

THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN CONFLICT AND POST-CONFLICT SITUATIONS

As it is stated in the Resolution No.22/16 adopted by the Human Rights Council on 10 April 2013 and titled as “Promotion and protection of human rights in post-disaster and post-conflict situations”, “the human rights and fundamental freedoms of millions of people around the world are affected in different ways by humanitarian crises, including armed conflict, natural disasters and man-made disasters, as well as during the stages of recovery, relief and rehabilitation.”¹

National Human Rights Institutions’ (NHRIs) roles and functions are stated by the Paris Principles, adopted by the United Nations General Assembly in 1993. General Observations of the Sub-Committee on Accreditation of Global Alliance of National Human Rights Institutions (GANHRI) indicates that **“Disruptions to peace and security** in no way nullify or diminish the relevant obligations of the National Institution. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. **In such circumstances, the protection of human rights becomes all the more important**, and National Institutions must ensure that individuals have accessible and effective remedies to address human rights violations”.²

However, as it is specified in “The Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations” which was adopted after the International Conference on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations, and organized by the Ukrainian Parliament Commissioner on Human Rights and United Nations Development Programme (UNDP) and dated 21-22 October 2015, **“the Paris Principles do not provide sufficient guidance on National Human Rights Institutions’ role in conflict or post-conflict situations.”** and **“in conflict and post-conflict situations the actions required** of a National Human Rights Institution **differ from usual activities** of human rights promotion and protection **in peace time.**”³ Therefore, the role of NHRIs in conflict times should be evaluated and analyzed with up-to-date human rights documents and materials and from current perspective.

¹Resolution adopted by the Human Rights Council, A/HRC/RES/22/16, 10.04.2013, p.1, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/A-HRC-RES-22-16_en.pdf (Access Date: 23.11.2023)

²GANHRI, General Observations of the Sub-Committee on Accreditation, 21.02.2018, G.O. 2.5., p.41, <https://ganhri.org/accreditation/general-observations/> (Access Date: 23.11.2023)

³“The Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations”, International Conference on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations, 21-22 October 2015, p.2,

https://ennhri.org/wp-content/uploads/2019/10/the_kyiv_declaration.pdf (Access Date: 23.11.2023)

In the aforementioned Kyiv Declaration, it is recognized that **“National Human Rights Institutions play a major role in addressing human rights violations, disseminating information about human rights and providing education on human rights, especially in conflict and post-conflict situations.”**⁴ This role may be in the form of ensuring respect for human rights and their protection in conflict and in post-conflict situations or in the form of preventing conflicts.⁵



In Conflict Period

GANHRI specifies that “Present in over 100 countries, NHRIs undertake **systematic analysis of the human rights situation** in their countries, **issue reports** and **recommendations** and **advise governments and parliaments** on human rights compliance. Some also **handle complaints** from citizens, thereby **facilitating access to justice, redress, and remedy**. Through these functions, **NHRIs also play an important role in preventing the outbreak, continuation, and recurrence of conflicts**, a role acknowledged in the Kyiv Declaration.”⁶

Within the context of the UN Publication on “National Human Rights Institutions History, Principles, Roles and Responsibilities” drafted by the Office of the United Nations High Commissioner for Human Rights, it is stated that **“NHRIs may undertake several roles**, all of which are directly relevant to the core protection mandate in times of instability and heightened likelihood of serious human rights violations **in conflict situations.**”⁷

⁴https://ennhri.org/wp-content/uploads/2019/10/the_kyiv_declaration.pdf p.1 (Access Date: 23.11.2023)

⁵Final Report of International Conference, International Conference on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations, p.6, https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/NHRI_Kyiv_Final_Report_20Apr16.pdf (Access Date: 23.11.2023)

⁶National Human Rights Institutions in Conflict-Affected and Fragile Settings: Examining their Contribution to SDG 16 and the Sustaining Peace Agenda, <https://ganhri.org/event/national-human-rights-institutions-in-conflict-affected-and-fragile-settings-examining-their-contribution-to-sdg-16-and-the-sustaining-peace-agenda/> (Access Date: 23.11.2023)

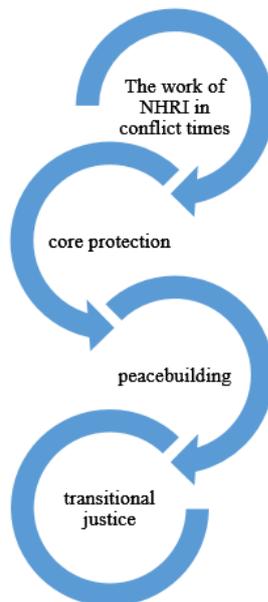
⁷“National Human Rights Institutions History, Principles, Roles and Responsibilities”, Office of the United Nations High Commissioner for Human Rights, United Nations New York and Geneva, 2010, p.139.

These roles may include:

- ▶ Efforts to promote dialogue between combatants;
- ▶ Efforts to promote the establishment and growth of peacebuilding mechanisms among representative communities; and
- ▶ Efforts to encourage acceptable and necessary accommodations to deal with underlying human rights issues that may be at the root of the conflict.”⁸

Because of the particular demands and challenges in times of conflict, “the NHRI might be required to fundamentally shift programme”.⁹

Image 1: According to the aforementioned UN Publication the work of NHRI in conflict times can emphasis towards:



In conflict times, the importance of NHRIs “**with their unique mandate** to protect and promote human rights at the national level” becomes more perceived.¹⁰ For example, “**NHRIs can play a vital role in the protection of vulnerable groups during conflict.**”¹¹ Also, NHRIs trigger States “to meet their international responsibility **to take all appropriate action** to ensure that international obligations are implemented at the national level.”¹² Therefore, NHRIs can play a crucial role during times of conflict and in crisis situations.

https://www.ohchr.org/sites/default/files/Documents/Publications/PTS-4Rev1-NHRI_en.pdf
(Access Date: 23.11.2023)

⁸https://www.ohchr.org/sites/default/files/Documents/Publications/PTS-4Rev1-NHRI_en.pdf p.139
(Access Date: 23.11.2023)

⁹https://www.ohchr.org/sites/default/files/Documents/Publications/PTS-4Rev1-NHRI_en.pdf p.139
(Access Date: 23.11.2023)

¹⁰<https://www.asiapacificforum.net/news/human-rights-times-conflict-role-nhris/> (Access Date: 23.11.2023)

¹¹https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/NHRI_Kyiv_Final_Report_20Apr16.pdf (Access Date: 23.11.2023) p.14

¹²https://www.ohchr.org/sites/default/files/Documents/Publications/PTS-4Rev1-NHRI_en.pdf p.20
(Access Date: 23.11.2023)

In the context of the role of NHRIs in conflict times, in the report on Promoting and Protecting Human Rights in Non-Government Controlled, Non-Recognised and Other Disputed Territories The Role and Responsibilities of National Human Rights Institutions drafted by the European Network of National Human Rights Institutions (ENNHRI) on September 2020 examples of possible activities within the NHRI mandate were given as follows:

- ▶ Monitoring and reporting
- ▶ Advisory role
- ▶ Complaints handling and legal support
- ▶ Promoting Human Rights
- ▶ Cooperation with civil society actors
- ▶ Cooperation with international bodies
- ▶ Cooperation with NHRIs on “the other side of the conflict”
- ▶ Cooperation with de facto human rights bodies and engagement with de facto authorities
- ▶ Conflict Resolution and Peace-building.¹³

In Post-conflict Period

ENNHRI states that “Independent, strong and trusted institutions are needed not only to support individuals affected by conflict, but also **to promote a culture of rights.**” and “NHRIs in situations of **(post-)conflict** play an essential role in **conflict prevention, management and resolution**, as well as **peace-building** and **transitional justice.**”¹⁴

“Since during conflict and post-conflict periods **that human rights are most in jeopardy**, NHRIs operating in fragile situations, face **greater challenges** in their efforts to promote and protect human rights.” In addition to that, in post-conflict period, “NHRIs can find themselves bearing the double burden of reduced funding and additional, urgent responsibilities.” The limited mandates to address issues and violations that arose after their establishment can be an example of these challenges.¹⁵

In post-conflict period, “transitional justice efforts to be effective, they must be human rights-based, consistently focusing on the rights and needs of victims and their families”.¹⁶

¹³“Promoting and Protecting Human Rights in Non-Government Controlled, Non-Recognised and Other Disputed Territories - The Role and Responsibilities of National Human Rights Institutions”, Full Report, ENNHRI, September 2020, p.23-33, <https://ennhri.org/wp-content/uploads/2020/09/Promoting-and-Protecting-Human-Rights-in-NGCT-Full.pdf> (Access Date: 23.11.2023)

¹⁴[https://ennhri.org/our-work/topics/human-rights-in-post-conflict/#:~:text=NHRIs%20in%20situations%20of%20\(post,peace%2Dbuilding%20and%20transitional%20justice](https://ennhri.org/our-work/topics/human-rights-in-post-conflict/#:~:text=NHRIs%20in%20situations%20of%20(post,peace%2Dbuilding%20and%20transitional%20justice) (Access Date: 23.11.2023)

¹⁵Andrea Breslin / Anna Würth, “National Human Rights Institutions in Post-Conflict Situations - Mandates, Experiences and Challenges”, Analysis, German Institute for Human Rights, p.12, https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Analyse_Studie/Analysis_National-Human-Rights-Institutions-in-Post-Conflict-Situation.s.pdf (Access Date: 23.11.2023)

¹⁶“Rule-Of-Law Tools For Post-Conflict States - National consultations on transitional justice”, Office of The United Nations High Commissioner For Human Rights, United Nations New York and Geneva, 2019, p.1, https://www.ohchr.org/sites/default/files/Documents/Publications/NationalConsultationsTJ_EN.pdf (Access Date: 23.11.2023)

The mandate of promotion and protection of human rights of NHRIs is evaluated in transitional contexts during post-conflicts period, in the Analysis of the German Institute for Human Rights, titled “National Human Rights Institutions in Post-Conflict Situations Mandates, Experiences and Challenges”. Some lessons have emerged from NHRI engagement in transitional contexts are counted in the conclusion part of the Analysis. According to an important one among these:

“The establishment of an NHRI does not in and of itself guarantee the promotion and protection of human rights; NHRIs must determine what they can reasonably achieve given the extensive limitations and challenges they face. The success of NHRIs cannot be judged on a short-term basis; **developing and embedding a human rights culture after a country has experienced dictatorial regimes and/or violent conflict **may take decades or even generations.**”¹⁷**



¹⁷https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Analyse_Studie/Analysis_National-Human-Rights-Institutions-in-Post-Conflict-Situations.pdf p.26 (Access Date: 23.11.2023)

In Conflict and Post-conflict Period

“In conflict and post-conflict or fragile contexts, NHRIs can play a key role in preventing further conflict and human rights violations and monitoring respect for international human rights and humanitarian law.”¹⁸

“The neutrality of NHRIs can be instrumental in facilitating dialogue between conflicting parties.”

“Many NHRIs operating in conflict and post-conflict contexts are already implementing a wide array of actions, **including:**

- ▶ **monitoring and documenting violations** which is contributing to **early warning and prevention,**
- ▶ **educating state** (including security sector) **and non-state actors** on human rights,
- ▶ **providing justice and legal services to the population.**”²⁰

“Where other approaches fail, NHRIs can promote access to justice and contribute towards transitional justice processes.”²¹

In Kyiv Declaration, it is stated that in conflict and post-conflict situations, NHRIs aim to ensure the respect and protection of human rights, and are guided by these principles:

- ▶ humanity,
- ▶ impartiality,
- ▶ independence,
- ▶ objectivity,
- ▶ cooperation with civil society.²²

The obligations of NHRIs in conflict and post-conflict situations and the guarantees of these obligations were counted in the Declaration.

As a background information at the Final Report²³ of the International Conference on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations, the question that “What, then, is the role of NHRIs in conflict and post-conflict situations?” is answered as below:

¹⁸*The Concept Note of Annual Seminar “The Role Of National Human Rights Institutions in Conflict and Fragile Contexts: A Contribution To Peaceful, Just and Inclusive Societies”*, p.2, <https://www.un.org/webcast/pdfs/160617am-hr-flyer.pdf> (Access Date: 23.11.2023)

¹⁹<https://www.un.org/webcast/pdfs/160617am-hr-flyer.pdf> p.2 (Access Date: 23.11.2023)

²⁰<https://www.un.org/webcast/pdfs/160617am-hr-flyer.pdf> p.2 (Access Date: 23.11.2023)

²¹<https://www.un.org/webcast/pdfs/160617am-hr-flyer.pdf> p.2 (Access Date: 23.11.2023)

²²https://ennhri.org/wp-content/uploads/2019/10/the_kyiv_declaration.pdf p.2 (Access Date: 23.11.2023)

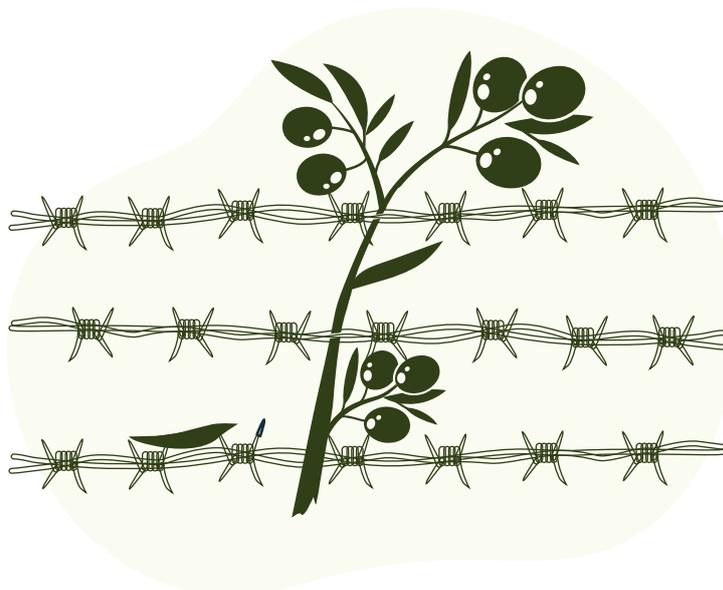
²³https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/NHRI_Kyiv_Final_Report_20Apr16.pdf (Access Date: 23.11.2023)

Roles in conflict situations are;

- ▶ understanding the causes of conflict and to propose solutions for it,
- ▶ monitoring and documenting human rights situations (including those of refugees and IDPs),
- ▶ advising governments on law and policy,
- ▶ contributing to the protection of rights of vulnerable groups during a conflict,
- ▶ facilitating dialogues,
- ▶ monitoring peace agreements,
- ▶ developing flexible strategies for responding to new crises (being active in engaging with political stakeholders, understanding the various perspectives of those involved in conflict, and should promote solutions to causes of conflict; ensuring an active and systematic approach to human rights so as to effectively monitor, protect, and promote them; playing an important role in identifying the needs of, and particular measures to protect, vulnerable groups in conflict, such as women and children, minorities, refugees and IDPs.)²⁴

Roles in post-conflict situations are;

- ▶ investigating allegations of human rights abuses committed during conflict, and then provide such evidence in forums, such as tribunals,
- ▶ playing an important role for the setup of referral mechanisms and facilitate access to justice and remedies for conflict-affected populations,
- ▶ being able to criticize governments and others who have committed human rights violations,
- ▶ more widely, assessing the functions and operations of police and governmental ministries to identify if administrative systems in post-conflict regions are working properly, and to suggest improvements,
- ▶ engaging with legislative actors, serve as participants of constitution drafting, and act as observers during elections,
- ▶ playing a vital role as institutions of accountability in the development framework.²⁵



²⁴https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/NHRI_Kyiv_Final_Report_20Apr16.pdf p.6 (Access Date: 23.11.2023)

²⁵https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/NHRI_Kyiv_Final_Report_20Apr16.pdf p.7 (Access Date: 23.11.2023)

In the aforementioned Final Report, it was called for a stronger role for NHRIs in conflict and post-conflict areas and some recommendations were given:

1. Recommendations related to Advisory/education/advocacy role of NHRIs (before/during/after conflict)

“International partners should support the educational role of NHRIs (including as preventive tool) for all levels of society”

“NHRIs should ensure highest standards of impartiality and independence. All parties to the conflict and all victims need to be treated equally”

“NHRIs should make their own investigations and inquiries for human rights violations resulting from conflict”

“NHRIs should review and advise on legislative reforms, especially in post-conflict/transition periods”

“NHRIs should advise on guiding human rights principles for the success of the peacebuilding processes”

“NHRIs should play a key role with regard to early/ pre-warning when monitoring the rights of vulnerable/ marginalized groups. NPM can contribute and play an important role through monitoring of places of detention”

2. Recommendation related to Documentation

“International partners should strengthen NHRIs’ capacity to document human rights violations”

3. Recommendations related to Internally Displaced People (IDPs) and vulnerable persons

“NHRIs should advise on national legal framework and adoption of new state regulations and norms”

“NHRIs should advise central authorities to assist local communities to handle the influx of IDPs and to ensure that all IDPs have an equal access to social care, education and other services”

“NHRIs should advise on the responsibility of the state, as well as the responsibility of individuals in terms of restitution of property. NHRIs should engage in legal trainings for relevant state authorities”

“Governments and NHRIs should work in cooperation and coordination in responding to the challenges children face in conflict”

“NHRIs should give a voice to the most vulnerable groups in the peacebuilding process and facilitate their inclusion and participation in the peacebuilding and transitional justice processes”

4. Recommendation related to Collaboration with CSOs

“International partners should support close cooperation of NHRIs with civil society, in particular with regard to human rights monitoring, but also referral systems for complaints.”

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