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**Human Rights Council****Forty-seventh session**

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Role of national human rights institutions in facilitating  
access to remedy for business-related human rights abuses****Report of the Working Group on the issue of human rights and  
transnational corporations and other business enterprises\****Summary:*

This report of the Working Group on the issue of human rights and transnational corporations and other business enterprises elaborates various ways (direct, indirect and foundational) in which national human rights institutions (NHRIs) could facilitate access to remedy for business-related human rights abuses. It also highlights NHRIs' critical role in the following three illustrative areas: collaboration with other judicial and non-judicial remedy mechanisms, cooperation amongst NHRIs in cross-border and transnational cases, and protecting civil society organisations and human rights defenders. Moreover, as NHRIs could facilitate access to remedy only within the wider human rights landscape at national, regional and international levels, this report also articulates a more holistic role for NHRIs in the business and human rights field.

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## I. Introduction

### A. Background

1. National human rights institutions (NHRIs) have a vital role in promoting and protecting human rights.<sup>1</sup> A resolution adopted by the UN General Assembly in December 2019 reaffirms “the importance of the development of effective, independent and pluralistic national institutions for the promotion and protection of human rights” and recognises “the role of independent national institutions for the promotion and protection of human rights in working together with Governments to ensure full respect for human rights at the national level”.<sup>2</sup> As highlighted in several resolutions and declarations of various international organisations as well as in this report, independence of NHRIs is one of the non-negotiable prerequisites for them to be able to operate effectively as a promoter and protector of human rights.

2. NHRIs also have a key role in implementing the 2030 Agenda and in turn contribute to the realisation of the Sustainable Development Goals (SDGs).<sup>3</sup> NHRIs “are uniquely placed to play a bridging role between stakeholders and promote transparent, participatory and inclusive national processes of implementation and monitoring” the Agenda.<sup>4</sup> In playing such a bridging role, NHRIs can also ensure that a human rights-based approach is adopted by States, businesses and other actors in implementing the 2030 Agenda. The Mérida Declaration highlights some activities that NHRIs could pursue in this regard.<sup>5</sup> They may, for example, organise workshops, provide advice to government agencies at different levels, promote transparent and inclusive consultation processes, engage both rights-holders and duty-bearers, assist in sound data collection, and monitor implementation progress at different levels.<sup>6</sup> NHRIs may also “investigate allegations of rights violations in the context of development and SDGs implementation, including in relation to discrimination and inequality that can erode the trust between the State and the people.”<sup>7</sup>

3. The growing expectations for NHRIs to play an important role in the field of business and human rights (BHR) – including in facilitating access to remedy for business-related human rights abuses – should be seen in this wider context. Even prior to the UN Human Rights Council’s formal endorsement of the UN Guiding Principles on Business and Human Rights (UNGPs) in June 2011, the Edinburgh Declaration of October 2010 emphasised the important role of NHRIs in addressing BHR challenges at national, regional and international levels.<sup>8</sup>

4. Several NHRIs have been engaging with BHR issues even prior to the adoption of the Edinburgh Declaration or the endorsement of the UNGPs.<sup>9</sup> However, this was often done without an explicit framing of such work as related to BHR. The UNGPs triggered NHRIs to

<sup>1</sup> UN General Assembly, “National Institutions for the Promotion and Protection of Human Rights”, GA Res 48/134 (4 March 1994).

<sup>2</sup> UN General Assembly, “National human rights institutions”, A/RES/74/156 (23 January 2020), paras 2-3.

<sup>3</sup> The Mérida Declaration: The Role of National Human Rights Institutions in implementing the 2030 Agenda for Sustainable Development, <https://www.forum-asia.org/uploads/wp/2017/01/Merida-Declaration-FINAL.pdf>. See also Human Rights Council, “National Human Rights Institutions”, A/HRC/RES/39/17 (8 October 2018), para 9.

<sup>4</sup> Mérida Declaration, note 3, para 15.

<sup>5</sup> *Ibid.*, para 17.

<sup>6</sup> See GANHRI, “National Human Rights Institutions Engaging with the Sustainable Development Goals (SDGs)” (2017), [http://ennhri.org/wp-content/uploads/2019/10/ganhri\\_nhris\\_engaging\\_with\\_the\\_sdgs.pdf](http://ennhri.org/wp-content/uploads/2019/10/ganhri_nhris_engaging_with_the_sdgs.pdf).

<sup>7</sup> Mérida Declaration, note 3, para 17(8).

<sup>8</sup> The Edinburgh Declaration (10 October 2010), para 11, [https://www.ohchr.org/Documents/AboutUs/NHRI/Edinburgh\\_Declaration\\_en.pdf](https://www.ohchr.org/Documents/AboutUs/NHRI/Edinburgh_Declaration_en.pdf).

<sup>9</sup> Surya Deva, ‘Corporate Human Rights Abuses: What Role for the National Human Rights Institutions?’ in Hitoshi Nasu and Ben Saul (eds.), *Human Rights in the Asia Pacific Region: Towards Institution Building* (Abingdon: Routledge, 2011) 234, 245-247.

adopt consciously a BHR lens to look at issues which were earlier seen mostly as failure of the State to regulate effectively human rights abuses by businesses.

5. The Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group) recognises an important role for NHRIs in diverse settings. For example, in its Guidance on National Action Plans on Business and Human Rights, the Working Group has recommended States to consult NHRIs to identify business-related adverse human rights impacts and gaps in existing regulatory frameworks, build capacity of businesses and provide them guidance on how to conduct effective human rights due diligence, assess the effect of new laws on BHR issues, and raise awareness of remediation mechanisms available to affected rights-holders.<sup>10</sup> NHRIs could also play a role in monitoring the implementation of a national action plan on BHR.<sup>11</sup> Moreover, NHRIs are an integral component of state-based non-judicial remedy mechanisms contemplated by Pillar III of the UNGPs. The Accountability and Remedy Project of the Office of the United Nations High Commissioner for Human Rights (OHCHR) has made specific recommendations to strengthen the effectiveness of state-based non-judicial remedy mechanisms, including NHRIs.<sup>12</sup>

6. In discharging its mandate, the Working Group has been working closely with NHRIs during country visits, in various dialogues and consultations, and at global and regional BHR forums. At times, it has also organised peer-learning sessions amongst NHRIs and provided them advice on BHR issues when requested to do so. In order to institutionalise further engagement with NHRIs, the Working Group has been strengthening its partnership with the Global Alliance of National Human Rights Institutions (GANHRI) as well as regional networks of NHRIs. Engagement with NHRIs has also been part of the Joint Project on Responsible Business Conduct in Latin America and the Caribbean.<sup>13</sup>

7. It is against this background that one should see the Human Rights Council's July 2018 request (resolution 38/13) to the Working Group to analyse further the role of NHRIs "in facilitating access to remedy for business-related human rights abuses, and to convene a two-day global consultation on these issues, open to all stakeholders, and to inform the Council by its forty-fourth session as appropriate". The Working Group briefed the Council during the 44<sup>th</sup> session and continued its engagement with NHRIs to prepare this report in line with the Human Rights Council resolution 44/15.<sup>14</sup> This report pulls together insights gained by the Working Group over the years about the role of NHRIs in the BHR field, the challenges that they face in promoting business respect for human rights and in holding business accountable for human rights abuses, and innovative tools that some of the NHRIs have adopted to overcome these challenges.

## B Objectives

8. The main objective of this report is to unpack various *direct, indirect* and *foundational* ways in which NHRIs could "facilitate" access to remedy for business-related human rights abuses. It also highlights their critical role in the following three illustrative focus areas: collaboration with other judicial and non-judicial remedy mechanisms, cooperation amongst NHRIs in cross-border and transnational cases, and protecting civil society organisations and human rights defenders. Selected good practices from different world regions are included in the report with a view to facilitate peer-learning and cross-fertilisation of innovative solutions to some of the common BHR challenges.

9. As NHRIs could facilitate access to remedy only within the wider BHR landscape at national, regional and international levels, this report also articulates a more holistic role for NHRIs in the BHR field. This wider/holistic role fits nicely with indirect and foundational

<sup>10</sup> UN Working Group on Business and Human Rights (UNWG), *Guidance on National Action Plans on Business and Human Rights* (Geneva: UNWG, 2016) 6-10, 21-22, 27-28, and 31-34.

<sup>11</sup> A/74/198, para 73. See also A/HRC/47/39.

<sup>12</sup> A/HRC/38/20.

<sup>13</sup> OHCHR, "Joint Project on Responsible Business Conduct in Latin America and the Caribbean", <https://www.ohchr.org/EN/Issues/Business/Pages/JointProjectResponsibleBusinessConduct.aspx>.

<sup>14</sup> A/HRC/RES/44/15, para 19.

ways in which NHRIs could support the process of facilitating access to remedy for business-related human rights abuses.

### C. Methodology

10. In addition to a review of the relevant literature, this report draws on inputs collected through an open call for submissions<sup>15</sup> and by participating in regional events as well as during sessions at the annual UN Forum on Business and Human Rights.<sup>16</sup> It also includes insights gained from a global consultation which the Working Group convened, in coordination with the GANHRI, in Geneva on 10-11 October 2019.<sup>17</sup> Last but not least, the report is informed by OHCHR's Accountability and Remedy Project,<sup>18</sup> a study conducted by the Danish Institute for Human Rights,<sup>19</sup> by numerous bilateral conversations with various members of NHRIs, and by submission made by NHRIs as well as their regional networks as part of the UNGPs 10+ Project.<sup>20</sup> Drawing insights from all these sources, this report analyses the current state of play concerning the role of NHRIs in facilitating access to remedy for business-related human rights abuses and makes recommendations to strengthen their role going forward.

### D. Scope and limitations

11. The term "NHRIs" in this report is used in a broad sense to cover all human rights institutions – irrespective of their nomenclature as human rights committee, human rights commission, human rights institute/centre, or ombudsperson<sup>21</sup> – established by States under a constitution or law to protect and promote human rights. Most of these human rights institutions are accredited with GANHRI. However, the recommendations in this report are relevant for other human rights institutions not accredited with GANHRI. For example, human rights institutions established at the provincial level, specialised human rights institutions at the national level (e.g., those dealing with rights of women or children or focusing only on anti-discrimination issues), and regional human rights institutions (e.g., the ASEAN Intergovernmental Commission on Human Rights, and the African Commission on Human and Peoples' Rights) also have an important role to play in the BHR field.

12. In view of resource and space constraints, the analysis in this report is illustrative rather than exhaustive of challenges and good practices concerning the role of NHRIs in the BHR field. Further research and empirical work would be desirable, for example, to assess efficacy of different remediation tools used by NHRIs or of their collaboration arrangements to deal with cross-border BHR issues. Moreover, as not all NHRIs are the same in terms of their composition, mandate and resources, some of the issues or recommendations should be contextualised to those specific settings.

<sup>15</sup> The questionnaire and the received responses are available at:

<https://www.ohchr.org/EN/Issues/Business/Pages/AccessToRemedySubmissions.aspx>.

<sup>16</sup> For more details about the Working Group's Project on the role of NHRIs in facilitating access to remedy for business-related human rights abuses, see:

<https://www.ohchr.org/EN/Issues/Business/Pages/ProjectOnRoleNHRIS.aspx>. See also /HRC/47/50.

<sup>17</sup> "Agenda: Global consultation on the role of national human rights institutions (NHRIs) in facilitating access to remedy for business related human rights abuses, 10 – 11 October 2019, Geneva", [https://www.ohchr.org/Documents/Issues/TransCorporations/NHRIs\\_draft\\_agenda.pdf](https://www.ohchr.org/Documents/Issues/TransCorporations/NHRIs_draft_agenda.pdf).

<sup>18</sup> OHCHR, "OHCHR Accountability and Remedy Project II: Enhancing effectiveness of State-based non-judicial mechanisms in cases of business-related human rights abuse", [https://www.ohchr.org/EN/Issues/Business/Pages/ARP\\_II.aspx](https://www.ohchr.org/EN/Issues/Business/Pages/ARP_II.aspx).

<sup>19</sup> Danish Institute for Human Rights (DIHR), *National Human Rights Institutions and Access to Remedy in Business and Human Rights – Part I: Reviewing the Role and Practice of NHRIs*.

<sup>20</sup> "Written inputs: UN Guiding Principles on Business and Human Rights at 10", <https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10-inputs.aspx>.

<sup>21</sup> See Frauke Lisa Seidensticker and Anna Wuerth, "National Human Rights Institutions: Models, Programs, Challenges, Solutions", 8-31, [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0005/1547510/NHRI\\_models\\_programs\\_challenges\\_solutions1.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0005/1547510/NHRI_models_programs_challenges_solutions1.pdf).

## II. Access to remedy for business-related human rights abuses: Role of NHRIs

13. Access to remedy for business-related human rights abuses is a key component of the UNGPs: Pillar III specifically focuses on access to remedy and outlines the role of States, businesses and other actors in this regard. In addition, access to remedy is part of the State duty under Pillar I to protect against human rights abuses by “taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Principle 1). Remediation is also an integral element of the responsibility of business enterprises to respect human rights under Pillar II (Principle 22).

14. The UNGPs envisage a role for three types of mechanisms: state-based judicial mechanisms, state-based non-judicial grievance mechanisms, and non-state-based grievance mechanisms. While effective judicial mechanisms are “at the core of ensuring access to remedy”,<sup>22</sup> non-judicial mechanisms such as NHRIs “play an essential role in complementing and supplementing judicial mechanisms”.<sup>23</sup> NHRIs can complement court-based remedial systems in diverse ways: preventing grievances from escalating, reducing the burden on courts by resolving some disputes including through mediation or conciliation,<sup>24</sup> assisting courts as *amicus* in BHR cases, and monitoring the implementation of court directions by State agencies and/or companies.

15. The Principles relating to the Status of National Institutions (Paris Principles), adopted by the UN General Assembly in December 1993, provide that NHRIs “shall be vested with competence to promote and protect human rights”.<sup>25</sup> Yet, in the essential list of NHRIs’ responsibilities provided in the Paris Principles, there is no explicit mention of providing remedies or accepting complaints.<sup>26</sup> States may, however, mandate NHRIs “to hear and consider complaints and petitions concerning individual situations”.<sup>27</sup> Therefore, the Paris Principles should be interpreted in light of subsequent developments, including international standards and evolving practice. For instance, the vital role of NHRIs in relation to access to remedy concerning business-related human rights abuses is acknowledged, among others, in the Edinburgh Declaration,<sup>28</sup> the UNGPs,<sup>29</sup> the OHCHR’s Accountability and Remedy Project,<sup>30</sup> the Human Rights Council resolutions 32/10 and 38/13,<sup>31</sup> and regional action plans adopted by the regional networks of NHRIs.<sup>32</sup>

16. Like other non-judicial mechanisms, NHRIs should meet the effectiveness criteria set out in Principle 31 of the UNGPs and elaborated in OHCHR’s report on “improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms”.<sup>33</sup> For example, NHRIs should be legitimate to enjoy the trust of various stakeholders, including the prospective “users” of NHRIs whose rights are abused by state agencies and/or businesses. The Paris Principles’ criteria of

<sup>22</sup> UNGPs, Commentary to Principle 26.

<sup>23</sup> Ibid, Commentary to Principle 27.

<sup>24</sup> Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights Nairobi, Kenya, 21-24 October 2008 – The Nairobi Declaration, para 33(a).

<sup>25</sup> UN General Assembly, “National institutions for the promotion and protection of human rights – Annex: Principles relating to the status of national institutions” (Paris Principles), A/RES/48/134, para 1.

<sup>26</sup> Ibid, para 3.

<sup>27</sup> Ibid, Additional principles concerning the status of commissions with quasi-jurisdictional competence.

<sup>28</sup> NHRIs can promote “enhanced protection against corporate-related human rights abuse, greater accountability and respect for human rights by business actors, [and] access to justice for victims”. Edinburgh Declaration, note 8, para 13.

<sup>29</sup> NHRIs “have a particularly important role to play in” non-judicial mechanisms under Pillar III. UNGPs, Commentary to Principle 27.

<sup>30</sup> A/HRC/38/20 (14 May 2018).

<sup>31</sup> These resolution recognise “the important role of national human rights institutions in supporting activities to improve accountability and access to remedy for victims of business-related human rights abuses.” A/HRC/RES/32/10 (15 July 2016); A/HRC/RES/38/13 (18 July 2018).

<sup>32</sup> DIHR, note 19, 9.

<sup>33</sup> A/HRC/38/20 (14 May 2018).

autonomy from the government, guaranteed independence, and pluralist composition have a direct co-relation to legitimacy of NHRIs contemplated by Principle 31. Moreover, NHRIs should be accessible and predictable and should operate in a transparent and rights-compatible manner.<sup>34</sup>

17. However, it will not be of much use if NHRIs are merely effective as an institution, but unable to provide effective remedies (or intervene actively on BHR issues generally). That is why the Working Group in its 2017 report to the UN General Assembly has highlighted that both the process of seeking remedies and the remedial outcomes should be effective.<sup>35</sup> While NHRIs on their own may not be able to offer the full “bouquet of remedies” required to redress fully business-related human rights abuses, they should be able to offer preventive and redressive remedies<sup>36</sup> if allowed (or at least not prohibited) by their respective mandates. Moreover, NHRIs can support the remedial ecosystem in indirect and foundational ways. This aspect is analysed below in section III of this report.

### III. Diverse pathways for NHRIs to facilitate access to remedy

18. The role of NHRIs in facilitating access to remedy for business-related human rights abuses, or in the BHR field more broadly,<sup>37</sup> should be seen in the wider context of their role in protecting and promoting human rights generally. They may struggle to facilitate remedy if the general human rights or the rule of law situation in a country is fragile,<sup>38</sup> or if there is little uptake of the UNGPs and other international BHR standards by States and business enterprises.

19. NHRIs can facilitate access to remedy for business-related human rights in diverse ways. The term “facilitate” should therefore be interpreted in a broad sense to capture both *direct* and *indirect* ways of facilitating remedies. Moreover, since this facilitation often takes place in the wider context of good governance and uptake of the BHR agenda by various actors in society, NHRIs also have a *foundational* role to play in facilitating remedies. Figure 1 highlights these three interconnected ways in which NHRIs could facilitate access to remedy for business-related human rights abuses.

20. It would be ideal if NHRIs could play all three inter-linked and complementary roles and in turn enhance the overall chances of the affected rights holders getting effective remedy.. For example, if an NHRI provides legal assistance to affected communities or supports human rights defenders trying to hold companies accountable, this indirect role may result in actual remedy by some other remedy mechanism. Similarly, foundational contributions of an NHRI such as raising awareness about rights and remedies, making law-policy reform recommendations, and supporting the development of a national action plan on BHR will build a base to invoke different remedy pathways. Moreover, if an NHRI is able to provide direct remedies in some cases, that would reduce pressure on courts and the National Contact Point (NCP) of the relevant country.

<sup>34</sup> Ibid.

<sup>35</sup> A/72/172, paras 3, 14 and 15.

<sup>36</sup> Ibid, para 41.

<sup>37</sup> Cantú Rivera discusses three roles of NHRIs: monitoring whether States’ laws and activities are in conformity with their international human rights obligations, advising businesses and States, and providing access to non-judicial remedy. Humberto Cantú Rivera, “National Human Rights Institutions and their (Extended) Role in the Business and Human Rights Field” in Surya Deva and David Birchall (eds.), *Research Handbook on Human Rights and Business* (Cheltenham: Edward Elgar, 2020) 492, 495-499.

<sup>38</sup> “The increasing questioning of values related to human rights and rule of law protection from some segments of society and some political actors ... may affect the enabling environment of democratic institutions meant to protect those values, including NHRIs.” European Network of National Human Rights Institutions (ENNHRI), *State of the Rule of Law in the European Union: Reports from National Human Rights Institutions* (2021) 27, <http://ennhri.org/wp-content/uploads/2021/03/EU-RoL-Report-2021.pdf>. See also Jonathan Liljeblad, “The Efficacy of National Human Rights Institutions Seen in Context: Lessons from the Myanmar National Human Rights Commission” (2017) 19 *Yale Human Rights and Development Journal* 95.

21. How much attention and resources an NHRI should devote to each of these three roles may of course vary depending upon their unique operating context and circumstances. What is crucial though is that all NHRIs have some footprints in each of the direct, indirect and foundational ways of facilitating access to remedy in business-related human rights abuses.

22. Irrespective of how NHRIs contribute to facilitating access to remedy for business-related human rights abuses, they should integrate a gender perspective.<sup>39</sup> They should also keep in mind differentiated and the often disproportionate impact of human rights abuses on individuals or communities in situations of vulnerability and marginalisation such as children, indigenous peoples, migrant workers, informal economy workers, internally displaced persons, people with diverse sexual orientation and gender identities, persons with African descent, refugees, and persons with disability. Several NHRIs such as those of Albania, Argentina, Armenia, Australia, Canada, Chile, Colombia, Georgia, Honduras, India, Nigeria, Malaysia, Peru, Poland, Slovakia, Slovenia, South Africa and Venezuela are already taking various steps to engage individuals and communities impacted in a differentiated and disproportionate manner.<sup>40</sup>

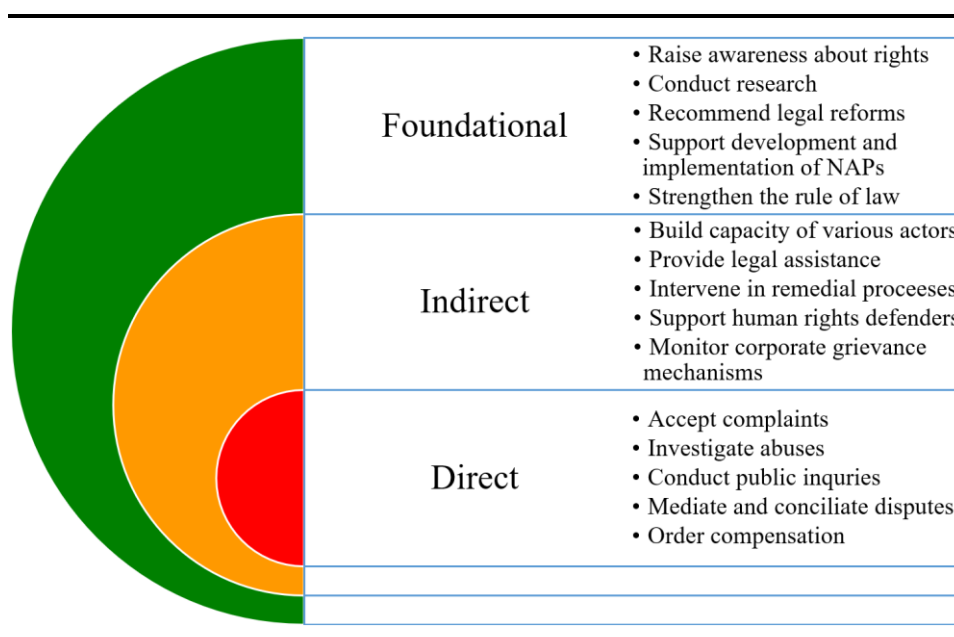


Figure 1: Diverse illustrative ways in which NHRIs could facilitate access to remedy

### A. Direct ways of facilitating remedies

23. A significant number of NHRIs can directly facilitate remedies for business-related human rights abuses. They can do so by accepting complaints, investigating abuses, conducting public inquiries, mediating or conciliating disputes, and making remedial recommendations. If direct remedies provided by NHRIs are recommendatory in nature, the affected individuals or NHRIs may need to approach courts to secure a binding enforcement. However, certain NHRIs such as those of South Africa, Ghana, Kenya, Uganda, Nigeria and Sierra Leone possess quasi-judicial powers and may in turn be able to issue binding remedial decisions.

24. While direct facilitation of remedies will be mostly redressive in nature (e.g., awarding compensation, ordering reinstatement, and mediating disputes), NHRIs could also provide preventive remedies directly. For instance, by facilitating dialogue between business

<sup>39</sup> See A/HRC/41/43. The UN Working Group has also recommended States to “ensure that judicial and non-judicial institutions are capable of providing gender-transformative remedies to achieve substantive gender equality”. Ibid, para 50.

<sup>40</sup> DIHR, note 19, 18-19.

enterprises and affected community members or by recommending State agencies and enterprises to conduct meaningful consultation with stakeholders, NHRIs may facilitate access to remedies for grievances at an early stage and thus prevent such grievances from escalating into serious conflicts. They may also set up an early warning mechanism, as done by the NHRIs of Colombia<sup>41</sup> and Peru,<sup>42</sup> to address grievances. Similarly, the NHRI of Chile has developed a mapping of conflicts related to business activities.<sup>43</sup> Instead of being reactive to abuses, such a proactive or pre-emptive approach on the part of NHRIs should be beneficial for all parties.

25. Some NHRIs have also conducted public inquiries on systemic or serious human rights abuses. The sexual harassment inquiry conducted by the Australian Human Rights Commission,<sup>44</sup> the National Inquiry into Land Rights of Indigenous Peoples conducted by the Human Rights Commission of Malaysia,<sup>45</sup> the climate change inquiry conducted by the Commission on Human Rights of the Philippines,<sup>46</sup> and a public inquiry conducted by the Kenya Human Rights Commission about the impact of mining activities in Taita Taveta country on the enjoyment of human rights<sup>47</sup> illustrate how NHRIs could use their mandate to facilitate remediation in the broad sense.<sup>48</sup> In a similar vein, the Ombudsman of Argentina investigated cases related to impacts of mining activities such as the Mine Gonzalito in the Province of Rio Negro<sup>49</sup> and of infrastructure projects such as Corridor Canal Beagle in the province of Tierra del Fuego.<sup>50</sup> In addition to providing a potential basis for future litigation leading to tangible remedies, such inquiries provide victims a voice to raise their grievances and facilitate truth-finding. The inquiry reports may also make recommendations for rehabilitation of affected communities or for systemic reforms.

## B. Indirect ways of facilitating remedies

26. All NHRIs – including those which do not have the mandate to provide remedies on their own (e.g., by accepting complaints, investigating human rights abuses, mediating and conciliating disputes, or conducting public inquiries)<sup>51</sup> – should be able to facilitate access to

<sup>41</sup> Defensor del Pueblo, Colombia, *Doctrina Defensorial En Derechos Humanos Y Empresas* (2018), [https://f5355d0a-667b-4461-bfa1-e12600732440.filesusr.com/ugd/134a42\\_4bbf8ab7ea51413cbf4b3ace3542b9a1.pdf](https://f5355d0a-667b-4461-bfa1-e12600732440.filesusr.com/ugd/134a42_4bbf8ab7ea51413cbf4b3ace3542b9a1.pdf).

<sup>42</sup> See [https://www.defensoria.gob.pe/areas\\_tematicas/paz-social-y-prevencion-de-conflictos/](https://www.defensoria.gob.pe/areas_tematicas/paz-social-y-prevencion-de-conflictos/).

<sup>43</sup> “INDH presenta Mapa de conflictos socioambientales en Chile y anuncia recurso de protección en favor de habitantes de Quintero” (5 September 2018), <https://www.indh.cl/indh-presenta-mapa-de-conflictos-socioambientales-en-chile-y-anuncia-recurso-de-proteccion-en-favor-de-habitantes-de-quintero/>.

<sup>44</sup> Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (2020), [https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020?mc\\_cid=1065707e3c&mc\\_eid=%5bUNIQID%5d&\\_ga=2.78917524.1829379678.1622437265-588186476.1622437265](https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020?mc_cid=1065707e3c&mc_eid=%5bUNIQID%5d&_ga=2.78917524.1829379678.1622437265-588186476.1622437265).

<sup>45</sup> Human Rights Commission of Malaysia, “Report of the National Inquiry into the Land Rights of Indigenous Peoples”, <https://drive.google.com/file/d/0B6FQ7SONa3PRbUlnUGcxzdEWU0/preview?resourcekey=0-f2P9meWSyl47gBzvW8VD9w>.

<sup>46</sup> Commission on Human Rights of the Philippines, “National Inquiry on Climate Change”, <https://chr.gov.ph/nicc-2/>.

<sup>47</sup> Kenya National Commission on Human Rights, *Public Inquiry Report on Mining and Impact on Human Rights: Taita Taveta County* (2016), <https://www.knchr.org/Publications/Thematic-Reports/Ecosoc-Rights/Business-Human-Rights>.

<sup>48</sup> See also a report issued by the NHRI of Ecuador about various labour rights abuses discovered on inspection of agricultural plantations of a company. “Report of verification, : ombudsman of Ecuador, The unworthy situation of families living inside the abaca farms of the Japanese company furukawa plantations C.A. del Ecuador (2019)”, available at: <http://repositorio.dpe.gob.ec/handle/39000/2260>.

<sup>49</sup> See resolutions of the Ombudsman Office: *N° 00012/17* (3 February 2017); and *N° 00046/18* (8 May 2018).

<sup>50</sup> See resolutions of the Ombudsman Office: *N° 00074/15* (22 October 2015); and *N° 000111/19* (18 October 2019).

<sup>51</sup> Many European NHRIs fall into this category. DIHR, *Part I*, note 19, 14.



remedy indirectly. They can do so by documenting abuses, providing legal assistance, supporting victims, protecting human rights defenders, building capacity of businesses, facilitating dialogue among diverse stakeholders, intervening in judicial proceedings, monitoring implementation of court orders, and assessing effectiveness of operational-level grievance mechanisms.

27. NHRIs may also hold the relevant State agencies accountable for their failure to protect against human rights abuses by business enterprises. This may include giving such State agencies recommendations, for example, to provide compensation to affected individuals and communities, or to introduce specific law-policy reforms to open up remedy pathways. NHRIs could also make strategic intervention in judicial proceedings. For example, the NHRIs of Chile,<sup>52</sup> Guatemala,<sup>53</sup> India,<sup>54</sup> Malawi,<sup>55</sup> and South Africa<sup>56</sup> have intervened before courts to promote business respect of human rights and/or secure remedies for the affected rights holders. The NHRIs of Bangladesh<sup>57</sup> and Egypt<sup>58</sup> also has the right to initiate, or intervene in, civil lawsuits on behalf of the aggrieved party.

28. Moreover, NHRIs should work “with businesses to fulfil their responsibility to respect human rights” and “support initiatives aimed at protecting victims of human rights abuses”.<sup>59</sup> For instance, the National Human Rights Commission of Korea has developed a manual for State-owned enterprises to provide them practical guidance to identify, prevent and remediate adverse impacts on human rights.<sup>60</sup> In addition, NHRIs may encourage businesses to establish operational level grievance mechanisms in line with the effectiveness criteria of Principle 31 of the UNGPs. They may also develop generic or sector-specific guidance, provide advice to specific businesses if requested to do so, and monitor the effectiveness of such grievance mechanisms alone or in collaboration with civil society organisations and trade unions.

29. NHRIs can also refer abuses to other appropriate remedy mechanisms at national and international levels. For example, NHRIs could refer cases – for information or suitable action – to courts, specialised tribunals, administrative bodies, NCPs, independent accountability mechanisms of international financial institutions, and UN special procedures as well as treaty bodies.<sup>61</sup> NHRIs could also ensure that BHR issues (including about access to remedy and corporate accountability) become an integral part of the universal periodic review mechanism as well as international fact-finding missions.

<sup>52</sup> “Corte Suprema falla en favor de población afectada por empresas de Quintero y Puchuncaví, y acoge argumentos INDH” (29 May 2019), <https://www.indh.cl/corte-suprema-falla-en-favor-de-poblacion-afectada-por-empresas-de-quintero-y-puchuncavi-y-acoge-argumentos-indh/>.

<sup>53</sup> See, for example, the *amicus* brief filed in the case of Hidroeléctrica La Vega I, <http://biblioteca.oj.gob.gt/library/index.php?title=48603&query=@title=Special:GSMSearchPage@process=@field1=encauzamiento@value1=DERECHOS%20HUMANOS%20%20GUATEMALA%20%20%20@mode=advanced&recnum=16>.

<sup>54</sup> National Human Rights Commission of India, *NHRC Interventions on Silicosis* (Delhi: NHRC India, 2016). See also “Some important interventions of NHRC” (21 August 2008), <https://nhrc.nic.in/press-release/some-important-interventions-nhrc>.

<sup>55</sup> DIHR, note 19, 28.

<sup>56</sup> See, for example, *University of Stellenbosch Legal Aid Clinic v Minister of Justice and Correctional Services* 2016 (6) SA 596 (CC); *National Credit Regulator v Standard Bank of South Africa Limited* [2019] ZAGPJHC 182.

<sup>57</sup> Submission of the National Human Rights Commission, Bangladesh: [https://www.ohchr.org/Documents/Issues/Business/Remedy/NHRC\\_Bangladesh.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/NHRC_Bangladesh.pdf).

<sup>58</sup> DIHR, note 19, 27.

<sup>59</sup> A/HRC/RES/39/17, para 9(g).

<sup>60</sup> National Human Rights Commission of Korea, “Human Rights Management Manual for State Owned Enterprises” (2018), <https://www.humanrights.go.kr/site/program/board/basicboard/view?menuid=002003003002&pagesize=10&boardtypeid=7019&boardid=7603529>.

<sup>61</sup> NHRIs may, for example, facilitate or assist victims’ petitions to treaty bodies and “follow up on interim orders of treaty bodies given to State parties in relation to complaints where irreparable harm is envisaged”. United Nations, “Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies”, HRI/MC/2007/3 (7 February 2007), para 4.

### C. Foundational ways of facilitating remedies

30. NHRIs may facilitate access to remedy in a more foundational way by raising awareness about human rights and remedy mechanisms, by conducting research and issuing reports on relevant BHR issues, by making law reform recommendations to strengthen access to remedy, by contributing to strengthen good governance and the rule of law generally, and by supporting the development of BHR frameworks, initiatives and laws. Unless individuals and communities have an informed understanding of their human rights and various options to seek remedies, they can hardly seek redress for violations of their rights. At the same time, business enterprises should know why and how to respect human rights. NHRIs could play a key role in raising awareness about BHR standards and building capacity of businesses as well as of rights holders.<sup>62</sup>

31. Considering the critical role of law and policy reforms to promote business respect for human rights and corporate accountability, NHRIs should conduct evidence-based research to make informed recommendations to States to introduce necessary changes for the domestication and implementation of international BHR standards in varied local contexts.<sup>63</sup> These reforms should support access to remedy in the long run. In addition, NHRIs may also conduct research and issue reports on specific BHR issues to provide guidance to States and/or businesses on applicable legal standards. The Mexican NHRI, for example, has issued reports and general recommendations about minimum wage and indigenous peoples' right to free, prior and informed consent.<sup>64</sup> The Australian Human Rights Commission has issued several reports on combatting modern slavery in different sectors,<sup>65</sup> whereas the New Zealand Human Rights Commission has developed several tools to introduce the idea of respecting human rights in a business context.<sup>66</sup> The NHRI of Peru has also issued reports to demand the State to develop and implement action plans to rehabilitate persons exposed to hazardous substances and wastes related to mining in the Andes and the Amazon.<sup>67</sup>

32. Moreover, NHRIs should contribute to coordinate inclusive consultations to support the development of national actions plans on BHR.<sup>68</sup> NHRIs may also push for national action plans to include adequate provisions to implement Pillar III of the UNGPs and then monitor the implementation of targets in such plans by the responsible government entities or ministries.<sup>69</sup> Achieving policy coherence at both vertical and horizontal levels to build a foundation for corporate accountability is another goal to which NHRIs should contribute.<sup>70</sup>

## IV. Challenges faced by NHRIs

33. In order to facilitate access to remedy for business-related human rights abuses effectively, it is important that NHRIs are compliant with the criteria of the Paris Principles,

<sup>62</sup> For example, the NHRIs of Argentina, Chile, Colombia, New Zealand, South Korea, and Thailand have taken steps to raise awareness and/or build capacity.

<sup>63</sup> NHRIs may, for example, draw inspiration from OHCHR's Accountability and Remedy Project (<https://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx>) as well as the European Union Agency for Fundamental Rights (<https://fra.europa.eu/en/themes/business-and-human-rights>).

<sup>64</sup> Cantú Rivera, note 37, 502.

<sup>65</sup> Australian Human Rights Commission, "Business and Human Rights", <https://humanrights.gov.au/our-work/business-and-human-rights/projects/current>.

<sup>66</sup> New Zealand Human Rights Commission, "Business and Work Hub", <https://www.hrc.co.nz/our-work/business-and-work>.

<sup>67</sup> Peruvian Defensoría del Pueblo, "Salud de los pueblos indígenas amazónicos y explotación petrolera en los lotes 192 y 8: ¿Se cumplen los acuerdos en el Perú?", <https://www.defensoria.gob.pe/wp-content/uploads/2018/10/Informe-de-Adjuntía-Nº-001-2018-DP-AMASPPI-PI.pdf>; "Gobierno debe intervenir en viviendas y barrios de Huancavelica", <https://www.defensoria.gob.pe/defensoria-del-pueblo-solicita-al-gobierno-intervencion-en-viviendas-y-barrios-de-huancavelica/>.

<sup>68</sup> Several NHRIs have played this role, e.g., Bangladesh, Columbia, Denmark, Germany, India, Indonesia, Kenya, Malaysia, Mexico, South Korea, the Netherlands, and Thailand.

<sup>69</sup> For example, NHRIs of France, Chile and Spain play a role to monitor the implementation of national action plan on BHR. See A/74/198, para 73.

<sup>70</sup> On the importance of policy coherence, see A/74/198.

including broad mandate, autonomy from the government, guaranteed independence, pluralist composition, adequate resources, and adequate powers of investigation.<sup>71</sup> The zero draft optional protocol to the proposed legally binding international instrument on BHR also envisages States to consider the Paris Principles while “designating or establishing the National Implementation Mechanism” under this instrument.<sup>72</sup>

34. As of January 2021, GANHRI has reviewed 127 NHRIs for accreditation. Out of 127 NHRIs, only 117 are currently accredited with an “A” or “B” status for being fully or partially compliant with the Paris Principles, respectively.<sup>73</sup> Although the Paris Principles require States to give NHRIs “as broad a mandate as possible”,<sup>74</sup> a majority of NHRIs have been established to focus on violations by State agencies in line with the traditional state-centric understanding of international human rights law.<sup>75</sup> Therefore, if the “broad mandate” under the Paris Principles is interpreted to include an “explicit” mandate to deal with business-related human rights abuses, the percentage of “A status” NHRIs – currently about 72 per cent (84 out of 117) – might drop down significantly because many of these NHRIs currently lack such a mandate.<sup>76</sup>

35. At the same time, there are some NHRIs that have an explicit mandate to deal with BHR issues or business-related human rights abuses. The mandate of several NHRIs covers discrimination committed by private entities. There are also NHRIs whose mandate goes beyond discrimination in the private sector, e.g., Kenya’s National Commission on Human Rights<sup>77</sup> as well as the Malawi Human Rights Commission<sup>78</sup> has a specific mandate to handle allegations of business-related human rights abuses. Moreover, even in the absence of an explicit mandate, some NHRIs have interpreted their mandates creatively to deal with BHR issues or cases. For example, although the Ombudsperson in Poland can only deal with abuses by a public entity, the Ombudsperson has interpreted “public entity” broadly allowing it to initiate civil court actions against private entrepreneurs that are publicly financed. Similarly, while the mandate of the Public Defender of Georgia – except for discrimination cases – is limited to the actions or acts of State and local self-government authorities, public institutions and officials violating the rights and freedoms,<sup>79</sup> it monitors the public services provided by private companies. The same broad approach has been adopted by the NHRIs of Peru<sup>80</sup> and Slovenia.<sup>81</sup>

36. However, even if NHRIs have an explicit or interpreted mandate to deal with human rights abuses by businesses which are not owned or controlled by States, the scope of what many such NHRIs can do to provide enforceable remedies directly is very limited. Lack of an explicit mandate and corresponding wide jurisdiction to handle business-related human

<sup>71</sup> Paris Principles, note 25.

<sup>72</sup> OHCHR, “Draft Protocol to the legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises”, <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/ZeroDraftOPLegally.pdf>.

<sup>73</sup> GANHRI, “Accreditation status as of 20 January 2021”, <https://ganhri.org/wp-content/uploads/2021/01/Status-Accreditation-Chart-as-of-20-01-2021.pdf>.

<sup>74</sup> Paris Principles, note 25, “Competence and responsibilities”, para 2.

<sup>75</sup> Deva, note 9, 236 and 241.

<sup>76</sup> GANHRI General Observations 2.9 contemplate the possibility of receiving complaints against both “public and private bodies”: [https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN\\_GeneralObservations\\_Revisions\\_adopted\\_21.02.2018\\_vf.pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf).

<sup>77</sup> Sections 8 (b) and 29 (1) (b), KNCHR Act 2012.

<sup>78</sup> Submission of Malawi Human Rights Commission: [https://www.ohchr.org/Documents/Issues/Business/Remedy/Malawi\\_HumanRightsCommission\\_Malawi.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/Malawi_HumanRightsCommission_Malawi.pdf).

<sup>79</sup> Article 35 (1), Constitution of Georgia, Articles 3 and 13, Organic Law of Georgia on Public Defender No. 2146a of 23 June 1999, Organic Law of Georgia No 3565 of 21 July 2010.

<sup>80</sup> Peruvian Defensoría del Pueblo, “Pronouncement N° 005/DP/2020: Electric utilities must correct electricity bills without waiting for the claim for excessive charges ”.

<sup>81</sup> DIHR, note 19, 13.

rights abuses is a major challenge faced by NHRIs.<sup>82</sup> This has, for instance, led to business enterprises challenging the jurisdiction of NHRIs to deal with business-related human rights abuses.<sup>83</sup>

37. NHRIs also face other challenges in practice in BHR cases. A majority of NHRIs personnel have limited awareness of the ever-evolving BHR issues, challenges and standards. In some cases, the internal expertise on BHR within NHRIs tends to be linked to one or two persons, with no plans to manage transition or to embed BHR work as a cross-cutting issue. In addition, most NHRIs face resource constraints<sup>84</sup> despite the Paris Principles requiring States to provide NHRIs with “adequate funding”.<sup>85</sup> This challenge becomes especially significant while dealing with a wide variety of BHR issues or a large number of cases concerning business-related human rights abuses. Cases with cross-border or transnational dimensions bring their unique challenges due to territorial jurisdiction of NHRIs.

38. Although some NHRIs have a power to investigate human rights abuses (including those related to businesses), only a few NHRIs such as those of Kenya,<sup>86</sup> Niger,<sup>87</sup> Malaysia,<sup>88</sup> and Uganda<sup>89</sup> have the power to compel documents and summon witnesses during investigations. The lack of power to compel documents and summon witnesses, or inability to issue or enforce their recommendations against private business enterprises,<sup>90</sup> also operate as a limitation in facilitating access to remedy directly in business-related human rights abuses.

39. Independence and autonomy of NHRIs is a critical prerequisite for their ability to discharge their mandate of protecting and promoting human rights. During its consultations and dialogues, the Working Group heard concerns from “users” of the NHRIs about lack of independence, even of certain NHRIs that enjoy an “A status”. In other words, although the desire to be accredited by the GANHRI “can create positive incentives for governments to establish NHRIs with broad jurisdiction and the legislative framework for formal independence”, it is not necessary that an NHRI “with an A rating is fully compliant with the Paris Principles, especially if the commission lacks independence from its government or is operating in times of domestic turmoil”.<sup>91</sup>

40. Concerns were expressed by several UN experts in April 2021 about the independence, for example, of Nepal’s National Human Rights Commission due to the appointment of new members not being consistent with the Paris Principles.<sup>92</sup> The European

<sup>82</sup> “Only those NHRIs with broad human rights promotion and protection powers and jurisdiction over both the public and private sectors can fully implement” the UNGPs. Linda C Reif, “The UN Guiding Principles on Business and Human Rights and Networked Governance: Improving the Role of Human Rights Ombudsman Institutions as National Remedies” (2017) 17 *Human Rights Law Review* 603, 605.

<sup>83</sup> Oil companies, for example, challenged the power of the Nigerian National Human Rights Commission to investigate environmental degradation in the Niger Delta. Nora Götzmann and Sébastien Lorion, “How can national human rights institutions improve access to remedy for rights abuses?” (10 June 2020), <https://www.openglobalrights.org/how-can-nhris-improve-access-to-remedy-for-rights-abuses/>.

<sup>84</sup> It seems that the concern related to insufficient resources is not limited to NHRIs of developing countries. ENNHRI, *State of the Rule of Law in the European Union*, note 38, 26. See also A/72/230, para 11; DIHR, *Part I*, note 19, 11.

<sup>85</sup> Paris Principles, “Composition and guarantees of independence and pluralism”, note 25, para 2.

<sup>86</sup> Sections 8 (d) and Sections 26-29 of the Kenya National Commission Act of 2012.

<sup>87</sup> Articles 19-21 and 30 of Law No. 2012-44 of 2012.

<sup>88</sup> Section 14 of the Human Rights Commission Malaysia Act 1999.

<sup>89</sup> Articles 52 (1) (a) and 53 (1) of the 1995 Constitution of the Republic of Uganda.

<sup>90</sup> Some NHRIs such as those of South Africa, Nigeria and Sierra Leone can enforce their recommendations.

<sup>91</sup> Carole J Petersen, “Bridging the Gap?: The Role of Regional and National Human Rights Institutions in the Asia Pacific” (2011) 13 *Asian-Pacific Law & Policy Journal* 174, 201. See also Kirsten Roberts Lyer, “National human rights institutions” in G. Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts* (Singapore: Springer, 2018) 291, 309.

<sup>92</sup> “Nepal: UN experts express concerns for independence and integrity of the NHRC” (27 April 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27026&LangID=E>. Civil society organisations have also criticised the June 2021 appointment of Justice Arun Kumar Mishra as

Network of National Human Rights Institutions has raised similar concerns about potential threats faced by NHRIs of Poland and Armenia.<sup>93</sup> It has been reported that NHRIs in El Salvador and Guatemala too have experienced threats undermining their legitimate human rights work.<sup>94</sup> In May 2021, the UN High Commissioner for Human Rights “sounded the alarm over the rising number of threats, attacks and attempts to undermine and delegitimise independent” NHRIs in Latin America and the Caribbean by Governments and others in positions of power.<sup>95</sup> These illustrative examples – despite various steps taken by the GANHRI and the United Nations to protect NHRIs from threats and reprisals<sup>96</sup> – indicate that NHRIs, even those with an “A status”, are facing diverse *external* threats to their independence all over the world.<sup>97</sup>

41. However, the independence of NHRIs may also be compromised by *internal* factors. For instance, if an NHRI is selective, without sound reasons, in picking up politically sensitive human rights issues or in allocating resources for pursuing such issues.<sup>98</sup> Concerns related to independence and integrity may also arise if an NHRI provides paid advice to specific companies without adequate transparency.

42. NHRIs which lack autonomy and independence will face a serious limitation in dealing with business-related human rights abuses on account of the State-business nexus. Even in cases where NHRIs enjoy autonomy and independence on paper, the practice of their actions (or lack of actions) in business-related human rights abuses and protecting human rights defenders often creates mistrust among rights holders. Shrinking civic space, corruption and (threats of) budget cuts were also identified as other major challenges faced by NHRIs in promoting business respect for human rights.

43. In public emergencies or in conflict settings, NHRIs may face additional challenges to discharge their mandate to promote and protect human rights, including in relation to the private sector.<sup>99</sup> COVID-19 illustrates this, as executive authorities all over the world have shown the propensity to use the pandemic as an excuse to unreasonably curtail human rights and/or the civic space.<sup>100</sup> In situations like this, NHRIs could demand the executive to provide public justification for the curtailment of human rights and freedoms.<sup>101</sup> They may also offer “guidance to States in ensuring a human rights-compliant response to the pandemic” and work “to protect groups in vulnerable situations”.<sup>102</sup>

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the Chairperson of India’s National Human Rights Commission. “Controversial Judge Who Praised Modi Will Head National Human Rights Commission Now”, *The Wire* (1 June 2021), <https://thewire.in/government/controversial-judge-who-praised-modi-to-be-nhrc-chief-opposition-leader-dissents>.

<sup>93</sup> ENNHRI, “NHRIs under Threat”, <http://ennhri.org/news-and-blog/category/nhris-under-threat/>.

<sup>94</sup> José Miguel Vivanco and Juan Pappier, “The U.S. can stop El Salvador’s slide to authoritarianism. Time to act”, *The Washington Post* (19 May 2021), <https://www.washingtonpost.com/opinions/2021/05/18/bukele-el-salvador-biden-human-rights-watch-authoritarianism/>; Human Rights Watch, “Guatemala: Rights Official at Risk of Criminal Prosecution Ombudsperson Under Attack for Defending Sexual and Reproductive Rights” (9 September 2020), <https://www.hrw.org/news/2020/09/09/guatemala-rights-official-risk-criminal-prosecution>.

<sup>95</sup> “Bachelet alarmed by attempts to undermine national human rights institutions in Latin America and the Caribbean” (6 May 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27063&LangID=E>.

<sup>96</sup> GANHRI, “Defending NHRIs from threats and reprisals”, <https://ganhri.org/support-to-nhris/>; Report of the Secretary-General, “National institutions for the promotion and protection of human rights”, A/74/226 (25 July 2019).

<sup>97</sup> Report of the Secretary-General, A/74/226, paras 81-86.

<sup>98</sup> See Lyer, note 91, 306.

<sup>99</sup> See The Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations (October 2015), [http://ennhri.org/wp-content/uploads/2019/10/the\\_kyiv\\_declaration.pdf](http://ennhri.org/wp-content/uploads/2019/10/the_kyiv_declaration.pdf).

<sup>100</sup> COVID-19 has also adversely affected the work of NHRIs. OHCHR, GANHRI and UNDP, *COVID-19 and National Human Rights Institutions: A Study by GANHRI, OHCHR and UNDP* (2021), 41-42.

<sup>101</sup> OSCE Office for Democratic Institutions and Human Rights (ODHIR), *National Human Rights Institutions in a Public Emergency: A Reference Tool* (Warsaw: ODIHR, 2020) 8-9.

<sup>102</sup> OHCHR, GANHRI and UNDP, *COVID-19 and National Human Rights Institutions*, note 100, 9.

44. Many NHRIs have taken special measures to engage individuals and groups who face heightened risks of vulnerability, social exclusion or marginalisation. Nevertheless, more could be done to train NHRI personnel to be sensitive or responsive to diverse experiences and needs of different rights holders impacted by business activities, otherwise some rights holders might continue to have a significant disadvantage in benefitting from NHRIs' capacity building programmes or in accessing NHRIs to seek remedies.

## V. Critical role of NHRIs in selected areas

### A. Collaboration with other judicial and non-judicial mechanisms

45. Instead of operating in a compartmentalised manner, NHRIs should collaborate with all relevant judicial and non-judicial mechanisms to strengthen the overall effectiveness of access to justice. Such collaboration can take various forms. For example, NHRIs in appropriate cases may refer cases of business-related human rights abuses to courts, non-judicial mechanisms, or investigative and prosecution agencies.<sup>103</sup>

46. NHRIs may also decide to participate in judicial proceedings in certain situations, e.g., to address systemic human rights abuses, to enforce their recommendatory orders, to submit an *amicus* brief, to initiate strategic litigation on BHR issues of public importance, or to assist rights holders lacking expertise or resources.<sup>104</sup> Moreover, NHRIs may assist courts by monitoring implementation of judicial orders, and train lawyers on how to use BHR standards in litigation. The interface of NHRIs and courts also raises issues that would require further clarity. For example, whether decisions of NHRIs could be appealed in courts and whether NHRIs should accept complaints on issue which may be *sub judice*.<sup>105</sup>

47. In States which have both NHRIs and NCPs (or other similar non-judicial mechanisms), there should be a greater cooperation and collaboration between the two institutions, but without any unnecessary overlap in functions and jurisdictions. NHRIs of Chile and Morocco, for example, have signed collaboration agreements with their NCPs, which should strengthen areas of reciprocal cooperation. The Australian Human Rights Commission, which sits on the Australian NCP's multi-stakeholder Governance and Advisory Board, provided feedback on proposed updates to the NCP's procedures to ensure that the NCP is accessible (including to vulnerable complainants) and independent.<sup>106</sup> The German Institute for Human Rights has also "participated in the peer review" of the German NCP and "identified opportunities for improvement".<sup>107</sup> Such mutually reinforcing collaborations between NHRIs and NCPs should be strengthened.<sup>108</sup>

48. In certain cases, NHRIs may also harness the potential of regional human rights mechanisms. For example, the Bolivian NHRI, along with civil society organisations,

<sup>103</sup> See A/HRC/38/20, Policy objective 3.3. Some NHRIs like Canada and Australia have referred appropriate cases to law enforcement agencies.

<sup>104</sup> For example, NHRIs of Colombia, India, Nepal and Georgia have done this.

<sup>105</sup> The Human Rights Commission of Malaysia, for example, is prohibited from inquiring "into any complaint relating to any allegation of the infringement of human rights which is the subject matter of any proceedings pending in any court, including any appeals". Submission of the Human Rights Commission of Malaysia: <https://www.ohchr.org/EN/Issues/Business/Pages/AccessToRemedySubmissions.aspx>.

<sup>106</sup> Submission of the Asia-Pacific Forum of National Human Rights Institutions, <https://www.ohchr.org/Documents/Issues/Business/UNGPsBHRnext10/inputs/nhris/asia-pacific-nhri-network.pdf>; Submission of the Australian Human Rights Commission, <https://www.ohchr.org/Documents/Issues/Business/Remedy/AustralianHumanRightsCommission%20.pdf>.

<sup>107</sup> Submission of the German Institute for Human Rights: [https://www.ohchr.org/Documents/Issues/Business/Remedy/German\\_Institute\\_for\\_Human\\_Rights\\_Germany.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/German_Institute_for_Human_Rights_Germany.pdf).

<sup>108</sup> See "Working Together: National Human Rights Institutions and the OECD Guidelines for Multinational Enterprises", <http://mneguidelines.oecd.org/factsheet-working-together-national-human-rights-institutions-and-OECD-guidelines-for-MNEs.pdf>.

presented a complaint about water pollution by mining companies to the Inter-American Commission on Human Rights.<sup>109</sup> The NHRI of Guatemala has also submitted cases of communities at risk due to business activities before the Inter-American Commission on Human Rights to ensure that they are granted protection measures.<sup>110</sup>

## B. Cooperation amongst NHRIs in cross-border and transnational cases

49. Barriers to access to remedy become more prominent in cross-border and transnational cases. NHRIs, unlike courts, can sometimes navigate through these barriers more easily, especially if an institutional mechanism of cooperation is in place. In cases with a transnational dimension, two strategies seem to be critical. The first is the innovative and purposive interpretation of their mandate by NHRIs. Unless there is an explicit prohibition, NHRIs should be able to deal with extraterritorial complaints against companies domiciled within their respective territories.

50. Some NHRIs – even in the absence of any explicit mandate to act outside the territory – have conducted informal visits across the border to ascertain facts about alleged human rights abuses or accepted complaints with an extraterritorial dimension.<sup>111</sup> The cooperation between the NHRIs of Ecuador and Colombia to carry out a verification mission in the indigenous territory of the Kichwa-Siona Community of San José de Wisuya and the Community of Buenavista provides a good example of a transnational cooperation for on-site visits to ascertain alleged human rights abuses.<sup>112</sup> Some NHRIs such as those of the Philippines, Malaysia, Indonesia and Thailand have also shown willingness to accept complaints with an extraterritorial dimension. For instance, on a complaint filed by the Earth Rights International and the Community Legal Education Centre against a Thai company (Khon Kaen Sugar Ltd.) for alleged land grabbing in Cambodia,<sup>113</sup> the National Human Rights Commission of Thailand asserted that it had jurisdiction over the case. It observed: “The NHRC has [the] mandate to ensure that the Thai State and private companies comply with human rights principles. The power and duties of the NHRC do not limit the types of stakeholder involved (whether public or private) or site of violations (whether inside or outside of Thailand).”<sup>114</sup>

51. The second strategy in cross-border cases is NHRIs entering into a formal or informal cooperation and collaboration arrangement with their counterparts. Some NHRIs have shown a growing interest in entering into memorandums of understanding or cooperation agreements to deal with business-related human rights abuses with a cross-border or transnational dimension. Such arrangements may provide for collaborative awareness raising programmes, reciprocal sharing of information, joint fact-finding, providing (legal) assistance to affected individuals, mediating disputes, and resolving complaints.<sup>115</sup> The memorandum of understanding between the NHRIs of Qatar and Nepal to protect the human rights of migrant workers is a case in point.<sup>116</sup> Similarly, the NHRIs of Malawi and Mozambique have collaborated on the situation of refugees from Mozambique coming to

<sup>109</sup> Reif, note 82, 625.

<sup>110</sup> See, for example, the case of the indigenous community, Chaab il Choch, due to displacement related to a business activity: <https://www.oas.org/es/cidh/decisiones/pdf/2018/3-18MC860-17-GU.pdf>

<sup>111</sup> The NHRIs of Malawi, Thailand, Ecuador and Indonesia have done so.

<sup>112</sup> Submission of the Ombudsman of Ecuador: [https://www.ohchr.org/Documents/Issues/Business/Remedy/DefensoriadelPueblo\\_Ecuador.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/DefensoriadelPueblo_Ecuador.pdf).

<sup>113</sup> Earth Rights International, “Human Rights Violations in Koh Kong Sugar Plantation Confirmed by Thai Human Rights Commission”, <https://earthrights.org/media/human-rights-violations-in-koh-kong-sugar-plantation-confirmed-by-thai-human-rights-commission/>.

<sup>114</sup> “Findings of the Subcommittee on Civil and Political Rights of the National Human Rights Commission of Thailand on the Koh Kong Sugar Cane Plantation Case in Cambodia”, <https://earthrights.org/wp-content/uploads/NHRC-Findings-on-Koh-Kong-25-July.pdf>. The Subcommittee of the Thai NHRI also found that evidence “allows for a reasonable belief that human rights principles and instruments were breached in this case” by the Thai company.

<sup>115</sup> See A/HRC/38/20, Policy objective 13.

<sup>116</sup> See: [http://nhrcnepal.org/nhrc\\_new/doc/newsletter/295903891Nepal\\_NHRC\\_Chair\\_Anup\\_Speech\\_MoU\\_Sign\\_QatarNHRC\\_Eng\\_18Dec2016.pdf](http://nhrcnepal.org/nhrc_new/doc/newsletter/295903891Nepal_NHRC_Chair_Anup_Speech_MoU_Sign_QatarNHRC_Eng_18Dec2016.pdf).

Malawi,<sup>117</sup> whereas the NHRIs of Germany and Colombia have collaborated on transnational coal mining activities.<sup>118</sup> The Danish NHRI has also signed a memorandum of understanding with the NHRIs of Zambia and Kenya focusing on capacity building and trainings.<sup>119</sup> The cooperation among the ten NHRIs of the Ibero-American Federation of Ombudsmen to monitoring the human rights impact of mining projects in the region is another example of collective and collaborative action.<sup>120</sup>

52. If certain NHRIs identify a systemic pattern of cross-border BHR issues or business-related human rights abuses, they should explore collaborative ways to overcome these challenges in a proactive manner. The NHRIs of Germany and Denmark have collaborated with, and assisted their peers in building capacity around BHR issues or developing a national action plan on BHR. Such collaboration could perhaps also be extended to deal with cases that have cross-border or transnational dimensions.

### C. Protecting civil society organisations and human rights defenders

53. Civil society organisations, trade unions and human rights defenders, including women and indigenous human rights defenders, play a critical role in realising all human rights and supporting access to remedy for business-related human rights abuses. As “justice enablers”, they provide support to individuals and communities affected by business-related human rights abuses in diverse ways.<sup>121</sup>

54. However, human rights defenders are facing increasing threats, intimidation, frivolous lawsuits, arbitrary detentions, beatings and even killings all over the world and the civic space is shrinking.<sup>122</sup> Women human rights defenders are experiencing additional gender-specific discrimination and violence<sup>123</sup> for standing up against business projects that might involve land grabbing, pollute the environment or result in adverse human rights impacts.

55. As the Marrakech Declaration notes, the “Paris Principles compliant NHRIs can play an important role in promoting and protecting human rights for all by contributing to safeguarding and promoting civic space and protecting human rights defenders”.<sup>124</sup> In line with measures outlined in the Declaration and the guidance provided by the Working Group,<sup>125</sup> NHRIs should monitor and report on civic space, set up early warning mechanisms and focal points within NHRIs, interact with human rights defenders and civil society regularly, support the development of defenders’ networks, and report cases of reprisals

<sup>117</sup> Submission of Malawi Human Rights Commission, 2, [https://www.ohchr.org/Documents/Issues/Business/Remedy/Malawi\\_HumanRightsCommission\\_Malawi.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/Malawi_HumanRightsCommission_Malawi.pdf).

<sup>118</sup> German Institute for Human Rights, “Closing protection gaps in the human rights and business context”, [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Information/Information\\_14\\_Promising\\_Practice\\_Closing\\_protection\\_gaps\\_in\\_the\\_human\\_rights\\_Business\\_context.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Information/Information_14_Promising_Practice_Closing_protection_gaps_in_the_human_rights_Business_context.pdf).

<sup>119</sup> Danish Institute for Human Rights and Zambia Human Rights Commission, “Human Rights Commission, Zambia – Business and Human Rights Work” (December 2019), [https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd\\_2020/nhri\\_case\\_stories/zambia\\_nhri\\_bhr\\_case\\_study\\_2020.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd_2020/nhri_case_stories/zambia_nhri_bhr_case_study_2020.pdf); Submission of the Danish Institute for Human Rights, <https://www.ohchr.org/Documents/Issues/Business/Remedy/DIHR.pdf>.

<sup>120</sup> See <https://www.cepal.org/es/publicaciones/44955-recomendaciones-la-incorporacion-enfoque-derechos-humanos-la-evaluacion-impacto>.

<sup>121</sup> A/72/162, para 72.

<sup>122</sup> BHRRC, “Human Rights Defenders & Business: January 2020 Snapshot”, <https://dispatches.business-humanrights.org/hrd-january-2020/index.html>; Global Witness, “Enemies of the State? How governments and businesses silence land and environmental defender” (30 July 2019), <https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/>.

<sup>123</sup> A/HRC/40/60, para 6.

<sup>124</sup> The Marrakech Declaration – Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions (12 October 2018), para 17.

<sup>125</sup> A/HRC/47/39/Add.2.



against human rights defenders to relevant institutions at national, regional and international levels.<sup>126</sup>

56. It would also be desirable for NHRIs to have *suo moto* powers to intervene to protect human rights defenders as the latter might lack capacity to complain or fear reprisals for making complaints to NHRIs. Moreover, NHRIs should collaborate with other independent human rights institutions with specific mandates to protect children, women and minorities human rights defenders.

57. Several NHRIs such as those of Croatia, Finland, Germany, Greece, Ireland, Slovakia and Slovenia are taking various steps to protect human rights defenders: “enhanced monitoring and targeted inquiries, the formulation of recommendations to relevant authorities, capacity building, legal and political support and spaces for dialogue and information exchange”.<sup>127</sup> The German NHRI has recommended “the Foreign Office in the development of a protection programme” for human rights defenders.<sup>128</sup> In a similar vein, the NHRIs of Ecuador<sup>129</sup> and Bangladesh<sup>130</sup> have issued regulations/guidelines for the protection of the rights of human rights defenders, while the Commission on Human Rights of the Philippines conducted an inquiry on the situation of human rights defenders in 2019.<sup>131</sup>

58. These illustrative examples demonstrate in concrete ways how all NHRIs should and could support the rights of human rights defenders and civic space generally. However, NHRIs should not see this support as a “one way street”. Rather, they should treat this as part of a “reciprocal support strategy”, as NHRIs might themselves face threats to their autonomy and independence for standing up for the rights of human rights defenders.<sup>132</sup> In such instances, if NHRIs enjoy trust of civil society organisations, trade unions and human rights defenders, they could count on support from these organisations and defenders.

## VI. Conclusions and Recommendations

### A. Conclusions

59. NHRIs are critical to not only protecting and promoting human rights but also to the realisation of the SDGs. They have also become indispensable actors in promoting business respect for human rights and playing their part in facilitating access to remedy for business-related human rights abuses. NHRIs, for example, can and do facilitate access to remedy in direct, indirect, and foundational ways. They also have a vital role in collaborating with other judicial and non-judicial remedy mechanisms, cooperating with relevant peers to deal with BHR cases with a transnational or cross-border dimension, and protecting civil society organisations and human rights defenders.

60. Although not all NHRIs have an explicit mandate to deal with BHR issues or cases, several NHRIs have interpreted “permissive silence” of their mandate innovatively and have developed creative ways to address human rights abuses by business enterprises in diverse ways. Nevertheless, NHRIs continue to face significant challenges in meeting growing expectations in the BHR field – from threats to their independence to inadequate resources, absence of investigation or enforcement powers, and limited expertise about BHR standards

<sup>126</sup> For example, NHRIs of Columbia, Bangladesh, the Philippines and Honduras have offered support to human rights defenders. The GANHRI also aims to launch in June 2021 a global action plan to support NHRIs in implementing the commitments made in the Marrakech Declaration.

<sup>127</sup> ENNHRI, *State of the Rule of Law in the European Union*, note 38, 29.

<sup>128</sup> *Ibid.*

<sup>129</sup> Resolution No. 043-DPE-DD-2019

[https://www.ohchr.org/Documents/Issues/Business/Remedy/DefensoriadelPueblo\\_Ecuador.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/DefensoriadelPueblo_Ecuador.pdf).

<sup>130</sup> Submission of the National Human Rights Commission, Bangladesh: [https://www.ohchr.org/Documents/Issues/Business/Remedy/NHRC\\_Bangladesh.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/NHRC_Bangladesh.pdf).

<sup>131</sup> Submission of the Commission on Human Rights of the Philippines: [https://www.ohchr.org/Documents/Issues/Business/Remedy/Commission%20on%20Human%20Rights\\_Philippines.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/Commission%20on%20Human%20Rights_Philippines.pdf).

<sup>132</sup> NHRIs, as well as their members and staff, are themselves human rights defenders. Marrakech Declaration, note 124, para 16.

and issues. Considering the important place of NHRIs in the human rights arena, States, international organisations and other actors should work together to overcome these challenges and in turn ensure that effective, independent and pluralist NHRIs operate in line with the Paris Principles.

## B. Recommendations

### For the United Nations

61. All relevant United Nations agencies, specialised agencies, funds and programmes, and human rights mechanisms should encourage States to establish (or strengthen as the case may be) effective, independent and pluralistic NHRIs with a broad mandate and adequate resources in line with the Paris Principles.

62. All relevant United Nations agencies, specialised agencies, funds and programmes, and human rights mechanisms should support NHRIs and collaborate with them in discharging their respective mandates.

### For States

63. States should give NHRIs an explicit mandate, broad jurisdiction and necessary powers to pursue BHR issues, including a role in facilitating access to remedy for business-related human rights abuses, in their enabling law.<sup>133</sup> In particular, NHRIs should be vested with power to compel information and documents, summon witnesses, and enter both public and private premises to investigate allegations of business-related human rights abuses.

64. States should provide NHRIs with necessary enforcement powers and additional resources to enable them to facilitate access to remedy effectively for business-related human rights abuses. This will not only strengthen access to remedy for victims of business-related human rights abuses, but also reduce the overall workload of courts. States should also provide “resources to NHRIs to enable them to advise and train companies on human rights issues”.<sup>134</sup>

65. States should confer on NHRIs a power to act on their own (*suo moto*) to conduct inquiries or investigations, intervene in judicial proceedings in public interest, and protect human rights defenders in cases of business-related human rights abuses.

66. States should clarify jurisdiction and competence of NHRIs *vis-à-vis* courts as well as other state-based non-judicial remedy mechanisms to avoid unnecessary overlap and in turn improve the overall efficiency of all state-based remedy mechanisms. National action plans on BHR or other policy documents may provide some guidance on this issue.

67. States should involve NHRIs in developing, revising and implementing national action plan on BHR, especially in relation to access to remedy under Pillar III of the UNGPs<sup>135</sup> and implement recommendations flowing from the OHCHR’s Accountability and Remedy Project to enhance the ability of NHRIs to deal effectively with business-related human rights abuses.<sup>136</sup>

68. States should keep gender balance and other diversity variables in mind while making appointments to NHRIs to strengthen their pluralistic character in line with the Paris Principles.

69. States, in line with the General Assembly resolution 74/156, should ensure that NHRIs and their staff “do not face any form of reprisal or intimidation, including political pressure, physical intimidation, harassment or unjustifiable budgetary

<sup>133</sup> The Working Group has previously recommended States to provide “NHRIs and/or ombudsperson offices with a mandate to receive complaints from victims of alleged business-related human rights abuses.” *Guidance on National Action Plans*, note 10, 34.

<sup>134</sup> *Ibid.*, 22.

<sup>135</sup> For details, see *Guidance on National Action Plans*, note 10.

<sup>136</sup> A/HRC/38/20, Annex.

limitations, as a result of activities undertaken in accordance with their mandates, including when taking up individual cases or reporting on serious or systematic violations in their countries.”<sup>137</sup>

70. States should consider conferring immunity on members and staff of NHRIs “from civil and criminal proceedings for action taken in an official capacity”.<sup>138</sup>

#### For NHRIs

71. NHRIs should establish a BHR focal point or working group to develop in-house expertise and facilitate better coordination with other NHRIs as well as the government ministry coordinating the implementation of the UNGPs, through a national action plan or other measures.

72. NHRIs should take steps to preserve their autonomy and independence from both external and internal threats, so as to enable them to act as a neutral player in disputes or differences between the State, civil society and the private sector. They should also follow recommendations of OHCHR’s Accountability and Remedy Project to strengthen their effectiveness in line with Principle 31 of the UNGPs.<sup>139</sup>

73. NHRIs should exercise their powers to resolve complaints, investigate cases, conduct public inquiries and mediate/conciliate disputes to remedy business-related human rights abuses in a proactive, creative and human rights-compatible manner. They should also disclose disaggregated data concerning handling of business-related human rights abuses on their website.<sup>140</sup>

74. NHRIs, in conciliating or mediating disputes, should pay attention to imbalance in power, information and resources between businesses and affected individuals and take proactive measures to redress this imbalance. They should also take care that the confidential outcome of conciliation or mediation processes does not unduly impair public justice elements such as transparency, accountability, and access to judicial remedies.

75. NHRIs should develop an efficient internal system of sorting complaints concerning business-related human rights abuses and referring cases unsuitable for them to appropriate judicial or non-judicial remedy mechanisms at national, regional and international levels.

76. NHRIs, in States with other independent or provincial level human rights institutions, should work closely with such institutions to ensure coherence and mainstream access to remedy for business-related human rights abuses.

77. NHRIs should collaborate with relevant peers, including by concluding cooperation agreements, to deal effectively with BHR issues or complaints with a transnational or cross-border element.

78. NHRIs should raise awareness, build capacity, offer trainings, document abuses, provide legal assistance, and support human rights defenders working in the BHR field. They should also facilitate meaningful and inclusive dialogue among diverse stakeholders, conduct research, and recommend legal reforms to improve business respect for human rights and corporate accountability for abuses.

79. NHRIs should document business-related human rights abuses and use this data in making recommendations in various settings, including as part of the universal periodic review mechanism and various treaty body processes.

<sup>137</sup> A/RES/74/156 (23 January 2020), para 10. See also A/HRC/RES/39/17, para 4.

<sup>138</sup> Report of the Secretary-General, “National institutions for the promotion and protection of human rights”, A/74/226, para 89.

<sup>139</sup> A/HRC/38/20, Annex.

<sup>140</sup> A DIHR study concludes that “data on business-related complaints received by NHRIs is scarce and not systematically collected or analysed”. DIHR, *Part I*, note 19, 13.

80. NHRIs should proactively monitor implementation, by both States and businesses, of recommendations made by international and regional human rights mechanisms as well as by the Working Group.

81. NHRIs should foster close relation with civil society organisations, trade unions, human rights defenders, human rights lawyers, and research centres as well as human rights clinics at academic institutions to promote business respect for human rights and corporate accountability.

82. NHRIs should safeguard civic space and protect human rights defenders from persecution from the State and/or business enterprises in line with the Marrakech Declaration. In protecting human rights defenders, NHRIs should be responsive to different experiences and needs of individuals or groups who may be at the heightened risk of vulnerability or marginalisation in a given society.

83. NHRIs should encourage business enterprises “to respect the rights of human rights defenders and advise them on actions and measures to ensure that they meet this responsibility.”<sup>141</sup>

84. NHRIs, regional networks of NHRIs and GANHRI should integrate a gender perspective throughout their work, including in dealing with BHR issues.<sup>142</sup>

#### For other stakeholders

85. GANHRI should develop specific General Observations to interpret the Paris Principles in the context of BHR issues and business-related human rights abuses. This guidance should then be taken into account in granting accreditation to NHRIs.

86. GANHRI should continue to strengthen the existing accreditation process of NHRIs to ensure that an “A” status is granted to only those NHRIs which not only claim but *demonstrate* to be fully compliant with the Paris Principles consistently. An explicit mandate, or practice, of an NHRI to deal with BHR issues and/or cases should be a relevant consideration in the accreditation and re-accreditation process.

87. The GANHRI’s Sub-Committee on Accreditation should take seriously feedback from civil society organisations and human rights defenders about the actual working of NHRIs at the accreditation stage, during re-accreditation cycles, and for a special review of the accreditation classification. The Sub-committee should consider inviting civil society organisations and human rights defenders as observers during its accreditation sessions.

88. GANHRI should strengthen its online knowledge platform to facilitate sharing of BHR practices and peer learning amongst NHRIs. As BHR challenges in different world regions are not identical, regional networks of NHRIs should organise “BHR cafes” to exchange innovative solutions developed by NHRIs to overcome challenges.

89. Regional networks of NHRIs should integrate BHR issues in their work plans and annual meetings. They should also facilitate exchange of innovative and good practices not only within a given region but also amongst different world regions.

90. In addition to pursuing the BHR agenda on their own, regional human rights organisations like the ASEAN Intergovernmental Commission on Human Rights, the Inter-American Commission on Human Rights, and the African Commission on Human and Peoples’ Rights should collaborate with NHRIs of different countries.<sup>143</sup>

91. Business enterprises and industry associations should cooperate in good faith with NHRIs taking various steps to protect and promote human rights, including remediating business-related human rights abuses.

<sup>141</sup> Marrakech Declaration, note 124, para 20(h).

<sup>142</sup> For further guidance, see A/HRC/41/43.

<sup>143</sup> Seidensticker and Wuerth, note 21, 36.