



European Network of
National Human Rights Institutions

Implementing the Council of Europe Recommendation on National Human Rights Institutions: The State of Play

The situation in Luxembourg



Luxembourg Country Report

Overview

Name of NHRI and mandate:

- Consultative Human Rights Commission of Luxembourg
- NHRI & NMM

Sources:

- NHRI: [ENNHRI, State of the Rule of Law in Europe in 2022, Luxembourg Country Report](#); [ENNHRI, State of the Rule of Law in the European Union in 2023](#);
- Sub-Committee on Accreditation (SCA) : [SCA Report March 2022](#)

Good practices and improvements:

- **CM Recommendation 1:** the Consultative Human Rights Commission of Luxembourg (CCDH) is an A-Status Institution.
- **CM Recommendation 12: awareness of and cooperation with the NHRI:** While uneven across state authorities, the CCDH has reported that an increasing number of authorities have become aware of the NHRI mandate

Key areas where improvement is needed:

- **CM Recommendation 2: constitutional basis:** the CCDH does not have a constitutional basis, and believes its regulatory framework should be further strengthened as such.
- **CM Recommendation 6 & 7: adequate funding and resources:** the SCA(2022), while recognizing an increase in the budget, recommends the need for an enhanced budget to allow the NHRI to carry out its mandate effectively and independently. The SCA also recommends full-time remunerated members on the NHRI's decision-making body.
- **CM Recommendation 8: adequate access to information and to policymakers:** While welcoming the greater consultation and engagement of the Parliament, the NHRI reports the need for greater cooperation of the ministries and the administration, including in the context of its mandate on human trafficking. While recognizing consideration by parliament of the NHRI's annual reports, the SCA (2022) emphasizes the need for providing the NHRI with the power to table all reports directly in the legislature rather than through the executive.
- **CM Recommendation 9: timely and reasoned response to NHRI recommendations:** the NHRI reports uneven and limited follow-up to its recommendations, while a legal obligation to provide a timely and reasoned reply to the NHRI's recommendations is missing and no follow-up mechanisms to ensure state authorities' consistent follow-up are in place.

Specific findings per Principle

The tables below include data on the assessment of the implementation of each Principle (i.e. the individual parts) within the Recommendation from three sources: the National Human Rights Institutions, the Sub-Committee on Accreditation of GANHRI and the Council of Europe independent bodies. Overall, the findings are considered in four overall groups: the establishment of NHRIs; the strengthening of NHRIs; a safe and enabling environment for NHRIs; and cooperation with and support for NHRIs.

I. Establishment of NHRIs

Principle 1	Member States should ensure that NHRIs are in place and that they are established, accredited and function in full compliance with the Paris Principles
Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI	<i>SCA report March 2022, p. 19</i> ‘The SCA recommends that the CCDH be re-accredited with A status.’
Principle 2	Member States should provide a firm legal basis for NHRIs, preferably at the constitutional level, and/or in a law which defines the mandates and functions of such institutions, guarantees their independence and provides them with the means necessary to accomplish their functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on NHRIs, in particular the Paris Principles and their interpretation developed by GANHRI’s Sub-Committee on Accreditation.

Assessment of implementation by the NHRI	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 3</i></p> <p>'The Consultative Human Rights Commission of Luxembourg (the CCDH) is established by law (Law of 21 novembre 2008) as an independent state institution and does not have a constitutional basis.'</p> <p>The CCDH believes that the NHRI regulatory framework should be further strengthened. The NHRI's role could be enshrined in the Constitution. In the context of the current constitutional reform in Luxembourg, the Parliament has the intention to grant the Ombudsman a constitutional basis. The equality body, the Ombudsman for the rights of the child and the CCDH however "only" have a legal basis. The CCDH recommended considering creating a constitutional basis for the latter institutions as well.'</p>
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II. Strengthening of NHRIs

<p>Principle 3.1</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - monitor and analyse the human rights situation in the country, publish reports on these findings and address recommendations to public authorities at national, regional and local levels and, when applicable, to private entities, and present an annual report to the relevant authorities, including before parliament, for its consideration.
<p>Assessment of implementation by the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>The Consultative Human Rights Commission (CCDH) advises the Government on general questions relating to human rights. Its core missions are the promotion and the protection of human rights.</p> <p>The CCDH elaborates opinions, communiqués and reports, on its own initiative or at the Government’s request. All publications are transmitted to the Prime Minister and the Parliament and are presented to the press. The Commission submits an annual report to the Prime Minister. This report gives a detailed account of the Commission’s work during the preceding year.</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report March 2022, p. 20</i></p> <p>‘The SCA acknowledges that the CCDH has produced reports, statements, and recommendations to relevant authorities.’</p>

	<p>'In accordance with Article 1(2) of the Law, the annual report of the CCDH is transmitted to Prime Minister who then transmits it to Parliament. The SCA acknowledges that the CCDH reports that its report is discussed by parliamentary committees.'</p>
<p>Principle 3.2</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - freely address public opinion, raise public awareness on human rights and carry out education and training programmes;
<p>Assessment of implementation by the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>The CCDH freely addresses public opinion and raises awareness according to its mission to promote human rights (for example through press conferences). The Commission participates in education and training activities for a larger public, students, teachers etc.</p>
<p>Principle 3.3</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - fully address all alleged human rights violations by all administrative authorities, other relevant State entities and, when applicable, private entities

<p>Assessment of implementation by the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>The CCDH is not competent to deal with individual complaints.</p>
<p>Principle 3.4</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - have unfettered access to all relevant premises, including places of deprivation of liberty, and to all relevant individuals, in order to be able to carry out a credible examination of all issues covered by their mandate and to all relevant information, subject to possible restrictions stemming from the protection of other rights and legitimate interests and with due respect for the confidentiality of information obtained;
<p>Assessment of implementation by the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>The CCDH does not have unfettered access to such premises.</p>

<p>Principle 3.5</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - monitor existing and draft policies and legislation with human rights implications before, during and after their adoption in order to advise the State about the impact of such policies and legislation on human rights and on the activities of human rights defenders, including by making relevant and concrete recommendations.
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in the European Union in 2023, p.431</i></p> <p>In some cases, it may take unreasonably long for the government to respond to the CCDH's official letters, especially in the area of business and human rights. For instance, despite the CCDH's requests to receive information about Luxembourg's position regarding the European Commission's proposal for a corporate sustainability due diligence directive, Luxembourg is still reluctant to disclose its definitive position (only some elements are known). The CCDH reported the intention to solicit more proactively feedback from the government and the Parliament, as well as to keep track of the implementation rate of its recommendations.</p> <p>Another example worth mentioning is the constitutional reform, where the Parliament did not take into account any of the CCDH's recommendations raised in its opinion. While the CCDH regrets that it was not able to issue its opinion earlier due to a lack of resources, it deplores that neither the parliamentary committee nor the assembly were deeming it necessary to receive the NHRI's opinion prior to their vote on the chapter on fundamental rights of the constitution. Political pressure to adopt the reform before the next elections seemingly prevailed over an inclusive and participatory process.</p>

	<p>Moreover, the CCDH issued an opinion on draft legislation 7787 implementing the EU regulation on conflict minerals which requires EU companies to ensure they import certain minerals and metals from responsible and conflict-free sources only : one of the NHRI’s recommendations aimed at improving civil society implication in the reporting process (e.g. by publishing a list of the businesses covered by the EU regulation and strengthening their role in the procedure) and the NAP (p. 31) explicitly mentions that it is essential to associate the different stakeholders (private sector and NGOs) to the implementation of the EU regulation. Nonetheless, neither the members of the working group, nor the CCDH have been implicated so far in the process. As a reminder, the conflict mineral regulation entered into force on 1st of January 2021. The draft legislation was introduced in March 2021 and is still pending in the Parliament. There has been no consultation and no feedback whatsoever.</p> <p><i>Please, see also recommendations 8 & 9</i></p>
<p>Principle 3.6</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - contribute to an effective justice system for all, through awareness-raising measures and facilitating access to rights and remedies and, as applicable, by providing legal assistance, being a party before the courts or, when applicable, receiving individual complaints;

<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p.3</i></p> <p>‘The Commission has the mandate to contribute to access to justice for individuals, including through awareness-raising.’</p> <p><i>ENNHRI, State of the Rule of Law in the European Union in 2023, p.433</i></p> <p>Besides offering general information and support about where to get help to potential victims of abusive lawsuits, the CCDH cannot provide support to victims of SLAPPs since it cannot intervene in individual cases.</p>
<p>Principle 3.7</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - encourage the signature, ratification of and accession to international human rights treaties and contribute to the effective implementation of such treaties, as well as related judgments, decisions and recommendations as well as to monitor States’ compliance with them.
<p>Assessment of implementation by the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>The CCDH encourages the government on a regular basis, through its opinions, reports etc. to ratify all relevant international human rights treaties.</p>

<p>Principle 4</p>	<p>The process of selection and appointment of the leadership of a NHRI should be competence based, transparent and participatory, in order to guarantee the independence and pluralist representation of these institutions. It should also be based on clear, predetermined, objective and publicly accessible criteria.</p> <p>The duration of the appointment should be clearly set out in the founding legislation, so that the leadership posts of the NHRI do not stay vacant for any significant period of time.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI for ENNHRI's report State of the Rule of Law in the European Union 2023</i></p> <p>The NHRI reports the need for better safeguards to the leadership appointment.</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report March 2022, p. 19</i></p> <p>'In accordance with Article 4(1) of the CCDH Law (the Law), members of the CCDH are appointed by the Government for renewable terms of five years. The SCA notes that the Law is silent on the number of times that members may be reappointed and the President may be re-elected, which leaves open the possibility of unlimited tenure. The SCA encourages the CCDH to advocate for amendments to the Law to provide for limits on the number of times that members may be reappointed and the President may be re-elected.'</p>

<p>Principle 5</p>	<p>To ensure independence, the enabling legislation of a NHRI should contain an objective dismissal process for the NHRI leadership, with clearly defined terms in a constitutional or legislative text. The dismissal process should be fair and ensure objectivity and impartiality and should be confined to only those actions which impact adversely on the capacity of the leaders of NHRIs to fulfil their mandate.</p>
	<p><i>Information Provided by the NHRI in 2023</i></p> <p>The dismissal process is defined in the founding law of the Commission as well as in the internal regulation.</p>
<p>Principle 6</p>	<p>Member States should provide NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 3</i></p> <p>working on time- and resource heavy projects such as the biannual report on human trafficking led to the result that some other important projects could not be finalised within a reasonable timeframe. However, the NHRI has received additional funding for human resources, which is expected to improve the situation.'</p>

	<p><i>ENNHRI, State of the Rule of Law in the European Union in 2023, p.430</i></p> <p>The NHRI has also applied for and received additional human resources. While it has not had any significant negative experiences regarding resources, it could always need more in order to be able to improve its monitoring abilities. The NHRI is still occasionally obliged to decide not to issue an opinion on draft legislation due to a lack of resources. It is worth noting that because it is attached to the government, it has fewer resources at its disposal and less freedom regarding the allocation of its resources as compared to the institutions attached to the Parliament (CET, OKAJU, Ombudsperson).</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report March 2022, p. 21</i></p> <p>'While acknowledging that the CCDH has received increases in its budget during the past years, the SCA encourages the CCDH to continue to advocate for an appropriate level of funding to carry out its mandate effectively and independently.</p>
<p>Principle 7</p>	<p>NHRIs should have the authority to determine their staffing profile and recruit their own staff, as well as sufficient resources available, in order to fulfil their mandate, so as to permit the employment and retention of staff and to ensure that they receive adequate training.</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report March 2022, pp. 19-20</i></p> <p>'The CCDH does not have full-time remunerated members on its decision-making body. The SCA acknowledges that the CCDH reports that the Secretary General, who acts in a full-time and remunerated capacity, is also involved in the strategic planning and execution of the activities. [...]The SCA encourages the CCDH to advocate for changes to its enabling law to provide for remunerated full-time members in its decision-making body.'</p>

<p>Principle 8</p>	<p>Member States should ensure that NHRIs enjoy adequate access to information and to policy makers and legislators, including timely consultations on the human rights implications of draft legislation and policy strategies.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 4</i></p> <p>‘In addition, unfortunately, the Luxembourgish NHRI does not have adequate access to information and to policy makers and it is not involved enough in all stages of legislation and policy making with human rights implications. Overall, the CCDH has access to information and can access to most of the data it is requesting. But the access largely depends on the authorities involved. Some ministries or administrations are not very cooperative which could be due to the general lack of collecting disaggregated data in Luxembourg. Better data collection and collaboration is therefore still necessary. Others take their time to respond, only respond partially or do not respond at all. This could also be a result of the lack of awareness of the NHRI’s mandate. Some ministries and administrations fully cooperate and respond to the CCDH’s requests for information and meetings.’</p> <p><i>[...] p. 10</i></p> <p>‘As already mentioned above, recently, one Minister was reluctant to cooperate with the CCDH and prevented his administration to communicate important information to the CCDH in the context of its human trafficking report. Other ministries sometimes do not respond to the requests of the CCDH, but, overall, the relationship with state authorities and non-state bodies has improved a lot over the past few years.’</p> <p><i>ENNHRI, State of the Rule of Law in the European Union in 2023, p. 432</i></p> <p>Access to information and documents sometimes is not systematic, and it depends on the topics and actors involved. A case in point the ongoing refusal from the Ministry of Foreign Affairs, the Ministry</p>

	<p>of Economy and the Ministry of Finance to communicate in a transparent manner about their position regarding the due diligence (CSDDD) directive proposal. The improvement of the business and human rights situation in Luxembourg is lacking transparency, notwithstanding the government's frequent recognition of the importance of its multi-stakeholder working group, which is supposed to accompany the implementation of the business and human rights National Action Plan. Non-governmental members of the working group are often not informed on series of important developments. Lastly, in its opinion on the constitutional reform, the CCDH pleaded in favour of the ratification of the convention of the CoE on access to public documents.</p> <p><i>Please, see also recommendation 3.4</i></p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA Report March, 2022, p. 20</i></p> <p>The CCDH also reported it is increasingly consulted by and engages with the Parliament on a variety of human rights issues. The SCA reiterates it is important that the enabling laws of a NHRI establish a process whereby the institution's reports are required to be widely circulated, discussed, and considered by the legislature. It is preferable for a NHRI to have explicit power to table reports directly in the legislature, rather than through the Executive, and in doing so to promote action on them. The SCA encourages the CCDH to advocate for changes to its enabling law to provide the explicit power to table all reports directly in the legislature, rather than through the Executive. The SCA further encourages the CCDH to advocate for its reports to be discussed by Parliament.'</p>

<p>Principle 9</p>	<p>Member States should implement the recommendations of NHRIs and are encouraged:</p> <ul style="list-style-type: none"> - to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame, - to develop processes to facilitate effective follow-up of NHRI recommendations, in a timely fashion and - include information thereon in their relevant documents and reports.
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 4</i></p> <p>‘Moreover, it would be useful to consider reinforcing the impact of the NHRI’s recommendations, for instance by explicitly obliging the government and/or the parliament to respond and justify their (in)actions (at the very least give a timely and reasoned response)’</p> <p><i>[...], p. 5</i></p> <p>‘Another concern raised by the Commission is the fact that the addressees of the NHRI’s recommendations are not legally obliged to provide a timely and reasoned reply. There are no such measures or practices in place to ensure authorities’ timely reply. The responsiveness largely depends on the Ministry and the administration (and its public officials/employees) involved as well as on their commitment to a human rights based approach’</p> <p><i>[...] p. 16</i></p>

	<p>'The CCDH has published numerous opinions and reports, given interviews, exchanged with Ministers and civil society. However, overall, there has been no or only little follow-up on the CCDH's recommendations and questions.'</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report March 2022, p. 20</i></p> <p>Public authorities are encouraged to respond to recommendations from NHRIs in a timely manner, and to provide detailed information on practical and systematic follow-up action, as appropriate, to the NHRI's recommendations. The SCA encourages the CCDH to continue to conduct follow-up activities to ensure that its recommendations are implemented by the relevant authorities.'</p>
<p>Principle 10</p>	<p>When member States grant NHRIs additional competences to perform functions foreseen by international conventions in the field of human rights, such as the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Convention on the Rights of Persons with Disabilities, the NHRI should have access to sufficient resources to develop the capacity to effectively discharge its functions, including having appropriately qualified and trained staff.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>The CCDH did not have access to additional resources when it was appointed National Monitoring Mechanisms for the Implementation of the Convention on the Rights of Persons with Disabilities or National Rapporteur on Human Trafficking.</p>

III. Safe and Enabling Environment

<p>Principle 11</p>	<p>Member States should ensure that NHRIs can operate independently, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of impartiality, integrity, transparency and fairness.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>So far, the CCDH has not detected any issues in this regard.</p>
<p>Principle 12</p>	<p>Member States should foster awareness and the co-operation of all relevant public authorities in relation to the mandate, independence and role of NHRIs, including through training and awareness-raising activities.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 4</i></p> <p>'At least some relevant state authorities have good awareness of the NHRIs' mandate, independence and role of the NHRI but it largely depends on the different state authorities. While some seem to be unaware of the existence, the independence, the mandate and the role of a NHRI (mistaking it for an NGO), an increasing number of state authorities seem to become aware of the NHRI's mandate. Some ministries and administrations, with whom the CCDH is, until now at least, rarely working with (for instance agriculture, environment, SMEs ...), are most likely unaware of the NHRI's mandate independence and role.'</p> <p><i>ENNHRI, ENNHRI, State of the Rule of Law in the European Union in 2023, p.428</i></p>

	<p>With regard to access to legislative and policy processes and follow-up, the Luxembourgish NHRI reports that while some authorities seem still to be unaware of the existence, the independence, the mandate and the role of a NHRI, an increasing number of state authorities seem to become aware of the NHRI's mandate and are willing to cooperate.</p>
<p>Principle 13</p>	<p>Member States should take all measures necessary to protect and support NHRIs against threats and harassment and any other forms of intimidation, including through ensuring functional immunity. Any cases of alleged reprisals or intimidation against NHRIs, their membership and staff, or against those who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 5</i></p> <p>'In terms of measures in place necessary to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions), so far, the Luxembourgish NHRI has not experienced a pressing need for special protection. The Luxembourgish NHRI does not have any form of special protection against such threats or attacks.'</p>
<p>Principle 14</p>	<p>Member States should ensure that confidential information collected by NHRIs in the context of their mandate is privileged and is not unduly made public.</p>

Assessment of implementation by the NHRI	<i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 5</i> 'its deliberations and meetings are protected by a legal confidentiality clause.'
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IV. Co-operation and Support

<p>Principle 15</p>	<p>Member States should take effective measures to enable NHRIs to communicate and co-operate with, in addition to the various levels of administration in the member States, in particular:</p> <ul style="list-style-type: none"> a. counterpart institutions, where appropriate through networking and exchange of information and practices, as well as through regular meetings such as those taking place within the framework of ENNHRI and GANHRI; b. civil society stakeholders, in particular non-governmental organisations and human rights defenders, who should enjoy easy and safe access to NHRIs as part of an enabling environment; c. other human rights structures, including regional, local and/or specialised institutions, notably Ombudsman institutions and equality bodies and their respective networks, where appropriate through jointly organised activities; d. international and regional organisations working in related or similar fields.
<p>Assessment of implementation by the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>As far as the CCDH is concerned, the level of cooperation between different human rights actors is sufficient and, in some cases, encouraged (e.g. interministerial working groups or committees). Since 2020, the CCDH is located in a “House of human rights”, together with the equality body (“Centre pour l’égalité de traitement”) and the Ombudsman for children (“OKAJU”), which facilitated and</p>

improved cooperation between the three entities. The NHRI also regularly collaborates with NGOs and participates in events and working groups organised by civil society (e.g. in the field of rights of persons with disabilities).

However, it is worth noting that some interministerial working groups are lacking transparency and the role of NGOs is not always sufficiently taken into account by the government.

The CCDH also regularly participates in ENNHRI and GANHRI meetings and engages with various international and regional organisations.

