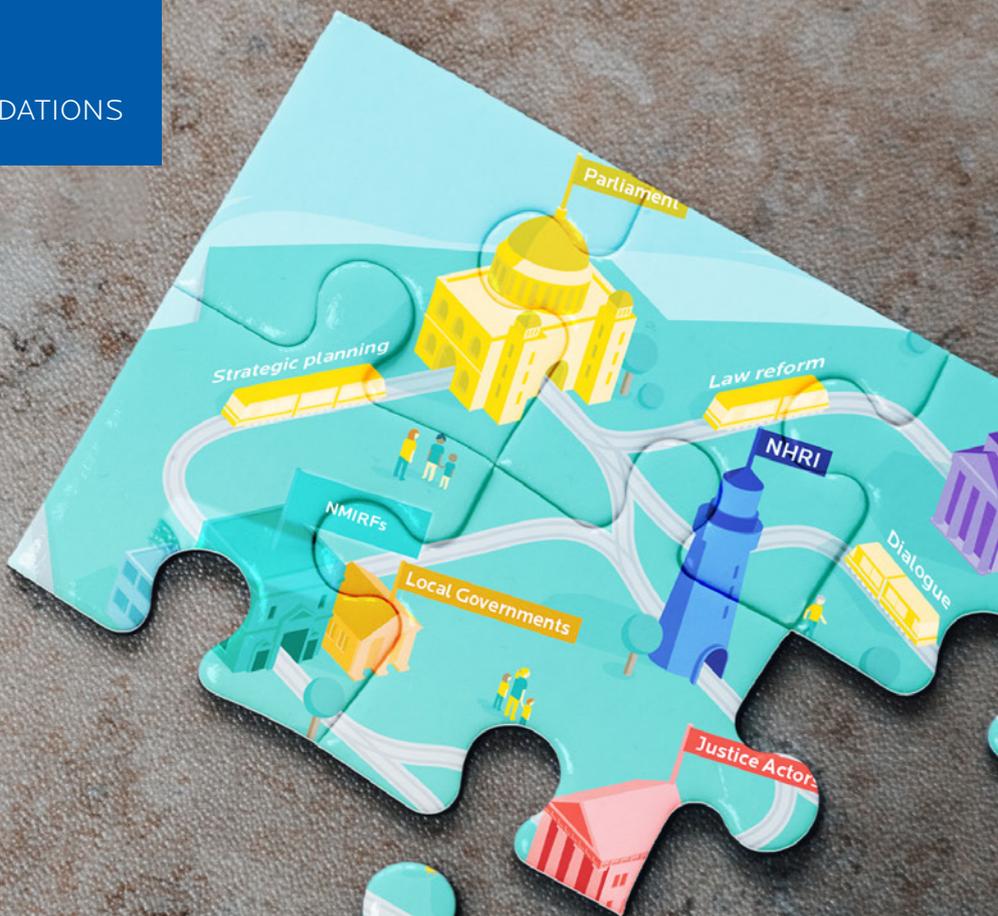


THE DANISH INSTITUTE FOR HUMAN RIGHTS

INTERACTIONS BETWEEN
NATIONAL HUMAN RIGHTS
INSTITUTIONS AND
NATIONAL MECHANISMS
FOR IMPLEMENTATION,
REPORTING AND FOLLOW-UP

RESEARCH AND RECOMMENDATIONS

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INTERACTIONS BETWEEN NATIONAL HUMAN RIGHTS INSTITUTIONS AND NATIONAL MECHANISMS FOR IMPLEMENTATION, REPORTING AND FOLLOW-UP: RESEARCH AND RECOMMENDATIONS

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ABBREVIATIONS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
GANHRI	Global Alliance of National Human Rights Institutions
HRC	Human Rights Council (United Nations)
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
LOIPRs	List Of Issues Prior to Reporting
NHRAP	National Human Rights Action Plan
NHRI	National Human Rights Institution
NMIRF	National Mechanism for Implementation, Reporting and Follow-up
NPM	National Preventive Mechanism (under OPCAT)
NRTD	National Recommendations Tracking Database
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the CAT
SCA	Sub-Committee on Accreditation (of GANHRI)
UN	United Nations
UPR	Universal Periodic Review
URG	Universal Rights Group

Abbreviations specific to the Danish case study:

DIHR	Danish Institute for Human Rights
IHRC	Interministerial Human Rights Committee

Abbreviations specific to the Mauritian case study:

NHRC	National Human Rights Commission
NMRF	National Mechanism for Reporting and Follow-up

Abbreviations specific to the Moldovan case study:

NHRC	National Human Rights Council
OPA	Office of the People's Advocate

ABBREVIATIONS

Abbreviations specific to the Portuguese case study:

NHRC National Human Rights Committee

PDJ Provedor de Justiça (Ombudsperson)

Abbreviations specific to the Korean case study:

NHRCK National Human Rights Commission of Korea

INTRODUCTION

This study is part of a research agenda critically exploring the ‘domestic institutionalisation’ dynamics at play in the field of human rights.¹ This refers to consistent trends, especially since the 1990s, through which states have set up actors, processes and policies dedicated to human rights, in part under the influence of international organisations, state conferences, and eventually law. The international community has sought to conceptualise and support the development of institutional innovations at the national level, in view of enhancing implementation and bridging the gap between commitments and reality.² Over time, different models for ‘national human rights systems’ have emerged, with variations pertaining to ideal actors, processes and frameworks.

After the 1993 World Conference on Human Rights and its final ‘Vienna Declaration’, *National Human Rights Institutions* (NHRIs) have been a particular focus of attention, and hailed as a cornerstone element of national human rights systems.³ NHRIs are independent state actors with a constitutional or legislative basis and a mandate to monitor, promote and protect human rights at the national level. They come in different shapes and forms, yet do share key mandates and features captured in the 1991 Principles relating to the status and functioning of national institutions for the protection and promotion of human rights (‘Paris Principles’)⁴ and later unpacked through multiple guidance and (soft) law provisions.⁵ Many NHRIs have been in place for a long time, with a drastic increase in their numbers in the 1990s.⁶ Their diffusion has been a strategic objective of the United Nations and regional organisations in the field of human rights.

In recent years, a ‘new type’ of actor has been conceptualised and increasingly promoted by the United Nations (UN). *National Mechanisms for Implementation, Reporting and Follow-up* (NMIRFs) are governmental structures mandated to coordinate and prepare reports to, and engage with, international and regional human rights mechanisms, and to coordinate and track national follow-up and implementation. Ideally, they should be ‘standing, [...] benefit from a comprehensive formal legislative or policy mandate, as well as a common intragovernmental understanding of [their] role and political ownership at the highest level, [and] have dedicated, capacitated and continuous staff, building expertise, knowledge and professionalism at the country level’.⁷ Although the idea drew on some states’ practice of setting up governmental human rights focal points, its conceptualisation and the publication of a practical guide⁸ and study⁹ by

the OHCHR in 2016 has provided a reference point for such structures, and led to their active promotion by the UN.

The 'coming of age of NMIRFs'¹⁰ as a new ideal-type of state human rights actor deserves attention in and of itself, but also in relation to what it means both in theory and in practice for other actors and the distribution of roles in national human rights systems. National human rights systems include courts, parliaments, civil society, academia, etc., but as this introduction will set out, the NMIRFs' apparition could have particular implications for NHRIs. NHRIs have over the last three decades been given a centrepiece role in national implementation and monitoring systems. They have particularly invested in international reporting and follow-up-related processes. The emergence of governmental actors focused on such functions but potentially assigned with much larger mandates in the national systems is therefore of particular interest to NHRIs. What is more, in practice, both NHRIs and NMIRFs navigate complex institutional identities and spaces, which potentially makes their interactions even more intricate.

1. NHRIS AND NMIRFS AS TWO 'CORNERSTONES' OF NATIONAL HUMAN RIGHTS SYSTEMS IDEALS PROMOTED BY THE UN

Since the 1993 Vienna Declaration called on states to adopt NHRIs,¹¹ the UN has considerably invested in them. NHRIs have been 'envisioned as a link between the international and national levels, with the aim of furthering the work of the UN in the area of human rights'.¹² As such, they have been boasted as a strategic relay of the international community at the national level. Regional organisations have similarly emphasised the strategic importance of, and their cooperation with, NHRIs.¹³

NHRIs' importance was also conceptualised in relation to their national functions, amongst other local actors. On multiple occasions, UN agencies have recalled that, 'when they are in compliance with the Paris Principles, NHRIs are among the cornerstones of national human rights protection systems [...]. In the midst of all [domestic] actors, NHRIs are unique: they exist in dynamic position between States, civil society and other actors, offering a neutral and objective space in which to interact, develop human rights laws and policy, and exchange ideas'.¹⁴

For long, NHRIs were the single, conceptually well-identified, state structure entirely dedicated to all human rights, held to occupy a unique and central space in national human rights systems. As such, many hopes and potential additional functions have been associated to NHRIs. Scholars and practitioners regularly extrapolated the roles of NHRIs,¹⁵ referring to them as an institutional arrangement well-fitted for a range of new emerging objectives, such as democratising policies in the context of 'good governance' agendas,¹⁶ operationalising economic and social rights and making them accountable,¹⁷ or the realisation of sustainable development goals,¹⁸ to mention a few examples.

The emergence of NMIRFs necessarily casts new light on such pre-existing tendencies to maximise the strategic diffusion and central role of NHRIs. NMIRFs themselves are now regularly heralded as a central element of national human rights systems and key counterpart of the UN. According to the UN Secretary General, these structures have ‘the potential to become one of the key components of the national human rights protection system, bringing international and regional human rights norms and practices directly to the national level by establishing a national coordination structure. This may result in the building of professional human rights expertise in every State’.¹⁹

Since 2016, the UN Human Rights Council, as well a consistent group of states during Universal Periodic Review (UPR) reviews, actively call for the establishment or reinforcement of NMIRFs. Those structures are now propagating around the world, with the support of the UN agencies²⁰ and other actors.²¹ Recent UN reports on these mechanisms have highlighted that in many cases, their role ‘have expanded [beyond reporting and follow-up]. They are increasingly involved in human rights advocacy, planning and implementation... [They] have become increasingly proactive in promoting human rights mainstreaming.’²² Reflecting these wider mandates, the UN Human Rights Council added an ‘i’ in NMIRFs acronym since 2019, standing for ‘implementation’ – not initially present in the 2016 practical guide and initial reports which referred to ‘National Mechanisms for Reporting and Follow-Up’.²³

NHRIs and NMIRFs co-exist. In recent years, the UN have on various occasions recalled that NHRIs and NMIRFs are both ‘key’²⁴ and ‘complementary elements of the national human rights protection system, which also includes an independent and effective judiciary and a functioning administration of justice, a representative national parliament with parliamentary human rights bodies; and a strong and dynamic civil society.’²⁵

Nonetheless, what would be the ideal distribution of roles and functions to ensure complementarity of roles in national human rights systems has not been unpacked in international guidance. The emergence of NMIRFs invites the UN and other norm entrepreneurs to re-assess the relevance and necessity to maximise NHRIs’ roles, and better consider complementarities and distinction of mandates,²⁶ so as to avoid ‘confusion’.²⁷ The increasing UN investment vis-à-vis NMIRFs also begs the question of a possible displacement or competition for international attention and resources – as cooperation funding to support national actors, but also expert/political attention in international oversight structures, are finite. Is there a risk that the strategic support to NHRIs will decrease as the NMIRFs agenda expands?

2. INTERNATIONAL REPORTING AND FOLLOW-UP AS PROCESSES INVESTED BY NHRIS AND NMIRFS

Reporting is an obligation of states that exist under nearly all human rights treaties. Although treaties commit all branches and levels of governments and reports are meant to be national reports covering all efforts to implement treaties and previous

recommendations, it is generally the task of the executive branch to prepare reports and represent states internationally.²⁸

Nonetheless, dynamics around international reporting and follow-up, as well as engagement with international law and international oversight mechanisms, have constituted a core area of activities for NHRIs, and is part of the common expectations placed on them. The Paris Principles spell out that NHRIs prerogatives shall include:

- to encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- to contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- to cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions.

Drawing on these 'essential requirements of the Paris Principles',²⁹ NHRIs have accumulated extensive experience in engaging with international and regional human rights treaty bodies, courts, special procedures, and other key processes such as the Universal Periodic Review. Testament to the interest of NHRIs in international reporting, 66% of A-Status NHRI submitted an alternative report during the first cycle of the UPR. This figure rose to 79% in the second cycle, and to around 97% in the third cycle.³⁰

Treaty bodies and other UN special procedures have increasingly flagged cooperation with NHRIs as 'critical'.³¹ Over the years, NHRIs have acquired various rights to contribute to international oversight structures work, through *inter alia* alternative reports and statements.³² They now participate in international proceedings as actors in their own right and have unprecedented access to various UN and regional fora.³³

A pre-requisite for NHRIs to carry out their alternative and independent reporting and follow-up roles during reviews is evidently that the state meets its reporting requirements. In the absence of a national report and a review, the independent (alternative) reporting activities of NHRIs becomes more difficult. NMIRFs, which aim at ensuring more diligent and predictable reporting by the government, may therefore offer enhanced avenues for NHRIs to be involved in, and leverage, international reviews and recommendations.

In practice, NHRIs' contribution to reporting and follow-up has tended to extend beyond their own mandate and roles in reporting as per the Paris Principles. Their activities have also entailed the mobilisation of other national actors, notably through empowering and facilitating civil society organisations' involvement in

reporting, as well as the dissemination of recommendations and tracking of follow-up. In the absence of permanent or functioning governmental procedures for follow-up, NHRIs have also on occasions played a role in 'identifying the relevant government departments that should be responsible for implementing the concluding observations and making them aware of their responsibilities, including advising them on how to respond to UN treaty body findings.'³⁴

Some of these activities have been performed by NHRIs in part to make up for the absence of a centralised and streamlined processes for civil society consultations or follow-up to recommendations. The rise of NMIRFs, whose core capacities should precisely – according to the OHCHR – include engagement with civil society and follow-up coordination and tracking, has the potential to reassign or rationalise roles that have in the meantime been performed by NHRIs. For instance, in New Zealand, the Human Rights Commission (NHRI of New Zealand) was until recently tasked to develop and publish an online national human rights action plan, which assigned recommendations follow-up responsibilities to distinct state actors.³⁵ The creation of the 'Human Rights National Mechanism' (NMIRF of New Zealand), decided by the government in December 2021, changes this and now foresees that the NMIRF will operate a monitoring tool and process recording recommendations, assigning responsibilities and tracking follow-up.

In short, the emerging guidance and increasing diffusion of NMIRFs have the potential to either consolidate/formalise, or recast/reorganise some of the reporting and follow-up processes taking place at the national level. Are legal or practical redistributions of roles amongst state actors observable? For instance, do NHRIs transfer some follow-up or consultations capacities or competencies to newly created NMIRFs? Do these renegotiations of institutional scope and boundaries mean that NHRIs can redirect their work other core tasks and avoid substituting for missing actors, or that some their roles are mistakenly governmentalised?

3. NHRIS AND NMIRFS AS COMPLEX ACTORS IN PRACTICE

The intrinsic difference in nature between NHRIs and NMIRFs is diligently recalled by the UN. The 2016 practical guide reminds that 'a national mechanism is a **government structure** and thereby differs from a national human rights institution (NHRI), which is **independent** and has a mandate to promote and protect human rights at the national level and to submit recommendations to the Government.'³⁶ However, neither NHRIs nor NMIRFs have easy institutional spaces to navigate in practice, which can further complicate their interactions.

The 'unique position' of NHRIs as a state actor yet independent from government has long been identified, not least by NHRIs themselves.³⁷ Besides documenting and reporting on human rights independently, and in many cases handling complaints against human rights abuses committed by the government, NHRIs are also part of the state and play a 'constructive role [...], in particular in their advisory

capacity to the competent authorities.’³⁸ Unlike civil society, NHRIs enjoy an official and insider’s position within the state, that usually comes with legal authority, better access to state actors and resources.³⁹ Advocates of NHRIs have regularly underlined that this status can be leveraged to transform administrations towards enhanced human rights compliance and implementation. It is also expected that NHRIs may comment and suggest solutions regarding ‘problems in coordination, allocation and acceptance of responsibilities between different government departments and levels of government’.⁴⁰ This means that NHRIs can comment on the establishment and operations of NMIRFs.

The conceptual and, even more so, operational intricacies of this position are a recurrent theme of scholarly investigations.⁴¹ Too much distance may impede NHRIs’ ability to influence and persuade the state from within, whereas too much closeness may hamper its legitimacy and its state watchdog role. Research shows that the balancing of advisory and critical functions has evolved over time in international guidance and the interpretation of the Paris Principles, towards an ever stricter functional and institutional independence of NHRIs.⁴² It also concludes that the benefits that NHRIs’ ‘unique position’ can trigger are very difficult to harness in practice. Despite an increasingly abundant guidance on independence, NHRIs still have to iron out for themselves how to operationalise independence locally, and what it exactly means in practice to pursue both constructive engagement and remain critical and independent, in their everyday work and interactions with the government.⁴³

A compounding factor is that NHRIs shall be independent from the government, but are established by the state – usually by the executive and legislative powers. Independence is not only a function of the NHRIs own positioning and attitude, it is also – and perhaps primarily – influenced by external factors in the hands of other state actors, such as resources and staffing, nomination of leadership, etc. In words of David Langtry and Kirsten Roberts Lyer, ‘as state-established institutions [NHRIs] run a considerable risk of being state mouthpieces, or of being restricted to the point of ineffectiveness.’⁴⁴ The recurring materialisation of this risk explains why so much emphasis has been put by international and regional actors – including networks of NHRIs – to specify and increasingly expand conditions for independence, and verify compliance with these conditions, notably through the periodical (re-)accreditation process organised by the Global Alliance of National Human Rights Institutions (GANHRI).⁴⁵

NMIRFs themselves are not deprived of a certain degree of complexity. Their potential ambivalence pertains to their underlying strategic objectives pursued by the government through their establishment. Prima facie, NMIRFs and other governmental human rights focal points are positively appreciated in international law and guidance, not least to rationalise and make reporting and follow-up more efficient. The Group of Friends on NMIRFs for instance insists that NMIRFs are increasingly recognised ‘as a crucial human rights instrument, including as a catalyser of the prevention of human rights violations. Indeed, NMIRFs are

increasingly called upon to support human rights implementation efforts and, more generally, at integrating human rights recommendations into the Sustainable Development Goals'.⁴⁶

At the same time, governments and their administrations defend states' records in the field of human rights (e.g., where there are allegations of human rights violations), or – worse – may even be instrumental in planning and executing restrictive policies. NMIRFs usually play a primary role in deflecting international criticisms. However, there is a thin line between seeking to genuinely present the implementation efforts of the states in the field of human rights, and purposely diverting attention away from violations.⁴⁷ In an article exploring the 'tensions and ambiguities' of NMIRFs, Jeremy Sarkin argues that:

a key issue is about when and how the state creates [NMIRFs]. At times, there is a genuine desire to improve state reporting, while on occasion states create them because it is thought that they will reflect positively on the country. A real concern for states in the state reporting process is that they come off looking relatively positive in relation to their human rights situation. Hence, an overarching concern is that these domestic institutions are still under the control of the state so as to ensure that the reporting process is done in a way that does not make the country look bad.⁴⁸

Sarkin finds that these ambiguities regarding the objectives of, and degree of state control over, NMIRFs are reflected in their composition (openness to observers from, e.g., from civil society or NHRIs), as well as in the quality of their consultations processes, their transparency and most importantly in their actual work and emphasis towards implementation of rights and recommendations, rather than simply focus on reporting.⁴⁹

In short, while conceptually NHRIs and NMIRFs are distinct and unique, both NHRIs and NMIRFs navigate complex positions in practice. Contrary to state actors such as parliaments and courts, which enjoy established and well understood roles and institutional identities, the distinctiveness of NHRIs and NMIRFs are not always well understood, for instance by politicians. They both are administrations, that sometimes rely on the same pools of staff from the civil service. Questions regarding the objectives predicated their establishment or pursued by their leadership, as well as their degree of independence/openness as reflected in organisation and practice may serve to blur institutional identities and boundaries.

4. OBJECTIVES OF THE STUDY

The overarching objective of this study is to shed light on, and analyse, the interactions between NMIRFs and NHRIs, both in theory and in practice. It seeks to investigate the questions raised in this introduction. Doing so, the study will contribute to the understanding of evolutions of ideal models for national human rights systems, following the emergence of NMIRFs.

These issues are important concerns for NHRIs, which explains why this study has been commissioned by an NHRI. It is a scholarly investigation undertaken by researchers, which could serve as a basis for NHRIs to understand and comment on the evolutions of UN guidance for national human rights systems. NHRIs have a legitimate interest and role to play in voicing out their opinions on the development of NMIRFs and future guidance on them. As seen above, one of the roles of NHRIs is to advise governments, including on how they organise themselves in view of performing their human rights obligations. As such, for instance, the Danish Institute for Human Rights has issued recommendations on the mandate and procedure of the Danish NMIRF in its UPR parallel report.⁵⁰ Treaty bodies have further pointed out that NHRIs ‘have an important role in encouraging their respective States to meet their reporting obligations’.⁵¹ It is therefore essential for NHRIs to consider whether they should encourage the establishment of NMIRFs in their country, and, in doing so, whether the existing guidance and experience of NMIRFs is relevant. This study could be useful for other NHRIs and their networks to take a position on the development of future guidance on NMIRFs.

The immediate contribution of the study is to fill a gap in knowledge in the nascent scholarship on NMIRFs. While NHRIs are well-researched,⁵² research on NMIRFs is still at its very infancy.⁵³ It has rarely addressed how the rise of NMIRFs has impacted other actors in national human rights systems,⁵⁴ or the overall guidance and practice of such systems.⁵⁵ Two recent stock-taking exercises on NMIRFs have considerably helped in raising global and country-specific knowledge on NMIRFs. One is a 2022 report by the OHCHR based on a global survey and regional consultations organised in 2021,⁵⁶ and the second is an upcoming report based on a survey, conducted by the Universal Rights Group (URG), a Geneva-based think-tank supportive of the NMIRFs agenda.⁵⁷ However, these limitedly addressed NMIRFs’ relations to NHRIs. The 2021 regional consultations actually ‘highlighted the need to clarify and maintain the respective roles of national mechanisms and national human rights institutions to ensure the necessary complementarity, while guaranteeing the independence of national human rights institutions.’⁵⁸ Both the OHCHR and the URG pointed to the need to complement their data-collection initiatives with some research addressing NHRIs-NMIRFs relations. As such, the Terms of Reference for this study were discussed with those organisations, in view of maximising the relevance of the study.

The study hopes to support the development of international guidance on NMIRFs. NHRIs are the subject of a wide corpus of soft law, practical guidance and even legal treaty provisions.⁵⁹ Many of those documents spell out how NHRIs are expected to interact with other actors, including courts, parliaments or civil society, and even to include some of those in their composition. NMIRFs, in contrast, have very little normative and practical frameworks to refer to. These are essentially the 2016 OHCHR’s Practical Guide on NMIRFs,⁶⁰ a series of resolutions adopted by the UN Human Rights Council since 2017,⁶¹ and regional initiatives, such as the ‘Pacific Principles of Practice of NMIRFs’ launched by the Pacific Community on 3 July 2020 and endorsed by eight states.⁶²

Initiatives are ongoing to develop further practical and possibly normative guidance for NMIRFs. The OHCHR, based on the 2022 resolution adopted by the UN Human Rights Council, is preparing tools to guide the work of NMIRFs, notably in the form of a 'virtual knowledge hub'.⁶³ The URG advocates for normative developments and possibly the adoption of universal principles for NMIRFs. In December 2022 in Marrakech, around 20 NMIRFs gathered in an International Seminar convened by the Interministerial Delegation for Human Rights of the Kingdom of Morocco in partnership with the Danish Institute for Human Rights, calling for the development of further (practical) guidance for NMIRFs, and flagged the question of relations with NHRIs as one of the key areas needing more clarity and guidance.⁶⁴ NMIRFs present at the Seminar supported the idea of creating a network of NMIRFs.

In these initiatives, NMIRFs and their promoters actually aspire to hear from NHRIs. They look up to NHRIs as a global phenomenon for inspiration, seeking to emulate how NHRIs became standard actors in national human rights systems. This is especially the case with regards to the opportunity of developing standard principles for NMIRFs. Indeed, the Paris Principles are regularly taken as examples by both NMIRFs representatives⁶⁵ and supporters. Amongst the latter, URG Executive Director Marc Limon argues that:

Today, most countries claim to have a NMIRF. In reality, they are usually just applying this label to whatever national implementation and reporting system they have already put in place. In some ways, this mirrors the challenges faced by NHRIs in their early years of their development – before the 1993 Paris Principles codified their principal characteristics.⁶⁶

In the same vein, the Global Alliance of NHRIs is often mentioned as an example of successful networking avenues from whom NMIRFs could learn.⁶⁷

The study is therefore needed and timely. It fills a knowledge gap and hopes to serve as a basis for NHRIs to feed their perspectives into the NMIRFs' agenda. It draws on and complements ongoing processes aiming at documenting NMIRFs' practice and may in turn contribute to the development of further guidance and tools for their establishment and operations.

5. RESEARCH METHODOLOGY

The research underpinning this study adopted a new legal realist methodology. This approach brings together insights and research methods from both law and social sciences.⁶⁸ Research methods combined:

- legal review and analysis of existing (soft) law, guidance, data and research on NMIRFs and NHRIs; and
- qualitative investigations focusing on select case studies, realised through desk-based documentary analysis as well as semi-structured interviews.

5.1 SOURCES FOR LEGAL ANALYSIS AND DOCUMENTARY REVIEW

Sources for legal analysis and documentary review encompassed all guidance for, and empirical surveys and literature on, NMIRFs, and selected areas of the abundant (soft) law provisions for NHRIs. For the time being, these sources are of limited direct usefulness, in the sense that the guidance on NMIRFs is rare and only touches upon NHRIs in broad strokes, and that guidance for NHRIs does not yet directly include references to NMIRFs.

Having said that, guidance on NHRIs provide ample recommendations on international reporting activities, as well as on relations with executive actors, that may *mutatis mutandis* apply to their interactions with NMIRFs. Conversely, it is useful to consider NMIRFs as the latest iteration and concept as part of a wider range of governmental human rights focal points. The publication of a practical guide and the study in 2016 by the OHCHR introduced the concept of NMRFs. In essence, however, it sought to capture under one umbrella term an heterogeneous range of states practice that emerged in various corners of the world as attempts to streamline the increasingly numerous international reporting processes, sometimes embedded in, e.g., structures implementing national human rights laws or policies.⁶⁹ But some guidance existed on other human rights governmental bodies or functions, e.g. as regards executive actors dedicated to e.g., national human rights action plans, or focusing on thematic fields. For instance, based on Article 33 of the Convention on the Rights of Persons with Disabilities, which obliges States Parties to establish both a focal points or coordination mechanism within government and independent monitoring mechanisms compliant with the Paris Principles, the relevant human rights bodies as well as scholars have started to unpack what relations between the two should be.⁷⁰

5.2 CASE STUDIES – GENERAL APPROACH

In order to best assess the impact on the emergence of NMIRFs on NHRIs, the research approach was predicated on selecting case studies/countries that firstly have a long-established NHRIs that is deemed compliant with the Paris Principles, and secondly have a recently introduced NMIRF. This sequence is aligned with international trends (NMIRFs introduced and conceptualised after NHRIs) and enables one to measure what has changed following the establishment of the NMIRF. Having this pattern shared by all case studies was also essential to allow for comparisons and for the generation of some generalisable findings.

This means that one specific type of situation is not captured by the study. There are countries where NMIRFs (although called something else since 'NMIRFs' were conceptualised recently by the UN) pre-existed NHRIs. For instance, a Human Rights Ministry has been in place in Burkina Faso since 2000 and is amongst a broader mandate responsible for reporting and follow-up, with the support of a dedicated interministerial committee.⁷¹ The NHRI, on the other hand, was first created in 2001, reformed in 2009, and following a long period of lethargy and concerns over its independence, was reconstructed as a brand new NHRI in 2016. The latter has not yet been accredited by GANHRI. Another example is Italy, where

the NMIRF – the Interministerial Human Rights Committee – was first established in 1978 and amended in 2013, but where no NHRI exists, despite numerous international recommendations and legislative attempts to adopt one since 2011.⁷²

These situations may be arguably more unique than contexts where NHRIs predate NMIRFs,⁷³ yet would deserve attention too. While – as illustrated in both the cases of Burkina Faso and Italy – NMIRFs may be formally supportive of, or even tasked with, the establishment of the NHRI, one may wonder whether these contexts can unfavourably impact NHRIs. In both countries, for instance, there are unresolved challenges in the establishment (Italy) and flourishing (Burkina Faso) of the NHRI. This may be due to extensive mandates of the NMIRF (for instance, in Burkina Faso, the Ministry may receive complaints), confusions amongst politicians or parliamentarians about the usefulness of two actors, or competition for resources.⁷⁴

5.3 CASE STUDIES – SELECTION AND ACCESS

The primary criteria used to select countries case studies were:

- the existence of a Paris Principles-compliant NHRI, as demonstrated by GANHRI membership with an A-status. The assumption was that compliance with the Paris Principles means that the NHRI is well established and is active on international reporting issues.
- the existence of an NMIRF. This criterion was approached in a broad manner, and did not seek, e.g., to settle debates over what should or should not be called an NMIRF. An NMIRF was deemed to exist in some shape if it had been mentioned in the 2016 study of the OHCHR, and/or if the country was part of the ‘Group of Friends’ on NMIRFs.

Additional criteria included:

- some evidence of relevant interactions between NHRIs and NMIRFs in the selected countries (as identified through consultations with field offices of the DIHR and discussions with the OHCHR, and reviews of cases raised during UN consultations and the URG surveys);
- geographical balance; and
- access for qualitative research.

Initially, nine countries were selected, from all regions. However, access to relevant institutions proved to be a daunting exercise. Ultimately, the study covers five countries where it was possible to conduct interviews to complement desk-based documentary reviews. These are Denmark, Mauritius, Moldova, Portugal and the Republic of Korea. There is therefore an acknowledged prism on Europe. As will be presented in Chapter 2, these case studies cover different types of set-ups in terms of NHRIs and NMIRFs institutional designs.

Research methods for case studies included documentary reviews of activity reports and inputs to international reporting and follow-up processes, as well

interviews. Online and on-site semi-structured interviews were conducted with NMIRFs, NHRIs and when relevant civil society representatives and OHCHR's country offices staff. When possible, interviews were conducted with several staff within the same organisation.

In total, 16 interviews were conducted over the course of 2022 and 2023. This included six NHRIs representatives, six NMIRFs representatives, as well as one in-country CSO and two OHCHR country offices representatives. In addition, representatives from an international think-tank working on NMIRFs and from one regional NHRIs network were interviewed as resources persons. For two countries (Mauritius and the Republic of Korea), it was only possible to interview one of the two key institutions. Hence, although it was possible to triangulate data through other sources, they are discussed less comprehensively in the report.

6. OVERVIEW OF THE STUDY

The study is organised as follows:

- Chapter 1 reviews existing guidance, (soft) law, data and research that can inform and serve as a reference point for organising and conceptualising interactions between NMIRFs and NHRIs.
- Chapter 2 introduces the case studies selected for the research. It presents the institutional state of play in Denmark, Mauritius, Moldova, Portugal and the Republic of Korea, focusing on the establishment, composition and mandates of the NHRIs and NMIRFs in each of the five countries.
- Chapter 3 presents and cross-analyses data generated by the case studies, for each of the distinct types of interactions between NHRIs and NMIRFs identified in Chapter 1.
- Chapter 4 identifies ten key findings that emerges from the research.

In the study's conclusion, the authors suggest a series of recommendations that NHRIs might consider and endorse in order to contribute to the ongoing expansion of NMIRFs.

CHAPTER 1

GUIDANCE INFORMING NHRIS-NMIRFS INTERACTIONS

The present chapter reviews existing guidance, (soft) law, data and research that can inform and serve as a reference point for organising and conceptualising interactions between NMIRFs and NHRIs. The different sections look at: the composition and membership of the two types of actors; their respective roles in international reporting; the composition of official delegations for international reviews; the roles of NHRIs and NMIRFs in follow-up to international recommendations; other types of possible international engagement in which both actors may play a role (individual communications and country visits); other types of interactions that may be structured around national dynamics of human rights implementation; and finally whether guidance spells out how to methodologically organise interactions. The chapter concludes with a commentary based on these provisions and their analysis.

1. COMPOSITION AND MEMBERSHIP

NHRIs and NMIRFs are not homogenous bodies with a distinct and unique type of membership.⁷⁵ By essence, both NMIRFs and NHRIs comprise representatives of multiple state- and, for NHRIs, non-state actors. This is a condition for efficiency, given their transformative and coordination mandates, but also, in the case of NHRIs, one of the requirements for their independence. Multiple memberships raise questions about the potential overlap in institutional arrangements and composition between NHRIs and NMIRFs.

1.1 RECOMMENDATIONS EMANATING FROM GUIDANCE FOR NMIRFS

In 2016, the OHCHR found that 'there are four main types of national mechanisms, depending on their location and degree of institutionalization and status: ad hoc; ministerial; interministerial; and institutionally separate'.⁷⁶ With time and increased knowledge about NMIRFs, the typology of NMIRFs appears to have evolved. First, the question of permanency has been parked aside from that of the composition – with an increasing convergence towards assuming that NMIRFs shall ideally be permanent by definition.⁷⁷ Second, the categorisation as 'ministerial, interministerial, and institutionally separate' seems to be nuanced. Based on the surveys and regional consultations organised in 2021, the OHCHR found that 'most States identified their national mechanisms as institutionally separate or functioning under the leadership of a single ministry. [...] In both cases, the interministerial set-up through a network of focal points features prominently.'⁷⁸

In other terms, it becomes an essential feature of NMIRFs to include an interministerial structure, supporting/supported by either a unit in a ministry, or a separate governmental agency. For the OHCHR, ‘an institutionally separate national mechanism functions with its own budget and staff, and is structured into internal directorates, programmes and subprogrammes. A national mechanism led by a single ministry usually relies on the staffing, budget and other resources of that ministry.’⁷⁹

The scope of the ‘interministerial’ dimension has also evolved. It is now widely expected to include a wider range of state actors and institutions: ‘Increasingly, the membership of national mechanisms extends to representatives from the parliament, the judiciary, statistics offices and sometimes local authorities such as municipalities.’⁸⁰ This extension is supported by the OHCHR. However, membership extension poses certain questions when it comes to NHRIs. First, there is a functional distinction amongst state actors with whom NMIRFs engage, depending on what the NMIRF expects from them. According to the OHCHR, an NMIRF ‘coordinates’ information-sharing and data-collection with governmental entities as well as the statistics offices, parliaments and the judiciary, but ‘consults’ with NHRIs as well as civil society.⁸¹ Second, NHRIs are treated differently in order to safeguard their essential feature of independence. NHRIs shall participate in NMIRFs activities, yet without voting rights. According to the 2016 Practical Guide:

NHRIs should by their very nature remain independent (often ensured by involving them in meetings of the national mechanism for reporting and follow-up, without membership status or voting rights).⁸²

Governments should therefore ‘systematically include NHRI representatives in the national mechanism’s structure and working groups, and in plenary meetings (without voting rights in order to preserve their independence in line with the Paris Principles).’⁸³

The 2022 OHCHR report based on the regional consultations flags an evolution. With regards to the functional distinction of NHRIs, the report points out that, ‘in practice, an increasing number of States involve national human rights institutions beyond mere consultation. A signal of this shift is the inclusion of representatives of national human rights institutions as members of national mechanisms for implementation, reporting and follow-up’, as is the case in Kenya, Saudi Arabia and Senegal.⁸⁴ It further adds that ‘membership of some national mechanisms extends to selected civil society organizations.’⁸⁵ The 2022 report limits itself to mentioning that in those cases, the fact that NHRIs and CSOs are entities independent from government means that they should also continue ‘to play their oversight role, for example by submitting separate alternative reports to human rights mechanisms’.⁸⁶

At the regional level, states and intergovernmental bodies have also called for widely encompassing state mechanisms for implementing regional or international law.

In 2018, the African Commission on Human and Peoples' Rights organised a 'Regional Seminar on the Implementation of Decisions of the Commission', in which it concluded that 'States Parties should: establish a central mechanism or unit at national level responsible for coordinating issues regarding implementation of decisions of the Commission; [and] ensure that the central mechanism is adequately funded and represented, with an open-ended composition of State actors, NHRIs, and inter-governmental organizations'.⁸⁷

States of the Pacific Community found in 2020 that NMIRFs should 'be permanent and established by the executive or legislature', and should 'include representation of all primary actors involved in the implementation of human rights including, but not limited to, government ministries and agencies, statutory bodies, parliamentarians, the judiciary, civil society, national human rights institutions, traditional and religious leaders/groups, national statistics offices and the private sector. Different levels of membership of the NMIRF may be appropriate (e.g. full / observer members)'.⁸⁸

1.2. RECOMMENDATIONS EMANATING FROM NHRIS' GUIDANCE

Guidance for NHRIs does not yet directly consider NMIRFs. However, existing guidance addresses the position of governmental/administrative officials in the composition and staff of NHRIs. Generally, the Paris Principles foresee that NHRIs composition should ensure representation or involvement in the appointment of its members of all 'social forces' and 'powers' impacting human rights, including non-state and state actors. If governmental department officials are included in NHRIs' membership, the Paris Principles add that they should participate 'only in an advisory capacity'.

As shown by Meuwissen, the inclusion of governmental representatives was a conscious choice made by NHRIs drafting the Paris Principles to ensure their relevance and connectivity vis-à-vis their main target: the duty-bearers. The proceedings of the Paris Workshop recall that:

one of the key features of those institutions [...] was that they formed links between the experts and representatives of associations, on the one hand, and those of government agencies or departments, on the other. It was therefore important that the various public authorities should be represented in these institutions at a high level, particularly the various ministries whose action had the greatest impact on human rights, not in order to take part in decision-making, but to give and receive information and to engage in as regular and trustful a dialogue as possible.⁸⁹

The interpretation given by GANHRI has been increasingly strict throughout the years. In 2008, the General Observations of its Sub-Committee on Accreditation merely recalled that 'government representatives on governing or advisory bodies of [NHRIs] do not have decision making or voting capacity'.⁹⁰ In 2013, the Sub-Committee took a stronger approach. Since then, it finds that:

Government representatives and members of parliament should not be members of, nor participate in, the decision-making organs of an NHRI. Their membership of, and participation in, the decision-making body of the NHRI has the potential to impact on both the real and perceived independence of the NHRI. The SCA recognizes that it is important to maintain effective working relationships, and where relevant, to consult with government. However, this should not be achieved through the participation of government representatives in the decision-making body of the NHRI.

Where governmental representatives or members of parliament, or representatives of government agencies, are included in the decision-making body, the NHRI's legislation should clearly indicate that such persons participate only in an advisory capacity. [... Their] participation [...] should be restricted to those whose roles and functions are of direct relevance to the mandate and functions of the NHRI, and whose advice and cooperation may assist the NHRI in fulfilling its mandate. [...]

The SCA acknowledges the value in developing and maintaining effective links with relevant ministers and government agencies, particularly where cooperation will assist in promoting the NHRI's mandate. However, it stresses that this must be done in a way that ensures both real and perceived independence of decision making and operation, and avoids a conflict of interest. The creation of Advisory Committees is an example of a mechanism where such relationships can be maintained without impacting on the NHRI's independence.⁹¹

The interdiction is not absolute, but considerably limited,⁹² and the Sub-Committee proposes measures to operationalise it, such as making it explicit in rules of procedure that they could be excluded from attending meetings where final deliberations and strategic decisions are made.⁹³

Guarantees of independence do not only pertain to the position of executive branch representatives in NHRIs' membership, but also influence its staff. While the Paris Principles only made a general reference to the importance of an NHRI's funding as enabling it to 'have its own staff', the 2002 Optional Protocol to the Convention against Torture explicitly spelled out that independence entails that of the personnel of national preventive mechanisms,⁹⁴ and the Committee Against Torture and Subcommittee on Prevention of Torture have both questioned the secondment of staff from government or state authorities to NPMs.⁹⁵

Subsequently, in 2008, GANHRI's Sub-Committee on Accreditation established a cap for secondment of public servants from ministries posted in NHRIs. It foresaw that 'senior level posts should not be filled with secondees, [and that t]he number of seconded should not exceed 25% and never be more than 50% of the total workforce'.⁹⁶ In 2013, the conditions were rephrased, assessing that 'staff should not

be seconded or re-deployed from branches of the public service⁹⁷ and limiting the number of secondees to 25% ‘except in exceptional or relevant circumstances’.⁹⁸ In 2018, the SCA went further and found that NHRI shall not ‘accept assigned personnel from government agencies, except in exceptional or relevant circumstances’ yet recalled that it may be the decision of the NHRI ‘to hire a public servant with the requisite skills and experience, [as] there may be certain positions within an NHRI where such skills are particularly relevant. However, the recruitment process for such positions should always be open to all, clear, transparent, merit-based and at the sole discretion of the NHRI’.⁹⁹

2. ROLES IN INTERNATIONAL REPORTING

This section focuses on the submission of the reports to international and regional oversight bodies. It spells out two dimensions. First, how strong is the expectation that NHRIs should prioritise international reporting processes? When they do, should they rather contribute to state reports, or report independently to international bodies?

2.1 GENERAL EXPECTATIONS REGARDING ENGAGEMENT WITH INTERNATIONAL BODIES

It is an essential and primary dimension of NMIRFs to ensure that reports are submitted. It was in fact the unique criteria of effectiveness in the 2016 study of the OHCHR on those actors. For that study, ‘an effective national mechanism for reporting and follow-up was understood to lead to timely reporting and a reduction in backlogs in periodic State reports.’¹⁰⁰ There is since then a growing attention on follow-up to the reporting’s outcomes, once recommendations are issued, as well as recognition of the wider mandates that NMIRFs might be entrusted with, more going towards the direction of national, implementation dynamics (both addressed below).

As regards NHRIs, there is a strong expectation that NHRIs engage with international human rights systems, including through reporting. Based on the Paris Principles (see introduction to this study, section 2), General Observation 1.4 of GANHRI’s Sub-Committee on Accreditation provides details on such expectations. It argues that:

Sections A.3(d) and A.3(e) of the Paris Principles give NHRIs the responsibility to interact with the international human rights system in three specific ways. That is, NHRIs are required:

1. To contribute to country reports submitted to United Nations bodies and committees, and to regional institutions, in line with the States’ treaty obligations;
2. To express an opinion on the subject, where necessary, with due respect for their independence; and
3. To cooperate with the United Nations and any other organization in its system, as well as with regional human rights institutions and the NHRIs of other countries.

The SCA is of the view that NHRI engagement with international bodies is an important dimension of their work. Through their participation, NHRIs connect the national human rights enforcement system with international and regional human rights bodies.¹⁰¹

However, as the review by Langtry and Roberts Lyer has shown, ‘the requirement to engage at the international level is not absolute’.¹⁰² The priority of the NHRIs lies in their work at the national level, and the Sub-Committee:

recognizes the primacy of an NHRI’s domestic mandate, and that its capacity to engage with the international human rights system must depend on its assessment of domestic priorities and available resources. Within these limitations, NHRIs are encouraged to engage wherever possible and in accordance with their own strategic priorities.¹⁰³

Despite this nuance, the Sub-Committee has consistently recommended NHRIs to ensure effective, systematic and constructive engagement with human rights mechanisms. It has also expressed concern where NHRIs’ inputs to international reporting processes were considered too limited.¹⁰⁴

2.2. NHRIS’ INPUTS TO INTERNATIONAL REPORTING PROCESSES

The question of whether NHRIs should focus on independent reporting (providing an alternative report) and/or contribute to the state report has been debated for years. While it is now widely recommended that NHRIs provide their own, alternative report (sometimes called ‘shadow reports’), as a signal of their independence and a welcome and useful contribution to international oversight mechanisms, nuances in approach over the balancing act between each strategy still linger, depending on the source of international guidance.

The Paris Principles require NHRIs to ‘contribute to the reports which States are required to submit to [UN] bodies and committees, and to regional institutions [...] and] to express an opinion on the subject, with due respect for their independence’. This initially translated into heterogeneous practices and requirements, notably by treaty bodies. While most of them privilege alternative reports by NHRIs,¹⁰⁵ the Committee on the Elimination of Racial Discrimination found in 1994 that NHRIs ‘should be associated with the preparation of reports and possibly included in government delegations in order to intensify the dialogue between the Committee and the State party concerned’.¹⁰⁶ And in 2010, the OHCHR still assessed that NHRIs should:

at a minimum, review State reports to ensure that [...] their work or their findings are accurately portrayed. Others may be used as a coordinating point through which information from various ministries, departments and organizations is channelled. [...] NHRI itself may be entrusted with compiling a draft report, which would then be submitted to the relevant

authorities for review. In this case it is important to keep in mind that the obligation to report is a *State* responsibility and the report that is presented to the expert committee is a *State* report.¹⁰⁷

Focusing on independence, GANHRI has adopted a stricter approach, spelled out in its SCA General Observations since 2013. General Observation 1.4 specifically provides that:

While it is appropriate for governments to consult with NHRIs in the preparation of a state's reports to human rights mechanisms, NHRIs should neither prepare the country report nor should they report on behalf of the government. NHRIs must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right. [...]

The SCA wishes to clarify that an NHRI's contribution to the reporting process through the submission of stakeholder or shadow reports under relevant international instruments should be done independently of the state, and may draw attention to problems, issues and challenges that may have been omitted or dealt with inadequately in the state report.¹⁰⁸

In various reviews of NHRIs' compliance with the Paris Principles, the Sub-Committee assessed that contributions to state reports are not sufficient, and that while it is appropriate for NHRIs to provide information to the government in the preparation of the state report, they should provide information to human rights mechanisms in their own right where they have the capacity to do so.¹⁰⁹

The OHCHR's 2016 Practical Guide on NMIRFs stresses the importance of NHRIs being consulted by government in the preparation of state reports.¹¹⁰ Governments should '[s]end draft reports to NHRIs for comments'.¹¹¹ However, it did remind that 'NHRIs should not prepare the reports nor should they report on behalf of their Governments. NHRIs should by their very nature remain independent.'¹¹² The 2022 OHCHR report based on regional consultations of NMIRFs also indicated that 'membership [in NMIRFs shall not] jeopardize the possibility of civil society organizations [and NHRIs] engaging with human rights mechanisms in parallel, for example through the submission of alternative reports'.¹¹³

Overall, while the two types of guidance recall the possibility for NHRIs to both send comments on the state report and report independently at the same time, the NMIRFs guidance insists more on the former, and the NHRIs guidance on the latter. International guidance does not strictly define how to balance the two strategies, and nuances emerge. To mention another example, in 2017, the treaty bodies chairs found that pursuant to the Paris Principles, NHRIs 'have the responsibility to contribute to the reports' prepared by the state, but that some NHRIs 'submit alternative reports and/or provide oral briefings, an initiative that many treaty bodies

welcome'.¹¹⁴ These are nuances, but important ones as NHRIs might be criticised for not investing enough in one or the other. The balancing act between the two strategic approaches is for NHRIs to consider, as guidance is not strictly prescriptive.

3. OFFICIAL DELEGATIONS

NHRIs' participation in state delegations has been subjected to similar debates. Initially, treaty bodies as well as the OHCHR had diverse views on the opportunity for NHRIs to participate or not in official state delegations participating in reviews conducted by international human rights bodies. The Committee on the Elimination of Racial Discrimination found in 1994 that NHRIs should be 'possibly included in government delegations in order to intensify the dialogue between the Committee and the State party concerned',¹¹⁵ whereas in 2002 the Committee on the Rights of the Child recalled that: 'States Parties must respect the independence of these bodies and their independent role in providing information to the Committee. It is not appropriate to delegate to NHRIs the drafting of reports or to include them in the government delegation when reports are examined by the Committee'.¹¹⁶

This ambiguity has in the past led NHRIs to express discomfort and report that government and NHRIs' expectations as to what constitute a good practice could be misaligned and therefore lead to tensions in their interactions.¹¹⁷ It also led some NHRIs to navigate this unsettled aspect 'to their advantage, preferring in some instances to be part of a government delegation, yet in others to act separated, when deciding which tactic would be more effective'.¹¹⁸

The situation has since then been clarified, at least for A-status NHRIs, and from the standpoint of GANHRI. In its General Observation 1.4, GANHRI's Sub-Committee Accreditation finds that:

NHRIs should not participate as part of a government delegation during the Universal Periodic Review, during periodic reviews before the Treaty Bodies, or in other international mechanisms where independent participation rights for NHRIs exist. Where independent participation rights for NHRIs do not exist in a particular fora and an NHRI chooses to participate in proceedings as part of a state delegation, the manner of their participation must clearly distinguish them as an independent NHRI.¹¹⁹

During accreditation processes, NHRIs are reminded that they should not participate as part of the government delegation as 'this compromises the independence, and/or perception of the independence' of NHRIs.¹²⁰

Today, the rule according to which NHRIs shall be participating in their own capacity, at least for those who have independent participation rights, appears consensual. For instance, the nine countries identified by Mutaz Qafisheh's 2013 research for including their A-status NHRIs in their official delegations during the first cycle of the UPR, all corrected the situation in subsequent cycles and no longer include their NHRIs.¹²¹

This consensus is evidently facilitated by the fact that Paris Principles-compliant NHRIs have now their own, well-identified access and procedures in UN and regional fora. While states are encouraged to include state branches other than the executive – the legislative and the judiciary – in state delegations,¹²² NHRIs benefit from their own procedures, nametags, time-allocations, and the ability to have private meetings with some of the treaty bodies, etc. These access and situations are unique and substantial such that Katrien Meuwissen found that the current state of play ‘requires revisiting the traditional conceptualization of the state as one international legal person.’¹²³

Nonetheless, it does not necessarily mean that NHRIs act upon their ability to participate in their own right in reviews. A report by GANHRI in 2016 noted that whilst the vast majority of those in their survey made or were willing to make written submissions to the treaty bodies, only half of respondents had participated in sessions, in part explained by a lack of resources.¹²⁴

4. FOLLOW-UP TO RECOMMENDATIONS

The 2016 OHCHR’s Practical Guide on NMIRFs limits itself to a fleeting reference to the fact that consultations of civil society and NHRIs cover both the reporting and the follow-up phases. Details pertain rather to the reporting phase, and the guidance includes no mention of NHRIs in the running of information management systems or the development and realisation of recommendation implementation plans. The focus is similar in General Observations of GANHRI’s Sub-Committee on Accreditation. The later draws extensively on the reporting phase, but only refer to follow-up once, mentioning that ‘effective engagement with the international human rights system may include: [...] monitoring and promoting the implementation of relevant recommendations originating from the human rights system.’¹²⁵ How should, then, NHRIs be involved in the follow-up to international recommendations?

Over time, treaty bodies have spelled out their expectations as regards NHRIs’ involvement in follow-up to recommendations. A key expectation pertains to the monitoring of the implementation of recommendations by the government, with a clear understanding that implementation is the responsibility of the government. The 2017 meeting of treaty bodies chairs detailed that:

follow-up to recommendations remains a State responsibility. National human rights institutions should, nevertheless, engage with treaty bodies on follow-up to their recommendations and both should keep each other regularly informed of developments. Reviewing the implementation of treaty body recommendations and of other human rights mechanisms is a core responsibility of national human rights institutions accredited with “A” status by the Global Alliance Subcommittee on Accreditation. Standardization of their participation in follow-up meetings at the national level could also be encouraged.¹²⁶

This can be done through sharing information with the treaty bodies themselves, which in some cases is formally organised. The CEDAW Committee, for instance, explains that it 'highly appreciates that NHRIs be officially mandated to ensure a formal follow-up process on the implementation of the recommendations of treaty bodies including CEDAW', and that in its case, 'NHRIs are invited to provide the Committee with written information, including an evaluation of the measures taken by the State party to implement the concluding observations that were selected by the Committee in its follow-up procedure. These contributions should be submitted to the Committee when the follow-up report of the State party is due or once this report is made public within the prescribed deadlines'.¹²⁷ NHRIs, alongside civil society, have also the right to submit mid-term implementation reports under the UPR, even in the absence of a mid-term report submitted by the government itself.

Going further, treaty bodies also express the hope that NHRIs can use other accountability tools in their mandate, for instance at the national level, to raise international recommendations and assess effective implementation by states. They notably encourage NHRIs 'to use their annual reports to monitor implementation of the Committee's concluding observations'¹²⁸ or to 'take into consideration the concluding observations of treaty bodies when undertaking amicus curiae briefs'.¹²⁹ Interesting, the Treaty bodies chairs envision that the creation of NMIRFs should open new opportunities for holding government accountable for implementation. For the Chairs:

The recent introduction of national mechanisms for reporting and follow-up and the publication of the practical guide thereon should be seen as a fertile ground for engagement by national human rights institutions, not only in terms of information sharing, but also with regard to holding the national mechanisms to account, and other cooperating parties during treaty body inquiries.¹³⁰

In addition, NHRIs may carry out a number of activities to enhance follow-up by the government. As recalled by the Human Rights Committee in 2012:

while always recalling that the duty to implement the Covenant rests with States themselves[, NHRIs] can support implementation in a number of ways, which include the following: broadly disseminating the concluding observations to all stakeholders; organizing follow-up consultations involving Government and non-governmental organizations, as well as parliament and other bodies; and advising their respective States to mainstream concluding observations throughout national planning and legislative review processes.¹³¹

NHRIs may have a key contribution to play in relation to the design, and prioritisation, of actions within implementation plans to be adopted by NMIRFs. For treaty bodies chairs:

[NHRIs] could play a very important role in the follow-up of recommendations made by treaty bodies, including in the identification of priority issues. Treaty bodies could recommend that States directly involve national human rights institutions in the development and implementation of follow-up action plans for their recommendations. National human rights institutions could advise their Governments on the establishment of follow-up mechanisms.¹³²

There are examples of multi-sector collaboration in the development of follow-up activities involving government, NHRIs and CSOs, in particular in relation to the UPR. For instance, in Kenya, government officials, the NHRI and CSOs jointly developed in 2015 a national implementation matrix for UPR recommendations, with the support of both the OHCHR and the CSO UPR-Info.¹³³ As has been acknowledged by the OHCHR the creation of a coordinated follow-up mechanism, such as that which exists in response to Malaysia's 3rd UPR review, 'helps in the identification and prioritization of key human rights issues that are most relevant to the domestic context'.¹³⁴

However, the treaty bodies chairs also added that 'more guidelines on how national human rights institutions could engage in such national action plans would be very useful'.¹³⁵ Indeed, some methodological issues have been resolved in connexion to the NMIRFs, whereas others remain unsettled. The primary clarification pertains to the entity preparing such a plan. Whereas in the past, NHRIs have occasionally been tasked to develop such a plan, there is now a recognition that NMIRFs are 'best placed to establish such a recommendation implementation plan and coordinate its follow-up'.¹³⁶ Consequently, while earlier software for developing such plans (e.g., IMPACT OSS) were designed for either NMIRFs or NHRIs,¹³⁷ the newer ones ('National Recommendations Tracking Databases' 2.0 developed by the OHCHR) are only designed for governmental use.¹³⁸ A compounding factor is that not all software encourages public access to the databases, and some governments chose to keep their implementation monitoring systems internal, which is problematic for NHRIs to play their role in monitoring the execution of implementation plans.¹³⁹

Other important methodological questions, in particular how to consult NHRIs and civil society in the development of plans, remain pending. For the UN Secretary General, 'the development of recommendation implementation plans could include some sort of consultations with stakeholders [...], but ultimately, the scope of such consultations will not mirror the scope of those on the development of the national human rights action plans'.¹⁴⁰ As software automatises the production of such plans and seeks to minimise the time between recommendations and actions, methodological clarity as to how to involve NHRIs in the process would be valuable. A final question that the information management systems put to the fore in connexion to NHRIs is whether those systems could be used to implement recommendations from international bodies, but also from NHRIs themselves. As underlined in the 2022 OHCHR report based on the regional consultations of

NMIRFs, ‘when reports from national human rights institutions were integrated in such tools, their recommendations also fed into the overall effort of implementing the human rights obligations of the State.’¹⁴¹

A last, key question is whether NHRIs shall partake in implementation itself, e.g. by being tasked as the executor of follow-up actions in recommendations implementation plans, or whether these responsibilities should entirely be left to the state so that NHRIs strictly limit themselves to monitoring and accountability roles.¹⁴² The Committee on the Rights of Child underlined that dilemma, and insisted that NHRIs shall decide for themselves the action they wish to undertake:

The State ratifies the Convention on the Rights of the Child and takes on obligations to implement it fully. The role of NHRIs is to monitor independently the State’s compliance and progress towards implementation and to do all it can to ensure full respect for children’s rights. While this may require the institution to develop projects to enhance the promotion and protection of children’s rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities.¹⁴³

This last question, pertaining to whether NHRIs can simultaneously engage in monitoring of, and implementation with, governmental actors, is debated in connexion to other dimensions of human rights work that in which NHRIs and governmental actors interact, at the national level (see next section).

5. INTERACTIONS RELATED TO OTHER TYPES OF INTERNATIONAL PROCESSES

NHRIs and NMIRFs are involved in other types of engagement with international and regional human rights bodies, beyond reporting and follow-up to recommendations. These importantly include interactions around specific complaints and cases following human rights violations, submitted to international/regional courts and procedures accepting individual communications;¹⁴⁴ and interactions for the preparation, conduct and follow-up of country visits by UN special procedures mandate-holders, and other international/regional bodies whose mandates include country visits. NMIRFs and NHRIs have distinct responsibilities regarding both types of engagement, but those are brushed over in existing guidance.

The practical guide on NMIRFs swiftly mentions that NMIRFs organise and centrally facilitate ‘responses to communications and follow-up questions and recommendations/decisions received from [international and regional human rights] mechanisms’¹⁴⁵ and engage and liaise with international and regional human rights bodies for the ‘facilitation of visits by special procedure mandate holders or the Subcommittee on Prevention of Torture’.¹⁴⁶ While clearly establishing that

NMIRFs shall be the primary responsible governmental structure in charge of those issues, there is no further guidance for NMIRFs as to how they should carry out these functions.¹⁴⁷ In practice, several states still have a separate structure, frequently anchored in the Ministry of Justice, in charge of the state representation in front of regional and international courts, and in charge of the execution of judgments. Through the survey of NMIRFs it conducted in 2021, the OHCHR further found that some NMIRFs have a more limited scope and do not cover e.g. special procedures, which are the main source of country visits. Indeed, only '56 per cent of respondents to the survey indicated that their national mechanisms had a mandate to engage with the special procedures, while 44 per cent reported that they engaged with regional mechanisms.'¹⁴⁸

As regards NHRIs, GANHRI's Sub-Committee on Accreditation makes a passing reference in its General Observations to the fact that 'effective engagement with the international human rights system may include [...] assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry'.¹⁴⁹ It does not touch upon the role of NHRIs in individual communications and decisions.

At the regional levels, procedures exist for the involvement of NHRIs in the cases before regional courts (as third-party interventions) and for the monitoring of implementation of decisions by governments. In Europe, the Council of Ministers and Department for the Execution of Judgments of the Council of Europe, also spelled out expectations and procedures for NHRIs' involvement in the monitoring of judgments execution,¹⁵⁰ and established special procedures for NHRIs and CSOs to alert the Committee in case of non-implementation. In 2021, the European Network of National Human Rights Institutions launched of an interactive resource hub with guidance and lessons learned from experience for NHRIs on the implementation of judgments.¹⁵¹ Similar expectations have been expressed by other regional bodies in America and Africa.¹⁵² In the Asia-Pacific region, the Asia-Pacific Forum of NHRIs has produced manuals to support NHRIs in carrying out activities in the context of individual communications and country visits.¹⁵³ The Network of African National Human Rights Institutions produced Guidelines for NHRIs in monitor decisions of the African human rights bodies.¹⁵⁴

With regards to individual communications dealt with by treaty bodies, involvement of NHRIs, via e.g. submission of information on the cases, does not yet seem to be a common practice, which some NHRIs have regretted. In its 2020 contribution to the treaty bodies review process, the National Human Rights Council of the Kingdom of Morocco notes that:

Several NHRIs are mandated with a quasi-jurisdictional mandate by handling and deciding upon complaints about human rights violations they receive from individuals or groups. Given this mandate, NHRIs should be consulted

by treaty bodies regarding the cases they receive from various sources. The information provided by “A” status NHRIs may help treaty bodies to have a full picture on the allegations included in individual communications.¹⁵⁵

NHRIs also have the opportunity before some human rights bodies, to submit complaints themselves. NHRIs can submit a communication to the African Commission on Human and Peoples’ Rights, although little use has been made of this opportunity.¹⁵⁶ Use can also be made of the complaints process before some of the UN special procedures.

Potentially, engagement with international actors on issues other reporting and follow-up can lead to a very different type of interaction between NMIRFs and NHRIs. When it comes to individual communications, the two actors can find themselves on opposite sides, either defending the states against accusation (NMIRFs) or supporting victims in making their cases or submitting their own (NHRIs). At this point, guidance for NMIRFs on such issues is very marginal. The need for more guidance, for instance on how victims seeking redress after a favourable judgement may access NMIRFs, has been identified and deserves more attention.¹⁵⁷ In turn, more understanding on how NHRIs and NMIRFs’ distinct roles intersect in these processes would be welcome.

6. OTHER TYPES OF INTERACTIONS RELATED TO NATIONAL DYNAMICS

The mandates of many NMIRFs extend beyond international reporting and follow-up functions. International engagement may be part of a wider set of responsibilities, that the recent addition of ‘implementation’ in their acronyms partly captures. In many countries, structures that would today identify themselves as being ‘the NMIRF’ of a country, have been established long before the concept of NMIRF emerged, and for other primary purposes than international reporting and follow-up. Many human rights ministries were established in the 1990s, in part as a result and perhaps symbol of internal regime changes and democratic transitions.¹⁵⁸ Other types of structures were put in place as recommended by international guidance, but to trigger national dynamics of human rights implementation, and not for the purpose of reporting and follow-up. Around the turn of the Millennium, the UN encouraged states to adopt national human rights action plans, and for this purpose recommended states to set up ‘national coordinating committees’, composed of a wide range of state and non-state actor.¹⁵⁹

Such pre-existing governmental human rights focal points¹⁶⁰ would sometimes be later designated as NMIRFs,¹⁶¹ with or without formal amendment to mandates to their configuration. Two examples may be given. In Morocco, the Interministerial Delegation for Human Rights was established in 2011 in the context of important reforms for the protection and promotion of human rights in the country, following the adoption of a new Constitution and in charge of overseeing the implementation of a future national human rights action plan. Over the last years, it has been showcasing itself as a paradigmatic example of an NMIRF and is now seeking to

play a primary role on the global NMIRFs agenda.¹⁶² In Georgia, the Inter-Agency Council on Human Rights was set up in 2014 to oversee the implementation of the National Human Rights Strategy and Action Plans. Supported by a five-person Human Rights Secretariat, the Council is chaired by the Prime Minister and composed of state institutions and NGOs with an advisory role. It prepares annual reports based on its activities and implementation of plans, reports that are presented in Parliament. The Parliament also reviews annual reports by the NHRI, and, on these bases, adopts resolutions that instruct the government on actions to take. Since the NMIRF concept emerged, the UN Country Team in Tbilisi has been promoting the transformation of the Inter-Agency Council into an NMIRF.¹⁶³

NHRIs, on their side, primarily carry out national functions. GANHRI's Sub-Committee on Accreditation has clearly recalled that the Paris Principles 'recognizes the primacy of an NHRI's domestic mandate, and that its capacity to engage with the international human rights system must depend on its assessment of domestic priorities and available resources.'¹⁶⁴ These functions include *inter alia* independent monitoring and research on human rights issues, the production of annual reports, recommendations to the executive on human rights policies, reviews of legislation and suggestions for revisions, and in many cases, complaints-handling. NHRIs may also receive additional, thematic mandates to act as, or be part of, National Preventive Mechanisms under the Optional Protocol to the Convention against Torture – and thus be tasked to visit places of deprivation of liberty in the country,¹⁶⁵ and/or of the independent monitoring frameworks under Article 33(2) of the Convention on the Rights of Persons with Disabilities. In performing these functions, a key interlocutor is the government.

The range of interactions between NHRIs and governmental structures is far more comprehensive than only interactions around international reporting and follow-up processes. As shown by Stéphanie Lagoutte in her review of state actors within national human rights systems,¹⁶⁶ national actors engage in horizontal and vertical interactions, in both national and international processes. NHRIs always work in both dimensions, whereas NMIRFs may or may not have national implementation mandates too. These national and international mandates may be more or less integrated. Whereas the 2002 Optional Protocol to the Convention against Torture devises a two-tier monitoring system, that integrates national and international monitoring,¹⁶⁷ the ways in which the 2006 Convention on the Rights of Persons with Disabilities (CRPD) was negotiated led to a lesser integrated system: On the one side, CRPD Article 33 requires states to establish a national implementation and monitoring systems – thus looking at horizontal interactions between national interactions; on the other side, Articles 34 to 36 establish a classical system of state reporting and reviews and organise vertical interactions between national actors and the CRPD Committee of experts.¹⁶⁸

The CRPD offers valuable insights for our discussion: first, because it prescribes the establishment of both a governmental 'focal point' (that may or may not also be in

charge of reporting, and may or may not be anchored within the country's NMIRF)¹⁶⁹ and an independent framework ideally including the NHRI; second because this is for the first time a legal obligation, which has therefore led to extensive guidance/committee jurisprudence as well as research and; and third because it distinguishes horizontal and vertical interactions and thus provides a sounding board to delve into the types of interactions that NHRIs might have with governmental actors outside of reporting and follow-up. It has notably been a basis for scholars to dissect the differences between 'implementation' and 'follow-up'.¹⁷⁰

Article 33(1) requires States Parties to designate one or more focal points within government, and ideally a 'coordination mechanism within government', and assigns them implementation responsibilities. Article 33(2) requires States Parties to establish 'a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation', taking into account the Paris Principles. In addition to this apparent simple distribution of tasks to distinct actors, many other articles of the Convention provide for positive and procedural obligations of the States Parties, such as obligations to raise awareness¹⁷¹ and train professionals and staff working with persons with disabilities¹⁷² on the Convention, or the obligation to collect statistical and research data to formulate and implement policies.¹⁷³

Intergovernmental bodies, the CRPD Committee and scholarship have sought to unpack those provisions and the assignment of responsibilities. The criteria of independence has been very strictly interpreted, in relation to the structure and the monitoring role of the NHRI/monitoring framework.¹⁷⁴ The widespread interpretation is that not a single representative of the executive branch shall hold a function, even as observer, in the monitoring frameworks, and the latter shall have no 'direct or indirect relationships with the government institutions responsible for implementing the policies'.¹⁷⁵ Although limitedly addressed in the existing guidance on the Convention, the protection role of NHRIs under CRPD Article (33)2 also suggests a distinct, external role, instructing the government to provide redress where complaints procedures found violations, or implement other types of preventive measures recommended by NHRIs.

At the same time, when it comes to promotional and data collection activities, some scholars have reminded that preserving NHRIs' independence does not prevent, nor should it overshadow, the fact that joint work – or at least coordination – is also possible between governmental focal points and NHRIs/independent frameworks. Some functions are assigned to both of types of actors by the Convention. NHRIs are in charge of 'monitoring', yet data collection is also a clear responsibility of the government under Article 32; and promotional work is both assigned to NHRIs in Article 33(2), and to governments in Article 8. For Gauthier de Beco and Alexander Hoefmans, 'it is not necessary to entrust the independent mechanisms with tasks that are already carried out by other actors'. The scholars thus propose 'the creation of a large platform of dialogue between representatives of civil society organisations and experts, on the one hand, and representatives of the public

administration, on the other hand. This platform should help the independent mechanisms to define their promotional activities.¹⁷⁶

In other words, NHRIs and NMIRFs may entertain a range of additional interactions at the national level, some of which might be difficult to navigate. Some might be more collaborative than what transpires in the NMIRFs' guidance, while others might be potentially more confrontational: when NHRIs have complaints-handling competencies, some have large investigative powers, including summoning officials, entering any public offices and seizing documents, ordering prosecutions or using public investigative tools that amount to blaming-and-shaming. This creates complex patterns of potentially contradictory everyday interactions.¹⁷⁷

National interactions also add challenges as regards where NHRIs draw the line in terms of adopting an advisory or an independent stance. They need to navigate unsettled international guidance: for instance, with regards to participation in action planning, the UN further found that the evaluation phase of a national disability plan should be carried out by 'an independent expert or body that was not significantly involved in [the] design or implementation' of the plan.¹⁷⁸ Thus, this pushed NHRIs in a purely external monitoring role; whereas it found in earlier guidance that NHRIs 'should be recruited to assist in the drafting of [national] action plans and utilized as much as possible in the implementation process'.¹⁷⁹

These insights from national interactions are valuable because they might serve as a reference point to inform some of the discussions on NHRIs-NMIRFs interactions, even for NMIRFs that have a purely international report and follow-up mandate. For instance, joint work of the production of the human rights indicators and data could be envisioned, without infringing the independence of NHRIs. At the December 2022 International Seminar on NMIRFs, OHCHR representatives explained that the Office is actively promoting the idea of opening up Memorandum of Understandings between NHRIs and National Statistical Offices to NMIRFs, so that the three actors cooperate on the production of human rights data. Similar joint activities on awareness-raising and trainings could be envisioned.

It is also important to consider the scope of the mandates of NHRIs and NMIRFs in order to understand the web of interactions they may entertain simultaneously. Some might be synergetic, others more adversarial in nature. Large mandates such as complaints-handling might be a source of friction, especially if the NMIRF has a wide mandate, including a responsibility to answer to NHRIs and civil society. To give one example, the NMIRF of Samoa adopts and coordinates an implementation plan that both follows-up on international recommendations and those of the NHRI.¹⁸⁰ Last, if the NMIRF is the structure assigned with additional thematic mandates (e.g. to be the 'focal point within government' under CRPD Article 33), then it also needs to consider the guidance and jurisprudence emanating from relevant instruments.

7. METHODOLOGIES AND PROCEDURES FOR NHRIS-NMIRFS INTERACTIONS

There is very limited guidance on how NMIRFs can concretely organise their interactions with NHRIs, in terms of structures and methodologies necessary to carry out the expected interactions identified above. The extent of the possible interactions is in fact not even fully reflected in the NMIRFs guidance produced by the OHCHR: NHRIs, like civil society, are only mentioned under the ‘consultation’ capacity of NMIRFs, which does not reflect the full spectrum of potential engagement. There is for instance no mention of NHRIs on the question of follow-up to recommendations.

Even under the ‘consultation capacity’, there is close to no indication as to how these consultations should methodologically take place. This contrasts with abundant attention to consultation processes by governmental focal points in thematic fields, for instance as regards rights of persons with disabilities, where detailed and extensive guidance is provided by the relevant treaty body and special rapporteur in order to ensure that consultation processes are meaningful.¹⁸¹ Taking guidance produced under CRPD Article 33(2) as a reference, Colin Caughey has shown how existing NMIRFs guidance is impoverished in terms of obligations for consultations compared to earlier guidance on thematic governmental human rights focal points.¹⁸² Similarly, the UN Secretary General admitted that consultations to produce recommendations implementation plans – to be realised by NMIRFs – are less extensive than e.g. earlier UN methodologies for consultations under national human rights action plans.¹⁸³ Some advocates suggest that NMIRFs democratise the implementation process through involving civil society and NHRIs,¹⁸⁴ and that international recommendations make up for less consultations at planning stages because treaty bodies and the UPR offer opportunities for civil society and NHRIs to express views.¹⁸⁵ Nonetheless, other NMIRFs supporters, such as scholar and expert Jeremy Sarkin, flag that ‘in many countries, these institutions generally remain closed, opaque and largely unknown outside the government [... NMIRFs] should be designed to lead consultations with NHRIs and NGOs on reporting and implementation. [...] This is seldom done, as they usually only work inside governments.’¹⁸⁶

There is therefore an ample void to fill in terms of how NMIRFs should involve NHRIs – but also civil society – in their various capacities and mandates. So far, UN guidance and reports on NMIRFs only indicate the following, in terms of organisational processes and methodologies for involving NHRIs.

First, based on information provided by NMIRFs themselves, the OHCHR established a connexion between permanency of NMIRFs and likelihood to consult NHRIs. The 2016 study ‘revealed much higher levels of consultation between national mechanisms and NHRIs and civil society than coordination with the judiciary and parliaments. All national mechanisms, irrespective of type, consulted civil society but standing mechanisms were more likely to consult NHRIs

than ad hoc mechanisms.¹⁸⁷ However, in its 2022 report based on a new survey of NMIRFs, the OHCHR found that 64% of the respondents indicated that their government/NMIRF had procedures in place to ensure consultation and dialogue with the country's NHRI, while 27% indicated that this was not the case – and 9% indicated that the question was not applicable to them.¹⁸⁸ This data suggests that the consultations of NHRIs fluctuates, and is far from guaranteed. The report unfortunately does not provide information about the nature and quality of those processes, where they exist.

Second, some organisational suggestions occasionally appear in NMIRFs' guidance. The 2016 Practical Guide proposes that, 'if institutionally separate, the national mechanism can create a separate directorate for coordination with the NHRI and civil society; otherwise, it can establish a "desk" for consulting with the NHRI and civil society during the drafting process'.¹⁸⁹ The 2022 OHCHR report flags that some NMIRFs have entered Memoranda of Understanding with their countries' NHRIs.¹⁹⁰ However, the same report still overall concludes that 'the regional consultations highlighted the need to clarify and maintain the respective roles of national mechanisms and national human rights institutions to ensure the necessary complementarity, while guaranteeing the independence of national human rights institutions'.¹⁹¹

Reversely, there is no guidance for NHRIs to organise their interactions with NMIRFs per se. The Sub-Committee of Accreditation of GANHRI has nonetheless praised NHRIs that established specialised units to monitor compliance by the state with its international human rights obligations.¹⁹²

8. FINDINGS

Based on the reviews and analysis of existing guidance on interactions between NHRIs and NMIRFs discussed in this chapter, the following findings can be drawn.

Firstly, there is so far limited guidance or documentation of practice that directly address NHRIs-NMIRFs interactions. The analysis shows that:

- Guidance for NHRIs does not yet touch upon NMIRFs – which might reflect a lack of awareness or attention regarding the global of NHRIs to the diffusion of NMIRFs.
- Guidance for NMIRFs addresses interactions with NHRIs, but only to a limited extent and under NMIRFs' 'consultation capacity'. There is a need to complement methodologies and guidance for NMIRFs on how to interact with NHRIs in e.g. follow-up activities.
- More generally, the implementation roles and functions of NMIRFs need to be unpacked – and the role of NHRIs therein addressed.
- There are other international processes in which both actors are likely to play roles (country visits of special procedures, individual communications or supranational court cases) which are not addressed by international guidance.

Secondly, some prescriptions for NHRIs-NMIRFs interactions can be inferred from existing guidance for NHRIs. They pertain mostly to institutional boundaries and affect the composition of the two types of actors, as well as of official delegations during international reviews. The single key variable is the objective of preserving NHRIs' independence. The analysis shows that:

- A consensus seems to be emerging that NHRIs should be standing observers/ observing members of NMIRFs, and that no governmental official should have voting rights if they are part of NHRIs structures.
- The interpretations of the Paris Principles have maximised the implications of independence over time, which includes not only factual conditions of independence (e.g. autonomous budget, and clear limits to staffing with regards to employment of governmental officials), but also consideration relating to 'perceived independence'. Signposts for GANHRI's measurement of independence now include: the tendency to reject governmental participation in NHRIs structures, even without voting rights; and that NHRIs do not to participate in official delegations to Geneva.¹⁹³

Thirdly, while independence leads to detailed and ever stricter prescriptions of what should not happen, guidance is much thinner as regards how to organise interactions, and even less so as regards the potential for synergetic cooperation/ joint activities that could co-exist with more critical stances. Some ideas are emerging, such as entering joint Memoranda of Understanding between NHRIs, NMIRFs and National Statistical Offices, for the production of factual and relevant data on human rights in the country.

Fourthly, guidance nonetheless is still malleable as regards certain types of activities at the core of NHRIs-NMIRFs interactions. NHRIs can submit an alternative report on their own to international systems, and/or provide comments to the NMIRFs for the state report. There are different views as regards to which strategy NHRIs should give preference. Similarly, the role of NHRIs in action plans in the field of human rights is subjected to different recommendations. Different sources interpret (perceived) independence as drawing the line in different places, and NHRIs have to navigate and balance these expectations in their everyday activities and interactions with NMIRFs.

Fifthly, interactions between NHRIs and NMIRFs are more complex than just interactions on reporting and follow-up. The nature and methodologies for the 'implementation' roles need to be carefully unpacked, including its key differences from follow-up. There is a range of national processes and functions that NHRIs are mandated to prioritise according to the Paris Principles, many of which include interactions with the government; and that NMIRFs may or may not cover as part of their mandates (e.g. some international reporting and follow-up may be an additional mandate to a large governmental human rights focal points covering national policies, law review, etc.). The analysis shows that:

- NHRIs may balance national and international engagement in different ways. National work is mandatory, while international engagement is encouraged but ultimately 'depend[s] on [the NHRI's'] assessment of domestic priorities and available resources', according to GANHRI.
- Different mandates configurations are likely to frame or impact the interactions. Far-reaching national competencies of the two actors (e.g. investigative and sanctioning powers of NHRIs, addressed to an NMIRF competent to centralise recommendations) may lead to a range of simultaneous interactions ranging from collaborative to confrontational. An hypothesis is that the broader the competencies of the two actors, the more complex their relations become.
- Another hypothesis is that NMIRFs might offer an opportunity for NHRIs to address their grievances to the government and expect them to be treated, where no other central structures exist in government.
- Key lessons and insights might be generated from guidance and (soft) law from thematic human rights fields that have prescribed national human rights systems for several decades. These thematic mandates may on occasion be adjoined to the NHRIs (independent monitoring frameworks) and to NMIRFs (focal points in governments).

Sixthly, the question of accountability of government is a structural predicament on which both the promotion of both NHRIs and NMIRFs are grounded. NHRIs are an external accountability structure that monitors and nudges governmental compliance with human rights. NMIRFs are structures that aim at making it happen, through more efficient mechanisms for reporting, implementation and follow-up. Accountability is however only implicitly and limitedly addressed in existing guidance – which limits itself to consultations. Ensuring open access follow-up databases by default and annual reports of NMIRFs to the NHRIs or Parliament could be first steps in addressing this important gap in guidance.

CHAPTER 2

PRESENTATION OF CASE STUDIES

This chapter introduces and reviews the case studies selected for the research. It presents the institutional state of play in Denmark, Mauritius, Moldova, Portugal and the Republic of Korea, focusing on the establishment, composition and mandates of the NHRIs and NMIRFs in each of the five countries. In par with the findings generated in Chapter 1, attention is given to whether the NHRIs and NMIRFs of each country are part of a larger ecology of independent and governmental human rights state actors, as well as to the level of international engagement of the NHRIs.

1. DENMARK

1.1 THE NHRI OF DENMARK

The National Human Rights Institution of Denmark is the **Danish Institute for Human Rights** (DIHR). First established by the Danish Parliament in 1987 as the Danish Centre for Human Rights, it was renamed as the Danish Institute for Human Rights in 2002. It currently operates under Act no 553/2012 of 2012,¹⁹⁴ and is mandated to promote and protect human rights, by inter alia: undertaking monitoring and reporting on the human rights situation in Denmark; conducting analysis and research; advising parliament, government and other public authorities and private stakeholders on human rights; promoting civil society organisations' work; implementing and promotion human right education. The Institute submits annual reports to the Danish and Greenlandic Parliaments,¹⁹⁵ and publishes additional subject-specific reports or legal briefs for the Danish public and decision-makers.¹⁹⁶

The DIHR can also assist victims of discrimination on the grounds of gender, race, ethnic origins and sexual orientation and gender identify. The DIHR has been the appointed National Equality Body in relation to race and ethnicity (since 2003), gender (since 2011) and sexual orientation and gender identity (since 2021). The DIHR was appointed in 2009 by the Danish Parliament as the independent monitoring mechanism as per Article 33(2) of the UN Convention on the Rights of Persons with Disabilities, together with the Danish Disability Council and the Danish Parliamentary Ombudsman.

In addition, the DIHR carries international work, with the aim of promoting and protecting human rights internationally. It does so through bilateral and multilateral cooperation activities, promoting human rights internationally through capacity-building projects, development of guidance of human rights actors, etc.

The Institute is directed by a Board reflecting of a broad composition. The Executive Director is answerable to the Board and is in charge of the day-to-day management. Its National Division, which focuses on human rights in Denmark, is composed of the Legal Department and the Equal Treatment Department. The former prepares submissions to international and regional bodies when those are reviewing the human rights situation/cases in Denmark. The International Division is composed of five Departments catering for distinct themes and geographies, and is supported by country offices or regional hubs in eight countries, plus staff posted in another five countries. The Research Department provides academic expertise, as well as data analytics support, on both national and international human rights issues. Administrative units also support the whole Institute. In total, the Institute employs 207 persons.¹⁹⁷

The DIHR is accredited with A status by GANHRI since 2002. During the last re-accreditation process, the Subcommittee of Accreditation requested reassurances with regards to the nomination and dismissal of board members, and encouraged the Institute to widen its mandate, notably its protection mandate. It also encouraged the DIHR to advocate for amendments to the enabling legislation to provide the DIHR with an explicit mandate to encourage ratification or accession to international human rights instruments.¹⁹⁸

The Institute submits independent parallel reports to international treaty bodies and for the Danish UPR examinations, as well as to regional bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Group of Experts on Action against Violence against Women and Domestic Violence.¹⁹⁹ It has also invested in mobilising civil society and the public in general around international reporting issues – in particular in supporting the establishment of the UPR Committee of the Danish Human Rights Council in 2010.

The DIHR does not operate a specific tool to track the implementation of international recommendations by the Danish government. It has however developed online tools, including a 'disability index' that aims at following over the years the degree of implementation of Convention on the Rights of Persons with Disabilities. This is measured through ten key outcome indicators that inform the enjoyment of the rights contained in the Convention.²⁰⁰

In addition to the DIHR, the human rights landscape is composed of additional independent actors. The **Danish Parliamentary Ombudsman** was established in 1955. Besides being mandated to receive complaints or to take up issues on its own initiative against all parts of public administration, the Ombudsman Act foresees that 'the Ombudsman shall monitor that existing legislation or administrative regulations are consistent with, in particular, Denmark's international obligation to ensure the rights of children, including the UN Convention on the Rights of the Child.'²⁰¹ In 2007, the Danish Parliamentary Ombudsman was designated National

Preventive Mechanism pursuant to the OPCAT.²⁰² In its NPM mandate and activities, the Danish Parliamentary Ombudsman is supported by the Danish Institute for Human Rights, and by the NGO Dignity – the Danish Institute against Torture.²⁰³

The **National Council for Children** was established by Parliament in 1994. The Council describes itself as ‘politically independent, but administratively it falls under the auspices of the Ministry of Social Affairs and the Interior. The Council’s legal mandate is to advocate for the promotion and protection of children’s rights in Denmark. [It] advise[s] Parliament, the Government and other public authorities.’²⁰⁴ Both the Danish Parliamentary Ombudsman and the National Council for Children have submitted parallel reports to the international reviews of Denmark. At the occasion of the fifth examination of Denmark by the CRC Committee and for the second UPR cycle as regards the National Council for Children, their parallel reports were listed as ‘information from NHRIs’ by the UN.

Last, it must be noted that efforts are ongoing to establish an **NHRI for Greenland**, distinct from the Danish Institute for Human Rights. A legislation was put forward in 2020, but has not been adopted.²⁰⁵

1.2 THE NMIRF OF DENMARK

The National Mechanism for Implementation, Reporting and Follow-up in Denmark is the **Interministerial Human Rights Committee (IHRC)**, established in December 2014 by a government decision. The IHRC meets four to five times per year. The Ministry of Foreign Affairs is the chair and serves as a secretariat of the IHRC. The Ministries of Justice, Finance, Interior and Social Affairs, and Immigration and Integration were originally the permanent members of the IHRC, while the participation of other ministries in meetings was ad hoc, depending on the substance discussed. However, in practice all ministries participate in almost every meeting and now all ministries are considered members of the IHRC. The DIHR and civil society organisations are invited to meetings of the IHRC on ad hoc basis. The Committee may liaise with other state and non-state actors. For instance, it forwards all national reports, UN recommendations after examination and follow-up reports to parliamentarians.

The mandate of the IHRC is to coordinate the national reporting and follow-up to the UN, as well as the work in the UN Human Rights Council. Engagement with other supranational human rights bodies, in particular follow-up to decisions by the European Court of Human Rights, are under the responsibility of the Ministry of Justice. The IHRC coordinates national reporting and tracks follow up, and each line ministry is responsible for the implementation of human rights within their own field. The mandate of the IHRC does not include engagement and follow-up to UN individual communications procedures, which are dealt with by the relevant line ministry in collaboration with the Ministry of Foreign Affairs.

Denmark has ratified eight of the nine core human rights conventions.²⁰⁶ The reporting methodology is well-established and the IHRC follows a standardised procedure.²⁰⁷ The Committee coordinates the preparation of a draft report with inputs from relevant ministries, as well as from the governments of Greenland and the Faroe Islands. The drafting of some reports, e.g. under the CRPD and CRC, are spearheaded by Ministry of Social Affairs, Housing and Senior Citizens and reporting under the CEDAW is spearheaded by the Ministry of Digital Government and Gender Equality, but these ministries do use the IHRC for as a forum for interministerial coordination. The Committee invites civil society organisations and the DIHR for consultations. Draft reports are subjected to a public consultation process, which may include public meetings as well as the possibility to submit comments by email, based on a draft publicised on the Ministry of Foreign Affairs' website or distributed to CSOs through the Council for Human Rights.²⁰⁸

In terms of follow-up, the IHCR's role is limited to assigning recommendations to line ministries and agencies for implementation, and to tracking implementation by reaching out to ministries to find out whether action has been taken. As regards assignment of recommendations, the IHCR clusters but does not prioritise recommendations. It does not have the administrative authority to instruct ministries to implement activities, and certain action would also require political decisions – which is not part of the mandate of the Committee. Nonetheless, the establishment of the IHCR has reportedly helped raise the level of engagement with international reporting and follow-up processes across government. The Committee facilitates the Ministry of Foreign Affairs' interactions with ministerial staff, and also facilitates ministerial engagement by exposing UPR recommendations to the ministers themselves.

As regards tracking of implementation, the exercise is supported by one excel file per treaty, with occasional requests to provide information on implementation. Steps to reach implementation of a recommendation are not spelled out by the Committee and each line ministry is responsible for the implementation of human rights within its own field. Yet the existence of the Committee has improved tracking by centralising information. Its work has been taken seriously by ministries, that promptly deliver the information requested. This facilitates the production of UPR mid-term progress reports. The IHRC is piloting a new initiative whereby it will identify two or three recommendations per reviews for a more attentive and regular follow-up, with the Committee serving also as an avenue to engage civil society in their implementation.

The IHRC has also been used as a forum to consult ministries ahead of the resolutions negotiated at the UN level. This is reportedly appreciated by line ministries who can input to UN normative developments, and not just be solicited when the government is held accountable for the implementation of international norms. Denmark is a member of the 'Group of Friends of NMIRFs' – although this task is coordinated by the Danish Permanent Representation in Geneva rather than by the IHRC itself.

2. MAURITIUS

2.1. THE NHRI(S) OF MAURITIUS

The **National Human Rights Commission (NHRC)** was established in 2001²⁰⁹ and is the official member of GANHRI for Mauritius. With a staff of 32 persons,²¹⁰ the NHRC has two divisions, a Human Rights Division and, pursuant to OPCAT, the National Preventive Mechanism Division. It has the mandate to receive complaints on violations of human rights, to call for documents to be produced, to summon witnesses, and to hold hearings.²¹¹ In 2021, for example, the NHRC received 157 complaints, the majority of which were from individuals.²¹² Complaints can be referred to other institutions, including the Director of Public Prosecutions. Of those which it determines itself, the NHRC can, after investigation during which it can summon witnesses, require provision of documents and hold hearings, resolve the complaint by conciliation as well as make recommendations to the ministry responsible for human rights. The NHRC can also refer cases for review of criminal convictions to the Supreme Court.

The NHRC has acquired A status from GANHRI in 2002 and was last re-accredited in June 2021, with comments made regarding the selection and appointment of NHRC's leadership, funding, pluralism or the need for its annual reports to be considered by Parliament. Regarding staffing, the Sub-Committee on Accreditation noted that:

the NHRC reports that 70% of its staff in charge of administrative and financial tasks are secondees including in high level position such as the NHRC Secretary as per Section 5(1) of the Act. A fundamental requirement of the Paris Principles is that an NHRI is, and is perceived to be, able to operate independent of government interference. Where an NHRI's staff members are seconded from the public service, and in particular where this includes those at the highest level in the NHRI, it brings into question the capacity of the NHRI to function independently.²¹³

Questions on conditions of independence of the NHRC had been raised by the UN Committee Against Torture and the UN Human Rights Committee.²¹⁴

As regards international engagement, the NHRC informed the Sub-Committee on Accreditation that it 'contributes to the State reports to Treaty Bodies while it has not submitted parallel reports to the Treaty Bodies'. It explained that 'it is an observer member of the Mauritius National Mechanism for Reporting and Follow-up mandated to coordinate and prepare reports to and engage with international and regional human rights mechanisms.'²¹⁵

There are no alternative or shadow reports listed on the OHCHR website as having been submitted by the NHRC nor by any of Mauritius' independent institutions to treaty bodies. The NHRC has submitted only one alternative report to the UPR,

under the first cycle in 2009.²¹⁶ It is furthermore unclear whether the NHRC has submitted any to the regional level. Generally, as analysed by Mauritian scholar Roopanand Mahadew:

The NHRC has adopted a timid approach to monitoring and advising on state compliance with international standards. [...] It has also failed to develop a clear strategy for inducing the government to domesticate human rights instruments such as the ICCPR, the ICESCR and even the African Charter on Human and Peoples' Rights. [...]

The [Maputo Protocol] can be used to illustrate the point. Mauritius signed it in 2005 but ratified it only in 2017, and then with reservations to Article 6(b) which prohibits the marriage of a girl under the age of 18. Between 2005-2017 the NHRC did not take any steps to advise the government on the importance of ratifying the Maputo Protocol. Moreover, since the latter's ratification, the Commission has not issued any comment on the reservation concerning child marriages. It has also been silent on the next essential step after ratification, namely the domestication of the provisions of the Maputo Protocol.²¹⁷

The Sub-Committee on Accreditation noted the lack of direct interactions of the NHRC with the international human rights system and 'encourage[d] the NHRC to engage effectively and independently with the international human rights systems', recalling that such engagement 'can be an effective tool for NHRIs in the promotion and protection of human rights domestically' as well as the 'importance for the NHRC to engage with the international human rights system independently of government', notably by means of submitting parallel report, making statements before review bodies, assisting in country visits and monitoring the implementation of recommendations.²¹⁸

The NHRC is one of several independent human rights institutions in Mauritius. Others are the **Equal Opportunities Commission**,²¹⁹ the **Ombudsperson for Children's Office**,²²⁰ the **Office of the Ombudsman**,²²¹ the **Independent Police Complaints Commission**,²²² and **Ombudsperson for Financial Services**.²²³ Some of these can receive complaints.²²⁴

Questions have been raised by the Committee Against Torture about the independence of the Independent Police Complaints Commission.²²⁵ The Concluding Observations of the Committee on the Elimination of Discrimination against Women in November 2018 recommended the government 'ensure the visibility of the Equal Opportunities Commission and increase its commitment to activities towards gender equality and awareness-raising on women's rights'.²²⁶ In addition, it was recommended by the Committee on the Rights of the Child that the government provide the Ombudsperson for Children with adequate resources.²²⁷

GANHRI's Sub-Committee on Accreditation has encouraged the NHRC to 'develop, formalize and maintain working relationships, as appropriate, with [the Independent Police Complaints Commission] and domestic institutions established for the promotion and protection of human rights'.²²⁸

2.2 THE NMRF OF MAURITIUS

The creation of an NMRF followed from the National Human Rights Action Plan 2012-2020 of Mauritius.²²⁹ The Plan included a discussion on 'Reporting to Human Rights Treaty Bodies and Follow-Up of their Recommendations Achievements', citing challenges with the reporting process and suggesting the creation of a standing technical interministerial committee to monitor treaties, as a way of addressing the timely submission of reports.²³⁰ It led to the creation of a national mechanism, consisting of a Human Rights Unit and a Human Rights Monitoring Committee, the former acting as coordinator and to develop indicators and benchmarks, the latter as a monitoring network.²³¹ They operated and were resourced from the Prime Minister's Office.

In November 2017, after the establishment of a new Ministry of Justice, Human Rights and Institutional Reforms, and as part of a process towards improving compliance with international norms,²³² the **National Mechanism for Reporting and Follow up** (NMRF) was created.²³³ Shortly thereafter, the responsibility for the Human Rights Unit and NMRF moved to the Ministry of Foreign Affairs. The Human Rights Unit serves as the secretariat for the NMRF.

The NMRF has responsibility for managing the reporting process for the UPR, treaty bodies, special procedures and at the regional level.²³⁴ It is composed of representatives of ministries, parliament, the Attorney General (who serves as a conduit for the involvement of the judiciary), NHRIs and civil society,²³⁵ although the National Human Rights Commission is involved as observer.²³⁶ The representation of the NHRIs in the NMRF was considered important, including by the OHCHR, from the outset. However, it was made clear that the NHRC's independence should be maintained, hence its involvement was restricted to that of observer and to provide input only when it related to its mandate and work.²³⁷ Focal points are identified from among the officers of each ministry and it is they who have the responsibility to update the NMRF.

The NMRF is responsible for ensuring reports are submitted to the UN treaty bodies, UPR and regional human rights system, coordinating relevant ministries and consulting with stakeholders.²³⁸ The NMRF coordinates with parliament, for example, when preparing the UPR report but not with respect to treaty body reporting.²³⁹ The judiciary are involved with respect to the latter.²⁴⁰ The NMRF consults with CSOs and the NHRC through sharing draft reports and meetings.²⁴¹ In addition, the team responsible for drafting the Voluntary National Review collaborates with an SDG Steering Committee of which the NMRF is part.²⁴² The NMRF's role as a platform for engagement with civil society has been noted as a good practice.²⁴³

Mauritius has ratified seven of the nine core human rights conventions, as well as the optional protocols to the conventions against torture and on the rights of the child.²⁴⁴ It has accepted individual complaints under the ICCPR and the CEDAW. According to the OHCHR, prior to December 2014, Mauritius had seven due reports, which could all be submitted in the period January-2015-June 2020 thanks the creation of the NMRF and the technical support from the OHCHR.²⁴⁵

In terms of follow-up, the NMRF disseminates recommendations from the international and regional bodies among the members of the NMRF at least every six months. Mauritius has a National Recommendations Tracking Database, although yet to be fully operationalised, developed with the support of the OHCHR. The intention is that it will include each international recommendation.²⁴⁶ An implementation plan, developed again with the assistance of the OHCHR, is starting to be incorporated into the NRTD.²⁴⁷ The NMRF requests, through written correspondence, emails and meetings, information on implementation which is then used for the drafting of reports. The information provided to the NMRF may be used to feed into the National Human Rights Action Plan.

Mauritius has adopted a National Human Rights Action Plan for 2012-2020 and the launch of a new NHRAP for 2023-2030 is imminent. The responsibility for overseeing the NHRAP's implementation also sits under the Human Rights Unit in the Ministry of Foreign Affairs, providing a certain synergy between the institutions and processes of the NHRAP and NMRF. The NHRAP, for example, incorporates both national and international obligations, noting certain Concluding Observations from treaty bodies recommending amendments to legislation.²⁴⁸

3. MOLDOVA

3.1. THE NHRI(S) OF MOLDOVA

The **Office of the People's Advocate (OPA)** was first established in 1998 as a 'Centre for Human Rights' under the 1997 Law on Parliamentary Advocates. The Law on the People's Advocate (Ombudsman) No. 52 of 04/03/2014 established the OPA. In order to strengthen the institution, the Constitution of Moldova was supplemented in 2017 with a chapter devoted to the People's Advocate.

The OPA includes two Advocates' positions: a People's Advocate, and one specialising in child rights (**People's Advocate for Children's Rights / Ombudsman for Children**). There are proposals to introduce a third autonomous position, a People's Advocate (Ombudsman) for entrepreneurs' rights.²⁴⁹ The OPA has a personal of 65 staff, and is organised in six directions (policies and legislation; monitoring and reporting; complaints-handling and investigations; torture prevention; promotion and awareness-raising; and child rights) and four regional offices.

The **People's Advocate** has a broad mandate to promote and protect human rights, monitoring and reporting on human rights obligations of the state, through commenting on legislation, receiving complaints, making recommendations to relevant state authorities, initiating matters in court and submitting proposals with respect to international mechanisms.²⁵⁰ It can access institutions including places of detention, request and receive from public authorities necessary material, hold hearings with relevant officials, hold confidential meetings with individuals in a range of detention settings, and publish reports on human rights violations.²⁵¹ With respect to complaints, it can oblige responsible authorities to submit material to it; and facilitate conciliation between the parties. If it finds rights have been violated, it can issue a notice to the authorities making recommendations on how the rights can be restored. This notice has to be reviewed within 30 days and the authorities should communicate to the People's Advocate the measures they have taken to remedy the violations. The People's Advocate has the power to refer the matter to a higher body or a court, or intervene with a demarche to start a criminal or disciplinary procedure, among other actions.²⁵²

The Ombudsman for Children provides protection to children seeking its assistance, acts to help those who are at risk and cooperates with national and international organisations. Since 2014, the OPA and the People's Advocate for Children's Rights, along with five CSOs, are members of the Council for the Prevention of Torture, which is the national mechanism for the prevention of torture, in conformity with the OPCAT provisions. The Council is chaired by the Ombudsperson but is separated from the Ombudsperson's Office. It is also supported by a special division within the Ombudsperson's Office.

In addition, the OPA monitors the implementation of the CRPD under Article 33. In 2016, the OPA established a 'Council of Experts' aimed at monitoring the implementation of the CRPD. The latter 'includes seven persons from different institutions with expertise in human rights related to disability, including persons with disabilities.'²⁵³

The 'Centre for Human Rights' was a GANHRI member since 2009, and the OPA has been granted A-status in 2018. At this occasion, GANHRI's Sub-Committee made comments regarding appointment, pluralism and adequate funding. In addition, it 'acknowledge[d] that the OPA has engaged with the international human rights system to a substantial degree, and that it is in the process of establishing a specialised unit to monitor the compliance by the State with its international human rights obligations'. It encouraged the OPA to strengthen its ability to engage with the international actors 'by advocating for additional resources [and by] actively engag[ing] with the OHCHR, GANHRI, [the European Network of NHRIs], and other NHRIs'.²⁵⁴

GANHRI's Sub-Committee also welcomed the fact that the OPA has 'developed a framework to independently monitor the implementation by government of the National Human Rights Action Plan in cooperation with other human rights bodies,

including civil society', and reminded the OPA that NHRIs shall 'also undertake rigorous and systematic follow-up activities to promote and advocate for the implementation of its recommendations and findings, and the protection of those whose rights were found to be violated.' It further encouraged public authorities 'to respond to recommendations from NHRIs in a timely manner.'²⁵⁵

The **Council for Preventing and Eliminating Discrimination and Ensuring Equality** ('the Equality Council') is the other independent human rights institution in the country. The Equality Council is an autonomous para-judicial public authority, which began its activity on 31 July 2013.²⁵⁶ The mandate of the Equality Council has recently been amended to strengthen its competences.²⁵⁷ It generally consists in the evaluation of legislation from the perspective of standards of non-discrimination, the examination of the complaints about alleged acts of discrimination, the monitoring of the implementation of law in the field, and awareness-raising.

The OPA has submitted alternative reports to all UPR cycles, and since 2017, produces alternative reports to almost all UN treaty bodies.²⁵⁸ The Equality Council has also submitted reports to the second and third cycles of the UPR.²⁵⁹

3.2 THE NMIRF OF MOLDOVA

The **National Human Rights Council ('the Council')** is considered the NMIRF of Moldova. It was established based on a government decision of 2019²⁶⁰ and following the recommendations from the National Action Plan on Human Rights (NHRAP) of Moldova.²⁶¹ Previously, the National Commission for the Elaboration of Initial and Periodic Reports, within the Ministry of Foreign Affairs and European Integration, was responsible for the coordination of the preparation of reports and for the follow-up to treaty body recommendations and decisions.²⁶²

The Council has a broad mandate, not limited to the international reporting and follow up and coordination of the process of implementation of UN and Council of Europe recommendations. It is in charge of state policies on human rights and in particular oversees the implementation of the NHRAP.²⁶³ The Council submits a yearly report to Parliament on progress in implementing the NHRAP.

The President of the Council is the Prime Minister and the Vice Presidents are the Minister of Justice and the Minister for Foreign Affairs and European Integration. The Council is composed of Ministers of various line ministries, three Chairs and Head of General Legal Directorate of the Parliament Secretariat, the Presidencies of the Superior Councils of Magistracy and of Prosecutors, the Head of the Secretariat of the Constitutional Court, the Attorney General, the President of the Congress of Local Authorities, as well as representatives from trade unions, lawyers. The OPA and Equality Council are also represented, together with five CSOs, the latter appointed after a public competition.²⁶⁴ Members have voting rights, while the NHRIs, the Congress of Local Authorities, the National Trade Union Confederation of Moldova, the Union of lawyers from the Republic of Moldova, and CSOs have a consultative status.

The Permanent Secretariat of the Council sits within the Human Rights and Cooperation with Civil Society Department at the State Chancellery. The Department is comprised of 8 persons, but only three job descriptions are dedicated to the field of human rights. Besides ensuring the operational activity of the Council, the Secretariat:

- coordinates the process of elaboration, monitoring and evaluation of NHRAP;
- coordinates public authorities for the preparation of international reports;
- coordinates the process of implementation at the national level of the recommendations formulated by the international mechanisms;
- establishes and coordinates specialised commissions and expert groups;
- strengthens relations with development partners and CSOs in the elaboration and monitoring of the implementation of state policies in the field of human rights;
- monitors the activities of the local structures of the Council in the implementation of national policies in the field of human rights;
- informs the public about the implementation of the human rights policies;
- collaborates with international organisations, CSOs and the media; and
- develops the professional capacities of the staff within the authorities and public institutions trained in the elaboration, monitoring and implementation of policy documents in the field of human rights, as well as in the elaboration of reports on the implementation of international treaties in the field of human rights to which the Republic of Moldova is a party.

The Council is supported by five specialised commissions and are coordinated by the State Chancellery, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Labor and Social Protection and the Ministry of Education and Research. The commissions are responsible for monitoring the implementation of 17 UN and Council of Europe treaties to which Moldova is a party, and related recommendations of special rapporteurs, mandate holders and thematic procedures. Each specialised commission is led by the relevant line ministry (e.g. the specialised commission on the ICCPR is chaired by the Minister of Justice), while two specialised commissions (for the UPR and the Council of Europe Convention on Action against Trafficking in Human Beings) are led by the State Chancellery itself.

There are 27 national human rights coordinators and 21 local coordinators under the Council who are key to the implementation of recommendations on the ground. They are appointed as focal points.²⁶⁵ Thirty-three 'municipal and district human rights commissions' have also been created,²⁶⁶ and are responsible for: the implementation of national policy documents for the protection of human rights; the elaboration of local plans and programs regarding the application of national policy documents in the field of human rights protection at local level; monitoring respect for human rights at local level; and the elaboration and submission of half-yearly reports to the Council's Secretariat.

Moldova has ratified seven of the nine core human rights conventions and all optional protocols.²⁶⁷ It has accepted individual complaints under the ICCPR and the CEDAW. The country has currently no major delays in reporting to the treaty bodies. Moldova is also party to several human rights treaties of the Council of Europe. The structure of the NHRC means that the reporting function is in effect divided among the different ministries, with coordination by the Secretariat based in the State Chancellery. For example, reports due under the ICESCR, the CEDAW, the CRC or the CRPD fall under the responsibility of the Ministry of Labour and Social Protection.

As regards follow-up, the Secretariat clusters recommendations and with the line ministries identifies measures to be implemented. The recommendations are in an online platform launched in 2018 (monitor.drepturi.md) which is publicly accessible and informs the degree of implementation of the action, and also includes comments by civil society or the NHRIs. Recommendation implementation plans are distinct from the NHRAP. They are meant to be more short-term and straight-forward, focused on implementation. Nonetheless, the NHRAP also takes into account the past recommendations.²⁶⁸

The Council and its Secretariat rationalised governmental human rights focal points but do not constitute the only governmental structure in charge of human rights. Before 2018, there were several secretariats covering several interministerial committees and councils on child rights protection, combatting human trafficking and labour rights. Most of those secretariats were gathered in one subdivision when the State Chancellery was re-designed in 2018. Yet, there are still some bodies that are linked to specific line ministries. Those bodies also report to the Council, which ensures a comprehensive articulation of all themes and actors. The **Agency for Inter-Ethnic Relations** stands out for having a representative as voting member of the Council. Attached to the Ministry of Education, Culture and Research, the Agency is a governmental central administrative body in charge of developing, carrying out and monitoring policies on inter-ethnic relations and languages. The Agency also leads on reporting and follow-up under the CERD.²⁶⁹

4. PORTUGAL

4.1. THE NHRI OF PORTUGAL

The Provedor de Justiça (PDJ/Ombudsperson) was established by the 1976 Constitution and its mandate subsequently detailed in its statute.²⁷⁰ In 1999, the PDJ/Ombudsperson was designated as National Human Rights Institution of Portugal.²⁷¹ Its 'main function is to defend and promote the rights, freedoms, guarantees and legitimate interests of citizens, ensuring, through informal means, justice and the legality of the exercise of public powers', and it 'may also exercise functions as an independent national institution for monitoring the application of international treaties and conventions on human rights, when designated for this purpose'.²⁷²

The PDJ/Ombudsperson's independence is expressly set out in the Constitution, which also requires that the public authorities cooperate with it.²⁷³ The PDJ/Ombudsperson is elected by the Assembly.²⁷⁴ With 104 staff, it is organised in four departments, one of which is the main department, which handles individual complaints. The latter is subdivided into one triage unit and four thematic units (Rights, Liberties and Guarantees; Labour and Social Rights; Economic Rights and Tax Issues; Cultural Rights and Rights of the Future Generations). There are also hotlines for Children, Senior Citizens, and Disabled Persons, offering helplines for advice and two regional offices. A new organic law of the Ombudsperson's Service²⁷⁵ was approved in 2021 with the aim of adapting the institution to the growing competences and responsibilities that now fall within the Ombudsperson's mission. The new organisation explicitly reflects different dimensions of its mandate, namely its work as a National Human Rights Institution and the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Its ability to receive and consider complaints is set out in Article 23 of the Constitution and its Statute which enables 'Citizens, natural or legal persons, can submit complaints for actions or omissions of public authorities to the PDJ/Ombudsperson, who considers them without decision-making power, directing the necessary recommendations to the competent bodies to prevent and remedy injustices'.²⁷⁶ In its 2021 report to Parliament, the PDJ/Ombudsperson noted an increase in requests to 21,259, of which 12,219 were considered to be a complaint, an increase of 57% from when the current Ombudsperson's mandate began in 2017.²⁷⁷ The new organic law approved in 2021 aimed in part to address this increase, and creates, as noted above, a new triage unit to process complaints.

The PDJ/Ombudsperson can make recommendations to relevant authorities 'with a view to correcting illegal or unfair acts by public authorities or improving the organization and administrative procedures of the respective services'; suggest amendments to, or proposals for new, legislation; adopt opinions, as requested by the Assembly; promote human rights; and intervene 'in the protection of collective or diffuse interests, when public entities, companies and services of general interest are at stake, whatever their legal nature'.²⁷⁸ It can also apply to the Constitutional Court for a declaration of unconstitutionality or illegality.²⁷⁹

To perform its mandate, the PDJ/Ombudsperson has the power to carry out inspection visits during which it will be 'listening to the respective bodies and agents and requesting the information, as well as the display of documents, which they deem convenient'; carry out any investigation or inquiry that it considers to be 'necessary or convenient';²⁸⁰ but 'does not have the power to annul, revoke or modify the acts of the public authorities and his intervention does not suspend the course of any deadlines, namely those of hierarchical and contentious appeals'.²⁸¹

The PDJ/Ombudsperson has A-status with GANHRI, first acquired in 1999, with the most recent re-accreditation as A-status in 2017.²⁸² The SCA has noted ongoing

concerns with respect to whether the selection process, through the Assembly, is 'sufficiently broad and transparent' given that it did not require vacancies to be advertised, nor set out clear criteria of assessment nor the process for consultation and participation. It also recommended that detail on the grounds and process for dismissal be included in the Statute. It called on the PDJ/Ombudsperson to advocate for amendments to its founding legislation.²⁸³

The PDJ/Ombudsperson has also been designated as the NPM pursuant to the OPCAT in 2013.²⁸⁴ Operating since 2014, it has the mandate to conduct visits to various places of deprivation of liberty including not only prisons and police stations but also educational facilities detaining children, centres for the detention of foreigners and psychiatric institutions. It can make public recommendations to relevant authorities. According to the new 2021 organic law, the National Preventive Mechanism is an autonomous department. Currently, three staff members are dedicated exclusively to the NPM mandate. Whenever necessary, other legal advisors of the Ombudsperson work with the NPM. The NPM also has the support of an Advisory Board that meets at least once a year.

A National Mechanism for Monitoring and the Implementation of the Convention on the Rights of Persons with Disabilities (*Mecanismo nacional de monitorização da implementação da Convenção sobre os Direitos das Pessoas com Deficiência*) was set up in 2014 with respect to Article 33 of the CRPD.²⁸⁵ Composed of eleven members, it also includes a representative of the PDJ/Ombudsperson.²⁸⁶

4.2 THE NMIRF OF PORTUGAL

The NMIRF of Portugal is the **National Human Rights Committee (NHRC)**.²⁸⁷ It was established in 2010,²⁸⁸ following a voluntary commitment of Portugal after its first UPR review in 2009. Portugal co-founded and coordinates the Group of Friends of NMIRFs in Geneva.

The NHRC describes its mission and competences as follows:

[The Committee] is an interministerial coordination body, which aims to implement an integrated approach to Human Rights and an agreed plan of action for public and private entities. [It] is in charge of the coordination of the various Ministries, in order to define the national position in international human rights bodies and also to uphold the compliance of obligations arising from international instruments in this area. The Committee is also responsible for promoting the production and dissemination of documentation on best practice in this field, both national and international, besides the promotion and dissemination of knowledge concerning human rights.²⁸⁹

The NHRC is chaired by the Ministry of Foreign Affairs and gradually included almost all governmental areas, plus the National Statistics Office. The NHRC adopts a two-tier system of representation of line ministries – two representatives,

one at the political/senior management level and the other at the technical level. The Office of the Ombudsperson, as well as the Public Prosecutor and Parliament, have a standing observer status: they are invited to all meetings and receive all communications. The NHRC is supported by a secretariat comprised of three persons, at the Human Rights Division of the Ministry of Foreign Affairs.

A key objective predicated the establishment of the NHRC has been to manage the reporting obligations of Portugal. Portugal has ratified eight of the nine core human rights treaties,²⁹⁰ and all their optional protocols. It has accepted all individual communication procedures. Prior to 2010, the country had struggled to prepare its national reports, and after reviews, experienced challenges in implementing recommendations received. Portugal had many reports behind. Ad hoc working groups were created to deal with each report. The UPR experience convinced the government to take action, and led to the creation of the NHRC. In a relatively short period of time, the considerable delays experienced with regard to some reports were expunged.²⁹¹

The NHRC organises the reporting process for all international human rights treaties and the UPR, through planning inputs and setting up drafting working groups.²⁹² The Committee is always involved in preparing visits of special procedures' mandate holders. While it engages with some Council of Europe's reporting, interactions and follow-up to decisions by the European Court of Human Rights are not dealt with by the NHRC, but rather falls under the responsibility of the Legal Department of the Ministry of Foreign Affairs and the Government Agent for the European Court of Human Rights.²⁹³ Although the mandate of the NHRC does not expressly include engagement and follow-up to UN individual communications procedures, the NHRC has also coordinated the reply and the follow-up to UN and Council of Europe individual communications procedures. Recently, it has been involved in the follow-up to individual communications under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, coordinating all the involved Ministries and providing replies to the Committee on Economic, Social and Cultural Rights through the Permanent Mission in Geneva.

Regarding follow-up, the Secretariat of the NHRC informs ministries about recommendations either in meetings – the Committee meets at least three times a year at plenary level and whenever needed at working group level – or through emails, which is the main means of communication. There is no online database nor implementation plans. The Secretariat then regularly requests information to track follow-up. The NHRC also coordinates the preparation of the mid-term progress reports for the UPR, and follow-ups on questions from the treaty bodies. The NHRC has launched initiatives that allow for a better tracking in national human rights implementation in general. It created a working group to develop human rights indicators. It has developed indicators in different areas, for instance on the right to education, the right to health, liberty and security of persons and gender-based violence.

The NHRC adopts an annual plan of action, also called 'strategic workplan', and produces an annual activity report. The annual workplan determines the NHRC's activities (including regarding international and regional forums, reporting, ratifications, information sharing) and contains pledges for action of individual line ministries for the coming year (three pledges per member). At the end of the year, members have to report back on what they have done to implement the pledges. The annual activity report then notes these actions and other activities of the Committee. These plans and reports are publicly accessible on the NHRC's website.²⁹⁴ The NHRC therefore offers a strategic platform of engagement for national human rights implementation too. To do so, it can also establish working groups. For instance, it created a specific working group on business and human rights, which has been used not only to discuss Portugal's position at the Intergovernmental Working Group that is negotiating a convention on business and human rights, but also to develop a national action plan on business and human rights.

The NHRC maintains an NGO mailing list. Any CSO can request to be included in this mailing list. CSOs are consulted on draft reports, together with the PDJ/Ombudsperson. At least one of the three yearly plenary meetings is organised with civil society. More meetings are held with civil society groups at working group level, often convened in response to requests from these groups (for example, on the rights of older persons) or to discuss draft national reports to treaty bodies.

Besides the NHRC, additional governmental human rights entities are worth mentioning. The **Commission for Citizenship and Gender Equality** is the official mechanism responsible for the implementation of the public policies designed to promote equality and non-discrimination in Portugal. It was set up in 1975 as a department within the public administration and in 1991 was replaced by a Commission for Equality and Women's Rights, gradually expanding to other types of discrimination and the promotion of citizenship in general. It is supported by an Advisory Board that is currently composed of three sections: (1) NGOs working in the field of women's rights, gender equality, citizenship and non-discrimination; (2) representatives of each Ministry (the interministerial section); (3) and a technical and scientific advisory group. It is currently answerable to the Secretary of State for Parliamentary Affairs and Equality. Its main policy instrument is the National Plan for Equality and Non-Discrimination.

In addition, the **National Commission for the Promotion of the Rights and the Protection of Children and Young People**, initially created in 1998, is a national public institution endowed with administrative autonomy and own assets, operating under the tutelage of the Ministry of Labour, Solidarity and Social Security. In its 'restricted composition', the Commission is composed of representatives of ministries and the Attorney General, whereas in its 'enlarged composition', it includes a more diverse range of state and non-state actors, including a representative of the PDJ/Ombudsperson.²⁹⁵ The Commission coordinates actions

taken towards the promotion of the rights and the protection of children and young people in Portugal, contributing to reinforce the implementation of international and regional treaties including the CRC.²⁹⁶

The **Commission for Equality in Labour and Employment**, established in 1979, is a tripartite organisation gathering members of the state, trade unions and employers' confederations, whose mission is the promotion and monitoring of social dialogue on equality in the labour market, notably gender equality.²⁹⁷

The **Commission for Equality and Against Racial Discrimination**, established in 1999, is also of a mix composition gathering state officials and non-state actors. It collects information on racial discrimination, recommends the adoption of appropriate laws and administrative measures, publish studies and annual reports on the situation of equality and discrimination in Portugal.²⁹⁸

All such commissions regularly take part of official delegations for reviews of Portugal by international human rights bodies, in particular the Commission for Citizenship and Gender Equality.

5. THE REPUBLIC OF KOREA

5.1. THE NHRI OF THE REPUBLIC OF KOREA

The **National Human Rights Commission of Korea (NHRCK)** was established by the Human Rights Commission of Korea Act of 2001.²⁹⁹ It is a large organisation with a staff of 234 officials, posted in Seoul – organised in 16 divisions – and in six regional offices.³⁰⁰ It has been granted A status by the Subcommittee on Accreditation of GANHRI since 2004, with recommendations made to reinforce the selection of the leadership and the financial autonomy of the NHRCK.³⁰¹

The NHRCK's mandate is broad, including promotional activities as well as research, commenting on legislation and policies. Under Article 19(1) of the Act it can make recommendations to the government authorities for the improvement of human rights, as well as conduct a survey of the situation in the country, and investigate and provide remedies to human rights violations. Under Article 3(7) of the Act it is also mandated to conduct 'Research and provisions of recommendations on the conclusion of any international treaty on human rights and the implementation of the said treaty, or presentation of opinions thereon'.

The NHRCK's investigative powers in the context of complaints handling entail an obligation to submit materials requested by the Commission, hearings, as well as visits and investigation of facilities.³⁰² Its decisions are not binding. Recommendations are addressed to the government, or else the Commission 'may request the Prosecutor General or the head of the competent investigation agency to initiate an investigation'.³⁰³ In 2021, the NHRCK processed 75,948 counselling requests and complaints, processed 9,287 out of 10,029 petitions filed and

recommended remedial actions on 506 cases.³⁰⁴ The NHRCK reports a very high level of acceptance of its recommendations by the targeted institutions.³⁰⁵

In terms of international reporting, the NHRCK has made numerous and regular submissions to the UN treaty bodies during the reporting processes. These have included submission of alternative reports³⁰⁶ and responses to the List of Issues.³⁰⁷ It has also attended reviews of the state reports.³⁰⁸ Furthermore, Article 21 of the Human Rights Commission of Korea Act requires that in the preparation of any state report to a treaty body, the state authorities 'shall hear the opinions of the Commission'.

The NHRCK undertakes various activities to follow-up on recommendations from the treaty bodies, including promoting concluding observations through hosting events, translations, and posting these documents and general comments on the website of the NHRCK.³⁰⁹ To ensure that these international commitments are then implemented domestically, the NHRCK also organises conferences to which it invites members of the treaty bodies. It also submits reports on follow-up to the treaty bodies where it maps out the recommendations and the extent to which they have been implemented.³¹⁰

The internal organisation of the NHRCK includes an International Human Rights Division whose role it is to respond to international mechanisms. In addition, there are divisions usefully aligned with the focus of the various international human rights treaties: a Child Human Rights Division, a Committee on the Rights of the Child, a Social, Economic and Cultural Rights Division, a Hate Speech Response Team, and a Gender Discrimination Remedy Team. The latter is directly related to implementation of recommendations of CEDAW:

On March 12, 2018, the Committee on the Elimination of Discrimination against Women had recommended that the Commission's gender discrimination-related functions be strengthened through increased authorities and resource allocation. One action that the Commission took to implement the recommendation was to establish the Gender Discrimination Remedy Team, which started off as a temporary team in July 2018 but will be elevated to division level in February 2022. The reorganization effort contributed to more stable management of gender equality and sexual harassment issues, as well as women rights and gender minority rights issues.³¹¹

Furthermore, the Division for Child and Youth Rights and Child Rights Committee have a mandate to give recommendations, undertake studies and research and investigate violations.³¹² These divisions and other groupings, therefore appear to assist the NHRCK in responding to specific treaty bodies.

In addition to the NHRCK, dozens of **local human rights commissions** have been established since 2007, and especially after the NHRCK recommended in 2012 that each of the 226 local governments of the Republic of Korea should pass a human rights ordinance providing for the establishment of human rights commissions. Their forms, degree of independence and actual performance vary, yet arguments have been made that they can be identified as sub-national NHRIs.³¹³ The NHRCK has been a strong advocate for the establishment of such commissions, publishes reports assessing their development, organises capacity-building activities for them and has entered memoranda of understanding with many of them.³¹⁴

5.2 THE NMIRF(S) OF THE REPUBLIC OF KOREA

Although the Republic of Korea is a member of the Group of Friends on NMIRFs in Geneva, there is no single, standing entity that could be considered to be the NMIRF of the country. On the one side, there are several ministries in charge of reporting to different treaty bodies. On the other, there is a standing National Human Rights Policy Council of an interministerial nature, which is however not directly dealing with reporting and follow-up, but rather with the development and implementation of the successive National Human Rights Action Plans. It is supported by a wide Human Rights Bureau at the Ministry of Justice.

The 2016 OHCHR study on NMIRFs categorised the Republic of Korea amongst **‘ad hoc’ NMIRFs**. The reporting to treaty bodies and follow-up is coordinated by a particular government ministry depending on to which mechanism or treaty body the report was being submitted. Four ministries coordinate reporting: the Ministry of Justice (for the ICCPR, ICESCR, CAT and UPR); the Ministry of Health and Welfare (CRPD, CRC); the Ministry of Foreign Affairs and Trade (CERD); and the Ministry of Gender Equality and Family (CEDAW).³¹⁵

The Republic of Korea has ratified eight of the nine core human rights conventions.³¹⁶ It accepts individual communications under almost all treaties, but has not ratified all Optional Protocols – notably not the OPCAT. At the time of writing, the country was up-to-date with all its reporting obligations, and had just acceded to the Convention on the Protection of all Persons from Enforced Disappearance, on 3 January 2023.

Two other interlinked governmental human rights structures are of importance in the Korean institutional landscape: the National Human Rights Policy Council and the Human Rights Bureau of the Ministry of Justice. The **National Human Rights Policy Council** was established in 2006 by Presidential Directive. Its primary responsibility is to adopt the National Human Rights Action Plans of the Republic of Korea as well as monitor and report their implementation. The country has adopted three plans so far, covering the periods 2007-2011, 2012-2016 and 2018-2022, and is currently finalising its fourth plan.

Because the NHRAPs include the objective of writing, submitting and preparing national reports to be submitted to international human rights bodies and set out specific reporting activities and time frames, the OHCHR 2016 study on NMIRFs argued that the Council ‘appears to be implicitly responsible for overseeing these reporting obligations to international human rights bodies’.³¹⁷

The Council is chaired by the Minister of Justice and includes the vice-ministers of several ministries (including the Ministry of Foreign Affairs and Trade, the Ministry of Health and Welfare, and the Ministry of Defence). It gathers a wide range of ministries and, ‘depending on the case’ and ‘if necessary’, the chairperson may invite ‘officials from the Office of the President, the National Human Rights Commission, public institutions and private organizations to attend the meeting’.³¹⁸ The Council is funded via the budget of the Ministry of Justice and its administrative work is undertaken by that Ministry.

The **Ministry of Justice’s Human Rights Bureau** plays a key role for the Council and beyond. It is responsible for the development of the ‘government-wide framework plan for national human rights policies, spanning introduction of a wide range of human rights protection programs and implementation of international human rights law’, and holds other responsibilities, from human rights education to offering ‘remedy for human rights violations that may take place in the process of undertaking the [Ministry of Justice]’s responsibilities such as prosecution, correction, crime prevention and border control’.³¹⁹

- The Human Rights Bureau is one of the seven bureaus and services constitutive of the Ministry of Justice. It is sub-divided in four divisions with the following tasks:
- The Human Rights and Policy Division ‘oversees and coordinates national human rights policies; takes charge of international human rights affairs; and [...] cooperates with domestic and international human rights institutions’
- The Human Rights Support Division ‘oversees protection and support of crime victims, and establishes and implements legal aid policies’
- The Human Rights Investigation Division ‘investigates and remedies human rights violation cases; conducts fact-findings on the conditions of detention and protection facilities; delivers human rights education; and evaluates the state of human rights protection of the Ministry of Justice, etc.’
- The Human Rights of Women and Children Division ‘protects rights of women and children; establishes, coordinates, oversees and implements relevant policies; and conducts education on gender equality’.³²⁰

The Human Rights Bureau takes the lead on reporting under the ICCPR, ICESCR, CAT and for the UPR, and interactions with the relevant bodies. Yet it also participates, although not as lead, in state delegations during other international reviews of the Republic of Korea. It also holds a special responsibility to ensure that the NHRAP development takes into consideration all international recommendations and in particular those of the UPR.

The role of the Ministry of Justice has been central in the human rights political and institutional developments in the Republic of Korea, in particular prior to the creation of the NHRCK. Accounts show how the Ministry was simultaneously tasked to elaborate the legal basis for the NHRCK, yet attempted to exert its influence to ensure the feudalisation of the NHRI-to-be to the Ministry. This was corrected by Parliament, which ensured an independent NHRCK.³²¹ Today, the two actors see each other as key institutions for human rights issues in the Republic of Korea. They have jointly developed a draft bill for a national policy framework for the promotion and protection of human rights in the Republic of Korea.³²²

The draft bill was amended and adopted by the government on 28 December 2021.³²³ If adopted by the Parliament,³²⁴ the law would provide for a legal basis for the NHRAPs, and would articulate the different actors and mandates within the national human rights system of the Republic of Korea, including the responsibilities of local governments. The current Policy Council would be elevated to a National Human Rights Policy Committee, chaired by the Prime Minister. The latter would coordinate all national human rights policies, and would have an explicit mandate to ensure reporting and follow-up to international organisations. The Act spells out how each actor should contribute to the local, national and international processes, under the leadership of the Committee, thus in effect setting up a large mandate-NMIRF. Interestingly, the Act also indicates how the NHRCK is to be involved in each of these processes, as well as represented in various bodies, thus providing an advanced proposal on how NHRI-NMIRF interactions could be organised.

CHAPTER 3

INTERACTIONS BETWEEN NHRIS AND NMIRFS IN PRACTICE: REVIEW OF FINDINGS FROM CASE STUDIES

This chapter presents and cross-analyses data generated by the case studies, for each of the distinct types of interactions between NHRIs and NMIRFs reviewed in Chapter 1. Section 1 identifies the position of NHRIs in the composition and membership of NMIRFs. Section 2 focuses on the role of NHRIs in international reporting, and its interactions with the NMIRFs in those processes. Section 3 touches upon official delegations and participation in international reviews. Section 4 delves into the question of follow-up to recommendations. Section 5 investigates other types of engagement with international human rights actors and law than reporting and follow-up. Section 6 addresses interactions between NHRIs and NMIRFs around national implementation processes. Section 7 reviews organisational modalities and work methodologies for NHRIs-NMIRFs interactions.

1. COMPOSITION AND MEMBERSHIP OF NMIRFS

In three of the case studies, NHRIs are standing observers (or else said, members with no voting rights/with consultative status) of the NMIRFs: this is the case in Mauritius, Moldova and Portugal. In contrast, in Denmark, the NHRI is invited to attend meetings on an ad hoc basis; and in the Republic of Korea, the NHRI can be invited, when deemed necessary by the Chair, to meetings of the National Human Rights Policy Council.

Being an observing member of the NMIRF means that NHRIs are invited to all meetings and receive all communications. In Portugal, where most of the work of the NMIRF is organised through email correspondence, the NHRI is copied in all exchanges and may therefore access any drafts inputs, comments and follow-up information shared by the Council's Secretariat or by line ministries, offering a large degree of transparency. Participation may be in plenary or in working groups. In Moldova, the different NHRIs may also be members of the Specialised Commissions supporting the work of the National Human Rights Council.

The level of NHRIs representation appears to vary. In Mauritius, the National Mechanism for Reporting and Follow-up invites the different NHRIs to all its meetings. Attendance by these institutions appeared to be regular, although they were not always represented at the highest level. During interviews, it was noted that 'the engagement with the NMIRF and membership of the NMIRF by the NHRIs is a good opportunity for them to keep abreast of what going on and to share what they are doing.'³²⁵ In Portugal, the designated representative of the NHRI for the meetings of the National Human Rights Committee is one of the Deputies. NMIRFs' staff underline that 'the Deputy-Ombudsperson is the second highest

person in the institution, which is a sign that the Ombudsperson considers the participation important'. Similarly, in Moldova, the Deputy-Ombudsperson attends meeting of the National Human Rights Council.³²⁶

The research shows that, interestingly, two of the NHRIs that are standing observers in their country's NMIRFs go to great lengths to underline their independence and special status amongst other members, in effect putting limits or disclaimers to their involvement. Reversely, the two NHRIs that are only occasional guests of NMIRFs have expressed interest in having a standing status.

In the first category, NHRIs may be invited to comment on drafts and attend meetings, but they choose to maintain a distance with the NMIRF. In Portugal, the Ombudsperson will be selective as to which meeting it will attend and it will confirm accordingly. Being part of the email correspondence enables the Ombudsperson to see what requests for information are being made by the state authorities. However, the current Ombudsperson has chosen not to respond to these collective emails, a practice which follows that of previous mandate holders in order to ensure its independence: 'I am observer so I do not want a direct relationship with other members of the Commission and they should respect us as an observer'.³²⁷ This particular point may seem minor, but the Ombudsperson considers this crucial as part of its regular and constant attention to its independence and authority. There is also no public record or informal report that the NHRI expressed any opinion on the NMIRFs' role or membership. Whilst the Ombudsperson maintains its autonomy from the NMIRF, it has said that it does find it useful to be present in their meetings and to follow what the NMIRF is doing regarding reporting, and make the NMIRF aware that the Ombudsperson is doing so.

This approach is acknowledged and fully accepted by the NMIRF itself. A former NMIRF member noted that 'the Ombudsperson is quite happy to be an observer, and in fact treasure the fact that it is not a full member'.³²⁸ An official working with the NMIRF similarly recalls that it was the initiative of the government to invite the Ombudsperson as an observing member of the NMIRF and copy it in all correspondence, 'as a sign of transparency'.³²⁹ But ultimately, it is always the decision of the NHRI to decide if they actually come or not, or take the floor: 'there is a total openness on the NMIRF side to let the Ombudsperson office engage as it wants'.³³⁰ This approach may be dictated by principled considerations and the institution's priorities. There might also be a personal expertise element: former Ombudsperson representatives may have been more participative and reportedly took more the floor on 'pet issues', or issues where they had direct expert inputs to contribute, as was reportedly the case e.g. during the discussions in the working group of the NHRC on the drafting of a national action plan in the field of business and human rights.

This arms-length approach, also adopted by the NHRIs in Moldova, it would appear, is in order to protect the NHRIs' independence, a solution proposed by the NHRIs themselves. The OPA and Equality Council accepted membership of the NMIRF on a consultative basis only, rather than having a vote, in order to maintain their

independence. After consideration, they decided that the NHRIs should not be part of the decision-making process of government, rather that they should only be involved in consultations and topics which may arise during any meetings. It was understood that they did not wish, therefore, to have the right to vote, only to be able to intervene and explain the position of the NHRI.³³¹ The Law consequently provides that the People's Advocate Office is an ex officio member of the Council. There is also a Superior Council of Prosecutors and the former People's Advocate did not agree to be part of this Council due to the same concerns. However, there may be some indication that the new People's Advocate may take a different view as they are now participating in the Council of Prosecutors. Although there is brief mention by the OPA in an annual report in 2018 of the National Human Rights Council, welcoming its creation,³³² no reference is made to its work in subsequent reports.

In the second category feature the Danish and Korean NHRIs, with no standing membership in the NMIRFs. The Danish Institute for Human Rights had expressed a preference to have a more permanent observer role in the NMIRF. The DIHR staff and civil society representatives further consistently note that there is a tendency for ministries to be represented in the NMIRF by junior staff, which limits the governance ability to i.e. take decisions during the committee meetings, and follow up once back in their respective ministries. They also regret that creation of the interministerial committee did not lead to staff reinforcement of the pre-existing International Law and Human Rights Section, within the Ministry of Foreign Affairs, which serves as the NMIRF's Secretariat. Having said that, questions of composition and membership are not the primary recommendations made by the DIHR when it comes to the NMIRF. Rather, the Institute has taken a stance on the competencies and the procedures of the NMIRF, in view of enhancing human rights implementation (see section below on follow-up).

In the Republic of Korea, the proposed national human rights framework engineered by the National Human Rights Commission and the Ministry of Justice in 2021 was an occasion for the NHRI to put forward its preferred institutional arrangement. Under the proposed legislation, 'the National Human Rights Commission of Korea may request the chairperson of [the newly created National Human Rights Policy Committee] to deliberate on issues', and 'may have a standing member attending and speak at the Committee'. The NHRI also advocated for the newly National Human Rights Policy Committee, now more clearly embracing an NMIRF function, to be attached directly to the Prime Minister, and no longer the Ministry of Justice.³³³ The government followed that proposal when approving the draft bill – now pending adoption by Parliament.³³⁴

Across case studies, there appears to be a convergence towards NHRIs preferring to be a standing observer of NMIRFs. As an observer, NHRIs have access to information but can choose whether to participate more actively or not in NMIRFs' proceedings, on their own terms. There is a willingness from two NHRIs that are already members to make sure to differentiate themselves from other members of the NMIRFs, reasserting their independence. This ostensible position might

be in part to preserve the ‘perception of independence’ too, which is increasingly paid attention to by GANHRI (see Chapter 1). This official stance does not prevent dialogue outside of regular activities between the staff and representatives of NHRIs and NMIRFs (see Section 8 below). In practice, findings also suggest that the personality/background of either the NHRI leadership and/or of the NHRI representative in the NMIRF might also influence how the degree of engagement of the NHRIs in NMIRFs proceedings translates in practice.

2. NHRIS AND INTERNATIONAL REPORTING: CONTRIBUTIONS TO STATE REPORTS AND ALTERNATIVE REPORTS

This section focuses on the role of NHRIs in international reporting, and its interactions with the NMIRFs in those processes. It first shows the degree of involvement of NHRIs in state reports, to then turn to NHRIs’ use of alternative reports and submissions to international bodies.

2.1 NHRIS’ CONTRIBUTIONS AND COMMENTS TO STATE REPORTS

NMIRFs’ avenues for associating NHRIs in state reports

All NHRIs in the case studies are invited to make contributions to the state reports drafted by the NMIRFs or relevant ministries, including in cases where they are not members of the NMIRFs (Denmark and the Republic of Korea) and where the NMIRFs are ad hoc (Republic of Korea). In the case of the Republic of Korea, there is a legal requirement under the Act establishing the Human Rights Commission that in the preparation of any state report to a treaty body (although not to UPR) the state authorities ‘shall hear the opinions of the Commission’.³³⁵ If adopted by Parliament, the new Korean Framework Act on Human Rights Policy would create a double obligation for the NMIRF to consult the NHRI and for the NHRI to submit its opinion.³³⁶

This process of engagement entails, for example, inviting the NHRI to attend meetings, and for it to comment on initial and later drafts.³³⁷ Other organisations, including from civil society, may be involved in these consultations. As was noted with respect to the drafting of a periodic report of the Republic of Korea to the CEDAW Committee, information was ‘collected through rounds of internal discussions and consultative meetings with gender and human rights experts, including those from the National Human Rights Commission and international organizations’.³³⁸ The Commission is asked for its opinion on initial drafts³³⁹ as well as to give ‘a final review of the draft of the report’.³⁴⁰ In Mauritius, the NHRC is requested to provide statistics and other information on complaints. In Moldova, the NHRIs, as members of the NMIRF, the Council, are also then members of its different working groups and ‘specialised commissions’ involved in drafting the report.

Different meetings may be held at various stages in the drafting process (e.g. preparing for the List of Issues Prior to Reporting, etc.) and the NHRIs may be involved, as in Mauritius, in all of these. In Denmark and Moldova, in complement to drafts circulated within the NMIRF or discussions over draft reports at the occasion of meetings organised with NHRIs and CSOs, public consultations are organised

around each report, which includes public hearings and the publicisation of reports drafts on the relevant websites.³⁴¹

Consultations of NHRIs and civil society in reporting phases is clearly heralded as a 'good practice' by treaty bodies and is one of the primary capacities expected from NMIRFs by the UN.³⁴² Very often, state reports duly underline their efforts to ensure an inclusive process. As was noted in the state report of Moldova under the third cycle of the UPR:

The report was drafted by the State Chancellery (Permanent Secretariat for Human Rights) with the contribution of the relevant national authorities and institutions. In addition to interministerial consultations, the draft report has been extensively consulted with National Human Rights Institutions and civil society organizations. The comments received were carefully evaluated for the final version of the report. It was subsequently approved by the National Human Rights Council.³⁴³

Another example is the state report of Portugal to the CRC, which notes:

As to the methodology used in its elaboration, the report was drafted within the National Committee for Human Rights, under the coordination of its Executive Secretariat and integrating the contributions of the Ministry of Foreign Affairs, Commission for Citizenship and Gender Equality, High Commission for Migration, Ministry of Defense, Ministry of Internal Affairs, Ministry of Justice, Ministry of Economy, Ministry of Labour, Solidarity and Social Solidarity, Ministry of Health, Ministry of Education, Ministry of Culture and *Provedor de Justiça* (Ombudsperson).³⁴⁴

Showcasing of 'inclusiveness' may be seen as excessive, raising concerns with the extent to which the NMIRF-prepared state report is presented as also incorporating the NHRIs. In Moldova, the OPA diligently recalls that its contributions to the NMIRF for the drafting of state reports do not compromise its right to submit alternative reports. In a press release following the August 2022 NMIRF's meeting approving the state report under the ICESCR, the Office of the Ombudsperson duly:

emphasize[d] that the Office of the Ombudsman as a National Institution for the Protection of Human Rights has actively participated by presenting opinions and suggestions for improving the mentioned documents, but, at the same time, reserves the right to submit the Alternative Reports based on the specified international instruments, in accordance with the international reporting procedure.³⁴⁵

Response from NHRIs to the opportunities to comment on state reports

In practice, and even for state reports underlining NHRIs' involvement, the actual degree of contribution of the NHRIs to drafting processes varies. The Portuguese Ombudsperson does not see itself 'at the same level as other institutions' within

the NMIRF since it only enjoys observer status, it finds it inappropriate to actively participate in the drafting process by replying to general requests for information addressed to all members. Therefore, whilst the Ombudsperson may see drafts of the government report through the email lists, it does not answer or engage in a dialogue with the NMIRF on its own initiative. If prompted, however, it will provide all necessary assistance, namely sharing information (regarding statistics on complaints received by the Ombudsperson on any given subject area) and advice.

In Moldova, information with respect to the OPA itself (e.g. the capacities of the institution or whether it has sufficient financial resources, etc.) was considered relevant for the People's Advocate to comment upon, but not necessarily the other recommendations that did not relate specifically to the NHRI. Rather, these were considered to be part of the obligations of the state.

The Danish and Korean NHRIs provide comments on state reports without the need to recall principled stances. This may be explained by their specific institutional set-up: they are not members of the NMIRFs, and in Korea, it is a legal obligation to consult the NHRI. They also balance their comments on state reports by systematically making use of their rights to submit alternative reports. The NHRCK's alternative reports not only assess the human rights situation in the country, they are also an occasion for the NHRCK to evaluate the quality of the state report itself, taking the treaty body reporting guidelines as a reference point. For instance, in its 2022 alternative report under the CRPD, the NHRCK found that:

In spite of those efforts and positive achievements of the government, the National Report submitted by the government has several limitations. First, reasons that delay the implementation of the Convention due to legal enforcement or practice are not sufficiently described, and optional rules and legal provisions which bear only theoretical significance are often cited as examples of compliance with the Convention, thus failing to provide an accurate explanation of the human rights status of persons with disabilities in Korea.

Second, the Guidelines demand that statistical data should be presented for the comparison and confirmation of the implementation of the states' obligations and the protection of rights of persons with disabilities corresponding to respective articles of the Convention. However, the National Report does not provide sufficient data necessary for the analysis of the human rights status of persons with disabilities or implementation status as it failed to provide data in relation to education, labor, and employment of persons with disabilities or tended to provide the overall status of supply and size from the government's perspective.

Third, although the budget is what shows government's commitment to policy, the report barely mentions budget.

The purpose of the National Report should be about reviewing the level of compliance of domestic laws with the Convention and identify issues

associated with the implementation of the Convention and areas to improve, so as to set the basis to establish and develop more appropriate upcoming policies. Given that, it is desirable that the National Report should state both positive progress that has been made and problems or limitations on the implementation of the Convention without any reservation as well as data and related budget to grasp the specific status.³⁴⁶

The Danish NHRI has also been critical of the quality of draft state reports, and used reporting instructions as a compass: for UPR reviews, it refers to UN Human Rights Council 16/21 adopted in 2011, that spells out reporting expectations and in particular the need for states to focus on the implementation of the accepted recommendations. Criticisms of the state report are issued during the drafting of the state report, in the NHRI's comments on the draft, and accompanied with suggestions on how to remedy the draft reports' weak points. It is worthwhile noting that the NHRIs' comments on draft state reports are publicly accessible on its website,³⁴⁷ and that the NHRI together with the Human Rights Council of Greenland has also provided comment on the quality of the government of Greenland's inputs to the Danish UPR report.³⁴⁸

At the end of the spectrum, the NMIRF in Mauritius sends drafts of reports to the NHRIs who are requested to provide the NMIRF with information, including statistics on the number of cases they received, the nature of complaints and outcomes.³⁴⁹ However, the NHRIs have not produced any alternative reports to treaty bodies of their own, and only one in relation to the UPR. It has been noted in one interview that the role of the NHRIs was more focused on responding to complaints rather than reporting and that the NHRIs and NMIRFs' mandates were therefore 'complementary'.³⁵⁰ During its 2021 re-accreditation process and review by GANHRI's Subcommittee on Accreditation:

The NHRC inform[ed GANHRI] that it is an observer member of the Mauritius National Mechanism for Reporting and Follow-up (NMIRF) mandated to coordinate and prepare reports to and engage with international and regional human rights mechanisms. The NHRC also inform[ed] that it contributes to the State reports to Treaty Bodies while it has not submitted parallel reports to the Treaty Bodies.³⁵¹

This approach focusing only on inputting to state reports while neglecting the possibility to submit alternative reports has been regretted by GANHRI's Subcommittee at various occasions, but has not prevented the accreditation of the NHRC with A-status (see below).

2.2 ALTERNATIVE REPORTS AND SUBMISSIONS OF NHRIS

The NHRIs in the case studies varied in terms of whether and how frequently they submitted alternative reports to the treaty bodies and under the Universal Periodic Review. The following table provides with an account of the independent submissions made by NHRIs, based on information recorded on the UN Treaty Body Database and on the UPR-Info database.

TABLE. ALTERNATIVE NHRIS SUBMISSIONS FOR TREATY BODIES AND UPR REVIEWS (UNTIL FEBRUARY 2023)

Country (+number of completed reporting cycles under core treaties)	NHRIs alternative reports (as documented in UN Treaty Body Database)	Number of treaties covered by NHRIs reports	Other types of submissions (as documented in UN Treaty Body Database)	Reports submitted under the first 3 UPR cycles
Denmark (completed 48 reporting cycles)	13 reports + 2 reports from Ombudsman (incl. 1 as NPM) + 1 report from the Danish National Council for Children + 7 NPM report sent to the SPT	7 (out of 8 ratified treaties, but CED reporting has not started yet since it was ratified in 2022)	9 contributions to LOIPRs (incl. 2 for upcoming cycles) 3 submissions of follow-up information	3 alternative reports, for each of the cycles
Mauritius (completed 31 reporting cycles)	0	0 (out of 7 ratified treaties)	0	1 alternative report, for the first cycle
Moldova (completed 21 reporting cycles)	4 alternative reports + 2 reports from the Equality Council + 6 NPM reports sent to the SPT	4 treaties (out of 7 treaties ratified) No OPA report under ICCPR, CERD and CRPD, but the Equality Council submitted a report under the CERD.	1 contribution to LOIPRs 1 submission of follow-up information	3 alternative reports, for each of the cycles
Portugal (completed 41 reporting cycles)	8 alternative reports + 3 NPM reports sent to the SPT	6 (out of 8 treaties ratified) No alternative reports under CEDAW and CED.	1 contribution to LOIPR (CEDAW)	0 alternative report, but oral statement during the third cycle
Republic of Korea (completed 37 reporting cycles)	9 reports	7 (out of 8 ratified treaties, but CED reporting has not started yet since it was ratified in 2023)	7 contributions to LOIPRs (incl. 3 for upcoming cycles) 1 submission of follow-up information 1 submission of comments on concluding observations	3 alternative reports, for each of the cycles

Methodological caveats: The UN Treaty Body Database does not document NHRIs' submissions prior to 2010. This might be due to the date of creation of the database, or to the fact that treatment of NHRIs submissions were not standardised across treaty bodies prior to that date. For instance, the database only mentions the DIHR's inputs to the fifth CRC review of Denmark, when in fact the Institute has submitted inputs to all reviews since the first one in 1994.³⁵² The UN Treaty Body Database nonetheless remains the most comprehensive records on reporting cycles. It therefore helps making a relative assessment of NHRIs' propensions to engage with alternative reports. The total number of reporting cycle is indicated in order to show that the reporting basis that NHRIs can engage in is not the same for all countries. Some reporting cycles date back as far as the 1970s, thus well before NHRIs were established. What is more, some NHRIs have more recently been established.

Factors influencing NHRIs' decision to submit alternative reports

Variations over submitting alternative reports might be explained by a series of factors. First, as seen in the previous sub-section, there might be different principled views as regards the institutional roles and the operational implications of the concept of independence, leading to a different trade-off between inputting to state reports and/or submitting alternative reports. This might be dependent on leadership's views, but other factors might be taken into account, such as the overall state capacities and resources, notably in relatively small, developing countries.

The NHRIs of Mauritius and Portugal, for instance, have a drastically diverging understanding of the institutional boundaries or distribution of functions when it comes to reporting. One perspective from interviews was that the former contributes to the state report, based on an understanding of a specialisation of roles amongst state actors (reporting coordinated by the NMIRF, while the NHRI focuses on complaints).³⁵³ Another view was that the NHRI did not need to produce its own alternative report because of the good working relationship with the NMRF and the fact that its comments were, thus, likely to be incorporated into the state report.³⁵⁴ For Portugal, the PDJ/Ombudsperson will resist commenting on draft state reports and focus on alternative reports, although – like in Mauritius – its primary activity is also complaints-handling.

In other words, similar mandates may be appreciated differently. Additional evidence of this is that in these two countries, the NHRIs have been designated as NPMs under the OPCAT, and both established a dedicated internal structure in order to perform this task. In the Portuguese case, the data and knowledge collected through the NPM activities play a significant role, and the aspects that are highlighted in the alternative reports reflect situations that are brought to the attention of the Office of the Ombudsperson mainly through complaints lodged by citizens regarding the operation of public services. Both mandates form the basis for the alternative reports.³⁵⁵ In contrast, in Mauritius this information are drawn upon in the state reports.³⁵⁶

Commenting on Mauritius' approach, and referring to Paris Principles and General Observation 1.4, the Sub-Committee on Accreditation of GANHRI reiterated for the second time in 2021:

the importance for the NHRC to engage with the international human rights system independently of government, [...including through] submitting parallel or shadow reports to the Universal Periodic review, Special Procedures mechanisms and Treaty Bodies [and] making statements during debates before review bodies and the Human Rights Council. [...] The SCA encourage[d] the NHRC to engage effectively and independently with the international human rights systems.³⁵⁷

The National Human Rights Commission of Mauritius was nonetheless re-accredited with A-status, showing that there might be a margin of appreciation for NHRIs to decide on their preferred course of action with regards to international reporting.

The state of play in Korea and Denmark appears more similar in terms of number of reports. However, the number of reports does not mean that the two institutions have the same appreciation of the relative importance of alternative reports in their work, or devote the same amount of institutional energy in these processes. Such strategic appreciation may change over time. The NHRC of Korea increasingly values and prioritises alternative reporting, explaining that ‘the Commission submitting parallel reports to the international human rights treaty bodies is one of the most important part of the works that the Commission conducts, and the importance is becoming more evident as time passes’.³⁵⁸ As such, it has created an International Human Rights Division and other internal divisions are organised according to thematic international treaties.

Conversely, the Danish NHRI, although diligently submitting alternative reports and engaging with treaty bodies and the UPR through multiple channels, has been re-considering the strategic prioritisation of alternative reporting in its work. As a DIHR staff explained, ‘while engagement with the international human rights system is a key NHRI requirement vis-à-vis the Paris Principles, we reflect on what we get from our engagement with treaty bodies and with the UPR process to improve and support the legitimacy of the system. We no longer want to tick boxes for the sake of it. We now put additional work in what we find strategic to promote and protect human rights. In this regard, interventions before the European Court of Human Rights have become increasingly important’.³⁵⁹ As such, the Institute’s ‘monitoring department’ was renamed in 2022 into a ‘legal department’ (more on this in section 5 below).

NHRIs’ propensity to submit alternative reports also depends on other types of assessments. The Portuguese Ombudsperson will submit reports to the treaty bodies depending on factors such as staff availability and a consideration of what contribution it could make to particular issues. It henceforth explained in its oral statement under the third cycle of the UPR that its intervention (not backed up by a more exhaustive alternative report) would ‘focus on key issues that intersect the Ombudsman’s multiple mandates and the recommendations delivered by the Human Rights Council on the last reporting cycle’.³⁶⁰ Lack of resources may also be constraining. In its report to the Human Rights Committee the Portuguese Ombudsperson noted that:

Neither the Ombudsperson’s designation as NHRI nor its appointment as NPM were followed by measures (namely, the reinforcement of financial and human resources) aimed at strengthening its monitoring functions. As a result, new functions as the promotion of human rights, dialogue with international institutions (UN bodies, Council of Europe and others),

monitoring duties, visits, coordination, and reports are done by the same staff that deals the traditional tasks of the Ombudsperson.³⁶¹

The new organisation resulting from the 2021 organic law now explicitly reflects different dimensions of the PDJ/Ombudsperson's mandate, namely its work as the NHRI and the National Preventive Mechanism under the OPCAT. The new departments have specific competences in the fields of prevention against torture (NPM), international relations office and development of studies and projects. The International Relations Department performs the duties of the Ombudsperson as NHRI. This Department is in charge of promoting harmonisation between internal and international law, in the human rights area; preparing and presenting reports required by international organisations; cooperating with international, regional and local institutions responsible for promoting and protecting human rights and coordinating the Ombudsperson's international activities.

In other words, it may take time and advocacy for NHRIs initially first established as an Ombudsman dealing primarily with complaints for maladministration to be well equipped to perform all aspects of its added NHRI mandate. Reversely, an NHRI such as the Danish Institute for Human Rights (first established in 1987) has since its creation extensively invested its international engagement, and has found ways to provide inputs to treaty bodies even before procedures for NHRIs inputs were clearly established.³⁶² Such long experience, leading to internal procedures for preparing reports, can further explain how an NHRI can keep a professional level of engagement with international reporting while strategically prioritising other types of activities. The resources that an NHRI needs to invest in international reporting have also changed over time because the standing of NHRIs at the UN has changed. As a DIHR staff explained:

At the beginning, we did everything big. We would send three people to Geneva for each review. Also, Katharina Rose [GANHRI representative in Geneva] had to fight to establish formalised avenues for NHRIs to be heard by the Committees. NHRIs are now listened to with great attention. For the recent CERD review of Denmark, we noticed that we had a great impact on the concluding observations, even with a limited engagement. [...] Of course, nothing is to be taken for granted, and each treaty body is different.³⁶³

The NHRIs in Moldova use the opportunity of submitting alternative reports to highlight issues which may not be present in the state report. For example, they may focus on matters which are difficult for the government to accept, or can move beyond the legislative or policy frameworks presented by the state in its report, to include information on the impact or change on the ground.³⁶⁴

The creation of NMIRFs may have helped creating more predictability in reporting cycles and in turn routinise national stakeholders' interventions around those. In the case of Portugal, more alternative reports seem to have been submitted after the establishment of the NMIRF. This may be coincidental, but interviewees did point

to the fact that the transparent approach of the NMIRF may have helped creating more shared awareness around international reporting, and enhanced the PDJ/ Ombudsperson Office's sensitivity towards those processes. The Ombudsperson mentioned that every year it receives from the NMIRF a plan with reporting cycles, which enables it to organise its alternative reports. However, the same logic did not lead the Mauritius' NHRI to engage in alternative reporting – instead, the creation of the NMIRF is used as a further justification for the Commission not to produce its own reports.

While NMIRFs may have increased predictability in state reporting, the scheduling of the reviews by treaty bodies themselves has proven disruptive, and has led to a desynchronisation between state and NHRIs reports. In five pending reviews (at the time of writing, May 2023), the state reports have long been submitted by the governments of Denmark and Korea, yet the NHRIs have so far inputted to the LOIPRs, prior to reporting. As explained by the DIHR staff, the Institute waits for the Committees to actually schedule the reviews before submitting its alternative report, in order to provide an up-to-date assessment of the situation. To give an example of the delays, in the case of the eighth CAT review of Denmark, the DIHR submitted a report prior to the LOIPR in January 2018, the CAT Committee published the list of issues in June 2018, the state submitted its report in December 2019, and the actual review was only recently scheduled – for November 2023.

Last, prioritisation of alternative reports over contributions to the state reports may also reflect an assessment of the quality of the state report (as the above extended quote from Korean alternative reports showed) and the state's ability to listen to NHRIs and CSOs. Some NHRIs in our study questioned the extent to which the state reports reflected the opinions (where given) of the NHRI and others in the drafting process. As the NHRCK in Korea noted, 'not all comments from the Commission are incorporated into the final draft of governmental reports'.³⁶⁵ This may be due in part to the stage at which the NHRI comments on the draft report: 'Comments provided [by the NHRCK] are put to the report after going through the decision-making process at the NMIRFs'.³⁶⁶ The NHRCK therefore considers it 'more effective to submit parallel/shadow reports to the treaty bodies'.³⁶⁷ In Moldova, similarly, it was also noted that the comments of NHRIs may not be incorporated into the state reports, particularly when it comes to issues that are contentious or relate to the actual implementation of recommendations. In Denmark, CSOs are reportedly 'fairly critical' of some aspects of the reporting itself, underlying notably that the reports could be more detailed and that the quality of answers to questions during the Geneva-based interactive dialogues remains 'very poor'.³⁶⁸

NMIRFs reactions to NHRIs alternative reports

In none of the case studies do the NHRIs experience official backlash, let alone reprisals, for engaging directly with international bodies – at least in recent years and since the NMIRFs were established. This is not to be taken for granted, as NHRIs around the world are regularly the object of attacks, official summons or

sometimes prosecuted for submitting alternative reports or taking the floor in UN fora.³⁶⁹ NMIRFs' representatives interviewed for this study either respectfully acknowledged the right of NHRIs and CSOs to submit alternative reports, and in some cases marked their appreciation of the comments and reports made by these stakeholders. One of the Danish NMIRF representatives insisted that civil society and NHRIs comments and alternative reports are welcome: they can provide missing information, but also help the government preparing for likely questions during the reviews. They also support the NMIRF in nudging implementation by line ministries (see below section 3.4).³⁷⁰

3. OFFICIAL DELEGATIONS

3.1 COMPOSITION OF OFFICIAL DELEGATIONS

The review of official lists of delegations for treaty bodies and UPR reviews³⁷¹ shows no records of NHRIs being part of official delegations. Some variations emerge across case studies, for instance in terms of predominance of representatives by ministries of justice (e.g. in Korean delegations) vs ministries of foreign affairs (e.g. in Danish delegations), or in terms of the overall number of delegates. In other countries, leadership and main ministerial representation vary according to the subject-focus of the review. Delegations' sizes also differ: delegations tend to be more compact for Mauritius and Moldova, and much more expanded for Denmark, the Republic of Korea and Portugal.³⁷²

Delegations are mainly composed of ministerial representatives, but frequently include other state actors, for instance representatives of the judiciary, thematic governmental human rights focal points (such as the Commission for Citizenship and Gender Equality in Portugal), parliaments, the police, etc. Interestingly, Korea has at times attempted to identify two categories of participants in its delegations, distinguishing official representatives from 'advisers', the latter category focusing on participants independent from the executive, such as research institutes, CSOs and parliamentarians. However, this practice has not been consistent in time (only applied on handful of occasions), and in substance (parliamentarians have either been identified as official delegates, or as advisers).³⁷³

3.2 NHRIS PARTICIPATION TO REVIEWS IN THEIR OWN CAPACITY

NHRIs' participation in their own right to international reviews is challenging to track, as there is no UN centralised documentation on participants to reviews other than the official delegations. Except for the NHRI of Mauritius, which lack of participation in reviews has been regretted by treaty bodies,³⁷⁴ there are evidence of participation of the NHRIs of the other four countries.³⁷⁵ There is also large evidence across summaries and proceedings of reviews that treaty bodies value the information provided by NHRIs, and whenever possible predicate or substantiate their questions to the official delegation based on NHRIs data and information. At the UPR, NHRIs contributions are duly reflected in UN compilations of stakeholders' information, that serves as a basis for many UPR reviewing states to prepare their comments.

With the voice of NHRIs now solidly established and appreciated in the context of international reviews (see Chapter 1, Section 2), the need for NHRIs to travel in numbers to Geneva has been less pressing. Some NHRIs have also developed new practices that are assessed as particularly impactful. For instance, prior to the third cycle UPR of Denmark, the Danish Institute for Human Rights together with the UPR-Committee consisting of CSOs invited Copenhagen-based embassies to a briefing in order to share its views and advocate for messages to be passed on by reviewing states during the interactive dialogue, or through prior questions to be submitted to Denmark. The development of digital tools for participation in reviews further led NHRIs to ponder the need for traveling to Geneva. As a DIHR staff commented, 'during the COVID19-crisis, we also discovered that online participation can be impactful.'³⁷⁶ All this points to a less acute need to necessarily rely on physical participation, and to a diversification of NHRIs' modes of interventions at the occasion of state reviews.

4. FOLLOW-UP TO RECOMMENDATIONS FROM SUPRANATIONAL BODIES

This section presents findings on NHRIs-NMIRFs interactions in the process of following up to recommendations. It first looks at the matter from the standpoint of NMIRFs (NMIRFs' involvement of NHRIs in follow-up activities) and then from the perspective of NHRIs (NHRIs' views and involvement on national follow-up to international recommendations).

4.1 NMIRFS TOOLS FOR FOLLOW-UP AND IMPLICATION OF NHRIS

NMIRFs' follow-up mandates and tools

As set out in Chapter 2, the NMIRFs in the case studies have heterogenous mandate/authority, practices and tools for ensuring follow-up to recommendations from supranational bodies. The Danish and Portuguese NMIRFs, which secretariats are located in the Ministries of Foreign Affairs, have no authority to instruct implementation by line ministries. They also do not have recommendations implementation plans, nor dedicated software to record recommendations and track implementation by line ministries. Having said that, the Portuguese National Human Rights Committee adopts an annual action plan (more related to national human rights implementation than follow-up, see section 6) and the Danish Interministerial Human Rights Committee is piloting an initiative to focus on a select number of recommendations. Dissemination and attribution of follow-up responsibilities happen through email exchanges, and sometimes meetings if necessary. Both countries have submitted UPR mid-term reports under the first and second cycles of the UPR.³⁷⁷

Moldova and Mauritius both have national human rights action plans setting up national human rights objectives, recently complemented by digital recommendations follow-up platforms. In Moldova, the NMIRF is in charge of both types of implementation work: the National Human Rights Council has a broad mandate that includes a responsibility for the development of national policies (NHRAPs) that take into account the most recent international recommendations

at the time plans are developed, as well as of more short-term sets of measures for the implementation of international and regional recommendations that are issued in the meantime. For instance, with respect to CEDAW, recommendations from the Committee in 2021 were sent to the Ministry of Health, Labour and Social Protection. The Secretariat, with the Ministry, developed a matrix of actions which was approved by the Council. Monitoring takes place twice a year. This process of communication and dialogue every six months facilitates better engagement of the authorities in the process.

In other words, the Moldovan NMIRF maintains both long-term NHRAPs that only reflects on most recent international recommendations, as well as more short-term and targeted recommendations implementation plans. A representative explains why:

Realistically and with experience, we have come up with this efficient practice: On one hand, there is one overarching national human rights action plan, valid for four years, approved by parliament that sets obligations for various actors (executive, legislative, judiciary, local authorities...), with an annual reporting obligation; in parallel, the sets of 'implementation tools' or instruments to follow-up on recommendations are more flexible and more short-term. Many recommendations are actions that can be ticked as done or not—they may be more concrete than the ambitious objectives of the national action plan. As such, more short-term action plans may work better for their implementation.

Of course, when we prepare the new national action plan, we also look at the received recommendations. For instance, we are currently evaluating Moldova's third National Human Rights Action Plan (2018-2022) and deciding on the next human rights policy framework. It is obvious that the next policy will also reflect upon the UPR recommendations that the country has just received.³⁷⁸

The Council's anchoring in the Prime Minister's office/Chancellery reportedly facilitates implementation. According to an NMIRF staff:

coordination of implementation is based on the administrative authority and encouragement, not on sanctions. The Secretariat is not there to punish non-compliant line ministries. It would be possible to make notes to the political leadership if certain things did not work well to make other actors accountable. However, this has yet to be necessary in practice as all actors understand the terms of our international obligations and commitments.³⁷⁹

The Council's work is technically supported by an online platform to follow up and monitor recommendations, which is publicly accessible.³⁸⁰ Moldova has not submitted any UPR mid-term report.

In Mauritius, the NMRF disseminates recommendations from the international and regional bodies among the members of the NMRF at least every six months. Mauritius has a National Recommendations Tracking Database, although yet to be fully operationalised, developed with the support of the OHCHR. The broader National Human Rights Action Plan, covering 2012-2020, incorporates both national and international obligations, and noted certain Concluding Observations from treaty bodies recommending amendments to legislation.³⁸¹ Because the responsibility for monitoring both the NHRAP and international obligations (the NMRF) falls within the same unit within the Ministry of Foreign Affairs, this facilitates coordination and synergy between the processes.

Last, the Korean NMIRFs are diverse and do not have a single centralised procedure for follow-up, nor an online platform to track recommendations and follow-up. Nonetheless, the Human Rights Bureau at the Ministry of Justice, which coordinates reporting and follow-up for three treaties and the UPR, has produced two UPR mid-term reports. It appears to have a system in place for considering international recommendations and if possible, integrating them in the NHRAPs of Korea. In the second UPR mid-term report, Korea explains that:

In the same manner as the first UPR, the Government went through procedures to incorporate the recommendations of the second UPR into the second National Action Plan on Human Rights, which was already adopted in 2012; the policy agenda for the accepted UPR recommendations was specified and plans for implementation were prepared in July 2013. Most of the UPR recommendations turned out to overlap with the recommendations of the existing treaty body system. Since the overlapping content was previously reviewed by appropriate authorities and the policy agenda was adopted during the preparation of the second National Action Plan on Human Rights, there are not a lot of additional agendas that have been altered after the recommendations of the UPR were issued.³⁸²

NMIRFs' involvement of NHRIs in follow-up activities

In their activities to follow-up on concluding observations and other recommendations, NMIRFs may involve NHRIs. For example, public consultations are organised by the Permanent Secretariat of the National Human Rights Council in Moldova with the NHRIs, parliamentarians and CSOs after the examination of the reports at the UN and receiving recommendations. During the consultations are discussed the next steps for the implementation of the recommendations, as well as the proposals/recommendations made by the NHRIs in these processes. The NHRIs may have projects directly with the relevant ministries for the implementation of some of the recommendations. These public consultations enable coordination of these various activities. As explained by a NHRC staff, 'it is still possible, and in fact very beneficial, to consult with external stakeholders – including the NHRI and CSOs – to identify measures to follow up on recommendations. We have realised that the broader the consultation (not in

time, but in the number of CSOs involved), the more efficient the implementation measures.³⁸³

In Denmark, the Interministerial Human Rights Committee solicits the Danish Institute for Human Rights' as well as civil society's inputs and assessments as to the implementation of the recommendations. After the 2021 UPR review, for instance, the Committee convened a meeting with the Institute and civil society before finalising the list of accepted or noted recommendations. It also asks inputs from national stakeholders when drafting its follow-up report to treaty bodies.³⁸⁴ The Committee recognises civil society and the NHRI as important actors to advance change in the government's policy and in parliament, and in turn help raising the level of implementation of the recommendations in view of the reporting cycle. The DIHR, alongside civil society, can use its own advocacy tools and leverage its institutional position. Such positive synergies are reportedly in part conditioned by the personal commitment of civil servants. There have been so far regular alignment and a shared willingness to trigger actual recommendation follow-up amongst the Committee's Secretariat staff, the DIHR and civil society, but interviewees noted that this might in part be boosted by the strong commitments for follow-up of the Committee's Secretariat staff.

In Portugal, there has for long been less expectations on the side of the National Human Rights Committee that the PDJ/Ombudsperson would take an active role regarding follow-up, except under the CAT. However, this may be changing. As one NMIRF representative pointed that 'apart from the CAT, under which the Ombudsperson has a specific mandate as National Preventive Mechanism, there has been less attention and resources for international issues: its core mandate is to deal with complaints at the national level. Having said that, as an NHRI the Ombudsperson has a role to play for all other treaty obligations: it is increasingly aware of this role and keen on expanding beyond the traditional main role in complaints-handling'.³⁸⁵

In contrast, in Korea, state authorities appear to rely in part on the NHRI to track implementation of the recommendations. The NHRCK is requested to provide information to the relevant government authorities when the latter are reviewing progress on implementation.³⁸⁶

Digital tracking tools can be useful avenues for NHRIs to contribute views to follow-up. When they are online and public, these databases can a minima be viewed by NHRIs. However, in many cases NRTDs are not publicly accessible. In part this may be temporary, as in Mauritius. Nonetheless, in the meantime, it is reported that the National Human Rights Commission is invited to attend the NMRF where monitoring of implementation of recommendation takes place.³⁸⁷

In Moldova, not only is the database public (monitor.drepturi.md), it also permits the NHRI to contribute in various ways. The National Human Rights Council's

Secretariat presents information collected from the ministries and government authorities to OHCHR to populate the database. It enables NHRIs and CSOs to post comments and make a separate evaluation (1-5, 5 fully implemented) on the recommendations. It has been noted that the current OPA has highlighted the importance of monitoring and conducting this evaluation.³⁸⁸ The NHRI has made use of this opportunity, posting comments and providing scores, particularly with respect to aspects of its operation and mandate, and sporadically on other issues. Its inputs offer alternative perspectives (for example noting delays in the adoption of legislation) but so far very little information has been provided by the government.

4.2 NHRIS' VIEWS AND INVOLVEMENT ON NATIONAL FOLLOW-UP TO INTERNATIONAL RECOMMENDATIONS

NHRIs' prioritisation of monitoring of recommendations implementation

The practice of NHRIs in the case studies vary as regards the extent to which they monitor the implementation of international and regional recommendations by the government. Some NHRIs comment on the role of the NMIRF in this process, others not.

The NHRIs of Mauritius and Portugal invest very little in monitoring implementation of international recommendations. In Mauritius, the annual report of the NHRC limits itself to references to recent state reports and concluding observations. It draws upon information provided by the NMRF when setting out the status of reporting, and does not add its own comments to it. For example, the NHRC's Annual Report 2020 notes:

The Combined 2nd and 3rd Periodic Report to the Committee on the Rights of Persons with Disabilities was submitted in October 2020 and will be examined by the Committee in 2021. Mauritius reported on the follow-up to the Concluding Observations of its last Report to the Committee on the Elimination of All forms of Discrimination against Women in November 2020. Mauritius presented its combined 9th and 10th Periodic Report under the African Charter on Human and People's rights in February 2020. The African Commission has not yet published its Concluding Observations on the Report.³⁸⁹

Having said that, releases of annual reports are an occasion for interactions between NHRIs and the NMIRFs. In interviews, it was noted that the Mauritius NMRF invites the NHRIs on the release of their annual reports to engage with it at that stage. In turn, the NMRF in Mauritius uses the information provided by the NHRIs in their annual reports to inform its own reports. Furthermore, beyond the NHRC, other independent human rights institutions of Mauritius may make more ample references to international law. The Annual Report 2020-2021 of the Ombudsperson for Children's Office, for example, makes extensive reference to the CRC and CRPD provisions, but not to the reporting process.³⁹⁰

In Portugal, the most recent annual reports of the PDJ/Ombudsperson do not refer to international recommendations – nor to e.g., the jurisprudence of the European Court of Human Rights.³⁹¹ Its latest, distinct report as NPM refers to one recommendation of the UN Subcommittee on Prevention of Torture in a footnote, in support to its own recommendations, as well as to jurisprudence of the European Court of Human Rights and of the European Committee for the Prevention of Torture³⁹² However, the PDJ/Ombudsperson reported taking an integrated approach between international recommendations and its own complaints-handling activities. For example, it may receive a complaint the subject matter of which deals directly with a recommendation from a treaty body. When it engages with the state authorities over the complaint the PDJ/Ombudsperson will remind them of the recommendation from the UN.

The NHRIs of Denmark, Korea and Moldova pay closer attention to international recommendations. They do not systematically track the implementation of every single recommendation. Neither have they developed off- or online tracking tools to measure implementation akin to, e.g., the English³⁹³ and Norwegian³⁹⁴ NHRIs' trackers. Yet a review of their annual and international reports shows a consistent attention to supranational recommendations, and their activities include raising awareness on the adoption of concluding observations through events, media and publicity, and inviting members of the treaty bodies to in-country meetings.³⁹⁵

Alternative reports to the supranational bodies are occasions to review how recommendations have been implemented by the government.³⁹⁶ Certain types of international submissions are dedicated to this monitoring exercise. The Danish Institute for Human Rights, for instance, is one of the rare NHRIs that submitted a voluntary mid-term report under the UPR, during the second cycle.³⁹⁷ It has also used in three occasions, under the CAT and the ICCPR, the possibility to send independent information as part of the follow-up procedure developed by treaty bodies, which consists in flagging as part of their concluding observations a select number of concluding observations on which the reviewed state has to send follow-up information within a year.³⁹⁸ The Moldovan and Korean NHRIs also sent follow-up information on one occasion each, to the Committee on Economic, Social and Cultural Rights.³⁹⁹

Annual reports of the NHRIs of Denmark, Korea and Moldova primarily focus on national dynamics of implementation, yet they also include numerous references to international recommendations and are thus used to hold governments accountable for their (in)action. Three types of mention to international recommendations are regularly found.

First, NHRIs typically refer to international recommendations that comfort their own recommendations to the government, based on concerns revealed through complaints-handling or documentation and research. For instance, the 2021 annual report of the National Human Rights Commission of Korea details legal and practical reasons why the Minister of Justice should 'delete status offender-related

provisions from the Juvenile Act and find alternative ways to guarantee juvenile welfare', and concludes its argument by recalling that the Committee on the Rights of the Child also recommended that status offender provisions be abolished.⁴⁰⁰

Second, NHRIs may directly relay non-implemented recommendations made by a treaty body. In his 2021 annual report, the Ombudsman of Moldova calls on the government to:

urgently undertake the necessary measures to ensure the implementation of the obligations assumed by ratifying the UN Convention on the Rights of Persons with Disabilities and the recommendations of the UN Committee on the Rights of Persons with Disabilities, regarding ensuring access to social infrastructure and services, including electronic ones, that meet the standards and needs of people with disabilities.⁴⁰¹

Third, on occasions, the NHRIs may commend the state for implementing a recommendation. In its 2020 annual report to the Parliament, the Danish Institute for Human Rights notes that:

The Danish Parliament has decided to repeal the requirement that recipients of unemployment benefits hold a residence permit. The residence requirement meant that a person was entitled to unemployment benefits if they had resided in Denmark for five out of the preceding 12 years. This change in policy came in the wake of a recommendation from the UN Committee on Economic, Social and Cultural Rights in October 2019 that Denmark remove the residence requirement.⁴⁰²

NHRIs' procedures for monitoring follow-up

NHRIs have developed various procedures to check the degree of implementation of recommendations. The OPA in Moldova gathers information from sources outside of government in order to cross-check data on implementation for its annual reports and monitoring. When participating in the NMIRF on issues of implementation, the OPA will provide information with respect to itself but not on other recommendations which did not relate to the NHRI. The OPA considered gathering information on the latter to be the state's responsibility. It may support the process by recalling ministries of relevant recommendations. For instance, recommendations from the CEDAW Committee in 2021 were sent to the Ministry of Health, Labour and Social Protection.

The NHRC of Korea interrogates the follow-up reports of the state and asks questions at the national level. It has requested the government provide it with any reports the state authorities have written on implementation. For example, with respect to CAT:

The NHRCK requested the Ministry of Justice for Korean government's implementation reports to the Committee on the concluding observations on the third to fifth periodic reports of Korea ... and other implementation data. However, the Ministry of Justice answered as non-existence and non-retention, respectively.⁴⁰³

Both the Korean NHRI and that in Moldova, initiate engagement with CSOs around implementation of international standards, considered in respect of the latter, to be necessary when the government's involvement of CSOs in processes has been found to be wanting.⁴⁰⁴ In order to carry out its goal of promoting 'domestic implementation with international human rights norms',⁴⁰⁵ the NHRCK organises discussion and conferences focusing on the domestic implementation of international treaties.

NHRIs recommendations for enhancing NMIRFs follow-up procedures

It is important to note that NHRIs' calls to follow-up on international recommendations are usually addressed generally to the government/the parliament or to specific line ministries. Annual reports never mention the NMIRFs' activities specifically: they do not make recommendations on how to improve follow-up mechanisms, nor do they comment on the annual reports of NMIRFs where they exist (Moldova and Portugal), thus limitedly holding them accountable for their follow-up activities.

There are nonetheless occasional calls by NHRIs to step up follow-up procedures by NMIRFs. Following the participation of the Moldovan Deputy Ombudsman to a 2022 meeting of the National Human Rights Council, the OPA indicated in a press release that:

the Deputy Ombudsman reiterated at the sitting the need to create at national level a mechanism to monitor the implementation of recommendations from international mechanisms for the protection of human rights. That action has its origins in the OPA analyses which show that most of the recommendations submitted by the UN Committees, on the basis of the Conventions, do not find practical implementation in national politics.⁴⁰⁶

In its 2021 UPR alternative report, the Danish Institute for Human Rights recommended the Danish government to step up human rights implementation and upgrade its NMIRF. The DIHR report indicated that:

Though Denmark upholds a high level of human rights protection, there is no systematic and strategic approach to the implementation of human rights recommendations. No systematic and public evaluation is carried out when Denmark receives concluding observations from UN treaty bodies, recommendations from special procedures or recommendations through individual communications. [...]

Recommendation: Ensure that the inter-ministerial working group on human rights establish a clear procedure for following up on recommendations from human rights mechanisms in cooperation with civil society actors and the national human rights institution.⁴⁰⁷

In the same vein, in 2019, the UN Committee Economic, Social and Cultural Rights had recommended Denmark to 'ensure that effective mechanisms, such as the interministerial human rights committee, [...] monitor the implementation of recommendations made by the Committee and other human rights mechanisms.'⁴⁰⁸

In the Republic of Korea, the NHRCK has co-drafted the pending Framework Act on Human Rights Policy. It foresees a mechanism for the NMIRF-to-be to systematise follow-up. Follow-up action plans would have to be presented to the NMIRF within six months after the completion of an international review. The pending bill also foresees that the 'State and local governments shall endeavour to implement the recommendations of international human rights organizations and reflect them in their human rights policies.'⁴⁰⁹

5. INTERACTIONS RELATED TO OTHER TYPES OF INTERNATIONAL PROCESSES

5.1 COUNTRY VISITS AND INDIVIDUAL COMMUNICATIONS

The NHRIs in this study engaged with UN special procedures when they visited the country. This included in the preparation of those visits, such as the DIHR which sent pre-visits briefs, suggested meetings and held briefings/debriefings, including for the general public in some cases, as for the visit in March 2016 of the Special Rapporteur on freedom of religion or belief, Heiner Beliefeldt.⁴¹⁰ The NHRIs will meet with the special procedure mandate-holders during their visits.⁴¹¹ These have been used by NHRIs as opportunities to highlight their own recommendations and responses by the state.⁴¹² For example, Moldova's Peoples' Advocate Office highlighted to the Special Rapporteur on Human Rights Defenders that its recommendations in its reports were not discussed in parliament.⁴¹³ Beyond these visits, there has been other engagement, for example, by submitting comments on draft guidelines developed by the special procedures.⁴¹⁴

NHRIs in this study did not initiate cases on behalf of victims to the individual communications process at the UN or regional levels. The only case reportedly brought by an NHRI appears to be in 2017, when the NHRCK submitted a complaint to the UN Working Group on Enforced or Involuntary Disappearances, regarding repatriation of individuals who were held in North Korea.⁴¹⁵ There is also limited involvement in monitoring the implementation of any decisions adopted by these bodies in respect of communications submitted by others. In part this may be due to the nascent processes for implementation and monitoring and which have principally focused on follow-up to reporting mechanisms, with communications yet fully to be considered.

Some of the NHRIs in our study did intervene as third parties and submitted amicus briefs before regional bodies. The DIHR, for instance, has in the last five years occasionally intervened as third party in cases before the European Court of Human Rights,⁴¹⁶ and monitors and advocates for the implementation of the Court's decisions. It maintains an online database of decisions taken by the European Court of Human Rights, national courts in human rights cases, as well as decisions taken by treaty bodies in context of individual communications.⁴¹⁷ The PDJ/Ombudsperson of Portugal, acting as NPM, also reports monitoring the implementation of decisions by the European Court of Human Rights, including their 'judicial aspects' and 'practical consequences', for decisions that affect not only the petitioner but reflect a problem observed at a wider level.⁴¹⁸

The NHRC of the Republic of Korea stands out for recommending ways for the government to enhance implementation of decisions. It has notably recommended that the government uploads the decisions to the official gazette and adopts legislation to implement the decision.⁴¹⁹ In its 2018 alternative report to the CERD Committee, the NHRCK as spelled out in more details its efforts to suggest a systemic follow-up to international decisions by the government, and the negative response received from the latter:

The State, contracting party to the Convention, has an obligation to dutifully implement the recommendation of the Committee; however, without any institutional facility to enforce the implementation of individual communications by UN treaty bodies, it is hard to ensure effective remedies including compensation for the individuals in reality.

On September 8, 2016, the NHRCK advised to adopt legislative and administrative measures to ensure effective implementation of the opinions regarding the individual communications by UN human rights treaties including appropriate compensation to the petitioner.

However, the government replied that it would not accept the advice on the ground that, under the current domestic positive law, the case bears no liability for compensation as it ensues only when a breach of contract or illegality is acknowledged. It also added that it would discuss the measures and procedures to implement the communications by international human rights instruments in the process of legislation of rules and regulations regarding human rights.

Thus, an institutional mechanism to ensure the implementation of the individual communications needs to be set in place as soon as possible so that effective remedies including personal compensation can be reviewed.⁴²⁰

5.2 PROMOTION OF INTERNATIONAL NORMATIVE STANDARDS AND RATIFICATION

State positions on the development of international standards

In the case studies, standing NMIRFs regularly act as vehicles for the definition of the country's position as regards the development of new international standards. This can primarily aim at associating line ministries in the process, but also offer avenues to involve NHRIs and civil society.

The Portuguese National Human Rights Council is formally tasked to 'ensure the coordination of the various ministries with a view to defining the national position in international human rights bodies', and 'counts on the participation of other public and private entities, as well as representatives of civil society, so that [Council's] action has a national dimension'.⁴²¹ As such, its working groups have been instrumental to decide, with a wide range of state and non-state actors, and in the presence of the PDJ/Ombudsperson, the position of Portugal on potential new human rights treaties on the rights of elderly people, and on business and human rights. The Council's annual meeting with CSOs is also helpful to prepare international initiatives of Portugal: the December 2022 meeting of the Council with CSOs focused on mental health and human rights, and directly feeds the resolution that Portugal presented in March 2023 at the UN Human Rights Council.⁴²²

In Denmark, the Interministerial Human Rights Committee has also been used, in practice, as a platform for consultations ahead of the resolutions negotiated at the UN level – but only with line ministries. Having said that, there are numerous joint initiatives taken by the Ministry of Foreign Affairs of Denmark and the International Division of the Danish Institute for Human Rights. This includes running of international capacity-building projects around the world, for which the DIHR is in part funded by the Ministry, as well as joint initiatives around the promotion of normative developments, notably for promoting anti-torture norms and bodies,⁴²³ ensuring that human rights are recognised as an integral part of the Sustainable Development Goals,⁴²⁴ or promoting an agenda for the development of norms on new technologies' impact on human rights.⁴²⁵ In interviews, both NMIRF, NHRI and CSOs representatives pointed out synergies when promoting human rights abroad: as captured by a CSO staff, 'the foreign dimension of human rights is 'an easier discussion to have than human rights in Denmark'.⁴²⁶

Such good relations as regards international promotion of human rights standards abroad can be challenging to understand, as it is distinct from the national work of the NHRI. The 2017 re-accreditation of the DIHR was deferred in part to answer the Subcommittee of Accreditation initial questions on the fact that the international work of the DIHR is more than four times what is provided for its core NHRI work, with funding received from the Danish Ministry of Foreign Affairs. It noted that 'such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the NHRI' so that they do 'not impact on its real or perceived

independence'.⁴²⁷ Following clarifications, those comments were not included in the Subcommittee's 2018 re-accreditation decision.

NHRIs may still act as a space for discussing normative developments with national stakeholders. For instance, in November 2022, the National Human Rights Commission of Korea drew together UN agencies, CSOs and other NHRIs to discuss the drafting of a UN Convention on the Rights of Older Persons, using this event as an opportunity to discuss the draft proposed by the NHRCK.⁴²⁸

Development of international guidance on NMIRFs

One area of international normative developments of direct relevance to the present study is the ongoing creation of standards and guidance on NMIRFs. On this topic, there is so far little interactions between NMIRFs and NHRIs, despite four of the states selected as case studies playing a role in this field. Portugal chairs the Group of Friends on NMIRFs, of which the Republic of Korea and Denmark are members. Portugal, Denmark, Mauritius and the Republic of Korea were co-sponsors of resolution on NMIRFs adopted by the UN Human Rights Council in 2019 (A/HRC/RES/42/30). For the 2022 resolution, Portugal, Mauritius and the Republic of Korea were co-sponsors (A/HRC/RES/51/33). There is no indication that these countries consulted their NHRIs during the drafting process. Ahead of the 2022 resolution, the Danish Institute for Human Rights co-organised a seminar with the OHCHR and the Geneva Human Rights Platform and reiterated the need to introduce language in the resolution on NHRIs-NMIRFs distinct and complementary mandates and interactions, yet, in the absence of a state taking up on its proposals, this did not make it through in the resolution.

Compounding factors are that 1) most of drafting of the resolutions on NMIRFs is done by the main sponsors (Paraguay and Brazil – two countries with no GANHRI-accredited NHRIs), and that 2) participation in the Group of Friends is mostly Geneva-focused, with various degrees of capitals' involvement. For instance, while the NMIRF of Portugal actively contributes to the international agenda on NMIRFs, the NMIRF of Denmark is not involved in international standards developments on this topic. While the Republic of Korea is a part of the Group of Friends and co-sponsor resolutions, the country itself has no standing NMIRF.

As such, GANHRI's Secretariat, that represents NHRIs in Geneva, would be ideally placed to ensure that the impact of NMIRFs on NHRIs is duly reflected upon in resolutions and guidance. So far, however, GANHRI's concerns vis-à-vis the UN's promotion of NMIRFs (the possibility that it might compete with the agenda on NHRIs) has led it to refrain from engaging with the NMIRFs agenda altogether, rather than discussing the opportunities and challenges it could represent for NHRIs.

Ratification of international and regional human rights treaties

As per the Paris Principles, NHRIs shall 'encourage ratification of the above-mentioned instruments or accession to those instruments'. Consequently, GANHRI's Subcommittee on Accreditation has for instance regretted that the Danish Institute for Human Rights 'is not explicitly mandated with responsibility to encourage ratification or accession to international human rights instruments. While acknowledging the activities the DIHR undertakes in this regard in practice, the [Subcommittee] encourages the DIHR to advocate for amendments to its enabling law to make this mandate explicit.'⁴²⁹

This does however not prevent the Danish, but also the Korean and Moldovan, NHRIs to raise ratification issues when need be.⁴³⁰ In their most recent annual reports, the Korean and Moldovan NHRIs indicate that they advocated for the ratification of optional protocols accepting individual communications. This does not appear to be the case for the Portuguese and Mauritian NHRIs.

The NMIRFs play an increasing role in ratification processes, which seems aligned with their mandates. In Mauritius, the NMRF is reportedly leading on the coordinating of stakeholders around ratification of particular instruments, involving line ministries and the NHRIs.⁴³¹ The NMRF can trigger the discussion and thereby prompt the lead ministry to move towards ratification.

If both NHRIs and NMIRFs are to play a role on ratification matters, and if the NMIRFs are a conducive channel for the state to proceed towards ratification, it would make sense that NHRIs would engage with NMIRFs on the issue of ratification of international and regional treaties – including optional protocols, as well as aim at lifting reservations entered at the occasion of ratifications, where relevant.

5.3 NATIONAL LAW REVISION AND HARMONISATION WITH INTERNATIONAL LAW

Case studies put to the fore evidence that the use of international human rights law and treaties by NHRIs clearly goes beyond reporting and follow-up. Other compliance strategies are used, that appear to supersede reliance on international reporting and follow-up as a driver for compliance.

NHRIs promotion of legal harmonisation with international standards

One of the key strategic approaches adopted by the Danish, Moldovan and Korean NHRIs is to apply international and regional law as a reference framework for reviewing national laws and policies, and as a guide for elaborating practical strategies to enhance human rights enjoyment. For example, one of the Republic of Korea's NHRI's three strategic goals in the Commission's Strategy of Action for Promotion of Human Rights (2021-2025) is 'Strengthening domestic implementation of international human rights norms'. As its 2021 Annual Report notes, the NHRCK:

continued to make recommendations and express opinion with regards to government policies and laws so that they are consistent with the International Convention on the Elimination of All Forms of Racial Discrimination and other international human rights standards.⁴³²

In this context, NHRIs' legal analysis, notably of upcoming new legislation and policies, is an important tool, and one that appears to be rather based on treaty bodies' general comments than on their recommendations to states. General comments offer a more in-depth interpretation of treaty provisions, that can be helpful to assess the details of a draft legislation. For instance, the 2021 annual report of Moldova's OPA/Children's Ombudsman contains a 100 page-review of select aspects of children's rights, which amply take the CRC Committee's general comments as reference point for the analysis.⁴³³ The OPA undertakes analysis of draft laws, *ex officio*, given the failure by government to comply with the provision in legislation that the government should consult with the OPA on draft normative acts.⁴³⁴

In Denmark, the DIHR's main strategic use of international human rights law is in connexion to its advice and legal research. A principal task of the DIHR is to submit views as part of the legislative consultation processes, and consider whether a draft bill complies with human rights law. The DIHR submits over 80 consultation responses every year.⁴³⁵ While the DIHR continues reporting to the UN committees, a more resolute use of international systems pertains to legal arguments and legal interventions they offer. It has also decided to invest in legal interventions in court cases, in particular through third party submissions at the European Court of Human Rights.⁴³⁶ Although the Institute has always based its activities on international law, it has strategically emphasised in recent years the legal basis for its work – in an attempt to deplete accusation of politicisation.

This case also shows how strategic emphasis on one use of international law rather than another may be influenced by views of the NHRI leadership as well as an assessment of the political context and how helpful treaty bodies or UPR recommendations are in this context. In Denmark, over the last two decades, there has been an increasingly critical take amongst political and legal circles as regards international and regional human rights bodies.⁴³⁷ While much of the criticisms have been targeted toward the European Court of Human rights⁴³⁸ and UN treaty bodies are generally regarded with relative indifference,⁴³⁹ the latter are occasionally the focus of criticisms too. Most of the controversies surrounding the work of the treaty bodies concerned cases brought against Denmark at the UN Human Rights Committee on the reviews of asylum requests by the Refugee Appeals Board, around 2016-2017.⁴⁴⁰ The DIHR Executive Director at the time, Jonas Christoffersen, condoned and added to those critical voices,⁴⁴¹ and suggested that national legislators could frame human rights law nationally – taking a strategically different approach than his predecessor.⁴⁴²

The standpoint of Danish human rights CSOs vis-à-vis international law is also important to note in this regard. Due to an understanding of the national institutional and political context (including the lack of follow-up mandate of the NMIRF), their main strategic plea is not recommendations follow-up: it is to incorporate international provisions in Danish law.⁴⁴³ Responding to CSOs' persistent requests in that direction, the government appointed several committees, in 1999 and again in December 2012 to consider the implications of incorporating human rights instruments into Danish law. The 1999 committee found that the ICCPR, the ICERD and the CAT should be incorporated in national law, whereas the 2012 committee had a more divided outcome in its August 2014 final report.⁴⁴⁴ Six committee members (out of 15) – amongst whom the above-mentioned DIHR Executive Director – recommended the incorporation of the ICCPR, the CRC, the CRPD, the CAT, the ICERD and the CEDAW into Danish law.⁴⁴⁵ However, the government explained that 'against the background of the report and subsequent public consultations, [it] decided not to incorporate further human rights instruments into Danish law'.⁴⁴⁶ The country did accept the individual complaints procedures under the CRPD (2014) and under the CRC (2015), but incorporation did not happen and remains a primary plea of civil society. An interviewed CSO representative in fact connects the creation of the NMIRF in December 2014 to the August 2014 expert report on incorporation: 'As Denmark refused to incorporate treaties into Danish law, the creation of the NMIRF was partly a response aimed at showcasing the seriousness of Denmark vis-à-vis international standards'.⁴⁴⁷

NMIRFs' roles in legal harmonisation

It would stand to reason that a fully realised NMIRF would be mandated to play an active role in analysing and revising national laws with regards to accepted international standards. This is not part of the Danish Interministerial Human Rights Committee's mandate, which is paradoxical given the context of its establishment (see previous sub-section). The UN Committee on Economic, Social and Cultural Rights has expressly called on the Committee to '(a) scrutinize the compliance of draft laws with its Covenant obligations; (b) assess the impact of laws and policies on economic, social and cultural rights'.⁴⁴⁸

In other case studies, law revision is expressly part of the mandate of the NMIRFs, but is not necessarily acted upon with the same degree of prioritisation and standardisation of procedures – and involvement of the NHRIs. In Portugal, the legal basis of the National Human Rights Committee foresees that Committee's responsibility includes to 'propose the adoption of internal, legislative or other measures necessary to fulfil international human rights obligations'.⁴⁴⁹ The Council's annual plans frequently provide for a generic action point foreseeing the 'adoption of internal, legislative or other measures necessary to comply with international human rights obligations'.⁴⁵⁰ However, this is a passing reference, and most activities are rather oriented towards international reporting and participation in international forum, for which the action plans are more detailed. The review of the NHRC's activity reports confirms that legislative harmonisation is not

prioritised. In theory, nothing prevents the NHRC from deciding in the future to set up dedicated working groups on legal harmonisation and take advantage of the representation of the parliament amongst its members (as observer) to invest more in legislative harmonisation with international standards.

In Mauritius, the National Mechanism for Reporting and Follow-up would appear to lead on the coordinating of stakeholders around law revisions.⁴⁵¹ For example,

Government has not yet taken any policy decision to repeal section 250 of the Criminal Code regarding consensual homosexual activity (Recommendations 145 to 147). The NMRF is, however, actively coordinating efforts especially with NGOs and other countries towards finding the most appropriate solutions to this Human Rights issue.⁴⁵²

However, whilst some issues regarding the non-alignment of national laws with international treaties is part of the work of the NMRF, and the matters will always be discussed at the level of the NMRF, it will ultimately fall to a line ministry or the Attorney General's Office to take the lead.⁴⁵³

The Protection of Human Rights Act provides the NHRI with a broad mandate, including to comment on legislation. In its 2021 Annual Report, the NHRC has factually reported the adoption of a series of laws on e.g. social benefits, cybersecurity and the independent broadcasting authority. However, these have reportedly been adopted or amended without critical comments.⁴⁵⁴ According to the NMRF, 'the NHRC does not publicly engage in commenting on legislation'.⁴⁵⁵

For the Republic of Korea, Article 20(1) of the National Human Rights Commission Act provides that the head of a state administrative agency or a local government, if they are aiming to introduce new or amendments to legislation and such changes may affect the protection of human rights, should notify the NHRCK in advance. As there is no NMIRF as such and government ministries are responsible for introducing legislation, the NHRCK acts as a repository for receipt of information with respect to both domestic law and compliance with international standards. It has initiated various strategic events bringing together experts including from the international community, to feed into domestic legislative processes.⁴⁵⁶

The Moldovan case appears to be offering a comprehensive mandate, set of procedures and actual practice of an NMIRF supervising legal harmonisation alongside the production of international reports, recommendations follow-up and the elaboration of human rights policies.

First, the National Human Rights Council of Moldova is tasked with overseeing NHRAPs, which sets as one of its priorities the harmonisation of regulatory, legal and institutional frameworks with international standards. In many cases, the areas identified for legislative revisions as part of the plans specify that the NHRIs shall be associated in the exercise. For instance, one of the activities of the 2018-2022

NHRAP is to 'evaluate the correspondence between legislative acts defining the procedure for the transmission of personal medical information with the relevant international standard', and 'develop and approve amendments' on the matter. These activities are to be performed by relevant ministries as well as the National Centre for Personal Data Protection, the Equality Council and the Ombudsman's Office.⁴⁵⁷

Second, although it might be the responsibility of line ministries to prepare legislative amendments, the NHRC can support the process. The Council includes several representatives from the Parliament. In addition, its specialised commissions, each dedicated to one treaty, can play an important role to discuss harmonisation, since they constitute discussion platforms with different government actors, human rights institutions and civil society representatives on the challenges faced by the authorities in the process of implementing international treaties. The NHRC's anchorage with the State Chancellery might also be of assistance, as the Chancellery has authority, and also developed structural methodologies for legal harmonisation. In the context of its pre-accession to the European Union, which negotiations are a driver for rule of law and fundamental rights reforms, the State Chancellery has set up a Centre for Harmonisation, and tools such as legal approximation matrixes.

Third, the NHRC actively reviews line ministries' efforts towards harmonisation efforts. For instance, during its meeting on 26 March 2021, the Council adopted its annual report on the implementation of the NHRAP, the UPR state report, as well as reviewed the Ministry of Justice's proposal for aligning the Penal Code to international standards, instructing the government to submit it to the Parliament.⁴⁵⁸ In turn, the NHRC reports to the Parliament on human rights harmonisation efforts, as part of its annual reports recording progresses towards the NHRAPs implementation.

6. OTHER TYPES OF INTERACTIONS RELATED TO NATIONAL DYNAMICS

This section reflects findings on NHRIs-NMIRFs interactions with regards to national dynamics of human rights implementation. In its second sub-section, it delves especially in the implementation of NHRIs recommendations to governments, and the potential for NMIRFs to facilitate this.

6.1 NATIONAL DYNAMICS OF HUMAN RIGHTS POLICY DEVELOPMENT AND IMPLEMENTATION

In three of the case studies (Mauritius, Moldova and Portugal), the NMIRFs have responsibilities for national human rights processes, in addition to international reporting and follow-up. In addition, in the Republic of Korea, the existing standing governmental structure – the National Human Rights Policy Council – is for now entirely devoted to national human rights policies, and will be elevated to also include international reporting and follow-up and properly qualify as NMIRF when the pending Framework Act on Human Rights Policy is adopted.

In these cases, the development, implementation and oversight of the National Human Rights Act Plans (NHRAPs) is often a backbone instrument of the NMIRFs' national work. Several successive plans have been adopted in Moldova and the Republic of Korea, and a second NHRAP should be adopted soon in Mauritius. In Portugal, the NMIRF adopts annual action plans that provide for a workplan for the year to come. Annual action plans as well the reports on their implementation are available for consultation.⁴⁵⁹ A working group has been established to develop a national action plan in the field of business and human rights.

This was noted as providing opportunities for interactions between the NMIRF and NHRIs. Many NHRAPs may also incorporate the recommendations of the NHRIs, thereby ensuring a cyclical and mutually reinforcing reporting and implementation process. In Mauritius, the NMIRF has its origins in the NHRAP 2012-2020 and this provided not only a useful incentive to ensure the establishment of the NMIRF, but this also resulted in the integration of their respective activities. As the secretariat of the NMIRF is also the same unit in the Ministry of Foreign Affairs that coordinates the implementation of the NHRAP, a synergy was created. The result of has been the clustering of recommendations from the human rights mechanisms around the themes of the NHRAP which in turn facilitates their respective implementation.⁴⁶⁰ Consideration is now being given as to how to ensure these themes are aligned to those in the NRTD. The committee set up to monitor the NHRAP invites the NHRC to its meetings and the latter can provide inputs to the discussions when government representatives are reporting on thematic areas.⁴⁶¹

If adopted by Parliament, the Korean bill on the Framework Act on Human Rights Policy, prepared by the NHRCK and the Ministry of Justice, would spell out the different interventions of the NHRI as regards the development and evaluation of the future NHRAPs of the Republic of Korea. Generally, the Act provides that central administrative agencies and local governments may request opinions from the National Human Rights Commission of Korea in establishing and implementing human rights policies. In relation to NHRAPs, the Act foresees that:

- For the NHRAP development, the National Human Rights Commission of Korea submits basic plan recommendations and opinions.
- During implementation, the NMIRF recommends improvement by inspecting the performance of the implementation plan every year. Its chairperson shall inform the chairperson of the NHRI and the heads of central administrative agencies of the results of the inspection.
- The Chair of the NMIRF shall listen to the opinions of the NHRI when comprehensively evaluating the achievements upon completion of the implementation of the plan or other policies. The results of the evaluations shall be made public.⁴⁶²

In sharp contrast with the above case studies, Denmark has no NHRAP, and the NMIRF has no national implementation mandate. In its 2021 UPR alternative

report, the Danish Institute for Human Rights recommended the Danish government to step up human rights implementation and adopt a national human rights action plan – which could be linked to the implementation of international recommendations. The DIHR's report read as follows:

1 INTRODUCE A NATIONAL HUMAN RIGHTS ACTION PLAN AND SYSTEMATIC FOLLOW-UP ON RECOMMENDATIONS [...]

Despite the adoption of several action plans concerning various human rights issues, including on combatting the trafficking of women, Denmark has yet to adopt a comprehensive national action plan for human rights to ensure proper identification of relevant human rights challenges and implementation of human rights standards. An inter-ministerial working group on human rights has been established, but efforts to promote and protect human rights nationally could be strengthened.

Recommendation: Take steps to develop a comprehensive national human rights action plan.⁴⁶³

In 2019, the UN Committee Economic, Social and Cultural Rights recommended Denmark to 'monitor the implementation of recommendations made by the Committee and other human rights mechanisms. The Committee encourage[d] Denmark] to consider integrating the related actions in a human rights action plan'.⁴⁶⁴ In both cases, the DIHR and the UN Committee on Economic, Social and Cultural Rights pointed out that an expanded NMIRF could be associated with this initiative.

While the DIHR has consistently recommended to the Danish government to adopt a NHRAP since the early 2010s, there is no realistic hope amongst DIHR staff that such a plan would actually be adopted by the government. As shown by DIHR Senior Researcher Anette Faye Jacobsen, social, political and historical traditions might explain why a state engage in a NHRAP or not, and 'in 2011, the idea was rejected once and for all by the government stating that human rights were well-protected by Danish law and that no NHRAP was needed'.⁴⁶⁵ The call for NHRAP has become a sort of ritualistic recommendation that no-one expects to be fulfilled,⁴⁶⁶ with efforts for promoting human rights compliance at the national level directed towards other strategies.

Indeed, the Danish government systemically rejects⁴⁶⁷ UPR recommendations to adopt a NHRAP. Ironically given its lack of implementation mandate, the creation of the NMIRF in 2014 has in fact been used by the government as an additional justification for not adopting a NHRAP. The government explained that it did not accept the 2016 recommendations by Georgia and Indonesia to adopt a NHRAP because 'an interministerial human rights committee on a regular basis reviews national and international recommendations to Denmark, and a number of thematic

action plans are already in force. Denmark considers that a national action plan would not add value to the current situation.¹⁴⁶⁸

While NHRAPs are not the only means to trigger national human rights implementation process, these findings serve to show that NHRIs have a primary interest is in ensuring governmental efforts in implementing human rights, much of it comes from national dynamics such as giving full effect to constitutional or legal human rights guarantees, implementing courts decisions, and develop policies based on, or considering CSOs or NHRIs inputs and recommendations.

6.2 IMPLEMENTATION OF RECOMMENDATIONS AND DECISIONS OF NHRIS BY THE GOVERNMENT

Amongst national human rights dynamics, one of direct interest to NHRIs is that governments duly consider NHRIs' own recommendations for enhancing human rights, and implement the decisions they render through their complaints-handling activities, where they have such a mandate.

In theory, the establishment of NMIRFs, especially those with large mandates tasked with national policies and implementation, should be an opportunity for NHRIs. It provides for a centralised focal point in government, mandated to consult with NHRIs and to track implementation of recommendations. However, NHRIs do not appear to expect or request NMIRFs to ensure the implementation of their recommendations and decisions, even where the NMIRFs have a broad mandate.

In Moldova, the NHRIs regularly take stock of the lack of implementation of their decisions, and occasionally publish specialised reports assessing the implementation of their recommendations by the government. For instance, the Children's Ombudsman published in 2020 a 'Thematic Report: Monitoring and Implementation of Recommendations of the Children's Ombudsman during the Mandate 2016-2020'⁴⁶⁹ that showed that only 30% of its recommendations were fully implemented, while the wide majority was simply left without an answer, and a small portion partially implemented. The report identifies reasons for non-implementation and flags avenues for enhancing implementation, yet at no point does it refer to the 2019 establishment of the National Human Rights Council as an opportunity – or makes suggestions for its work.

The OPA and the People's Advocate for Children's Rights' annual reports, which are presented in Parliament, are occasions to pass on many concrete recommendations to the government. However, they are not necessarily assigned or directed at a specific actor within the executive – generally recommending specific actions to 'the government' or occasionally 'the general inspectorate of police' or the 'national administration of the penitentiary'.⁴⁷⁰ The National Human Rights Council then has the responsibility to work with the relevant authorities to implement these recommendations, and then report back again, after six months, to parliament.

In Portugal, where the NMIRF also has a broad mandate, there appears to be no expectation placed on the National Human Rights Committee that it would act as a channel for implementing the PDJ/Ombudsperson's recommendations.

In Mauritius, it was noted that the NMRF provides an opportunity for the NHRIs, when they release their annual reports, to explain their content and engage with the NMRF and stakeholders to determine if their recommendations have been implemented. The reports make reference to the recommendations from the human rights mechanisms but there may be little discussion at the level of the parliament on the mandate of the NMRF. It was noted that there is potential to align the recommendations from the NHRIs to those of the human rights mechanism and eventually incorporate these into the NRTD.⁴⁷¹

In the Republic of Korea, the NHRCK deplored that 'there is no legal basis for the Commission to actually check the implementation of the recommendation in the National Human Rights Commission Act'⁴⁷² and thus proposed a Partial Amendment Draft to the National Human Rights Commission Act:

Under this amendment, the heads of agencies, etc., who has received recommendations from the Commission shall notify the Commission of the result of the implementation of the recommendation. The Commission may monitor the implementation status, while matters necessary in this regard shall be prescribed by the Commission rules.⁴⁷³

These have now been incorporated into the Act, the amended sections providing:

(5) The Commission may verify and inspect the status of compliance with the recommendation or opinion given under paragraph (1).

(6) The Commission may, if deemed necessary, publish its recommendation and opinion under paragraph (1), the details notified by the heads of relevant agencies, etc., who have received any recommendation under paragraph (4), and the results of verifying and inspecting the status of compliance under paragraph (5).⁴⁷⁴

The NHRCK has also taken steps and devised strategies to enhance the likeliness of the line ministries and agencies implementing its recommendations. Strikingly, these do not go through the existing governmental human rights structures, but establish new ones. As explained by NHRCK, 'in order to resolve potential conflicts in conducting the tasks of human rights policy in advance and to have the government bodies and local governments accept the Commission's policy recommendation, the Commission consults the matters concerning the protection and promotion of human rights with the relevant government agencies'.⁴⁷⁵ Pursuant to Article 19 of the Enforcement Decree of the National Human Rights Commission of Korea Act, the Commission has established in 2022⁴⁷⁶ and operates a Council of Human Rights Policy-Related Policy Persons in order to consult with related

agencies for matters regarding the improvement on the legislation, policies, institutions and the promotion and protection of human rights.

In Denmark, where the NMIRF's mandate is narrower and more focused on international reporting, there is no expectations from the NHRI nor civil society that the NMIRF would be a vehicle for tracking the implementation of their own recommendations, which remain lagging. The main human rights work and advocacy of the NHRI and civil society targets line ministries, not the NMIRF. Interviewees from the DIHR and civil society consistently underlined that the 'real human rights work is not with the NMIRF and the Ministry of Foreign Affairs':⁴⁷⁷ as such, 'there is no need to have a conflict with the Ministry of Foreign Affairs because it has no implementing power'.⁴⁷⁸ CSOs and the DIHR staff also all point out that they enjoy a good level of engagement and trust on international affairs, this is not representative of the interactions of civil society with other ministries, which have 'complex and difficult' relations with CSOs, as mentioned by ministerial staff themselves.⁴⁷⁹

The 'real human rights power' is primarily with the Ministry of Justice when it comes to legally binding international human rights law and cases, and with line ministries, as well as with the Parliament, when it comes to any substantial policy and legal matters. The Danish NHRI can find itself in much more adversarial positions towards line ministries than it is towards the Ministry of Foreign Affairs and the NMIRF staff. An emblematic case in which the DIHR both through legal memos and public advocacy⁴⁸⁰ intervened is regarding the decree adopted in 2016 by the then Minister for Immigration and Integration separated couples in refugee centres, where one or both persons were minors. It argued that the decree violated the CRC and the European Convention on Human Rights.⁴⁸¹

In other words, there is no expectation that the Danish NMIRF could follow-up on the NHRI or CSO recommendations. It is also not evident that the latter stakeholders would actually want a centralised, Ministry of Foreign Affairs-based NMIRF to channel interactions with line ministries. As an NGO representative explained, 'for strategic issues, we will go straight to the relevant ministries: [...] the risk with NMIRFs anchored in Ministries of Foreign Affairs that cover every thematic human rights areas is that it would dilute subject areas and target actions'.⁴⁸² Similarly, DIHR staff underline that the NHRI's 'priority is to engage with line ministries: we want to meet the person responsible on the subject matter'⁴⁸³ and that 'the division of responsibilities over human rights issues between the Ministry of Foreign Affairs and the Ministry of Justice is a fundamental and structural flaw'.⁴⁸⁴

In short, implementation of NHRIs and other national stakeholders' recommendations are a major issue for NHRIs, but one that is not yet a substantial part of the NHRIs-NMIRFs interactions, and deserve a fine-grained attention as to how it could be organised without severing access of NHRIs to policy-makers. At the very least, NMIRFs should receive and review NHRIs' annual and thematic reports.

Having said that, there is already, although indirectly, a discussion around NHRIs recommendations in NMIRFs work, in the sense that state reports and alternative reports to international bodies regularly make references to NHRIs recommendations and their status of implementation. Typically, NHRIs in our study – except in Mauritius where there are no alternative reports – included their own recommendations, made at the national level, in the reports to the treaty bodies. Reversely, in many of the state reports the recommendations made by NHRIs at the national level are referred to and incorporated into the response to the treaty bodies. For example, the Republic of Korea state report to CERD in 2017 notes:

Under the existing policy, native English teachers (E-2 visa holders) were required to submit their Medical Examination Record for Employment including HIV test results for Alien Registration as a new entrant. However, the HIV testing requirement for native English teachers (E-2) was abolished under Notification No. 2017-116 of the Ministry of Justice as of July 3, 2017 which followed the National Human Rights Commission of Korea (NHRC)'s recommendations made based on the decision that the mandatory HIV testing policy has discriminatory nature against race, national origin, etc.⁴⁸⁵

7. METHODOLOGIES AND PROCEDURES FOR NHRIS-NMIRFS INTERACTIONS

7.1 PROCEDURES FOR NMIRFS' INVOLVEMENT OF NHRIS

There are no dedicated organisational structures in place or signed agreement for engagement with NHRIs in the NMIRFs covered by the case studies. Engagement is ensured by the secretariats supporting the NMIRFs, which in all cases are relatively small and do not allow for distinct procedures to be put in place. Where NHRIs are standing observers of the NMIRFs and their sub-structures – e.g. in Moldova and Portugal, NHRIs receive information and invitations as other NMIRF members, either by formal communications or emails. In Mauritius, Portugal and Moldova, the NMIRFs invite the NHRIs to all of their meetings.

In Denmark, when the NHRI is invited to meetings, exchanges are ensured by the Secretariat of the NMIRF too, and the DIHR has a designated contact point in its national division to follow all NMIRF-related matters. Communications are very smooth. In the Republic of Korea, the reporting structures engage with the NHRCK based on the terms of the law – an obligation to consult the NHRI as part of the preparation of a report.

7.2 INVITATIONS TO RESPECTIVE ACTIVITIES

In addition to regular meetings of NMIRFs, both NHRIs and NMIRFs may organise activities, in which they occasionally invite each other. For instance, in Portugal, the Ombudsperson appears to be drawn upon for expertise, including through being invited to conferences by the government or whereby the state authorities suggest that the Ombudsperson represents Portugal as an expert on the topic. Reciprocal invitation to each other's activities was cited by several NHRIs in our study as a

way of ensuring positive interaction with the NMIRF. This was particularly so if the attendance was regular. These engagements provided opportunities for the NHRI and NMIRF to keep up to date with each other's activities as well as to draw upon their respective expertise.

7.3 ORGANISATION OF JOINT ACTIVITIES

Events and activities may also be jointly hosted or co-organised by NHRIs and NMIRFs or equivalent governmental structures. The NHRCK in Korea engages with the relevant government authorities, through for example, 'discussion sessions with invited experts' and jointly hosting events with the government around domestic implementation.⁴⁸⁶ In Denmark, the DIHR and the Ministry of Foreign Affairs – which hosts the NMIRF – organise a range of joint activities internationally.

Joint activities are also regularly reported as regards human rights promotion, including awareness-raising and trainings. These objectives do not only appear to be occasional joint activities, they seem to be in part construed as shared responsibilities of NHRIs and NMIRFs/the government. In Mauritius, social media is used by the NMRF to provide information on the NHRIs to the public. We were informed that there is mutual presence at each other's events and collaboration through awareness raising campaigns. What is more, the NHRAP of Mauritius foresees that trainings of officials on human rights issues are a shared responsibility to be co-organised with the NHRC.⁴⁸⁷ In the chapter on human rights education, the NHRAP foresees that NHRC officers as well as the Ombudsperson for Children shall act as resources for the Ministries in running training activities.⁴⁸⁸

Pursuing the idea that human rights education and promotion are shared responsibilities, there are evidence that the structuring of interactions in these fields is emerging between NHRIs and government actors. In Moldova, where the Agency for Inter-Ethnic Relations leads on the implementation of recommendations from the CERD Committee, studies carried out by the OSCE have highlighted a lack of coordination among the Agency, the OPA and Equality Council, leading the three bodies to sign a Memorandum of Understanding in November 2018 to strengthen cooperation. This collaboration includes joint training programmes for the employees of the three institutions, facilitated by the OSCE Mission, and leaflets on human rights have been published collectively by the three bodies.⁴⁸⁹ In the Republic of Korea, when adopted, the new National Human Rights Policy Framework Act will provide for a legal framework for joint work between the National Human Rights Commission of Korea, central administrative agencies and local governments on human rights promotion and education, establishing an obligation to cooperate between the different actors.

An area where both NMIRFs and NHRIs have direct responsibilities is that of interacting with civil society. This is an objective associated with NHRIs' nature, and on which many have accumulated extensive experience. Consultation with civil society is also one of the four main 'capacities' of NMIRFs. Experienced NHRIs may share some of their expertise to help NMIRFs in enhancing their capacities

to reach out and consult CSOs. This might be especially useful for new NMIRFs, especially those situated in a Ministry of Foreign Affairs which traditionally do not need to consult local civil society on domestic matters. However, consultation with civil society is not a shared responsibility. In theory, NMIRFs guidance suggest that NHRIs and civil society sit on the same side of the table when participating in NMIRFs activities. In the Republic of Korea, it is required under Article 19(8) of the National Human Rights Commission Act that the Commission cooperates with CSOs independently. It may nonetheless use its convening power and experience to suggest ways for the government to step up its consultations with CSOs. The NHRCK assesses that:

Though the Government of the Republic of Korea makes efforts to have civil society organizations involved in preparing for governmental reports through public hearings and collecting opinions by using online platforms, civil society organizations view the efforts as perfunctory procedures and the government is not making enough efforts to receive necessary inputs.⁴⁹⁰

In Denmark, while the Danish NHRI pursues its own engagement with CSOs, it has invested in supporting the NMIRF in consulting with the general public and CSOs in the preparation of state reports. Interviewed CSOs 'stress that the DIHR has played a crucial role in facilitating and supporting the role of civil society, both in relation to UN Mechanisms and nationally in relation to the Interministerial Committee. The Institute has played the role of maintaining the contact with the Ministry and ensuring that civil society organisations were invited to the relevant meetings.'⁴⁹¹ CSOs report participating to the NMIRFs meetings (when invited) alongside the DIHR. This support has been instrumental for the NMIRF's Secretariat. In practice, this has amounted to the DIHR organising the consultations with the general public. While CSOs report that the differences of mandates between the NHRI and the NMIRF were very clear during the consultations, it does pose a question as to whether the NMIRF's capacities to consult are increasing. Some DIHR staff point out that the Institute has now been requested by the Ministry of Foreign Affairs to organise such consultations over several UPR cycles, possibly indicating a partial outsourcing of the NMIRFs' consultations objectives rather than a transfer of skills.⁴⁹²

7.4 DIALOGUE AND INTERPERSONAL DIMENSIONS

The dialogue between the NMIRFs and NHRIs representatives, as well as personalities/skills of individuals populating NMIRFs and NHRIs, appear to be a determinant factor in the quality and breath of NHRIs-NMIRFs interactions. Some interviewees have referred to such dimensions as 'informal interactions', as they do not occur in the formal activities of the NHRIs and NMIRFs, while others underline that there are no 'informal connexions' between staff, but rather an 'interpersonal influence'.

In Mauritius, engagement between individuals within the NMIRF and NHRIs was cited as constructive, albeit made more challenging during the pandemic. For instance, the dialogue between individuals at the NMRF and Ombudsperson for Children resulted in what was perceived by the NMRF as a positive relationship, citing the dynamism and willingness of individuals as a contributing factor. One of the former staff of the Danish NMIRF was noted as particularly interested ensuring follow-up to international recommendations, due to their personal dynamism for advancing implementation on the subject-matter.

Dialogue and interpersonal interactions can also help to explain the choices the NHRI makes with respect to official engagement with the NMIRF and thereby avoid miscommunications and awkwardness. The dialogue can help the NHRI to explain the boundaries of its mandate and how it navigates independence in practice.

CHAPTER 4

KEY EMPIRICAL FINDINGS

Finding 1. A structural parameter to understand NHRIs-NMIRFs interactions is NHRIs' degree of strategic interest in international reporting and follow-up.

It emerges from the case studies that NHRIs do not all give the same relative importance to international reporting and follow-up amongst their activities and as part of their range of mandate functions. Engagement with international reporting can also change over time. This degree of engagement is determinant to understand NHRIs expectations vis-à-vis NMIRFs.

NHRIs' degree of engagement in international reporting and follow-up processes vary in practice. It must be seen in comparison with other mandate functions and activities of the NHRIs, and appears to depend on:

- a. Mandate and institutional identity of the NHRIs: NHRIs with e.g. complaints-handling mandates may see this as their primary responsibility in practice. Mandates may have evolved over time, leading to a certain institutional path dependency in the development of an NHRI's identity and organisation, for instance when the NHRI mandate was added onto that of a long-standing Ombudsperson institution. The granting of additional mandates to NHRIs, in particular as NPM pursuant to OPCAT or the independent monitoring framework pursuant to the CRPD, increase the likelihood of NHRIs engaging with relevant treaty bodies.
- b. Strategic prioritisation of national human rights dynamics: NHRIs, even those that have long-standing experience and systematically engage with international reporting processes, tend to prioritise national human rights activities and processes as a means to ensure advancements. This may entail human rights documentation and research, complaints-handling, legal advice in legal reforms, ensuring participation of civil society in national decision-making, trainings of state officials, and so forth.

There is a notable interest from NHRIs to ensure that their own recommendations and decisions are implemented by the government. Some NHRIs take an integrated approach between international recommendations and their own recommendations: they make their recommendations and if relevant, note that it is also backed up by an international recommendation.

Arguably, it may be that this strategic preference comes out more strongly in the five case studies due to existing national processes, with e.g. well-established parliamentary processes, and three of the countries having NHRAPs offering a policy framework for national human rights progress and stakeholder engagement.

Having said that, as shown in one of the case studies, NHRIs that drastically under-prioritise engagement with international actors may be criticised for that by GANHRI's Subcommittee of Accreditation (while still being considered Paris Principles-compliant).

- c. International engagement beyond reporting and follow-up: Reporting to treaty-bodies/UPR and recommendations follow-up is not the only, and perhaps not main, strategic use of international law by NHRIs. Other usages of international law are instrumentally drawn upon, and appear to supersede reliance on international reporting and follow-up as a driver for compliance. Legal harmonisation with international standards is key, also called upon by CSOs. NHRIs' legal analysis of upcoming legislation and policies, or recommendations for the development of new ones, is an important tool that is actively used and relies on international law. In those cases, NHRIs appear to use e.g. treaty bodies' general comments more than concluding observations and country recommendations, as the former offer a more in-depth and practical interpretation of treaty provisions.

In addition, in countries covered by regional courts and commissions, our case studies show that NHRIs may see such bodies and their jurisprudence as offering a more solid basis for their international activities, as they may have direct and binding implications for national policy-making, and offer access to redress for victims. Some NHRIs find it increasingly important to intervene in such cases and follow-up on decisions, privileging these over monitoring UN treaty bodies' recommendations follow-up.

However, some potential uses of international law and treaty-bodies seem under-prioritised. Except for one, NHRIs in this study did not initiate cases on behalf of victims to the individual communications process with UN mechanisms. There is also limited involvement during individual communications handling, and in monitoring the implementation of any decisions adopted by these bodies in respect of communications submitted by others.

Last, it is observed that there is more evidence of NHRIs participating in reporting processes (either independently or through comments to the state report – see Finding 2) than in follow-up activities. One NHRI appeared to have processes in place to monitor governmental implementation of international recommendations, while others were either doing this in an ad

hoc manner (in contrast to a systematic engagement with reporting), or were hardly engaged in the matter.

This prioritisation of other mandates areas and activities does not diminish the intrinsic value of international reporting processes. As seen in three case studies, experienced NHRIs may still diligently contribute to international reporting processes, while increasingly investing institutional energy in other types of strategies. But investment can vary relative to other activities. It is a matter of strategic appreciation, that can also change over time. Findings show that the factors influencing NHRIs' strategies in that regard include the following:

- a. Evolution of mandates and resources; NHRIs with large mandates may have to balance different activities in light of their resources. They might for instance select international interventions based on what they see as their added value. For NHRIs that started off as, for example, an Ombudsman, international engagement can be developed gradually, depending on resources, adjustments of internal processes, and accumulation of experience.
- b. Evaluation of the relevance of international recommendations as a driver of change given the national context: NHRIs may have varying assessment of the usefulness of international recommendations to advance human rights nationally. This may change depending on the political context itself, especially when critical treaty bodies recommendations occasionally become politicised.
- c. Changes in NHRIs leadership: Personal views of NHRIs leadership, whether at the level of the board/commissioners/executive directors, may also change the appreciation of the strategic engagement with international reporting processes and their usefulness in national contexts. In one case study, changes of executive directors had a drastic impact on the NHRIs' appreciation of international recommendations and their potential to lead change.
- d. International opportunities: Adherence to additional treaties or regional systems create new opportunities for NHRIs' international engagement. NHRIs with more limited options (e.g. no or weak regional systems) appear to invest more in the UN treaty bodies. This leads to more resolute investment with individual communications and alignment of the NHRIs' strategy and internal structures to the international framework, in order to facilitate engagement with specific treaty bodies.

NHRIs' access to international systems has also evolved over time, making it easier for NHRIs to input and influence recommendations while investing less resources in finding their ways to Geneva. The increasing reliance on digital participation has added to that trend. Some avenues offered by treaty bodies, e.g. to submit follow-up information, or options for alternative mid-

term reports, are still underused by NHRIs – although case studies show that NHRIs are picking up on these new possibilities.

The degree to which NHRIs invest in international reporting and follow-up frames the expectations that NHRIs may have vis-à-vis NMIRFs, as well as the depth of their interactions. In two countries where NHRIs have lesser international activities, NHRIs may only distantly liaise with the NMIRF, and have expressed limited or no interest in holding the NMIRF accountable or ensuring that it follows-up on recommendations. But it is observed that the creation of the NMIRF has led either to NHRIs being more aware and engaged around treaty reporting for treaties that they had less prioritised so far, or provided an avenue for NHRIs to get involved in reporting at all. In the other countries with more sustained international engagement of NHRIs, key expectations include a focus on implementation rather than reporting, and on the creation and implementation of national policies and/or NHRAPs (see more on expectations under Findings 3 and 4 below).

Finding 2. Not all NHRIs have the same balance between alternative reporting and inputs to state reports.

While international reporting is only one type of activity in which NHRIs engage, the study delved into the matter. Indeed, interaction in the drafting of state reports was, inevitably, one of the key ways in which the NMIRF and NHRIs engaged. Findings show that NHRIs may have a drastically different approach to the balancing act between commenting on the state's draft report prepared by the NMIRFs and submitting their own alternative reports. Roughly speaking, three NHRIs did systemically both, while one only engaged in alternative reporting, and the last one only inputted to draft state reports.

The decision to engage in one and/or the other approach appeared to be explained by the following factors:

- a. Principled approach on distribution of roles and institutional boundaries and on the implications of NHRIs' independence: Those NHRIs who used the opportunity to submit alternative reports did in part for principled reasons, to maintain their independence. Three of them did so while also commenting on the draft state reports, but one of them took the independence stance further and decided, despite receiving the draft reports as part of the NMIRF, refrained from commenting on them and only engaged in alternative reporting (although not systematically – see next point). At the other end of the spectrum, one NHRI assessed that the creation of the NMIRF only led to a distribution of functions and complementarity of mandates, with the NHRI focusing on e.g. complaints-handling and the NMIRF on implementation, reporting and follow-up.

The latter approach was criticised by GANHRI's Subcommittee of Accreditation for not engaging with international oversight mechanisms on its own right, but that NHRI was nonetheless re-accredited with A-status, showing that there might be a margin of appreciation for NHRIs to decide on their preferred course of action with regards to international reporting.

- b. Assessments for engaging in alternative reporting: The four NHRIs that submit alternative reports did so quasi-systematically for two of them, frequently for one, and regularly but not consistently for the fourth. The rationales for engaging in alternative reporting included:
- Quality of the state report: Two NHRIs have underlined, either in their comments to draft state reports or in their alternative reports, the insufficient quality of the state reports. They notably underline how the state reports should better tackle practical steps taken for implementing treaties, or include statistical data. One found it useful to take the Reporting Guidelines of Treaty Bodies as a yardstick to add objectivity to its evaluation of the quality of the state report.
 - Effectiveness: NHRIs that submitted alternative reports tended to assess their impact as greater than being part of the state reporting process. There was, however, evidence that staff of the same NHRI may have different appreciations as to the benefits of commenting constructively on state reports (in order to ensure a better report and build trust) vs alternative reporting.
 - NHRIs resources, experience and added value: NHRIs that did not systematically contribute to reporting processes may have also considered resource constraints. Some have opted to focus on areas where they had something to contribute (e.g. some have more experience in civil and political rights issues) or an explicit mandate (such as a NPM mandate). With experience, NHRIs have put in place internal procedures and organisational processes that make it easier and decrease the need for extensive resources.
- c. Considerations regarding comments to state reports: The two NHRIs that quasi systematically submit alternative reports are also the two that consistently provide comments to the state report. In one case, it is a legal obligation to consult the NHRI in the drafting process. In the other case, the NHRI regularly published online its comments on draft reports, in order to be transparent. Other NHRIs that comment on draft state reports, either during meetings or through written submissions, tend diligently to balance this by recalling their independence. They also may set up some standards, such as clarifying the type of information they accept to provide or not.
- d. NMIRF's impact on enhanced predictability and opportunities to comment: The creation of NMIRFs may have helped create more predictability in reporting cycles and in turn routinise national stakeholders' interventions around those. In one case, more NHRI alternative reports seem to have been submitted after the establishment of the NMIRF: the transparent approach

of the NMIRF may have helped in creating more shared awareness around international reporting. In another case, the NHRI was not participating in international reporting in any capacity, but is now at least engaging through the NMIRF.

An emerging hypothesis – that would need further research into additional case studies over time – is that the establishment of NMIRFs leads to a better understanding on the side of government of the NHRIs' roles in reporting processes, and thus a more conducive environment for it to happen. No criticism of NHRIs' reports or interventions in reviews was observed in the case studies. On the contrary, NMIRFs' representatives interviewed for this study either respectfully acknowledged the right of NHRIs and CSOs to submit alternative reports, and in some cases marked their appreciation of the comments and reports made by these stakeholders, to either complement missed details, or as a way for pre-identifying questions likely to be received during the reviews.

Finding 3. NHRIs expect NMIRFs to focus on implementation.

NMIRFs in the case studies have heterogenous mandate and authority, as well as varying practices and tools for ensuring follow-up to recommendations emanating from supranational bodies. NHRIs have tended to express demands for NMIRFs to considerably step up their human rights implementation role. To do so, NMIRFs are recommended to:

- a. Be granted a large implementation mandate: Implementation does not limit itself to recommendations follow-up; it also includes e.g. follow-up to individual communications, as well as harmonising national legislation with international standards. Implementing is also not limited to tracking implementation – it should involve a more active and resolute form of instigating line ministries and governmental agencies into action. Last, NHRIs recommend implementing national human rights frameworks, including policies and action plans (see Finding 4 below).
- b. Ensure that such implementation mandate is acted upon and that the relevant operational processes are in place: As findings showed, NMIRFs with large mandates may still prioritise the reporting phase, and may neglect e.g. legal harmonisation efforts and follow-up in general. Some NHRIs have therefore called for clear procedures for following up on recommendations from human rights mechanisms; one of the reviewed NHRIs spelled out the procedures that the state should put in place for implementing decisions taken in the context of individual decisions. Failing to institutionalise proper mandates and procedures for follow-up, actual follow-up tended in some cases to rely on the personal commitments of NMIRFs' support staff.

- c. Ensure advanced consultations with civil society and NHRIs in implementation processes: Broad and meaningful engagement of NHRIs and civil society (with the largest possible number of CSOs involved) was noted by NHRIs as enhancing the effectiveness of implementation measures.
- d. Have a relevant institutional anchorage: NMIRFs placed in single ministries (whether the Ministries of Foreign Affairs or the Ministries of Justice) lack authority over (other) line ministries, and have no administrative means to activate them into implement activities. Ministries of Foreign Affairs have no direct implementing role neither. One NHRI reported that the division of responsibilities over human rights issues between the Ministry of Foreign Affairs and the Ministry of Justice was a fundamental and structural flaw in the national system; and another NHRI explicitly advocated to elevate the NMIRF from being anchored in the Ministry of Justice to being directly attached to the Prime Minister’s services. Where that was the case (in one case study), implementation was reportedly facilitated.

Implementation of national and international standards and policies is a key concern for NHRIs, and it is therefore essential that the establishment of an NMIRF contributes to it, including ideally implementation not just of international recommendations but also of national human rights policies. NMIRFs that e.g. primarily focused on preparing international reports of the state were at best a missed opportunity. In the worst scenario, NMIRFs with limited mandates could be construed as counterproductive. In one case study, the government has used the creation of the NMIRF as a justification for not engaging in processes advocated for by the NHRIs and CSOs. It rejected the long-standing demand by the NHRI to adopt a NHRAP. CSOs also argue that the establishment of the NMIRF was a gesture responding to a key demand to engage in integration of international provisions into national law – yet the NMIRF does not have a mandate to engage in law revision.

There would be scope for NHRIs to step up their advocacy for implementation-focused and effective NMIRFs. In one country the NHRI has spearheaded, in partnership with the Ministry of Justice, the drafting of a new law that would set up the future NMIRF. However, other NHRIs have remained hesitant in demanding more impactful NMIRFs. Findings show that:

- While three NHRIs in our case studies made explicit suggestions for NMIRFs to reinforce their implementation and follow-up mandates and procedures, the other two have adopted a more reserved approach and have not commented on the NMIRFs’ mandates;
- For most in this study, NHRIs have not attempted to make recommendations while NMIRFs were being set up; comments have been made after their creation;
- NHRIs do not tend to engage in reviewing the activities of NMIRFs with the aim of making them accountable. There is no mention of NMIRFs activities in e.g.

the NHRIs' annual report. Where NMIRFs publish activity reports, NHRIs do not analyse and comment on those;

- NHRIs too may have a prism to focus on the reporting phase rather than the implementation phase: Two NHRIs did not invest in monitoring follow-up, and although other did, they rarely had tools to systematically monitor governmental follow-up to international recommendations, making it more challenging to scrutinise NMIRFs' impact on implementation;
- NHRIs do not appear to expect or request NMIRFs to ensure the implementation of NHRIs' own recommendations and decisions, even where the NMIRFs have a broad mandate, and even in circumstances where the implementation rate of NHRIs' decisions is clearly sub-optimal.

Some questions remain as regards ideal models for an implementation-focused NMIRF. A central one pertains to the ability of any centralised governmental structures such as an NMIRF to enhance the dialogue between NHRIs, CSOs and line ministries. In some cases, NHRIs and CSOs have raised doubts about the added value of one single entity covering all rights that would channel interactions with line ministries, especially NMIRFs anchored in Ministries of Foreign Affairs. It was reported that this could dilute subject-specific and expert dialogue as well as direct engagement around specific actions. NMIRFs procedures for consultations may also be less advanced than procedures for stakeholders' participation in decision-making that have been put in place in relation to thematic fields. More reflexions are needed as to how comprehensive NMIRFs may enhance and potentially facilitate access of NHRIs to policy-makers and line ministries. One case study had developed line ministries-led specialised commissions attached to the NMIRF, which could serve as a source of inspiration.

NMIRFs with a limited mandate are also of concern to treaty bodies. In relation to one of the countries taken as a case study, the UN Committee on Economic, Social and Cultural Rights recommended the country to ensure that the NMIRF:

- scrutinise the compliance of draft laws with its Covenant obligations;
- assess the impact of laws and policies on economic, social and cultural rights; and
- monitor the implementation of recommendations made by the Committee and other human rights mechanisms.

It also encouraged the country to integrate the related actions in a national human rights action plan. Having said that, treaty bodies are inconsistent and do not yet systematically assess and make recommendations on NMIRFs to all reviewed states. A robust approach in these oversight activities would help reviewing NMIRFs roles and performance, and could serve as a reference point in advocating for more effective NMIRFs.

Finding 4. National Human Rights Action Plans serve as operational backbone instrument for the NMIRFs' implementation work.

Three of the countries taken as case studies have institutionalised the adoption and implementation of NHRAPs. These fall under the responsibility of the NMIRFs, or where there is a no standing NMIRF yet, of a central governmental human rights body. In another case study, the NMIRF has developed a practice of adopting annual action plans for human rights activities to be implemented by line ministries, and serve as the forum to develop some of the thematic human rights action plans, e.g. on business and human rights. In the only country with no NHRAP, the NHRI has been consistently advocated for the government to adopt a national human rights action plan, and the UN Committee on Economic, Social and Cultural Rights has made a similar recommendation. The two pointed out that an NMIRF with an expanded mandate could take on the responsibility of ensuring its implementation.

NHRAPs are often backbone instruments of the NMIRFs' national implementation work. Case studies show that to make it useful, NMIRFs shall have the authority and resources to ensure the implementation of the NHRAPs, and that a system of reporting on implementation must be in place. NHRIs can play a unique role in relation to NHRAPs, which requires special interactions with the NMIRFs in charge of developing, implementing and monitoring such plans. One of the case studies provides an advanced blueprint of how this can happen, and the NHRI has proposed to formalise the interactions in a law providing for the future NMIRF. It foresees that:

- During the NHRAP development, the NHRI submits basic plan recommendations and opinions to the NMIRF.
- During implementation, the NMIRF recommends improvement by inspecting the performance of the implementation plan every year. The NMIRF chairperson must inform the chairperson of the NHRI of the results of the inspection.
- The Chairperson of the NMIRF shall listen to the opinions of the NHRI when comprehensively evaluating the achievements upon completion of the implementation of the plan or other policies. The results of the evaluations shall be made public.

The case studies further shed some light on the relations between NHRAPs, and the follow-up to recommendations. They confirmed earlier assessments that NHRAPs and the implementation of international recommendations may be mutually reinforcing. As put by the EU Fundamental Rights Agency:

Recommendations from international and regional human rights mechanisms can play an important role in the NHRAP process. These recommendations can, for example, play a role in deciding which themes to prioritise in the NHRAP. Vice versa, a NHRAP can serve as an implementation tool for these recommendations. As a result, it is advisable for those drafting NHRAPs to cooperate with their National Mechanism for Reporting and Follow-up (NMRF).⁴⁹³

They also showed that NHRAPs and recommendation implementation plans may have different timelines and may lead to co-existing processes, with OHCHR's digital tools appearing to primarily cater for international recommendations follow-up. Case studies with NHRAPs did consider the most recent international recommendations, in particular those from the UPR reviews, when elaborating their NHRAPs. However, rather than updating the approved NHRAPs each time new treaty bodies recommendations were issued, more short-term implementation plans and reporting processes were elaborated, with shorter deadlines (six months). This appeared to be the NHRIs' preferences too, to ensure more dynamic implementation processes.

NHRIs in at least two cases studies promoted an ideal organisation where the same structure is in charge of NHRAPs and recommendation implementation, noting that the distinction between national implementation processes (in which ministries of justice usually play a central role) and international recommendation implementation processes (in which ministries of foreign affairs tend to play a central role) is an unhelpful division. An ideal solution apparent from the case studies was where the NMIRF is in charge of all processes and attached to the Prime Minister's office.

Regardless of whether NHRAPs and recommendation implementation plans are integrated or not, and the system they use, findings show that NHRIs can usefully play a role in providing implementation advice and monitoring effective implementation. This confirms the 2022 OHCHR's report based on NMIRFs regional consultations according to which, 'when reports from national human rights institutions were integrated in such tools, their recommendations also fed into the overall effort of implementing the human rights obligations of the State.'⁴⁹⁴

One of the case studies shows that it is possible to devise digital tracking tools that reflect NHRIs and CSOs' contributions to recommendation implementation processes, with the NHRI able to post comments on the degree of implementation of international recommendations by the government. This is not always an option open to NHRIs in case studies, and in some countries UN-tracking databases are not public, nor yet properly informed by the government itself. The role of NRTDs in producing or hosting NHRAPs is also still unclear.

Finding 5. NHRIs' standing memberships in NMIRFs is beneficial for both actors, and best respect NHRIs' independence if the latter are observers and can decide their level of participation on their own terms.

There is a clear convergence across case studies for NHRIs preferring to be permanent, observing members of NMIRFs. In the two case studies where NHRIs are only ad hoc guests of NMIRFs, NHRIs would rather to be permanent observers. In one of those countries, this wish is not explicitly advocated for: the key demand of the NHRI is the expansion of the NMIRF mandate and the focus on implementation. In the second case, the NHRI has made more elaborate proposals,

not only for the NHRI to be a permanent observer, but also for it to be able to propose agenda points to the NMIRF's chair, or be mandatorily consulted in certain types of procedures – e.g. submitting an opinion with recommendations prior to the development of a NHRAP by the NMIRF.

In case studies where NHRIs are already members of the NMIRFs, consultative standing status was seen as a pre-requisite for participation in the first place, to emphasise their institutional independence from government actors. However, being an observer does not automatically mean that NHRIs will remain perceived as distinct. There has been an identified risk of co-optation, when the same requests are addressed to all NMIRFs participants, regardless of their status.

That has led two of the concerned NHRIs to recall their special status in their addresses to NMIRFs or press releases, as well as to adopt a principled stance as to which information they are ready to share or not, and deciding whether to participate more actively or not in NMIRFs' proceedings, on their own terms. NHRIs' decision to strategically maintain this arms-length distance in how they respond to requests for information and attendance at meetings may be principled, but in practice evidence showed that it may also come down to the personal stance of the NHRIs leadership, or the profile and interest for the NHRIs' representative(s) in the NMIRF.

An NHRI may be strategic about how it maintains this independence but at the same time recognise the benefits it obtains from participating in the NMIRF. For example, presence at meetings not only enables an NHRI to follow the progress of the reporting, have access to the calendar of reporting and thereby adapt its own timetable for submission of alternative reports, to identify who best to reach in government on particular issues, but also is a reminder of the role of the NHRI in monitoring the state authorities.

NMIRFs did appear to value the participation and inputs of NHRIs, and in some cases were reported to have suggested the membership of NHRIs in the NMIRF in the first place. Interviewed NMIRFs staff appreciated the independence of NHRIs and respected NHRIs' willingness to decide for themselves the extent of their involvement in NMIRFs' activities. Case studies further evidenced that NHRIs' contributions to the activities of the NMIRFs were more fruitful when:

- NHRIs are also observing members of the sub-structures of the NMIRFs: In the two case studies where NMIRFs had sub-structures (specialised commissions, working groups, etc.), NHRIs were also members of those and were able to make meaningful contributions;
- NHRIs' membership covers not only the A-status NHRI of the country, but also other thematic independent national human rights institutions. All NHRIs can make a contribution in their areas of expertise. In one case study, one thematic NHRI even appeared more engaged than the A-status NHRI, depending on the representative. This should include the NPM and the CRPD independent monitoring framework.

The independence of NHRIs shall also reflect on the composition of official state delegations to Geneva at the occasions of international reviews by treaty bodies or the UPR. There NHRIs have their own speaking rights, independently from the government. In line with international guidance, no NHRIs in the case studies participated in official state delegations to Geneva. NHRIs participated in proceedings in their own right and capacity. With the voice of NHRIs now solidly established and appreciated in the context of international reviews, it was noted that the need for NHRIs to travel in numbers to Geneva has been less pressing. The development of digital tools for participation in reviews further led NHRIs to ponder the need for traveling to Geneva. Not only has the need to rely on physical participation been less acute, but NHRIs have also developed new practices at the occasion of reviews, that are assessed as particularly impactful – such as reaching out to embassies of reviewing states ahead of UPR reviews.

Finding 6. The emergence of NMIRFs readjusts mandates and functions of different actors in national human rights systems; it offers an opportunity for NHRIs to sharpen accountability and demands that government deliver on their responsibilities, as well as to clarifies roles and activities in areas of the join interest

Case studies have shown how NHRIs and NMIRFs tend to come to a common understanding of their respective institutional boundaries and roles, and do see clear complementarities between their mandates and functions. Mandates and functions appear to fall in one of the following four categories:

- Distinct mandates and areas and functions: there is notably a clear understanding that protection activities and complaints-handling falls under NHRIs (including NPMs, and thematic NHRIs);
- Interlinked yet distinct functions in mandates areas (e.g. international reporting and follow-up);
- Shared responsibilities that can lead to joint activities (e.g. promotion and awareness-raising); and
- Parallel similar functions (e.g. consultations with civil society).

Distinctive mandates areas and functions, such as complaints-handling which according to international law is only – amongst the two actors – falling under the remit of NHRIs, are not likely to cause practical problems in understanding the respective roles of NHRIs and NMIRFs. That is unless – which was not the case in our case studies but has been observed in certain countries such as Jordan, Burkina Faso or Morocco – the NMIRF's leadership decides to engage in protection and/ or complaints-handling; this can lead to conflictual interpretations of the essential roles of NHRIs and NMIRFs. In our case studies, the other three categories may potentially lead to overlaps and practical issues, and deserve more fine-grained attention.

Regarding international reporting and follow-up, findings show that NHRIs and NMIRFs have distinct and complementary roles, and that the creation of NMIRFs offer a useful clarifier as to follow-up responsibilities, but which still needs fine-tuning in practice.

- a. On reporting, Finding 2 analysed how NHRIs approach the balancing act between commenting on state reports and submitting their own alternative / independent reports to the UN, and factors that may influence their strategies. Ultimately, there is an understanding shared by NHRIs and NMIRFs across the case studies that it is up to NHRIs, in view of their independence, to decide on their own terms how/how much to be involved in reporting. NHRIs may indeed remain attentive to ensure that there is no, even if inadvertent, threat to their independence by being called upon by NMIRF to undertake tasks that should be rightly those of government.

- b. On follow-up, it emerges from the case studies that follow-up and implementation are clearly the responsibility of the NMIRF, yet it is recognised as useful to consult NHRIs and CSOs as broadly as possible in the identification of follow-up measures-up measures. What is more, tracking follow-up, ensuring follow-up, and monitoring follow-up are three distinct types of activities that should not be confused.
 - Tracking follow-up does not equate to actually following up on recommendations. Tracking is about getting informed and informing the public about follow-up steps taken. It is a necessary but insufficient step for following up. Ensuring follow-up means pro-actively organising and ensuring implementation of measures, through administrative and political processes. This may entail identifying measures, facilitating the adoption of implementation plans, finding resources for implementation, assigning responsibilities and timelines for action, demanding regular reports to implementers, taking action when follow-up is delayed, etc.
 - Tracking is different from monitoring, in the sense that tracking is a necessary information tool that supports the government in ensuring systematic follow-up, whereas monitoring is associated with external and independent monitoring, where independent monitors can choose how to conduct monitoring (e.g. thematic focus, focus on certain levels of results: whether results on laws, institutions and processes, or actual rights enjoyment by rights-holders, etc.).

- b. Roles and responsibilities are clear from the perspectives of NHRIs:
 - Ensuring actual follow-up as well as tracking of follow-up are the responsibilities of the governments, and can ideally be performed by the NMIRFs. For this, NMIRFs should have the right mandate and procedures. Implementation measures are normally taken by line ministries, with NMIRFs organising and ensuring that they are performed. It may occasionally be that NMIRFs themselves conduct direct targeted implementation activities, and even more rarely, and with its full consent, that NHRIs are

part of follow-up implementation. In case studies, for instance, trainings of officials or service-providers about rights-based approach may be conducted by NMIRFs and/or NHRIs (see below).

- NHRIs and civil society monitor implementation and follow-up by the government and the NMIRFs, and can make recommendations to enhance implementation. The difference between tracking implementation and monitoring has been raised by NHRIs in case studies. NHRIs may approach directly line ministries to question implementation and make suggestions on how best to operationalise international recommendations into action.
- d. NMIRFs also recognise the distinct functions of NHRIs and NMIRFs in theory. However, in practice, depending on the NMIRFs' mandate, they may still have placed high expectations on NHRIs to facilitate implementation.
- Where NMIRFs have the mandate and authority to ensure and track follow-up, NMIRF with advanced mandate and procedures explained that the NHRI 'deals with monitoring of implementation of human rights, ...select their own themes and issues, make recommendations to the government, and the [NMIRF] in turn considers that its role is to deal with the response of the state and implementation of these recommendations'. Hence, it considers the role of the NHRIs to be 'important' and 'complementary'.
 - Where NMIRFs have limited authority and mandate to ensure follow-up, they unofficially welcomed the NHRI's advocacy directed at line ministries, as it helped nudge implementation where the NMIRF saw itself as rather powerless. This implies that the NMIRF's staff are interested in implementation and see the NHRIs as an 'ally' to promote implementation – which is in itself a good sign. However, it displaces follow-up responsibilities. NHRIs therefore insist that their accountability and monitoring activities do not substitute for the responsibility of the state to follow-up on recommendations.
 - The existence of an NMIRF has provided an anchorage point to demand that the government set up efficient follow-up procedures within government. Where NMIRFs exist, there should be no more need for NHRIs to substitute for the lack of follow-up systems. They have also enabled NHRIs to have a more fine-grained approach to monitoring, with NHRIs in the case studies considering that the NMIRFs have the responsibility for gathering information on follow-up by line ministry, while the NHRIs shall be able to request the NMIRF to provide any reports the state authorities have submitted on implementation. In one case, one NHRI successfully advocated for a change of its founding Act to include provisions on monitoring of implementation and the ability to make information received public. Where NMIRFs exist, it should also not be the role of NHRIs to *track* recommendations follow-up: NHRIs in our study have therefore strategically calibrated *monitoring* at another level, e.g. focusing on measuring results on rights-holders.

- e. The creation of NMIRFs have created opportunities to more robustly engage on 1) treaty ratification, including optional protocols and acceptance of individual communications, as well as aim at lifting reservations entered at the occasion of ratifications; and 2) state's inputs to international norm development.
- These two areas of international engagement regularly featured in the mandates of NMIRFs. In line with the Paris Principles, they are also of direct interest to NHRIs. NMIRFs should therefore provide a more robust entry point for NHRIs' ratification advocacy and a channel for stakeholders to contribute to forming the state's position on international normative development.
 - In practice, ratification issues were only occasionally addressed by each type of actors, with both NHRIs and NMIRFs possibly interacting on such occasions. International normative developments led to some joint work.
 - Although case studies revealed a few promising practices in those fields, especially in relation to normative development, this work area has not yet been fully invested by NMIRFs and the interactions with NHRIs were largely inconsistent.
 - There was scope in case studies for NHRIs to more actively engage with NMIRFs on those matters, especially regarding ratification of international and regional treaties, acceptance of individual communications, and lifting of reservations. NHRIs continued to occasionally address the government generally, instead of prompting the NMIRFs to deliver on these aspects of their mandates.

Case studies also showed that there are some mandate areas that are common to NHRIs and NMIRFs, and for which it is helpful that the two types of actors coordinate activities, or run them together. It emerges that:

- a. Common mandate areas and roles were especially apparent as regards human rights promotion, including awareness-raising and trainings, for either general audience, target groups, including officials or service-providers. It also appears that in some cases NHRIs and NMIRFs have worked together in the production of human rights indicators and data.
- b. These objectives not only appear to be occasional joint activities, but they also seem to be in part construed as shared responsibilities of NHRIs and NMIRFs/ the government, as is legally the case under the CRPD, which attributes e.g. awareness-raising to the government (Article 8 in particular) as well as a promotional role to the NHRIs and other types of independent frameworks (Article 33(2)). In line with CRPD scholars' suggestions (see Chapter 1, Section 6), this leads in practice to NMIRFs and NHRIs coordinating their promotional work, or running activities jointly.
- c. Shared roles and joint activities have led to specific spelling out working arrangements and distribution of activities, through action plans or memorandum of understanding (see Finding 7).

- d. This is however only happening in countries where the NMIRF is mandated and equipped to perform or at least organise those tasks. This was not the case in one case study where the NMIRF remained focused on producing reports, with the NHRI continuing to be default key bearer of promotional work activities or producing indicators, together with civil society.

Findings show that some activities may correspond to similar mandates, but do not amount to a joint responsibility within the national human rights systems. NHRIs and NMIRFs consultations with civil society constitute a case-in-point.

- a. Engagement with civil society is a direct and essential responsibility of both NMIRFs and NHRIs. This is an objective associated with NHRIs' nature as per the Paris Principles, and many NHRIs have accumulated extensive experience in that regard. Consultation with civil society is also one of the four main 'capacities' of NMIRFs, as defined in the OHCHR.
- b. However, it is not a joint responsibility, rather a parallel imperative that both NMIRFs and NHRIs have their own consultations and cooperation with civil society. In one of the case studies, it is an explicit legal requirement of the NHRI to cooperate with CSOs independently.
- c. This does not prevent NHRIs from using their convening power and experience to suggest ways for the government to step up its consultations with CSOs, in view of making them meaningful. Experienced NHRIs may share some of their expertise in consulting civil society to help emerging NMIRFs in enhancing their capacities to reach out and consult CSOs in implementation work as well as reporting and follow-up. Some case studies have shown that it may be possible to organise joint consultations with CSOs at the occasion of reporting, and do so while preserving the independence of NHRIs and explaining the distinctive mandates of the two actors. NHRIs have also helped CSOs to enhance their structures for presenting joint comments to state reports and alternative reports.
- d. However, NHRIs remain attentive to help NMIRFs in raising their consultations capacities only as a transitory phase, in view of supporting the NMIRFs in acquiring the capacity and contacts to carry such activities on its own. The objective is to build the skills of the NMIRFs, and not to outsource consultations to NHRIs. NHRIs' provision of advice on how to make NMIRFs-led consultations meaningful, does not prevent NHRIs from conducting their own consultations, and remaining critical of the states' consultations, if need be, in their own reports, pointing, if appropriate, to 'perfunctory procedures' and criticising the government for not making enough efforts to receive necessary inputs.

In short, the emergence of NMIRFs appear to lead to a degree of re-distribution of responsibilities within national human rights systems – allowing NHRIs to focus on their accountability and monitoring functions and demand that the government upholds its responsibilities in terms of human rights implementation and civil society inclusion in decision-making processes. There is now an entry point within government for enabling and tracking implementation, engaging in ratification process, consulting with NHRIs and CSOs in these processes, etc. This may lead to a transfer of responsibilities and activities that long-standing NHRIs have played while substituting for a lack of central implementation coordinator within government. Experienced NHRIs may also help raise the skills of NMIRFs, at least in a transitory period, for e.g. running CSOs consultations, but NHRIs must not substitute themselves to the weaknesses of NMIRFs' mandates or capacities. As case studies showed, active engagement with line ministries' follow-up to international recommendations is not the responsibility of the NHRIs, which should only carry out an external independent monitoring, and demand that NMIRFs perform their role. Last, findings also showed that there are areas where NHRIs and NMIRFs can work jointly and may share responsibilities, as key actors in the national human rights systems. This is the case for awareness-raising and trainings on human rights. All such findings point to the fact that the potential interactions between NHRIs and NMIRFs go far beyond 'consultations', as spelled out in the existing OHCHR guidance on NMIRFs, and need to be further understood as well as organised.

Finding 7. Several modalities can help organise NHRIs-NMIRFs interactions

As seen under Finding 6, NHRIs and NMIRFs carry out activities that are interlinked, each in their respective roles. They may also organise joint activities, especially in areas that can amount to shared responsibilities. As NHRIs and NMIRFs are increasingly as two distinct central elements of national human rights systems, it appears crucial to establish modalities that can enable smooth interactions between NHRIs and NMIRFs. Case studies point to examples as to the forms that such modalities can take.

A minima, where the NHRIs are members of the NMIRFs, inclusion on mailing lists and participation in meetings are pre-requisites for interactions. This includes membership and participation in sub-structures of the NMIRFs, such as specialised commissions or working groups. Even in case studies where NMIRFs have rather limited mandates and NHRIs are not full members of the mechanism, it has still proven useful to designate a staff/establish a desk in charge of interacting with the other actor, in view of ensuring proper communication and understanding of the other's role.

More advanced interactions can be facilitated by spelling out the expected roles and functions of each actor, and where/when they intersect. Case studies have shown that this can be done through:

- a. Legal provisions: In one case study, interactions between NHRIs and NMIRFs are formally spelled out in the law, in particular in the legal framework of these actors. This includes, for instance, spelling out the obligation to consult the NHRI prior to reporting. This has the advantage of reducing potential friction over the practical interpretation of the notion of independence, with no risk to overlook the NHRI. The downside is that the NHRI might prevent itself from carrying out certain activities – such as monitoring governmental follow-up to international recommendations – as long as it is not explicitly provided for by the law.
- b. Memoranda of understandings: Some NHRIs and NMIRFs have entered a memorandum of understanding, in view of coordinating activities in areas that are a shared responsibility of NHRIs and NMIRFs, namely trainings and human rights promotion.
- c. Action plans: In some countries taken as case studies, NHRAPs foresee which activities will be carried out with the NHRI. For instance, when it comes to trainings of officials on human rights issues, NHRIs leaders and staff are identified as resources for the ministries in running training activities.

In addition to planned interactions and meetings, case studies have demonstrated how NHRIs and NMIRFs may also usefully entertain more ad hoc exchanges that help in raising the quality of their respective activities – e.g. relying on NHRIs for the provision of expertise, to keep each other informed of their roles and activities. The mutual sharing of annual reports and invitation to their releases were identified as occasions to inform of the main priorities of the two actors – yet only in one country was the sharing of annual reports with the other actor and invitation at their launches seemed to be done. On a more informal level, but also helping building trust and knowledge about key human rights institutional actors nationally, NHRIs and NMIRFs regularly use their own communication channels – including social media – to inform their partners, CSOs or the wider audience about each other's activities.

Invitation to activities also offer spaces for more informal or interpersonal exchanges. Such dialogues were presented in two case studies as very helpful for the NHRI to explain the boundaries of its mandate and how it navigates independence in practice, and avoid misunderstandings – especially when positions fluctuate after a change of leadership.

Finding 8. Transparency of NMIRFs' activities is important to raise accountability towards the public and monitoring actors, yet more could be done and NHRIs could enhance their review of NMIRFs' actions.

Findings show that transparency of activities of the NMIRFs is instrumental to ensure their accountability towards the general public and through monitoring activities of NHRIs and CSOs. As seen in Finding 5, standing membership

as observer is one way to ensure that NHRIs are informed of all activities of NMIRFs, being able to participate in all meetings as well as being copied in all communications.

Other important ways to remain transparent emerged through the case studies, including:

- a. Having a website featuring the work of, and documents produced by, the NMIRF;
- b. Ensuring that the legal basis of the NMIRF and its terms of references/ procedures are publicly accessible;
- c. Producing an annual NMIRF activity report as well as an annual action plan;
- d. Ensuring that the digital tracking databases have an online public version;
- e. Publicising state draft reports for comments, and organising hearings for the general public in addition to meetings with NHRIs and CSOs. NHRIs may also cultivate transparency and publicise on their websites the comments they submitted to the NMIRF for the state reports.

These techniques were applied inconsistently throughout the case studies. Usually, NMIRFs used one or the other transparency measure only. The discussion on NMIRFs' transparency and accountability – which is a key conversation in relation to long-lasting governmental human rights focal points in thematic fields such as gender equality mechanisms – is also not addressed in international guidance or seminars gathering together NMIRFs.

In our case studies, NHRIs have generally remained timid in demanding NMIRFs' transparency. Where NMIRFs do produce e.g. annual reports or work plans, those did not appear to be reviewed by NHRIs. Much more could be done to make the government accountable for its follow-up and implementation responsibilities through NMIRFs.

Finding 9. NHRIs are insufficiently engaged in the development of international norms and guidance on NMIRFs.

As the present analysis demonstrates, NHRIs have a direct interest in ensuring that the NMIRFs' development contributes to enhancing the government's human rights compliance and its ability to deliver on its responsibilities. It would therefore be useful that international guidance and resolution on NMIRFs would unpack the implementation functions of NMIRFs, and ensure that the NMIRFs agenda takes into account the meaningful contributions that NHRIs can offer. NHRIs' inputs would be instrumental to influence the normative developments and

practical guidance on NMIRFs that are being developed since 2016. NHRIs could contribute their views to: Human Rights Council's biennial resolutions on NMIRFs, and OHCHR's practical tools (guides and online hub) for NMIRFs as well as future 'principles for NMIRFs', should those be developed.

NMIRFs regularly act as vehicles for the definition of the country's position as regards the development of new international standards, offering avenues to involve NHRIs and civil society. In some case studies this was explicitly part of their mandates, and in several there was an excellent cooperation between the NMIRFs (or the Ministry of Foreign Affairs generally) and the NHRI and civil society in promoting international human rights standards. However, such cooperation has in no cases so far been applied to international standards on NMIRFs, in particular at the occasion of the UN Human Rights Council's resolutions, despite four of the states selected as case studies playing a role in this field. This might be explained in part because the drafting of the resolutions on NMIRFs is done by the main sponsors, and negotiations mostly happen in Geneva, between Permanent Representations. Even for states being part of the Group of Friends on NMIRFs (four or our case studies), discussions are mostly Geneva-focused, with only one capital-based NMIRF in our case studies being more involved in UN normative developments.

On NHRIs side too, there has been a limited attempt to influence normative developments, except for one NHRI taken as a case study, which has heavily invested in influence normative developments around NMIRFs, in view of impacting the ability of states to better implement human rights, and to ensure that the development of NMIRFs build on existing laws and experiences of governmental human rights focal points, and does not encroach on the role and functions of NHRIs. That NHRI, being capital-based, has limited access in Geneva and was for instance unsuccessful in its attempt to influence the 2022 resolution on NMIRFs. GANHRI's Secretariat, that represents NHRIs in Geneva, would be ideally placed to ensure that the impact of NMIRFs on NHRIs is duly reflected upon in resolutions and guidance; but has so far refrained from engaging with the NMIRFs agenda altogether.

RECOMMENDATIONS

By way of conclusion, the authors wish to present a series of recommendations, that NHRIs might consider and endorse in order to contribute to the ongoing expansion of NMIRFs and ensure that NHRIs' voice is heard on the matter. These recommendations are based on the legal and documentary analysis presented in Chapter 1 and on the empirical findings analysed in Chapter 4. It is suggested that these recommendations are reviewed by a larger pool of NHRIs and their networks for endorsement and presenting a common and strategic approach to input to and ideally influence the NMIRFs agenda.

Generally, NHRIs tend to call for, and welcome, the establishment of a central structure within government able to ensure human rights implementation by all ministries, and value a more robust national system of international reporting and follow-up.⁴⁹⁵ There are however some doubts amongst NHRIs as to whether they should call for an NMIRF, if that would only lead to more timely reporting. As seen in the study, the existence of an NMIRFs, even with very limited mandates and no authority to trigger implementation by the line ministry, may be used as an excuse by government to avoid engaging e.g. in human rights planning. NHRIs should therefore be attentive to their messaging regarding NMIRFs, and have clear demands as regards their development, if not conditions for their support. Poorly designed NMIRFs may be counter-productive, and NHRIs may end up having to substitute for their weaknesses.

The conclusion suggests recommendations that NHRIs may consider making prior to the establishment of NMIRFs (1), and subsequently when in operation (2). It then looks at how the existence of NMIRFs recomposes national human rights systems, allowing NHRIs to be more strategic about their demands towards the government (3). It recommends how NHRIs-NMIRFs may be organised (4). It finally looks at recommendations NHRIs may pass to the international system as regards the normative developments on NMIRFs (5).

1. RECOMMENDATIONS REGARDING THE ESTABLISHMENT OF NMIRFS

1.a. Legal bases of NMIRFs should be discussed with other key actors within the national human rights system, and first and foremost NHRIs. They may even be co-drafted with the NHRI. In any case, NHRIs should issue recommendations on future NMIRFs' legal basis, even if unsolicited. The

legal basis can spell out the types of interactions that the NMIRF shall have with the NHRI.

→ *Inspiration: In the Republic of Korea, a new NMIRF framework was co-drafted by the NHRI and the Ministry of Justice; it includes provisions under which the NHRI can suggest agenda items and shall be consulted ahead of certain activities.*

1.b. NMIRFs' mandates should include implementation objectives, ideally covering both international and regional recommendations follow-up and national human rights policies and plans. Follow-up should not be interpreted narrowly: It includes tracking implementation, as well as effectively prompting line ministries into implementation. NMIRF may also directly implement targeted activities. Engagement with international actors on individual communications should also be spelled out, including access to redress for recognised victims. Implementation also covers both legal harmonisation with international law and effective operationalisation of human rights policies and plans.

→ *Inspirations: In Moldova, the NMIRF is in charge of implementing the NHRAP, as well as follow-up plans to international and regional recommendations, and oversees the harmonisation of national legislation with international and regional standards.*

→ *NHRIs may rely in their advocacy on treaty-body jurisprudence to demand comprehensive NMIRFs' mandates: In relation to Denmark in 2019, the UN Committee on Economic, Social and Cultural Rights has expressly called on the NMIRF's mandate to include the following activities: '(a) scrutinize the compliance of draft laws with its Covenant obligations; (b) assess the impact of laws and policies on economic, social and cultural rights, and (c) monitor the implementation of recommendations made by the Committee and other human rights mechanisms.'*

1.c. NMIRFs' composition gathers all line ministries and relevant governmental agencies – ideally represented by both senior/political and technical staff. It is advisable to include NHRIs as standing members with observing status. NHRIs shall receive all communications and be invited to all meetings. However, they shall decide on their own terms the extent to which they wish to participate (in case studies all attended to be informed, but choose whether to take the floor or not), in line with their independence status. This should cover all NHRIs in the country where there are several, including thematic ones or NPMs and CRPD independent monitoring frameworks when they are distinct from the main NHRI. NHRIs may also recommend that NMIRF's membership includes representatives of statistical offices, as well as, as observers, parliaments, the judiciary, and local

authorities, all of whom have a role to play in human rights compliance and implementation.

→ *Inspirations: The NMIRF of Portugal adopts a two-tier system of representation of line ministries – two representatives, one at the political/senior management level and the other at the technical level. The NMIRFs of Mauritius, Moldova and Portugal include all NHRIs of the countries as standing observers of the NMIRF. The latter decide their degree of involvement in the NMIRF's activities. The Public Prosecutor and Parliament also have a standing observer status in the NMIRF.*

→ *Standards for NMIRFs developed by states themselves suggest NMIRFs membership of key actors beyond the executive branch, as observers at least. The 2020 Pacific Principles recommended that NMIRFs should 'include representation of all primary actors involved in the implementation of human rights including, but not limited to, government ministries and agencies, statutory bodies, parliamentarians, the judiciary, civil society, national human rights institutions, traditional and religious leaders/groups, national statistics offices and the private sector. Different levels of membership of the NMIRF may be appropriate (e.g. full / observer members)' (Principle 3.1.).*

1.d. Organisation of NMIRFs: In order to preserve more in-depth forms of interactions with civil society and NHRIs that have been developed in thematic fields, as well as an advanced level of technical dialogues on specific matters, NMIRFs can develop thematic sub-structures (working groups, specialised commissions) for the development of thematic policies, indicators, etc. By assigning responsibilities for sub-structures to line ministries, the NMIRF can enhance, rather than channel or filter, access of NHRIs and CSOs to policy-makers in specific thematic sectors. It is further important that the NMIRF has a secretariat with enough resources to ensure the smooth operations of the NMIRF, with specialised knowledgeable of international, regional and national standards and systems.

→ *Inspiration: The NMIRF of Moldova has set up specialised commissions. The Moldovan organisation entails thematic working groups for each of the treaties to which the country is party. Relevant line ministries lead those commissions, in which NHRIs participate.*

1.d. Institutional anchorage has direct influence on the NMIRF's ability to deliver on its mandate. In order to be able to trigger implementation by line ministries, linkages to the Prime Minister's or Presidential offices may be advantageous.

→ *Inspiration: The NMIRF of Moldova is headed by the Prime Minister and the Vice Presidents are the Minister of Justice and the Minister for Foreign Affairs*

and European Integration. Responsibilities for sub-structures are with line ministries, depending on the theme. The Secretariat is located in the State Chancellery (Prime Minister's Office).

1.e. NMIRFs' transparency: NMIRFs should produce an annual work plan and annual activity reports. It should have a website, featuring all relevant documents including its legal basis, terms of references and procedures.

→ Inspiration: The Portuguese NMIRF has its own website featuring its legal basis, annual workplan and activities reports as well as other relevant documentation on its work.⁴⁹⁶

2. RECOMMENDATIONS REGARDING NMIRFS' ACTIVITIES AND OPERATIONS

2.a. The quality of state reports to, and engagement with, treaty bodies can usually be improved, including the processes of consultations with civil society. Even in cases where reports are submitted relatively on time, there is usually scope to improve the quality of the reports: challenges and problems should not be left to NHRIs and CSOs to raise in their alternative reports, but are a substantial part of the state report, which should also provide statistical as well as budgetary information. They also do not substitute for the need to integrate inputs received from consultations in the state report.

→ Inspirations: The NHRIs of Denmark and the Republic of Korea have assessed the quality of state reports in their inputs to state reports and alternative reports, respectively. The Danish NHRI also assess the quality of UPR mid-term reports and follow-up information provided by the government to treaty-bodies. As a yardstick to objectively assess the quality of state reports, the Korean NHRI diligently refers to the treaty bodies' reporting guidelines to state.

2.b. Procedures for effective follow-up must be in place. While having a tracking tool and recommendation implementation plans are minimum tools, follow-up procedures are more comprehensive, and must spell out how recommendations will be evaluated and translated into action, how NHRIs and civil society will be involved in this exercise, as well as how line ministries will be responsible for implementing and reporting on actions. Procedures should also be in place for NMIRFs' engagement on individual communications and execution of the subsequent decisions – including to whom victims can address themselves for follow-up to such decisions.

→ Inspiration: The Republic of Korea's NHRI has spelled out the need for institutional mechanisms to ensure the implementation of the treaty-body decisions based on individual communications, so that effective remedies including personal compensation can be reviewed.

2.c. The adoption and implementation of National Human Rights

Action Plans should be considered as a key instrument to operationalise the implementation objectives of NMIRFs, in particular national policy objectives. Those should include NHRIs recommendations and results of CSOs consultations. Follow-up to international and regional recommendations shall also either be integrated in NHRAPs and/or be dealt with in shorter-term recommendations implementation plans. Activity reports on those plans should be prepared on a regular basis, and measures taken by the NMIRFs and the political leadership in case of lack of progress. Tracking databases should be public, maintained by the NMIRFs, and cover all implementation measures and activities identified by both types of plans. NHRIs recommendations and comments should also be included, ensuring that the digital tracking databases have an online public version.

→ Inspirations: The Moldovan NMIRF is responsible for the NHRAPs of Moldova, with local authorities obliged to produce their own local human rights action plans. Implementing agencies have an obligation to report progress annually, and the NMIRF reviews progress and reacts if need be. The NHRAP takes into account the latest international recommendations, yet the NMIRF also produces short term implementation plans for international recommendations. Tracking of their implementation is reflected in an online digital tool in which NHRIs and CSOs may include comments. In the Republic of Korea, the NHRI has spelled out the different interventions of the NHRI in connection with the NHRAP, and there is a legal obligation of the NMIRF's chair to report progress on implementation.

2.d. NMIRFs should promote international ratification of treaties – including optional protocols, acceptance of individual communications and lifting reservations, as well as consult NHRIs when defining the position of the state on international normative developments.

Promoting ratifications is a key function of NHRIs, spelled out in the Paris Principles – on which depends the effective universality of human rights standards. The creation of NMIRFs provides an opportunity for NHRIs to channel their demands for ratification of treaties and being part of the state's contribution to international developments. It constitutes an entry point to strategic engagement and sustained discussions on these matters between the NHRI, the government and the Parliament, which is an actor often represented in NMIRFs' membership.

→ Inspiration: The Portuguese NMIRFs' legal basis explicitly provides it with a mandate to promote ratification and coordinate the position of the state in international forum. The NMIRF has in practice organised consultations with CSOs to receive inputs and ideas in view of initiatives taken by the country at the UN Human Rights Council, leading to the adoption of HRC resolutions.

2.e. Holding NMIRFs accountable: NHRIs' responsibilities entail advising and monitoring how the government organise its human rights activities. They should therefore make recommendations relating to the establishment and operations of the NMIRFs. NHRIs could usefully include a section on their (annual) reports reviewing the effectiveness of the NMIRFs – akin to treaty bodies' concluding observations which usually start with a review of the states' human rights structures and institutions.

→ *Inspiration: The Danish NHRI has made recommendations for enhancing the Danish NMIRFs effectiveness, in its 2020 UPR alternative report.*

3. RECOMMENDATIONS ON DISTRIBUTION OF ROLES AND RESPONSIBILITIES IN NATIONAL HUMAN RIGHTS SYSTEMS FOLLOWING THE EMERGENCE OF NMIRFS

3.a. Where NHRIs are not yet established or weak, and governmental human rights focal points or NMIRFs exist, the latter have a special responsibility to ensure the establishment or reinforcement of NHRIs.

All countries are recommended by treaties bodies or during the UPR reviews to establish or reinforce NHRIs. NMIRFs therefore have the responsibility to make this happen. The creation of the NHRI might entail redefining the roles of different actors within the national human rights system. NMIRFs have a special duty to explain the distinct and complementary roles of NHRIs and NMIRFs, and to remain careful that their existence is not used as a pretence for lawmakers to dismiss the relevance of establishing or reinforcing NHRIs.

→ *Inspiration: NHRIs may rely on the state obligations in CRPD Article 33 to underline the necessity to set up both a governmental/interministerial mechanisms as well as an NHRI/independent framework, with the former responsible for implementation, and the second for independent monitoring, as well as human rights protection and promotion. Promotion and data gathering may be conceived as a shared task, as Articles 8 and 31 of the same treaty establish obligations of the government in those regards. Articles 4 and 33(1) further spell out the obligation for the government to involve rights-holders and CSOs in both implementation and monitoring.*

3.b. NMIRFs shall nurture NHRIs and CSOs contributions to reporting processes – offering opportunities to meaningfully comment on draft state reports, as well as ensuring an understanding within the government that it is expected from international actors that NHRIs and CSOs would also use their rights to submit independent and alternative reports to the international systems. It is up to NHRIs to decide on the strategy they wish to adopt in terms of using one or the other options, or both. NMIRFs have a responsibility to ensure that NHRIs and CSOs can exercise their alternative reporting rights without reprisals.

→ *Inspirations: The NMIRF of Denmark values the contributions made by the NHRI, the NPM and CSOs, whether those are made as comments to the draft state report or as alternative reports. It assesses that that such contributions help in improving reports as well as preparing for reviews, and identifying critical questions that may be asked. The NMIRF further organises, so far with the NHRI's support (see below recommendation 3.d), public hearings in which the views of the general public are sought. It also invited the NHRIs and CSOs to provide views before accepting/noting UPR recommendations, and to comment on draft follow-up responses. The NHRI has developed advanced techniques in view of influencing international reviews of Denmark, such as reaching out to Copenhagen-based embassies to advocate for messages to be passed on by reviewing states during the UPR.*

3.c. Implementation responsibilities are with the NMIRF, whereas NHRIs can focus on their accountability role. NMIRFs shall implement and track implementation of human rights activities, and NHRIs focus on independent monitoring of governmental responsibilities. Where NMIRFs exist, NHRIs have redefined their activities and no longer substitute for the lack of governmental focal structure: for instance, they have not engaged in systematic tracking of implementation of recommendations through a digital database, but demand that the NMIRF does so. In turn, they can engage in independent monitoring, which can take different strategies, including demands to NMIRFs to devise and share implementation action plans, progress reports that they shall receive from line ministries, or targeted requests to line ministries, or focusing on surveys investigating actual impact of governmental policies on rights-holders, etc. The emergence of NMIRFs is therefore an opportunity for NHRIs to hold the government further accountable and reminds it of its responsibilities, and avoid substituting for its lack of action in e.g. suggesting actions to be taken by line ministries or tracking implementation. In other words, the rise of NMIRFs provide an opportunity for NHRIs to push back to the government some functions that it substituted for. Furthermore, NHRIs now have an avenue to strategically address advocacy pleas and enter into structured discussions on processes that fall part of the NMIRFs' mandates, for which their NHRIs' messages would otherwise be generally addressed as recommendations to the government. Promoting treaty and protocol ratifications, lifting of reservations and acceptance of individual communications procedures appear as prime examples of areas where the creation of the NMIRF provides for a clear interlocutor.

→ *Inspiration: The NHRI of the Republic of Korea interrogates the follow-up reports of the state and asks questions at the national level. It has requested the government provide it with any reports the state authorities have written on implementation. In relation to its own recommendations, the NHRI may inspect the status of compliance and, may publish the information provided by the heads of relevant agencies, and the results of verifying and inspecting the status of compliance.*

3.d. Defining, a minima, a strategy on international reporting and follow-up. Independence of NHRIs is especially crucial to maintain in relation to reporting and follow-up. As findings show, NHRIs may approach the matter in different ways, and may decide the extent to which they find it more strategic to comment on draft state report or report independently, or do both. International and regional actors, as well as GANHRI, have clear expectations that NHRIs should in any case submit own alternative reports, to identify issues that were not included in the state report, believed to be misrepresented in the state report and alert the treaty bodies to any limitations on their own mandate and functioning. NHRIs should have a strategy on how much they are willing to comment on the drafting of the state report, in the meetings, comments, etc. and which issues they are prepared to comment upon and which not, in order to ensure their independence. Case studies have also shown that NHRIs' strategy on reporting may now mix a variety of options. NHRIs increasingly ponder the need to send physical delegates to review vs online participation, can maximise impact with a strategic timing of submissions (e.g. submit alternative reports only when the actual review is planned by the treaty body, in order to send the most up-to-date information and make up for delays between state reports submissions and scheduling of the reviews), use other avenues offered by treaty bodies for NHRIs to contribute to reporting cycles (e.g. contributions to LOIPRs), or devise new advocacy tools (e.g. meeting with embassies prior to UPR reviews). NHRIs may also decide to publish in full transparency their comments to the state reports on their websites. Case studies showed that there might be a learning curve for NHRIs to contribute to international reporting, but that with experience and relevant internal organisation, it can effectively contribute to reporting with less resources; the creation of NMIRFs seem to have played a role in enhancing NHRIs engagement in reporting where the latter did not invest much in the past. Last, NHRIs' reporting strategy may also depend on the political context and the availability of other avenues for human rights protection and dynamics, both at regional and national levels.

→ Inspirations: In the Republic of Korea, which is not covered by regional human rights systems, the NHRI places high emphasis on international reporting and follow-up. It comments all draft state reports and align both its internal strategy and its organisation to reflect in part the framework at the international level. It has a number of divisions, teams and committees to facilitate its work. These Divisions and other groupings, therefore, appear to assist the NHRCK in responding to specific treaty bodies and move towards a more integrated system whereby mechanisms and infrastructure is mutually reinforcing. In Denmark, the NHRI is one of the rare NHRIs that submitted a voluntary mid-term report under the UPR, during the second cycle. It has also used in three occasions, under the CAT and the ICCPR, the possibility to send independent information as part of the follow-up procedure developed by treaty bodies. It however also answers requests from the NMIRF to comment on follow-up measures, and published on its website all inputs sent to the NMIRF.

3.e. Shared responsibilities of NHRIs and NMIRFs may lead to joint activities: In line with the CRPD, awareness-raising and training on rights, as well as data collection and the identification of human rights indicators, fall both under the mandates of NHRIs and NMIRFs, and appear to be areas where joint activities may be organised without hindering the independence of NHRIs nor challenging their capacities to remain critical in other types of functions and activities.

→ *Inspirations: In Mauritius, the NHRAP, overseen by the NMIRF, foresees that trainings of officials on human rights issues are a shared responsibility to be co-organised with the NHRIs of the country. In the Republic of Korea, when adopted, the new National Human Rights Policy Framework Act will provide for a legal framework for joint work between the National Human Rights Commission of Korea, central administrative agencies and local governments on human rights promotion and education, establishing an obligation to cooperate between the different actors.*

→ *The OHCHR has been supporting NHRIs to open up existing Memorandum of Understanding with Central Statistical Offices to NMIRFs, to have a tripartite framework to produce human rights data.*

3.f. NHRIs and NMIRFs may temporarily work together to raise one another's capacities on matters where they are both involved, with distinct responsibilities. A common example is that NHRIs may have long experience in consulting with civil society, which is a key capacity that NMIRFs must have, according to the UN. NHRIs may support NMIRFs in their consultations, yet ultimately, NHRIs do have their own separate obligation to consult and cooperate with civil society independently. It cannot be merged, in the long run, with the NMIRFs' responsibility to engage with civil society. NHRIs may help ensure that NMIRFs identify relevant CSOs, invite and engage meaningfully with a diversity of CSOs, and may support CSOs in organising themselves in view of reporting processes. They may also support the first consultations organised by NMIRFs as a way to raise their capacities. However, this should be transitory and should in no case be seen as outsourcing NMIRFs' engagement with CSOs, nor replace NHRIs' own engagement with CSOs. Capacity development may go both ways: NMIRFs in case studies where NHRIs have not had a long experience in reporting appear to play a role in raising knowledge of NHRIs on reporting cycles and opportunities, including of options for NHRIs to participate in their own right.

→ *Inspiration: The Danish NHRI has invested in mobilising civil society and the public in general around international reporting issues – e.g. supporting in 2010 the establishment of an UPR Committee composed of CSOs. It has played a key role in ensuring that CSOs are invited to NMIRF's meetings, whenever the NHRI is invited too. It has supported the NMIRF in organising public hearings with the general public and CSOs in the preparation of state reports, yet has so*

far managed to do so while explaining its independent role, being mindful of not substituting to the NMIRF, as well as pursuing its own engagement with CSOs.

4. RECOMMENDATIONS FOR ORGANISING NHRIS-NMIRFS INTERACTIONS

4.a. NHRIs and NMIRFs should consider formalising their interactions.

NHRIs-NMIRFs interactions are potentially numerous as well as multiform, engaging in similar areas with distinct yet interlinked functions (e.g. international reporting), or undertaking joint activities on matters of shared responsibilities (e.g. awareness-raising and trainings), as well as temporary support to reinforce skills and capacities. The intensity of interactions may call for formalising the expected contributions and interactions between the two actors. It is however important that in any circumstances, it remains up to the NHRI to decide the extent to which it is involved in any activity, out of respect of the principle of independence of NHRIs.

→ Inspiration: Case studies showcase different ways to formalise interactions between NHRIs and NMIRFs, including: providing specifically in the law the different ways in which NHRIs are involved in NMIRFs activities (Republic of Korea); entering a Memorandum of Understanding (Moldova) or agreeing on activities to be performed together, with leading/supporting roles assigned, through action plans (Mauritius).

4.b. Dialogues and ad hoc interactions may contribute to a good understanding between NHRIs and NMIRFs, including on their respective roles and how NHRIs wish to navigate independence in their interactions with the NMIRF. NMIRFs and NHRIs should consider inviting each other to their public activities, and maximise opportunities to develop relationships outside of formalised interactions, with a view to drawing on each other's expertise, acknowledging the important roles of each actors as well as raising understanding between the institutions.

→ Inspiration: In Mauritius, NHRIs (including thematic ones) and the NMIRF share with each other annual reports and invite each other to their releases, this being an occasion to inform of the actors' main priorities. They also regularly use their own communication channels – including social media – to inform their partners, CSOs or the wider audience about each other's activities.

4.c. NMIRFs and NHRIs should establish focal points for interactions.

The establishment of a focal point/desk/directorate for consultations with NHRIs and CSOs within the NMIRF's secretariat helps ensure a qualitative and meaningful process. It builds capacities and ensures sustainability in procedures and institutional memory – especially as NMIRFs may have a high degree of turnover. Similarly, it has proved useful for the NHRIs to identify a contact point for the NMIRFs within its technical/expert staff level, in

addition to the official representative of the NHRI who is usually at leadership level (e.g. deputy-Ombudsperson). NMIRFs contact points within NHRIs may ensure engagement with the NMIRFs, monitoring of its work (review of outputs and annual reports, etc.), but also remain attentive to international guidance and resolutions on NMIRFs. Such yardsticks may be useful to advocate for more effective NMIRFs nationally.

→ The Danish NHRI has identified a contact point within its staff for all matters relating to the Danish NMIRFs – even though the NHRI is not a standing observing member of the NMIRF but only an occasional guest in its meetings. The contact point ensures an in-depth knowledge of the NMIRFs' activities. She prepares interventions and accompanies the managers representing the NHRI when invited by the NMIRF. In addition, the NHRI has a researcher and an advisor in its international department following international developments pertaining to the NMIRFs.

→ Establishing a desk for NHRIs and CSOs consultations within the NMIRF is a recommendation of the OHCHR (2016 Practical Guide, page 22).

4.d. Navigating independence in interactions with NMIRFs: While NHRIs should maximise the use of opportunities to engage with the NMIRF, it is still crucial for NHRIs to continue to be vigilant in their role within the NMIRF. NHRIs may come up with an engagement strategy vis-à-vis the NMIRF that maintain their independence. The study points to areas of work where functions are interlinked yet distinct – and where independence is crucial, while in other fields that emerge as shared responsibilities (e.g. awareness-raising and trainings on human rights), joint work can be done and maintaining independence may be less of an issue.

→ Inspiration: Some NHRIs have established criteria as to what it considers appropriate to contribute to or not (e.g. in Moldova) and if necessary ensured that this was clearly spelled out in either legal bases of the two actors (Republic of Korea) or in shared documents (memorandum of understanding or action plans).

5. RECOMMENDATIONS REGARDING INTERNATIONAL LAW, GUIDANCE AND OVERSIGHT ON NMIRFS

As seen in Chapter 1, there are still a number of gaps in international guidance and oversight of NMIRFs. Based on case study findings and areas of NMIRFs' work that emerge as strategic for NHRIs, key messages could be addressed to the UN and international actors.

5.a. Key messages for the development of international guidance on NMIRFs by the OHCHR and norms by the HRC:

- Measuring success of an NMIRF should not be determined by the number of reports submitted on time, but on effective implementation of the recommendations by the government;
- The addition of the 'I' for implementation in 'NMIRF' by the HRC in 2019 provides an opportunity and a mandate for the OHCHR to revisit its 2016 guidance and unpack implementation responsibilities of those structures. NMIRFs themselves, in recent seminars, have underlined that they often have wide mandates covering national human rights policies and plans;
- Essential international follow-up dimensions are also left out from the existing guidance on NMIRFs, such as implementation of decisions taken by treaty bodies in connection with individual communications. Concrete guidance would be needed, including in terms of victims' access to redress and reparations following a favourable decision by treaty bodies;
- Some questions that deserve further reflexion and operational guidance pertain to whether NMIRFs may engage not only in triggering implementation by line ministries, but also to some extent in the direct organisation of implementation activities (e.g. human rights trainings, legal harmonisation, etc.). So far, the NMIRF guidance does not foresee direct activities, yet many NMIRFs engage in some types of direct implementation. Another conundrum pertains to the integration of NHRAPs and Recommendations Implementation Plans, which remains a complex matter and an operational challenge for states;⁴⁹⁷
- OHCHR practical digital tracking tools (NRTDs) should include a standard option for NHRIs to contribute views on recommendations implementation.

5.b. Key messages on NMIRFs oversight by treaty bodies and other types of international reviews:

- Treaty bodies systematise their oversight of NMIRFs structures, based on occasional practices (see ICESCR 2019 conclusions in relation to Denmark) and the wide experience of treaty bodies in reviewing governmental thematic structures, e.g. in the field of gender equality and disability.⁴⁹⁸
- Treaty bodies may facilitate the involvement of NHRIs in international reviews and processes by: providing guidance on NHRIs' implications in individual communications, issuing precise recommendations,⁴⁹⁹ and ensuring predictability of reviews and follow-up activities.⁵⁰⁰

5.c. Avenues for direct advocacy: NHRIs are always invited by the OHCHR to NMIRFs-related activities and seminars, with online participation possible: NHRIs may consider participating more actively and voice their messages in these fora. They may also answer surveys and provide inputs on a regular

basis in the context of the treaty bodies reform process. However, influencing norms and guidance development in Geneva may be one-step removed, and better conducted by GANHRI, which represents NHRIs in Geneva and is better connected to liaise with Permanent Representations involved in the drafting of HRC resolutions on NMIRFs, to ensure that the support to NMIRFs does not come at the expenses of NHRIs.

5.d. NHRIs networks: GANHRI could usefully initiate a strategic dialogue with the Group of Friends on NMIRFs and upcoming network of NMIRFs to ensure that the voices of NHRIs are heard in NMIRFs-related activities, in particular to insist on the implementation responsibilities of NMIRFs. It would also be well placed to analyse if the level of UN financial support to NHRIs as well as the political attention towards NHRIs has changed with the emergence of the NMIRFs agenda (measuring the number of UPR recommendations on NMIRFs and NHRIs in UPR reviews over time, for instance). In addition, regional NHRIs networks could have similar discussions and interactions where regional human rights systems exist and appear to have an increasing interest in government reporting and follow-up structures (as seen in Chapter 1, Section 5). GANHRI and regional networks would also be well placed to host discussions and raise knowledge amongst NHRIs about the rise of NMIRFs and their implications for NHRIs, alerting them to opportunities for enhancing national human rights systems as well as the issues to which they should remain attentive.

Generally, there are increasing discussions, amongst NMIRFs and their supporters (e.g. Universal Rights Groups, OHCHR) to define minimal normative standards for NMIRFs. Now is therefore the time for NHRIs collectively to spell out the expectations for standards that would ensure that NMIRFs add value to those for national human rights systems and its constitutive actors. As more and more states are considering establishing NMIRFs, individual NHRIs should use international guidance and practice on NMIRFs to advocate for NMIRFs with the most useful mandate and composition in the national context. This study hopes to be a key contribution for this new important area of action to happen.

ENDNOTES

- 1 Steven L.B. Jensen, Stéphanie Lagoutte and Sébastien Lorion, 'The Domestic Institutionalisation of Human Rights: An Introduction', *Nordic Journal of Human Rights* (2019) 37(3) 165.
- 2 Stéphanie Lagoutte, 'The Role of State Actors Within the National Human Rights System', *Nordic Journal of Human Rights* (2019) 37(3) 177.
- 3 According to Brian Burdekin, 'the World Conference did play a fundamentally important role in shifting the UN's focus to concentrate more specifically on mechanisms and strategies to promote and protect human rights at the national level. This shift, together with [...] the decision by the first High Commissioner to make NHRIs a significant area of emphasis, prepared the ground for a dramatic expansion of NHRI activity throughout the 1990s.' In Brian Burdekin and Jason Naum, *National Human Rights Institutions in the Asia-Pacific Region* (Nijhoff, 2007) 13.
- 4 Later endorsed by the UN General Assembly, Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights ('Paris Principles') (UN Doc. A/RES/48/134, 1993).
- 5 For an overview, see Section 1-4 of the Asia-Pacific Forum's Bibliography on NHRIs, available at: <https://www.asiapacificforum.net/resources/nhri-bibliography/>.
- 6 See Katerina Linos and Thomas Pegram, 'Architects of Their Own Making: National Human Rights Institutions and the United Nations', *Human Rights Quarterly* (2016) 38(4) 1116.
- 7 UN Secretary General, Strengthening UN Action in the Field of Human Rights through the Promotion of International Cooperation and the Importance of Non-Selectivity, Impartiality and Objectivity (UN Doc. A/72/351, 2017) para. 18.
- 8 OHCHR, National Mechanisms for Reporting and Follow-Up: A Practical Guide to Effective Engagement with International Human Rights Mechanisms (UN Doc. HR/PUB/16/1, 2016).
- 9 OHCHR, National Mechanisms for Reporting and Follow-up: A Study of State Engagement with International Human Rights Mechanisms (UN Doc. HR/PUB/16/4/Add.1, 2016).
- 10 Marc Limon and Ellis Paterson, The Emergence and Coming of Age of National Mechanisms for Implementation, Reporting and Follow-Up (Universal Rights Group Blog, 2019).
- 11 UN, Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para. 36.

- 12 David Langtry and Kirsten Roberts Lyer, *National Human Rights Institutions: Rules, Requirements and Practice* (Oxford University Press, 2021) 41. Going further, Pegram argues that the OHCHR strategically empowered NHRIs as domestic intermediaries that could be mobilised to bypass and influence states. See Thomas Pegram, 'Global Human Rights Governance and Orchestration: National Human Rights Institutions as Intermediaries', *European Journal of International Relations* (2015) 21(3) 595.
- 13 For an overview, see Langtry and Roberts Lyer 2021 (note 12) 34-39.
- 14 UNDP and OHCHR, *UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions* (2010) 2-3.
- 15 Leading to claims that 'the only way to achieve promotion of human rights is by building national capacities through the expansion of NHRIs', in C. Raj Kumar, 'National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights', *American University International Law Review* (2003) 19(2) 287.
- 16 Linda C. Reif, 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection', *Harvard Human Rights Journal* (2000) 13, 1.
- 17 Ayebaesin Jacob Beredugo and Frans Viljoen, 'Towards Greater Role and Enhanced Effectiveness of National Human Rights Commissions in Advancing the Domestic Implementation of Socio-Economic Rights: Nigeria, South African and Uganda as Case Studies', *Comparative and International Law Journal of Southern Africa* (2015) 48(3) 401.
- 18 See DIHR, *National Human Rights Institutions as Driving Force for Sustainable Development* (2019).
- 19 UN Secretary General 2017 (note 7) para. 15.
- 20 On support given to NMIRFs, see for instance: OHCHR, *Implementation and Enhancement of International Cooperation in the field of Human Rights* (UN Doc. A/HRC/41/25, 2019) paras. 20-21.
- 21 Including the Danish Institute for Human Rights in both Denmark (see below) and internationally.
- 22 OHCHR, *Regional Consultations on Experiences and Good Practices relating to the Establishment and Development of National Mechanisms for Implementation, Reporting and Follow-up* (UN Doc. A/HRC/50/64, 2022) para. 52.
- 23 HRC, *Promoting International Cooperation to Support National Mechanisms for Implementation, Reporting and Follow-up* (UN Doc. A/HRC/RES/42/30, 2019) para. 2.
- 24 UNSG 2017 (note 7).
- 25 OHCHR 2016 (note 8) 4.
- 26 In addition, another state actor dedicated to human rights – namely parliamentary human rights committees – has recently been conceptualised by the UN through the publication by the OHCHR of draft principles in 2018. OHCHR, *Draft Principles on Parliaments and Human Rights. Contribution of Parliaments to the work of the Human Rights Council and its Universal Periodic Review* (UN Doc. A/HRC/38/25, 2018) Annex 1. For a review of what this new

- actor means for ideal models of national human rights systems, including for NHRIs, see Kirsten Roberts Lyer, 'Parliaments as Human Rights Actors: The Potential for International Principles on Parliamentary Human Rights Committees', *Nordic Journal of Human Rights* (2019) 37:3, 195.
- 27 Jeremy J. Sarkin, 'The Role of National Human Rights Mechanisms for Reporting and Follow-Up (NMRF): Understanding these New Global Domestic Processes Using the Cases of Georgia and Portugal as a Focus', *Teisé* (2019) 1130, 184.
- 28 UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (UN Doc. CCPR/C/21/Rev.1/Add.13, 2004) para. 4.
- 29 GANHRI's Sub-Committee of Accreditation, General Observations (2018) General Observation 1.4.
- 30 UPR-Info, The UPR: Beyond Reporting – Transformational Changes on the Ground (2022) 19.
- 31 Meeting of Chairs of the Human Rights Treaty Bodies, Common Approach to engagement with National Human Rights Institutions (UN Doc. HRI/MC/2017/3, 2017) para. 13.
- 32 See overview and discussion in Domenico Zipoli, 'NHRI Engagement with UN Human Rights Treaty Bodies: A Goal-based Approach', *Nordic Journal of Human Rights* (2019) 37(3) 259.
- 33 See overview and discussion in Katrien Meuwissen, 'NHRIs and the State: New and Independent Actors in the Multi-Layered Human Rights System?', *Human Rights Law Review* (2015) 15(3) 446.
- 34 Gauthier de Beco and Rachel Murray, Commentary on the Paris Principles on National Human Rights Institutions (Cambridge University Press, 2015) 58.
- 35 See The New Zealand Action Plan for Human Rights, 2005-2010, released by the Human Rights Commission; and National Plan of Action, 2015-2019, released by the Human Rights Commission on 13 March 2017.
- 36 OHCHR 2016 (note 8) 3 (original emphases).
- 37 SCA 2018 (note 29) General Observation 1.5. See also: Tomer Broude and Natan Milikowsky, 'Establishing an NHRI in a Contested Political Space: A Deliberative Process in Israel', *Nordic Journal of Human Rights* (2019) 37(3) 286.
- 38 UN 1993 (note 11) para. 36.
- 39 According to the OHCHR's predecessor: 'Proximity places [NHRIs] in an excellent position to evaluate the practical effectiveness of existing laws; to identify problems which may have escaped the attention of the legislature or other implementing agencies; and to suggest [...] improvements'. In UN Centre for Human Rights, National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights (Professional Training Series No. 4, 1995) para. 191.
- 40 *Ibid.*, para. 204.
- 41 In addition to the complex relation to the executive, the *sui generis* nature of NHRIs have been discussed in relation to other state actors too. Being 'neither judicial nor lawmaking making mechanisms', NHRIs have been described as

- falling within a 'fourth branch' of the state powers, which creates difficulties in clearly understanding in practice the institutional identity, boundaries and expected interactions with other actors. See, in David Bilchitz and David Landau (eds.), *The Evolution of the Separation of Powers* (Edward Elgar Publishing, 2018): Faraaz Mahomed, 'Chapter 7: The Fourth Branch: Challenges and Opportunities for a Robust and Meaningful Role for South Africa's State Institutions Supporting Democracy'; Redson Edward Kapindu, 'Chapter 8: Separation of Powers and the Accountability Role of NHRIs: The Malawi Human Rights Commission through the Courts'; and José Ma. Serna de la Garza, 'Chapter 9: Mexico's National Commission on Human Rights: An Autonomous Constitutional Agency with Too Much Autonomy?'
- 42 Meuwissen 2015 (note 33).
- 43 See Anne Smith, 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?', *Human Rights Quarterly* (2006) 28(4) 904. See also the case of the National Human Rights Commission of Nepal, in Sébastien Lorion, *The Institutional Turn of International Human Rights Law and its Reception by State Administrations in Developing Countries* (PhD diss., University of Copenhagen, 2020) Ch. 10.
- 44 Langtry and Roberts Lyer 2021 (note 12) 1.
- 45 Ibidem.
- 46 Statement of Portugal on behalf of the Group of Friends of National Mechanisms on Implementation, Reporting and Follow-up, 42nd Reg. Sess. Human Rights Council, General Debate Item 5 (19 September 2019).
- 47 Stéphanie Lagoutte and Sébastien Lorion, 'Governmental Human Rights Focal Points: Governments and National Administrations as Drivers of Human Rights Implementation?', *Universal Rights Group's blog*, 2021.
- 48 Jeremy J. Sarkin, 'The Tensions That Exist in the Creation of National Mechanisms for (Implementation) Reporting and Follow-up (NMRF/NMIRF) to Better Comply with State Reporting to United Nations Treaty Bodies', *Tulane Journal of International and Comparative Law* (2021) 29(2) 307.
- 49 Ibidem.
- 50 DIHR, *NHRI Stakeholder Report – Key Recommendations, Universal Periodic Review of Denmark 2021* (2020).
- 51 UN Human Rights Committee, *Paper on the relationship of the Human Rights Committee with National Human Rights Institutions* (UN Doc. CCPR/C/106/3, 2012) para. 9.
- 52 See Stéphanie Lagoutte and Annali Kristiansen, *Review of literature on National Human Rights Institutions* (DIHR, 2016); and Steven L. B. Jensen, *Lessons from Research on National Human Rights Institutions* (DIHR, 2018).
- 53 Existing scholarly pieces – mostly coming from practitioners involved in the NMIRFs promotion – are all mentioned throughout the study.
- 54 One exception pertains to the interactions between NMIRFs and SDG focal points: Rachel Murray, *Report on Country Experiences with HR-SDG Integrated National Mechanisms for Implementation, Reporting and Follow-up* (Danish Institute for Human Rights, 2021).

- 55 For one exception, see Domenico Zipoli, *National Human Rights Strategies: The Role of National Human Systems in the Implementation of International Human Rights Standards* (Geneva Academy, 2021).
- 56 OHCHR 2022 (note 22). Adding to that, at the regional level, the OHCHR-Regional Office in Pretoria commissioned a study reviewing NMIRFs in Southern Africa in 2021, covering 11 countries. See OHCHR – Regional Office for Southern Africa, *The Status of National Mechanisms for Reporting and Follow-up in Southern Africa: Practices, Challenges and Recommendations for Effective Functioning* (2021).
- 57 The authors thank the URG for making the data and the draft report available in context of the present research. This research was also carried out with the Bingham Centre for the Rule of Law, Freshfields Bruckhaus Deringer, and the Human Rights Implementation Centre at the University of Bristol.
- 58 OHCHR 2022 (note 22) para. 18.
- 59 For an overview, see Section 1-4 of the Asia-Pacific Forum's Bibliography on NHRIs (note 5).
- 60 OHCHR 2016 (note 8).
- 61 HRC, *Promoting International Cooperation to Support National Human Rights Follow-up Systems, Processes and related Mechanisms, and their Contribution to the Implementation of the 2030 Agenda for Sustainable Development* (UN Doc. A/HRC/RES/36/29, 2017); HRC 2019 (note 23); HRC, *Promoting International Cooperation to Support National Mechanisms for Implementation, Reporting and Follow-up* (UN Doc. A/HRC/RES/51/33, 2022).
- 62 Pacific Community, *Pacific Principles of Practice of National Mechanisms for Implementation, Reporting and Follow-up* (2020).
- 63 UN HRC 2022 (note 5861 para. 5).
- 64 See Sébastien Lorion (ed.), *Report on the International Seminar on National Mechanisms for Implementation, Reporting and Follow-up in the field of Human Rights, Marrakech 7-8 December 2022* (DIHR, 2023) 54-62.
- 65 To give one example, the deputy-Chair of the NMIRF of Uzbekistan, speaking at the International Seminar on National Mechanisms for Implementation, Reporting and Follow-up in the field of Human Rights, held in Marrakech on 7-8 December 2022, suggested to 'develop Guidelines and Principles for National Reporting Mechanisms like Paris Principles for NHRIs'. *Ibid.*, 94.
- 66 Marc Limon, 'The Global Human Rights "Implementation Agenda" and the Genesis of NMIRFs', in Rachel Murray and Debra Long (eds.), *Research Handbook on the Implementation of Human Rights in Practice* (Edward Elgar Publishing, 2022) 199.
- 67 The Head of the Secretariat of the Portuguese NMIRF, speaking at the International Seminar on National Mechanisms for Implementation, Reporting and Follow-up in the field of Human Rights, held in Marrakech on 7-8 December 2022, argued that 'there are many things that NMIRFs could do together. It is a good idea to have meetings like the present Seminar more regularly. We all know that NHRIs have a global alliance (GANHRI). Why not having something more structured and regular to exchange views on NMIRFs?' The Moroccan NMIRF, that convened that international seminar, actually had

- invited GANHRI to present their networking experiences, for NMIRFs to learn from, at that International Seminar. While GANHRI could not be represented, several NHRIs participated in the Seminar.
- 68 Heinz Klug and Sally Engle Merry, 'Introduction', in Heinz Klug and Sally Engle Merry (eds.), *The New Legal Realism: Studying Law Globally* (Cambridge University Press, 2016) 2.
- 69 To contextualise the concept of NMIRFs within state practices as well as a new iteration of a prescription of governmental actors in thematic human rights fields, see Sébastien Lorion, *Defining Governmental Human Rights Focal Points: Practice, Guidance and Concept* (DIHR 2021).
- 70 See Sébastien Lorion, 'A Model for National Human Rights Systems? New Governance and the Convention on the Rights of Persons with Disabilities', *Nordic Journal of Human Rights* (2019) 37(3) 234.
- 71 In different shapes, sometimes merged as a State Secretariat or merged as part of a Ministry for both justice and human rights, but permanently present since 2002 and with its dedicated staff since 2006. See Sébastien Lorion, 'Inside the Human Rights Ministry of Burkina Faso: How Professionalised Civil Servants Shape Governmental Human Rights Focal Points', *Netherlands Quarterly of Human Rights* (2021) 39(2) 95.
- 72 Isolde Quadranti, 'Protecting and Promoting Human Rights in Italy: What has become of the Proposal of a National and Independent Commission for Human Rights?', *Mediterranean Human Rights Review* (2019) 1, 75.
- 73 Notwithstanding that in contexts where some type of structures that would be today referred to as NMIRFs might have in existence before an NHRI, they have often been dismantled or discontinued.
- 74 According to engaged scholars who promote the establishment of an NHRI in Italy, some parliamentarians have been reported to raise the question as to why give a budget to yet a new state human rights structure, when a large budget is already allocated for the operations of the Interministerial Human Rights Committee.
- 75 See regarding NHRIs: Ryan M. Welch, Jacqueline H. R. DeMeritt, and Courtenay R. Conrad, 'Conceptualizing and Measuring Institutional Variation in National Human Rights Institutions (NHRIs)', *Journal of Conflict Resolution* (2021) 65(5) 1010.
- 76 See OHCHR 2016 (note 8) 5.
- 77 Permanency is a key feature of NMIRFs as advocated by the Universal Rights Group, and is occasionally mentioned in the UN definition of NMIRFs. For instance, in 2017, the UN Secretary General defined a national mechanism as 'a permanent national governmental mechanism or structure', in UNSG 2017 (note 7) para. 17.
- 78 OHCHR 2022 (note 22) para. 11.
- 79 Ibidem.
- 80 Ibid., para. 14.
- 81 OHCHR 2016 (note 8) 16 and 19.
- 82 Ibid., 4.
- 83 Ibid., 22.

- 84 OHCHR 2022 (note 22) para. 18.
- 85 Ibid., para. 19.
- 86 Ibid., paras. 18 and 19.
- 87 African Commission on Human and Peoples' Rights, Report of the Second Regional Seminar on the Implementation of Decisions of the African Commission on Human and Peoples' Rights, 4–6 September 2018, Zanzibar, Tanzania (2018) para. 20(B)(ii).
- 88 Pacific Principles 2020 (note 62) points 2 and 3.1.
- 89 Turpin, quoted in Meuwissen 2015 (note 33) 454.
- 90 ICC Sub-Committee on Accreditation, General Observations. Annex 2 to the Report and Recommendations of the Session of the Sub-Committee on Accreditation, 3-6 November 2008, General Observation 2.3.
- 91 SCA 2018 (note 29) General Observation 1.9.
- 92 For an overview of how the Sub-Committee on Accreditation has applied this guidance in specific cases during (re-)accreditation reviews, see Langtry and Roberts Lyer 2021 (note 12) 110-115.
- 93 Ibidem.
- 94 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Doc. A/RES/57/199, 2002) Art. 18(1).
- 95 Committee against Torture, Concluding Observations on the fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland (UN Doc. CAT/C/GBR/CO/5) para. 14; Subcommittee on Prevention of Torture, Visit to United Kingdom of Great Britain and Northern Ireland undertaken from 9 to 18 September 2019: Recommendations and Observations addressed to the National Preventive Mechanism (UN Doc. CAT/OP/GBP/RONPM/R.1) para. 54.
- 96 SCA 2008 (note 90) General Observation 2.4.
- 97 ICC Sub-Committee on Accreditation, General Observations as adopted in Geneva in May 2013, General Observation 2.4.
- 98 Ibid., General Observation 2.5.
- 99 SCA 2018 (note 29) General Observation 2.4. For an overview of how the Sub-Committee on Accreditation has applied this guidance in specific cases during (re-)accreditation reviews, see Langtry and Roberts Lyer 2021 (note 12) 162-169.
- 100 OHCHR 2016 (note 9) 2.
- 101 SCA 2018 (note 29) General Observation 1.4.
- 102 Langtry and Roberts Lyer 2021 (note 12) 267.
- 103 SCA 2018 (note 29) General Observation 1.4.
- 104 See reference and comprehensive review in Langtry and Roberts Lyer 2021 (note 12) 263-270. See also with respect to Mauritius: GANHRI, Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (June 2021) 22-23.
- 105 See Ineke Boerefijn, 'Partnership between National Human Rights Institutions and the Human Rights Treaty Bodies in the Implementation of Concluding Observations', in Yves Haeck, Brianne McGonigle Leyh, Clara Burbano Herrera and Diana Contreras Garduno (eds.), *The Realisation of Human Rights: When Theory Meets Practice* (Intersentia, 2014) 437; Katrien Meuwissen, 'NHRI

- Participation to United Nations Human Rights Procedures: International Promotion Versus Institutional Consolidation?', in Jan Wouters and Katrien Meuwissen (eds.), *National Human Rights Institutions in Europe* (Intersentia, 2013) 263.
- 106 UN Committee on the Elimination of Racial Discrimination, General Recommendation XVII on the Establishment of National Institutions to Facilitate the Implementation of the Convention (UN Doc. HRI/GEN/1/Rev.1, 1994) para. 2.
- 107 OHCHR, National Human Rights Institutions: History, Principles, Roles and Responsibilities, Professional Training Series number 4 rev 1 (2010) 109, original emphasis.
- 108 SCA 2018 (note 29) General Observation 1.4.
- 109 See references and overview of SCA comments on the matter in Langtry and Roberts Lyer 2021 (note 12) 267-268.
- 110 OHCHR 2016 (note 8) 3-4.
- 111 Ibid., 22.
- 112 Ibid., 3.
- 113 OHCHR 2022 (note 22) paras. 18 and 19.
- 114 Meeting of Chairs of the Human Rights Treaty Bodies 2017 (note 31) paras. 18-19.
- 115 UN CERD Committee 1994 (note 106) para. 2.
- 116 UN Committee on the Rights of the Child, General Comment No. 2 (2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child (UN Doc. CRC/GC/2002/2, 2002) para. 21.
- 117 See case of Malawi, in Rachel Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Bloomsbury, 2007) 16.
- 118 Ibid., 64.
- 119 SCA 2018 (note 29) General Observation 1.4.
- 120 See references in Langtry and Roberts Lyer 2021 (note 12) 268.
- 121 These were Austria, Cameroon, Congo, Ghana, Jordan, the Philippines, Rwanda, Ukraine, and Zambia. See references in Mutaz M. Qafisheh, 'The International Status of National Human Rights Institutions', *Nordic Journal of Human Rights* (2013) 31(1) 69.
- 122 See OHCHR, Maximizing the use of the Universal Periodic Review at Country Level (2020) 9; and UN Human Rights Council 2017 (note 26) para. 2.
- 123 Meuwissen 2015 (note 33) 446.
- 124 GANHRI, National Human Rights Institutions and United Nations Treaty Bodies (2016) 18.
- 125 SCA 2018 (note 29) General Observation 1.4.
- 126 Meeting of Chairs of the Human Rights Treaty Bodies 2017 (note 31) para. 39.
- 127 UN Committee on the Elimination of Discrimination against Women, Paper on the Cooperation between the Committee on the Elimination of Discrimination against Women and National Human Rights Institutions (UN Doc. INT_CEDAW_BAP_8997_E, 2019) paras. 29 and 27.
- 128 UN Human Rights Committee 2012 (note 51) para. 17.
- 129 Meeting of Chairs of the Human Rights Treaty Bodies 2017 (note 31) para. 42.

- 130 Ibid., para. 44.
- 131 UN Human Rights Committee 2012 (note 51) para. 17
- 132 Meeting of Chairs of the Human Rights Treaty Bodies 2017 (note 31) paras. 37-38.
- 133 See, e.g., with respect to Kenya and the development of a national implementation matrix for the second cycle UPR recommendations, UPR-Info, *The Butterfly Effect: Spreading Good Practices of UPR Implementation* (2016) 14.
- 134 OHCHR, *Study on Emerging Good Practices from the Universal Periodic Review* (2021) para. 11.
- 135 Meeting of Chairs of the Human Rights Treaty Bodies 2017 (note 31) paras. 37-38.
- 136 UNSG 2017 (note 7) para. 30.
- 137 'IMPACT OSS is primarily designed to help Governments' NMIRFs and independent NHRIs, but can also be used by Human Rights NGOs that wish to hold Governments accountable.' Source: <https://impactoss.org/impactoss> (accessed 26 January 2023).
- 138 According to the OHCHR, 'the NRTD is currently only offered to governments of Member States. Subject to available capacity, OHCHR will review requests from other types of users on a case-by-case basis. Following the initial setup and rollout process of a national NRTD instance, NHRIs, CSOs, UN partners and other actors may be granted access subject to a decision of the administrating unit (typically the NMIRF secretariat).' Source: <https://nrt.dohchr.org/en/> (accessed 26 January 2023).
- 139 Zipoli 2021 (note 55) 54. For a complete overview of digital human rights tracking tools and their different features, including access for NHRIs, see Domenico Zipoli, *The Emergence of Digital Human Rights Tracking Tools and Databases* (The Geneva Human Rights Platform, 2023).
- 140 UNSG 2017 (note 7) para. 30.
- 141 OHCHR 2022 (note 22) para. 38.
- 142 There is a related debate about the implementation functions of NMIRFs themselves, and whether they should themselves implement human rights follow-up measures, or only coordination and facilitate implementation by other governmental line ministries and agencies. For a discussion on this dimension, see Sébastien Lorion and Stéphanie Lagoutte, 'Implementers or Facilitators of Implementation? Governmental Human Rights Focal Points' Complex Role in Enhancing Human Rights Compliance at the National Level', in Murray and Long 2022 (note 66) 119.
- 143 UN Committee on the Rights of the Child 2002 (note 116) para. 25.
- 144 For a review of the avenues for individual complaints under the UN system, taking the example of North African countries, see Stéphanie Lagoutte, *Individual International Complaints and Communications: Algeria, Egypt, Jordan, Morocco, and Tunisia* (DIHR, 2022).
- 145 OHCHR 2016 (note 8) 15.
- 146 Ibid.,14.

- 147 For a full overview of guidance on the matter, see Rachel Murray and Christian De Vos, 'Behind the State: Domestic Mechanisms and Procedures for the Implementation of Human Rights Judgments and Decisions', *Journal of Human Rights Practice* (2020) 12(1) 22.
- 148 OHCHR 2022 (note 22) para. 43.
- 149 SCA 2018 (note 29) General Observation 1.4.
- 150 Council of Europe, *Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements*, adopted by the Committee of Ministers on 10 May 2006, and amended on 18 January 2017.
- 151 Accessible at <http://ennhri.org/implementation-of-the-european-convention-on-human-rights/#1611845358640-b87cff23-8334> (accessed 25 August 2023).
- 152 Ample references were made to NHRIs' role in: African Commission on Human and Peoples' Rights 2018 (note 87). The Inter-American Court for Human Rights has also stepped up its cooperation with NHRIs, including through agreements entered since 2010 with the Ibero-American Federation of Ombudsmen to promote NHRIs' participation as amicus curiae in pending cases. For an overview, see Montserrat Solano Carboni, 'The Role of National Human Rights Institutions in Implementing Decisions of the Inter-American System: Three Recent Examples from Costa Rica', *Journal of Human Rights Practice* (2020) 12(1) 217.
- 153 Asia Pacific Forum, *International Human Rights and the International Human Rights System: A Manual for National Human Rights Institutions* (2012) Ch. 7 and 13.
- 154 Network of African National Human Rights Institutions, *The Role of NHRIs in Monitoring Implementation of Recommendations of the African Commission on Human and Peoples' Rights and Judgments of the African Court on Human and Peoples' Rights* (2021).
- 155 See Contribution of the National Human Rights Council of Morocco regarding the Review Process of the UN Human Rights Treaty Body System (2020).
- 156 African Commission on Human and Peoples' Rights, 'Communication 74/92, Commission Nationale des Droits de l'Homme et des Libertés v Chad', *Ninth Annual Activity Report of the African Commission 1995-1996* (1996) Annex VIII.
- 157 Rachel Murray, 'The 'implementation' in 'National Mechanisms for Implementation, Reporting and Follow-up: What about the Victims?', in Frans Viljoen, Charles Fombad, Dire Tladi, Ann Skelton and Magnus Killander (eds.), *A Life Interrupted: Essays in honour of the Lives and Legacies of Christof Heyns* (Pretoria University Press, 2022) 431.
- 158 For instance, ministries for human rights were established in Mali in 1993 in the aftermath of the establishment of the third republic and adoption of a new constitution in Morocco in 1993 by King Hassan II in the context of constitutional reforms aimed at reducing monarchist absolutism, and in Pakistan in 1995 under the reformist government of Benazir Bhutto.
- 159 OHCHR, *Handbook on National Human Rights Plans of Action* (UN Doc. HR/P/PT/10, 2002) 45-49. See also Sébastien Lorion, *National Human Rights Action Plans: An Inventory* (DIHR, 2022).

- 160 See Lorion 2021 (note 69).
- 161 But this has not always been the case. Some countries continue to have one mechanism in charge of national coordination of governmental work – for instance a human rights network coordinated by the Ministry of Justice, while a mechanism for reporting and follow-up has been created to engage with international human rights bodies, typically coordinated by the Ministry of Foreign Affairs.
- 162 See historical background and mandates of the Interministerial Delegation for Human Rights of the Kingdom of Morocco in Zipoli 2021 (note 55) 26-32.
- 163 See Lorion 2021 (note 69) 38-39.
- 164 SCA 2018 (note 29) General Observation 1.4.
- 165 See Rachel Murray, 'National Preventive Mechanisms under the Optional Protocol to the Torture Convention: One size does not fit all', *Netherlands Quarterly of Human Rights* (2008) 26(4) 485.
- 166 Lagoutte 2019 (note 2) 179.
- 167 Sarah McCosker, 'Innovations in Institution-Building and fresh Challenges: The Optional Protocol to the Convention against Torture and the Convention on the Rights of Persons with Disabilities', in Hitoshi Nasu and Ben Saul (eds.), *Human Rights in the Asia-Pacific Region* (Routledge, 2011) 66-69.
- 168 Lorion 2019 (note 70) 244.
- 169 For a discussion on those differences, see Colin Caughey, 'Government human rights focal points: Lessons learned from focal points under the Convention on the Rights of Persons with Disabilities', *Netherlands Quarterly of Human Rights* (2021) 39(2) 119.
- 170 Largely addressed in Caughey (ibid.).
- 171 Article 8 of the Convention on the Rights of Persons with Disabilities.
- 172 Articles 4, 8, 9, 13, 20, 24, 24, 26, 27, 28, 30 and 32 of the Convention on the Rights of Persons with Disabilities.
- 173 Article 31 of the Convention on the Rights of Persons with Disabilities.
- 174 Lorion 2019 (note 70).
- 175 Silvia Quan, *Address by CRPD Committee Member Silvia Quan, Seventh session of the Conference of the States Parties to the Convention on the Rights of Persons with Disabilities* (2014).
- 176 Gauthier de Beco and Alexander Hoefmans, 'National Structures for the Implementation and Monitoring of the UN Convention on the Rights of Persons with Disabilities', in Gauthier de Beco (ed.), *Article 33 of the UN Convention on the Rights of Persons with Disabilities: National Structures for the Implementation and Monitoring of the Convention* (Brill/Nijhoff, 2013) 46.
- 177 As Goodman and Jinks' work on socialisation underlined, it is challenging for one actor to simultaneously carry out punitive and socialisation strategies. In Ryan Goodman and Derek Jinks, 'Social Mechanisms to Promote International Human Rights: Complementary or Contradictory?', in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press, 2013) 103.

- 178 UN Department of Economic and Social Affairs, *Toolkit on Disability for Africa: Frameworks for Implementing and Monitoring the United Nations Convention on the Rights with Disabilities* (2016) 13.
- 179 UN Centre for Human Rights 1995 (note 39) para. 215.
- 180 For details, see Zipoli 2021 (note 55) 55-56.
- 181 See, respectively, UN Committee on the Rights of Persons with Disabilities, *General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention* *Special Rapporteur on the Rights of Persons with Disabilities* (UN Doc. CRPD/C/GC/7, 2018); and *Report of the Special Rapporteur on the Rights of Persons with Disabilities to the thirty-first session of the Human Rights Council* (UN Doc. A/HRC/31/62, 2016).
- 182 Caughey 2021 (note 169) 129-130.
- 183 UNSG 2017 (note 7) para. 30.
- 184 Norway Ministry of Foreign Affairs, *Global Human Rights Implementation Agenda: The Role of International Development Partners* (2018) para. 4.
- 185 Limon and Paterson 2019 (note 10).
- 186 Jeremy J. Sarkin, 'The 2020 United Nations Human Rights Treaty Body Review Process: Prioritising Resources, Independence and the Domestic State Reporting Process over Rationalising and Streamlining Treaty Bodies', *The International Journal of Human Rights* (2020) 25(8) 1317-1318.
- 187 OHCHR 2016 (note 9) 23.
- 188 OHCHR 2022 (note 22) Annex 2, Graph D.
- 189 OHCHR 2016 (note 8) 22.
- 190 OHCHR 2022 (note 22) fn 31.
- 191 *Ibid.*, para. 18.
- 192 See reference and comprehensive review in Langtry and Roberts Lyer 2021 (note 12) 263-270.
- 193 In recent years, GANHRI's Subcommittee on Accreditation has gone one step beyond measuring independence based on these signposts of independence, and started to evaluate the practice of independence by NHRIs themselves. Since 2015, occasional mentions appear in the Subcommittee's reviews to the willingness of NHRIs to exercise their mandates in practice. In 2017, it published a practice note on *assessing the performance of NHRIs*, in which the Subcommittee signals that it will consider 'whether the NHRI demonstrates independence in practice and a willingness to address the pressing human rights issues'. In Sub-Committee on Accreditation, *Practice Note 3: Assessing the Performance of NHRIs* (2017).
- 194 The Act on the Danish Institute of Human Rights – Denmark's National Human Rights Institution No. 553 of 12 June 2012 as amended by Act No. 656 of 12 June 2013 and Act No. 2591 of 28 December 2021. The Act is available in Danish here. Unofficial translations of acts and bylaws are available here. As of 15 May 2014, the Act was put into force for Greenland (see *Royal Decree no. 393/2014*): from this date the DIHR also served as Greenland's NHRI, however efforts are ongoing in order to establish an independent Greenlandic NHRI.

- 195 See all reports at: https://www.humanrights.dk/publications?field_category_target_id=159&field_date=&exposed_year=All&field_topic_target_id=All (accessed 25 August 2023).
- 196 See <https://menneskeret.dk/status> (accessed 25 August 2023).
- 197 Source: <https://menneskeret.dk/medarbejdere>, as of March 2023.
- 198 GANHRI SCA, *GANHRI Sub-Committee on Accreditation Report – October 2018*, 8.
- 199 For an overview of international reports, see <https://menneskeret.dk/monitorering/internationale-rapporter/rapportering-andre-internationale-menneskerettighedsorganer> (accessed 25 August 2023).
- 200 See <https://handicapbarometer.dk/> accessed 25 August 2023). The indicators are populated through surveys conducted every four years, that sadly show that the living conditions of people with disabilities have either stagnated or declined between 2012 and 2020.
- 201 Danish Parliament, *Act No. 473 of 12 June 1996 concerning the Ombudsman as amended by Consolidated Act No. 556 of 24 June 2005, Consolidated Act No. 502 of 12 June 2009, Consolidated Act No. 568 of 18 June 2012 and Consolidated Act No. 349 of 22 March 2013*, Art. 12.
- 202 Its legal basis was revised accordingly in 2009. See annual reports of the Danish Parliamentary Ombudsman to the Subcommittee on Prevention of Torture at <https://www.ohchr.org/en/treaty-bodies/spt/annual-reports-received-subcommittee-national-preventive-mechanisms> (accessed 25 August 2023).
- 203 The DIHR takes part in the OPCAT visits to places where persons may be deprived of their liberty, while Dignity provides medical expertise. In addition, since 2010, the Greenland's Ombudsperson acts as NPM for institutions covered by Greenland's Home Rule.
- 204 The Danish National Council for Children, *Supplementary NHRI Report to the Fifth Periodic Report of Denmark* (2016) 4.
- 205 See DIHR, *Human Rights in Focus: Report to Inatsisartut 2020-21* (2021) 16.
- 206 All except the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. The last treaty ratified was the Convention for the Protection of all Persons from Enforced Disappearance, ratified on 14 January 2022.
- 207 Described e.g. in the 2019 national report under the CEDAW (UN Doc. CEDAW/C/DNK/9, paras. 1-6), or in the 2021 national report for the UPR (UN Doc. A/HRC/WG.6/38/DNK/1, paras. 1-4).
- 208 See description at <https://www.humanrights.dk/about-us/council-human-rights> (accessed 25 August 2023).
- 209 *Protection of Human Rights Act, 1998*.
- 210 Chairperson and administrative staff included, in 2023. Source: <https://nhrc.govmu.org/Pages/About%20us/Staff-of-the-NHRC.aspx> (accessed 25 August 2023).
- 211 NHRC of Mauritius, *Annual Report 2021* (2022).
- 212 *Ibid*, 19.
- 213 GANHRI SCA 2021 (note 104) 25.

- 214 UN Committee against Torture, *Concluding Observations on the fourth Periodic Report of Mauritius* (UN Doc. CAT/C/MUS/CO/4, 2017) paras. 6 (e), 7 (a) and 33. See also UN Human Rights Committee, *Concluding Observations on the fifth Periodic Report of Mauritius* (UN Doc. CCPR/C/MUS/CO/5, 2017) para. 11.
- 215 GANHRI SCA 2021 (note 104) 22.
- 216 See https://www.upr-info.org/sites/default/files/documents/2013-09/nhrc_musuprs42009nationalhumanrightscommission-mauritiushri.pdf (accessed 25 August 2023).
- 217 Roopanand Mahadew, 'Chapter 12: The National Human Rights Commission of Mauritius', in Charles M. Fombad (ed.), *Compendium of documents on National Human Rights Institutions in eastern and southern Africa* (Pretoria University Law Press, 2019) 548-549.
- 218 GANHRI SCA 2021 (note 104) 22-23.
- 219 See <https://eoc.govmu.org/eoc/> (accessed 25 August 2023).
- 220 See <https://oco.govmu.org/Pages/index.aspx> (accessed 25 August 2023).
- 221 See <https://ombudsman.govmu.org/Pages/Index.aspx> (accessed 25 August 2023).
- 222 See <https://ipcc.govmu.org/Pages/index.aspx> (accessed 25 August 2023).
- 223 Ombudsperson for Financial Services Act 2018.
- 224 The Independent Police Complaints Commission Act 2016, Act No. 14 of 2016.
- 225 UN Committee against Torture 2017 (note 214) paras. 6 (e), 7 (a) and 33; and UN Human Rights Committee 2017 (note 214) para. 11.
- 226 UN Committee on the Elimination of Discrimination against Women, *Concluding Observations on the eighth Periodic Report of Mauritius* (UN Doc. CEDAW/C/MUS/CO/8, 2018) para. 14(f).
- 227 UN Committee on the Rights of the Child, *Concluding Observations on the combined third to fifth Periodic Reports of Mauritius* (UN Doc. CRC/C/MUS/CO/3-5, 2015) para. 10.
- 228 GANHRI SCA 2021 (note 104) 22-23.
- 229 OHCHR – Regional Office for Southern Africa 2021 (note 56) 16.
- 230 *National Human Rights Action Plan for Mauritius, 2012-2020*, paras. 27-29. See also *National Human Rights Action Plan 2012-2020 (Updated In July 2019)* 13.
- 231 UPR-Info 2016 (note 133) 19.
- 232 Asha Burrenchobay, *National Mechanism for Reporting and Follow-up (NMRF)*, Presentation, 2021 (on file with authors).
- 233 UN Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution. 6/21*. Mauritius* (UN Doc. A/HRC/WG.6/31/MUS/1, 2018) para. 8.
- 234 NHRC of Mauritius, *Annual Report 2020* (2021) 3. Republic of Mauritius, *Ninth to tenth combined Periodic Report of the Republic of Mauritius on the Implementation of the African Charter on Human and Peoples' Rights* (January 2016-August 2019) para. 53.
- 235 See <https://humanrights.govmu.org/Pages/Human%20Rights/TreatyConvention.aspx> (accessed 25 August 2023); OHCHR – Regional Office for Southern Africa 2021 (note 56) 24; Interview, 12 April 2023.

- 236 GANHRI SCA 2021 (note 104) 22.
- 237 Interview, 12 April 2023.
- 238 UN Human Rights Council 2018 (note 233) para. 8.
- 239 OHCHR – Regional Office for Southern Africa 2021 (note 56) 32.
- 240 Ibid., 33.
- 241 Ibid., 37.
- 242 Murray 2021 (note 54).
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- 247 OHCHR – Regional Office for Southern Africa 2021 (note 56) 41.
- 248 See *National Human Rights Action Plan for Mauritius, 2012-2020*, para. 22.
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- 270 Parliament of Portugal, *Statute of the Ombudsman, Law no. 9/91 of 9 April 1991* (amended by Law no. 30/96 of 14 August 1996, Law no. 52-A/2005 of 10 October 2005 and Law no. 17/2013 of 18 February 2013).
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- 278 Parliament of Portugal 1991 (note 270) Art. 20.
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- 284 Council of Ministers' Resolution No. 32/2012, 20 May 2012.
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- 291 OHCHR 2016 (note 9) 11. See also Lorion 2023 (note 64) 13-15.
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- 301 GANHRI SCA, *GANHRI Sub-Committee on Accreditation Report* (October 2021) 11-12. For scholarly reviews on the NHRCK's independence and evolution over time, see Soo-Young Hwang, 'Advancing Human Rights, Advancing a Nation: Becoming a Seonjnguk via the National Human Rights Commission of Korea', in Celeste L. Arrington and Patricia Goedde (eds.), *Rights Claiming in South Korea* (Cambridge University Press, 2021) 106; Sanzhuan Guo, 'Independence of National Human Rights Institutions and Linkage between International Law and Domestic Law: A Case Study of the National Human Rights Commission of Korea', *Asian Yearbook of Human Rights and Humanitarian Law* (2017) 1, 264.
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- 310 E.g. NHRCK, *Opinion Report for Consideration of the Sixth Periodic Reports by Republic of Korea under the Convention against Torture* (2020). NHRCK, *Independent Report for the Review of Seventeenth to Nineteenth Periodic Reports*

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- 313 Andrew Wolman, 'Sub-national Human Rights Institutions: A Definition and Typology', *Human Rights Review* (2017) 18(1) 87.
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- 320 Ibidem.
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- 322 See NHRCK, *Promoting Legislation jointly with the Human Rights Commission and the Ministry of Justice for the Framework Act on Human Rights Policy*, Press release of 30 June 2021. Draft proposed legislation available at: <https://www.chungbuk.go.kr/synap/result/DATA/bbs/56/20210705082001361j4eW0p.hwp.view.xhtml> (accessed 28 August 2023). See also Ministry of Justice, *Press release of 30 June 2021*.
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- 327 Interview, 29 April 2022.
- 328 Interview, 23 December 2022.
- 329 Interview, 21 December 2022
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- 332 Office of the People's Advocate, *Report on the Observance of Human Rights and Freedoms in the Republic of Moldova in 2018* (2019) 87.
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- 338 Republic of Korea, Ninth Periodic Report under Article 18 of the CEDAW, due in 2022 (UN Doc. CEDAW/C/KOR/9, 2022) para. 6.
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- 341 See e.g. Republic of Moldova, State report to the Human Rights Committee (UN Doc. CPR/C/MDA/3, 2016) paras. 2 and 3. Republic of Moldova, State party report to CEDAW (UN Doc. CEDAW/C/MDA/6, 2019) para. 6.
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- 343 UN Human Rights Council 2021 (note 257) para. 2.
- 344 Republic of Portugal, Fifth and sixth Periodic Report due in 2017 under article 44 of the CRC (2017).
- 345 Office of the People's Advocate 2022 (note 326).
- 346 NHRCK, Submission to the UN Committee on the Rights of Persons with Disabilities on the Occasion of its Consideration of the Combined Second and Third Periodic Report of Korea (2022) 4-5.
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- 348 DIHR and Human Rights Council of Greenland, Submission on the Government of Greenland's draft Contribution to the National Report by the Kingdom of Denmark to the UPR 2021 (2020).
- 349 Republic of Mauritius, Eighth Periodic Report of States Parties due in 2018 (UN Doc. CEDAW/C/MUS/8, 2018) para. 3.
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- 352 Danish Centre for Human Rights, Letter to the Secretariat of the Committee on the CRPD, dated 18 March 1994.
- 353 Interview, 31 March 2022.

- 354 Interview 12 April 2023.
- 355 See latest alternative report: Provedor de Justiça *Contribution on the Implementation of the ICERD in the Process of Examination of the Combined eighteenth and nineteenth Periodic Reports submitted by Portugal* (2023).
- 356 Republic of Mauritius, *Fifth periodic report submitted under Article 19 of the CAT pursuant to the Simplified Reporting Procedure* (UN Doc. CAT/C/MUS/5, 2022).
- 357 GANHRI SCA 2021 (note 104) 22-23. At the occasion of the 2014 re-accreditation (A status) of the NHRC, the Sub-Committee had similarly noted 'that the NHRC did not provide independent submissions during the 2013 UPR of Mauritius, nor has it provided independent submissions during the periodic reviews of Mauritius before the treaty bodies. [...] The SCA notes that the NHRC states that it has contributed to State reports to these bodies. However, the SCA considers it important that the NHRC engage with the international human rights system independent of government.' In ICC, *Report and Recommendations of the Session of the Sub-Committee on Accreditation* (October 2014) 23.
- 358 Written submission, March 2022.
- 359 Interview, 25 March 2022.
- 360 Provedor de Justiça, *NHRI Statement, 3rd Reporting Cycle of the UPR, Pre-session* (2019).
- 361 Provedor de Justiça 2020 (note 271) 2.
- 362 For instance, it contributed to all CRC reviews of Denmark, since the first one. See note 352.
- 363 Interview, 25 March 2022.
- 364 Interview, 31 March 2022.
- 365 Written submission, March 2022.
- 366 Written submission, March 2022.
- 367 Written submission, March 2022.
- 368 Interview, 29 April 2022.
- 369 To give but one example, in 2014, five members of the Human Rights Commission of the Maldives were prosecuted by the Supreme Court of the Maldives following a report submitted by the NHRI to the second UPR of the Maldives. The UN Human Rights Committee has adopted views on this case (through an individual communication submitted by two NHRI members and the International Service for Human Rights), see UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3248/2018* (UN Doc. CCPR/C/130/D/3248/2018, 2021).
- 370 Interview, 4 April 2022.
- 371 In as much as documented by the OHCHR on its dedicated database.
- 372 To take as a reference point the same review in pre-COVID19 times, delegations for the second cycle of the UPR included 10 and 13 delegates for Moldova and Mauritius, and 26, 30 and 25 delegates for Denmark, Republic of Korea and Portugal, respectively (interpreters and interns excluded).

- 373 See Notes Verbales from the Permanent Mission of the Republic of Korea to the United Nations for the country's 2011 CEDAW review and for the 2022 CRPD review.
- 374 See UN, *Human Rights Committee considers the report of Mauritius*, Meeting Summaries (24 October 2017).
- 375 See for instance: Statement by Louise Holck, Executive Director of the DIHR, during the review of Denmark for its ninth reporting cycle under the CEDAW, on 22 February 2021 (UN Doc. INT/CEDAW/STA/DNK/44410/E, 2021); Statement by Nam Kyusun, Commissioner of the NHRCK, during the review of the Republic of Korea for its third reporting cycle under the CRPD, on 24 August 2022 (UN Doc. INT/CRPD/OCR/KOR/27/34247/E, 2022); *Declaration by the Ombudsman in the Pre-Session of the Committee on the Rights of the Child on the Implementation of the Convention on the Rights of the Child in the evaluation process of the 5th and 6th Periodic Reports of Portugal* (2018).
- 376 Interview, 25 March 2022.
- 377 All UPR mid-term reports are accessible at <https://www.ohchr.org/en/hr-bodies/upr/upr-implementation> (accessed 28 August 2023).
- 378 Lorion 2023 (note 64) 50-52.
- 379 Ibidem.
- 380 See monitor.drepturi.md (accessed 25 August 2023).
- 381 See *National Human Rights Action Plan for Mauritius, 2012-2020*, para. 22.
- 382 Republic of Korea, *Second UPR Mid-Term Progress Update on its Implementation of Recommendations made in October 2012* (2016) 2.
- 383 Lorion 2023 (note 64) 52.
- 384 See DIHR, *Høringssvar til Udkast til Danmarks Skriftlige Opfølgning på visse Anbefalinger Vedrørende FN's Konvention om Økonomiske, Sociale og Kulturelle Rettigheder* (2021).
- 385 Interview, 21 December 2022.
- 386 Written observations, March 2022.
- 387 Correspondence with the NMRF of Mauritius, 11 September 2023.
- 388 Interview, 31 March 2022.
- 389 NHRC of Mauritius 2021 (note 234) 12. For another example, see NHRC of Mauritius 2022 (note 211) Section F.
- 390 Ombudsperson for Children's Office, *Annual Report 2020-2021*, where the CRC and CRPD are integral to the report and their activities.
- 391 Provedor de Justiça 2021 (note 277).
- 392 Provedor de Justiça, Mecanismo Nacional de Prevenção, *Report to the Republic's Assembly, 2021*, 35-37 and fn 77.
- 393 See <https://humanrightstracker.com/en/> (accessed 28 August 2023).
- 394 See <https://www.nhri.no/en/recommendations/> (accessed 28 August 2023).
- 395 NHRCK 2021 (note 306).
- 396 For instance, the NHRCK maps out in its reports on follow-up to the treaty bodies on concluding observations the recommendations and the extent to which it considers them to have been implemented. See e.g.: NHRCK 2020 (note 310); NHRCK 2018 (note 310) para. 154.

- 397 Source: <https://www.ohchr.org/en/hr-bodies/upr/nhr-is-mid-term-reports> (accessed 28 August 2023).
- 398 In 2017 to the CAT Committee and the Human Rights Committee, and in 2010 to the Human Rights Committee, through a Geneva-based NGO (the Centre for Civil and Political Rights). Accessible at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=DNK&Lang=EN (accessed 28 August 2023).
- 399 See e.g., NHRCK 2019 (note 310).
- 400 NHRCK 2022 (note 300) 45.
- 401 Office of the People's Advocate, *Report on the Observance of Human Rights and Freedoms in the Republic of Moldova in 2021* (2022) 47.
- 402 DIHR, *Human Rights in Denmark 2020: Annual Report to the Danish Parliament* (2021) 23.
- 403 NHRCK 2020 (note 310) para. 26.
- 404 Interview, 31 March 2022.
- 405 See <https://www.humanrights.go.kr/eng/contents/view?contentsNo=127&menuLevel=3&menuNo=126> (accessed 28 August 2023).
- 406 Office of the People's Advocate 2022 (note 326).
- 407 DIHR 2020 (note 50) 1-2.
- 408 UN Committee Economic, Social and Cultural Rights, *Concluding Observations on sixth Periodic Report of Denmark*, (UN Doc. E/C.12/DNK/CO/6, 2019) para. 7.
- 409 Draft proposed legislation 2021 (note 322) Art. 20.
- 410 See DIHR news dated 21 April 2016 at <https://menneskeret.dk/nyheder/fn-undersoeger-danske-forhold-religionsfrihed> (accessed 28 August 2023).
- 411 E.g. for Portugal, *Report of the Working Group of Experts on People of African Descent on its mission to Portugal* (UN Doc. A/HRC/51/54/Add.2, 2022) para. 3; for Mauritius, *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes – Visit to Mauritius* (UN Doc. A/HRC/51/35/Add.1, 2022) para. 6; for the Republic of Korea, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the Republic of Korea* (UN Doc. A/HRC/35/32/Add.1, 2017) para. 2.
- 412 See visit of Provedor de Justiça, *Ombudsman received the UN Special Rapporteur on Human Rights and the Environment*, Press release of 21 September 2022.
- 413 Special Rapporteur on the situation of human rights defenders, *Report of the Special Rapporteur's visit to the Republic of Moldova* (UN Doc. A/HRC/40/60/Add.3, 2019) para. 75.
- 414 E.g. the Portuguese Ombudsman made a submission to the Special Rapporteur on adequate housing's Guidelines for the implementation of the right to adequate housing, see https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Provendedor_de_Justica_Portugal.pdf (accessed 28 August 2023).

- 415 See NHRCK, *Chairperson's Statement on the adoption of the 52nd UN Human Rights Council Resolution on the Human Rights of North Korea*, Press release of 25 April 2023.
- 416 For instance, in the case of M.A. v. Denmark (Application no. 6697/18). See ECtHR, *Grand Chamber Decision of 9 July 2021*.
- 417 See <https://menneskeret.dk/viden/afgoerelsesdatabasen> (accessed 28 August 2023).
- 418 PDJ/Ombudsperson, à propos European Court of Human Rights case of Petrescu v. Portugal, in *Provedor de Justiça 2020* (note 271) 8.
- 419 Written observations, March 2022.
- 420 NHRCK 2018 (note 310) paras. 155-158.
- 421 Republic of Portugal, Council of Ministers 2010 (note 288) Art. 2(a) and preamble.
- 422 See summary of the meeting with CSOs at <https://direitoshumanos.mne.gov.pt/pt/a-cndh/reunioes/37-reuniao-plenaria-da-comissao-nacional-para-os-direitos-humanos> (accessed 28 August 2023).
- 423 The Ministry of Foreign Affairs is also actively supporting the candidacy of a DIHR Senior Researcher to be elected as CAT Committee members.
- 424 Many joint initiatives were undertaken in this regard, for instance the development of the 'Sustainable Recovery Pledge'. See at <https://fngeneve.um.dk/en/copy-of-human-rights/sustainable-recovery-pledge> (accessed 28 August 2023).
- 425 This culminated notably in the Danish-led 'Tech for Democracy' initiative, that attempts to mobilise representatives from governments, NHRIs, multilateral organisations, tech industry and civil society to make technology work for democracy and human rights. See <https://techfordemocracy.dk/> (accessed 28 August 2023).
- 426 Interview, 29 April 2022.
- 427 GANHRI SCA, *Sub-Committee on Accreditation Report* (November 2017) 43.
- 428 NHRCK, *NHRCK Hosts International Conference on Drafting of International Convention on Older Persons' Rights*, Press release of 25 November 2022.
- 429 GANHRI SCA 2018 (note 198) 8.
- 430 For instance, the Danish NHRI has been invited by the relevant line Ministry (of Social Affairs, Children and Integration) to comment on the draft legislation prepared for the ratification of the CRPD Optional Protocol. See response at DIHR, *Høring over Udkast til Besluntningsforslag om Danmarks Ratifikation af den Valgfri Protokol af 13. December 2006 til FN's Konvention om Rettigheder for Personer med Handicap* (2014).
- 431 E.g. with respect to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, see UN Human Rights Council 2018 (note 233) para. 17; Interview, 12 April 2023.
- 432 NHRCK 2022 (note 300) 16.
- 433 Ombudsman Office, *Report on Observance of Child's Rights in the Republic of Moldova in 2021* (2022).
- 434 Law on Regulatory Acts No.100/2017, in ENNHRI 2021 (note 249) 377.

- 435 See <https://www.humanrights.dk/about-us/departments/legal-department> (accessed 28 August 2023).
- 436 For instance, in 2018 the DIHR submitted information on the national human rights situation in the case of *M.A. v. Denmark*. The case concerned the denial of a request for family reunification, on the basis that the applicant had not yet possessed a residence permit for at least three years, as generally required by Danish law for persons with a temporary protection status.
- 437 Jens Vedsted-Hansen, 'Pushing Back International Human Rights Law – Counter Reaction to Transnational Law?' in Bettina Lemann Kristiansen et al (eds.), *Transnationalisation and Legal Actors: Legitimacy in Question* (Routledge, 2019) 127.
- 438 Jacques Hartmann, 'A Danish Crusade for the Reform of the European Court of Human Rights', *EJIL: Talk!*, 14 November 2017.
- 439 As a DIHR staff noted, 'the context matters: for instance, in Greenland the treaty bodies and UPR conclusions can create a media storm; but it is not the case in Denmark... The government will not do something because the Committees say so, because of the lack of legal value of their recommendations. Decisions of the European Court of Human Rights are much more implemented' (Interview, 25 March 2022).
- 440 See Frank Hvilsom and Mathias Gram, 'Danmark sår tvivl om FN's troværdighed', *Politiken*, 23 mars 2016; and Sarah Scott Ford, *Nordic Migration Cases before the UN Treaty Bodies: Pathways of International Accountability?* iCourts Working Paper Series no. 267 (2021) 25.
- 441 Jonas Christoffersen, 'FN's Menneskerettighedskomiteer – nødvendige reformer på vej', *EU-ret & Menneskeret* (2016) 33; and Jonas Christoffersen, 'Prøvelse Af Flygtningenævnets Afgørelser', *Ugeskrift for Retsvæsen* (2016) 279.
- 442 Morten Kjærum, 'Går Jonas Christoffersen mere op i politiske skulderklap end konventioner?', *Altinget*, 25 January 2019.
- 443 Amnesty International, *Denmark Human Rights in Review: 2011-2015, Submission to the UN Universal Periodic Review* (2016) 3.
- 444 See details in Silvia Adamo, 'Protecting International Civil Rights in a National Context: Danish Law and Its Discontents', *Nordic Journal of International Law* (2016) 85(2) 119.
- 445 Ministry of Justice of Denmark, *Betenkning nr. 1546. Betenkning om inkorporering mv. inden for menneskeretsområdet* (2014) 9.
- 446 UNGA, *National Report submitted in accordance with Paragraph 5 of the annex to Human Rights Council Resolution 16/21 – Denmark* (UN Doc. A/HRC/WG.6/38/DNK/1, 2021) para. 9.
- 447 Interview, 29 April 2022.
- 448 UN Committee Economic, Social and Cultural Rights 2019 (note 49) para. 7.
- 449 Republic of Portugal, Council of Ministers 2010 (note 288) Art. 2(a).
- 450 E.g. NHRC, *2021 Action Plan* (2021) point 4.
- 451 Mahadew 2019 (note 217) 548-549.
- 452 UN Human Rights Council 2018 (note 233) para. 52.
- 453 Interview, 12 April 2023.

- 454 NHRC of Mauritius 2022 (note 211) 16.
- 455 Correspondence with the NMRF of Mauritius, 11 September 2023.
- 456 See e.g. regarding the development of an equality law, NHRCK 2022 (note 300) 28.
- 457 Republic of Moldova (note 261) Area 9, Activity 2.
- 458 See Decision nr 1 of the NHRC, 26 March 2021. Accessible at: https://cancelaria.gov.md/sites/default/files/decizia_cndo_nr1_26_martie_2021.pdf (accessed 28 August 2023).
- 459 See Annual Strategic Work Plans and Annual Reports - The PNHRC - Portuguese National Human Rights Committee (mne.gov.pt) (accessed 28 August 2023).
- 460 Interview, 12 April 2023.
- 461 Interview, 12 April 2023. See National Human Rights Action Plan for Mauritius, 2012-2020, para. 22.
- 462 See draft proposed legislation 2021 (note 322), translation by the authors.
- 463 DIHR 2020 (note 50).
- 464 UN Committee Economic, Social and Cultural Rights 2019 (note 49) para. 7.
- 465 Anette Faye Jacobsen, 'Expanding into the Local Level: Selective and Maximalist Models of Human Rights Implementation in Denmark and Sweden', *The International Journal of Human Rights* (2022) 27(1) 10.
- 466 'It will never happen', captured a DIHR staff. Interview, 22 March 2022.
- 467 'Notes', in UPR terms.
- 468 UN Human Rights Council, Annex to the 2021 National Report of Denmark to the UPR's Third Cycle (UN Doc. A/HRC/WG.6/38/DNK/1 Annex E, 2021) 6.
- 469 Office of the People's Advocate, Thematic Report: Monitoring and Implementation of Recommendations of the Children's Ombudsman during the Mandate 2016-2020 (2020).
- 470 See e.g. Office of the People's Advocate 2022 (note 402).
- 471 Interview, 12 April 2023.
- 472 NHRCK 2021 (note 306) 78.
- 473 Ibidem. The text of the proposed amendment is included in this submission. This is now in force, as of 1 July 2022, see NHRCK 2022 (note 300) 27.
- 474 Republic of Korea 2001 (note 299) Art. 25.
- 475 Written submission, March 2022.
- 476 Republic of Korea, Enforcement Decree of the National Human Rights Commission Act, Presidential Decree No. 32751, 1 July 2022.
- 477 Interview, 22 March 2022.
- 478 Interview, 25 March 2022.
- 479 Interview, 4 April 2022.
- 480 See 'Institut for Menneskerettigheder: Støjberg lyttede ikke til os', *Politiken*, 13 June 2017.
- 481 In a subsequent parliamentary probe and impeachment case, which investigated both violations of international human rights law as well as alleged lies and responsibilities under the Minister Accountability Act, the former Minister was convicted to 60 days in prison and lost her seat at the Parliament in December 2021.

- 482 Interview, 29 April 2022.
- 483 Interview, 25 March 2022.
- 484 Interview, 22 March 2022.
- 485 Republic of Korea 2017 (note 339) para. 59. See also Republic of Korea 2019 (note 340) para. 48.
- 486 NHRCK 2021 (note 306).
- 487 NHRAP of Mauritius (note 230) Recommendation 96: 'Leadership Seminars on Human Rights for Heads of Ministries and senior officials shall be conducted'.
- 488 NHRAP of Mauritius (note 230) Recommendations 25 and 93-95.
- 489 UN Committee on the Elimination of Racial Discrimination 2020 (note 269) paras. 3, 13-14, 60 and 76.
- 490 Written submission, March 2022.
- 491 Interview, 29 April 2022.
- 492 Interview, 25 March 2022.
- 493 EU Fundamental Rights Agency, *National Human Rights Action Plans in the EU: Practices, Experiences and Lessons Learned for more Systematic Working Methods on Human Rights* (2019) 25.
- 494 OHCHR 2022 (note 22) para. 38.
- 495 For instance, the National Human Rights Commission of Nigeria has recommended to the UN to encourage states to set up or strengthen NMIRFs (see NHRC of Nigeria, *Comments of the NHRC to Questionnaire in relation to the Implementation of GA Resolution 68/268*, 2022). The decision to establish an NMIRF in New Zealand was also welcomed by the NHRI, which underlined that this creation 'reflect[ed] much work done within government as well as the advocacy of the Commission and others in support of such processes for many years.' See Human Rights Commission of New Zealand, *New National Mechanism welcomed by Commission*, press release of 12 May 2022.
- 496 A variation on the same idea has been suggested by the NHRI of Guatemala in 2022: states should have 'a mechanism' and 'submit annual reports, ex officio, on progress in the implementation of recommendations, and not only when the human rights treaty bodies request it or until when the country should be evaluated again'. In Procurador de los Derechos Humanos de Guatemala, *Submission to the fourth Biennial Report on the Status of the Human Rights Treaty Body System* (2022).
- 497 For an elaboration on these questions, see Lorion and Lagoutte 2022 (note 142); and Sébastien Lorion, *The Global Diffusion of National Human Rights Actions Plans at Vienna+30: A Chasing Game Between International Guidance and State Practice* (2023).
- 498 As recommended by the Danish NHRI in 2022: 'In addition to keep scrutinising NHRIs, Treaty Bodies could enhance their examination of governmental focal points in charge of human rights implementation and follow-up, at the occasion of their reviews of state reports. This can draw on the experience of the CEDAW Committee in reviewing gender equality mechanisms and of the CRPD Committee. As CRPD Article 33(1) constitutes an anchor point in international human rights law, the CRPD Committee could be a driver to

unpack guidance and recommendations for focal points and coordination mechanisms within government.' 'In addition to keep scrutinising NHRIs, Treaty Bodies could enhance their examination of governmental focal points in charge of human rights implementation and follow-up, at the occasion of their reviews of state reports. This can draw on the experience of the CEDAW Committee in reviewing gender equality mechanisms and of the CRPD Committee. As CRPD Article 33(1) constitutes an anchor point in international human rights law, the CRPD Committee could be a driver to unpack guidance and recommendations for focal points and coordination mechanisms within government.' See DIHR, *Submission to Call for Inputs on Questionnaire in Relation to Implementation of GA Resolution 68/268* (2022).

- 499 As requested by the NHRI of Guatemala in 2022: 'The concluding observations and recommendations of the treaty bodies have been useful to Guatemala's Ombudsman Institution to supervise the human rights situation in the country. Nevertheless, on several occasions the recommendations are very general, they are not measurable, they are not achievable and there is no indication of temporality, which diminishes the effectiveness of the recommendations. It is necessary that the presidents of the different Mechanisms develop standardized techniques and methods to issue more quality and usefulness recommendations.' See Procurador de los Derechos Humanos de Guatemala 2022 (note 497).
- 500 As demanded by the Greek NHRI in 2020. See Greek National Commission for Human Rights, *Communication to the President of the UN General Assembly and the co-facilitators for the review of the UN human rights treaty body system* (2020).

Since 2016, the United Nations have strongly encouraged the creation of National Mechanisms for Implementation, Reporting and Follow-up (NMIRFs). Such governmental actors are rapidly spreading around the world, and principles on NMIRFs are being discussed. How does this new development recast ideal models for national human rights systems, and how does it impact independent National Human Rights Institutions (NHRIs)?

Based on extensive research exploring NHRIs-NMIRFs interactions in five countries (Denmark, Mauritius, Moldova, Portugal and the Republic of Korea), Sébastien Lorion and Rachel Murray point to major changes in local human rights implementation that may be induced by the development of NMIRFs.

This study is part of a DIHR independent research agenda critically exploring the 'domestic institutionalisation' dynamics at play in the field of human rights. While the study is first and foremost raises academic knowledge on the opportunities and risks arising from the development of NMIRFs, the studies goes one step further and makes a series of recommendations that considered, especially from the perspective of NHRIs, for the future normative and practical developments of NMIRFs.

The study is a part of the MATTERS OF CONCERN working paper series focusing on new and emerging research on human rights across academic disciplines. Papers are available online at www.humanrights.dk.