. The intent is that its results will be used to inform interventions to ensure justice for the victims.[45]

The UHRC had also taken part in an UN-funded peace-building project with former internally displaced people (IDPs) in the Acholi region of Northern Uganda. The project was intended to complement the State-led resettlement exercise following the end of the 20-year war.[46] The UHRC developed and delivered training to members of the Uganda Police Force, community paralegals, local officials, court officials, district administration personnel, and land committees. The project carried out sensitisation campaigns aimed at creating awareness of legal rights in communities, with a focus on land rights, land laws, children's rights and issues of domestic violence and community empowerment. The UHRC also engaged in coordinating the activities of Civil-Military Cooperation Centres in some areas of Northern Uganda. These centres were involved in joint monitoring, investigations, training, human rights sensitisation, mediation, and public outreach activities, and contributed to capacity building for key institutions and individuals in the security sector such as the army, police, government focal points, and local government officials.[47] During the period of negotiations between the Ugandan Government and the LRA, the UHRC also assisted by providing guidance to the parties on mediation and human rights.[48] Another UHRC project on access to justice focussed on marginalised communities in

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42 As to the budget available to UHRC, in the 2013/14 financial year UHRC was allocated the equivalent of 3.43 million euro, 35% of which came from development partners. As of December 2014, UHRC had 232 staff, including substantive, volunteer, project staff, chairperson, and members of the Commission: UHRC (2014), p. 85.

43 See note 34, recommendation 13.1 (ii).

44 Transitional Justice Working Group (2013), p. 29; see also NANHRI (2014), p. 12 ff.

45 Daily Monitor (04.10.2016).

46 The resettlement of the IDPs was carried out through the government's Peace, Recovery and Development Plan (PRDP) initiated in 2007. CIPESA, a donor-funded centre on ICT policies in Southern and Eastern Africa, undertook a sobering assessment of the plan's implementation in 2014: http://cipesa.org/2014/11/documenting-the-impact-of-aid-cuts-on-the-peace-recovery-and-delivery-programme/ (accessed 26.09.2016). On the overall engagement of the UHRC, see NANHRI (2014), p. 12 ff.

47 UHRC (2010), p. 4.

48 The Commonwealth (2013), p. 11.

the Acholi region, and mediating in land-related conflicts amongst returnees in conflict-affected areas.[49] The UHRC pointed out that the tangible needs of post-conflict populations need to be addressed along with their rights: NHRIs should advocate for and facilitate the implementation of transitional justice programs, in particular "measures for reparations and realization of related socio-economic rights, such as access to physical and mental health services, education, and economic and infrastructure support."[50] These concerns were reflected in the 2012 report "Picking up the Pieces" on the Acholi region, which was based on earlier monitoring work by the UHRC (see section 2.2.1, below).

The challenges involved in fulfilling "needs and rights" raised by the UHRC are echoed in a 2015 report by the International Center for Transitional Justice on the unredressed needs of children born of sexual violence and their mothers. While a development approach might meet some of the immediate needs of these women and their children in terms of access to social and economic resources, development support in and of itself does not constitute reparations.[51] Development efforts thus need to be designed to contribute to the realisation of economic, social and cultural rights, and the UHRC is one of the NHRIs that have adopted guidelines on the human rights-based approach to development.[52] Thus the UHRC has been active in monitoring (see section 2.2.1), mediation, training, awareness-raising and reporting in relation to processes of transitional justice. It has also provided advice to the Government on law and policies and worked with other national and international actors to develop the Human Rights National Action Plan (NAP) for Uganda, initially in fulfilment of commitments arising from the Universal Periodic Review in 2011.[53]

Box 5: Afghanistan: Post-conflict and transitional justice context

During the period between 1978 and the fall of the Taliban regime in 2001, Afghanistan experienced a communist coup, a Soviet invasion, a mujahedeen insurgency, and repressive Taliban rule. Widespread and systemic violations of human rights occurred in all these different political settings, and the population experienced and witnessed disappearances, torture, mass executions, ethnic persecution, internal displacement, gender-based discrimination and mass emigration of Afghans to Pakistan and Iran.

The question of how to address the legacy of the different periods of conflict, insecurity and repression is contentious and complex, and has been debated for over a decade. Further complicating the situation is an environment of on-going conflict, insecurity and weak state institutions, and the presence of many alleged perpetrators in positions of power. Impunity has been allowed to prevail because the focus has been largely on ending conflict and insecurity by negotiating with insurgent leaders and their fighters and reintegrating them into society. In the attempts to secure peace and stability, the predominant approach followed by policymakers has "largely failed to include justice as a component of reconciliation and reintegration processes".[54]

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49 The Commonwealth (2013), p. 13.

50 The Commonwealth (2013), p. 13.

51 ICTJ (2015a), p. 31.

52 UHRC (2008), p. 32.

53 Meanwhile, the status of the National Action Plan on Human Rights is unclear. While in its UPR report (2016) the Government claimed that it had issued a plan based on broad stakeholder consultation in 2014, the UHRC annual report speaks of a draft National Action Plan: UHRC (2016), p. 236.

54 Winterbotham (2012), p. 1.

Box 6: Afghanistan: The National Human Rights Institution

The Afghanistan Independent Human Rights Commission (AIHRC) has been inextricably bound up with the history of transitional justice since the 2001 Bonn Agreement provided for its establishment.[55] The Commission began its activities in 2002 on the basis of a presidential decree. This decree tasked the AIHRC with developing a national action plan for human rights, monitoring rights throughout the country, investigating alleged violations, carrying out a national programme of human rights education and organising human rights consultations.[56] The latter included a national consultation on transitional justice, which led to a proposal for a national strategy for addressing past abuses.

Article 58 of the 2004 constitution enshrined the AIHRC as Afghanistan's NHRI, and the Law on the Structure, Duties and Mandate of the AIHRC was adopted in 2005.[57] Article 4 of that legislation lays down "equal and fair access to social welfare and other services provided by the State" as a human right, and article 21(4) lays a duty on the Commission to monitor the performance of governmental authorities and NGOs concerning the "fair and accessible distribution of services and welfare". The AIHRC is also charged with seeking effective approaches for harmonising international human rights principles and processes with Afghan culture and traditions, and planning and implementing "programs that include the investigation of crimes and human rights abuses as part of the transitional process" (Article 21(12)). The AIHRC was last re-accredited with A-status in 2014.[58]

The AIHRC launched an extensive national programme of consultations on transitional justice in 2004. The consultations captured data from over 4,151 respondents, convened over 200 focus groups, and involved all of Afghanistan's provinces at the time, as well as refugee populations in Iran and Pakistan. People in the focus groups were very willing to discuss the issues involved, and evinced a strong sense of gratitude for having being consulted at all. The process constituted the first effort ever made to consult with the general public about their experiences of violence and suffering, and their views on the best way forward for Afghanistan. Great symbolic meaning has therefore been attached to it: it stands for people's participation in society and the state's willingness to engage with and listen to them. The 2005 report that resulted from the consultations, "A Call for Justice", notes that the state and the international community should build on this work in order to "enable the vast majority of Afghans to regain their trust in public institutions", that there are hopes that the work can contribute towards overcoming the enormous challenges of security and justice facing the country, and that it will help to heal the nation's pain, bring about the rule of law and end the culture of impunity in Afghanistan.[59] The report outlines the legacy of human rights violations and abuses, explores both judicial and non-judicial mechanisms for transitional justice, and presents potential measures for reform and reconciliation in Afghanistan. Follow-up discussions on the report led to the development and adoption of a national Action Plan on Peace, Justice and Reconciliation. The Plan identified five key actions:

– acknowledgement of the suffering of the Afghan people;

55 Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions (Bonn Agreement), http://www.un.org/news/dh/latest/afghan/afghan-agree.htm (accessed 01.10.2016).

56 Decree of the Presidency of the Interim Administration of Afghanistan on the Establishment of an Afghan Independent Human Rights Commission, 6 June 2002, http://www.aihrc.org.af/ media/files/Laws/decree.pdf (accessed 01.10.2016).

57 Law on the Structure, Duties and Mandate of the AIHRC 2005, Decree No.16, 22/02/1384, Article 4, http://www.aihrc.org.af/media/files/Laws/Law_AIHRC.pdf (accessed 01.10.2016).

58 In 2015, the AIHRC had 603 staff and a budget of an equivalent of 11.93 million euro, see AIHRC (2015), p. 71. ANNI / CSHRN (2014), p. 6 criticise the lack of budgetary support for the AIHRC, which is almost completely financed by donors.

59 AIHRC (2005), p. 5–6.

- ensuring credible and accountable state institutions (vetting);
- truth-seeking and documentation;
- promotion of reconciliation and national unity and
- establishment of effective and reasonable accountability mechanisms.

The Afghan Government presented the action plan at the International Conference on Afghanistan in London in early 2006, where Afghanistan and the international community agreed that it would be implemented over a three-year term. In the following years, the Government neither fully implemented nor rescinded the plan[60] – probably one of the worst outcomes of transitional justice processes, but not an infrequent one.

Among the few steps that were implemented was the establishment by the Government of an advisory board to vet senior government appointments. The board was mandated to find, interview and vet appropriate and honest candidates for senior and other government posts, including in the civil service and police force. Due to interference by the president, however, the board has not been very successful in carrying out its responsibilities, and the new Government has generally bypassed the advisory board.

As a way to acknowledge the suffering of Afghans, the Government made December 10 National Remembrance Day, honouring the victims of human rights violations. It also erected a monument at the site of a mass grave in Faizabad, Badakhshan province. The AIHRC established a museum close to the monument, to honour the victims buried in the mass grave and to provide a place for the survivors and surviving relatives to gather to remember and reflect on the past.[61] For the same purpose and with support from the Netherlands, the AIHRC also built a monument in the Jaghori district of Ghazni province. Civil society organisations, among them the Afghanistan Human Rights and Democracy Organization and Afghan Victims' Families Association, organised a transitional justice coordination committee, and hold events on December 10 each year to mark National Remembrance Day for victims of war crimes. In 2009, a Transitional Justice Coordination Group (TJCG) was established with the support and involvement of AIHRC, UNAMA, ICTJ and the Open Society Institute. In 2010, the TJCG organised a "Victims' Jirga", a national gathering of civilian victims of war from regions all over Afghanistan to remember the victims of past crimes. Jirga participants demanded trials for war criminals, and the event was repeated the following year to ensure that the voices and demands of the victims could not be forgotten in the midst of the other political processes underway.

Human rights promotion is a key function of NHRIs; it is also a duty of the states that have ratified human rights treaties. While NHRIs have a mandate to promote human rights, their obligation is independent of that of their states. In other words: establishing and funding an NHRI alone does not constitute the fulfilment of a state's obligation to promote human rights. This also holds true for the promotion of human rights in transitional contexts. In practice, however, many NHRIs find themselves in situations in which a state is reluctant, unwilling, or unable, to fulfil its obligation to implement activities to promote human rights. Under these circumstances, NHRIs have to find ways to embark upon such activities without letting their states 'off the hook'. Many NHRIs, in most cases with support from the international community, have taken innovative approaches to fulfil their responsibility to promote human rights, such as those depicted above. However, external financing always brings with it challenges for sustainability and resources. To develop a sustainable model of intervention for longer-term peace building initiatives, NHRIs should devise strategies at an early stage intended to ensure that human-rights promoting activities can be sustained by other institutions.

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60 Gossman (2013), p. 6.

61 Winterbotham (2012), p. 24; Afghanistan Justice Organization and GPPAC Global Secretariat (2013), p. 7.

2.2 Protection of human rights

Protection of human rights is the other key part of the mandate of all NHRIs, regardless of the situation their country is in. The SCA defines protection functions as "those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling."[62]

2.2.1 Monitoring and reporting

Monitoring is a key function of NHRIs, and is fulfilled in different modes. Most NHRIs issue regular reports on the human rights situation in their countries, basing these on secondary sources as well as their own research and data gathering. A common source of data is the systematic analysis of complaints received by an NHRI or from the inspection visits it conducted over the reporting period. Few, if any NHRIs have the capacity to monitor all of the human rights standards the country has committed itself to respect, protect and fulfil, and concentrate instead on the human rights issues felt to be of greatest significance in their countries. Many NHRIs therefore choose to monitor the situation with respect to specific human rights issues, for example abuses in prisons or violations of the rights of persons with disabilities. The monitoring function of NHRIs is intimately connected to other powers that are encompassed in their mandates, for example the power to receive complaints, to recommend that the state prosecutor take action upon them, to conduct investigations or inquiries on their own accord and to demand access to all necessary information. Ultimately, the strength of an NHRI's monitoring is also related to its capacity to analyse and present its results to a larger public and to follow-up on its findings and push for implementation of its recommendations.

In transitional contexts, both regular and ad hoc monitoring can serve as a means to uncover and address violations of human rights. Monitoring can also have a preventative effect. Ensuring wide geographical coverage can help to rebuild the trust of those living in regions that have been marginalised. Monitoring can also be helpful in tracking the status and fulfilment of human rights during a transitional period and detecting any emerging patterns of abuse. In many transitional contexts, NHRIs have found it prudent to join forces with civil society organisations for monitoring purposes. While pragmatism may often be a motivating factor in this decision – pooling strengths in a resource-poor and possibly dangerous environment – it often improves the quality of monitoring reports and widens the pool of qualified human rights monitors. It also has the potential to increase the degree of impartiality in monitoring, depending on the organisations involved.

The PDO in Georgia carries out regular and ad hoc visits to a variety of establishments and institutions. Its rights to monitor are broader than those of most other European NHRIs. In 2014 and 2015, PDO units conducted visits to penitentiary establishments, temporary detention locations, police divisions, children's homes, and mental health centres; one unit monitored a migrant return operation. The PDO visited a total of 3,040 prisoners in 2014 and 3,300 in 2015.[63] Georgia was commended by the Special Rapporteur on Torture in 2015 for its efforts to combat torture and ill-treatment, who testified to the "drastic changes" since October 2012, although he also noted that much remained to be done.[64] A 2014 report on human rights abuses in Georgia's prisons compiled by the Open Society Georgia Foundation spoke of positive assessments of the permission granted to NGO representatives to enter detention cells under the auspices of the PDO. According to the NGOs consulted for the report, allegations of torture in pre-trial detention facilities had decreased due to their visits.[65]

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62 ICC-SCA (2013), p. 9.
63 See Public Defender of Georgia (2016a), p. 7; Public Defender of Georgia (2015), p. 5.
64 UN, Human Rights Council (2015), para 26–29.
65 Open Society Georgia Foundation (2014), p. 11.

Another division at the PDO, the Tolerance Centre, monitors the rights of religious and ethnic minorities and disseminates its findings through a website available in three languages.[66] The centre issues public statements on instances of intolerance directed against Muslims and of violence against women; and in 2014 it organised a high-level meeting attended by the OSCE High Commissioner on National Minorities and the President. The establishment and practices of the Centre, a specialised unit within the PDO that develops relationships with NGOs and civil society, has been commended as a useful model.[67] The Centre has also monitored the implementation of the Action Plan and National Concept for Tolerance and Civil Integration.[68]

With respect to the portion of the population affected by conflict and persons internally displaced (IDPs) during the different phases of conflict in Georgia,[69] the PDO carries out field and monitoring visits to affected regions and IDP settlements to investigate their human rights situation and provide free legal advice. In addition, the PDO has established an advisory council, the Ossetian Forum, which advises on the rights of the conflict-affected ethnically Ossetian portion of the population. A legal expert was assigned to research human rights issues arising in connection with persons affected by conflict.

In order to keep itself well informed about the human rights situation, redress human rights violations and advocate for improved human rights protection for conflict-affected populations, the PDO actively cooperates with NGOs and community organisations active in the sphere of conflict resolution and transformation, such as the IDP network Synergia. Nonetheless, the PDO declared in 2014 that the conflict-affected areas of Abkhazia and South Ossetia remained "a black hole in terms of human rights monitoring and protection."[70] The PDO called for an international monitoring mission to address violations such as property expropriation, ethnic discrimination, and abductions.[71] The Special Rapporteur on Torture, visiting Georgia in 2015, was denied access to the pertinent areas.[72]

In Uganda, the UHRC monitored and documented violations of human rights during the period of hostilities and later also hosted consultative workshops to highlight the needs of war-affected communities (see above, section 2.1). The disaggregated data that the UHRC generated enabled them to highlight the needs of particular groups and individuals, such as women, children, and other vulnerable groups. Further monitoring and documentation focused on the needs of IDPs, and this led the UHRC to begin advocating the development of a national IDP policy. The UHRC further advocated the application of human rights principles to the return, reintegration, and rehabilitation of IDPs in safety and dignity, including the restoration of property and the establishment of adequate social services.[73]

Another notable form of engagement by the UHRC was its research in the Greater North of Uganda between 2007 and 2011 in cooperation with the UN Office of the High Commission for Human Rights (OHCHR). The research resulted in a report on victims' perspectives on the right to remedy and reparation. It has been described as one of the most "ambitious documentation projects ever undertaken in the country" and the task was

66 See Public Defender of Georgia (2014), p. 16.

67 Carver (2011), p. 17.

68 See Public Defender of Georgia at http://www.ombudsman.ge/en/news/1718-the-tolerance-center-presents-the-results-of-the-monitoring-of-the-action-plan-and-national-concept-for-tolerance-and-civil-integration.page (accessed 26.09.2016).

69 Approximately 220,000 people were forced from their homes during the conflicts in the early 1990s. A second phase of displacement occurred during the conflict in August 2008, and resulted in the displacement of about 128,000 people from South Ossetia and adjacent areas, and from parts of Abkhazia. The majority of those displaced in 2008 managed to return, but almost 26,000 remained displaced: Amnesty International (2010), p. 7.

70 Public Defender of Georgia (2014a), p. 1.

71 Public Defender of Georgia (2014a), p. 2.

72 UN, Human Rights Council (2015), para 4.

73 The Commonwealth (2013), p. 12.

heralded as a "daunting one",[74] but nevertheless as constituting a key contribution to realising victims' right to truth.

Box 7: The right to an effective remedy

The scope of the right to an effective remedy incorporates various elements of restitution (particularly relevant with respect to land), compensation, rehabilitation (health care and legal services), satisfaction (public disclosure and apology) and guarantees of non-recurrence. Guarantees of non-recurrence are defined as requiring the civilian control of armed forces, international standards of due process, legal reform, an independent judiciary, robust protection regimes, training in human rights and humanitarian law and a gender-just interpretation of laws through promotion of women's rights and equality.[75]

Like the PDO in Georgia, the Afghan Human Rights Commission (AIHRC) gave input to a 2005 National Action Plan on Peace, Justice and Reconciliation, including through a comprehensive documentation project. The Conflict Mapping Project catalogued all conflict-related human rights violations in the country from 1978 to 2001 in each of Afghanistan's provinces. This ambitious effort details abuses committed by all parties to the conflict, through every phase of the war. This was particularly important given that most Afghans had suffered tremendous losses during the different phases of the conflict but were not aware that others, in different parts of the country and in a different war, had also suffered.[76] The Conflict Mapping Project was likened to a "truth commission in content and scope".[77] However, as of this writing, the 800 page report has yet to be published – the AIHRC decided to postpone its release due to the deteriorating security situation as well as threats made against its staff. But the report is an important document on the history of Afghanistan; all the more since there are political forces who would like to completely deny that any violations of human rights occurred over the past four decades.

Box 8: Refugees and internally displaced persons

Most conflicts result in the displacement of significant numbers of refugees to third countries and the scattering of IDPs. In 2015, 65 million displaced persons came under the mandate of the UN High Commissioner for Refugees. As national bodies with regional and international networks, NHRIs are well placed to address the rights of refugee and IDP populations, who are all too frequently "forgotten" when a conflict has passed beyond the immediate humanitarian emergency stage. With the increasing tendency to see refugee, migrant and IDP populations as a risk to national security, many NHRIs see engagement in this area as mandatory.[78] However, a strategic vision for the scope and duration of this engagement, particularly with respect to IDP populations, is beneficial for any NHRI that addresses internal displacement.

Analysts speak of an effective silencing of the AIHRC with respect to the documentation effort, and the efforts relating to transitional justice have stalled.[79] A civil society submission for the 2014 re-accreditation of the AIHRC expressed the view that the Government's failure to provide protection for AIHRC, combined with an alleged compromise between the administration and

74 Beyond The Hague (Blog), Paul Bradfield: Uganda Announces Transitional Justice Policy (9 August 2013). https://beyondthehague.com/2013/08/09/the-lapse-of-amnesty-in-uganda-stimulating-accountability-or-prolonging-conflict (accessed 16.09.2016).

75 See UN, General Assembly (2006).

76 Gossman (2013), p. 2, 5.

77 Gossman (2013), p. 5.

78 See the Belgrade Declaration issued by 32 NHRIs and Ombudspersons mainly from Europe in 2015 at http://nhri.ohchr.org/EN/News/Lists/News/DispForm.aspx?ID=207&ContentTypeId=0x0104006A3D2D731523E24B9C932DE5D6E5EDFF (accessed 26.09.2016).

79 Gossman (2013), p. 6; Tag: AIHRC Afghanistan Independent Human Rights Commission at https://www.afghanistan-analysts.org/tag/afghanistan-independent-human-rights-commission/ (accessed 16.09.2016). On the 2016–2017 debate on ICC investigations: see Qaane (27.06.2017).

alleged human rights violators, has prevented the publication of the institution's "most significant and meaningful contribution to Afghanistan's democratic transition process."[80]

Within the context of the National Action Plan on Peace, Justice and Reconciliation, the AIHRC also worked hard to realise the envisioned vetting mechanism: a Presidential Special Advisory Board for Senior Appointments, responsible for vetting candidates for government and other authorities on the basis of their human rights record and any past crimes. The AIHRC has worked with the Afghan Civil Service Commission to review the human rights records of persons under consideration for appointments, and encouraged the creation of an Advisory Panel for Appointments, which formulates rules and advises the President on senior political appointments.[81] However, the passing of an amnesty law undermined the vetting mechanism.[82]

As the NHRI engagement in the three countries demonstrates, the monitoring and documentation of past and/or ongoing human rights violations is crucial for obtaining justice and redress. However, it is also a highly sensitive endeavour, one which can endanger NHRI staff, as is the case in Afghanistan, and which can be subject to both political interference and obstruction, especially when it implicates individuals who are still in power.

2.2.2 Complaints handling

The competence to receive and work on individual complaints is optional under the Paris Principles, but almost all A-accredited NHRIs exercise this function, and many see it as the core of their mandate. It also appears to be one of the key avenues through which NHRIs can address the ongoing consequences of past abuses, and the continuing nature of such abuses. It is crucial to institute effective mechanisms for redress of structural and symptomatic violations relating to a conflict because complaints in a post-conflict context usually "reflect the pattern of violations that prevailed during the conflict".[83] Whether NHRI complaint handling can have a preventive effect depends on the follow-up action taken by both the NHRI and the state. For complaint handling to be an effective avenue for the protection of human rights overall, it is therefore advisable for it to be coupled with other NHRI functions, i. e. monitoring and promotion of human rights. When this is not the case, NHRIs risk the loss of their agenda-setting and the more researched-based advisory function.[84]

The PDO in Georgia received thousands of complaints following the October 2012 elections. The complaints concerned a number of issues related to the previous administration, including unlawful deprivation of liberty, ill-treatment in detention, issues relating to property and pressure to 'donate' property to the state, and relating to other unlawful behaviour on the part of state officials, such as money laundering.[85] In 2013, the PDO examined approximately 40 complaints of ill-treatment or degrading treatment of detained persons by the police. It asked for preventive measures to be put into place in those detention centres where ill-treatment appeared to be particularly frequent, and for effective and prompt investigation of the alleged crimes. In some cases, the prosecution failed to find any evidence, while in others the investigations dragged on interminably. The PDO follows up with these complaints, and has voiced concern about the frequent failure to prosecute cases and, when cases are prosecuted, about the inadequacy of sentencing in relation to the severity of the crime, in cases of torture, for example.[86]

On the whole, the experience of the PDO in this area illustrates the quandary NHRIs find themselves in with respect to complaint handling, which is particularly delicate in a post-conflict

80 ANNI / CSHRN (2014), p. 2.
81 Sajjad (2009), p. 430.
82 Gossman (2013), p. 6.
83 Parlevliet (2006), p. 44.
84 Linos / Pegram (2015), p. 29–31.
85 Hammarberg (2013), p. 6.
86 Public Defender of Georgia (2014a), p. 7–8.

context: NHRIs do not issue binding decisions,[87] and can thus only bring cases to the attention of the executive or the judiciary. If the latter is unwilling or lacks capacity to address individual cases and systemic abuses, NHRIs can do no more than exercise their soft power – raise their voices, keep up their reporting and follow-up and build national and international constituencies.

Perhaps in reaction to the concerns raised by the PDO during Georgia's state reporting procedure in 2014, the UN Human Rights Committee encouraged Georgia to establish an independent and impartial body to investigate allegations of abuse by police and other law enforcement officers, including torture and inhuman or degrading treatment.[88]

There is considerable debate over whether it is preferable to expand and increase the authority and powers of an NHRI to adapt to a transitional justice and reform setting, or whether it is more effective to set up dedicated distinct bodies with appropriate powers and specific expertise, as the UN Human Rights Committee has suggested to Georgia. There is little evidence suggesting that dedicated bodies are not likely to run into the same difficulties that NHRIs encounter. In addition, the more complaint mechanisms are set up, the less transparent the situation tends to become for those seeking redress, as confusion arises about the different roles and functions, for example in relation to the roles of a truth commission, a domestic tribunal, a domestic fact-finding body, a reparations mechanism, and so forth.[89] The question of "one or many" institutions to address the multiple dimensions of past abuses is thus as important a subject for debate as that of whether "one or many" institutions can best protect human rights.[90] Both questions are best examined and answered in the specific country context – there is no blueprint that can be adopted.

As was the case with the PDO in Georgia, a large number of the complaints submitted to the UHRC were related to the deprivation of personal liberty and to torture, cruel, inhuman or degrading treatment. Most complaints were directed against the Uganda Police Force. Apart from investigating the complaints, UHRC also recommended that training of the police force be improved, including the training on investigation skills, and that the force be equipped with the facilities necessary to avoid detaining people beyond the legally permissible period while processing their cases. The UHRC also advised the State to ratify the Optional Protocol to the Convention against Torture (which it has failed to do as of this writing)[91] and to provide for an additional mechanism for the prevention of torture and ill treatment.

How does the handling of complaints addressing past abuses by NHRIs differ from their handling of other types of complaints? When widespread and intense violence persists, it can often be impossible for an NHRI to investigate complaints thoroughly. Yet investigations are utterly necessary, either for documentary purposes, or to allow an NHRI or the complainant to take a case to court. Even-handed treatment of complaints is key: the function must be impartial and accessible to all parties to a conflict, notwithstanding the fact that the institution is financed by the state, which is often a party to the conflict. On the whole, apart from the challenge involved in setting up a transparent complaints management system, NHRIs face a heightened standard with respect to overall visibility, impartiality and legitimacy in the eyes of citizens. To address this, many NHRIs have found it useful to establish mobile units or regional offices, or both, to facilitate access for victims/survivors in remote areas. Last but not least, NHRI staff working on complaints need to be aware of and sensitive to the overall conflict context, and approach their work accordingly.

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87 With the exception of very few NHRIs, among them the UHRC: see Linos / Pegram (2015), p. 32.

88 UN, Human Rights Committee (2014), para 12.

89 See, for example, the report on his country mission to Tunisia, in which he recommends the establishment of a coordinating body for all transitional justice mechanisms: UN, Human Rights Council (2013), para 88.

90 See Carver (2011), p. 16.

91 See the 2016 National report of Uganda to the UPR, available at https://www.upr-info.org/en/review/Uganda/Session-26—November-2016/National-report#top, para 17 (accessed 07.03.2017).

3 Conclusions

The organisational structure and the different functions of the NHRIs presented above dictate to a certain extent what an NHRI will focus on in its engagement with transitional justice processes.

The Office of the Public Defender in Georgia, for example, has a wide range of departments, which allows the PDO to work on variety of different areas in parallel. Not all NHRIs are able to pursue such a broad array of activities simultaneously, many do not have a comparable depth of capacity and expertise available, nor the extensive powers, public profile, and influence that the Office of the Public Defender in Georgia enjoys. One observer remarked that the "enormous public prestige of the Public Defender can be brought to bear on a range of issues. The power wielded by such an institution may be 'soft' but far from negligible."[92]

Likewise, the structure of the NHRI in Uganda has allowed it to carry out valuable work on documentation, mediation, and peace building, and it has used its human rights promotion to raise awareness of the issues confronting those affected by conflict and ways of approaching current concerns, such as land rights.

When the Afghan National Institution was established, it (like a number of NHRIs in Latin America and Africa) was given a mandate to develop a plan for addressing human rights violations and crimes of the past, and it has "largely directed the transitional justice process" since its creation.[93] The AIHRC has been praised in particular for "its creativity and resolve" in working in extremely insecure and complicated circumstances to seek accountability for violations of human rights.[94]

Indeed a huge amount of creativity, patience, strength and resolve is required of NHRIs in order to maintain their independence in the face of pressures and expectations from states, civil society, the larger public and international organisations. NHRIs in post-conflict situations have to navigate an extremely sensitive political landscape, and the room for them to manoeuvre is narrow.

Some lessons have emerged from NHRI engagement in transitional contexts:

1 The independence and performance of a given NHRI that existed prior to the eruption of a violent conflict must be carefully examined before a decision is made to adapt its mandate to equip it to tackle post-conflict challenges. In cases an NHRI established in a pre-conflict period is not perceived as fully independent of former regimes, other transitional justice mechanisms that are specifically set up to deal with a new phase in society may be better positioned to gain trust by virtue of being new and untainted by any association with previous regimes, or even previous periods of a country's history. If, on the other hand, the NHRI acted independently before and throughout the conflict, engaging with transitional justice processes could serve to increase its visibility, its integrity, and/or attract a larger budget from the state or donors. It is important to note, though, that any NHRI engaging in transitional justice processes should take care to be very transparent and accountable in order to guard against frustrated expectations. Transitional justice processes that prove disappointing or are deemed unsuccessful may taint the reputation of an NHRI associated with them.

92 Carver (2011), p. 19.
93 Winterbotham (2012), p. 17.
94 Sajjad (2009), p. 424.

2 Funding and support from various donors, including technical assistance, capacity building and advice, has facilitated the growth and expansion of NHRIs. It is essential to consider how sustainable such a level of activity and coverage will be over the long-term, especially if governmental or external funding is reduced, as the latter invariably will be over time. If an NHRI is forced to scale down or close down some of its divisions, it must consider the impact this could have on its position in civil society, and the legal and political processes it supported beforehand.

3 NHRIs are intended to be permanent fixtures in society, whereas the mechanisms of transitional justice are intended to be temporary. If NHRIs do become involved in transitional justice processes, they should make sure that other institutions, and in particular those established or supported by the state, likewise fulfil their obligations to protect and promote human rights in the post-conflict context.

4 NHRIs in post-conflict situations should be aware that their engagement should not detract it from its other core protection and promotion functions. A focus on the transitional context often crowds out other human rights issues unrelated to the (post)conflict situation, for example LGBTI rights, juvenile justice, domestic violence and economic and social rights. If other areas are neglected, the development of the NHRI itself may be jeopardised, as its expertise and attention will be skewed in a particular direction.

5 Peace agreements which create or empower NHRIs often fail to adequately secure the institutional capacity within the NHRIs to realise the goals set out; the demands of international agreements to meet the various social, political, economic and cultural standards often do not take specific and inherent capacity limitations into account; and demands for an accountable government that adequately responds to past violations and abuses may fail to appreciate the difficult bargaining position in which NHRIs find themselves. Prospective donors and diplomats need to take this into account when they negotiate peace agreements with conflict parties and plan for institutional recovery.

6 The establishment of an NHRI does not in and of itself guarantee the promotion and protection of human rights; NHRIs must determine what they can reasonably achieve given the extensive limitations and challenges they face. The success of NHRIs cannot be judged on a short-term basis; developing and embedding a human rights culture after a country has experienced dictatorial regimes and/or violent conflict may take decades or even generations.

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Abbreviations

AIHRC	Afghanistan Independent Human Rights Commission
ENNHRI	European Network of NHRIs
GANHRI	Global Alliance of National Human Rights Institutions
ICTJ	International Centre for Transitional Justice
IDPs	Internally displaced people
LGBTI	Lesbian, Gay, Bisexual, Trans* and Inter
LRA	Lord's Resistance Army
NANHRI	Network of African National Human Rights Institutions
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
OHCHR	UN Office of the High Commission for Human Rights
PDO	Public Defender of Georgia
SCA	Subcommittee on Accreditation
TJCG	Transitional Justice Coordination Group
UHRC	Uganda Human Rights Commission
UNAMA	United Nations Assistance Mission in Afghanistan

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