



UN Office of High Commissioner for Human Rights

**Guidance Note
on
National Human Rights Institutions
and Transitional Justice**

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Introduction

1. This Guidance Note¹ is intended to assist National Human Rights Institutions (NHRIs) in their engagement on transitional justice, so they can best perform their institutional role of promoting and protecting human rights during the period of transition from conflict or totalitarian rule. NHRIs engagement on transitional justice should seek 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.
2. This Note was developed pursuant to an international roundtable of NHRIs hosted by the UN Office of the High Commissioner for Human Rights (OHCHR) and the South African Human Rights Commission (SAHRC) in Cape Town, South Africa from 22 to 25 November 2007. Participants included representatives of 15 NHRIs, international and non-governmental organizations and other experts in this field. The Roundtable discussions addressed, *inter alia*, the experiences and the role of NHRIs with regard to judicial and non-judicial mechanisms of transitional justice, and considered how NHRIs can contribute to the holistic approach comprising of prosecutions, truth seeking, reparations, vetting and institutional reform.
3. National human rights institutions (NHRIs) are official, State-sponsored and funded organizations, with responsibility for promoting and protecting human rights at the national level. An NHRI can assist a State in implementing its human rights obligations, in monitoring its progress in fulfilling these obligations, and, in some circumstances, in ensuring that remedies are available in the event that violations occur. When in compliance with the standards set out in the Paris Principles²—for example, independence, autonomy, pluralism, a sufficiently broad mandate to promote and protect human rights, adequate funding, and effective cooperation with other stakeholders—NHRIs can be key actors in the promotion and advancement of the rule of law. Fundamental to strong national human rights protection systems, NHRIs can help translate international norms into reality at the national level.

¹ OHCHR wishes to thank Yasmin Sooka for her contribution towards the development of this Note.

² Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993, available at <http://www2.ohchr.org/English/law/parisprinciples.htm>.

4. NHRIs are well placed to contribute to transitional justice processes through information gathering, documenting and archiving human rights abuses, conducting investigations, monitoring and reporting, cooperating with national, regional, hybrid or international judicial mechanisms, providing assistance to victims, ensuring respect for international standards, advising on legislative and institutional reforms, and conducting education and training on human rights and national reform efforts. Moreover, they can raise awareness about various transitional justice mechanisms and lessons learned worldwide, engage civil society and institutional actors in the transitional justice discourse, facilitate national consultations on transitional justice while ensuring the participation of victims, women and vulnerable groups, assist in establishing and implementing transitional justice initiatives, and facilitate follow up on the recommendations of various transitional justice mechanisms.
5. The Guidance Note provides an overview of transitional justice mechanisms and of applicable international standards. Furthermore, it provides recommendations for NHRIs' engagement in transitional justice processes and examples of relevant NHRI country experiences.

Transitional Justice

6. Transitional justice comprises “a range of processes and mechanisms associated with society’s attempt 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, or a combination thereof.”³ It has been suggested that transitional justice also has the potential to expand its scope in order to more comprehensively address root causes of conflicts and the related violations of all rights, including economic, social, and cultural rights.⁴
7. **Prosecutions** form one of the central elements of an integrated transitional justice strategy, aiming at moving a society beyond impunity and a legacy of human rights abuse.

³ Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies [hereinafter Report of the Secretary-General on the rule of law], S/2004/616, paragraph 8.

⁴ See Louise Arbour, Economic and Social Justice for Societies in Transition, New York University Journal of International Law and Politics, Vol. 40, No. 1, Fall 2007, pages 26 to 27.

Prosecutions can be undertaken by national, regional, hybrid or international authorities. Any prosecution initiatives should be conducted in accordance with international human rights standards. They should pay careful attention to the rights and needs of victims and endeavor to bolster the rule of law in a particular society. Hybrid and international courts should be particularly mindful of providing a positive legacy for national justice systems.⁵

8. **Truth commissions** are officially sanctioned, temporary, non-judicial investigative bodies that conduct statement-taking, investigations, research and public hearings. They should take a victims centered approach and conclude their work with a final public report that includes findings of fact and recommendations. While truth commissions do not replace the need for prosecutions, they have the potential to help post conflict societies establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and make recommendations for reparations and institutional reforms.⁶
9. **Reparations programmes** are meant to redress gross and serious violations of international human rights and humanitarian law in the wake of conflict or authoritarian rule. In such situations, large numbers of victims call for reparations but their claims cannot be redressed through individual cases in court of law, partially because of their numbers but also because of the incapacity of the legal system. A reparations programme that distributes a variety of benefits ranging from the material to symbolic and that is distributed both individually and collectively can help to cover a larger portion of the universe of victims.⁷
10. Supporting the **reform** of national security institutions and civilian control, oversight and governance **of the security sector** (SSR)⁸ is an important part of the overall equation in helping to restore peace and security in situations of transition. The term “security sector” describes institutions legitimately entitled to intervene in society using force if necessary, in order to protect citizens, uphold law and order and state institutions, and protect the borders

⁵ See generally Rule-of-Law Tools for Post Conflict States, Prosecution Initiatives, HR/PUB/06/4, available at <http://www.ohchr.org/Documents/Publications/RuleoflawProsecutionsen.pdf> , and Rule-of-Law Tools for Post Conflict States, Maximizing the Legacy of Hybrid Courts, HR/PUB/08/2, available at <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>.

⁶ Rule-of-Law Tools for Post Conflict States, Truth Commissions HR/PUB/06/1, available at <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>.

⁷ Rule-of-Law Tools for Post Conflict States, Reparations Programmes, HR/PUB/08/1, available at <http://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>.

⁸ See Report of the Secretary-General on securing peace and development: the role of the United Nations in supporting security sector reform, A/62/659-S/2008/39.

of a State. Security institutions that served previous regimes and that were complicit in violations need to be transformed into institutions of integrity that sustain peace and uphold and promote human rights and the rule of law.⁹ Public officials and employees who are personally responsible for gross violations of human rights or serious crimes under international law, and in particular those involved in military, security, police, intelligence and judicial sectors, should not continue to serve in State institutions.¹⁰ **Vetting** processes aim at excluding from public service such persons with serious integrity deficits in order to reestablish civic trust and re-legitimize public institutions.¹¹ The restoration of civic trust in public institutions is based on the notion that these institutions will work for every citizen, irrespective of race, ethnicity, religion, gender, or other characteristics. The removal of persons should comply with the requirements of due process of law and the principles of non-discrimination.¹² Peace agreements can provide an important opportunity to establish useful frameworks and mandates for security sector reform as well as other transitional justice mechanisms.

11. It has been further recognized that structured **disarmament**,¹³ **demobilization**¹⁴ and **reintegration**¹⁵ (DDR) process that aims at forging a peaceful coexistence among former adversaries without sacrificing justice and accountability,¹⁶ is one of the keys to transition out of conflict. It is important that DDR programmes are informed by international human rights standards and that more systematic attention be paid to the coordination between DDR and transitional justice processes so as to ensure that they can reinforce each other.

⁹ Rule-of-Law Tools for Post Conflict States, Vetting: An Operational Framework, HR/PUB/06/5, page 3, available at <http://www.ohchr.org/Documents/Publications/RuleoflawVettingen.pdf>.

¹⁰ The Updated Set of Principles for the protection and promotion of human rights through action to combat impunity [hereinafter Updated Set of Principles] (E/CN.4/2005/102/Add.1, principle 36, available at

<http://daccessdds.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>.

¹¹ Vetting: An Operational Framework page 4.

¹² Updated Set of Principles, principle 36.

¹³ Disarmament is the collection, documentation, control and disposal of small arms, ammunition, explosives and light and heavy weapons of combatants and often also of the civilian population. Disarmament also includes the development of responsible arms management programmes. For more information, visit www.unddr.org/whatisddr.php

¹⁴ Demobilisation is the formal and controlled discharge of active combatants from armed forces or other armed groups. For more information, visit www.unddr.org/whatisddr.php.

¹⁵ Reintegration is the process by which ex-combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open time-frame, primarily taking place in communities at the local level. It is part of the general development of a country and a national responsibility, and often necessitates long-term external assistance. For more information, visit www.unddr.org/whatisddr.php.

¹⁶ Transitional Justice entry by Louis Bickford in the Macmillan Encyclopaedia of Genocide and Crimes Against Humanity (2004).

12. Justice, peace and democracy are not mutually exclusive objectives, but are mutually reinforcing imperatives. Advancing all three objectives in fragile transitional settings requires strategic planning and careful integration.¹⁷ The United Nations has accorded great importance to comprehensive strategies on transitional justice that integrate efforts towards prosecutions, reparations for victims, truth seeking, vetting and institutional reform. The UN has further recognized that pre-packaged solutions are ill-advised and therefore transitional justice strategies should be informed by the national consultations carried out with civil society and victims' organizations. Experiences from other countries can be used as a starting point for national debate and decision making.

International Standards

13. The success of transitional justice initiatives depends in part on their basis in and compliance with international norms and standards.¹⁸ The United Nations Charter, together with international human rights law, international humanitarian law, international criminal law and international refugee law, form the foundation of these norms and standards. These norms and standards have been developed and adopted by countries around the world and have been accommodated by the full range of legal systems, such as common law, civil law, Islamic law and other legal traditions. The norms and standards regarding the duty to prosecute, the right to the truth and the right to remedy and reparation are essential to transitional justice processes and necessary for combating impunity. Satisfying one of these obligations does not relieve a State of its duty regarding other transitional justice obligations.¹⁹

The right to justice

14. States have a duty to institute criminal proceedings in respect to war crimes, crimes against humanity, genocide and gross violations of human rights such as extrajudicial, summary or arbitrary executions, torture and similar cruel, inhuman or degrading treatment, slavery, and

¹⁷ Report of the Secretary-General on the rule of law, para. 10. See also *id.*, para. 32. This position was recognized approvingly in Commission of Human Rights Resolution 2005/81.

¹⁸ Report of the Secretary-General on the rule of law.

¹⁹ Report of the Independent Expert to update the set of Principles to combat impunity, Dianne Orentlicher [hereinafter Report of the Independent Expert], UN Doc, E/CN.4/2005/102 9 (18 February 2005), paragraph 16, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/03/PDF/G0511103.pdf?OpenElement>.

enforced disappearance. This duty arises from several sources of international law, including widely ratified human rights treaties, customary international law and international humanitarian law such as the Geneva Conventions and the Rome Statute for the International Criminal Court. These principles have been further reflected in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of the International Humanitarian Law*, adopted by consensus by the General Assembly in 2005, which provide that “[i]n cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.”²⁰ The United Nation’s Security Council has affirmed the responsibility of States “to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of humanitarian law.”²¹ This duty to prosecute can conflict with the granting of amnesties. The Secretary General has stated that “amnesty cannot be granted in respect of international crimes such as genocide, crimes against humanity or other serious violations of international humanitarian law,”²² and further that “United Nations-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights”²³ These limitations apply to the granting of amnesties designed to end armed conflict.²⁴

The right to the truth

15. Individual victims, their families, and society as a whole have a right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances

²⁰ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law [hereinafter *Basic Principles and Guidelines*], A/RES/60/147, Principle 4, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement>. See also the Updated Set of Principles, Principle 19.

²¹ Statement by the President of the Security Council, Protection of civilians in armed conflicts ; UN Doc S/PRST/2002/41, p.1; see also Security Council Resolution 1674, 28 April 2006, paragraph 8.

²² Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, UN Doc. S/2000/915, para. 22 (footnote omitted), [hereinafter ‘Report of the Secretary General on the establishment of a Special Court for Sierra Leone.’]

²³ Report of the Secretary General on the rule of law, paragraph 10.

²⁴ Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, para. 22

and reasons that led, through massive or systematic violations, to the perpetration of those crimes.²⁵ An individual's right to know has been widely recognized in human rights jurisprudence, and provides that "irrespective of any legal proceedings, victims and their families have the imprescriptable right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate".²⁶ Society as a whole also has a right to know the truth, as knowledge of collective oppression is part of a people's cultural heritage. This collective right gives rise to a State's duty to preserve evidence of and facilitate knowledge of these violations in order to preserve collective memory, protect against revisionist arguments, and prevent the reoccurrence of such violations.²⁷ The right to the truth is "an inalienable and autonomous right" and "should be considered as a non-derogable right that is "not subject to limitations."²⁸ Because the right to the truth is a non-derogable right, amnesties or similar restrictions must not deny or impair it.²⁹ States must take appropriate action to give effect to the right to know and to fulfill their duty to preserve memory, including ensuring an independent and effective judiciary, establishing complementary non-judicial complaint processes, creating a commission of inquiry and creating and preserving access to archives³⁰ concerning violations of international human rights and international humanitarian law.

The right to a remedy, including reparations

16. Victims of gross violations of human rights or serious violations of international humanitarian law are entitled to a remedy and reparation for the harm they have suffered. States have a corresponding duty to "provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human

²⁵ Updated Set of Principles, Principle 2.

²⁶ Report of the Independent Expert, Principle 4.

²⁷ Report of the Independent Expert, Principles 2 and 3

²⁸ Report of the Office of the United Nations High Commissioner for Human Rights, Study on the right to the truth [hereinafter Study on the right to the truth], UN Doc. E/CN.4/2006/91, p.2.

²⁹ Study on the right to the truth, p.15, paragraph 30, Principles 3, 5, and 14.

³⁰ The Updated Set of Principles, Definitions, E Archives, provides a useful definition of "archives": "collections of documents pertaining to violations of human rights and humanitarian law from sources including (a) national governmental agencies, particularly those that played significant roles in relation to human rights violations; (b) local agencies, such as police stations, that were involved in human rights violations; (c) State agencies, including the office of the prosecutor and the judiciary, that are involved in the protection of human rights; and (d) materials collected by truth commissions and other investigative bodies." The Report of the independent expert, paragraph 15, states that "in accordance with professional archival practice, the word 'documents' comprises a broad range of formats, such as paper (including maps, drawings and posters), electronic records (such as e-mail and word processing records and databases), still photographs, film, videotapes and audio tapes."

rights law or serious violations of international humanitarian law.”³¹ When persons or legal persons are responsible for the harm, they have a duty to provide reparation directly to the victim or to compensate the State if the State has already provided for it.³² Moreover, States should endeavor to establish national programmes for reparation and other assistance to victims in the event that the party liable for the harm suffered is unable or unwilling to meet their obligations.³³ Victims who have suffered a gross human rights violation or serious violation of international humanitarian law have a right to “equal and effective access to justice”, “adequate, effective and prompt reparation for the harm suffered”, and “access to relevant information concerning violations and reparations mechanisms”.³⁴ Reparations can include the following forms of redress: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.³⁵

³¹ Updated Set of Principles, Principle 15.

³² Updated Set of Principles, Principle 15.

³³ Basic Principles and Guidelines, Principle 16.

³⁴ Basic Principles and Guidelines, Principle 11.

³⁵ Basic Principles and Guidelines, Principle 19.

Chapter 1: The Protection of Human Rights

NHRIs perform several functions crucial to the protection of human rights during periods of transition. NHRIs can play an important role in ensuring accountability and combating impunity by gathering information, documenting and archiving both past and present violations of international human rights law and international humanitarian law.³⁶ They can also play an important role by recommending, facilitating, assisting or providing investigations and enquiries into specific human rights issues and abuses and publishing related reports. Additionally, NHRIs can monitor and record violations during both conflict and authoritarian rule and transitional periods. These information gathering processes are essential to the work of future prosecution initiatives, truth seeking and truth telling bodies, reparations measures and vetting processes. NHRIs are also well placed to assist victims by ensuring that they have equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. NHRIs can also assist victims and witnesses with measures such as relocation and resettlement.

1.1 Monitoring and Reporting

NHRIs may wish to consider:

- ❖ Taking a comprehensive approach to monitoring human rights violations. It is recommended that a comprehensive approach include monitoring both state bodies such as the judiciary, police, security forces and prisons, and non-state actors. In situations of transition, NHRIs may also wish to pay particular attention to monitoring refugee and internally displaced persons (IDP) camps to ensure that the rights of refugees, IDPs and stateless persons are respected.
- ❖ Monitoring a State's compliance with its international and regional human rights, international humanitarian law and criminal law obligations.

³⁶ For more information on international norms and standards relating to the preservation of and access to archives bearing witness to violations, see Updates Principles and Guidelines, paragraphs. 32-35.

- ❖ Ensuring that domestic law is harmonized with international and regional obligations.³⁷
- ❖ Using their participation in regional and international bodies to draw attention to a State's failure to comply with these obligations.

Country experiences

In Afghanistan, the Afghanistan Independent Human Rights Commission (AIHRC) regularly monitors prisons, the status of freedom of speech, the status of women and children, and other human rights issues, such as forcible repatriation of refugees. For example, in 2002 the AIHRC monitored and reported on police mistreatment of university students participating in a rally in Kabul, during which time the police killed four students and injured thirty two others. In response to this incident the AIHRC made a public statement condemning the acts of the police. The AIHRC has also monitored the intimidation of journalists and issued public reports to disseminate these findings. The AIHRC publishes its reports in an official monthly journal and also submits them to the relevant authorities.

In Uganda, the Ugandan Human Rights Commission (UHRC) carried out a number of investigations into prisons and the activities of the police, and submitted reports based on these investigations to the national parliament. This has led to the closing of certain prisons and the amendment of the Prisons Act. Amending the Prisons Act has led to improved prison conditions.

In Guatemala, the Human Rights Ombudsman (PDH) prepares an extensive annual report and submits it to the National Congress. These reports highlight the findings of investigations into human rights violations such as gender based violence, the denial of fair trial rights, and denial of access to food, education, and healthcare. The PDH conducts investigations through its several regional offices and organizes its findings

³⁷ National Human Rights Institutions, Best Practice, Commonwealth Secretariat [hereinafter Commonwealth Secretariat], Best Practice 3.1, available at http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/%7BBBF05153F-7565-4A2F-8F2A-F002F05594EC%7D_HumanRightsBestPractice.pdf.

by region, by affected group (for example women, indigenous people, or migrant populations), and by category of human rights violation.

In South Africa, the South African Human Rights Commission (SAHRC) conducts preliminary need assessments through public hearings regarding public interventions and strategies and administrative practices and programs. The SAHRC then prepares a report based on these assessments for the national parliament.

1.2 Investigations

NHRIs may wish to consider:

- ❖ Identifying the patterns and root causes of past and ongoing violations.³⁸ This will help promote the non-reoccurrence of past violations.
- ❖ Pursuing all available sources of information in carrying out investigations including statements from victims, witnesses and alleged perpetrators; medical reports; police investigation files; court files; media reports; and information from non-governmental organizations (NGOs), families of victims and lawyers.³⁹
- ❖ Working in partnership with other individuals and entities that are able to provide background and substantive information regarding violations that have occurred.
- ❖ Ensuring that efforts to locate disappeared persons are an ongoing aspect of investigations.
- ❖ Where appropriate, liaising with independent investigative bodies. If NHRIs directly investigate human rights violations involving physical injury, including injuries from sexual violence,⁴⁰ they should consider utilizing expert assistance.

³⁸ National Human Rights Institutions: Amnesty International's recommendations for effective protection and promotion of human rights [hereinafter Amnesty International's recommendations], IOR 40/007/2001, 1 October 2001, recommendation 4.A.3, available at <http://www.amnesty.org/en/library/info/IO40/007/2001>.

³⁹ Where appropriate, the mandate of NHRIs should empower them to independently initiate investigations into violations of international human rights and international humanitarian law. The NHRIs should have a mandate broad enough to ensure effective powers of inquiry on matters of human rights concern, including having access to government information so as to be able to respond to the concerns of victims in the cause of their investigations.

⁴⁰ Amnesty International's recommendations, recommendation 4.B.1.

- ❖ Where appropriate, recommending or organizing witness protection programs for persons that testify or otherwise provide information that furthers investigations.

Country experiences

In Guatemala, the Office of the Ombudsman created a special investigations section to search for disappeared persons. This assisted in establishing the truth regarding the whereabouts of hundred of missing individuals.

In Nepal, the National Human Rights Commission (NHRC) conducted investigations into the army's massacre of 19 people at Doramba in August 2003. It also brought to light abuses committed by the insurgent Maoists during the country's 9-year civil war.

In 1998, Komnas HAM, the NHRI of Indonesia, conducted a survey of human rights abuses that had taken place in Aceh between 1990 and 1998. These investigations found that Indonesian government forces had committed various violations of human rights, such as summary executions, torture, enforced disappearances, arbitrary arrests and detention, rape and sexual assault, and property destruction. Komnas HAM recommended prosecution of those responsible, compensation for the victims, restoration of civilian institutions, ending the culture of impunity within the military; a wholesale review of military law and education, and reallocation of resources between the central and provincial governments.

In Morocco, the NHRI (Human Rights Consultative Council/CCDH) was created in 1990 to inquire into human rights violations. In 1999, the CCDH issued a report on 112 "disappearance" cases and proposed the establishment of a mechanism to provide financial compensation to certain victims. Following pressure by victims and human rights organizations, this became the first in a series of measures undertaken by authorities to acknowledge, investigate and redress past violations in Morocco. In 2003, the CCDH restructured itself so as to enhance its powers and independence. It has continued its implementation of transitional justice measures, including the establishment and follow up on the Equity and Reconciliation Commission /IER.

1.3 Complaints handling⁴¹

NHRIs may wish to consider:

- ❖ Providing complaint mechanisms that are simple, accessible, inexpensive and expeditious.⁴² It is recommended that in making complaint mechanisms accessible, NHRIs take into account such considerations as geographical and physical accessibility, including to people with disabilities. It is suggested that NHRIs not be located in governmental or military offices.⁴³
- ❖ Establishing guidelines and rules of procedure for the investigation of complaints that incorporate a rights based approach and procedural fairness.⁴⁴ Towards this end, NHRIs should consider providing clear information about the types of complaints that are admissible and who is eligible to lodge a complaint.⁴⁵ It is recommended that NHRIs accept complaints regarding governmental and non-governmental acts or omissions.⁴⁶
- ❖ Developing strategies that encourage complaints from groups that are particularly vulnerable to human rights violations, including proactively reaching out to these groups and informing them of their rights to utilize complaint processes.⁴⁷
- ❖ Investigating complaints and making recommendations on how and by whom they should be addressed. Towards this end, NHRIs may wish to use, where appropriate, mediation and other alternative dispute resolution mechanisms to resolve complaints.⁴⁸
- ❖ Managing expectations by being transparent and honest about what they can deliver.

⁴¹ For more information about the importance of NHRI complaints handling, see OHCHR Fact Sheet No.19, National Institutions for the Promotion and Protection of Human Rights available at <http://www.unhcr.ch/html/menu6/2/fs19.htm>

⁴² Commonwealth Secretariat, Best Practice 3.2.

⁴³ Commonwealth Secretariat, Ch. V.

⁴⁴ Commonwealth Secretariat, Best Practice 3.3.

⁴⁵ Commonwealth Secretariat, Best Practice 3.2.

⁴⁶ Commonwealth Secretariat, Best Practice 3.2.

⁴⁷ Commonwealth Secretariat, Best Practice 3.2.

⁴⁸ Commonwealth Secretariat, Best Practice 3.6.

Country experiences

In Uganda, the UHRC opened civilian military operation centers in various regions to receive and resolve complaints about human rights violations. The centers bring together civil and military parties with the view to discussing problems in a cooperative way and resolving human rights issues. In the event that the regional centers are unable to find a solution the cases are referred to the UHRC, which proceeds with handling the complaints through its formal channels.

In South Africa, the core work of the South African Human Rights Commission's (SAHRC's) legal department is to investigate individual and systemic complaints of human rights violations, provide appropriate redress and resolve disputes regarding human rights violations. The SAHRC accepts complaints from individuals who believe that the rights protected under South Africa's Bill of Rights have been violated. To facilitate complaints handling, the legal department developed and made available online a required complaints handling form to be submitted by any individual seeking the SAHRC's legal assistance. When the SAHRC cannot directly address a complaint it may help individuals contact other human rights organizations.

In Peru, the Human Rights Ombudsman is equipped to handle individual complaints. The Ombudsman has recourse to legal and administrative remedies and its services are offered free of charge.

1.4 Information gathering, documentation and archiving

NHRIs may wish to consider:

- ❖ Gathering information about past and ongoing abuses, both independently and through collaboration with other investigative bodies.

- ❖ Seeking to preserve and protect documents for future investigations and for use in judicial and non-judicial transitional justice proceedings.⁴⁹
- ❖ Establishing or leading a body that coordinates information gathering, documentation or archiving.
- ❖ Helping prevent any removal, destruction, concealment or falsification of information related to past and ongoing abuses.⁵⁰
- ❖ Facilitating access to documents and archives to ensure that victims and their relatives can claim their rights; that persons implicated can access the archives in order to prepare their defense or contest information contained in the archives; and to further historical research. It is recommended that access to archives be subject to reasonable restrictions aimed at safeguarding the privacy and security of victims and other individuals, and that these restrictions should not be used for censorship.⁵¹
- ❖ Ensuring that courts and non-judicial commissions of inquiry, as well as investigators reporting to them, have access to relevant documents and archives, including original documents as needed.⁵²
- ❖ Where possible and appropriate, ensuring that copies of archives are made and stored in diverse locations.

Country experiences

In Morocco, the CCDH (Human Rights Consultative Council) conducted an inquiry into human rights violations and was further instrumental in establishing the Equity and Reconciliation Commission (IER) which, *inter alia*, gathered, analyzed and archived information on missing persons from various sources. Subsequently, the

⁴⁹ Updated Principles, Principles 14 and 16

⁵⁰ Updated set of Principles Principle 14

⁵¹ Updated set of Principles Principle 15

⁵² Updated Principles paragraph 32. This principle must be implemented in a manner that respects applicable privacy concerns, including in particular assurances of confidentiality provided to victims and other witnesses as a precondition of their testimony.⁵² Access may not be denied on grounds of national security except in exceptional circumstances, as defined by law, and subject to independent judicial review.⁵²

CCDH was tasked to follow up on the IER's recommendations, including advising on the use of the information that the IER gathered during its mandate.

In Guatemala, the Office of the Ombudsman recovered numerous official documents from the national police archives that they are now using to establish accountability and to determine how the death squads employed during decades of civil war operated.

In Peru, the Ombudsman's Office created an Information Centre for Collective Memory and Human Rights in 2004. The Centre makes the documents of the Peruvian Truth and Reconciliation Commission available to the public. Additionally, the Peruvian NHRI is in charge of the photographic exposition entitled "YUYANAPAQ: To remember", which visually conveys the violence that occurred in Peru from 1980 through 2000. These photographs are exhibited at the National Museum, which receives thousands of visitors from Peru and abroad.

1.5 Cooperation with national, regional, hybrid, or international judicial mechanisms

NHRIs may wish to consider:

- ❖ Submitting advice to the courts, such as amicus curiae briefs or third party interventions. This function helps ensure that the courts are informed about and implement international human rights standards in their decisions.⁵³
- ❖ Bringing legal cases to protect the rights of individuals or to promote changes in law and practice⁵⁴ and challenging the legality of government action and obtaining judicial orders to remedy the situation, particularly where the government has failed to implement the NHRIs' recommendations on the subject.⁵⁵

⁵³ Amnesty International's recommendations, recommendation 3.6.

⁵⁴ Amnesty International's recommendations, recommendation 3.6.

⁵⁵ Amnesty International's recommendations, recommendation 3.6.

- ❖ Bringing applications on behalf of those who may be unable to bring cases to protect their rights themselves. This could include, for example, children, those with mental or intellectual impairments, or prisoners.⁵⁶
- ❖ Sharing information gathered through such activities as documenting, investigations, complaints handling and monitoring and reporting with judicial authorities. As appropriate, NHRIs should respect privacy and confidentiality standards when sharing this information.
- ❖ Encouraging authorities to enforce national, regional, hybrid and international court judgments. This could be done by directly communicating with the authorities, through the dissemination of information about judgments to the public, including through formal education programmes and media outreach, and by asking international, regional and non-governmental bodies to encourage the authorities to enforce judgments.
- ❖ Evaluating and monitoring the protection of the human rights of the persons affected by the operation of customary and religious courts.⁵⁷
- ❖ Ensuring through monitoring and reporting that the rights of victims, witnesses and the accused that interact with judicial mechanisms are protected.
- ❖ Utilizing the expertise of personnel at international courts by organizing trainings and exchanges for national judicial and criminal justice personnel. Similarly, NHRIs may wish to consider organizing trainings for international and hybrid court personnel to assist them in better understanding the national legal system, including customary and religious justice where relevant.

Country experiences

The Rwandan Human Rights Commission (RNHRC) visited the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania during 2007 when the

⁵⁶ Amnesty International's recommendation, recommendation 3.6.

⁵⁷ See Human Rights Committee General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, paragraph 24, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>.

court was discussing the transfer of prisoners from Arusha to Rwanda. The RNHRC reviewed the conditions under which the prisoners were being held in Arusha and whether the conditions in Rwanda would be compatible with international norms and standards. The RNHRC also monitors the gacaca process.

In Peru, the Ombudsman's Office established a specialized team to supervise the process of bringing human rights violations presented in the Peruvian Truth and Reconciliation Commission into Peru's legal system. These efforts have allowed the Peruvian NHRI to develop various recommendations for the improvement of the Peruvian justice system. For example, the information gathered through constant communication with victims and their organizations and their lawyers prompted the Ombudsman's Office to highlight the lack of legal assistance available to victims and to recommend the creation of a unit of lawyers that would provide free legal assistance to victims and their families. The Peruvian NHRI has also published four reports that focus on the successes and difficulties encountered in the process of bringing these cases into the legal system.

1.6 Assistance to victims

NHRIs may wish to consider:

- ❖ Promoting comprehensive assistance to victims. Assistance may include the provision of both financial and non-financial assistance to victims and witnesses and the provision of ongoing psychological assistance for victims and supporters of the process.
- ❖ Taking effective measures to ensure the security, physical and psychological well-being of victims and witnesses that provide information to the NHRI. It is highly recommended that NHRIs respect the privacy of the victims and witnesses that provide this information.⁵⁸
- ❖ Playing a significant role in assisting female victims by engaging in gender appropriate assistance. Gender appropriate assistance is comprised of a wide range of actions, such as being composed of a gender balanced staff, including

⁵⁸ Updated set of Principles, Principle 10.

commissioners; holding female-only meetings when necessary; making special provisions for anonymous reporting and testimony; and extending periods of confidentiality and limits on access to archives in which sexual violence is reported.

- ❖ Implementing witness protection programs where they have the capacity to do so and helping to organize, facilitate or monitor these programs when not directly involved in their implementation. Witness protection programs may be especially necessary to protect victims of sexual violence and victims from traditionally marginalized groups.
- ❖ Coordinating the activities of both national and international bodies that provide comprehensive assistance to victims so as to prevent duplicated efforts.

Country experiences

In Peru, the Ombudsman's Office has played an important role with respect to assisting the families of disappeared persons. In 2004 a national law created and placed the NHRI in charge of the Special Registry of Persons Missing due to Forced Disappearance and of providing families of the victims with a certification of the disappearance of their loved ones.

In Morocco, the Human Rights Consultative Council (CCDH) played a crucial role in the establishment of the Equity and Reconciliation Commission (IER), which has addressed both short term and long term medical and psychological care for victims of human rights violations. In the short term, the IER provided immediate medical assistance to around 50 victims of human rights violations over the course of its mandate. To serve victims in the long-term, the IER recommended that all victims and their families receive medical coverage and urged the establishment of a permanent mechanism that would administer health care to victims and their families.

In the Philippines, the Commission on Human Rights of the Philippines (CHRP) has established an Assistance and Visitorial Office to mobilize resources and services for victims of human rights violations and their families. This office operates an effective

referral management service that responds to the diverse needs of victims and their families, including rehabilitation, financial assistance, medical care and legal aid. It is also equipped to directly provide forensic and medical services and administers several monetary compensation funds. Administration of these funds is subject to specific guidelines and provides survivor's benefits for the immediate surviving heirs of human rights violations; medical assistance to defray the costs of treatment for human rights violations; incidental emergency expenses to cover expenses such as transportation, food and medicine; community assistance for families forcibly moved; and rehabilitation assistance for victims of unjust imprisonment or detention.

In Afghanistan, the Afghanistan Independent Human Rights Commission (AIHRC) helped to establish a Return Commission to facilitate the safe and secure return of internally displaced persons (IDPs). The Return Commission is comprised of representatives from various stakeholders, such as UNHCR, UNAMA, local authorities and members of the AIHRC. Based on the recommendations of the AIHRC, the Return Commission has placed a strong emphasis on employing international human rights principles and international humanitarian law in its work.

In Northern Ireland, the NIHRC launched a Victims' Rights project. This project led to the report *Human Rights and Victims of Violence* (2003), which outlined the relevant instruments victims might use to pursue the investigation of conflict related death in the United Kingdom. The report highlighted relevant regional and international avenues, such as utilizing Article 2 of the European Convention on Human Rights; the corresponding provisions in the International Covenant on Civil and Political Rights; and United Nations and Commonwealth legal standards and guidelines on this topic. The NIHRC also used its work on a proposed Bill of Rights for Northern Ireland to advocate that victims be treated with dignity and provided with redress, investigations, information, and assistance in criminal proceedings.

Chapter 2: Creating Opportunities and an Enabling Environment for Transitional Justice

NHRIs can play an important role in developing an enabling environment for transitional justice initiatives, rule of law and sustainable peace, and ensuring that international human rights standards are observed. NHRIs can foster an enabling environment through such activities as conducting investigations, monitoring and reporting on human rights violations, providing human rights education and assisting in institutional and legislative reform. Additionally, NHRIs are uniquely placed to act as a bridge between government and civil society and facilitate dialogue and cooperation between them regarding transitional justice processes. This unique position between the national government and civil society facilitates exchanges between actors with diverse viewpoints. For example, NHRIs can support national consultations that incorporate the views of all stakeholders, including civil society, victims, women, and vulnerable groups. NHRIs can also promote peace and democracy in periods of transition by helping to establish and implement transitional justice initiatives while promoting accountability, remedies for victims and other measures facilitating the non-reoccurrence of violations. NHRIs are well placed to follow up on the outcomes and recommendations of these mechanisms and processes.

2.1 Engaging civil society and institutional actors in transitional justice discourse

NHRIs may wish to consider:

- ❖ Calling attention to the need to address past violations of human rights law and international humanitarian law, including through transitional justice processes.
- ❖ Raising the public's awareness about and facilitating national dialogue on transitional justice issues. This could be done through forums for discussion, workshops and meetings with civil society, government officials and other stakeholders.
- ❖ Cultivating political will for addressing violations of international human rights and international humanitarian law. This could be accomplished through such activities as engaging authorities in dialogue and forming institutional

relationships with them, and by meeting with local communities and ensuring direct communication between these communities and the authorities.⁵⁹

- ❖ Consulting with and mobilizing support from regional structures and the international community for the national dialogue on transitional justice issues. Regional and international structures, such as courts, treaty bodies, and other human rights institutions and mechanisms, can be a useful resource for sharing international standards, best practices and lessons learned in this area.
- ❖ Using their participation in United Nations treaty reporting processes and other international bodies and mechanisms to draw attention to the need for addressing past violations, including through transitional justice mechanisms.
- ❖ Establishing advisory committees made up of diverse civil society groups to advise the NHRI in relation to the performance of its functions.
- ❖ Ensuring comprehensive information sharing between civil society and transitional justice mechanisms. For example, NGOs and other civil society organizations may have valuable information about violations suffered and the universe of victims needed for truth commissions, reparations measures and vetting processes. It is highly recommended that NHRIs ensure that information sharing respects privacy and confidentiality standards.

Country experiences

Since 1999, the Northern Ireland Human Rights Commission (NIHRC) has been involved in the investigation of conflict related deaths in Northern Ireland. The NIHRC's activities have included the production of the report *Human Rights and Victims of Violence* (2003), holding a conference in 2004 regarding investigations into these deaths, and publishing two booklets on the importance and application of relevant articles of the European Convention on Human Rights in the summer of 2005. The NIHRC also engages with the Committee of Ministers at the Council of

⁵⁹ Report, International Roundtable on the Role of National Institutions in Conflict and Post Conflict Situations, Belfast, Northern Ireland, p.5

Europe regarding the high profile suite of Northern Ireland cases under examination by the European Court of Human Rights. Other work on death investigation issues includes making statements and submissions to the government bearing on the use of lethal force by the State and publishing a report on this topic in 2005 and engaging the police service in discussion around the development of the Historic Enquiries team, which is re-examining a large number of conflict related unsolved homicides.

In Nepal, the National Human Rights Commission (NHRC) has articulated the need to build allies and partners amongst the Nepalese authorities in its four year (2004-2008) strategic plan and has developed interaction programs that specify communication efforts to be undertaken with such government bodies as the House of Representatives and high ranking government officials. According to its reports, the NHRC holds periodic meetings with the government which provide them an opportunity to raise issues of concern in a collaborative manner, and has recently met with the Home Secretary and the Chiefs of Security Forces to discuss human rights violations such as the killing of candidates for election in the time period leading of the April 2008 Constituent Assembly elections.

In the Philippines, the CHRP successfully advocated for the creation of ministerial focal points within the government. These focal points facilitate the CHRP's interaction with relevant ministerial departments and allow it to better ensure the government's implementation of recommendations from international human rights bodies.

In South Africa, the Parliamentary Liaison and Legislation and Treaty Body Monitoring unit of the South African Human Rights Commission (SAHRC) facilitates civil society engagement with legislative reform by conducting trainings, hosting workshops and seminars, and facilitating a civil society forum to obtain community input regarding parliamentary and governmental undertakings.

2.2 Facilitating a national consultation on transitional justice, while ensuring the participation of victims, women and vulnerable groups⁶⁰

NHRIs may wish to consider:

- ❖ Utilizing their unique position as a bridge between the government and civil society to facilitate national consultations on transitional justice.
- ❖ Ensuring that transitional justice consultations are undertaken in a culturally sensitive manner that demonstrates respect for the dignity of victims and others affected by human rights violations.
- ❖ Advocating for the inclusion of victims groups, women’s groups and vulnerable and marginalized persons in the consultations processes. It is recommended that special attention be paid to child victims and former child combatants and to victims of sexual violence.
- ❖ Advocating that consultations are accompanied by a tailored sensitization programme. NHRIs can encourage that the people to be consulted are provided with the information and understanding necessary for them to express informed viewpoints. It is recommended that those consulted are made aware of the transitional justice options available.
- ❖ Assisting in establishing an enabling and protective national legal environment for consultations.
- ❖ Facilitating the production of a final, public report that can both assist policy making and provide accountability by accurately conveying the views that have been expressed during the consultation.

Country experiences

In Afghanistan, the Afghanistan Independent Human Rights Commission (AIHRC) was mandated to carry out an extensive national consultation with the view of elaborating a national strategy for transitional justice. The national consultation

⁶⁰ For detailed information on conducting transitional justice consultations, see Rule-of-law Tools for Post-Conflict States, National Consultations on Transitional Justice, forthcoming.

consisted of both a quantitative survey of 4151 respondents, and a quantitative inquiry based on 200 focus groups comprised of over 2000 people. The consultation was conducted over an eight month period and covered a wide geographical area, reaching 32 of Afghanistan's 34 provinces and refugee populations in Iran and Pakistan. The national consultation resulted in the report "A Call for Justice", which was submitted to the Afghan President in January 2005. The report outlined the legacy of human rights abuses, discussed judicial and non-judicial mechanisms for transitional justice and forward-looking measures for reform and reconciliation. It also included a Plan of Action (POA) which focused on the promotion of peace, reconciliation, justice and the enhancement of the rule of law in Afghanistan.

In Uganda, in the national consultations regarding the 2007 Agreement on Accountability and Reconciliation, a special consultation event was organised for children. During the consultation, UNICEF worked closely with local child protection organisations to obtain the views of children. Special attention was given to fostering environment that encouraged the children to speak frankly while at the same time taking measures to protect their special needs.

2.3 Assist in developing and implementing transitional justice strategies

NHRIs may wish to consider:

- ❖ Assisting with the development of transitional justice strategies. It is recommended that the development of these strategies be undertaken pursuant to consultations or dialogue with affected communities and other stakeholders.
- ❖ Using their position as a bridge between civil society and the government to ensure that strategies for transitional justice reflect the recommendations of victims, women and marginalized groups.
- ❖ Mobilizing a society's support for action on transitional justice agendas. It is recommended that NHRIs consider playing this role even when they are not

directly mandated to develop or follow up on the implementation of transitional justice strategies.

- ❖ Monitoring the implementation of a transitional justice agenda and the government's commitment to the agenda by soliciting the support and involvement of all relevant constituencies.

Country experiences

In Afghanistan, the AIHRC collaborated with the Government of Afghanistan and the United Nations Assistance Mission in Afghanistan to draft a National Action Plan for Peace, Reconciliation and Justice.⁶¹ The Action Plan articulated a vision, timeline, lead organizations, potential partnerships and detailed steps to take regarding such transitional justice processes as vetting measures, truth-seeking and documentation. This Action Plan was developed pursuant to an extensive national consultation.

2.4 Assisting in the establishment of transitional justice processes and the implementation of their mandates

NHRIs may wish to consider:

- ❖ Participating or otherwise contributing to establishing transitional justice mechanisms.⁶² For example, NHRIs can contribute to the drafting of legislation establishing a truth seeking body, reparations measures or vetting initiatives. Representatives of NHRIs can also meaningfully participate by serving as commissioners, advisors or in other related capacities.
- ❖ Advocating for and mobilizing society's support for the establishment and implementation of transitional justice mechanisms.

⁶¹ "Peace, Reconciliation and Justice in Afghanistan", Action Plan of the Government of the Islamic Republic of Afghanistan, 6-7 June 2005, available at http://www.aihrc.org.af/actionplan_af.htm#_ftn1.

⁶² NHRIs may be directly mandated to establish specific transitional justice mechanisms, such as truth and reconciliation commissions, reparations programmes or vetting processes. NHRIs that do not have a direct mandate can still play an important facilitating role.

- ❖ Ensuring that the establishment and operation of any transitional justice mechanism is in compliance with international human rights standards and practices. To this effect, they could call attention to applicable international standards, as well as best practices and lessons learned on transitional justice.
- ❖ Ensuring that recommendations for transitional justice mechanisms comply with and uphold international standards.
- ❖ Publishing and disseminating the reports and recommendations of various transitional justice bodies, such as truth commission reports and recommendations, tribunal judgments and reports, reparations policies and measures in respect to memorialization and institutional reforms.
- ❖ Calling for the implementation of the recommendations of transitional justice bodies. To this effect, the NHRIs could bring them to the attention of the government and mobilize the support of the civil society.
- ❖ Monitoring and reporting on the implementation of the recommendations of transitional justice bodies.

Country experiences

In Sierra Leone, the Truth and Reconciliation Commission (TRC) recommended that the Government should appoint a Human Rights Commission (HRC) that could implement the recommendations of the TRC. The TRC suggested that the HRC should undertake such activities as, inter alia, monitoring human rights violations, providing a complaint mechanism for individuals to report instances of human rights violations, advocacy, research and legal actions undertaken in support of international human rights standards, investigative powers, and a mandate to advise all three branches of government on how to effectively incorporate international human rights standards into national and local law. The NHRI has been established only recently and its work has been hampered by lack of resources.

In Morocco, the CCDH was mandated to follow up the work of the truth commission (the IER). In June 2006, the CCDH set up joint working committees comprised of

government officials and former members of the IER to examine recommendations, particularly on reparations and institutional and legal reforms. The CCDH began by informing victims and their families of the results of research into 742 cases of enforced disappearance that it said the Commission had resolved, and stated that it would continue the Commission's research into 66 unresolved cases.

2.5 Cooperation with and facilitation of prosecution initiatives

NHRIs may wish to consider:

- ❖ Advocating for the prompt, thorough, independent and impartial investigation of human rights and international humanitarian law. Towards this end, they could encourage prosecuting authorities to take appropriate measures to bring suspected perpetrators to trial and also ensure respect for fair trial rights.⁶³
- ❖ Advocating that the state provide broad legal standing in the judicial process to any wronged party and to any person or non-governmental organization having a legitimate interest therein. Where appropriate NHRIs can advise on legislation or constitutional reform that facilitates this broad legal standing.⁶⁴
- ❖ Assisting in the establishment and implementation of procedures that allow victims and their families to institute proceedings on either an individual or collective basis.⁶⁵
- ❖ Encouraging and providing recommendations for the development of effective national judicial processes. Where the domestic legal system is incapable of providing prompt and effective relief to victims, it is recommended that NHRIs encourage States to participate in an international or internationalized tribunal.⁶⁶
- ❖ As appropriate, sharing information obtained through their work on transitional justice issues with the relevant judicial authorities, including prosecuting

⁶³ See Updated Principles, Principle 19.

⁶⁴ See Updated Principles, Principle 19.

⁶⁵ See Updated Principles, Principle 19.

⁶⁶ See Updated Principles, Principle 21.

authorities. It is highly recommended that NHRIs respect privacy and confidentiality standards when sharing this information.

- ❖ Intervening on behalf of victims and interested parties when States engage in practices such as pardons, indemnities, and amnesties, which may contribute to impunity.
- ❖ Where appropriate, encouraging the prosecution of violations of economic, social, and cultural rights.⁶⁷

Country experiences

In Peru, the human rights Ombudsman is staffed with multiple lawyers and pursues legal remedies to both human rights complaints lodged with it by individuals and to human rights issues it has identified of its own initiative.

In Morocco, for example, the CCDH requested the Minister of Justice to initiate proceedings against fourteen current and former government officials suspected of complicity in grave human rights abuses. The CCDH next sent an open letter to Parliament asking it to form a commission of inquiry to investigate suspected responsibility for torture and disappearances of the fourteen men named in the letter to the Minister of Justice, plus two additional men.

2.6 Contributing to the establishment and implementation of the truth seeking and truth telling mechanisms

NHRIs may wish to consider:

⁶⁷ See Arbour, *Economic and Social Justice for Societies in Transition*, pages 15-16. “The adjudication of economic, social, and cultural rights in a transitional context has also been shown to be possible. Although prosecutions by domestic, hybrid, and international tribunals mainly address violations of civil and political rights that constitute international crimes, in some cases they have dealt with selected violations of economic, social, and cultural rights. . . . Ultimately, the possibility of expanding the current scope of international criminal law to encompass and ensure the redress of other gross violations of economic, social and cultural right—such as the discriminatory or deliberate targeting of certain groups in cases of forced evictions or with respect to access to food, health care, or drinkable water—should be considered.”

- ❖ Assisting in the development of a truth commission’s terms of reference⁶⁸ with the view to ensuring that its mandate, powers and periods of operations are appropriately defined and protected.⁶⁹
- ❖ Ensuring that a truth commission is founded through a process of consultation with relevant stakeholders, including civil society, victims, women and other traditionally excluded groups. It is recommended that careful consideration be given to what kind of commission would be most appropriate for the context.⁷⁰ It is also recommended that NHRIs consider ensuring participation of the above groups in the implementing and assessment phases.
- ❖ Ensuring that truth commissions are established through procedures that guarantee their independence, impartiality and competence. Towards this end, NHRIs can develop and publicize criteria designed to ensure independence, impartiality and competence of truth commission members.⁷¹
- ❖ Advocating for the removal of laws that could impede the ability of commissioners to fully report on the truth.⁷²
- ❖ Ensuring that the staff composition of truth commissions, including commissioners and other senior positions, provides a balanced representation of women and groups which have been especially vulnerable to human rights violations.⁷³
- ❖ Providing truth commissions with information that they have gathered through such processes as documenting and archiving, conducting national consultations and responding to complaints and requests for investigations.⁷⁴

⁶⁸ See Updated Principles, Principle 8.

⁶⁹ See Updated Principles, Principles 12 and 13. These rights and mandates might include, *inter alia*, the right to seek assistance of law enforcement authorities if required and the mandate to publish a final report.

⁷⁰ See Truth Commissions, page 7.

⁷¹ See Updated Principles, Principle 7 and 7(a). Criteria for ensuring competence and impartiality might include a commissioner’s expertise in human rights and humanitarian law or the principle of irremovability except in exceptional and predefined circumstances.

⁷² See Updated Principle, Principle 7(b).

⁷³ See Updated Principles, Principle 7(c).

⁷⁴ See Updated Principles, Principle 16, which states that “Courts and non-judicial commissions of inquiry, as well as investigators reporting to them, must have access to relevant archives.”

- ❖ Advocating that truth commissions safeguard the evidence they collect for later use in the administration of justice⁷⁵ and for reparations measures.⁷⁶
- ❖ Calling attention to the need for truth commissions to inquire into the whereabouts and status of disappeared persons.
- ❖ Where appropriate, advocating that truth commissions address violations of economic, social and cultural rights (ESCR) when examining the root causes, consequences and nature of gross human rights violations. NHRIs may wish to consider advocating that truth commissions address violations of these rights in their recommendations.
- ❖ Advocating, monitoring and reporting on the implementation of truth commission recommendations.

Country experiences

In Kenya, the Kenyan NHRI issued a position paper outlining principles and prerequisites regarding the establishment of an effective Truth, Justice & Reconciliation Commission. These recommendations included, inter alia, the need for a holistic approach to accountability; responsiveness to the needs of the Kenyan people; the widest possible consultation of key stakeholders including the Government, Parliament, and civil society; and structural and procedural guarantees for the Commission's independence.

In Northern Ireland, the NIHRC is assessing how existing mechanisms for dealing with past, such as public inquiries, inquests and the work of the Historic Enquiries Team of the police service, can aid victims in the truth recovery process. This assessment continues to inform the NIHRC's work with the Council of Europe's Committee of Ministers and its engagement with a government appointed panel established to investigate truth recovery processes.

⁷⁵ See Updated Principles, Principle 8(e) and 8(f).

⁷⁶ See Tool on Reparations, page 15.

In Morocco, civil society has called for full disclosure of the truth about the fate of the victims and the nature of the human rights violations that occurred during previous four decades. In 2003, the CCDH pursued this issue and made detailed recommendations for the establishment of the Equity and Reconciliation Commission (IER) which was subsequently formed in 2004. Eight of the 17 IER commissioners were also members of the CCDH. The CCDH was then mandated to follow up on the IER's recommendations, including with regard to reparations and institutional reform.

2.7 Contributing to the establishment and implementation of the reparations measures

NHRIs may wish to consider:

- ❖ Advocating for comprehensive reparations measures that address a large universe of victims and harms suffered.⁷⁷ Towards this end, they could advocate for and where appropriate assist in the development of a reparations plan that clearly articulates applicable violations, corresponding benefits, information about victims and measurable steps to be taken to guarantee the distribution of benefits.⁷⁸
- ❖ Advocating for a fair and appropriate⁷⁹ reparations programme which distributes various kinds of benefits, including material compensation, service packages in form of health, education and housing benefits; symbolic reparations such as establishing the days of commemoration, the creation of museums and parks

⁷⁷ See Tool on Reparations, page 15, regarding the idea of achieving completeness: "Whatever benefits a reparations programme ends up distributing and for whatever violations, its aim is to ensure that every victim actually receives the benefits, although not necessarily at the same level or of the same kind. If this is achieved, the programme is *complete*."

⁷⁸ See Reparations Programmes, page 15.

⁷⁹ See Reparations Programmes, page 29.

dedicated to the memory of victims, official apologies; and rehabilitation measures such as restoring the good name of victims.⁸⁰

- ❖ Ensuring that victims and other sectors of civil society play a meaningful role in the design and implementation of reparations programmes.
- ❖ Facilitating the participation of civil society, victims, women and traditionally marginalized groups in consultations aimed at developing reparations programmes.⁸¹ It is also recommended that NHRIs ensure their participation during the implementation and assessment phase.
- ❖ Encouraging the use of information about victims and violations gathered through such processes as national consultations, complaint procedures, investigations and truth commissions for the development of comprehensive databases that facilitate the distribution of reparations.
- ❖ Helping to ensure that victims are afforded protection against intimidation and reprisals when exercising their right to reparations.⁸² NHRIs can help to protect victims through such activities as liaising with government officials and conducting investigations, monitoring and reporting.
- ❖ Ensuring that in the case of enforced disappearance, the family of the direct victim is informed of the fate and/or whereabouts of the disappeared person and, in the event of decease, that the deceased person's body is returned to the family as soon as it has been identified.⁸³
- ❖ Facilitating or assisting with the publicizing of reparations procedures so that as many victims and potential beneficiaries as possible are informed and involved.⁸⁴ NHRIs can contribute to the effectiveness of reparations measures by conducting outreach, particularly to victims of sexual violence, who may not know that the

⁸⁰ See Reparations Programmes, page. 22.

⁸¹ See Updated Principles, Principle 32. It is particularly important to ensure that women and marginalized groups are included in the construction of and eligible for the benefits of reparations measures as women and marginalized groups have been disproportionately excluded from receiving reparations benefits. See Reparations Programmes, page 21.

⁸² See Updated Principles, Principle 32.

⁸³ According to the Updated Principles, the body should be returned regardless of whether the perpetrators have been indentified or prosecuted. Updated Principles, Principle 34.

⁸⁴ Updated Principles, Principle 33.

violations they endured are included in reparations measures, and to traditionally marginalized groups.⁸⁵

- ❖ Ensuring that reparations measures are linked to other transitional justice measures, such as truth-seeking, prosecutions and institutional reform.⁸⁶
- ❖ Encouraging reparations programs to address social and economic aspects of international human rights and international humanitarian law violations.⁸⁷
- ❖ Advocating for, and monitoring and reporting on, the implementation of reparations programme recommendations. Towards this end, NHRIs may wish encourage States to establish specialized bodies designed to ensure the timely implementation of reparation programmes.
- ❖ Encouraging the adoption of communal reparations to address the needs of the most affected groups or marginalized sectors of the population.

Country experiences

In Morocco, the Human Rights Consultative Council (CCDH) has undertaken ongoing efforts to implement the recommendations of the Equity and Reconciliation Commission (IER) and in particular the IER's recommendations for reparations measures. In 2006 and 2007, around 23,500 victims received compensation checks. The CCDH also worked with the Government and State Social Welfare Bodies Fund to ensure that approximately 2,000 victims of human rights violations received health insurance. The CCDH and its partners are working to increase coverage so that 12,000 people receive health insurance as part of the reparations package. The CCDH and the IER also signed a partnership and co-operation agreement to provide vocational training as part of the reparations programmes. Additionally, the CCDH is pursuing implementation of collective reparations programs for particular communities and areas that suffered from systematic human rights abuses or that were located in close proximity to a detention center.

⁸⁵ Report of the Independent Expert, paragraph 60.

⁸⁶ Reparations Programmes, pages 33-34.

⁸⁷ See Arbour, Economic and Social Justice for Societies in Transition, pages 17-18. ESCR focused reparation measures might include, inter alia, housing and property restitution programs, reparation measures related to health care, or recommendations for educational reform aimed at redressing the loss of educational opportunities caused by conflict and discrimination.

In Peru, the human rights Ombudsman office monitors the recommendations of the former Truth and Reconciliation Commission (CVR). These recommendations include the provision of symbolic reparations; the recovery of memory and the return of dignity to the victims; attention to education and mental health; individual and collective economic reparations such as programs for institutional reconstruction, community development, basic services and income generation; and the importance of justice and combating impunity as part of a holistic reparations programme. The Ombudsman monitors such features of the program as coordination, training, communication with potential reparations recipients and the participation of affected groups in the reparations process.

In Guatemala, the Human Rights Ombudsman convened dialogue sessions on the question of reparations in which some 60 to 70 groups were involved. These dialogues led to the development of concrete reparation programmes.

2.8 Advising on Vetting Processes, Security Sector Reform and other forms of institutional reform

NHRIs may wish to consider:

- ❖ Advocating for and monitoring the implementation of vetting processes.
- ❖ Encouraging the development of effective operational guidelines for vetting processes that comply with international human rights standards. It is recommended that NHRIs advocate for guidelines that assess the status of institutions and public needs, define job requirements and integrity standards, and articulate the mechanisms of the reform process.⁸⁸
- ❖ Monitoring appointments to positions of authority to ensure that those who have committed gross violations of human rights are not permitted to exercise public power or are removed from those positions.

⁸⁸ Vetting, page 13.

- ❖ Ensuring that vetting processes are just and reasonable and comply with international standards of due process.⁸⁹
- ❖ Seeking support and assistance from other stake-holders such as civil society and the international community for the implementation of a vetting agenda.
- ❖ Advocating for and facilitating consultations with civil society, in particular with victims groups and other reform-minded constituencies, to inform the design of vetting processes.⁹⁰
- ❖ Ensuring that vetting processes are transparent and that the public is made aware of vetting programmes. Towards this end, NHRIs may wish to consider advocating that institutional reform processes should include an effective public information mechanism.⁹¹
- ❖ Ensuring that vetting programs do not conflict with measures designed to reintegrate and rehabilitate former combatants.
- ❖ Advocating that peace processes take into account the reform of the security sector and suggesting frameworks and mandates for security sector reform.

Country experiences

In Guatemala, the Human Rights Ombudsman created a background screening unit and established a database on alleged perpetrators. The database was used as a tool to challenge the appointment of public officials.

In Afghanistan, the AIHRC has worked with the Afghan Civil Service Commission to review the human rights records, integrity and respect for the law of all persons considered for appointment. The AIHRC also encouraged the establishment of an Advisory Panel for the Appointments, which formulates rules and advises the President on senior political appointments. The AIHRC developed a strategy for the general reform of the justice sector designed to ensure the non-reoccurrence of human rights abuses. Its strategy is partly informed by the extensive national consultation it

⁸⁹ See Updated Principles, Principle 36.

⁹⁰ Vetting, page 11.

⁹¹ Vetting, page 11.

conducted, from which the AIHRC received numerous survey responses calling for professionalism and competence in the public sector, the reform of the security sectors and the judiciary and the need to remove human rights violators from positions of authority.⁹²

In the Philippines, the CHRP is responsible for a vetting process that works as an oversight mechanism on the career development of the police and armed forces. The CHRP is charged with reviewing and clearing candidates for promotion. The candidates whose records demonstrate violations are not recommended for promotion.

⁹² “Peace, Reconciliation and Justice in Afghanistan,” Action Plan of the Government of the Islamic Republic of Afghanistan, 6-7 June 2005, available at http://www.aihrc.org.af/actionplan_af.htm#_ftn1.

Chapter 3: Institutional Reform and Capacity Building

During a period of transition to peace and democracy, it is particularly important that States should undertake legislative, administrative and constitutional reforms to restore respect for the rule of law, a culture of respect for human rights and trust in government institutions. It is also essential that States undertake institutional, administrative and constitutional reforms that can restore the public trust in State institutions. These institutional reforms can contribute to redressing harm to victims and preventing the reoccurrence of violations by addressing the wrongs of perpetrators, including groups that have been traditionally excluded or persecuted and creating a basis for peace and democracy through the reintegration of combatants. Human rights education is highly relevant in transitional contexts and can help to create and sustain a culture of respect for human rights and the rule of law. Human rights education and training can facilitate institutional reform and prevent reoccurrence of human rights and humanitarian law violations by creating both government and civil society capacity for the protection and implementation of these international norms and standards.

3.1 Ensuring respect for international standards and advising on legislative reform

NHRIs may wish to consider:

- ❖ Advocating that legislation and administrative regulations that contributed to or legitimized past violations are repealed.
- ❖ Advising the government on legislative reforms in order to bring domestic law into compliance with international human rights and other universally accepted standards.⁹³ International human rights standards can assist in clarifying protections and safeguards necessary to prevent the reoccurrence of human rights violations.⁹⁴
- ❖ Reviewing the effectiveness of existing legislation or administrative provisions and making recommendations for the amendment of such legislation or the

⁹³ See Updated Principles, Principle 38.

⁹⁴ See, for example, the Preamble of the Updated Principles.

introduction of new legislation as necessary. This is especially important regarding internal security laws, administrative detention laws, and police detention and interrogation procedures, which can often facilitate human rights violations, or where enabling legislation implementing international standards does not implement the international obligations effectively.⁹⁵

- ❖ Encouraging the ratification of international and regional human rights treaties and the removal of a State's existing treaty reservations.
- ❖ Cooperating with the efforts of international and regional treaty bodies to monitor States' compliance with their treaty obligations.⁹⁶ Where appropriate, NHRIs can contribute to the preparation of State reports to human rights treaty bodies.⁹⁷
- ❖ Encouraging civil society organizations to respond to official state reports through mechanisms such as shadow reports or direct complaints to monitoring bodies.
- ❖ Promoting the utilization of international mechanisms in the absence of effective domestic remedies.
- ❖ Playing an active role as *amicus curiae* in national, regional, hybrid and international transitional justice litigation by advocating international human rights and international humanitarian law standards.
- ❖ Ensuring that steps are taken to address the root causes of conflict. Root causes often include systematic discrimination and inequality based on religion, language, race, sexual orientation, gender, or tribal or ethnic affiliation. To this effect the NHRIs may wish to consider advocating for constitutional protection, legislative promotion and judicial enforcement of all human rights, including economic, social and cultural rights.⁹⁸
- ❖ Advocating for, assisting in and monitoring the development of transitional justice mechanisms such as truth commissions, prosecution initiatives, vetting processes and reparations commissions, as these are appropriate responses to ensuring the

⁹⁵ Amnesty International's recommendations, recommendation 3.5.

⁹⁶ Commonwealth Secretariat, Best Practice 4.5.

⁹⁷ Commonwealth Secretariat, Best Practice 4.5.

⁹⁸ See Arbour, *Economic and Social Justice for Societies in Transition*, page 26.

protection of the human right to the truth, to remedy, reparation and guarantees of non-reoccurrence, and of a State's duty to constitute criminal proceedings.

Country experiences

In South Africa, the Parliamentary Liaison and Legislation and Treaty Body Monitoring office of the South African Human Rights Commission (SAHRC) monitors national and provincial level legislation and monitors and engages in the UN Treaty Body System. Towards this end the office liaises with government and civil society concerning South Africa's international treaty body obligations; conducts research, develop reports and follow up on recommendations from treaty bodies; and promotes and protect human rights by providing input on proposed legislation that impacts on human rights, nationally and provincially.

In Morocco, the CCDH issued recommendations for the harmonization of national law with Morocco's international human rights commitments. It recommended modifying the penal code so that it accurately reflects the contents of international human rights standards, including those embodied in the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the Convention Against Torture.

3.2 Advising on institutional reform

NHRIs may wish to consider:

- ❖ Advocating for the civilian control of military and security forces and for the establishment of the effective institutions of civilian oversight over military and security forces.
- ❖ Advocating for the establishment of effective and transparent civilian complaint procedures.
- ❖ Promoting and where appropriate assisting in the training of public officials and employees that ensures their knowledge of and respect for human rights and

- humanitarian law, as well as their independence, impartiality, and independence.
- ❖ Monitoring appointments to positions of authority to ensure that those who have committed gross violations of human rights are not permitted to exercise public power. This could be accomplished through fair and transparent vetting processes that comply with international human rights standards.⁹⁹
 - ❖ Advocating that the process of disarmament, demobilization and reintegration (DDR) of combatants¹⁰⁰ is informed by international human rights standards.
 - ❖ Advocating for pluralist representation of all constituencies of the society in all state institutions (for example, the executive, judiciary, legislative, civil service, and security forces), taking into account competence and integrity.
 - ❖ Advocating for adequate representation of women, minority and other traditionally excluded groups in public institutions. This could include creating a specialized institution such as a Ministry, commission or focal point in an existing institution.

Country experiences

In Afghanistan, the Afghanistan Independent Human Rights Commission (AIHRC) co-established the Free and Fair Elections Foundation and through it jointly monitored Afghanistan's first post-conflict elections in 2004. Following its monitoring efforts, it issued a report recommending the structural and legal reform of the national elections commission so as to better ensure transparency and independence. The AIHRC recommended, inter alia, reforming the electoral law to allow for and facilitate the presence of well trained domestic and international observers and members of the media; enhanced identification, hiring and training of electoral staff, with particular emphasis on neutrality; education of electoral security staff so that they do not abuse their role or encroach upon voters rights; and the creation of a complaints mechanism and appeals procedure comprised of an investigative staff with a strong legal or judicial background. The report also recommended reforming the voter registration process, for example through completely transparent preparation of voter registers so as to prevent double or fraudulent voting and conducting a national census to enhance

⁹⁹ See Vetting.

¹⁰⁰ See Updated Principles, Principle 37, which address the disbandment and demobilization of parastatal armed forces and the social reintegration of children that have been forced into combat.

voter registration accuracy and making the voter registration documents public and open to public inspection.

In Northern Ireland, the NIHRC has contributed to discussions with the government and the public around security sector reforms following the local peace agreement. The NIHRC has also published a review of policing reforms and worked closely with the police service to promote compliance with human rights standards. Since 2000, the NIHRC has produced five reports monitoring and reviewing the police service's human rights training programmes. Many of the recommendations from these reports have been implemented by the police.

3.3 Raising public awareness and conducting education and training on human rights and national reform efforts

NHRIs may wish to consider:

- ❖ Developing tailored human rights training modules that address the specific needs and contexts of various groups, such as police, judicial personnel, politicians, lawyers, the media, and various communities such as women or indigenous persons.
- ❖ Emphasizing the universal applicability of human rights standards to all persons, including accused persons and individuals in prison. In doing so it may be useful to call attention to relevant international norms and standards. Emphasizing the universal applicability of human rights is particularly important when there is tension between human rights concepts and traditional or religious practices.
- ❖ Disseminating information about their particular role in the promotion of human rights and transitional justice measures. It is recommended that this information make clear that, while part of the government, NHRIs operate as independent human rights bodies.
- ❖ Ensuring that human rights education is integrated into the curricula of all educational institutions and relevant professions, such as police and judges.

- ❖ Monitoring and issuing reports on the nature and quality of human rights trainings so as to adapt training courses as needed and raise awareness about these courses.
- ❖ Ensuring that the media is well informed about human rights issues and the work of NHRIs. It is recommended that NHRIs also monitor media reporting to ensure that it is objective and reliable.
- ❖ Advocating for and where appropriate facilitating or assisting with the publicizing of reports on transitional justice processes, such as the work of truth commissions, prosecution initiatives, vetting and institutional reform, and reparation procedures.

Country experiences

In Afghanistan, the AIHRC's Human Rights Education Unit conducts hundreds of workshops and awareness raising sessions. So far, thousands of people have attended these workshops. These educational programs inform attendees of their human rights and familiarize them with such international human rights instruments as the Universal Declaration for Human Rights and the Convention on Elimination of all forms of Discrimination Against Women. The AIHRC also has an ongoing relationship with the Afghan National Police (ANP) and Afghan National Army (ANA) through which it conducts regular meetings and monitors the teaching of human rights standards at ANP and ANA educational facilities. The AIHRC's Transitional Justice Unit also holds awareness raising meetings and gatherings. In 2007 this unit educated almost 10,000 people, including civil society members, civil servants and community elders. Topics included Afghanistan's Truth Seeking Commission, Transitional Justice History, the International Criminal Court and Conflict Mapping. The AIHRC also signed a Memorandum of Understanding with the Ministry of Education to have human rights education incorporated in primary and secondary schools and at universities. Towards this end the AIHRC has collaborated on the revision and improvement of school curricula, has funded the printing of human rights messages on the back of secondary school textbooks, and has undertaken the translation and distribution of international legal texts, with a particular emphasis on the rights of women and children.

In Kenya, the KNCHR educates and informs the public in order to reduce corruption in government and to promote access to information and transparency. They communicate information about government corruption to ordinary citizens, including through publications.

In South Africa, the South African Human Rights Commission (SAHRC) has established a National Centre for Human Rights Education and Training (NACHRET). NACHRET offers education and training to a range of sectors and beneficiary groups by developing and delivering courses, training programmes, workshops, dialogues and seminars on human rights. The NACHRET also coordinates and evaluates national and provincial human rights training programmes; ensures that education and training systems are aligned with international human rights standards; provides in-house capacity building; and responds to training requests generated through the SAHRC's legal department.

The Northern Ireland Human Rights Commission (NIHRC) has undertaken various efforts to raise public awareness about the proposed Bill of Rights for Northern. For example, the NIHRC has worked with the Department of Education to develop school curriculum resources regarding the proposed Bill and has trained and supported teachers in delivering this material as part of the formal post-primary education curriculum. The NIHRC has also worked with civil society to develop a training program on human rights and conflict transformation that is targeted at community workers, mediators and the staff of local authorities' that work in conflict situations.