

# 1. Introduction

National Human Rights Institutions (NHRI) have a unique position as central independent state actors in the promotion and protection of human rights at the national level and as bridges between the national and international protection of human rights. This makes them essential participants in an all-of-society effort to address the human rights consequences of climate change and climate action.

This Practical Guidance for NHRIs on Addressing Human Rights and Climate Change<sup>1</sup> aims to provide information about how international human rights mechanisms have addressed the relationship between climate change and human rights; provide information about how members of the Global Alliance of National Human Rights Institutions (GANHRI) can engage with human rights and other international mechanisms on climate change; and provide a mechanism for members to share their experiences with climate action.

## 1.1 NHRIs, Climate Change and Human Rights

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The 2020 Global Alliance of National Human Rights Institutions (GANHRI) Annual Conference adopted an outcome statement – [\*\*Climate Change: The Role of National Human Rights Institutions\*\*](#) – highlighting that, “Climate change and its impacts are one of the greatest challenges of the day, directly and indirectly impacting on the full enjoyment of human rights, including social, economic and cultural rights as well as civil and political rights, the right to development and the right to a healthy environment.”<sup>2</sup> GANHRI and its membership committed individually and collectively to playing an active role in promoting human rights-based climate action.<sup>3</sup> The conference statement also sets out numerous practical ways that NHRIs can work for climate justice. Climate change and human rights had already been identified as a high-priority theme for GANHRI in its strategic plan 2020 – 2022.<sup>4</sup>

**At the national level, NHRIs can:**

- Report to and advise government and other stakeholders on a human-rights-based approach to climate mitigation and adaptation measures;
- Promote sound policy measures related to climate change and the environment;
- Promote and monitor environmental, social and human rights risk and impact assessments prior to the start of projects;
- Advocate for climate action policies that integrate the expertise of local communities and traditional knowledge of indigenous peoples;

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<sup>1</sup> Hereafter referred to as the *Practical Guidance*.

<sup>2</sup> <https://ganhri.org/outcome-statement-nhris-and-climate-change/>

<sup>3</sup> For the purposes of this *Practical Guidance*, climate action is action to combat climate change and its impacts.

<sup>4</sup> <https://ganhri.org/strategy/>

- Include climate change and environmental perspectives in the investigation of complaints and base advocacy and policy advice on the findings;
- Support individuals who are negatively impacted by climate change or mitigation measures to have an effective access to remedy; and
- Advocate protection for environmental human rights defenders, who can face various forms of violence and prosecution.

**At the international level, NHRIs can:**

- Play a ‘bridging’ role to support the exchange of information between policymakers, civil society and other stakeholders, including groups most affected by climate change
- Engage in national, regional and international processes to promote human-rights-based action on climate change, including in relation to nationally determined contributions (NDCs) under the Paris Agreement.<sup>5</sup>

It is for each NHRI to determine how its work is relevant to climate action. There is no one size fits all answer given substantial differences among NHRIs and their mandates and circumstances. Moreover, some NHRIs have been working on issues related to climate change for many years; some show no sign of working on issues related to climate change any time soon; and many others lie somewhere in between. It is important that NHRIs share their experience as peers to increase their common understanding of why and how climate change is relevant to the promotion and protection of human rights.

The UN High Commissioner for Human Rights has warned that the triple planetary crisis of climate change, pollution and nature loss now represents one of the greatest human rights challenges of our era, and that the response to the climate emergency must be an all-of-society endeavour.<sup>6</sup> It is clearly established that climate change

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<sup>5</sup> <https://ganhri.org/outcome-statement-nhris-and-climate-change/>. The text and a brief description of the Paris Agreement can be found at <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>. Other multilateral environmental agreements mentioned in this Practical Guidance include:

- [United Nations Framework Convention on Climate Change. New York, 9 May 1992](#)
- [Kyoto Protocol to the United Nations Framework Convention on Climate Change. Kyoto, 11 December 1997](#)
- [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Aarhus, Denmark, 25 June 1998](#)
- [Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. Escazú, 4 March 2018](#)

Their texts and lists of the Parties to them are found at Multilateral Treaties Deposited with the Secretary-General, CHAPTER XXVII, Environment, CHAPTER XXVII : Environment, <https://treaties.un.org/Pages/Treaties.aspx?id=27&subid=A&clang=en>.

<sup>6</sup> Statement by Michelle Bachelet, UN High Commissioner for Human Rights, 48th session of the Human Rights Council, Item 2, 13 September 2021 at <https://reliefweb.int/report/world/environmental-crisis-high-commissioner-calls-leadership-human-rights-council-member>. In her statement, the High Commissioner noted that: “National human rights institutions are also responding to the urgent need for action. At its annual conference in December of last year, the Global Alliance of National Human Rights Institutions focused on climate change and committed to concrete actions to support rights-based climate action and improve monitoring and reporting on these issues. My Office and others, under the umbrella of the [UN Secretary-General’s] Call to Action [for Human Rights], are working closely with NHRIs to support realization of these commitments.”

prejudices the enjoyment of a wide range of rights, such as the rights to life, water and sanitation, food, health, housing, equality and non-discrimination, self-determination, culture, development and a clean, healthy and sustainable environment in many locations.<sup>7</sup>

As climate change progresses it will prejudice the realisation of rights in more ways in more places. Reports of the Inter-government Panel on Climate Change portray clearly the harmful social and economic effects of climate change, and it takes little imagination to extrapolate from there to the impact of climate change on human rights.<sup>8</sup> There are also risks that some measures to address climate change will fail to comply with relevant human rights norms and standards. NHRIs' unique position as central independent state actors in the promotion and protection of human rights at the national level and as bridges between the national and international protection of human rights makes them essential participants in an all-of-society effort to address the human rights consequences of climate change and climate action.<sup>9</sup>

GANHRI is committed to supporting NHRIs worldwide to make progress on these commitments, individually and collectively.<sup>10</sup> A central element of that commitment is the establishment of the NHRI Caucus on Human Rights and Climate Change to facilitate the exchange of knowledge, experiences and good practices among NHRIs across all regions.<sup>11</sup>

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<sup>7</sup> Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, A/HRC/10/61, 15 January 2009. At <https://undocs.org/en/A/HRC/10/61>. See also: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/31/52, 1 February 2016, paras. 23-30 at <https://undocs.org/A/HRC/31/52>. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/74/161, 15 July 2019, paras. 26-51 at <https://undocs.org/A/74/161>. See also UNEP and Sabin Center for Climate Change Law, *Climate Change and Human Rights*, December 2015 at [https://wedocs.unep.org/bitstream/handle/20.500.11822/9530/-Climate Change and Human Rights-human-rights-climate-change.pdf.pdf?sequence=2&amp%3BisAllowed=](https://wedocs.unep.org/bitstream/handle/20.500.11822/9530/-Climate%20Change%20and%20Human%20Rights-human-rights-climate-change.pdf.pdf?sequence=2&amp%3BisAllowed=).

<sup>8</sup> IPCC, Working Group II, *Climate Change 2022: Impacts, Adaptation and Vulnerability – Summary for Policymakers*, 28 February 2022, at: [https://report.ipcc.ch/ar6wg2/pdf/IPCC\\_AR6\\_WGII\\_SummaryForPolicymakers.pdf](https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf). See also: IPCC, *Special Report: Global Warming of 1.5°C*, 2018 at <https://www.ipcc.ch/sr15/chapter/chapter-4/>. One could also listen to the victims of slow and sudden onset natural disasters caused or amplified by climate change, or one could read David Wallace Wells, *The Uninhabitable Earth: A Story of the Future*, Allen Lane, 2019.

<sup>9</sup> Even in those countries where NHRIs focus primarily on non-discrimination, they have a crucial role to play as climate change has differentiated effects according to gender, socio-economic status, age and many other criteria. One aspect of differentiated effect that demands more attention from a human rights perspective is the difference between how climate change affects those alive today and how it will affect future generations not yet born. See: Neubauer, et al. v. Germany, German Federal Constitutional Court, 24 March 2021, paras. 4 and 182-195 at [http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210429\\_11817\\_judgment-1.pdf](http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210429_11817_judgment-1.pdf). See also the Norwegian National Human Rights Institution's (NIM) *Submission to the UN Committee on the Rights of the Child regarding the General Comment no. 26 on Children's Rights and the Environment with a Special Focus on Climate Change* at section 2.4, pp 6-8 at: [https://www.nhri.no/2022/nims-innspill-til-fns-barnekomite-om-barns-rettigheter-miljo-og-klima-etter-barnekonvensjonen/nim\\_submission-to-crc-general-comment-no-26/](https://www.nhri.no/2022/nims-innspill-til-fns-barnekomite-om-barns-rettigheter-miljo-og-klima-etter-barnekonvensjonen/nim_submission-to-crc-general-comment-no-26/).

<sup>10</sup> GANHRI, *Climate change and human rights* at <https://ganhri.org/climate-change-and-hr/>. See also Strategic Plan 2020-2022, at [https://ganhri.org/wp-content/uploads/2020/12/GANHRI\\_Strategic-Framework\\_final.pdf](https://ganhri.org/wp-content/uploads/2020/12/GANHRI_Strategic-Framework_final.pdf).

<sup>11</sup> <https://ganhri.org/ganhri-and-climate-change/>

This *Practical Guidance* aims at offering something to the widest possible range of national human rights institutions. It is premised on the recognition that while consistency with the Paris Principles<sup>12</sup> is their common attribute, national human rights institutions differ greatly in their mandates, size, resources and operating environment. There are many kinds of activities that GANHRI members collectively can take in their work on climate action and human rights, even if few members will engage in all activities.<sup>13</sup>

Mandated activities of NHRIs can include: Monitoring; reporting (national and international); investigation of complaints; support of individuals or communities seeking remedies; litigation; research and analysis; policy development; technical advice to government, business and others; educating and raising awareness; dialogue facilitation; advocacy (national and international); human rights impact assessment; and implementation of legislation.

Descriptions of NHRI engagement on climate change are provided in Annex II of this *Practical Guidance*, and it is foreseeable that the number and kinds of examples will expand as NHRIs engage further on climate action.

Even if some NHRIs have been attentive to climate action for many years, most NHRIs' work on climate change is in its early stages. Due to the growing urgency of addressing the climate emergency and the unique position of NHRIs, they need to urgently bolster their capacity to deal with climate change and its impacts by, inter alia, meaningfully engaging with climate law and policy making and its implementation, by contributing to holding state and private actors to scrutiny for their action on climate change, and by helping to ensure that measures to mitigate and adapt to climate change respect applicable human rights standards.

This *Practical Guidance* seeks to facilitate access to knowledge and tools to help NHRIs engage in these activities. It is conceived of as a living document that will evolve to reflect developments in climate action and, more importantly, relevant NHRI experience. It aims to be a tool for GANHRI and its Climate Caucus to develop a community of climate action practice among GANHRI's members that contributes to mutual awareness-raising, knowledge-sharing and capacity-building activities on climate action.<sup>14</sup>

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<sup>12</sup> UN Principles relating to the Status and Functioning of National Institution for the Protection and Promotion of Human Rights (Paris Principles), UN General Assembly resolution A/RES/48/134 of 20 December 1993. See also <https://ganhri.org/paris-principles/>.

<sup>13</sup> In chapter 5 of their 2020 Handbook *Climate Change and Human Rights: The Contributions of National Human Rights Institutions*, the German Institute for Human Rights and the Center for International Environmental Law provide a wide range of examples of how NHRIs have engaged on climate change to date at: <https://www.institut-fuer-menschenrechte.de/publikationen/detail/climate-change-and-human-rights#> or <https://www.ciel.org/reports/climate-change-and-human-rights-the-contributions-of-national-human-rights-institutions/>.

<sup>14</sup> The aim is to update the Practical Guidance regularly to reflect significant developments in the bodies, mechanisms and processes that it covers.

## 1.2 Approaches to Climate Action

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There are two principal objectives for NHRIs' engagement on climate action.

- To encourage governments and businesses to mitigate greenhouse gas emissions and to adapt and build resilience to the effects of climate change.
- To ensure that mitigation and adaptation measures are consistent with human rights.

In most respects NHRIs work on climate action<sup>15</sup> will rely on practices and procedures applied to dealing with other human rights issues. Even the cross-border aspects of climate change are not unique: migration, human trafficking and aspects of business responsibility for human rights are among other human rights issues with a cross-border character. Where climate change differs is in the science of the issue and the magnitude and urgency of the existential threat that it poses to humanity and human rights everywhere. Tried and tested approaches to promoting and protecting human rights can be applied to climate action; new approaches will also be needed – for instance to engage with United Nations Framework Convention on Climate Change (UNFCCC) bodies and processes, which are described below in Section 3.

Where governments and businesses fail to mitigate<sup>16</sup> or adapt<sup>17</sup> to climate change or to repair loss and damage caused by climate change, or fail to do so adequately, human rights can be invoked as a means of encouraging them to act. NHRIs have an important role to play in encouraging governments and businesses to act, in influencing how they act, and in holding governments and businesses accountable for fulfilling the commitments that they make to act. Over the past few years there has been an increase in litigation against governments and businesses invoking human rights standards. NHRIs could contribute their knowledge and expertise to such litigation as third parties.

Another role for NHRIs in climate action is in working to ensure that where governments and business do act, their mitigation and adaptation measures respect applicable human rights obligations and standards. Successfully meeting the challenge of limiting the global temperature increase to 1.5°C above pre-industrial

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<sup>15</sup> There is no single common definition of climate action. For the purposes of this Practical Guidance, it is intended to cover efforts to reduce greenhouse gas emissions, strengthen adaptive capacity and resilience to adapt to the effects of anthropogenic climate-change and remedy loss and damage caused by anthropogenic climate change.

<sup>16</sup> The Intergovernmental Panel on Climate Change defines mitigation as: A human intervention to reduce emissions or enhance the sinks of greenhouse gases. Glossary for the Synthesis Report IPCC Fifth Assessment Report at: [https://www.ipcc.ch/site/assets/uploads/2019/01/SYRAR5-Glossary\\_en.pdf](https://www.ipcc.ch/site/assets/uploads/2019/01/SYRAR5-Glossary_en.pdf).

<sup>17</sup> The IPCC defines adaptation as: The process of adjustment to actual or expected climate and its effects.

In human systems, adaptation seeks to moderate or avoid harm or exploit beneficial opportunities. In some natural systems, human intervention may facilitate adjustment to expected climate and its effects. Idem.

levels (or even well below 2 degrees Celsius)<sup>18</sup> before it is too late will require economic, social and cultural transformations unprecedented in their speed and scope.<sup>19</sup> In such circumstances, it is foreseeable that human rights will occasionally be violated unless serious sustained attention is given to ensuring the consistency of transformational measures with human rights.<sup>20</sup> The relatively limited experience to date with mitigation and adaptation already provides examples of negative consequences where measures were taken without sufficient attention to the human rights of affected parties.<sup>21</sup>

NHRIs have an important contribution to make to efforts to ensure that climate change mitigation and adaptation measures respect human rights norms and standards<sup>22</sup>. The most effective measures will be preventive and avoid violations thorough measures such as meaningful inclusive informed public consultations about proposed measures

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<sup>18</sup> Paris Agreement, article 2.

<sup>19</sup> IPCC, Special Report: Global Warming of 1.5°C, 2018, Chapter 4: Strengthening and Implementing the Global Response, p. 317. <https://www.ipcc.ch/sr15/chapter/chapter-4/>

“The speed of transitions and of technological change required to limit warming to 1.5°C above pre-industrial levels has been observed in the past within specific sectors and technologies. But the geographical and economic scales at which the required rates of change in the energy, land, urban, infrastructure and industrial systems would need to take place are larger and have no documented historic precedent [...]. To reduce inequality and alleviate poverty, such transformations would require more planning and stronger institutions (including inclusive markets) than observed in the past, as well as stronger coordination and disruptive innovation across actors and scales of governance.”

<sup>20</sup> Although the IPCC Working Group II report Summary for Policymakers published on 28 February 2022 includes only one express mention of human rights, its analysis in connection with avoiding maladaptation and climate resilient development highlights the relevance of human rights standards and processes. That analysis speaks repeatedly in terms of equity and justice. Climate justice is defined as comprising justice that links development and human rights to achieve a rights-based approach to addressing climate change. IPCC, Working Group II, Climate Change 2022: Impacts, Adaptation and Vulnerability – Summary for Policymakers, 28 February 2022, at: [https://report.ipcc.ch/ar6wg2/pdf/IPCC\\_AR6\\_WGII\\_SummaryForPolicymakers.pdf](https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf). Note in particular footnote 14 at page 6 which defines climate justice.

<sup>21</sup>For example: European Center for Constitutional and Human Rights, Wind park in Mexico: French firm disregards indigenous rights at <https://www.ecchr.eu/en/case/wind-park-in-mexico-french-firm-disregards-indigenous-rights/>; Licence for wind power development on Fosen ruled invalid as the construction interferes with Sami reindeer herders' right to enjoy their own culture, Supreme Court judgment 11 October 2021, HR-2021-1975-S (case no. 20-143891SIV-HRET, case no. 20-143892-SIV-HRET and case no. 20-143893SIV-HRET) at: <https://www.domstol.no/en/enkelt-domstol/supremecourt/rulings/2021/supreme-court---civil-cases/hr-2021-1975-s/>; The Report of the High Level Independent Fact-Finding Mission to Embobut Forest in Elgeyo Marakwet County at: <https://www.knchr.org/portals/0/grouprightsreports/KNCHR-Fact-Finding-Mission-to-Embobut-Forest.pdf>. One might argue that the failure of the French government to take account of procedural human rights in making its decision to increase fuel taxes in 2018 contributed to the gilets jaunes backlash.

<sup>22</sup> The German Institute for Human Rights recently published a detailed study of numerous cases where measures for climate mitigation and adaptation had negative human rights impacts. It examines the reasons for the negative impacts and makes recommendations to policy makers and those who design measures for climate mitigation and adaptation on how to avoid those impacts. The Human Rights Impacts of Climate Change Mitigation and Adaptation Measures, April 2022 at: [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere\\_Publikationen/Climate\\_Change\\_Mitigation\\_and\\_Adaptation\\_Measures.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Climate_Change_Mitigation_and_Adaptation_Measures.pdf).

and human rights impact assessments.<sup>23</sup> Where climate change mitigation or adaptation measures fail to respect the human rights of affected parties, NHRIs have roles to play in receiving complaints, investigating, reporting and promoting dispute resolution and remedies – just as in other instances of human rights violations. Human rights provide a universally established framework that can contribute to the legitimacy, acceptance and popular support for changes required by climate action.<sup>24</sup>

Partnerships and outreach will be essential to NHRI effectiveness in connection with climate action. This could involve assisting already convinced partners in applying an effective human-rights-based approach to climate action<sup>25</sup> or convincing other partners and potential partners to take a human-rights-based approach to climate action. Human rights education offered by NHRIs should address climate action, but NHRIs should also endeavour to ensure that climate change education<sup>26</sup> also addresses human rights.

In their work on climate action, NHRIs will strike a balance between their efforts at the national level and at the international level, regionally and globally. In a world of sovereign states, most changes need to take place at the national level, but as a global challenge, climate action also requires pursuit of the highest possible international

The UN Office of the High Commissioner for Human Rights identifies the essential content of a human rights-based approach as the following:

(a) As policies and programmes are formulated, the main objective should be to fulfil human rights;

(b) The rights holders and their entitlements must be identified, as must the corresponding duty bearers and their obligations, in order to find ways to strengthen the capacities of rights holders to make their claims and of duty bearers to meet their obligations;

(c) Principles and standards derived from international human rights law, especially the Universal Declaration of Human Rights and the core universal human rights treaties, should guide all policies and programming during all phases of the process.

OHCHR, Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38, 2021, p. 42 at <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-38-frequently-asked-questions-human-rights-and-climate>.

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<sup>23</sup> See the discussion of procedural human rights at heading 5.1 below. For human rights impact assessment and due diligence, see heading 5.4 below.

<sup>24</sup> Since its second annual resolution on human rights and climate change in 2009, the Human Rights Council has stressed:

that human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change, thereby promoting policy coherence, legitimacy and sustainable outcomes. (Resolution 47/24)

<sup>25</sup> For a discussion of human rights -based approaches, see heading 5.3 below.

<sup>26</sup> See Paris Agreement, articles 11(1) and 12, which address education and public awareness of climate change.

standards, robust commitments and effective cooperation. As with many other human rights issues, there will be a two-way relationship between national and international efforts. National experience can inform international standard setting and processes, directly in international fora or indirectly by influencing the positions that national governments take into international fora. Remedies to national challenges can be pursued in UN and regional fora and international standards, processes and decisions can be used in turn to drive change at the national level.

The bodies and processes addressed in this *Practical Guidance* offer many opportunities for NHRIs to use their national experience to support international climate actions and to draw on international efforts to guide climate action within their own countries. Striking the right balance between outward-focussed international engagement and inward-focussed national engagement raises, once again, the challenge of how NHRIs can most effectively allocate their limited resources and what they require to make optimal decisions. Decisions will also be required about how and when to collectively, whether through GANHRI or the regional NHRI bodies, or in coalitions with other NHRIs. The Caucus on Human Rights and Climate Change has an important role to play in this regard.

Many NHRI actions related to climate change would be like their activities related to other more “classic” human rights challenges. Defence of environmental defenders or climate activists is not fundamentally different from the defence of other human rights defenders. Engagement with UN human rights mechanisms on climate change would be like engagement with them on other human rights issues. NHRI engagement on climate action does not require an approach that is fundamentally different from what NHRIs already do. The work of NHRIs in promoting the implementation of the 2030 Agenda for Sustainable Development and human rights through the Sustainable Development Goals (SDGs), including in the High-Level Political Forum on Sustainable Development, has given NHRIs experience that they can apply to climate change. For instance, the connections and synergies between human rights and the SDGs will be relevant to the just transition required by climate action, and the connections and synergies between human rights and climate action could be developed in support of the realisation of the SDGs.

The importance of science to climate action will require additional basic specialised knowledge. This *Practical Guidance* will suggest some initial training opportunities and sources to acquire that knowledge. However, NHRIs do not need to become repositories of knowledge about climate change. Through partnerships with government agencies, intergovernmental organisations, civil society organisations, academia and business, they can combine their human rights expertise with the expertise of others in joint efforts.

### 1.3 The format of this *Practical Guidance*

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The climate emergency requires a response with commensurate vigour and urgency. Rapid economic, social, political, cultural and technical changes must take place to meet the challenges of climate change, and the response of the human rights community will need to evolve rapidly. NHRIs will apply novel practices and

approaches<sup>27</sup> and learning from experience will be continuous. This *Practical Guidance* aspires to be a living instrument that can evolve to reflect developments in efforts to meet the challenges of climate change and the evolving practice and diverse experiences of GANHRI's members. A web-paced format will allow the *Practical Guidance* to be regularly updated.

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<sup>27</sup> For example, the national inquiry on climate change undertaken by the Philippines Commission on Human Rights. See <https://chr.gov.ph/nicc-2/>. Philippines Commission on Human Rights, National Inquiry on Climate Change: Report, May 2022 at: <https://chr.gov.ph/wp-content/uploads/2022/05/CHRP-NICC-Report-2022.pdf>.