



Title: Bringing the African Charter to the National Level: The role of NHRIs in enhancing implementation

Event: ACHPR 40th Anniversary of the Adoption of the African Charter On Human and Peoples' Rights

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1. I wish to express appreciation to the organizers of this event for commemorating the anniversary of the African Charter on Human and People's Rights. During the dark days of apartheid - days of suffering and hopelessness, the African Charter was one of a few things that gave us hopes and courage to fight on. It convinced us that when we

were demanding our rights, we were not breaking the law as the successive apartheid governments were wont to declare. Article 2 told us that “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, political or any other opinion, national and social origin, fortune, birth or any status”. Writing about the achievements of the OAU, Hassan B Jallow, Chief Justice of the Gambia says, “When the balance sheet of the organisation of African Unity (OAU) is eventually set out, I believe the elaboration, adoption and entry into force of the African (Banjul) Charter on Human and People’s Rights will, together with the political liberation of the continent from colonialism, racism and apartheid, rank among the greatest achievements of that continental organisation.” I cannot agree more.

2. It is quite unfortunate to note that recent studies have shown that there is an immense gap between the decisions of the African Commission on Human and Peoples Rights (the Commission) and judgments of the African Court on Human and People's Rights (the Court), on the one hand, and the efforts made by states to implement the Charter, on the

other. The African Commission and the African Court are the most important mechanisms established by the African Charter to promote human and people's rights and ensure their protection in Africa. One would expect that they would get sufficient support from member states regarding the work that they do, especially the decisions they make, to promote and protect human rights. I am sure there are many different efforts being implemented to ensure implementation of the decisions of the African Commission and the African Court by member states of the African Union. National human rights institutions (NHRIs) have a significant role to play in those efforts.

3. Mine is to share ideas on the role of national human rights institutions in bringing the African Charter to the national level and enhancing its implementation by African states. Before I address that issue, I wish to note that, at the centre of those bearing the duties for the protection and promotion of human rights is the recognition that the state is the main guarantor of human rights and thus, it has the obligation to promote, protect and ensure the realization of these rights. To this end, states sign, ratify or accede to international and regional human rights instruments and are required to adopt mechanisms to safeguard human rights and to implement these instruments at the domestic

level. The role of NHRIs is, among others, to monitor that they implement the terms of those international and regional instruments.

4. NHRIs are established by states to be the vanguards of human rights. Their main responsibility is to promote and protect human rights, to monitor the respect for and fulfilment of human rights and to make recommendations to their respective states regarding human rights.
5. When talking about bringing the Charter to the national level, it should always be borne in mind that NHRIs, including African NHRIs, are not the same and their abilities differ significantly. Steven Jensen, who did research and a review on findings related to the effectiveness of NHRIs, makes us understand that while there are NHRIs that are making a significant contribution to improving human rights in their own environments, there are also settings where some states have built 'sham'¹ NHRIs in response to international pressure, without granting them the powers to carry out their monitoring tasks⁵⁰ or giving them the means to do so. Unfortunately, such a situation prevails in many countries on the African continent. By their very nature, such sham

¹ See Lessons from Research on National Human Rights Institutions by Steven LB Jensen, Danish Institute for Human Rights (2018) page 27.

NHRIs find it hard to play the role of bringing the African Charter to the national level or enhance its implementation. They are characterized by an inability or fear to exercise a decisive moral authority over the rights discourse in the public sphere, especially authority that has the potential to result in embarrassment to the government. It is therefore important to call upon all states to give their NHRIs proper mandates in line with the Paris Principles and the capacity and resources necessary to effectively play their role in the promotion and protection of human rights.

6. The drafters of the Paris Principles² undoubtedly envisioned a role for NHRIs which interfaced between international human rights bodies and the national human rights protection system. **These principles make NHRIs the bridge between international and national human rights systems, with the view to helping the process of domesticating international human rights norms and standards.** Many NHRIs already play this role or are even obliged by their national mandates to do so. For example, section 13(1)(b)(vi) of the South African Human Rights Commission Act, 2013, obliges the South African Human Rights

² Principles relating to the Status of National Institutions (The Paris Principles). Adopted by the UN General Assembly resolution 48/134 of 20 December 1993.

Commission (the SAHRC) to monitor the implementation of, and compliance with, international and regional conventions and other international and regional instruments relating to the objects of the South African Human Rights Commission. Consequently, NHRIs occupy a pertinent role in the universalization of international and regional human rights law within their respective national legal frameworks.

7. The Paris Principles outline seven fundamental 'competencies and responsibilities' of NHRIs. One of these fundamental principles, refers directly to the domestication of international laws and the harmonization of municipal practices with international human rights practices. In a nutshell, the Paris Principles require every NHRI, among others, to lobby or advise the state to ratify international human rights treaties, to contribute to the reports of the state to treaty bodies and, if necessary, to express an opinion on any human rights subject under consideration, with due respect for its independence.
8. On the other hand, the African Charter requires the African Commission to work with NHRIs. Such a relationship is critical for both bringing the African Charter to the national level and for enhancing its

implementation at that level. Article 45(1)(a) of the Charter mandates the Commission to “encourage local and national institutions concerned with human and peoples’ rights,...” to give “its views³” or make recommendations to governments. The article also requires the ACHPR to “cooperate with other African ... institutions concerned with the promotion and protection of human and peoples’ rights”⁴. The Commission is thus required to develop a unique relationship with NHRIs, among other key players, for the protection of human rights in Africa. This relationship is important for bringing the Charter and its interpretation by the Commission to the national level.

9. The Commission grants affiliate status to NHRIs which meet the stipulated criteria pursuant to Resolution 370(LX) 2017 on the Granting of Affiliate Status to National Human Rights Institutions and specialized human rights institutions in Africa; thereby creating a specially designated and elevated relationship between NHRIs and the Commission. Because NHRIs are positioned by their own mandates and the Paris Principles⁵ to monitor state compliance with international and regional conventions and treaties, they can be an important

³ This must be the view of the African Commission regarding particular aspects of human rights.

⁴ Article 45(1)(c) of the Charter

⁵ Paragraph 3(b) and (c) of the Paris Principles.

contributor to the accomplishment of the major objective of improving the implementation of Charter.

10. For purposes of today's discussion, I thought it would be important to look at some practical ways in which NHRIs can enhance the implementation of the decisions, concluding observations and recommendations of the African Commission and decisions of the African Court.

10.1. **African** NHRIs can bring the African Charter to the national level and enhance the implementation of the resolutions of, especially, the African Commission by working together in collaboration with one another. In this regard, African NHRIs have formed the Network of African National Human Rights Institutions (NANHRI). Under the leadership and guidance of NANHRI and, through this network, African NHRIs have paid significant attention to the need to play a role in the implementation of the decisions of the African Commission and the African Court and have developed a framework and guiding principles towards that end. They can be found in the website of NANHRI and I will mention some as I speak.

- 10.2. NHRIs should immediately bring the findings to the attention of their governments and other domestic audiences, including by using various media platforms available to them. It is of critical importance that the NHRI makes officials in the relevant government departments aware of the resolutions or concluding observations that require implementation by the state and to try to get a time frame within which the state intends to implement the decisions. Where officials find it difficult or are reluctant to determine time frames, an NHRI should recommend a plan of action for the government to follow in order to implement findings;
- 10.3. At the same time, the NHRI should work with civil society organizations and other stakeholders in the country and together publicise the decisions or concluding observations of the African Commission or the judgements of the African Court implicating the state;
- 10.4. Some NHRIs have persuaded their governments to establish internal mechanisms, such as committees that receive and coordinate issues relating to decisions of international and regional bodies, including the issue of compliance. Other

NHRIs are encouraged to try to persuade their own governments to do so. However, this is not the only way of engaging with the state – it just makes it easier to engage when there is a structure within government that the NHRI can engage with;

10.5. The NHRI has the duty to to monitor progress on implementation and to continuously engage with government in this regard. NHRIs should collaborate with relevant national stakeholders in monitoring the state’s implementation of the findings and judgments;

10.6. While monitoring, the NHRI should check the reliability and accuracy of the information that the state provides on the implementation of and compliance with the findings. And where the information is not accurate, the NHRI should consider submitting a shadow report giving its own understanding of the facts or situation;

10.7. Experience has shown that sometimes officials within governments do not have all the technical skills required to write relevant reports. Where they are able, NHRIs have a responsibility to provide technical assistance to the state in

implementing decisions of the African Commission or judgments of the African Court, including producing the required reports. The NHRIs should therefore not hesitate to offer such technical assistance to government. Also, NHRIs can enlist the African Commission for technical assistance on the contents of the communications, which can then be used by states to implement the decisions on the ground;

10.8. The Paris Principles provide NHRIs with the platform to help bring the African Charter to the national level. It provides that NHRIs have the responsibility, among others, to submit to government, parliament or any competent body, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights. This can be used as an important avenue for bringing issues to the attention of the government and for urging the implementation of the decisions of the African Commission and judgements of the African Court;

10.9. In addition to presenting the decisions, findings and concluding observations to parliamentary committees, NHRIs should update them on state's implementation progress.

Parliament has an oversight role over the executive and could potentially influence the implementation of those decisions and recommendations by the government. NHRIs should also consider how they can incorporate the findings and legal precedents of the African Commission and the African Court into their work, which includes advocacy to and educating the people about human rights.

- 10.10. An NHRI should not hesitate to put the necessary pressure on its government to persuade implementation. It should consider using the Universal Periodic Review and other international mechanisms such as African Peer Review Mechanism to put pressure on the state to adopt implementation and then publicize the relevant findings as well as the government's responses.
11. There is no doubt therefore that NHRIs constitute a key link and play an important role both in bringing the African Charter to the national level and facilitating and enhancing its implementation at that level.
12. Thank you.