

Concept note

14th International Conference of National Human Rights Institutions “Torture and Other Ill-treatment: The Role of National Human Rights Institutions (NHRIs) ”

6-8 November 2023 – Copenhagen, Denmark

Executive summary

In October 2022, GANHRI’s Bureau decided to dedicate the 14th International Conference of National Human Rights Institutions (NHRIs) to discuss the role of NHRIs in combating and preventing torture and other forms of ill-treatment. This timely decision comes in a historical moment for human rights defenders everywhere, including NHRIs. The upcoming celebrations of the 30th anniversary of the adoption of the Paris Principles and the 75th anniversary of the Universal Declaration on Human Rights present opportunities for NHRIs—both individually and collectively through GANHRI—to share good practices and identify a clear roadmap forward to join forces in addressing this grave human rights violation. As global network of all NHRIs, GANHRI provides a unique platform to promote and support this exchange among NHRIs at the global level, and an avenue for NHRIs to seek peer advice and to facilitate support to NHRIs from partners.

It is in this context that the 14th International Conference will build on the extensive existing expertise and wide-ranging experiences of NHRIs in respect of preventing and combating the scourge of torture and other ill-treatment, at a current critical moment in time. The Conference will aim to address this topic in a holistic and thorough manner, presenting an important opportunity for NHRIs to consolidate the achievements attained during previous Conferences, and, together with partners and stakeholders, to share experiences, identify good practices, and reaffirm their vital individual and collective commitments to a central pillar of their international and domestic human rights obligations: the right of all persons to freedom from torture and other forms of ill-treatment.

*“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”
(Article 5, Universal Declaration on Human Rights)*

Overview: The Prohibition of Torture and Other Ill-treatment in International Law

Torture and other cruel, inhuman, or degrading treatment or punishment (CIDT or “other ill-treatment”) are **absolutely prohibited** under international law and can never be justified or tolerated. The infliction of this extreme form of suffering denies the inherent dignity of the human being, and is thus one of the few crimes that is universally prohibited. The legal frameworks prohibiting torture and other ill-treatment are among the most developed and widely codified in both international human rights law (IHRL) and international humanitarian law (IHL). Indeed, the prohibition against torture and other ill-treatment is a norm of customary international law, and has acquired the rare

status of *jus cogens* or peremptory norm of international law (along with the prohibition of slavery and genocide), making it binding on all, regardless of the ratification of treaties or other international instruments. This prohibition is also widely codified at the regional level, and has been recognised as a matter of domestic law for several centuries.ⁱ

The absolute and non-derogable nature of the prohibition of torture means that it **cannot be justified in any circumstance** whatsoever, whether a state of war, internal political instability, military occupations, or any other public emergency.ⁱⁱ The obligation to prevent torture and ill-treatment **applies at all times**, including during the investigation of serious crimes and in situations of armed conflict, and is binding on both State and non-State actors, under Common Article 3 of the Geneva Conventions. In this regard, it is instructive that International Human Rights Law (IHRL) and International Humanitarian Law (IHL) are distinct but complementary bodies of law. Crucially, **international human rights law remains applicable at all times during armed conflicts**, and the protection offered under human rights law does not cease during hostilities, without prejudice to the application of IHL (as *lex specialis*), under the relevant and appropriate circumstances.

Furthermore, States' *jus cogens* obligations to prohibit and prevent torture and other ill-treatment cannot be territorially limited, and States have **extraterritorial obligations** in these regards. More specifically, the prohibition of torture and other ill-treatment applies whenever a State "brings a person within its jurisdiction by exercising power, control or authority over territory, persons or transactions outside its borders," no matter the victim's citizenship; or the where the State engages in the action or inaction giving rise to its international responsibility.ⁱⁱⁱ

The Status Quo

Despite the universal ban, torture continues to exist in all regions of the world. Indeed, empirical research demonstrates that it remains the most frequently violated physical integrity right in the last quarter of the twentieth century (Cingranelli and Richards 1999, 522), so much so that it is sometimes egregiously used as a "normal" tool of statecraft (Conrad and Moore 2010, 474).

The absolute obligation to combat and prevent the occurrence of torture and other ill-treatment, is often not adequately complied with in practice, due to a lack of understanding about the legal definitions of torture and other ill-treatment, the various obligations inherent therein, and the proliferation of root causes of and incentives for torture and other ill-treatment in diverse scenarios and situations around the world. Indeed, despite the steadfast existing legal framework, the practice of torture and other ill-treatment remains unabated in many parts of the world, as showcased by ongoing research.^{iv}

Furthermore, the exacerbation of intersectional global crises—from the global COVID-19 pandemic and the aggravation of socio-economic inequality to climate change and the deterioration in the rule of law, growing use of emergency powers, and shrinking of civic space in many corners of the world—over the past years, has led to growing concerns about losing ground in the fight against, and rising risks of torture and other ill-treatment globally. For instance, as the UN anti-torture mandates jointly and unanimously warned that "COVID-19 pandemic is leading to an escalation of torture and ill-treatment worldwide", highlighting a host of heightened risks, including for instance to all persons deprived of their liberty, in the context of the excessive use of force by law enforcement against demonstrators in certain situations, and to torture survivors, who may

be “especially in danger of getting infected by the lethal virus due to their vulnerable situations.”^v It is in this pressing and highly relevant context that the theme of this conference has been selected.

What is Torture and Other Ill-Treatment?

The question and task of adequately defining **what constitutes torture and other ill-treatment** in practice, is a critical stepping-stone to ensuring that such acts are adequately identified, prevented, and addressed, in compliance with States’ obligations under international human rights law, and domestically.

Paraphrasing the definition of torture found in Article 1 of the UNCAT, torture is **defined** as “*the intentional infliction of severe mental or physical suffering by a public official, who is directly or indirectly involved, for a specific purpose.*”^{vi} More specifically, the constitutive elements of the international legal definition of torture, which must be taken into account when legally qualifying an act (or omission) as torture are:

- a) The **intensity of pain or suffering** inflicted (i.e. the nature of the harm/conduct in question)
- b) The **purpose** element (i.e. the specific purpose behind the conduct)
- c) The **status** of the perpetrator (i.e. the involvement or acquiescence of a **public official**), and
- d) The **intent** of the perpetrator.

Article 16 of the Convention further mandates that States have a further obligation to prevent “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture” under Article 1 of the Convention. According to the mandate of the Special Rapporteur, Article 16 indicates that torture is “a particularly serious and reprehensible form of CIDT”. Crucially, as elaborated by the European Court of Human Rights, it is important for authorities to recognize that ~~(torture and)~~ CIDT may take place even when the **purpose or intention** of a State’s action **or inaction** may not have been to degrade, humiliate, or punish the victim—but where this was nevertheless the result. The Committee Against Torture interprets state obligations to prevent torture as indivisible, interrelated, and interdependent with the obligation to prevent CIDT or punishment because “conditions that give rise to ill-treatment frequently facilitate torture.”^{vii}

Furthermore, and crucially for the work of NHRIs in particular, State’s obligation to prevent torture applies not only to public officials, such as law enforcement agents, but also apply in relation to private individuals, such as for instance doctors, health care professionals, and social workers working in private institutions like hospitals and care homes. This is so because the State has a positive obligation to closely *regulate* certain private institutions, such as those that provide health care or care for persons with disabilities, children, or the elderly (especially when such institutions can deprive persons of ambulatory freedom) and to take *operational measures* to prevent ill-treatment the state is or should have been aware of, including ill-treatment carried out by private individuals. As underlined by the Committee Against Torture, the prohibition of torture must be enforced in all types of institutions, and states must exercise due diligence to prevent, investigate, prosecute, and punish violations by nonstate officials or private actors. The work of NHRIs in fighting and preventing torture and other ill-treatment can also be highly relevant to their role and commitments in advancing human rights in the context of business activities and on the part of business and private entities, as outlined in the 2010 Edinburgh Declaration.^{viii} More broadly, NHRIs

also have an essential role to play in promoting awareness about what constitutes torture and other CIDT, both with duty bearers and the general public.

Evolving Definition and Progressive Interpretations of Torture and Other Forms of Ill-treatment and their Relevance to the Work of NHRIs

Any in-depth discussion of the constitutive elements of the definition of torture will show that this normative framework has continuously evolved to encompass acts and situations falling outside the traditional criminal justice system and/or taking place in contexts outside traditional detention and/or law enforcement settings. Indeed, interpretive bodies have made clear that like other key legal instruments, the Convention against Torture is necessarily a “**living instrument** which must be interpreted in light of present-day conditions.”^{ix}

Accordingly, the present-day legal definition of torture has evolved to cover acts of domestic violence and violence against women committed by private actors—illustratively, in the form of female genital mutilation (FGM), or for instance in the context of certain other “medical” [treatments / interventions] (particularly as involving reproductive decisions) faced by women in some cases.^x Indeed, as unequivocally stated by the Committee against Torture in its General Comment 2, States have a clear responsibility to prohibit, prevent, and investigate and punish such violence and acts committed by private actors in [their] communities and homes, and owe a particular duty of care to women and girls—as well as men and boys, in some cases—who may risk being subjected to a litany of “violations of the Convention on the basis of their actual or perceived nonconformity with socially determined gender roles.”

This gradual movement by international human rights mechanisms such as the UNCAT the Human Rights Committee towards recognizing such forms of “gender violence” as torture or CIDT – and clearly underlining that states have a positive obligation to prohibit, prevent and punish such ill-treatment – over the past several decades, marks an encouraging critical shift towards more inclusive, and victim-centered interpretations of key human rights standards. In particular, as stressed by the mandate Special Rapporteur on Torture, classifying such acts as “torture” carries a considerable additional stigma for the State and reinforces legal implications,” including the imperative obligations to criminalize the act, hold perpetrators accountable, and provide reparation to victims, thus leading to better compliance with human rights law, and more effective justice for victims and, ultimately, for all people and for societies at large.

In Focus: Persons in Situations of Vulnerability

Specific protections and special measures designed to address the specific needs and heightened risk factors faced by certain marginalized groups and persons in situations of vulnerability, are provided for in international human rights law. Authorities must take steps to implement adequate special measures—which cannot be considered unlawfully discriminatory—so as to ensure that these persons are able to enjoy their rights on an equal footing with others; and, in particular, to ensure compliance with the fundamental human right to freedom from discrimination and equal enjoyment of the law. In fulfilling their duty of care towards all persons, and in order to ensure adequate compliance with all human rights, including the right to freedom from torture and other ill-treatment authorities must accordingly apply an intersectional lens to account for overlapping and interdependent factors and instances of discrimination.

It is well-established under international human rights law that certain persons and groups of persons—including, but not limited to, women, LGBTIQ+ persons, children, persons with disabilities, older persons, persons belonging to minority groups (ethnic, religious, cultural, linguistic, or other), indigenous persons, Human Rights Defenders, migrants and migrants workers, refugees, asylum-seekers and stateless persons, foreign nationals, and economically disadvantaged or otherwise marginalized persons—are at a heightened risk of experiencing violations and abuses of their human rights, and in particular of being subjected to torture or other ill-treatment, whether directly by State agents or at the hands of private individuals in their communities. Accordingly, it is thus clear that the progressive evolution of the legal definitions and jurisprudential understandings of torture and other ill-treatment, are absolutely critical to ensuring that this diverse array of more at-risk persons are afforded adequate protection from experiencing torture or other ill-treatment at all times.

It is in this context that the work of NHRIs—in light of their unique and broad mandates under the Paris Principles to promote and protect the rights of all persons within their jurisdictions—is and continues to be especially critical for those persons and groups of persons who find themselves at greater risks of experiencing discrimination, violence, or other human rights violations and abuses, or are otherwise in particular situations of vulnerability.

Accordingly, and recalling the special status of NHRIs as independent and pluralistic institutions that are representative of all members of society, with wide-ranging mandates and functions to address and improve the human rights of all persons under their jurisdictions, this conference will devote particular attention to the crucial work that NHRIs do in respect of protecting the rights of persons in situations of vulnerability, including the elderly, children, indigenous persons, and women and LGBTIQ+ persons, among others.

Situations of Deprivation of Liberty: A Specific Situation of Vulnerability

Any situation where a person is deprived of his or her liberty and when there is an imbalance of power—in which one person is completely dependent on another—constitutes a situation of heightened risks of torture or other ill-treatment. Additionally, the risks of being tortured or ill-treated is higher at certain times during the period of a person's detention, such as the initial period of arrest and police custody, as well as during transfer from one place of detention to another. Situations where persons deprived of their liberty are held out of contact with others can also increase the risk of torture or ill-treatment, in particular incommunicado detention or solitary confinement.

It can be difficult to identify persons or groups who are at greater risk of torture and ill-treatment, as this can vary significantly according to the national context and individual circumstances; in fact, any person could potentially be at risk. In general, however, vulnerable and marginalized groups within society face significantly higher risks of experiencing torture and ill-treatment when deprived of liberty. Furthermore, the risk of torture and other forms of ill-treatment exists within any closed facility; not only prisons and police stations but also, for example, psychiatric facilities, juvenile detention centres, immigration detention centres and transit zones in international ports—thus making the work of authorities and NHRIs working for the protection of human rights of all people, at once all the more complex and relevant. Indeed, NHRIs, including NHRIs functioning as NPMs,

have a particularly relevant role to play in monitoring places of detention and in safeguard the rights of persons deprived of liberty to be free from torture and other ill-treatment at all times.

A Special Focus Prevention

Alongside the traditional obligations of States to respect, protect, and fulfill human rights, the prohibition of torture and other ill-treatment also entails the positive obligation to prevent such acts in all their forms. Accordingly, States are required to take **positive measures to prevent** their occurrence, as outlined in Articles 2.1 and 16 of the United Nations Convention against Torture (UNCAT).^{xi}

NHRIs are particularly well-equipped to assist States in all aspects of their development and implementation of comprehensive strategies for torture prevention, which require an integrated approach to combat the risks and practice of mistreatment domestically, focusing on:

- Solid legal and policy frameworks that prohibit torture and CIDT In line with international standards;
- Effective implementation of these frameworks by means of concerted and concrete efforts, including in respect of tackling the the root causes of prohibited treatment, ensuring access to justice and reparations, preventing impunity, and pursuing deterrence, as appropriate;
- And dedicated and continuing monitoring and evaluation efforts.

In furtherance of this obligation, the Convention's Optional Protocol (OPCAT) sets out a mechanism to assist States parties to meet these obligations by establishing a system of regular visits to places of detention by independent international and national bodies. The OPCAT, which was adopted in 2002 and entered into force in 2006, does not establish new normative standards. Instead, it reinforces the specific obligations for prevention of torture in articles 2 and 16 of the Convention by establishing a system of regular visits to places of detention by international and national bodies. Significantly, Article 18 of OPCAT calls on States to give due to consideration to the Paris Principles when establishing their national preventive mechanisms (NPM) for these purposes.

It is in this context that many NHRIs have come to serve as national preventative mechanisms (NPMs) under the OPCAT, with specific mandates and responsibilities focused on combating and preventing torture and other ill-treatment.^{xii} Indeed, most States that have established their NPMs to date have opted to designate their already-existed NHRIs as NPMs.^{xiii} In cases where NPMs are designated outside the framework of existing NHRIs, close collaboration between the NPMs and the NHRIs is nevertheless required. Accordingly, the work of NPMs, and in particular as regards their functioning as part of and/or complementarily with NHRIs, will retain a special focus throughout the deliberations of this conference.

I. The Key Role of National Human Rights Institution

The primary responsibility to combat and prevent torture and other ill-treatment rests with States, which as outlined above, have a clear duty to take all measures necessary to ensure the right of all persons to be free from torture and other forms of ill-treatment, and to mitigate the risks and prevent the occurrence of such prohibited practices. As core elements of States' national human rights protection system, National Human Rights Institutions (NHRIs), play a particularly crucial role in ensuring that the State uphold these obligations, in guiding and assisting States in guaranteeing and ensuring these obligations to all people in practice, and in holding them accountable for lack

of progress in their implementation. Indeed, research conducted across 153 countries over a period of 26 years (1981-2007) indicates that in countries that have ratified the Convention against Torture, the presence of an NHRI substantively decreases the chances the State will be an egregious offender.^{xiv}

The unique status and role of NHRIs in linking international and domestic human rights systems

Due to their singular status as independent institutions of the State with a broad human rights promotion and protection mandate and functions under the Paris Principles, NHRIs are vital cornerstones of national human rights protection systems. Accordingly, empowered, credible, and properly established NHRIs are strategically positioned to apply their unique mandate and functions to tackle the practice and risks of torture and other ill-treatment in their jurisdictions. More specifically, NHRIs are ideally placed to actively engage and cooperate with all relevant national actors in the fight against torture, as well as with international organizations and bodies that promote and protect human rights, such as United Nations and regional mechanisms, and platforms such as GANHRI. Indeed, NHRIs are especially well-equipped to play an essential role in linking the international and domestic human rights systems.

Broad mandates that practically and effectively link-up with the diverse aspects of “anti-torture” work

It is also instructive that fundamental work of combating and preventing torture and other ill-treatment is also one that will provide NHRIs an opportunity to engage the majority of their broad mandates under the Paris Principles—ranging from investigating and handling complaints, monitoring and reporting, to advising, training, and conducting human rights education and awareness, *inter alia*—in a strategic and cross-cutting manner, to address one of the main human rights challenges of our times.

Lastly, it is also significant that the nature of work to combat and prevent torture and other ill-treatment—including, in particular, the risks of cruel, inhuman, and degrading treatment and punishment, which may not amount to torture but that nevertheless remain equally prohibited under international law—is often of such a multifaceted nature in practice, as to productively engage diverse aspects NHRIs’ equally broad mandates and areas of work—ranging, for instance, from more traditional criminal justice and penitentiary systems domains, to newer areas of work involving the functioning of care institutions and human rights challenges faced by persons in situations of vulnerability in domestic and/or community spheres, as noted above.

The practical efforts and actions that NHRIs can undertake to protect all persons from torture and other ill-treatment, to mitigate risks, and to ensure adequate protection from such practices, will rest at the heart of this conference. Accordingly, [the proceedings / conference deliberations] will feature a specific primary focus on the main concrete areas of work and avenues for action available to NHRIs operating on the ground. The conference will result in the development of an outcome Declaration, which will outline the key outcomes, priorities, and areas for follow-up and future collaboration, relevant to the topic under discussion.

As precedent, the 2008 Nairobi Declaration, adopted during GANHRI’s 9th International Conference, which addressed the role of NHRIs in the administration of justice, and encourages their active involvement in torture prevention [by, in particular, advocating for NHRIs to:

- *encourage their Governments to ratify the UNCAT and the OPCAT and to consider their designation as NPMs (if the necessary powers and resources are made available to them);*
- *strengthen the correctional system and its personnel, including by protecting detainees for torture and CIDT*
- *strengthen the correctional system and its personnel, including by means of training correctional staff on the prohibition of torture and interviewing and investigatory techniques, inter alia; and*
- *advocate for strengthening of laws to improve the judicial or criminal law system, including by enacting anti-torture laws, where none exist^{xv}.*

Furthermore, it is important to note that the themes of combating and preventing torture and other ill-treatment have often also featured as important components [even if not expressly/in minute detail] of other past GANHRI International Conferences and areas of focus. This was the case, for instance, for the 13th International Conference and subsequently Marrakesh Declaration which dealt extensively with the critical challenges faced by human rights defenders around the world, including in respect of cases of intimidation, threats, and reprisals against defenders (including NHRI members and staff), which can and often do meet the threshold of torture or other ill-treatment.^{xvi}

NHRIs AND ANTI-TORTURE WORK IN PRACTICE: SUB-THEMES IN FOCUS

This section provides a non-exhaustive list of specific areas of focus and functions, or sub-themes, that are relevant in practice to the anti-torture work of NHRIs. These and additional topics, as identified in collaboration with NHRIs and other relevant partners, will serve as the basis for an open, meaningful, and practical exchange during the forthcoming International Conference, and lay ground for the ongoing strengthening of NHRIs' work and collaboration on the ground.

Promoting ratification of international and regional treaties and instruments, encouraging the enactment of relevant legislation, and pursuing legal and procedural reforms

A country's legal framework—including international treaties, regional instruments, and domestic legislation—provides the foundation for any effective strategy to combat and prevent torture. NHRIs have a particularly important role to play in promoting the ratification of relevant international human rights treaties. If a State has not ratified these core treaties, such as the UN Convention against Torture (UNCAT) and its Optional Protocol (OPCAT), NHRIs can develop and pursue a strategy to promote ratification. This can include making a formal recommendation to the Government to ratify certain treaties, actively advocating governmental and parliamentary representatives and building public awareness on the issue.

NHRIs also typically have a strong advisory mandate that allows them to review existing legislation, propose amendments or recommend new legislation to support the criminalization of torture in line with international law. Additionally, NHRIs can further advocate for the development, adoption, and review or revision of procedural and other relevant reforms, such as detention procedures, that are in line with international norms and provide effective safeguards for persons who are deprived of their liberty, or who otherwise come into contact with law enforcement and may face risks of torture or other ill-treatment.

In doing so, it is critical that NHRIs focus on the details of the relevant international legal standards, and their precise and effective domestication (covering, for instance, a comprehensive definition of “torture” and CIDT in domestic legislation; ensuring that torture is a specific criminal offense carrying appropriate penalties; and giving legislative effects to other relevant provisions, like the non-refoulement principle and/or the inadmissibility of evidence obtained by torture principle).

In conflict and post-conflict situations, NHRIs can also play key advisory and preventive roles, for instance by taking measures to identify early signs of possible conflict and steps to prevent conflict, including through addressing human rights violations, and by objectively and impartially assessing the human rights situation and advising on the respect, promotion and protection of human rights and humanitarian law, with a view to effectuating preventive measures.

Accordingly, the Conference will feature exchanges on, and examine good practices in respect of NHRIs’ roles in lobbying for the ratification of international anti-torture treaties like the UNCAT and the OPCAT, and in advising and assisting Governments in reconciling and implementing effective national legislation in support of torture prevention in line with international obligations.

Training, awareness-raising, and education

Although States have a duty to prevent torture, it is often not applied in practice and there is commonly a lack of understanding about the concept of torture, including its legal definitions and interpretations. As such, NHRIs have a particularly critical role to play in facilitating trainings with authorities/officials, and conducting awareness-raising and education campaigns, to support the effective implementation of anti-torture laws, policies, and strategies, in their jurisdictions. More specifically, NHRIs can play a key role by contributing to and/or conducting training programs for relevant public officials, and specifically for the different authorities and actors involved in implementing the state’s anti-torture legal framework, and notably within the criminal justice system—such as law enforcement officials, judges and detaining authorities—in respect of both the relevant normative frameworks and the development and implementation of operational practices that respect these norms.

NHRIs also have a critical role to play in promoting community and national-level awareness of, and respect for, all human rights. Given their core mandate in this respect, NHRIs are ideally placed to initiate public education programmes that promote awareness of the prohibition of torture and build community support for the prevention of torture. Conducting public education programmes and awareness-raising campaigns, including in partnership with other relevant actors like civil society and community leaders, are furthermore critical important because they can influence stakeholders and decision makers and contribute to community-wide attitudinal change. Furthermore, NHRIs should also place a special emphasis on raising awareness amongst populations particularly at-risk of experience prohibited behavior, including persons in detention, and persons belonging to marginalized groups or otherwise in situations of vulnerability. Additionally, because torture or other ill-treatment almost often occur out of public view, bringing such practices out of the shadows, including by engaging the media and other relevant groups, can be key to bringing about changes to laws, policies and practices.

Likewise, NHRIs can make crucial contributions in terms of promoting human rights education, training, and awareness-raising in the context of armed conflicts, including by promoting knowledge of and compliance with relevant instruments like the Copenhagen Process Principles and Guidelines—applicable to international military operations in the context of non-international armed conflicts and peace operations, and in accordance with the Kyiv Declaration on the role of NHRIs in conflict and post-conflict situations.^{xvii}

The crucial role that NHRIs can play in fighting and preventing torture and other ill-treatment by exercising their basic functions in respect of training, education, and awareness-raising, will demand focused attention and discussion throughout the Conference, which will provide a vital opportunity to share experiences, exchange lessons, and collectively identify good practices.

Investigations and complaints

Investigating and documenting complaints and allegations of torture is critical in any strategy to prevent torture, and one in which NHRIs are particularly well-equipped to play a crucial part, in light of their extensive mandates to investigate human rights abuses committed under their national jurisdictions. Because torture and other ill-treatment typically take place in the “dark”, and continue to be starkly underreported, NHRIs have a particularly significant role to play in documenting, collecting, and preserving evidence of such practices, which can crucially inform investigations, including criminal investigations, by other relevant national authorities.

Investigations into allegations of torture or other ill-treatment should be compliant with Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) standards, which will require the services of appropriately qualified, trained, and skilled and—vitaly—-independent forensic medical personnel. With Istanbul Protocol compliant methods of documentation and investigation, NHRIs play a crucial role in preserving evidence in cases of torture or other ill-treatment, and in building a record that has the potential to give voice to victims and to result in effective prosecutions and even the provision of redress for victims—even in instances when such outcomes may take place a long time after the prohibited treatment has taken place, or long after the physical evidence of torture (if any), may have faded, or supplementary evidence of torture may have otherwise disappeared. The work of documenting, collecting, and preserving such information is particularly important in contexts where the authorities may be, at least for the time being, unable or unwilling to conduct effective investigations themselves.

Investigations conducted by NHRIs also play a key role in the pursuit of Universal Jurisdiction in some cases, in line with obligations under the Convention against Torture, which obliges State Parties to either extradite or bring to justice any person present in any territory under their jurisdiction who is alleged to have committed torture, by submitting the case to its competent authorities for the purpose of prosecution.^{xviii} The exercise of universal jurisdiction is particularly important given the reality that torturers often attempt to escape justice by fleeing abroad, and in cases where those administering a given State’s criminal justice system may be unable or unwilling to initiate investigations and prosecutions. Likewise, in situations of international armed conflict, State Parties to the Geneva Conventions are required to exercise universal criminal jurisdiction over grave breaches of the conventions, including acts of torture or inhuman treatment.^{xix}

Additionally, it is important to ensure that NHRI members and staff are adequately trained in relevant, trauma-informed and gender-sensitive investigative and interviewing methods, as well as in methods that are responsive to the needs of persons in various situations of vulnerability; and to ensure that information and evidence collected is properly recorded, stored, and preserved. When investigative allegations of human rights violations including torture and other ill-treatment, including in contexts of armed conflict, it is important for investigators to be trained in the various relevant international standards and guidelines, such as the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, and the Esperanza Protocol for the Effective Investigation of Threats against Human Rights Defenders, and the Guidelines for Investigative Conflict-Related Sexual and Gender-based Violence against Women and Boys, among others.

NHRIs should also look to make use of the array of kinds of evidence available in any given case, including for instance complaints, testimonies and statements, medical records, photographic and other visual evidence, affidavits, information and responses collected from the authorities, among others. Furthermore, NHRIs are particularly well-placed to collect evidence directly from places of detention, including during official visits to places of detention. They can furthermore look to gather corroborating information, relevant to individual cases, when undertaking visits in response to specific allegations of mistreatment (such as for instance verifying the description of physical locations, or cross-checking data with data found in registers and/or otherwise available on-site or from personnel in the facility in question).

Lastly, NHRIs should also keep reports of torture and ill-treatment from other sources (including for instance decisions in relevant court cases, reports prepared by non-governmental organizations and by international and regional mechanisms and bodies, as well as media reports of torture). These and other aspects of NHRIs relevant work in the critical area of investigations and complaints (which must necessarily be conducted in a safe, responsive, and victim-centered manner that pays particular attention to individuals' particular situations of vulnerability), will also feature as a key part of Conference proceedings, which will feature a special focus on specific challenges that NHRIs may face in these areas, including in respect of specific training and capacity needs.

Cooperation with International and Regional Mechanisms

As noted, NHRIs play a key role linking the domestic and international human rights systems. Their engagement with international human rights bodies and mechanisms is moreover a key requirement under the Paris Principles. More specifically, NHRIs can for instance crucially contribute to the effective work of international and regional mechanisms, such as UN Treaty Bodies (TBs), for instance by providing alternative reliable sources of information and by monitoring the implementation of their recommendations. Indeed, NHRIs are well-placed to play a multitude of roles in their cooperation with such bodies, including for instance by way of reporting on situations on the ground; following-up on recommendations at the local level; monitoring and advising States on the implementation of recommendations; undertaking educational and awareness-raising activities, and engaging with relevant constituencies and stakeholders. As regards combating and preventing torture and other ill-treatment, NHRIs should strive in particular to cooperate closely—but not exclusively—with the UN Committee against Torture (UNCAT), both in its regular reporting procedure and its individual complaints procedure.

In cooperating with UNCAT and other relevant Treaty Bodies, whether for instance the Human Rights Committee (HRC), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC), or the Committee on the Rights of Persons with Disabilities (CRPD), NHRIs should strive to both contribute information for inclusion in States' regular reports to the mechanisms, and to submit their own alternative, or shadow reports, for the Committees' consideration. If a State has accepted a Treaty's individual complaints procedure, NHRIs can also raise public awareness about this provision, to assist with the submission of individual complaints. More generally, NHRIs can play a key role in helping to disseminate information about the relevant work of Treaty Bodies, including for instance in terms of reports and individual decisions, and to follow-up on and support Governments in their implementation.

NHRIs can also fruitfully cooperate with a host of other international and regional human rights mechanisms, including for instance the Human Rights Council's Universal Periodic Review process and its Special Procedures thematic mandates, such as that of the Special Rapporteur on Torture; relevant regional bodies like the Council of Europe's Committee for the Prevention of Torture; and special mechanisms overseen by regional human rights bodies, like the Special Rapporteur on Prisons, Conditions of Detention, and Policing in Africa, under the African Commission on Human and Peoples' Rights; and international humanitarian bodies like the International Committee of the Red Cross, among others.

Furthermore, in situations of armed conflict, NHRIs can play a particular important role in monitoring the human rights situation on the ground and documenting and responding to violations (regardless of which party to the conflict has allegedly committed these), and reporting these to international, regional, and other national human rights mechanisms, in line with the 2015 Kyiv Declaration.

International and regional cooperation among NHRIs through the GANHRI platform

GANHRI is one of the largest human rights networks worldwide. Together with our four regional networks and strategic partners, we work to unite, promote and strengthen NHRIs to operate in line with the Paris Principles and provide leadership in the promotion and protection of all human rights.

By coming together under the auspices of GANHRI, NHRIs learn from each other, engage in debates, exchange experiences and lessons, and identify together how they can, individually and collectively, best apply their unique mandates and functions to address human rights issues in each context – globally, regionally and nationally.

The conference will provide a platform for NHRIs to share their experiences and best practices in the fight against torture and ill-treatment, and to discuss ways in which they can collaborate and work together to achieve their shared goals, individually and as a collective voice, through GANHRI, including for instance through the development of an Outcome Declaration that will serve as a roadmap for future action in the fight against torture and other ill-treatment, as elaborated upon below.

Monitoring places of deprivation of liberty

Monitoring functions are essential to the work of NHRIs, including for instance in respect of investigations, reporting, complaints handling, and advisory functions. Monitoring places of

deprivation of liberty is, in particular, an essential part of NHRIs' activities and strategies for combating and preventing the occurrence and risks of torture and other ill-treatment in their jurisdictions.

As a part of their anti-torture strategies, NHRIs can take up a proactive role, for instance by establishing programmes of regular preventive visits, with a global focus, to places of deprivation of liberty. Conducting regular visits to all prisons and pre-trial detention facilities in a country, in order to assess conditions of detention against relevant national and international human rights standards for the treatment of prisoners and detainees, is a good practice in this respect. NHRIs conducting such visits are likewise well-advised to undertake complementary activities in support of this work, for instance by undertraining trainings on detention monitoring for members and staff, and by developing guidelines on detention monitoring in order to standardize inspection procedures and ensure compliance with the highest international human rights standards, such as the Nelson Mandela Rules and, where relevant, with the most up-to-date International Humanitarian Law standards, procedures, and practices, for instance as undertaken by the ICRC.

Because torture and other ill-treatment can occur in many different settings outside of more traditional facilities within a state's criminal justice systems—such as prisons, police stations, pretrial detention facilities, and juvenile detention facilities, for instance—it is essential that NHRIs conduct monitoring in broader and diverse types of facilities, where people may be deprived of their liberty or otherwise involuntarily or voluntarily housed, including for instance orphanages, care homes for the elderly, psychiatric institutions, and immigration facilities, among others. Ensuring regular attention to such institutions is critical to ensuring that persons in situations of vulnerability and persons belonging to marginalized groups, who face the most severe risks of being subjected to torture and other ill-treatment, are adequately protected from such practices. In this respect, NHRIs must ensure that members and staff conducting such visits are adequately trained, and include persons with relevant expertise to the type of facilities visited, and the situations of persons therein, more specifically (e.g. social workers, varieties of medical professionals, lawyers, or NGO representatives, *inter alia*).

It is imperative that NHRIs engaging in monitoring places of deprivation of liberty follow basic principles and established monitoring methodologies that are in line with the highest standards of international law and good practices, so as to ensure utmost independence and effectiveness in undertaking of these duties. As such they should, *inter alia*, adhere to the "do-no-harm" principle; ensure respect for both persons deprived of liberty and authorities, and for issues related to the facility's security, and to confidentiality; and should always aspire to the highest standards of objectivity, credibility, and consistency, in their functions and undertakings. Furthermore, it is imperative that NHRIs thoroughly examine all aspects of detention—ranging from the legal and administrative measures applicable to the facility in question and the nature of the detention regime, to the living conditions and the organization and management of detainees and personnel, as well as the relationship between these, therein—as interdependent, during *in situ* monitoring visits. According to best practices, it is important to ensure that monitors have access to all facilities within a place of deprivation of liberty, to all necessary records and information, and to all persons deprived of their liberty therein; as well as the liberty to choose persons for interviews, and to conduct interviews in private.^{xx}

NHRIs and NPMs

Many NHRIs serve as national preventative mechanisms (NPM) under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) with specific mandates and responsibilities. As noted above, NPMs have specific mandates and responsibilities focused on combating and preventing torture and other ill-treatment. While OPCAT does not prescribe that NPMs take a specific form, each State party shall maintain, designate or establish one or several preventive mechanisms for the prevention of torture at the domestic level.^{xxi} , Many States have chosen to designate the NHRIs as NPMs. Designating NHRIs as NPMs can have specific advantages, given the fact that NHRIs' existing mandates often feature attributes, expertise, methodology and infrastructure beneficial to fulfilling relevant NPM mandates.

In such cases, NHRIs have a special responsibility to ensure that the designated NPMs in their jurisdiction are both functionally and financially independent, well-resourced and well-staffed, and effective in undertaking their duties under the OPCAT—including for instance, but not limited to, those of conducting regular unannounced visits to any places where persons are or may be deprived of their liberty; presenting observations on draft or existing legislation relevant to combating and preventing torture; reporting on their activities, and undertaking appropriate educational, training, and awareness-raising activities.

Given the particular relevance of this sub-theme to the fulfillment of all persons' rights to be free from torture and other ill-treatment, this conference will feature a special focus on the role of NHRIs as NPMs throughout, as well as on the various pertinent aspects of NHRI-NPM cooperation and coordination.

Reporting and Cross-Cutting Thematic Undertakings

NHRIs are also unique in their mandates to undertake initiatives and inquiries of a cross-cutting nature, including in respect of particular human rights challenges, like issue of torture and other ill-treatment. Such undertakings can and have in certain instances proven to be highly effective and valuable thanks to their capacity to mobilize diverse national actors towards cross-cutting actions, in pursuit and support of more holistic responses and solutions to the specific challenge in question. For instance, such cross-cutting and diverse actions could be pursued by NHRIs as part of strategic dedicated inquiries into the issue of torture and other CIDT, and prospectively comprise of diverse actions ranging from review of relevant legislation, analysis of root causes for mistreatment, scrutiny of law enforcement practices, interviews with relevant authorities, collection of victim testimonies, detention monitoring visits, and the receipt of complaints and pursuit of investigations.

The function of reporting is one of particular importance to, and across the, varied array of NHRI mandates and activities. While monitoring and reporting the domestic human rights situation generally is of course one of the key roles of all NHRIs under the Paris Principles, reporting on issues of torture and CIDT more specifically forms a key component of this duty. As such, NHRIs should not only streamline reporting on issues of torture and CIDT within their regular reporting, but should also undertake specific thematic and visit-related (e.g., in re: visits to places to places of deprivation of liberty), on these issues. Thematic, annual, visit, internal, and other reports by NHRIs should consistently account for this issue. Reporting by NHRIs is key at both the national level across domestic constituencies ranging from public officials to the general public, and at the international level, and notably before international human rights mechanisms and other bodies.

In situations of armed conflict, NHRIs can play a particularly important role in carrying out systemic communications with authorities so as to provide information and recommendations on the promotion and protection of human rights in accordance with both international humanitarian and international human rights law standards; and in taking cross-cutting measures to overcome the consequences of conflict in society, including crucially by addressing past violations by contributing to the fight against impunity and promoting access to justice for victims, including through effective investigations and reparations.

Special focus on persons in situations of vulnerability and on victims and their families

As mentioned throughout this concept note, persons in situations of vulnerability demand particular attention from human rights protection mechanisms and institutions like NHRIs, so as to ensure that they are able to enjoy their human rights on an equal basis with others. Thanks to their broad mandates, NHRIs are ideally placed to safeguard the rights of persons in situations of vulnerability.^{xxii} Additionally, NHRIs are particularly well-equipped to address multiple and intersectional forms of discrimination, and the heightened risks of violence, and particularly of torture and CIDT, faced by persons facing such aggravated risks.

NHRIs can also have a special role in ensuring that victims of torture and other ill-treatment are provided with full and effective reparation, including restitution compensation, rehabilitation, satisfaction and guarantees of non-repetition, in line with the Committee's authoritative interpretations of UNCAT Article 3. As outlined above, NHRIs have the potential to meaningfully address the situation and fulfill the rights of victims and their families, in line international human rights law,^{xxiii} including by, for instance: conducting awareness-raising campaign and education to ensure that victims and their families are aware of, and have access to meaningful ways to effectively exercise their rights to complain and to have their cases thoroughly, promptly, and impartially investigated and, ultimately, to obtain adequate redress, compensation and rehabilitation; advocating for contributing to the passage of appropriate and international law-compliant legislation; and providing other measures of support to victims and their families, such as for instance conducting public hearings and/or inquiries in appropriate cases. As emphasized above, it is critical that NHRIs' functions continue to be pluralistic in all respects, and particularly in terms of addressing the diverse needs of persons experiencing varied situations of vulnerability.

Special focus on contributing to the realization of the SDGs

Strong and well-resourced NHRIs, independent institutions established by law to promote and protect human rights, advise governments, and hold them to account, are crucial actors of the institutional architecture to realize the SDGs, in particular SDG 16 on Peace, Justice and Strong Institutions. As outlined in the Mérida Declaration,^{xxiv} NHRIs can apply their unique mandate and functions under the Paris Principles to support the implementation of the 2030 Agenda and the realization of human rights.

In respect of the obligations to combat and prevent torture and other forms of ill-treatment, which are critical to promoting and perpetuating peaceful and inclusive societies at all levels in line with the SDGs, NHRIs continue to have critical roles in advising national and local governments; raising awareness and promoting dialogue and participation amongst different types of stakeholders domestically, bridging national and the international human rights systems and objectives;

monitoring and reporting on the status quo and progress; and holding authorities accountable and providing access to justice, including by investigating violations of human rights.

OBJECTIVES

The overall objective will be to explore the roles of NHRIs and NPMs in combating and preventing the risks of torture and other ill-treatment in their respective jurisdictions, as well as in respect of cooperation at the regional and international levels, with a particular view to all of the practical and effective ways in which NHRIs can work to employ their broad mandates and extensive protective and promotion functions under the Paris Principles, to uphold the rights of all persons to human dignity and to freedom from torture and other ill-treatment.

The methodology by which objectives are achieved will include experience and knowledge sharing, including of good practices and challenges, and will feature input from NHRIs from all regions, UN experts, regional organizations, CSOs undertaking relevant work, grassroots activists and HRDs, and others. The discussions will take into account the relevant political, economic, social, and any other factors that contribute to or influence domestic contexts and efforts in this regard, including with a view to identifying and addressing the root-causes of torture and CIDT in diverse jurisdictions, and with the ultimate goal of meaningful tackling and redressing such challenges and the incidence of prohibited behavior.

More specifically the Conference objectives will be to:

- Further the understanding of the challenges faced with regards to combating and preventing risks of torture and other ill-treatment in practice, including in respect of root causes.
- Discuss and explore the role that NHRIs and NPMs can and should play in reducing and eliminating the risks and incidence of such prohibited treatment (including, practically, with regards to legislative and procedural frameworks; strategic; and monitoring practices, *inter alia*).
- Identify good practices and challenges, with a particular view to tackling root causes, and to addressing instances of torture and CIDT in non-traditional settings (alongside the traditional focus on monitoring work and places of detention).
- Explore how States, GANHRI and regional networks, UN and regional agencies and mechanisms, civil society, and others, and work together and in effective and complementary ways, to protect all persons from risks of, and eliminate the scourge of torture and other ill-treatment for all people.
- Produce an Outcome Declaration to serve as a roadmap for NHRIs' ongoing individual and collective efforts and strategies to combat and prevent the scourges of torture and other ill-treatment, and to uphold the human dignity of all persons.

ⁱ No treaty, nor any customary norm can overrule the absolute prohibition of torture and of all forms of ill-treatment.

ⁱⁱ Torture and other ill-treatment constitute a grave breach of the Geneva Conventions of 1949, a violation of their Common Article 3 (applicable to conflicts not of an international character) as well as of the two Additional Protocols of 1977, and of customary international humanitarian law. Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, 2 volumes, Volume I. Rules, Volume II. Practice (2 Parts), Cambridge University Press, 2005, and likewise the ICRC Customary IHL database.

ⁱⁱⁱ See report of the Special Rapporteur on Torture, UN General Assembly (A/70/303), 7 August 2015, available at: <https://www.refworld.org/pdfid/55f292224.pdf>, paras 14-16; 65. State actions giving rise to extraterritorial jurisdiction can include cross-border military operations, the occupation of foreign territories, anti-migration and anti-piracy operations, peacekeeping, covert operations in foreign territories, detaining persons abroad, extraditions, and the exercise of de facto control or influence over non-State actors operating in foreign territories.

^{iv} For instance, in 2014 Amnesty International reported that it received reports of torture and other ill-treatment in 141 countries, from all regions of the world, over the prior five years. In its 2014 annual report, it documented torture and other ill-treatment as occurring in 82% of the countries it covered, and called the continued prevalence of torture a “global crisis” (See Amnesty International: <https://www.amnesty.org/en/what-we-do/torture/>; <https://www.amnesty.org/en/latest/news/2015/06/torture-around-the-world/>). Indeed, as further elaborated by Human Rights Watch, the reality on the ground paints a very different picture than implied by the absolute legal prohibition and the near-universal ratification of the Convention against Torture. More specifically, “[w]hile the ban on torture has reduced the incidence of torture and related abuse, it is still practiced in many places. Torture is hard to root out in part because governments typically carry it out in secret, behind closed doors, away from public scrutiny” (HRW: <https://www.hrw.org/legacy/campaigns/torture/world.htm>).

^v OHCHR Press Release: <https://www.ohchr.org/en/stories/2020/06/covid-19-exacerbates-risk-ill-treatment-and-torture-worldwide-un-experts>

^{vi} UNCAT Article 1: ‘Torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

^{vii} Juan E. Mendez and Andra Nicolescu, *Evolving Standards for Torture in International Law*, in *Torture and Its Definition In International Law: An Interdisciplinary Approach*, Oxford University Press (2017)

^{viii} See, e.g.: <https://ganhri.org/working-group-business-and-human-rights/#:~:text=In%202010%2C%20the%20Edinburgh%20Declaration,international%2C%20regional%20and%20national%20level>.

^{ix} In this vein, as elaborated by the ECHR “[c]ertain acts which were classified in the past as ‘inhuman and degrading treatment’ as opposed to ‘torture’ could be classified differently in the future;” and “the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies. *Selmouni v France*, no. 25803/94, ECHR 1999-V, judgement of 28 July 1999.

^x UN Committee against Torture, 1997, General Comment no. 2, paragraph 22: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>.

^{xi} According to article 2.1, “[e]ach State Party shall take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction”, while article 16 requires that “[e]ach State Party shall undertake to prevent (...) other acts of cruel, inhuman or degrading treatment or punishment.”

^{xii} See APT, NHRIs as NPMs: <https://www.apt.ch/en/resources/publications/national-human-rights-institutions-npms-opportunities-and-challenges-2013>; <https://www.apt.ch/en/knowledge-hub/npm-toolkit/npm-models/designation-npm>; See OHCHR page on NPMs: <https://www.ohchr.org/en/treaty-bodies/spt/national-preventive-mechanisms>

^{xiii} See APT, NPM Toolkit, National Human Rights Institutions, available at: <https://www.apt.ch/en/knowledge-hub/npm-toolkit/npm-models/national-human-rights-institutions>

^{xiv} *Journal of Human Rights*, National Human Rights Institutions: Domestic Implementation of International Human Rights Law, by Ryan M. Welch.

^{xv} Cite, GANHRI, The Nairobi Declaration: <https://ganhri.org/wp-content/uploads/2020/09/NairobiDeclarationEn.pdf>

^{xvi} Cite, GANHRI, The Marrakesh Declaration: https://ganhri.org/wp-content/uploads/2019/11/Marrakech-Declaration_ENG_-12102018-FINAL.pdf

^{xvii} See GANHRI, The Kyiv Declaration on the role of NHRIs in conflict and post-conflict situations, available at: <https://ganhri.org/resources/the-kyiv-declaration-on-the-role-of-national-human-rights-institutions-in-conflict-and-post-conflict-situations/>; ENNHRI, Guide on the Role of NHRIs in (Post-)Conflict Situations (September 2020), available at: <https://ennhri.org/wp-content/uploads/2020/10/Guide-on-the-Role-of-NHRIs-in-Post-Conflict-Situations.pdf>

^{xviii} See articles 5 and 7 of the UN Convention against Torture.

^{xix} See Article 50 of First Geneva Convention; Article 51 of Second Geneva Convention; Article 130 of Third Geneva Convention; and Article 147 of Fourth Geneva Convention.

^{xx} See e.g. APT detention monitoring guide: <https://www.apt.ch/sites/default/files/publications/monitoring-guide-en.pdf>

^{xxi} OPCAT article 17.

^{xxii} Including for instance women, LGBTIQ+ persons, children, persons with disabilities, older persons, persons belonging to minority groups (ethnic, religious, cultural, linguistic, or other), indigenous persons, Human Rights Defenders, migrants and migrants workers, refugees, asylum-seekers and stateless persons, foreign nationals, economically disadvantaged, or otherwise marginalized persons.

^{xxiii} *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*—General Assembly resolution 60/147 of 16 December 2005

^{xxiv} GANHRI, Merida Declaration, available at <https://ganhri.org/wp-content/uploads/2020/01/Merida-Declaration-FINAL.pdf>.