

# ENNHRI Submission to CDDH INST

## On the revision of the Council of Europe Committee of Ministers Recommendation on NHRIs

ENNHRI welcomes the initiative to revise the 1997 Council of Europe Committee of Ministers (CoM) Recommendation on NHRIs. ENNHRI and its 45 member institutions recognise that the updated CoM Recommendation will play a key role in the further recognition and strengthening of NHRIs in Council of Europe Member States and their cooperation with the Council of Europe, for the better realisation of human rights across the region.

In its capacity as observer to the Steering Committee of Human Rights (CDDH), ENNHRI wishes to inform the CDDH of the key elements European NHRIs have indicated would be the most useful to include in the CoM Recommendation to facilitate and strengthen their work to promote and protect human rights, democracy and rule of law.<sup>1</sup>

### 1. Strong NHRIs in compliance with the Paris Principles in each CoE Member State

Since the start of the nineties, the Paris Principles have laid down the international minimum standards for NHRIs so that they can contribute effectively to the promotion and protection of human rights. Since the nineties, the Paris Principles have been progressively clarified.<sup>2</sup>

While each state can choose the NHRI model that best fits their national context, ENNHRI and other regional and international institutions (such as the Venice Commission, OSCE ODIHR, UN OHCHR and GANHRI) provide advice to state authorities on how to set up and strengthen an NHRI in compliance with the Paris Principles. Currently, NHRIs are established in almost all CoE Member States, and those that have not yet done so have committed to do so in the future.<sup>3</sup>

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<sup>1</sup> All ENNHRI members have been consulted on the revision of the CoE Recommendation on NHRIs, including through online consultation, in-person discussions at ENNHRI's General Assembly in November 2019, and a high-level consultation meeting on 6 February 2020 with participation of the CDDH INST Chair and secretariat.

<sup>2</sup> See, in particular: [GANHRI General Observations of the Sub-Committee on Accreditation](#), last updated by the GANHRI Bureau on 21 February 2018.

<sup>3</sup> In the context of the Universal Periodic Review (UPR), for example, all European member States have accepted recommendations to establish an NHRI. Moreover, states across the globe have accepted the existence of an NHRI in compliance with the Paris Principles as an indicator of SDG 16 on peaceful, just and inclusive societies.

Once established, NHRIs can apply for international accreditation by GANHRI and will undergo an internationally recognized periodic peer review by the GANHRI Sub-Committee on Accreditation (SCA) under the auspices of the OHCHR to assess their compliance with the Paris Principles.<sup>4</sup> The recommendations resulting from the peer review are used by NHRIs to further strengthen their mandate and practice, including through advocacy with relevant state authorities.

ENNHRI suggests that the Recommendation accordingly includes:

- For all CoE Member States to establish an NHRI in compliance with the Paris Principles and, once established, to further strengthen them, taking due account of the minimum standards contained in the Paris Principles and the recommendations resulting from the accreditation process, and to make specific and time-bound commitments in that regard;<sup>5</sup>
- For all CoE Member States to recognise and facilitate, as appropriate, following key NHRI characteristics:<sup>6</sup>
  - a constitutional or legal mandate for NHRIs to promote and protect all human rights across the state's jurisdiction, including through monitoring, reporting, and advising;
  - access for NHRIs to all relevant individuals, premises and information, with due respect for confidentiality of information obtained and interaction with other state bodies and institutions, including Parliament;
  - autonomy from Government, including through free prioritisation of roles and *ex officio* powers; adequate budget allocation through a separate budget line; objective, transparent, participatory and merit-based selection and objective dismissal procedures for the members of the NHRI decision-making body; protection from civil and criminal liability for acts undertaken in good faith by NHRI members and staff;

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<sup>4</sup> As of 27 November 2019, 26 CoE Member States have an A-status accredited NHRI, while 9 have a B-status accredited NHRI. See: GANHRI Chart of the Status of NHRIs [here](#) (updated bi-annually, after each accreditation session).

<sup>5</sup> See, in this respect already: CM/Rec(2018)11, Annex, I, 'Member States should [...] h: 'establish effective, independent, pluralistic and adequately funded NHRIs in compliance with the Paris Principles, or where they already exist, strengthen them for the protection and promotion of all human rights and fundamental freedoms, including in their role to protect and promote an effective environment for civil society co-operate and seek assistance, when needed, from the European Network of National Human Rights Institutions (ENNHRI), as well as from regional and international bodies such as the Office of the United Nations High Commissioner for Human Rights (OHCHR), the ODIHR/OSCE, the Council of Europe Commissioner for Human Rights, and the Venice Commission;'

<sup>6</sup> The key NHRI characteristics are further developed in the [GANHRI General Observations of the Sub-Committee on Accreditation](#), last updated by the GANHRI Bureau on 21 February 2018.

- pluralism, including through the appointment and composition of the decision-making body and staff of the NHRI and through effective cooperation of the NHRI with diverse groups from civil society, including groups at risk of human rights violations.<sup>7</sup>
- For all CoE Member States to conduct timely and transparent consultations, including with the country's NHRI, in policy development and draft legislation where it may affect the NHRI.<sup>8</sup>

## 2. Greater Awareness of and Cooperation with NHRIs by National Authorities

As independent and pluralistic public institutions with competence to deal with any human rights issue and daily engagement with civil society, NHRIs are well placed to monitor the human rights situation on the ground and to advise state authorities on how to address human rights challenges and to foster an enabling environment for human rights, democracy and rule of law.

The relationship between NHRIs and state authorities is one of cooperation and accountability, for the greater realisation of human rights. On the basis of their broad mandate, NHRIs have a variety of specific roles to play in relation to different state authorities, including:

- to table an annual report and special reports with recommendations before parliament on the human rights situation in the country;
- to monitor policies and legislation before, during and after their adoption to inform the executive and legislative about the impact of such policies and legislation on human rights and on the activities of human rights defenders and to advise on compliance with international human rights norms and standards;
- to contribute to an effective justice system for all, by raising awareness of rights and access to justice and by providing legal assistance, being a party or third-party intervener before the courts, or receiving individual complaints.

ENNHRI suggests that the Recommendation accordingly includes:

- To foster awareness and cooperation of all relevant public authorities in relation to the independence, mandate and functions of NHRIs, through training and awareness raising activities;

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<sup>7</sup> Further on the role of NHRIs in relation to the promotion and protection of civil society space: CM/Rec(2018)11. Further on the different roles and complementarity of NHRIs with civil society: CDDH(2017)R87 Addendum IV.

<sup>8</sup> See, in this respect already: CM/Rec(2018)11, Annex, I, Member States should [...] f. 'ensure timely and transparent public consultations in policy development and draft legislation, especially where it may affect civil society;'

- To make it an obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time and to develop processes to facilitate effective follow-up of NHRI recommendations, including in the case of rejection of recommendations;<sup>9</sup>
- To ensure, including through transparent procedures, that NHRIs enjoy adequate access to policy-making processes and that policymakers utilise NHRIs' reports and data, including human rights impact assessments, to ensure human rights-based approaches to policy-development and implementation;<sup>10</sup>
- To ensure, including through transparent procedures, that timely advice is sought on a systematic basis from NHRIs in the preparation of draft legislation that may impact on human rights, including by inviting NHRI representatives to give evidence during parliamentary hearings and discussions;<sup>11</sup>
- To seek advice from NHRIs and engage in dialogue in ensuring compliance with international human rights treaties, decisions and recommendations of their supervisory bodies and mechanisms, including the judgments of the European Court of Human Rights.<sup>12</sup>

### 3. Developing Closer Partnership between NHRIs and the Council of Europe

Sharing the broad mandate to contribute to the realisation of human rights, democracy and rule of law, NHRIs are in a unique position to help the Council of Europe fulfil its purpose. A close partnership between NHRIs and the CoE is highly instrumental in this regard. NHRIs promote respect for CoE Conventions & legal instruments in Member States and contribute to the national implementation of CoE standards and policies, in cooperation with the variety of civil society organisations and state authorities. At regional level, European NHRIs contribute to the work of

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<sup>9</sup> See in this respect already: [CM/Rec\(2019\)6](#) on the development of the Ombudsman institution, Annex, para. II, 9: 'Member States should make it a legal obligation for all addressees of recommendations by Ombudsman institutions to provide a reasoned reply within an appropriate time.'

<sup>10</sup> See in this respect already: CoE Commissioner for Human Rights, [HR Comment on 25 years Paris Principles](#): 'Recommendations: To all Council of Europe Member States [...]: Ensure that NHRIs enjoy adequate access to policy makers, including timely consultations on draft legislation and policy strategies with human rights implications;'

<sup>11</sup> See in this respect already: [CM Rec\(2018\)\(11\)](#), appendix, I, f; CoE Commissioner for Human Rights, [HR Comment on 25 years Paris Principles](#); PACE [Resolution 1998 \(2014\)](#), 6.4: 'seek advice from NHRIs in the preparation of draft legislation and use them as sources of information on equality, human rights and non-discrimination, including by inviting NHRI representatives to give evidence during parliamentary hearings and discussions'.

<sup>12</sup> See in this respect already: all outcome documents of the high-level conferences on the reform of the Convention system, most recently the [Copenhagen Declaration](#) at paras. 14, 18 and 33.

the CoE under the umbrella of ENNHRI, the network encompassing all NHRIs from across the Council of Europe region.

NHRIs, individually and collectively through ENNHRI, contribute information and legal opinions to different CoE bodies. This occurs most effectively in those instances where NHRIs enjoy formal access to CoE procedures, as is the case in the context of Rule 9 interventions by NHRIs on execution of judgments before the Committee of Ministers<sup>13</sup> or Third Party Interventions by individual NHRIs and ENNHRI before the European Court of Human Rights.<sup>14</sup>

As reflected in the Committee of Ministers' Helsinki Decision<sup>15</sup> and building upon existing good practices, the partnership between NHRIs and the Council of Europe can be further strengthened, by:

1. jointly strengthening capacity of NHRIs to effectively contribute to CoE procedures;
2. further bolstering CoE mechanisms to address reprisals and threats against HRDs, including NHRIs;
3. further facilitating access for NHRIs and ENNHRI to relevant CoE procedures, including through developing participatory status. The development of participatory status for NHRIs and ENNHRI at the Council of Europe (similarly as already developed for INGOs)<sup>16</sup> would allow to better build on the natural partnership between the CoE and NHRIs which share the objectives to promote and protect human rights, democracy and rule of law across the CoE. Such regional partnership in Europe would also mirror the existing status of NHRIs and their networks at the United Nations.<sup>17</sup>

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<sup>13</sup> Rules of the Committee for the supervision of the execution of judgments and of the terms of friendly settlements, Rule 9. For more information, see ENNHRI's [Guide for NHRIs](#) to support implementation of judgments from the European Court of Human Rights and ENNHRI's [Information Note for NHRIs](#) on Communications to the Committee of Ministers of the Council of Europe.

<sup>14</sup> Rule 44(3) of the Court has been the procedural basis used for individual and collective NHRI Third Party interventions before the ECtHR to date. For example, in 2019, ENNHRI submitted two third party interventions to the European Court of Human Rights, one on [right to vote for persons with disabilities](#) and the other on [national intelligence sharing and right to privacy](#).

<sup>15</sup> 129<sup>th</sup> Session of the Committee of Ministers, Helsinki, 17 May 2019, 'A shared responsibility for democratic security in Europe. The need to strengthen the protection and promotion of civil society space in Europe' (further: CoM Helsinki Decision).

<sup>16</sup> [Resolution CM/RES\(2016\)3 on participatory status for INGOs](#).

<sup>17</sup> The UN Human Rights Council rules of procedure enable A-status accredited NHRIs and their regional and global networks to participate in all HRC procedures as observers: A/RES/60/251, para. 11 *juncto* A/HRC/RES/5/1, 18 June 2007, Annex, Rule 7, (b). Moreover, accredited NHRIs can systematically contribute to UN treaty body procedures through written and oral interventions, independent from government delegations.

ENNHRI suggests that the Recommendation accordingly includes:

- To encourage and sponsor the development of a stronger role and meaningful participation of NHRIs, allowing for their most effective participation in, and contribution to, the work of CoE,<sup>18</sup> in particular:
  - a) to develop participatory status for NHRIs and their regional network (ENNHRI) in the Organisation;
  - b) to ensure that NHRIs and ENNHRI are informed of relevant activities concerning the promotion and protection of human rights, democracy and rule of law in the framework of the Council of Europe and to explore the possibilities of inviting NHRIs to regular dialogue with a view to further enhancing and formalizing co-operation between NHRIs and their regional network (ENNHRI) and the Council of Europe so as to enrich the discussions of the Committee of Ministers and other Council of Europe bodies;<sup>19</sup>
  
- To encourage and sponsor the development of further support for NHRIs, in particular:
  - a) further develop co-operation programmes with the Council of Europe to ensure permanent knowledge-sharing among NHRIs, in order to strengthen their contribution to the effective implementation of the European Convention on Human Rights and other relevant instruments, including the Revised European Social Charter;<sup>20</sup>

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<sup>18</sup> See in this respect already: CoM Helsinki Decision, para. 1: 'examine further options for strengthening the role and meaningful participation of civil society organisations, and national human rights institutions in the Organisation, with the view to increasing its openness and transparency towards civil society, including access to information, activities and events;'

<sup>19</sup> See in this respect already: CoM Helsinki Decision, para.3: 'invite the Secretary General to explore the possibilities of inviting the relevant human rights NGOs to a regular exchange with a view to further enhancing co-operation between civil society and the Council of Europe and enriching the discussions of the Committee of Ministers and other Council of Europe bodies.'

<sup>20</sup> See in this respect already: CM/Rec(2019)6, Annex, para. 13: 'Member States should encourage and sponsor the development of co-operation programmes with the Council of Europe to ensure permanent knowledge-sharing among Ombudsman institutions, in order to strengthen their contribution to the effective implementation of the European Convention on Human Rights and other relevant instruments.'

- b) further strengthen the Organisation's mechanisms for the protection of human rights defenders, including NHRIs, and consider relevant engagement with NHRI networks through their policies on NHRIs under threat<sup>21</sup>

#### 4. Implementation and Evaluation of the Revised CoE Recommendation

ENNHRI and its members are committed to disseminating and contributing to the implementation of the revised CoM Recommendation once it is adopted by the Committee of Ministers.

ENNHRI suggests that the Recommendation accordingly includes:

- commitment by Member States to evaluate the domestic implementation of the Recommendation on a regular basis, including through consultation and dialogue with their NHRIs;
- commitment of Member States to examine, within the Committee of Ministers, the implementation of the revised Recommendation no later than three years after its adoption.

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<sup>21</sup> See in this respect already: CoM Helsinki Decision, para. 2: 'further strengthen the Organisation's mechanisms for the protection of human rights defenders, including the Secretary General's Private Office procedure on human rights defenders.'