

ENNHRI response to open call for input for the 4th Council of Europe Summit (Reykjavik 16-17 May 2023)

A common vision

How can the Council of Europe become a more strategic and political organisation fit to promote and protect the organisation's core values?

The Council of Europe should further integrate and support independent national actors and their pan-European networks, such as NHRIs and ENNHRI, in its strategies and actions to build greater unity between Council of Europe Member States. The approach should be two-fold: integrating national actors and their networks better at the Council of Europe, and integrating the Council of Europe better at national level. Therefore, multi-level governance approaches, intrinsically interconnecting CoE and domestic processes and actors, such as NHRIs, should become the norm, including stronger participation rights for NHRIs and ENNHRI at CoE processes.

Through their independent mandate to promote and protect the full span of human rights at national level, NHRIs are in a key position to inform the CoE with evidence-based reports and recommendations from the ground which can induce strategic and timely action from the CoE. At the same time, through their national leverage, NHRIs can also further promote the strategic relevance of the Council of Europe nationally and advance implementation of CoE decisions and judgments, including through tailormade follow-up action in the national context. As an umbrella organisation bringing together all European NHRIs, ENNHRI can facilitate collective action, solidarity and learning across the region, and can represent the regional voice of NHRIs as a collective at the CoE on issues impacting across its geography.

While NHRIs and ENNHRI have been dedicated to working closely with the Council of Europe over the past decades, and NHRIs have been recognised as '[pillars for the protection of human rights, democracy and rule of law by the Council of Europe](#)', the partnership between the Council of Europe, NHRIs and ENNHRI should become more strategic to fully live up to its potential to advance the protection and promotion of human rights, democracy and rule of law across the region.

The Council of Europe should deliver on the strategic priorities reflected in the Committee of Ministers 2021 [Hamburg](#) and 2019 [Helsinki](#) Decisions to further strengthen the role and meaningful participation of NHRIs and ENNHRI in the CoE. The Council of Europe's strategic and country-specific procedures, such as at the Committee of Ministers, should open up to systematically benefit from direct engagement with independent domestic human rights actors such as NHRIs, and, when relevant, their regional networks. This would, conversely, facilitate the CoE strategic and country-specific decisions to more easily and consistently find their way to the domestic level, where locally embedded actors such as NHRIs, supported by their regional networks, can promote implementation and build awareness around the added value of the Council of Europe for European societies.

In view of their unique mandate which corresponds to the CoE's statutory aims and scope, guaranteeing access of NHRIs and ENNHRI to CoE procedures through participation rights should become the norm, as is the case already in UN human rights procedures such as the [UN Human Rights Council](#). In this context, and bearing in mind ENNHRI is the only network gathering all NHRIs across wider Europe, the development of participation rather than observer status for ENNHRI at the Council of Europe should be considered.

At national level, and in the current climate of seismic changes in Europe, it is also of key importance for the Council of Europe to support the resilience of independent rights defenders such as NHRIs and support countering threats against them.

CM [Recommendation 2021/1](#), on 'effective, independent and pluralist NHRIs' offers golden regional standards to maintain resilience, and ensure strong and independent NHRIs in each CoE member state. While the CM has included the implementation of this Recommendation as part of its strategic priorities, and [ENNHRI is taking substantive actions in support of its implementation](#), further support from the CoE to advance the implementation of the CM Recommendation, such as through comprehensive technical cooperation programmes, would be pertinent.

As put forward in the Committee of Ministers [Helsinki](#) Decision, the Council of Europe should also develop more robust mechanisms to protect human rights defenders, including for their cooperation with the Council of Europe. Especially in a context of conflict and growing threats to the rule of law and democracy in Council of Europe Member States, robust regional support and protection mechanisms for human rights defenders become increasingly needed.

Beyond direct support for key national counterparts and their networks, state authorities with support of the CoE could also set-up multi-stakeholder platforms at national level to advance constructive discussion, awareness and a culture of support for the Council of Europe and

advance the implementation of CoE judgments and decisions. Such platforms could include representatives of government, parliament, NHRIs, NGOs, and other rights defenders and could engender also public campaigns adapted to a local audience about the added value of the Council of Europe. The Council of Europe could build on national mechanisms in place in some countries (such as [Slovenia](#)) to address implementation of ECtHR judgements, or could be inspired by and build on the EU's setting up of multi-stakeholder initiatives at national level in relation to the rule of law and the EU Charter of Fundamental Rights.

Meeting the challenges of today and tomorrow

What role can the Council of Europe play in ensuring accountability for Russia's aggression against Ukraine?

In line with its unique mandate, the Council of Europe should support human rights, democracy and rule of law in Ukraine, and support domestic actors including the National Human Rights Institution, in their efforts to address, monitor and report on human rights violations in line with international standards, and to ensure accountability for violations of human rights and international humanitarian law arising from the war against Ukraine.

In the context of the war against Ukraine, the addressing of human rights, democracy and rule of law becomes both more challenging and important. The ongoing international armed conflict has resulted in higher levels of human rights abuses, and limited resources to address them. ENNHRI is dedicated to [support the Ukrainian NHRI in carrying out its mandate](#), and calls upon the Council of Europe to also further step up its support for the institution.

The Council of Europe, in particular, is well placed to provide technical support in addressing human rights, democracy and rule of law in the context of Ukraine's derogation to the ECHR. A pressing need has emerged for the NHRI and other Ukrainian actors to monitor, document and report on violations of international human rights law in the context of the international armed conflict in Ukraine, and that this is done in line with European and international standards, including through the use of digital tools and artificial intelligence. Moreover, special attention needs to be dedicated to upholding economic and social rights of Ukrainian people in these devastating circumstances. The European Social Charter can play an important role in this respect.

The Council of Europe should also support transnational cooperation across its Member States to address the human rights violations ensuing from the unprovoked armed attack on Ukraine that are of a cross-border nature, such as the rights of people fleeing Ukraine. ENNHRI reaffirms the need for [long-term, human rights-based solutions and regional solidarity to support those fleeing](#)

Ukraine. NHRIs will continue to be key actors in ensuring that responses to the displacement from Ukraine are rooted in respect for human rights, and support from the Council of Europe in ensuring this would be pertinent.

While developing its response to current seismic challenges, the Council of Europe should also consider in particular the added value and relevance of the work of NHRIs in situations of conflict and post-conflict, where human rights abuses can be more widespread and societies divided. Independent, strong and trusted institutions such as NHRIs are needed not only to support individuals affected by conflict, but also to promote a culture of rights. Notably, ENNHRI provides guidance and support to NHRIs on promoting and protecting rights in non-government controlled areas and other disputed territories, contributing to closer cooperation across Council of Europe Member States even in some of the most challenging contexts.

How can the Council of Europe create a framework for efficient action on current and future challenges (for example on issues such as environment and human rights, inequality and digital)?

1) In order to become more efficient and impactful, the Council of Europe should install a systematic follow-up by the Committee of Ministers of violations of human rights, democracy and rule of law in Council of Europe Member States, based on each State's record on implementation of judgments of the European Court of Human Rights and of the recommendations of Council of Europe independent monitoring bodies such as the European Social Committee. NHRIs should receive full-fledged participation rights in such country-specific follow-up at the CoE, in line with the practice at the UN. In addition, regular country-specific summaries bringing together all CoE judgments and recommendations addressed per country should be shared by the CoE with NHRIs and other key domestic actors, to facilitate and encourage follow-up at country-level.

The Council of Europe is a global frontrunner for human rights, democracy and rule of law on account of its well-elaborated legal framework and the related expert bodies and institutions, including the European Court of Human Rights, the European Committee of Social Rights, the Council of Europe Commissioner for Human Rights and the other specialised monitoring and advisory bodies, mandated to independently assess Member State's compliance with the Council of Europe's legal framework. Despite this, the Council of Europe's authority and *raison d'être* is currently challenged, in particular due to the lack of implementation by Member States of the judgments of the European Court of Human Rights and of the findings and recommendations of the Council of Europe independent monitoring bodies.

ENNHRI recommends strategic action in relation to the implementation of the European Convention on Human Rights and judgments of the Court in particular which indicate the erosion of rule of law in Europe (further below), and supports initiatives to strengthen implementation of the European Social Charter which is crucial to tackle rising inequality that undermines European democracies.

Yet, beyond the strengthening of existing mechanisms, ENNHRI recommends the setting up of a systemic procedure at the level of the Committee of Ministers to follow-up the implementation by each Council of Europe Member State of the Council of Europe's judgements and findings of independent monitoring bodies addressed to it. The bringing together of different judgments and recommendations from the CoE per country and allowing interactive debate on them, including governments and independent national actors such as NHRIs, has significant potential to advance domestic awareness of the CoE outcomes and follow-up of these at national level. The success of such approach is also shown globally through the [United Nations Universal Periodic Review](#).

The CoE procedure should, notably, ensure participation rights for NHRIs to provide independent national-level reports on the state of implementation in their country. While developing such approach to NHRI participation rights, good practices from the UPR or the EU accession policy can be taken as inspiration. In the context of the EU accession policy, notably, the follow-up by state authorities of NHRI recommendations are included as benchmark to assess advancement of EU candidate countries on their path to EU integration.

Moreover, the CoE procedure should include clear benchmarks for ensuring swift and appropriate follow-up by the Committee of Ministers, in cooperation with other relevant Council of Europe bodies, and foresee escalation of follow-up action when Member States do not enhance their implementation of their human rights obligations under the Council of Europe's legal framework. Enhanced attention in the context of such follow-up procedure should be considered for rights which appear to be systematically violated across Council of Europe Member States, such as access to justice, right to housing, or domestic violence against women.

At least, regular country-specific summaries bringing together CoE judgments and recommendations should be shared by the CoE with NHRIs and other key domestic actors, to facilitate and encourage follow-up at domestic level. Such an approach bringing together the many varying country-specific procedures and their outcomes would advance access to information of the very rich but rather fragmented CoE procedures, as reported by NHRIs.

2) In line with the 2021 [Hamburg Decision](#), the implementation of the European Convention of Human Rights and of European Court of Human Rights judgments should be a key strategic priority.

[The Council of Europe's data](#) on the lack of implementation of judgments of the European Court of Human Rights, including of leading cases, indicates this is a systemic problem across the Council of Europe which is further on the rise. Notably, and as indicated through the 2022 report of [Democracy Reporting International and the European Implementation Network](#), as well as [ENNHRI's annual rule of law reporting](#), the non-implementation of European Court of Human Rights judgments has serious negative effects on human rights, democracy and rule of law in Europe.

The 2021 Committee of Minister's Hamburg Decision has rightly included the implementation of the European Convention of Human Rights and the implementation of European Court of Human Rights judgments as key strategic priority. However, so far, the identification of this strategic priority has not been followed by the necessary comprehensive follow-up and commitment of sufficient resources to this area of work of the Council of Europe. The [2021 Annual Report on the Supervision of the Execution of Judgments of the Court](#), notably, reflects the crucial role of the Department for the Execution of Judgments, and flags the need to urgently strengthen the Department's resources. However, according to the [Programme and Budget of the Council of Europe for 2022-2025](#), the Department's budget will stay the same in real terms as compared to 2021.

The Council of Europe should also strengthen the involvement and support for independent domestic authorities such as NHRIs in the implementation of judgments of the European Court of Human Rights and the European Convention on Human Rights and thereby bolstering the leverage and follow-up of CoE judgments domestically. The crucial role of NHRIs for the implementation of ECtHR judgments has been regularly recognised at the highest political level of the Council of Europe, including at the inter-governmental conferences in [Brighton \(2012\)](#), [Brussels \(2015\)](#) and [Copenhagen \(2018\)](#), as well as in the review of the [10-year "Interlaken process"](#) aimed at further strengthening the ECHR system. Yet, there is vast potential to further involve and support NHRIs, as well as NGOs, in carrying out this role.

Measures to strengthen such involvement could include, [for example](#), to introduce a requirement that Action Plans of State Parties include reports on how NHRI and NGOs have been involved in identifying and implementing measures needed to execute a judgment, or that Member States are required to respond to submissions made under Rule 9 by NHRIs and NGOs. In addition, further support should be provided by the Council of Europe to build the capacity of NHRIs to

carry out their role in the context of the implementation of judgments, both through in-country support as through supporting peer exchange and learning across NHRIs. The latter could be done through ENNHRI, in cooperation with the Department on the Execution of Judgments, and civil society partners such as the European Implementation Network, [as was successfully done in 2020](#). Overall, the Council of Europe should significantly increase technical cooperation projects focused on implementation of judgments, including NHRIs and civil society.

3) With regards to more recent challenges which are currently not adequately covered by existing CoE instruments, such as in relation to human rights and the environment or artificial intelligence, the Council of Europe should prioritise binding standard-setting and robust accountability to ensure human rights, democracy and rule of law remain at the heart of European societies - including for future generations.

In relation to artificial intelligence, human rights, democracy and rule of law, ENNHRI is actively participating in its observer capacity to the ongoing standard-setting at the CoE Committee on Artificial Intelligence (CAI), bringing the collective voice of NHRIs to the negotiating table. However, together with other observers, ENNHRI has called to ensure meaningful and inclusive standard-setting at the CAI, in line with the standards and good practices of the Council of Europe on inclusive standard-setting, such as in the context of successful negotiations on [Convention 108+](#).

Informed through its members across the CoE, ENNHRI's [advocacy](#) aims to ensure a human rights based approach to artificial intelligence in the future CoE Convention. As all fundamental rights are affected by AI, NHRIs underline that the Convention must be broad enough to protect against individual, collective, and societal risks. ENNHRI underlines the need to ensure long-term protection and, insofar as possible, future-proof against applications of AI that present an unacceptable risk to human rights, democracy and the rule of law. Among the practices posing such a threat are the use of biometric controls for migration management and AI systems by law enforcement and judicial authorities. ENNHRI also highlights the importance of multi-stakeholder participation and public consultation in the context of the implementation of the Convention. This is crucial to ensure that the huge impact of digital technologies is comprehensively monitored, debated, and addressed. Indeed, the Convention should foresee additional responsibilities for the private and public sectors. For instance, by explicitly stating businesses' responsibility to respect human rights and that public authorities are the main duty bearers.

ENNHRI underscores the need to ensure independent multi-level oversight of the future AI Convention. At national level, oversight may be well placed with NHRIs in view of their independent and broad human rights mandate. NHRIs should have access to information under

the AI Convention when access to that documentation is necessary for the fulfilment of their mandate. At least, future national oversight bodies should closely cooperate with pre-existing human rights bodies, such as NHRIs who have a mandate to contribute to implementation of international human rights treaties, including through awareness raising and promotion. Moreover, in the context of this Convention, institutionalized cooperation between the Council of Europe and national oversight bodies will be crucial to advance implementation of the Convention and respect for human rights, democracy and rule of law. Independent domestic oversight bodies, for example, should have the right to bring reports and participate to meetings of the CoE oversight body when it considers compliance concerning their country. Such multi-level accountability is in place successfully already, for example, in the context of the UN CRPD.

In relation to human rights and the environment, ENNHRI [advocates](#) the need for the Council of Europe to adopt a binding instrument affording a right to a healthy environment.

A safe, clean, healthy and sustainable environment is essential to the realisation of the right to life, and of all other human rights. While 32 Council of Europe Member States already recognise the right to a healthy environment in their national legal systems, an explicit and comprehensive provision protecting this right is currently lacking in the Council of Europe system. A legally binding instrument would obligate States to address the human rights impacts of climate change, loss of biodiversity and environmental degradation, thus bringing the European human rights system in this area in line with the African, Arab and Inter-American systems. A new instrument must enhance the current gaps in European environmental human rights protection, while also being without prejudice to the existing protection against environmental issues under the ECHR, as interpreted dynamically by the European Court of Human Rights.

Like the [PACE](#), ENNHRI favours a binding instrument through an Additional Protocol to the ECHR. Such a Protocol would provide the most effective legal protection of the right to a healthy environment because it would be enforceable by the European Court of Human Rights, which can issue legally binding judgements in individual complaints. As an Additional Protocol must be signed and ratified by a State, this solution would also enable those States who wish to move ahead to do so, while allowing others to join later.

Given the fundamental impact of climate change on human rights, and to complement judicial enforcement by the ECtHR, ENNHRI also recommends the Council of Europe to set up an independent monitoring body on human rights and the environment, modeled after the European Commission against Racism and Intolerance. This CoE monitoring body could monitor and support CoE Member States on how to address climate change, loss of biodiversity and environmental degradation through a human rights based approach, and could engage with a wide variety of actors at national level, including environmental human rights defenders and

NHRIs. In this respect, the UNECE Aarhus Convention, and in particular the findings of the Special Rapporteur on environmental defenders, should also be taken into account.

An organisation fit for purpose

How can the Council of Europe become a more strategic and political organisation fit to promote and protect the organisation's core values?

The CoE is the only international organisation whose primary goals are the promotion and protection of human rights, democracy and rule of law in Europe. The position of the CoE as the key guardian of human rights, democracy and rule of law in Europe should be reinforced. Building a European human rights community, developing strong human rights standards and accountability mechanisms, and supporting good practices for inspiration of other actors, in Europe and globally, should be the key role of the Council of Europe.

To safeguard its role in the future, it is essential for the Council of Europe to open up the CoE further for domestic human rights actors, in particular independent NHRIs and their transnational network, ENNHRI. Participation rights for NHRIs and ENNHRI at the Council of Europe should be put in place, after the example of UN human rights procedures. (cfr response to question 1). Moreover, the Council of Europe should ensure inclusive standard-setting and set in place strong multi-level accountability which interrelates Council of Europe and independent domestic oversight bodies, and fuels awareness and compliance at national level (cfr response to question 2).

At the same time, to strengthen such authoritative position for the Council of Europe, the CoE should further institutionalise cooperation with key European and global organisations and their human rights mechanisms, including at the EU, the OSCE and the United Nations. Leveling up the political clout of the Council of Europe, such as through the organisation of more regular Summits, as is recommended by the High-Level Reflection Group, can also be beneficial in this respect. Again, as emphasised in response to question 1) high-level strategic decision making at the Council of Europe, should be organized in a participatory way and build awareness and leverage across European societies for the importance of and adherence to the CoE and its standards.

How can the Council of Europe become a more modern organisation with an adapted framework for better supporting member states and better responding to current and future challenges?

In line with our former responses, we submit three approaches which would make the Council of Europe a more modern organisation:

1) Integrate multi-level governance models which consistently interlink the CoE with domestic actors and processes. Multi-level governance approaches can be embedded in forthcoming treaties and their oversight mechanisms (such as on artificial intelligence (see former question), but can also be developed further in existing procedures such as those in relation to execution of ECtHR judgments. For example: measures to strengthen NHRI/ NGO involvement on execution of ECtHR judgements, could introduce a requirement that Action Plans of State Parties include reports to the CoE on how NHRI and NGOs have been involved in identifying and implementing measures needed to execute a judgment.

2) Support transnational networks bringing together domestic human rights actors across the CoE, and support in-country platforms on the CoE. Transnational networks such as ENNHRI, which shares the CoE aims and regional scope, engender awareness-raising and learning amongst their membership on the Council of Europe, and facilitate engagement of their members in their individual and collective capacity with the Council of Europe. Thereby, a transnational network develops a regional multiplier effect across its peers in respect to awareness-raising and enforcement of the Council of Europe standards. The Council of Europe should further support ENNHRI, including through considering participation rights for ENNHRI at the Council of Europe (cfr response to question 1).

In-country platforms on the Council of Europe, on the other hand, can facilitate the development of a culture of human rights, democracy and rule of law at domestic level, and can also be used as leverage to support implementation of CoE standards at domestic level. Some good examples are in place of national cooperation platforms in relation to the execution of judgements. Such cooperation platforms could be further replicated and expanded by state authorities, with support of the CoE, and could be used especially also to find ways forwards in addressing structural human rights issues in-country.

3) Ensure an accessible and transparent CoE, including consistent participation rights for independent national human rights actors such as NHRIs and ENNHRI. Accessibility of the CoE can also be enhanced online, such as through providing online participation opportunities during meetings and setting up dedicated webpages with targeted

information for key actors on how they can engage across the different processes at the Council of Europe.

The potential contribution of NHRIs and ENNHRI to the Council of Europe independent mechanisms and the implementation of the Council of Europe's legal framework is not fully capitalised, including through a lack of transparency and fragmentation of clear participation rights, guidance and information on how NHRIs can most effectively engage with the Council of Europe bodies (further question 1 above). The Council of Europe should consider the [good practice of the United Nations](#) concerning the rights, guidance and support provided to NHRIs and their networks to contribute to intergovernmental and independent country-specific procedures to inspire further transparency and accessibility for NHRIs at the Council of Europe.

