

BEYOND AFFILIATE STATUS:

**EXTRAPOLATING THE PARTICIPATION OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE
WORKINGS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

**DISSERTATION SUBMITTED IN PARTIAL FULLFILMENT OF THE REQUIREMENTS OF THE
MASTER OF LAWS DEGREE (LLM)
HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA**

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DEDICATIONS

To
My family
Friends
&

All women who are victims of domestic violence.

DECLARATIONS

I, **BONOLO RAMADI DINOKOPILA**, do hereby declare, certify and affirm that this research is my own work and that to the best of knowledge, has not been submitted or is currently being considered either in whole or in part, in fulfillment of the requirements of a Masters of Law Degree at any other institution of learning. The ideas used herein have been taken from different scholars, but have been presented in a manner that has not been taken from other literature hence it is deemed original. I assume personal responsibility to the correctness of facts contained herein and to the presentation thereof.

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LIST OF ABBREVIATIONS

Abuja Guidelines	Abuja Guidelines on the Relationship between Parliaments Parliamentarians and Commonwealth National Human Rights Institutions
1998 Resolution on Affiliate Status	Resolution on Granting Observer [Affiliate] Status to National Human Rights Institutions in Africa
ACJ	African Court of Justice
African Charter	African Charter on Human and Peoples' Rights
African Children's Committee	African Committee of Experts on the Rights and Welfare of the Child
African Commission /ACHPR	African Commission on Human and Peoples' Rights
African Court	African Court on Human and Peoples' Rights
African's Women's Protocol	Protocol on the Rights of Women
AOHSG	Assembly of Heads of State and Government
APF	Asia Pacific Forum of National Human Rights Institutions
APRM	African Peer Review Mechanism
BHRC	Benin Human Rights Commission
CERD	UN Committee on the Elimination of all forms of Discrimination
CESCR	International Covenant on Economic, Social and Cultural
CHR	Commission on Human Rights
CHRAJ	Ghana's Commission on Human Rights and Administrative Justice
CRC	Convention on the Right of the Child
ECOSOC	Economic and Social Council
IACHR	Inter-American Commission on Human Rights
ICC	International coordinating Committee of National Human Rights Institutions
KNCHR Act	Kenya National Commission of Human Rights Act
KNHCR	Kenya National Commission of Human Rights

NANHRI/Network	Network of African National Human Rights Institutions
NEPAD	New Partnership for Africa's Development
NGOs	Non-Governmental Organisations
NHRCs	National Human Rights Commissions.
NHRIs	National Human Rights Institutions
NI Unit	National Institutions Unit
NNHRC	National Human Rights Commission of Nigeria
OAU	Organisation of African Unity
Paris Principles	Principles Relating to the Status of National Institutions Rights
SAHRC Act	South African Human Rights Commission Act
SAHRC	South African Human Rights Commission
SRP	Special Rapporteur on Prisons and Detention Facilities in Africa
UHRC	Uganda Human Rights Commission
UN	United Nations Organisation
UNCHR	United Nations Commission on Human Rights
UNHCHR	United Nations High Commissioner for Human Rights
Vienna Declaration	Vienna Declaration and Programme of Action

CHAPTER I

THE ADVENT OF NATIONAL HUMAN RIGHTS INSTITUTIONS AS GLOBAL ACTORS: THE SILENT REVOLUTION?

1. Introduction

1.1 Background to the study

There is increased interaction between the African Commission on Human and Peoples' Rights (African Commission/ACHPR) and National Human Rights Institutions (NHRIs). This interaction presents both opportunities and challenges in the promotion and protection of human rights in Africa. More than thirty African Countries have national human rights institutions, with a greater or lesser degree of independence depending on the situation in a particular country.¹

The relationship between the African Commission and NHRIs draws its legitimacy from Article 26 of the African Charter on Human and Peoples' Rights (the African Charter).² NHRIs interact with the African Commission in accordance with the Resolution on Granting Observer [Affiliate] Status to National Human Rights Institutions in Africa adopted in 1998 (1998 Resolution on Affiliate Status).³ This resolution sets out the rights and duties of NHRIs as well as the requirements necessary for an NHI to attain affiliate status before the African Commission. The resolution clearly points out that NHRIs shall assist the African Commission in the promotion and protection of human rights at the national level.⁴ Accordingly, NHRIs are given affiliate status if they conform to the UN Principles relating to the Status of National Human Rights Institutions (the Paris Principles).⁵ The number of NHRIs with affiliate status before the African Commission is currently twenty one.⁶

This affiliate status of NHRIs entitles them to be invited to sessions of the African Commission, to be represented in its public sessions and in its subsidiary bodies. This status also affords NHRIs the opportunity to participate 'without voting rights' in the African Commission's sessions and to deliberate on issues which are of interest to them.⁷ They are

¹ CH Heyns & M Killander *Compendium of key human rights documents of the African Union* (2007) 269.

² F Viljoen *International human rights law in Africa* (2007) 412.

³ Resolution on Granting Observer [Affiliate] Status to National Human Rights Institutions in Africa (1998 Resolution on Affiliate Status), adopted at the Commission's 24th session, Banjul, the Gambia, 22-31 October 1998.

⁴ 1998 Resolution on Affiliate Status, para 4(d).

⁵ 1998 Resolution on Affiliate Status, para 4(a).

⁶ 24th Activity Report, AU Doc EX.CL/466(XIII) para 60.

⁷ 1998 Resolution on Affiliate Status, para 4(b).

also invited to submit proposals which may be put to the vote at the request of any member of the African Commission.⁸ At the African Commission's public sessions there is now a separate section for NHRIs to sit and in debates they speak after states and before Non-Governmental Organisations (NGOs) on all agenda items, except for state reporting.⁹

NHRIs have two responsibilities ascribed to them by the resolution, namely, to submit reports to the African Commission every two years on their activities in the promotion and protection of the rights under the Charter.¹⁰ They are also mandated to assist the African Commission in the promotion and protection of human rights at national level.¹¹

The relationship between the African Commission and NHRIs is not as deep-rooted as that of the African Commission and NGOs, rendering their interaction with the African Commission unclear. Their 'affiliate status' does not clearly define their role and their relationship with African Commission. As Viljoen points out;

As NHRIs were established in Africa, some started attending the sessions of the African Commission. Often sandwiched between the states and NGOs, their role and contribution were never clearly defined...With little tangible benefit to them or clarity about their role, a dwindling number of these institutions attend the Commission's sessions.¹²

It cannot be gainsaid that the increasing inaction¹³ of NHRIs is by and large caused by a lack of clarity as to their role and relationship with the African Commission. There is consequently a need for clarity as to the role NHRIs can play within and with the African Commission. The 'affiliate status' accorded to them remains to be clarified.¹⁴

Furthermore, there are a number of overlapping issues that affect both NGOs and NHRIs, such as their role in the drafting of state reports and their participation during state reporting process. These are the issues that need further interrogation. It is due to this anomaly that at the 43rd session of the African Commission the South-African delegation called for a proper model that could better espouse the interface between the African Commission and

⁸ As above.

⁹ R Murray *The role of national human rights institutions at the international and regional levels: The experience of Africa* (2007) 49.

¹⁰ 1998 Resolution on Affiliate Status, para 4(c).

¹¹ 1998 Resolution on Affiliate Status, para 4(d).

¹² Viljoen (n 2 above) 412.

¹³ The activity reports indicate that a high water mark of attendance was reached at the African Commission's 39th Ordinary Session of the Commission, when 19 NHRIs attended. The number decreased sharply to five at the following session. The 41st Ordinary Session was graced by eleven NHRIs. Four institutions attended the 42nd session and the 43rd Ordinary Session was attended by three NHRIs.

¹⁴ Viljoen (n 2 above) 413.

NHRIs.¹⁵ Among other things, the South African delegation called for the adoption of general guidelines to regulate the relationship between the African Commission and NHRIs.¹⁶

1.2 Statement of the research problem

Murray¹⁷ and Kjærum¹⁸ have highlighted the gains that may be appropriated by the participation of NHRIs in the workings of the African Commission and or regional bodies. They assert that NHRIs could play an important role in relation to documenting national human rights situations, providing expertise on national protection systems, including key national institutions, advocating and advising the state on the scope and implementation of its human rights obligations and assisting in follow-up to recommendations of the African Commission.

However, an overly positive outlook on this partnership might be misplaced. Until the validity of the participation of NHRIs in sessions of the African Commission is properly justified, the relationship between the two is likely to continue to be inconsistent.¹⁹ In cases where states are using NHRIs primarily to improve their international image and co-opt local human rights groups as a tool for furthering that agenda, there is a danger that the state will move to displace non-state actors. This would justify why governments might agree to create institutions that monitor the very international norms they violate.²⁰ Hence, as NHRIs acquire more formal international powers, they may begin to compete with NGO groups for resources such as funding and in certain circumstances, speaking time in international forums. Domestically, NHRIs could also help states occupy the “space” now filled by societal groups, thereby controlling the human rights agenda and silencing calls for accountability.²¹

1.3 Research questions

Against the preceding background, this study raises the following questions:

What is the rationale behind the participation of NHRIs in regional and international human rights mechanisms?

What is the role of NHRIs in relation to regional and international human rights mechanisms?

¹⁵ 24th Activity Report, para 61.

¹⁶ As above.

¹⁷ Murray (n 9 above) 11-13.

¹⁸ M Kjærum 'National human rights institutions implementing human rights' (2003) 16 <http://www.humanrights.dk/files/Importerede%20filer/hr/pdf/n_h_r_i_h_fte_eng.pdf> (20 August 2008).

¹⁹ Murray (n 8 above) 25.

²⁰ S Cardenas Emerging Global Actors: The United Nations and National Human Rights Institutions (2003) 9 *Global Governance* 37.

²¹ As above.

What is the role and what could be the role of NHRIs in the work of the African Commission?

What are the areas that the NHRIs can work with the African Commission to strengthen the protection of human rights within their jurisdictions and in Africa?

What rules should govern the relationship between the African Commission and NHRIs?

The above questions have implications for other related issues, such as the possible role of NHRIs during the state reporting process, policy decisions as well as issues surrounding, *inter alia*, amendment of the rules of procedure of the African Commission, the adoption of rules of procedure of the African Court on Human and Peoples' Rights (African Court) and the African Court of Justice (ACJ).

1.4 Focus and objectives of the study

There has been no significant improvement in the relationship between the African Commission and NHRIs in the light of the recommendations²² adopted at the 2nd African Union Conference of NHRIs.²³ Much discourse has revolved around the relationship between the African Commission and NGOs with observer status, but not much has been said about the relationship between the African Commission and NHRIs. The aim of this study is therefore to look at the relationship between the African Commission and NHRIs. In particular, it will examine their role in the workings of the African Commission and how that role could be strengthened in order to enhance human rights protection in Africa. The study will further examine the rationale behind their greater participation in the workings of the African Commission and ascertain whether there is a need for a more elaborate and meaningful relationship.

The study will analyse the existing legal framework in other regional mechanisms in order to draw out best practices²⁴ and to ascertain how a sustainable relationship can be established between NHRIs and the African Commission. Challenges to any proposed kind of relationship will be discussed, such as striking the balance between politics and the legitimate

²² Report of the brainstorming meeting of the African Commission, 20th Activity Report, AU Doc EX.CL/279(IX) paras. 49-52.

²³ Held alongside the 39th ordinary Session of the African Commission from the 12th to 14th May 2006, Banjul, and The Gambia. 20th Activity Report, paras.18

²⁴ An example of such is the Optional Protocol to the UN Convention against Torture which reflects a closer interaction between treaty bodies and national institutions. According to the Protocol national institutions or a specialised body can carry out on-site inspections on behalf of a subcommittee on the prevention of torture established under the UN Committee against Torture.

advisory, monitoring functions of NHRIs.²⁵ In this context the study will consider the most appropriate method under which the cooperation should be established, the challenges thereof and possible rules or guidelines that could better enhance this relationship.

1.5 Significance of the study

This study will provide an in-depth analysis into the present and potential relationship of the African Commission and NHRIs. The study will further contribute to the broader understanding of the role of NHRIs at the regional level, with particular reference to Africa, and how that can benefit the African Commission and Africa in general.

1.6 Research methodology and limitations

The research will adopt a non-empirical methodology. The study will therefore embark on a review of the existing literature on the subject and where possible interviews will be conducted. The research will further draw from all the international instruments on the subject, best practices from other human rights mechanisms as well as various reports on NHRIs, such as the Human Rights Watch study on NHRIs in Africa.²⁶ Thus, primary and secondary sources of data will be consulted. This study is limited to those NHRIs which have come to be widely known as national human rights commissions (NHCs) and are established in accordance with the *Paris Principles*.²⁷ The study does not include offices of the ombudsman or offices of inspector general, save where they are combined as in the case of Ghana.²⁸

1.7 Literature review

The compendium *Comparative Constitutionalism and Good Governance in the Commonwealth; an Eastern, Southern African perspective*, by Hatchard, Ndulo and Slinn,²⁹ provides a discussion of the functions and powers of two of the main oversight bodies in Eastern and Southern Africa, i.e. offices of the ombudsman and human rights commissions and assesses their contribution towards furthering the aims of the Harare Commonwealth

²⁵ Kjærøum (n 18 above) 16.

²⁶ Human Rights Watch, 'Protectors or Pretenders? Government Human Rights Commissions in Africa', <<http://www.hrw.org/reports/2001/africa>> (10 May 2008)

²⁷ They have been defined as 'a state sponsored and state funded entity set up under an act of parliament or under the constitution, with the broad objective of protecting and promoting human rights.' See M. Gomez, 'Sri Lanka's New Human Rights Commission' (1998) 20 *Hum. Rts. Q.* 281.

²⁸ International Council on Human Rights Policy 'Performance and Legitimacy; National Human Rights Institutions' (2004) 4.

²⁹ J Hatchard et al *Comparative constitutionalism and good governance in the Commonwealth: An Eastern and Southern perspective* (2004), see ch 10.

Declaration.³⁰ The work does not deal with the role of NHRIs at international or regional levels nor does it address their possible relationship with the African Commission.

The Protectors; Human rights commissions and accountability in East Africa,³¹ discusses among other things, the value of human rights institutions, the achievements of some of the national human rights institutions in East Africa as well as the way forward for the East African Human Rights Institutions. The work only provides an appraisal of NHRCs in East Africa. It does not address the subject matter of the present study.

The study, *Protectors or Pretenders? Government Human Rights Commissions in Africa* focuses on the performance of NHRIs in Africa. It is an analysis of their effectiveness of NHRCs in Africa and explores the reasons why some of them are weak institutions. Its discussion of the relationship between the African Commission and NHRIs is outdated. The study was conducted at time when no African NHRI had affiliate status with the African Commission.³² Birgit Lindsnaes's *National human rights institutions: Standard- setting and achievements* does no more than give a detailed analysis of the *Paris principles* and the development of the concept of national human rights institutions. Most importantly, the publication gives examples of specific human rights focus which could be useful when developing a plan for the collaboration between the African Commission and NHRIs.

Another study by the International Council on Human Rights Policy in 2000 and entitled *Performance and Legitimacy; National Human Rights Institutions* makes recommendations on what is likely to make NHRIs effective. The recommendations are made after a study on why there exists a difference in the impact of NHRIs in their particular countries despite the fact that they all purport to apply the *Paris Principles*. The study gives a general discussion of the possible role that NHRIs could play at international and regional levels but does not discuss their role in the workings of the African Commission.

³⁰ In the Commonwealth Declaration, Commonwealth Heads of Government recognised that developing appropriate 'institutional structures which reflect national circumstances' is a key element for promoting and protecting human rights, good governance and rule of law.

³¹ CM Peter (ed.) *The Protectors; human rights commissions and accountability in East Africa* (2008).

³² Human Rights Watch 'Protectors or Pretenders? Government Human Rights Commissions in Africa', <<http://www.hrw.org/reports/2001/africa>> (10 May 2008); summary.

*Toothless bulldogs? The Human rights Commissions of Uganda and South Africa: A comparative study of their independence*³³ is a comparative study of the independence of NHRIs in South Africa and Uganda. Viljoen in *International human rights law in Africa* gives a brief account of the relationship between the African Commission and NHRIs. The work contains a brief analysis of the relationship in the African system as well as the challenges and prospects of possible interface between the two bodies. The work does not address, among other things, the rationale behind the participation of NHRIs at international and regional levels.

Rachel Murray's work titled *The role of national human rights institutions at the international and regional levels: The experience of Africa* is the latest (2007) book which focused on the subject of this research. The book discusses the role of NHRIs at the regional and international level, the accountability of NHRIs, their independence as well as an attempt to provide an account from an African perspective. The work however does not give a detailed analysis of the relationship of the African Commission and NHRIs. Even though the author discusses the shortcomings of the partnership, there is no clear guidance as to how that relationship can be strengthened and the strategies that could be adopted to sustain any collaboration.³⁴

1.8 Chapter breakdown

The study is divided into five chapters. Chapter 1 highlights the basis and structure of the entire study. Chapter 2 is a conceptual analysis of the role of NHRIs and discusses how NHRIs has evolved since the *Paris Principles*. The chapter provides a critical analysis of the *Paris Principles* vis-à-vis the role of NHRIs in regional and international human rights bodies. Chapter 3 looks at the role of national human rights institutions at international and regional levels, and focuses on their relationship with the African Commission. Chapter 4 looks at areas of collaboration between the African Commission and NHRIs. The chapter also briefly discusses the relationship and/or possible relationship between NHRIs and other human rights protection bodies in Africa, such as the African Court on Human and Peoples' Rights, the Committee of Experts on the Rights and Welfare of the Child and the African Court. It will draw out best practices in other regional bodies and ascertain guidelines or mechanisms that could be put in place to enhance the collaboration. Chapter 5 is a summary of the conclusions drawn from the whole study and makes some recommendations.

³³ Matshekga J 'Toothless bulldogs? The Human Rights Commissions of Uganda and South Africa: a comparative study of their independence' *African human rights law journal*. Vol.2, no.1 (2002), 68-91.

³⁴ M Hansungule 'R Murray, The role of national human rights institutions at the international and regional levels' *African Human Rights Law Journal* (2007) 7 589.

CHAPTER II

THE TRAJECTORY OF NATIONAL HUMAN RIGHTS INSTITUTIONS

2 Introduction

Over the past several years Africa has witnessed a significant growth in number of human rights NGOs with observer status before the African Commission. Over the years, both their numbers and their participation in the workings of the African Commission have increased tremendously.¹ Alongside the growth of NGOs there has been a continued growth of NHRIs in Africa. Nudged on and supported by donors and the UN, NHRIs started flourishing in Africa during the 1990s.²

This proliferation of NHRIs can also be attributed to the recommendation by the African Commission to states urging them to establish institutions to conduct studies and research.³ Perhaps also, this was due to the sudden recognition that international and regional institutions cannot in themselves suffice as the primary sites of the struggle(s) for human rights.⁴ Authors such as Quashigah are of the view that these institutions are a product of the resurgence of democratisation in many parts of the world and in Africa in particular.⁵ The necessity of NHRIs has been recognised by the UN Economic and Social Council (ECOSOC) as far back as 1946⁶ and later in 1960.⁷ ECOSOC thus invited member states to favour the establishment of NHRIs and continuation of their operation.

This chapter discusses the nature and role of NHRIs. It examines the establishment of NHRIs and in the process highlights the definitional problems of NHRIs. It also gives an historical background to the evolution of NHRIs since the *Paris Principles*. The chapter situates their 'international formal standing' within the Paris principles and other relevant documents.

¹ As of this year, the number of NGOs with observer status had grown to 380; 24th Activity Report, AU Doc EX.CL/466(XIII), para 59.

² F Viljoen 'International human rights law in Africa' (2007) 412.

³ As above.

⁴ OC Kafor & SC Agbakwa 'On Legalism, popular agency and "voices of suffering": The Nigerian National Human Rights Commission in context' (2002) 24 *Human Rights Quarterly* 663.

⁵ K Quashigah 'National human rights Institutions in Africa: Functions, strengths, and weaknesses 1' quoted in HS Kanzira 'The independence of national human rights bodies in Africa: a comparative study of the CHRAJ, UHRC and SAHRC' (2002) *East African Journal of Peace & Human Rights* 176.

⁶ ECOSOC Resolution 2/9 of 21 June 1946.

⁷ ECOSOC Resolution 7772B (XXX) of July 1960.

2.1 Origins, nature and role of NHRIs

2.1.1 Defining NHRIs

While recognising the inherent difficulties with definitions, the UN has defined NHRIs as a ‘...body which is established by a government under the constitution or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights.’⁸ Carver’s report to the International Council on Human Rights Policy has defined them as a hybrid category that includes many different varieties within it. According to his study NHRIs include such institutions as human rights commissions, ombudsmen, *Defensores del Pueblo*, and procurators for human rights.⁹ Accordingly this ‘hybrid category’ excludes a government department on the one hand, such as a human rights office in the foreign ministry, and obviously an NGO on the other.¹⁰

Reif defines NHRIs as ombudsmen, human rights commissions or hybrid human rights ombudsmen.¹¹ Cardenas simply defines them as government agencies whose purported aim is to implement international norms domestically.¹² Suffice to point out that the definition of NHRIs seems to be contextual and varies, depending, to a large extent on the nature of the study and the purpose for which the study is being undertaken. That is why Hatchard defines them, in the context of the Commonwealth, as ‘bodies established by a national constitution or by statute and which promote and protect the fundamental political values of the Commonwealth’ that are enshrined in the Harare Commonwealth Declaration.¹³

NHRIs have taken various forms in different countries, including but not limited to offices of the ombudsman, national human rights commissions, or a combination of the two,¹⁴ anti-

⁸ Kafor & Agbakwa (n 4 above) 663.

⁹ International Council on Human Rights Policy ‘*Performance and Legitimacy; National Human Rights Institutions*’ (2004) 3; CESCR General Comment No.10, The role of NHRIs in the protection of economic, social and cultural rights (1998) Doc. E/1999/22.

¹⁰ International Council on Human Rights Policy (n 9 above) 3

¹¹ LC Reif ‘Building democratic institutions: The role of national human rights institutions in good governance and human rights protection’ (2000) *Spring Harvard Human Rights Journal* 2.

¹² S Cardenas ‘Emerging Global Actors: The United Nations and National Human Rights Institutions’ (2003) 9 *Global Governance* 23.

¹³ J Hatchard ‘Report on the inter-relationship between Commonwealth human rights commissions and other national human rights institutions’ (2003) 7.

¹⁴ Eg Ghana’s Commission on Human Rights and Administrative Justice (CHRAJ) fused a Human Rights Commission, an Ombudsman and an Anti-Corruption Agency.

corruption commissions and equality and other specialist commissions.¹⁵ At present, the majority of NHRIs fall into one of two broad categories: human rights commissions or ombudsperson institutions.¹⁶ The primary function of the latter institutions is to foresee fairness and legality in public administration. More specifically, the office of the ombudsman exists to protect the rights of individuals who believe themselves to be victims of unjust acts on the part of the public authorities.¹⁷ Initially NHRIs were mainly concerned with the protection of persons against all forms of discrimination and with the protection of civil and political rights.¹⁸ However, they are now encouraged to protect socio-economic rights,¹⁹ with some institutions like the South African Human Rights Commission (SAHRC) constitutionally mandated to promote and protect socio-economic rights.²⁰

For the purpose of this study NHRIs shall refer to permanent and independent bodies established by way of constitutional authority or through legislation and established for the specific purpose of promoting and protecting human rights within a particular country.²¹ This study does not include offices of the ombudsman or offices of inspector general, save where they are combined as in the case of Ghana.²² The study is limited to those NHRIs which have come to be widely known as national human rights commissions (NHCs) and are established in accordance with the *Paris Principles*.²³

2.1.2 The trajectory of NHRIs

NHRIs date back to 1946 when the United Nations Economic and Social Council (ECOSOC) requested member states to consider the desirability of establishing human rights committees to collaborate with the Commission on Human Rights (CHR).²⁴ This it appears was

¹⁵ Hatchard (n 13 above) 7.

¹⁶ Kanzira (n 4 above) 174.

¹⁷ Centre for Human Rights, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Human Rights Institutions for the Promotion and Protection of Human Rights* (UN Handbook), UN Professional Training Series No. 4, (1995) 8.

¹⁸ UN Handbook (n 17 above) 7.

¹⁹ CESCR General Comment No. 10 (n 9 above).

²⁰ South African Constitution (1996), sec. 184(3).

²¹ AE Pohjolainen 'The evolution of national human rights institutions – The role of the United Nations' (2006) 6.

²² UN Handbook (n 17 above) 6.

²³ They have been defined as 'a state sponsored and state funded entity set up under an act of parliament or under the constitution, with the broad objective of protecting and promoting human rights; M. Gomez, 'Sri Lanka's New Human Rights Commission' (1998) 20 *Human Rights Quarterly* 281.

²⁴ United Nations, 'Fact Sheet No. 19: National Institutions for the Protection and Promotion of Human Rights', <<http://www.unhchr.ch/html/menu6/2/fs19.htm>> (20 August 2008).

borne out of the need to have member states—as partners at the national level—assist in the promotional mandate assigned to the then nascent CHR.²⁵ Their establishment has been discussed since then.

In 1960, ECOSOC passed Resolution 772 B (XXX) encouraging member states to establish NHRIs. This was followed by the September 1978 seminar on National and Local Institutions for the promotion and Protection of Human Rights, held in Geneva where, for the first time, a set of guidelines on the functions that NHRIs should discharge evolved.²⁶ This Seminar recommended several functions to be performed by these institutions. These functions will be discussed later in this chapter.

NHRIs gained prominence after the UN began to actively promote the concept. This began when the Centre for Human Rights in Geneva organised a consultation on national human institutions.²⁷ The consultation workshop was held in Geneva from October 7 to 9, 1991, which workshop was attended by both national and regional institutions. The findings of this workshop were endorsed by the UNHCR and by the General Assembly as *Principles relating to the Status of National Institutions (the Paris Principles)*.

The Commonwealth, the most influential and largest association of independent states after the UN, remains a major supporter of NHRIs. The active participation of the Commonwealth in the establishment of these oversight issues resulted in the decision to establish the Asian Pacific Forum of National Human Rights Institutions (Forum)²⁸ and the Larrakia Declaration.²⁹ The Harare Commonwealth Declaration underscored the importance of situating struggles for human rights protection at national level. The efforts by the Commonwealth have thus been aimed at clarifying the role, functions and establishment of NHRIs, for;

²⁵ Unpublished: AJ Osogo 'Oval slides in triangular spaces? Anchoring national human rights institutions in 'tripartite' Commonwealth Africa' unpublished LLM thesis, University of Pretoria, 2006 8.

²⁶ C Idike 'Deflectionism or activism?': The Kenya National Commission on Human Rights in focus' (2004) 1 *Essex Human Rights Review* 43; United Nations, 'Fact Sheet No. 3 (rev. 1): Advisory Services and Technical Cooperation in the Field of Human Rights' < <http://www.unhcr.ch/html/menu6/2/>> (30 September 2008)

²⁷ Gomez (n 23 above) 282.

²⁸ Gomez (n 23 above) 283.

²⁹ <<http://www.asiapacificforum.net/about/annual-meetings/1st-australia-1996/downloads/larakia.pdf>> (30 September 2008).

With the Paris Conference being attended by representatives from a range of different institutions and legal traditions, the inevitable result was that the Paris Principles themselves lack specificity. The challenge was therefore to develop more meaningful guidelines. Here the Commonwealth has been particularly active.³⁰

Through the Harare Declaration, the Commonwealth heads of government has thus recognised that such institutions could be useful in the promotion and protection of human rights, matters of good governance and observance of the rule of law.³¹ This led in the following year to the development of the Commonwealth *Best Practice Guidelines* detailing a recommended framework for the organisation and powers of NHRIs.³²

Within the African system, the UN led campaign on the establishment of NHRIs saw the birth of the *Yaounde Declaration*, in which the importance of NHRIs was affirmed and to the Abuja Guidelines on the relationship between Parliaments, Parliamentarians and Commonwealth National Human Rights Institutions (*Abuja Guidelines*). The then Organisation of African Union (OAU), now the African Union (AU), embraced the concept of NHRIs³³ and was joined by the African Commission in the years to come.³⁴

The origin of NHRIs can thus be traced back to the UN trilogy of documents, namely, the Paris Principles Relating to the Status of National Institutions for the Protection of Human Rights, the *Handbook on the Establishment and Strengthening of National Human Rights Institutions for the Promotion and Protection of Human Rights*, and the UN 'Fact Sheet No. 19: National Institutions for the Promotion and Protection of Human Rights. The three documents provide, in a harmonious manner, the minimum standards and guidelines for the establishment and evaluation of NHRIs.³⁵ Even though these instruments lay out the recommended framework for the establishment of NHRIs, much still depends upon, among other things, the scope of constitutional rights and the size, structure and history of the state itself.³⁶

³⁰ Hatchard (n 13 above) 9.

³¹ J Hatchard *et al* 'Comparative constitutionalism and good governance in the Commonwealth: An Eastern and Southern perspective' (2004) 208.

³² Hatchard (n 13 above) 9.

³³ Article 26 of the Charter of the Organisation of African Unity (OAU).

³⁴ This aspect of the trajectory of NHRIs will be discussed fully under Chapter III.

³⁵ Idike (n 26 above) 43.

³⁶ Hatchard (n 31 above) 211.

2.1.3 The role of NHRIs at domestic level

A set of standards for the establishment and evaluation of NHRIs are contained in the texts of a number of UN-driven documents concerning the nature and effectiveness of NHRIs, now commonly known as NHCs.³⁷

As aforementioned, the role of NHRIs is catalogued in several documents, namely, the Paris Principles Relating to the Status of National Institutions for the Protection of Human Rights, the *Handbook on the Establishment and Strengthening of National Human Rights Institutions for the Promotion and Protection of Human Rights*, the UN 'Fact Sheet No. 19: National Institutions for the Promotion and Protection of Human Rights as well as the *1978 Guidelines on the Structure National institutions for the protection and Promotion of Human Rights*. In addition to the above, there is also the Best Practice Handbook developed after the Cambridge meeting. The Best Practice Handbook is a guide to setting up NHRIs, staffing them, defining their mandates and practical roles as well as ensuring that they are accountable and accessible.³⁸

In sum, these documents set out the role of NHRIs to include the competence to promote and protect universal human rights standards domestically.³⁹ The Paris principles set out some key paradigms which must be at the core of an NHRI.⁴⁰ The six key criteria in the Paris Principles are that; the independence of the institution should be guaranteed by statute or constitution, autonomy from the government, pluralism, inclusive in membership, a broad mandate based on universal human rights standards, adequate powers of investigation and adequate resources.⁴¹ Since the Paris Principles advocate that NHRIs should have 'as broad a mandate as possible'⁴² most of these institutions have advisory, promotional, and protective roles predominantly within the national sphere.

³⁷ Kafor & Agbakwa (n 4 above) 668.

³⁸ Paris Principles. para. 1

³⁹ As above.

⁴⁰ International Council on Human Rights Policy (n 9 above) 1-2.

⁴¹ Roundtable of national human rights institutions and national machineries for the advancement of women, Quarzazate, Morocco, 15-19 November 2004 at p. 3-4.

⁴² R Murray *The role of national human rights institutions at the international and regional levels: The experience of Africa* (2007) 7.

2.1.4 The mandate of NHRIs

Most NHRIs carry out similar work, but the difference lies in the weight given to their particular functions. Hence NHRIs differ in a number of significant respects, the main difference being the scope of their mandate.⁴³ The mandate of the Kenya National Commission of Human Rights (KNCHR) allows it, *inter alia*, to investigate upon receiving complaints the violation of human rights, visit places of detention, inform and educate the public about human rights and to act as the chief agent of the government in ensuring compliance with its obligations under international treaties and conventions on human rights.⁴⁴ The mandate of the UHRC and the SAHRC is also similar to that of the KNCHR.

NHRIs are also vested with the responsibility to advise the government on matters concerning the promotion and protection of human rights.⁴⁵ They are thus mandated to offer advice on the conformity or otherwise of existing or proposed legislation with human rights principles enshrined in international human rights instruments to which the state is a party and on any questions by the government relating to any human rights violations.⁴⁶ As a result of this function, most NHRIs are mandated to examine complaints alleging infringements of applicable international human rights instruments by individuals, associations of trade unions, and other representatives.⁴⁷ They equally enjoy wider remedial powers.⁴⁸ NHRIs are also supposed to ensure effective implementation of national legislation and international instruments that impose human rights obligations on the government.⁴⁹

NHRIs are further responsible for encouraging states to ratify or accede to, all the relevant international human rights instruments⁵⁰ and take part in the state reporting process by submitting shadow reports to various international bodies and committees to which the state is a party to.⁵¹ NHRIs are also supposed to assist in the formulation of educational and information

⁴³ M Sekaggya 'Value of human rights institutions: Human rights Commission processes' in CM Peter (ed.) *The Protectors; human rights commissions and accountability in East Africa* (2008) 72.

⁴⁴ LM Mute 'Infusing human rights in policy and legislation: Experiences from Kenya National Commission on Human Rights' in CM Peter (n 43 above) 29; KNCHR Act sec. 16(1)(a)-(i).

⁴⁵ Paris Principles, para. 2; Eg KNCHR Act sec. 16(1)(d).

⁴⁶ Paris Principles, para. 1(a)-(g).

⁴⁷ Paris Principles, part IV; UN Handbook (n 17 above) 34; OC & SC Agbakwa (n 4 above) 671.; Eg KNCHR Act sec 16(1)(h)-(i).

⁴⁸ Eg KNCHR Act sec 19(2)(a)-(c).

⁴⁹ Paris principles, para 3(b) & (c); Eg KNCHR Act sec 16(1)(f).

⁵⁰ Paris principles, para. 3(c).

⁵¹ Paris Principles, para. 3(d); Eg KNCHR Act sec 16(1)(f).

programmes designed to enhance awareness and understanding of human rights principles through education and all press organs.⁵² They are expected to cooperate with the relevant international bodies.⁵³ Suffice to point out that most of the documents on the nature and functions of NHRIs do not insist that every NHRI possess the kind of powers catalogued therein. They simple act as guidance for the establishment and drafting of the enabling legislation of NHRIs.

The scope of the mandate of NHRIs differs from one institution to one another depending on the manner in which they are established. The Paris Principles state that national institutions should be vested with competence, founded on a legislative or constitutional basis.⁵⁴ The principles also advocate that national human rights institutions should be given a broad mandate as much as possible, guaranteed independence of decision makers by having their own budget and should not be subjected to financial restraints.⁵⁵

The SAHRC and the UHRC both derive their mandate from the constitution.⁵⁶ The SAHRC was created alongside other human rights institutions, normally referred to as the chapter nine institutions, by the Final Constitution of South Africa. The SAHRC Act of 1994 then provides in detail, the functions, nature of office and such other matters necessary for the running of the commission. The UHRC derives its mandate from article 51(2) of the Constitution of Uganda and the UHRC Act of 1995. The UHRC Act similarly sets out in detail the mandate of the UHRC. Some NHRIs, such as the Benin Human Rights Commission (BHRC) and the KNCHR, are established by law or act of parliament⁵⁷ whilst the Nigerian National Human Rights Commission (NNHRC) was established by a military decree.⁵⁸

Suffice to point out that, even though some successful NHRIs were established by an act of parliament or some other means, a constitutional foundation remains the foremost guarantee of legitimacy for national human rights institutions.⁵⁹ Hence, it is advisable that,

⁵² Paris principles, para. 3(g); Eg KNCHR Act sec 16(1)(c).

⁵³ Paris Principles, para 3(e).

⁵⁴ B Lindsnaes *et al* 'National human rights institutions; articles and working papers- input to the discussions on the establishment and development of the functions of national human rights institutions (2001) 14.

⁵⁵ As above.

⁵⁶ The Constitution of the Republic of South Africa, sec. 181(1)(b).

⁵⁷ Lindsnaes *et al* (n 54 above) 14.

⁵⁸ National Human Rights Commission Decree of 1995.

⁵⁹ M Mohamedou 'The effectiveness of national human rights institutions' in Lindsnaes *et al* (n 54 above) 51.

notwithstanding the stringency and complexity of amending constitutions,⁶⁰ a newly established NHRI should derive its mandate from the concerned state's constitution.

2.3 International formal standing of NHRIs and the Paris principles

It is well accepted that the Paris Principles provide guidelines as to the establishment, management, role, and participation of NHRIs largely within the domestic arena. Their participation within the national, legal or otherwise, framework is not questionable, for they were initially and specifically crafted for that purpose. However, there is no sufficient literature situating the justification for the participation of NHRIs in the regional and international arena within the Paris Principles or any of the aforementioned documents on the nature and functions of NHRIs. The Paris Principles advocate for the co-operation of NHRIs with the relevant international and regional human rights mechanisms. The extent of the co-operation remains to be clarified and is now a matter of interpretation, sparking a debate among international human rights scholars.

To a larger extent the documents, within which NHRIs derive their legitimacy, do not envisage a NHRI that is actively and/or directly involved in the international *fora*. As it will be shown later, their participation at regional and international levels remains questionable. In fact, international human rights scholars have taken to adopting what can be considered a liberal interpretation of these documents.⁶¹ In particular, the *Paris Principles* have been interpreted to accommodate a larger participation of these institutions at international and regional levels. Through such interpretation, albeit inconsistent, NHRIs have been given the latitude to appear and participate at these forums.

NHRIs have been allowed to form networks with international and regional institutions and are beginning to acquire formal international standing. It appears, however, that the role that was envisaged for NHRIs, in particular by the Paris Principles, at international and regional levels was that of co-operation with the relevant international bodies. None of the instruments cited above specifically gives NHRIs a formal international standing. Nor does any enabling legislation of these institutions perused during this study. In fact, NHRIs were initially established as liaison points for the UN, where the UN would be able to utilise their proximity to

⁶⁰ CM Fombad 'Limits of power to amend constitutions: Recent Trends in Africa and their impact on constitutionalism' (2007) 6 *University of Botswana Law Journal* 27.

⁶¹ Murray (n 42 above) 7.

national authorities and populations to publicise human rights related activities. Thus, allowing easier implementation of international human rights principles and norms domestically.⁶²

2.4 Concluding remarks

An analysis of the trilogy of the UN documents as read together, *prima facie*, seems to indicate a conception of an ideal NHRI.⁶³ However paragraph four of the UN Handbook seeks to debunk this myth. It categorically provides that it;

is not a blueprint for legislation. It is not prescriptive and does not set out to create a prototype or ideal institution against which the effectiveness of all others may be measured. There can be no model and there are no set rules.⁶⁴

However, one can safely come to the conclusion that Paragraph four of the UN Handbook does not in any way reflect the true position and status of the Paris Principles. To the extent that the Principles have influenced other documents on the nature and functions of NHRIs, they remains relevant to the discourse on NHRIs and as important as ever to the analysis of the rise and rise of NHRIs in Africa.

It is the metamorphosis of the 'purported aim' of the establishment of NHRIs, initially being for forging the implementation of international human rights norms domestically, that forms the subject matter of this study. It is apparent that the definitions do not on the face of it perceive these institutions as international actors. They presuppose that NHRIs are by and large mandated to implement international norms domestically. The transformation of the role of these institutions exposes definitions of a NHRI, such as Cardenas' definition, as being a too simplistic view towards the very nature and role of contemporary NHRIs.

⁶² Osogo (n 25 above) 12.

⁶³ Kafor & Agbakwa (n 4 above) 671.

⁶⁴ UN Handbook (n 17 above) 7.

CHAPTER III

NHRIS, AS THE NEW DARLINGS OF THE INTERNATIONAL HUMAN RIGHTS SYSTEM

3 Introduction

The previous chapter has hinted on the controversy surrounding the participation of NHRIs at the international and regional levels of human rights activity. The point need not be repeated here, save to emphasize that the mandate conferred upon these institutions by the Paris Principles has been widely interpreted to accommodate them at these levels. The issue of international formal standing aside, the main question remains; *what is the main agenda of NHRIs at the international and regional levels?*

Espousing the rationale behind their emerging status as international actors, this chapter highlights what appears, in the words of Cardenas, to be a double edged phenomenon presenting both opportunities and challenges for the local protection of human rights norms.¹ It presents an analytical discussion of their emerging status as global actors. It does so by examining the engagement of NHRIs with the African Commission as well as the challenges to the establishment of a more involved relationship between the two.

3.1 Emerging Global Actors: NHRIs at the International and Regional Levels

NHRIs are increasingly taking part in the international and regional arena. Representatives of NHRIs are increasingly seen as actors in their own right at international human rights conferences and at times during convention negotiations.² It is not farfetched to say that hardly any international conference or seminar takes place without their involvement.³ Osogo is of the view that this is not accidental and it is very well within their mandate.⁴ However, as highlighted above, this participation is contentious. Certainly, it should not be taken for granted that they are well within their mandate by virtue of participating at the

¹ S Cardenas Emerging Global Actors: The United Nations and National Human Rights Institutions (2003) 9 *Global Governance* 23.

² J von Doussa 'The potential role of national human rights institutions in the Pacific' paper presented at the Australian law reform agencies conference, Port Villa, Vanuatu, September 2008 <http://www.hreoc.gov.au/about/media/speeches/speeches_president/index.html> (09 October 2008)

³ Unpublished: AJ Osogo 'Oval slides in triangular spaces? Anchoring national human rights institutions in 'tripartite' Commonwealth Africa' unpublished LLM thesis, University of Pretoria, 2006 12.

⁴ As above.

international and regional levels. There is a need to interrogate the rationale behind their participation at those levels, with the aim of ascertaining whether they are indeed a necessary actor in the international arena.

3.1.1 The rationale behind the participation of NHRIs at the international and regional levels

Justifications for the participation of NHRIs at the international and regional levels evoke arguments akin to those of permitting NGOs to do the same.⁵ In fact the reasons are so similar that one might conclude that giving them any international formal standing will be tantamount to unnecessary duplication of international actors. Despite the objection, the following discussion pinpoints the reasons for allowing national institutions to have a greater performance at regional or international levels.

The rationale for their participation at the international and regional levels could, arguably, be situated within the competence and responsibilities of NHRIs as espoused by the Paris Principles. For example, in the Paris Principles it is foreseen that NHRIs have a role to play in relation to reports that the state is supposed to submit to international and regional mechanisms.⁶ Co-operation between NHRIs and international bodies is ideal. In fact, the Paris Principles advocate for such co-operation.⁷ Whilst national institutions are able to do most of the field work at the national level, international and regional organisations are able to do a majority of international work in publicity, resources, pressure or lobby as well as protection. There is, therefore, the pressing need for consistent co-operation between NHRIs and human rights protection bodies.

There is also a continued growth of interaction between states, economic entities and financial institutions and all of these actors have an impact on the realisation of human rights.⁸ This interdependence causes one to acknowledge that within this complex state of affairs, human rights work at the national and international levels cannot be legally divorced.⁹ Thus, the

⁵ R Murray 'The role of national human rights institutions at the international and regional levels: The experience of Africa' (2007) 11.

⁶ Paris Principles para A (3)(d); The UN Committee on the Elimination of all forms of racial has in its general recommendation 28 (2002) recommended that NHRIs assist their member states in complying with their reporting obligations.

⁷ Paris Principles para A (3)(e).

⁸ FV Jimenez 'The silent revolution' in Centre for Human Rights 'Bulletin of Human Rights 90/1' (1991) 30. It should be noted that disputes involving states are probably outside the purview of mandate of NHRIs. Art 53(4)(b) of the Constitution of Uganda provides that 'the commission shall not investigate any matter involving the relation between the Government and the Government of any foreign state or international organisation.'

⁹ As above.

involvement of NHRIs creates an important interface between these two levels of human rights protection. That is why one of the arguments advanced by proponents of clothing NHRIs with formal international standing is that their participation at these levels can better ensure states' compliance with international obligations.¹⁰ In particular, Murray asserts, they can be seen as the national machinery designed for the implementation of the decisions and recommendations of international bodies.¹¹ NHRIs can use the authoritative status of some of the decisions and recommendations of international or regional bodies in their endeavours to make the government comply with its obligations.¹²

One of the advantages of giving NHRIs a broad mandate to police international standards is that it may prove a more effective remedy than the various regional and international enforcement mechanisms.¹³ The fact is that most of the international and regional mechanisms lack enforcement power and thus are unable, in practice, to deal with the vast numbers of potential issues within their mandates is evident enough. Some observers have argued that national institutions are the only realistic means of addressing such a wide array of issues.¹⁴ Perhaps, to say that they are the 'only' means of dealing with a vast majority of domestic issues is an exaggeration. It is however true to say that their mandate is all encompassing and allows them to do more. The important role NGOs, Ombudspersons as well as other institutions with the mandate of protecting human rights should not be forgotten.¹⁵

NHRIs may also be counted on to assist with the submission of reports by states to international bodies. At the international level, this process is aimed 'at establishing an objective and impartial inspection by an external body of the state's recent human rights record.'¹⁶ Even though there is controversy surrounding the participation of NHRIs in the state reporting process,¹⁷ their involvement, whether directly or indirectly will provide a reliable source

¹⁰ Murray (n 5 above) 11.

¹¹ Murray (n 5 above) 12.

¹² M Kjørsum 'National human rights institutions implementing human rights' (2003) 19 <http://www.humanrights.dk/files/Importerede%20filer/hr/pdf/n_h_r_i_h_fte_eng.pdf> (20 August 2008).

¹³ International Council on Human Rights Policy 'Performance and Legitimacy; National Human Rights Institutions' (2004) 99.

¹⁴ As above.

¹⁵ In the case of South Africa, this would be the other chapter nine institutions, namely, the Commission for Gender Equality, the Public Protector and the Commission for the Promotion and Protection of the rights of cultural, Religious, and Linguistic Communities; South African Constitution, section 181.

¹⁶ F Viljoen 'International human rights law in Africa' (2007) 370.

¹⁷ Viljoen (n 16 above) 370; Murray (n 5 above) 16-18; J Hatchard *et al Comparative constitutionalism and good governance in the Commonwealth: An Eastern and Southern perspective* (2004) 231; M Nassali 'Economic and

of information.¹⁸ Any contribution by both NGOs and NHRIs is more likely to give any forum a holistic view towards the human rights situation of the member state. The participation of NHRIs in international and regional mechanisms can also provide them with a forum(s) to air their views and advance the quest for the protection of the citizenry and of human rights defenders.¹⁹

NHRIs can provide a level of expertise on human rights through their contribution at international and regional levels.²⁰ It is within that context that NHRIs can be able to assist international or regional bodies in any fact finding missions or prison facilities inspections as is normally the case and assist, if allowed by the relevant body's procedural rules of fact-finding missions, with their on-site observations.²¹ Such assistance will also be relevant for special mechanisms such as special rapporteurs.²² Parlevliet takes it a step further. In her discussion about NHRIs and peace agreements, she recommends that where an international mission is (or will be) present in the country during peace negotiations, the peace agreement should ideally include a provision recommending collaboration and joint protection activities with NHRIs.²³

As aforementioned, delegates from NHRIs are increasingly taking part in international conferences, including but not limited to, international human rights treaty negotiations.²⁴ It is at these conferences that they adopt common positions and forming their own lobby groups to assert, among other things, the role they should play at the international and regional levels. Their participation during treaty negotiations may prove to be beneficial in so far as lobbying is concerned and may also provide assistance to the country delegation with the necessary

social rights: drawing the threads together' in CM Peter 'The protectors ; human rights commissions and accountability in East Africa' (2008) 98.

¹⁸ M Evans *et tal* ' The reporting mechanism of the African Charter on Human and Peoples' Rights' in M Evans & R Murray (eds) 'The African Charter on human and Peoples' rights: The system in practice , 1986-2000' (2002) 57.

¹⁹ Murray (n 5 above) 21.

²⁰ Murray (n 5 above) 18; ML Schweitz 'NGO participation in international governance: The question of Legitimacy' (1995) 89 *American Society of International Law Proceedings* 419.

²¹ Centre for Human Rights ' Opinion to the African Commission on Human and Peoples' Rights on the conduct and procedure of joint promotional and protective fact-finding missions with the United Nations and any other organizations' (2008) 5 (on file with author).

²² Viljoen (n 16 above) 393.

²³ M Parlevliet, 'National human rights institutions and peace agreements: Establishing national institutions in divided societies' (2006) *International Council on Human Rights Policy* 36; see also Centre for Conflict Resolution, Cape Town, Technical Seminar Report, *National Human Rights Institutions ,conflict management and peacebuilding in Africa*.

²⁴ J von Doussa (n 2 above).

information and expertise in certain issues affecting the relevant country. Thus, another reason for NHRIs to participate at the international and regional levels is to influence the shaping of international policies, especially those with a bearing on the enjoyment of human rights by the citizens of a particular state.

NHRIs may also become the focal point for submitting individual complaints to treaty bodies, such as the African Court on Human and Peoples' Rights (African Court), the African Commission, and the UN Committee on the Elimination of all forms of Discrimination (CERD).²⁵ For example, article 14(2) read together with article 14(4) and (5) of the UN Convention on the Elimination of All Forms of Racial Discrimination leaves room for such a possibility. There have been a few cases where NHRIs have themselves taken cases to international or regional bodies under the communication procedure.²⁶ This role, it could be argued, is well within their mandate. The advantage is that the NHRIs are better placed to know, or they are expected to know the communication procedure of the relevant body and may help the victim address such body in the right manner.²⁷

Most NHRIs devote considerable energy and resources to human rights education programmes. Human rights education not only sensitizes people about their rights it also makes the state aware of its obligations under international legal standards.²⁸ Information and education are the only ways in which the African Charter and other instruments can become a dynamic part of the democratic process.²⁹ It thus make sense for NHRIs to participate at the international and regional levels, in order to better carry out human rights education programmes in close co-operation with the protective mechanisms. In fact, some international and regional bodies have both protective and promotional mandates.³⁰ As a result NHRIs can partner with international or regional bodies to carry out the dissemination of information and promotion of human rights at domestic level.

²⁵ M Kjærørum (n 12 above) 19.

²⁶ *Communication 74/92, Commission Nationale Des Droits de l'homme et des Libertes v Chad*, Ninth Annual Report of the African Commission on Human and Peoples' Rights; NHRIs lodge petitions with the Inter-American Commission on Human Rights (IACHR) after domestic remedies have been exhausted; Murray (n 10 above) 13.

²⁷ As above.

²⁸ As above.

²⁹ B Lindsnaes *et al* ' National Human Rights Institutions; Articles and working papers , input to the discussions on the establishment and development of the functions of national human rights institutions' (2001) 120.

³⁰ The African Commission is established under art 30 of the ACHPR with the twin mandates of promotion and protection of human rights in Africa ; SA Yeshanew 'Utilising the promotional mandate of the African Commission on Human and Peoples' Rights to promote human rights education in Africa' (2007) 7 *African Human Rights Law Journal* 191.

3.2 Is the devil in the details? A critical analysis of the rise and rise of NHRIs as new global actors

The relationship between NHRIs, regional and international human rights mechanisms raises a number of other interesting issues. Like other institutions in a globalizing world, NHRIs can have both beneficial and perverse consequences.³¹ One of the daunting challenges to this relationship is the ambiguity of NHRIs; are they state or non-state actors?³² This ambiguity seems to be stemming from a narrow understanding of the true nature of NHRIs as state institutions or governments' machinery with the responsibility to hold governments accountable. They are supposed to be independent from government, and yet they are set up by the government and acting as quasi-governmental organisations.³³ The question being whether they should be regarded as state actors or non-state actors, or they should be treated as *sui generis*. Coupled with this ambiguity is the issue of accountability of NHRIs. Precisely who is accountable, between NHRIs themselves and the state, for actions of a NHRI at international and regional levels?³⁴ A discussion of these issues is beyond the scope of this study. Suffice to point out that the confusion highlighted above adds another complication to the already intricate principles of state responsibility. These conceptual dilemmas are no doubt one of the most critical issues that need to be addressed in order to ensure that NHRIs have a significant and distinctive place on the international plane.³⁵ This dilemma is most apparent on matters of state reporting. Viljoen rightly points out that;

General ambivalence about the relationship between NHRIs and their governments also manifests itself in the process of state reporting. In one approach strictly following the Paris Principles and emphasising the independence of NHRIs, these institutions should not be responsible for preparing state's report...Following this approach it would be appropriate for NHRIs to submit 'shadow' reports. Another approach favours a much more central role for NHRIs in the process...³⁶

The above highlights one of the problems inherent in affording NHRIs any global status. Is it appropriate for NHRIs—whose main function is to hold the state to account—to help the

³¹ Cardenas (n 1 above) 36.

³² Murray (n 5 above) 59.

³³ P de Vos 'Experience of human rights in Africa : challenges of implementing economic , social and cultural rights' in CM Peter (n 17 above) 27.

³⁴ C Scott 'Accountability in the regulatory state' (2000) 27 *Journal of Law and society* 60; R Murray (n 5 above) 69-88.

³⁵ RE Kapindu ' Book Review; The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa By Rachel Murray' (2007) 125 *SA Law Journal* 198.

³⁶ Viljoen (n 16 above) 393.

government prepare its defence before international public opinion?³⁷ This exemplifies the key problems associated with ascertaining the extent to which NHRIs can represent their countries at human rights mechanisms meetings and conferences. Their participation needs to be examined, lest they will be used by states to conceal violations of human rights by the state from an international body.³⁸

Cardenas argues that NHRIs could lead to the reassertion of state authority and a dampening of the role of civil society.³⁹ That of course is likely to arise where NHRIs are used by the government to improve its international image. A good example is the National Human Rights Commission of Nigeria (NNHC), established by a regime that earned a reputation as perhaps the most brutal of all Nigeria's military regimes.⁴⁰ Exceptionally, even though the NNHC was established by a military dictatorship, it managed to function effectively in carrying out its proper mandate of human rights protection.⁴¹ That notwithstanding, the danger posed by similarly situated institutions to the human rights struggle is real. Through such institutions states will move to displace non-state actors, in particular, the civil society.

As NHRIs acquire more formal international powers they may begin to compete with civil society actors and also help states control the human rights agenda by silencing calls for accountability.⁴² It is possible that the roles of NHRIs and civil society actors could come into conflict, particularly in respect of dissent when it comes to the policies of the government and their implications on human rights.⁴³ This is something that has to be avoided as it has the potential to be catastrophic. Furthermore, argues Murray, NHRIs are not necessarily experts necessitating them being given formal international status on that basis.⁴⁴ In most states they do not have the resources, unlike NGOs which are normally donor funded, to obtain all the information relating to human rights violations in the respective country.⁴⁵ However, Kapindu

³⁷ International Council on Human Rights Policy (n 13 above) 100.

³⁸ Australian Human Rights and Equal Opportunity Commission have served as advisors (but not as members) to government delegations reporting to the Human Rights Committee on the Elimination of Racial Discrimination; International Council on Human Rights Policy (n 28 above) 100.

³⁹ Cardenas (n 1 above) 37.

⁴⁰ OC Kafor & SC Agbakwa 'On Legalism, popular agency and "voices of suffering": The Nigerian National Human Rights Commission in context' (2002) 24 *Human Rights Quarterly* 691.

⁴¹ M Parlevliet (n 23 above) 6.

⁴² Cardenas (n 1 above) 37.

⁴³ CR Kumar 'National Human Rights Institutions: Good governance on institutionalization of human rights' (2003) *Am. U. Int'l Rev.* 297; see also MA Olz 'Non-Governmental Organisations in regional human rights systems' (1997) 28 *Columbia Human Rights Law Review* 326-321.

⁴⁴ Murray (n 5 above).

⁴⁵ Kumar (n 43 above) 297; Interview with Roselyn Karugonjo-Segawa, Director, Monitoring & Inspections, Uganda Human Rights Commission (UHRC), Uganda, Kampala, 14 October 2008.

argues to the contrary and asserts that ‘...perhaps the problem is not inherent in the very concept of an NHRI, but rather in some of the people who have thus far been appointed to such organisations’.⁴⁶ He concludes this argument by pointing out, rightly so, that the very nature of an NHRI requires that the people who are appointed should possess the necessary expertise in the area of human rights.⁴⁷

Acknowledging that their position is more difficult to sideline, a more complicated issue becomes whether they should be limited to addressing international and regional mechanisms, only under the agenda item on NHRIs, or they should be allowed to address treaty bodies on all agenda items.⁴⁸

3.3 The participation of NHRIs in the workings of the African Commission

Regional systems for the protection of human rights are now an important part of the international system for the protection of human rights.⁴⁹ In Africa we have seen the growth of steady, although unremarkable, attempts to foster human rights protection and the evolution of several protection mechanisms within the African human rights system.⁵⁰ We have a number of instruments which constitute the normative framework of the system.⁵¹ Then we have institutions that are mandated to promote and protect the values and rights embodied under these instruments. These institutions include the AU, the African Commission, the African Court on Human and Peoples’ Rights (African Court), and the African Committee of Experts on the Rights and Welfare of the Child (the African Children’s Committee).

The African Commission was established within the Organisation of African Unity (OAU) with the mandate to monitor the implementation of the African Charter on Human and Peoples’ Rights (ACHPR). It was established under article 30 with the twin mandate of the promotion

⁴⁶ Kapindu (n 35 above) 199.

⁴⁷ As above.

⁴⁸ M Kjørsum (n 12 above) 17; In 2005 the Commission for Human Rights adopted Resolution 2005/74 inviting NHRIs to participate in all agenda items of the Commission.

⁴⁹ C Heyns et al ‘A schematic comparison of regional human rights systems’ (2003) 3 *AHRLJ* 76.

⁵⁰ For a discussion of the African system see Viljoen (n 16 above) 157-418; VOO Nmehielle *The African human rights system- its laws, practices, and institutions* (2001); GW Mugwany *Human rights in Africa- enhancing human rights through the African regional human rights systems* (2003); M Evans & R Murray (eds) ‘*The African Charter on Human and Peoples’ Rights- the system in practice, 1986-2000*’ (2002); J Oloka-Onyango ‘Beyond Rhetoric: Reinvigorating the struggle for economic and social rights in Africa’ (1995) 26 *Cal. Int’l L. J* 52.

⁵¹ AU Constitutive Act, the New Partnership for Africa’s Development (NEPAD) Declaration, the African Charter on Human and Peoples’ Rights (African Charter), the African Charter on the Rights and Welfare of the Child (African Children’s Charter), and the Protocol on the Rights of Women (African’s Women’s Protocol).

and protection of human rights in Africa.⁵² The African Commission is thus the primary body responsible for human rights protection on the continent.⁵³ It was a foregone conclusion, upon the establishment of NHRIs, that a relationship will eventually be established between the African Commission and NHRIs in Africa.

Before we delve into the workings of the African Commission and NHRIs, it is important to appreciate the proliferation of NHRIs in Africa with particular reference to the contribution of the African Commission.

3.3.1 NHRIs and the African Commission in perspective

Consistent with the international trend, the African Charter encourages states to establish appropriate national institutions entrusted with the promotion and protection of rights and freedoms guaranteed under the Charter.⁵⁴ Before NHRIs were given the opportunity to obtain affiliate status with the African Commission in 1998, a Co-ordinating Committee of African National Institutions (now renamed the Network of African National Human Rights Institutions) was formed in Yaoundé, Cameroon in 1996, where the first African National institutions conference was held.⁵⁵ The Yaoundé declaration was a decision by NHRIs present at the conference to, among other things, negotiate for a proper representative status on the African Commission.⁵⁶ The second conference of a similar nature was held in Durban, South Africa in 1998 where another declaration was adopted.⁵⁷ The Durban declaration urged the African Commission to adopt—at its next session—an appropriate resolution on the effective participation of national institutions in the work of the African Commission.⁵⁸

NHRIs were offered the opportunity to apply for affiliate status with the African Commission in 1998 through the Resolution on Affiliate Status. The resolution did no more than endorse the Paris Principles as the criteria applicable for the status of affiliated institution and imposed a few obligations on the institutions.⁵⁹ The decision to grant NHRIs affiliate status by the African Commission was welcomed by the OAU in its Grand Bay (Mauritius) Declaration and

⁵² In 2000, the OAU underwent a transformation to become the African Union (AU). It was established by the Constitutive Act of the African Union, adopted at the 36th ordinary session of the Assembly of Heads of State and Government (AOHSG) of the OAU on 11 July 2000, in Lomé, Togo; Yeshanew (n 30 above) 191.

⁵³ Article 30 ACHPR.

⁵⁴ Article 26 as read together with article 25 of the African Charter. The Mauritius Plan of Action

⁵⁵ < http://www.newsite.co.ke/hr/index.php?option=com_content&task=view&id=8&Itemid=3> (11 October 2008)

⁵⁶ Yaoundé Declaration para 17.

⁵⁷ Durban Declaration.

⁵⁸ Durban Declaration para 14.

⁵⁹ Resolution on Affiliate Status para 4.

Plan of Action.⁶⁰ From the available literature, it appears that NHRIs themselves pushed harder for recognition and eventual affiliate status with the African Commission. This issue will be the focus of the next section of this study.

3.3.2 Beyond the Resolution on Granting Observer [Affiliate] Status to NHRIs in Africa (1998)

Having been given affiliated status, it remained to be seen whether the newly born relationship between the Commission and NHRIs would be fruitful. The activity reports of the African Commission catalogues, albeit inconsistently, the relationship after the 1998 Resolution on Affiliate Status. The discussion below ascertains the nature and extent of this 'affiliate status.' This will be achieved by mainly looking at the activity reports of the African Commission, resolutions as well as other relevant sources of information relating to the workings of the African Commission and NHRIs.

The term 'affiliate status' adopted by the resolution does not clearly define the role of NHRIs, thus failing to demarcate sufficiently or extensively the nature of the role of NHRIs viz the African Commission. The resolution merely requires that these institutions assist the African Commission in the promotion and protection of human rights at the national level.⁶¹ It does not go beyond this. This is despite the fact that the literal meaning of the term 'affiliate' presupposes a close relationship between the two.⁶²

That notwithstanding, this affiliate status entitles NHRIs to be present at and to participate 'without voting rights' in the African Commission sessions.⁶³ They are afforded time to speak after states and before NGOs. They speak under the agenda item 'cooperation and relationship between Commission with NHRIs and NGOs' during the public sessions of the African Commission.⁶⁴ NHRIs are permitted to make any presentations on any issue that is of relevance to them and their presentations are usually preceded or followed by consideration by the African Commission of applications for affiliate status from NHRIs. NHRIs which care to attend the African Commission' sessions take this opportunity to request for a more involving relationship between the African Commission and NHRIs.⁶⁵ For example, a recommendation

⁶⁰ Mauritius Declaration and Plan of Action para 24.

⁶¹ Resolution on Affiliate Status to National Human Rights Institutions in Africa, adopted at the Commission's 24th session, Banjul, the Gambia, 22-31 October 1998, para 4(d); Viljoen (n 16 above) 413.

⁶² Oxford Dictionary 19.

⁶³ Resolution on Affiliate Status para 4 ; Viljoen (n 16 above) 413.

⁶⁴ Murray (n 5 above) 49.

⁶⁵ 24th Activity Report, para 61.

was made by the South African Human Rights Commission (SAHRC) to establish a NHRI unit within the African Commission and the development of guidelines on co-operation between the African Commission and NHRIs.⁶⁶ NHRIs have also been given the opportunity to give a statement, through a representative of NHRIs, at the opening ceremony of the Commission's sessions.⁶⁷

The participation of NHRIs in the sessions of the African Commission is erratic. The activity reports indicate that a high water mark of attendance was reached at the African Commission's 39th Ordinary Session, when 19 NHRIs attended.⁶⁸ The number decreased sharply to five at the following session.⁶⁹ The 41st Ordinary Session was graced by eleven NHRIs.⁷⁰ Four institutions attended the 42nd session⁷¹ and the 43rd Ordinary Session was attended by three NHRIs.⁷² The attendance of NHRIs in the sessions of the African Commission is illustrated by the table below.

Participation of NHRIs in the sessions of the African Commission

African Commission Session	Venue & date	No. of NHRIs in attendance
39th Ordinary Session	Banjul, The Gambia 11th- 25th May 2006	19
40th Ordinary Session	Banjul, The Gambia 15th- 29th November 2006	5
41st Ordinary Session	Accra, Ghana 16th May -30th May 2007	11
42nd Ordinary Session	Brazzaville, Congo 15th- 28th November 2007	4
43rd Ordinary Session	Ezulwini, Swaziland 7th- 22nd May 2008	3

Apart from these sessions, the collaboration of NHRIs with the commissioners is usually in the form of promotional missions in respect of the duties that they have been assigned to do mostly in their capacity as special rapporteurs.⁷³ Frankly, the Commissioners are not doing

⁶⁶ As above.

⁶⁷ Murray (n 5 above) 51.

⁶⁸ 20th Activity Report , AU Doc EX.CL/279(IX) para 7.

⁶⁹ 21st Activity Report , AU Doc EX.CL/322(X) para 7.

⁷⁰ 22nd Activity Report , AU Doc EX.CL/364(XI) para 9.

⁷¹ 23rd Activity Report , AU Doc EX.CL/466(XIII) para 12.

⁷² 24th Activity Report , para 10.

⁷³ For e.g. the Special Rapporteur on Human Rights Defenders in Africa participated in a national workshop in Lome, Togo , on 'The role of National Human Rights Institutions in the protection of human rights defenders' from 3-4 September 2007; 23rd Activity Report, para 58.

much in terms of establishing a more formal link between the African Commission and NHRIs. These promotional activities are mostly in the form of workshops or panel discussions, relegating this affiliate status to nothing more than a 'talk shop'. Otherwise any working relationship between the African Commission and NHRIs in any other forum, if any, remains invisible.

There is simply no proper co-ordination and communication between the two. In the first instance, despite assertions by the African Commission that it values the relationship,⁷⁴ it has failed to follow up with the submission of reports by NHRIs as required by the 1998 resolution on affiliate status. The African Commission is simply not pro-active, has left much to chance and to a large extent depends on the efforts of NHRIs. It does not even play a protective role in supporting NHRIs' commissioners that face government pressure or reprisal for their work. The African Commission has not reprimanded NHRIs that are weak or state compliant.⁷⁵ This is despite a scathing report on NHRIs entitled *Protectors or Pretenders; Government Human Rights Commissions in Africa* published by Human Rights Watch in March 2001.⁷⁶ Furthermore, several recommendations made by NHRIs to the African Commission remain unimplemented.⁷⁷ Despite this unfruitful relationship, the African Commission continues to confer affiliate status on those institutions which have applied. Beyond the applications for affiliate status, the African Commission's approach has been similar to that of the UN and is to encourage states to establish such where none are existent.⁷⁸

In the light of the non-existent efforts by the African Commission, efforts by NHRIs themselves cannot go unnoticed. NHRIs continue to hold conferences geared towards fostering a meaningful relationship. The first conference of such a kind was held in Cameroon, which conference resulted in the widely accepted Yaoundé Declaration. The Second conference was held in Durban also resulting in the Durban Declaration. At the time of this study, the last conference was held in Kigali, Rwanda on the 8th to 10th October 2007. Other meetings include the Mediterranean Encounter of National Institutions for the promotion and Protection of

⁷⁴ African Commission's Mauritius Plan of Action 1996-2001, paras 47 & 49.

⁷⁵ Human Rights Watch 'Protectors or Pretenders? Government Human Rights Commissions in Africa', <<http://www.hrw.org/reports/2001/africa>> summary (10 May 2008).

⁷⁶ The report charges that many African NHRIs serve as apologists for government violations of human rights, lack independence and are generally, with a few exceptions, ineffective; Human Rights Watch (n 75 above) summary; MH Abdiwawa 'Empowering people on their rights in Tanzania' in CM Peter (n 17 above) 44.

⁷⁷ Second AU conference on NHRIs which was held to discuss the role of NHRIs in the African Commission resulted in recommendations which remain unimplemented; 20th Activity Report, para 18; Viljoen (n 16 above) 413.

⁷⁸ Murray (n 5 above) 51.

human rights, in Marrakech, Morocco, April 1998 and the West African Human Rights Forum.⁷⁹ It is at these meetings that NHRIs share their experiences, activities and difficulties in the protection of human rights at the national level.

African NHRIs have also established the Network of African National Human Rights Institutions (NANHRI/Network), formerly known as the Coordinating Committee of the African National Human Rights Institutions.⁸⁰ The constitution of the NANHRI governs among other things, the Co-ordinating Committee of NANHRI.⁸¹ Registered under Kenyan law as an independent legal entity, it co-ordinates the activities of the network through the Secretariat based in Kenya.⁸² NANHRI was conceived, among others, as a means of fostering relationships between NHRIs, regional and international human rights protection bodies as well as a way of strengthening NHRIs in Africa.⁸³

Granted, NANHRI was and is definitely a step in the right direction. As Karugonjo-Segawa has pointed out, the Network is willing and it is trying to improve relations between NHRIs in Africa and the African Commission.⁸⁴ The most unfortunate thing to happen would be for the network to concentrate on maintaining a good relationship with the ICC and other UN Charter based mechanisms to the exclusion of the African Commission. Commissioner Bahame Nyanduga has already lamented that the Constitution of NANHRI does not mention the African Charter, yet member states draw reference from this Charter.⁸⁵ He further pointed out there is a need for the modalities of co-operation between the African Commission and NANHRI be looked into.⁸⁶ It remains to be seen whether Nyanduga's recommendations will be accepted by the Network.⁸⁷

3.3.3 Post mortem: understanding the stillbirth of the relationship between the African Commission and NHRIs

One need not belabour the point with regard to this sad reality. As evidenced above, the lack of clear co-ordination between the African Commission and NHRIs is to a larger extent, the

⁷⁹ <<http://www.demotemp360.nic.in/default.asp?PID=88&DID=0>> (21 September 2008)

⁸⁰ < http://www.newsite.co.ke/hr/index.php?option=com_content&task=view&id=8&Itemid=3> (11 October 2008)

⁸¹ <http://www.newsite.co.ke/hr/index.php?option=com_content&task=view&id=8&Itemid=3> (18 September 2008)

⁸² As above.

⁸³ Constitution of NANHRI, art 2 & 3.

⁸⁴ Interview with Roselyn Karugonjo-Segawa ,Director, Monitoring &Inspections, UHRC.

⁸⁵ Conference Report, Sixth Conference of African National Human Rights Institutions, 8th to 10th October 2007, Kigali, Rwanda, 34.

⁸⁶ As above; 24th Activity Report, para 38.

⁸⁷ The Executive Director of NANHRI has opined that the Network 'will become a privileged and strategic partner of the Commission in the promotion and protection of human rights in Africa; 24th Activity Report, para 37.

cause of all the woes that have befallen the relationship between the two. The inaction by NHRIs can also be attributed to poor co-ordination. Despite repeated calls for the establishment of one,⁸⁸ there is still no focal point for NHRIs within the Secretariat of the African Commission. This is despite the foregone conclusion that once such a co-ordination point is established, there will be an improved relationship between the two. Such a focal point is likely to enhance their Affiliate status as well as lead to the development of a more clear working relationship.⁸⁹ NHRIs do not attend the meetings of the African Commission because of the way the proceedings are being conducted and the lack of clarity on the agenda.⁹⁰ Since the 1998 Resolution on Affiliate Status, Rules of Procedure of the African Commission were never amended to reflect the entrance of NHRIs onto the scene.⁹¹ However, Hansungule is of the view that, even though,

They may attend these sessions, most NHRIs practically have no competence as suggested, to assist states' compliance with their international obligations or to advise victims on how to use these systems to access the mechanisms. They cannot possibly play these roles when they themselves lack a basic understanding which is necessary for any kind of role playing.⁹²

In certain cases NHRIs are staffed with people who have no prior experience or training in human rights standards or work,⁹³ making it impossible for them to appreciate the work of the African Commission.

Indeed, in most instances the relationship between NHRIs and NGOs, is limited to once-off conferences or workshops and is at the most non-existent. This is despite the fact that NGOs are well versed with the procedures and workings of the African Commission and are involved in the workings (both protective and promotional) of the African Commission. In the advent of the establishment of a working relationship NGOs could act as a source of information for NHRIs insofar as learning more about the work of the African Commission and other relevant

⁸⁸ 24th Activity Report, para 61; Report of the retreat of members of the African Commission on Human and Peoples' Rights (ACHPR) facilitated by the Office of the High Commissioner for Human Rights (OHCHR), African Union Conference Centre, Addis-Ababa, Ethiopia, 24-26 September, 9 <<http://www.demotemp360.nic.in/pdf/ACHPR-Retreat-Report-Final.pdf>> (20 September 2008).

⁸⁹ As above.

⁹⁰ Murray (n 5 above) 53.

⁹¹ As above. This however cannot be a major hindrance to the development as there is nothing in the Charter that expressly restricts the participation of any type of organization in the African human rights system; VOO Nmehielle (n 50 above) 312.

⁹² M Hansungule 'R Murray, The role of national human rights institutions at the international and regional levels' *African Human Rights Law Journal* (2007) 7 592.

⁹³ Human Rights Watch (n 75 above) summary.

bodies is concerned. The poor relationship between the African Commission and NHRIs may also be attributable to a lack of interest in the workings of the African Commission by NHRIs themselves, lack of interest in the work done by NHRIs by the African Commission and fatally, lack of communication of the African Commission's activities to NHRIs.⁹⁴

Other problems that may be cited as hindrance include, in some cases, lack of political space necessary for the NHRI to operate effectively or where there is space, self censorship by the NHR itself. Some, like the UHRC, do not take part in the workings of the African Commission due to financial difficulties. However, they do participate when the state report is being considered by the African Commission.⁹⁵ NHRIs may also be flawed at inception, hobbled by statute, or controlled through funding or staffing.⁹⁶ Additionally, this inaction may be due to an understanding of their (NHRIs) role as being limited to the domestic arena and as not so much concerned with the international or regional human rights mechanisms.

3.4 Concluding remarks

NHRIs are indeed emerging as global actors. The rationale for their participation at international and regional levels is, to a certain extent, convincing. However, the general ambivalence about their participation at these levels is not borne out of any paranoia but out of well-founded fear. Unfortunately, their participation in the workings of the African Commission remains insignificant and is yet to materialise and move beyond the affiliate status they are conferred on paper. There are signs that measures to take advantage of the possibility of a more involved relationship between the African Commission and NHRIs as availed by the 1998 Resolution of Affiliate status are being adopted. However, at the moment there are no visible concerted efforts-especially by the African Commission- to take the relationship beyond the now paper based affiliate status.

⁹⁴ Interview with Roselyn Karugonjo-Segawa, Director, Monitoring & Inspections, UHRC.

⁹⁵ As above.

⁹⁶ Human Rights Watch (n 75 above) summary.

CHAPTER IV

CLOSING THE GAP: A DYNAMIC APPROACH TO THE RELATIONSHIP BETWEEN THE AFRICAN COMMISSION AND NHRIs

4. Introduction

The importance of the relationship between the African Commission and NHRIs cannot be gainsaid. However, the participation of NHRIs in the workings of the African Commission over the years has been minimal and remains unclear. This is rather disheartening considering that it is ten years since the adoption of the Resolution on Affiliate Status by the African Commission. Lack of focus, communication and proper co-ordination has and continues to hinder this relationship.

This chapter discusses the manner in which the relationship between the African Commission and NHRIs could be enhanced, with particular reference to the promotional and protective mandate of the African Commission. It also highlights the measures or mechanisms that could be put in place by the African Commission to take this relationship beyond mere rhetoric. The chapter further provides a brief discussion of the potential relationship between NHRIs and other human rights protection bodies within the African human rights system.

4.1 Establishment and strengthening of co-operational links

As already highlighted, the basis for reforming the relationship between the African Commission and NHRIs is to address the issue of the poor coordination and communication of their initiatives. That can only be addressed by establishing and strengthening links between the African Commission and NHRIs in Africa.

In so far as strengthening co-operational links is concerned, the African Commission could establish a focal unit within its Secretariat designed to co-ordinate all its relations with NHRIs. The establishment of such a focal point has been recommended as a way of strengthening the relationship between the African Commission and NHRIs.¹ As Hansungule

¹ Report of the retreat of members of the African Commission on Human and Peoples' Rights (ACHPR) facilitated by the Office of the High Commissioner for Human Rights (OHCHR), African Union Conference Centre, Addis-

points out- in the context of the African Peer Review Mechanism (APRM),-a 'focal point is a critical link...it is decisive to the success of the mechanism. An inaccessible focal point means stakeholders cannot communicate.'² A focal point within the secretariat of the Commission is likely to ensure, among other things, proper dialogue between African Commission and NHRIs.

Such a unit would not be the first of its kind. The United Nations Office of the High Commissioner for Human Rights (UNOHCHR) has a similar unit. The UNOHCHR has also established a National Institutions Unit (NI Unit), tasked with coordinating activities between the UNOHCHR, the International Coordinating Committee of National Human Rights Institutions (ICC) and other UN treaty bodies.³ The NI Unit is also the secretariat of the ICC⁴ and provides advisory services relating to the establishment and management of these institutions.⁵ It also facilitates NHRIs' participation in the UN and UN Charter treaty bodies.⁶

Another route could be for the Network of African National Human Rights Institutions (NANHRI/Network), to take up this role and facilitate closer co-operation between the African Commission and its members. Having recognised the importance of such co-operation-particularly in relation to co-operation with UN bodies- NHRIs around the world have forged regional networks. Within Latin America, there is the Network of the Americas' National Institutions for the Promotion and Protection of Human Rights, which was created in 2000.⁷ In the Asian region there is the Asia Pacific Forum of National Human Rights Institutions (APF).⁸ Among other things, the APF provides practical support for the establishment and strengthening of NHRIs in the Asia Pacific Region.⁹ The APF also provides support to its members and assist

Ababa, Ethiopia, 24-26 September, 9 <<http://www.demotemp360.nic.in/pdf/ACHPR-Retreat-Report-Final.pdf>> (20 September 2008); 24th Activity Report, AU Doc EX.CL/466(XIII) para 61.

² M Hansungule 'Overview paper on the role of the APRM in strengthening governance in Africa: opportunities & constraints in implementation' (undated) 15.

³ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Rules of Procedure, r 2.

⁴ The ICC co-ordinates NHRIs at national level, organises ICC conferences and ensures regular contact with the OHCHR and other international organisations. The ICC is also responsible for accrediting NHRIs that are in compliance with the Paris principles; R Murray *The role of national human rights institutions at the international and regional levels: The experience of Africa* (2007) 31

⁵ Effective functioning of human rights mechanisms: National Institutions and Regional arrangements. Report of the Secretary General, 24 Jan. 2006 E/CN.4/2006/101, at paras 5-6.

⁶ Rules of procedure of the ICC r 4(a).

⁷ < <http://www.asiapacificforum.net/about/annual-meetings/8th-nepal-2004/downloads/other-human-rights-institutions/americas.pdf>> (23 September 2008)

⁸ Asia Pacific Brochure <www.asiapacificforum.net> (23 September 2008).

⁹ As above.

them in their role of promoting, monitoring and protecting human rights.¹⁰ APF thus offers a wide range of services and support for its members. These services include, among other things, co-ordination of the participation of member institutions in the UN, ICC and other international and regional mechanisms. Just like NANHRI, its membership consists of NHRIs in the region and its activities are by far involved with human rights protection institutions in the region. Furthermore, just like NANHRI, full membership is limited to NHRIs which comply with international standards set out in the Paris Principles.

NHRIs can and should strive to establish a co-ordinated relationship. They can collaborate in many areas, including but not limited to, capacity building through training,¹¹ co-operation through the exchange of information¹² as well as organisation of regional workshops.¹³ It is through networking that NHRIs can better participate in the formulation of policies and human rights protection initiatives in Africa.

It is obvious that NHRIs cannot, and should not, be the only promoter of human rights, hence the need to strengthen collaboration and co-ordination between NHRIs and organisations working on human rights within their respective countries.¹⁴ This necessitates co-operation between NHRIs and NGOs. They could, for example, co-operate in the investigation of violations of human rights in their respective countries, undertake shadow reporting and submission of cases to the African Commission. They could also contribute to amendments of the rules of procedure of the African Commission or any mechanism that seeks to adopt new rules.

The African Commission has the latitude to choose the manner in which close co-operation between it and NHRIs could be established. It could thus choose, as recommended in numerous occasions, to establish a NHI unit within its Secretariat. It could also encourage and facilitate the strengthening of NANHRI. Through either, the African Commission can ensure

¹⁰ As above.

¹¹ The APF has a good exchange programme and has gone a long way to training the staff of member institutions.

¹² The APF has a website (www.asiapacificforum.net) in place that is used for the dissemination of information pertaining to the activities carried out by NHRIs. NANHRI, although still at the nascent stages, has a similar website (www.nanhri.com) which can be effectively used for the dissemination of information.

¹³ Remarks of Mr. Justice R. Rajendra Babu, Chairperson, National Human Rights Commission of India, 12th Annual meeting of APF, 26 September 2007.

¹⁴ The Danish institute for human Rights, 'Supporting national institutions for the promotion and protection of human rights – a strategic niche for UNDP' Issues paper, Executive Summary, November 2004 <http://europeandcis.undp.org/files/uploads/HR/ISSUE_PAPER_Executive_summary_NHRI_DANISH.pdf>(20 October 2008).

that NHRIs comply with the Paris Principles and can easily assess their effectiveness. It can also ensure that they submit their activity reports bi-annually as required by the 1998 Resolution on Affiliate status. Such a body could also be used to implement the recommendations made to the African Commission pertaining to its relationship with NHRIs. An NHI unit could also be mandated to consider applications for affiliate status. Roselyn Karugonjo-Segawa lamented that it took three applications to the African Commission for the Ugandan Human Rights Commission (UHRC) to be granted affiliate status.¹⁵ This would grant the African Commission the opportunity to make the process of granting NHRIs affiliate status more thorough and less time consuming.

Through such a focal point or network, the African Commission can also organise various activities geared towards the protection of human rights in Africa. Pending any decision by the African Commission to establish a focal point, it is incumbent upon NHRIs through NANHRI to measure up and take appropriate measures to strengthen this relationship. As Karugonjo-Segawa pointed out, most NHRIs have the capacity and indeed appreciate the workings of the African Commission.¹⁶ Absent at the moment, it appears, is the will and the incentive to fully participate.

Thus, areas for collaboration between the African Commission and NHRIs can be either protective or promotional.

4.2 Protective based co-operation

Under article 45(2) of the African Charter, the African Commission is mandated to protect human rights in Africa. Chapter III of the Charter addresses the African Commission's protective mandate. This function has several aspects which include individual communications,¹⁷ inter-state communications and 'on-site' or 'fact finding' missions by the African Commission.¹⁸ NGOs have been regarded as partners of the African Commission for they have engaged critically with the African Commission on its working methods as well as in its working groups.¹⁹ For example, NGOs have been instrumental in the submission of

¹⁵ Interview with Roselyn Karugonjo-Segawa, Director, Monitoring & Inspections, UHRC, Uganda, Kampala, 14 October 2008.

¹⁶ As above. .

¹⁷ African Charter, arts 47 through 59.

¹⁸ As above, art 46.

¹⁹ F Viljoen *International human rights law in Africa* (2007) 407.

communications and the development of the communications procedure²⁰ and they have also facilitated fact-finding and promotional missions of the African Commission.²¹ It is therefore desirable that there be established clear co-operation between the African Commission and NHRIs in relation to activities geared towards furthering this protective mandate of the African Commission if they want to be considered as partners of the African Commission.

The African Commission and NHRIs can certainly elevate their relationship to the same level as that of the African Commission and NGOs. In respect of communications, NHRIs could start by developing a culture of submitting communications to the African Commission. As already pointed out, this has been done before²² and needs only to be encouraged further as the Rules of Procedure of the African Commission do not prevent NHRIs from submitting cases before the African Commission. In fact, NHRIs lodge petitions with the Inter-American Commission on Human Rights (IACHR), after domestic remedies have been exhausted.²³ Acknowledging that the increased submission of communications before the African Commission by NHRIs raises issues of their institutional security,²⁴ they should nonetheless, be more involved in the communication procedure of the African Commission or at the very least assist complainants in approaching these mechanisms.

As regards 'on-site' or 'fact finding' missions by the African Commission,²⁵ NHRIs could provide assistance to the missions sent by the African Commission, acting under article 46 of the African Charter, to investigate allegations of human rights violations.²⁶ They can partner with the Special Rapporteur on Prisons and Detention Facilities in Africa (SRP), for example, to inspect prisons and detention facilities.²⁷ This is ideal, especially given that the mandates of

²⁰ As above.

²¹ As above.

²² *Communication 74/92, Commission Nationale Des Droits de l'homme et des Libertes v Chad*, Ninth Annual Report of the African Commission on Human and Peoples' Rights; R Murray 'The role of national human rights institutions at the international and regional levels: The experience of Africa' (2007) 13.

²³ L Reif 'The Ombudsman, Good Governance, and the International Human Rights System' (2004) see ch. 6.

²⁴ Security from political attack, as measured by qualitative assessment of capacity to survive actual or threatened attacks on independence; T Roux 'Principle and Pragmatism on the Constitutional Court of South Africa' LLM (Human Rights and Democratisation in Africa) Lecture, delivered 5 May 2008, Centre for human rights, Faculty of Law, University of Pretoria, (on file with author).

²⁵ T Mutangi 'Fact-finding missions or omissions: a critical analysis of the African Commission on Human and Peoples' Rights and lessons to be learnt from the Inter-American Commission on Human Rights' 1 (2006) *East African Journal of Peace and Human Rights* 1, for a detailed discussion on fact finding missions of the African Commission.

²⁶ Report of the retreat of members of the African Commission (n 1 above) 9.

²⁷ F Viljoen 'The Special Rapporteur on Prisons and Conditions in Africa: Achievements and possibilities' 27 *Human Rights Quarterly* (2005) 125-171.

NHRIs involve the investigation of alleged human rights violations. Such inspections could also act as a vital pre-emptive measure which is important for vulnerable persons in the hands of state organs.²⁸ Furthermore, it could help the African Commission overcome some of the problems the delegates encounter during fact finding missions, such as time constraints and inability to collect enough evidence during their fact-finding missions.²⁹

4.3 Promotional based co-operation

Article 45 of the African Charter mandates the African Commission with the duty to promote human and peoples' rights in the continent.³⁰ In particular, the African Commission may collect documents, undertake studies and research on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, and disseminate information.³¹ Accordingly, the African Commission is mandated to co-operate with African and other International institutions concerned with the promotion of human and peoples' rights.³²

Over the years the African Commission has made efforts aimed at realising the goals of its promotional mandate and appears to have properly organised itself for promotional activities.³³ The African Commission has thus been involved in the dissemination of information and the organisation of conferences, workshops, seminars and symposiums to discuss the relevant issues.³⁴ Other promotional activities that the Commission has been involved in include, state reporting, the passage of resolutions, recommendations encouraging member states to promote human rights education in their domestic spheres and highlighting the importance of human rights education in the implementation of the African Charter;³⁵ the appointment of special rapporteurs on thematic issues such as extra-judicial executions, prisons and other conditions of detention as well as on women's rights.³⁶

²⁸ CM Peter 'The way forward for the East African Human Rights Institutions' in CM Peter (ed) 'The protectors; human rights commissions and accountability in East Africa' (2008) 324.

²⁹ Mutangi (n 25 above) 37.

³⁰ African Charter, art 45(1); A Yeshanew 'Utilising the promotional mandate of the African Commission on Human and Peoples' Rights to promote human rights education in Africa' (2007) 7 *African Human Rights Law Journal* 191.

³¹ African Charter, art 45(1)(a).

³² African Charter, art 45(1)(c).

³³ VOO Nmehielle *The African human rights system- its laws, practices, and institutions* (2001) 176 & 179.

³⁴ Nmehielle (n 30 above) 178.

³⁵ Yeshanew (n 27 above) 201; Viljoen (n 19 above) 368.

³⁶ M Evans & R Murray 'The Special Rapporteurs in the African system' in M Evans & R Murray (eds) *The African Charter on Human and Peoples' Rights- the system in practice, 1986-2000* (2002) 280.

Suffice it to point out that in so far as the promotional mandate of the African Commission and co-operation between the African Commission and NHRIs is concerned, there seems to be movement in the right direction. The Activity Reports of the African Commission shows that Commissioners do attend seminars and workshops organised by NHRIs, to discuss issues relating to human rights as part of the promotional mandate of the African Commission.³⁷ It is imperative that NHRIs should be involved in most of these activities as they are in a position to ensure a more co-ordinated and comprehensive delivery of human rights education on a nationwide scale.³⁸ This is in contrast to NGOs as they are usually focused on a geographical area or a specific area of interest.³⁹

The state reporting process of the African Commission deserves particular attention. Despite the controversy surrounding the extent of their participation in the state reporting process, NHRIs should be involved in one way or the other in the state reporting process.⁴⁰ This is well within their monitoring mandate. They should, for example, be involved in the preparation of country reports and should send shadow reports to the African Commission so as to help bring to the fore facts that can only be obtained through investigative work at the national level.⁴¹ Such reports are likely to better exhibit the reality of the human rights situation of the country. NHRIs can further 'provide constructive, well-informed criticism from within, which is frequently important in corroborating or balancing criticism from 'foreigners.'⁴² In fact that was the recommendation made at a Retreat of the members of the African Commission where the role of NHRIs in the workings of the African Commission was discussed.⁴³ The African Commission should also train NHRIs on the procedures of state reporting in order to improve their capacity in the area.

Another area of collaboration between the African Commission and NHRIs could be in the area of follow-up of decisions of the African Commission, country specific resolutions and on reports made to the African Commission by states. Follow-up on decisions of the African

³⁷ J Hatchard *et al Comparative constitutionalism and good governance in the Commonwealth: An Eastern and Southern perspective* (2004) 231.

³⁸ M Nassali 'Economic and social rights: drawing the threads together' in CM Peter 'The protectors ; human rights commissions and accountability in East Africa' (2008) 97.

³⁹ As above.

⁴⁰ Viljoen (n 17 above) 371; Report of the Brainstorming meeting on the African Commission, 9-10 May 2006, Banjul, The Gambia, AU Doc ACHPR/BS/01/010,9 May 2006 (20th Activity Report, Annex II)

⁴¹ As above.

⁴² G Alfredson *et al* (ed) 'International human rights monitoring mechanisms' (2001) 825.

⁴³ Report of the retreat of members of the African Commission (n 1 above) 3.

Commission is unsatisfactory and remain inconsistent.⁴⁴ The Commission hardly makes reference to reports or recommendations previously issued and the extent to which they have been implemented by the concerned state.⁴⁵ The argument may well be that the African Charter does not mandate follow up measures with respect to communications.⁴⁶ However, as Viljoen rightly asks, why would the Commission consider communications in the first place, if it remains unconcerned about their implementation and effect?⁴⁷

Collaboration in this area can strengthen the African Commission's practice regarding follow-up of recommendations and decisions of the African Commission. This is because of the pressure that NHRIs can exert at the national level as well as the fact that follow-up may be considered a form of investigation within the context of the communication procedure.⁴⁸ As discussed elsewhere in this study, NHRIs can undertake investigative work on behalf of the African Commission as it is well within their mandate.

4.4 Co-operation between NHRIs and other human rights protection bodies in Africa

The relationship between NHRIs and other human rights bodies in Africa is important because it has the potential to ensure the more effective protection of human rights on continent. Unfortunately, at the time of this study, there was no established relationship between NHRIs and the African human rights mechanisms discussed below.

The African Committee of Experts on the Rights of the Child (the African Children's Committee) is mandated to cooperate with institutions concerned with the promotion and the protection of human rights.⁴⁹ At its first meeting, the African Children's Committee agreed to collaborate with other organisations.⁵⁰ It is assumed that these 'organisations' will ordinarily include NHRIs. The African Children's Committee is still at its nascent stages⁵¹ and it remains to be seen what form the relationship between the two will take. However, once a formal relationship is established, the two can collaborate in almost the same manner as NHRIs ideally

⁴⁴ Viljoen (n 19 above) 389.

⁴⁵ Viljoen (n 19 above) 390.

⁴⁶ F Viljoen & L Louw 'State compliance with the recommendations of the African Commission on Human and Peoples' Rights, 1993-2004' (2007) 101 *AJIL* 18; Viljoen (n 19 above) 358.

⁴⁷ Viljoen (n 19 above) 359.

⁴⁸ As above.

⁴⁹ African Charter on the Rights and Welfare of the Child, art 42(a)(iii).

⁵⁰ See A Lloyd 'The first meeting of the African Committee of Experts on the Rights and Welfare of the Child' (2002) 2 *AHRLJ* 325.

⁵¹ BD Mezmur 'Still an infant or now a toddler? The work of the African Committee of Experts on the Rights and Welfare of the Child and its 8th ordinary session' (2007) 7 *AHRLJ* 258.

should be collaborating with the African Commission. This is so because the African Children's Committee has a similar mandate to that of the African Commission.

The Protocol to the African Charter establishing the African Court on Human and Peoples' Rights (Court Protocol) does not explicitly make reference to NHRIs. Only NGOs with observer status have direct access to the African Court.⁵² Apart from that fact, the African Court has been inactive and it is only recently (June 2008) that its interim Rules of Court were adopted.⁵³ Like the African Children's Committee it has no established relationship with NHRIs.

Whether NHRIs will be able to submit communications before the African Court is likely to be decided in the future. It will be interesting to see whether the African Court will interpret the provision entitling NGOs to submit cases directly before the African Court to include NHRIs. Such a decision may bring to an end the debate as to the nature or categorisation of NHRIs, i.e, whether they are government institutions, independent institutions or they are *sui generis*. Unless otherwise decided by the Court, NHRIs will have to submit cases to the African Court indirectly through the African Commission within the ambit of article 5(1)(a) of the Court Protocol.

4.5 Concluding remarks

Perhaps the words of Kapindu most appropriately sum up the issue of the non-existent relationship between the African Commission and NHRIs when he points out that,

NHRIs in Africa reap no benefits from shunning the ACmPR [African Commission] if they are truly committed to promoting and protecting the rights of people in their respective jurisdictions. NHRIs would clearly benefit from constant interface and information exchange with the ACmHPR. Similarly, the ACmHPR gets no benefit out of paying lip service to co-operation and engagement with NHRIs, as it would certainly benefit a lot from the vast information resource on human rights in Africa held by NHRIs.⁵⁴

It is also important that the African Commission and NHRIs do not work in isolation from other human rights bodies within the African system. Having recognised the importance of co-operation, NHRIs around the world have forged effective regional networks. Although, most of these networks are used for hosting conferences and workshops, they are making progress in so far as capacity building is concerned. The African Commission and African NHRIs should

⁵² Court Protocol, art 5(3).

⁵³ Interim Rules of the African Court.

⁵⁴ RE Kapindu ' Book Review; *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* by Rachel Murray' (2007) *SA Law Journal* 201.

avoid this 'talk shop syndrome' and move beyond mere rhetoric if they are to tap into the potential possessed by NHRIs.

CHAPTER V

CONCLUSION AND RECOMMENDATIONS

5. Conclusion

This study raised several issues relating to, among other things, the rationale behind the participation of NHRIs at international and regional levels, the nature, history and functions of NHRIs as well as their international formal standing *viz* the Paris Principles. However, the study mainly sought to examine the present relationship between the African Commission and NHRIs, with the aim of considering how the African Commission and NHRIs can improve and enhance their relationship further.

The study has highlighted some of the ambiguities that afflict this relationship. It has also highlighted the debate as to the true agenda of NHRIs at the international and regional levels and the dangers that arises thereto. Chief among them is the concern that NHRIs are likely to displace civil society, especially if they are co-opted by governments with a bad record of human rights, and thereby defeat the struggle against the violation of human rights.

Questions as to whether NHRIs should participate in the workings of the African Commission have been posed. Rightly so, for there is no visible working relationship between them and the African Commission or any other human rights protection body within the African human rights system for that matter. Be that as it may, benefits that may be accrued by a strong collaboration between the African Commission and NHRIs, as evidenced in the preceding chapters, are visibly compelling.

This study has come to the conclusion that, at present, there is no proper working relationship between the African Commission and NHRIs. This is largely attributable to two main factors. Firstly, there is no proper agenda, or direction or framework as to what form the relationship should take. In other words, there is no clear indication, by the African Commission, as to what role should NHRIs take once they decide to participate in its operations. Secondly, there is absolutely no co-ordination or communication of events and initiatives of the two, making collaboration inconsistent, far between and largely in the form of workshops, symposia and presentations by Commissioners.

This study has also come to the conclusion that the validity of the participation of NHRIs in the sessions of the African Commission, even though controversial, is not a hindrance to the establishment of a working relationship between the African Commission and NHRIs. Acknowledging that there are instances where one can question the true objective of an African NHRI, most NHRIs in Africa are now taking seriously their mandate as human rights protectors. It is submitted that the oft-cited 2001 study by Human Rights Watch '*Protectors or Pretenders? Government Human Rights Commissions in Africa*' does not exhibit the present state of events as there has been marked improvement in the works of African NHRIs. The argument here is that, since there is some movement towards the acceptance of NHRIs as international actors, African NHRIs should not be excluded on the basis of fear of their institutional security and how they address it.

In order to strengthen the protection of human rights in Africa, there is need for concerted efforts by the African Commission to create a long-lasting relationship with NHRIs. Equally, NHRIs should utilise the few opportunities available to them to foster a relationship and define their role in the workings of the African Commission.

5.1 Recommendations

In order to establish a sustainable relationship, the African Commission and NHRIs need to lay down a normative framework within which the two will operate. In the first instance the African Commission is advised to revisit the 1998 Resolution on Affiliate Status in order to clarify upon the position of NHRIs within its hierarchy of human rights actors. The African Commission should, upon revisiting the 1998 Resolution on Affiliate status, take the opportunity to explain the role and ambit of the 'Affiliate status' of an African NHRI. For there to be a meaningful relationship, there is need for clarity in the normative framework and at the term affiliate does not explain the role of NHRIs within the workings of the African Commission.

Secondly, the African Commission should introduce guidelines on the relationship between the two. Such guidelines, even though they are not a guarantee to effective co-operation, would go a long way in giving direction to the otherwise directionless relationship between the African Commission and NHRIs. Just as is the case with the Abuja Guidelines on the relationship between parliaments, parliamentarians and Commonwealth NHRIs,¹ the

¹ Abuja Guidelines on the relationship between parliaments, parliamentarians and Commonwealth NHRIs.

guidelines should spell out what the Commission can do to support the work of a NHRI and conversely what NHRIs can do to support the workings of the African Commission.

The two should thus identify areas of strategic interest and draw a plan of action. Areas of possible support and collaboration include; the submission of cases before the African Commission, collaboration in fact-finding missions, inspection of prisons and detention facilities, organising symposia, workshops, promotional visits, follow-up of decisions of the African Commission, preparation of state reports as well as shadow reporting.

In order to further strengthen its collaboration with NHRs, the African Commission should establish a focal point within its Secretariat. The proposed unit should be tasked with co-ordinating activities between the African Commission and NHRIs. It can also be used for monitoring the effectiveness, independence and compliance with the Paris Principles by NHRIs.

Equally, NHRIs should strengthen the Network of African National Human Rights Institutions (NANHRI/Network) in a bid to develop a more functional and working relationship between the African Commission and NHRIs in Africa. As evidenced by the Asia Pacific Forum of NHRIs (APF), a strong network of NHRIs can help in bringing about the easier co-ordination of activities between NHRIs and human rights protection bodies. A strong NANHRI can be useful in any proposed collaboration as it will make communication and co-ordination of events easier. In order to achieve most of the aforementioned, NHRIs should obviously develop interest in participating in the sessions of the African Commission. Such sessions offers a platform whereat NHRIs can advocate for the establishment of the necessary mechanisms as well as adoption policies relevant to effective protection of human rights by NHRIs.

Closer collaboration between the African Commission and NHRIs, albeit faced with many challenges, would bring about effective human rights protection in Africa. It will ensure that the efforts of the African Commission trickle down to the citizenry. One cannot overemphasize the importance of overhauling the manner in which the African Commission and NHRIs relate. Ten years since NHRIs were afforded affiliate status, it is appropriate that the two take this relationship beyond mere rhetoric and beyond the paper based 'affiliate status.'

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