

National Human Rights Institutions To The Test: Non-Refoulement & The Rights Of Refugees

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National Human Rights Institutions To The Test: *Non-Refoulement* & The Rights Of Refugees

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Abstract

National Human Rights Institutions (NHRIs) can act as a bridge between national contexts and international human rights standards. This research explores their role in protecting refugee rights, with a focus on the principle of *non-refoulement*. It examines the mandates, priorities and actions, over the last five years (2019-2024), of 20 A-status NHRIs across various world regions. The analysis shows that their human rights mandates allow them to engage in a wide range of relevant activities - including monitoring, notably at borders, legislative and policy advice and public advocacy - and to collaborate regularly with various regional or international institutions. While several of them are also empowered to handle individual complaints, trigger constitutional reviews, and intervene in judicial proceedings, margins for progress appear significant in these areas. In practice, several institutions adopt innovative approaches but few have in fact set refugee rights and non-refoulement as a thematic priority for their work. Most do not seem to deploy the systematic and continuous efforts their national context arguably calls for. Further efforts could well be constrained by, inter alia, issues of independence and/or limitations in capacity and resources - but further research would be required to identify key factors. The study ultimately confirms NHRIs' potential but suggests a necessity for these institutions - as well as regional and international networks - to enhance their focus on refugee protection, and display greater consistency in initiatives and collaborations, including with UNHCR. This note features examples of existing practices that could serve as sources of inspiration.

Keywords: *National Human Rights Institutions, Non-refoulement, Refugee rights, Pushbacks, Paris Principles, Geneva Convention*

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Introduction

This article investigates the mandates and functions of a panel of 20 A-status National Human Rights Institutions (NHRIs)¹ in relation to the protection of refugee rights, with a particular focus on *non-refoulement*. The main research questions guiding this study are: To what extent do NHRIs prioritize refugee protection and non-refoulement within their strategic or thematic goals? What initiatives have they undertaken in this area, and how consistent and impactful are these efforts across different national and regional contexts? The central argument of this paper is that while A-status NHRIs are more likely to translate their mandates into effective practices, their engagement in the fields of refugee protection and *non-refoulement* varies significantly. This research highlights innovative and positive practices among some of these institutions. It underscores their potential to contribute substantially to advancing refugee rights, thereby strengthening the broader human rights framework.

The study contributes to the human rights debate by examining how NHRIs approach refugee protection and *non-refoulement*, which remain underexplored within human rights scholarship. While existing studies have addressed the role of NHRIs in general human rights promotion (OHCHR 2010; Jensen 2018; FRA 2021; Lacatus and Carraro 2023), there is limited analysis of their specific commitments to the rights of refugees, particularly in the face of rising risks of *refoulement* practices. By focusing on 20 NHRIs with A-status, the paper also investigates how their established mandates and resources position them to act independently and innovatively in protecting refugee rights in contexts where violations have been documented over the past five years (2019–2024).

The research uses a desk-based methodology, drawing on reports and recommendations from UN Treaty bodies, UPR submissions, contributions from international NGOs, official NHRI publications, and additional documentation from UNHCR and international and regional NHRI networks².

¹ National Human Rights Institutions (NHRIs) are periodically accredited before the Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI). They are evaluated with reference to the UN Paris Principles, which are the international standards for NHRIs to promote and protect human rights effectively and independently. NHRIs are accredited with one of the following statuses: A status – Fully compliant with the Paris Principles; B status – Partly compliant with the Paris Principles; No status – Not compliant with the Paris Principles.

² See: Global Alliance of National Human Rights Institutions; European Network of National Human Rights Institutions; Asia Pacific Forum of National Human Rights Institutions; Network of African National Human Rights Institutions; Red de Instituciones Nacionales de Derechos Humanos del Continente Americano; Arab Network for National Human Rights Institutions.

Furthermore, direct queries were made to the selected 20 NHRIs, of which only six replied (Slovenia, Lithuania, the UK, Greece, Qatar, and Morocco) and provided additional insights on their commitments and activities. NHRIs were selected to ensure a balanced coverage of various world regions (see Figure 1).

The article is structured as follows: Section 2.1 reviews the mandates of NHRIs and their operational options, particularly in relation to non-refoulement; Section 2.2 examines NHRIs' strategic priorities, including commitments made under the Global Forum process; Section 2.3 discusses their engagement within international and regional networks; Section 2.4 explores their cooperation and partnerships with UNHCR; Section 2.5 focuses on the monitoring function of NHRIs; Section 2.6 encompasses legal and policy advice; Section 2.7 explores advocacy actions implemented by NHRIs; Section 2.8 explores the authority of NHRIs to investigate individual complaints and their judicial engagement; Section 2.9 is dedicated to NHRIs' cooperation with international human rights institutions. Finally, Section 2.10 assesses specific NHRI initiatives in light of the Paris Principles, with a focus on non-refoulement.

Limitations of the study include the scope, which does not assess the impact of NHRI initiatives or analyze the underlying drivers of their engagement. Data collection challenges included language barriers and inconsistent online publication practices among NHRIs, underscoring the need for improved transparency and accessibility in NHRI documentation. This article aims to advance understanding of the role of NHRIs in refugee protection and to encourage further inquiry into the effectiveness of their engagement in this critical area of human rights.

1. Context: NHRIs, Refugee Rights & Refoulement

NHRIs hold a crucial position as intermediaries between national contexts and the international human rights regime. Their role is key in ensuring that domestic laws and policies align with global human rights standards, and in helping States follow through on their international obligations. Their broad mandate to protect and promote human rights allows them to address refugee rights even in the absence of specific national legislation governing refugee status or of ratification of international instruments such as the 1951 Geneva Convention and its 1967 Protocol. Indeed, by relying also on overarching human rights standards, NHRIs can advocate for the protection of refugees and asylum seekers, ensuring their rights are respected and upheld.

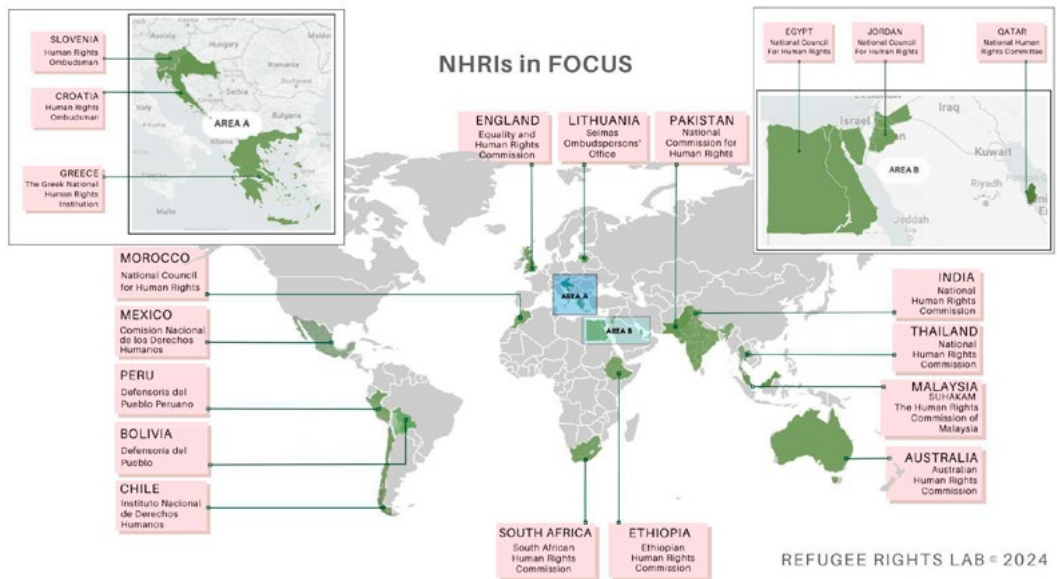


Figure 1: NHRI in Focus

In recent years, many States – including many of those in focus with the present research – have introduced limitations on access to asylum, creating significant barriers for individuals seeking refuge. These take different forms, from physical barriers and border closures to legal provisions criminalizing irregular entry or facilitating immediate expulsions. Pushbacks have been documented in virtually all world regions. Broader steps to deter and deflect refugee movements are also on the rise, and characterized by legal, institutional, and practical barriers obstructing access to international protection and various forms of externalization of asylum, with inadequate guarantees and shifting responsibility for identifying or meeting international protection needs or leaving such needs unmet (UNHCR 2021).

Refugees are also particularly vulnerable in contexts where comprehensive national legal framework for asylum and refugee status determination are missing; or where registration of claims can be suspended or where their complexity, sometimes combined with a lack of information, resource gaps and extensive delays, or corruption issues hinder access to international protection. Many can be exposed to collective expulsions, deportation and extradition procedures with inadequate guarantees, and readmission agreements based on disputable assessments of safety disregard the actual risks faced by returnees. Discriminatory nationality laws also create challenges, potentially leading to statelessness and further limiting options for individuals seeking nationality and protection.

Hence, overall, a wide range of measures in both law and practice, often combined, do considerably limit access to asylum, violate the principle of non-refoulement (see Annex I for a definition), and undermine the rights of refugees and asylum seekers. These would require urgent attention and reform to ensure the protection and dignity of those seeking refuge. In contexts of systematic violations, NHRIs certainly have both a potential and a responsibility to act. Yet such involvement is often not granted, given the sensitivity of these matters and potential challenges related to State sovereignty, migration management, and border control. However, references to NHRIs are limited in the New York Declaration and the Global Compact on Refugees, contrasting with their multiple mentions in the Global Compact for Safe, Orderly and Regular Migration (2019, para. 15(j), 27(c), 28(c), 31(d), 33(d), 44). If existing literature suggests active NHRI involvement in addressing refugee rights (Glušac 2016; Carver 2017; Kämpf 2018; Tiwari 2020; EUAA 2024), the volume of publications is limited, there are geographical imbalances, and updates would be desirable. The latest paper examining the role of NHRIs in the protection of refugee rights was published by the EUAA in 2024. It provides a concise analysis of the NHRIs in EU member states and Switzerland as part of a mapping project of NHRIs and their roles in asylum and reception systems.

2. Key Findings

2.1. Mandates & Options

The analysis shows that while the mandates of NHRIs surveyed do not explicitly reference refugees, asylum seekers, or non-refoulement, most have broad mandates allowing them to act on relevant matters. This aligns with UNHCR's guidance, which highlights that through their wide-ranging human rights competencies, these institutions can address violations affecting refugees and asylum seekers (UNHCR 2020).

Most NHRIs in the panel are broadly mandated to protect and promote 'human rights' as anticipated by the Paris Principles, reflecting extensive competence *ratione materiae*. Almost all can draw on both national and international standards, provided the relevant instruments have been ratified or are recognized as customary law. This includes the principle of non-refoulement, which is also defined as customary international law, further reinforcing its critical importance in the protection of refugee rights (Lauteroacht and Bethlehem, 2001). In some cases, the reliance on international standards is explicitly foreseen. For example, the Human Rights

Ombudsman Act of Slovenia and the Ombudsman Act of Croatia explicitly reference both national and international human rights standards in their mandate. Exceptions are relatively few and do not necessarily lead to clear limitations in practice. For example, the UK's NHRI primarily references the Equality Act (2010) but it also has a mandate to monitor and advise the UN on the UK's compliance with its international human rights obligations. *Ratione Personae*, NHRIs mandate are typically not limited to citizens or nationals. They can act on behalf of all individuals within the jurisdiction of the State. Although some mandates reference nationals specifically³, such references do not appear to affect the legitimacy nor ability to address violations impacting refugees and asylum seekers.

NHRIs surveyed have a wide set of functions and options anticipated by their mandates, allowing for extensive engagement in human rights issues. One of their primary roles is to monitor and investigate human rights situations within their jurisdiction, permitting them to identify and address human rights violations, including those affecting refugees and asylum seekers. A number of NHRIs analyzed are also required to report annually on relevant human rights matters to the government or parliament. These reports highlight key issues, advocate for policy changes, and can contribute to holding authorities accountable for their human rights record. NHRIs also play a critical role in legislative monitoring and advising, ensuring draft legislation complies with international standards and protected rights (UNHCR 2020). Another crucial function of NHRIs is advocacy. They engage in human rights education and public awareness-raising activities, promoting a culture of respect and protection for all individuals, including refugees and asylum seekers.

Most NHRIs are also empowered to receive and act on individual complaints, allowing individuals, including refugees and asylum seekers, to seek redress for human rights violations. While a few NHRIs, such as those in the UK and Greece, have limitations in this area, most can act on individual complaints and do not restrict admissibility based on the nationality of complainants. For instance, Peru's NHRI accepts complaints from all individuals within its jurisdiction, Mexico's NHRI addresses complaints regardless of nationality, and Slovenia's NHRI provides redress for both nationals and non-nationals. Additionally, several NHRIs, such as those in India, Slovenia, and Croatia, have the mandate to investigate and address human rights issues *proprio motu*.

³ See Bolivia's NHRI mentioning indigenous, native, urban communities, intercultural communities, Afro-Bolivians, and Bolivian expatriates, and Australia's NHRI referring to the 'people of Australia'.

Many NHRIs can actively engage at a judicial level by submitting or referring cases to courts, participating as a third party in judicial proceedings or initiating constitutional reviews. One landmark example of referral is that of the Indian NHRI which, in 1996, filed a petition before the Supreme Court against the State government of Arunachal Pradesh in support of the Chakma refugees (the Court found a violation of the right to life and liberty as guaranteed by Article 21 of the Constitution (Supreme Court of India 1996). It set judicial precedent for non-refoulement in the national jurisprudence and has been momentous for refugee rights protection in the Indian legal system). Exceptions here include Egypt, Jordan, Qatar and Morocco, which do not seem to have an express competence to submit cases directly to national courts. Several NHRIs, such as those of Slovenia, Bolivia, Thailand, but also India and Peru have, beyond interventions in individual cases, options to trigger constitutional reviews, provided public interest is at stake. This could allow them to challenge restrictive bills inconsistent with a right to (seek) asylum if and as constitutionally guaranteed. NHRIs also play a crucial role in collaborating with international institutions, including treaty bodies and judicial entities like the European Court of Human Rights (ECtHR). This collaboration is sometimes explicitly foreseen by their mandate, as seen in Chile, Greece, and the UK, where NHRIs are expected to cooperate with international judicial bodies.

Several NHRIs in focus also have the National Preventive Mechanism (NPM) mandate, which is of significant added value. This mandate enhances their capacity to monitor and report on torture and other ill-treatment. NHRIs that do not have an explicit NPM mandate include Australia, Malaysia, Jordan, and Egypt. However, this is not necessarily limiting their interventions. Malaysia, for instance, can still visit detention centers, as specified in Article 4.2 of the Human Rights Commission of Malaysia Act 1999. The Jordanian NHRI has a broad mandate that allows for substantial access in immigration centers. Additionally, some NHRIs can have exceptional powers further enhancing their capacity and leverage to investigate and act on specific situations. For instance, in Slovenia, the NHRI can seek and secure clarifications or meetings with government officials, the latter having an obligation to respond.

2.2. Strategic Priorities & Commitments

2.2.1. Strategic priorities

Not all NHRIs in the panel set and formalize strategic priorities into specific plans. If and when they do, there tends to be no reference to the rights of asylum-seekers and refugees, or non-refoulement – even in its

wider human rights-based acceptance, this including under a broader attention to civil and political rights. However, there are notable exceptions, exemplified by the proactive approaches of the NHRIs of Ethiopia and Greece (see below). Documentation surveyed also suggests a potential concern with language used publicly by several NHRIs regarding refugees and non-refoulement. Indeed, terms such as ‘migrants’ or ‘human mobility’ sometimes appear to be favored over more direct and specific references to refugees, forced displacement and international protection concerns, as noted in the cases of South Africa, Peru, Bolivia, Qatar and Mexico’s NHRIs. This shift in terminology may reflect a reluctance or hesitation among NHRIs to address these sensitive issues explicitly.

Ethiopian Human Rights Commission (EHRC)

The EHRC, as shown in the website section IDPs, Refugees & Migrants’ Rights, places a strategic emphasis on the rights of internally displaced persons (IDPs), refugees, and migrants, consistent with Ethiopia’s significant position as both a host and transit country. Priority areas include research, advocacy, empowerment of vulnerable communities, and monitoring compliance with national and international standards. Collaboration with stakeholders further supports advancing the rights and protection needs of these groups (EHRC 2024). In particular, in 2021, the Ethiopian Human Rights Commission (EHRC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) conducted a joint investigation into alleged human rights violations and abuses, and violations of international humanitarian law, and refugee law committed in the context of the conflict in Tigray (EHCR and OHCHR 2021).

Greek National Commission On Human Rights (GNCHR)

In 2023, the GNCHR (2023, p32) prioritized refugee and migrant rights as a central theme. It fulfills institutional obligations by appointing civil society representatives to key committees of the Hellenic Ministry of Migration Policy and is actively involved in monitoring the implementation of National Programmes for Asylum, Migration, and Integration Fund and Internal Security Fund (GNCHR 2023, p26). The Commission has voting rights on the Monitoring Committee for Migration Funds 2021-2027, where it ensures that EU funds are used in compliance with the EU Charter of Fundamental Rights (GNCHR, personal communication email, 2024, July 24).

NHRIs, with a NPM mandate, do not necessarily set a clear focus on immigration-related detention, and, in that context, matters of access to asylum and procedural guarantees attached. Mexico stands as a notable

exception. Its Comisión Nacional de los Derechos Humanos (CNDH) provides an example of an NHRI with an NPM mandate that actively emphasizes immigration detention and related issues as among its priorities.

National Commission On Human Rights - México (CNDH)

The CNDH, as part of its Institutional Strategic Plan for 2020-2024, emphasizes a commitment to permanent and ongoing supervision of places of imprisonment and deprivation of liberty. In more detail, some of the anticipated activities include regular monitoring and follow-up visits to prevent torture and ill-treatment, providing for specific visits to places where migrants are concentrated, such as detention centres, reception centres and transit points. An online interactive platform is dedicated precisely to such activities. As can be seen from the reports published, from 2020 to the present, a variety of visits have been made to places of detection and shelters for migrants aimed at providing medical and psychological assistance, information on their legal migratory situation, the right to a regular migratory process, food, essential items for cleaning and personal hygiene, clean mattresses, access to telephone communications, and access to complaint mechanisms with the competent authorities. In more detail, for example, in 2022 there were 286 visits to migrant detention centers, where 20,654 foreigners were assisted, while in 2023, there were 845 supervision visits, during which 24,891 foreigners were assisted.

2.2.2. Public Commitments

There is overall a clear lack of public commitments from NHRIs surveyed regarding refugee rights, and particularly as regards non-refoulement. This gap is evident when screening public statements, outcomes of regional or international conferences, dedicated forums, and other relevant initiatives. As of August 2024, none but two of the 20 NHRIs surveyed have individually engaged with the first (2019) and second editions (2023) of the Global Refugee Forum. However, the CNDH of Morocco notably made an individual pledge during the Global Refugee Forum 2023 where it committed to support the finalization and adoption of the Law on Asylum, promote refugees' fundamental rights, establish a multilingual guidance mechanism for better access to justice, and include refugee rights in its work (Global Compact on Refugees UNHCR 2023).

Hence the general pledge made by the Global Alliance of National Human Rights Institutions (GANHRI) in 2023 (see 4.3.1) still has, to date, to be backed by individual and concrete commitments from its members.

2.3. Regional and International Networks

There is limited evidence of a drive at both international and regional levels for NHRIs to further engage on refugee rights and non-refoulement, including via joint efforts. This perhaps logically, reflects the gaps found in NHRIs' national agendas and commitments. Still, notably in Europe and the Americas, relevant working groups have been established to allow for joint initiatives, statements and the sharing of practices. Networks of NHRIs have not engaged as such with the Global Compact or the Global Forum – apart from the GANHRI 2023 pledge to implement national-level initiatives for greater human rights protection for displaced and stateless persons.

At the international level, via GANHRI, NHRIs have engaged with the 2016 UN summit leading to the New York Declaration. In addition to the organizational objectives of strengthening NHRIs promoting adherence to the Paris Principles, and facilitating information sharing and capacity building, GANHRI's strategic priorities also encompass thematic focus areas, and among these, People on the Move, and Torture and Ill Treatment and Climate change. A brief reference to non-refoulement appears in the 2023 Kyiv-Copenhagen Outcome Declaration (2023) on which also generally emphasizes the role of NHRIs in preventing torture and other ill-treatment and recalls the particular exposure of refugees and internally displaced persons among other vulnerable groups. At the Global Refugee Forum 2023 held in Geneva, Ms. Amina Bouayach, President of the National Human Rights Council of Morocco (CNDH) and Secretary of the GANHRI, underscored the vital role that NHRIs play in safeguarding the rights of refugees and asylum seekers. She also referred to reporting efforts on the status of refugees' rights, processing of individual complaints, as well as support in aligning legal frameworks with international standards (Conseil National des Droits de l'Homme 2023).

Many NHRIs are also members of the International Ombudsman Institute (IOI), which focuses on strengthening ombudsman institutions, promoting best practices, and advocating for human rights, with a special emphasis on vulnerable groups. IOI's strategic priorities miss a more explicit focus on migration and refugee protection, particularly the principle of non-refoulement. Joint visits, such as the Slovenian Ombudsman's visit to Hungary, exemplifies IOI's concrete commitment, but there is room for a more targeted approach within their strategic framework.

At the regional levels, the European Network of National Human Rights Institutions (ENNHRI) has promoted independent border monitoring and issued a report on rights accountability at borders under the EU Pact on Migration and Asylum (which has not materialized). In 2022 it also published the Report 'Strengthening Human Rights Accountability at Borders' focusing

on monitoring and overall transparency, access to justice, investigations, revision and prevention and promoting a culture of rights (ENNHRI 2022). ENNHRI has also created a standing working group on asylum and migration. Similarly, the Red de Instituciones Nacionales para la Promoción y Protección de los Derechos Humanos del Continente Americano (RINDHCA) also has a working group focused on migrant and refugee populations, with the aim of proposing a joint response strategy to the human mobility crisis experienced in the American continent and related to Objective 6 of the RINDHCA Action Plan. The Southeast Asia NHRI Forum (SEANF) & Asia Pacific Forum (APF) have paid limited attention to migration and refugee issues, focusing primarily on migrant workers, as well as addressing xenophobia, discrimination, barriers to healthcare, and social protection, but with no reference to asylum law and non-refoulement. Finally, the Network of African National Human Rights Institutions (NANHRI) has adopted the Cairo Declaration, which focuses on various human rights and issues, but is not publicly available for review. A specific focus on non-refoulement is not present in the document, but the Declaration does recommend relevant actions to authorities including improved screening measures and individual assessments at borders and places of first arrival, by applying standardized operating procedures, including training to border control officials.⁴ To advance this agenda, NANHRI established a dedicated working group on migration in 2018, led by Morocco's National Human Rights Council. Furthermore, at the African Union level, the pivotal role of NHRIs in championing a human rights-based approach to the Global Compact was highlighted (Études sur les Droits de l'Homme 2019). But no specific attention to refugee rights was found. There is also no publicly available trace of the Arab Network of National Human Rights Institutions recently addressing the issue of non-refoulement or the broader topic of refugees' rights.

There would be a need to carry out complementary mapping of efforts from sub-regional networks and thematic networks that may be active on specific issues.

2.4. Cooperation with the UN High Commissioner For Refugees (UNHCR)

NHRIs, as independent entities, are uniquely positioned to collaborate with UNHCR. Article 35 of the Geneva Convention calls for cooperation between

⁴ In an email communication (24/09/2024), the CNDH has provided the information included in the Cairo Declaration, from the 12th Biennial Conference of the Network of the African National Human Rights Institutions (NANHRI), held in Cairo on 5-6 November, 2019.

UNHCR and national authorities (Convention and Protocol Relating to the Status of Refugees | UNHCR n.d.). NHRIs can also act as a bridge in this respect. UNHCR acknowledges this potential and has issued guidance on engaging with NHRIs, advocating for increased cooperation. Such collaboration can strengthen border monitoring capabilities to uphold the right to seek asylum and the principle of non-refoulement, as well as advocate for legislative and policy reforms to protect the human rights of refugees. Apart from formal agreements such as Memoranda of Understanding (MoU), UNHCR and NHRIs can develop work plans outlining specific activities and responsibilities, ensuring a structured and effective partnership (UNHCR 2020). In the panel, we observed varying degrees of collaboration with UNHCR, ranging from informal cooperation to institutionalized partnerships. A notable example is the NHRI of Malaysia (SUKAHAM), which has had a MoU with UNHCR since 2017 even though the State has not ratified the 1951 Geneva Convention (SUHAKAM 2021a). Similarly, the South African Human Rights Commission (SAHRC) signed an MoU with UNHCR in 2021 to support asylum-seekers and stateless persons through information sharing, case interventions, and human rights advocacy (SAHRC 2021).

Furthermore, the CNDH, in partnership with UNHCR since 2014, has focused on capacity-building programs and consultations to uphold foreigners' rights and refugee protection. In 2021, CNDH and UNHCR signed a framework agreement to advance Morocco's National Immigration and Asylum Policy through policy studies, data exchange, and rights monitoring.⁵ Another notable example is the Border Protection Network, involving the UNHCR and the NHRIs of Bolivia, Peru, and Chile, which coordinates border missions, monitors refugee status determination, and provides asylum-related information (UNHCR 2020).

Even in the absence of formal agreements and partnerships, NHRIs can closely collaborate with UNHCR. Some have often conducted bilateral consultations and meetings with UNHCR to address issues at national level (ex. Slovenia⁶ and Lithuania (SOO 2023)). Additionally, Greece's NHRI has involved UNHCR in its project that aims to monitor, record, and report informal forced return incidents of third-country nationals from Greece to neighboring countries (GNCHR n.d.).

⁵ In an email communication (24/09/2024), the CNDH has provided the information about the partnership with UNHCR.

⁶ Human Rights Ombudsman RS. (2021, May 28) Ombudsman Svetina Meets with the Representative of the UN High Commissioner for refugees. <https://www.varuh-rs.si/en/news/news/ombudsman-svetina-meets-with-representative-of-the-un-high-commissioner-for-refugees>.

2.5. Monitoring of Situations, Including at Borders

The independent and effective monitoring function of NHRIs is particularly important in preventing and exposing human rights violations at borders. They can be a critical source of information on developments there (ENNHRI 2022). This research finds that many NHRIs have indeed been active in field monitoring of refugee and asylum seeker rights on the border, during the period covered (2019-2024). European NHRIs (Croatia (ENNHRI and HRO RC 2021)), Greece (see below (ENNHRI and GNCHR 2021)), and Slovenia (ENNHRI and HRO RS 2021)) have contributed to ENNHRI's research on strengthening human rights accountability on borders. Other NHRIs have been present on their main border crossing areas by conducting field visits to monitor the situation of unaccompanied minors (ex. Chile (INDH 2023)) and have sometimes made their presence at borders more permanent by opening field offices (ex. Bolivia (DP 2023)). NHRIs can also establish fact-finding commissions in response to violent and tragic events at border crossings to identify potential human rights violations (ex. Morocco (CNDH 2022)).

Some NHRIs make use of their mandate as NPM to inspect detention facilities, including immigration and asylum centers (ex. South Africa and Croatia (see below)) and regularly monitor police stations at the borders (ex. Slovenia⁷). NHRIs can visit regular detention premises with a focus on foreign nationals detained, although not necessarily with a focus then on the right to seek asylum nor non-refoulement (ex. Pakistan⁸). Other NHRIs, while not mandated as NPM, can still proceed with visits to immigration detention facilitation (ex. Australia⁹).

NHRIs may be present in border areas, but do not necessarily actively monitor pushbacks due, as reported, to ethical concerns, limited human resource to do so and/or the difficulty in anticipating the exact locations where pushbacks will occur (ex. Lithuania¹⁰).

Despite the abovementioned initiatives, and while it should still be stressed that not all initiatives in this respect are necessarily documented or made public by NHRIs. There is overall, limited evidence of consistent efforts

⁷ This information was provided by the Slovenian Ombudsman via email communication (05/07/2024).

⁸ NCHRP. (2022). The Plight of Afghan Refugees Incarcerated in Central Prison, Karachi. <https://nchr.gov.pk/wp-content/uploads/2022/12/The-Plight-of-Afghan-Refugees.pdf>.

⁹ AHRC. (2020). Inspections of Australia's immigration detention facilities 2019 Report. <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention/> / AHRC. (2024, April 19). Inspection report: 'serious concerns' at Yongah Hill Detention Centre. <https://humanrights.gov.au/about/news/inspection-report-serious-concerns-yongah-hill-detention-centre>.

¹⁰ This information was provided by the SOO via email communication (10/07/2024).

being deployed and maintained overtime in monitoring and documenting violations at borders, and likely to address the magnitude of challenges to non-refoulement and other key principles such as non-penalization. As hinted to, this may to some extent result from NHRIs facing operational challenges and a lack of capacity and human resources to do so to a level that the national context demands. Still, NHRIs can and have sometimes enhanced their monitoring and reporting needs by collaborating with external organizations, including NGOs as well as international organizations such as the OHCHR (see Ethiopia below) and UNHCR (see section 3.4).

Ombudswoman Of The Republic Of Croatia

The Croatian Ombudsman is a notable example of how NHRIs can use their NPM mandate to monitor border situations. In 2021, the Ombudswoman conducted several investigations into alleged illegal conduct by police officers at the border, including a case of denied access to international protection at a detention center. It also conducted unannounced visits to Stara Gradiška Border Police Station, and follow-up visits at Trilj Transit Detention Centre and Imotski Border Police Station (ENNHRI and HRO RC 2021). The Croatian Ombudsman for Children also sits on the advisory boards of the Croatian Independent Monitoring Mechanism (IMM), and is tasked to make recommendations to enhance the effectiveness and independence of the mechanism's work (Croatia Law Centre 2024).

Greek National Commission for Human Rights (GNCHR)

The GNCHR, in collaboration with UNHCR and civil society, effectively monitors cases of informal forced returns. The Recording Mechanism of Informal Forced Returns was established in September 2021 as a collaborative effort. It aims to uphold the principle of non-refoulement and ensure accountability of human rights violations. By employing a standardized, transparent, and scientific recording methodology, the Mechanism seeks to strengthen the credibility of reported incidents and promote greater accountability (GNCHR n.d.). The first interim report, published in January 2023, documented 50 incidents, including the return of six refugees to Turkey despite them having been granted international protection (GNCHR 2023c). The most recent document prepared by the Recording Mechanism of Informal Forced Returns is the 2023 Annual Report (available in Greek) (GNCHR 2023a).

Ethiopian Human Rights Commission (EHRC)

The collaboration between EHRC and OHCHR was crucial in uncovering severe human rights abuses during the Tigray conflict. Their collaborative

investigation produced a comprehensive report on the human rights abuses suffered by the Eritrean refugees, documenting killings, displacement, disappearances, and harassment by both the Ethiopian Defense Forces (EDF) and Tigray forces. This partnership was essential in revealing violations such as the EDF's breach of the principle of non-refoulement, where refugees were forcibly returned to Eritrea. The joint effort underscored the importance of international cooperation in holding violators accountable and highlighting humanitarian crises (EHRC and OHCHR 2021).

2.6. Legal and Policy Advice and Initiatives

NHRIs have an advisory function that enables them to provide recommendations to the Government and other State institutions on ways to improve their human rights record (UNHCR 2020). Several among those surveyed have been actively identifying and challenging inconsistencies in draft immigration bills or proposed amendments that do not align with international standards, particularly concerning non-refoulement and the right to asylum (see Lithuania, the UK, Australia and Slovenia below). In some instances, NHRIs have been directly invited to share their views, recommendations, and analysis with relevant parliamentary committees (see Lithuania below). They have also made recommendations to the government, focusing on public policies and issues such as providing asylum-seekers with information about national procedures and border management (see Slovenia below). Some NHRIs have urged their governments to ratify the 1951 Convention Relating to the Status of Refugees (ex. Jordan (JNCHR 2017), Malaysia (SUHAKAM 2022a) and Qatar (NHRC QA 2017)). They may also suggest authorities to consider adopting, where not yet in place, a national law providing clear ground for international protection to be granted, following status determination (see Morocco below). However, evidence of clear and explicit statements thereof is rather exceptional. Qatar's NHRI has recommended the enactment of a political asylum law that defines the conditions for granting political asylum, to which the government has responded by issuing Law No. 11 of 2018 on Political Asylum. The law also established the 'Refugee Affairs Committee,' comprising members from the Ministry of Interior, Ministry of Foreign Affairs, Ministry of Justice, State Security Agency, and the National Human Rights Committee.¹¹ In 2022, one of the members of the Indian NHRI, quoted in a press release from the institution (NHRC IN 2022), called, during a forum, for the enactment of a 'national law on refugees and asylum seekers to overcome *ad hocism* and

¹¹ This information was provided by the QNHRC via email communication (26/08/2024).

confusion as these may lead to subjectivity and unnecessary litigation'. This arguably, still falls short of an institutional statement and clear recommendation.

Seimas Ombudspersons' Office (SOO) - Lithuania

In 2021, the SOO advised against proposed amendments to the Law on the Legal Status of Aliens, citing inconsistencies with human rights standards, including fast-tracking asylum applications, restricting asylum rights in cases of mass influx, and ambiguous provisions on the restriction of freedom of movement which would amount to detention without a court's decision (SOO 2021). In 2022, the SOO raised similar concerns about proposed amendments to the Law on the State Border, warning they could legalize pushbacks (SOO n.d.). Although the SOO advocated for safeguards, such as a commitment against pushbacks of those fleeing persecution or conflict, the 2023 legislation passed without these proposed safeguards.¹²

Equality And Human Rights Commission (EHRC) – United Kingdom

The EHRC has Parliamentary authority to advise on the equality and human rights impacts of laws and proposed laws. On refugee rights, the EHRC submitted several Parliamentary briefings in 2023 (March 27, April 25, May 10, and June 28) regarding the Illegal Migration Bill, warning that it could breach the UK's international obligations, including non-refoulement (EHRC 2023). In April 2023, it also provided written evidence to the Joint Committee on Human Rights (JCHR) on the same matter (EHRC 2023a). Additionally, in January 2024, the EHRC advised the JCHR and the House of Lords on the Safety of Rwanda (Asylum and Immigration) Bill, cautioning that it could infringe Article 13 of the ECHR by limiting courts' ability to reassess refoulement risks, declaring Rwanda a safe country despite past non-refoulement violations, and potentially breaching Articles 3 and 13 of the ECHR, Article 33(1) of the Refugee Convention, Article 3(1) of the UN Convention against Torture, and Articles 6 and 7 of the ICCPR (EHRC 2024).

Defensoría Del Pueblo Of Peru

The Defensoría del Pueblo monitors the implementation of Peru's Legislative Decree on Migration, related regulations, and the National Policy on Migration, advising the Superintendencia Nacional de Migraciones, the Ministry of Foreign Affairs, and the Council of Ministers (DP 2023a). In 2021, during the militarization of the Tumbes border, the Defensoría recommended to the Ministries of Foreign Affairs and Defense that border

¹² This information was provided by the SOO via email communication (10/07/2024).

management integrate human rights and intersectionality principles in line with Peru's international obligations. This led to a gradual demilitarization, though migration control was reinforced along the Tumbes border and nearby routes (DP 2024).

Australian Human Rights Commission (AHRC)

In April 2024, the AHRC advised the Senate Standing Committee on Legal and Constitutional Affairs against passing the Migration Amendment (Removals and Other Measures) Bill 2024. The AHRC raised concerns about potential human rights violations related to the bill's broad language on deportation proceedings, specifically 'removal pathway directions' that expedite non-citizen removals. The Commission warned that individuals with valid protection claims, including those under the fast-track system, could be removed without adequate reassessment, risking violations of the Refugee Convention, articles 6 and 7 of the ICCPR, and article 3 of the Convention against Torture (AHRC 2024a).

Human Rights Ombudsman Of The Republic Of Slovenia

The Human Rights Ombudsman of Slovenia has consistently sought clarifications from the Ministry of Internal Affairs on its policies. In 2020, after reviewing conditions at the Foreigner Center in Postojna and delays in asylum processing, the Ombudsman issued recommendations to the Ministry (HRO RS 2020). In 2022, he met with the new Minister, urging public disclosure of findings on police handling of asylum seekers, especially forced returns (HRO RS 2022). The Ministry accepted this recommendation and now publishes forced return monitoring reports from a Slovenian NGO on its website (HRO RS 2023).

National Human Rights Council Of Morocco (CNDH)

The CNDH has been instrumental in promoting the rights of refugees (Zaanoun 2023). Following a 2013 report advocating for significant changes in asylum and migration policies (CNDH 2013), it has continued to push for the implementation of a comprehensive asylum law, (such as Draft Law No. 66-17) (CNDH 2020a). This pending law aims to ensure the effective recognition of refugee status and uphold the principle of non-refoulement. In its latest Annual Report (2023), the CNDH has continued to advocate for stronger legal protections, calling for the approval of Draft Laws No. 72.17 and 97.21 to expand migrant rights, protect asylum seekers, respect the principle of non-refoulement and fully acknowledge UNHCR refugee status by issuing residence cards (CNDH 2023b).

2.7. Public Advocacy

NHRIs play a crucial role in advocating for the protection of human rights and raising awareness about human rights abuses. Institutions may undertake a variety of initiatives to promote human rights, such as ‘human rights education and training; public awareness initiatives, including campaigns, local events; media strategies, including press conferences and press releases; publications, including general information pamphlets, annual and special reports, website material and material developed for a target audience; seminars and/or workshops; community-based initiatives; and policy development, to ensure that knowledge is developed and disseminated’ (OHCHR 2010).

The majority of the NHRIs surveyed have used annual reporting to highlight issues related to refugee rights (ex. Greece, Lithuania and Slovenia). Additionally, NHRIs have issued press releases or public statements in reaction to specific events at borders, exposing and denouncing practices such as collective expulsions and pushbacks (see Malaysia, Thailand and Slovenia below). They called on governments to ensure access across the border and to implement policies consistent with international standards, including non-refoulement. NHRIs can also intervene in specific individual cases and plead with governments to halt deportations, as illustrated in the case of an Uyghur activist facing extradition from Morocco (Yabiladi.com 2024; CNDH 2021). In December 2021, the President of the CNDH urged the Government not to extradite him to China, citing Morocco’s obligations under the United Nations Convention against Torture. Since 2021, the CNDH has been monitoring the situation of this individual.¹³ Some have also issued thematic reports to highlight specific issues (see Pakistan below) and prepared material developed for specific audiences, such as the teaching resources for school children on refugee issues (ex. Australia) (AHRC, n.d.).

National Human Rights Commission Of Thailand (NHRCT)

In 2021, the NHRCT was concerned about the unrest along the Thailand-Myanmar border and urged the government to assist Myanmar refugees and Thai nationals who live in border areas and provide humanitarian assistance to displaced people. The NHRCT called for respecting the international non-refoulement principle throughout the process (NHRC TH 2021a).

¹³ In an email communication (24/09/2024), the CNDH communicated that the person has not been deported despite being the subject of an extradition request from China.

National Commission For Human Rights Of Pakistan (NCHRP)

In February 2024, the NCHRP issued a technical note on child protection for ‘children on the move,’ urging the development of a comprehensive asylum policy and a screening mechanism with UNHCR to prevent forced returns of vulnerable children (NCHR PK 2024).

Human Rights Commission Of Malaysia (SUHAKAM)

The SUHAKAM has issued press releases addressing deportation practices of asylum-seekers and unaccompanied minors from Myanmar and urged the government to stop these practices (SUHAKAM 2022a). After the start of the conflict in Gaza in October 2023, the institution advocated for the plight of the Palestinian refugees in Malaysia, urging the establishment of policies that balance humanitarian duties, national interests, and non-refoulement. The institution stated that addressing refugee issues is a collective responsibility, regardless of the government’s stance on the 1951 Refugee Convention (SUHAKAM 2023).

Human Rights Ombudsman Of The Republic Of Slovenia

The Human Rights Ombudsman of the Republic of Slovenia issued a statement in 2021 following the tragic death of a young Turkish girl who drowned in a river on the border between Slovenia and Croatia. In the statement, the Ombudsman expressed concern over the ongoing deaths and human rights abuses occurring along the migratory routes, and emphasized the need to not normalize the collective expulsion of individuals using irregular routes in search for protection. The Ombudsman urged the European Union to develop a better common policy on asylum and migration to ensure effective access for those in need and to uphold the principle of non-refoulement ((HRO RS 2021).

2.8. Review Of Individual Complaints & Judicial Engagement

Many NHRIs surveyed have the authority to investigate individual complaints of human rights violations. Non-citizens, including refugees, are generally able to submit complaints, regardless of status. For instance, the SAHRC defines a complainant as ‘any person, group or class of persons, association, organization or organ of state who lodges a complaint’ (SAHRC 2023). Many NHRIs have the authority to intervene in cases of deportation (see Mexico and Bolivia below).

Challenges were recurring in finding and interpreting information on NHRIs discharge of this aspect of their mandate. Indeed, many do not necessarily publish substantial information as to the complaints registered,

handled, or do not include disaggregated data isolating those filed by non-nationals, asylum-seekers or refugees or focused on non-refoulement (see for instance the South African NHRI, whose report referred to as the trends analysis report, which provides an overview of complaints handled in a given year) (John-Langba 2020).

Some offer a notable exception, including quantitative data on complaints filed by asylum seekers, refugees, and unaccompanied minors in its reports. Data show that there is a limited volume of relevant complaints overall (ex. Slovenia).¹⁴ Available indications of low number of complaints from asylum-seekers/refugees may indicate that they have limited access to complaint mechanisms. It could also be due to specific circumstances preventing access. There is no evidence of NHRIs taking proactive steps to improve the accessibility of their complaint mechanisms, such as providing information in multiple languages or raising awareness through NGOs or refugee-led organizations. However, once again, there may be gaps in public information about such initiatives.

NHRIs also have the authority to intervene in individual cases and provide input to national courts, either through *amicus curiae* or interventions (see Australia and Chile below). For instance, NHRIs in Slovenia, South Africa and the UK actively engage in national legal proceedings through such submissions, providing critical input on human rights considerations. Several institutions with the mandate to intervene before the court have not recently exercised this mandate concerning the principle of non-refoulement - and can sometimes actually find themselves cited as respondent in relevant cases¹⁵. Nevertheless, NHRIs have intervened in other areas of refugee rights, such as the UK one, which has addressed issues such as housing discrimination against refugees (EHRC 2019).

Some NHRIs also have the power to challenge the constitutionality and legality of legislation on relevant matters. For instance, the Slovenian NHRI requested a review of the constitutionality and legality of certain

¹⁴ In 2023, there were 2 complaints filed by unaccompanied minors and 20 complaints filed by asylum seekers/refugees. In 2022, there were 4 complaints filed by unaccompanied minors and 35 filed by asylum seekers/refugees. In 2021, there were 3 complaints filed by unaccompanied minors and 33 filed by asylum seekers/refugees. In 2020, there were 7 complaints filed by unaccompanied minors and 18 filed by asylum seekers/refugees. In 2019, there were 4 complaints filed by unaccompanied minors and 24 filed by asylum seekers/refugees. It's important to note that not all complaints are published, only those that are substantiated and require investigation by the Ombudsman.

¹⁵ The Indian NHRC is registered as second respondents in the recent ongoing case in the Supreme Court of India [Mohammad Salimullah v. Union of India. Review of Mohammad Salimullah v. Union of India. (Ongoing), WP(C) 793/17. Supreme Court of India. https://webapi.sci.gov.in/supremecourt/2017/27338/27338_2017_Order_13-Oct-2017.pdf]. For more information, see (Supreme Court Observer n.d.).

amendments to the Foreigners Act (2017), which would have allowed the National Assembly to vote on suspending the right to asylum in situations of emergency, and the police would have had the authority to reject all applications for international protection as inadmissible and deport the individuals back to the country they entered Slovenia from (Croatia Law Centre 2024). Beyond judicial engagements, NHRIs can also play a facilitating role in providing protection against forced return of individuals without legal status. For instance, Qatar's NHRI is reportedly currently assisting people who came to the country on tourist visas but are now at risk of deportation because their visas were not renewed. They are creating a list of individual cases for authorities to review and consider humanitarian solutions ¹⁶.

National Human Rights Commission Of Mexico (CNDH)

The CNDH has intervened on multiple cases of deportation. For example, in November 2023 it sent a recommendation to the Mexican Commission for Refugee Aid (COMAR) regarding the delay in issuing a certificate of recognition of refugee status to a person from Honduras. Additionally, it addressed the National Migration Institute for deciding to return the person to their home country despite the pending decision on their legal status (CNDH MX 2024). Two years prior (November 2021), it also intervened in a case involving three Haitian asylum seekers who were deported without considering their refugee status applications. The authorities failed to provide them with a French-language interpreter and did not adhere to the principle of non-refoulement (CNDH MX 2021).

Defensoría Del Pueblo Of Bolivia

In March 2022, the Ombudsman's Office initiated an *ex officio* procedure after two inspectors from the General Directorate of Immigration at Viru Viru International Airport refused entry to two Ukrainian citizens who were seeking refuge in Bolivia. The General Directorate of Immigration subsequently informed the Ombudsman that they are pursuing legal actions against the officials involved and assured that this was an isolated incident that does not reflect the stance of the Directorate or the Bolivian State (Opinión 2022, March 12).

National Human Rights Institute Of Chile

The INDH took legal actions between 2018 and 2019 for individuals who have been denied access to refugee status determination procedures due to illegal pre-admissibility practice. Following the intervention, over 150

¹⁶ This information was provided by the QNHRC via email communication (26/08/2024).

individuals who sought international protection have successfully been granted access to refugee status determination procedure. During this time, the INDH has filed 28 appeals before the Courts of Appeal (5 for Amparo and 22 for Protection) on behalf of Cuban, Colombian, and Venezuelan citizens (INDH 2019a).

Australian Human Rights Commission

The AHRC investigated a complaint involving a Sri Lankan national and found that due to an administrative error, the Department of Home Affairs failed to refer his non-refoulement claims to the Minister, risking a breach of obligations against torture upon his return. Following AHRC recommendations, the department granted him a permanent Partner visa, resulting in a positive outcome (AHRC 2019). The Commission also intervenes in court cases on refugee rights, and, notably, in the 2020 KDSP case, it argued that Australia's non-refoulement obligations should not be compromised despite the asylum seeker's criminal record, which had affected his visa eligibility (AHRC n.d.; Seal of the Federal Court of Australia n.d.).

2.9. Cooperation with International Human Rights Institutions & Mechanisms

NHRIs play a crucial role in the international human rights system by collaborating not only with human rights mechanisms but also by participating in UN processes and engaging with all UN entities (UNHCR 2020).

All NHRIs in the panel engage to some extent with international institutions, particularly those within the UN human rights system. A notable example in this regard is Morocco: the CNDH has in fact engaged with various United Nations treaty bodies in recent years. In 2021, it provided inputs for the List of Issues to be examined by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families during its 36th session, raising concerns about incidents of deportations of undocumented migrants and encouraging the Committee to question the government about the measures taken to respect the principle of non-refoulement (CNDH 2021a). It also urged the government to expedite the adoption of draft law 97.21 on asylum and conditions for granting asylum in line with the Constitution, Geneva Conventions, and the Global Compact on Refugees . Again, in its 2023 submission to the CERD, it called on the government to continue to ensure the respect for the principle of non-refoulement of asylum seekers (CNDH 2023a).

Some NHRIs are particularly proactive in engaging with UN Treaty bodies, special rapporteurs and the universal periodic review (UPR) process. For example, the GNCHR (2021) contributed to a 2021 questionnaire by the UN Special Rapporteur on Migrants, detailing restrictions on asylum claims at international borders in Greece, particularly during COVID-19. In 2023, GNCHR (2023a, 2023b) reiterated concerns about push-back practices in a submission to the Committee on the Elimination of Discrimination against Women (CEDAW) and raised similar issues with the Human Rights Committee, focusing on the lack of guarantees and remedies for those affected by ‘informal forced returns’ at the border. It also presented its findings in a 2024 European Court of Human Rights case regarding push-backs that occurred in 2019-2020 (*G.R.J. v Greece*, ECHR, 2024).

Similarly, in Australia, the AHRC (2021) engages systematically with UN Treaty bodies, while also contributing to the UPR process. In 2020, it issued a follow-up report to CEDAW, criticizing third-country processing due to unsafe conditions, delays in claim processing, poor refugee status determination, and limited resettlement options. It warned that these conditions could lead to ‘constructive refoulement’ (AHRC 2020). In 2022, the AHRC (2022) also raised concerns with the UN Committee against Torture (CAT) about Operation Sovereign Borders, highlighting flaws in the screening process that risked returning asylum seekers to dangerous situations where they could face torture or inhumane treatment. It also noted risks of refoulement due to visa cancellations under the Migration Act. In 2023, the AHRC (2023) again challenged offshore processing and prolonged detention in a report to CAT.

Finally, also the Chilean INDH addressed the CERD about concerns related to the Migration and Foreigners Bills (Concerns to the Migration Bill have also been raised before the UPR (INDH 2018)), criticizing the Bill for not including the principle of non-refoulement in sections related to entry bans and expulsion procedures. Additionally, it condemned Chilean authorities for denying asylum seekers from Venezuela, Colombia, and Cuba access to the Refugee Status Determination (RSD) process through the unlawful practice of ‘preadmissibility’. This practice imposes unauthorized requirements, unjustifiably preventing individuals from accessing refugee procedures. Since 2018, the INDH has filed 35 protection actions, 19 of which were accepted, declaring the procedures for 221 asylum seekers illegal (INDH 2019). Similar concerns about preadmissibility were raised by the INDH before the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) in 2020 (INDH 2020).

Some NHRIs are also proactive in engaging with regional human rights institutions. Notably, the Lithuanian SOO was, at the time of writing,

planning to submit a third-party intervention to the ECHR in the case of *C.O.C.G. and Others v. Lithuania*. The case concerns the pushbacks of Cuban asylum seekers from Lithuania to Belarus and the deprivation of liberty of asylum seekers. The NHRI has sought the leave to intervene, but they have informed us that they will not address the principle of non-refoulement in their submission. The specific issues they will address remain unclear.¹⁷

Similarly, the Human Rights Ombudsman of the Republic of Slovenia has been actively engaging with the EU and the Council of Europe.¹⁸ For instance, it has contributed to a joint ENNHRI report submitted to the European Commission as part of the consultation for the annual report on the state of the rule of law in the EU. In the report, the Ombudsman strongly condemned the ongoing practice of push-backs and other human rights violations (ENNHRI 2024). In 2021, the Ombudsman notified the European Commission about amendments to the Foreigners Act (ZTuj-2F), which followed previous amendments in 2017 (ZTuj-2) (see section 4.4). Despite the Constitutional Court ruling in 2019 that these amendments violated the prohibition of torture in the Constitution, the Slovenian Parliament introduced similar amendments in 2021. The Ombudsman expressed concerns that these new amendments conflict with EU law and highlighted the government's disregard for the Constitutional Court's ruling, suggesting that further petitions may be ineffective (HRO RS 2021a).

However, not all NHRIs have consistently made submissions or emphasized refugee issues in their submissions and difficulties remain in tracking submissions as many NHRIs do not necessarily make these documents public, or at least in a systematic way.

2.10. Other Activities

Some NHRIs have designed initiatives for refugee rights practitioners, especially government officials, border police officers, NGOs, and the refugee community. For practitioners, they compiled comprehensive knowledge about national legal framework, international standards, and best practices that must be followed. For asylum seekers and refugees, they provide guidance on the RSD procedure and aim to raise awareness about their rights. NHRIs can also develop alternative projects that oppose the traditional modus operandi of governments.

¹⁷ This information was provided by the SOO via email communications (10/07/2024 and 17/07/2024).

¹⁸ The Ombudsman's office has informed us via email communication that it is actively contributing to the sixth review of Slovenia under ECRI (05/07/2024).

For example, in 2020, the CNDH of Morocco and the Casablanca-Settat Regional Commission, with the support of the UNHCR, held a training session for NGO practitioners. This covered Morocco's entry, residence, and asylum laws, boosting NGOs' capacity to address refugee issues (CNDH 2020).

In Greece, the GNCHR also led training for Ministry officials. It hosted seminars for security forces and public servants across Greece on EU fundamental rights in refugee reception conditions, as well as specialized workshops for parliament members, judges, and lawyers in 2024 (GNCHR 2024). Furthermore, Chile's INDH trained 30 border police officers in Tarapacá on identifying asylum seekers and trafficking victims, covering rights guarantees, return/refoulement procedures, and the Migration Law in 2023 (INDH 2022).

As an example of raising awareness, Peru's Defensoría del Pueblo and the South African Human Rights Commission both engaged in writing guides available to refugees on access to documentation (birth certificates, citizenship documents, immigration visas), RSD process, access to rights, protections against deportation and guidance for human rights violations (DP 2020; SAHRC n.d.).

Conclusions

This desk-based research has explored the extent to which 20 A-status NHRIs address refugee protection and the principle of non-refoulement. It reveals that only a few do prioritize these agendas in their strategic plans. Public commitments are scarce, and engagement in international thematic forums such as the Global Refugee Forum remains to date extremely limited. Preferences for generic or attenuated language like "migrants" or "human mobility" over references to "asylum-seekers", "refugees" and "asylum" or "forced movements" in some of their statements are suggestive of hesitations to frontally address international protection issues as such. Other challenges – such as operational constraints, lack of resources and possibly of independence – certainly stand in the way and demand greater attention.

Still, in practice, and even if an intermittent fashion, many NHRIs deploy meaningful monitoring and reporting efforts, notably at borders and liaising also with field-based NGOs. Several also provide sound legal and policy advice to governments or carry out various forms of judicial engagement and regularly cooperate with international human rights institutions such as UN treaty bodies. A few, such as the Human Rights Ombudsman of the

Republic of Slovenia and the Greek National Commission for Human Rights, have been proactive in deploying strategic and innovative efforts.

The research also suggests untapped potential in developing partnerships with OHCHR and UNHCR – including for capacity-building initiatives. While they can offer a platform for knowledge-sharing and joint advocacy efforts, global and regional networks of NHRIs remain also unevenly active in this field. In conclusion, there is a pressing need for greater prioritization, strategic focus and resource allocation if such institutions are to make a difference in making sure the rights of refugees and the principle of non-refoulement are upheld in line with international standards, both in law and practice.

Annex I - Terminology

Refugee: The 1951 Refugee Convention defines a refugee as a person who ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country.’ Regional legal instruments in Africa and the Americas have broadened this definition by including people who are compelled to leave their country because of ‘external aggression, occupation, foreign domination, internal conflicts, massive violation of human rights or events seriously disturbing public order’ (UNHCR Refugees, n.d.). In addition, individuals who are outside their country of origin (typically because they have been forcibly displaced across international borders) but who may not qualify as refugees under international or regional law, may in certain circumstances also require international protection, on a temporary or longer-term basis. This may include, for example, persons who are displaced across an international border in the context of disasters or the adverse effects of climate change but who are not refugees. In some instances, people who fear serious harm in their country of origin would in circumstances where international refugee law is not applicable be protected against return (UNHCR, 2017).

Non-Refoulement: The prohibition of refoulement is the cornerstone of refugee protection. It derives from Article 33 (1) of the 1951 Refugee Convention, which provides that ‘[n]o contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’. In addition, international human rights law has made

non-refoulement an integral component of the prohibition of torture and cruel, inhuman or degrading treatment or punishment, enshrined in Article 7 of the International Covenant on Civil and Political Rights (ICCPR). The United Nations (UN) Human Rights Committee (HRC), which monitors the implementation of the ICCPR, has interpreted Article 7 – and to some extent, Article 6 on protecting the right to life – as implying that return to torture and other forms of ill-treatment is also prohibited. The prohibition of refoulement is also explicitly stipulated in Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which states that ‘[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture’. Moreover, the principle of non-refoulement is considered to be a rule of international customary law, and hence binds all states – regardless of whether they are parties to these international conventions (FRA, 2016).

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