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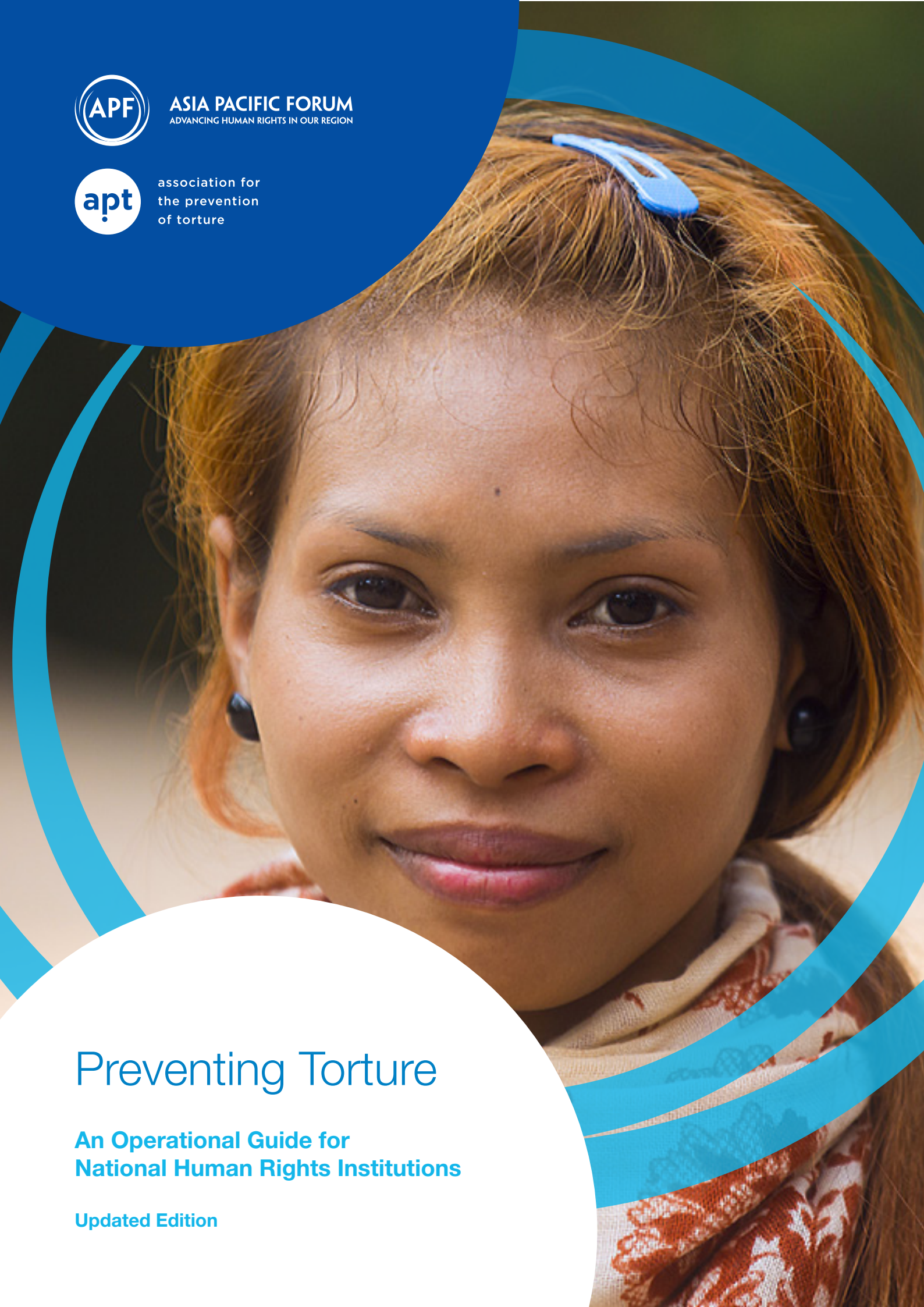
association for
the prevention
of torture



Preventing Torture

An Operational Guide for National Human Rights Institutions

Updated Edition

Contents

Foreword

This Guide is the outcome of cooperation between the Asia Pacific Forum of National Human Rights Institutions (APF) and the Association for the Prevention of Torture (APT).

Torture is a grievous violation of human rights that cannot be justified under any circumstances. Its prohibition is enshrined in the Universal Declaration of Human Rights, which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The United Nations Convention against Torture also contains important provisions on the prohibition of torture, with its Optional Protocol reinforcing the obligation to prevent torture by establishing a system of regular visits to places of detention by international and national bodies.

Yet while torture is prohibited under international law, its practice continues across the world. Combatting torture therefore requires the involvement of a broad range of stakeholders, including National Human Rights Institutions (NHRIs). As national institutions with a mandate to protect and promote human rights, NHRIs are uniquely placed to take concrete steps to prevent torture in their countries. The aim of this publication is to support and strengthen the work of NHRIs to undertake this important work.

Since the first edition of the Guide was published in 2010, there have been a number of important developments in torture prevention, including those relating to NHRIs. One example is the UN Human Rights Council's 2018 resolution on NHRIs, which reaffirms the role of NHRIs in preventing torture and other human rights abuses, encouraging them to take actions such as promoting the ratification of international human rights treaties, advocating for legal and policy reforms, and delivering education and training on torture prevention. This Guide has been updated to include these latest developments.

This publication also has been updated to incorporate the gender dimensions of torture prevention. It is vital for NHRIs and other national, regional and international actors to integrate gender into their torture prevention work. This includes considering the intersectionality of identities that compound many of the risk factors associated with torture and ill-treatment.

We hope that this Guide will provide a valuable overview of the key concepts in torture prevention and is a practical tool for NHRIs as they plan and undertake torture prevention activities, ensuring that such violations of human rights and affronts to human dignity can no longer take place.

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Acknowledgements

Preventing Torture: An Operational Guide for National Human Rights Institutions – Updated Edition is a joint publication of the Association for the Prevention of Torture (APT) and the Asia Pacific Forum of National Human Rights Institutions (APF). The original 2010 guide was a joint publication between the APF, APT and the United Nations Office of the High Commissioner for Human Rights (OHCHR).

The 2010 Guide was written by Barbara Bernath. It adapts and builds on information included in the *Torture Prevention* CD-Rom, produced as part of the APT-OHCHR Actors for Change Project (2005). The APT and APF would like to thank Francesca Albanese, Citlalin Castañeda, Kieren Fitzpatrick, Kate Fox, James Iliffe, Ahmed Motala, Suraina Pasha, Chris Sidoti, Safir Syed and Lisa Thompson for their contributions.

The Guide was reviewed in June 2021 to ensure that it integrates gender considerations, and it reflects the most updated developments on torture prevention, as part of an APF initiative to ensure gender is adequately considered in all its resources. The project was managed by Aishath Fasoha, Manager for Gender Programmes of the APF. The Guide was reviewed by Veronica Filippeschi, Vulnerabilities and Policy Senior Adviser at the APT and consultant Jem Stevens with contribution from Barbara Bernath, Secretary General of the APT.

List of abbreviations

ACJ	Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions
APF	Asia Pacific Forum of National Human Rights Institutions
APT	Association for the Prevention of Torture
CAT	United Nations Committee against Torture
CEDAW	United Nations Committee on the Elimination of Discrimination against Women
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
GANHRI	Global Alliance of National Human Rights Institutions
IACHR	Inter-American Commission on Human Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NGO	Non-governmental organization
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism under the Optional Protocol to the Convention against Torture
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SPT	United Nations Subcommittee on Prevention of Torture
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
UPR	Universal Periodic Review
WHO	World Health Organization

Introduction for users

The Asia Pacific Forum of National Human Rights Institutions (APF) and the Association for the Prevention of Torture (APT) are pleased to present the updated edition of the 2010 *Preventing Torture: An Operational Guide for National Human Rights Institutions.* This revised edition integrates gender considerations and developments related to torture prevention.

This Guide aims to support and strengthen the work of national human rights institutions (NHRIs) – whether they are human rights commissions or ombudsman offices – in the prevention of torture, especially NHRIs that are fully compliant with the Paris Principles.[1]

While NHRIs that do not fully comply with the Paris Principles can still play an important role in the prevention of torture, fully compliant NHRIs are more able to engage in this preventive work with legitimacy, credibility and, therefore, with greater effectiveness.[2]

Rationale

NHRIs are a vital part of strong national human rights protection systems and play a key role in linking the international and domestic human rights systems. Their mandate means that they can engage with all relevant actors at the national level, as well as interact with international mechanisms, in order to contribute to the prevention of torture.

Although NHRIs have broad mandates which require them to protect and promote all human rights for all persons, there are strong arguments for NHRIs to devote special attention to the prevention of torture.

Torture is one of the most horrendous violations of a person's human rights. It is an attack on the very essence of a person's dignity. Family members and relatives of the victims are also directly affected as they may experience psychological trauma from the act of torture inflicted to their beloved ones. Torture also has a harmful impact on the society at large, as it corrupts the States that use it, degrades the legal system that accepts it and undermines the trust in State institutions. Such a practice has no place in a society that preserves human dignity and respects the rule of law and human rights.

However, while there is an absolute prohibition on torture under international law, it continues to be widely practiced in all parts of the world. Combating torture therefore requires the active involvement of many actors, including NHRIs.

A focus on prevention can present both challenges and opportunities for NHRIs. Most NHRIs operate predominantly as "reactive" bodies that respond to complaints brought to them by individuals or organizations, rather than initiating investigations or other preventive actions. While moving from this reactive focus can be challenging, it is important to note that NHRIs do have a mandate to undertake preventive actions, such as promoting legal reform, running training programmes and raising public awareness. Placing greater emphasis on torture prevention therefore offers NHRIs the opportunity to strike a balance between the different aspects of their mandate and to engage in preventive actions in a more strategic way.

1 Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134 of 20 December 1993).

2 As of May 2021, there are 117 NHRIs worldwide that are members of the Global Alliance of National Human Rights Institutions (GANHRI); 84 of which are accredited as being fully in compliance with the Paris Principles. Compliance is assessed through a peer-based accreditation process carried out by GANHRI, through the Sub-Committee on Accreditation (SCA), under the auspices of OHCHR. NHRIs that are deemed to fully comply with the Paris Principles are accredited with "A status" and enjoy special standing at the international level, in recognition of their legitimacy and effectiveness.

Monitoring places of detention is an area where NHRIs may experience the most difficulty in balancing their traditional protective mandate with a preventive approach. This might be particularly challenging for NHRIs that have been designated as the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The system of regular, unannounced, preventive visits established under the Optional Protocol obviously differs significantly in its objectives, scope and methodology from investigative visits carried out by NHRIs to document and respond to individual complaints. However, the Optional Protocol includes certain guarantees and powers that can help resolve this challenge. When an NHRI has been designated as a national preventive mechanism under the Optional Protocol, its role and functions as NPM are also assessed by the GANHRI Sub-Committee on Accreditation (SCA) as part of the Paris Principles accreditation process.

In recent years, a greater focus has been placed on the important role of NHRIs in preventing human rights violations, in addition to their crucial role in promoting and protecting human rights and fundamental freedoms.

The Nairobi Declaration, adopted during the Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights in October 2008, addresses the role of NHRIs in the administration of justice and encourages their involvement in torture prevention. Indeed, several provisions of the Nairobi Declaration are directly relevant for torture prevention, such as providing training for law enforcement and correctional staff; conducting unannounced visits to police stations and places of detention; reviewing standards and procedures; and promoting ratification of the Convention against Torture and its Optional Protocol. The annual review of the implementation of Nairobi Declaration during GANHRI meetings provides an additional motivation for NHRIs to be more actively involved in the prevention of torture.

Subsequent declarations adopted during GANHRI international conferences also include provisions that are relevant for torture prevention. In the Marrakech Declaration, adopted in October 2018, NHRIs committed to monitor places of detention including through preventive visits. Furthermore, the Amman Declaration and Plan of Action, adopted in November 2012, addresses the role of NHRIs in promoting gender equality, including by preventing all forms of gender-based violence in places of detention, through trainings, inquiries, law and policy reform, and promotion of the implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). The annual review of the implementation of the declarations adopted during GANHRI meetings provide an additional motivation for NHRIs to be more actively involved in the prevention of torture.

The UN Human Rights Council, in its 2018 resolution on NHRIs,[3] reaffirmed, among others, the key role of NHRIs in contributing to the prevention of human rights violations and abuses and encouraged them to continue undertaking a number of actions that are also relevant for torture prevention, including promotion of ratification and implementation of international human rights treaties, promotion of legal, policy and procedural reforms, training, education, public awareness and advocacy.

3 UN Human Rights Council, Resolution 39/17, National Human Rights Institutions, UN Doc. A/HRC/RES/39/17, 8 October 2018.

Objectives and content

The Guide is designed to be a practical toolkit to support NHRIs as they plan and undertake concrete activities to prevent torture in their country. The guide begins by explaining the concept of torture prevention and highlights the importance of engaging in a global, integrated strategy to prevent torture.

The Guide is divided into two key parts. The first section provides the legal context for the prevention of torture, including the definition of torture and the relevant international and regional instruments that prohibit torture. The second section outlines the practical steps that NHRIs can undertake to prevent torture. Examples of good practices from different NHRIs have been included to illustrate effective ways of putting torture prevention strategies into action. Each chapter includes key questions, the legal basis for the involvement of NHRIs, discussion of the major issues and options for further reading.

Gender considerations are mainstreamed throughout the Guide.

Introduction:

The concept of torture prevention and its application

KEY QUESTIONS

- Do States have an obligation to prevent torture?
- How is the prevention of torture defined?
- What are the key elements of an effective torture prevention strategy?
- How can NHRIs contribute to the prevention of torture?
- How can NHRIs integrate gender in their torture prevention work?

Introduction: A duty to prevent

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" states article 5 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948.

The prohibition of torture and other forms of ill-treatment has a special status in the international protection of human rights. It is included in a number of international and regional treaties and also forms part of customary international law, binding all States.

The prohibition of torture is absolute and can never be justified in any circumstance. This prohibition is non-derogable, which means that a State is not permitted to temporarily limit the prohibition on torture under any circumstance whatsoever, whether a state of war, internal political instability or any other public emergency. Further, the prohibition of torture is also recognized as a peremptory norm of international law, or *jus cogens*. In other words, it overrides any inconsistent provision in another treaty or customary law.

Considering the particular importance placed on the prohibition of torture, the traditional obligations of States **to respect, to protect and to fulfil** human rights is complemented by a further **obligation to prevent torture** and other forms of ill-treatment.[4] States are required **to take positive measures to prevent its occurrence.**[5] "In the case of torture, the requirement that States expeditiously institute national implementing measures is an integral part of the international obligation to prohibit this practice."[6]

The United Nations Convention against Torture also places an explicit obligation on States parties to prevent torture and other forms of ill-treatment. 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." Its Optional Protocol

4 Human Rights Committee, General comment No.31 para.17

5 In the case of *Velasquez Rodriguez,* the Inter-American Court of Human Rights recognized that as a consequence of this obligation, "the States must prevent, investigate and punish any violation of the rights recognized by the Convention" (para. 166); *Velasquez Rodriguez* case (29 July 1988); Inter-Am.Ct.H.R. (Ser.C.) No. 4 (1988). In its general comment No.20, the Human Rights Committee "notes that it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States Parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture (…)" (para. 8).

6 International Criminal Tribunal for the former Yugoslavia; *Prosecutor v. Furundzija* (10 December 1998); Case No. IT-95-17/I-T (para. 149).

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.

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 prevention. In 2016, the academic research 'Does torture prevention work"[7] showed that prevention strategies are effective in reducing torture. Covering a period of 30 years (1984-2014) and 16 countries,[8] the research applied a combination of quantitative and qualitative methods analysing the correlation, in law and practice, between the incidence of torture and a set of 66 preventive measures. It shows that detention safeguards, prosecution and unannounced visits to places of detention are the most effective means. Country chapters also highlight the important role of NHRIs in preventing torture.

This introduction defines torture prevention, outlines an integrated strategy to prevent torture and describes the preventive role that NHRIs can play.

1. What does "torture prevention" mean?

This section proposes first a definition of 'prevention of torture', and then analyses those factors contributing to increasing the risks of torture.

1.1. Defining "prevention of torture"

According to the Chambers Dictionary, "to prevent" means "to stop (someone from doing something, or something from happening), to hinder, to stop the occurrence of, to make impossible, to avert."

In public health, prevention is a common strategy in the fight against diseases, aimed at avoiding the emergence, development and spread of epidemics.

Crime prevention "comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society by intervening to influence their multiple causes."[9]

These definitions, while instructive, are insufficient to properly define the concept of prevention in relation to torture and other forms of ill-treatment.

At a time where many interventions in the fight against torture are described as "prevention", it is important to distinguish between two different forms of torture prevention. This distinction is based on when the intervention occurs and the approach that is employed.

Direct prevention (mitigation) aims to **prevent torture and other forms of ill-treatment from occurring** by reducing the risk factors and eliminating possible causes. This intervention happens before torture and ill-treatment take place and aims to address the root causes that can lead to torture and ill-treatment, through training, education and regular monitoring of places of detention. Direct prevention is forward-looking and, over the long term, aims to create an environment where torture and ill-treatment are not likely to occur.[10]

Indirect prevention (deterrence/non-recurrence) takes place once cases of torture or ill-treatment have already occurred and is focused on **avoiding the repetition of such acts.** Through investigation and documentation of past cases, denunciation, litigation, prosecution and sanction of the perpetrators, as well as reparation for victims, indirect prevention aims to convince potential torturers that the "costs" of torturing are greater than any possible "benefits".

7 Richard Carver and Lisa Handley, *Does Torture Prevention Work?,* Liverpool University Press, 2016.

8 Argentina, Chile, Ethiopia, Georgia, Hungary, India, Indonesia, Israel, Kyrgyzstan, Norway, Peru, Philippines; South Africa, Tunisia, Turkey, United Kingdom.

9 United Nations Guidelines for the Prevention of Crime, Economic and Social Council resolution 2002/13, para. 3.

10 In the medical field, this is called "primary prevention" (i.e. all the measures taken to reduce the risk of occurrence of a disease).

It is important to bear this distinction in mind as these two approaches employ very distinct strategies and methodologies. They are, however, complementary and both should form part of an integrated strategy to prevent torture. This distinction between direct and indirect prevention has also been used internationally to define prevention of human rights violations more generally.[11]

An effective preventive strategy requires a certain level of political will to combat torture, which is publicly stated and able to be monitored. Prevention initiatives in an environment where torture is systematically used to silence political opposition have to be carefully examined and weighed against the risk of being instrumentalised.

It is important to stress that no State is immune from the risk of torture and ill-treatment. As a result, there is always a need to be vigilant and to develop and implement effective preventive strategies.

1.2. Analysing the risk factors

Direct prevention of torture aims at reducing the risks of torture by addressing root causes. It is therefore essential to begin with a thorough identification and analysis of risk factors (those conditions that increase the possibility of torture occurring). These risks factors can be found at different levels.

1.2.1 Risks related to the overall environments

The general **political environment** is an important factor to consider, as a lack of political will to prohibit torture, a lack of openness of governance, a lack of respect for the rule of law, high levels of corruption and impunity, counter-terrorism measures, and militarisation or privatisation of detention and security can all increase the risk of torture.

The same is true for the **social and cultural environment.** Where there is a culture of violence, a public acceptance of torture or high public support to "get tough" on crime, the risk of torture occurring is also increased.

The overall **institutional environment** should also be included in the analysis. The level of accountability and transparency of the authorities, the existence of public policies regarding crime prevention and the effectiveness of complaints mechanisms are factors that can reduce the risk of torture, along with effective independent external actors, such as NHRIs and civil society organizations.

The organization and functioning of the **criminal justice system**, in particular, is an important factor to consider. The level of independence of the judiciary, as well as the level of reliance on confessions in the criminal justice system, will have a direct influence on the risk of torture. As the risk of torture is higher during the initial period of detention, particular attention should be paid to law enforcement authorities. In this regard, the institutional culture, the role and functioning of the police and recruitment and training processes for officers can all positively or negatively influence the risk of torture.

The national **legal framework** should also be analysed. In countries where torture is prohibited in the Constitution and in law, as well as being a specific offence under the criminal code, the risk of torture might be lower than in countries where this is not the case. The analysis should also focus on the rules and regulations that apply to places where persons are deprived of their liberty, as well as the existence of appropriate legal safeguards. In addition, the way in which the legal framework is implemented in practice should be closely analysed.

1.2.3 Places, moments and practices of heightened risks

Any situation where persons are deprived of their liberty and when there is an imbalance of power, in which one person is totally dependent on another, constitutes a situation of risk.[12] The risk of torture

11 Human Rights Council, A/HRC/30/20, 16 July 2015, para. 8-10.

12 See the concept of "powerlessness" developed by the Special Rapporteur on Torture (E/CN.4/2006/6, paras. 39 and 40). Article 10.1 of the International Covenant on Civil and Political Rights establishes a link between the rights to liberty and personal integrity and states that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

and other forms of ill-treatment exists within any **closed place;** not only prisons and police stations but also, for example, psychiatric facilities, juvenile detention centres, immigration detention centres, transit zones in international ports, social care homes, quarantine centres, unofficial secret places and overseas/offshore detention or even homes for elderly.

The risk of being tortured or ill-treated is higher at certain **moments** during the period of a person's detention, such as the initial period of arrest, apprehension, stop and search, police questioning and custody, as well as during transfer from one place of detention to another and forced deportation. Other situations such as public demonstrations or enforcement of special measures such as state of emergencies or curfews, can also increase the risk of torture or ill-treatment.

Specific **practices** also condone or increase the risk of torture or ill-treatment, in particular incommunicado detention or solitary confinement, disciplinary sanctions, reprisals, use of restraints, involuntary placement, capital punishment, body searches, corporal punishment and the use of force to police assemblies.

1.2.4 Persons in situations of vulnerability facing heightened risks

Any person deprived of liberty is in a situation of vulnerability. It can therefore be difficult to identify persons or groups who are at greater risk of torture and ill-treatment. This can also vary significantly according to the national context. In general, however, certain persons commonly face a higher risk of torture and ill-treatment due to factors such as their gender, age, gender identity or expression, sexual orientation, migration status, nationality, economic status, disability and drug use.

An effective preventive strategy therefore requires a careful analysis of the risk factors that reinforce a person's vulnerability to torture and ill-treatment, as well as their interplay and the way all these factors intersect for each person in their unique circumstances.

For example, women in detention face a high risk of ill-treatment and torture and are exposed to gender-based violence. Such violence is directed against a woman because she is a woman and it affects women disproportionately. Women from indigenous or ethnic minority groups, women with disabilities, lesbian and trans women are often proportionally overrepresented in detention and face additional challenges and risks of abuse and discrimination once deprived of liberty.

1.3 Holistic approach to torture prevention

Torture prevention, to be effective, requires a holistic approach. It seeks to address the root causes of torture by engaging in a meaningful and sustained dialogue with a wide range of authorities in order to achieve the desired changes, rather than through denunciation or public condemnation. It is forward-looking and often aims at changing laws and practices over time with mid-term or long-term goals based on concrete solutions that mitigate the risks of torture.

Torture prevention requires a combination of interrelated interventions at three different levels in order to create an environment where torture and ill-treatment are less likely to occur:

- a legal framework that prohibits torture
- effective implementation of this legal framework
- mechanisms to monitor the legal framework and its implementation.

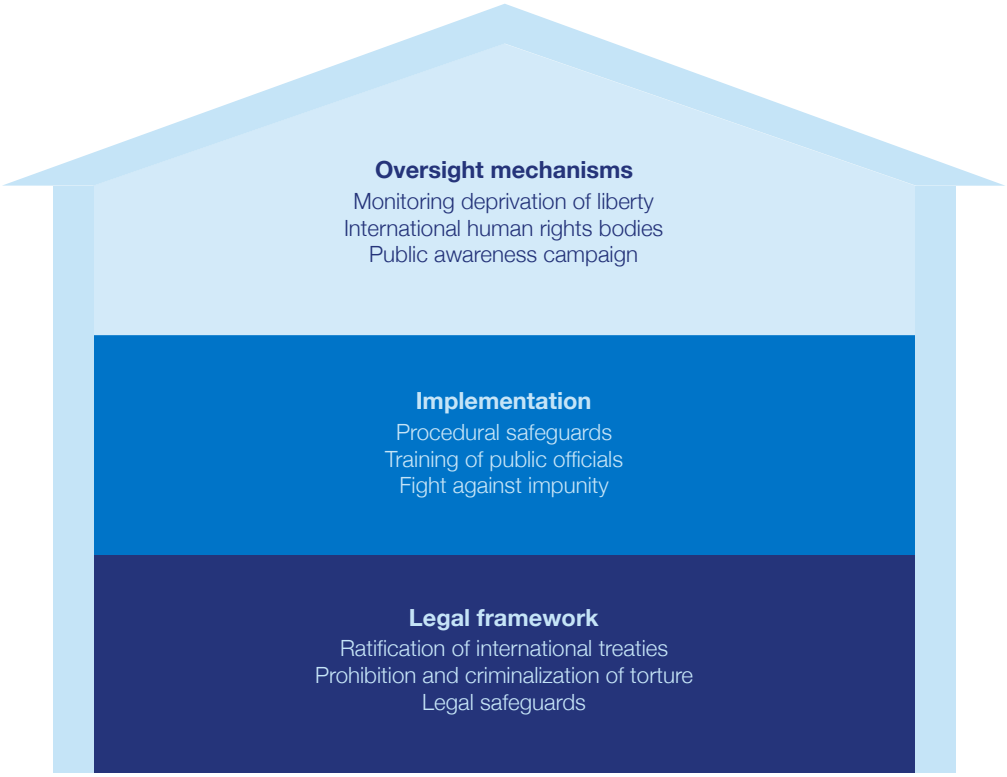
The fight against torture has, for a long time, focused on the first two elements of this strategy, in particular the enactment of laws and litigation of cases. An effective legal framework is an essential part of any strategy to combat torture. However, as reaffirmed by the independent research on torture prevention, the mere existence of laws and regulations is not sufficient to prevent torture; they also need to be properly understood and complemented by concrete measures to ensure they are rigorously applied.

A significant emphasis has also been placed on ending impunity (exemption from punishment for a criminal act) through the use of national and international criminal law. This line of action is an

important indirect prevention strategy that must be complemented by other approaches to effectively address the root causes of torture.

This is why an integrated torture prevention strategy requires a third element, which is focused on direct prevention and employing non-confrontational and non-judicial oversight mechanisms. These mechanisms can include, for example, regular and unannounced monitoring of places of detention by independent bodies and public education campaigns to build community awareness and support for the prevention of torture and ill-treatment.

This integrated preventive strategy can be depicted in the form of a house, where the legal framework forms the foundation, implementation of the framework creates the walls, and the oversight mechanisms provide the protective roof.



1.3.1 Existence of a comprehensive legal framework

A strong legal framework to prohibit and prevent torture and ill-treatment is a critical component of any torture prevention strategy. The legal framework should reflect relevant international human rights standards and include specific provisions to prohibit and prevent torture, including detention safeguards.

States can draw on the international legal framework by:

- ratifying relevant international human rights treaties
- integrating international human rights treaties into national law

- respecting soft law[13] in relation to the prohibition of torture and deprivation of liberty.

At the domestic level, States should adopt explicit legislative provisions that:

- prohibit any act of torture and stipulate that no exceptional circumstance may be invoked to justify torture (possibly at the Constitutional level)
- make acts of torture, wherever in the world they are committed, a specific offence under criminal law
- include appropriate penalties to punish the crime of torture
- stipulate that an order from a superior may not be invoked to justify torture
- make inadmissible in legal proceedings evidence that is gathered through the use of torture.

In addition, legal safeguards for persons deprived of their liberty should be provided in law from the outset of detention, in particular:

- the right to have family members or a third party informed of their whereabouts following their arrest
- the right to have access to a lawyer and to have the lawyer present during interrogation
- the right to have access to an independent medical doctor, possibly of own choosing
- the right to remain silent
- the right to be brought before a magistrate or judge within a reasonable period of time
- the right to challenge the legality of their detention and treatment
- the right to be informed of these rights in language that is understandable to them.

1.3.2 Implementation of the legal framework

Effective implementation requires practical measures to be taken on a range of levels to ensure that national laws and regulations regarding torture and ill-treatment are respected in practice.

Training and education

The different actors involved in implementing the legal framework, and in particular those within the criminal justice system (such as law enforcement officials, judges and detaining authorities), will require proper training – both initial and ongoing – regarding the normative framework and the development of operational practices that respect these norms.

In addition to training, the overall institutional culture is also key for the implementation of the legal framework in practice, especially for law enforcement. This includes, for example, profile and recruitment, military culture and equipment, leadership messages.

Procedural safeguards

Procedural safeguards should be put in place and operate as intended, in particular for persons deprived of their liberty. This could include, for example, standard operating procedures to ensure access to a lawyer from the outset of custody, video recording of police questioning, the existence and maintenance of registers in places of detention or a regular review of police codes of conducts.

13 "Soft law" is a term used to refer to documents which are not binding at international law (i.e. whose status is less than that of a treaty concluded under the 1969 Vienna Convention on the Law of Treaties).

Investigation and prosecution

Allegations of torture must be promptly, impartially and effectively investigated,[14] even in the absence of a formal complaint, and "the investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might be involved."[15]

Any breach of the law must be appropriately sanctioned. When this does not occur, a culture of impunity develops which can undermine both the force of the law and its implementation.

Taking action to tackle impunity is even more important in relation to torture and ill-treatment, as it is absolutely prohibited under all circumstances.

The following actions should be taken:

- strengthening the independence of the judiciary
- establishing effective and accessible complaints mechanisms
- ensuring access to free legal aid and legal assistance
- promptly and effectively investigating allegations of torture or ill-treatment
- ensuring those who breach the law are prosecuted and sanctioned.

Redress for victims

Victims of torture and ill-treatment should be provided with full and effective remedy (procedural part) and reparation (substantive part), including restitution, compensation, rehabilitation, satisfaction and a guarantee of non-repetition.[16]

Financial compensation should be provided for economically assessable damages. Satisfaction can include a variety of measures, such as an official declaration to restore the dignity of the victim, a public apology or a commemoration and tribute to victims.

1.3.3 Oversight mechanisms

In addition to an effective legal framework and its implementation, there is also a need to establish oversight mechanisms, as the risk of torture and ill-treatment is present in all countries at all times. Oversight mechanisms can check both the existence and compliance of the domestic legal framework as well as its implementation. In addition, they help identify areas of potential risk and propose possible safeguards. Internal administrative oversight mechanisms which are set up within an institution – such as police inspection services or prison inspection services – help monitor the functioning of State institutions and their respect for legislative norms and regulations. While very useful, internal oversight mechanisms are, by themselves, insufficient for this preventive work as they lack independence and have a more administrative monitoring function.

In addition to internal oversight mechanisms, it is essential to set up independent mechanisms to visit places of detention. The mere fact that independent bodies can enter places of detention, at any time, has a strong deterrent effect. The objective of these visits is not to document cases of torture or denounce the situation or the authorities. Instead, the aim is to analyse the overall functioning of places of detention and provide constructive recommendations aimed at improving the treatment and conditions of persons deprived of liberty.

The international human rights system also provides an important oversight mechanism, with relevant treaty bodies as well as special procedures able to review and make recommendations regarding the State's legal framework and its implementation.

14 See Article 12 of the UN Convention against Torture and the Nelson Mandela Rules (Rules 57 and 71).

15 See Blanco Abad v. Spain, Committee against Torture, Communication 59/1996, views adopted on 14 May 1998.

16 See CAT General Comment *No. 3 on the right to redress* (2012); 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 International Humanitarian Law (General Assembly resolution 60/147 of 16 December 2005).

Finally, the media and civil society organizations can contribute to an effective system of checks and balances to prevent and prohibit torture. Responsible media reporting, public education campaigns and targeted awareness-raising initiatives can build greater knowledge and understanding of the issues, influence public opinion and help change the attitudes of stakeholders and decision makers. Civil society organisations play a fundamental oversight role, by monitoring state policies and practices, including through visits to places of detention.

2. The relevance of torture prevention to NHRIs

NHRIs are usually ideally placed to contribute at each level of an integrated strategy to prevent torture and ill-treatment in their country.

NHRIs can contribute to the development of an effective legal framework by:

- encouraging the State to ratify relevant international human rights treaties
- advocating for legal reforms to make torture a criminal offence and to prevent its use by public officials.

NHRIs play a key role in bridging the gap between law and practice. They can contribute to implementation of the legal framework by:

- reviewing detention procedures
- investigating allegations of torture
- contributing to training programmes for relevant public officials.

NHRIs can contribute to, and act as, control mechanisms by:

- cooperating with international bodies
- monitoring places of detention
- promoting public awareness.

3. Integrating gender in torture prevention work

It is important for NHRIs to adopt a gender-sensitive and intersectional approach in their torture prevention work. NHRIs can do this through gender mainstreaming and specialised action.

Gender mainstreaming can be defined as a "process to assess gender implications across all activities of an organisation followed by action taken to achieve gender equality and ensure gender inequality is not perpetuated. Its goal is to achieve gender equality; equal rights, responsibilities and opportunities for people of all genders".[17]

Achieving equality often means treating people differently and gender mainstreaming therefore necessitates addressing the experiences, risks and responses for women, men and gender diverse people in different ways. When their distinct circumstances and needs are overlooked, there is a risk of perpetuating inequalities.

Specialised action refers to targeted activities NHRIs can undertake to prevent gender-specific forms of torture and other ill-treatment. This involves prioritising and addressing violations rooted in often deeply embedded societal discrimination around gender, gender identity and expression.

It should be remembered that "gender" refers to socially constructed roles of, and power relations among women, men and gender diverse people. The meaning of gender varies across societies and over time, but it often results in hierarchical relationships and patriarchal norms and power structures.

17 Asia Pacific Forum of National Human Rights Institutions, *Monitoring, Evaluation, Accountability and Learning (MEAL): A Guide for National Human Rights Institutions in the Asia Pacific, 2021*

In addition, NHRIs should take full consideration of the intersectionality of identities and the different levels and areas of disadvantage that women, girls and lesbian, gay, bisexual, transgender and intersex (LGBTI) persons can face due to their characteristics of race, ethnicity, disability, age, class, caste, sexual orientation, gender identity or sex characteristics, or as a result of being an indigenous person, a refugee or migrant or other status.

It is important that NHRI teams working to prevent torture have the knowledge and skills to address gender issues in the different dimensions of their work.

By integrating gender in their torture prevention work, NHRIs can strengthen this work while better contributing to gender equality in a number of ways:

- making visible forms of gender-based torture and other ill-treatment which may otherwise be overlooked or go unrecognised, for example domestic violence, the denial of abortion or forced gender identity and sexual orientation "conversion therapies" which amount to torture or other ill-treatment
- understanding and responding to the different impact of human rights situations on different people, for example, the different pathways into, experiences and impact of detention on women, men and gender diverse people
- analysing and addressing the specific risks of torture and ill-treatment and the particular protection needs of women, girls and LGBTI persons
- revealing and addressing the entrenched discrimination and harmful gender stereotypes contributing to torture and other ill-treatment
- making the experiences of women, girls and LGBTI persons more visible, not just as victims but as unique individuals with agency
- ensuring operationally that torture prevention activities avoid perpetuating harmful stereotypes and discrimination and promote gender equality in their methodologies.

KEY POINTS: INTRODUCTION

- States have an obligation to prevent torture.
- There is an important distinction between direct prevention (measures taken before torture occurs to stop it from happening) and indirect prevention (measures taken after torture has occurred to avoid its repetition).
- Preventing torture begins with an analysis of risks factors. It also requires a holistic approach involving interventions at three levels: a strong legal framework, effective implementation of the legal framework and oversight mechanisms to monitor and support the legal framework and its implementation.
- NHRIs should integrate gender in their torture prevention work through gender mainstreaming and specialised action.

FURTHER READING

UN SPT, The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. CAT/OP/12/6, 30 December 2010.

Richard Carver and Lisa Handley, *Does Torture Prevention Work?,* Liverpool University Press, 2016.

APT, *Yes, Torture Prevention Works: Insights from a global research study on 30 years of torture prevention* (2016)

Committee against Torture, *General comment No. 3: Implementation of article 14 by States parties*, CAT/C/GC/3, 12 December 2012.
Committee against Torture, *General comment No. 2, Implementation of article 2 by States Parties*, CAT/C/GC/2, 24 January 2008.

Part I:
Prohibition of torture: the legal background

Chapter 1:
What is torture?

KEY QUESTIONS

- What is the definition of torture?
- Can torture be justified in exceptional cases?
- Is cruel, inhuman or degrading treatment or punishment also prohibited?
- What is a gender-sensitive and intersectional approach to torture and ill-treatment?

1. Definition of torture

It is important to stress at the outset that the legal definition of torture differs quite significantly from the way the term is commonly used in the media or in general conversation, which often emphasizes the intensity of pain and suffering inflicted.

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides the internationally agreed legal definition of torture:

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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

This definition contains three cumulative elements:

- the intentional infliction of severe mental or physical suffering
- by a public official, who is directly or indirectly involved
- for a specific purpose.

In some cases, a broader definition of torture, covering a wider range of situations, may apply under another international, regional or national law. When a broader definition applies, the Convention's definition cannot be used to narrow it. Its articles 1.2 and 16.2 specifically provide that its provisions are without prejudice to provisions contained in any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment. For instance, the definition of torture in the Inter-American Convention to Prevent and Punish Torture goes further by not requiring the pain or suffering to be "severe"; by referring to "any other purpose" rather than just "such purpose as"; and by including the reference to methods "intended to obliterate the personality of the victim

or diminish his physical or mental capacities", irrespective of whether such methods cause pain or suffering.

A gender-sensitive approach to torture

It is important to note that many international torture prevention mechanisms stress the importance of using a gender-sensitive and intersectional lens in any examination of torture and ill-treatment. This means considering the unique experiences of women, girls, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, their intersecting identities and the impact of entrenched societal discrimination and gender stereotypes when addressing torture.

Patriarchal norms, discriminatory laws and systematic impunity are some of the deep-rooted factors contributing to women and LGBTI persons being at risk of torture. Offences that are aimed at or that solely and disproportionately affect women, girls and persons on the basis of their perceived or actual sexual orientation or gender identity[18] perpetuate prejudice and risks of harm. Patterns of violence are often accepted by communities and marginalisation prevents women and other groups from accessing justice.

As well as in detention contexts, women and girls can be at particular risk of torture and ill-treatment in healthcare settings - especially involving reproductive rights - and in the private sphere in communities and homes. Particular attention should be paid to forms of gender-based violence[19] and abuse, including rape and sexual violence, violence against pregnant women, human trafficking, domestic violence, forced/denial of abortion, forced sterilisation and harmful practices such as female genital mutilation and honour-based violence, which can amount to torture under the Convention.[20]

It is also worth noting that "with the consent or acquiescence of a public official or other person acting in an official capacity" has been interpreted[21] to mean that privately inflicted harm against women, children or groups may be covered under the definition if severe pain or suffering is caused and if the State fails to act with due diligence to prevent or protect individuals, since it would be committed for a discriminatory purpose.

Furthermore, UN mechanisms have emphasised that "the purpose and intent elements of the definition of torture are always fulfilled if an act is gender-specific or perpetrated against persons on the basis of their sex, gender identity, real or perceived sexual orientation or non-adherence to social norms around gender and sexuality".[22]

The Convention's definition of torture specifically includes the principle of non-discrimination and prohibits acts carried out for "any reason based on discrimination of any kind". The discriminatory use of mental or physical violence or abuse is thus "an important factor in determining whether an act constitutes torture".[23]

18 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council (5 January 2016) (A/HRC/31/57), para. 14.

19 "Gender-based violence" refers to harmful acts directed at an individual based on their sex or socially constructed gender roles. It includes violence that results in physical, sexual or psychological harm. See the Committee's general comment No. 2, para. 22.

20 Idem.; see also the Committee against Torture's general comment No. 4, which refers to "gender-based or sexual violence, in public or in private, gender-based persecution or genital mutilation amounting to torture" in para. 29(c); the Committee's concluding observations on Belarus (2011) in which if reaffirmed the absolute prohibition of sexual violence as a form of torture (CAT/C/BLR/CO/4); Committee's decision in Mrs. A v. Bosnia and Herzegovina, Communication No. 854/2017, views of 22 August 2019 (CAT/C/67/D/854/2017) general recommendation 35, para. 16.

21 See Committee against Torture's general comment No. 2 (para.18).

22 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council (5 January 2016) (A/HRC/31/57), para. 8; see also CEDAW Committee, general recommendation 35, para. 16.

23 See Committee against Torture, general comment No. 2 on the Implementation of article 2 by States parties (2008), para. 20.

The "due diligence obligation" requires states to prevent, investigate, prosecute and punish acts of torture and ill-treatment, wherever there are reasonable grounds to believe such acts are being committed by private actors. Where they fail in this obligation, states can bear responsibility as authors, for consenting to or acquiescing to torture and ill-treatment. This includes an obligation to prevent and protect victims from gender-based violence. "When states are aware of a pattern of violence or the targeting of specific groups by non-state actors, their due diligence obligations are likewise engaged".[24]

Lawful sanctions

The definition of torture provided in the Convention explicitly excludes "pain or suffering arising only from, inherent or incidental to lawful sanctions." The lawfulness of the sanction should be determined by reference to both national and international standards, including the United Nations Standard Minimum Rules for the Treatment of Detainees (Nelson Mandela Rules). This approach recognizes both the absolute nature of the prohibition of torture and the need for consistency in its application.

The issue of corporal punishment has been raised by some States under the so-called "lawful sanctions" clause. However, this clause cannot be used to justify the use of corporal punishments under domestic law. It has been firmly established that corporal punishments are prohibited under international law, in general, and the Convention against Torture in particular.[25]

2. Absolute prohibition of torture

Some human rights can be restricted under certain circumstances (for example, for the protection of public order) if the restriction is provided for by law, is for a public interest, is necessary to protect the rights of others or the community, and is proportionate. The circumstances under which these restrictions may apply are specifically and exhaustively listed in various human rights treaties.

Some treaties also provide a special ability to derogate from certain human rights during an officially declared public emergency. Derogate means to pass laws or take actions that would ordinarily violate those rights.

Torture, however, is absolutely prohibited and can never be justified under any circumstances whatsoever. Relevant international treaties unanimously exclude the freedom from torture and ill-treatment from derogation and restriction clauses.

Customary international law, which applies to all States, including those that have not ratified relevant human rights or international humanitarian law treaties, considers the prohibition of torture to be a peremptory norm, or *jus cogens*. This means that no exception or derogation to the prohibition is permitted in any circumstance, even a state of war, the threat of war, internal political instability or public emergency. Necessity, self-defence and other defences are not accepted in any case of torture, no matter how extreme or grave the circumstances.

In addition to the legal arguments, there are also solid moral and ethical grounds for rejecting any act of torture.

Defusing attempts to justify torture

Despite the clarity in international law, some states have attempted to undermine the absolute prohibition of torture and justify its use. This was particularly marked during the so-called "war on terror". However, the obligation remains firmly in place and the Committee against Torture has absolutely rejected "any efforts by States to justify torture and ill-treatment as a means to protect public safety or avert emergencies".[26]

24 Report of the Special Rapporteur on torture op. cit., para. 11.

25 See e.g. Committee against Torture, 'Concluding Observations: Saudi Arabia' (2016) (CAT/C/SAU/CO/2), para 11.

26 CAT, General comment No. 2 op.cit. para 11.

The absolute prohibition of torture is sometimes questioned by people on the grounds of security or counter-terrorism using a hypothetical "ticking bomb" scenario. This scenario involves the police capturing a terrorist whom they suspect has placed a bomb that is about to explode in the middle of a large city. The police believe that only torture will make the suspect disclose the information needed to prevent the deaths of thousands of people. The question is posed: "May the person be tortured?"

This hypothetical situation operates by manipulating the emotional reactions of the audience and assumes that:

- there is a known threat
- the attack is imminent
- the attack will kill a large number of people
- the person in custody is the perpetrator of the attack
- the person has information that will prevent the attack
- only torturing the person will provide the information in time to prevent the attack.

In real life situations, however, one or more of these assumptions are always invalid.

The assumptions that underpin the "ticking bomb" argument can also, by extension, be used to try and justify torture in a wider range of situations. For instance, we might ask ourselves if our reaction to the "ticking bomb" scenario would be different if we were not sure whether the suspect was actually connected with the bomb plot, or whether they were in fact connected to terrorism at all; whether the suspect had any reliable information about the threat; if the threat was several days or a week away; or whether the threat was even real.

The scenario also contains some hidden assumptions that should be defused.

- The motive of the torturer is to get the necessary information, with the genuine intention of saving lives. However, even if the torturer did begin with the genuine motive of obtaining information, torture corrupts the perpetrator. This is an inherent part of the act of torture. Further, the assumption that the objective is purely to gather information is too simplistic. In real life situations other motivations and emotions, such as anger, punishment, and the exercise of power, can take over.
- It is an isolated situation, not to be repeated regularly.

However, it is part of the nature of torture that any authorization of such acts invariably leads to a slippery slope, where the use of torture becomes more widespread within the institution.[27]

Last but not least, the scenario assumes that the suspect will provide valuable information under torture. However, there is now large and growing scientific research showing that torture is ineffective in gathering accurate and reliable information and that rapport-based, non-coercive methods for interviewing are more effective for gathering information.

Following the 2016 call by the Special Rapporteur on torture in his last report to the General Assembly,[28] Principles on Effective Interviewing for Investigations and Information gathering have been drafted,[29] a process supported by several UN bodies.[30]

27 Association for the Prevention of Torture, *Defusing the Ticking Bomb Scenario: Why we must say NO to torture, always* (2007), pp. 13–16.

28 See Report of the Special Rapporteur on Torture, A/71/298, 5 August 2016.

29 Principles on Effective Interviewing for Investigations and Information Gathering", May 2021

30 See *Kyoto Declaration on advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda for Sustainable Development,* adopted on 7 March 2021; Resolution of the Human Rights Council, 23 March 2021, A/HRC/RES/46/15.

3. Other cruel, inhuman or degrading treatment

As outlined previously, for an act to be deemed torture under the Convention against Torture, it should include three cumulative elements:

- the intentional infliction of severe mental or physical suffering
- by a public official, who is directly or indirectly involved
- for a specific purpose.

This definition raises the question of how to classify and respond to acts that fall short of satisfying all three criteria. For instance, what about an act that is not inflicted "intentionally" but occurs because of negligence? What about an act that does not occur for a specific purpose? What about an act that inflicts pain or suffering not considered "severe"?

In these situations, the prohibition of other forms of cruel, inhuman or degrading treatment or punishment may apply. As with torture, this prohibition is also absolute and non-derogable.

Article 16.1 of the Convention against Torture requires that "each State Party shall undertake to prevent (…) other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

Therefore, any act that falls short of the definition of torture because it lacks one or more of the criteria may still be covered under the prohibition outlined in article 16 of the Convention against Torture.[31]

Governments and officials sometimes assume that, because these forms of cruel, inhuman or degrading treatment or punishment do not come within the definition of torture, there is some leeway in whether they may be permitted in extreme circumstances. Such assumptions are completely wrong.

Under international law, there is no leeway regarding the prohibition of all forms of cruel, inhuman or degrading treatment or punishment. International law prohibits all such treatment, in all circumstances. This is true under international human rights law and international humanitarian law, which prohibits the ill-treatment of persons deprived of their liberty everywhere and at all times.

In practice, the distinction between torture and ill-treatment is often not clear. Violence against women, girls and LGBTI persons is often regarded as ill-treatment, although it would more appropriately be identified as torture. The pain and suffering experienced by women, girls and LGBTI persons is often downplayed, due to gender-stereotypes and deep-rooted discriminatory social norms.

It is important that a gender-sensitive and intersectional lens to torture and ill-treatment "guards against" this tendency."[32] The totality of the individual's circumstances should be examined when assessing the level of pain and suffering. This includes how other intersecting factors and identities influence the way a person experiences torture, and the full impact on their physical and mental well-being, in the short and long-term.

31 See *Kostadin Nikolov Keremedchiv v. Bulgaria,* Committee against Torture, Communication 257/2004, views adopted on 11 November 2008.

32 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council (5 January 2016) (A/HRC/31/57), para. 9.

KEY POINTS: CHAPTER 1

- Article 1 of the Convention against Torture defines torture using three cumulative elements: the intentional infliction of severe mental or physical pain; with the direct or indirect involvement of a public official; for a specific purpose.
- A gender-sensitive and intersectional lens is crucial when examining torture.
- Torture is prohibited under international law and can never be justified. The prohibition on torture is absolute and non-derogable.
- Cruel, inhuman or degrading treatment or punishment is also absolutely prohibited and non-derogable.

FURTHER READING

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council (2016) (A/HRC/31/57)

Torture in International Law: A Guide to Jurisprudence; Association for the Prevention of Torture, Center for Justice and International Law; 2008

Defusing the Ticking Bomb Scenario: Why we must say NO to torture, always; Association for the Prevention of Torture; 2007

Human Rights Committee, general comment No. 20: replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7); 10 March 1992

Amnesty International (AI), Combating Torture and other Ill-Treatment: A Manual for Action (2016)

Camille Giffard and Polona Tepina,The Torture Reporting Handbook (Human Rights Centre, University of Essex; 2nd edition 2015)

Chapter 2:

International and regional instruments on torture and other forms of ill-treatment

KEY QUESTIONS

- Is the absolute prohibition of torture enshrined in international treaties?
- Which provisions of the Convention against Torture contain concrete preventive actions?
- What other international and regional treaties are relevant to the prevention of torture? What 'soft law' standards apply?

1. Prohibition of torture and other forms of ill-treatment in international treaties

There are a number of international and regional instruments that absolutely prohibit torture and ill-treatment.

1.1. Universal Declaration of Human Rights

The unequivocal prohibition on torture is included in the founding document of the international human rights system: the Universal Declaration of Human Rights.

Its article 5 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The Universal Declaration of Human Rights also says that people have the right to "an effective remedy" if their rights are violated.

The Universal Declaration of Human Rights, which sets out the basic human rights standards that apply to all States, forms part of customary international law.[33]

1.2. International Covenant on Civil and Political Rights

Article 7 of the International Covenant on Civil and Political Rights provides that no person "shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

In addition, article 10 states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

The Covenant provides that anyone claiming that their rights have been violated shall have an effective legal remedy. Further, no derogation is allowed regarding the right not to be subjected to torture and other forms of ill-treatment.

33 One of the sources of international law applicable in the International Court of Justice, according to Article 38 (1)(b) of the Statute of the Court, is "international custom, as evidence of a general practice accepted as law." The formation of customary international law requires consistent State practice and supporting *opinio juris* (i.e. a belief that the practice in question "is rendered obligatory by the existence of a rule of law requiring it"; see North Sea Cases, ICJ Rep. (1969) 44, para.77).

The Covenant establishes the Human Rights Committee, which monitors the implementation of the rights set out in the treaty. It does this by examining the reports of States parties, as well as individual communications/complaints received under the treaty's Optional Protocol. The jurisprudence, general comments and concluding observations adopted by the Human Rights Committee provide important interpretive guidance on the obligations and rights set out in the Covenant.

General comments from the Human Rights Committee that are of particular relevance to the prevention of torture include:

- General comment No. 20 on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (article 7)
- General comment No. 21 on the humane treatment of persons deprived of their liberty (article 10)
- General comment No. 35 on liberty and security of person (article 9)
- General comment No. 28 on the equality of rights between men and women (article 3)
- General comment No. 18 on non-discrimination.

The Covenant is an international treaty that binds all States that have ratified it. The high number of States parties to the Covenant indicates the overwhelming acceptance of the human rights standards that it contains.

1.3.United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the most comprehensive international treaty dealing with torture.

It contains a series of important provisions in relation to the absolute prohibition of torture and establishes the Committee against Torture to monitor the implementation of treaty obligations by States parties.

The Committee's general comments provide interpretation and specification of provisions of the Convention to assist States parties in their implementation. So far, the Committee has published general comments on three areas:

- General comment No. 2 on the obligation to prevent torture (article 2)
- General comment No. 3 on the right to redress (article 14)
- General comment No. 4 on the principle of non-refoulement in the context of individual inquiry procedure (articles 3 and 22).[34]

The Committee also examines the reports of States parties and individual complaints. The Committee's concluding observations and its views on individual communications provide an additional aid in interpreting the Convention.

1.3.1. Definition of torture

Article 1 of the Convention provides a definition of torture that contains the following three key elements:

- the intentional infliction of severe mental or physical pain or suffering
- with the direct or indirect involvement of a public official
- for a specific purpose.

34 Replaces the Committee's General comment No. 1.

This definition is considered to be limited in some respects. It confines torture to acts committed by, or in some way involving, agents of the State. Article 1 of the Convention against Torture says the act must occur "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[35]

With its focus on acts involving public officials, the Convention has been criticised for reproducing a public/private dichotomy, which privileges the male experience, as it is men who predominantly need protection from excessive state power.[36] It was feared that this definition would fail to address the forms of systematic gender-based violence and harm that women are subjected to, often in the private sphere.

However, through the Committee against Torture's guidance and jurisprudence, it has been firmly established that the Convention's definition of torture encompasses acts committed by non-state actors in private spaces. In its General comment 2, the Committee explains that states bear responsibility for torture and ill-treatment committed by private individuals, where they fail in their due diligence obligation to stop, sanction and provide remedies for such acts.

A state's "indifference or inaction provides a form of encouragement and/or de facto permission" for privately inflicted harm.

The Committee explicitly states that this principle applies to states' "failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking". The Committee has placed increasing emphasis on gender issues in ensuring implementation of the Convention, calling on states to "step up efforts" to prevent and combat different forms of sexual and gender-based violence.[37]

In addition, it should be remembered that gender intersects with other factors and identities, including race, nationality, religion, sexual orientation, age, disability, and immigrant status, meaning people experience torture in distinct ways. The torture protection and prevention framework must therefore be "interpreted against the background of the human rights norms that have developed to combat discrimination and violence against women".[38]

Overall, the fact that specific acts of torture are not itemized in the Convention is, however, one of the strengths of the treaty. A list could never fully itemize or describe every possible method of torture that may be used now or in the future.

1.3.2. Obligation to take preventive measures

According to article 2 of the Convention, each State party has an obligation to take all necessary measures to prevent acts of torture. This includes legislative, administrative and judicial measures, as well as any other measures that may be appropriate.

The Committee against Torture has highlighted that "gender is a key factor" in the prevention of torture. The obligation to prevent torture includes taking positive steps to protect women and other groups from sexual and gender-based violence.[39]

35 See *Elmi v. Australia*, Committee against Torture, Communication 120/1998 (views adopted on 14 May 1999), which relates to the definition of "public official" under article 1 of the Convention. In exceptional circumstances where State authority is wholly lacking (Somalia had no central Government at that time), acts by groups exercising quasi-judicial authority could fall within the definition of article 1.

36 Teresa Fernández-Paredes, 'The Importance of Investigating Torture Against Women and Girls by Non-State Actors: Applicable Legal Standards in International Human Rights Law' in *Gender Perspectives on Torture: Law and Practice,* Center for Human Rights & Humanitarian Law, American University Washington College of Law (2018), p. 59.

37 *Concluding observations on Senegal (2013) (CAT/C/SEN/CO/3)* para.14 (b); *Concluding observations on Guatemala (2018) (CAT/C/GTM/CO/7).*

38 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council (5 January 2016) (A/HRC/31/57), para. 9.

39 Idem. para 22.

This is a legally binding obligation and, when reporting to the Committee against Torture, States parties are required to explain what steps they have taken to implement this obligation. The Committee requests states to identify the situations where groups are at risk of gendered violations and report on measures taken to prevent them.

NHRIs can also refer to this obligation when planning and undertaking activities to prevent torture and ill-treatment of persons deprived of their liberty.

1.3.3. No justification for torture – ever

Article 2.2 of the Convention states that "no exceptional circumstances whatsoever" can justify torture. This includes war or the threat of war, political instability, combating terrorism or any other emergency.

Orders from a superior officer are also not a justification for torture. Law enforcement and detaining officials should receive training that clearly highlights their obligation to refuse such orders.

1.3.4. Non-refoulement

Article 3 of the Convention sets out the principle of non-refoulement, which requires States to not expel, return or extradite a person to another State if there are "substantial grounds" for believing that the person would be in danger of being subjected to torture.[40]

The principle of non-refoulement is an illustration of the absolute prohibition of torture and other forms of ill-treatment. It has been undermined by the practice of some States to seek diplomatic assurances when there are known risks that the person being returned may be subjected to torture or ill-treatment. This practice has been used in the context of the so-called war on terror, with the sending State seeking assurances from the receiving State that the individual in question will not be tortured or subjected to other forms of ill-treatment. This practice is considered to violate the principle of non-refoulement and is not permissible.[41]

When applying the principle of non-refoulement, states should consider whether a person has or would be subjected to violence, including "gender-based/sexual violence, in public or in private, or gender-based persecution, genital mutilation, amounting to torture" in the receiving state.[42] Patterns of widespread gender-based violence are also relevant for determining whether there are "substantial grounds" for believing that a person would be in danger of being subjected to torture.

1.3.5. Specific crime of torture

Article 4 of the Convention requires each State party to ensure that torture is included as a specific crime in their national criminal law.

Some States argue that this is unnecessary, as acts of torture would already be covered by existing offences in their criminal codes.

However, this provision is essential because:

- torture is not just a form of violent assault; it is an exercise of power over a victim that does not correspond to any other criminal offence
- defining torture as a crime underlines the specific nature and gravity of the offence
- making torture a specific offence provides a clear warning to officials that the practice is punishable, thereby providing an important deterrent

40 See Committee against Torture, general comment No. 4 on the Implementation of Article 3 of the Convention in the context of article 22, on the principle of non-refoulement.

41 See for example, Committee against Torture, concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (2013) (CAT/C/GBR/CO/5), para. 18.

42 See Committee against Torture, general comment No. 4 on the Implementation of Article 3 of the Convention in the context of article 22, para. 29(c).

- it emphasizes the need for appropriate punishment, taking into account the gravity of the offence
- enhances the ability of responsible officials to monitor the specific crime of torture.

The Committee against Torture requires that States parties use, as a minimum, the definition of torture included in article 1 of the Convention.

1.3.6. Universal jurisdiction

The Convention obliges each State party to establish its jurisdiction over the crime of torture, irrespective of whether the crime was committed outside its borders and regardless of the alleged perpetrator's nationality, country of residence or absence of any other relationship with the country (articles 5–9). If the State is unable to prosecute the offence, it is required to extradite the alleged perpetrator to a State which is able and willing to prosecute such a crime. This principle of universal jurisdiction constitutes one of the most important aspects of the Convention that is more often applied.[43]

Where torture is part of a widespread or systematic attack, or takes place in an armed conflict, those responsible for torture might also be tried by the International Criminal Court, as torture is regarded as a crime against humanity and a war crime. However, many more States have ratified the Convention against Torture, which covers all acts of torture and creates the obligation to exercise universal jurisdiction.

1.3.7. Training officials

Article 10 of the Convention requires States parties to take steps to ensure that all law enforcement personnel, medical personnel, public officials, and others involved in the deprivation of liberty receive education and information on the prohibition and prevention of torture.

The Committee against Torture has stressed that this obligation includes the need for states to provide specialised training on gender-specific issues such as sexual violence against women and on the rights of LGBTI persons.[44]

1.3.8. Review of detention procedures

Under article 11 of the Convention, States parties are required to keep under systematic review interrogation rules, instructions, methods and practices, as well as custody procedures. These should comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and other relevant international standards, e.g. the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

The new Principles on Effective Interviewing for Investigations and Information Gathering also propose guidance to policy makers on implementing Article 11 to replace interrogation, often coercive and confession driven, by rapport based interviewing.[45]

States should put in place specific measures to protect women and LGBTI persons deprived of their liberty, given their heightened risk of torture and ill-treatment and distinct needs in detention. Such rules are not considered discriminatory.

43 See the decision of the Committee against Torture dealing with the trial of Hissène Habré in Senegal (*Suleymane Guengueng and others v. Senegal,* Committee against Torture, Communication 181/2001, views adopted on 17 May 2006).

44 In its, the Committee against Torture, General comment No. 3 (para 24). See also the Committee's concluding observations, e.g. on Greece (CAT/C/GRC/CO/7).

45 Principles on Effective Interviewing for Investigations and Information Gathering, APT, May 2021

1.3.9. Prompt investigation

According to article 12 of the Convention, each State party must establish prompt and impartial investigations whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. This means that, even in the absence of a formal complaint, the relevant authorities must undertake an impartial, effective, independent and thorough investigation as soon as they receive information indicating any instance of torture or ill-treatment.

Article 12 includes an obligation for states to promptly and thoroughly investigate acts of sexual and gender-based violence by public and private actors.[46]

1.3.10. Right of victims to complain and obtain redress

The Convention provides that victims of torture have the right to complain and to have their case investigated promptly and impartially (article 13), as well as to receive full and effective redress and reparation (article 14). This includes compensation and the means for as full rehabilitation as possible.

States should also take positive measures to ensure that complaints mechanisms and investigations "take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to come forward and seek and obtain redress".[47]

This means applying gender-sensitive procedures in judicial and non-judicial proceedings in order to avoid re-victimising and stigmatising people. Reparations should be based on a full understanding of the gendered nature of harm suffered and restitution should address any structural causes of the violation, including discrimination on gender or any other grounds.

1.3.11. Inadmissible evidence

According to article 15 of the Convention, any evidence gathered as a result of torture must be deemed inadmissible in official proceedings. This provision is extremely important because, by making such statements inadmissible in court proceedings, one of the primary aims of torture becomes redundant.

1.3.12. Optional Protocol to the Convention against Torture

The Convention against Torture is complemented by an Optional Protocol, which was adopted in 2002 and entered into force in 2006. The Optional Protocol 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 (see more in chapter 10).

1.4. Other treaties

A number of other international human rights treaties contain similar prohibitions of torture and other ill-treatment.

The Convention on the Rights of the Child contains a specific provision in relation to torture and ill-treatment of children (article 37), as does the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 10), the Convention on the Rights of Persons with Disabilities (article 15), and the International Convention for the Protection of All Persons from Enforced Disappearances (articles 12 and 18).

Although there is no specific provision on torture included in the Convention on the Elimination of All Forms of Discrimination against Women, the relevant United Nations treaty body has reaffirmed the

46 Committee against Torture's recommendation in its concluding observations on Bangladesh (2019 (CAT/C/BGD/CO/1) para 39 (a); Committee's concluding observations on Poland (2019) concerning forced sterilisation (CAT/C/POL/CO/7) p.7 ; and concluding observations on Madagascar (2011) concerning human trafficking (CAT/C/MDG/CO/1) para 12.

47 See Committee against Torture, general comment No. 3 on the Implementation of Art. 14 by States Parties (2012), para. 33

right of women to be free from torture and ill-treatment. Authoritative guidance from the Committee on the Elimination of Discrimination against Women provides that gender-based violence which impairs the enjoyment of this right constitutes discrimination under the Convention.[48] The Committee has also made it clear that "States parties have a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender-based violence."[49]

International refugee law also provides an important source of international human rights law that is highly relevant to the issue of torture. The right to seek asylum in another country is one of the fundamental protections for anyone who faces the danger of persecution. There is a total prohibition on any Government returning a person to a country where they would be in danger of serious human rights violations, and torture in particular. This is the principle of non-refoulement, which is specifically mentioned in the Convention against Torture.

Although they are not strictly human rights treaties, the Geneva Conventions, which apply in times of armed conflict, also contain a clear and unambiguous prohibition of torture in their common article 3.

The Rome Statute of the International Criminal Court also explicitly provides that torture can constitute a crime against humanity and a war crime, which fall under the jurisdiction of the Court (articles 7 and 8). Article 7(2)(e) defines torture as "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions." This definition is broader than that in the Convention against Torture, as it includes acts committed by both State and non-State actors and does not require "purpose" as an objective of the torture.

2. Prohibition of torture and other ill-treatment in regional instruments

There are six general regional human rights instruments - in Europe, Africa, Arab countries, the Americas and Southeast Asia - which each contain a clear and unequivocal prohibition of torture. There are also two regional treaties – in Europe and the Americas – and thematic treaties in some regions, that deal specifically with torture.

2.1. European Treaties

The European Convention on Human Rights, adopted in 1950, is a regional treaty under the auspices of the Council of Europe. Article 3 states:

> *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

The Council of Europe has also adopted a treaty dealing specifically with torture: the European Convention for the Prevention of Torture (1987). This treaty does not create any new norms but does establish a visiting Committee (see chapter 7 for more information).

In 2011, the Council of Europe adopted the Istanbul Convention, the first binding international treaty on preventing and combating violence against women and domestic violence.

In the European Union, the Charter of Fundamental Rights of the European Union came into effect in 2009. Article 4 provides:

> *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

48 Committee on the Elimination of Discrimination against Women (CEDAW Committee), general recommendation 19 on violence against women, updated by general recommendation 35; Ingrid Abramova vs. Belarus, CEDAW Committee, Communication No. 23/2009, views adopted on 25 July 2011.

49 CEDAW Committee, general recommendation No. 28, para 19.; CEDAW Committee's general recommendation 33 on women's access to justice, paras. 48 and 51.

2.2. Treaties under the Organization of American States

The American Convention on Human Rights, adopted in 1969, is a regional treaty under the auspices of the Organization of American States. Article 5 states:

> *Every person has the right to have his physical, mental, and moral integrity respected. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.*

The Organization of American States has also adopted a specific instrument on torture: the Inter-American Convention to Prevent and Punish Torture (1985). The Convention contains the following detailed definition of torture (article 2):

> *For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.*

This definition goes further than the one contained in the Convention against Torture by not requiring the pain or suffering to be "severe"; by referring to "any other purpose" rather than "such purpose as"; and by including the reference to methods "intended to obliterate the personality of the victim or diminish his physical or mental capacities", irrespective of whether such methods cause pain or suffering.

The Convention also specifically states that any public official who carries out torture – or who orders it or fails to prevent it – is guilty of a crime and that acting under orders is no defence to the crime. The Convention provides for an absolute prohibition of torture that cannot be suspended under any circumstances.

The Inter-American Convention further requires that:

- police and other public officials are trained to prevent torture
- allegations of torture are investigated and that criminal prosecutions will occur where appropriate
- laws are passed to provide compensation for torture victims
- statements extracted under torture are not admissible as evidence in legal proceedings
- states prosecute or extradite alleged torturers.

The Convention also requires States parties to take effective measures to prevent and punish other cruel, inhuman or degrading treatment or punishment.

While the Convention does not contain a separate enforcement mechanism, the Inter-American Commission on Human Rights has an obligation to report on the practice of torture in Member States and the Inter-American Court has taken on jurisdiction of this treaty.

In addition, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) of 1999 specifically recognises the right of women not to be subject to torture (article 4).

2.3. African Charter on Human and Peoples' Rights

The African Charter, adopted by the Organization of African Unity in 1981, states:

> *Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of*

man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

African Charter on the Rights and Welfare of the Child contains provisions to protect children from torture and other ill-treatment (articles 16, 17 and 30).

2.4. Arab Charter on Human Rights

Article 8 of the Arab Charter on Human Rights, adopted by the League of Arab States on 22 May 2004 and entered into force 15 March 2008, provides that:

1. *No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.*
2. *Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.*

3. General standards

In addition to these various treaties, there are a number of general standards and professional principles that are highly relevant to the prevention of torture.

Many of these are soft law standards, which cannot be legally enforced in the same way as treaty obligations. However, they provide detailed and useful guidelines for interpreting terms such as "cruel, inhuman or degrading treatment or punishment", as well as for implementing treaty obligations.

The Committee against Torture, for example, makes reference to the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), when examining steps taken by States parties to implement article 11 of the Convention against Torture, which requires them to keep their detention procedures under review.

3.1. United Nations standards

The United Nations has developed a number of standards and guidelines related to the prevention of torture. Two key UN instruments on detention are:

- Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). These are the primary international standards on detention and cover all aspects of prison management and the treatment of prisoners, pre-trial and convicted. The Rules were first adopted in 1957 and were revised in 2015 to reflect "advances in correctional sciences and best practices. Rule 1 is particularly important as it unequivocally *prohibits any form of torture or ill-treatment* of persons deprived of their liberty. The revised rules also include other new basic principles such as dignity, non-discrimination, as well as important news rules on body searches, solitary confinement, medical ethics and inspections
- Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).[50] Adopted in 2010, these are the first set of international standards addressing the specific needs of women and girls in prisons, filling a gap in international standards in this area. Although adopted in the criminal justice context, the rules are applicable to other types of detention and provide a reference on gender-sensitive treatment in detention more broadly.[51]

50 The Bangkok Rules complement the Nelson Mandela Rules and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)

51 United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules), para.14

Other relevant UN instruments include:

- Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012)
- 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 (2005)
- Model Autopsy Protocol (1991)
- Rules for the Protection of Juveniles Deprived of their Liberty (1990)
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
- Basic Principles for the Treatment of Prisoners (1990)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
- Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (1985)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982)
- Code of Conduct for Law Enforcement Officials (1979).

The UN Human Rights Council has made a number of thematic resolutions on the right to be free from torture and other ill-treatment, including on:

- the roles and responsibilities of police and other law enforcement officials (2021)[52]
- the negative impact of corruption on the right to be free from torture and other ill-treatment (2018)[53]
- safeguards to prevent torture during police custody and pretrial detention (2016)[54]
- the role and responsibility of judges, prosecutors and lawyers (2010)[55] and
- the role and responsibility of medical and other health personnel (2009).[56]

3.2. Other international instruments

The following instruments were developed by international experts and civil society groups:

- Principles on Effective Interviewing for Investigations and Information Gathering (2021)[57]
- The Yogyakarta Principles (2006) and the Yogyakarta Principles Plus (2017)[58]
- The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (2007).[59]

52 Human Rights Council resolution 46/15. Torture and other cruel, inhuman or degrading treatment or punishment: the roles and responsibilities of police and other law enforcement (23 March 2021)

53 Human Rights Council resolution 37/19, The negative impact of corruption on the right to be free from torture and other cruel, inhuman or degrading treatment or punishment (23 March 2018) (A/HRC/RES/37/19).

54 Human Rights Council resolution 31/31, Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention (24 March 2016) (A/HRC/RES/31/31).

55 Human Rights Council resolution 13/19, Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of judges, prosecutors and lawyers (15 April 2010) (A/HRC/RES/13/19).

56 Human Rights Council resolution 10/24, Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of medical and other health personnel (26 March 2009) (A/HRC/RES/10/24).

57 Developed by a multidisciplinary group of experts under the coordination of the Association for the Precention fo Torture, the Anti-torture Initiative and the Norwegian Centre for Human Rights. Available under www.apt.ch.

58 Developed by a group of eminent international human rights experts, these principles outline how existing international human rights standards can be applied to sexual orientation and gender identity issues.

59 Adopted at an International Meeting on Women's and Girls' Right to a Remedy and Reparation, held in Nairobi from 19 to 21 March 2007, by women's rights advocates and activists, as well as survivors of sexual violence in situations of conflict.

3.2. Regional standards

Council of Europe

The Council of Europe has established a number of instruments related to the prevention of torture and, in addition, a number of recommendations have been adopted by the Committee of Ministers.

The most relevant standards include:

- the European Prison Rules (revised 2020) - the most important set of European soft-law standards and principles related to prison management, staff and treatment of detainees – and a reference globally.
- the European Code of Ethics for Prison Staff (2012)
- the European Code for Police Ethics (2001).

In addition, the European Committee for the Prevention of Torture, developed substantive standards in its annual reports including on police custody, women in prison, juveniles and standards relating to different types of places of deprivation of liberty.

European Union

The European Union has adopted Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (revised 2019).

In addition, it has adopted a series of Directives for all Member States introducing detention safeguards during criminal proceedings, such as:

- Directive (EU) 2012/13 on the right of information in criminal proceedings, 22 May 2012
- Directive (EU) 2013/48 on the right of access to lawyer in criminal proceedings, 22 October 2013
- Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, 11 May 2016.
- Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings, 26 October 2016.

Organization of American States

In March 2008, the Inter-American Commission on Human Rights adopted a set of Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

The OAS General Assembly has adopted several resolutions on “Human Rights, Sexual Orientation, and Gender Identity and Expression”.[60]

60 See for example, Resolution AG/RES. 2863 (XLIV-O/14) Human Rights, Sexual Orientation, and Gender Identity and Expression, approved at the fourth plenary session, held on June 5, 2014.

African Union

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is a binding treaty adopted by the African Union in 2003.

The African Commission on Human and Peoples' Rights has adopted:

- Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) (2002)
- Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, which include provisions on the prevention of torture (2003)
- Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) (2014).

The Pan-African Parliament has adopted a Model Police Law for Africa (2019).

ASEAN

Member States of the Association of Southeast Asian Nations (ASEAN) adopted the ASEAN Human Rights Declaration in November 2012. Article 14 provides that:

> *14. No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.*

The ASEAN has adopted a number of instruments relevant for torture prevention, including:

- Declaration on Culture of Prevention for a Peaceful, Inclusive, Resilient, Healthy and Harmonious Society (2017)
- Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN (2012).

KEY POINTS: CHAPTER 2

- Torture is prohibited in a number of international human rights treaties.
- The Convention against Torture contains a series of provisions on prevention measures.
- Regional instruments in Africa, the Americas, Arab countries, Europe and Southeast Asia also prohibit torture.
- 'Soft law' standards, both international and regional, complement the prohibition of torture and other ill-treatment.
- Gender-based violence and privately inflicted harm can amount to torture.

FURTHER READING

The Torture Reporting Handbook; Camille Giffard and Polona Tepina, Human Rights Centre, University of Essex; 2000, Human Rights Centre, University of Essex; 2nd edition 2015

Committee against Torture, general comment No. 2, Implementation of article 2 by States Parties; 2008 (CAT/C/GC/2)

Torture in International Law: A Guide to Jurisprudence; Association for the Prevention of Torture and the Center for Justice and International Law; 2008

Manfred Nowak, Moritz Birk, and Giuliana Monina eds, The United Nations Convention against Torture and its Optional Protocol: A Commentary (Second Edition, Oxford Commentaries on International Law; 2019)

Part II:
Preventing torture: NHRIs in action

Introduction to Part II

The primary responsibility to prevent torture rests with the State, which has a clear duty to take all measures to prevent torture and other forms of ill-treatment.

NHRIs, which are a key element of strong national human rights protection system, can play a crucial role by ensuring that the State upholds this obligation.

Part II describes in detail the practical actions that NHRIs can take under each of the three dimensions of an integrated torture prevention strategy. In addition, a fourth section presents a selection of cross-cutting actions for NHRIs to consider. Each chapter includes information on how NHRIs can integrate gender in this work. They also include examples of good practices from NHRIs in different parts of the world.

Section I:
Promoting an effective legal framework

Chapter 3:
Promoting legal and procedural reforms

KEY QUESTIONS

- What type of legal reforms should NHRIs promote in relation to the prevention of torture?
- What fundamental legal and procedural safeguards should NHRIs promote?
- What other detention procedures should NHRIs promote?

LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles[61]

Competence and responsibilities

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of it a power to hear a matter without any referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports as well as any prerogative of the national institution, shall relate to the following area:

(i) Any legislative or administrative provisions, as well as provisions relating to the judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as

61 The complete text of the Principles relating to the status of national institutions for the promotion and protection of human rights (commonly known as the "Paris Principles") is available in the Further Readings section of the CD-Rom.

bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions confirm to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures

(b) To promote and ensure the harmonization of national legislation, regulations and practices with the international instruments to which the State is a party, and their effective implementation

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and their effective implementation

ACJ Reference on Torture

Ratification of relevant international instruments

NHRIs should stress the importance of ratifying all relevant treaties regarding torture, including the International Covenant on Civil and Political Rights, its First Optional Protocol, the Convention against Torture and the Optional Protocol. In particular, they should stress the importance of individuals having a right to make a complaint to relevant international bodies and therefore the importance of their States becoming party to the First Optional Protocol to the International Covenant on Civil and Political Rights and making a declaration under article 22 of the Convention against Torture.

Legislative implementation of international obligations in domestic law

NHRIs should urge their State to:

- include a comprehensive definition of the term torture in domestic legislation
- ensure that torture is a specific criminal offence under domestic law
- recognize customary international law as informing domestic law
- give legislative effect to the non-refoulement principle, including the prohibition of the return of person to a country in which they may face torture or other cruel, inhuman or degrading treatment or punishment

- enact legislation asserting jurisdiction over the extra-territorial acts of torture committed by nationals and non nationals.

Interrogation standards

- NHRIs should promote the Minimum Interrogation Standards (MIS) developed by the ACJ and work to make sure that public officials involved in interrogations are fully informed with regard to these MIS and trained to use them effectively.

Introduction

A country's legal framework provides the foundation for any effective strategy to prevent torture. This legal framework includes international treaties that the State has ratified, as well as domestic laws that it has enacted.

NHRIs have an important role to play in promoting the ratification of relevant international human rights treaties. They also have a strong advisory mandate that allows them to review existing legislation, propose amendments or recommend new legislation to support the prevention of torture.

In addition, NHRIs can advocate for detention procedures that meet international norms and provide effective safeguards.

1. Promoting ratification of international treaties

NHRIs should review whether their country has ratified all key international treaties related to torture, and in particular:

- the Convention against Torture (including articles 21 and 22) and its Optional Protocol
- the International Covenant on Civil and Political Rights and its Optional Protocol.

The Convention on the Elimination of All Forms of Discrimination against Women is particularly relevant for addressing torture and ill-treatment against women and girls.

Where appropriate, regional treaties should also be considered (see chapter 2 for more information).

If a State has not ratified these core treaties, 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 lobbying governmental and parliamentary representatives and building public awareness on the issue.

Insights from practice:

*Since 2016, the **Human Rights Commission of Malaysia** (SUHAKAM) has been collaborating with the APT, Suara Rakyat Malaysia (SUARAM), Amnesty International Malaysia (AIM), the Bar Council and Lawyers for Liberty (LFL) to implement a national campaign against torture, called "ACT4CAT". The campaign helped intensify the government's readiness to sign the UNCAT in the near future. SUHAKAM also conducted UNCAT awareness raising campaign with key stakeholders, including the authorities, using issues such as treatment of detainees under pre-trial detention as entry points for advocacy.*

2. Promoting legal reform

The Convention against Torture contains a number of important measures that contribute to the prevention of torture. When a State ratifies the treaty, it is obliged to implement these measures in its domestic laws and policies.

NHRIs have an important role to play to assess whether the national legal framework meets the requirements set out in the Convention against Torture. When this is not the case, NHRIs should use their mandate to promote the necessary legal reforms.

In countries with a monist system – where international obligations directly form part of the national legal framework – NHRIs should monitor the situation to assess whether these obligations are respected in practice.

As part of gender mainstreaming, NHRIs should consider how domestic legal frameworks impact on the lives of women, men and people with diverse gender identities, and the existence of discriminatory laws and gaps in protection which increase their risk of torture and ill-treatment. NHRIs should consider the possible impact of any proposed reforms on women, men and people with diverse gender identities, and ensure proposals that contribute to eradicating inequality and harmful gender stereotypes rather than inadvertently perpetuating them.

Criminalization of torture (article 4)

Article 1 of the Convention against Torture provides a clear definition of torture. This definition makes torture distinct from other crimes such as assault, rape or murder, although there may be some overlap with these crimes.

The three key elements of the definition of torture include:

- that severe pain or suffering – physical or psychological – is inflicted intentionally
- it is committed by agents of the State, or with its consent or acquiescence
- for a specific purpose, such as extracting a confession, obtaining information, punishment or intimidation and discrimination.

The Convention against Torture requires States parties to make torture a specific offence in their national criminal law. The Committee against Torture recommends that States use, as a minimum, the definition provided in the Convention.

If it does not already exist, NHRIs should advocate that a specific crime of torture is included in their country's criminal code, in accordance with article 1 of the Convention. No defences or exceptional circumstances should be allowed to justify torture, including the defence of superior orders.[62] The Convention also requires States to ensure that the crime of torture is punishable with a penalty that takes into account the extremely grave nature of the offence.

Insights from practice:

*The **National Human Rights Commission of Mexico** has actively contributed to the adoption and implementation of the General Law for the prevention, investigation and punishment of torture. The Commission submitted observations to the draft law and publicly advocated for its adoption by the Senate. in the Law was adopted on 26 June 2017 and since then the Commission has carried out a number of initiatives to promote and monitor its implementation.*

***The Commission on Human Rights of the Philippines** played an important role in supporting the national campaign for an anti-torture law in the Philippines. Together with the national civil society coalition, United against Torture Coalition (UATC), a draft anti-torture law was developed and*

62 Committee against Torture, 'Concluding observations on the fifth periodic report of China' (2016) (UN Doc CAT/C/CHN/CO/5), para 7b.

lobbied with the House of Representatives. The consolidated and consistent effort paid off with the adoption of the Philippines' Anti-Torture Law in 2009.

Inadmissibility of evidence obtained by torture (article 15)

The criminal law should clearly state that any evidence obtained under torture is inadmissible in criminal proceedings brought against that person. NHRIs should ensure that this law is respected in practice.[63]

Universal jurisdiction to trial torturers (articles 5–9)

NHRIs should ensure that legislation exists to enable the State to prosecute any alleged torturer in its territory, irrespective of whether the crime was committed outside its borders and regardless of the alleged perpetrator's nationality, country of residence or absence of any other relationship with the country. If the State is unable to prosecute the offence, it is required to extradite the person to a State which is able and willing to prosecute such a crime.

Non-refoulement (article 3)

NHRIs should monitor whether domestic laws, as well as relevant policies and practices, are sufficient to respect and uphold the principle of non-refoulement, which is a key obligation of States parties under the Convention.

This includes ensuring that states do not return people to countries where there is a substantial risk they would be subjected to gender-based violence, by public or private actors, amounting to torture, as well as to torture, ill-treatment, criminalization and detention based on their sexual orientation, gender identity or sex characteristics.

Legal frameworks to prevent torture against women and LGBTI people

NHRIs should monitor whether domestic laws prohibit, prevent and redress acts of gender-based harm that amount to torture and ill-treatment, by both state and non-state actors, in line with article 2 and other relevant provisions of the Convention.

Where legal frameworks fall short, NHRIs can promote legal reform including: criminalising all forms of violence against women and girls, for example domestic violence, rape and marital rape, forced marriages, sexual harassment, forced abortion and female genital mutilation. Comprehensive trafficking legislation should include a definition of trafficking.

NHRIs can also advocate for repealing discriminatory laws that perpetuate harmful stereotypes, encourage gender-based violence and contribute to impunity. This could include: decriminalising abortion; repealing laws that target women and LGBTI persons for "moral crimes"; dismantling legal barriers for women to initiate legal proceedings; repealing laws that restrict women's access to divorce, property rights and inheritance; repealing laws that criminalize consensual relationships between same-sex adults; and repealing laws that penalize cross-dressing and sex work.

Insights from practice:

*In 2014, the **National Human Rights Commission of Bangladesh (JAMAKON)** and the Law Commission of Bangladesh submitted to the government a draft of the first Anti-Discrimination Act, which included protections for LGBT people as a marginalized and vulnerable population.*

63 The Special Rapporteur on Torture, Juan Mendez, elaborated on the exclusionary rule in his report to the Human Rights Council of April 2014 (A/HRC/25/60).

3. Reforming detention procedures and implementing safeguards

The 2016 research 'Does torture prevention work?' showed that detailed and concrete procedures are not only required to ensure that the legal framework is implemented in practice but are the most effective in reducing torture. Some most important legal safeguards need to be included in the law itself.

Torture nearly always takes place in secret. Early hours of custody and interrogation represent moments of heightened risks of torture and ill-treatment. Promoting greater transparency of places of deprivation of liberty and implementing legal and procedural safeguards from the first hours of deprivation of liberty are substantial steps towards prevention because they remove many of the opportunities for torture to occur and help reduce the risk of ill-treatment of persons deprived of their liberty.[64]

Recent soft law standards have been adopted by the United Nations and regional bodies that clarify State obligations to implement safeguards.[65] Following the 2016 call by Juan Mendez, the former Special Rapporteur on Torture,[66] a multidisciplinary group of experts adopted the Principles on Effective Interviewing for Investigations and Information Gathering, also called the 'Mendez Principles'.[67] This document proposes a set of six principles on non-coercive and rapport-based interviews combined with the effective implementation of legal and procedural safeguards throughout the interview process.

Women, girls and LGBTI persons are particularly at risk of torture and ill-treatment in detention including rape and other acts of sexual and gender-based violence and humiliation, inflicted by staff and other detainees. Societal discrimination is replicated and amplified in detention contexts. In systems that have largely been designed for men, women's gender-specific needs, backgrounds, characteristics and pathways into the criminal justice system are often ignored. Specific safeguards and services are required to address the distinct needs of women and LGBTI detainees and to ensure their protection.

NHRIs should actively promote and support the adoption of detention procedures that bring greater transparency and provide practical safeguards, including for women, LGBTI persons and other groups in situations of vulnerability in detention.

3.1. Detention procedures contributing to transparency

It is widely recognised - and confirmed by empirical research - that one of the most important measures to prevent torture is ensuring effective access by all persons deprived of liberty to all legal and procedural safeguards during the first hours and days of custody. The Committee against Torture, the Human Rights Committee and other international[68] and regional mechanisms therefore recommend the adoption of a number of legal and procedural safeguards that aim to reduce the risk of torture and ill-treatment in detention.[69]

64 See Richard Carver, Lisa Handley, *Does torture prevention work?*, Liverpool University Press, 2016.

65 See Human Rights Council, Resolution 46/15 (23 March 2021) and Resolution 31/31 (24 March 2016); 2017 Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines; EU Directives introducing safeguards during criminal proceedings (see under Chapter 3, Section 3).

66 Report of the Special Rapporteur on Torture A/71/298.

67 Available on www.apt.ch

68 See for example, the Human Rights Council's Resolution on 'Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention' adopted on 24 March 2016; and the UN Subcommittee on Prevention of Torture's reports to States on country visits.

69 See the Committee against Torture's general comment No. 2 on the implementation of article 2, para.13;. Human Rights Committee's general comment No. 20 concerning prohibition of torture and cruel treatment or punishment (article 7) and general comments No. 35 on the right to liberty and security of the person (article 9).

The 2015 Nelson Mandela Rules and the 2010 Bangkok Rules also provide important benchmarks for the protection of persons deprived of liberty in terms of safeguards – the latter specifically for women deprived of their liberty. The 2006 UN Convention for the Protection of All Persons from Enforced Disappearance, in particular its Article 17, prohibits secret detention and strengthened legal and procedural safeguards.

Insights from practice:

In November 2017, during the annual meeting of the ***South East Asia National Human Rights Institutions Forum (SEANF)*** *composed by the NHRIs from* ***Indonesia, Malaysia, Myanmar, Philippines, Thailand and Timor Leste,*** *members proposed the development of regional guidelines to help SEANF members to prevent torture effectively. The SEANF's Guidelines on Torture, developed in partnership with the APT, were adopted in December 2021. The Guidelines provide practical suggestions and strategies across six key areas: mobilising for change; strengthening law and justice, including through promotion of key safeguards in the first hours of custody; increasing transparency in detention; protecting persons in situations of vulnerability; promoting the well-being of NHRI members and staff; and engaging with the international community for local impact.*

No unauthorized places of detention

Persons deprived of liberty should not be held in unauthorized places of detention. Unauthorized places of detention have no procedures or records and therefore provide no institutional protection to the detainee. It should be a criminal offence to hold persons deprived of their liberty in unauthorized places of detention.

No incommunicado detention

Incommunicado detention – which occurs when a person is isolated and has no contact with the outside world – creates an environment that is conducive to torture, especially when the situation is prolonged. All persons deprived of their liberty should be allowed to receive visits from a lawyer, family members and others. Any exceptions should be clearly specified in law and should be of limited duration, with oversight by the judiciary.

Right to inform a third party

It is essential that persons who have been arrested are allowed to contact a family member, friend, lawyer, consulate representative or any person of their choice and inform them of their arrest and where they are being held.

Access to a lawyer

Ensuring that a person has access to a lawyer immediately following their arrest, especially during interrogation, can significantly reduce the risk of torture. In addition, a lawyer will be able to provide advice about the legality of their client's detention and take action on any complaints that may be made. Access to a lawyer should include the right to contact and be visited by a lawyer and, in principle, the right to have the lawyer present during police questioning.

Women tend to be disadvantaged in terms of legal representation. Legal aid rules based on household income can discriminate against women, as women may have to rely on men to pay for legal fees. States must guarantee the right to an effective counsel without discrimination.

Access to a medical doctor

The right to receive a medical examination by an independent medical doctor – and, if possible, a doctor of the person's own choice – also helps reduce a culture of secrecy from developing in places of detention. The relationship between health professionals and detainees must be based on the same ethical and professional standards as those applicable to patients in the community.

A medical examination can establish the physical condition of the person at the time of their arrest or detention. This can be a significant deterrent against torture and can also help to detect signs of torture or ill-treatment. Any indications of ill-treatment should be documented and reported to the competent authorities, while ensuring that the detainee or associated persons are not exposed to harm. The medical examination can also establish if the person suffers from any health problems that might be aggravated by detention.

Women should be able to request a female doctor or nurse for examination or treatment. As well as a comprehensive assessment of gender-specific healthcare needs, medical screenings should determine any sexual abuse or other violence prior to or within detention.[70] Where this is found, women should be provided with information and assistance in seeking legal recourse.

The results of the medical examination should be formally recorded by the detaining authorities and also be made available to the person and their lawyer.

Appearing before a judge

Anyone who is arrested should be brought promptly before a judge.[71] The judge should ensure that the person's arrest and detention are legal. The judge will also be able to inquire into the treatment they received in custody and investigate any complaint that the person may raise. Even in the absence of a formal complaint, the judge should be able to take action ex officio if there are visible injuries or other indications that torture or ill-treatment may have occurred.

3.2. Other detention procedures

The following detention procedures focus specifically on the deprivation of liberty by police officials. They set out recommended best practices by international and regional mechanisms. In 2006, the Asia Pacific Forum of National Human Rights Institutions adopted detailed procedural standards on interrogation – the Minimum Interrogation Standards – developed by its Advisory Council of Jurists.

Registers

Maintaining official registers provides a crucial safeguard for detainees. They are an important tool for recording the location of each person throughout the period of their detention, as well as making sure that proper detention procedures are followed. Registers should be kept rigorously in all places of detention and police stations, as part of a harmonised system.[72] The registers should be readily accessible to all concerned parties.[73] Gaps and inconsistencies in register entries can alert monitoring teams to potential risks for torture or ill-treatment.

Separating interviews and custody

Interviewing and custody should be the responsibility of different bodies. Different agencies have different priorities, different areas of expertise and different chains of commands. The involvement of

70 Medical screenings should not involve virginity tests, which represent a gross form of discrimination and custodial violence against women and should be explicitly prohibited. See, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, to the Human Rights Council (15 January 2008) (A/HRC/7/3), para. 34.

71 Human Rights Committee states, General comment No. 35

72 See, for example the UN Subcommittee on Prevention of Torture's reports to states parties on its visits to Niger from 29 January to 4 February 2017 (2020) (CAT/OP/NER/1), para. 63; and to Kazakhstan from 20 to 29 September 2016 (2019) (CAT/OP/KAZ/1), para. 52.

73 Human Rights Committee, General comment No. 20, para. 11.

different agencies can help protect detainees from the possibility that the conditions of their detention will be used to influence their behaviour during interviews. In addition, each agency can act as a check on the work of the other.[74]

Rapport-based interviewing

The aim of police interviews should be to obtain accurate and reliable information in order to seek the truth about matters under investigation - following a methodology of "investigative interviewing" - rather than to obtain a confession from someone presumed guilty.[75] Rapport-based, non-coercive methods for interviewing and the application of safeguards throughout the interview process are the most effective for gathering information and reducing the risks of ill-treatment. The Principles on Effective Interviewing for Investigations and Information Gathering provide guidance on how to move away from interrogation to effective interviewing.

In addition, there should be a code of conduct which sets out detailed and specific standards for the conduct of police interviews. The code should address issues such as the permissible length of the interview, rest periods, the location and identity of persons to be present during the interview and interviewing a person under the influence of drugs. The process of developing a code of conduct is useful in itself as it encourages police officials to consider what practices are appropriate and effective for their work. The code of conduct should be publicly available and provided to all persons deprived of their liberty.

Audio and/or video recording of interrogations

Audio or video recording not only brings greater transparency to the interrogation process, but can also provide significant advantages for the police. Audio or video recording helps monitor and ensure that an established code of conduct is followed by police during interrogations.

Independent oversight mechanisms

Regular and unannounced visits to all places of detention by independent monitoring bodies helps prevent a culture of secrecy from developing and provides an important safeguard for persons deprived of their liberty.

Contact with the outside world

Ensuring detainees can maintain contact with the outside world is a fundamental right providing vital support to detainees and contributing to their ability to successfully integrate with society upon release. It also acts as a safeguard against torture and ill-treatment.

Women are often detained in locations far from their homes because of the relatively few women's prisons in most countries. Measures should be taken to counterbalance the disadvantages women face in having contact with their family due to distance and location, where possible.[76]

Insights from practice:

*Between 2017 and 2019, the **National Human Rights and Ombuds Institution of Uruguay** (INDDHH), in its capacity as National Preventive Mechanism under the OPCAT, carried out several visits to police stations across the country to monitor the implementation of fundamental safeguards in the first moments of detention, in particular the right to notify a third party, access to a medical*

74 See CPT annual report 2018 substantive section on Preventing police torture and other forms of violence, CPT In-f(2019)9,para 82 to 85.

75 Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (5 August 2016) (A/71/298); European Committee for the Prevention of Torture, Preventing police torture and other forms of ill-treatment – reflections on good practices and emerging approaches (2019).

76 Rules 26 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

doctor, access to a lawyer and the notification of rights. A thematic report was issued in 2020 with recommendations addressed to the relevant authorities.[77]

3.3. Other safeguards to protect women in detention

A number of additional measures can contribute to reducing the risk of torture and ill-treatment for women and respond to their specific needs, in line with the Nelson Mandela Rules and the Bangkok Rules, including:

- separating male and female detainees
- ensuring women prisoners are attended and supervised only by women staff
- strictly regulating security and safety measures: for example, body searches should be limited to a minimum and conducted by staff of the same sex; no shackling and handcuffing of pregnant women, women in labour or after childbirth
- providing for gender-specific health care and hygiene needs, including pre- and post-natal care, equivalent to the care available in the community.

Furthermore, an important systemic safeguard is to divert women out of detention by ensuring gender-specific non-custodial alternatives wherever possible.[78] Recognising that many women in the criminal justice system do not pose a threat to society, this measure can protect women from the risks they face in detention and avoid the disproportionately negative impact of imprisonment on their rehabilitation and children's lives[79].

KEY POINTS: CHAPTER 3

- NHRIs can promote ratification of relevant international human rights treaties, such as the Convention against Torture and its Optional Protocol.
- NHRIs can promote legal reform, in particular making torture a crime under domestic law.
- NHRIs can promote reform of detention procedures.
- NHRIs can promote laws and safeguards to protect women and other groups in situations of vulnerability from torture.

77 See: https://www.gub.uy/institucion-nacional-derechos-humanos-uruguay/comunicacion/publicaciones/garantias-primeros-momentos-detencion-unidades-policiales-uruguayas

78 As recommended by Rule 58 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

79 Penal Reform International, *Women in detention: Putting the UN Bangkok Rules on women prisoners into practice* (2017).

FURTHER READING

Principles on Effective Interviewing for Investigations and Information Gathering; 2021

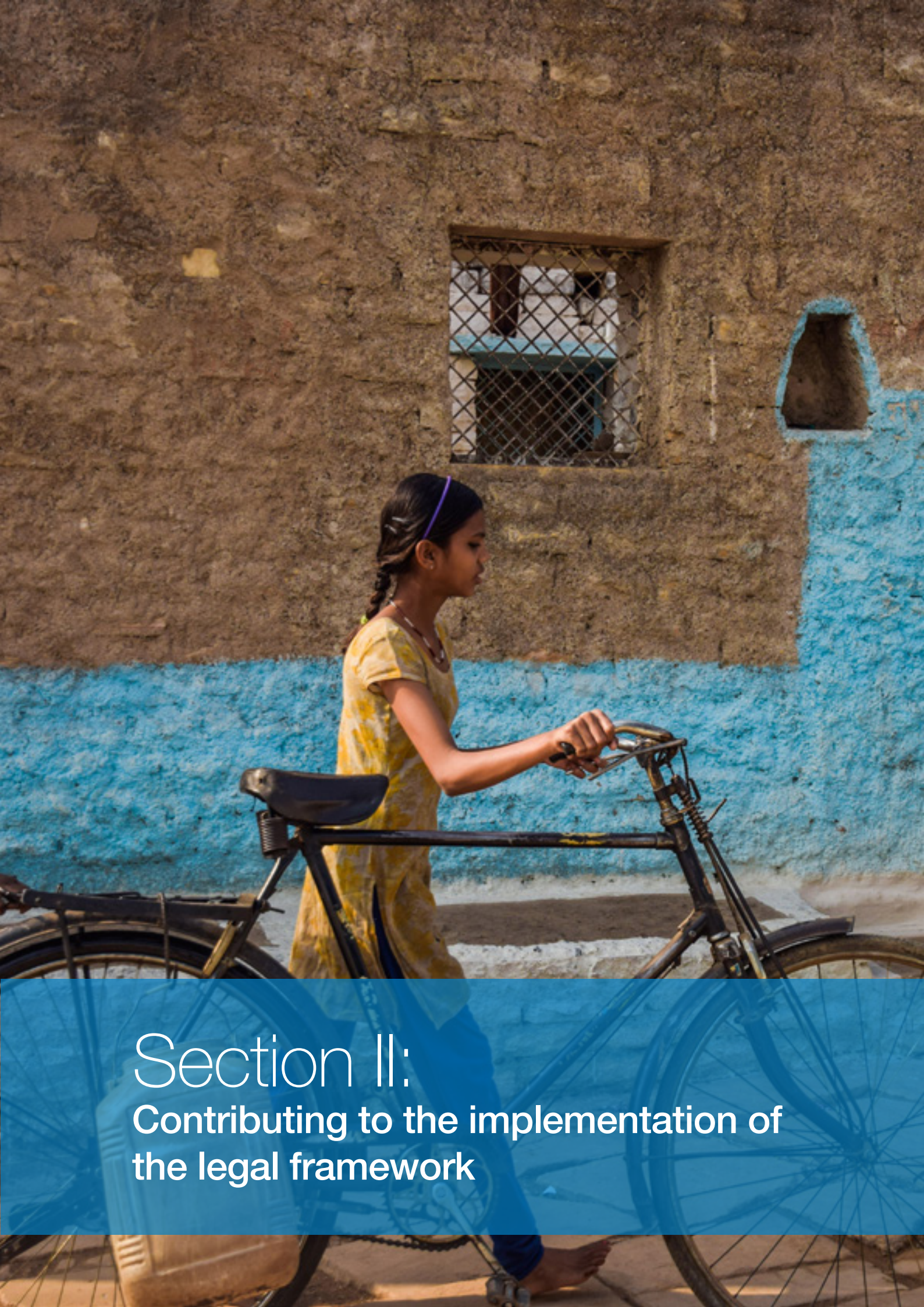
Guide on anti-torture legislation, Association for the Prevention of Torture; 2016

Does Torture Prevention Work? Richard Carver and Lisa Handley (eds), Liverpool University Press; 2016

Criminalisation of Torture: State Obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Sir Nigel Rodley and Matt Pollard; E.H.R.L.R. Issue 2, Sweet and Maxwell; 2006

Human Rights Committee, General comment No. 20: replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)

The Right of Access to Lawyers for Persons Deprived of Liberty; Legal Briefing Series, Association for the Prevention of Torture; March 2010



Section II:
Contributing to the implementation of the legal framework

Chapter 4:

Investigating allegations of torture

KEY QUESTIONS

- What type of information helps assess the credibility of a victim's testimony?
- What other type of information should be collected when investigating allegations of torture?
- How should information about allegations of torture be recorded?
- How can NHRIs integrate gender considerations in the investigation process?

LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Methods of operation

Within the framework of its operation, the national institution shall:

b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations.

Introduction

Investigating and documenting allegations of torture is critical in any strategy to prevent torture. NHRIs should investigate and document any complaints they receive from victims or their relatives, as well as initiate their own investigations if they believe that torture or ill-treatment may be occurring in certain places of detention.

Conducting investigations can be a complex and challenging task. Investigation teams should reflect the diversity of their communities and investigators need to have the appropriate training, experience, skills, time and resources to conduct investigations properly.[80]

It is important to note that victims of torture can suffer serious physical and psychological damage. As a result, they may be reluctant to talk about their experience. There is also a real risk of re-traumatising and stigmatising survivors of torture, including sexual and gender-based violence. Specific skills and sensitivity are required to avoid exposing people to further humiliation and pain (see also Chapter 5 on Interviewing).

NHRIs should keep up to date with and observe the latest ethical standards in investigating allegations of torture. The guiding principle of "do no harm" means NHRIs should be aware of potential risks and avoid causing further damage or suffering through their actions. NHRIs will need to consider how to ensure confidentiality and informed consent.[81] A victim-oriented approach should ensure that the individual's needs and best interests are prioritised in the investigation.

1. Collecting information

When a person claims to be victim of torture, it is important to collect all possible information that might help support the allegation.

Good investigators keep an open mind and assess evidence thoroughly and objectively. The aim is to collect sufficient, reliable and relevant evidence which enables the NHRI to reach a conclusion. This can include testimonial, physical, documentary and digital evidence.

The first step is to conduct an interview with the alleged victim as promptly as possible (see chapter 5 for more information). Following the interview, it is crucial to check the information you have collected and assess the reliability of the allegations made.[82]

To help you make this assessment, it is important to consider if:

- the testimony is convincing and internally consistent
- the testimony is consistent with information from other independent sources
- the testimony corresponds to known patterns of torture and ill-treatment
- other testimonies corroborate the victim's statement
- other physical corroboration is found during on-site visits
- there is medical evidence of torture
- there are physical indicators of torture (however, the absence of physical signs does not mean that torture did not occur)
- there are psychological indicators of torture.

80 See Asia Pacific Forum of National Human Rights Institutions, *Undertaking Effective Investigations: A Guide for National Human Rights Institutions* (updated 2018), Chapter 2: Training and experience and Chapter 3: Adequate resources.

81 Informed consent means upholding individual autonomy and full informed decision-making in terms of a person's participation in the investigation.

82 Complete accuracy is seldom expected of torture victims. See *Kisoki v. Sweden*, Committee against Torture, Communication 41/1996, views adopted on 8 May 1996.

The testimony is convincing and internally consistent

In some allegations of torture, it may be difficult to find evidence other than the testimony of the victim. If the victim's account sounds true – in other words, the account is consistent and does not contradict itself – this will provide an important first step in your inquiries. Where possible, this account should be matched with other types of information that may provide corroboration. It is essential, therefore, to gather as much detailed information as possible.

It is important to bear in mind the particular difficulties involved in taking statements from victims of torture, as many will have been traumatized by the experience. They may give inaccurate information because they are ashamed of what has been done to them or they may be reluctant to disclose information for other reasons. Their distress may also cause them to appear evasive. People who have been victims of sexual assault may feel particularly ashamed and unable to speak about the experience.

The testimony is consistent with information from other independent sources

The testimony corresponds to known patterns of torture and ill-treatment

It can often be difficult to cross-check the details of a specific allegation of torture, however, it is possible to check it against information that is already known. This information might relate to agencies that are likely to commit torture, to places where torture is likely to occur and to allegations of torture that have been reported in the past.

Other testimonies corroborate the victim's statement

By its very nature, torture is almost always carried out in secret. As a result, it can be difficult to find and interview the sort of witnesses that might be available when investigating other human rights violations.

However, there are still potential witnesses who may be able to corroborate a victim's allegation of torture including:

- people who were present when the victim was taken into custody. They might provide information about who took the victim away, when this happened, how the person was treated and the physical condition of the person at that time
- people who were detained with the victim. They might provide information about who took the person for interrogation, when the person was interrogated, how long the interrogation lasted, the physical condition of the victim before and after interrogation and the account the victim gave to them at the time
- prison officials or law enforcement officers who may have been present during the torture and who object to its use. They may be willing to provide information on a confidential basis.

Information found during visits to places of detention

NHRIs that have access to places of detention can gather corroborating information when they undertake visits in response to an allegation of torture. During these scene visits,[83] NHRI representatives can verify the description of the building and rooms, check the registers and verify other information, such as the date and time of a person's admission, removal from the cell and the names of guards on duty.

There is medical evidence of torture

There are four types of potential medical evidence that can be used to corroborate allegations of torture. They include:

83 A scene is any environment where something relevant to the investigation takes – or took – place, see APF Guide op.cit, Chapter 21: Scene visits.

- a medical examination of the victim at the time, or shortly after, the torture is alleged to have taken place
- a physical examination of the victim at the time s/he made the complaint
- a psychological examination of the victim
- a post-mortem examination (autopsy).

Medical evidence should be treated with caution as a medical examination alone cannot prove an allegation of torture. However, it may be consistent with the allegation and can therefore provide important corroborating information. It is recommended that any medical evidence is gathered and compiled by a physician with proper forensic skills.

NHRIs might face difficulties in finding appropriately qualified medical personnel. Indeed, some NHRIs may face a situation where there are no skilled forensic medical personnel in the country. In this case, one possible solution may be to seek outside assistance to train medical personnel in forensic skills.

In other countries, there might be a lack of independent forensic medical personnel, particularly if they all work for government agencies and/or provide forensic expertise for the police or public prosecutor. NHRIs will then have to assess whether they, and the victim, can trust the independence and professionalism of these personnel.

There are physical signs of torture

Medical examination of victims of torture must be left to medical professionals. However, with experience, a human rights investigator can come to recognize some of the most common signs of torture.

It is often useful to take photographs of the physical signs of torture, if the victim gives their consent. However, such photographs should not identify the person (for example, by showing the face). Several pictures should be taken to record all aspects of these physical signs. Clear colour photographs, taken in good lights, can form part of the corroborating evidence and be provided to medical personnel for professional evaluation. It is important to take close-up photographs of the injuries and wide-angle photographs showing the location of the injuries on specific parts of the body.

Some of the common types of torture, and the physical signs that result from this, include:

- **beating and other blunt violence**, which can cause broken bones, bruises, scars and tramline stripes (from beatings with a cane or stick)
- **beatings on the sole of the feet**, which can result in intermittent pain in the feet and legs, tingling and “pins and needles” in the legs and feet, as well as hard, rough scars on the soles
- **burning**, which can leave scars of varying shapes and sizes
- **suspension**, which causes a burning sensation and sharp pains in the arms and legs
- **electrical torture**, which can cause changes to the skin and splintering or loss of teeth
- **partial suffocation with water**, which can lead to chronic bronchitis
- **sexual torture**, which can result in injuries to the genital area, irregular periods, spontaneous abortions, testicular pain, anal itching, sexually transmitted disease and sexual dysfunction.

It may be appropriate to apply a presumption of ill-treatment, when an individual who was in good health at the time of detention is found to be injured at the time of release.[84]

The absence of physical signs of torture does not mean that torture has not taken place. Some methods of torture do not leave any physical signs, such as sensory deprivation and other forms of psychological torture.

84 See ECtHR, *Eren v. Turkey*, no. 36617/07, Judgment of 20 October 2015, para. 30

There are psychological signs of torture

All torture will have psychological effects on a person. Indeed, a primary purpose of torture is to exercise power over a helpless victim with the aim of degrading, dehumanizing and disintegrating his or her personality. The impact of this experience can continue long after the physical scars of torture have healed.

There are two distinct, although closely linked, aspects to consider when it comes to gathering evidence of psychological signs of torture. It is important to be clear if you are collecting **evidence of psychological torture** or whether you are collecting **psychological evidence of torture**.

The term "psychological torture" refers to methods of torture that do not involve direct physical pain. These methods can include threats of death, mock execution or sensory deprivation. In these cases, there will be no physical evidence of torture and the psychological signs may be the only evidence available to you.

On the other hand, the psychological evidence of torture refers to the mental health consequences of torture, regardless of whether the torture was physical, mental or a combination of both.

The psychological effect of torture is sometimes described as post-traumatic stress disorder. However, some psychologists dispute this description, believing that it is too culturally rooted in Western society. Victims of torture from other cultures may not suffer exactly the same combination of symptoms and they believe it may be not helpful to use labels in this way.

However, people who have been tortured may:

- have constant distressing recollections of the event
- experience recurrent nightmares of the event
- feel distress at things that remind them of their torture
- try to avoid situations that will remind them of their torture
- be unable to remember aspects of what happened
- feel detached from the world around them.

These responses can manifest in a number of physical symptoms, such as:

- difficulty sleeping
- irritability or anger
- difficulty concentrating
- hyper-vigilance
- exaggerated startled response.

It is important to determine whether a person shows symptoms of psychological trauma and whether this correlates with their allegations of torture.

Following a victim-oriented approach, the role of NHRIs should not be limited to taking information but should include ensuring adequate support and rehabilitation for torture survivors they engage with, including by referral.

Insights from practice:

*The **Commission on Human Rights of the Philippines (CHRP)** has established an in-house forensic facility to enable it to independently investigate and analyse evidence relating to cases of torture and extra-judicial killings. The facility is led by doctors who are also trained to examine injuries inflicted by torture, in line with the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Istanbul Protocol").*

In 2016, the CHRP helped authorities in investigating allegations of torture perpetrated by police officers against a bus driver who was visiting his family in the province of Pampanga. The forensic evidence from the investigation led to the first ever conviction under the anti-torture law in the Philippines.

2. Recording information

The only purpose for NHRIs to gather information about allegations of torture is so it can be recorded and used. Statements and interviews with victims should be written down.

All the information gathered in relation to an allegation of torture should be properly recorded in a file, including:

- testimonies
- statements or complaints
- medical records
- photographs
- affidavits
- information and responses from the authorities
- other information (such as reports from on-site visits to places of detention).

In addition, NHRIs should also keep reports of torture and ill-treatment from other sources, including:

- decisions in relevant court cases
- reports prepared by non-governmental organizations
- reports of international and regional bodies (such as the United Nations Special Rapporteur on Torture or the European Committee for the Prevention of Torture)
- social media posts and media reports of torture.

This information is useful to help to cross-check allegations and identify patterns of abuses. NHRIs should aim to collect disaggregated data broken down in terms of sex, age and other status where possible.

All information collected should be formally recorded using a standard format that allows others within the NHRI to analyse and use it appropriately. A standard reporting format allows for cross-checking between different cases and establishing patterns of torture and ill-treatment.

NHRIs that have the capacity to do so should maintain a computer database or spreadsheet of complaints of torture they have received.

Records with confidential information should be kept in a secure location at all times. As an additional precaution, NHRIs can consider identifying files by numbers, rather than by names, with the corresponding list of names filed separately from the substantive records.

3. Integrating gender in the investigations process

It is important for NHRIs to ensure that gender perspectives and the goal of gender equality are integrated in each stage of the NHRI's investigations into torture and other ill-treatment.[85] This allows the NHRI better respond to and address gender-specific forms of torture and ill-treatment and the different experiences of women, men and people with diverse gender identities while working towards gender equality outcomes. It requires conscious and proactive efforts, which can include the following strategies:[86]

- **Reviewing current practice:** NHRIs can start by reviewing which cases of torture and other ill-treatment have been investigated so far and why. Are men's cases investigated more, and if yes, why? Is torture and ill-treatment of women and LGBTI persons investigated? If yes, are these cases reflective of women's and LGBTI persons' experiences of torture and other ill-treatment in society? For example, has the NHRI investigated cases in the private sphere, where women are disproportionately affected? The NHRI may need to develop strategies for reaching out to women and LGBTI persons or initiating investigations into gendered forms of torture that would otherwise go unreported.
- **Applying a gender lens:** This involves understanding how and why gender differences and inequalities are relevant to the case(s) of torture or other ill-treatment under investigation. NHRIs should consider whether the causes, circumstances or consequences of the alleged violation are gender specific. How could the investigation address these gender dimensions and contribute to equality? How could it address any harmful gender stereotypes, discriminatory social norms or power structures underlying the torture or ill-treatment? If the investigation is into torture or ill-treatment of men, NHRIs can consider how women are affected. What are women's experiences in relation to this state agency or in this type of place of detention? Are there differences in coping mechanisms and access to remedies for men and women? NHRIs should develop gender sensitive tools and methodologies for investigations. A gender lens should be applied to how evidence is sought and analysed.
- **Including women and LGBTI persons in investigation design and ensuring visibility of women and LGBTI persons in leadership and investigation roles:** this can help ensure gender perspectives are included and send a powerful message that the organisation is an inclusive space that values the knowledge, experience and expertise of women and LGBTI people.
- **Addressing cultural barriers to participation:** NHRIs should be aware of and seek to address the range of barriers which can prevent women and LGBTI persons from making complaints or engaging with investigations into torture, including gender-based violence. These can include social norms regarding acceptable behaviour and role, fear of stigmatisation and reprisals and lack of information on rights. The NHRI can use its monitoring and/or awareness raising mandates and work with intermediaries to actively engage with women and LGBTI persons in detention and the community on the issue of torture.
- **Investigation teams that are reflective of society,** with gender balance and gender expertise as far as possible. Measures such as secondment can help fill gaps in female staffing. Investigators should be trained on gender issues and how to interview vulnerable and/or traumatised witnesses.

85 See OHCHR, *Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice* (2018) on integrating gender into the preparation, investigation, analysis and reporting stages of human rights investigations.

86 Adapted from Asia Pacific Forum of National Human Rights Institutions, *Undertaking Effective Investigations: A Guide for National Human Rights Institutions* (updated 2018), Chapter 31: Gender mainstreaming the investigations process.

- **Including gender equality considerations in reports and recommendations on torture:**[87] the report should integrate gender throughout, including information on how gender mainstreaming was undertaken, giving full weight to the experiences of women and LGBTI persons, addressing gender issues in the recommendations and using gender-sensitive language and positive imaging.

The following chapter includes specific considerations and approaches for interviewing women, and victims of trauma and sexual violence.

KEY POINTS: CHAPTER 4

- Internal consistency of a testimony is an important element that can support allegations of torture. Other corroborating information should also be sought.
- Medical documentation, as well physical or psychological signs of torture, can provide further evidence of torture.
- Formally recording the evidence gathered is crucial.
- NHRIs should integrate a gender perspective in each stage of the investigation process.

FURTHER READING

Undertaking Effective Investigations: A Guide for National Human Rights Institutions; Asia Pacific Forum of National Human Rights Institutions; updated 2018

Integrating a gender perspective into human rights investigations: Guidance and practice; Office of the United Nations High Commissioner for Human Rights; 2018

The Torture Reporting Handbook, Camille Giffard and Polona Tepina, Human Rights Centre, University of Essex; second edition 2015

Manual on Human Rights Monitoring; OHCHR; revised 2011

87 See "Checklist to integrate gender in human rights reports/documents Checklist to integrate gender in human rights reports/documents" in OHCHR, *Manual on Human Rights Monitoring* (2011), Chapter 15: Integrating Gender into Human Rights Monitoring, p. 16.

Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Professional Training Series No.8/Rev.2; OHCHR; 2022

Chapter 5:
Interviewing

KEY QUESTIONS

- What is the purpose of interviewing a victim or a witness?
- How should you prepare for an interview?
- What are the key issues to consider when conducting an interview?
- What are the specific challenges involved in interviewing victims of trauma?
- What are the gender specific considerations related to interviewing?

LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Methods of operation

Within the framework of its operation, the national institution shall:

b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence

Introduction

Interviewing a variety of sources is key to gather information. There are a number of different situations where representatives of NHRIs will be required to conduct an interview, including:

- as part of a formal or official inquiry
- when a person visits the office of the NHRI to file a complaint
- during a visit to a place of detention
- in the course of field investigation
- in a meeting with an official.

Preparing for and conducting interviews should always be done with the specific context in mind. Applying all of the following practices may not be possible in every situation; however, the key principles

are worth noting. The "do no harm" principle should guide NHRIs throughout the interview process, including preparation, conduct and follow-up. NHRIs have the responsibility to ensure the physical and psychological safety and well-being of interviewees. In this regard, NHRIs need to carefully assess the potential risk of harm to the interviewee, including the gender dynamics and cultural norms that may result in victims and witnesses being exposed to further harm, such as re-traumatization or stigma, violence and marginalization.[88]

1. Purpose of an interview

An interview allows you to:

- gather many different pieces of information from a single interviewee
- respond to information that the interviewee gives you
- cross-check information that you already have
- assess whether the interviewee is credible
- provide the interviewee with the chance to tell their story.

A key challenge you can face is that the reason you are conducting the interview may not be the same as the reason the interviewee agreed to speak with you. As a result, what the interviewee wants to tell you may not be the information you are looking to collect. In these situations you should pursue your objective at the same time as respecting the interviewee's wish to share information that is important to them. You have no power to make someone tell you something they do not want to share.

Gather many pieces of information from a single interviewee

An interview allows people to describe events that they have experienced. At the simplest level, someone you are interviewing might primarily talk about something that has happened to them. However, they may also have knowledge of other people's cases and the information they provide may help corroborate another person's testimony. It may also help determine whether there is a pattern of torture or if it is a systemic practice.

Respond to information that the interviewee provides

One of the benefits of conducting interviews is the opportunity to respond directly to information that is provided by the interviewee and to ask follow-up questions. This interaction with the interviewee may help you to understand an issue in greater detail or provide new and revealing information on an issue that you had not anticipated.

Cross-check information

Interviews may also allow you to cross-check and confirm – or not – information that you have collected from other sources.

Assess whether the witness is credible

The interview process provides you with an important opportunity to assess the credibility of the person and the information they are providing. While it is difficult to describe precisely how you assess this, there is no doubt that a face-to-face interview is more effective than relying on a written statement. This is why courts rely on oral testimonies of witnesses rather than just written statements. When someone is telling their own story in their own words, it allows you to determine whether you think they are telling the truth. An interview also allows you to ask difficult questions, which a person who is not telling the truth might prefer to avoid. It also requires the interviewee to respond to questions immediately, rather than having time to prepare a written response. Asking the same question in different ways can also help test whether the person's story is consistent.

88 OHCHR, *Integrating a gender perspective into human rights investigations: Guidance and practice* (2018), p. 25.

Allow witnesses to tell their story

Victims of human rights violations often feel that they have been neglected, marginalized and forgotten. Sometimes the violations they have suffered will be the cause of stigma and isolation from their communities. Often they will not have had the chance to tell their story to authorities. The interview might be the first opportunity for the person to talk about their experience. Therefore, listening is more important than asking questions.

2. Protection of interviewees

When preparing and conducting interviews with victims or witnesses, it is of paramount importance to consider their need for protection and apply the "do no harm" principle.

While there can be no complete assurance that the interviewee will not face retaliation or reprisals after the interview, several measures may be taken to protect the person, such as:

- interviewing a significant number of people to avoid focusing attention on the one person
- conducting the interview in a safe place where surveillance is minimal
- asking what security precautions the person believes should be taken at the start and the end of the interview
- sharing your contact details with the person and inviting them to keep in contact with you after the interview
- in places of detention, conducting a follow-up visit shortly after the interview and meeting with the same detainees
- never referring explicitly during the interview to statements made by other persons and never revealing the identity of witnesses
- in case of remote interviews, using secure methods of communication and make sure the person is in a safe place.

3. Preparing for an interview

Many potential difficulties encountered in interviews can be effectively managed through proper preparation. Developing a pre-interview planning routine will often not require much time and, after a while, can become second nature.

When interviewing a victim or a witness of torture or ill-treatment, it is important to follow ethical principles and for the interview to be as predictable as possible. This allows the interviewee to feel empowered. This is particularly important for victims, as torture and ill-treatment often creates strong and persistent feelings of powerlessness. When preparing for the interview, the interviewer should always be conscious of helping to empower the victim and take into consideration the need to avoid revictimization. In this regard, it is important to consider if the person has already been interviewed by others and assess whether it is necessary to make them recount traumatic events.

Interviewers should also be prepared in advance to respond appropriately if the persons becomes distressed during the interview. As part of the preparation stage, interviewers should also make sure they have the necessary information at hand if they need to refer the person to specific services. Gender-specific considerations should be integrated since the preparation of the interview.

The location

If you are carrying out the interview in the office of the NHRI, the surroundings should be as comfortable and welcoming as possible, with a glass of water or a cup of tea or coffee to offer the person.

If you are not interviewing the person in your own offices, select a location that provides the greatest sense of privacy and minimizes the potential for eavesdropping or retaliation. The room should be as comfortable as possible and should not have negative associations for the interviewee. In places of detention, the interview should be conducted in a location where the person can feel confident that the conversation cannot be overheard. Ask the person if they feel comfortable and safe.

In some exceptional circumstances, you could also consider the possibility to conduct remote interviews. In this case, specific consideration should be given to safeguarding the privacy and confidentiality of the interview by using secure communication methods. If you are conducting a remote interview in places of detention, make sure that the person deprived of liberty is granted a closed and secure area, without the presence of staff or other persons. Specific efforts should also be made to build trust and rapport with the interviewee.

As women are often the primary carers of children, they may face additional obstacles and have limited availability to participate in interviews. NHRIs should be aware of the situation of women in the particular context and take the necessary measures to mitigate the obstacles, for example by providing child-care alternatives.[89]

If possible, you could also consider asking the interviewee where they would feel safer and more comfortable to have the interview.

Selecting an interviewer

It is important to select the most appropriate person from the NHRI to conduct the interview, consider what language to use and if interpretation is needed during the interview. Issues such as gender of the interviewer, knowledge of the issues or the case, gender expertise, language skills and sensitivity to cultural differences are important considerations. In some cases, there may be no choice about who will conduct the interview. However, it is always important to reflect on how the interviewee may perceive the interviewer and whether this could create some barriers to conducting an effective interview. Ask the person if they feel comfortable being interviewed by a man or woman. If there is no option, the interviewer should describe their experience in dealing with such cases and reassure the person that they are sensitive to the difficulty of talking about a traumatic experience.

Duration of the interview

It is important for victims of torture to have enough time to tell their story at their own pace and in their own words, without being rushed or interrupted. A failure to appreciate this might mean some people are reluctant to talk. At the same time, the session should not be too long, as this could be stressful for the victim. Therefore, a balance needs to be struck between these two competing demands. In addition, it may be necessary to conduct more than one interview in order to have the story told in full. The possibility of subsequent interviews should be considered in this planning stage. However, as it may not always be possible to conduct more than one interview, you should seek to gather as much essential information as possible by asking the right open-ended questions.

When planning the duration of the interview, specific considerations should also be given to the specific situations and needs of women in a particular context. For women with child-care responsibility, for example, the interview should be conducted in special schedules that facilitate their participation.

Learning about the case

The interview may relate to an incident about which you already have some knowledge. If so, you should compile and review any available information, such as official information, media reports, reports prepared by non-governmental organizations or civil society groups or notes from interviews with other witnesses.

89 OHCHR, *Integrating a gender perspective into human rights investigations: Guidance and practice* (2018), p. 27.

Preparing questions

Sometimes you may not know in advance the topic of the interview or the person you will be interviewing; for instance, when a person arrives at the office of the NHRI and wishes to make a complaint. In most cases, however, you will know what the interview is about and can prepare some questions.

Questions should be open-ended and non-leading. They should also focus on the key elements of *who, what, when, where, how* and *why*. Questions should also include gender-specific considerations to gather information on the differentiated impact on women, girls and persons with diverse gender identities.

However, you should not rely too heavily on a prepared questionnaire or incident sheet. It can help to memorize the key questions. Eye contact and establishing rapport with the interviewee are more important than working through a set list of questions. You can, however, refer to this list at the end of the interview to make sure that you have asked all the important questions.

In most cases you will want to interview a person privately, in order to ensure the confidentiality of the interview process. However, a victim may want to be accompanied by a person of trust and this request should be respected.

4. Conducting an interview

4.1. General considerations

Conducting an interview is a sensitive task which requires the interviewer to have:

- an ability to listen
- patience
- objectivity and impartiality
- empathy and sensitivity
- respect for diversity
- integrity
- critical distance
- memory
- an ability to reformulate.

Confidentiality and security

The issue of confidentiality should be clarified at the beginning of the interview and must be respected by the interviewer. You should clearly explain how the information will be used and/or shared (such as in an internal report, external report or communication with authorities) and whether it will be necessary to use the name and personal details of the interviewee. You will also need to obtain the informed consent of the interviewee to use and/or share the information provided and make sure this consent is recorded. During the interview, you should not mention sources of any other information (unless the source is public) and you should keep the identity of other witnesses confidential.

Working with an interpreter

The interview should be conducted in the language that the interviewee finds most comfortable with and with an interviewer who is fluent in that language. If this not possible, you may need to arrange for an interpreter to be present.

Interpreting is a difficult job and simply having knowledge of both languages may not be sufficient. In some situations, it might be difficult to find an interpreter who is seen as impartial. The interviewer

should discuss the situation with the interviewee to find out if there are any reasons that would make a particular interpreter unsuitable.

Preparation for the interview is important and the interviewer should explain the ground rules to the interpreter in private before the interview commences. This can also be an opportunity to go through the proposed list of interview questions. Interpreters must be reminded that all information discussed during the interview is strictly confidential.

To make sure the interpreter abides by the principle of confidentiality, a confidentiality clause should be included in contract of the interpreter. It can also be included in a code of conduct to be signed by the interpreter. Such a code is not only useful for the work of the interviewer and the interpreter, it can also help the interviewee to better understand the role and responsibilities of the interpreter. A copy should be given to the interviewee in a language they understand.

In places of detention, this issue of confidentiality is even more important in building a relationship of trust with the detainee. Accordingly, prison officers, other prison staff and other detainees should not be used for interpretation.

Interviewers should remember to speak directly to, and listen to, the interviewee, as there can often be a tendency to talk "through" the interpreter. A great deal can be learned by observing the interviewee, even if you do not understand the language. It is also important to frame questions in the second person, rather than the third person, when speaking through an interpreter (for example, "What did you do?" rather than "What happened to him next?").

A woman may prefer to have a female interpreter, and this should be established prior to the interview.

Recording

A thorough record of the interview should be kept and, at the very least, notes need to be taken. The notes should be in direct speech and use the exact words of the interviewee to the greatest possible extent. Confirm with the interviewee that the information recorded is accurate. This does not mean reading the entire notes of the interview; only those parts where there may be some uncertainty. As it may be challenging to take detailed notes during the interview, it is recommended that the interviewer complete the information right after the interview to make sure all the relevant information is recorded.

The use of electronic equipment (digital cameras, audio and video recording) presents serious security concerns that should be closely considered. If security conditions permit, audio recording may be better than written notes as it provides a more accurate and word-for-word record of the whole interview. However, transcribing the interview afterwards can be time-consuming and, therefore, it might be sufficient to transcribe only the most relevant sections of the interview. The use of digital cameras could be useful to take pictures of injuries, relevant documents and places. Particular attention should be paid to avoid the picture showing the identity of the interviewee. In general, it is recommended not to use video recording for interviews, as it presents the highest security risk for the interviewee.[90]

Taking notes or using electronic equipment to record the interview should always be agreed with the interviewee at the start of the interview. When conducting interviews in places of detention, the use of an audio and/or video recorder may present an unacceptable level of risk to the interviewee. Even if the interviewee does agree to the interview being audio recorded, they may not be as open and forthcoming as might otherwise have been the case. It is better to have a full and frank interview, taking written notes, than a limited interview that is audio recorded.

If an interviewee chooses not to be audio recorded at the beginning of the interview, it is always possible to ask later on in the interview, when they are feeling more settled, whether it is possible to record the remainder of the interview. Alternatively, an interviewee might be prepared to speak briefly on the recorder at the conclusion of an interview with written notes.

90 OHCHR, *Revised Manual on Human Rights Monitoring* (2011), Chapter 11: Interviewing, p. 14.

When recording interviews, appropriate technical preparation should be taken to check the equipment to be used, such as ensuring having a notebook with sufficient blank pages, checking if pens work well, checking batteries and memory of the audio/video recorders, and testing the equipment. Even if an interview is being audio/video recorded, written notes should also be taken.

The information collected in the interview can be used to complete an incident sheet or included in some other format for recording data.

4.2. Different stages of the interview

Starting the interview

The start of the interview is crucial for establishing rapport with the interviewee and building a sense of confidence and trust. How you greet the interviewee and introduce yourself is very important and shows respect for the interviewee. Make sure you greet the interviewee in a culturally appropriate manner. You know why you want to conduct the interview, however, the interviewee may not.

The introduction allows you to explain in a clear and simple way who you are, the role of the NHRI, the purpose of the interview what information you are looking to collect, what you will do with the information after the interview, and to introduce any other person present at the interview such as an interpreter. It is important to make no threat or promise and not to create any false expectations. It is essential to clearly explain what you can do and what you cannot do.

It is also important to clarify the voluntary nature of the interview and to explain to the interviewee that they can decide not to answer any questions they are not comfortable with and to end the interview at any time.

You should clearly explain what will be done with the information the interviewee provides (whether it will be used in an internal or external report or shared with the authorities) and discuss the extent to which the interviewee may require the information to remain confidential. While most interviewees may not object to the details of their case being included in a public report, they may want their personal details, or any information that may identify them, to remain confidential. You should ensure that the interviewee provides their informed consent to the disclosure of this information and record this at the beginning of the interview notes.

The interview should start with an open question, such as “What would you like to tell me about?” Some victims of torture can be confused or distressed, while others may have so much they want to say that they do not know how to start. Encourage the interviewee to tell their story in a logical, possibly chronologically, sequence. This can be done by inviting the interviewee to “Start at the beginning …” and then continue by asking “Could you tell me what happened next?”

If something is unclear, do not interrupt unless it is absolutely necessary. Make a note and come back to the question later on. You may need to collect specific details on particular aspects of the story, but the first priority is to listen to the story as a whole.

In order to ensure protection of the interview, it is recommended to ask what security precautions the person believes should be taken.

Conducting the interview

Open and non-leading questions should be used during the early stages of the interview.

An open question is one that invites a person to provide a detailed response, rather than a simple answer of “yes”, “no” or a short fact. Open questions also give control of the conversation to the interviewee, as it allows them to choose how much information is shared.

A leading question is one where the suggested answer is contained within the question. For example, instead of asking “Did the police torture you?”, you should ask “Could you tell me how did the police treat you?”

As the interview progresses, you may need to ask some closed questions to clarify or confirm certain information.

The interviewer also has to be careful not to coach the interviewee by suggesting answers to questions or lines of evidence.

The art of listening is crucial to conducting effective interviews. The following principles provide a useful guide when interviewing victims of torture:

- let the interviewee narrate his or her story. They know what they want to say. Do not dominate the conversation and do not talk too much yourself
- listen to the person. Good listening means hearing what the interviewee is actually saying, not what you think they are saying
- ask questions that respond to what the person is telling you. Do not simply move through a set list of questions and ignore what you are being told
- be sensitive to how the interviewee feels about the information they are sharing with you and be sensitive to non-verbal signs, such as body language, without being patronizing
- allow moments of silence in the interview and be patient – do not rush the person
- be aware of your own body language
- maintain a friendly, polite and sympathetic attitude towards the interviewee
- be sensitive to cultural differences in questioning and being questioned.

Even if you want to probe for information – or if you do not believe the story you are being told – it is important to respect the interviewee and allow them to tell their story in their own words and at their own pace, avoiding interrupting them.

The presence of an additional person at the interview can be considered, although this should be done with the agreement of the interviewee. This person can confirm that the interview was freely given, and that the interviewee was not subjected to any pressure from the interviewer. They can help monitor the level of stress of the interviewee and assess whether there is a need to take a break or to postpone the interview to a later time. This person can also take notes of the interview, allowing the interviewer to concentrate solely on the interview and building rapport with the interviewee.

Closing the interview

It is advisable to collect standard information about the person – such as name, address, occupation, ethnicity and age – at the end of the interview. This overcomes the risk that the interview begins like an interrogation.

Before closing the interview, you should clearly explain what will happen next and what you will do with the information you have recorded. You should check that the interviewee has understood this. It is also essential to clarify whether the information was given anonymously or whether the interviewee is willing to consent to the use of the information and his or her name.

It is important to close the interview with an open question, such as “Do you have anything else to add?” This reminds the interviewee that it is their last chance to speak and it may prompt additional important information.

The interviewer should also establish a process for keeping in contact with the interviewee, either by telephone or through a reliable contact. The interviewee should know how to contact the NHRI – quickly and at any time – in the event of threats or reprisal or in order to provide additional information.

5. After the interview

Immediate follow-up

It can be difficult to set aside time to think about an interview immediately after it has finished, particularly if you are conducting a number of interviews in quick succession. However, it is helpful to take a few minutes to go over your interview notes. This can provide ideas for other people to interview or additional sources of information about the same event.

Write up the interview notes, or transcribe the interview recording, as soon as possible. The advantage is that you are more likely to remember information that may not be clear in your notes. It might also give you the chance to go back to the interviewee if you have further questions.

In writing up your notes, you should use direct speech and the exact words of the interviewee as much as possible. The best evidence is what the person actually said, not how you interpreted or summarized the information. In writing up these notes, it is preferable to compile the information in chronological order.

Statements and affidavits

A statement is simply a written account of an incident provided by a person and using their own words. An affidavit is a sworn statement. This means that the person has sworn, in front of a lawyer or judicial officer, that the contents of the statement are true. Nothing can guarantee that an affidavit is true, although it does carry more weight as evidence than interview notes. There are also legal sanctions for false declarations made under oath.

Whether the information you obtain is in the form of a statement or affidavit will depend on the mandate of the NHRI and/or the purpose for collecting the information. If the information is to be included in an internal or external report, then it may be sufficient to collect a statement from an interviewee. However, if the information is intended for use in legal proceedings, such as a criminal prosecution, or it is the basis of a formal complaint, then it may be necessary to obtain an affidavit.

It is easier to prepare an affidavit if you decide before the interview that this is what you intend to do. Begin by inviting the interviewee to tell their story slowly. The interviewee should describe only what they have seen, heard or experienced directly, not what they have been told by others. You should write only what you are told and refrain from adding anything or imposing your own interpretation. As far as possible, an affidavit should be in direct speech and use the person's own words. Each legal system will require an affidavit to be prepared according to a certain format. Unfortunately, this may sometimes require the use of language that is more complex than strictly necessary.

6. Interviewing victims of trauma

Interviewing victims of trauma

Interviewing victims of traumatic events is always a very sensitive process that requires careful preparation, including assessing the risks to survivors before the interview takes place.[91] People who have survived extreme events will often suffer a serious stress reaction, usually called post-traumatic stress disorder (PTSD).

PTSD is usually divided into two phases:

- an acute phase, where common symptoms include flashbacks, nightmares and intrusive thoughts
- a chronic phase, which follows the acute phase if treatment is not provided and can include symptoms such as depression and lack of concentration.

91 OHCHR, *Revised Manual on Human Rights Monitoring* (2011), Chapter 11: Interviewing, p. 26.

When a person is in the chronic phase of PTSD, they may not realize that the symptoms they are experiencing are related to the trauma they have suffered.

Other characteristics that a person who has gone through a traumatic event might display include:

- constantly recalling the event
- trying to avoid remembering the event
- physical symptoms, such as insomnia, irritability or hyper-vigilance.

All of these factors can pose challenges when conducting an interview. For example, if someone is short of sleep or has difficulty concentrating it may it hard for them to sustain an interview over an extended period of time. In this situation, it might be preferable to have several short interviews.

It will also be challenging to conduct an interview with a person who is trying to avoid remembering the event. In some situations, it is not a conscious decision to block the memory. It can be common for people who have gone through traumatic experiences to suffer amnesia. The interview process, while painful, may actually help someone overcome this response, although this must be handled in a sensitive and sympathetic way,

In some circumstances, an interviewee may also begin to re-experience the traumatic event. As an interviewer, you must be alert to this possibility. If it appears that the interviewee is reliving or awakening memories of the experience, stop the interview immediately and discuss this with the person.

Interviewing victims of torture

Interviewing victims of torture is an extremely delicate process. As an interviewer, you must be prepared to deal with difficult emotions and be able to empathize with the victim.

Individuals should not be forced to talk about their experience if it makes them feel uncomfortable. Further, torture survivors may have difficulty remembering specific details and inconsistencies may arise.

As mentioned above, the interview process may have the effect of reawakening traumatic memories for the person, so the interviewer should avoid retraumatizing the person. The person may become overwhelmed or show signs of distress, including non-verbal ones such as shivering of hands, skin becoming pale, tears, sobbing or losing breath. If this occurs, it is important to stop the interview, express your concern and awareness of what the person is experiencing and clarify the confidential nature of the interview. It may be necessary to take a break from the interview to let the person recover or to come back at another time for a second interview.

The interviewer should also know in advance the legal, medical and psychological support services available, to be able to appropriately refer the person to them.

Interviewing victims of sexual violence

Victims of rape and other forms of sexual violence are also likely to suffer from trauma. Some psychologists call this rape trauma syndrome (RTS).

RTS is usually divided into three phases:

- the impact phase, where the victim is likely to experience a wide range of emotional reactions, which may be openly expressed or kept under tight control
- the acute phase, where symptoms are similar to the acute phase of PTSD and include flashbacks, fear and intrusive thoughts; further, the physical consequences of rape can be very distressing, particularly the fear of HIV infection or other sexually transmitted diseases
- the chronic phase, which like PTSD, will follow the acute phase if treatment is not provided.

It is important for the interviewer to avoid assumptions, prejudices and stereotypes associated with sexual violence, including the idea that only women or girls can be victims of this type of violation. Men, women and LGBTI persons of all ages can be victims of rape or sexual and gender-based violence.

Constant reassurance can do no harm to victims of sexual violence and others affected by trauma. If they are willing to talk, invite them to discuss how their emotional reactions are linked to what they have suffered. However, ask them to tell you the details of their experience only when they are ready.

People who have been victims of sexual violence often share similar responses to victims of torture. Low self-esteem is a common characteristic. This is partly a psychological consequence of the trauma but also frequently a reflection of social attitudes which can hold victims of sexual violence partly to blame. Because of the social stigma attached to sexual violence in some contexts, victims may be particularly reluctant to talk about their experience.[92] Therefore, when conducting an interview, it is crucial to be non-judgmental and to place no hint of blame on the person. Victims of sexual violence may not want to talk about what happened to them; do not force them.

Sexual violence is deeply intimate, so interviewers should make sure to be extremely delicate when conducting the interview and avoid asking details that are not strictly necessary.

Interviewing persons deprived of liberty (see also chapter 8)

Interviews with persons deprived of liberty are different from interviews carried out in the privacy and security of the NHRI office or any other safe location. The importance of gaining the trust of the interviewee cannot be stressed enough. It is even more important to not do anything that could betray that trust. All precautions should be taken so the safety and security of the interviewee is not compromised. These interviews should be conducted without a witness and take place in a private location, out of sight and hearing of others.

The purpose of conducting interviews in places of detention can vary, especially if they form part of a preventive visit. As the person deprived of liberty may not fully understand the purpose of the interview, and have particular expectations relating to their individual situation, it is important that you clearly explain its aim at the outset. As the interviewer, you should also describe what you can do and what you cannot do. Further, you should not make any promise that you cannot keep or raise false expectations.

Persons deprived of their liberty who have suffered torture should be asked whether the information they provide can be used and, if so, in what way. For example, you should clearly ask for the person's consent regarding the use of their name. However, because of a fear of reprisal, they may prefer that the information is kept anonymous.

Interviewing women

Prior to conducting interviews with women, it is important to be aware and consider the gender dynamics of the specific context where the interview will take place. In some contexts, women may face specific obstacles to participate in an interview (due for example to lack of availability for household or childcare responsibilities) or may be reluctant to share their own experiences for different reasons, including fear for them and their children. It is therefore important to take all necessary measures to ensure that women can participate in interviews. These include, for example, adapting the schedule of the interview, making specific childcare arrangements and being extra careful with the need for privacy during the interview. In some contexts, it might be appropriate to first speak with a women's husband/father or other male member of the family in order to explain the reasons for the interview.[93] The interviewer should also be aware of any support service (legal, medical, psychological or other type) that women could be referred to.[94]

92 OHCHR, *Revised Manual on Human Rights Monitoring* (2011), Chapter 11: Interviewing, p. 25.

93 See OHCHR, I*ntegrating a gender perspective into human rights investigations: Guidance and practice*, 2018, pp. 26-29.

94 APF, *Promoting and Protecting the Human Rights of Women and Girls: A Manual for National Human Rights Institutions*, January 2017, pp.57-58.

It might be difficult for a man to interview a woman, even when the subject matter of the interview is not sensitive. A woman is often more willing to talk to another woman. This consideration is especially important when discussing an experience of a violation of sexual nature. It is difficult enough for a woman to talk to anyone about an experience of this nature and a man, however sympathetic, is likely to trigger fears and feelings of vulnerability associated with the assault. However, it is important to avoid making assumptions regarding women's preferences and ensure that the interviewee can choose to speak to a woman or a man.

Interviewing children

Children's best interest should always prevail when planning and conducting interviews, including considering whether it is really necessary to carry out the interview in the first place and if the information can be obtained through other means. It is also important for interviewers to be adequately trained on child development and specific techniques for interviewing children.

Children perceive the world very differently from adults and this fact should be appreciated when preparing to interview a child. The issue of power relations should also be carefully considered, as a child may be more likely to provide compliant answers.

The age, developmental stage, education and prior experiences of the child must also be taken into account, as this will greatly influence the child's capacity to tell their story. For instance, can the child talk freely and uninterrupted? Or are they better able to respond to specific questions?

If the interview relates to an allegation of physical abuse, a child is likely to feel anxious and reticent to discuss the issue. It is important to be extremely patient. Often several interviews will be necessary before a child will trust you sufficiently to confide in you. It may also be helpful to consider using other methods of communication, such as drawing or using pictures or images (sad faces / smiley faces).

The child should be asked whether they have a preference regarding the gender of the interviewer. During an interview, you should also be attentive to signs that the child is growing anxious or overwhelmed and, when necessary, offer a break or interrupt the interview.

Other specific issues to be carefully considered when interviewing children include:

- Obtaining the informed consent of the parent(s) or legal guardian to talk to the child, as well as the child's consent (if age allows).
- Ensuring a safe and private location as well as sitting arrangements that could make the child more comfortable, for example by avoiding sitting behind a desk.
- Making sure from the beginning that the child understands the purpose and process of the interview.
- Using simple language adapted to the child's age and development stage.
- Reducing note-taking.

Interviewing LGBTI persons

In certain contexts, it may be particularly challenging to gather information on human rights violations directly from LGBTI persons for a number of reasons, including security, risk of harm, trauma and stigma. NHRIs may therefore seek to obtain information on the situation of LGBTI persons also from other sources, such as associations and organisations that protect their rights. It is also crucial that all data is treated confidentially and that this is clearly explained to the interviewee.

NHRIs should be trained on LGBTI issues prior to carrying out interviews with LGBTI persons. When interviewing LGBTI persons, it is important to use appropriate language, to avoid pressuring the person to disclose their sexual orientation or gender identity by posing direct questions, and to send a clear message of non-discrimination. The interviewer should refrain from making assumptions on the person's sexual orientation or gender identity, and refer to the person by using the terms, pronouns and names they choose.

What is ultimately important for the interviewers is not to know the person's sexual orientation or gender identity, but rather to enquire into and identify any forms of discrimination based on sexual orientation, gender identity and expression, or sex characteristics, that may be conducive to torture or other ill-treatment.[95]

Insights from practice:

As part of its work to promote and protect the rights of women and LGBTI persons, in 2016 the ***Commission on Human Rights of the Philippines*** *adopted the Gender Ombud Guidelines[96] for investigating human rights violations against women and persons with diverse sexual orientations, gender identities and expressions. The Guidelines were developed in close coordination with the Philippines Commission on Women and in consultation with national government agencies and civil society organizations. The document includes general guidelines and specific guidelines on pre-interview, interview and post interview related to women and LGBTI persons.*

KEY POINTS: CHAPTER 5

- Interviewing is important for a number of purposes, such as collecting information, assessing its credibility and cross-checking.
- It is crucial to prepare for an interview and to be clear about what you hope to achieve.
- Interviewing is a delicate task, and a primary goal is to build rapport with the interviewee. Basic principles should be followed in terms of opening the interview, asking open and non-leading questions, closing the interview and respecting confidentiality.
- Follow-up is essential, for example by preparing an affidavit or identifying other people to interview.
- Interviewing victims of trauma and other persons in situations of vulnerability poses specific challenges; an interviewer needs to be prepared for this and know how to respond appropriately.
- Gender-specific considerations should be included during the preparation, conduct and after any interview.

95 APT, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*, 2018, pp. 46-48

96 See: http://chr.gov.ph/wp-content/uploads/2018/09/CHR-Gender-Ombud-Guidelines.pdf

FURTHER READING

OHCHR, Integrating a gender perspective into human rights investigations: Guidance and practice, 2018

APF, *Promoting and Protecting the Human Rights of Women and Girls: A Manual for National Human Rights Institutions* (updated January 2017).

OHCHR, *Revised Manual on Human Rights Monitoring*, Chapter 11: Interviewing, 2011

Chapter 6:
Training public officials

KEY QUESTIONS

- What type of training activities can NHRIs undertake to assist in the prevention of torture and ill-treatment?
- What are the advantages and disadvantages for NHRIs in directly delivering training courses for public officials?
- What factors should NHRIs take into account when delivering trainings?
- How can torture prevention trainings address gender issues?

LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Competence and responsibilities

3. A national institution shall, inter alia, have the following responsibilities:

f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles.

ACJ Reference on Torture

Training and education

NHRIs should take an active role in educating all sectors of the community. For example lawyers, journalists, doctors, medical personnel, teachers, police, the military, senior public officials, the judiciary and legislators, on the meaning and application of the international law on torture, cruel, inhuman or degrading treatment or punishment.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

United Nations Declaration on Human Rights Education and Training

Article 7.4

States, and where applicable relevant governmental authorities, should ensure adequate training in human rights and, where appropriate, international humanitarian law and international criminal law, of State officials, civil servants, judges, law enforcement officials and military personnel, as well as promote adequate training in human rights for teachers, trainers and other educators and private personnel acting on behalf of the State.

Article 9

States should promote the establishment, development and strengthening of effective and independent national human rights institutions, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights ("the Paris Principles"), recognizing that national human rights institutions can play an important role, including, where necessary, a coordinating role, in promoting human rights education and training by, inter alia, raising awareness and mobilizing relevant public and private actors.

United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)

Rule 75

1. All prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner.
2. Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties, which shall be reflective of contemporary evidence-based best practice in penal sciences. Only those candidates who successfully pass the theoretical and practical tests at the end of such training shall be allowed to enter the prison service.
3. The prison administration shall ensure the continuous provision of in service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)

Rule 33

1. All staff assigned to work with women prisoners shall receive training relating to the gender-specific needs and human rights of women prisoners.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Rule 85

The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present rules.

Introduction

Providing professional training programmes for public officials is a critical strategy to help prevent torture and ill-treatment of persons deprived of their liberty.[97] Training can be particularly effective when a lack of human rights knowledge, skills or attitudes among duty bearers is contributing to a pattern or risk of torture and ill-treatment occurring.[98]

All personnel involved in the arrest, interviewing and deprivation of liberty of persons should receive training on human rights and, in particular, on the absolute prohibition of torture. NHRIs can play an important role in contributing to the provision of this training by developing training tools and delivering training courses.

However, it is important to note that training programmes offered by NHRIs will generally only be useful when there is clear political will to prevent torture and other ill-treatment. The legal and regulatory framework, institutional policy and procedures must reflect and support the human rights principles discussed in the training room.

In these cases, training programmes should be integrated into the general work and procedure of the institution, whether it is a police service, prison service, immigration department, psychiatric hospital, social care service or other institution. To achieve the greatest impact, the training programme should have the strong endorsement and support of that institution's leadership.

When torture and other ill-treatment occur at the instigation of an institution's authorities, or is tolerated by them, training will not be the right approach. It may in fact be counterproductive as it provides an opportunity for the institution's leadership to publicly promote that they are making efforts to prevent torture.

Police officers, prison warders and other public officials may also be hostile to what they view as outside interference in how they do their job. They may resent receiving training from representatives of NHRIs, whom they might consider to be idealists with no practical understanding of the difficulty of their job. A mapping exercise can help NHRIs determine what results training could realistically achieve and whether it is the most appropriate intervention to address torture and other ill-treatment in the specific context.

It is therefore important for NHRIs to carefully consider their strategy for the development and delivery of training programmes. In some cases, the NHRI may not be the most appropriate organization to provide training. Instead, it could contribute to the development and revision of curricula and training materials, as well as monitor and evaluate the effectiveness of training programmes.

1. Developing and revising training curricula and materials

Ensuring that human rights standards and principles are included in training curricula for public officials involved in the arrest, questioning and detention of people deprived of their liberty is an essential preventive measure.

According to the Convention against Torture, States parties have a duty to ensure that information on the prohibition and prevention of torture is included in training programmes for law enforcement and other public officials. The Bangkok Rules and the Nelson Mandela Rules also include such obligations. The new Principles on Effective Interviewing for Investigations and Information Gathering also call for States to develop specific training on interviewing techniques.[99]

97 Human Rights Committee general comment No. 20 , para. 10.

98 From OHCHR, *Planning to Impact*: *A Manual on Human Rights Training Methodology; Professional Training Series No. 6/Rev.1* (revision 2019).

99 See Principles on Effective Interviewing for Investigations and Information Gathering, in particular Principles 6 'Effective Interviewing is a professional undertaking that requires specific training'.

NHRIs can monitor how these obligations are implemented in practice. They can assess whether human rights training, in general, and the prevention of torture in particular, are properly integrated in the basic training curricula for police officers, prison officers, army personnel and others. In addition, the curricula and course materials for ongoing professional training for these groups should also be reviewed.

In line with a human rights-based approach, training institutions and programmes should themselves embody and apply human rights principles, including non-discrimination, equality and accountability. Training content and processes should promote inclusion, participation and empowerment of all participants and educational personnel involved.[100]

Where human rights training programmes and materials are non-existent or insufficient, NHRIs can contribute to the development or revision of curricula, in cooperation with the relevant training authorities.

It is important to underline the point that training in human rights and torture prevention should not only provide law enforcement agencies and other officials with valuable theoretical knowledge on standards and rules. It should also offer them practical information and skills that will be useful in their daily work. Human rights and torture prevention training should therefore be seen as an integral part of operational training.

For example, torture prevention should form a core part of basic operational training with police officers in a number of key operational areas, such as:

- arrest – on minimum use of force and implementation of legal and procedural safeguards from the first moment of deprivation of liberty
- interrogation – on "effective interviewing" techniques
- investigation – on effective investigations and how to collect other evidence to reduce reliance on confession
- maintenance of public order and demonstrations – on use of force in extra-custodial settings and de-escalation techniques.

Public officials should be trained on gender equality, women's rights and LGBTI rights as part of comprehensive programmes to combat gender-based discrimination and violence. Specific training topics for public officials involved in deprivation of liberty and other torture prevention-related roles could include:

- the gender-specific needs and rights of women in detention, including mental and physical healthcare and hygiene needs
- recognising victims of sexual and other gender-based violence, responding appropriately and sensitively to prevent re-victimization and stigmatization
- ensuring equal access of women and lesbian, gay, bisexual, transgender and intersex people to all services in detention
- combating and dismantling the harmful gender stereotypes resulting in torture and ill-treatment, for example in the provision of health-care services to women, girls, and lesbian, gay, bisexual, transgender and intersex persons.

In addition to developing and revising curricula, NHRIs can also contribute to the development and revision of other training materials, such as brochures on the prevention of torture or "train the trainer" manuals.

100 OSCE/ODIHR, *Guidelines on Human Rights Education for Law Enforcement Officials* (2012), pp. 19-21.

Insights from practice:

*The **Namibia Ombudsman** launched a country-wide police training program. This included both the development of a new police training manual on torture and ill-treatment and a national media campaign. The lessons-learned from detention monitoring visits informed each training session and a process of special briefings, leadership meetings and peer-to-peer exchanges helped to share the key training messages as widely as possible. One of the keys to the training success was focusing on constructive attitude changes, rather than using a naming and shaming approach.*

*The **Kenya National Commission on Human Rights** has been involved in a process led by the National Police Service to review its curriculum and incorporate a human rights-based approach, including on the pre¬vention and protection of sexual violence. The NHRI has been advocating for the creation of guidelines for the members of the National Police Service on how to use force, and how to prevent and protect from sexual violence, in their operations[101].*

2. Delivering training courses

NHRIs can consider delivering training courses for professional groups directly involved in deprivation of liberty, such as police, prison officers, army personnel, and health and social care service providers.

Peer learning is known as an effective way to build trust and encourage participation. This model brings participants from the same sector together, so they can exchange experience, discuss human rights issues in relation to their everyday work and learn from each other. It may therefore be preferable for officials to be trained on human rights and torture prevention by people from their own profession.

Another option is to establish a mixed training team, composed of representatives from the NHRI and representatives from the professional group. NHRIs could work with senior officials that are still in service or retired as potential trainers or experts to advise on the training curricula and course materials.

Alternatively, NHRIs can focus on developing and running "train the trainer" courses, with regular follow-up and evaluation included as part of this strategy.

Where appropriate, NHRIs can be involved in directly training public officials. Like with any human rights education activity, this will involve three phases: design and planning, implementation and evaluation (see also Chapter 9). Planning tools such as the "Logic Model" can assist NHRIs to deliver trainings based on the torture prevention outcomes it is trying to achieve.[102]

In the training cycle, NHRIs should take account of the following principles.

- **Needs assessment:** The content, structure and methodology of the training programme should be tailored to the meet the identified needs of the participants and the organization. A bottom-up approach could be interesting and lower ranking officials could also be consulted during the needs assessment.
- **Selection of participants:** Training must be available for officials who have direct contact with detainees, not just high-ranking officers or new recruits receiving basic training. Women and men should have equal access to trainings. For more impact, it is better, when possible, for participants to volunteer rather than being designated.

101 GANHRI, P*reventing and Eliminating All Forms of Violence Against Women and Girls: The Role of National Human Rights Institutions: A contribution to the review and priority themes of CSW63*, 2019, p. 29.

102 See APF, *Human Rights Education: A Manual for National Human Rights Institutions* (revision 2019), Chapter 6: Planning and designing human rights education, pp. 62–76.

- **Objectives:** Training should have a practical focus to assist officials in their daily work and help them respond to operational challenges that they face.
- **Evaluation:** Monitoring the impact of training should be integrated into the training process and could include follow-up visits, questionnaires or mentoring.

Active participation is one of the most important factors promoting learning and there are a range of participatory training techniques NHRIs can use, from carousels and case studies to fishbowls and roleplay exercises.[103] Training will also be more impactful when it acknowledges and draws on the professional expertise and practical experience participants bring to the course.

Insights from practice:

*The **Human Rights Commission of Malaysia (SUHAKAM)** has conducted training programmes for various enforcement agencies, exposing participants to the nine core international human rights instruments and their principles. The objective was to integrate the concept of human rights into the daily duties of these officials, with particular emphasis on their role in promoting and protecting human rights*

KEY POINTS: CHAPTER 6

- Training public officials is an important way that NHRIs can contribute to the prevention of torture.
- NHRIs can be involved in developing and revising training curricula and relevant training material on torture prevention.
- NHRIs can develop and deliver training courses, which are based on a needs assessment, contains practical content, involves relevant participants and includes evaluation.
- Gender issues should be included in torture prevention training for public officials. NHRIs can conduct a gender analysis to ensure that trainings are gender-sensitive and work towards gender equality.

103 See OHCHR, *From Planning to Impact: A Manual on Human Rights Training Methodology;* Professional Training Series No. 6/Rev.1 (revised 2019), pp. 27–33.

FURTHER READING

Combating Torture: A Manual for Judges and Prosecutors; Conor Foley, Human Rights Centre, University of Essex; 2003

To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces; International Committee of the Red Cross; second edition 2014

A Human Rights Approach to Prison Management: Handbook for Prison Staff; Andrew Coyle; International Centre for Prison Studies; third edition 2018

Understanding Policing; Amnesty International, Netherlands; 2007

From Planning to Impact: A Manual on Human Rights Training Methodology; Professional Training Series No. 6/Rev.1; OHCHR; revised 2019

Human Rights Education: A Manual for National Human Rights Institutions; APF; revised 2019

APF Gender Mainstreaming Guidelines for Trainers and Developers of APF Training Material; APF; 2017

Guidelines on Human Rights Education for Law Enforcement Officials; OSCE/ODIHR; 2012

Section III:
Acting as an oversight mechanism

Chapter 7:

Cooperating with international mechanisms

KEY QUESTIONS

- Does interaction with treaty bodies – and the United Nations Committee against Torture in particular – go beyond submitting shadow reports?
- What opportunities exist for NHRIs to interact with the United Nations Human Rights Council, in particular in the Universal Periodic Review and with the Special Rapporteur on Torture?
- Do NHRIs have a role to play in regional complaints mechanisms?
- How can NHRIs interact with international and regional visiting bodies?

LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Competence and responsibilities

3. A national institution shall, inter alia, have the following responsibilities:

d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence.

e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights system.

ACJ Reference on Torture

International bodies

NHRIs should encourage their State to issue a standing invitation to the United Nations Special Rapporteur on Torture and other relevant Rapporteurs of the United Nations to make visits and reports.

NHRIs should urge their States to ensure that the reporting requirements under relevant international treaties are up-to-date. They might also consider drafting shadow reports.

NHRIs should urge their States to implement all recommendations and conclusions made in reports prepared by the relevant monitoring committees and Special Rapporteurs. In this respect, NHRIs have a supportive role to play.

Introduction

Most of the human rights instruments prohibiting torture (described in chapter 2) have established various mechanisms to monitor their implementation. NHRIs can contribute to the work of these mechanisms by providing alternative sources of information and by monitoring the implementation of their recommendations.

The first two sections of this chapter examine mechanisms established within the United Nations human rights system. A difference is traditionally made between the mechanisms established under the Human Rights Council and applicable to all States (called Charter-based bodies) and mechanisms set up under a specific treaty (called treaty-based bodies) that are applicable only to States that have ratified these treaties. The mandate of the Committee against Torture will also be examined in detail.

When reviewing the compliance of an NHRI with the Paris Principles, GANHRI's Sub-Committee on Accreditation (SCA) also examines the interaction that an NHRI has with the international human rights system, including with the treaty bodies.

The third section of this chapter examines regional complaints mechanisms, while the final section looks at the role of visiting mechanisms which have specific mandates focusing on torture prevention.

1. United Nations treaty bodies

Human rights treaty bodies are committees of independent experts that monitor the implementation of international human rights treaties. They are created by the treaty that they monitor and their main function is to consider the reports of States parties.

Some treaty bodies can examine individual complaints (a quasi-judicial function). However, this is usually dependent on the State party accepting this provision of the treaty. The treaty body can issue its views following the examination of a complaint, although this is not a legally binding decision. Treaty bodies also issue general comments on specific provisions of their respective treaties or general recommendations on thematic or cross-cutting issues.

While this section will examine in detail the role and function of the Committee against Torture, it is important to note that the Human Rights Committee plays an important role in torture prevention. As part of their torture prevention strategy, NHRIs should strive to cooperate closely with this body both in the reporting procedure and its individual complaints procedure.

Treaty Body	Treaty	Examination of reports	Individual complaints
Human Rights Committee	International Covenant on Civil and Political Rights (1966)	Yes	First Optional Protocol (1966)
Committee on Economic, Social and Cultural Rights	International Covenant on Economic, Social and Cultural Rights (1966)	Yes	Optional Protocol (2008)
Committee on the Elimination of Racial Discrimination	International Convention on the Elimination of All Forms of Racial Discrimination (1965)	Yes	Article 14
Committee on the Elimination of Discrimination against Women	Convention on the Elimination of All Forms of Discrimination against Women (1979)	Yes	Optional Protocol (1999)
Committee against Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984)	Yes	Article 22
Committee on the Rights of the Child	Convention on the Rights of the Child (1989)	Yes	Third Optional Protocol
Committee on Migrant Workers	International Convention on the Rights of All Migrant Workers and Members of Their Families (1990)	Yes	Article 77[104]
Subcommittee on Prevention of Torture	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment (2002)	No	No

104 The individual complaints procedure has not yet been accepted by a sufficient number of States Parties to make it operational (April 2021).

Treaty Body	Treaty	Examination of reports	Individual complaints
Committee on the Rights of Persons with Disabilities	Convention on the Rights of Persons with Disabilities (2006)	Yes	Optional Protocol
Committee on Enforced Disappearances	International Convention for the Protection of All Persons from Enforced Disappearances (2006)	Yes	Article 31

1.1. Role of NHRIs in the treaty body reporting procedure

Each treaty establishes a reporting procedure which requires States parties to regularly present a report on their compliance with, and implementation of, their treaty obligations. Some treaty bodies have pre-session meetings during which they adopt a list of questions that the State will be required to answer. The report is then examined during a public session of the treaty body, in the presence of a delegation of the State party, which considers all information provided by the State and information received from other sources. Based on this process, treaty bodies adopt concluding observations, which refer to the positive aspects of the State's implementation and areas where they recommend the State to take further action.

Most treaty bodies also offer States an optional simplified reporting procedure, known as "List of Issues Prior to Reporting" (LOIPR) procedure. The LOIPR is a public list of limited issues, which the treaty bodies adopt based on a review of submitted information and transmits to States parties prior to the submission of their respective periodic report. Under the LOIPR procedure, the State is required to submit a common core document and its replies to the list of issues.

Recently, several treaty bodies have explicitly recognised the importance of participation by NHRIs in the treaty bodies' work and formalized their participation through adoption of various documents. For example, in 2019 the Committee on the Elimination of Discrimination against Women adopted a paper on the cooperation between the Committee and NHRIs.[105]

1.1.1. Pre-reporting procedure

NHRIs can play an important role in the pre-reporting process. In particular, they can discuss the reporting process with their Government and help ensure that the State's report is submitted on time.

1.1.2. Reporting and simplified reporting procedures

The role of NHRIs in the reporting procedure can differ from one treaty body to another. However, as a minimum, NHRIs can:

- submit their own independent report on the State's compliance with, and implementation of, the treaty
- submit their written information for the list of issues or list of issues prior to reporting adopted by the treaty body
- provide briefings for members of the treaty bodies, either in person or remotely via videoconference

105 Committee on the Elimination of Discrimination against Women, *Paper on the cooperation between the Committee on the Elimination of Discrimination against Women and National Human Rights Institutions*, adopted by the Committee at its seventy-fourth session (21 October-8 November 2019)

- attend the interactive dialogue between the treaty body and the State party.

State reports and shadow reports

NHRIs may contribute information for inclusion in the State's reports to treaty bodies. Increasingly treaty bodies expect that NHRIs will be consulted in the preparation of reports by States parties. However, NHRIs should refrain from preparing a report on behalf of the State, as it is crucial that they do not compromise their standing as an independent, oversight body.

NHRIs can also draft an alternative report (also known as a "shadow report") and submit this directly to the treaty body. NHRIs might also include comments on the report prepared by the Government, if there is sufficient time to do so. State reports are supposed to be made public six weeks before the treaty body meets.

A shadow report can follow the structure of the Convention, considering each article and highlighting areas of progress or concern regarding implementation of its provisions by the State. It can also focus on particular issues. However, the report should be balanced and consider both positive and negative developments. If the Government has taken constructive steps towards the promotion and protection of human rights, these should be acknowledged.

Shadow reports should also suggest questions and issues that the treaty body can raise in discussion with the State, as well as propose recommendations that the treaty body could consider making to the State in its concluding observations.

Other possible contribution

Some treaty bodies allow NHRIs additional opportunities to participate in the reporting process, such as:

- holding a closed and private meeting with the treaty body, in person or through videoconference
- submitting information to assist with drafting the written list of issues sent to the State before the session
- making a statement during the plenary session
- meeting with members of treaty bodies outside the official meeting hours, for example during lunch breaks, in person or through telephone or videoconference
- publicising the webcasting review session.

More and more sessions are live webcasted and NHRIs can organise public sessions at the national level to raise awareness and publicise the review, the questions and the answers by the State delegation.

NHRIs from all regions have been increasingly involved in treaty body processes. In its 2019 report to the General Assembly on NHRIs, the UN Secretary General noted that, between September 2018 and July 2019, 59 NHRIs submitted information and 38 provided briefings to the treaty bodies.[106] Treaty bodies are also increasingly using new technologies such as video conferencing when NHRIs cannot travel to Geneva.

1.1.3. Follow-up to the reporting procedure

NHRIs have a key role to play in the follow-up to the reporting process. They can translate, publish and disseminate the concluding observations adopted by the treaty bodies. They can also encourage the Government to implement the recommendations made by the treaty body, as well as monitor the Government's progress in this area.

Treaty bodies have developed follow up procedures. Several request mid-term information or report on the implementation of recommendations issues in their concluding observations. Some treaty

106 UN Secretary-General's report to the General Assembly on national institutions for the promotion and protection of human rights, A/74/226, 25 July 2019, para. 73.

bodies also prioritise some key and urgent recommendations with a specific timeframe for reporting by State. Some have appointed Rapporteurs dedicated to follow up among the members. NHRIs can play a key role in this follow up procedure by liaising with the Rapporteur and/or by providing written information on the implementation of the recommendations by the State.

1.2. Role of NHRIs and treaty body complaints procedure

1.2.1. Treaty bodies complaints procedure

Eight Committees/treaty bodies[107] can consider complaints or individual communications from people who believe their rights have been violated under the relevant treaty. Complaints may be brought only against States which have recognized the competence of the Committee to consider complaints from individuals. Depending on the treaty concerned, the State party recognizes the Committee's competence by making a declaration under an article of the treaty or by becoming a party to an Optional Protocol.

Anyone can lodge a complaint with a Committee against a State that satisfies these conditions. A complaint may also be brought on behalf of another person if their consent is obtained or if the author can justify acting without such consent, for example, where a person is in prison without access to the outside world. There is no formal time limit for filing a complaint. However, it is preferable for complaints to be submitted as soon as possible after exhausting domestic remedies. In urgent situations, the committees may request through the State party to grant "interim measures" to prevent "irreparable harm". Such requests are normally issued to prevent actions that cannot be undone, like the execution of a death sentence or the deportation of an individual facing risk of torture.

Complaints are considered on the basis of the written information supplied by the complainant, or their representative, and the State party in closed meetings. The committees' decisions on individual complaints are included in their annual reports. If a violation is found, the State is requested to provide an effective remedy and respond to the Committee within a set deadline. The remedy recommended will depend on the violations found. The State has a good faith obligation to implement the Committee's findings and grant appropriate remedies.

A member of each committee, called a Rapporteur, regularly reports to it on the implementation of each decision and this is published in the committees' reports. The Rapporteur encourages the State to implement the decision of the Committee by issuing specific requests, writing regular reminders for information, consulting with representatives of the State and, on occasion, visiting the country concerned. The Human Rights Council also encourages States to implement the committees' decisions through the Universal Periodic Review.

Although some States do not comply with the decisions of committees, a significant number have granted a variety of remedies to complainants following the decisions. Many have provided compensation, released complainants from prison, reopened criminal cases, stopped the deportation of individuals, granted residence permits, commuted death sentences and amended legislation and policies which were held to contravene the treaties.

1.2.2. Role of NHRIs in the treaty body complaints procedure

If the State has accepted the individual complaints procedure, NHRIs can raise public awareness about this provision of the treaty and can consider assisting individuals to submit complaints. Depending on their mandate, NHRIs may also be able to submit cases to treaty bodies on behalf of individuals.

107 The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances. In the future, the Committee on Migrant Workers may also consider individual complaints.

They can disseminate decisions of treaty bodies concerning individual complaints, as well as follow-up on these decisions and try to ensure that the Government implements them.

The conclusions of these treaty bodies also provide an important source of jurisprudence that can be useful for the work of NHRIs.

1.3. NHRIs and the Committee against Torture

The Convention against Torture establishes the Committee against Torture, a body that monitors the performance of States parties in meeting their obligations under the treaty. The Committee has a broad mandate. Not only does it examine reports submitted by States parties, it can also carry out confidential inquiries into allegations of systematic torture, examine individual complaints (where States have accepted this procedure) and make general comments to help States, NHRIs and others interpret and understand the treaty.

1.3.1. State reporting procedure

States parties have an obligation to submit a report to the Committee against Torture every four years, setting out what steps they have taken to implement their obligations under the treaty. The Committee can also submit to a State party a list of issues prior to receiving its

report. If the State party agrees to report under this optional reporting procedure, its response to this list of issues constitutes its report. As with reports prepared for other treaty bodies, NHRIs may be consulted in the preparation of the State party's report.

NHRIs can also submit their own shadow report to the Committee, as well as provide information for the written list of issues and list of issues prior to reporting. The list of issues is adopted one session prior to the session during which the Committee considers the State's report.

The Committee's website includes information on the participation of NHRIs (and Civil Society Organisations) in the reporting process.[108]

NHRIs and NPMs that have submitted written information may also have a private plenary meeting with the whole Committee prior to the dialogue with the State delegation. These one-hour briefings are part of the official session and include interpretation from and into UN languages. They provide NHRIs with the opportunity to highlight and update the Committee on key issues.

NHRIs cannot intervene during the Committee's examination of the State's report and its dialogue with the State delegation. However, as these meetings are public, NHRIs may attend as observers, even if they have not submitted written information.

Sessions of the Committee are now live webcasted, and this is an opportunity for NHRIs to participate remotely as well as to further disseminate the review and the State responses.

NHRIs can also play an important role by disseminating the Committee's concluding observations to the general public, as well as key stakeholders and relevant authorities. They can consider hosting follow-up meetings to discuss the concluding observations and strategies to implement the recommendations made by the Committee. The Committee has appointed one of its 10 members as Rapporteur on follow up. NHRIs can also monitor and assist the State to implement the recommendations made by the Committee.

The Committee adopted a follow-up procedure in 2003 which requires States parties to provide information on the steps they have taken to implement its recommendations. NHRIs may also submit written information to the Committee under this follow-up procedure. In 2015, the Committee adopted specific guidelines to strengthen the procedure to follow-up on its concluding observations with detailed information on NHRIs follow-up submissions (including deadlines, format, word limit, languages, etc.)[109]

108 See: https://www.ohchr.org/EN/HRBodies/CAT/Pages/NGOsNHRIs.aspx

109 See UN Doc. CAT/C/55/3.

Insights from practice:

*In 2019, the **National Human Rights Commission of Mexico** submitted written information to the Committee against Torture prior to the state review. Representatives from the Commission, including the National Preventive Mechanism also held a private and closed meeting with the members of the Committee and attended the session.*

1.3.2. Committee's inquiry procedure

The Committee against Torture can carry out a confidential inquiry into torture if it receives reliable information that torture is being systematically practiced in a certain country. Such an inquiry might include a visit to the country concerned.

Although the report of the inquiry will be confidential, a summary of the inquiry report is provided in the Committee's annual report. In addition, the very fact that an investigation takes place can by itself have a positive impact. A limited number of countries do not want the Committee to conduct such inquiries and have therefore submitted a reservation to the relevant article – article 20 – when ratifying the Convention against Torture.

Following the country visit, the Committee will determine whether or not the practice of torture is systematic. The Committee has developed the following criteria to establish what is meant by "systematic":

- torture is habitual, widespread and deliberate in at least a considerable part of the territory
- this may or may not be the result of direct Government policy
- failure to enact laws preventing torture may also add to the systematic nature of torture.

Role of NHRIs regarding inquiry procedure

NHRIs can raise awareness about the inquiry procedure at the national level and the process of submitting information to the Committee. NHRIs can provide the Committee with reliable information about the systematic use of torture in the country and also provide support to assist with its inquiries. Prior to and during the visit, NHRIs can meet with the delegation and provide additional information, mindful of the confidential nature of the inquiry. This information could include suggestions regarding places of detention to visit, allegations of torture and issues that should be raised by the Committee with the State. NHRIs can also submit information on the status of implementation of the Committee's recommendations following the inquiry, as well as relevant reliable information on any developments that may have taken place after the country visit or at any other stage of the procedure.

1.3.3. Individual complaints

It may be possible for the Committee against Torture to consider individual complaints if the relevant State has accepted this procedure under article 22 of the Convention against Torture. If this is the case, an individual can bring a complaint of torture or ill-treatment. Alternatively, the person's relatives, a designated representative or the NHRI can bring the complaint if the victim is unable to do so. There is no time limit on making a complaint. However, the alleged violation must have taken place after the State accepted the complaints procedure.

In addition to allegations of torture or ill-treatment, an individual may also complain if the State has failed to meet its obligations under the Convention against Torture. The most serious complaints might involve:

- a threat to expel someone to a country where they are in danger of torture

- a failure to promptly and effectively investigate an allegation of torture
- a failure to grant redress to a victim of torture
- use of a statement made as a result of torture in court proceedings.

The Committee will not investigate a complaint when:

- the State has not accepted the individual communications procedure
- the communication is anonymous
- the communication is "an abuse of the right of submission of such communications"
- the matter complained of is not covered under the Convention against Torture
- the same matter has been, or is being, examined by another international procedure
- domestic remedies have not been exhausted (domestic remedies might be considered to be exhausted when procedures are unreasonably prolonged).

Role of NHRIs regarding individual complaints

NHRIs can lobby their States to accept the individual communications procedure under article 22 of the Convention against Torture. If it has been accepted, NHRIs can raise public awareness about how the procedure works and what is involved in making a complaint. They can also assist individuals to submit complaints to the Committee, as well as follow-up the examination of complaints and monitor the response of the State.

1.3.4. General comments

The Committee can adopt general comments to help States interpret their obligations under the Convention. To date it has adopted general comments in relation to article 2, on article 3 in the context of article 22 and on article 14 of the Convention.

NHRIs may be consulted on draft general comments and encouraged to submit their responses to the Committee. They can also recommend that the Committee consider an issue where a general comment is required or would be useful.

> *In 2007, the Committee wrote a letter to the Chair of the ICC (now GANHRI) requesting comments from NHRIs on the draft general comment on article 2. A number of NHRIs reviewed the draft general comment and submitted responses to the Committee.*

2. Mechanisms under the United Nations Human Rights Council

The Human Rights Council is a permanent United Nations body aimed at strengthening the promotion and protection of human rights around the world. It was created in 2006 to replace the Commission on Human Rights. The new Council has been given a clear mandate to undertake its work based on the principles of universality, equality, non-selectivity and objectivity.

The Human Rights Council is composed of 47 Member States elected by the General Assembly through secret ballot. The most important and innovative aspect of the Council is the Universal Periodic Review, a process which examines the human rights situation of all Member States on a regular basis. The Human Rights Council also assumes the special procedures created under the former Commission on Human Rights.

NHRIs that have been accredited as complying with the Paris Principles ("A status") have been recognized with the following participation rights in the Human Rights Council:

- separate accreditation status (different from States and from NGOs)
- the right to speak under all items of the Council's agenda

- the right to submit documentation (reports, policy papers, etc.) and make written statements for inclusion in the official record of meetings
- dedicated seating
- NHRIs can also organise side events on issues relevant to the work of the Human Rights Council.

As reported by the UN Secretary-General, between September 2018 and July 2019, 43 national human rights institutions delivered statements orally, in writing or by video during the Human Rights Council's sessions, submitted documentation, participated in general debates, organized side events or interacted with special procedure mandate holders.[110]

Insights from practice:

On the occasion of the 46th session of the UN Human Rights Council, the ***National Human Rights Council (CNDH) / National Mechanism for the Prevention of Torture (NPM) of Morocco,*** *in cooperation with the Association for the Prevention of Torture (APT), organised an online side event (webinar) on "African NPMs, opportunities and challenges during and after the COVID-19 pandemic".*

2.1. Special procedures

The fact-finding and investigatory mechanisms of the Human Rights Council are collectively known as the special procedures. These include Special Rapporteurs, Special Representatives of the Secretary-General, Independent Experts and working groups mandated by the Human Rights Council with the aim of documenting human rights violations on particular themes or country situations.

The strength of these special procedures lies in their independence; mandate holders are human rights experts appointed in an individual capacity.

The following special procedures are of particular relevance for the prevention of torture:

- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
- Working Group on Arbitrary Detention
- Working Group on Enforced or Involuntary Disappearances
- Special Rapporteur on extrajudicial, summary or arbitrary executions
- Special Rapporteur on the promotion and protection of fundamental freedoms while countering terrorism
- Special Rapporteur on violence against women, its causes and consequences
- Special Rapporteur on the human rights of internally displaced persons
- Special Rapporteur on the rights of persons with disabilities
- Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity
- Special Rapporteur on the rights to freedom of peaceful assembly and of association
- Special Rapporteur on the human rights of migrants

110 See UN Doc. A/74/226, para. 63.

In relation to torture prevention, the most important of these special procedures is the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

2.1.1. Special Rapporteur on Torture

The Special Rapporteur on Torture is an independent expert who reports to the Human Rights Council and to the General Assembly.

The role of the Special Rapporteur is to engage Governments in dialogue about credible allegations of torture and to conduct fact-finding visits.

The Special Rapporteur also conducts annual thematic studies, contributes to the development of international human rights standards relevant to torture and ill-treatment, and engages in advocacy and public awareness activities.

Dialogue

The dialogue that the Special Rapporteur establishes with Governments is based on the following types of communications.

- **Urgent appeals** request the Government to respond urgently to information that an individual may be at risk of torture. This is a non-accusatory procedure, which generally requests the Government to take certain steps to prevent possible incidents of torture without adopting a position on the alleged risks.
- **Letters of allegations** bring to the attention of the Government cases of individuals or groups alleging torture or ill-treatment. The Government is requested to clarify the substance of the allegations and to forward information on the status of any investigation. Depending on the reply, the Special Rapporteur may decide to conduct further inquiries or make recommendations.
- **Comments on legislation and policy** are comments provided by the Special Rapporteur to Governments on national laws, regulations and policies relevant to the mandate.

It is important to note that, unlike other United Nations human rights mechanisms, it is not necessary for a victim to exhaust all domestic remedies before submitting allegations of torture to the Special Rapporteur.

The Special Rapporteur's annual report, which is provided to the Human Rights Council and to the General Assembly, includes an overview of all communications sent and received during the year. The report may also examine key thematic issues – such as impunity, counter-terrorism measures, guarantees for persons deprived of their liberty and non-refoulement – and propose recommendations.

In his 2016 Report to the Human Rights Council, the UN Special Rapporteur on Torture addressed gendered perspectives on torture and other ill-treatment, assessing the applicability of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in international law to the unique experiences of women, girls and LGBTI persons.[111]

111 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57, 5 January 2016

Fact-finding visits

The Special Rapporteur does not have an automatic right to undertake a fact-finding visit to a country (unlike the Subcommittee on Prevention of Torture established under the Optional Protocol). Instead, the Special Rapporteur can visit only following an invitation from a Government.

During the fact-finding visit, the Special Rapporteur will have contact with a wide range of stakeholders, such as Government officials, NHRIs, NGOs, alleged victims and relatives, and can visit places of detention, such as prison and police stations. The report of the fact-finding visit includes conclusions on the country situation and makes recommendations to the Government.

2.1.2. Contribution of NHRIs to the work of the Special Rapporteur on Torture

NHRIs are key dialogue partners for the Special Rapporteur. They can provide the Special Rapporteur with reliable information, assist with preparations for a fact-finding visit, monitor implementation of recommendations and undertake other follow-up action following a visit.

Providing information

NHRIs can provide an independent and credible source of information for the Special Rapporteur. They can prepare information on individual cases or on the broader human rights situation that could form the basis of the Special Rapporteur's communications to the Government. They can also draw attention to issues of concern in legislation or draft legislation.

In addition, NHRIs can contribute to the development of thematic reports by the Special Rapporteur, by suggesting specific issues or topics to be the subject of a future thematic study or by submitting relevant information following a call for inputs from the Rapporteur.

Fact-finding visit

NHRIs can recommend that the Government invite the Special Rapporteur to undertake an official fact-finding visit. In preparing for a country visit, the NHRI should provide a report of relevant information to the Special Rapporteur, as well as propose suitable interlocutors.

During the visit, the Special Rapporteur will usually meet representatives of the NHRI. This provides an important opportunity for the NHRI to present recent and updated information regarding torture and other forms of ill-treatment in the country. It also allows the NHRI to advise the Special Rapporteur on particular places of detention to visit.

Following up on reports and recommendations

As relay mechanisms at the country level, NHRIs have an important role to play in following-up on the report issued by the Special Rapporteur following the fact-finding visit. NHRIs should translate, if necessary, and widely disseminate the report to all key stakeholders. Importantly, they can also monitor steps taken by the State to implement recommendations made by the Special Rapporteur.

NHRIs can organize follow-up seminars or roundtable discussions on the report and its recommendations, as well as draw on the report when preparing advice, recommendations and reports to the Government, Parliament or relevant authorities. It can also be a valuable resource for NHRIs when they prepare their strategic work plan or formulate a national human rights action plan.

Finally, NHRIs can regularly communicate with the Special Rapporteur and provide information on progress that has occurred in the implementation of recommendations from the report.

Insights from practice:

*The **National Human Rights Commission of Mexico** met with the Special Rapporteur during its 2014 visit to the country. The Special Rapporteur issued a follow-up report in 2017 based on the information received by relevant stakeholders, including the National Human Rights Commission.*

2.2. Universal Periodic Review

2.2.1. The UPR procedure

The UPR is a new mechanism, in operation since 2008, which examines the human rights records of all United Nations Member States once every four years.

The review is based on three types of information:

- a report submitted by the State, in writing and oral presentation
- a compilation of all United Nations and treaty body documents, comments and recommendations regarding the State, which is prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR)
- a summary of credible and reliable information provided by national stakeholders such as NHRIs, NGOs, civil society groups and academic institutions, which is also prepared by OHCHR.

Each State is reviewed during a session of a working group of the Human Rights Council, consisting of all 47 Member States of the Council. The review takes the form of an interactive dialogue between the State delegation and the members of the Council, as well as any other State. The review addresses a broad range of human rights topics and can include discussion of the State's laws, policies and practices in relation to torture and other forms of ill-treatment.

A report is then prepared by a troika of three Member States of the Council and discussed in a half-hour session of the working group. The report of the working group is then adopted by the Human Rights Council during its next session, following a one-hour discussion in a plenary meeting of the Council.

2.2.2. The role of NHRIs in the UPR

NHRIs have been recognized with a specific role in the UPR procedure. They provide an important source of independent information on the country's human rights situation, including the situation regarding torture and ill-treatment of persons deprived of their liberty. It is therefore very important that NHRIs make use of their opportunity to contribute to the UPR process.

Preparation for the review

Given their mandate, NHRIs are able to collect and compile independent, reliable and well-documented information on the human rights situation in their country. This information can form the basis of their report to the UPR.

The Human Rights Council has issued detailed guidelines regarding the structure and length of reports, along with deadlines for their submission.[112] NHRIs can, at the least, submit their latest annual report or relevant thematic reports. The documents submitted by NHRIs and other national stakeholders are available in full on the website of the Human Rights Council and are summarized in a compiled format prepared by OHCHR. The report can also be publicly presented at the national level in preparation of the review. As reported by the UN Secretary-General, between September 2018 and July 2019, 13 national human rights institutions submitted information for the Universal Periodic Review.[113]

In addition, NHRIs can propose questions and issues that Member States might raise during the review of the State, as well as suggest concrete recommendations that the UPR procedure could make to the State.

112 See: www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx

113 See UN Doc. A/74/226, para. 65.

Review of the State

The human rights situation is reviewed by the working group of the Human Rights Council, which takes the form of an interactive dialogue with the State delegation. This dialogue is open only to Member and Observer States of the Human Rights Council. NHRIs are not able to take part in the dialogue, although they are able to attend the session as observers. This provides them with a further opportunity to lobby Member States and propose questions and recommendations.

Adoption of the report

NHRIs can participate in the general debate on the report of each State review, which occurs during the following session of the Human Rights Council. As NHRIs cannot contribute to the dialogue during the review of the State, it is important that they make use of the opportunity to contribute to the discussion at this plenary session. In fact, many NHRIs are already engaging constructively in this forum to raise issues and propose concrete recommendations.

Follow-up on recommendations

The role of NHRIs goes beyond participation in the UPR reporting and review process. As key national stakeholders, they are uniquely placed to follow-up on the implementation of recommendations made by the Human Rights Council. NHRIs can engage with the State and civil society on the most appropriate and effective ways to monitor implementation and follow-up to the UPR procedure.

In addition, NHRIs are well placed to disseminate the outcome of the UPR process at the national level by developing relevant education and awareness-raising programmes.

Insights from practice:

*The **Australian Human Rights Commission** regularly contributes to the UPR with written information on Australia's human rights situation on the ground, making recommendations about ongoing challenges, and working with civil society organisations who are taking part in the process. For the third UPR of Australia in 2021, the Commission has produced 25 fact sheets on key issues. The Commission has also adopted a practice of publishing reports assessing the implementation status of the recommendations made to Australia in the UPR.*[114]

2.3. Human Rights Council complaint procedure

2.3.1. The complaint procedure

A new complaint procedure has been established under the Human Rights Council to address consistent patterns of gross and reliably attested violations of all human rights, which occur in any part of the world and under any circumstances.

Economic and Social Council resolution 1503 from 1970 provides the basis for the establishment of this new procedure, which retains its confidential nature. It also requires a complainant to exhaust all domestic remedies before lodging a complaint with the Human Rights Council. The complaint procedure does not result in an individual judgement or an individual remedy, rather it aims instead to address systemic patterns of human rights violation.

The complaint procedure establishes two distinct working groups: the Working Group on Communications and the Working Group on Situations.

The Working Group on Communications, composed of five independent experts geographically representative of the five regional groups, is given the role to assess the admissibility and the merits

114 See: https://humanrights.gov.au/our-work/rights-and-freedoms/projects/australias-third-universal-periodic-review-upr

of communications it receives. All admissible communications and recommendations are transmitted to the Working Group on Situations.

The Working Group on Situations is composed of five members appointed by regional groups from Members States of the Human Rights Council. It presents the Council with a report on consistent patterns of gross and reliably attested violations of human rights and makes recommendations on the course of action to take. The Council examines reports of the Working Group on Situations in a confidential manner and then takes a decision concerning each situation brought to its attention.

2.3.2. The contribution of NHRIs to the complaints procedure

NHRIs can raise awareness at the national level about the complaints procedure, how it works, possible outcomes and the fact that it is a confidential process. NHRIs can also submit information when they have evidence of consistent patterns of human rights violations, such as torture and ill-treatment.

3. Regional complaints mechanisms

Three regional systems for the protection of human rights – the European, African and Inter-American systems – have adopted a two-body mechanism for the examination of individual complaints, consisting of a Commission and a Court.

The Commissions are quasi-judicial bodies, with the power to issue decisions and recommendations. The Courts have the power to issue legally enforceable judgments. Reforms to the European system in 1999 mean that complaints in this jurisdiction are now made directly to the European Court of Human Rights.

The ASEAN and Arab systems do not foresee any complaints nor an enforcement mechanism. In 2014, the Arab League approved the Statute of the Arab Court of Human Rights, but it has not entered into force yet.

3.1. Overview of regional complaint mechanisms

3.1.1. The European system

Individual complaints are submitted directly to the European Court of Human Rights.

For the Court to consider a complaint:

- it must be covered by the European Convention
- domestic remedies must be exhausted (or unreasonably prolonged)
- it must be submitted within six months of a decision by domestic authorities
- it must not have been considered by another international complaints procedure.

3.1.2. The African system

The African Commission on Human and Peoples' Rights was set up to monitor compliance with the African Charter on Human and Peoples' Rights. It can also examine individual or collective complaints.

For the Commission to consider a complaint:

- it must not be anonymous
- it must be covered by the African Charter
- it must not be based exclusively on reports in the mass media
- domestic remedies must be exhausted
- it must be submitted within a reasonable period of time once domestic remedies have been exhausted.

In 1998, a Protocol to establish an African Court of Human Rights was adopted. This came into force in 2004 and started to operate in 2006. The first judgement was issued by the Court in 2009.

The Court can examine complaints submitted by:

- the Commission
- the State party which has lodged a complaint to the Court
- the State party against which a complaint has been lodged
- the State party whose citizen is a victim of a human rights violation
- African intergovernmental organizations.

The African Court can also examine complaints from NGOs and individuals if the State concerned has made a declaration to accept this.

3.1.3. The Inter-American system

The Inter-American human rights system has two procedures: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Complaints to the Commission can be based on the American Convention on Human Rights or on fundamental human rights standards, especially the American Declaration on the Rights and Duties of Man. The latter would apply if the State involved in the complaint was not a party to the Convention.

In addition, the Commission has responsibility for monitoring adherence to the Inter-American Convention to Prevent and Punish Torture.

Complaints can be referred to the Court only if:

- they concern a State party to the Convention, and
- the State party has accepted the jurisdiction of the Court.

3.2. The role of NHRIs in the regional complaint mechanisms

NHRIs can make use of regional complaints mechanisms in a number of ways. They can assist individuals to submit complaints or they can file cases directly. They can also present amicus curiae briefs. In addition, NHRIs can seek affiliated or accredited status before regional mechanisms to present evidence and advocate their views.

Insights from practice:

*In April 2008, the **Irish Human Rights Commission, on behalf of the European Group of NHRIs,** submitted an amicus curiae brief to the European Court of Human Rights in the case of DD v. Lithuania. This was the first such application before an international Court made by a regional grouping of NHRIs.*

Following on from this submission, the European Group of NHRIs developed a procedure for monitoring cases before the European Court of Human Rights. Cases involving priority areas of concern dealing with systemic human rights issues are now tracked and reviewed on a periodic basis, helping identify strategic cases suitable for an amicus curiae intervention. Where a case meets these criteria, the Irish Commission on Human Rights, as Chair of the regional group, refers the case to the relevant NHRI of the respondent State, or to the European Group if no NHRI exists in that country.

NHRIs also have a role to raise public awareness of the outcome of complaints at the national level and to disseminate case law to legal and judicial stakeholders. In addition, NHRIs should closely monitor the implementation of the decisions and judgements by the authorities.

4. Visiting mechanisms

Most international mechanisms are reactive and intervene only after torture or ill-treatment has already occurred. Recently, however, mechanisms have been established that perform an important preventive role, especially through a system of visits by independent experts to places of detention.

4.1. Optional Protocol to the Convention against Torture

The Optional Protocol to the Convention against Torture was adopted by the United Nations General Assembly in December 2002 and came into force in June 2006.

The Optional Protocol establishes a system of regular visits to all places of detention undertaken by two types of mechanisms:

- the Subcommittee on Prevention of Torture
- National Preventive Mechanisms (NPMs) established in each State that has ratified the Optional Protocol.

The Optional Protocol breaks new ground in the human rights system for three main reasons.

Firstly, the emphasis is placed firmly on prevention, through a proactive system of visits to place of detention, rather than reacting once violations have occurred.

Secondly, it establishes a complementary approach between preventive efforts at the international and the national level, creating an innovative “triangular” relationship between State authorities, the Subcommittee on Prevention of Torture and the NPM.

Finally, the approach is based on working cooperatively with States to prevent violations and to improve the protection of persons deprived of their liberty, rather than on public condemnation. States are required to enter into an ongoing dialogue with both the Subcommittee and the NPM on the implementation of recommendations.

Given the importance of the Optional Protocol in the field of torture prevention, chapter 10 deals specifically with the issue of NHRIs and the Optional Protocol. The following information provides some introductory information about the Optional Protocol.

4.1.1. The Subcommittee on Prevention of Torture

The Subcommittee on Prevention of Torture (SPT) is an expert body composed of 25 independent members. The Subcommittee has a dual mandate to monitor conditions of detention and treatment of persons deprived of their liberty through country visits in States that have ratified the OPCAT and to provide advice and assistance on OPCAT implementation, in particular regarding the establishment and functioning of National Preventive Mechanisms in States Parties.

One of the innovative features of the OPCAT is that the SPT can carry out country visits to States Parties and access places of deprivation of liberty and relevant information without the prior authorization of the State. It can also carry out interviews in private with persons deprived of liberty and any other person.

During these visits, the Subcommittee engages in dialogue with State authorities and with the NPM with a view to strengthening the protection of persons deprived of their liberty from torture and ill-treatment. Country visits also provide a unique opportunity for the Subcommittee to engage directly with other relevant national actors, in particular NHRIs and civil society.

During the country visit, the SPT makes unannounced visits to particular places of detention. The aim is to analyse the root causes of torture and ill-treatment, identify indicators that may point to possible future abuses and discuss possible safeguards.

Following the country visit, the Subcommittee drafts a report which includes observations and recommendations. The SPT submits the report in confidence to the State, requesting a written response within 6 months of its receipt. This then triggers further dialogue regarding the implementation of the SPT's recommendations. The SPT visit reports are confidential, although State Parties are encouraged to make them public.

If a State fails to cooperate, the Subcommittee on Prevention of Torture can ask the Committee against Torture to make a public statement or to publish the report.

The Subcommittee also publishes an annual report, which is publicly available.

The Optional Protocol also provides for the Subcommittee on Prevention of Torture to cooperate with international and regional bodies in its work.

4.1.2. National Preventive Mechanisms

A State that has ratified the Optional Protocol is required to designate or establish one or several National Preventive Mechanisms (NPMs). The Optional Protocol contains no specific requirement or guidance regarding the structure of NPMs. There are, however, a number of key requirements set out in the OPCAT with which NPMs need to comply.

A State may therefore:

- set up an entirely new specialised institution, or
- designate an existing body (for example, the NHRI or Ombuds Institution), or
- designate several mechanisms, which can include existing or new bodies.

Chapter 10 provides a detailed analysis of some of the issues faced by NHRIs that are designated as a NPM.

NPMs have a mandate to conduct regular, unannounced visits to all places where persons are deprived of their liberty. They can also present observations on draft or existing legislation relevant to the prevention of torture. NPMs are also required to prepare an annual report of their activities, which should be made public and disseminated by the authorities.

NPMs should be independent from the State and its authorities, both from a financial and a functional point of view. NPMs should also have a multidisciplinary composition and include expertise from a range of fields relevant to deprivation of liberty. They should also be gender-balanced and include representatives of ethnic and minority groups.

4.1.3. Powers to visit places of detention

For the first time in an international treaty, the Optional Protocol provides powers and guarantees for NPMs and the Subcommittee on Prevention of Torture to carry out visits to places of deprivation of liberty.

Under the Optional Protocol, both the Subcommittee and NPMs have the authority to visit any place where persons are deprived of their liberty, such as:

- prisons
- police cells
- pre-trial detention centres
- juvenile detention centres
- administrative detention centres

- military detention facilities
- detention centres for migrants and asylum-seekers
- temporary detention points in ports or airports
- border checkpoints
- medical institutions
- psychiatric institutions
- social care homes for children and elderly people.

During these visits they are able to:

- interview any person deprived of liberty in private
- interview any relevant official and staff member
- interview family members of a person deprived of liberty
- examine the records of all persons deprived of liberty
- examine documents, such as disciplinary rules and prison records
- inspect the entire premises of the place of deprivation of liberty.

4.2. Regional visiting bodies

4.2.1. The European Committee for the Prevention of Torture

The European Convention for the Prevention of Torture, adopted by the Council of Europe in 1987, establishes the Committee for the Prevention of Torture.

The European Committee for the Prevention of Torture has a mandate to visit any place of detention in all Member States of the Council of Europe. It can carry out two types of visits:

- periodic visits, which take place on a regular, five-year basis; the alphabetical list of countries to be visited the following year is published at the end of the previous year
- ad hoc visits, which take place in response to a specific event and commonly occur at short notice.

The European Committee can visit, at any time, any place where people are deprived of their liberty. This includes places such as prisons and police cells, as well as psychiatric hospitals and homes for children and older people. It can enter any institution that it chooses without restriction. It can communicate freely and confidentially with people deprived of their liberty and with anyone else who may be able to provide relevant information.

After its visit, the European Committee will prepare a report with recommendations, which is submitted to the State for its response. Although this reporting process initially occurred confidentially, it has now become accepted that States will authorize publication of the reports. It can also issue a public statement if the Government does not cooperate (and has already done so on several occasions).

In its general report of activities, the European Committee has also adopted a series of standards on issues such as police custody, imprisonment, health care services in prisons, involuntary placement in psychiatric establishments, young people deprived of their liberty, safeguards for irregular migrants deprived of their liberty and combating impunity.

4.2.2. Visiting mechanisms in the Americas

The Inter-American Commission on Human Rights can carry out country visits to States parties to the Inter-American Convention on Human Rights in order to monitor the general human rights situation in a country or investigate specific cases of human rights violations.

In 2004, the Commission established the position of the Special Rapporteur on the Rights of Persons Deprived of Liberty. Since 2019, the mandate of the Office of the Special Rapporteur also includes preventing and combating torture and its name was changed to Special Rapporteur on the Rights of Persons Deprived of Liberty and to Prevent and Combat Torture. The Rapporteur can visit places of deprivation of liberty, issue public reports and recommendations, and undertake follow-up visits. The Rapporteur also develops standards related to deprivation of liberty and can also issue thematic reports on specific issues.

4.2.3. The Special Rapporteur on Prisons and Conditions of Detention in Africa

This position was established by the African Commission on Human and Peoples' Rights in 1996. The Special Rapporteur has the mandate to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and People's Rights, including through country visits to States Parties, with their consent. After each country visit, the Special Rapporteur issues a public report with recommendations to the State. An annual report of the Special Rapporteur's activities is also prepared and presented to the Commission.

4.2.4. Contribution of NHRIs to regional visiting bodies

NHRIs can provide independent information regarding the situation of torture and ill-treatment in their country on a regular basis to visiting bodies, or in advance of a country visit when this is known. Regional bodies usually meet with NHRIs during their visit. This provides an important opportunity to present recent information and exchange views about particular needs and priorities regarding torture prevention. NHRIs are also uniquely placed to follow-up on the implementation of recommendations made by visiting bodies, provided the reports are published.

KEY POINTS: CHAPTER 7

NHRIs can contribute to the effective work of international and regional human rights bodies.

They can submit independent and credible information, participate in review procedures, follow up on recommendations and contribute to the work of these bodies in developing relevant standards.

Interaction with the following mechanisms is important for the prevention of torture and ill-treatment:

- **United Nations Human Rights Council,** in particular the Universal Periodic Review
- **Treaty bodies**, in particular the Committee against Torture
- **Special procedures**, in particular the United Nations Special Rapporteur on Torture

- **Regional complaints mechanisms**
- **Visiting mechanisms** at the international level, such as the Subcommittee on Prevention of Torture, and at the regional level.

FURTHER READING

International Human Rights and the International Human Rights System: A Manual for NHRIs; *APF; 2015*

UNDP-OHCHR Toolkit for collaboration with NHRIs; UNDP-OHCHR; 2010

Chapter 8:
Monitoring places of deprivation of liberty

KEY QUESTIONS

- What is the difference between preventive and investigative monitoring?
- What steps should be taken to prepare for a visit to a place of deprivation of liberty?
- What are the different steps involved in carrying out a visit?
- What type of reporting and follow-up is required following a visit?
- How to integrate a gender-sensitive approach to monitoring places of detention?

LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Competence and responsibilities

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral (…). These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(ii) Any situation of violation of human rights which it decides to take up.

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such

situations and where, necessary, expressing an opinion on the positions and reactions of the government.

(b) To promote and ensure the harmonization of national legislation, regulations and practices with the international instruments to which the State is Party and their effective implementation.

ACJ Reference on Torture

Alternative measures to combat torture

NHRIs should work with the Governments to improve the current infrastructure of detention facilities so as to ensure that human dignity is respected.

Monitoring

NHRIs should also take a proactive role in monitoring detention facilities. In order to facilitate this role, NHRIs (and any other monitoring agencies) should have free and unfettered access to all places of detention, the ability to interview persons in private and full access to all relevant documentation. The monitoring team should be multi-disciplinary and include lawyers and medical personnel.

Introduction

While the Paris Principles do not expressly mention "monitoring" as a key mandate of NHRIs, one of their fundamental roles is to investigate violations of human rights, including those that occur in places of deprivation of liberty.

NHRIs can monitor places of deprivation of liberty as part of an overall investigation strategy or as a specific thematic activity.

NHRIs can establish a regular programme to monitor places of deprivation of liberty, based on the goal of prevention rather than investigation. Regular preventive visits to places of deprivation of liberty constitute one of the most effective means of preventing torture and ill-treatment. Some NHRIs have already established a regular system to monitor places of deprivation of liberty, while others have been designated as National Preventive Mechanisms (NPMs) under the Optional Protocol to the Convention against Torture (read more in chapter 10). When monitoring places of deprivation of liberty, NHRIs should apply a gendered and intersectional lens. This would allow them to understand the differentiated impact of detention on groups in situations of vulnerability, including women and LGBTI persons, and to adequately address their specific needs.

The preventive nature of these visits distinguishes them in purpose and methodology from other types of visits that NHRIs may conduct and, in particular, from visits to investigate or document individual complaints made by persons deprived of liberty.

Characteristics of preventive visits

- **Regular visits rather than one-off visits**
  These visits are part of a systematic and ongoing process, which means that visits to any given place of deprivation of liberty will occur on a regular basis, based on a programme of visits reflecting the priorities and timeframe for such visits.
- **Proactive rather than reactive**
  These visits do not seek to react to specific incidents or allegations, but rather to ensure that the environment itself is less likely to give rise to such incidents and allegations. They are therefore proactive and can take place at any time, even when there is no apparent problem.[115]
- **Addressing systemic issues rather than individual situations**
  These visits do not attempt to respond to individual cases. Instead, the focus is to analyse the place of deprivation of liberty as a system and assess all aspects related to the deprivation of liberty. The aim is to identify the root causes of ill-treatment and other human rights violations and finding ways to address them in view of affecting systemic change.
- **Based on cooperation rather than denunciation**
  Preventive visits are part of an ongoing and constructive dialogue with the relevant authorities, providing concrete recommendations to improve the detention system over the long term.

This chapter outlines a methodology for monitoring places of deprivation of liberty that can be applied by those NHRIs that have the legal mandate to perform this role. It also provides guidance on how to incorporate gender considerations in monitoring places of deprivation of liberty.

There are certain powers that NHRIs require in order to effectively undertake preventive monitoring of detention facilities. These powers have been expressly set out, for the first time, in the Optional Protocol and include:

- undertaking regular and unannounced visits to all places of detention
- access to all types of places where persons are deprived of their liberty
- access to all facilities within the place of detention
- access to all necessary records and information
- access to all persons deprived of their liberty and to any other person
- liberty to choose the persons to interview and the location where the interview is carried out
- the ability to interview persons deprived of liberty in private.

When some of these powers are not granted, NHRIs should carefully weigh up the advantages and disadvantages of engaging in preventive monitoring activities. It is especially important that NHRIs are given the authority to conduct interviews with persons deprived of liberty in private.

Basic principles of monitoring

- **Do no harm**
  Persons deprived of their liberty are particularly vulnerable and their safety should always be a primary consideration. Monitoring teams should not take any action that could endanger an individual or a group. Poorly planned visits – or visits that do not follow basic principles and methodology – can potentially do more harm than good. At all times, monitoring teams should avoid that their actions lead to possible reprisals against any person who has interacted and spoken with them.

115 This does not prevent NHRIs from carrying out visits in response to specific events.

- **Respect the authorities and persons deprived of their liberty**
  Respecting persons deprived of liberty and authorities is absolutely crucial for monitoring. Persons deprived of their liberty should always be treated with respect and courtesy. Monitoring teams should always respect the role and functions of the detaining authorities. Establishing mutual respect with the staff and management of the detention centre is the basis for building a constructive relationship and effective working practices. Monitoring teams should also be firm with authorities when it comes to implementing their mandate. While monitors should consider reasonable requests from the authorities, particularly regarding safety and security, it is essential that their independence and powers are respected in practice.
- **Respect confidentiality**
  It is critical that all members of the monitoring team, including interpreters, respect the confidentiality of information provided by persons deprived of their liberty and others during private interviews. No information should be released without the express consent of the person who was interviewed.
- **Respect security**
  There are three aspects to the issue of security. Firstly, the monitoring team should respect the security requirements of the facility and conform to internal rules. Secondly, the security of persons deprived of liberty – which is closely linked to the issue of confidentiality – should be a priority. Finally, members of the monitoring team must address the issue of their own security. The issue of personal safety may be raised by the authorities as a reason to not allow access to specific parts of a facility or to conduct interviews with certain detainees. It is ultimately the responsibility of each member of the monitoring team to determine how they respond to this advice.
- **Be objective and credible**
  Monitoring teams must strive to record available and observable facts and to engage with both staff and persons deprived of liberty in an independent and impartial way. Monitors should also be perceived as being impartial. The mandate of the monitoring team – both what it can and cannot do – should be clearly explained to staff and persons deprived of liberty and no promises or undertakings should be made that cannot be kept. The objectivity and credibility of the information collected will be ensured through a robust triangulation (direct observation, analysis of documents and registers, and interviews).
- **Be consistent and persistent**
  The legitimacy and credibility of the NHRI monitoring function will be established over time. This requires consistency, continuity and patience. The same methodology should be used consistently during its regular programme of visits to all places of deprivation of liberty.

1. Before the visit

NHRIs should invest in training their visiting team in monitoring methodology, covering issues such as skills and attitudes during visits and interviews as well as drafting and reporting. Training can also include the use of gender-sensitive language and the implications of the principle of non-discrimination, as well as other specific trainings to deal with sensitive issues.

1.1. Negotiating access

Most NHRIs have some access to places of detention as part of their general mandate. When this is not the case, the NHRI will need to negotiate access directly with the relevant authorities. The best way of ensuring long-term access to places of detention is to establish a memorandum of understanding with the relevant ministries or government departments (usually the Ministry of Interior and the Ministry of Justice, although it may also extend to ministries of health, immigration, social care

and others). The memorandum of understanding should explicitly guarantee the NHRI the powers it needs for effective monitoring (see above). In particular, it should include the guarantee of unrestricted access at any time and the ability to conduct interviews in private with persons deprived of liberty selected by the monitoring team.

1.2. Establishing a programme of visits

In establishing a programme of visits, NHRIs should first prepare a list all types of places of detention that should be visited. The list should include the type of facility (prison, pre-trial detention facility, etc.), its holding capacity (official and actual) and its location. Ideally, NHRIs should visit all places where people are, or may be, deprived of their liberty: prisons, police stations, mental health institutions, juvenile detention facilities, military facilities, immigration detention centres and others.

After compiling this initial list, NHRIs then need to select the places of detention that they intend to visit, on the basis of selection criteria they have identified in advance, such as:

- a cross-selection of different categories of facilities by region or at the national level
- complaints received (or lack of complaints) or known human rights problems
- high levels of risks, for example the first hours of detention
- the existence of other monitoring mechanisms
- the situations of vulnerability of persons deprived of liberty
- remote locations.

The programme of visits will also depend on the type and length of the visits that the NHRI intends to conduct. Ideally, NHRIs should undertake a combination of in-depth visits, that last several days and analyse all aspects of conditions and treatment in a facility, and short visits that provide a general overview of the detention situation as well as thematic and follow up visits. NHRIs may find that announcing their visits, especially in case of in-depth visits to large establishments, may facilitate the conduct and overall dialogue with the authorities.

Some visits, however, should usually be unannounced, in particular visits to police stations, where the risk of ill-treatment is usually greater than in other custodial settings. The “surprise effect” is also particularly relevant, as detainees may be at risk of being removed, hidden or transferred prior to the visit if it is announced. As part of a regular monitoring programme, it is important to determine how regularly different places of detention will be visited. Ideally, places of detention should be visited once a year and those facilities that present higher risks should be visited more frequently.

It is also necessary that programmes of visits take into account the required time for the preparation, in particular when new areas or issues are to be monitored, as well as capacities, resources and expertise needed.

1.3. Developing practical tools and training

NHRIs may decide to develop practical tools to assist them undertake visits, such as checklists or questionnaires for interviews. These tools can help ensure that a consistent approach is used during each visit to places of detention, especially when there are different monitoring teams from the NHRI. They should, however, provide a general guide for the visit, rather than setting out a format to be strictly followed. Monitoring places of detention requires the ability to adapt to a variety of situations and to respond to the specific circumstances of particular detention facilities.

1.4. Preparing for the visit

It is crucial that NHRIs set aside adequate time to prepare for the visit, as this ensures that the monitoring team can make greatest use of the time they spend in the detention facility.

1.4.1. Defining the objective of the visit

The purpose of the visit should be defined beforehand, as it has an impact on the length, methodology and team composition. During an in-depth visit to a place of deprivation of liberty, the goal of the NHRI should be to gain an understanding as comprehensive as possible of the place visited, the conditions of detention and the treatment of detainees in the facility. The objective of thematic visits is to look only at specific issues in a particular place of detention, across a series of similar facilities or different types of detention settings, such as the complaint system, the disciplinary procedures, medical care or violence between prisoners.

NHRIs may also carry out follow-up visits to ascertain if recommendations made on previous occasions have been implemented.

1.4.2. Establishing the visiting team and organizing the work

In setting up the monitoring team, NHRIs should consider:

- the type of expertise needed, based on the objectives of the visit and the type of facility being visited (participation of a medical doctor is often useful). For example, if one of the objectives is to analyse the provision of medical treatment for women in prison, the presence of a woman doctor will be important
- gender balance and diversity within the team, including interpreters and doctors
- the size of the visiting team (generally between two and eight persons)
- identifying a team leader
- the division of tasks between team members and ensuring each person understands their specific responsibilities during the course of the visit.

1.4.3. Research and documentation

Before a visit, the monitoring team should seek to:

- map out all the relevant legislation, policies and regulations, including those impacting persons in situations of vulnerability such as women and LGBTI persons
- know the relevant universal and regional standards
- request documentation about the place (capacity, hierarchy, registers, sex, gender and age disaggregated data, etc.)
- compile and review all available information about the particular place of detention, including reports from other monitoring bodies, civil society organisations, media, associations of family members of detainees; and
- the number and type of complaints received by the NHRI or other complaint handling bodies (the absence of complaints can also be revealing).

It is important to make sure that all team members share and review this information before undertaking the visit.

1.4.4. Establishing prior contacts

Before the visit, the NHRI should consider contacting other groups or individuals who have information to share about the particular place of detention, such as civil society organisations, family members of detainees, lawyers and those released from detention.

The NHRI may also choose to announce a visit in advance. While NHRIs are mandated to carry out unannounced visits to places of detention, there are some situations where announcing a visit in advance may be beneficial (for example, to ensure the presence of the prison director and to gather information on the place in advance).

1.4.5 Logistics

It is important for the NHRI to take into consideration the following aspects prior to the visit:

- define the timeframe of the visit, including breaks and debriefings within the team
- set up the transportation
- define the dress code
- bring all the necessary materials and the proper equipment, including recording devices, personal IDs, and copies of all the necessary credentials, permissions and identification documents needed to carry out the visit.

1.4.6 Mental preparation

Before the visit, the NHRI should take some time to think about the visit, the attitude of the monitoring team and that of the authorities and staff in the place to be visited. In particular, the team should:

- be clear about the mandate of the institution, its powers and limitations
- anticipate possible problems and how they might be resolved, for example if the team is denied access to some facilities or documents
- be mindful of the "do no harm" principle and the risk of reprisals due to monitoring.

2. Undertaking a visit

Although each preventive visit to a place of detention is unique, there are some standard steps that need to be followed, including:

- an initial talk with the person in charge of the facility
- a tour of the premises
- consultation of registers and other documentation
- interviews with detainees in private
- interviews with staff
- a final talk with the person in charge.

2.1 Triangulating information

Preventive monitoring requires to cross-check all relevant, available information from different sources (a process known as "triangulation") in order to gain a clear understanding of the situation and to properly evaluate the treatment and conditions of persons deprived of liberty. Triangulation is at the core of the monitoring methodology and is key to gathering credible and objective information.

The different sources of information include:

- persons deprived of their liberty
- authorities, staff members and other sources (including relatives, former detainees, lawyers, service-providers, chaplains)
- first-hand observation by the monitoring team, and consultation of registers and other documentation.

2.2 Initial talk with the person in charge

The visit usually begins with an initial conversation with the person in charge of the facility, or if they are not present, the person next in charge.

This discussion is an important first step in establishing a constructive dialogue with the authorities. It also provides an opportunity to:

- introduce the mandate of the NHRI and the visiting team
- explain the objectives of the visit
- explain the working method for the visit, in particular the need to hold interviews in private with selected detainees
- explain how information collected during the visit will be used
- ask for recent and specific information
- ask the person in charge of the facility for their opinion about the challenges they encounter in their work and possible solutions.

2.3 Tour of the premises

After the initial conversation with the authorities, the visiting team should undertake a general tour of the premises. A short introductory tour of the entire facility helps to provide a sense of the overall design and layout of the centre, as well as the location of different facilities used by the detainees and those areas where there are increased risks of torture and ill-treatment (including solitary confinement cells, disciplinary cells, screening areas). It also enables the visiting team to gain a first impression of the atmosphere of the place.

Following the general tour, the visiting team can break into smaller groups to more thoroughly monitor specific areas of the place, such as the kitchen, the infirmary, disciplinary cells, dormitories and sanitary facilities.

2.4 Consultation of registers

One or more members of the team should consult the registers and other documents held on file. This consultation can be useful at the beginning of the visit, as information obtained from the registers and other documents can be verified during the course of the visit and during interviews with detainees. The monitoring team can also go back and check registers during the course of the visit, to cross-check information obtained during interviews with persons deprived of liberty, authorities or others. There are a number of different registers kept in places of detention but, in the context of preventing torture and ill-treatment, registers of incidents, registers of disciplinary measures, complaints, medical files and custody records (in case of monitoring police custody) are of particular importance. Other documents – such as internal rules, staff lists and working schedules – are also important and provide an understanding of how the centre functions.

2.5 Interviewing persons deprived of liberty

The most important part of any visit is the time spent talking in private with persons deprived of liberty and hearing directly about their treatment and their experience of the conditions in detention.

The interview process is a delicate and sensitive exercise which aims to establish a relationship of trust between the interviewer and the person deprived of liberty (see chapter 5 for more information on preparing for and conducting interviews). It requires specific skills and training.

When considering selection strategies for interviewing persons deprived of liberty, and when conducting interviews, the monitoring team should ensure they do everything they can to prevent any possible harm and reprisals.

The visiting team, and not the authorities, must select the detainees who will be interviewed. Ideally, in order to have a representative sample of detainees in the centre, a significant number of interviews should be conducted (for example, 10 per cent of all detainees).

The visiting team may decide to select a random sample of detainees based on the register (for example, every tenth person listed). Alternatively, the team might decide to select a representative

sample of detainees based on previous information or a specific situation of risk (for example, recently arrived detainees or detainees held under disciplinary sanctions, trans detainees).

A combination of both random and critical selection helps ensure that an appropriate cross-section of detainees are interviewed and can contribute information to the preventive monitoring process. The visiting team should make sure that they do not speak only with those detainees who seek to make contact with them.

Ensuring the confidentiality of the interview is essential. The interview should be held out of hearing, and preferably out of sight, of staff and other detainees. The choice of location for the interview is also crucial, both for confidentiality and to build trust. Any location that would equate the NHRI monitor with detention centre staff, such as administrative offices, should be avoided.

The NHRI visiting team should ensure gender diversity in their composition, as some persons deprived of liberty can feel more at ease with an interviewer of the same gender. Monitors should be trained on the use of appropriate language. When carrying out interviews to persons deprived of liberty, it is also important to send a clear message of non-discrimination, including with regards to gender, gender identity and sexual orientation.

Conducting individual interviews can be a time-consuming process. In order to optimize the time available to the visiting team, it may be useful to hold a combination of individual interviews and group discussions with detainees.

Group discussions enable the visiting team to have contact with more detainees and are useful to hear about common concerns, get a sense of the mood or culture within the place and identify individual detainees to interview in private. However, as there is no confidentiality, group interviews exclude the possibility of discussing more sensitive issues. It is important to ensure that there is no disclosure during group discussions of any information that may pose a risk of harm to an individual.

2.6 Discussions with staff

In addition to talking with the person in charge of the facility, it is also important for the visiting team to speak with different members of staff. Although it might be difficult to carry out interviews in private, in particular with security staff, the visiting delegation should try to talk with a representative selection of staff. Other staff, members, such as medical doctors and social workers, should also be interviewed.

Staff members can all contribute very important information. They can raise issues for further investigation, as well as contribute their own suggestions or opinions about problems within the place. Talking with staff is also important in order to cross-check information or allegations received from other sources.

Finally, any opportunity during the visit to engage in conversation with staff and detainees, including informal talks, should be taken.

2.7 Final meeting with the person in charge

It is important to formally end the visit with a talk with the person in charge of the facility. This should be arranged beforehand, and the visiting team should set aside some time to debrief and share their findings prior to this meeting. The aim of the final talk is to provide a summary of facts found and specific issues identified. Urgent cases should be raised immediately, although it may be wise to address very serious cases directly to more senior officials. The final talk should also mention the steps that will follow the visit, including the preparation of a written report of the visit which will be sent to the relevant authorities.

Montoring places of detention in times of COVID-19

Since the onset of the COVID-19 pandemic in 2020, the situation in places of detention has worsened and monitoring is more important than ever. Several international organisations, including the World Health Organization and the United Nations Subcommittee on Prevention of Torture, have issued recommendations on the protection of rights of persons deprived of liberty as well as monitoring staff, and recommended the continuation of national oversight and monitoring visits.

After an initial period of suspension of visits to protect both the monitors and the persons detained or working in places of detention, most monitoring bodies resumed their onsite visits. They adapted their monitoring methodology, the size of their team and the duration of visits to fully respect safety measures and the 'do no harm' principle. Some oversight bodies have also been creative in developing new ways of conducting their monitoring work, including by conducting remote monitoring.[116]

3. After the visit

3.1. Drafting reports and recommendations

The visit is not an end in itself but rather the first step in a long-term process of improving the treatment of detainees and the conditions of detention. Visits should be followed by credible reports addressed to the relevant authorities, which include practical recommendations for change.

3.1.1. Internal reporting

NHRIs should develop a standard reporting format for visits to places of detention. These notes provide a clear, fact-based account of the visit and contribute to the development of institutional knowledge. They are particularly important when NHRIs plan thematic reports that cover several visits.

3.1.2. Visit report

Visit reports are the basis for engaging in dialogue with the authorities and discussing the modalities for implementing recommendations. The reports are addressed to the authorities in charge of the facility visited, as well as higher authorities (such as the relevant government department or ministry), if need be. They should be prepared shortly after the visit and not be unnecessarily long.

116 APT/ODIHR *Guidance note: Monitoring places of detention through the covid-19 pandemic*, 2020

Visit reports usually include:

- generic information about the place visited
- factual information about the visit (duration, methodology, objectives)
- areas of concern structured thematically, including facts found, observations and analysis
- good practices identified (if applicable)
- practical recommendations for change.

The NHRI can decide to make its visit reports public. In this case, they should be easily accessible and widely disseminated.

It is important to ensure that the reports do not disclose confidential information or any information that may result in a risk of harm to the person who provided the information.

Visit reports should be drafted considering a gender perspective and a gender-sensitive language.

3.1.3. Thematic reports

In addition to their reports on specific visits, NHRIs can also prepare thematic reports that consider specific issues (for instance, medical services, police violence or women deprived of liberty) over a certain period of time and across different types of places of detention. This approach provides a more analytical view that can help identify patterns of problems and highlight contributing factors in different places. They should also include practical recommendations to bring about systemic change. Thematic reports should initially be sent to the relevant authorities for comment and then made public and widely disseminated through the media.

Insights from practice:

*In 2016, the **Norwegian Parliamentary Ombudsman**, in its capacity as NPM, published a thematic report on the treatment and conditions of women in prison, following a series of visits to high security prisons carried out between 2014 and 2016. The report addresses key issues such as material conditions, security, activities, health services and contact with family[117].*

*In 2020, the **National Human Rights Commission of Afghanistan** conducted investigations in 34 prisons throughout the country to identify existing challenges and to provide the relevant authorities with appropriate recommendations to prevent COVID-19 spread in the detention centres.*

3.1.4 Drafting good recommendations

The quality and usefulness of recommendations developed following visits to places of detention should be assessed against the following ten interrelated and mutually reinforcing criteria (the double SMART model).

117 See: https://www.sivilombudsmannen.no/en/news/prevention-torture/body-searches-balancing-security-and-dignity/

Specific: each recommendation should address only one specific issue

Measurable: the evaluation of the implementation should be as easy as possible

Achievable: each recommendation should be realistic and feasible

Results-oriented: the actions suggested should lead to a concrete result

Time-bound: it should include a realistic timeframe

AND

Solution-suggestive: Wherever possible, recommendations should propose credible solutions

Mindful of prioritization, sequencing and risks: it might be useful to address more urgent recommendations first and reserve others for subsequent reports

Argued: recommendations should be based on high-quality, objective evidence and analysis and refer to standards

Real-cause responsive: recommendations should address the cause of the problem, rather than the symptoms

Targeted: recommendations should be directed to specific institutions/actors rather than to "the authorities"

In practice, it might be difficult to draft recommendations that comply with all the double SMART criteria. However, NHRIs should take sufficient time to consider them carefully. Drafting good recommendations is essential as it provides a solid basis for an ongoing dialogue with the authorities and enables NHRIs to follow-up on their implementation.

3.2 Follow-up strategies

In addition to sending visit reports to the persons in charge and higher authorities, NHRIs can present them to the staff and management of the place visited to establish a dialogue on implementation. In addition, meetings with several heads of institutions on thematic or transversal issues could also be organised. Finally, NHRIs can establish regular dialogues with high-level authorities on the implementation of recommendations issued in visit reports.

3.3. Annual report

NHRIs are usually required to present an annual report of their activities to the Parliament. Annual reports provide an opportunity for the NHRI to summarize its key human rights concerns and present recommendations requiring legislative intervention. Annual reports can also draw attention to concerns regarding the treatment of detainees and conditions of detention. The annual report should be made available to the media and, more broadly, to the general public.

Insights from practice:

*The **Georgia Public Defender** presents its annual report to the Parliament in June each year. In addition, the NPM also presents its separate annual report to the Parliament in a separate hearing in January each year. The June session is an opportunity to reiterate some of the issues*

KEY POINTS: CHAPTER 8

- Monitoring places of detention through regular visits should respect basic principles, in particular the "do no harm" principle.
- Visits to places of detention should be well planned in terms of reviewing available information, dividing tasks between team members and making prior contacts.
- Key steps involved in conducting a visit include: an initial talk with the authorities in charge, a tour of the premises, a consultation of registers and other documents, private interviews with detainees, a final meeting with the authorities in charge.
- Obtaining and cross-checking information from different sources is key to ensuring the objectivity and credibility of such information.
- NHRIs should integrate a gender perspective and gender-sensitive language when preparing and conducting visits to places of deprivation of liberty, as well as when writing reports and recommendations.
- Reporting on visits and preparing good recommendations is crucial as a follow-up mechanism and for establishing an ongoing dialogue with the relevant authorities.

FURTHER READING

Torture Prevention Learning Village, Open Courses on Fundamentals of Detention Monitoring, Gender-Sensitive Detention Monitoring and Monitoring LGBTI+ People in Detention, Association for the Prevention of Torture; 2022

NPM Toolkit, Association for the Prevention of Torture

Guidance: Monitoring Places of Detention through the COVID-19 Pandemic, APT-OSCE/ODIHR; 2020

Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide, APT; 2018

Women in detention: a guide to gender-sensitive monitoring, Penal Reform International/ Association for the Prevention of Torture; 2015

Monitoring Immigration Detention: Practical Manual, Association for the Prevention of Torture ;2014

Monitoring Police Custody: A Practical Guide, Association for the Prevention of Torture; 2013

Mitigating the risks of sanctions related to detention monitoring: Briefing paper, Association for the Prevention of Torture; 2012

Monitoring Places of Detention: A Practical Guide; Association for the Prevention of Torture; 2004

Detention Monitoring Briefing No. 1: Making Effective Recommendations; Association for the Prevention of Torture; 2008

Detention Monitoring Briefing No. 3: Using Interpreters in Detention Monitoring; Association for the Prevention of Torture; 2009

Visiting places of detention: What role for physicians and other health professionals?; Association for the Prevention of Torture; 2008

Chapter 9:
Promoting public awareness

KEY QUESTIONS

- How can NHRIs engage in effective public education on torture prevention?
- What activities can help build public awareness on torture prevention?
- How can NHRIs incorporate gender considerations in public education on torture prevention?

LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Methods of operation

3. A national institution shall, inter alia, have the following responsibilities:

g) To publicize human rights (…), by increasing public awareness, especially through information and education and by making use of all press organs.

Universal Declaration of Human Rights

Preamble

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective

recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

United Nations Declaration on Human Rights Education and Training

Article1

Everyone has the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training.

Article 9

States should promote the establishment, development and strengthening of effective and independent national human rights institutions, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights ("the Paris Principles"), recognizing that national human rights institutions can play an important role, including, where necessary, a coordinating role, in promoting human rights education and training by, inter alia, raising awareness and mobilizing relevant public and private actors.

Introduction

Promoting community awareness of, and respect for, human rights is one of the core functions of NHRIs. This makes them ideally placed to initiate public education programmes that promote awareness of the prohibition of torture and build community support for the prevention of torture.

Public education programmes and awareness-raising campaigns are important because they can influence stakeholders and decision makers and contribute to community-wide attitudinal change. Human rights education not only imparts knowledge, but fosters skills, attitudes, and behaviour so people can exercise, uphold and defend rights in their daily lives.[118]

Human rights education is a lifelong process, involving many forms of learning in a range of settings: formal, informal and non-formal. The UN Declaration on Human Rights Education explicitly recognises the role of human rights education in "the prevention of human rights violations and abuses" by empowering people to "contribute to a culture of human rights".[119]

118 Plan of Action for the fourth phase (2020-2024) of the World Programme for Human Rights Education – Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/42/23 (26 July 2019), adopted by the Human Rights Council in resolution 42/7, World Programme for Human Rights Education: adoption of the plan of action for the fourth phase (26 September 2019), section I.A.5.

119 United Nations Declaration on Human Rights Education and Training (2011), Article 2.

Awareness-raising activities usually have more impact when they are conducted in partnership with others, in particular with civil society, community leaders or other relevant groups. The media are also a crucial partner. Networking and close consultation with these different partners is an important component of any successful public awareness programme.

NHRIs should apply a gender and intersectional lens to, and promote gender equality through, all stages of awareness raising programmes[120]. In addition, specialized public education activities might be needed to address specific and pressing gender issues in relation to torture prevention, for example know your rights programmes for women prisoners or targeted community outreach for people at risk of gender-based violence.

It is important to remember that bringing about attitudinal and behavioral change is a challenging task which requires more than campaigns and workshops. Most of an NHRI's core activities will have an educational component which should be recognized and utilized. For example, an NHRI's detention monitoring activities or a public inquiry into torture and ill-treatment will seek to change attitudes and bring about action to prevent of torture in the future.

Broadly speaking, there are three groups to whom public education on torture prevention may be directed: rights holders, duty bearers and influencers. This chapter looks at programmes and campaigns aimed at rights holders, in particular people most at risk of torture and ill-treatment, and influencers, including the media and opinion leaders. Chapter 6 focuses on training of public officials (duty bearers).

1. Public education

It is obvious that people need to understand what rights they have in order to ensure that those rights are respected by the authorities. However, those who are most vulnerable to torture and ill treatment – for instance, people who are living in poverty, who have a lower level of education or belong to at risk groups such as women, foreign nationals, indigenous persons and other minority groups – are also often those who are least likely to have a proper understanding of their rights.

There is a clear need to ensure that people of all backgrounds know their rights. When people are aware of the obligations that the Government and other authorities have to them, and when those obligations are not met, they can be held to account.

When planning a public education programme, NHRIs should define a specific objective and the group or groups they intend to reach. For example, a targeted campaign might have a goal of helping homeless young people know and exercise their rights if they are arrested by the police.

These education initiatives are generally most effective when they are conducted in partnership with others working in the field. Therefore, NHRIs should consider building networks with a wide range of groups and professionals, such as social workers, charity organizations, human rights NGOs or professional associations of doctors and lawyers.

Once the objective for the education programme has been defined, the next step is to consider the best way to communicate with the target group. This will obviously vary considerably, depending on the group. There are a range of educational methods available and the NHRI will need to choose the approach most appropriate for the context, participants, and defined purpose.[121] Human rights

120 Human Rights Education: A Manual for National Human Rights Institutions; APF; revised 2019, Chapter 9: Human rights education and gender".

121 For example, the "Multi-level approach to human rights education" identifies six ways of conducting human rights education activities and has been developed for NHRIs' to meet multiple situations, needs, strengths and outcomes. Educational frameworks such as the human rights-based approach, the "4-A" framework and the Learning Pyramid – can be used as guides for strengthening the approach. See APF, *Human Rights Education: A Manual for National Human Rights Institutions* (revised 2019).

education principles will help guide the design of the activities.[122] If, for instance, the programme aims to reach homeless young people, it could include strategies such as:

- placing leaflets or posters in key places, including police stations or youth centres
- running street theatre sessions
- distributing caps, T-shirts or pocket cards
- establishing and promoting a free information hotline
- holding information sessions in youth centres, accommodation centres or other places where young people gather.

NHRIs should mainstream gender into their planning, implementation and follow up to public education activities on torture prevention. A gender analysis can help NHRIs identify what is known about the gender situation, the impact the activity will seek to have, the strategies and resources necessary. In its content and methodology, the activity should actively promote gender equality, participation and counter any conscious or unconscious factors that may perpetuate gender discrimination. A gender lens should be applied in reporting and evaluation.

In addition, there is a growing recognition of the need for public education programmes that specifically address gendered forms of torture and ill-treatment in the public and private spheres. Depending on the context, these could include:

- public education programmes to combat gender-based violence in the family
- community-level sensitisation activities to combat harmful gender stereotypes underlying discrimination and abuse in the provision of healthcare services
- awareness-raising to fight discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in the community and in places of detention
- campaigns to mobilise public opinion against genital mutilation.

Insights from practice:

*The **Ombudsman for Human Rights of Timor Leste** (Provedor de Dereitos Humanos) has raised public awareness about the situation of LGBTI persons, including the conditions they face in detention places. In this regard, they have conducted trainings and public seminars to put forth positive views about LGBTI persons.*

2. Public awareness campaigns

As part of their mandate to promote human rights, NHRIs should seek to raise awareness among the general public about the absolute prohibition on torture and the right of all persons, in particular those deprived of their liberty, not to be tortured or ill-treated.[123]

Torture and ill-treatment almost always occur out of public view. As a result, these issues may be rarely discussed in the media or other public settings and there may be little awareness that such practices occur. NHRIs can play an important role in bringing the issue of torture out of the shadows

122 Human rights education activities should be: relevant to participants, collaborative, participatory, probing, involve thoughtful action and be empowering. See ibid., pp. 77–85.

123 In its general comment No. 20, the Human Rights Committee asks to "be informed how States parties disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by article 7" (para. 10). The Committee against Torture also notes that "it is important that the general population be educated on the history, scope and necessity of the non-derogable prohibition of torture and ill-treatment" (general comment No. 2, para. 25).

and into the public domain. Public awareness and community support can be a crucial factor in bringing about changes to laws, policies and practices.

In most countries around the world, community attitudes to detainees can vary from indifference to suspicion and even antipathy. These feelings are usually reinforced by public discourse on issues of security and law and order that can legitimate poor treatment of detainees. Similarly, public opinion can sometimes view certain forms of violent behaviour, for example during interrogation, as an acceptable part of police work. This perception can be reinforced by television programmes that show police violence as a normal, or even necessary, part of policing.

This is why it is important for NHRIs to regularly communicate the message that torture is never acceptable and that all persons deprived of their liberty deserve humane treatment. One of the best ways to address the community at large is through global public awareness campaigns that engage journalists and opinion leaders.

Furthermore, in some contexts, human rights work is criticised as serving only specific cultural, political, economic, or religious interests. NHRIs and human rights defenders working on torture can risk being viewed in a negative light, for example as "defenders of criminals". To counteract misconceptions and build support, NHRIs might need to develop positive narratives around the benefits of torture prevention e.g. for society, good governance, accountability and strengthening criminal justice systems.

NHRIs might choose to focus awareness-raising activities on specific groups at risk of torture and ill-treatment. For example, in many countries the public knows very little about the plight of women in detention and their unique needs are often left off policy agendas. The Bangkok Rules specifically recommend that "the media and the public shall be informed about the reasons that lead to women's entrapment in the criminal justice system" and effective responses to enable their social reintegration, taking into account the best interests of their children.[124]

One of the best ways to address the community at large is by engaging journalists and opinion leaders, including through public awareness campaigns. Informed and sustained media coverage on an issue can help shape public opinion and create political pressure for change. Engaging the media will not be a one-off event but a sustained activity. NHRIs will need to build relationships and understand how the media operates to present torture issues in a way that engages journalists and leads to useful, accurate and compelling coverage.

At the same time, it should be remembered that media reporting can sometimes perpetuate harmful stereotypes and entrench discrimination. The way stories are reported might influence stakeholders in unexpected or unwanted ways. NHRIs should be aware of the potential risks of media engagement, to weigh these up against possible benefits and develop risk mitigation strategies.

An effective public education campaign will be based on an agreed communication strategy, which will include a specific objective, a clear and simple message, the main methods and targets of communication and the timeframe for the campaign.

Some avenues that NHRIs can use to communicate with the general public include:

- holding a major press conference to encourage news reporting on the issue
- mobilizing leading public figures in support of the campaign, which could also include testimonies of victims

124 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rule 70.1.

- using social media platforms – such as Facebook, Twitter, YouTube, Instagram and LinkedIn – to engage directly with audiences
- involving and mobilising artists
- preparing opinion editorials and Letters to the Editor
- developing community awareness spots for radio and television
- placing advertisements in major newspapers
- incorporating the issue into popular television drama series or radio programmes
- distributing posters and leaflets
- organizing a public petition.

Public awareness campaigns should integrate gender in their content and methodology, for example by including gender-related priorities in its messages and ensuring visibility of women and men Commissioners, staff, and other stakeholders in media outreach.

It is important to select an appropriate time to launch the campaign. One option is to use the momentum created by various international days, such as

- International Day in Support of Victims of Torture; 26 June
- Human Rights Day; 10 December
- International Women's Day; 8 March
- International Day against Homophobia, Transphobia and Biphobia; 17 May
- International Day of the Girl Child; 11 October
- World Children's Day; 20 November
- International Day for the Elimination of Violence against Women; 25 November
- World AIDS Day (for a campaign on issues related to HIV/AIDS in prisons); 1 December.

Insights from practice:

As a result of the three-year joint project "A Continent United Against Torture", between the ***Network of African National Human Rights Institutions (NANHRI)*** *and the APT, NHRIs agreed to commemorate the African Pre-Trial Detention Day on 25 April (the day of adoption of the Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa). The day was officially adopted by the African Commission on Human and Peoples' Rights and 25 April 2016 marked the inaugural African Pre-Trial Detention Day.*

The ***Kenya National Commission on Human Rights*** *marked the African day on pre-trial detention for the first time in Kenya on 25th April 2016 at Langata women prison. Subsequently, the Commission in collaboration with other partners working within the criminal justice system have conducted activities at Nairobi Remand and Allocation prison (2017) and Mathari National Teaching and referral Hospital (2018). Various activities including inspections of places of detention, public lectures to publicize and provoke dialogue the Luanda Guidelines and media awareness have been conducted with the aim of providing a basis for the development of national level awareness raising and advocacy on the implementation of the guidelines.*

*In 2015, the Malaysian NHRI **SUHAKAM**, together with national civil society organisations launched a public campaign called ACT4CAT for the ratification of the UN Convention against Torture. As part of the campaign, it created a Facebook page and a specific hashtag to increase outreach to the public. In addition, it launched a comic and artwork collection called 'Cartoonists against torture'.*

3. Raising awareness among persons deprived of their liberty

NHRIs can also consider running education programmes that provide information to persons deprived of their liberty and those who are most at risk of torture or ill-treatment.

This could include information about existing guarantees and procedures, as well as rights during arrest, interrogation and in detention. It may also include information about contacting the NHRI or making a complaint.

This information could be distributed through:

- leaflets or booklets on the rights of prisoners
- pocket cards on the rights of inmates

KEY POINTS: CHAPTER 9

- Educating the general public about the prohibition and prevention of torture is an important preventive action.
- Educational programmes can focus on persons deprived of liberty and those who are most at risk of torture and ill-treatment.
- Awareness-raising campaigns can help shape public opinion about the issue and provide important momentum for change.
- NHRIs should mainstream gender in public education activities on torture prevention. Specialised actions might be needed to address gendered forms of torture or other ill-treatment.

FURTHER READING

Human Rights Education: A Manual for National Human Rights Institutions; APF; revised 2019

From Planning to Impact: A Manual on Human Rights Training Methodology; Professional Training Series No. 6/Rev.1; OHCHR; revised 2019

APF videos (2015):

- Who is Human Rights education for?
  Available online at
  www.youtube.com/watch?v=U8X6DBc_hsk (5.07)
- Planning human rights education
  Available online at
  www.youtube.com/watch?v=SDQD7tpzMOw (5.37).
- Delivering human rights education
  Available online at
  www.youtube.com/watch?v=356rLNkBgIs (6.41)

Media Handbook for National Human Rights Institutions, APF; 2013

Facilitation Manual: A guide to using participatory methods for Human Rights Education; Amnesty international; 2011

Section IV:
Cross-cutting actions

Chapter 10:

NHRIs and the Optional Protocol to the Convention against Torture

KEY QUESTIONS

- How can NHRIs promote ratification of the Optional Protocol to the Convention against Torture, as well as open debate on the options for a national preventive mechanism?
- What are the challenges for NHRIs in being designated as a national preventive mechanism?
- How can NHRIs not designated as a national preventive mechanism cooperate with the Optional Protocol's bodies?

Introduction

The Optional Protocol to the Convention against Torture aims to prevent torture and ill-treatment by establishing a system of regular visits to places of detention. These visits are undertaken by an international body, the Subcommittee on Prevention of Torture, and by a national preventive mechanism (NPM). The Optional Protocol was adopted in 2002 and entered into force in 2006. It represents an important new instrument for the prevention of torture and offers several different roles that NHRIs can play (see chapter 7 for more information). So far, the majority of NPMs designated are National Human Rights Institutions.

1. Promoting the Optional Protocol

1.1. Role of NHRIs in the ratification of the Optional Protocol

As part of their general mandate to promote ratification of international instruments, NHRIs can be actively involved in promoting ratification of the Optional Protocol. This can be done through formal recommendations to the Government, discussing the importance of the Optional Protocol in its annual or thematic reports, lobbying relevant Government Ministers and Members of Parliament and raising awareness and building support with different stakeholders and the public.

When discussing ratification of the Optional Protocol, consideration should also be given to the practical steps involved in implementing the treaty and, in particular, the possible options for establishing or designating a NPM.

Insights from practice:

*The **South African Human Rights Commission (SAHRC)** has advocated for OPCAT ratification and implementation for many years. Following the OPCAT signature by South Africa (20 September 2006), an ad hoc committee, the "Section 5 Committee" (now Section 11), was established by the SAHRC to promote OPCAT ratification and implementation. The Committee was composed of representatives from the Government, Parliament, civil society organizations and existing monitoring bodies. Several workshops involving the Commission were also held over the years. In 2016, the Commission also submitted a business plan and engaged in regular dialogue with the government on NPM designation. South Africa finally ratified the OPCAT on 20 June 2019 and designated a multiple body National Preventive Mechanism coordinated and functionally led by the South African Human Rights Commission.*

1.2. Consultation process regarding possible NPM

Under the Optional Protocol, NPMs have a mandate to regularly examine the treatment of persons deprived of their liberty in places of detention. They are also required to make recommendations to the authorities on the prevention of torture and to submit observations on relevant existing or draft legislation.

In order for them to perform this mandate, States parties must guarantee NPMs functional independence, as well as the independence of their members. They must also make available the necessary resources for the effective functioning of the NPM. They must ensure that NPM members and staff have the required capabilities and professional knowledge to perform the role. The NPM composition should also ensure gender balance and adequate representation of ethnic and minority groups in the country. In addition, NPMs must be granted certain powers regarding (unannounced) access to places of detention, access to information, the opportunity to interview persons deprived of their liberty in private, and the right to choose where they visit and who to interview.

The Optional Protocol does not prescribe any particular organizational form for NPMs. States are able to decide the most suitable option, taking into account their national, social, political and economic context. It is incumbent on States to thoroughly analyse and assess the various options available to them.

This analysis should be undertaken in an open and transparent manner, as recommended by the Subcommittee on Prevention of Torture in its guidelines[125] on NPMs.

NHRIs should be part of this consultation process, together with other national actors, such as relevant Government officials, existing monitoring bodies, civil society organisations, trade unions, professional organizations and Members of Parliament. It may also be useful to seek the advice of other NPMs in the same region or in similar contexts and, in some cases, regional and international organisations such as the SPT.

Relevant Government agencies should proactively publicise the process, opportunities for participation and the criteria, methods and reasons for the final decision on the NPM model – ideally chosen through consensus among those engaged in the consultation process. This process can take place through meetings and workshops, as well as online and through calls for written comment or contribution.

Ideally, the consultation process should start with a mapping of existing oversight and monitoring institutions, considering their ability to meet the OPCAT key requirements as well as practical issues, including:

125 Subcommittee on Prevention of Torture, *Guidelines on national preventive mechanisms,* CAT/OP/12/5, 9 December 2010, para. 16.

- legislation or other basis of establishment
- existing mandate and jurisdiction
- existing powers, including in relation to both public and private places of deprivation of liberty
- independence (both real and perceived)
- existing human, financial and logistical resources
- relations with the authorities and other relevant actors
- working methods, and existing practices and experience, including in relation to detention monitoring
- immunities and privileges of both elected and hired members and staff.

It is also important to map the number and type of places where people are deprived of liberty in the country. These two mapping activities may be done by the government but also by existing oversight bodies, such as the NHRIs, or other actors such as civil society. They can provide a useful starting point for developing recommendations on possible options for the NPM.

Based on this analysis, and on the consultation process, States can then decide their preferred model for the NPM. This could include:

- the establishment of an entirely new specialised institution mechanism, or
- the designation of an existing body, such as the NHRI, or
- the designation of multiple bodies, either existing bodies, new bodies or a combination of both.

Insights from practice:

*In **Paraguay**, following the State's ratification of the Optional Protocol, a three-day national seminar was held that brought together hundreds of representatives from the governmental and non-governmental sectors. At the end of the forum, a 13-member NPM drafting committee was established by consensus, comprising government and civil society representatives. After six months of consultations, a draft law to create the National Commission to Prevent Torture was presented to the Congress. In its second annual report, the Subcommittee on Prevention of Torture "noted with appreciation that the process of development of the draft law establishing the NPM has been characterized by openness, transparency and inclusivity" (CAT/C/42/2, para. 38).*

*The **Australian Human Rights Commission** played an active role in the consultation process on the NPM designation. Upon request of the Commonwealth Attorney-General, it conducted consultations with civil society to advise the Australian Government on OPCAT implementation. First, in 2017, the Commission produced an interim report summarising the views received by civil society through written submissions and roundtables. The report informed the ratification process, which was completed by the government in December 2017. In 2018, a second phase of consultation was launched to provide feedback on the proposals and on the detail of how OPCAT should be implemented in Australia. The Commission published the final report in June 2020.*

1.3. Consideration of NHRIs as NPM

When there is an independent NHRI operating in the country, designating the NHRI as the NPM is an option available to the Government. Its independence, existing mandate and functioning, as well as the level of credibility and legitimacy it has established with the authorities and the broader society, should be carefully examined.

Existing NHRIs do not necessarily meet all the requirements of the Optional Protocol. Amendments to legislation, organizational restructuring and the provision of additional human, logistical and financial resources are almost always needed if an existing human rights commission or ombuds institution is to assume the role of NPM.

Furthermore, taking up a new mandate with a focus on prevention, rather than protection or investigation, will require the NHRI to review its working methods, structure and professional composition. In some cases, aspects of the NHRI work may make it inappropriate for designation as the NPM. This might be the case for NHRIs that are predominantly reactive in nature, where the main focus is handling individual complaints, or NHRIs which primarily undertake research or human rights education and promotion.

The Nairobi Declaration, adopted during the Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights in October 2008, states that NHRIs should encourage their Governments "to consider their designation as national preventive mechanisms, only if the necessary powers and resources are made available to them." When an NHRI has been designated as NPM under the OPCAT, its role and functions as NPM are also assessed by the GANHRI Sub-Committee on Accreditation (SCA) as part of the Paris Principles accreditation process.

There a number of issues that should be examined carefully when considering the designation of an existing NHRI as a NPM, including:

- legal basis and having a specific mandate to carry out preventive visits
- having sufficient human and financial resources to carry out full programme of regular visits, as well as to cover other aspects of the NPM preventive work, including, inter alia, the production and publication (and possibly translation) of NPM reports, training and awareness-raising activities, communication and participation in international exchanges and other fora
- guaranteed access to all types of places of deprivation of liberty
- guaranteed access to relevant information
- the right to conduct interviews with persons deprived of liberty in private
- independence
- relevant and multidisciplinary professional expertise
- the right to make recommendations to Government and relevant authorities and to receive a considered response
- the right to publish reports
- necessary privileges and immunities
- whether there are other bodies monitoring places of detention.

An assessment of these issues can help identify what additional legal measures, restructuring and resources may be required for the NHRI to comply with the OPCAT requirements.

Furthermore, the process leading to the designation of the NHRI as NPM should be open, inclusive and transparent.

2. NHRIs designated as NPM

Worldwide, the majority of designated NPM are NHRIs or are associated with NHRIs. A few States have created a new specialised institution to serve as NPM.[126]

126 See APT OPCAT Database at www.apt.ch

2.1. Different NPM models

There are three different ways in which NHRIs have been designated as NPMs under the Optional Protocol.

- NHRI as the sole NPM

  The mandate of the NPM is given to an existing NHRI. This is the main model in all regions across the globe.

Insights from practice:

*The **National Commission for Human Rights of Rwanda** was formally designated as NPM by law in September 2018. Following designation, the Commission revised its internal structure to create a sub-commission on the prevention of torture within the institution*

- the NHRI acts as NPM in coordination with others: Under this model, the NHRI is officially designated as the NPM but conducts its mandate in formal cooperation with others, in particular with civil society organizations. This model is commonly referred to as the 'Ombudsman Plus' structure.

Insights from practice:

*In **Slovenia**, the tasks and powers of the NPM are carried out by the **Human Rights Ombudsman, in cooperation with NGOs.** In accordance with the legislation, NGOs registered in Slovenia can participate in carrying out inspections in places of where people are deprived of their liberty. The participating NGOs are selected by the Ombudsman on the basis of a public tender and a cooperation contract is signed between the Ombudsman and each NGO*

- the NHRI is designated as part of a multiple body NPM: States have the possibility to designate several NPMs, either on a geographical or thematic basis. Under this model, the NHRI can be one of several NPMs and may also act as a coordinating body.

Insights from practice:

*In **New Zealand**, the following bodies have been designated as NPMs: the Ombudsman, the Independent Police Conduct Authority, the Children's Commissioner and the Inspector of Service Penal Establishments. The **New Zealand Human Rights Commission** has been given the coordinating role as the **Central National Preventive Mechanism.***

2.2. Opportunities and challenges for NHRIs designated as NPM

Designating an NHRI as NPM presents several advantages, when the institution has a strong legal basis, expertise, positive reputation, trust and visibility, as well as strong links and experience with the international human rights system and its status within international and regional NHRI networks.

NHRIs designated as NPMs also raise specific challenges in terms of resources, mandate, composition and internal coordination.

2.2.1. Resources

According to the Optional Protocol, States should make available the necessary resources for the effective functioning of the NPM. Designating an existing NHRI as the NPM should not be viewed by the Government as an economical way of implementing its responsibilities under the Optional Protocol. As highlighted in the Nairobi Declaration, NHRIs can undertake this additional mandate only if they are provided with the necessary human and financial resources.

2.2.2. Legislation and powers

Most NHRIs have a strong legal basis, often grounded in the constitution. In many cases, this founding legislation contains some powers required by the Optional Protocol, in particular related to visiting places of detention. However, the founding legislation of NHRIs often falls short of compliance with all OPCAT requirements. In such cases, there are several options:

- pass new or additional legislation designating the NHRI as the NPM
- revisit the institution's founding legislation entirely and include the required amendments.

Regardless of the approach chosen, the specific functions and powers of the NPM should be stated explicitly in law, in order to sustain the NPM's existence in the long term. This process will also need to be accompanied by discussions on the institutions' internal rules and processes.

Insights from practice:

Togo *ratified the Optional Protocol in 2010. It decided to give the mandate to the NHRI, the Commission Nationale des Droits de l'Homme but to revise its legal basis. The 2005 CNDH law was profoundly amended in 2018. The new Commission is now composed of nine members divided into three sub-commissions. The sub-commission on prevention is implementing the NPM mandate.*

Maldives *ratified the Optional Protocol in 2006 and the National Human Rights Commission was designated as NPM by Presidential Decree in 2008. The 2013 Anti-torture Act officially designated the NHRI as NPM and provided a legislative basis to this mandate.*

2.2.3 Mandate and change of mindset

NHRIs have a mandate to handle complaints and to investigate and document cases of human rights violations. The fact that the NHRI already undertakes visits to places of detention is not, in itself, sufficient to ensure that these visits will meet the OPCAT requirements. The preventive visits described in the OPCAT differ in their objectives and their approach from other types of visits, in particular visits to investigate complaints of torture and ill-treatment.

The work of an NPM is forward-looking, multidisciplinary, aimed at reducing risks and root causes of torture and ill-treatment, and at protecting the dignity of those deprived of their liberty, even in the absence of complaints. The approach of NPMs is also based on ongoing, constructive engagement and dialogue with the authorities. It often focuses on bridging the gap between what exists in law

and standards, and the practices that are found in detention – work which requires an in-depth understanding of what is happening in detention, built on in-depth visits to places of deprivation of liberty.

Undertaking the role of NPM therefore requires a change of mindset for the NHRI. The NHRI should take time to reflect on the new mandate and ensure that all staff members have a clear understanding of the preventive approach.

2.2.4 Internal structure

When the NHRI is designated as NPM, it is advisable to establish a dedicated unit or department within the NHRI headed by a senior figure to take on this preventive function. This can help the NPM focusing its full attention on preventive work and avoid confusion among the authorities or detainees about the specific mandate of the NPM.

While one department of an NHRI may be responsible for the NPM work, designation means that the NHRI as a whole "is" the NPM and not only one department (although some exceptions do exist). While the NPM department should be granted operational autonomy, it should also be integrated into the broader institution, including with a system of regular interaction and cooperation with other departments. Such cooperation may cover: complaints and how they are collected, transferred and investigated; visits to places of detention; thematic issues relevant to the whole institution; training and education; communication; and law reform.

Insights from practice:

Estonia *ratified the Optional Protocol in 2006 and designated its Ombudsperson's Office (Office of the Chancellor of Justice) as NPM. It started its operations as NPM in 2007, the NPM mandate being implemented by three thematic units. In 2015, a new department - the Inspection Visits Department - was created to carry out the NPM tasks and increase the efficiency of the work.*

2.2.5. Handling complaints

While undertaking their preventive work – during and beyond visits to places of detention –NPMs will hear allegations of torture and ill-treatment and receive complaints related to treatment, conditions or other situations in detention. Although NPMs should not focus on documenting these cases, they constitute important indicators of systemic problems and a valuable source of information for NPMs' work. Therefore, it is important that NPMs are able to keep record and systematise all complaints received, to be able to identify patterns and integrate them in the NPMs' overall strategy.

NHRIs that are designated as NPMs should have a clearly defined process in place for the NPM to refer serious cases and the complaints received to the relevant unit within the NHRI (the complaints or investigations unit) and for the complaints unit to share the complaints related to places of detention to the NPM.

2.2.6. Composition

In order to conduct effective preventive work, NPMs need to have dedicated staff with expertise from diverse professional backgrounds. Some NHRIs may already have a mix of relevant professional skills and training. However, many NHRIs are predominantly made up of lawyers and lack expertise in certain areas, especially in the medical field. It is therefore key for NPMs to be able to recruit new staff

with such expertise – or to rely on medical doctors, psychologists and others as external experts – to ensure that they fulfil the criteria of multidisciplinarity.

NPMs' composition should also ensure gender balance and representation of different ethnic and socio-culturak groups among their personnel.

2.2.7. Institutional capacity

Most NHRIs have a number of existing departments that may be complementary to the work of the NPM, such as the ones working on complaints, legislative reform, specific issues related to groups in situations of vulnerability, communication and advocacy, and administrative issues. Finding synergies between the NPM and these departments is key for the institution as a whole to maximise its impact and use of resources.

Synergies may also be found between the NPM and the NHRI's regional offices, to ensure adequate geographical coverage for its preventive work. However, involving such offices in preventive visits and other aspects of NPM work requires careful thought and planning in order to maximise the use of the institutions' resources and to ensure coherence of the NPM's work.

Existing infrastructure (such as offices and cars) can also be useful when NHRIs take on an NPM mandate, although additional resources will almost always be required and are, in fact, a specific requirement of the GANHRI subcommittee on accreditation (SCA), when it reviews those members institutions that have been designated as NPMs.

Some NHRIs have also created an Advisory Council to provide the NPM with additional expertise and advice and to discuss strategic orientation and thematic priorities.

Insights from practice:

*In 2014, the **Parliamentary Ombudsman of Norway**, created an advisory committee to provide expertise and advice to the NPMs. It is composed of 18 members representing NGOs and professional associations with expertise in relevant thematic areas such as children, anti-discrimination or user experience from different sectors.*

2.2.8. Annual report

NPMs are required to publish an annual report of their activities. This should preferably be a separate annual report from the NHRI's or, at the least, a specific chapter in the annual report of the NHRI. In this case, the communication strategy surrounding the publication of the report should ensure enough visibility for the NPM work as one of the core mandates of the institution.

Insights from practice:

*In **Georgia**, the Public Defender's Office presents its annual report to the Parliament. In addition, it also presents the annual report as NPM in a separate hearing.*

2.3. Interaction between designated NPMs and the Subcommittee on Prevention of Torture

The Optional Protocol provides for direct and confidential contact between the Subcommittee on Prevention of Torture and NPMs. When designated as the NPM, NHRIs can interact with the Subcommittee in several ways.

Cooperation in the framework of SPT visits: NHRIs designated as NPMs can have direct and confidential contact with the SPT before, during and after its visit to the country.

Before an SPT visit, NPMs can provide background information to the SPT on particular risks, places and themes relating to detention in the country to better inform the SPT visit programme. The NPM may also provide information to the SPT in relation to its own functioning, powers and budget.

NPMs usually meet with the SPT at the start and during the visit, in order to discuss precise plans and priorities. The NPM and the SPT may also conduct visits together to places of deprivation of liberty. The NPM may also be invited by the SPT to participate in the final discussion with the authorities, in addition to a meeting between the SPT and the NPM alone.

NPMs can follow-up on SPT visits, both immediately and over the longer term. They can play an important role in prevention of reprisals, including by going back to the places that were visited by the SPT and conducting interviews and other monitoring activity with this specific purpose in mind. Over the longer term, the NPM plays an important role in encouraging the state to make the visit report public and, if the SPT report is made public, in monitoring the implementation of SPT recommendations.

Interaction with the SPT in its advisory capacity: Article 11 of the OPCAT also sets out an important role for the SPT to provide advice, technical assistance and training on the NPM establishment and functioning, beyond SPT visits. This includes meetings with NPMs during SPT sessions in Geneva (both face to face or via video-conference); participation by SPT members in NPM national or regional activities; and ongoing written and oral communication. The SPT also provides advice to NPM without direct contact, by providing general guidance and recommendations on NPM functioning.

NPMs can update the SPT in relation to issues related to state compliance with OPCAT obligations, thematic issues or developments in detention, which can inform SPT plans for future visits. It is also common practice for NPMs to share their annual reports with the SPT, who post them publicly on their website.

SPT advice on COVID-19

Following the outbreak of the COVID-19 pandemic in 2020, the SPT has provided written guidance[127] related to:

- the NPMs' mandate in places where persons are held in compulsory quarantine for reasons of public health protection;

127 Subcommittee on Prevention of Torture, Follow-up to the first advice of the Subcommittee to States parties and Preventive Mechanisms relating to COVID-19 pandemic, CAT/OP/12, 18 June 2021; Protocol for National Preventive Mechanisms undertaking on-site visits during the coronavirus disease (COVID-19) pandemic, CAT/OP/11, 10 June 2021; Advice of the Subcommittee to States parties and National Preventive Mechanisms relating to the coronavirus disease (COVID-19) pandemic, CAT/OP/10, 7 April 2020; Advice on compulsory quarantine for Coronavirus-COVID-19, CAT/OP/9, 31 March 2020.

- measures that States should take to address the risks for persons deprived of liberty and staff in all places of deprivation of liberty; and
- measures that NPMs should take to carry out their monitoring work in times of COVID-19.

3. Contribution of non-NPM NHRIs to the Optional Protocol's bodies

Even when NHRIs are not designated as NPMs, they can still make an important contribution to effective implementation of the Optional Protocol.

3.1. Cooperation with the Subcommittee on Prevention of Torture

With regard to the Subcommittee on Prevention of Torture, NHRIs can provide credible information regarding the situation of torture and ill-treatment in their country. They can also provide the Subcommittee with independent information on the mandate and functioning of the NPM, as well as on the implementation of recommendations submitted by the NPM.

During a country visit, NHRIs should meet with the Subcommittee delegation to present recent information and discuss relevant issues in regard to torture prevention.

Insights from practice:

*The **Human Rights Commission of the Philippines (CHRP)** helped build national awareness on the OPCAT. During the visit of the Subcommittee on Prevention of Torture to the country in 2015, the Commission organised a national OPCAT awareness workshop for relevant stakeholders and civil society.*

3.2. Contact with the NPM

NHRIs can play a complementary and supporting role with the organization, or organizations, designated as the NPM.

They should establish direct and regular contact with the NPM and, if necessary, assist the NPM to develop its mandate by sharing their experience and methodologies. NHRIs can also assist the NPM in developing effective ways of working with the authorities and establishing a constructive, ongoing dialogue.

NHRIs can bring issues of torture and ill-treatment to the attention of the NPM. In those countries where the NHRI also has visiting powers, it should consider sharing information and coordinating its work with the NPM in order to avoid duplication. This could also include carrying out joint visits to

places of detention. NHRIs should also monitor the functioning of NPMs, their independence and their effectiveness.

Insights from practice:

*In **France**, the designation of the **Ombudsman (Médiateur de la République)** was initially considered as an option for the NPM. However, in 2007, the decision was made to create an entirely new body to carry out the NPM mandate: the **General Inspector of Places of Detention (Contrôleur général des lieux de privation de liberté).** The Inspector is in regular dialogue with other relevant bodies and has signed an agreement with the Ombudsman that aims to clarify the division of tasks and avoid duplication.*

KEY POINTS: CHAPTER 10

- NHRIs can play an important role to promote the OPCAT, by advocating for ratification and participating in broad and inclusive consultations on NPM designation.
- NHRIs may be designated as the NPM; either as the sole NPM, in cooperation with civil society organisations or as one of several NPMs. This double mandate can present particular opportunities and challenges for NHRIs.
- NHRIs designated as NPMs can have direct and confidential contact with the SPT in the context of the SPT visit to the country and in its advisory role.
- NHRIs not designated as the NPM can contribute to the work of the NPM and the work of the Subcommittee on Prevention of Torture.

FURTHER READING

NPM Toolkit, Association for the Prevention of Torture

Preventing torture: the role of National Preventive Mechanisms. A practical guide. Professional Training Series No. 21; OHCHR (2018)

Guidelines on national preventive mechanisms, Subcommittee on Prevention of Torture, Cat/OP/12/5 (2010)

Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation Manual (revised edition); Association for the Prevention of Torture and Inter-American Institute of Human Rights; 2010

Guide on the Establishment and Designation of National Preventive Mechanisms; Association for the Prevention of Torture; 2006

Chapter 11:
Public Inquiries

KEY QUESTIONS

- What are the advantages and disadvantages of NHRIs conducting a public inquiry on torture and other ill-treatment?
- What steps are involved in establishing and running an effective public inquiry?
- How can NHRIs integrate gender in public inquiries on torture and other ill-treatment?

LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Competence and responsibilties

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matter concerning the promotion and protection of human rights. The national institution may decide to publicize them.

Introduction

Conducting a public inquiry on systemic violations of human rights, such as torture and ill-treatment, can be a very effective strategy for NHRIs. A public inquiry is an investigation into a pervasive human rights problem, in which the general public is invited to participate through public evidence and written submissions from witnesses and experts. It results in the production of one or more reports with findings and recommendations.

This approach allows NHRIs to go beyond the investigation of individual complaints. By gathering information and evidence from a variety of sources, a NHRI can identify the underlying factors that contribute to the violation of human rights and propose recommendations for positive change. Because the inquiry process is public, it can also help raise community awareness of the issue and build understanding and support for recommendations made by the NHRI.

Given that public inquiries are complex and resource intensive mechanisms, they should only be undertaken following careful consideration of the possible advantages, disadvantages and other relevant factors.

1. Advantages and disadvantages of a public inquiry on torture

1.1. Advantages

A public inquiry is a comprehensive process that allows NHRIs to perform several functions at the same time.

Handle a large number of complaints

A public inquiry on torture and ill-treatment enables the NHRI to deal in a streamlined and cost-effective way with a large number of individual cases. The proactive nature of the inquiry might also mean that the NHRI receives complaints from individuals who, for various reasons, may not otherwise have made a formal complaint (such as lack of knowledge or lack of ability to address a petition). This is especially true for vulnerable groups, such as young people, migrants or foreign detainees.

Investigate systemic causes of torture

In many cases torture and ill-treatment occur because of inadequate systems that allow or overlook such acts, rather than the misbehaviour of isolated individuals. A public inquiry helps the NHRI to expose patterns of violations and identify the underlying factors that contribute to torture and ill-treatment and offering recommendations to address systemic problems.

Analyse national laws and policies

A public inquiry provides an opportunity for the NHRI to analyse existing national laws and regulations and assess whether or not they meet the State's obligations under relevant international human rights treaties. In addition, the inquiry might review and assess the policies and programmes that operate in places of detention and propose recommendations for change.

Educate and raise awareness

A public inquiry can be a powerful education tool to raise awareness among the general public, as well as persons deprived of liberty, decision makers and professional groups, about the absolute prohibition of torture. It can also build greater understanding and appreciation of problems that are not necessarily understood as human rights issues, including the treatment of persons in detention or gender-based forms of torture and ill-treatment.

Develop effective recommendations

The recommendations from a public inquiry, which draw on evidence, analysis and research, will be credible and provide clear and practical steps to address the systemic issues that contribute to torture and ill-treatment, whether in places of detention, other institutions or the community. In addition, media coverage and public engagement in the process can generate political pressure for change. If there is a high level of public and media scrutiny when the report is released, the Government will be obliged to respond, increasing the likelihood that the NHRI's recommendations produce tangible results.

1.2. Disadvantages

Resources

An effective public inquiry requires a significant investment of time, expertise and human and financial resources. The resources needed will depend on the scale of the inquiry (regional or national), its breadth (focused on specific places of detention or different types of detention facilities) and on the materials that need to be produced. In terms of human resources, a number of full-time and/or part-time staff with a wide range of expertise within the institution will be required to conduct the inquiry – this could include researchers, educators, investigators, media and policy officers and administrative staff. The public inquiry may also require the support of expert consultants.

Cooperation of witnesses

Torture and ill-treatment is a very sensitive issue. Speaking about their experiences can be a very difficult and traumatizing process for victims. They may prefer to speak in confidential sessions, with one or two interviewers, rather than in a public hearing. Victims and witnesses may also fear reprisals. In addition, it might be difficult to gain the cooperation of key officials and representatives from relevant institutions.

A one-off activity rather than a process

A public inquiry puts the issue of torture and ill-treatment in the public spotlight for a very specific period of time, while follow-up is typically conducted less in the public eye. However, because torture and ill-treatment is often a structural problem, a more permanent and regular oversight process might be more effective in bringing about long-term positive change.

2. Steps to undertake a public inquiry

The following steps can be taken by NHRIs in undertaking a public inquiry[128]. To integrate gender in the public inquiry, NHRIs will need to assess and operationalise the implications for women, men and persons with diverse gender identities in each stage of the process - some examples of possible actions are provided below.

Choosing the issue

This is one of the most important steps in relation to a public inquiry. The NHRI will need to consider whether the specific pattern of torture or ill-treatment lends itself to a public inquiry process and whether this is likely to be effective in achieving redress for survivors and prevention in the future.

This could include asking: what is the significance of the issue? Is it one around which broad consensus, media pressure and sustained public interest can be built? Is it possible to gather public evidence, or is the issue too sensitive? Does the NHRI have the necessary capacity and resources to conduct the inquiry?

NHRIs should apply a gender-lens when choosing an issue for a public inquiry. NHRIs can consider how patterns of torture and other ill-treatment affect women and men differently in their context, why such differences might exist and their root causes. Are there violations against women that are being overlooked and could be addressed through such an inquiry?

Public inquiries can be well-suited to addressing patterns of violations which are embedded in the culture of society, such as gendered forms of torture, which often involve multiple discrimination and violations of different rights and around which there is currently little understanding or appetite for change.

128 Adapted from APF, *Conducting a National Inquiry into Systemic Patterns of Human Rights Violation: A Manual for National Human Rights Institutions* (second edition, 2019) Chapters 3 – 16.

Prepare background or scoping paper

This forms the basis for the NHRI's decision on whether to go ahead with the inquiry, with background information on the issue, what is proposed to be investigated, what it seeks to achieve, how this will be done, the resources needed and proposed timeframe. The background paper could include a gender analysis and the possible impact of an inquiry on gender issues[129].

Identify, consult and engage stakeholders

Engaging stakeholders is key, as their experience and expertise are essential to the success of an inquiry. Relevant stakeholders might include torture survivors, their families, government officials, staff involved in deprivation of liberty, NGOs, academics, professional associations, religious and community groups, as well as alleged and potential perpetrators. NHRIs should map stakeholders who can provide gender perspectives and seek to ensure equal participation of women in the inquiry process.

Defining objectives and terms of reference

An important step is to define the aim, scope and the timeframe of the public inquiry. While this can be a detailed process, clearly defined terms of reference are a critical component of a focused and effective inquiry. The objectives could include what the inquiry will seek to achieve in terms of addressing gendered forms and impacts of torture and ill-treatment and working towards gender equality outcomes.

Appoint Commissioners and staff

Public inquiries need to have the right team, made up of Commissioners and staff with the necessary mix of skills, qualities and experience. The team should be reflective of society and include gender representation and gender expertise as far as possible. Where needed, outside expertise can be drawn on by appointing highly qualified and widely respected experts as "special advisors".

Gather other resources

The success of an inquiry depends on having the necessary resources, which should be secured in advance before the inquiry is launched. These include the necessary budget to enable the NHRI to enable it to meet its objectives and terms of reference. The inquiry will also need premises, equipment, services and other materials to carry out its work effectively.

Finalise an inquiry plan

The inquiry plan sets out all information about the inquiry in a single place. It is a strategic document which describes how the inquiry will meet its objectives and provides a blueprint for the conduct of the inquiry. It should include the inquiry's methodology, its timetable of activities, products and a monitoring and evaluation plan. The document should include gender considerations and related approaches and actions in each stage of the plan.

Launching the inquiry

The public inquiry should be officially launched by the NHRI, with detailed information about the aims, objectives and conduct of the inquiry provided to all relevant stakeholders.

Obtain information: research and evidence

The NHRI will need to identify what information already exists and the information that will need to be obtained through research. For example, all relevant national laws and regulations should be compiled, as well as international and regional standards and jurisprudence. This forms a basis to assess the extent to which the State is meeting its international obligations to prevent torture.

129 See for example, the gender analysis framework proposed in OHCHR's *Manual on Human Rights Monitoring* (2011), Chapter 15: Integrating Gender into Human Rights Monitoring.

Evidence will also be provided by those with particular experience or expertise through oral or written submissions or public hearings. Part of the NHRI's work will be to identify those who can provide evidence – often from many different sectors of society - and encourage them to do so.

Some important ways an inquiry into torture and ill-treatment can gather information and evidence are:

Individual complaints

All relevant complaints received through the public inquiry should be compiled and assessed to identify systemic factors that contribute to torture and ill-treatment in places of detention.

Visits to places of detention

Given that the risk of torture and ill-treatment is highest for persons deprived of their liberty, the public inquiry will need to include thorough inspections of different places of detention.

Interviews with persons deprived of liberty

Depending on its scope, a central part of the public inquiry will involve interviews with persons deprived of their liberty. Focus group discussions should be conducted with detainees. However, it is crucial that the NHRI also conducts interviews in private with a large and representative selection of detainees.

The NHRI should aim to collect disaggregated data which allows analysis of the experiences of women, men, girls and boys, as well as people who do not feel represented by binary sex/gender categories. An excellent information management system will be needed to manage the large amounts of information gathered during the course of an inquiry.

Public hearings

Public hearings are a distinguishing element of public inquiries and key to them achieving their objectives. Public hearings should invite the participation of a broad range of individuals and organizations, including victims of torture or their relatives, human rights NGOs, lawyers, police officers, staff and officials from relevant detention centres and representatives from government agencies. NHRIs will need to carefully plan the structure of hearings identifying who needs to be heard and when, as well as the individual situation of each witness.

Preparation and release of a report and recommendations

The final report with recommendations is an important outcome for the public inquiry, although it may not necessarily be the only one. It is important to consider the structure of the report in the early stages of the inquiry, as this may influence the methodology of the inquiry process. Preparing a report and recommendations is time-consuming and this should not be underestimated in the planning stages of the inquiry.

An effective, successful report will consider the following elements.

- **Style and language:** The report should be accessible to the main target audiences. Sentences should be short and concise, avoiding superlatives and stereotypes. The report should use gender inclusive language.
- **Content:** All the issues outlined in the terms of reference should be addressed in the report. Findings and conclusions should be firmly based on the evidence received. The report should not only describe facts but also contain an analysis of the issues, the legal framework and any identified shortcomings. Recommendations should be realistic and comprehensive, addressing the principle issues identified in the inquiry. They should address the authorities and other bodies with a role in providing redress and preventing torture and other ill-treatment in the future. They should be relatively easy to translate into policies, laws or other required action. The report should robustly integrate gender considerations throughout[130].

- **Format and timing:** The format of the report is important in terms of increasing publicity and impact. Associated resources, such as a summary report, should be considered early in the process. The timing of the report's release should build upon the interest and momentum created by the inquiry. Gender considerations should be included in the media outreach plan.

Follow-up

The NHRI should conduct follow-up to promote implementation of its recommendations. It should establish a dialogue with the relevant authorities to discuss steps to implement the report's recommendations. It should seek to build sustained commitment from civil society and pressure towards institutions to whom recommendations are directed. The NHRI should also closely monitor and report on any developments related to the inquiry, for example in an annual report.

Monitoring and evaluation

Monitoring and evaluation are essential components of any public inquiry and should be planned for from the start. They allow the NHRI to make adjustments along the way and draw lessons learnt to increase the effectiveness of future inquiries. They also contribute to the accountability of the NHRI as an institution.

Insights from practice:

*In 2014, the **Australian Human Rights Commission**, launched an 8-month inquiry[131] into children in closed immigration detention. The purpose of the Inquiry was to investigate the ways in which life in immigration detention affects the health, well-being and development of children. The Commission visited 11 detention centres, interviewed 1129 children and parents in detention. It held 5 public hearings with witnesses, received 239 submissions from schools, medical service providers and NGOs. The Commission also held focus groups with young adults who, as children, were detained. A range of different child psychiatrists, paediatricians, and health professionals also assisted the Commission throughout the Inquiry.*

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130 See for example, "Checklist to integrate gender in human rights reports/documents Checklist to integrate gender in human rights reports/documents" in OHCHR, *Manual on Human Rights Monitoring* (revised 2011), Chapter 15: Integrating Gender into Human Rights Monitoring, p. 16.

131 See: https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014

KEY POINTS: CHAPTER 11

- Conducting a public inquiry can be an effective way to address systemic patterns of human rights violations such as torture and other forms of ill-treatment; however, it also presents challenges that should be considered.
- Holding a public inquiry on torture involves a number of steps, from choosing the specific issue and defining the inquiry's objectives and terms of reference, to gathering information, visiting places of detention, conducting private interviews with detainees, holding public hearings, preparing a report and recommendations, conducting follow-up and monitoring and evaluation.
- To integrate gender in a public inquiry, NHRIs will need to assess and operationalise the implications for women, men and people with diverse gender identities in each stage of the process.

FURTHER READING

Conducting a National Inquiry into Systemic Patterns of Human Rights Violation: A Manual for National Human Rights Institutions; second edition, 2019

National Human Rights Institutions in the Asia Pacific Region; Brian Burdekin assisted by Jason Naum; The Raoul Wallenberg Institute Human Rights Library; 2007

Going Public: Strategies for an Effective National Inquiry (DVD); Asia Pacific Forum of National Human Rights Institutions; 2012 (revised)

Summary

Summary

Introduction: The concept of torture prevention and its application

- States have an obligation to prevent torture.
- There is an important distinction between direct prevention (measures taken before torture occurs to avoid it happening) and indirect prevention (measures taken after torture has occurred to avoid its repetition).
- Preventing torture begins with an analysis of risk factors. It also requires a holistic approach involving interventions at three levels: a strong legal framework, effective implementation of the legal framework and oversight mechanisms to monitor and support the legal framework and its implementation.
- NHRIs should integrate gender in their torture prevention work through gender mainstreaming and specialised action.

Chapter 1: What is torture?

- Article 1 of the Convention against Torture defines torture using three cumulative elements: the intentional infliction of severe mental or physical pain; with the direct or indirect involvement of a public official; for a specific purpose.
- Torture is prohibited under international law and can never be justified. The prohibition on torture is absolute and non-derogable.
- Cruel, inhuman or degrading treatment or punishment is also absolutely prohibited and non-derogable.
- A gender-sensitive and intersectional lens is crucial when examining torture.

Chapter 2: International and regional instruments on torture and other forms of ill-treatment

- Torture is prohibited in a number of international human rights treaties.
- The Convention against Torture contains a series of provisions on prevention measures.
- Regional instruments in Africa, the Americas, Arab countries, Europe and Southeast Asia also prohibit torture.
- 'Soft law' standards, both international and regional, complement the prohibition of torture and other ill-treatment.
- Gender-based violence and privately inflicted harm can amount to torture.

Chapter 3: Promoting legal and procedural reforms

- NHRIs can promote ratification of relevant international human rights treaties, such as the Convention against Torture and its Optional Protocol.
- NHRIs can promote legal reform, in particular making torture a crime under domestic law.
- NHRIs can promote reform of detention procedures.
- NHRIs can promote laws and safeguards to protect women and other persons in situations of vulnerability from torture.

Chapter 4: Investigating allegations of torture

- Internal consistency of a testimony is an important element that can support allegations of torture. Other corroborating information should also be sought.
- Medical documentation, as well physical or psychological signs of torture, can provide further evidence of torture.
- Formally recording the evidence gathered is crucial.
- NHRIs should integrate a gender perspective in each stage of the investigation process.

Chapter 5: Interviewing

- Interviewing is important for a number of purposes, such as collecting information, assessing its credibility and cross-checking.
- It is crucial to prepare for an interview and to be clear about what you hope to achieve.
- Interviewing is a delicate task, and a primary goal is to build rapport with the interviewee. Basic principles should be followed in terms of opening the interview, asking open and non-leading questions, closing the interview and respecting confidentiality.
- Follow-up is essential, for example by preparing an affidavit or identifying other people to interview.
- Interviewing victims of trauma and other persons in situations of vulnerability poses specific challenges; an interviewer needs to be prepared for this and know how to respond appropriately.
- Gender-specific considerations should be included during the preparation, conduct and after any interview.

Chapter 6: Training public officials

- Training public officials is an important way that NHRIs can contribute to the prevention of torture.
- NHRIs can be involved in developing and revising training curricula and relevant training material on torture prevention.
- NHRIs can develop and deliver training courses, which are based on a needs assessment, contains practical content, involves relevant participants and includes an evaluation.
- Gender issues should be included in torture prevention training for public officials. NHRIs can conduct a gender analysis to ensure that trainings are gender-sensitive and work towards gender equality.

Chapter 7: Cooperating with international bodies

NHRIs can contribute to the effective work of international and regional human rights bodies.

They can submit independent and credible information, participate in review

procedures follow up on recommendations and contribute to the work of these bodies in developing relevant standards.

Interaction with the following mechanisms is important for the prevention of torture and ill-treatment:

- **United Nations Human Rights Council**, in particular the Universal Periodic Review
- **Treaty bodies**, in particular the Committee against Torture
- **Special procedures**, in particular the United Nations Special Rapporteur on Torture

- **Regional complaints mechanisms**
- **Visiting mechanisms** at the international level, such as the Subcommittee on Prevention of Torture, and at the regional level.

Chapter 8: Monitoring places of detention

- Monitoring places of detention through regular visits should respect basic principles, in particular the "do no harm" principle.
- Visits to places of detention should be well planned in terms of reviewing available information, dividing tasks between team members and making prior contacts.
- Key steps involved in conducting a visit include: an initial talk with the authorities in charge, a tour of the premises, consultation of registers and other documents, private interviews with detainees, and a final meeting with the authorities in charge.
- Obtaining and cross-checking information from different sources is key to ensure the objectivity and credibility of such information.
- NHRIs should integrate a gender perspective and gender-sensitive language when preparing and conducting visits to places of deprivation of liberty, as well as when writing reports and recommendations.
- Reporting on visits and preparing good recommendations is crucial as a follow-up mechanism and for establishing an ongoing dialogue with the relevant authorities.

Chapter 9: Promoting public awareness

- Educating the general public about the prohibition and prevention of torture is an important preventive action.
- Educational programmes can focus on persons deprived of liberty and those who are most at risk of torture and ill-treatment.
- Awareness-raising campaigns can help shape public opinion about the issue and provide important momentum for change.
- NHRIs should mainstream gender in public education activities on torture prevention. Specialised actions might be needed to address gendered forms of torture and other ill-treatment.

Chapter 10: NHRIs and the Optional Protocol to the Convention against Torture

- NHRIs can play an important role to promote the OPCAT, by advocating for ratification and participating in broad and inclusive consultations on NPM designation.
- NHRIs may be designated as the NPM; either as the sole NPM, in cooperation with civil society organisations or as one of several NPMs. This double mandate can present particular opportunities and challenges for NHRIs.
- NHRIs designated as NPMs can have direct and confidential contact with the SPT in the context of the SPT visit to the country and in its advisory role.
- NHRIs not designated as the NPM can contribute to the work of the NPM and the work of the Subcommittee on Prevention of Torture.

Chapter 11: Public inquiries

- Conducting a public inquiry can be an effective way to address systemic patterns of human rights violations such as torture and other forms of ill-treatment; however, it also presents challenges that should be considered.
- Holding a public inquiry on torture involves a number of steps, from choosing the specific issue and defining the inquiry's objectives and terms of reference, to gathering information, visiting places of detention, conducting private interviews with detainees, holding public hearings, preparing a report and recommendations, conducting follow-up and monitoring and evaluation.
- To integrate gender in a public inquiry, NHRIs will need to assess and operationalise the implications for women, men and people with diverse gender identities in each stage of the process.

Further Readings

Further readings

United Nations instruments and standards

- *Universal Declaration of Human Rights*

Treaties

- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
- *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*
- *International Covenant on Civil and Political Rights*
- *Convention on the Rights of the Child*
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*
- *Convention on the Rights of Persons with Disabilities*
- *Convention on the Elimination of All Forms of Discrimination against Women*
- *International Convention for the Protection of All Persons from Enforced Disappearance*

Other standards

- *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 (2005)*
- *Principles relating to the Status of National Institutions (The Paris Principles)*
- *UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) (2010)*
- *UN Standard Minimum Rules on the Treatment of Prisoners (the Nelson Mandela Rules) (2016)*
- *The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016): The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*
- *Office of the High Commissioner for Human Rights, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Professional Training Series No.8/Rev.2 (2022)*

Subcommittee on Prevention of Torture

- *The approach of the SPT to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the OPCAT (2010)*
- *Prevention of torture and ill-treatment of women deprived of their liberty (2016)*
- *Prevention of torture of LGBTI persons (2016)*
- *Guidelines on national preventive mechanisms, Subcommittee on Prevention of Torture, Cat/OP/12/5 (2010)*

Committee against Torture

- *General comment No. 2 on the obligation to prevent torture (article 2)*
- *General comment No. 3 on the right to redress (article 14)*
- *General comment No. 4 on the principle of non-refoulement in the context of individual inquiry procedure (articles 3 and 22)*

Human Rights Committee

- *Human Rights Committee, general comment No. 20: replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (article 7)*
- *General comment No. 21 on the humane treatment of persons deprived of their liberty (article 10)*
- *General comment No. 35 on liberty and security of person (article 9)*
- *General comment No. 28 on the equality of rights between men and women (article 3)*
- *General comment No. 18 on non-discrimination*

UN CEDAW

- *General recommendation 19 on violence against women (1992), updated by general recommendation 35 (2017)*
- *General recommendation 33 on women's access to justice (2015)*
- *General recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010)*
- *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices (2014)*

UN Special Rapporteur on Torture

- *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council (5 January 2016) (A/HRC/31/57) on the applicability of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in international law to the unique experiences of women, girls, and lesbian, gay, bisexual, transgender and intersex persons.*
- *Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment on interviews of suspects (5 August 2016) (A/71/298).*
- *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, to the Human Rights Council (10 April 2014) (A/HRC/25/60) on the exclusionary rule.*

UN Special Rapporteur on Violence Against Women

- *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Pathways to, conditions and consequences of incarceration for women, Report to the UN General Assembly (21 August 2013) (A/68/340),*

UN Working Group on the Issue of Discrimination against Women in Law and Practice

- *Report of the Working Group on the issue of discrimination against women in law and in practice to the Human Rights Council (8 April 2016) (A/HRC/32/44),*
- *Women deprived of liberty; Report of the Working Group on the issue of discrimination against women in law and in practice (May 2019) (A/HRC/41/3315)*

Human Rights Council

- *Human Rights Council resolution 46/15, Torture and other cruel, inhuman or degrading treatment or punishment: the roles and responsibilities of police and other law enforcement officials (23 March 2021) (A/HRC/RES/46/15)*
- *Human Rights Council resolution 37/19, The negative impact of corruption on the right to be free from torture and other cruel, inhuman or degrading treatment or punishment (23 March 2018) (A/HRC/RES/37/19)*
- *Human Rights Council resolution 31/31, Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pre-trial detention (24 March 2016) (A/HRC/RES/31/31)*
- *Human Rights Council resolution 13/19, Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of judges, prosecutors and lawyers (15 April 2010) (A/HRC/RES/13/19)*
- *Human Rights Council resolution 10/24, Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of medical and other health personnel (26 March 2009) (A/HRC/RES/10/24)*
- *UN Human Rights Council Resolution 39/17, National Human Rights Institutions, (8 October 2018) (A/HRC/RES/39/17).*

Office of the United Nations High Commissioner for Human Rights (OHCHR)

- *Integrating a gender perspective into human rights investigations: Guidance and practice* (2018)
- *Fact sheet: Women and detention.* September 2014.
- *Report of the Office of the United Nations High Commissioner for Human Rights, The Role of Prevention in the Promotion and Protection of Human Rights (16 July 2015) (A/HRC/30/20)*
- *From Planning to Impact: A Manual on Human Rights Training Methodology; Professional Training Series No. 6/Rev.1* (revised 2019)
- *Manual on Human Rights Monitoring;* OHCHR; revised 2011
- *UNDP-OHCHR Toolkit for collaboration with NHRIs;* UNDP-OHCHR; 2010
- *Preventing torture: the role of National Preventive Mechanisms. A practical guide. Professional Training Series No. 21;* OHCHR (2018)

United Nations High Commissioner for Refugees (UNHCR)

- *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2014)

UN Office on Drugs and Crime

- *Handbook on Women and Imprisonment, 2nd edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules) (2014)*
- United Nations Office on Drugs and Crime and World Health Organization, *Women's Health in Prison: Action Guidance and Checklists to Review Current Policies and Practices* (2011) Brenda van den Bergh and Alex Gatherer, WHO Regional Office for Europe; Tomris Atabay and Fabienne Hariga, United Nations Office on Drugs and Crime

Other Principles or Declarations

- *Yogyakarta Principles (2006)* and *Yogyakarta Principles Plus (2017)*
- *The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (2007)*

Regional instruments and standards

Africa

- *African Charter on Human and Peoples' Rights*
- *Robben Island Guidelines for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*
- *African Commission Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) (2014)*
- *African Charter on the Rights and Welfare of the Child*
- *African Committee of Experts on the Rights and Welfare of the Child, General Comment on article 30 of the African Charter on Rights and Welfare of the Child*
- *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)*
- *African Union Solemn Declaration on Gender Equality in Africa*
- *The African Union Gender Policy and Agenda 2063*
- *Pan-African Parliament Model Police Law for Africa (2019)*

Americas

- *Inter-American Convention to Prevent and Punish Torture*
- *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*
- *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) of 1999* specifically recognises the right of women not to be subject to torture *(article 4).*
- *OAS General Assembly resolutions on 'Human Rights, Sexual Orientation, and Gender Identity and Expression'*
- *IACHR Rapporteurship on the Rights of Persons Deprived of Liberty and to Prevent and Combat Torture*
- *IACHR Rapporteurship on the Rights of Women*

- *IACHR Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*
- *IACHR, Violence against women and girls: Best Practices and Challenges in Latin America and the Caribbean (2019)*

ASEAN

- *ASEAN Human Rights Declaration (2012)*
- *ASEAN Declaration on Culture of Prevention for a Peaceful, Inclusive, Resilient, Healthy and Harmonious Society (2017)*
- *ASEAN Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN adopted on 09 October 2013*
- *ASEAN Regional Plan of Action on the Elimination of Violence against Women (ASEAN RPA on EVAW)*

Europe

Council of Europe

- *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*
- *The CPT Standards (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment)*
- *Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)* - and related tools and publications *here*.
- *European Prison Rules* (revised in 2020)
- *European Code of Ethics for Prison Staff (2012)*
- *Standards developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*
- *Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents,* Council of Europe, 4 April 2018

European Union

- *EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* – 2019 Revision of the Guidelines

League of Arab States

- *Arab Charter on Human Rights*
- *Cairo Declaration for Arab Women: The Post-2015 Agenda.*
- *Executive Action Plan «Protection of Arab Women: Peace and Security» 2015-2030*

Relevant documents

APT

- *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide* (2018)
- *Yes, Torture Prevention Works: Insights from a global research study on 30 years of torture prevention* (2016)
- *Monitoring Immigration Detention: Practical Manual* (2014)
- *Monitoring Police Custody: A Practical Guide* (2013)

- *Mitigating the risks of sanctions related to detention monitoring: Briefing paper* (2012)
- *Torture Prevention Learning Village, Open Courses on Fundamentals of Detention Monitoring and Gender-Sensitive Detention Monitoring* (2021)
- *NPM Toolkit*
- *Monitoring Places of Detention: A Practical Guide* (2004)
- *Detention Monitoring Briefing No. 1: Making Effective Recommendations* (2008)
- *Detention Monitoring Briefing No. 3: Using Interpreters in Detention Monitoring* (2009)
- *Visiting places of detention: What role for physicians and other health professionals?* (2008)
- *Guide on the Establishment and Designation of National Preventive Mechanisms; Association for the Prevention of Torture* (2006)
- *Principles on Effective Interviewing for Investigations and Information Gathering,* May 2021
- *The Right of Access to Lawyers for Persons Deprived of Liberty; Legal Briefing Series,* March 2010
- APT-SEANF, *South East Asia National Human Rights Institutions Forum (SEANF)'s Guidelines on Torture (2021*)
- APT-OSCE/ODIHR, *Guidance: Monitoring Places of Detention through the COVID-19 Pandemic* (2020)
- APT-CTI, *Guide on anti-torture legislation* (2016)
- APT and Penal Reform International, *Women in detention: a guide to gender-sensitive monitoring* (2015)
- APT and Penal Reform International, *Women in detention: a guide to gender-sensitive monitoring* (2015)
- APT and Inter-American Institute of Human Rights, *Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation Manual* (revised edition) (2010)

APF

- *Undertaking Effective Investigations: A Guide for National Human Rights Institutions* (updated 2018)
- *Mainstreaming the Human Rights of Women and Girls into Our Everyday Work* (2019)
- *Part of our Everyday Work: NHRI Guidelines for Mainstreaming SOGISC Work* (2017)
- *APF Gender Mainstreaming Guidelines for Trainers and Developers of APF Training Material* (2017)
- *Promoting and Protecting the Human Rights of Women and Girls: A Manual for National Human Rights Institutions* (updated January 2017)
- *Conducting a National Inquiry into Systemic Patterns of Human Rights Violation: A Manual for National Human Rights Institutions;* second edition (2019)
- *Going Public: Strategies for an Effective National Inquiry (DVD); 2012 (revised)*
- *Human Rights Education: A Manual for National Human Rights Institutions* (revised 2019)
- *Media Handbook for National Human Rights Institutions* (2013)
- *International Human Rights and the International Human Rights System: A Manual for NHRIs (2015)*

Other

- Penal Reform International, *Women in detention Putting the UN Bangkok Rules on women prisoners into practice* (2017)
- Penal Reform International et al, *Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)* (2013)
- Penal Reform International (PRI) and OSCE Office for Democratic Institutions and Human Rights (ODIHR) *Guidance Document on the Nelson Mandela Rules* (2018)
- DCAF, OSCE/ODIHR, UN Women, *Gender and Security Toolkit, Tool 5: Places of Deprivation of Liberty and Gender* (December 2019)
- OSCE/ODIHR, *Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty. Standards, Approaches and Examples from the OSCE Region* (2019)
- OSCE/ODIHR, *Integrating the Issue of Sexual and Gender-Based Violence in Detention Monitoring: A Guidance Note for Oversight Mechanisms* (January 2021)
- OSCE/ODIHR, *Guidelines on Human Rights Education for Law Enforcement Officials* (2012)
- Manfred Nowak, Moritz Birk, and Giuliana Monina eds, *The United Nations Convention against Torture and its Optional Protocol: A Commentary* (Second Edition, Oxford Commentaries on International Law; 2019)
- Camille Giffard and Polona Tepina, *The Torture Reporting Handbook* (Human Rights Centre, University of Essex; 2nd edition 2015)
- *Gender Perspectives on Torture: Law and Practice, Center for Human Rights and Humanitarian Law, Anti-Torture Initiative,* Washington University, Washington College of Law (2018)
- DCAF, *International and Regional Laws and Instruments Related to Gender Equality and the Security and Justice Sector* (2020)
- Richard Carver and Lisa Handley (eds), *Does Torture Prevention Work?* (Liverpool University Press, 2016)
- Amnesty International, *Combating Torture and other Ill-Treatment: A Manual for Action* (2016)
- *A Human Rights Approach to Prison Management: Handbook for Prison Staff;* Andrew Coyle; International Centre for Prison Studies; third edition 2018
- International Committee of the Red Cross, *To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces* (second edition 2014)
- *Criminalisation of Torture: State Obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;* Sir Nigel Rodley and Matt Pollard; E.H.R.L.R. Issue 2, Sweet and Maxwell; 2006
- *Combating Torture: A Manual for Judges and Prosecutors*; Conor Foley, Human Rights Centre, University of Essex; 2003
- *Police and Human Rights: A Manual for Teachers and Resource Persons and for Participants in Human Rights Programmes;* Ralph Crashaw; Martinus Nijhoff; second edition 2009

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