German Institute for Human Rights

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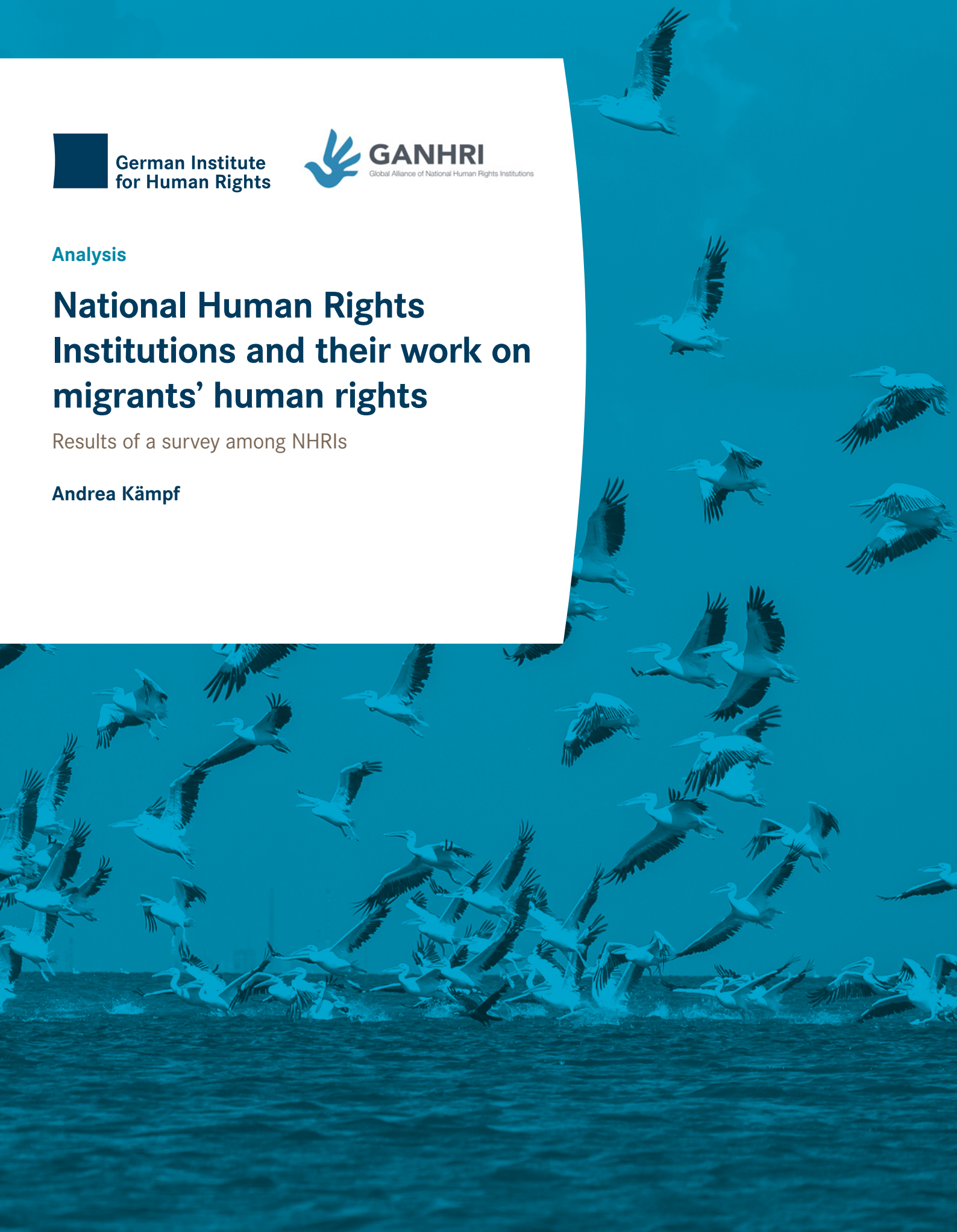
Global Alliance of National Human Rights Institutions

Analysis

National Human Rights Institutions and their work on migrants' human rights

Results of a survey among NHRIs

Andrea Kämpf



The Institute

The German Institute for Human Rights is the independent National Human Rights Institution in Germany. It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations. It is supported by the German Bundestag. The Institute is mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and has established Monitoring Bodies for these purposes.

GANHRI

is the global alliance of NHRIs, mandated to support in all regions the establishment and strengthening of NHRIs, in line with the United Nations Paris Principles. GANHRI encourages and facilitates cooperation among NHRIs from all regions, including through hosting global meetings of NHRIs and by acting as knowledge broker for NHRIs. GANHRI is the global voice of NHRIs. Activities include: an annual meeting and triennial conference; accreditation of NHRIs in accordance with the United Nations Paris Principles; promotion of the role of NHRIs within the United Nations and with Member States and other international agencies; capacity building also in collaboration with the Office of the High Commissioner for Human Rights (OHCHR); assistance to NHRIs under threat and support to governments willing to establish NHRIs.

The Author

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Executive summary

According to the latest World Migration Report from 2018, "current estimates are that there are 244 million international migrants globally (or 3.3% of the world's population). (...) Global displacement is at a record high, with the number of internally displaced at over 40 million and the number of refugees more than 22 million." No surprise, therefore, that asylum and migration are not novel topics for NHRIs. The New York Declaration and the negotiations towards the Global Compacts on Refugees and Migrants have given NHRIs new impetus for their work specifically on migrants' human rights: The Global Alliance of National Human Rights Institutions (GANHRI) established a task force to coordinate NHRI participation in the negotiations for the Global Compact on Safe, Orderly and Regular Migration (GCM), and the German Institute for Human Rights – financially supported by the German Foreign Office – coordinated NHRI inputs, organised a conference and prepared this report to lay the ground for further engagement by NHRIs and increased cooperation among them.

This analysis is based on a survey of NHRIs worldwide conducted in the summer of 2018. Of the (then) 110 NHRIs worldwide accredited as being in full or partial compliance with the UN Paris Principles, 32 responded to this survey, thus almost a third of all GANHRI members from all regions participated. Every world region represented by a NHRI regional network within GANHRI – Africa, the Americas, Asia-Pacific and Europe – contains countries of migrant origin, transit and destination, though their relative proportions vary from one region to the next. This reflects the fact that migration often happens within regions, and contradicts public perceptions, particularly prevalent in destination countries, that some regions are regions solely of destination while other regions see only an outward flow of migrants. It also means that all of the four regional NHRI networks deal with a wide range of situations in which migrants' rights are of relevance, that is, the arrival, transit, departure and return of migrants as well as their (re)integration into their host societies or societies of origin.

To sum up the major results of the survey:

- All NHRIs responding to this questionnaire work on migrants' rights or are planning to do so. Almost a third of respondent NHRIs stated that more than one quarter of their work related directly or indirectly to migrants' rights. The possibility of sample bias notwithstanding, it is clear that migrant rights are well-established on NHRIs' agendas.

- The results reaffirm that NHRIs are an effective link between the national and the international level as well as between the individual and the structural level of human rights protection: Most respondent NHRIs are working on migrants' rights to deal with specific situations on the ground which concern them, as well as to contribute to human rights monitoring procedures at the international level.

- Most NHRIs believe that the effectiveness of their work on migrants' rights could be increased. Asked what would be most likely to facilitate this, they identified first and foremost exchange and joint work: exchange among themselves and with other regional and international institutions, and joint monitoring of cross-border situations and cooperation on individual cases. Training on a range of issues was also mentioned, though not as often. Insufficient resources and lack of specialised staff are the main challenges the NHRIs are facing.

- It is worrying that NHRIs across all regions mention that the implementation of migrants' human rights is being hampered by increased anti-immigrant sentiment, together with public policies that frame migrants as security risks and by restrictions on admission to the country placed by governments.

The analysis concludes by recommending increased collaboration among NHRIs, especially in cross-regional contexts, that they be supported in their interactions with regional and global organisations working on migrants' rights and be recognised and included by them, in their monitoring and accountability roles, when setting up programmes.

Preface

It seems a banality to say that migration is as old as humanity. Yet in view of the many violations of migrants' rights, acceptance of migration and respect for the human rights of migrants cannot be taken for granted. On the contrary; the Convention on Migrant Workers is the least ratified of the nine core human rights conventions, and public discourses on migration and migrants are growing increasingly hostile and exclusionary nearly everywhere in the world.

Migration and how we deal with it puts our humanity to the test. Hence, policies on "safe, orderly and regular" migration need to go hand in hand with human rights education and integration policies and practices. As Lebanese-French writer Amin Maalouf puts it: "For it is often the way we look at other people that imprisons them within their own narrowest allegiances. And it is also the way we look at them that may set them free."

How can National Human Rights Institutions contribute to achieving this goal? What do they do to promote and protect the rights of migrants on the ground? As this study shows, National Human Rights Institutions (NHRIs) around the world have acquired a wealth of experiences and knowledge in this regard. To mention a few examples: NHRIs in the Asia-Pacific region monitor government labour policies and work to protect migrant workers from exploitation by ensuring their access to remedy. Members of the European Network of NHRIs have monitored the detention of migrants and worked to safeguard their right to information. Likewise, NHRIs in the African Network have monitored human rights violations along migration routes and promoted non-discrimination and anti-racism among local migrant and non-migrant communities.

In conjunction with the backlash against migrants, NHRIs have also come under attack for their work: for example, public defamation campaigns against the president of Australia's NHRI were launched after it published a report about the long-term effects of immigration detention on detainees.

In the summer of 2015, UN member states adopted the New York Declaration on Refugees and Migrants in a spirit of confidence and solidarity. Not long thereafter, interested members of the Global Alliance of National Human Rights Institutions (GANHRI) came together in a task force to help ensure that human rights were embedded adequately in the Global Compact for Safe, Orderly and Regular Migration (GCM). Each GANHRI region is represented on the task force, which is made up of the NHRIs of the Philippines, Morocco, Mexico and Germany. The GANHRI Special Envoy Florence Simbiri-Jaoko, former head of the Kenyan NHRI, supported the task force and represented GANHRI at the negotiations on many occasions. GANHRI has thus been engaging and actively participating in the consultations and negotiations on the GCM. GANHRI's engagement is part of a series of work streams where it engages systematically in international human rights processes. GANHRI contributes to such processes by bringing together the rich and diverse expertise of its members and their unique knowledge from the ground. GANHRI aims to be an active player in the implementation of the GCM, aiding its members to engage in monitoring, policy advising and human rights education to help ensure the respect and full realization of migrants' human rights. After all, NHRIs are mandated to bring human rights home – for everyone in their countries.

Beate Rudolf, Director of the German Institute for Human Rights and GANHRI Chairperson

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Abbreviations

APF Asia Pacific Forum

CSO civil society organisation

ENNHRI European Network of NHRIs

EU European Union

FIO Federación Iberoamericana del Ombudsman (Iberoamerican Federation of Ombuds institutions)

GANHRI Global Alliance of National Human Rights Institutions

GCM Global Compact on safe, orderly and regular migration

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

ILO International Labour Organisation

IOM International Organization for Migration

LGBTI Lesbian, Gay, Bisexual, Trans* and Inter*

NANHRI Network of African National Human Rights Institutions

NGO non-governmental organisations

NHRI National Human Rights Institution

NPM National Preventive Mechanism

OHCHR Office of the High Commissioner for Human Rights

SCA Sub-Committee on Accreditation

SDGs Sustainable Development Goals

SEANF Southeast Asia National Human Rights Institution Forum

UK United Kingdom

UN United Nations

UNHCR United Nations High Commissioner for Refugees

UPR Universal Periodic Review, Universal Periodic Review

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1 National Human Rights Institutions

States that ratify human rights treaties are obliged to respect, protect and fulfil human rights. Whether or not they do so is monitored by UN treaty bodies, domestic and regional courts, watchdog non-governmental organisations (NGO), and also by other states in the Universal Periodic Review (UPR), the peer review established by the Human Rights Council.[1]

National Human Rights Institutions play a particularly important role in in monitoring state compliance with human rights obligations; they are tasked with the promotion and protection of all human rights, with monitoring the fulfilment of the human rights obligations by their respective state, and with keeping an eye on how the exercise of governmental authority affects human rights at all levels – from the national level down to municipalities. NHRIs are independent public institutions established and financed by the State, which has to ensure institutional, personal and financial independence of the NHRI. They often have a mandate to receive individual complaints, but do not adjudicate them like courts do. They work closely with non-governmental organisations, and yet are by nature quite different from them, being based in statute or the constitution and funded by the State.

Internationally, NHRIs are based on and must comply with the Paris Principles, endorsed in 1993 by the UN General Assembly.[2] Their mandate must extend to all human rights in all areas. On the common basis of the Paris Principles, NHRIs around the world are arranged and equipped in very different ways in respect of their mandates, structures and competences. One can discern three main types of NHRIs,[3] whereby their names do not necessarily indicate which type they belong to:

- **Commissions** tend to engage in a wide range of activities, from the investigation of restrictions on human rights and rights violations, to educational and public relations work, to participation in legal proceedings.
- **Ombudspersons** focus on the protection of individual rights, by handling of individual cases and/or complaints for example. The mandate of ombudspersons is often restricted to certain areas, such as health or consumer protection. Not all ombudspersons are NHRIs, and not all NHRIs have a mandate to receive complaints.
- **Consultative Commissions** focus on advising their government and parliament, but they may also have investigative powers.
- **Institutes** specialise in research-based policy advice, as well as in educational and public relations work.

The increasing exchange and cooperation between NHRIs are resulting in a gradual convergence of these models.

NHRIs protect and promote human rights in the country in which they are established, and an

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1 This chapter is an updated version of the corresponding chapter in the study on NHRIs and children's rights by Stamm/Würth (2018)

2 UN General Assembly (1993). A/RES/48/134.

3 See Aichele 2009, p. 16; GANHRI itself adds two categories (hybrid institutions and multiple institutions), http://nhri.ohchr.org/EN/AboutUs/Pages/RolesTypesNHRIs.aspx (accessed 26.10.2018) and in a March 2017 source adds more types ("civil rights protectors, public defenders, and parliamentary advocates") which it seems to have previously subsumed under "multiple institutions", see GANHRI 2018b, para 7.

increasing number also work on the extraterritorial human rights obligations of the state.[4] The UN treaty bodies regularly call on States either to establish NHRIs or to better guarantee their independence, functioning and funding.[5]

NHRIs form a bridge between state and non-state actors. They advocate for the improved protection of human rights vis-à-vis both governmental agencies and private actors and advise them on the implementation of the improvements they recommend. NHRIs also support civil society groups, for example by providing human rights training or by helping to coordinate their efforts, for example, for reporting to UN human rights bodies. NHRIs help to connect the different domestic institutions and levels of human rights protection, by supporting procedures for state reporting to international and regional bodies, for instance, or by bringing state and civil society actors together for follow-up discussions on the recommendations issued at the end of these proceedings.

Human rights education – educating the public and specific target groups about, through and for human rights – is a cornerstone of NHRIs' work worldwide. By fulfilling this part of their mandate well, an NHRI can help establish a culture of human rights and overcome discrimination and inequality.

NHRIs regularly review the laws in force in their countries and suggest amendments, where necessary, to bring them in line with international obligations. NHRIs also help improve the protection of individual rights; most accept and investigate individual complaints – an optional power under the Paris Principles , some NHRIs can take cases to court, others support pending cases by submitting briefs (amicus curiae) without themselves being party to the proceedings. What unites all NHRIs (with very few exceptions) is their "soft power": while they do not have the power to enforce their views or recommendations, they use the power of their human rights-based arguments to convince government or private actors to revise their practices.[6]

1.1 Paris Principles and NHRI accreditation

In the national context, NHRIs are established by provisions of national legislation or of the country's constitution. However, international standards governing the competencies and responsibility of NHRI are laid down in the Paris Principles, contained in a resolution of the UN General Assembly. NHRIs have set up an international peer review system to assess whether an NHRI operates according to the Paris Principles. The system accredits NHRIs at regular five-year intervals.[7] The Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institution (GANHRI) undertakes the peer review twice a year under the auspices of the Office of the High Commissioner for Human Rights (OHCHR).

To be accredited, the NHRI must demonstrate its compliance, in law and in fact, with the Paris Principles, including with respect to its mandate, competencies, and independence from the government. To verify compliance with the Paris Principles, the SCA also looks for pluralism among NHRI staff and governing bodies, as well as whether it has resources sufficient to the fulfilment of its basic functions. In recent years, the SCA has increased its scrutiny of the work an NHRI does – or does not do – ascertaining, for example, whether the NHRI speaks out for human rights defenders when they are under attack,

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4 These include, among others, the NHRIs of the Commonwealth, who adopted a declaration for NHRI common action in 2015, see Commonwealth Forum of National Human Rights Institutions 2015; the NHRI of the Philippines, which works on a case of transnational climate justice; and the German and Colombian NHRIs, partnering to address business and human rights issues, see Kaya et al. 2017.

5 Between 2008 and 2017, the treaty bodies made 396 observations and issued 428 recommendations to States with respect to their National Human Rights Institutions; query "Theme: National Human Rights Institution"+"all treaty bodies", see http://uhri.ohchr.org/en/search/annotations retrieved 26.10.2018.

6 See Carver 2011; Linos/Pegram 2017.

7 According to GANHRI statute (2018c) section 1

or against grave human rights abuses in their country.

Once the accreditation procedure is complete, an NHRI is accredited with A or B status.[8] Only A-status NHRIs are voting members in GANHRI, and only they are entitled to exercise participation rights in the United Nations (UN) human rights system, for example, by making oral statements at the Universal Periodic Review.

During the past ten years, the accreditation procedure undertaken by GANHRI has become more rigorous. To communicate its expectations for accrediting NHRIs, the SCA has issued a, recently revised, set of "General Observations".[9] These describe how the SCA assesses the various criteria established by the Paris Principles.

Some countries have institutions which fulfil functions comparable to those of an NHRI but which have not applied for accreditation. While the term "National Human Rights Institution" is not legally protected, it should be reserved for institutions which function in line with the Paris Principles and undergo the accreditation process described above. This is reflected in resolutions of the UN General Assembly and the UN Human Rights Council.[10]

1.2 Membership in networks

While GANHRI is the alliance of NHRIs worldwide, NHRIs are also organised in four regional networks. These regional networks have an advantage similar to that of the regional human rights protection systems: they are better able to reflect regional challenges and particularities and can address actors relevant to the region, for example regional human rights courts or policy-making by regional organisations, like the African Union or the European Union.

- Founded in 1999, the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas is responsible for all of the Americas; it currently has fifteen A-status and two B-Status NHRI members. Its strategic priorities are regional migration, cooperation with the inter-American human rights system, follow-up to the recommendations of the international human rights system, establishing a permanent secretariat.

- The Asia Pacific Forum (APF) has 16 A-status NHRIs as full members and 8 associate members with B-status. It offers extensive services to its members in relation to accreditation, capacity needs assessments, and training. Currently, it receives financial and technical support from various donors. APF has several strategic thematic priorities, among them mass movement of people (including asylum seekers, refugees, migrants, internally and externally displaced persons);.

- 44 African NHRIs belong to the Network of African National Human Rights Institutions (NANHRI), which is hosted by the Kenyan NHRI. 21 members are A-status members with full membership rights; the 10 B-status members do not have voting rights nor can they be elected to NANHRI offices. Thematic priorities include business and human rights, peace and conflict resolution and Lesbian, Gay, Bisexual, Trans* and Inter* (LGBTI) rights. Strategic objectives relate to sizable improvements of the human rights situation in African states, for example with respect to civil liberties and governance, and to economic, social and cultural rights.[11]

- The European Network of NHRIs (ENNHRI) has 41 NHRI members, 27 of them holding A-status, a further eight with B-Status, and six

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8 By August 2018, there were 79 NHRIs with A status, and 33 with B status. Ten institutions are listed by GANHRI as being "former C status", which is the equivalent to "no status" within GANHRI, as the C status accreditation has been abolished, https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20(8%20August%202018.pdf (accessed 20.08.2018)

9 See GANHRI Rules of Procedure (2018d), chapter 2.2; cf. GANHRI General Observations (2018b).

10 The most recent resolutions are UN General Assembly Resolution 72/181 of 19 December 2017 and UN Human Rights Council Resolution A/HRC/RES/39/17 of 28 September 2018.

11 http://www.nanhri.org/1088-2/ (accessed 26.10.2018).

observers, which are not formally accredited as NHRIs.[12] ENNHRI is active on a number of issues, such as on the human rights of older persons or the Sustainable Development Goals. ENNHRI also brings European NHRIs together in working groups, including a working group on asylum and migration, to exchange experiences and to cooperate on selected human rights issues.

12 http://ennhri.org/List-of-members, data as per June 2017 (accessed 26.10.2018).

2 About this study

Migration is not a new topic in the work of NHRIs, but the New York Declaration as well as the work towards the Global Compacts on Refugees and on Migration have certainly given new momentum to their work around migrants' human rights. Previous work of NHRIs on migration includes a comprehensive guide to NHRIs and migrants' human rights published by the APF, a guide to access to information for migrants and several statements on alternatives to detention of migrants published by ENNHRI, and the working group on migrants and human trafficking by the Iberoamerican Ombudsman Federation, FIO, whose membership encompasses most of the NHRIs in the Americas and specialized ombuds institutions in the region.[13]

In the follow-up to the New York Declaration for Refugees and Migrants in October 2016, GANHRI called for interested NHRIs to step forward to lead GANHRI's engagement in the process for the Global Compact for Safe, Orderly and Regular Migration (GCM) and its implementation. A task force was set up, consisting of the NHRIs of the Philippines, Morocco, Mexico and Germany, thus representing all four GANHRI regions; the task force also included GANHRI Special Envoy Florence Simbiri-Jaoko, former Chairperson of the Kenyan NHRI. The GANHRI task force participated in the consultations, conferences and negotiations on the GCM on the global level as well as regionally and bilaterally. As a result, the GCM now explicitly recognises the role of NHRIs in its implementation, especially at the national level, in objectives 11, 12 and 17.

At a conference held in Berlin in May 2018, about twenty NHRIs and regional NHRI networks shared experiences from their work on migrants' human rights and charted the way forward towards implementing the GCM after 2018.[14] This report is part of that process.

This report is based on the results of a survey among NHRIs (see Annex, Questionnaire). The survey questionnaire was developed with input from the task force and subsequently sent out to all the regional NHRI networks for dissemination among their members. About a third of GANHRI members responded, respondents were evenly spread among the regional networks. The questionnaire was based on mostly closed questions with the possibility to comment. To facilitate access, the survey was sent out in the four GANHRI languages, viz. English, French, Spanish, and Arabic.

13 See APF 2015, ENNHRI 2017a, ENNHRI 2017b and ENNHRI 2017c as well as http://www.portalfio.org/red-migrantes-trata/ (accessed 26.10.2018).

14 These activities were kindly supported by the German Foreign Office.

3 NHRIs working on migrant human rights

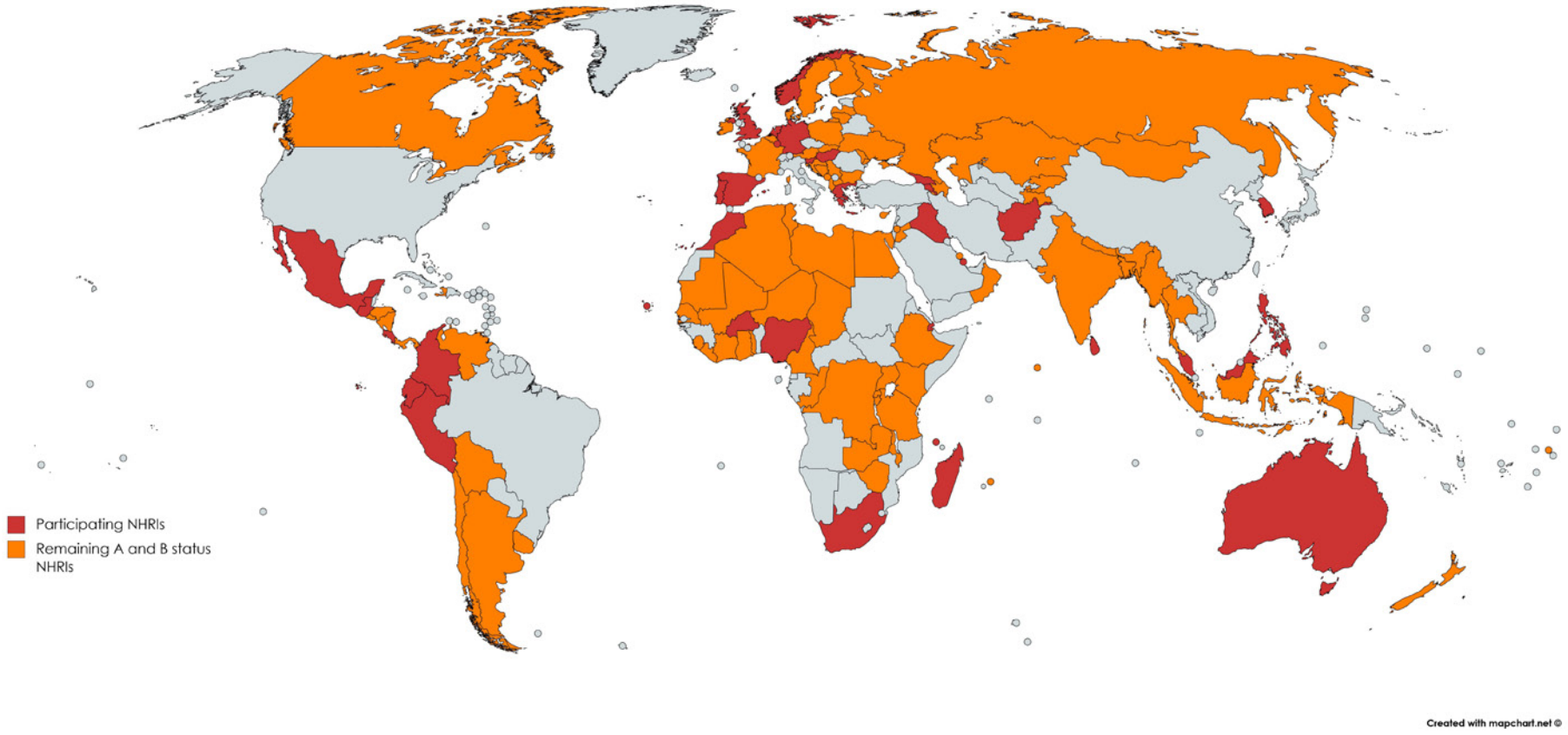
Thirty-four NHRIs responded to the survey. Out these, two were not accredited with A or B status,[15] and are thus not included in the following chart (Chart 2) which shows the regional distribution of participating NHRIs. However, their answers are included in the rest of the report and in all other charts and tables. The 34 NHRIs accredited with A or B status that responded amount to thirty-one per cent of GANHRI's 110 members.[16]

NHRIs in all four world regions – i.e. regions corresponding to the four regional NHRI networks – demonstrate a similar level of engagement: The percentage of respondent NHRIs among the total NHRIs in each region is roughly consistent across all regions, though Africa is slightly underrepresented in the overall group of respondents. The overall rate of response was 31%. Since only about a third of all GANHRI members took part in the survey, it is likely that our sample is biased towards NHRIs that are relatively active in this area.

15 The questionnaire was shared with NHRIs through the regional networks. Their mailing lists may include non-accredited institutions which have some form of associate status pending a future application for accreditation.

16 110 members when the questionnaires were sent out, which was prior to 18 July 2018. As of 18 July 2018, there were 112 A- and B- status NHRIs.

Chart 1 Geographical distribution of respondent and non-respondent NHRIs accredited with A and B-status



Neither the geographical designations nor graphic representation of geographical regions used in this report are in any way intended to express any opinion whatsoever on the part of GANHRI concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Chart 2 Distribution of respondent NHRIs and all GANHRI members, by region, in absolute numbers and as percentage

	Regional distribution of responding NHRIs (only A & B Status) in numbers	As percentage of total respondents	Regional distribution of all GANHRI members (only A & B status) in numbers	As percentage of all GANHRI members
APF	8	24%	26	22%
ENNHRI	12	35%	37	31%
NANHRI	6	18%	30	25%
Americas Network	6	18%	17	14%
Total	32	100%	110	100%

3.1 Refugees – Migrants?

Most responding NHRIs distinguish between refugees and migrants (see Annex, Chart 15), thus echoing the division between the two compacts on refugees and migration. There is intense legal and political debate as to whether this distinction reflects the reality of movements of migrants and refugees, and the division does not come naturally to NHRIs either. The NHRIs of Burkina Faso and South Africa, for example, said their distinction between refugees and migrants stemmed from their national legal order: the NHRIs need to categorise persons as either refugees or migrants in order to provide support measures to them. The NHRIs of the Comoros and Guatemala commented that refugees can also be migrants, indicating an understanding of the term "migrant" as a broader category than "refugee". The NHRI of Colombia differentiated between migrants and refugees but included the categories "internally displaced" as well as "forced migrants" and "refugees" in one department, putting more emphasis on the aspect of forced movement. Only one NHRI stated that it does not work on migrants' rights as such because a different term is used to refer to both migrants and refugees in national legislation.

Practice 1 The Peruvian NHRI: raising awareness of alternatives to expulsion

In 2017, the Peruvian NHRI drew attention to several shortcomings in national migration law and investigated the situation and treatment of foreigners in Peru. It recommended improvements with respect to regularisation procedures, the inclusion of family members into the concept of migrating unit, and, last but not least, that sanctions for administrative offences be proportional to the offence – under the law as it stood, expulsion was the only possible sanction. The report was discussed in the intergovernmental working roundtable on migration and resulted in a legislative reform proposal that was subsequently passed. The Peruvian NHRI is monitoring its implementation.

"Migrants" were understood by NHRIs as non-citizens in the country as well as citizens who had migrated to another country. One NHRI noted that its mandate did not include the latter category of migrants, thus de facto limiting the mandate of the NHRI to migrants and refugees on the territory of its State. While disputed with regard to scope, the extraterritorial effect of human rights treaties has been confirmed by the relevant treaty bodies.[17]

17 For an overview of Treaty Body pronouncements with further references see GIESCR (2018)

Therefore, NHRIs should be able to hold their own states to account also with regard to acts or omissions which have a negative human rights impact abroad.

Practice 2 The Philippine NHRI: protecting migrant workers' rights across borders

In another case, the Philippine NHRI – after having received a substantial number of complaints about a Philippine recruitment company engaged in human trafficking of teachers to the USA – contacted local human rights commissions and civil society organisations (CSOs) in the USA with the request that they provide legal assistance to the workers. Likewise, the Philippine NHRI requested the US embassy in the Philippines to coordinate with the appropriate US agencies to investigate the issuance of the visas and the US operations of the illegal recruiter involved. In the Philippines, the NHRI advised the Department of Labour to revoke the recruitment agency's license and the national police and the immigration authorities to ensure the arrest of the owner of the recruitment agency which had violated the law.

3.2 Country of origin – transit – destination?

In destination countries in Europe, there is often a perception among the public that some regions are only destination regions for migrants and others only regions of origin. However, practically all regions contain countries of origin, transit and destination, though in varying proportions, as is evident in the chart below, which groups the survey responses by the four regional NHRI networks.[18] This reflects the fact that migration is very often an intraregional phenomenon. It also means that NHRIs and the responding NHRIs in Africa, Europe, in the Asia-Pacific region and the Americas deal with a wide range of migrants' rights situations, that is the arrival, transit and departure of migrants.

Practice 3 The Guatemalan NHRI: co-operating across borders to fight enforced disappearance of migrants

In addition to facing extremely harsh social conditions and a high risk of violence, Guatemalans who migrate to the United States of America sometimes disappear before they reach their destination, leaving their families in uncertainty about their whereabouts and well-being. Many are murdered en route. In 2012, the Guatemalan NHRI signed a Cooperation Agreement with the Argentine Forensic Anthropology Team and with the Foundation for Justice and Rule of Law of Mexico to identify remains suspected to be those of Guatemalan migrants who were missing. The Guatemalan NHRI, together with civil society organisations, helped the families of disappeared persons to obtain psychological support. While these measures will not return victims of violence to their families, they have allowed the NHRI to provide assistance to them.

The table below shows how the respondent NHRIs characterised their countries with respect to migration flows: as being predominantly a country of destination, transit or origin of migration (one country did not respond to the question, and 2 chose the first option twice, which is why the sample is 35).

18 See for example Figure 5 on page 11, The International Migration Report 2017, https://www.un.org/development/desa/publications/international-migration-report-2017.html. No APF member ranked itself primarily as a country of transit, but this might be due to the sample.

Chart 3 NHRIs assessment of their country as country of origin/transit/ destination, by region

	No answer	Country of origin of migrants	Country of transit of migrants	Country of destination of migrants	Number of respondent NHRIs
APF	0	5	0	4	9
ENNHRI	0	3	4	5	12
NANHRI	1	5	1	1	7
Americas Network	0	3	3	1	7
	1	16	8	11	

Practice 4 The Costa Rican NHRI: ensuring access to basic shelter and regularisation for migrants in transit

Over the last years, flows of migrants through Costa Rica have increased, particularly migrants from Cuba and Haiti, but also from Africa. In 2015, the Costa Rican NHRI investigated the living conditions of these migrants, who were spread over various hostels all over the country; the humanitarian assistance provided to them by the authorities; and their access to regularisation procedures. The NHRI was particularly concerned about unaccompanied minors. Following its investigation, the Costa Rican NHRI initiated two proceedings aimed at the revision of the legal provisions on both migrants and unaccompanied minors. As a result, the National Council for Migration, to which the Costa Rican NHRI submitted its recommendations, proposed several changes to the national migration policy, to bring it up to date. The NHRI continues to monitor the implementation of these changes.

3.3 Institutional setting

The institutional set-up of NHRIs around the world differs. This can have a bearing on how issues are taken up within an NHRI. Some NHRIs, for instance, have one division for political rights and one for ESC rights, in such cases, migrants' rights may be addressed as a cross-cutting issue. In other NHRIs, migrant rights are addressed by group-specific departments. Another way of organising an NHRI is to have divisions dedicated to policy areas – domestic, international etc. Here again, migrants are a cross-cutting issue.

Across regions, most of the NHRIs responding to this survey have a unit made up of several staff persons working on migration or a focal person for migrants' rights or a Commissioner or Ombudsperson responsible for migration. In their comments to this question, many NHRIs clarified that while they have a specific focal person or unit dealing with migrants' rights, human rights related to migration were also a cross-cutting issue addressed by other units as well. Respondent NHRIs have thus created a good basis for mainstreaming migrants' rights (see Annex, Chart 16).

Overall, organisational models for work on migrant rights vary across regions; in other words, there are no organisational models specific to individual regions.

A smaller number of NHRIs have established working groups for migration/asylum issues. The NHRIs of Burkina Faso and the Comoros stated that they work with a national mechanism on migrants' rights, the Ministry for Human Rights and a specific Ombudsperson respectively.

Practice 5 The South African NHRI: monitoring court-ordered reform of detention conditions

In 2012, the South African NHRI instituted legal proceedings against the Director-General of Home Affairs relating to the detention periods served by asylum seekers and undocumented migrants illegally present in South Africa, which were in contravention of provisions of the Immigration Act. The court declared the actions and/or practices by the Minister and the Director-General of Home Affairs to be unlawful and unconstitutional. All persons in charge of the Lindela Repatriation Centre were directed to take all steps reasonably necessary, without delay, to ensure that the practices were terminated forthwith. They were further directed by the court to provide the NHRI with access to Lindela Centre, on a regular and at least quarterly basis, and with a written report setting out:

1) The steps taken to comply with the order on an ongoing basis, and in particular the steps taken to ensure that no person is detained in contravention of the order.

2) Full and reasonable particulars in relation to any person detained at Lindela for a period in excess of 30 days from the date of that person's initial arrest and detention.

The NHRI resumed active monitoring in January 2016. The monitoring and oversight function of the NHRI at Lindela provides an opportunity for the Director-General of Home Affairs to demonstrate steps taken to improve the conditions of detention of undocumented migrants, in compliance with legislation and in fulfilment of human rights obligations. Conversely, this process gives the NHRI the opportunity to request information necessary for the execution of its constitutional mandate, while assisting DHA to comply with human rights norms.

Small but incremental steps have been taken, including the following:
- Reduced numbers of undocumented migrants at Lindela;
- Improved hygiene standards;
- Improved food handling and preparation;
- Commitments by the detaining officials to revise policies to adopt a human rights-based approach to detention;
- Awareness of the role of human rights advocates and the NHRI;
- Increased awareness of transparency in policing and detention monitoring and oversight.

The NHRI of Portugal explained that it cooperated on migrants' rights with a national institution, the High Commissioner for Migration: "Based upon a protocol between the NHRI and the national mechanism, the national mechanism is responsible for promoting and helping migrants to address complaints to the NHRI and help through translation services, when needed. The NHRI in turn forwards those complaints that fall within the competence of the national mechanism to that body. Moreover, the NHRI and the national mechanism committed to promote awareness raising activities on the rights of migrants. These two institutions also arrange meetings to deal with problems associated with the enforcement of migrants' rights, as necessary."

Other NHRIs likewise described forms of cooperation on migrants' rights issues with a range of stakeholders at the national level. These stakeholders included

- national ministries in the country as well as embassies abroad – cooperation in the form of advising, as well as participation in meetings, providing reports/information;

- other NHRIs, sometimes on the basis if formal instruments, such as Memoranda of Understanding;

- civil society organisations;

– the local Office of the OHCHR as well as the United Nations High Commissioner for Refugees (UNHCR). Both UN entities support NHRIs in capacity-building in the relevant areas; according to NHRIs, cooperation with these UN entities helps raise the NHRI's profile in the country.

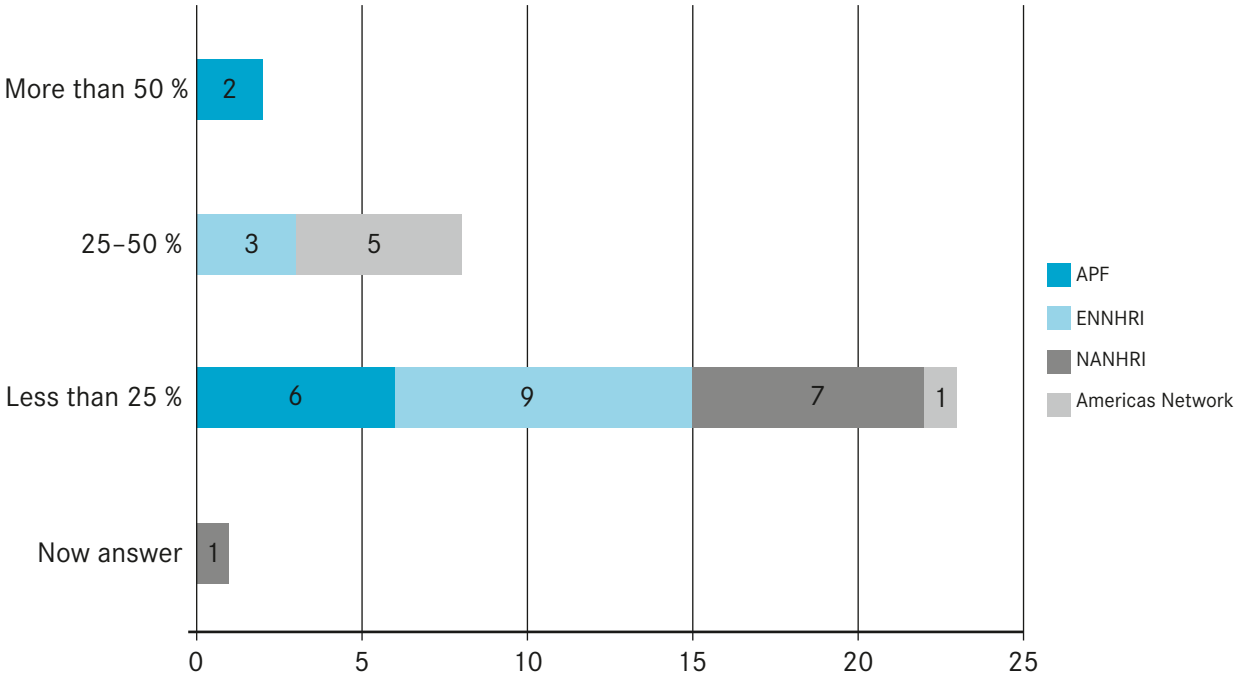
3.4 How much work goes into working on migrants' rights?

NHRIs are mandated to work on all relevant human rights issues affecting the population in their countries. They thus face an extremely broad range of human rights issues and a popular expectation that they will work on all of them. Given this, we were surprised to find that two of the respondent NHRIs indicated that more than 50 per cent of their work related to migrant rights. Both NHRIs are in the Asia-Pacific region: Qatar, a country of destination whose population is made up chiefly of migrants (90.8 per cent)[19] and the Philippines, a country of origin, 6.2 % per cent of whose population is in different forms of migration[20], and where labour migration and remittances are an established part of the national government's policy as well as budget. Thus, the high proportion of the work of these two NHRIs that is devoted to the rights of migrants might be partially explained by the importance of government regulated labour migration in these countries.

A bit less than one third of the responding NHRIs stated that work on migrants' rights issues accounted for more than 25 % but less than 50 % of their work overall. Thus, migrants' rights are a strong focus of roughly a third of responding NHRIs, which invest more than one fourth of their energy in migrant rights. The remaining two-thirds reported working less than 25 % on migrants' rights, which is hardly surprising given the range of human rights topics NHRIs can cover.[21]

We also asked the NHRIs that did not work on migrants' rights to indicate why they did not do so. The NHRIs of Norway and Madagascar, for example, stated that while migrants' rights were included in their mandate, they, being rather recently founded institutions, had not had the chance to fully operationalise that part of their mandate.

Chart 4 Share of NHRIs' work dedicated to migrants' rights, by region and in numbers



19 See country profile/immigration at World Bank, https://www.knomad.org/data/migration/immigration?tid%5B211%5D=211

20 See country profile/emigration at World Bank, https://www.knomad.org/data/migration/emigration?tid%5B207%5D=207

21 Given that two-thirds of NHRIs indicated to work 25 % or less on migration, might have warranted broader range of options in this last quartile of options, such as for example "share of work on migration is 15–25 % , is 5–15 %, is less than 5 %"

4 Why and how NHRIs work on migrants' rights

4.1 Why NHRIs work on migrants' rights

NHRIs' raison d'être is to "bring human rights home", and one way they do so is by translating international human rights obligations and debates into the national political discourse and practice, as well as by channelling national debates to the international level. Thus, when NHRIs choose to begin work on a new issue, it is generally because it has become a national priority as a result of human rights violations at the national level. Alternatively, they take up a new issue because it has been taken up onto the global agenda (such as the Agenda 2030 or the GCM) and relates to furthering human rights implementation at the national level.

Most NHRIs work on migrants' rights because they consider doing so to be a part of their mandate. The results of this survey also reflect and reaffirm the function of NHRIs as a link between the national and the international level, as well as the individual and the structural level of human rights protection: The ratification of the Convention on Migrants Rights and the human rights reporting and review procedures at the international level, and particularly the Universal Periodic Review (UPR), were the third and fourth most important reason respondent NHRIs cited for taking up work on migrant rights.

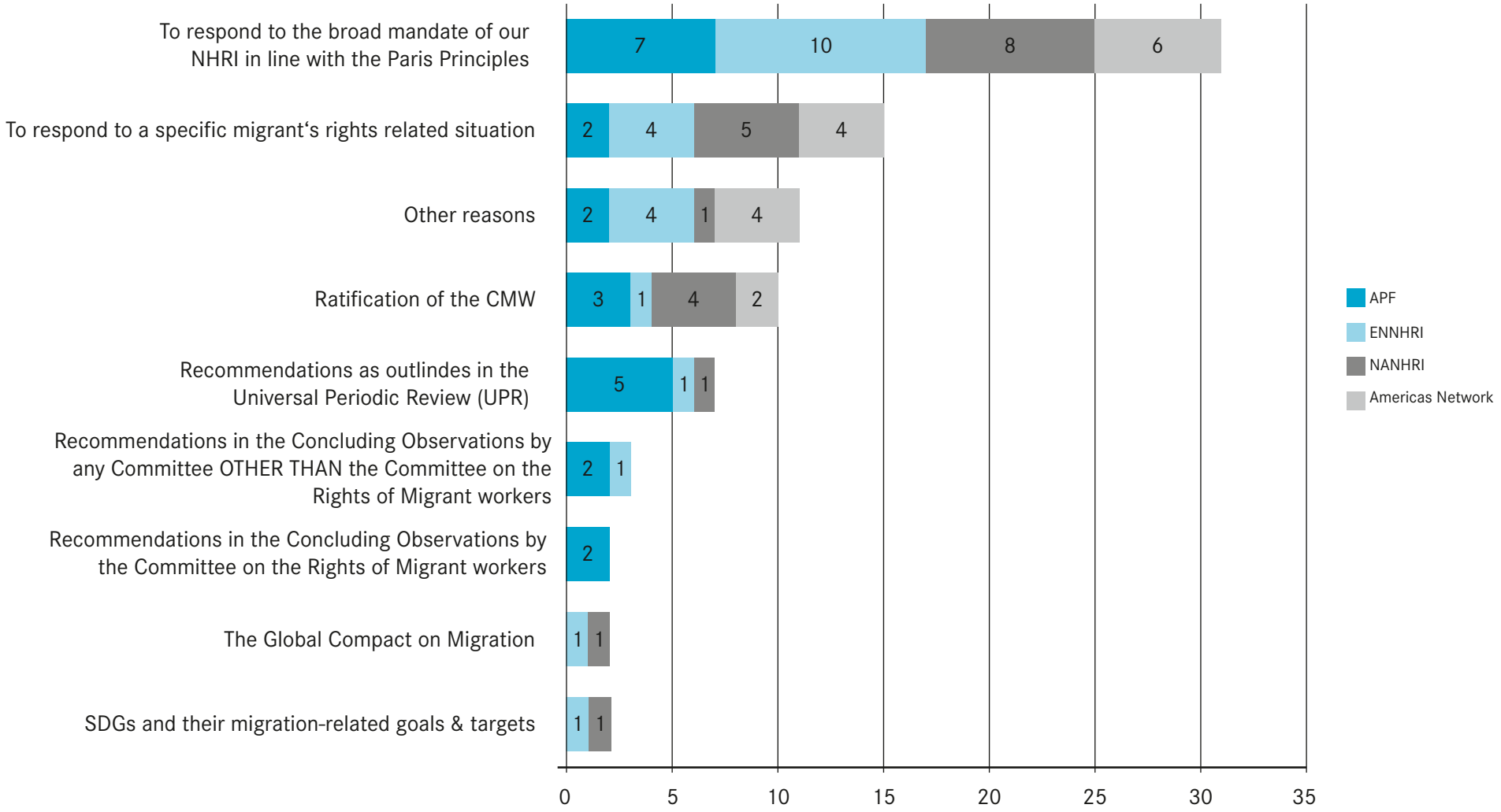
This report thus also supports the assumption that group-specific human rights treaties do raise the profile of this group and prompt engagement on their rights: While other human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR) harbour the potential to mainstream migrants' rights, only three NHRIs said that these treaties and their respective reporting mechanisms triggered their work on migrants' rights. Similarly, international commitments such as the Sustainable Development Goals (SDGs) or the GCM have not yet been instrumental in prompting NHRI engagement on migrants' rights – though this may reflect the fact that these are rather recent agendas, while NHRIs' engagement precedes these commitments.

Other reasons why NHRIs started to work on migrants' rights relate to broader political or social circumstances, such as

- specific national political and/or legal actions or inactions, for example, the lack of a national migration policy, specific migrant settlement outcomes including citizenship, return/repatriation of own nationals from other countries, or the treatment of offshore asylum seekers, cases of alleged violations of migrants' rights by state and local self-government bodies and officials;
- xenophobia and discrimination against migrants, and a rise in human rights violations against migrants;
- the migration agreements between Africa and Europe.

As the following chart shows, the rights-specific situations responding NHRs address when taking up migrant rights work relate mostly to migrants' lack of access to services such as education, health, and family re-unification.

Chart 5 Reasons for working on migrants' rights, by region and in numbers



4.2 What migrant rights issues NHRIs work on

We asked NHRIs to list the five migrant rights issues of greatest priority that they had worked on in the past two years. More than half of the responding NHRIs indicated that detention of migrants – adults and children – was the most pressing issue with respect to migrants' rights for them. NHRIs' concerns mirror those of many stakeholders in the negotiations for the GCM.

Detention of adult migrants and unaccompanied minors has been one of the major controversial issues, and the GCM falls short of banning it entirely. Migrants are often held in administrative detention, for example, while their identity is verified, and detention conditions, particularly for irregular migrants, can be dismal. The United Nations Human Rights Council's Working Group on Arbitrary Detention has repeatedly raised the issue with governments and in February 2018, did so in its revised deliberation on detention of migrants.[22]

Practice 6 Australia and Northern Ireland NHRIs: working on migrant detention issues

The Australian NHRI: detention as a priority issue: Under the Australian Migration Act of 1958, any non-citizen in Australia without a valid visa must be detained. The Australian Human Rights Commission remains concerned about the high number of people in detention facilities, the length of time for which many of them remain in detention and about the fact that such detention leads to violations of Australia's human rights obligations, including its obligations under the ICCPR and the Convention on the Rights of the Child to refrain from arbitrary detention.

The Commission monitors and reports on the conditions for people in immigration detention through the following activities:

- investigating complaints about alleged breaches of human rights in immigration detention facilities;
- visiting immigration detention facilities and publishing reports on those visits;
- developing minimum "Human rights standards for immigration detention"; and
- conducting national inquiries.

The overarching aim is to ensure that conditions of detention meet internationally accepted human rights standards. The Commission's actions have contributed towards an increase in transparency and an understanding of the Australian Government's obligations to immigration detention. The Commission's actions have not yet resulted in systemic changes to immigration detention policies in Australia, such as an amendment of the Migration Act 1958.

Northern Ireland's NHRI: access to health in immigration detention centres: Under the United Kingdom's (UK) Detention Centre Rules medical practitioners must report any cases in which a detained person may have been a victim of torture to the centre's manager. However, these rules do not apply to the UK's immigration detention centres, including the centre in Northern Ireland, since these are supposed to be used for short term detention only. Concerned that migrants may have been

22 For the reports of the Working Group, see https://www.ohchr.org/EN/Issues/Detention/Pages/Annual.aspx. The revised deliberation on detention of migrants (A/HRC/39/45) can be found here: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/45 (accessed 23.10.2018).

subject to torture or inhumane treatment during their journey, Northern Ireland's NHRI engaged with non-state, state and UN bodies to raise the issue and tracked any developments, or lack of developments, in its annual statements. In 2018, the UK Government introduced rules for short term holding facilities throughout the UK requiring healthcare professionals to report any concerns that a detained person may have been victim of torture.

The second most pressing issue for the responding NHRIs relates to procedures used to determine the status of refugees/migrants, followed by the elaboration of migration policy options. These two issues are of particular concern to the European NHRIs that responded.

Across all NHRIs, priority issues are as follows:

- Detention of adults and that of children, as a top priority, far outweighing all others,
- Refugee/migrant status determination (focus among European NHRIs),
- Migration policy,
- Human trafficking, situation of migrant women and irregular migrants,
- Racism and hate speech directed against migrants.

Regional disaggregation shows that ENNHRI members concentrate more on status determination and migration policy, while NHRIs in the Asia Pacific region show a tendency to work on the "how" of migration: labour mobility schemes, regulation of recruitment agencies, particularly about fees, etc. This might reflect that the fact that in this region NHRIs from countries of origin responded to the questionnaire (see above, Chart 4).

In much of the recent discourse on "combatting irregular" and "promoting regular" migration, particularly in destination countries, migration and migrants are framed deprecatingly: migration is considered a burden and migrants are perceived in a more negative light.

For the most part, responding NHRI engage in comparatively little work on the inclusion of migrants in society or fostering their participation in decision-making. Most responding NHRIs seem

Practice 7 The Moroccan NHRI: paving the way for regularisation through a new immigration and asylum policy

In 2013, the Moroccan NHRI published a comprehensive report proposing a new migration policy framework. Its recommendations covered, inter alia, the situation of refugees and asylum seekers, foreign nationals in an irregular or regular situation, and the fight against human trafficking.

Acting on these recommendations, the government adopted a new immigration and asylum policy and strategy, which it continues to pursue. In two rounds of exceptional regularisations, in 2014 and 2017, foreign nationals residing in Morocco who did not have a legal status were able to regularise their status. The Moroccan NHRI chairs the National Commission for the Monitoring and Appeal of the Regularisation Operation, which worked towards relaxation of criteria for regularisation.

The National Immigration and Asylum Strategy has also enabled the Moroccan authorities to regularise a number of refugees recognised by the United Nations High Commissioner for Refugees, as well as to set up various mechanisms and measures to support the integration of regularised foreign nationals.

The Moroccan NHRI is continuously following up on the recommendations it issued in 2013, regarding the updating of legislative texts to bring them into line with the international conventions duly ratified by Morocco.

to focus more on the transit route and arrival conditions and less on living with migrants as fellow citizens. There are frequent exceptions, though, such as the NHRIs of Qatar, Malaysia, Ecuador, Armenia, the Netherlands and Portugal, and others, which have worked on migrants' access to social rights. Anecdotal evidence from conversations with NHRIs suggests that the sparse attention to migrants as co-citizens can be attributed partly to state migration schemes which frame migrants more as temporary labour force, whose members will one day leave the country. NHRIs may also be concentrating their capacities and (often limited) resources on issues and violations demanding their immediate attention.

Practice 8 The Portuguese NHRI: facilitating access to social security for migrants

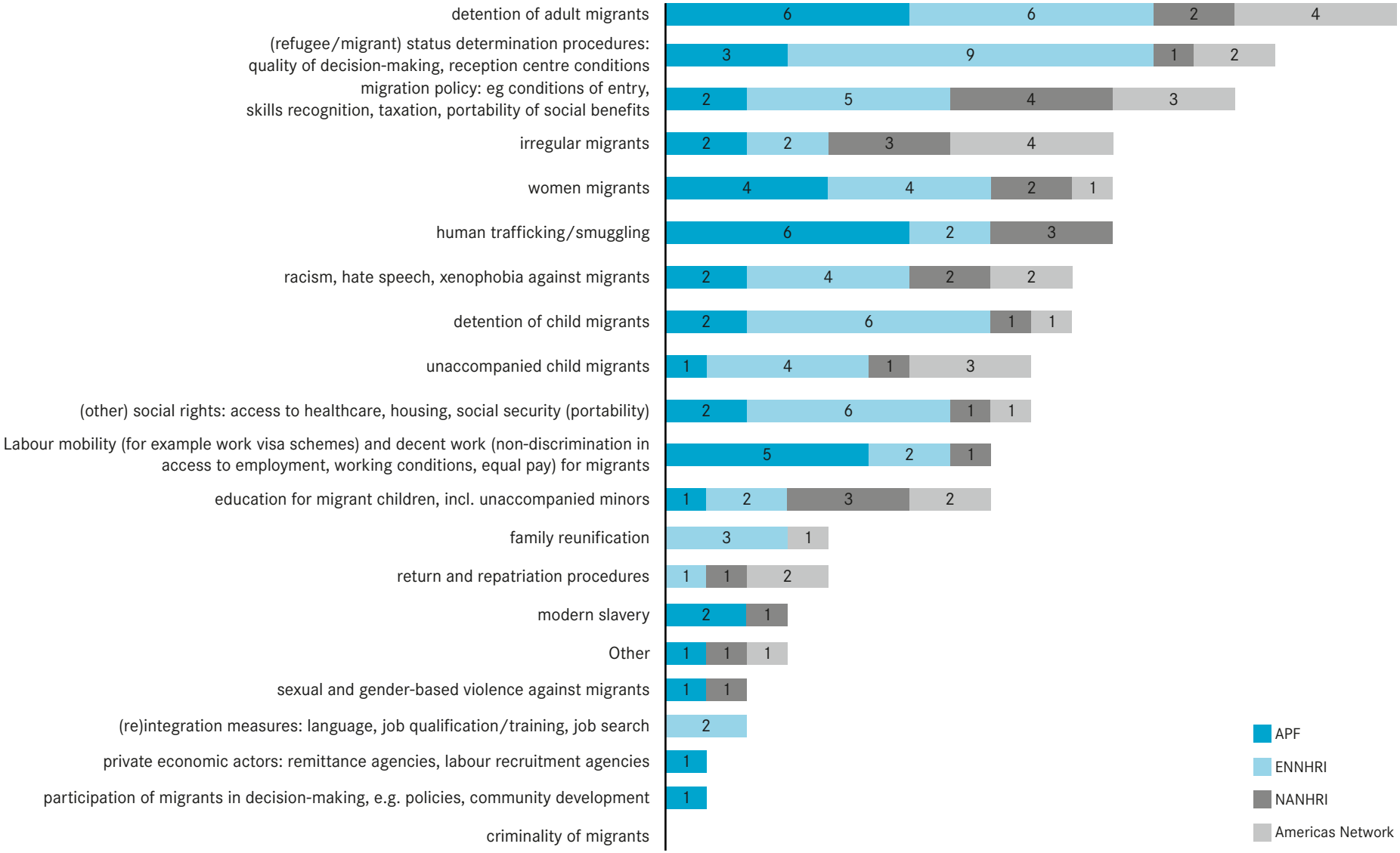
To register with Portuguese social security services, migrants needed a valid work/residence permit or work visa – and to obtain those, they needed to be enrolled in social security. The Portuguese NHRI brought social security services and migration services together to negotiate conditions of enrolment for foreign nationals in the social security services. As a result, the Director-General for Social Security issued an internal regulation instructing all social security services to require the same documents from all foreign nationals. Foreign nationals can now enrol in social security without presenting a valid work/ residence permit or work visa.

Considering how high on the political agenda of European Union (EU) governments the issue of repatriation/return is, it is remarkable that so few ENNHRI members appear to have engaged with this topic. Meaningful engagement would, inter alia, require cross-boundary and even cross-regional cooperation, something Latin American NHRIs have already gained practical experience in. For example, Latin American NHRIs have cooperated to accompany migrants being returned or repatriated, in the context of the referral system that Central American states have established to deal with migrants returned to Mexico by the USA.

Practice 9 The Moroccan NHRI: facilitating access to rights through a broad approach

To support foreign nationals' access to their human rights, the Moroccan NHRI has set up a series of activities, at national and regional level, aimed at establishing a mechanism to assess the level of access to various rights, such as the right to schooling, civil registration, health and access to healthcare, while fostering synergies between different institutional and non-institutional actors. The NHRI's activities included disseminating relevant information and procedures, exploring needs of migrants and highlighting good practices in these areas of law. In doing so, the Moroccan NHRI and their institutional and non-institutional partners are helping to transform the various elements of the legal framework (national laws, circulars and regulatory texts) into a lived reality for migrants who were facing difficulties in accessing these rights.

Chart 6 Migrants' rights topics NHRIs work on most intensively (up to 5 topics), per region and in numbers



4.3 NHRIs' work to protect and monitor migrants' rights

We also wanted to gain insight into how NHRIs work in general and compare this to how they work on migrants' rights. If differences emerged, this might point to underused potential and/or indicate that working on migrants' rights involved a different set of challenges. As the following charts show, we found that most respondent NHRIs use mainly the same approaches in their work on migrants' rights that they use in other areas, though less intensively in areas not related to migrant rights. For example, regarding protection and monitoring, most NHRIs focus on individual cases and complaints, followed by monitoring of public institutions.

Practice 10 The Slovenian NHRI: ensuring access to health and social security for nationals working abroad

Most NHRIs have the power to launch investigations on their own initiative. The Slovenian NHRI did so after the media had reported repeatedly on Slovenian workers abroad whose employers were not paying them wages or sending contributions to Slovenian social security institutions. As it turned out later, many of those "employers" were shell companies. However, they never encountered problems when applying for relevant documentation ("A1 forms") from the Health Insurance Institute of Slovenia (ZZZS). Trade unions had called for regulation in this field. In 2015, the Slovenian NHRI submitted inquiries relating to these incidents to the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Financial Administration, The Health Insurance Institute, and the Slovenian Government.

The practical problem was that the databases of the Health Insurance Institute and of the Financial Administration are not directly linked. The former therefore had no means of verifying that employers requesting documents met all relevant criteria and had been issuing "A1 forms" without performing a check. With some delay – critically noted by the Slovenian NHRI – the Slovenian Government drew up legislation which closed this gap. As of 2018, the Slovenian NHRI monitors the implementation of the measures designed to protect human rights in the context of transnational service provision.

NHRI's approaches to their work on migrant rights and their work on other human rights differ most markedly with respect to monitoring public and private institutions: about 20 per cent of responding NHRIs stated that while they do use these two approaches generally, they do not do so in their work on migrants' rights. Given that both public as well as private institutions have a strong bearing on migrants' enjoyment of human rights, this might be an area where NHRIs could increase their engagement, particularly regarding private institutions, like large scale employers, for instance. Intervention in court cases is also an option for NHRIs that they make much less use of about migrants than they do in other areas, but even in other areas, the approach is seldom used, at least by the respondent NHRIs. This is easily understandable as four-fifths of responding NHRIs have a mandate to handle complaints. Most NHRIs with no mandate to handle complaints are in Europe.[23]

Practice 11 The Portuguese NHRI: working to enable access to justice

Lawyers and family members are required to pay a fee to visit migrants at the short-term holding facility at Lisbon airport. Portugal's detention facilities are usually operated by the Immigration and Borders Service, a state police force (Ministry of Internal Affairs). However, the Lisbon facility is within the airport and access is therefore limited to specific channels of entry (the same used by airplane crews) which are controlled by a private company. This company, which also holds the public concession to run the airport itself, requires lawyers to undergo an accreditation process involving a fee. The

23 Stamm/Würth (2018) S.11

Portuguese NHRI has filed an objection with the National Civil Aviation Authority as well as the Immigration and Borders Service and reminded the latter that, as an institution of detention and thus of the deprivation of liberty, it has a duty to ensure that persons detained have smooth access to legal assistance. Subsequently, the National Civil Aviation Authority issued a recommendation to the private company in question, but with no effect to date. This issue has not been resolved, nor has that of the considerable delay before the airport operator allowed the Ombudsman and the National Preventive Mechanism (NPM) teams access to the Lisbon facility.

Chart 7 NHRIs' work on protecting and monitoring migrants' rights, per approach and in percentages

	Consider individual complaints and petitions	Investigations of individual cases	Legal aid or support for individual or collective claims	Intervention in court cases („amicus curiae")	Strategic litigation	Monitor and report on public institutions' compliance with human rights	Monitor and report on private institutions' compliance with human rights
Answer	*in %*						
Protection & monitoring in general							
Yes	82.4%	76.5%	44.1%	35.3%	11.8%	85.3%	47.1%
No	14.7%	20.6%	47.1%	55.9%	73.5%	8.8%	47.1%
No response	2.9%	2.9%	8.8%	8.8%	14.7%	5.9%	5.9%
Protection & monitoring with regard to migrants' rights							
Yes	73.5%	67.6%	38.2%	20.6%	8.8%	64.7%	20.6%
No	20.6%	26.5%	47.1%	67.6%	70.6%	26.5%	67.6%
No response	5.9%	5.9%	14.7%	11.8%	20.6%	8.8%	11.8%

There are also interesting regional differences (see Annex, Chart 17 & Chart 18): All respondent NHRIs from the Americas and Europe monitor and report on the behaviour of public institutions with respect to migrants' rights to the same degree that they do with respect to other rights, whereas responding NHRIs from the Asia-Pacific region and Africa are far less active in keeping watch over the migrant's rights compliance of public institutions.

4.4 NHRIs' work to promote migrants' rights

When it comes to promotion of human rights, the difference in NHRIs' approaches to their general rights promotion work and to migrant's rights promotion work is far greater than is the case in their protection and monitoring activities. The greatest differences are apparent in reporting to human rights treaty bodies and following up on their recommendations, i.e. under the UPR and the follow-up to SDG implementation. As the table below shows, more than 85 per cent and 47 per cent of NHRIs report to human rights fora and follow up on SDG implementation, respectively, but only about 65 per cent and 15 per cent use these approaches to advance migrant rights. Interestingly however, NHRIs engage in awareness-raising about migrants' rights and empowering migrants' organisations with roughly the same intensity that they do with respect to the rights of other social groups.

Regarding regional differences (see Annex, Chart 19 & Chart 20), the responding NHRIs from the Asia Pacific region seem to focus their migrant rights-related approaches on legislative harmonisation and monitoring and reporting. NHRIs in the other regions use a wider range of approaches in their work on migrant rights.

Practice 12 The Colombian NHRI: Securing data disaggregation when reacting quickly to incipient situations

Facing a sudden refugee influx from Venezuela, the Colombian government established a special migration group, which coordinated the humanitarian and administrative assistance provided to these refugees. The first step was to assess the needs of these refugees by way of an administrative register of Venezuelan migrants and then to adapt the integrated humanitarian response policy accordingly. While the Colombian government was putting this process into place, Colombia's NHRI worked to ensure the collection of social and economic data disaggregated by ethnicity during the registration process. At the end of the registration process, the government grants a temporary migrant status to all the registered Venezuelans. This status entitles them to healthcare, residence, to work and to attend public schools. Currently the policy for a comprehensive response to the situation of the Venezuelan migrants is still in the process of implementation; ultimately it will benefit 442,462 registered migrants. In the meantime, the Colombian NHRI will keep working to ensure the rights of the Venezuelan migrants.

Chart 8 NHRIs' use of specific approaches to promote migrant rights and human rights in general, in percentages

	Promote harmonization of national legislation and administrative practice with international standards	Conduct public inquiries related to the promotion of migrants' rights	Monitor and report the development of human rights situation in your country to national bodies, to the UPR or to the reporting process under human rights treaties and follow-up on those recommendations	Report and follow up on SDG implementation	Work to ensure government statistics are properly disaggregated alongside human rights-based criteria	Formulation of training programmes for teaching, researching and integrating of migrants' human rights in the curricula of educational institutions and/or providing training	Promote the general public's knowledge about migrants' and their rights	Empower migrants/ work with migrant self-representing organisations
Response	*in %*							
Promotion in general								
Yes	91.2%	47.1%	85.3%	47.1%	32.4%	47.1%	79.4%	35.3%
No	2.9%	47.1%	8.8%	47.1%	58.8%	47.1%	11.8%	61.8%
No response	5.9%	5.9%	5.9%	5.9%	8.8%	5.9%	8.8%	2.9%
Promotion with regard to migrants' rights								
Yes	76.5%	29.4%	64.7%	14.7%	17.6%	29.4%	70.6%	32.4%
No	14.7%	61.8%	26.5%	67.6%	64.7%	58.8%	17.6%	55.9%
No response	8.8%	8.8%	8.8%	17.6%	17.6%	11.8%	11.8%	11.8%

4.5 Working with migrants

Of the thirty-four NHRIs that responded to the survey, about two-thirds (21) reported that they involved migrants in their work. Forms of involvement vary, ranging from more active roles for migrants, such as the participation of migrants as (co-)researchers, to more passive roles, such as awareness campaigns targeted at migrants. The survey results indicate that making websites and events accessible to migrants are the approaches that are most popular among NHRIs for fostering migrant participation, (see next graph) suggesting that there is still considerable potential for NHRIs to tap in their efforts to make migrants' voices heard and support them as actors of their own development. This is particularly important for enhancing participation and developing an image of migrants as future co-citizens and not temporary labour force.

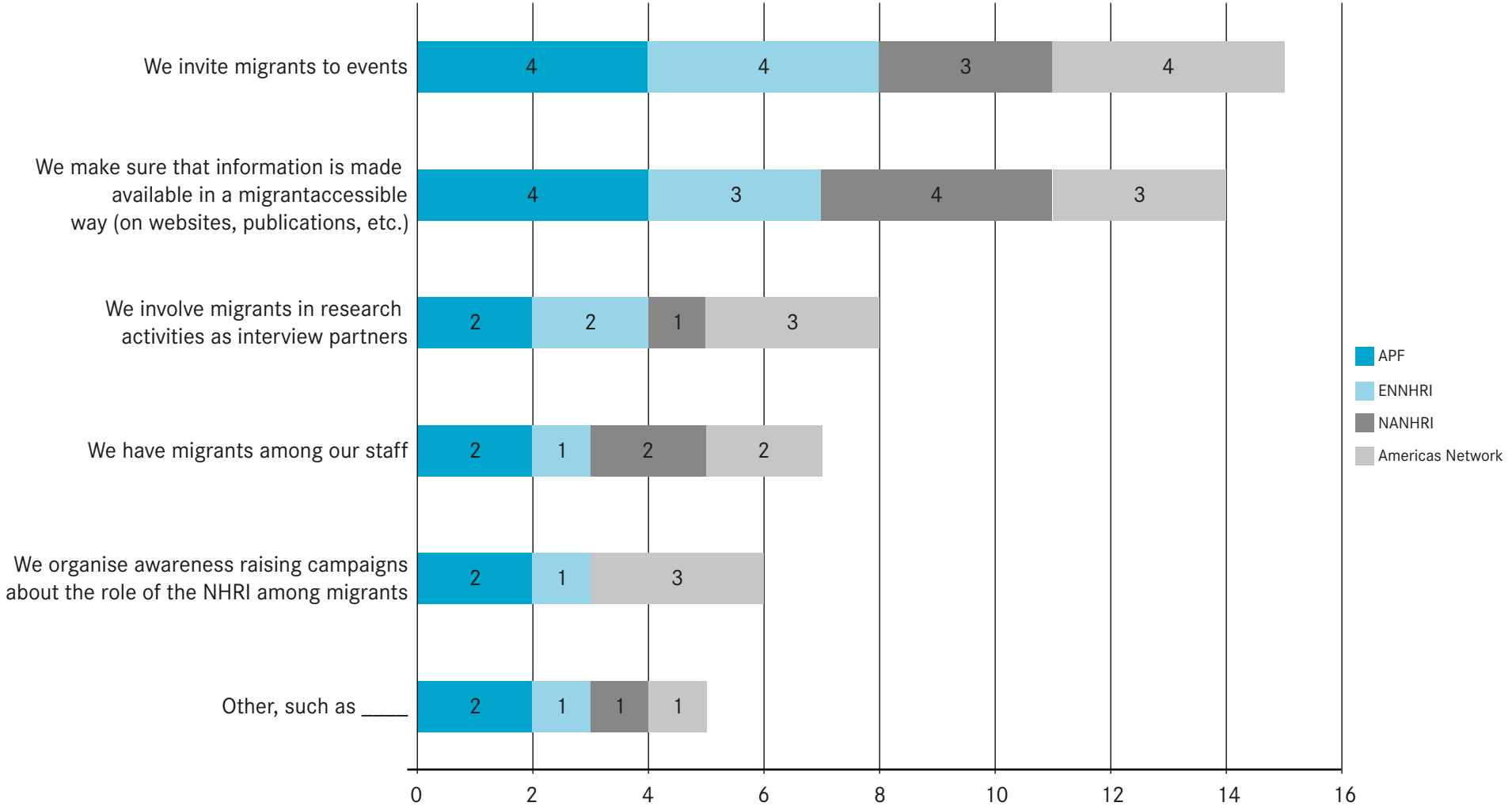
Yet, the survey also demonstrates that many NHRIs have found inclusive ways to work with migrants – such as including migrants in advisory capacities, as staff or interview partners.

Looking at regions, NHRIs in Europe seems to be the only ones that do not organise awareness campaigns among migrants about the role of NHRIs. Maybe this is because the ENNHRI members that responded do not have complaint mechanisms which migrants need to be familiarised with. Overall, very few NHRIs globally reported doing awareness-raising, and it would be important for NHRIs everywhere to increase their efforts in this area.

Practice 13 The German NHRI: securing the right to identity by implementing the right to information

The registration of a new-born child is vital in making it possible for the child to exercise his or her rights, such as the access to medical services and state social benefits. In Germany, problems occur when parents are not able to present satisfactory proof of identity (for example, birth and marriage certificates and identity cards) when trying to register their children born in Germany. The Berlin Association of Midwives (Berliner Hebammenverband), the German Academy for Paediatrics' and Adolescent Medicine (Deutsche Akademie für Kinder- und Jugendmedizin) and registered paediatricians alerted the German NHRI that children were not receiving a birth certificate, but instead only an extract from the register of births or just a written confirmation that the birth had been reported to the registry office. Although an extract from the register of births is legally equivalent to a birth certificate, the German NHRI received reports that not all authorities that require birth certificates to be presented for registration or for benefit applications recognize these substitute certificates, thus barring children from exercising their rights to access to medical services and state social benefits and claiming the benefits to which they are entitled. These problems especially show up in cases where children were only given a written confirmation that the birth was reported. As a first step, the German NHRI raised awareness among refugees and migrants through a leaflet in several languages spoken by refugees, which was distributed to maternity clinics and refugee shelters in Berlin and published on the website of the German NHRI. There are still no exact figures on how many children born in Germany do not have a birth certificate. The German NHRI is currently exploring ways to address the inconsistencies in administrative practices through legislative and administrative improvements.

Chart 9 How NHRIs ensure access and inclusion of migrants into their work, per region and in numbers



5 Linking the national with the regional and the international: NHRIs' cooperation and work with regional and international institutions

5.1 Working in and with regional NHRI networks

Most NHRIs cooperate within their own of the four regional NHRI networks; Spain also engages with the Iberomerican Ombudsman Federation the FIO, most of whose members are NHRIs (see Annex, Chart 21). NHRIs also cooperate in cross-regional or sub-regional NHRI networks[24], such as the Association of Francophone NHRIs (Association francophone des commissions nationales des droits de l'Homme , AFCNDH), or the Southeast Asia National Human Rights Institution Forum (SEANF) in the APF region, or the West African NHRI network, (Réseau des Institutions Nationales de Promotion et de Protection des Droits de l'Homme de l'Afrique de l'Ouest, CEDEAO).

Practice 14 ENNHRI and APF: advancing the rights of migrants through capacity-building and advocacy at the regional level

At the European level, over 20 European NHRIs gather in ENNHRI's Asylum and Migration Working Group to work together on issues surrounding the human rights of migrants, asylum applicants and refugees. They do so by discussing national and regional trends in the field, sharing good practices, conducting joint research on specific issues, engaging with regional and international stakeholders and joining voices about important developments on asylum and migration. For example, in 2017 ENNHRI's Asylum and Migration Working Group published a report on migrants' access to information about their rights, setting out the results of a monitoring exercise in 11 European NHRIs and recommendations on how to realise migrants' right to information in practice.[25]

NHRIs in the Asia Pacific region identified the important role they can play in promoting and protecting the rights of migrant workers and their families early on, in 2009. Many have established outreach and monitoring programs and some have developed formal Memoranda of Understanding with other NHRIs in the region to strengthen the protections available to migrant workers. A blended learning training program developed by the APF aims to share the lessons learned from these initiatives and to build the capacity of NHRI staff to respond to the human rights issues facing migrant workers in their countries. A comprehensive manual for NHRIs and their work on migrant workers was published in 2015 and is freely available online.[26]

Outside of NHRI networks, NHRIs have been working with or within Ombudsman networks

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24 To ensure a fair balance of regional representation within GANHRI, the GANHRI Statute recognises four regional networks. While NHRIs are free to establish sub-regional or cross-regional networks of NHRIs, these networks do not play a role within or for the purposes of GANHRI.

25 See ENNHRI 2017a/b/c

26 APF 2015

and institutions such as e.g. the Iberoamerican Ombudsman Federation (Federación Iberoamericana del Ombudsman, FIO) or the Association of Mediterranean Ombudsman Institutions (AOM), the European Ombudsman Institute (EOI), Association des Ombudsmans et Médiateurs de la Francophonie (AOMF), and the European Network of Ombudspersons for Children (ENOC). Given that migrants cross borders and even move from one region to another, intraregional cooperation between NHRI networks should certainly be strengthened, at least along typical migrant routes, such as the one between Africa and Europe.

Other bodies in which NHRIs often engage – though apparently not the NHRIs responding to this survey – are the Commonwealth Forum of NHRIs, as well as Equinet, the European Network of Equality Bodies.

5.2 Cooperating with other NHRIs

NHRI cooperation is diverse and context-specific: "other options" was the response to the question about cooperation partners most frequently selected. A common form through which to initiate cooperation is the Memorandum of Understanding (MoU), which can serve as a basis for a defined set of practical, political or research activities. MoUs of this kind are in place between the NHRIs of Qatar and Nepal, and of Qatar and Sri Lanka, between the NHRIs of England, Scotland and Wales, among Latin American NHRIs and the Iberoamerican Ombudsman Federation (FIO) as well as among NHRIs of the Visegrad states. Examples of cooperation include:

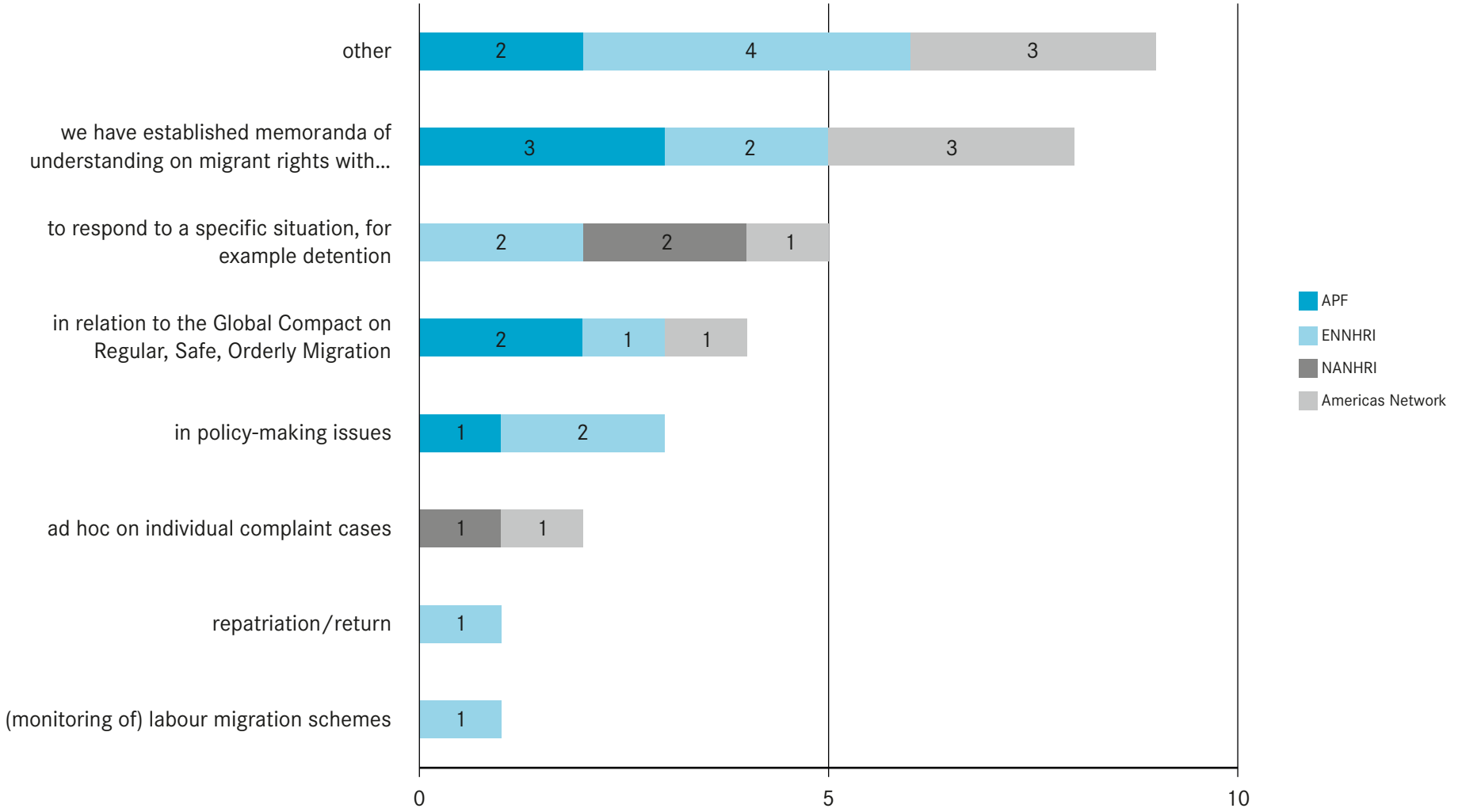
- joint border-monitoring by the NHRIs of Armenia and Georgia,
- protection of migrant workers in the host country (NHRI of Qatar with the NHRIs of Nepal and Sri Lanka), as well as
- cooperation in research and preparation of policy papers (for example ENNHRI's migration and asylum working group or FIO).

SEANF published a policy paper containing migration policy recommendations for each Southeast Asian government that serves as an advocacy and monitoring document. Joint working groups, such as that of GANHRI's migration task force or the FIO, provided avenues for cooperation on the global or regional level.

Practice 14 The Philippine and Malaysian NHRIs: cooperating to protect migrants' rights across borders

The Philippine NHRI works regularly across borders to protect migrant workers from human rights violations. In one instance, the Philippine NHRI supported a Filipino migrant worker in Malaysia who had been arrested and detained on false charges of irregular migration and claimed to have suffered inhumane treatment and illegal detention. The Philippine and Malaysian NHRIs contacted the relevant authorities in both countries to establish the regularity of the worker's stay in Malaysia. Doing so was complicated due to the closure of the recruitment agency involved. Both NHRIs worked towards the worker's release from jail and provided humanitarian support to the worker.

Chart 10 Current cooperation among NHRIs, by region and in numbers



5.3 Intensifying cooperation among NHRIs – what do NHRIs need?

As Mephistopheles remarks in Goethe's *Faust*, "All theories, dear friend, are grey; The golden tree of life is green," and so say NHRIs: Exchange and joint work are what NHRIs would like to do more of in their work on migrants' rights (and most likely beyond): in the form of joint monitoring of cross-border situations and individual cases, as well as exchange among themselves and with other regional and international institutions. Working with regional bodies, such as the European or African Union, or with regional human rights courts are among the avenues for cooperation least favoured by NHRIs. The survey results did not permit an assessment of why this is the case; perhaps it is because NHRIs already successfully work with those bodies or because there is no regional human rights system for them to engage with, as, for example, is the case in Asia, or perhaps NHRIs do not believe they could have any impact in those fora. Since most NHRIs work within their regional human rights systems (see next question), further research and activities should focus on the best ways of addressing migrants' rights within the respective systems.

When asked which issues they wanted to engage in exchange about, NHRIs mentioned a broad range of topics, which we have grouped into the following categories:

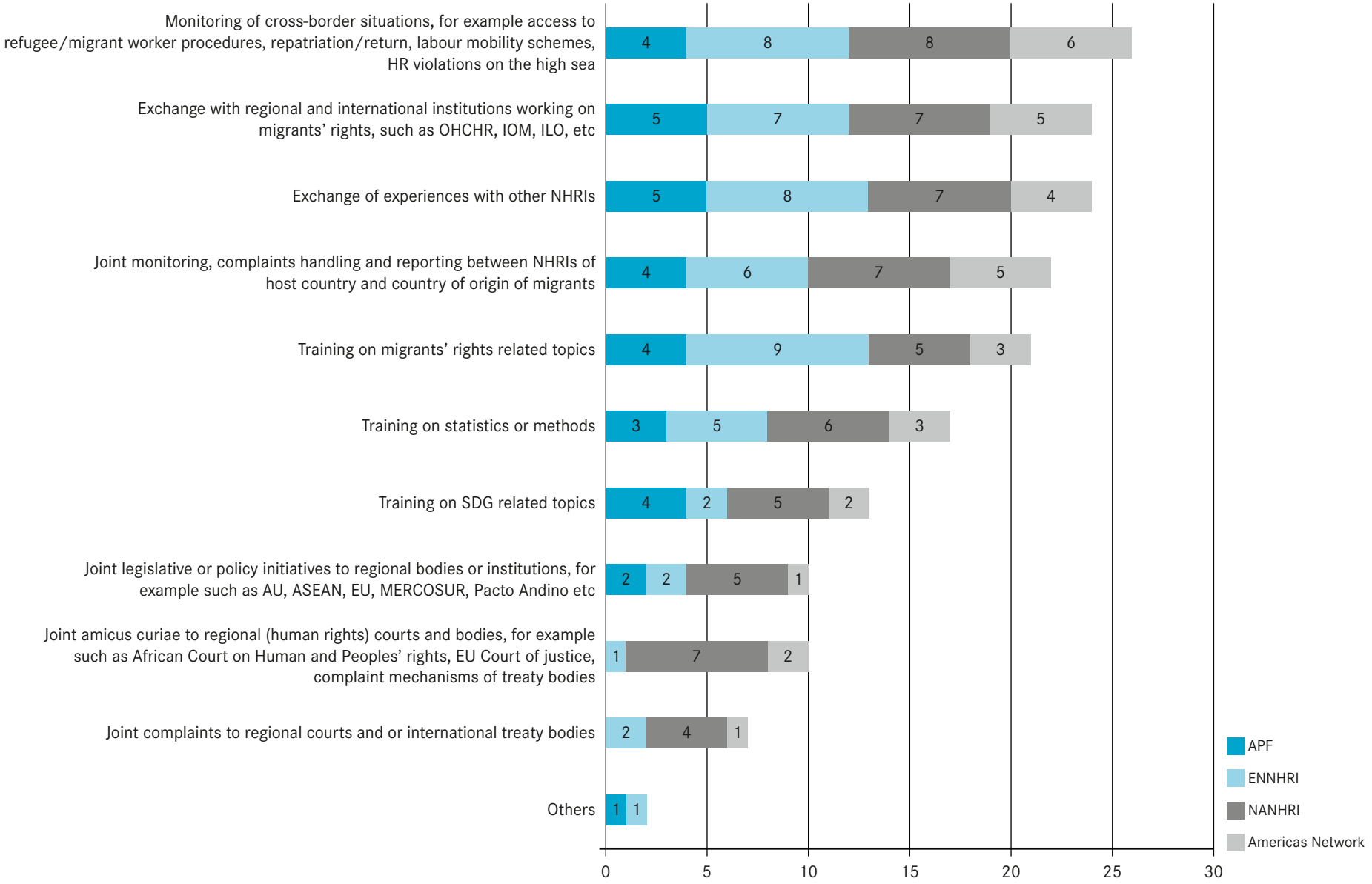
- Working methods of NHRIs
  - Addressing complaints;
  - Conducting training for law enforcement agencies;
  - Hosting dialogues and roundtable discussions with relevant government agencies and stakeholders;
  - Visiting places of detention and making recommendations to ensure that all places of detention meet the minimum human rights requirements for detention;
  - Human rights monitoring of migrant population in the country and abroad;
  - Assessing impact of protection/promotion activities on the situation of migrants.
- Topics
  - Monitoring detention of migrants;
  - Unaccompanied minors;
  - Human trafficking;
  - Reintegration of return migrant workers;
  - Orientation and care of migrants;
  - Access to social rights.
- Interaction
  - with consular services,
  - with regional human rights bodies.

Training needs were listed as the second most important avenue for cooperation, which NHRIs detailed as follows:

- Human rights of migrants: legal provisions, treaties etc., and how to apply those rights practically;
- How to make legal texts of migrant human rights accessible for the broader public (awareness raising) and for basic training of public officials;
- International best practices;
- Training on a wide range of topics, the most frequently mentioned being: Unaccompanied minors, women migrants, inclusion of migrants, access to social rights, family re-unification, migration policy, gender-based violence, access to labour market, human trafficking, irregular migration, detention, and reception of asylum seekers;
- Strategic litigation.

This is a broad range of issues which matches the gaps identified in some of the questions to some extent (for example with respect to strategic litigation, see above, Chart 7), and partly reflects training needs in core NHRI mandates, such as e.g. training of public officials. For any capacity-building activities, it is probably best to verify needs at the regional level and along migratory routes.

Chart 11 Useful activities for NHRIs to intensify work on migrants' rights, by region and in numbers



5.4 Cooperation with regional human rights bodies and regional institutions

The International Organization for Migration (IOM) is the lead agency on migration. Its constitution does not contain a reference to human rights.[27] The GCM contains a general commitment to a human rights-based implementation without anchoring rights in respective indicators. Therefore, by interacting on migration with regional human rights systems and with the regional political bodies, which are often responsible for setting the migration agenda, NHRIs could provide a crucial link between them and work towards human rights-based implementation of the GCM. This appears to be a particularly good window of opportunity, since the GCM will be reviewed on the regional level and global level intermittently, starting soon with a first regional review in 2020.

Practice 15 The Luxembourg NHRI: working with regional organisations & harmonisation of legislation to benefit migrants

The NHRI of Luxembourg worked to assure that EU directives on protection and reception of asylum seekers and refugees were correctly transposed into national law. It published a legal opinion which addressed, inter alia, the rights of asylum seekers to information, access to justice, access to health care, to education, access to the labour market and the detention of migrants. In consequence of its intervention, the draft legislation has been modified in parts to incorporate certain of the NHRI's recommendations, to ensure that the human rights of asylum seekers are fully respected in Luxembourg.

Practice 16 The Dutch NHRI: working with the regional human rights system to the benefit of migrants

The large majority of irregular adult migrants in the Netherlands is generally not provided with accommodation. And although irregular migrants are de jure entitled to emergency medical care in the Netherlands, in practice they are often denied care. In 2014/15, the Dutch NHRI visited shelters run by non-state institutions, such as NGOs and volunteers' initiatives, and issued press releases to raise awareness about living conditions of irregular migrants and the violations of their human dignity. The NHRI also supported a group of churches in bringing a complaint to the European Committee of Social Rights and actively informed the government and the MPs about the human rights standards and the binding character of human rights treaties. In 2016, the European Committee of Social Rights found that the situation in the Netherlands was not in conformity with Article 13(4) (right to social and medical assistance) or with Article 31(2) (right to housing) of the European Social Charter. Inter alia, the Committee found that shelter must be provided not only to migrant children but also to adult migrants in an irregular situation, even if they have previously been requested to leave the country.

Most NHRIs work with their regional human rights systems. The European NHRIs seem particular active, which may be due to the fact that the region has a strong human rights institutional landscape, with the Council of Europe's European Court of Human Rights' and the European Union's Court of Justice's judgements being accepted as binding in national law. Based on their responses to the survey, the responding African NHRIs do not seem to engage with the regional human rights system on migration, even though there is a progressive African Convention on Displaced Persons. It is possible that the explanation for this lies in a sample bias. Also, the African network of NHRIs, NANHRI, actively engages with the regional human rights system. The low interaction in the APF region is understandable, given the nascent status of the human rights system there. Most common forms of participation are submission of country or thematic reports and participation in hearings. NHRIs are less engaged in standard-setting procedures, such as the development of regional conventions or guidelines, with ENNHRI as the exception that proves the rule, as ENNHRI has engaged in guidelines on detention of migrants.

27 https://www.iom.int/constitution [last accessed 09.11.2018]

Chart 12 Work with regional human rights systems, by region and in numbers

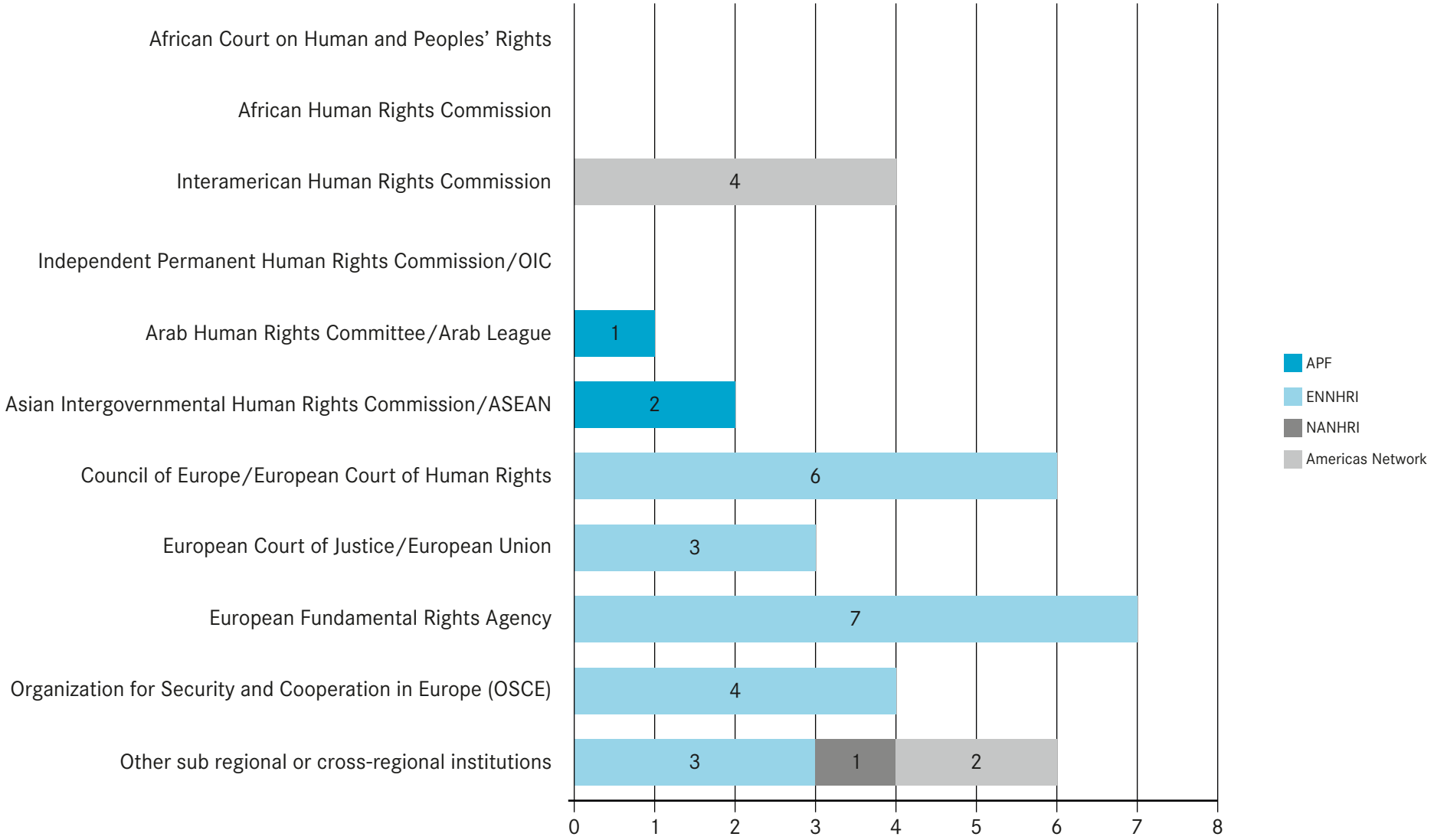
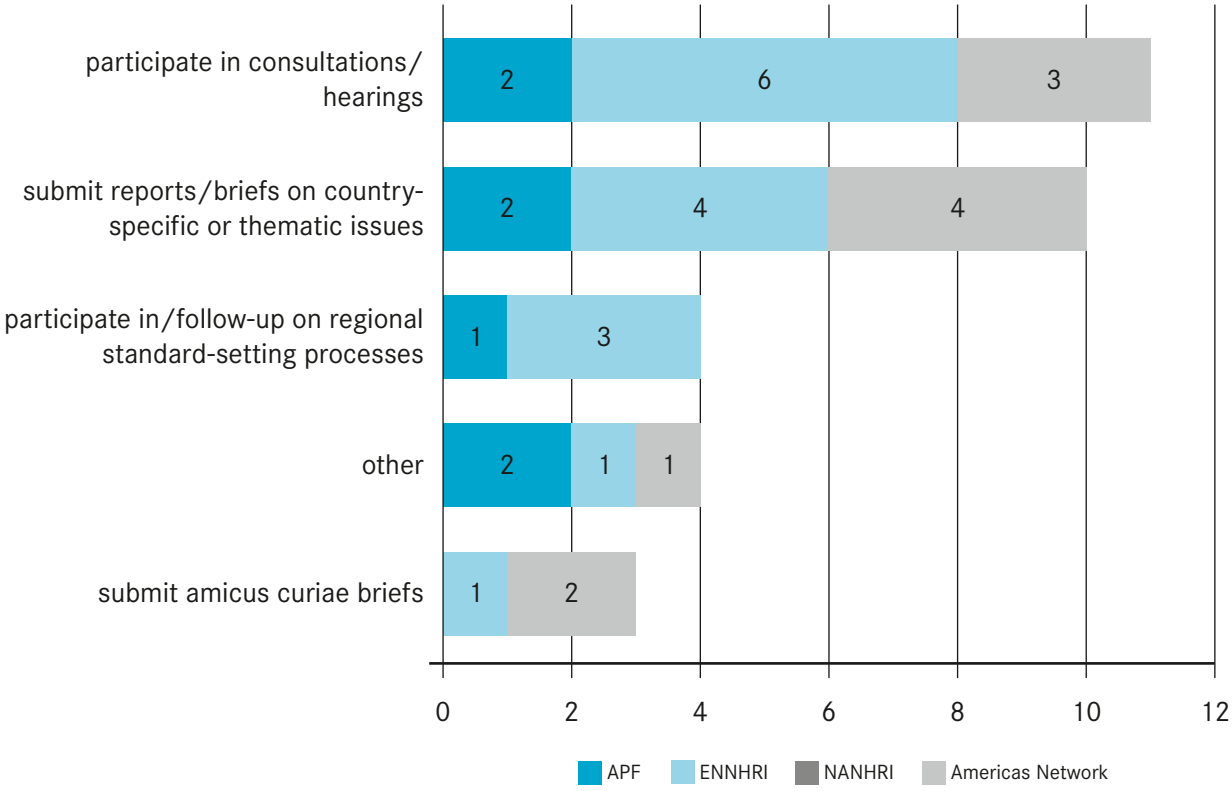


Chart 13 Ways of working with regional human rights systems, by region and in numbers



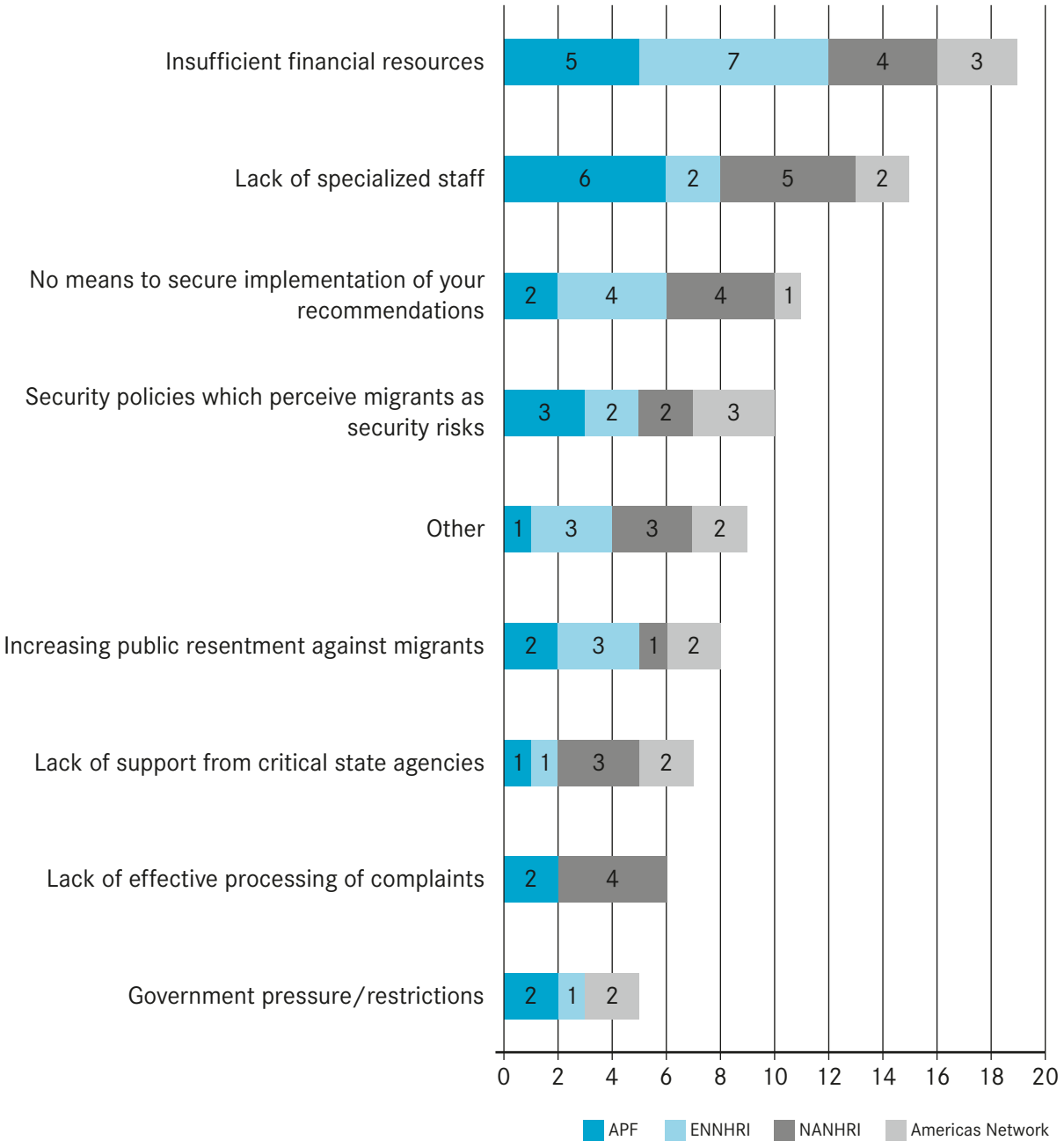
6 Looking ahead

Of all NHRIs responding, 91 per cent clearly saw potential to increase the effectiveness of their work on migrants' human rights; only one NHRI considered that it was already doing everything it could. Some NHRIs have taken steps recently, e.g. one NHRI recently created a high-ranking position on migration and related areas to engage more deeply on migrant rights, another expected increased outbound migration of their nationals to put the issue of migration more firmly on the political agenda and thus also on the agenda of the NHRI.

The two main challenges most often mentioned are insufficient resources and lack of specialised staff. These challenges are particularly acute for NHRIs in Africa, Asia and the Americas, reflecting the under-funding of NHRIs and perhaps also the staffing policies of NHRIs. A third challenge mentioned often is a lack of means for NHRIs to ensure that their recommendations are acted upon – a structural challenge that most NHRIs face, since their decisions are not binding upon the government.

NHRIs across all regions have to deal with increasing anti-migrant sentiment. This, together with public policies which frame migrants as security risks, as well as restrictions on admission to the country for migrants are hampering the implementation of migrants' human rights. In other words, NHRIs face pressure from both the state as well as from broader society in their work on migrants' rights – which is also illustrated by the fact that about a quarter of the respondent NHRIs identified lack of support from critical state agencies, notably relevant ministries as well as specialised commissions and agencies, as a challenge.

Chart 14 Main challenges for NHRIs, by issue and numbers per region



7 Conclusions and recommendations

To conclude: Migrants' rights, as an area of work, are well-established among respondent NHRIs and their networks. Since all four regional networks work on migration and have countries of all categories – origin, transit, destination and return – within their memberships, NHRIs tackle the whole diversity of migrants' rights challenges.

NHRIs' raison d'être is to "bring human rights home" and one way they do so is by feeding international human rights obligations and debates into the national political discourse and practices as well as channelling national debates to the international level. They are particularly apt at interfacing with state institutions and the international level, be it in the context of harmonisation of national legislation and administrative practices with international standards, monitoring and reporting on the human rights situation to national and international bodies or promoting the general public's knowledge about migrants and their rights. They also have vast experience in investigating the situations of marginalised groups, such as migrants, and following up on individual complaints and petitions as well as in monitoring public institutions' compliance of with human rights obligations.

Given the transnational nature of migration, there is room for increased collaboration among NHRIs, particularly in the context of migratory routes that cross regional boundaries and thus NHRI network boundaries. Monitoring these situations, both individual situations and the long-term impact of national and regional policies could be combined with corresponding public diplomacy with regional and international institutions and fora. Furthering them could help secure human rights for migrants in cross-border situations, strengthen regional and global reporting under the GCM, and more generally contribute to assuring a human rights-based implementation of the Global Compact on Migration.

Detention of migrants is a concern of both African and European NHRIs, and one that is only partly "home-made". The recent EU policies have tightened border security, led to the criminalisation of movement across Africa and driven migrants underground and onto more dangerous routes, thus triggering a rise not only in risks, but also in detention-like conditions. Given the EU plans to step up its (forced) return and repatriation activities, European, and particularly EU-based NHRIs can benefit from Latin American NHRIs' experience with the referral system Latin American countries are setting up for Latino migrants being returned from the United States of America. European NHRIs, in turn have a vast experience in interacting with the rich landscape of regional human rights institutions. Asia-Pacific NHRIs in turn work in a region characterised by decades of labour migration and have amassed extensive knowledge about how to make labour migration work and how to avoid human rights risks, for example, in temporary or circular labour migration. NHRIs in the Asia-Pacific and Latin American regions probably have the most consolidated cross border cooperation in place, which could inspire other regions.

Looking at the national level, inclusion of migrants in the societies in which they have settled is a pertinent issue in all countries, and particularly in cases where migration is neither temporal nor circular. The responses of NHRIs to this survey show that there is room for more inclusion of migrants in the work of NHRIs and their respective societies. This could also be helpful for projecting a positive image of migration and turning the tide on xenophobia and racism.

Recommendations

Based on the results of the survey, the author would like to suggest that GANHRI, as well as the four regional networks, discuss the following measures in light of their strategic priorities, capacities and resources:

GANHRI should

- assist regional networks and their members to create opportunities for exchange among themselves and with regional and international actors (International Labour Organisation (ILO), IOM, etc) as well as training opportunities (ideally linked with exchange among members).

GANHRI and the four regional networks of NHRIs should

- support of members in working on implementing the actions under the GCM determined for NHRIs (particularly objectives 2, 11, 12, 15, 17),
- assist members and regional networks to include migrants' rights in international reporting processes, such as to human rights treaty bodes and the UPR,
- support cross-regional cooperation where needed and possible,
- support members whose countries are in critical political situations, where migrants' and other human rights are under pressure and/or being violated, including through support of members in identifying useful avenues for addressing pressure from the state and the broader society,
- assist members in confirming or expanding their mandate to include cross-border situations,
- support its members to demand from their countries the ratification of international treaties that protect the human rights of migrants.

The four regional networks of NHRIs should

- assist members to work with their regional human rights systems and including migrants' rights in regional reporting, such as under regional human rights treaties, especially with a view to the regional monitoring of the GCM every four years,
- assist members to identify useful avenues for addressing migrants' rights and frameworks in regional political fora,
- offer training and exchange opportunities for members.

International and regional organisations should

- recognize NHRIs' monitoring and accountability role by including them in reporting and work processes as well as programme setups, while respecting their independence,
- facilitate reporting on migration issues by NHRIs, their Global and regional networks, for example through dedication of reporting space to GCM review.

8 Annex

8.1 Questionnaire

15.03.2018

Mapping of NHRIs roles, activities, experiences with regards to migration

Questionnaire for National Human Rights Institutions (NHRI)

Introduction:
This questionnaire is part of GANHRI's work on the Global Compact on Migration (http://refugeesmigrants.un.org/migration-compact) and reflects the issues discussed in that process. Consequently, it focuses on human rights-related aspects of migration, not on asylum and refugee-related aspects, which is the topic of another Compact. We are conscious that NHRIs might work on both issues and that there are overlaps, and we invite NHRIs to use this questionnaire to clarify this.

Please send the completed questionnaire by **27.04.2018** to the following e-mail address **kaempf@dimr.de** with a copy to **chairsoffice@ganhri.org**.

Background

Migrants: *Article 2–2(1) of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx) contains the following definition: "For the purposes of the present Convention:*
1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."
Employment can be temporary.

Refugees: *UNHCR's mandate defines refugees in line with 1(A)(2) of the 1951 Refugee Convention and its 1967 Protocol, according to which "the term 'refugee' shall apply to any 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 his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".*

On the regional level, the decolonisation process and several civil conflicts in the African region led to broader formulations of the refugee definition by the predecessor of the African Union through the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention). Similarly, the 1984 Cartagena Declaration expanded the definition of refugees in Latin America due to an increased number of refugees fleeing dictatorial regimes. These regional definitions now include inter alia, external aggression, generalised violence and massive violation of human rights as possible reasons for determining the refugee status.

While, previously, migration was considered voluntary, as opposed to the dislocation of refugees, and therefore migrants were considered less vulnerable, the evidence now clearly demonstrates that this is not the case. Hence efforts to protect migrants have grown more concerted efforts. Also, climate change and humanitarian crises have blurred the lines between migrants and refugees. Institutions such as NHRIs are therefore critical in the design of the promotion and protection of the rights of both refugees and migrants. Also, while the circumstances that lead to either category to leave their countries of origin may be very different, the experiences of refugees and migrants in the host countries may nonetheless be similar.

Overview of the topics of the questionnaire

I. Basic information on your National Human Rights Institution 54

II. Work and context of your NHRI on migration issues 54

III. Work of your NHRI on protection, monitoring and promotion of migrants' rights 57

IV. Your involvement in other regional or multilateral institutions or fora 62

V. Challenges you are facing within your NHRI 63

Before we can start, German (and European) data protection law requires that you issue your consent to the following. As you will see, we Germans are very thorough!

Consent

I agree that my personal data, such as name, first name, function, e-mail, telephone number, will be collected, processed and used by the German Institute for Human Rights for the following purposes:

Inclusion of data in our password-protected database for the purpose of sending information and publications as part of the work of the Global Alliance of National Human Rights Institutions (GANHRI).

I have been advised that any personal data relating to me personally that are collected in the context of the above-mentioned purposes will be collected, processed and used in compliance with the General Data Protection Regulation.

I have also been informed that the collection, processing and use of my data is voluntary and that I can refuse my consent or revoke at any time with effect for the future with no detrimental consequences for me.

I will address my declaration of revocation to:

German Institute for Human Rights, Zimmerstraße 26/27, 10969 Berlin.

Should I file a declaration of revocation, my data will be deleted upon receipt of the declaration, in compliance with data protection laws.

_____

Place, date and signature

I. Basic information on your National Human Rights Institution

1 Name of your institution: ____

2 Country: ____

3 Name and position of respondent: ____

4 Desk officer for migration issues, whom we could contact for further information

a) same as above
b) it is a different person: ____
c) Contact details:
e-mail: ____
phone: ____

II. Work and context of your NHRI on migration issues

5 In the work of your institution, do you distinguish between refugees and migrants?

☐ Yes
☐ No
Comment: __.

6 To what extent is your country a ...? Please prioritize by ranking them from 1 to 3 (1st place = predominantly, 3rd place = least of the 3 options).

__. Country of origin of migrants?
__. Country of transit of migrants?
__. Country of destination of migrants?

7 Does your institution have ...?
Please click the 2 options most resembling the arrangement in your institution!

☐ A commissioner or ombudsperson responsible for migration

☐ A national monitoring mechanism for the Convention on Migrant Workers/ on migrants' human rights as such, which is part of our NHRI

☐ A unit consisting of several persons, working on migration

☐ A focal person for rights of migrants

☐ All units work on migrants' rights

☐ None of the above, but we cooperate with a national mechanism on migrants' rights which is located in another institution. (*Please skip 7a) and answer additionally 7c)*

☐ None of the above, we do not work on migrants' rights (*Please skip 7a and 7b) and answer additionally 7c)*

Other/Comments ____

7a) How much of your work as NHRI is dedicated to migrants' rights?

☐ Less than 25%
☐ 25–50%
☐ More than 50%

7b) How do you cooperate with the external national mechanism on migrants' rights?

____

7c) If your NHRI does not work on migrants' rights, could you please explain why?

____

8 What were the reasons for your institution to work on migrants' rights? Please click the 3 most relevant!

☐ To respond to the broad mandate of our NHRI in line with the Paris Principles

☐ The ratification of the CMW

☐ Recommendations in the Concluding Observations by the Committee on the Rights of Migrant Workers

☐ Recommendations in the Concluding Observations by any Committee OTHER THAN the Committee on the Rights of Migrant Workers, namely ____

☐ To respond to a specific migrant's rights-related situation (such as); please specify ____

☐ Recommendations as outlined in the Universal Periodic Review (UPR)

☐ The Global Compact on Migration

☐ SDGs and their migration-related goals & targets

☐ Other reasons, such as ____

9 Please select up to 5 migrants' rights issues your institution has worked on during the past 2 years.)

☐ Migration policy: e.g. conditions of entry, skills recognition, taxation, portability of social benefits

☐ (Refugee/migrant) status determination procedures: quality of decision-making, reception centre conditions

☐ Education for migrant children, incl. unaccompanied minors

☐ Labour mobility (e.g. work visa schemes) and decent work (non-discrimination in access to employment, working conditions, equal pay) for migrants

☐ (Other) social rights: access to healthcare, housing, social security (portability)

☐ (Re)integration measures: language, job qualification/training, job search

☐ Participation of migrants in decision-making, e.g. policies, community development

☐ Private economic actors: remittance agencies, labour recruitment agencies

☐ Modern slavery

☐ Human trafficking/smuggling

☐ Detention of adult migrants

☐ Detention of child migrants

☐ Return and repatriation procedures

☐ Racism, hate speech, xenophobia against migrants

☐ Migrant women

☐ Unaccompanied migrant children

☐ Family reunification

☐ Irregular migrants

☐ Sexual and gender-based violence against migrants

☐ Criminality of migrants

☐ Other, such as ____

III. Work of your NHRI on protection, monitoring and promotion of migrants' rights

10 Protection and Monitoring: Did your NHRI do the following work on the protection and monitoring of migrants' rights during the last 5 years:

10a) We do have the mandate to receive individual complaints

☐ Yes (please go to question 10b)
☐ No (please skip to question 11)

	in general		with respect to migrants' rights	
	Yes	no	Yes	no
a) Consider individual complaints and petitions	☐	☐	☐	☐
b) Carry out investigations of individual cases	☐	☐	☐	☐
c) Legal aid or legal support for individual or collective claims	☐	☐	☐	☐
d) Intervene in court cases („amicus curiae")	☐	☐	☐	☐
e) Strategic litigation	☐	☐	☐	☐
f) Monitor and report compliance of public institutions with human rights	☐	☐	☐	☐
g) Monitor and report compliance of private institutions with human rights	☐	☐	☐	☐

10b) If applicable: What kind and percentage of complaints handled by your institution were brought forward?

Complaints brought forward by migrants ____ %

☐ We do not register the background of individual complainants

Complaints related to migrants' rights ____ %

Comments: ____

11 <u>Promotion</u>: Has your NHRI carried out the following activities on the promotion of migrants' rights during the last 5 years?

	In general		With respect to migrants' rights	
	yes	no	yes	no
a) Promote harmonization of national legislation and administrative practice with international standards	☐	☐	☐	☐
b) Conduct public inquiries related to the promotion of migrants' rights	☐	☐	☐	☐
c) Monitor and report the development of human rights situation in your country to national bodies, to the UPR or to the reporting process under human rights treaties and follow-up on those recommendations	☐	☐	☐	☐
d) Report and follow up on SDG implementation	☐	☐	☐	☐
e) Work to ensure government statistics are properly disaggregated according to human rights-based criteria	☐	☐	☐	☐
f) Development of training programmes for teaching, researching and integrating migrants' human rights in the curricula of schools, universities and in professional circles, and/or providing training	☐	☐	☐	☐
g) Promote the general public's knowledge about migrants' and their rights	☐	☐	☐	☐
h) Empower migrants/work with migrant self-representing organisations	☐	☐	☐	☐

12 Please provide one or more examples of your migrants' rights activities:

Remarks: We would like to include some practical examples of NHRIs' work on migrants' human rights, to illustrate not only the work NHRIs do, but also the impact their activities have. In the following, please provide 1 or 2 examples. Thank you!

_____

1st example

a) Background/situation: What was the problem/ which human rights were affected?

_____

b) How did you address the issue?
- What steps did you take?
- Which stakeholders/state actors, civil society organisations did you address and/or include in your work?

_____

c) How did your work improve the situation/what impact did your actions have?

_____

d) Please provide links to additional documentation or attach documents

_____

e) Whom could we contact for further information?

_____

2nd example

a) Background/situation: What was the problem/ which human rights were affected?

_____

b) How did you address the issue?
- What steps did you take?
- Which stakeholders/state actors, civil society organisations did you address and/or include in your work?

_____

c) How did your work improve the situation/what impact did your actions have?

_____

d) Please provide links to additional documentation or attach documents

_____

e) Whom could we contact for further information?

____

13 Does your NHRI involve migrants directly in your work?

☐ Yes
☐ No

13a) If yes, in which way does your NHRI ensure that migrants can access and be heard by your institution? (*Please click all that apply*)

☐ We have an advisory council which includes migrants/is composed entirely of migrants.

We involve migrants in research activities

☐ as interview partners

☐ as co-researchers

☐ in an advisory function

☐ other, such as ____

☐ We invite migrants to events

☐ We organise awareness raising campaigns about the role of the NHRI among migrants

☐ We make sure that information is made available in a migrant-accessible way (on websites, publications, etc.)

☐ We have migrants on our staff

☐ Other, such as ____

14 In which regional, sub-cross regional networks have you worked successfully on migrants‘ rights? (Please click all that apply)

☐ European Network of National Human Rights Institutions (ENNHRI)

☐ Network of African National Human Rights Institutions (NANHRI)

☐ Network of the NHRIs of the Americas (RED)

☐ Asia Pacific Forum of National Human Rights Institutions (APF)

☐ Other sub regional or cross-regional networks, please specify ____

15 Have you been cooperating with other NHRIs related to migrants' rights?

☐ Ad hoc, on individual complaint cases, e.g. ____

☐ In policy-making issues, e.g. ____

☐ We have established memoranda of understanding on migrant rights with NHRIs in ____

☐ In relation to the Global Compact for Safe, Orderly and Regular Migration

☐ To respond to a specific situation, e.g. detention

☐ On cases of repatriation/return

☐ (Monitoring of) Labour migration schemes

☐ Other, such as: ____

Comments: ____

16 Which types of activities by an NHRI-network are or would be most useful for your NHRI's work on migrants' rights?

☐ Training on migrants' rights-related topics. Please specify which topics ____

☐ Training on SDG-related topics

☐ Training on statistics or methods

☐ Exchange of experiences with other NHRIs, esp. on ____

☐ Joint legislative or policy initiatives for submission to regional bodies or institutions, e.g. AU, ASEAN, EU, MERCOR, Pacto Andino etc.

☐ Joint amicus curiae to regional (human rights) courts and bodies, e.g. African Court on Human and Peoples' Rights, EU Court of Justice, complaint mechanisms of treaty bodies

☐ Joint complaints to regional courts and or international treaty bodies

☐ Exchange with regional and international institutions working on migrants' rights, such as OHCHR, IOM, ILO, etc

☐ Monitoring of cross-border situations, e.g. access to refugee/migrant worker procedures, repatriation/return, labour mobility schemes, HR violations on the high sea

☐ Joint monitoring, complaints handling and reporting between NHRIs of host country and country of origin of migrants

☐ Others, please specify ____

IV. Your involvement in other regional or multilateral institutions or fora

17 Has your NHRI engaged on migrants' rights with regional human rights systems or regional fora with HR elements, such as (Please click all responses that apply)

☐ African Court on Human and Peoples' Rights?

☐ African Human Rights Commission?

☐ Interamerican Human Rights Commission?

☐ Independent Permanent Human Rights Commission/OIC?

☐ Arab Human Rights Committee/Arab League?

☐ Asian Intergovernmental Human Rights Commission/ASEAN ?

☐ Council of Europe/European Court of Human Rights?

☐ European Court of Justice/European Union

☐ European Fundamental Rights Agency

☐ Organization for Security and Cooperation in Europe (OSCE)?

☐ Comments/Other sub regional or cross-regional institutions, please specify

____

17a) If yes, how do you work with regional human rights systems:

☐ participate in consultations/hearings

☐ submit amicus curiae briefs

☐ participate in/follow-up on regional standard-setting processes

☐ submit reports/briefs on country-specific or thematic issues

☐ other, please specify ____

V. Challenges you are facing within your NHRI

18 Do you believe your NHRI could work more effectively on migrants' rights?

☐ Yes
☐ No

Comments ____

18 a) If yes: What are the main challenges facing your NHRI with regard to increasing effectiveness of your work on migrants' rights? (*Please click all that apply*)

☐ Lack of effective processing of complaints

☐ Lack of specialized staff

☐ No means to secure implementation of your recommendations

☐ Insufficient financial resources

☐ Increasing public resentment against migrants

☐ Security policies which frame migrants as security risks

☐ Government pressure/restrictions

☐ Lack of support from critical state agencies, namely ____

☐ Other/Comments: ____

19 Please provide any additional comment, idea, question or remark

____

Thank you very much for filling in the questionnaire!

8.2 Charts

Chart 15 Distinction drawn/not drawn between refugees and migrants by responding NHRIs, by region and in numbers

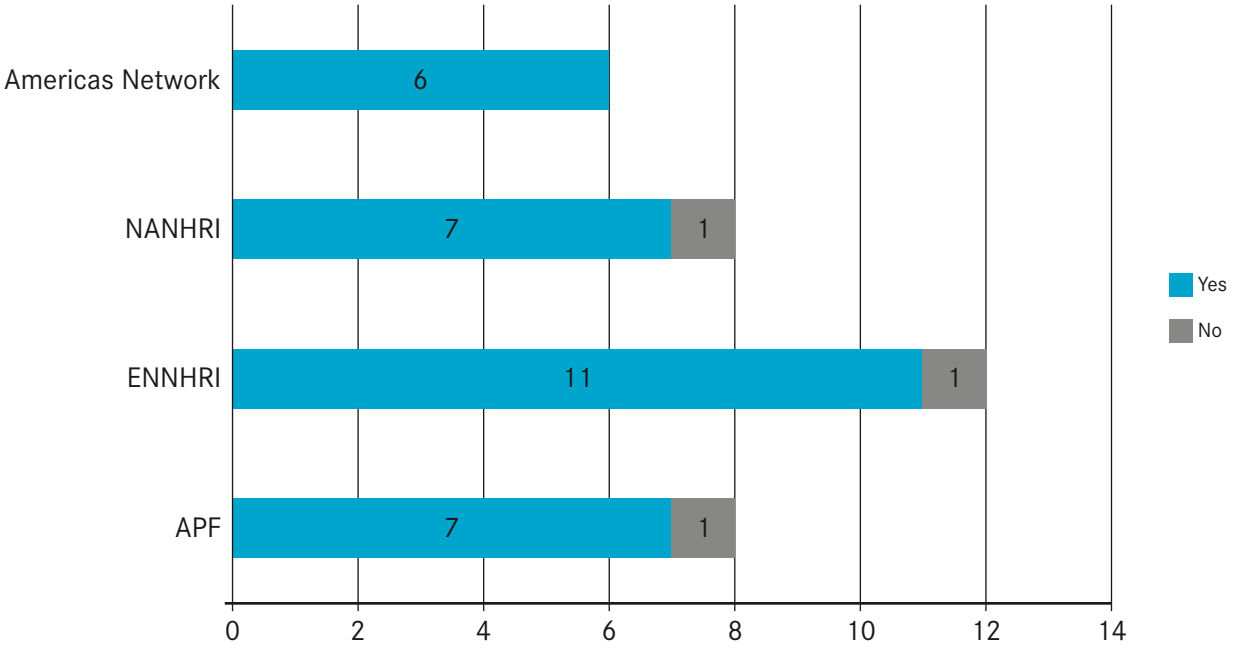


Chart 16 How NHRIs have institutionalised migrants' rights, by region and in numbers

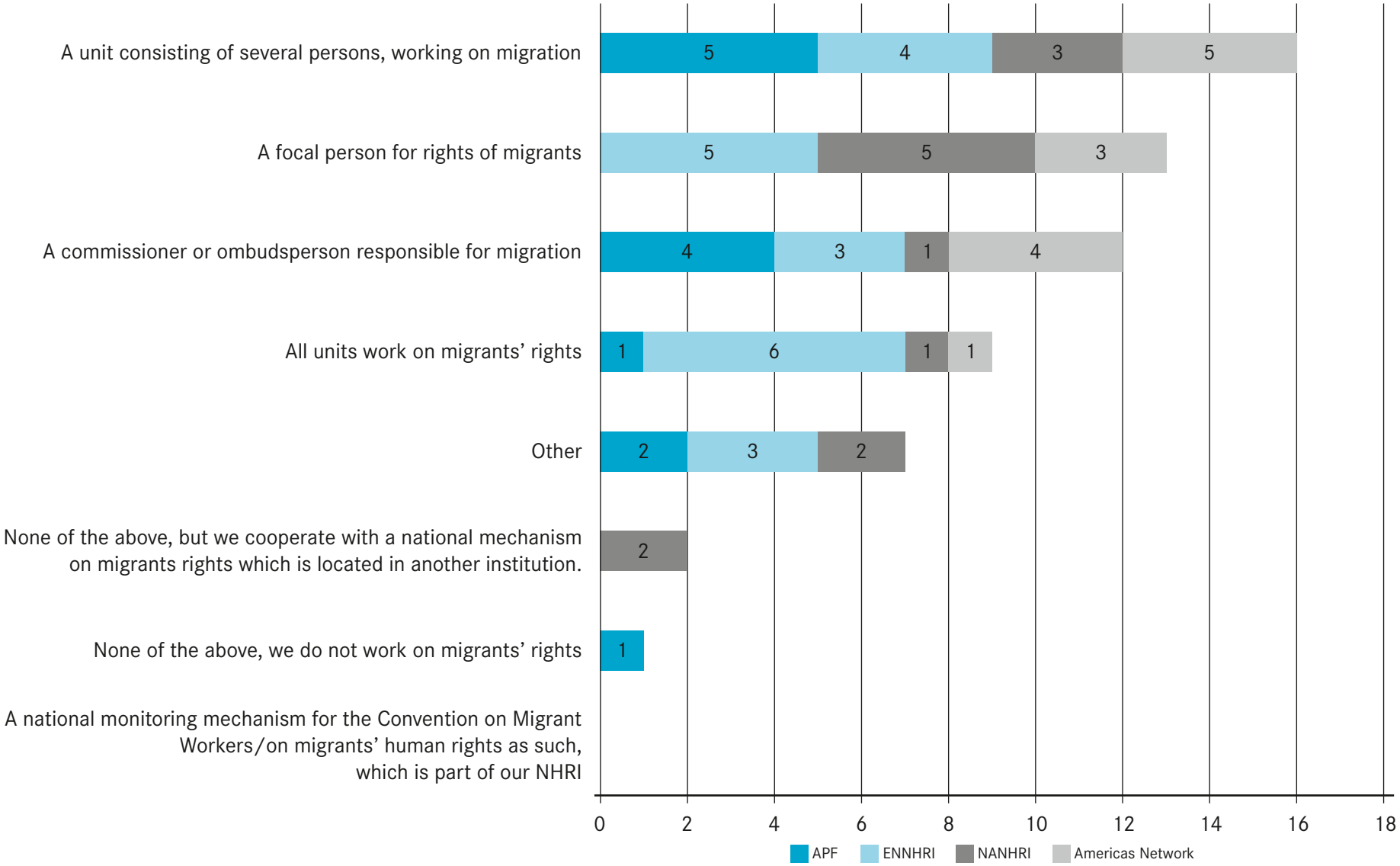


Chart 17 Regional disaggregation: NHRIs general work in protection and monitoring, by region and in numbers

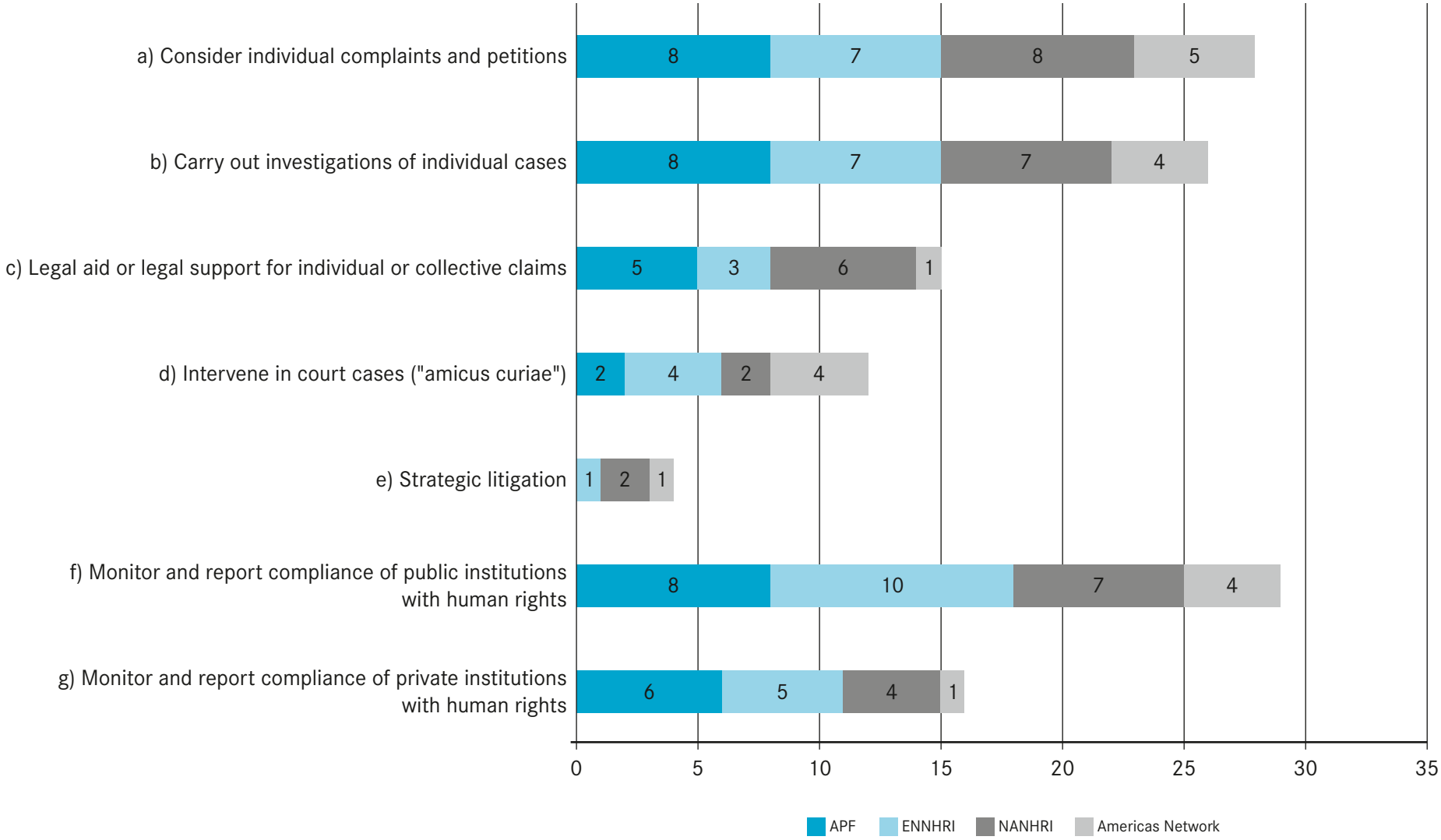


Chart 18 Regional disaggregation: NHRIs work in protection and monitoring with regard to migrants' rights, by region and in numbers

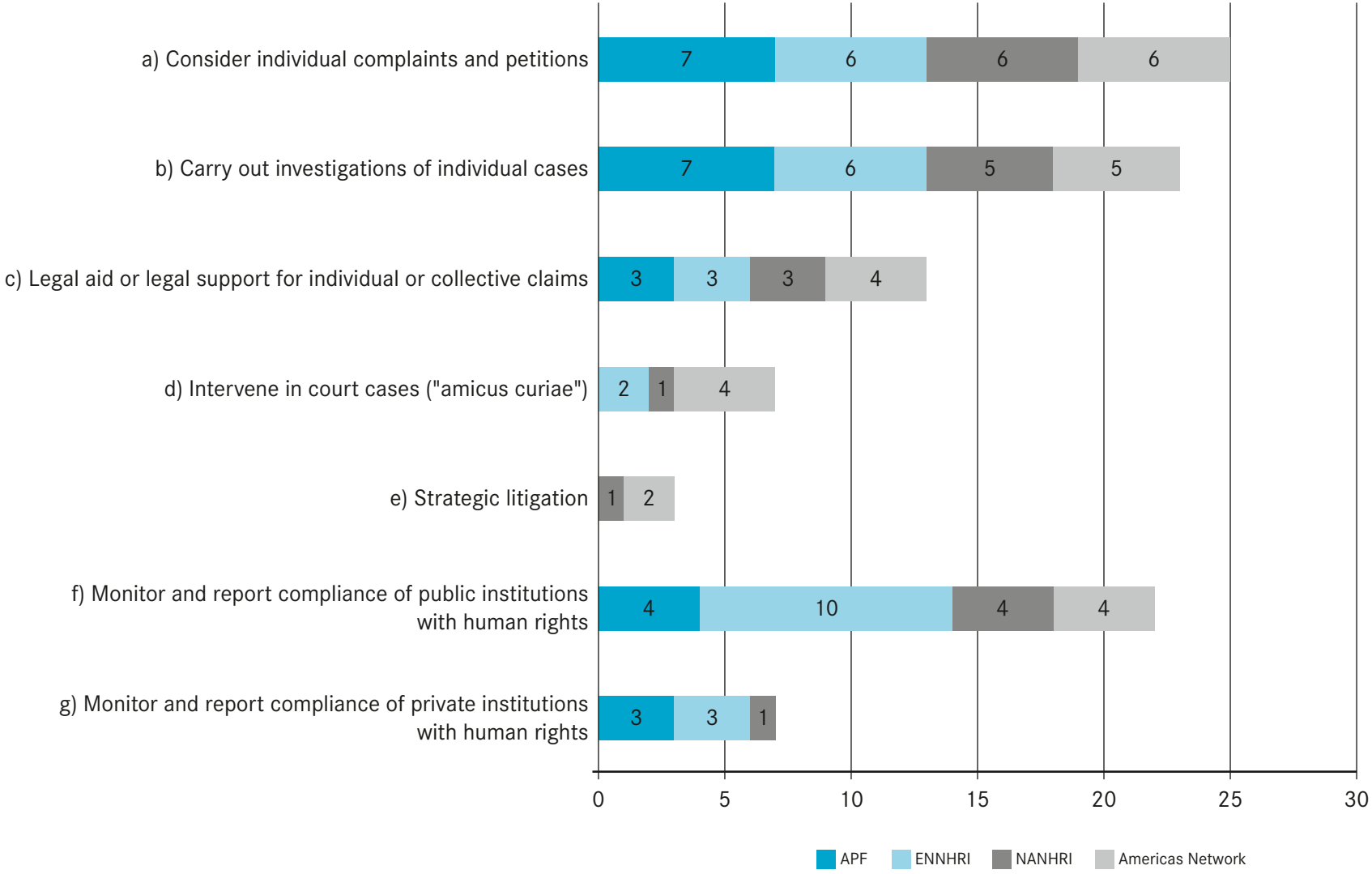


Chart 19 Regional disaggregation: NHRIs general work in promotion, by region and in numbers

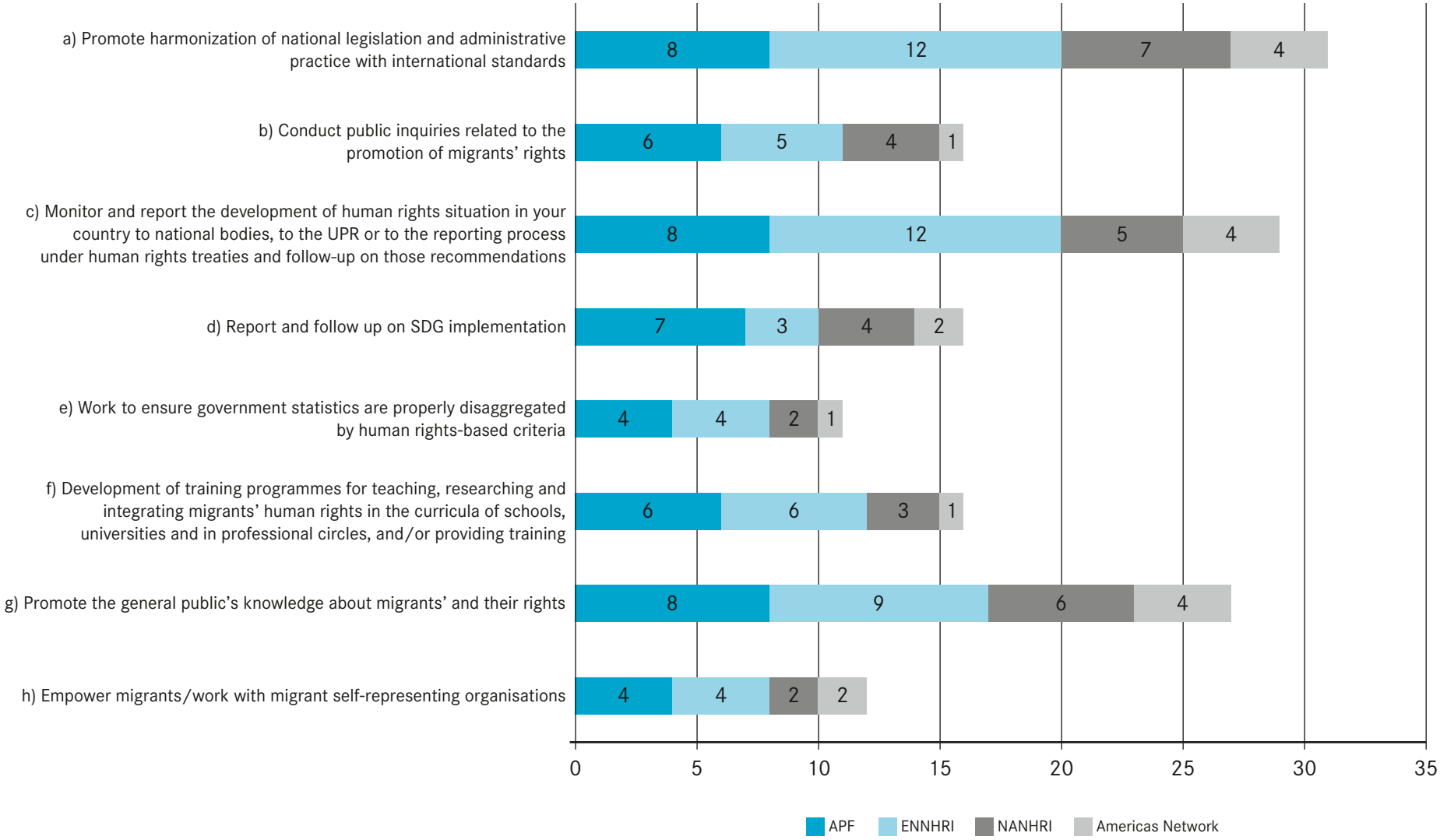


Chart 20 Regional disaggregation of NHRIs work promoting migrants' rights, by region and in numbers

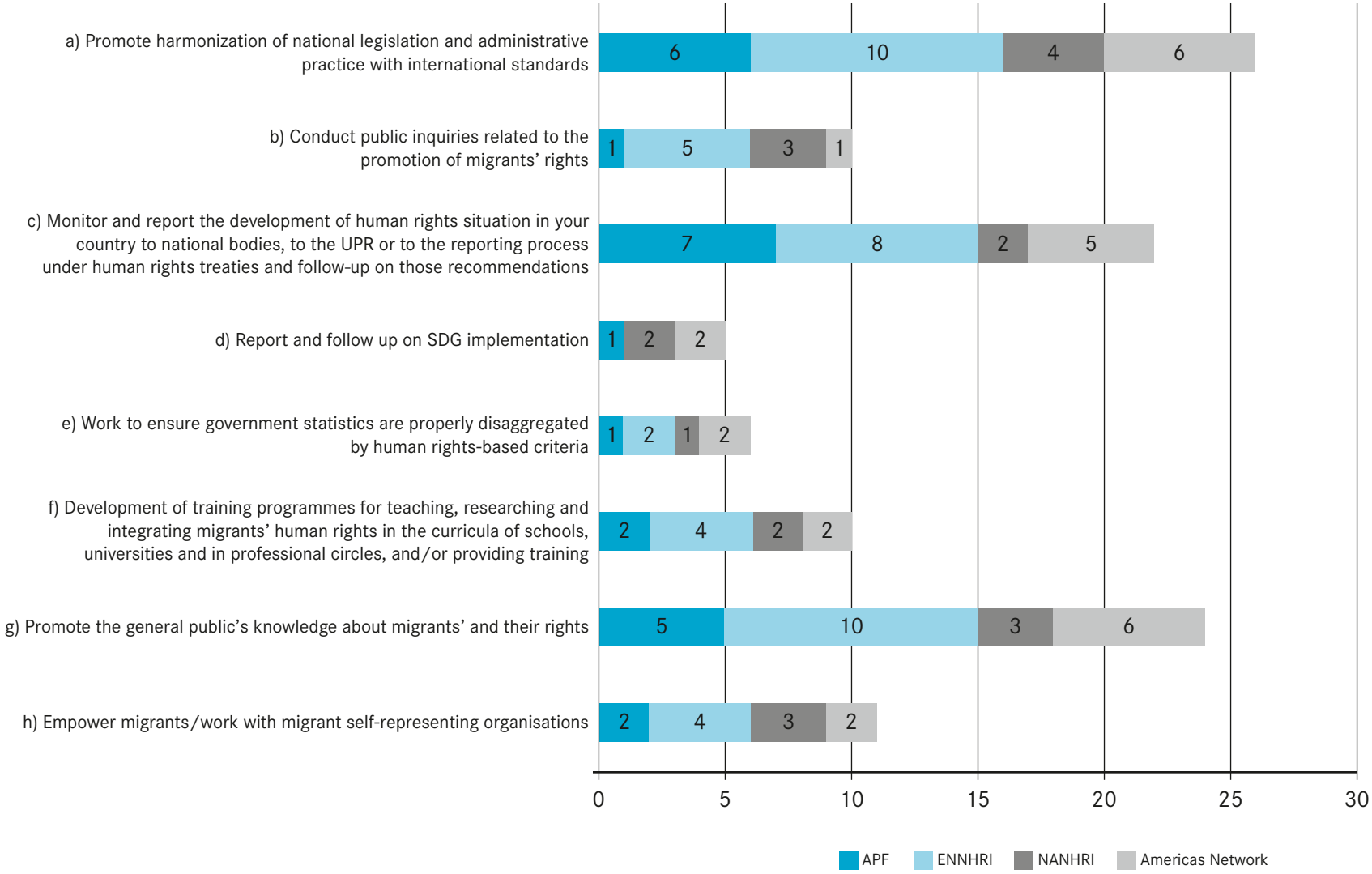
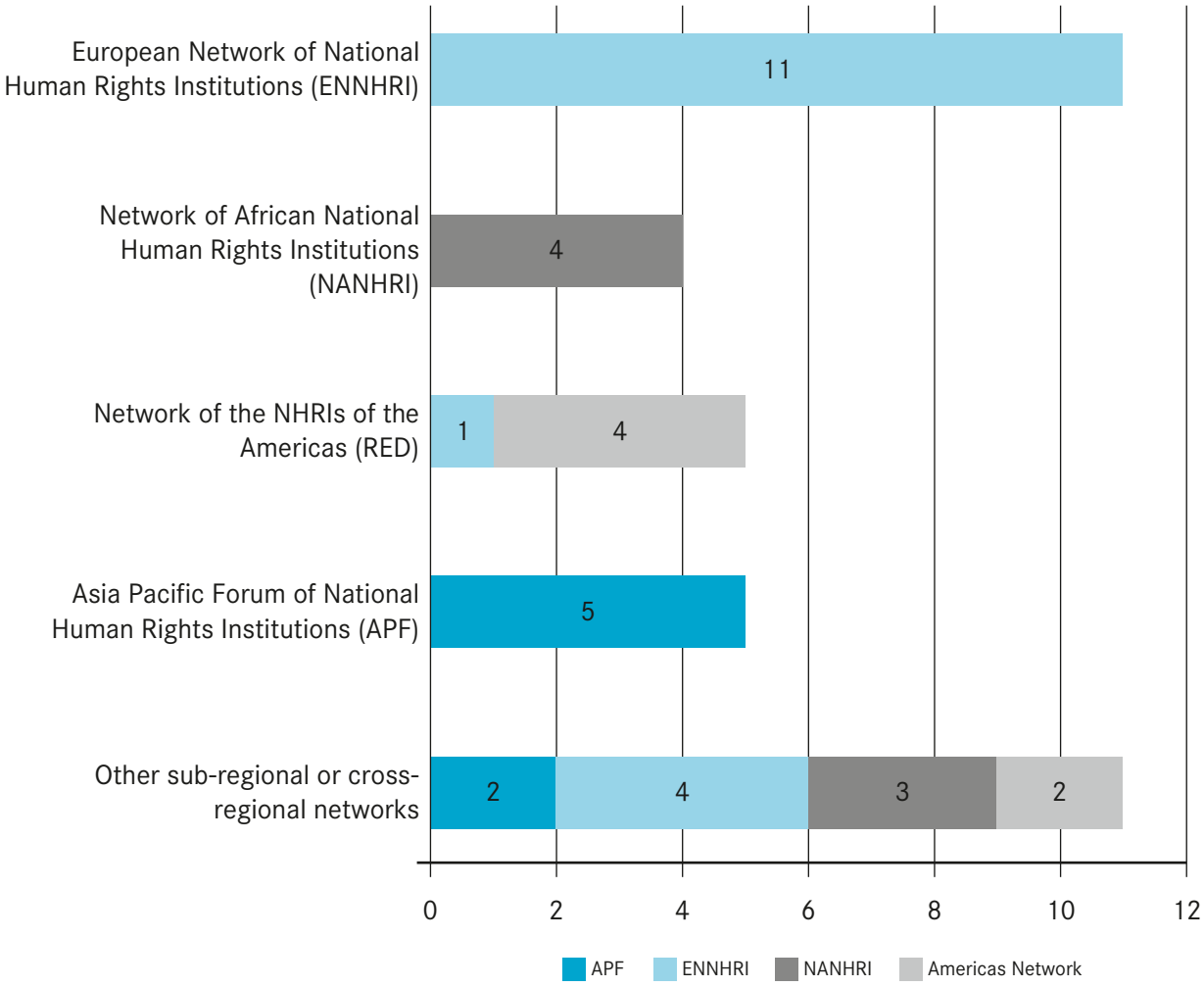


Chart 21 NHRIs' work in and across regional networks, by region and in numbers



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