

Engagement of NHRIs in European Rule of Law Mechanisms

Methodology paper



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1. Background: a united approach based on shared objectives

As permanent and independent state-mandated bodies with a broad human rights remit, National Human Rights Institutions (NHRIs) are in a key position to promote, protect and strengthen the rule of law, building on the close interconnection and mutually reinforcing relationship between the rule of law, democracy and human rights. This is reflected, among others, in ENNHRI's [Regional Action Plan on Promoting and Protecting Human Rights Defenders and Democratic Space](#).

As it is true with other international monitoring mechanisms, NHRIs' engagement in European Rule of Law mechanisms forms an integral part of their mandate to promote and protect human rights. By contributing to a more comprehensive and accurate assessment of the situation in each country, and recommending action needed to address challenges, NHRIs' engagement can help to enhance the impact of existing frameworks and related initiatives, and thus achieve better promotion and protection of human rights, rule of law and democracy. Similarly, regional mechanisms' awareness of NHRI reporting and recommendations in relation to rule of law can lead to enhanced follow-up to those recommendations, through multilateral or independent processes at regional level.

The contribution to European rule of law, democracy and human rights monitoring and enforcement frameworks has been identified since 2018 as one of the key thematic priorities for regional cooperation by ENNHRI's members. Recent developments at European level confirm the added value and the existence of key opportunities for the engagement of all ENNHRI's member NHRIs in European rule of law monitoring initiatives. Such engagement would relate to three main aspects:

(1) NHRIs' contribution as information providers, to help regional actors have a more accurate picture of the national rule of law environment, based on reliable, objective and verifiable information. NHRIs can take advantage of their unique position to collect and provide input concerning both:

- (i) their own features and concrete functioning, i.e. their formal and functional independence, pluralism and effectiveness (NHRIs as rule of law indicators); and
- (ii) the human rights situation on the ground (NHRIs regular reporting on human rights with rule of law implications, e.g. access to justice, media pluralism, civic space, etc).

(2) NHRIs' involvement in the identification and implementation of follow-up action to address detected issues at the national level, including facilitating discussions with national parliaments and, when covered by their mandate, through court proceedings.

(3) NHRIs' role in the active promotion of a rule of law culture, including by raising awareness with the general public and cooperating with civil society stakeholders.

Discussions among NHRIs, including at the November 2019 ENNHRI General Assembly and at the dedicated High-Level Seminar hosted by ENNHRI Secretariat (February 2020), underlined the importance of a united approach for all NHRIs across ENNHRI's membership, applicable to the different processes relevant to EU Member States, Enlargement, Eastern Partnership and other countries.

ENNHRI's member NHRIs agreed that a united approach is favoured with a view to framing a common and coherent engagement in European rule of law mechanisms of all NHRIs across the region, in a spirit of cooperation and solidarity. It was agreed that NHRIs would explore the possibility of developing country-specific rule of law reports, using information extracted from relevant national reports and compiled on the basis of a structure and methodology common to all NHRIs, developed by ENNHRI. The common structure and methodology for NHRIs' rule of law reporting to the EU will allow ENNHRI to support timely and coherent NHRI reporting under different EU mechanisms, and to annually collate and publish all national reports as one regional report, for the development of enhanced NHRIs' impacts on European rule of law at national and regional level.

This note develops the common approach to NHRI's reporting and participation to European rule of law mechanisms from a methodological perspective. It will develop a common structure for individual NHRI reporting and specifies guiding principles underlying the approach to NHRIs' reporting and participation to European Rule of Law mechanisms. While 2020 marks the first 'trial' year of development and implementation of the common approach to NHRIs' reporting and participation to European rule of law mechanisms, a periodic evaluation is foreseen at the end of the annual reporting cycle to ensure learning from experience and adaptation of the common methodology as appropriate.

2. Common reporting and participation of NHRIs in European Rule of Law mechanisms

2.1 Development of a common frame for reporting by individual NHRIs

A questionnaire is developed and intended to be used as a common reporting structure by all NHRIs in order to facilitate and streamline the collection of information by NHRIs on rule of law and to ensure that the information collected are effectively conveyed to EU institutions and other regional or international actors in line with consultation requirements.

Taking into account the priority areas and indicators identified by European institutions and bodies for the different rule of law mechanisms, the common reporting structure develops questions targeted at information provision by all NHRIs related to:

- the NHRI as indicator of rule of law; and
- country-specific human rights reporting by NHRIs, with relevance to rule of law.

Each NHRI can consider (including on the basis of its mandate, capacity, and national context) whether it is feasible and appropriate to respond to all questions provided in the questionnaire. Room is provided for NHRIs to flag national specificities which may not be covered under the questions/areas identified.

The reporting structure will be devised so as to encourage concise data provision, with reference to existing resources as appropriate. The information provided in the reporting structure should be in English, while resources referred to may be in the original language.

The questionnaire is annexed to this note (Annex I).

2.2 Collection of NHRI contributions by ENNHRI

ENNHRI Secretariat will develop and manage a members-only secured online interface to showcase NHRIs' country-specific contributions, according to the common reporting structure. The online interface will provide the opportunity to make submitted national reports visible for ENNHRI members and the ENNHRI Secretariat. While the data submission form will include an opportunity to opt-out of this possibility, it is hoped that providing this possibility will support members' peer exchange, provide inspiration, and contribute to solidarity across the ENNHRI membership. None of the data provided will be used publicly without prior consultation of the NHRI concerned.

The monitoring period is the same for all NHRIs (the previous calendar year). The provision of data would be foreseen by the end of the first quarter of each year (although with some delay in 2020 due to the setting up of the reporting structure and COVID 19 implications).

Through ENNHRI, NHRIs will be informed when consultation requirements by European institutions and bodies develop, which could imply that NHRIs may be asked to review or update their contributions later in the year. The monitoring and reporting exercise is meant to be replicated for an initial period of at least 3 years.

2.3 Analysing and processing the information

Verification and consistency checks

ENNHRI may approach NHRIs for the purpose of verification and consistency checks, asking for clarification or complementing relevant information included in their contribution prior to the collation and dissemination of contributions. ENNHRI may also flag out to members any apparent issues related to their data provided through the common reporting structure, in light of the guiding principles developed below (section 3). While ENNHRI may invite members to complement or review data provided based on the common reporting structure and guiding principles, the national information provision remains the responsibility of the NHRI concerned. The publication of the common ENNHRI report, based on the collation of the national reports, however, will be subject to ENNHRI's policy on common positions (membership or, as a minimum, Board approval). Any proposed changes to information retrieved from national reports will be verified with the NHRI concerned before publication of the common report.

Highlighting trends

On the basis of the individual reports received, ENNHRI commits to analysing and processing the information provided by NHRIs for the purpose of identifying emerging trends. Members will be consulted on any trends identified and, if relevant reporting deadlines do not allow a full one-week consultation period, Board approval will be required as a minimum.

Information on accreditation status and SCA recommendations

In line with the international recognition of NHRIs as rule of law indicator, and the acceptance of the Paris Principles as the international standards on the independent and effective functioning of NHRIs, ENNHRI Secretariat will include reference to the accreditation status and the latest SCA report with recommendations for each NHRI.

2.4 Collating and disseminating contributions

Country reports

Each NHRI will be able to use its contribution provided in the common framework as its own reporting or advocacy product. The country reports can be used and disseminated at national level and/or distributed to European institutions or bodies to match relevant individual consultation requirements (which is the case, for example, for Eastern Partnership and Enlargement countries within the EU legal and policy framework).

Sub-regional reports and comprehensive ENNHRI report

ENNHRI will collate, publish and disseminate NHRIs contributions according to relevant regional areas (e.g., EU, Eastern Partnership, Western Balkans) to feed into the various relevant European consultation processes concerning rule of law. When relevant in line with the European reporting requirements, ENNHRI will also provide an executive summary of the collations, highlighting regional trends. Members involved in any sub-regional reporting will be consulted in advance of submission and/or publication.

ENNHRI also commits to compiling and publishing an annual comprehensive ENNHRI report composed of:

- ◆ a collation of all country reports which result from NHRIs' contributions;
- ◆ an executive summary identifying and highlighting regional trends.

The publication of the comprehensive ENNHRI report will be subject to ENNHRI's policy on common positions, which entails at least one week's consultation with members. The regional report will be made available to all ENNHRI members, will be published on ENNHRI's website and will be disseminated and used by ENNHRI for advocacy purposes with relevant stakeholders, including from the EU, Council of Europe, United Nations and civil society. Individual members can consider dissemination and use of the ENNHRI regional report and sub-regional collations, as appropriate.

2.5 Follow-up to reporting

Member support and international representation

ENNHRI will function as regional focal point for NHRIs' participation to European rule of law mechanisms. The network will support, inform and consult members individually and collectively on relevant follow-up actions, as feasible and appropriate. ENNHRI will maintain regular contacts with stakeholders to inform and consult NHRIs on relevant developments and in fostering synergies between regional processes. ENNHRI will represent NHRIs collectively in relevant international fora, either through a member or the Secretariat, and can share with stakeholders expertise on NHRI's standards, mandate and functioning.

Taking into account members' requests and available resources, ENNHRI will consider the further development of opportunities for exchange of good practices and capacity-building in this area.

Support to NHRIs under threat

NHRIs' engagement in European Rule of Law mechanisms might produce unintended consequences which may negatively affect NHRIs' functioning and the environment in which they operate. Each NHRI is best placed to judge the likely risks, and take this into account within its country-specific reporting. However, ENNHRI will be mindful of potential developing risks and consult with each relevant NHRI for any new use of the information contained in its reporting. ENNHRI will assist NHRIs and stakeholders in the early identification of threats to NHRIs and in the identification and implementation of necessary safeguards and measures to prevent or react to such threats. ENNHRI will thereby take into account and build upon the [Guidelines](#) on ENNHRI support to NHRIs under threat.

2.6 Periodic evaluation of the common approach

ENNHRI will annually evaluate and adapt, as appropriate, the common reporting structure and guiding principles through member-wide consultation. The evaluation will take into account ENNHRI's sustainability, effectiveness and impacts of the common approach at international and national level, as well as the development of European Rule of Law processes. The outcomes of the initial reporting year (2020) will help inform the approach, methodology and potential follow-up actions in the future.

3. Guiding principles for a strategic, impactful and safe engagement

Based on the outcomes of the dedicated High-Level Seminar held in February 2020, a set of principles have been identified to guide NHRIs' reporting and participation to European Rule of Law mechanisms.

3.1 Streamlining a human-rights based approach to rule of law

Following a human rights-based approach, the identification of thematic priorities underlying NHRIs' engagement in European Rule of Law mechanisms takes into account:

- ◆ key topics and areas identified by EU institutions for the different mechanisms, to ensure overall consistency with consultation requirements;
- ◆ standards and recommendations stemming from other relevant processes at regional and international level (in particular at Council of Europe level and the United Nations);
- ◆ areas of concern identified by NHRIs themselves as relevant to the rule of law situation, to reflect national and regional specificities.

The reporting questionnaire (Annex I) is accordingly structured around broad thematic clusters identified in line with this approach.

3.2 Building on NHRIs' existing functions and expertise

Framing NHRIs' engagement as integral component of NHRIs' mandate

NHRIs' engagement in European Rule of Law mechanisms is to be embedded as an integral part of NHRIs' mandate. This means that the scope and modalities of such engagement have to be framed consistently with the scope of each NHRIs' national mandate and with the overall frame provided by the UN Paris Principles. NHRIs' will therefore:

- ◆ bear in mind the opportunities and limitations provided for by their national mandate and by the Paris Principles at each stage of their engagement (as information providers, contributing to the identification and implementation of follow-up measures, engaging in promotion initiatives), and
- ◆ consider synergies with their regular activities, for example, by taking advantage of regular monitoring exercises to integrate rule of law related aspects, and/or integrating relevant parts of their annual report in a thematic rule of law report.

Developing synergies with NHRIs' engagement at national and international level

As a means to ensure consistency and sustainability, NHRIs' engagement in European Rule of Law mechanisms will be developed in synergy with NHRIs' relevant work at national and international level. In concrete terms, this means that NHRIs engagement at the different stages will build on or feed into:

- ◆ General or thematic national reporting initiatives;
- ◆ General or thematic reporting to other international monitoring bodies;
- ◆ The formulation of and follow-up of recommendations to national authorities.

3.3 Valuing NHRIs' unique standing

Taking into account NHRIs' special features

NHRIs' engagement in European Rule of Law mechanisms reflects NHRIs' role as impartial and reliable partners, fulfilling their legal mandate to promote and protect human rights domestically in an independent manner. The common approach to Rule of Law monitoring by NHRIs will acknowledge the differences in NHRIs, including roles, functioning and environment across ENNHRI's membership, and their international accreditation status. The different characteristics, national environment and accreditation status of NHRIs are relevant to contextualise the scope and impact of NHRIs' contributions at each stage of the process.

Interaction with other national human rights defenders

Due consideration shall be given to the interaction with other human rights defenders when NHRIs engage in European Rule of Law mechanisms. Such interaction relates to a variety of aspects, for example:

- ◆ the engagement with other human rights defenders while monitoring & reporting on their situation and including them as potential beneficiaries of follow-up measures;
- ◆ the cooperation with other national human rights defenders as a source of information and to check consistency of findings;
- ◆ the cooperation with other national human rights defenders to promote participation of civil society in European rule of law processes;
- ◆ the cooperation with other national human rights defenders in the identification and implementation of follow-up measures and for promotion initiatives.

3.4 Safeguarding Confidential Information

NHRIs engaging in European Rule of Law mechanisms as information providers need to be able to secure and protect confidential and sensitive information. This is particularly true if their reporting contributions are based on documents and information that are classified or otherwise not public, or case files that may raise privacy concerns. The guiding principle to secure confidentiality in the regional reporting is to take a similar approach to confidentiality guarantees as is applicable for national reporting. Each NHRI is best placed to judge the likely risks, and take this into account within its country-specific reporting. However, ENNHRI will be mindful of potential developing risks and consult with each relevant NHRI for any use of the information contained in its reporting.

Annex I – Reporting questionnaire/grid

Topic	Questions
Independence and effectiveness of the NHRI	<p>1. Did significant changes take place in the environment in which your NHRI operates that are relevant for the independent and effective fulfilment of your mandate?</p> <p>2. Did the national regulatory framework applicable to your NHRI change, since the last review by the SCA?</p> <p>Please provide reference to relevant sources:</p>
Human rights defenders and civil society space	<p>3. Has your human rights monitoring and reporting found any evidence of laws, measures or practices that could negatively impact on civil society space and/or reduce human rights defenders' activities? <i>(eg impacting on freedom of association, freedom of assembly, freedom of expression, and access to information, attacks on human rights defenders, their work and environment)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources:</p>
Checks and balances	<p>4. Has your human rights monitoring and reporting found any evidence of laws, processes and practices that erode the separation of powers, participation of rights holders, and the accountability of State authorities? <i>(eg expedited legislative processes, lack of scrutiny or consultation, lack of judicial or constitutional review, non-execution of judgments, non-publication of administrative decisions, increased executive powers or insufficient parliamentary oversight)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources:</p>

<p>Functioning of justice systems</p>	<p>5. Has your human rights monitoring and reporting found evidence of any laws, measures or practices that restricts access to justice? <i>(eg independence and impartiality of the courts, effective judicial protection, access to (free) legal aid , fair trial standards, execution of judgments)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources:</p>
<p>Media pluralism</p>	<p>6. Has your human rights monitoring and reporting found any evidence of laws, measures or practices that could restrict a free and pluralist media environment? <i>(eg insufficient protection of journalists' independence, adequacy of resources, inadequate investigations on attacks on journalists)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources:</p>
<p>Corruption</p>	<p>7. Has your human rights monitoring and reporting found any evidence of state measures or practices relating to corruption, or significant inaction in response to alleged corruption, and which could have an impact on human rights? <i>(eg protection of whistleblowers)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources:</p>
<p>COVID 19 measures</p>	<p>8. What have been the most significant impacts of measures taken to in response to the COVID-19 outbreak on the rule of law in your country? <i>(eg emergency measures not time-limited, lack of access to the courts, measures that are not legitimate or proportionate to the threats posed)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources:</p>

	<p>9. What are the most important challenges due to COVID 19 for your NHRI's functioning? <i>(eg reduced monitoring capacity, reduced delivery of services to citizens)</i></p> <p>What are the most important measures taken by your NHRI to continue the fulfilment of your mandate in the COVID 19 context?</p> <p>Please provide reference to relevant sources:</p>
Other relevant areas	<p>10. Are there any other relevant developments or issues you would like to report on, which have impact on the national rule of law environment?</p> <p>Please provide reference to relevant sources:</p>
Suggestions for support	<p>11. Do you have any suggestions for support from regional mechanisms that could help the rule of law situation in your country, as reported above?</p> <p>12. In particular, do you have any suggestions for support from ENNHRI and/ or regional mechanisms that would help address any negative trends impacting on your NHRI's ability to fulfil its mandate in compliance with the Paris Principles? <i>(eg enabling environment, regulations, threats)</i></p>