

**DETERMINING THE IMPEDIMENTS TO THE EFFICIENCY AND
EFFECTIVENESS OF THE NATIONAL HUMAN RIGHTS COMMISSION OF
CÔTE D'IVOIRE: ARE THE PARIS PRINCIPLES A PANACEA?**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS OF THE DEGREE LLM (HUMAN RIGHTS AND
DEMOCRATISATION IN AFRICA)**

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Dedication

To my daughter Prunelle;

You came with all the wonderful things that are happening to me and for you I am committed to make the world become a paradise so that you can live safely and happily in it.

With the deepest love of your father.

Acknowledgment

In Côte d'Ivoire:

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To God be the glory.

Acronyms

Unless the context requires otherwise, the abbreviations stand for this:

CNDHCI	<i>Commission Nationale des Droits de l'Homme de Côte d'Ivoire</i>
ECOSOC	Economic and Social Council
ICC	International Coordinating Committee of National Human Rights institutions
NGOs	Non-Governmental Organisations
NHRC	National Human Rights Commission
NHRIs	National Human Rights Institutions
UN	United Nations
UPR	Universal Periodic Review

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Chapter one

Introduction

1.1 Background of the study

In 1991, the first major international gathering on the issue of National Human Rights Institutions (NHRIs) was held from the 7 to the 9 October in Paris during the first International Workshop on National Institutions for the Promotion and Protection of Human Rights under United Nations (UN) auspices. The outcome of such meeting is the Paris Principles adopted by the United Nations Human Rights Commission Resolution 1992/54 of 1992 and the General Assembly Resolution 48/134 of 1993. The Paris Principles relate to the status and functioning of national institutions for protection and promotion of human rights and ‘have become the benchmark against which national human rights institutions are measured’.¹

Through time, NHRIs’ importance has increased as they become common in the constitutional system of many countries and their role is recognized in the literature and the work of international bodies. For instance, the foreseen African Court of Justice and Human Rights is expected to grant standing to NHRIs.² If NHRIs are to make a difference and substantive contribution in the promotion and protection of human rights at the national level, it becomes crucial that such institutions are institutionalized and operationalised in accordance with international authoritative guidelines, which the Paris Principles provide.

More than seventeen years after the adoption of the Paris Principles, in a military and political crisis with all the horrible human rights violations implied, Côte d’Ivoire has established its National Human Rights Institution known as ‘*La Commission Nationale des Droits de l’Homme de Côte d’Ivoire*’³ charged with the task to take up the challenge of mitigating the lamentable situation of human rights in the country.

After its establishment and as it came into effective existence, the institution has engaged in what it has been created for and produced since then two annual reports on its activities to date.

¹ International Council on Human Rights Policy, *Performance & legitimacy: national human rights institutions* (2000) 1.

² Article 30(e) of the Protocol on the Statute of the African Court of Justice and Human Rights.

³ The English terminology used in Côte d’Ivoire’s National Report at the 2009 Universal Periodic Review (2009 UPR) as well as by the literature is ‘the National Human Rights Commission of Côte d’Ivoire’ but this study will also refer to the institution as ‘the Ivorian National Human Rights Commission’.

Nevertheless, from the analysis of its reports and the scrutiny of the human rights situation in Côte d'Ivoire, one can freely assert that the institution did not achieve a lot towards the promotion and protection of human rights in the country and is more likely to miss its objective if nothing is done to improve its actual settings and features.

Thus, if the initial goal is to be cherished, it does not elude the fact that there is a need for the newly established institution to comply with the requirements set by international law in relation to NHRIs.

In fact, it is clear from both the point of view of the literature⁴ and the international community⁵ as well for the Ivorian authorities⁶ that the National Human Rights Institution established in peculiar conditions is not in conformity with the set benchmarks relative to such type of human rights safeguards at the national level. And this position of the Ivorian National human Rights Commission makes it unable to participate fully in the international forums⁷ where all respectable NHRIs are willing and expected to have standing and active contribution to the debate on their contribution to human rights promotion and protection.

Therefore, it seems relevant to undertake an in-depth study seeking to assess the level of compliance of the recent institution to the international standards and specifically the Paris Principles. Also, it is worth to find out what other factors hinder the quality of the institution.

⁴ U Spliid *The compliance of the constituent documents of West African and Central African National Human Rights Institutions with the Paris Principles: A descriptive analysis* (2009).

⁵ The Ivorian institution has never undergone one of the accreditation systems available at the universal and regional level, hence it lack of status as regard to these systems and the comments and recommendations done by the international community during and after the Ivorian government submitted its report to the 2009 UPR emphasised on the need of the institution to comply with the Paris Principles.

⁶ '*L'état des Droits de l'Homme en Côte d'Ivoire*' *Rapport Annuel* (2008) 94 and '*L'état des Droits de l'Homme en Côte d'Ivoire*' *Rapport Annuel* (2009) 130, where it is reported the constantly position of the Institution's Chairperson placing at the core of the institution goal, the need to comply with Paris Principles ;' see also 'Côte d'Ivoire National Report to the 2009 UPR' para, 24 available on www.upr-info.org/Review-2009 (accessed 12 August 2010) :

The present make-up of the CNDHCI, which is the outcome of political negotiations in a context of political crisis, will be reviewed and brought into conformity with the Paris Principles once normality returns to Côte d'Ivoire.

⁷ The A status granted to a NHRI by the International Coordinating Committee of NHRIs (ICC) gives full membership to that institution and assures to it the status observer before the United Nations human rights system. In the African system, the A status granted by the African National Human Rights Institutions' Network assures an affiliate status to the beneficiary before the African Commission of Human and Peoples' Rights; see interview of Ulrik Spliid done by Brendan Sweeney available on www.humanrights.dk (accessed 12 September 2010).

So, in spite of this disclosure of the context of the study, one should not proceed without stating comprehensively the overall problem guiding this analysis.

1.2 Problem statement

The study investigates what impedes the effectiveness and efficiency of the Ivorian National Human Rights Commission. Therefore, it systematically assesses the level of compliance of the institution to the international standards as it has been sustained that these minimum standards⁸ are a guarantee for a minimum success in the achievement of NHRIs' objectives. So, this research contends that the more a NHRI is working towards compliance with the Paris Principles, the more it becomes capable of delivering on its promises of human rights promotion and protection. Nevertheless, given the argument some made that compliance with Paris Principles is not a full guarantee that a NHRI would be effective in delivering on its mandate, the paper also seeks to investigate whether or not there are other factors and if so what factors affect the effectiveness of NHRI to deliver on their mandate.⁹ The paper tries to achieve this by examining the level of compliance of the Ivorian NHRI with such international standards as the Paris Principles and investigating what other factors in the political, socio-economic or constitutional sphere of the country affect its efficacy.¹⁰

⁸ Even if according to AE Pohjola, *The Evolution of National Human Rights Institutions - The Role of the United Nations* (2006) 14, quoting the *ECOSOC Res. 961 F (XXXVI) of 12 July 1963*:

[W]hile the Paris Principles were originally meant to serve as minimum standards guiding governments in providing their new institutions with the "essential basis", it has been claimed that, in reality, they constitute a "maximum programme that is met by hardly any national institution in the world"

The position held in this paper is supportive to the minimum standards thesis.

⁹ A position has been developed in the literature supporting the fact that complying to the Paris Principles does not lead necessary to the effectiveness and efficiency of a NHRI because experience has shown that some NHRIs deemed to be fully in conformity with these Principles are not as deliverable as other regarded as driving far away from the said standards; see in this regard n 1 above, 2:

Much of this research leads back, in one way or another, to the Paris Principles. There is no doubt, for example, that a broad mandate, a founding statute, an independent appointments process and adequate funding all aid effectiveness. But there have been institutions that have been effective in their own context without any of these things. (...) [S]ome institutions set up more or less in conformity with the Paris Principles have been completely ineffective, while others that had little independence and inadequate funding have made a positive impact on the human rights situation in their country.

¹⁰ It has been acknowledged in the two reports issued since then by the Commission that the institution is not delivering efficiently and effectively on its mandate due to many reasons and the general situation of human rights in the country is also a proof of that.

1.3 Thesis statement

The Ivorian National Human Rights Commission as a NHRI has to comply with minimum international standards governing the creation and the activities of such institutions. Therefore, independently to the discovery or not of the fact that the establishment of the institution was done with a will to make it be in conformity to these standards, one has to undertake an assessment of the extent that this institution adheres and complies to the Paris Principles. This research encompasses the constituent documents of the commission as well as its activities on the field. Therefore, it is not a mere analysis of the legal framework of the Commission on the basis of the Paris Principles, but an analysis of the environment, the structure and the activities of the Commission.

Thus, the assessment purports to find out how far the Ivorian National Human Rights Commission has complied with the international standards. Consequently, the overall question of the study can be framed as follows: To what extent the Ivorian National Human Rights Commission is in conformity with the international standards relating to NHRI such as most notably the Paris Principles? Other more specific questions include what are the tools to be identified from these standards to assess the quality of NHRI? In what ways does the lack of possession of some of the qualities set by these standards effect the effectiveness of the Ivorian NHRC? What other factors outside of those envisaged in international standards including Paris Principles affect the operation and effectiveness of the Ivorian NHRC? In what ways can such factors negatively affecting the effectiveness of Ivorian NHRC be addressed?

1.4 Significance of the study

This study focuses on identifying the qualities that a NHRI need to possess as envisaged in international standards and such other factors that directly affect the operation of such institutions and thus their capability to make substantive contribution for the promotion and protection of human rights. This adds to our understanding of the international standards applicable to them and the limitations of such standards. The identification of the factors that affect the operation of the Ivorian NHRC offers insights into the issues that affect similar institutions in other African countries particularly those transiting from war to peace and how such institutions may need to be reformed as part of the process of post-conflict peace-building measure.

According to the Ivorian delegation at the 2009 UPR, once the country will be stable and return to a democracy¹¹, the authorities will have to look into ways of improving the Commission in the light of international standards such as the Paris Principles.¹² Therefore, an in-depth assessment seeking to identify what in the constitution or the make-up, in the total structure and organisation as well as in the activities of the institution fall short of these standards will make significant contribution for such an exercise. Moreover, this finding will lead to the formulation of practical and appropriate measures to be adopted by the state of Côte d'Ivoire for the Commission to gain respect from the ICC because having complied with the international standards and set the basis of a tool able to deliver on human rights promotion and protection as expected. The outcome of such work is to render available an analysis portraying an inventory of the qualities that a NHRI needs to be possessed of for it to be effective. Thus, the Ivorian authorities will have the latitude to adopt the appropriate corrective measures in the light of the findings of the study. In addition, all prospective support to the Commission in a view to align it with the international standards will have a clear understanding of the issues relative to the Commission and the possible support will be more focused.

This study is a comprehensive document to be used in the accomplishment of such task as all the attempts to set similar corrective measures have been done either from a legalistic perspective¹³ or were biased by the ideological inclination of their authors.¹⁴ So, this study appears as the first major and total scrutiny of the Ivorian National Human Rights Commission in the light of Paris Principles to include the legalistic approach as well as the contextual elements.

1.5 Definition of terminology

¹¹ It is worth to note that when this study was being carried out, the country was actively engaged in an electoral process with the presidential elections scheduled for October 31, 2010 and these are popular consultations expected to terminate the abnormal situation in which the Commission came into existence; the study is therefore timely and apropos.

¹² See n 6 above.

¹³ n 1 above, 2 'Inevitably much of the discussion of NHRIs has been legal and largely normative' and this is illustrated by the fact that Spliid's work has merely analysed the constituent documents.

¹⁴ The first report of the Commission had attempted recommendations towards the compliance to the Paris Principles, however, one can notice, as it will be shown later on in the study that these recommendations are somehow not objective.

The expression ‘National Human Rights Institutions’ is a generic terminology used to describe a reality that appears on diverse format.¹⁵ However, common features make possible the grouping of such diversity under a unique term. These features are the national characteristic of such institutions, their separation to the governmental machinery and their role including obligatory the promotion and protection of human rights within their respective countries.¹⁶ So, even if nowhere in the literature one can find a comprehensive definition of what is called ‘National Human Rights Institution’ seen as the commanding one,¹⁷ this descriptive and criteria based definitional approach is able to make one capable to identify it. That is why the current trend is to define a National Human Rights Institution on the basis of the benchmarks and criteria set by the Paris Principles.¹⁸

In this study whose object is the Ivorian National Human Rights Commission, the body analysed has been qualified as a National Human Rights Institution by its creators as well as by application of the elementary criteria used to identify such type of institutions. However, it is worth to distinguish between the idea behind the establishment of the institution and the reality of the current features it has. This to say that the compliance or not of the Ivorian National Human Rights Commission with the Paris Principles does not matter here in the acquisition of the name

¹⁵ M Mohammad-Mahmoud, “The effectiveness of National Human Rights Institutions” in Lindsnaes *et al*, (eds) *National Human Rights Institutions – Standard Setting and Achievements, in National Human Rights Institutions – Articles and Working Paper* (2001) 49, has attempted an enumeration of the diverse type of NHRIs:

National human rights ‘institutions’ come in all shapes and sizes – human rights commissions, Ombudsmen, *Defensores del Pueblo*, Procurators for human rights, national advisory commissions on human rights, national antidiscrimination commissions, and so on.

¹⁶ See n 15 above ‘Excluding government departments and non-governmental organisations, they can best be defined as quasigovernmental or statutory institutions with human rights in their mandate.’ ‘;’ ‘National human rights institutions (NHRIs) are administrative bodies set up in to protect or monitor human rights in a given country’, www.wikipedia.org/wiki/National_human_rights_institutions (accessed 15 September 2010) ‘;’ ‘National human rights institutions (NHRIs) are organizations that have been established by governments with the specific role of promoting and protecting human rights’, www.asiapacificforum.net/members/what-is-an-nhri (accessed 15 September 2010).

¹⁷ UN Handbook on the establishment and Strengthening of National Human Rights Institutions for the Promotion and Protection of Human Rights (1995) 6:

‘Despite the existence of a comprehensive standards relating to practice and functions, an analysis of activities conducted both within and outside the United Nations system reveals that there is not yet an agreed definition of the term “national human rights institution”.’

¹⁸ None of the literature accessed has done a definition of the concept out of referring to the Paris Principles and this leads to conclude that the Paris Principles are the best description and definition of what is a National Human Rights Institution.

National Human Rights Institution. Only the will of the creators governs the qualification of the institution and the whole issue of seeking its conformity to Paris Principles is all about acquiring definitively the features and characters of a National Human Rights Institution as defined by Paris Principles.

Therefore, the Ivorian National Human Rights Commission is a National Human Rights Institution by the will behind its creators' intention and is neither, as already said, established in compliance with Paris Principles nor it lives by these standards, hence the present study to reveal where lay the shortcoming as well as the achievements in the quest of the compliance to Paris Principles. To achieve that, it is necessary to review deeply the literature dealing with the question.

1.6 Literature review

The recentness of the Ivorian National Human Rights Commission makes it difficult to find a comprehensive and specific literature relative to it even if some attempts have been made in a view to reveal the relatively new institution. One can refer to the paper presented by Acka Joseph at a conference on the 16 February 2007.¹⁹ Also, Ulrik Spliid²⁰ in a study concerning the compliance of Central and Western African NHRIs with the Paris Principles, but with a focus on the constituent documents of these institutions, has made an important and interesting analysis of the legal asset of the Ivorian National Human Rights Institution. This study of Spliid is to date, the unique authoritative work on the Ivorian commission when it comes to assess it in the light of international standards and appears consequently very relevant for the present research.

Thus, the literature relative to the thematic of National Human Rights Institutions is the most abundant source of information as regard to the study. So, works done under the auspices of institutions such as the International Council on Human Rights Policy of Switzerland²¹, the Office of the United Nations High Commissioner for Human Rights²² and the Danish Institute for

¹⁹ Acka, J 'La Commission Nationale des Droits de l'Homme de Côte d'Ivoire : pour quoi faire ?' paper presented at the public conference organised by and at the Centre de Recherche et d'Action pour la Paix, Abidjan, 16 February 2007.

²⁰ n 4 above.

²¹ n 1 above.

²² n 17 above.

Human Rights²³ are the theoretical and academic discourse on which the study is to depend. Also, there is also literature independent of these institutions, which will be useful for the study.²⁴

Nevertheless, one has to acknowledge the great importance of the Ivorian National Human Rights Commission's own literature constituted by its reports produced as a part of its tasks. Two of them have been issued since the establishment of the institution; the Annual Reports 2008 and 2009.

Indeed, the legal instruments²⁵ on and about the Commission are primary sources of information throughout this study.

1.7 Methodology adopted

First of all, the Paris Principles are analysed and with the support of the literature, it is determined exactly what these standards require in term of establishing and running a National Human Rights Institution. In other words, by analysing these principles the qualities that NHRI need to possess are identified.

Second, an assessment of whether or not the Ivorian National Human Rights Commission as currently constituted possesses these qualities is investigated. To this end the constituent documents of the institution as well as information on its institutional and actual operation (its activities) are analysed.

Third, the study seeks to identify those other factors that directly affect the operation and hence efficacy of the Ivorian NHRC. Accordingly, the environmental and contextual framework of the institution is also identified. The actual operation (activities) of the Ivorian NHRC will also be examined.

Fourth and finally, the study will try to offer ways of improving the qualities of the Ivorian NHRC and the measures that need to be taken in order to address factors that adversely affect similar institutions in other African countries.

²³ Pohjola (n 8 above) ‘;’ M Kjærø *National Human Rights Institutions implementing human rights* (2003) ‘;’ B Lindsnaes *et al.* (eds) *National Human Rights Institutions – Articles and Working Papers* (2001).

²⁴ CM Peter ‘Human rights Commissions in Africa – lessons and challenges’ in A Bosl & J Diescho (eds) *Human Rights in Africa: legal perspectives on their Protection and Promotion* (2009).

²⁵ Presidential Decision no. 205-08/PR of 15 July 2005 ‘;’ Presidential Decree no. 2006-258 of 9 August 2006 ‘;’ Rules of Procedure of the National Human Rights Commission of Côte d’Ivoire adopted by its General Assembly on the 16th October 2008.

Therefore, the study is undertaken on the basis of information gathered through a diverse literature and mainly on the Annual Reports produced by the concerned institution as well as the legal instruments on and about the Commission. It is basically a desktop research using the available literature to achieve the in-depth assessment of the relatively new institution.

The approach is therefore a qualitative assessment using information on the commission obtained from the literature to determine its level of compliance to the Paris Principles.

However, it is often resorted to the knowledge of the environment in which the Commission is evolving, which the researcher has.

1.8 Limitations of the study

The limitations to the study will be those common to any desktop research. In facts, it would have been ideal to have the study made from inside the Institution in order to get updated data relevant for the study.

Another limitation is that the study does not purport to come out with an achieved model of NHRI adequate for Côte d'Ivoire; it is rather a sum of analyses leading to the diagnostic of the shortcomings in the existence of the Commission if it is willing to comply with international standards.

One cannot neglect also the fact that almost the primary sources used in the study are originally in French version and the translation into English has been done by the researcher himself and this obviously goes with all the implied probable limitations and weaknesses.

1.9 Overview of chapters

The study consists of five chapters starting by this proposal introducing the overall research. Chapter two presents and discusses the tool used to assess the object of the study; it is basically a chapter dedicated to the disclosure of the Paris Principles substance and core content. Chapter three is the venue where the determination of the level of compliance of the Ivorian National Human Rights Commission to the Paris Principles is undertaken *per se*. Meanwhile, chapter four seeks to reveal other factors that are impeding the effectiveness and efficiency of the institution. Finally, chapter five summarises the study and proposes a range of recommendations towards the total compliance of the Ivorian National Human Rights Commission with the Paris Principles, hence its effectiveness and efficiency in the delivery on human rights promotion and protection.

Chapter two

Presenting and discussing the tool of assessment: Paris Principles

2.1 Introduction

As framework for analysis, the study uses the standard set by the Paris Principles. Therefore, it is worth to make one becomes familiar to these Principles and the aim of this chapter is to realise the challenge of the substance of the Principles. However, revealing the history of the elaboration of these Principles contributes to the general understanding of the Principles and their authority.

2.2 Genesis of the Paris Principles

2.2.1 Appearance of the concept of NHRIs

From the review of the literature, the origin of Paris Principles is to be found in the starting point of the debate on National Human Rights Institutions. In fact, the international workshop,²⁶ which generated the Paris Principles had not been released from scratch or *ex nihilo*; it was the result of a long and constant international movement towards the establishment of the concept of national bodies or structures with a focus on human rights issues.²⁷

Thus, the move started in 1946²⁸ ‘when the Nuclear Commission on Human Rights, a nine-member preparatory body, convened a meeting to plan the future work programme of the Commission on Human Rights’.²⁹ Then, it was the turn of the ECOSOC to handle formally the issue and maybe it is why one part of the literature asserts that ‘the question of national human rights institutions was first discussed by the Economic and Social Council (ECOSOC)’.³⁰ In fact, this organ has issued the 21 June 1946 a resolution³¹ that called Member States to think about the inception of what can be seen as the embryonic stage of NHRIs. The ECOSOC resolution in its

²⁶ See chapter one.

²⁷ Pohjola (n 8 above) 30:

Although it was only in the 1990s that national human rights institutions became a firmly established and widely accepted concept, the idea of national bodies that would contribute to promotion and protection of human rights has intermittently surfaced in international discussions since the creation of the UN

²⁸ However according to Pohjola (n 8 above) it is possible to trace back this to earlier than this date with the nuclear entities established under the ILO in the years 1920s.

²⁹ n 8 above.

³⁰ UN Handbook (n 17 above) 4.

³¹ Economic and Social Council Resolution 2/9 of 21 June 1946.

address to states invited them ‘to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights’.³²

Consequently, the concept of NHRIs started being consolidated and the first attempts of setting for these bodies some guiding principles in their establishment and functioning appeared.

2.2.2 The consolidation of the concept of NHRIs and the first attempts of guidelines for NHRIs

This dynamic towards the new national human rights body remained constant in the international discourse and some member states of the United Nations³³ had already created apparatuses in a view to implement the ECOSOC resolution. Therefore, the resurgence of the issue at the Commission on Human Rights’ seventh session in 1951³⁴ is not surprising.

The constant debate reached a decisive point when in 1960; Mr Gunewardene³⁵ proposed a memorandum on the matter.³⁶ Three years later, the question made its first appearance at the General Assembly of the United Nations³⁷ and the trend towards the setting of principles regulating NHRIs was definitively launched with the *note verbale* addressed to Member States by the General Assembly in order to request comments ‘on the establishment of national commissions to perform certain functions relating to the observance of the international human rights covenants’.³⁸ Also, in 1971, the Parliamentary Conference on Human Rights held in Strasbourg was about discussing the features of NHRIs.³⁹ All this enthusiasm led to the decision⁴⁰ of the United Nations General Assembly scheduling ‘a special seminar on national and local institutions in 1978’.⁴¹ The planned meeting happened as expected with the goal to ‘suggest

³² Economic and Social Council resolution 2/9 of 21 June 1946 (n 31 above).

³³ France (1947).

³⁴ Pohjola (n 8 above)

³⁵ Ceylonese Chairman of the Commission at this time, see Pohjola (n 8 above) 34.

³⁶ ‘Blueprint’ according to Pohjola (n 8 above) 37.

³⁷ UN Handbook (n 17 above).

³⁸ Pohjola (n 8 above) 41.

³⁹ Pohjola (n 8 above) 43; quoting the Report by the Council of Europe Consultative Assembly on *Parliamentary Conference on Human Rights (1972)*, 5.

⁴⁰ Pohjola (n 8 above) 41

⁴¹ Pohjola (n 8 above) 41

certain possible guidelines for the structure and functioning of national institutions'.⁴² It is reported in the literature that the '[t]he groundwork for such guidelines was provided by the Commission [Commission on Human Rights of the United Nations] itself in a resolution annexing a carefully formulated six-point list on the possible functions of national institutions'.⁴³ The meeting produced a historical result by 'drafting and adopting the first set of international guidelines'⁴⁴ on NHRIs. Therefore, the following years were dedicated to the deepening of the popularization of the idea of NHRIs and an important activity went on in the international community with the exchange of information and experiences on the issue of NHRIs.⁴⁵ Within the 1980s, the United Nations Secretary General produced in this trend five reports on NHRIs.⁴⁶

So, clearly, the way towards the elaboration of an authoritative set of principles for these NHRIs was opened.

2.2.3 The elaboration *per se* of Paris Principles and their international validation

As noted in the background in the general introduction of this study, the Paris Principles were drafted and adopted during an International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris held from the 7 to 9 October 1991. The literature reports that the guidelines stemmed from the 1978 seminar and endorsed by the resolutions of the Human Rights Commission were one of the basic elements of the discussions in this gathering.⁴⁷

Thus, after the content of the Paris Principles was elaborated and adopted by this workshop, the United Nations came to play an important role in their international validation. In fact, the first organ of this universal organization to give its assent to these Principles was the UN Commission

⁴² Pohjolainen (n 8 above) 41.

⁴³ Pohjolainen (n 8 above) 41

⁴⁴ Pohjolainen (n 8 above).

⁴⁵ Pohjolainen (n 8 above) 49.

⁴⁶ Pohjolainen (n 8 above) 49.

⁴⁷ B Lindsnaes & L Lindholt 'National Human Rights Institutions: Standard-setting and Achievements' in B Lindsnaes, L Lindholt & K Yigen (eds.) *National Human Rights Institutions, Articles and working papers*. The article was published in 'Human Rights in Development Yearbook 1998 - *Global Perspectives and Local Issues*', edited by Hugo Stokke and Arne Tostensen, Kluwer Law International (1998).

on Human Rights in 1992 adopting a resolution upon them.⁴⁸ Then, came the blessings of the UN General Assembly by inclusion of these Principles in a resolution adopted in December 1993.⁴⁹

So, the actual official shape of the Paris Principles is the one set in Annex 6 of the UN General Assembly Resolution 48/134 adopted on the 20 December 1993.

At this stage, it is worth to note that just after the adoption *per se* of the Paris Principles in the International Workshop, and after their endorsement by the UN General Assembly until now, these Principles received the approval of diverse international actors as well as national stakeholders. However, this general acceptance of the Paris Principles will not be tackled under this subsection, as it will be analyzed when the study will be dealing with the authority of the Paris Principles. Nevertheless, it was important to mention it here to show that the Paris Principles got and have value worldwide.

Therefore, it is important also to engage in the discovery of their substance.

2.3 Substance of the Paris Principles

Paris Principles are structured around four issues or objects among which one was said to be 'optional'.⁵⁰ The present subsection will deal with the substance of the Paris Principles by using the same shape in which they appear.

Thus, the Paris Principles sets minimum standards relative to NHRIs' competence and responsibilities, their composition and guarantees of independence and pluralism, their methods of operation as well as to the status of commissions with quasi-judicial competence. The substance of the Paris Principles has been well summarized and expounded in the literature⁵¹ and the developments below are mainly based on this literature.

2.3.1 Competence and Responsibilities

⁴⁸ UN Commission on Human Rights Resolution 1992/54.

⁴⁹ UN General Assembly Resolution 48/134 (20 December 1993), Annex 6.

⁵⁰ However, as noted by the literature, many NHRIs have made it currently an essential point of their existence; see Kjærø (n 23 above) 7.

⁵¹ This includes all types of sources dealing with the interpretation of Paris Principles such as the International Coordination Committee (ICC) Sub-Committee on Accreditation General Observations 2008, the Statement of Compliance with the Paris Principles, April 2008 as well as the ICC Sub-Committee on Accreditation General Observations 2009.

Paris Principles announce that the role of NHRIs is to promote and protect human rights and enumerate but not all what is expected from NHRIs when accomplishing the above mission. The first responsibility of a NHRI consists in advising state entities on matters related to human rights.⁵² Also, NHRIs should encourage the ratification of international human rights instruments and ensure the harmonisation of domestic legislation with these instruments as well as their effective implementation.⁵³ Therefore, they are expected to participate in the state-reporting obligation to the different human rights mechanisms and cooperate with the various stakeholders within these systems.⁵⁴ In addition, NHRIs should contribute to the elaboration of human rights curriculums to be taught in schools, universities and professional circles.⁵⁵ NHRIs should publicise human rights in a view to combat discrimination.⁵⁶

Thus, the Paris Principles provide for guidelines regarding the competence and responsibilities that NHRIs are generally expected to have by law. It is accordingly stipulated that '[a] national institution shall be vested with competence to promote and protect human rights.' As NHRIs do not replace or subtract from the inherent competences and roles of an independent judicial system and enforcement authorities, their role in the protection of human rights is qualitatively different from such established institutions. The protection competence of NHRIs include, among others, undertaking investigation of human rights abuses or violations not brought to the jurisdiction of courts and recommend or initiate corrective measures and provision of legal assistance to those who cannot afford to pay for exercising their rights and have access to justice.⁵⁷ The promotional role of NHRI encompasses a range of powers including, among others, publicity of human rights norms and standards, organizing awareness creation activities including, conduct studies on human rights situations and disseminate such studies.

A report of the International Council on Human Rights reads:

The responsibilities assigned to NHRI are wide ranging. These include, among others, reporting to the government on human rights matters; ensuring harmonisation of national laws with international human rights standards; encouraging ratification of international human rights instruments; contributing to states'

⁵² See the Paris Principles

⁵³ See the Paris Principles

⁵⁴ See the Paris Principles

⁵⁵ See the Paris Principles

⁵⁶ See the Paris Principles

⁵⁷ CM Peter 'Human rights Commissions in Africa – lessons and challenges' in Bosl & Diescho (n 24 above) 369.

reports to UN treaty bodies and committees; co-operating with international, regional and other national human rights institutions; assisting in human rights education; publicising and promoting human rights.⁵⁸

Given that the judicial process is by its nature reactive and thus does not on its own accord initiate action to enforce human rights against violations, the protection and promotional role of NHRI offers additional avenues to redress violations and injustices. The protection and promotion role of NHRIs also have high potential to contribute to address systematic or structural conditions leading to human rights violations and most importantly avail most vulnerable sections of society the avenue for having easy access to justice that could not otherwise have been possible. They also potentially contribute to nurture and deepen the culture of human rights and create the space.⁵⁹

2.3.2 Composition and guarantees of independence and pluralism

The Paris Principles tackle this issue in three points. First, the composition should be pluralist by including ‘social forces’ those who are ‘involved in the promotion and protection of human rights’. For this purpose, the Principles proceeds to the enumeration of the stakeholders deemed to be the reflection of a pluralist composition of a NHRI:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

It is important to emphasize on the fact that the Principles submit that the preferred appointment method of the members is by means of an election, but do not exclude other ways of appointment provided that the pluralism is safeguarded.⁶⁰ In addition, one should note that there is a restriction

⁵⁸ As n 1 above.

⁵⁹ UN Handbook (n 17 above) 36.

⁶⁰ See Paris Principles.

to the participation of ‘government departments’, which, if included in the composition of the NHRI, ‘should participate in deliberations only in an advisory capacity’.

Second, the Principles deal with the material resources to be allocated to a NHRI. These resources should allow the independence of the NHRI. Therefore, the infrastructures given to the NHRI should be ‘suited to the smooth conduct of its activities’ and the ‘funding’ should be ‘adequate’ as it should ‘enable it to have its own staff and premises’. Moreover, the NHRI’s funding should ‘not be subject to financial control which might affect its independence’.

Third, the Principles establish that the appointment of a NHRI’s members has to be operated by ‘an official act, which shall establish the specific duration of the mandate’. The purpose of such requirement is to grant ‘a stable mandate’ to the members appearing as a guarantee of the ‘real independence’ of the institution. Also, there is a possibility of renewal of members’ mandate ‘provided that the pluralism of the institution's membership is ensured’.

The attempt to reveal the substance of the second object dealt with in the Paris Principles done by the researcher can be completed by the following quote:

Composition and independence: independence is guaranteed through three means. The first is composition, which ensures “the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights”. The second is a level of funding and infrastructure that allows it to be “independent of the Government and not be subject to financial control which might affect its independence”. The third is that the mandate of the institution be established by law.⁶¹

2.3.3 Methods of operation

As regard to the methods of operation, the Principles enumerate a range of methods worth quoting at length. So, according to the Principles:

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

⁶¹ *Performance and legitimacy: national human rights institutions, International Council on Human Rights Policy* (n 1 above).

- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.⁶²

These provisions have been summarized by the literature as follows:

Methods of operation: provisions here include that an NHRI shall “freely consider any questions falling within its competence” whoever refers them, including “any petitioner”. This section also makes specific reference to maintaining “consultation with the other bodies, whether jurisdiction or otherwise” responsible for human rights issues. It also stresses the “fundamental role played by the nongovernmental organisations in expanding the work of the national institutions” and enjoins NHRIs to develop relations with Non-Governmental Organisations (NGOs).⁶³

2.3.4 Status of commissions with quasi-judicial competence

This part of the Principles applies only to NHRIs with ‘quasi-judicial competence’ and appears as ‘optional’. Therefore, whenever a specific NHRI does not have this quasi-judicial competence, these principles do not apply to it. So, obviously, once the mandate of a NHRI includes a quasi-judicial competence, this institution is bound by the hereby rules.

⁶² See Paris Principles.

⁶³ *Performance and legitimacy: national human rights institutions, International Council on Human Rights Policy* (n 1 above) 2.

Thus, for the literature:

[T]he Principles state that a NHRI *may* be authorised to hear and consider complaints, and provide guidelines for such procedures, including an emphasis on “amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions”⁶⁴

2.4 Conclusion

This chapter attempted to develop the analytical framework intended to be used in the assessment of the Ivorian National Human Rights Commission. This is done on the basis of the standard set in the Paris Principles. The framework developed in this chapter covers the nature and scope of the competence and responsibility and the institutional and constitutional as well as some of the operational standards to be followed in the establishment and running of NHRI.

Against the above framework, the following chapter examines the following questions. What are the competences of the Ivorian National Human Rights Commission? Is the Ivorian National Human Rights Commission vested with the necessary competence to enable it makes substantive contribution to the promotion and protection of human rights? What specific tasks is it legally assigned to undertake? Are these responsibilities broad enough to allow it to fully and effectively exercise its powers? What are the potentials of the competence and responsibilities of the Commission to substantively contribute to the promotion and protection of human rights in Côte d’Ivoire? Is the Commission provided with the necessary institutional, constitutional and financial safeguards to enable it undertake its activities independently? Is it provided with the structures, staffing levels and funds commensurate with its powers and responsibilities? What are the modalities for appointment of members of the Commission? Are they provided guaranteed term of office? What is the nature of the legal instrument that establishes the Commission? What are the methods of operation of the Commission defined in the instrument establishing the commission?

⁶⁴ *Performance and legitimacy: national human rights institutions, International Council on Human Rights Policy* (n 56 above).

Chapter three

The level of compliance of the Ivorian National Human Rights Commission to the Paris Principles

3.1 Introduction

The Ivorian National Human Rights Commission is regulated by a number of legal texts, which guide the researcher throughout this chapter. Therefore, the analysis of these texts as well as the current structure and the operations of the Commission give the extent to which this institution is in line with the standards set in the Paris Principles as articulated in the previous chapter. .

Thus, the chapter deals first with the structural aspects before tackling the operational ones.

3.2 Assessment of the structural aspects of the Ivorian National Human Rights Commission

The structural aspects relate to the legal basis of the Commission, its membership, its architectural and administrative organisation as well as its financing.

3.2.1 Legal basis of the Commission

The Ivorian National Human Rights Commission is established by a presidential decree.⁶⁵ Automatically, one can be tempted to see in that a violation of the Paris Principles, which recommend the creation of such institution by virtue of the constitution or the legislative power.⁶⁶ However, it will be superficial to deduce such conclusion without going deeply in the circumstances of adoption of the decree and the mechanism of the legislative power of the President in the Ivorian legal system.

In fact, as regard to the conditions in which the decree has been issued, it is important to recall that the country was in a military and political crisis that led to the so-called Linas-Marcoussis Agreement⁶⁷ providing for the establishment of a NHRI as one of the solutions to the crisis. Therefore, the reconciliation government has elaborated and submitted to the Parliament an Act relative to a NHRI. That Act has been adopted by the Parliament and is aimed to modify a former

⁶⁵ Presidential Decision no. 205-08/PR of 15 July 2005.

⁶⁶ See Paris Principles.

⁶⁷ Can be consulted on www.cotedivoirepr.ci (accessed 12 August 2010).

Act creating the Ivorian National Human Rights Commission. So, the NHRI of Côte d'Ivoire was born. However, following the protest against their absence in the membership of the Commission as set up by the Act, political parties and the rebel organisations signatory of the Linas-Marcoussis Agreement will be integrated into the membership of the Commission by the decree currently establishing the institution.

As regard to the legislative power of the President in the Ivorian legal system, it derives from the Constitution and is carried in a way to preserve the integrity of the separation of powers. In fact, in relation to this decree, it is worth to recall that it is a decree with value of law because it has been adopted in application of the special powers of the President in case of exceptional circumstances as provided in the Constitution.⁶⁸

So, if one takes into account the aim of the recommendation of such Principles, which is to make the NHRI a pure product of the people's will as required by democracy, the legal basis of the institution complies with Paris Principles because the constitution expression of the people's will allows the President to act so and the purpose of such decree was to assemble the people around the NHRI by including the political parties. Moreover, the legislative power in exceptional circumstances of the President in Côte d'Ivoire's legal system has been utilised several times⁶⁹ to solve emergency matters and has prevented the country to collapse in irreparable crisis, showing its importance and necessity near the classical legislative power of the Parliament in a democracy.

Therefore, the legal basis of the Ivorian Human Rights Commission is no more an issue as there is existence of a legal Act responding to the aim of the Paris Principles' requirements and which provides for 'its sphere of competence' and for 'its composition'. Also, the literature has acknowledged that the establishment by an Act of the executive does not automatically threaten the independence of the institution and, rather in some circumstances is preferable.⁷⁰

3.2.2 Membership of the Commission

⁶⁸ See article 48 of the Ivorian Constitution.

⁶⁹ For instance, the foreseen presidential elections are the result of the utilization of the exceptional power of the President, which has allowed the candidacy of some leaders of the opposition who use to have trouble with the application of the Constitution and the electoral code. This action has solved one of the main reasons of the crisis.

⁷⁰ B Lindsnaes & L Lindholt 'National Human Rights Institutions: Standard-setting and Achievements' in Lindsnaes, Lindholt & Yigen (n 47 above) 15.

Pluralism

The National Human Rights Commission of Côte d'Ivoire is made of representatives of political parties, parliament, government, experts and representatives of Civil Society.⁷¹

Apparently, the recommendations of the Paris Principles seem to be respected as regard to the pluralism because all the groups of stakeholders in human rights issues are included in the membership of the Commission.

However, a deep scrutiny of the composition of the Commission leads to challenge this conformity with the Paris Principles. In fact, the Principles have emphasized the point that the NHRI should include non-governmental organisations responsible for human rights and universities. The first concern as regard to this in the composition of the Ivorian institution is that none of the numerous Ivorian human rights non-governmental organizations is represented in the Commission because the founding text did not provide for it.⁷² The same observation goes for universities.

The second concern is related to the presence representatives of signatory groups⁷³ of Linas-Marcoussis Agreements in the Commission. In fact, one could have applauded for the inclusion of such organizations because it is likely to achieve the cherished pluralism as it goes beyond the minimum required by Paris Principles. However, this was not the aim of such inclusion as it was the result of the balance of power in the country at the moment of the establishment of the Commission.⁷⁴ This led to an injustice and a make-up of the Commission contrary to the very aim of its existence and mission. Thus, not all the political parties operating in the country or a really representative part of these parties are members of the Commission and also rebel groups known to have violated openly human rights in the country⁷⁵ are members of the Commission in charge of promoting and protecting human rights. This accordingly makes the institution a highly

⁷¹ *'L'état des Droits de l'Homme en Côte d'Ivoire' Rapport Annuel (2008) 17*, referring to article 6 of the decree.

⁷² Even if as reported in the 2008 Annual Report of the Commission, by an informal arrangement, the human rights NGOs obtained from the ministry of justice and human rights to be the entities to appoint the members seen as human rights experts, this does not solve the problem of the absence of human rights NGOs in the composition of the Commission.

⁷³ Political parties and rebel groups.

⁷⁴ See subsection 3.2.1 of chapter 3.

⁷⁵ It has been frequently reported that these movements have violated human rights and some leaders of the rebellion, namely Foffie Kouakou the commander of the upper North zone are still under the United Nations individual sanctions until now because of the human rights violations they committed; see UN resolution 1572.

political body, which is brought about as a compromise and as such fails short of the standards set in the Paris principles.

Third, even if the representatives of the government *per se*⁷⁶ are participating in a consultative quality, it is worth to note that the executive has realized the feat of getting voting power in the Commission deliberations. One can assert that given the presence of the representatives of three constitutional institutions the independence the Commission is supposed to maintain *vis-a-vis* the government appears to be lacking. These are the Economic and Social Council,⁷⁷ the Ombudsman,⁷⁸ and the Supreme Board of the Courts.⁷⁹ Given the role of these institutions, the fact that they have more than consultative membership but additionally enjoy voting power does not totally negate the provisions of the Paris Principles. Nevertheless, the composition strives to include a gender balance by imposing a minimum quota for women as regard to some category of members.⁸⁰

Appointment

The Paris Principles do not impose a specific mode of appointment provided that the pluralism of the institution is safeguarded. However, it seems that the less controversial mode for the Principles is by elections⁸¹ and the NHRI are therefore encouraged to build their membership by that means. Most importantly however, the Paris Principles insist on the fact that the appointment should be ‘effected by an official act which shall establish the specific duration of the mandate’.

The Ivorian institution complies with these basic requirements because there have been three acts relative to respectively, the modalities of appointment of the representatives,⁸² the appointment of

⁷⁶ Representatives of Ministries

⁷⁷ The President of the Economic and Social Council is appointed by the Executive and the current one is known to be an opened follower of the President.

⁷⁸ The Ombudsman is appointed by the Executive.

⁷⁹ The Supreme Board of the Courts’ Chairperson is the President of the Republic according to article 104 of the Constitution.

⁸⁰ It does so as regard to the experts and the representatives of the farmers; see article 6 of the Presidential Decision no. 205-08/PR of 15 July 2005.

⁸¹ See the Paris Principles.

⁸² See Decree no. 2006-258 of 9 August 2006 relative to the modalities of appointment of the Human Rights Commission of Côte d’Ivoire’s members.

the members of the Executive Committee⁸³ and the appointment of the members of the Commission.⁸⁴

However, one should not stop the analysis on the mere existence of such acts; it is worth to question the method of selection of representatives, which is left to a great extent to the total goodwill of the different structures represented. Will these structures carry out this responsibility with the transparency and efficiency necessary to come out with a qualitative representative and ultimate member of the Commission? The question is valuable as regard to the recurrence of bad practices in the administration and other sectors of the Ivorian society⁸⁵ that are likely to prevent the Commission to be composed of the best human resources available in the field of human rights. This is a serious concern for the efficiency of the Commission even if a kind of guarantee against the presence of unfit or incompetent members in the Commission has been established by the possibility offered to any citizen or human rights NGO to challenge an appointment not conform to the conditions⁸⁶ to be filled by candidates to the Commission's membership.⁸⁷ In spite of this, the concern is still real as regard to the fact that the contestation of the appointment can only challenge the quality of the candidates not the procedure followed in their appointment and this leaves opened the possibility to miss the recruitment of the highest qualified human resources.

In addition to this, it is provided in the decree that the mandate is not renewable and another concern appears, as there will not be a transmission and sharing of the experience from the outgoing members to the new comers.⁸⁸

Dismissal

⁸³ See Decree no. 2007-697 of 31 December 2007 relative to the appointment of members of the Executive Board of the Human Rights Commission of Côte d'Ivoire.

⁸⁴ See Decree no. 2007-698 of 31 December 2007 relative to the appointment of members of the Human Rights Commission of Côte d'Ivoire.

⁸⁵ As an illustration, the President of the parliament accused publicly the minister of home affairs of corruption relative to the examinations for the recruitment of police forces and other civil servants.

⁸⁶ Article 8 of the Decree establishing the Commission states that the candidates should have the Ivorian nationality, have a good morality, not having any record of penal condemnation due to a behavior in breach with the respect and the honor of the person, should have never violated human rights and humanitarian law, and be in a regular position *vis-a-vis* the tax administration.

⁸⁷ See article 9 of the Decree establishing the Commission.

⁸⁸ See article 7 of the Decree establishing the Commission.

The dismissal of a member of the Commission is regulated by the Rules of Procedures of the Institution adopted by the General Assembly on the 16 October 2008. According to these Rules, the dismissal intervenes in case of violation of the law or violation of the Rules of Procedures⁸⁹ and the competent organ to pronounce the dismissal is the General Assembly after the concerned member had submitted written explanations to defend himself or herself.

Thus, this procedure is transparent as all guarantees against unfair revocations are offered to the members and the dismissal is pronounced by the most pluralist and representative body of the Commission. It will be therefore impossible to reach biased dismissals.

However, the point relative to the causes of the revocation should be framed more specifically to allow a clear understanding. In fact, when it is said that the dismissal can occur in case of violation of law, to what law or legal instruments is it referred to? Is it that a member of the Commission can be fired just because of ignored a rule of the Highway Code?

Also, it is not clear from the analysis of the different constituent documents if people from outside the Commission can fill a request of revocation against a member before the competent body and this right seems to be reserved for only the Commission's members. Consequently, the members of the Commission can just form a kind of brotherhood and agreed to avoid engaging such type of action against each other.

Finally, as the practice of the Commission after two years of existence does not record a single case of dismissal or action of revocation, it is not possible to answer these questions and that deepen the concerns raised because those are elements not consistent with either the spirit or the letter of the Paris Principles.⁹⁰

3.2.3 Organisational infrastructure

The organisational architecture is not addressed deeply by the Paris Principles, which say merely that a NHRI's infrastructure has to be suited to the smooth conduct of its activities.

Therefore, there is a leeway given to states in the settings of their NHRIs' organizational infrastructure provided that the adopted options are able to permit the institution to work effectively and efficiently. Let examine the organizational settings of the Ivorian Human Rights

⁸⁹ Article 121 Rules of Procedure.

⁹⁰ Issues of dismissal of a NHRI's member are central for the Paris Principles, which assert the necessity to free members of NHRIs from any type of pressure able to hinder their independence.

Commission which include the architecture of the institution, its budget and infrastructures as well as its staffing.

Architecture

Four entities have to be distinguished in the makeup of the Commission.

First, the Executive Committee made of a group of five elected commissioners comprising a chairperson, two vice-chairpersons, a treasurer and a secretary. This Executive Committee is responsible for the management of the Commission and its members hold full time positions because they are remunerated and they are not allowed to have another employment.⁹¹

Second, the Chairperson of the Executive Committee or Chairperson of the Commission is the legal representative of the Commission and presides over the Executive Committee as well as the General Assembly.⁹² The current chairperson of the Commission is Mrs,Victorine Wodie,⁹³ who was a former Minister in charge of human rights.

Third, the General Assembly is composed of all the members of the Commission including those without voting right.⁹⁴ It is the decision-making organ and has a general competence over matters relative to the Commission's activities, elects the Executive Committee, adopts the Rules of Procedures of the Commission and its annual budget.⁹⁵ It holds meetings according to the needs.⁹⁶

Fourth, the General Secretariat is the administrative body of the Commission and is in charge of preparing the Executive Committee's reports, the budget as well as minutes of meetings. It also has the duty to keep the archives and documents of the Commission. It is headed by a Secretary General⁹⁷ appointed by the Executive.⁹⁸

From this architecture it is theoretically possible to conclude that the Commission has an organisational setting capable to smoothly carry out its task because all the components have their specific roles and a hierarchy is clearly established among these organs.

⁹¹ Article 15 of the Decree establishing the Commission.

⁹² Article 20 of the Decree establishing the Commission.

⁹³ She holds a doctorate in law.

⁹⁴ It gives a total of 44 members with 33 having voting right and 11 without voting right.

⁹⁵ Article 19 of the Decree establishing the Commission.

⁹⁶ Article 19 of the Decree establishing the Commission.

⁹⁷ Mrs, Yves Ahounan is the current head of the general secretariat of the Commission.

⁹⁸ Article 18 of the Decree establishing the Commission.

This structure has permitted the Commission to carry out its activities for two years now and there are not major concerns regarding the settings of the architecture *per se* which is a classical one having shown its efficiency in diverse cases.

However, it is not sufficient to set up a good structure in order to guarantee the efficiency of a NHRI; the structure has to be nourished by competent and qualified as well as dedicated human resources⁹⁹ and an adequate material and financial means.

Budget and infrastructures

The budget is prepared and adopted by the Commission and has to be provided by the state which takes it from its general budget.¹⁰⁰ Also, the Commission can receive gifts and funds from other entities or persons.¹⁰¹

The issue here is the willingness and capability of the state to provide effectively the Commission with the budget it has adopted. In fact, as regard to the willingness, it is hard to evaluate it¹⁰² and the assumption is that the mere commitment of the state to establish and render functional a NHRI is a good start to deduce its will to supply the institution with adequate funding. However, it is not often the case and the Commission has been and still claiming from the state more dedication towards the financing of the institution.¹⁰³ And it is at that point that the state alleges the crisis situation through which the country is going that makes impossible the effective fulfilment of all the state's financial obligations. It is possible to say that the financing of the Commission remains a huge challenge and is a core issue to be dealt with in the light of compliance with Paris Principles because without having the right amount of the Commission budget and the funds effectively received for its functioning, one can note its cash flow problems.¹⁰⁴

Nevertheless, a sign of the will to free the institution from a financial control is given by the fact that the preparation, the adoption and the execution of the Commission budget is done entirely by

⁹⁹ Will be analysed later on.

¹⁰⁰ Article 31 of the Decree establishing the Commission.

¹⁰¹ Article 19 of the Decree establishing the Commission.

¹⁰² See developments below on the arguments often used by the state to escape from criticism as regard to its willingness to fund adequately a NHRI.

¹⁰³ See recommendations in the Commission's Annual Reports 2008 and 2009.

¹⁰⁴ The financing shortage leads to the absence of the Commission in the other regions of the country and its containment to Abidjan the economic capital.

the organs of the institutions entitled to do so according to the constituent documents of the Commission. Also, there has been set a guarantee of good governance by the secondment of a public accountant and a public comptroller to respectively carry out the financial operations and control the execution of the budget.¹⁰⁵ Those are technical supports from the state to the Commission and are consistent with the prescriptions of the Paris Principles on this issue.¹⁰⁶

As regard to the infrastructures and other relevant materials for the effective functioning of the Commission, the same arguments above are applicable. To date, the Commission is located in two buildings and there is a permanent complaint from the Executive Committee relative to the tininess of the space in which the Commission operates. Also, complaints are raised as regard to the furnishing of the Commission's offices as well as the necessity to have cars for operational activities.¹⁰⁷

Staffing

The staffing of the Commission is generally made by secondment. In fact, none of the constituent documents and legislation relative to the Commission addresses the issue of staffing. The practice in the country is that for independent institutions like the Commission, the supplier of staff is the state through the ministry of public service and employment by secondment.¹⁰⁸ It is the case with the Commission if one refers to the public accountant, the public comptroller, the administrative assistants and other staffs all from the ministry of public service and working at the Commission as civil servants.

However, there is a possibility for the Chairperson of the Commission to freely recruit contractual staff as well as request from the ministry specific profiles of the human resources that are affected to the Commission.¹⁰⁹

As regard to this situation where the Commission is partially unable to recruit its staff and find itself supplied by the executive, it appears obviously that the very requirement of the Paris

¹⁰⁵ Article 30 of the Decree establishing the Commission.

¹⁰⁶ The Paris Principles recommend that the financial control of the state on its NHRI should not be a done in way to curtail the institution's independence and the one exercised on the Ivorian Commission is merely in a view of assuring good governance.

¹⁰⁷ See recommendations in the annual reports of the Commission.

¹⁰⁸ *L'état des Droits de l'Homme en Côte d'Ivoire* Rapport Annuel (2008) 23.

¹⁰⁹ This information has been obtained through an email correspondence with a staff of the Commission and it seems that there is no express legal basis to such competences of the chairperson and it is a practice that became the rule.

Principles relative to staffing is not respected, hence for the Paris Principles, a risk for the Commission to see its independence jeopardized. This however needs to be seen in the institutional cultural context of the country. The justification is that civil servants are not biased and receive orders from the authorities under whose supervision and hierarchy they are assigned to carry out the public service mission for which they have been recruited.¹¹⁰ So, the fact that the Commission staff is made of such civil servants cannot be seen automatically as a threat to its independency; all depend on how far the ministry is implied in their in secondment. Fortunately, the task of the ministry ends after the secondment is done and the daily work of the staff is done under the direct responsibility and supervision of the Commission. Thus, it will be totally misleading to see in this supply of staff, an interference in the independence of the Commission even if ideally, the staffing done by the Commission is the best way to secure independence.

3.3 Assessment of the operational features of the Institution

The mandate of the Commission is stipulated in the law as ‘cooperation, consultation, evaluation and proposal making with respect to promotion, protection and defense of human rights’.¹¹¹ From that general mandate, specific tasks have been identified and enumerated in further article of the legal basis of the Commission. Therefore, the analysis to find out whether or not this mandate is conform to the minimum standards and to what extent it complies or not to these standards, is based on the interpretation of the specific tasks identified in the legal basis of the Commission as well as the operations effectuated on the field by the Commission.

Thus, the split of the mandate of a NHRI done by the Paris Principles according to the literature¹¹² is the structure followed by this analysis.

3.3.1 Mandate of monitoring

The Ivorian Human Rights Commission has a monitoring mandate clearly stated in the legal basis of the institution. Article 3 gives the power to the Commission to draw the attention of any authority holder of coercive power on human rights violations in the domain of their competence and to propose measures intended to stop these violations. In the same vein, the commission is

¹¹⁰ K Yigen ‘Guarantees of independence of NHRIs: Appointment and Dismissal Procedures of Leading Members’ in B Lindsnaes, L Lindholt & K Yigen (eds) *National Human Rights Institutions, Articles and working papers* (2001) 78.

¹¹¹ Article 3 of the Decree establishing the Commission.

¹¹² Kjærøum (n 23 above) 6.

entitled to carry visits in prisons and detention centres after receiving the necessary authorisation from the competent prosecutor. The Commission has to prepare and submit reports to the competent authorities after these visits.

The Commission, as illustrated in its annual activity reports of 2008 and 2009 effectively applies this legal framework on the monitoring mandate of the Commission on the field.¹¹³

However, there is an impediment to the effective, efficient and independent implementation of the mandate in the light of the Paris Principles. In fact, the need to get authorisations from the public prosecutors, is claw-back giving back to the state what it was pretending to leave up for the Commission as the authorisations can just be denied on whatever grounds. That prevents the Commission of monitoring effectively human rights situation in prison and the few visits of prisons done by the Commission since its creation can find a justification in the necessity to obtain a prior authorisation from the state through the prosecutors. The submission is therefore in favour of the removal of such authorisations.

3.3.2 Advisory mandate

Article 4 of the Decree is relevant in finding out the advisory mandate of the Commission. In fact, it clearly states the nature of relationship the Commission may have with the public powers.

This interaction is made of basically informing, counselling and advising these authorities on human rights issues. More clearly it is referred to the propositions to be made by the Commission in the view to help the state in the implementation of the recommendations of the United Nations, the African Union and other international organisation's human rights systems. Also, the Commission is a consultative organ for the government, the parliament and other state institutions, which can request the opinions of the Commission on human rights matters or obtain these opinions at the own initiative of the Commission.¹¹⁴

Moreover, the Commission is requested to participate in the elaboration of state reports to the different human rights systems and mechanisms.¹¹⁵

¹¹³ The Commission reported three visits of prisons in the 2008 Annual Report and one in the 2009 Annual Report.

¹¹⁴ Article 4 of the Decree establishing the Commission.

¹¹⁵ See n 113 above.

Consequently, the textual requirements of the Paris Principles regarding the advisory mandate of a NHRI seem to be fulfilled by the Ivorian Human Rights Commission. What remains is to find out if this mandate is carried out on the field.

Thus, the reports of the Commission contain notice of the active participation of the Commission in the elaboration, submission and review of the state of Côte d'Ivoire to the 2009 UPR.¹¹⁶ Also, it is recorded meetings and work sessions with state institutions.¹¹⁷

However, an important point is absent from the activities of the Commission, namely the active participation in law drafting and ratification processes relative to human rights. In fact, the Commission did not have one single meeting with the Parliament to establish this link for future collaboration in the light of the important role it is expected to play in reforming domestic law or the adoption of new legislations to comply with the international human rights obligations of the state as well as working towards the adherence and ratification of human rights instruments.

So, that role clearly stated in the Paris Principles even if it can be deduced from the legal basis of the Commission, is not tackled at all by the institution in spite of the opportunities it has to do so.

3.3.3 Interactions with regional and international organisations as well as with civil society

The founding documents of the Commission allow it to relate with national and international institutions or organisations with a human rights mandate provided that these relationships are carried out according to the policy defined by the government.¹¹⁸ Moreover, the Commission is forbidden to conduct by itself any mission without the necessary authorisations.¹¹⁹

Are these provisions fully compliant to the Paris Principles in that these principles require NHRIs to relate with the above-mentioned entities?

From the reading of these provisions, it is possible to question the independence of the Commission in the conduction of these relationships as regard to the fact that some prior authorisations have to be obtained and the activities undertaken have to be conform to the so-called 'policy defined by the government'.

¹¹⁶ 'L'état des Droits de l'Homme en Côte d'Ivoire' *Rapport Annuel* (2009) 107.

¹¹⁷ 'L'état des Droits de l'Homme en Côte d'Ivoire' *Rapport Annuel* (2009) 97-99.

¹¹⁸ Article 5 of the Decree establishing the Commission.

¹¹⁹ See n 117 above.

Thus, the issue is to know how theoretically and practically these conditions can hinder the independence of the Commission. In fact, does a NHRI have an independent human rights policy different from the one of the state? Or is it not that a NHRI is itself a part the human rights policy of the state? The answers to these questions have to be found in the practical interrelations that the Ivorian Human Rights Commission has with the national and international human rights organisations.

So, from the analysis of the annual activity reports of the Commission, one can notice that the institution has engaged and still engage human rights organisations and institutions at the national level as well as the international ones.¹²⁰ Also it is not noticeable that the scope of the relationship existing between the NHRI and these stakeholders has never been restrained by the state policy.¹²¹ The reality is that this formulation of the provisions of the constituent documents has to be read as the mere good faith will of the state to assert its primary role of elaborating and leading the policy of the country in all domains. That to say that the state was not intending to curtail the independence *per se* of the Commission, rather it was just setting the frame in which the task should be carried out and the proactive relations¹²² that the Commission has with various partners is the manifestation of that it has really hands-free to relate with the human rights stakeholders as required by the Paris Principles.

Nevertheless, for consistency, the framing of the legal documents should be reviewed to adhere to Paris Principles.

3.3.4 Educational and informative mandate

The decree does not state formally that the Commission has to carry out an educational and informative mandate. However, the literature has deduced from two provisions of the decree the competence of the Commission to handle such mandate.¹²³ Moreover, this position can be illustrated by the split off of the mandate done in the Rules of procedures of the Commission. In fact, article 3 of these rules recognises that the Commission associates itself in the elaboration and

¹²⁰ The commission received in 2008 the visit of the United Nations' Deputy High Commissioner for Human Rights.

¹²¹ The scope and extent of the interactions between the Commission and human rights stakeholders at the national and international level as described in the Annual reports of the Commission does not allow arguing that the state acts in a way to restrain these interactions of the institution.

¹²² See n 120 above.

¹²³ Spliid (n 4 above) 65; refers to articles 3& 4 of the Decree establishing the Commission as legal basis of the teaching and research mandate the institution possesses.

implementation of programmes aiming to teaching human rights at school, university and professional environments.¹²⁴

Therefore, the Commission is fully legally equipped to handle the role of education to human rights that the Paris Principles expect it to do as well as the role of informing populations on human rights issues.

Thus, practically, the Commission is engaged in the development of a human rights curriculum to be taught at school¹²⁵ as well as other activities aiming to bring human rights awareness among populations.¹²⁶

Consequently, one can assert that what matters as regard to the educational and informative mandate of the Commission is just that the founding legal text of the institution does not formally set this mandate and it is a secondary source of law relative to the Commission, namely the Rules of Procedures, which provide for it.

3.3.5 The optional quasi-judicial competence

Even if it is not an obligatory mandate from the reading of the Paris Principles, the majority of NHRIs worldwide include the quasi-judicial mandate in the scope of their mission.¹²⁷ The Ivorian Human Rights Commission is charged also with this mandate. Therefore, it is important to seek whether or not the quasi-judicial mandate of this institution is instituted and carried out in compliance to Paris Principles requirements in that regard. Also, will be determined to what extent the compliance or non-compliance appears.

Thus, the Commission's legal basis provides that the institution receives complaints relative to human rights violations and carries out non-judiciary enquiries in order to adopt measures to be submitted to the government in a view to solve address these violations.¹²⁸

¹²⁴ See article 3 of the Rules of Procedure of the Commission.

¹²⁵ See Annual Report 2009 where the Commission reported on the permanent working session it have with the different stakeholders of the educational system in Côte d'Ivoire to develop the human rights curriculum to be taught at school.

¹²⁶ As an illustration see the report in the Annual Report 2009 on the promotional activities carried out by the Commission during the celebration of the anniversary of the Universal Declaration of Human Rights as well as other promotional activities.

¹²⁷ Kjærøum (n 23 above) 7 ; Spliid (n 4 above) 18.

¹²⁸ Article 3 of the Decree establishing the Commission.

One can see that the legal basis of the Commission has included all the characters that the Paris Principles require a NHRI to have when it is willing to take a quasi-judicial mandate. So, how is it implemented on the field?

The annual activity reports of the Commission have made accounts of the quasi-judicial mandate by enumerating the number of complaints received as well as the outcomes given to these complaints.¹²⁹ The less one can say is that the Commission tried to do it best with the available means it has to carry out the complaint-handling mandate.

3.4 Conclusion

This chapter has shown that Côte d'Ivoire attempted to establish a NHRI in compliance to Paris Principles even if some elements still to be corrected in order to align as much as possible the institution on the international standards. The mains irregularities have to be found in the failure to include formally in the Commission's composition some human rights stakeholders identified by the Paris Principles, the absence of a clear incorporation of key tasks of NHRIs even if these duties have been acknowledged by the Commission in its Rules of Procedure, and finally the presence of provisions in the legal basis of the Commission driving one to deduce a control of the institution by the state, although the practical existence of the Commission shows that it enjoys independency from the state machinery.

Therefore, the hindering factors to the Commission's effective and efficient delivery on its mission have to be found not only in the mere reluctance *vis a vis* some requirements of the international standards but also above.

Thus, are there not some other factors that impede on the Commission's quality?

¹²⁹ In the 2008 Annual Report, the Commission had received within the period of 1 August to 31 December, 201 complaints and had dealt totally with 47 of them when 154 were still in process ;' in the 2009 Annual Report, from the 1 January to the 31 December 2009, the Commission received 232 complaints.

Chapter four

Investigating the existence of other hindering factors to the Institution's quality

4.1 Introduction

The fact that the Commission does not comply with some of the requirements of Paris Principles appears as an impediment to its effective and efficient delivery on the promotion and protection of human rights in Côte d'Ivoire. However, the parameters set in the Paris Principles relating to competence, responsibilities, institutional independence and composition are not the only factors that determine the efficacy and success of NHRIs. One has accordingly to go beyond this to find out what other factors are likely to affect the Commission's qualitative and quantitative delivery on its mission. The purpose of this chapter is accordingly to investigate these extraneous factors as they particularly pertain to the Ivorian Human Rights Commission.

4.2 The transitional situation

It has been emphasized in the literature that the features of a NHRI, hence its effectiveness and efficiency depend on the context in which it has been established and is evolving.¹³⁰ Therefore, exploring the context of the Ivorian Human Rights Commission is important to find out the ways in which this context affects the Commission and its operations.

The National Human Rights Commission of Côte d'Ivoire has been established following a military and political crisis, as part of a peace process that attempted to end the conflict. As indicated in a previous chapter, the Commission was established based on the Linas-Marcoussis Agreement. Therefore, the stakeholders in the crisis were necessarily associated to the composition of the Commission. The main architectures of the Commission are mainly official actors and the constitution of the Commission is also a product of a peace process dominated by

¹³⁰ B Lindsnaes & L Lindholt 'National Human Rights Institutions: Standard-setting and Achievements' in Lindsnaes, Lindholt & Yigen (n 47 above) 4:

The hypothesis behind an institutional framework approach is that the degree of political consensus behind creating such a type of institution (including such elements as political autonomy, independency in decision-making procedures, the professional approach to analyse human rights standards and national issues, the content of the mandate and powers of the institutions, the constituency and stakeholders behind and the actual size and capacity) is decisive for the achievements to be obtained by national institutions.

such official actors. This naturally affects the composition of the Commission as well as the appointment process as it limits the role of civil society. The process of appointment of the Commission's members is the direct result of the circumstantial forces present at the moment on the political arena of Côte d'Ivoire. The issue is that the real stakeholders in human rights matters were not given the opportunity to participate as it should in the establishment of the Commission because they were not holding any of the military or political power, which led to the creation of the Commission. The Commission is born and has been operating in a political context of transition from conflict to peace. It means that the Commission is operating in a sensitive political environment as well as in a context in which supporting institutions are weak, civil society and the press are not robust enough and there is lack of resources.

Consequently, the problem faced by the state in the establishment of the Commission was the dilemma of reconciling the obligation and the will to create an institution complying with international standards and the realities present in the country. Thus, the performances of the Commission will be depending also on such transitional situation and the shortage of funding. Additionally, the containment of the Commission in only one part of the country as well as the textual will of the state to control the Commission's interactions with national and international institutions, are some but not all of the effects of the transitional environment on the Commission.

Obviously these factors have important consequences on the operation of the Commission. They are not however decisive. Where there is political will and strong commitment, their impact is particularly minimal. Therefore, the issue shifts on the question of the existence of a political will of the state to establish and run a NHRI complying with Paris Principles.

4.3 The lack of political will

'Political will' can be defined as the good faith of the authorities with the power to make decisions to act in a manner that leads to the achievement of an objective deemed positive. Therefore, the task here is to find out whether or not the state of Côte d'Ivoire, namely the Ivorian decision-makers are willing to empower the National Human Rights Commission.¹³¹ In fact, this question finds its answer in the attitude of decision-makers towards the Commission.

First, as stated above, the shortcomings noted in the settings of the current Commission obtained in the constituent documents of the institution even before the advent of the pressure and

¹³¹ CM Peter 'Human rights Commissions in Africa – lessons and challenges' in Bosl & Diescho (n 24 above) 370; has identified the lack of political will as one of the obstacles to the effectiveness and efficiency of NHRIs in Africa.

abnormal circumstances. So, the argument is that the decision-makers had the opportunity and possibility as well as the means¹³² to establish a NHRI, which is in conformity to international standards, but they did not do so. That shows their lack of political will to create a NHRI that conforms to international standards.

Second, after the creation of the current institution, there was and there is still is a possibility to correct the shortcomings and bring the institution to compliance with international standards. This is because the circumstances have changed to the better. In fact, after the signature of the Ouagadougou Peace agreement between the rebel group and the President, the country is engaged in a reconciliation process where the management of this process has been left to the leader of the rebel groups who is the current Prime Minister of the country. Therefore, the government has a chance and the means to restructure the Commission in order to make it conform to international standards; but it did not do so.¹³³

Third, the Commission has been denied its status as an institution of the state at different occasions. For instance, it has been ranked under NGOs' group at the ceremony of annual presentation of wishes to the President.¹³⁴ Moreover, the decree had put the Commission under the tutorship of the Ministry of justice and human rights ignoring its status of independent institution of the state.¹³⁵

Finally because of this lack of political will that has prevented allocation of adequate funding, the activities of the commission could not be felt all over the country. In addition, the Commission did not obtain the authorisation from the former rebel group to undertake activities in the parts of the country under their control although the leader of this group is the current Prime Minister of the state.

¹³² Aware of the international requirements on NHRIs and had the necessary funds to empower the Commission.

¹³³ The civil society assembled in the '*Regroupement des Acteurs Ivoiriens des Droits Humains*' attempted to propose a project of Act that is deemed to correct the shortcomings of the constituent documents of the Commission but it did not succeed to get a positive feedback from the government; that shows how unwilling the government is to empower really this institution.

¹³⁴ '*L'état des Droits de l'Homme en Côte d'Ivoire*' *Rapport Annuel* (2008) 25.

¹³⁵ See article 37 of the Decree establishing the Commission read together with the Decree relative to the attributions and competences of the members of the government; this situation has been noted and criticized by the Attorney General during a meeting with the Prime Minister cabinet and is reported in the Annual Report 2008 of the Commission.

Consequently, one of the reasons of the insufficient delivery of the Commission on its mandate is the lack of political will of the Ivorian decision-makers to empower the Commission. The situation is worsened by the kind of wait-and-see policy adopted by Commission's leaders as discussed in the section below.

4.4 The low commitment of the commission's leadership

The commitment of the leadership of NHRIs has been identified as an important element to be considered in the effectiveness and efficiency of a NHRI in the literature which illustrating the experiences of such institutions throughout the world.¹³⁶

In fact, if all institutions or organisations need to have a strong and good leadership in order to be well managed and succeed in their missions, this requirement is the most important when it comes to institutions with a human rights mandate.

Therefore, the main motivation of those who wish to work in such institutions or are appointed in such institution must be their commitment to the promotion and protection of human rights. And this motivation should be a strong commitment present before the appointment and kept high during one's tenure.

Thus, the question as regard to the Ivorian institution is to determine if such commitment exists at the level of the Commission's leadership and the criteria of finding out that will be the overall assessment of the state of the Commission's interaction with the relevant national and international human rights stakeholders as well as the propositions done by the Commission's leadership to enhance its efficiency and correct the shortcomings.

So, the argument is that, the leadership should find ways to overcome all challenges and hoist the institution to a level of respectability among the national and international stakeholders including populations of the country. However, this assessment is not an evaluation of the personal skills of the leadership of the Commission; it is rather a mere analysis of how the effectiveness and efficiency of the Commission have been lowered by the insignificant level of involvement of its leadership in the execution of the mandates of the institution'.

First, as regard to the interaction with the human rights stakeholders, one notes that, the Commission has never attempted to seek accreditation from the ICC or that of f the African

¹³⁶ See the Commonwealth Secretariat work: Best Practices for National Human Rights Institutions.

system in order to get at least a clear state of the compliance of the Commission to the Paris Principles.¹³⁷

In addition, the Commission's contacts with the Parliament are inexistent and it is unusual that the main law-making body of the country is not in touch with the Commission in order to get its advices on human rights issue. This is according to Paris Principles and as regard to the essence of the Commission's mandate. These initiatives do not need other means than just the will of the leadership of the Commission to do so.

Second, in relation to the propositions done to correct the shortcomings of the Commission, it appears that these propositions are not relevant.¹³⁸ So, the point is that the leadership of the Commission is not behaving in a proactive manner able to prove its deep commitment to human rights issue.

4.5 Conclusion

This chapter has identified and explained the factors beyond the non-compliance to the Paris Principles, which hinder the efficiency and effectiveness of the Ivorian Human Rights Commission. The transitional situation appears to be a circumstantial factor that could have been overcome by the determination of the Ivorian decision-makers to empower the Commission and a higher level of commitment from the commission's leadership towards the strengthening of the institution.

Yet, it is never late to correct these shortcomings and the last chapter of the research is dedicated to the summary of the outcomes of the study as well as to the formulation of recommendations in a view to address the problems of the Commission.

¹³⁷ The assessments done by the different accreditation systems include a clear diagnostic of what are the positive aspect as well as the negative ones in the confrontation of the NHRI under review with international standards.

¹³⁸ For instance there is no need for the Commission to be obligatory entrenched in the Constitution as constantly claimed by its leadership and seemingly, this quest is motivated by the status that is granted to the Presidents of state's institutions constitutionally established.

Chapter five

Conclusions and recommendations

5.1 Conclusion

The study reveals that the compliance to the Paris Principles is an important step towards the effective and efficient delivery of NHRIs on the promotion and protection of human rights. The Ivorian Human Rights Commission failed to comply with some of the important requirements of Paris Principles such as assuring the participation of human rights NGOs and academia to the composition of NHRIs as well as recognising the clear mandate of participation in the drafting of domestic law. The consequence is that the efficiency and effectiveness of the institution leaves lot to be desired for.

Nonetheless, the evaluation of the level of compliance to Paris Principles should take into account other specific elements relative to the environment in which the Commission has been established and is run.

Therefore, the study undertook the quest of finding out these other factors that are impeding on the compliance to the Paris Principles and consequently on the quality of the Commission. Thus, the transitional situation, the lack of political will from the Ivorian decision-makers and the low commitment of the Commission's leadership are found to be the hampering factors to the Commission's effectiveness and efficiency.

Consequently, there is a need to solve these questions with a view to empower the Ivorian Human Rights Commission for it to become a respectable institution able to address the upcoming challenges relative to the forthcoming normalisation of the political and democratic situation of Côte d'Ivoire.

5.2 Recommendations

The recommendations below have to be applied because the correction of the shortcomings of the Commission has to be done methodically starting from the primary problems. Consequently, the state of Côte d'Ivoire should assure that the following recommendations are implemented:

1. Create and strengthen the political will to empower the Commission. This can be done by sensitising the decision-makers on the importance of human rights and specifically on the value of the role that NHRIs play in the promotion and protection of human

rights at the national level. Also, it has to be understood that a NHRI is not an adversary of the state but a partner which can help the state in the fulfilment of its obligations deriving from international human rights instruments ratified by the state. Therefore, a NHRI which is efficient and effective reflects on the state and its stand on human rights.

2. The normalisation of the political and military situation. All stakeholders in the Ivorian crisis should work towards the return to democracy and a normal situation. Thus, the presidential elections scheduled for the end of October 2010 should effectively take place in a fair and peaceful manner. The same should be done for the other elections in order to equip the country with the necessary institutions. So, the normalisation will create adequate space to freely take decisions and have all the means including the financial one to allocate to the Commission the required resources for its mission. In addition, the reconciliation among various sections the population of Côte d'Ivoire that the normalisation is expected to bring is a favourable environment to undertake all necessary reforms in diverse domains including the Commission.
3. It is submitted that the Commission's leadership should become more proactive in fully implementing the mandate of the Commission and enhancing its legitimacy. In fact, as shown in chapter four, the leadership of a NHRI has the responsibility to work towards building the reputation and credibility of the Commission at the national level and international level. And this should not depend on the means provided to the institution. Therefore, the minimum means given to the Commission should serve optimally towards the accomplishment of the noble mission of the Commission.
4. Undergo the different accreditation mechanisms available to get a clear idea of the requirements that need to be complied with at the international level
5. The amendment of the shortcomings of the constituent documents of the Commission should be undertaken. That should be done by the establishment of a special committee including all stakeholders and experts on human rights and particularly on NHRIs. This committee will come up with an act that takes into account all the critics done on the settings and features of the Ivorian Commission. Below are the main elements to be considered in the future shape of the Ivorian Human Rights Commission:

- Ensure that the new act will be adopted by the Parliament and if possible provide in the Constitution for a NHRI.
- Ensure pluralism by including in the composition of the institution, human rights NGOs, academia, trade and professional unions. And if political parties have to be maintained in the composition, ensure assure that their representatives are effectively a proper representation of the political trends of the country. Exclude from the composition of the Commission the former rebel group if they stay in the current format that their organisation has and do not become a regular and legal structure in accordance with the law. Moreover, review the method of appointment of the Commission's members to assure that only those who are dedicated to human rights issues and have expertise in the issue are recruited. In addition, assure the representation of foreign nationals due to the percentage of this population in the country.¹³⁹
- Remove all provisions that request some authorisations from the government or from other authorities before the Commission undertakes specific activities as a guarantee of its independence
- Allow the Commission to recruit the necessary expertise in the accomplishment of its mission.
- Formally provide for the mandate as stated in the Paris Principles in the legal basis of the Commission stressing the role of the Commission relative to domestic law, ratification of international human rights instruments as well as the submission of state reports and the teaching role.
- Assure that the mandate of the Commission's members do not end in a manner that does not allow the transfer and sharing of experience with the new members.
- Provide for the establishment of local representations in the different regions of the country.
- Create and keep updated a website for the Commission.

¹³⁹ About 26 per cent of the total population living in Côte d'Ivoire is made of foreign nationals; see www.wikipedia.org/wiki/Côte_d'Ivoire#Demographics (accessed 20 October 2010).

Indeed, as stressed by Annan the former Secretary-General of the United Nations:

Building strong human rights institutions at the country level is what in long run will ensure that human rights are protected and advanced in a sustained manner. The establishment or enhancement of a national protection system in each country reflecting international human rights norms should therefore be a principal objective of the United Nations. These activities are especially important in countries emerging from conflict.¹⁴⁰

Word Count: 16 608, including dedication and acknowledgment but excluding plagiarism declaration, acronyms, table of contents and bibliography.

¹⁴⁰ K Annan *Strengthening of the United Nations: an agenda for further change*; Report of the Secretary-General, 9 September 2002.

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