



FACULTY OF LAW
Lund University

Hermela Binyam Tsegaye

**A comparative analysis of the involvement of National
Human Rights Institutions in the UN and the African
Union systems**

JAMM04 Master Thesis

International Human Rights Law

30 higher education credits

Supervisor: **Professor Ida Elisabeth Koch**

Term: < VT2015 >

Contents

Summary

Acknowledgement

Abbreviations

1. Introduction.....	1
1.1 Background.....	1
1.2. Research Question.....	3
1.3. Methodology.....	4
1.4. Overview of the Chapters.....	4
2. The Concept of National Human Rights Institutions (NHRI).....	6
2.1. Minimum standards of NHRIs: the Paris Principles.....	6
2.1.1 Background.....	6
2.2.2. Elements of the Principles.....	7
2.3. Types of National Human Rights Institutions.....	14
2.3.1 Human Rights Commissions.....	15
2.3.2 The Ombudsman.....	17
2.3.3. Specialized Institutions, Advisory committees and National human rights Institute/Centers.....	19
3. Involvement of National Human Rights Institutions in the United Nations Human Rights System.....	21
3.1. NHRIs and the Office of the High Commissioner for Human Rights (OHCHR).....	21
3.2. The Status of NHRIs in the UN.....	25
3.3. The International Coordination Committee(ICC): accreditation and accountability.....	27
3.4. The interaction between the UN Human Rights Mechanisms and NHRIs.....	32
3.4.1. Treaty Bodies.....	32
3.4.2. Human Rights Council and NHRIs.....	37
4. National Human Rights Institutions in the African Human Rights System.....	47
4.1. Background.....	47
4.2. The African Commission on Human and Peoples' Rights and NHRIs.....	50

4.3. The African Court on Human and People’s Rights and NHRIs.....	55
4.4. Network of African NHRIS	56
5. Conclusions and Recommendations: The way forward in the involvement of NHRIs in the AU system..	62
5.1. AU Commission/Assembly.....	62
5.2. African Commission on Human and Peoples’ Rights (ACHPR).....	63
5.3. Review and Evaluation Mechanisms	64
5.4. Treaty Bodies	66
5.5. Summary Conclusion	67
Bibliography.....	69

Summary

The thesis engages in a comparative analysis of the involvement of National Human Rights Institutions (NHRIs) in the UN and the African human rights systems. Thus, the thesis seeks to answer the question: What lessons can be drawn from the system of the involvement of NHRIs in the UN Human rights system to that of the African human rights system? Assuming that the UN system is far more developed and advanced than the latter, the thesis explores to what extent the African system could be adapted to resemble the UN system with regards to NHRIs.

The thesis begins with a general discussion on the concept of NHRIs. Much of the first section is devoted to the Paris Principles which are the international Minimum standards of NHRIs. In addition to a discussion on each element of the Paris Principles, this section also describes the various types and forms of NHRIs in the world.

The next two sections present an account of the involvement of NHRIs in the UN and AU systems respectively. Questions such as: what is the status of NHRIs in the UN; what are the functions of the International Coordination Committee (ICC) of NHRIS; and how far do the UN Human Rights mechanisms interact with NHRIs, are dealt with in the first of these sections. A careful study of this part of the thesis helps identify what lessons could be learnt from the UN system to improve the participation of NHRIs in the African context. This section precedes the part of the thesis which addresses NHRIs' participation in the African Human Rights system.

These two sections together lay the ground for the final part of the thesis: conclusions and recommendations. The thesis concludes that numerous lessons can be taken from the interaction of NHRIs and various UN organs which can be adapted to the AU system. A comparison of the two systems vis-à-vis NHRIs reveal the weak involvement of NHRIs in the AU system. Therefore, the thesis concludes by pointing towards areas where the interaction between African NHRIS and the continental organization, AU, could take lessons from that of the UN and its system of NHRIs.

Acknowledgement

A heartfelt gratitude goes to Professor Ida Elisabeth Koch. The insightful ideas and directions she has given me during the course of the thesis writing process are invaluable. Thank you very much for being kind, considerate and very supportive to me.

I would also like to thank Anders Tröger and the staff of the Faculty of Law at Lund University who have showed relentless support during the study program.

The highest praise goes to my God who has granted me the grace through my Savior and Lord Jesus Christ!

Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
APRM	African peer Review Mechanism
AU	African Union
ECOSOC	United Nations Economic and Social Council
HRC	Human Rights Council
ICC	International Coordinating committee of National Human Rights Institutions
IOI	International Ombudsman Institute
ICCPR	International Covenant on Civil and Political Rights
NHRIs	National Human Rights Institutions
NIU	National Institutions Unit
NANHRI	Network of African National Human Rights Institutions
OAU	Organization of African Unity
OHCHR	Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic review

1. Introduction

1.1 Background

It was as early as 1946 that the issue of national institutions began to arise when the Nuclear Commission on Human Rights discussed the idea of establishing local human rights committees or information groups which could periodically communicate information on national human rights observance to the Commission on Human rights¹. The Economic and Social Council, based on the recommendation of the Commission, adopted a resolution which called for member states to start considering the establishment of such local information groups “to collaborate with them in furthering the work of the Commission on Human rights”². This move by the commission might have its roots in preceding initiatives by the International Labor Organization (ILO) which recommended states to create permanent independent labor inspectorates who would be empowered to investigate, advise and inform about the protection of rights of workers; and another attempt by the United Nations Educational and Scientific Organization(UNESCO) who recommended that member states shall establish national commissions with members from the government as well as the various entities involved in the education, scientific and cultural field³. It appears that these initiatives were more concerned with supporting the work of the parent organizations than promoting human rights nationally⁴.

It was by later developments that the role of national institutions was upgraded from mere international support bodies to advisory committees and human rights promoters. In 1962 the Commission for Human rights came up with a resolution which advised states to form, in light of the situations in their respective countries, national advisory committees which could, among others, “...study questions relating to human rights, examine the situation at the national level, offer advice to the government, and help to create public opinion favoring respect for human rights...”⁵. This

¹ Pohjolainen, *The Evolution of National Human Rights Institutions: The role of the United Nations*(2006),p.30

² ECOSOC Resolution 2/9 (21 June 1946), Section 5

³ Pohjolainen, above at note 1, p.31

⁴ *ibid*

⁵ See Commission on Human Rights Resolution 9(XVIII) (27 march 1962)

resolution was well received in that such organs as the Economic and Social Council (ECOSOC) later adopted a resolution which mentioned the importance of setting up national commissions on the status of women that develop and make recommendations to improve the position of women⁶. Following these moves, the General Assembly of the UN also called for states to “intensify their domestic efforts in the field of human rights, with the assistance of their appropriate organizations...”⁷ Such measures marked a big step forward in the attempt to establish broadly mandated national institutions which engage in tasks of human rights promotion, monitoring and advice.

After the advent of the international human rights covenants, the UN Secretary General took the initiative to explore the possibility that national institutions could engage in tasks beyond the ones discussed so far, namely, the establishment of national commissions that perform functions associated with the observance of the international human rights covenants⁸. Although some states were of the opinion that the issue of national institutions should not be included on the agenda of the Commission, it was generally recognized that the UN could significantly contribute to the enhancement of NHRIs by, for example, providing recommendations as to their possible functions⁹. Apart from participation of national institutions in human rights education and the preparation of periodic reports by member states, it was suggested that they could be empowered to entertain individual complaints submitted after the exhaustion of other remedies¹⁰. The uncertainty as to the mandates of NHRIs lingered until the advent of the Paris Principles¹¹ and later the Vienna Declaration and Program of Action, which was adopted by 171 states and which explicitly affirmed the “role of national institutions in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights”¹².

⁶ See ECOSOC Resolution 961 F (XXXVI)(12 July 1963)

⁷ General Assembly Res. 1961(XVIII), (12 December 1963), para.4

⁸ Pohjola, above at note 1, p.41

⁹ *ibid*, p.42

¹⁰ *ibid*

¹¹ Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (the Paris Principles), Adopted by General Assembly Resolution 48/134(20 December 1993)

¹² General Assembly Resolution 52/128 (12 December 1997), para.6

Presently, the UN system appears to be more advanced than any of the regional human rights systems when it comes to the involvement of National Human Rights Institutions (NHRIs). The UN system allows these NHRIs to engage their governments and other national players in necessary consultations to try and enhance compliance with treaty body recommendations. Apart from their participation with activities of treaty bodies, the UN system facilitates for the crucial participation of NHRIs in UN special procedures. The role of NHRIs in the Universal Periodic Review is also immense. In addition, different organs of the UN provide a wide range of support to the works of NHRIs worldwide.

Regional organizations like the African Union have also taken steps towards the involvement of these institutions in their respective human rights systems. The network of African National Human rights Institutions has been established with the aim to support-through national, regional and international co-operation-the establishment, strengthening and development of NHRIs in order to enable them to more effectively undertake their mandates. Although the system involving NHRIs is at its infancy and is beset with shortcomings, it appears to be promising. Coupled with questions of legitimacy, accountability and accessibility of African NHRI's, a question remains whether the measures taken at the regional level(by the African Union) are sufficient enough and what should the way forward look like to effectively engage NHRIs in the protection and promotion of human rights at the AU level.

1.2. Research Question

The research question arises mainly from the researcher's preliminary observation of Africa Union's system in relation to NHRIs. A general look at the AU system and the weak involvement of NHRIs make one question why NHRIs are less active within the AU system. To understand what is lacking in the AU system, it is a welcome approach to consider engaging in a comparative analysis of the AU with an organization which has a longer history in terms of working together with NHRIS, namely: the UN system.

The main research question of the thesis is: What lesson can be drawn from the system of the involvement of NHRIs in the UN Human rights system to that of the African human rights system? Thus, the purpose of the study is to pin point the strong sides from the NHRI related practice of the various UN organs and see if such could be applicable in the African context. Assuming that the more experienced system of the UN has much to offer in this regard, I hope that the study points towards

important elements which the AU could take from. It is hoped that, at the end of the thesis, some crucial lessons are revealed from the failures and successes of the far bigger and more advanced system of the UN.

1.3. Methodology

The study intends to address the specific research question through both critical analysis and comparative approaches. It will try to compare the place NHRIs have in the AU system to that of the more advanced UN system which would enable me to identify the strength and weakness of the AU system. In making the critical analysis, I will resort to literature review of secondary sources including books, journals, articles, laws...etc. I will also consult and interpret primary sources, which include different regional and international human rights conventions and protocols, soft laws and other relevant documents such as reports, speeches and deliberation notes.

1.4. Overview of the Chapters

The next chapter is devoted to a general discussion on the concept of National Human Rights Institutions. One of the main subjects to be treated under this chapter is the Paris Principles which are the international Minimum standards of NHRIs. Following a fairly detailed analysis of each element of the principles, the chapter concludes with a description of the various types of National Human Rights Institutions across the globe.

Chapter three deals with the involvement of NHRIs in the UN system. The chapter begins with a discussion on the role of the Office of the High Commissioner for Human Rights (OHCHR) in the area of NHRIs. Questions such as: what is the status of NHRIs in the UN; and what are the functions of the International Coordination Committee (ICC) of NHRIs will be dealt with turn by turn during the course of the chapter. The subject that takes a bigger chunk of the chapter concerns the interaction between the UN Human Rights Mechanisms and NHRIs. Here, much space is accorded to UN treaty bodies and the Human Rights council vis-à-vis NHRIs. In relation to the latter, the roles of NHRIs in the functions of the UN Special Procedures and the process of Universal Periodic Review will be explained. Under this chapter, an attempt is made to conduct an in-depth study of the involvement of NHRIs in the UN system in order to set a solid ground for the subsequent two chapters. A careful study of this chapter helps identify what lessons could be learnt from the UN system to improve the participation of NHRIs in the African context.

The fourth chapter discusses NHRIs in the African Human Rights system. Starting with a historical discussion of evolution of NHRIs within the African regional system, the chapter engages in an analysis of the involvement of NHRIs in the African Commission on Human and Peoples' Rights (ACHPR) and the African court on Human and Peoples' Rights. The chapter concludes with an account of the Network of African NHRIs.

Chapter five, the last chapter, provides conclusions and recommendations. In this chapter, an attempt is made to point out relevant lessons from the UN system that can be helpful to improve the participation of NHRIs in the AU system. Specific lessons to the AU commission, ACHPR, Review mechanisms, and treaty bodies are dealt with turn by turn. A general conclusion wraps the chapter.

2. The Concept of National Human Rights Institutions (NHRIs)

2.1. Minimum standards of NHRIs: the Paris Principles

2.1.1 Background

Only a few NHRIs were established across the globe in 1991 when the Commission on Human Rights resolved to call a conference in Paris on the issue on NHRIs which was concluded by the drawing of a set of Principles Relating to the Status of National Institutions which have come to be referred to as the Paris Principles¹³. Although they are not legally binding, the status of this normative framework which set standards for NHRIs has been raised mainly owing to the international acceptance they have enjoyed and their endorsement at the Vienna World Conference on human Rights¹⁴. The success of the principles is often attributed to the fact that they were meant to discourage states from establishing ‘window dressing’ human rights institutions designed to appease domestic accusations related to human rights handling or impress external donors¹⁵. Therefore, although the creation of NHRIs is an important step by states, it appears that what is more important is the establishment of Paris Principle compliant institutions in order to gain real legitimacy internationally.

Various international as well as national organizations have shown interest in them and encouraged states to follow the standards. At the UN level, the Office of the High Commissioner (OHCHR), for example, has announced that its support targets those national institutions which are established in accordance with the relevant international standards, namely the Paris Principles¹⁶. Majority of the

¹³ Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (the Paris Principles), Adopted by General Assembly Resolution 48/134(20 December 1993)

¹⁴ Commonwealth Secretariat, *National human rights institutions: best practice* (2001), p.23

¹⁵ *ibid*

¹⁶ Pohjola, *The Evolution of National Human Rights Institutions: the Role of the United Nations*(2006),p.10

UN treaty bodies including Committee on the Elimination Racial Discrimination(CERD),Committee on Social Economic and Cultural rights(CERC) and Committee on the Rights of the Child(CRC) have expressed their support of the principles by recommending the establishment of NHRIs with due regard to the latter for the effective implementation of treaty obligations¹⁷.Apart from treaty monitoring bodies, the principles are gaining wider acceptance among UN Special Rapporteurs and other representatives who have encouraged governments to use the Paris Principles as a standard while establishing national institutions¹⁸.

Similarly, Inter governmental organizations, international NGOs and networks of National human rights institutions have also endorsed and referred to these criteria. The International parliamentary Union (IPU) and the Council of Europe Committee of Ministers, for example, have taken the lead among intergovernmental organizations in calling for states to take in to account the Paris Principles with regard to their human rights institutions¹⁹. Similarly human rights NGOs , Amnesty International being the foremost in this regard, have expressed their backing in that the principles should be used as “...basic minimum guidelines for the establishment of national institutions”²⁰. Likewise, regional and international networks of national institutions have also taken firm stance with regard to the application of the principles. For example, the International Coordinating Committee (ICC) of national human rights institutions has clearly stipulated in its rule of procedure that eligibility of membership to the group of national institution is restricted solely to those complying with the principles²¹. The following section emphasizes on the common elements of NHRIs as set out in the Paris principles.

2.2.2. Elements of the Principles

The Paris Principles focus on the major areas of: Competence and responsibilities of NHRIs; Composition of NHRIs and guarantees of independence; operational methodology, institutional competence and working methods and practices; and quasi-judicial competence of NHRIs²².The

¹⁷ *ibid*, p.11,12

¹⁸ *ibid*,p.13

¹⁹ *ibid*,p.10

²⁰ Amnesty International, *Proposed Standards for National Human Rights Commission*(1993),p.1

²¹ ICC Rules of Procedure, Section 3, rule 3(a)

²² See Paris Principles, above at note 11

principles establish a standard for effective NHRI which includes criteria such as defined mandate, independence, accessibility, accountability, composition and cooperation with other bodies²³.

2.2.2.1 Broad Mandate

The Paris Principles provide that “a national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence”²⁴. It follows that an effective NHRI needs to have a clearly defined jurisdiction which shall be set out in its establishing legislation. The principles employ two particular approaches in fulfilling the human rights mandates of NHRIs, namely, monitoring the human rights situation and receiving individual complaints and providing remedies²⁵. To realize this mandate, national institutions are vested with such a wide range of responsibilities and powers as: investigating alleged human rights violations (either by the initiation of the institution or by the individual/group); advising the government on legislation/policy and their conformity with the domestic and international human rights obligations of states; conducting public inquiries; promoting human rights and educating the public²⁶.

In this regard, the principles advocate the broadest possible range of functions and powers; a large category of bodies encompassed by the NHRI's operation; and the widest possible legal basis for the tasks of the institution. This means that general institutions empowered to carry out various activities are preferred to numerous specialized bodies assigned with single responsibilities²⁷. In the same vein, a Paris Principle institution does not limit itself to cases where the state or its agent is the responsible party for human rights violation but also extends to private employers, institutions and individuals²⁸.

Broad mandate also relates to whether the institution has the competence to treat cases based on rights enshrined in the national constitution or if it also has the competence to apply international

²³ *ibid*

²⁴ Paris Principles, art. 1

²⁵ Commonwealth Secretariat, *supra* note at 13, p.25

²⁶ See the Paris Principles, *above* at note 11

²⁷ Pohjolainen, *above* at note 4, p.7

²⁸ Lindsnaes et al, *National Human Rights Institutions, Articles and working papers, Input to the discussion on the establishment and development of the functions of national human rights institutions* (2001), p.84

human rights instruments to which the state is a party to²⁹. In this regard, a national institution whose legislative foundation is based on international instruments would be in a better position to supervise national implementation of the rights, to single out gaps in legislations and to provide significant assistance in the process of reporting to treaty bodies³⁰.

2.2.2.2. Independence

Apart from a broad and clear mandate, the Paris Principles underscore the capacity to act independently while pursuing its mandate as an important factor in ensuring the effectiveness of a NHRI³¹. An effective national institution acts “independently of government, of party politics and of all other entities and situations which may be in a position to affect its work.”³² However, as a national institution is established by the law of the state which specifies its mandate and acquires its funding from the same, it cannot be totally disconnected from the state and operate in full independence. Thus, while the imposition of some limitations is inevitable, such restrictions on independence should not be a setback for the institution to effectively carry out its responsibilities³³. Generally, independence of an institution extends to its legal status and operation, financial autonomy, appointment and dismissal of members and its composition.

A separate legal status which will permit an NHRI to exercise adequate decision making power and sufficient enough to allow the institution to perform its tasks without obstruction from any organ of government or any other entity is a necessity³⁴. It is essential that the enabling legislation entrusts the institution to put in place its own internal rules of procedure with regard to the operation of the institution³⁵. These rules and regulations as well as the recommendations and reports should be protected from external changes unless clearly specified in the enabling legislation³⁶. To realize full functional autonomy, national institutions bestowed with investigatory powers should also be given a

²⁹ United Nations (Center for Human Rights), *National Human Rights Institutions, A Handbook on the Establishment and strengthening of National Institutions for the Promotion and protection of Human Rights, Professional Training Series No 4*(1995), para. 87,

³⁰ *ibid*

³¹ see Paris Principles, *Composition and Guarantees of Independence and Pluralism*, para. 1-3

³² United Nations (Center for Human Rights), above at note 17, para. 68

³³ *ibid*, para.68,69

³⁴ *ibid*, para. 70

³⁵ Burdekin, *National Human Rights Institutions in the Asia-Pacific Region*(2007),p.44

³⁶ United Nations (Center for Human Rights), above at note 28,para.71

parallel authority to compel cooperation and facilitation of the works of the NHRI by government bodies³⁷.

Regarding financial independence, the Paris Principles take a serious stance by providing that an institution shall “...be independent of the Government and not be subject to financial control which might affect its independence.”³⁸ National institutions whose finances are controlled by government ministries or other similar bodies risk being dependent on such bodies. Thus, the founding legislation should make sure that not only the source and nature of funding is specified but also that this is done with a view to enable the NHRI to adequately perform its functions³⁹. It is “advisable to ensure that the budget of a national institution is not linked to the budget of a government department...” and that the budget of the institution is “secured so that no official decision or action of the institution will affect its budget allocation”⁴⁰.

Specific and well established criteria of appointment and dismissal is essential in guaranteeing the independence of a national institution. This finds expression in the Paris principles which states that “In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act”⁴¹. The terms to be spelt out on the enabling legislation should touch up on the method (voting or any other procedures); criteria (such as nationality, qualifications, profession) and duration of appointment; whether members can be reappointed; and issues of privileges and immunities⁴². Similarly, to avoid a compromise of independence, a clear description of conditions under which a member would be dismissed and the body entitled for the dismissal (a parliament or an equivalent organ) should be included on the official act⁴³.

The composition of an institution is also a factor for its independence in relation to governmental bodies and other entities. The principles support this cardinal criteria in that “the composition of the national institution...shall be established in accordance with a procedure which affords all necessary

³⁷ *ibid*, para. 72

³⁸ Paris Principles, *Composition and guarantees of independence and pluralism*, Para. 2

³⁹ United Nations (Center for Human Rights), above note at 29, para.74

⁴⁰ *ibid*, para.75

⁴¹ Paris Principles, para. 3

⁴² United Nations (Center for Human Rights), above note at 29, Para.78

⁴³ *ibid*, para.80

guarantees to ensure pluralist representation ...”⁴⁴ It is incumbent upon national institutions to come up with procedures accommodating the greatest diversity possible through the representation of all “social forces (of civilian society)involved in the promotion and protection of human rights” including non-governmental organizations, trade unions, concerned social and professional organizations and proponents of philosophical or religious thought⁴⁵.The principles also call for the involvement of parliaments and government departments although representatives of such bodies should participate in the deliberations of the institution only in an advisory capacity⁴⁶.It follows that diversity guarantees not only a wide expertise on local issues and cooperation with various sectors of society, but also safeguards independence in that the institution’s work will not be dominated by any particular group or approach⁴⁷.

2.2.2.3. Accessibility

The accessibility of a national institution also highly contributes to its effectiveness. A NHRI would be more effective if it can be easily accessible to the society that it aims to protect or whose interests it stands to promote⁴⁸. Burdekin argues that one of the foremost reasons for establishment of national institutions, in the first place, is the understanding that courts were “...almost inaccessible to many of those within their jurisdiction whose rights were frequently and sometimes systematically violated”⁴⁹. Ensuring physical accessibility to its constituency is one important aspect. The Principles recommend the setting up of “local or regional sections to assist it in discharging its functions”⁵⁰. Therefore, geographical accessibility could be improved by decentralizing offices, i.e., by establishing regional offices, and recruiting field officers to be assigned in different localities⁵¹. An NHRI can also enhance accessibility by designing convenient procedural laws such as those which do not require the physical attendance of complainants or witnesses.

⁴⁴ Paris Principles, para 1

⁴⁵ *ibid*

⁴⁶ *ibid*, para. 1 (d),(e)

⁴⁷ Pohjolainen, above at note 1, p.7

⁴⁸ United Nations (Center for Human Rights), above note at 29, para.98

⁴⁹ Burdekin, above at note 35, p. 44

⁵⁰ Paris Principles, para. 3(h)

⁵¹ United Nations (Center for Human Rights), above at note 29, para. 103

Accessibility cannot, however, fully be achieved by the geographical proximity of the institution alone but also extends to a whole gamut of issues such as awareness of the institution and composition of the institution. Individuals who are most in need of assistance might not be reached through the common methods of communication which makes it incumbent upon it to ensure its visibility by devising creative strategies to reach to these vulnerable groups⁵². Successful national institutions are those that are able to communicate their purpose and mechanisms with simple and understandable terms to the society they stand for which might include the usage of different languages⁵³. Similarly, since diversity in the composition of the institution positively influences accessibility, staff selection criteria should take into account ethnicity, religion, language, culture as well as gender⁵⁴. Apart from this, with the view of creating sense of belongingness among the society, the selection should also be representative of the section of society whom the institution is established to serve⁵⁵.

2.2.2.4. Cooperation

To ensure effectiveness, the Paris Principles call for the cooperation of NHRIs “with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights”⁵⁶. In the forefront of these wide ranges of institutions with which links are to be created are nongovernmental organizations. “In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions” the Paris Principles recommend the development of “relations with the non-governmental organizations devoted to promoting and protecting human rights.”⁵⁷ The support of NGOs is important in improving the accessibility (visibility) of the NHRI by promoting the existence of the latter to the general society; and they can also serve as bridges between NHRIs and victims of human rights violations that might not be otherwise willing to directly contact national institutions⁵⁸. In addition, NGOs often have wider network of contacts and are highly specialized which makes them ideal partners for education

⁵² Burdekin, above at note 35, p.45

⁵³ Lindsnaes, above at note 28, p.52-53

⁵⁴ Burdekin, above at note 35, p.47

⁵⁵ United Nations (Center for Human Rights), above at note 29, para. 104

⁵⁶ Paris Principles, para.1(e)

⁵⁷ Paris Principles, *Modes of Operation*, para. g

⁵⁸ United Nations (Center for Human Rights), above at note 29, para. 108-109

training and information dissemination⁵⁹. Therefore, the Paris Principles recommend cooperation between NGOs “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”⁶⁰.

Cooperation between intergovernmental organizations and between NHRIs themselves is equally helpful in realizing the goals of national institutions. Close ties with the United Nations particularly the Human Rights Council mechanisms and the treaty bodies which are established to monitor the handling of governments’ international human rights obligations is important (this will find detailed expression in the following chapter). Inter-institutional cooperation among NHRIs also immensely contributes in this regard, among others, by facilitating the exchange of experience and knowledge. The principles advise national institutions to “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)”⁶¹. Well established institutions can provide the newly found ones with guidance: in the drafting of legislation, in the training (and recruitment) of staff, and in the effective methods of operation⁶². Institutions may also enhance effectiveness by engaging in joint researches and studies and exchanging information on issues of mutual interest. Thus, the effectiveness of NHRIs highly depends on their ability to establish and maintain relations with bodies with similar agendas of human rights protection and promotion.

2.2.2.5. Adequate Resources and Accountability

Sufficient resources are also among the various factors of efficiency prescribed by the Paris Principles. A National institution “shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding” the purpose of which is to enable it have appropriate staff and premises⁶³. Inadequate resources can, apart from general efficiency, impact the accessibility of an institution as financial and other resources are required to bring the institution closer to the

⁵⁹ Burdekin, above at note 35,p.60

⁶⁰ Paris principles, *Modes of Operation*, para. g

⁶¹ Paris Principles, *Modes of Operation*, para. f

⁶² United Nations (Center for Human Rights), above at note at 29, para. 113

⁶³ The Paris Principles, para 3(2)

society it is established to serve. In the same vein, inadequacy in resources adversely affects the credibility of an institution in that the public can have a negative perception of a weak NHRI ((as a result of poor funding and insufficient personnel)⁶⁴. Therefore, it has to clearly be stipulated on the enabling legislation that the institution shall receive adequate resources in order to ensure that it discharges its responsibilities effectively. In addition, institutions should develop ways of managing scarce resources by “setting of priorities and adherence to a fixed and approved budget plan”, and by widening their contacts so as to secure outside support of resources⁶⁵.

Finally, a national institution has to be accountable both to the government as well as the people the institution serves in order to enhance its institutional effectiveness. It should be legally and financially accountable to the government body which can be done by issuing detailed reports concerning their activities to the concerned government body⁶⁶. The founding legislation of the NHRI should specify “the frequency of the reports; possibility of submitting ad hoc, special reports; issues to be reported on” and the procedure as to how such reports are to be examined⁶⁷. Similarly, a national institution has to be accountable to the section of society whose human rights it is established to promote and protect. It should be able to conduct societal evaluations of its activities (and report on the results) and make its reports available for comment and examination by the public at large⁶⁸.

However widely accepted the prescriptions of efficiency of the Paris Principles briefly explained in the foregoing paragraphs are, there appear to be some concerns on some of the issues they raise. For example, the idea of a NHRI which is independent from the government but at the same time depends on the latter for financial resources; and the fact that a national institution is at the one hand supposed to advise government and at the other criticize the same seem to be contentious issues⁶⁹.

2.3. Types of National Human Rights Institutions

The World Conference on Human Rights, having encouraged the establishment and strengthening of national institutions in accordance with the Paris Principles, recognized the right of each State to

⁶⁴ United Nations (Center for Human Rights), above at note 29, para. 122

⁶⁵ *ibid*, para. 123

⁶⁶ United Nations (Center for Human Rights), above at note 29, para. 137

⁶⁷ *ibid*

⁶⁸ *ibid*, para 138

⁶⁹ Pojolainen, above at note 1, p.9

choose the framework that best suits its particular needs at the national level⁷⁰. This has encouraged governments to apply the Principles relating to the Status of National Institutions and other international recommendations with regard to their national context and interests. Thus, the determinant factors for the institutional models depend on the legal and political traditions, historical experiences and economic circumstances and even the example of neighboring or politically important states to mention but a few⁷¹. The most common basis of classification of national institutions appear to be in terms of their mandate, organizational composition, or the political and legal traditions within which they operate.

Different bodies classify NHRIs in various categories and the nomenclature employed to refer to these institutions has become exceedingly diversified. The common categories include: National commissions, National Advisory Commissions, National Anti-discrimination Commissions, Ombudsmen and Defesor Del Pueblo⁷². Others tend to categorize them into: Consultative Commissions; Commissions with judicial competence; Commissions with ombudsman competence and judicial competence; National Human rights Centers and Human rights Ombudsmen⁷³. However, to grasp the main differences in the characteristics of these institutions, it would be useful to classify NHRIs in to the broad categories of Human Rights Commissions, Ombudsmen, Specialized institutions⁷⁴, Advisory committees and Human rights Institutes/Centers.

2.3.1 Human Rights Commissions

Human Rights Commissions , sometimes referred to as “Commonwealth model” institutions owing to the fact that they originated in the Commonwealth region, have been established in many countries to ensure that laws concerning the protection of human rights are effectively applied⁷⁵. It is based on the model of the early national institutions such as the Human Rights Commissions of Australia (1981),

⁷⁰ Vienna Declaration and Program of Action, Part I, para. 36

⁷¹ Pojolainen, above at note 1, p.16

⁷² International Council on Human Rights Policy, *Performance & Legitimacy: National human rights institutions*, 2004, p.3-4

⁷³ Kjaerum, *National Human Rights Institutions Implementing Human Rights*(2003),p.7-9

⁷⁴ United Nations (Center for Human Rights), above at note 29, para. 41-45

⁷⁵ Pohjolainen, above at note 1,p.16

Canada (1977), New Zealand (1977) and the United Kingdom (1976) whose mandate focused on the implementation of anti-discrimination or equality legislations⁷⁶. Although the above institutions which focus on the specific issue of anti-discrimination were the stepping stones for the emergence of Human Rights Commissions, some of the latter ones were based on a pluralistic composition by including different issues and sectors of society.

Although Human rights commissions are primarily concerned with the protection of persons against all forms of discrimination and with the protection of civil and political rights, they may also be empowered to promote economic, social and cultural rights which will be defined in the legislation under which they are established⁷⁷. This law will also serve to define the commission's jurisdiction by specifying the range of violations which it is empowered to investigate (this ranges from infringements of a single right - the right to equality for example - to any right recognized in the constitution)⁷⁸. Most human rights commissions function independently of other organs of government although they might be required to report to the legislature on a regular basis. They are composed of members from diverse backgrounds of interest, expertise and experience related to human rights and from different professional groups, political parties and localities of the country⁷⁹.

Human rights commissions generally assume broad functions directly linked to the protection and promotion of human rights such as an advisory function in relation to government policy on human rights, an educative function which is oriented towards the public and an impartial investigatory function⁸⁰. One of the most common functions vested on HRC is to receive and investigate complaints from individuals and groups alleging human rights violations⁸¹. Secondly, they review the government's human rights policy in order to detect short-comings in human rights handling and suggest ways of improving the observance. They may also monitor the state's compliance with its own legislation and international human rights to recommend constructive changes if necessary⁸². As full realization of human rights cannot be achieved through adequate legislation and appropriate

⁷⁶ *ibid*

⁷⁷ Pohjolainen, above at note 1, p.17

⁷⁸ *ibid*

⁷⁹ *ibid*

⁸⁰ United Nations (Center for Human Rights), above at note 29, para. 44-51

⁸¹ Pohjolainen, above at note 1, p.17

⁸² United Nations (Center for Human Rights), above at note 29, para. 44-51

administrative arrangements, Commissions are also entrusted with responsibility to carry out awareness raising activities about human rights through various means⁸³. Some HRCs are also bestowed with the task of conducting public inquiries on relevant human rights questions⁸⁴.

2.3.2 Ombudsman's Institutions

The other category is that of the Human Rights Ombudsman (often one person but may also be a group of persons), a NHRI which is established by the state in many countries in response to the increase in complaints about bureaucratic conduct⁸⁵. The modern roots of the ombudsman are traced in the Swedish Ombudsman for justice which was established in 1809 before it began to be established in various forms around the world⁸⁶. The Ombudsman is a public sector institution established by the legislative branch of government to supervise the administrative activities of the executive branch by receiving and impartially investigating complaints from the public⁸⁷. Its general objectives are the improvement of the performance of the public administration and the enhancement of government accountability to the public. Although the objectives are similar in nature, ombudsman offices can presently be found in various shapes and forms the major ones being the Classical and the Hybrid⁸⁸.

The classical ombudsman has a primary function of overseeing fairness and legality of public administration and protect the rights of individuals who believe that they are victims of an unjust treatment by the public administrations⁸⁹. They have the sole mandate of administrative control either up on receipt of complaints from persons aggrieved against government agencies, officials, and employees; or act on their own initiative to investigate and recommend corrective action and issue reports⁹⁰. Although these institutions receive complaints against a wide range of governmental bodies including state corporations and agencies, they are in most cases not entrusted with the mandate to

⁸³ *ibid*

⁸⁴ Pohjola, above note at 1, p.17

⁸⁵ Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection* (2000), p.1

⁸⁶ *ibid*, p.5

⁸⁷ *ibid*, 1-2

⁸⁸ *ibid*

⁸⁹ *ibid*, p.3

⁹⁰ *ibid*

investigate the legislature, the judicial activities of courts, the police and military forces⁹¹. Apart from such distinct government organs, Ombudsmen do not usually have the jurisdiction to investigate complaints between private parties.

The hybrid offices perform the tasks of both classical ombudsmen and that of Human Rights Commission. Unlike the classic Scandinavian Ombudsman, which deals with fairness and legality of public administration and act as mere overseer over the same, the hybrid model institutions are human rights oriented in a sense that they have been given a clear mandate to promote and protect human rights in addition to those powers bestowed on the former⁹². Apart from investigation of complaints and surveillance of the observance of human rights at different government offices, these institutions make recommendations and proposals and issue opinions and statements on government policies and legislation related to human rights⁹³. They may also engage in awareness raising and training activities which is normally a task undertaken by human Rights commissions. Although, as a rule, these mandates of protection and promotion of human rights are only limited to the public sector⁹⁴, some hybrid human rights ombudsmen have the jurisdiction, for example, to deal with complaints involving both the public as well as private sector conduct⁹⁵.

The fact that Ombudsmen are assuming responsibilities traditionally left to Human Rights Commissions and vice versa has blurred the distinction between the two national institutions. It appears that the only visible difference (particularly between the hybrid ombudsman and HRCs) is that ombudsmen institutions are by definition single-person entities and HRCs are not⁹⁶. Apart from this distinction, although many long established offices of the ombudsman are not directly concerned with human rights unless they relate to the institution's principal function of overseeing fairness and legality in public offices, the hybrid ones are given explicit mandates of protection and promotion. Likewise, it is not also uncommon to come across Human Rights Commissions operating exclusively in relation to public administration which is traditionally a sphere of the ombudsman⁹⁷. The fact that

⁹¹ *ibid*

⁹² Pojolainen, above at note 1, p.18

⁹³ *ibid*

⁹⁴ *ibid*

⁹⁵ Rief, above note at 84 ,p.3

⁹⁶ Pojolainen, above at note 1, p.18

⁹⁷ *ibid*, p.19

many human rights ombudsmen are becoming members of both the International Ombudsman Institute (IOI) and the International Coordinating Committee of National Institutions (ICC) can be one more sign to show the disappearance of a distinction between the two basic forms of national institutions⁹⁸.

2.3.3. Specialized Institutions, Advisory committees and National human rights Institutions/Centers

Specialized institutions, although share the characteristics of the models discussed above (ombudsmen and HRCs), they could be categorized as another breed of NHRIs. These institutions are usually established to promote government and social policy which is developed in relation to specific groups in a society such as ethnic (including religious and linguistic) minorities, indigenous population, refugees, immigrants, children, women, the poor and the disabled⁹⁹. Specialized human rights institutions perform the task of Human Rights Commissions (as explained above) with regard to the specific group they are assigned to. They are usually empowered to investigate discriminatory conducts against individuals in the group or members of the group as a whole, provide consultative assistance to the same individually and as a group, monitor the efficacy of existing laws related to the group, and act as advisers to parliament and the executive organ¹⁰⁰.

Finally, there are those institutions such as Advisory committees and National human rights Institutes/Centers that give especial focus on particular tasks among those for which National Human rights institutions are responsible for. Advisory Committees, for example, do not usually have investigatory jurisdiction and do not receive complaints but emphasize on their consultative role and act as a link between civil society and the government¹⁰¹. Apart from providing expert advice to the government on issues of human rights observance, these committees sometimes conduct researches and participate in awareness-raising activities which fact makes them resemble those Human Rights commissions without a monitoring mandate. Likewise, Human rights Institute/centers focus on a

⁹⁸ *ibid*

⁹⁹ United Nations (Center for Human Rights), above at note 29, para. 53-55

¹⁰⁰ *ibid*

¹⁰¹ Pohjolainen, above at note 1,p.19

single aspect of the responsibilities of NHRIs namely Human rights education, conducting of studies and documentation¹⁰².As they mainly research based institutions, they do not have investigative mandates and do not receive complaints. Side by side with their research undertakings, the centers prepare statements and commentaries on draft legislations and share the tasks of Advisory committees by providing expert advice to governments on human rights issues¹⁰³.

Although there are some variations in mandate among the numerous typologies of NHRIs, it is not an easy task to find a clear line differentiating their roles and responsibilities which poses a challenge on classification. It appears that most of the institutions have overlapping jurisdiction of protecting and promoting human rights and none, in principle, have the power to make binding decisions. As Ombudsmen, for example, who traditionally deal with the fairness and legality of public administration, are increasingly engaging in the role of HRCs (i.e., protection and promotion of human rights), distinctions blur between the two common types of NHRIs. Similarly other types of NHRIs are seen to be involving in each other's sphere of specialization and jurisdiction leaving only few differences among themselves and diminishing what would be typical characteristics of each. However, it could be summed that the NHRIs briefly discussed earlier seem to have common denominator: that they are set up by governments to work independently in promoting and protecting rights.

¹⁰² Kjaerum, above at note 62,p. 9

¹⁰³ Pohjolainen, above at note 1,p.19

3. Involvement of National Human Rights Institutions in the United Nations Human Rights System

3.1. NHRIs and the Office of the High Commissioner for Human Rights (OHCHR)

The dual mandate of NHRIs to protect and promote human rights at the national level also takes effect at the international level in relation to intergovernmental institutions. Following the Vienna Declaration, the Secretariat developed the Program of Action for Technical Assistance to National Institutions, which focused on diffusing the concept of the Paris Principle institutions, helping states establish and strengthen their NHRIs and backing regional co-operation among these institutions¹⁰⁴. The UN extends its support to national institutions by facilitating links among national human rights institutions, supporting regional and international forums on NHRIs, providing support to governments assistance to establish and strengthen such institutions¹⁰⁵. In this regard the Office of the United Nations High Commissioner for Human Rights (OHCHR) has been in the fore front by providing advisory and technical support to NHRIs and facilitating the creation of networks of such bodies at the international level. The support of the UN gained momentum specially after the appointment of the Special Advisor on National Institutions and the growing cooperation with the United Nations Development Program(UNDP) which has ever since played important role through financial support¹⁰⁶.

The OHCHR accords priority to the establishment and strengthening of national human rights institutions with due regard for the Principles Relating to the Status of National Institutions to:

¹⁰⁴ Murray, *The Role of National Human Rights Institutions at the International and Regional Levels*(2007),p.27

¹⁰⁵ *ibid*

¹⁰⁶ Pohjolainen, above at note 1, p.125

support their increased participation in the United Nations and regional human rights mechanisms and encourage the sharing of good practices among NHRIs; support the strengthening of their regional and international networks, and facilitate their access to United Nations country teams and other relevant partners¹⁰⁷. The Office believes that NHRIs compliant with the Paris Principles are essential to national human rights protection systems and are important counterparts for OHCHR as they can play a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level¹⁰⁸. The Office has set as its priorities:

“increasing the knowledge of NHRIs about new United Nations human rights treaties and optional protocols; encouraging institutions to play a greater role in encouraging the ratification of new treaties; strengthening treaty body procedures for interaction with NHRIs; compiling examples of good practices of interaction between NHRIs and United Nations human rights mechanisms; disseminating the concluding observations of treaty bodies and recommendations resulting from the universal periodic review process; publicizing the use of the International Coordinating Committee representative in Geneva; encouraging greater NHRI involvement in drafting the general comments of treaty bodies; and supporting the involvement of NHRI complaints-handling and the use of jurisprudence with respect to the treaty body system”¹⁰⁹

In this regard, the office of the Special Advisor on National Institutions in the OHCHR was created to further this goal in 1995¹¹⁰. However, since the advisor lacked information on the situation of the specific states, there was a concern that “the advice given may be generic and tied to the Paris Principles, rather than based on an in-depth understanding of what might work best in the political and cultural context of a specific country”¹¹¹. This led the OHCHR to come up with the broadly mandated National Institutions Unit (NIU) which provides advice and training on how to establish or strengthen NHRIs, assist NHRIs participation in the UN Charter and treaty bodies and act as

¹⁰⁷ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, (A/HRC/13/44) 15 Jan.2010, para. 2

¹⁰⁸ *ibid*, para. 3

¹⁰⁹ *ibid*, para. 66

¹¹⁰ Murray, above at note 104, p. 28

¹¹¹ Human Rights Watch, *Protectors or pretenders? Government Human Rights commissions in Africa*(2001),p.74-75

secretariat to the ICC¹¹². In this regard, OHCHR makes use of its country and regional offices, human rights advisers and human rights components of United Nations peace missions, and collaborates with other United Nations partners (including UNDP) and the regional coordinating bodies of NHRIs¹¹³.

The OHCHR provides advice to governments with regards to the establishment of NHRIs and, if they already exist, provides policy advice on their operational efficiency¹¹⁴. In the pre-establishment phase, legal advice is given to governments, with emphasis on the Paris Principles, which includes finding a suitable model of NHRI for the state and helping draft a founding legislation for the institution¹¹⁵. Advice is provided on constitutional or legislative frameworks concerning the establishment, nature, functions, powers and responsibilities of NHRIs in addition to undertaking comparative analysis, technical cooperation needs assessments, project formulation and evaluation missions in order to establish and strengthen the institutions' conformity to the Paris Principles¹¹⁶. After the establishment of the institutions, policy advice and technical assistance is given to develop their operational efficiency which includes the enhancement of the daily management and organizational capacity¹¹⁷. Technical cooperation programs and agreements are conducted with a view to strengthening the capacity of national institutions through OHCHR's regional offices which include training on monitoring, investigation and human rights reporting¹¹⁸.

The Office of the High Commissioner also contributes immensely in enhancing the networking among national institutions. Regional initiatives in which the Office plays important roles of facilitation include: European Group of National Institutions for the Promotion and Protection of Human Rights, Arab National Human Rights Institutions, Asia-Pacific Forum of National Human Rights Institutions, Network of African National Human Rights Institutions, and Network of National Institutions for the Promotion and Protection of Human Rights of the Americas¹¹⁹. Globally, the office works in concert with such international initiatives such as the International Coordinating Committee of National Institutions (to which OHCHR acts as the secretariat), the Sub-committee on

¹¹² Murray, above at note 104, p. 29

¹¹³ Report of the Secretary General, above at note 107, para 7

¹¹⁴ Pohjola, above at note 1, p. 71

¹¹⁵ *ibid*

¹¹⁶ Report of the Secretary General, above at note 107, para. 9

¹¹⁷ Pohjola, above note at 4, p. 72

¹¹⁸ Report of the Secretary General, above at note 105, Para. 8

¹¹⁹ see *ibid*

Accreditation, the Commonwealth Forum of National Human Rights Institutions, and Ibero-American Federation of the Ombudsman¹²⁰. Assistance to these networks on national institutions takes the form of promoting the establishment of Paris Principles-compliant institutions, providing training, organizing conferences and workshops which aim at developing the capacities of the institutions¹²¹.

Apart from facilitating networking among NHRIs, OHCHR has played a paramount role in improving co-operation between national institutions and various bodies of the UN. The NHRIs that met in 1993 in Vienna recommended that the Commission on Human rights should “take appropriate measures to ensure that the national institutions participate actively, by right and with a specific status, in the work of the United Nations human rights bodies”¹²². Following this and other recommendations, the OHCHR took steps in promoting the acceptance of national institutions as “natural human rights advocates and partners in international cooperation on human rights”¹²³. It has ever since supported a mutually beneficial cooperation between NHRIs and the various UN bodies in the area of human rights monitoring-the former provide necessary information to the latter while the UN bodies provide political support and advice as to effective implementation of international human rights laws¹²⁴.

The office has been assisting NHRIs cooperation particularly with the UN human rights mechanisms such as the Human rights council, treaty bodies and special procedures. OHCHR has been facilitating NHRI engagement with the Human Rights Council in accordance with Commission on Human Rights resolution 2005/74 and Human Rights Council resolution 5/1 which provides opportunities for NHRIs and their regional networks to participate in the Human Rights Council and to engage with its mechanisms¹²⁵. Similarly, OHCHR provides expert analysis on NHRIs and their related activities to

¹²⁰ *ibid*

¹²¹ *ibid*

¹²² UN- ECOSOC, *National Institutions for the Promotion and Protection of Human Rights: Report of the second International Workshop on National Institutions for the Promotion and Protection of Human Rights*, E/CN.4/1994/45 (23 December 1993), B. Recommendations, Para. 1(a)

¹²³ See first report of the UN High Commissioner for Human Rights to the UN General Assembly, A/50/36(1995), Para. 6(f)

¹²⁴ This relationship will be further discussed in detail latter on the sections dealing with the UN Human rights mechanisms

¹²⁵ Report of the Secretary General, above at note 107, para. 74

the UN treaty bodies and regularly updates a compilation of all treaty body concluding observations and recommendations that mention NHRIs¹²⁶, and sends back concluding observations to the institutions concerned¹²⁷. Regarding Special Procedures, it provides information to Special Procedures mandate-holders related to the work of NHRIs to help them prepare for their country missions¹²⁸.

3.2. The Status of NHRIs in the UN

Following the advent of the Paris Principles and the increase in the attention accorded to NHRIs by OHCHR's efforts, national institutions have gained acceptance at the global level as important human rights actors. This transformation in status from mere recipients of assistance to global actors on their own right is more obvious when studying their increasing (but varying) participation in the sessions of UN bodies¹²⁹. In 1995, it had been suggested by the Secretary General that national institutions be "granted the same status as the specialized agencies and space should be made available to them so that their representatives could express their views as representatives of independent bodies"¹³⁰. However, during the sessions of the Human Rights Commission in 1996 and 1997, NHRIs were represented from the seat of their respective government's delegation and were allowed to address the Commission concerning the specific agenda item regarding NHRIs¹³¹. On a later session, the commission decided that the arrangement "which allows national institutions to address the Commission from a special section of the floor set aside specifically for this purpose, behind the nameplate "National Institutions", should be continued" although only in relation to item 18 (b) on the agenda which addresses the issue of national institutions¹³².

¹²⁶ United Nations, Office of the High Commissioner for Human rights, *Monitoring the core international human rights treaties* (2014), Available at <http://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx>

¹²⁷ Report of the Secretary General, above note at 107, para.78

¹²⁸ Special Procedures mandate holders look to national institutions for assistance in ensuring that their recommendations are followed up at the national level. *ibid*, para.83

¹²⁹ Pohjola, above at note 1, p. 75-76

¹³⁰ Report of the Secretary-General, *Human Rights Questions: Human Rights Questions, including Alternative Approaches for Improving the Effective Enjoyment of human Rights and Fundamental Freedoms, National Institutions for the Protection and promotion of Human Rights*, A/50/452, (20 Sep. 1995), paras. 36-37

¹³¹ Pohjola, above at note 1, P.76

¹³² Commission on Human Rights Resolution 1999/72, Para.15

It was later in 2003 and onwards that National Institutions, in addition to independent representation, began to enjoy the opportunity to speak on issues other than agendas only related to NHRIs¹³³. The UN Sub-Commission on the Promotion and Protection of Human rights allowed national institutions to be present in its sessions on the same basis as NGOs and to address the Sub commission on any item on its agenda¹³⁴. At the level of the Human rights Commission, such a decision came with Resolution 2005/75 which permitted NHRIs to speak “under all items of the commission’s agenda” provided that such national institutions are accredited by the Accreditation Subcommittee of the International Coordinating Committee of National Institutions (ICC)¹³⁵. As the Human Rights Commission was replaced by the Human Rights Council, General Assembly resolution 60/251 establishing the latter upheld the existing rules of procedure regarding NHRIs participation in the Council. It provided that the “...participation of and consultation with observers, including...National Human rights institutions ... shall be based on arrangements, including... practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities”¹³⁶. This decision underscored the fact that the status/participation of National institutions in the human rights council is highly dependent upon their accreditation by the ICC.

The UN General Assembly has repeatedly recognized the role played by NHRIs in the Human Rights Council. Mentioning Human Rights Council resolutions on NHRIs (Council resolutions 5/1 and 5/2 of 18 June 2007 and also Commission on Human Rights resolution 2005/74 of 20 April 2005), the General Assembly has noted the importance of the ongoing involvement of NHRIs in the universal periodic review mechanism, in the special procedures, as well as in the human rights treaty bodies¹³⁷. The General Assembly has also welcomed the strengthening of opportunities for NHRIs to contribute to the work of the Human Rights Council, as laid down in the Human Rights Council review outcome document annexed to Council resolution 16/21 of 25 March 2011¹³⁸.

¹³³ UN Sub-Commission on the Promotion and Protection of Human rights Resolution E/CN.4/Sub.2/2003/1.10 (15 Aug 2003), para. 19

¹³⁴ *ibid*

¹³⁵ Human Rights commission Resolution 2005/74, para 11(a).

¹³⁶ General Assembly Resolution 60/251, art 11

¹³⁷ General Assembly Resolution 66/169, para 9

¹³⁸ General Assembly Resolution 68/171, para 13. Human Rights Council Resolution 16/21 is adopted by the General Assembly in GA resolution 65/281 of 17 June 2011

The General Assembly's recognition and encouragement of NHRIs "...to participate in and to contribute to deliberations in all relevant United Nations mechanisms and processes"¹³⁹ shows the level of attention NHRIs have currently achieved in the UN system. Following Human Rights Council's recommendation¹⁴⁰ that the Assembly explore the feasibility of enabling NHRIs participation in the Assembly, the latter seems to have taken the matter to heart. The commitment by the Assembly to explore the feasibility of "enabling NHRIs to participate independently in relevant United Nations mechanisms and processes"¹⁴¹ indicates that NHRIs are progressively attaining a status that best ensures their effective contribution in the UN system.

3.3. The International Coordination Committee (ICC): accreditation and accountability

As more and more strong and independent national institutions are established across the globe, the need for developing ties among themselves has similarly increased over the years. This ambition was realized in 1993 when the national institutions convened in Tunis at the Second International Workshop decided to establish the International Coordination Committee of National Institutions (ICC)¹⁴². The participants resolved that the Committee would hold meetings under the auspices of and co-operation with the then UN Center for Human Rights (whose roles are now taken over by the OHCHR) and assists NHRIs to follow resolutions and recommendations related to the strengthening of such institutions¹⁴³. The UN Commission on Human Rights latter endorsed the committee as the foremost representative of national institutions at the global level¹⁴⁴ as an "international association of NHRIs which promotes and strengthens NHRIs to be in accordance with the Paris Principles and provides leadership in the promotion and protection of human rights"¹⁴⁵. The ICC is managed by a committee called the ICC Bureau which is comprised of sixteen individuals, including the

¹³⁹ *ibid*, para 14

¹⁴⁰ Human Rights Council resolution 20/14, para 16

¹⁴¹ General Assembly resolution, 68/171, Para 16

¹⁴² Kjaerum, *National Human Rights Institutions Implementing Human Rights*(2003),p.17

¹⁴³ Murray, above note at 104,p. 30

¹⁴⁴ Commission on Human Rights Resolution 1994/54 ,para 7

¹⁴⁵ Statute of the International Coordinating Committee for National Institutions, art. 5

Chairperson and the Secretary from each of the four regions, namely: Americas, Africa, Asia-pacific and Europe, in order to ensure ‘a fair balance of regional representation on the ICC’.¹⁴⁶

The ICC is primarily responsible for coordinating at an international level the activities of NHRIs established in conformity with the Paris Principles, and promoting the establishment and strengthening of NHRIs in compliance with the Paris Principles¹⁴⁷. To realize its objectives, the Committee performs a wide range of functions. It facilitates: interaction with the United Nations, including the OHCHR, the Human Rights Council (its mechanisms), United Nations human rights treaty bodies, as well as with other international organizations; Collaboration and coordination amongst NHRIs and Regional Coordinating Committees¹⁴⁸; Communication amongst members and with stakeholders; development of guidelines, policies, statements; and organization of conferences(including the biennial International Conference stated under article 8 of the statute)¹⁴⁹.The committee also plays a vital role through accreditation of new members; providing assistance to NHRIs believed to be under threat; encouraging the provision of technical assistance; and fostering and promoting education and training opportunities to develop and reinforce the capacities of NHRIs¹⁵⁰. Apart from these tasks, the Committee undertakes any other functions which are referred to it by its voting members¹⁵¹.

For various reasons, including the fact that the OHCHR acts as the Secretariat of the ICC through its National Institutions Unit (NIU), the ICC can be said to have been increasingly involved in the UN structure¹⁵². Through the NIU, OHCHR works in partnership with the ICC and provides legal and technical assistance to the latter and the regional coordinating bodies of NHRIs to ensure that NHRIs are established in compliance with the international standards¹⁵³. Substantial part of the activities of

¹⁴⁶ *ibid*, art. 31(1) and 42

¹⁴⁷ *ibid*, art. 7(1)(2))

¹⁴⁸ Regional Coordinating Committees are bodies established by NHRIs in each of the regional groupings referred to in Section 7 of the ICC Statute to act as their coordinating secretariats and they include: Asia Pacific Forum of National Human Rights Institutions; European Coordinating Committee of National Human Rights Institutions; Network of African National Human Rights Institutions; and Network of National Human Rights Institutions of the Americas. See *ibid*

¹⁴⁹ *ibid*, art. 7(1)

¹⁵⁰ *ibid*, art.7(2))

¹⁵¹ *ibid*, art.7(3)

¹⁵² Murray, above at note 104, p. 30

¹⁵³ See OHCHR, <www.nhri.net>

the ICC are conducted under the auspices of and in close cooperation with the OHCHR which include, for example, applications for accreditation under the Paris Principles which is decided by the ICC Bureau under the OHCHR¹⁵⁴. The involvement of the Office of the High Commissioner has even extended to a point where some NHRIs have voiced concerns in that the role of the National Institutions Unit is exceeding its secretarial support to instructing what national institutions should be doing¹⁵⁵. At the 17th session of the ICC, for example, some NHRIs proposed to consider whether the secretariat of the ICC would be better placed permanently outside the UN structure¹⁵⁶.

The role of the ICC within the UN structure is more apparent when it comes to the accreditation of national institutions which is an important criterion for membership in the ICC and participation of NHRIs in various UN sessions particularly that of the Human rights council's. The ICC statute provides that only NHRIs which comply fully with the Paris Principles, being those which have been accredited with an 'A' status, shall be eligible to be voting members of the ICC¹⁵⁷. Those who are accredited as partially compliant could only be considered to be non-voting members¹⁵⁸. Similarly, as briefly discussed earlier, the Human Rights commission resolution 2005/74 stressed accreditation as an important criterion for NHRIs' participation as well as to address the commission "under all items of the commission's agenda" and to be allocated "dedicated seating"¹⁵⁹. Those NHRI which are not accredited would only be allowed to speak under agenda item 18(b) (regarding NHRIs themselves) on a statement lasting seven minutes mainly due to lack of time available¹⁶⁰. Therefore, the ICC's process of regulation for accreditation determines a national institution's membership in the Committee as well as its participation at the international level thereby bestowing legitimacy on the NHRI.

Any NHRI seeking accreditation based on the General Assembly Paris Principles applies to the Chairperson of the ICC through the ICC Secretariat (The OHCHR National Institutions

¹⁵⁴ Statute of the International Coordinating Committee for National Institutions, art. 11

¹⁵⁵ Murray, above at note 104, p.30

¹⁵⁶ *ibid* (Some NHRIs further expressed their concerns during the 17th session of ICC that "documents distributed by the NI unit reflected the view that it was the NI unit that was directing NHRIs rather than the other way round". *Ibid*)

¹⁵⁷ Statute of the International Coordinating Committee for National Institutions, art.24(1)

¹⁵⁸ *ibid*, art. 24(2)

¹⁵⁹ Human Rights Commission Resolution 2005/74, above at note 135

¹⁶⁰ Report of the Secretary General: *Enhancing the Participation of National Human Rights Institutions in the Work of the Commission for Human Rights*, E/CN.4/2005/107, para. 22

Unit). Documents including: the legislation or other instrument by which it is established; an outline of its organizational structure including staff composition and annual budget; a copy of its most recent annual report ¹⁶¹; a detailed statement showing how it complies with the Paris Principles and in circumstances in which it does not comply ¹⁶². Having received and reviewed an application from a NHRI, the Sub-Committee on Accreditation prepares an accreditation recommendation and forward its recommendation to the ICC Bureau¹⁶³. In accordance with the Paris Principles, the different categories for accreditation used by the Sub-Committee are:

“A: Compliance with the Paris Principles;

A(R): Accreditation with reserve – granted where insufficient documentation is submitted to confer A status;

B: Observer Status - Not fully in compliance with the Paris Principles or insufficient information provided to make a determination;

C: Non-compliant with the Paris Principles”¹⁶⁴.

However, before the ICC bureau reaches a final decision, the recommendation of the Sub-Committee shall first be forwarded to the Applicant NHRI who will be given a chance to challenge the Sub-Committee’s recommendation. If at least four members coming from two or more regional groups do not raise objection to the recommendation within twenty days of its receipt, the recommendation will then be approved by the ICC Bureau¹⁶⁵.

National institutions which have once undergone evaluation and have been categorized would not however hold their status permanently. All NHRIs that hold an ‘A’ status, for example, are subject to re-accreditation on a five year basis¹⁶⁶. Where it appears that the circumstances of any NHRI that has been accredited with an ‘A’ status may have changed in a way which affects its compliance with the Paris Principles, the Sub-Committee is entitled to initiate a review of that NHRI’s accreditation

¹⁶¹ The sub-Committee will only consider applications from NHRIs which have completed their first year of activities and are thus able to present an annual report of their activities. See Report and Recommendations of the Sub-committee on Accreditation of ICC, 16th session, 14-15 April 2005

¹⁶² Statute of the International Coordinating Committee for National Institutions, art. 10

¹⁶³ *ibid*, art.12

¹⁶⁴ Report and recommendations of the Sub-Committee on accreditation, above at note 150, para 4

¹⁶⁵ Statute of the International Coordinating Committee for National Institutions, above at note 134

¹⁶⁶ *ibid*, art.15

status¹⁶⁷. Prior to a decision to remove the ‘A’ status accreditation, the applicant will be informed of this intention and given an opportunity to provide evidence necessary to establish its continued compliance with the Paris Principles¹⁶⁸. In addition to ‘A’ status NHRIs, it is incumbent upon all national institutions to inform the Committee where its “circumstances change in any way which may affect its compliance with the Paris Principles” following which the sub-committee will review the NHRI’s accreditation status¹⁶⁹. If the accreditation of the institution is suspended, it would remain so until a decision is made regarding its conformity to the Paris Principles or until its accreditation lapses¹⁷⁰, and an NHRI would retain its status while on review until a determination is made¹⁷¹. In the event that accreditation lapses or is revoked or suspended, all rights and privileges conferred on that NHRI through accreditation immediately cease until such institution regains it by re applying¹⁷².

Although the process of accreditation is advantageous in creating legitimate and strong NHRIs, it seems to have some shortcomings particularly with regards to funding and who the target of the assessment actually is. Although the OHCHR through its NI Unit provides secretarial and other supports, there is lack of funding to the ICC particularly to enable the Committee make assessment visits to the national institutions¹⁷³. Apart from lack of funding to appropriately carry out the evaluations, the procedures for accreditation reveal that although it is the NHRI that is supposed to convince the ICC for accreditation, it is not the NHRI that controls the issues its approval depends on¹⁷⁴. For example, important elements of the Paris Principle based on which NHRIs are assessed such as independence, adequate funding¹⁷⁵, appointment of members, and geographical reach are beyond the control of the national institutions.

¹⁶⁷ *ibid*, art.16(2)

¹⁶⁸ *ibid*, art.18

¹⁶⁹ *ibid*, art.16(1)

¹⁷⁰ *ibid*,art.21

¹⁷¹ *ibid*, art. 23

¹⁷² *ibid*, art. 22 and 23

¹⁷³ Secretary-General Report, above note at 160, para. 14

¹⁷⁴ Murray, above note at 104, p. 80

¹⁷⁵ On the accreditation sessions of 2013 and 2014, for example, the Subcommittee on Accreditation stressed the importance of the provision of adequate core funding by the State to ensure the independence and financial autonomy of such institutions. See Report of the UN Secretary General, *Activities of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights in accrediting national institutions in compliance with the Paris Principles*, June 30,2014, para 15.

3.4. The interaction between the UN Human Rights Mechanisms and NHRIs

3.4.1. Treaty Bodies

The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties and are created in accordance with the provisions of the treaty that they monitor¹⁷⁶. There are nine human rights treaty bodies¹⁷⁷, not including the Subcommittee on Prevention of Torture (SPT)¹⁷⁸. When states ratify international treaties, they assume the obligation to submit periodical reports to the treaty bodies on the measures they have taken to ensure the implementation of the treaties and such reports will be examined by the treaty bodies along with information from other sources¹⁷⁹. After the examination of such reports, the treaty bodies adopt concluding observations, in which they forward concerns and make recommendations to the State party which is expected to undertake the necessary measures to implement the recommendations of the treaty bodies¹⁸⁰. Generally, the treaty bodies perform a broad range of functions in relation to the treaties that created them which include: Consideration of State parties' reports ; Consideration of individual complaints or communications ;publishing general comments on the treaties and organizing discussions on related issues¹⁸¹.

As National Human Rights Institutions immensely support the work of the treaty bodies by promoting the implementation of conclusions and recommendations of human rights treaty bodies, the OHCHR, through its NI unit, has been assisting the engagement of national institutions and treaty

¹⁷⁶ United Nations, Office of the High Commissioner for Human rights, *Monitoring the core international human rights treaties* (2014), Available at <http://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx>

¹⁷⁷ The Treaty Bodies include: The Human Rights Committee (CCPR) ,The Committee on Economic, Social and Cultural Rights (CESCR), The Committee on the Elimination of Racial Discrimination (CERD),The Committee on the Elimination of Discrimination Against Women (CEDAW),The Committee Against Torture (CAT),The Committee on the Rights of the Child (CRC), Committee on Migrant Workers (CMW),The Committee on the Right of Persons with Disabilities (CRPD),The Committee on Enforced Disappearance (CED). See Treaty Bodies, <www2.ohchr.org

¹⁷⁸ The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) is a new kind of treaty body which started work in 2007 and which has a purely preventive mandate focused on “an innovative, sustained and proactive approach to the prevention of torture and ill treatment”. *ibid*

¹⁷⁹ see Treaty Bodies, <www//nhri.net>

¹⁸⁰ *ibid*

¹⁸¹ United Nations, above at note 176

bodies. To facilitate their work, the Office makes sure that concluding observations and decisions of treaty bodies are posted on its website of NHRIs and sends such to national institutions in the countries concerned¹⁸². The efforts of the Office seem to have paid off when seeing the initiatives taken by several treaty bodies to recognize and encourage the role and participation of NHRIs¹⁸³. Many have included the issue of NHRIs in their Recommendations¹⁸⁴ and have raised important questions with regard to such bodies by: questioning the independence of the institutions, urging governments to increase the powers and resources accorded to NHRIs and to provide more information on their reports, advocating for enhancement of the roles of the national institutions, encouraging the establishment of institutions with specific mandates related to the particular treaty, and calling on governments to adhere to recommendation of NHRIs¹⁸⁵.

Although the role to be played by NHRIs has gained wider acceptance amongst the treaty bodies, their approaches towards National institutions appear to be inconsistent in spite of undergoing attempts to carve a common direction vis-à-vis NHRIs. In 2005, for example, the issue of NHRIs has been raised in the inter-committee meeting in the presence of several national institutions¹⁸⁶. The inter-committee underscored the need for increased co-operation with national institutions and the importance of the adoption of working practices “by all treaty bodies in a unified manner”¹⁸⁷. The discussion emphasized on compliance of NHRIs with Paris Principles, the need for their independence (including not being part of government delegation to treaty body sessions), and the consideration of a joint criteria for the participation of NHRIs in the work of treaty bodies¹⁸⁸. Later in

¹⁸² OHCHR, above at note 142

¹⁸³ The following Committees have adopted general comments on NHRIs: the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. The following have included in their working methods a section on the participation of NHRIs in their activities: The Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities. The Committee on the Elimination of Racial Discrimination has amended its rules of procedure to allow A-status institutions to address the Committee in plenary session. See Report of the UN Secretary General, A/HRC/27/39, June 30, 2014, para 94

¹⁸⁴ Since 2000 ,for example, the recommendations/concluding observations issued by CCPR ,CAT,CERD,CESCR,CEDAW,CRC and CMW have touched up on the issue of NHRIs(see Treaty Bodies, above note at 179)

¹⁸⁵ Murray, above note at 104, p. 38-40

¹⁸⁶ Report of the Secretary General, *Effective Functioning of Human Rights mechanisms: National Institutions and Regional Arrangements*, E/CN.4/2006/101, 24 Jan 2006, para. 64

¹⁸⁷ Murray, above note at 104, p.91

¹⁸⁸ *ibid*, p.92-93

2006, NHRIs, treaty bodies and civil society met in Berlin to discuss the interaction between NHRIs and treaty bodies. This International Roundtable on the Role of NHRIs in the Treaty Body Process was concluded by the drawing of a draft harmonized approach to national human rights institutions' engagement with treaty body processes which was latter welcomed by the inter-committee¹⁸⁹. Apart from calling on treaty bodies to "recognize the independent standing of NHRIs in their consideration of State party reports, distinct from Government and civil society", it clearly outlines the areas of co-operation between the two¹⁹⁰.

A major area of co-operation is the ratification of human rights treaties by states as NHRIs can serve as a bridge between civil society and governments by encouraging State ratification and sensitizing the public of the need for such ratification to bring increased pressure on the State¹⁹¹. In this regard, NHRIs are expected to, in accordance with the Paris Principles, encourage ratification of and accession to human rights instruments and publicize and disseminate information concerning such instruments by undertaking advocacy and through educational campaigns. Their role also extends to assisting governments and other stakeholders in "understanding, conceptualizing and contextualizing international instruments"¹⁹². They should also inform Parliaments about State party obligations arising from international human rights instruments and encourage the removal of State party reservations to the respective treaties¹⁹³.

Treaty bodies also encourage national institutions to contribute in the state reporting process and present their own reports as well. As many states lag behind with their reporting to Treaty Bodies and some states fail to report at all, NHRIs are encouraged to influence states to take their reporting obligation seriously¹⁹⁴. NHRIs are supposed to contribute to the preparation of State party reports through consultation or by commenting on the report. In this regard, they should become familiar

¹⁸⁹ Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies, Sixth Inter-Committee Meeting of the human rights treaty bodies, Geneva, 18-20 June 2007, HRI/MC/2007/3

¹⁹⁰ Draft Harmonized Approach to National Human Rights Institutions engagement with Treaty Body Processes, Annex to *ibid*

¹⁹¹ NI Unit, The United Nations Treaty Bodies and National Institutions, p.2, available at www.nhri.net

¹⁹² Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies, para. 6

¹⁹³ *ibid*

¹⁹⁴ Müller and Seidensticker, *Handbook on The Role of National Human Rights Institutions in the United Nations Treaty Body Process*, German Institute for Human Rights, 2007, p.36

with, and assist in clarifying the treaty body reporting guidelines to their states. It is generally assumed that NHRIs should be given opportunities to make oral presentations in the pre-sessional working groups of treaty bodies besides submitting written information before the formal examination of a State party report¹⁹⁵. To ensure a unified practice in this respect, the Draft Approach requires treaty bodies to “adopt a harmonized procedure ensuring formal interaction with NHRIs during the examination of the State party report”¹⁹⁶. However, it is the view of the NI Unit that National Institutions should consider assisting the government in the preparation of its reports only where there is a lack of institutional capacity from the latter’s side so as not to compromise the independence of the institution¹⁹⁷. Once the government is fully capable of undertaking its reporting responsibilities, the NHRI is encouraged, in addition to providing its views for input into the State Party report, to independently or in coordination with local civil society prepare a “parallel report for the relevant Treaty Body”¹⁹⁸.

NHRIs have been entrusted with the important role of following up the recommendations and decisions of the treaty bodies¹⁹⁹. NHRIs are expected to monitor State dissemination of information to concerned parties in the country on concluding observations and recommendations of treaty bodies. The most important task will then be following up the effective implementation of the concluding observations and recommendations. In order to provide guidance on the appropriate measures to be taken, NHRIs are advised to engage with government bodies concerning the implementation of concluding observations and recommendation²⁰⁰. NHRIs can also follow up whether their governments have informed the relevant treaty bodies about measures that have been taken to give effect to the latter’s recommendations by checking whether such information has been sent²⁰¹. In the same vein, apart from following up recommendations of treaty bodies, NHRIs can serve as National Preventive Mechanisms (NPM) empowered (Under the Optional Protocol to CAT which calls on state parties to implement their existing obligations to prevent torture) to visit places of detention

¹⁹⁵ Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies, above at note 189, para 3

¹⁹⁶ Draft Harmonized Approach, above at note 190, para.5

¹⁹⁷ NI Unit, above note at 178 ,p.2

¹⁹⁸ *ibid*

¹⁹⁹ *ibid*

²⁰⁰ Conclusions of the International Round table on the Role of National Human Rights Institutions and Treaty Bodies, above at note 189, para. 5

²⁰¹ Müller and Seidensticker, above at note 194 , p. 65

regularly and on a follow-up basis and make recommendations to the relevant authorities identifying ways to undertake improvements²⁰². Where there are separate NPM, national institutions can play an important role in following up the implementation of the recommendations of the NPM or that of the Subcommittee on Prevention²⁰³.

Treaty bodies also encourage involvement of NHRIs with regards to complaints procedures. NHRIs should urge their governments to accept the individual complaints procedures. To achieve this, they can urge their governments, through various means, to ratify the Optional Protocols to ICCPR, CEDAW and CESCR ; and to make the relevant declarations under article 22 of CAT and article 14 (1) of ICERD which stipulate individual complaints procedure. NHRIs can, therefore, organize educational activities and awareness-raising activities on the individual complaints procedures²⁰⁴. NHRIs can also offer support with filing a complaint to a treaty body to individuals who claim that their rights have been violated which includes advice on the appropriate treaty body or admissibility of the petition²⁰⁵. The draft harmonized approach provides that “Treaty bodies should seek, and include information from NHRIs in their enquiry procedures and follow up activities and encourage them to submit reports on the same.”²⁰⁶ NHRIs can make use of enquiry procedures²⁰⁷ to address systematic human rights violations within their countries²⁰⁸. Apart from pressuring their states to accept the enquiry procedure, NHRIs may initiate the procedures themselves or encourage NGOs or other representatives of civil society to initiate these procedures²⁰⁹. Once the committees decide to initiate the inquiry, they may push their governments to cooperate with the committee in the context of the procedure²¹⁰.

Generally, the UN treaty bodies (and the OHCHR) have taken important steps to engage NHRIs in their works although co-operations could be more strengthened to achieve better results. While

²⁰² Optional Protocol to CAT ,art.17-23

²⁰³ Müller and Seidensticker , above note at 194,P.72

²⁰⁴ *ibid*,p.53

²⁰⁵ *ibid*,p.54

²⁰⁶ Draft Harmonized Approach, above note at 188, para. 6

²⁰⁷ For example, the inquiry procedure under article 20 of CAT and article 8 of the Optional Protocol to CEDAW are put in place to enable investigation of specific, but lasting and systematic violations of provisions of these two conventions.

²⁰⁸ Müller and Seidensticker , above note at 181,p.60

²⁰⁹ *ibid*, p.61

²¹⁰ *ibid*, p.62

NHRIs work towards fulfilling their function under the Paris principles to “promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments...and their effective implementation”²¹¹, treaty bodies have shown great interest in supporting such function²¹². Moreover, the Draft Harmonized Approach advocates support to NHRIs in countering threats against them “including constraints on mandatory activities, budgetary pressure and threats against members and staff”²¹³. It further calls for further development of harmonized procedures relevant to NHRIs and the inclusion of the issue of NHRI as a standing agenda item in the inter-committee meetings²¹⁴.

3.4.2. Human Rights Council and NHRIs

The Human Rights Council, created by the UN General Assembly on 15 March 2006 by replacing the Human Rights Commission, is an inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights²¹⁵. The council’s main purpose is to promote the full implementation of human rights obligations and commitments by States, address situations of violations (and make recommendations), and mainstream human rights within the UN²¹⁶. On June 2007, the Council adopted its ‘Institution-building package’ which lays down the framework to guide it in its future work among which are: the Universal Periodic Review mechanism which will assess the human rights situations in UN member states; Advisory Committee which provides the council with expertise and advice on thematic human rights issues; and the revised Complaints Procedure mechanism which allows individuals and organizations to bring complaints about human rights violations to the attention of the Council²¹⁷. The Council also works

²¹¹ Paris Principles, para. 3b

²¹² National Human Rights Institutions and the UN treaty Monitoring Bodies, A Recommendations Paper by ICC, p. 2-7. Many of the treaty bodies have referred to NHRIs in their recommendations and some treaty bodies, particularly the Committee on the Rights of the Child, committee on Economic Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination, have issued General Comments on the role of NHRIs in relation to the state reporting process. Many of the treaty bodies have also invited NHRIs in their sessions to voice their concerns and submit additional reports; and various informal and formal meetings have been held between the two. See *ibid*.

²¹³ Draft Harmonized approach, above at note at 190, para. 11

²¹⁴ *ibid*, para 13

²¹⁵ See Human Rights Council<www.ohchr.org>

²¹⁶ Murray, above at note 104, p. 34

²¹⁷ Human Rights Council, above at note at 215

with the UN Special Procedures established by the Commission on Human Rights and latter assumed by the Council²¹⁸.

The Council's establishing resolution clearly provides that the Council will "work in close cooperation in the field of human rights with...national human rights institutions" in their capacity as observer in the Human Rights Council²¹⁹. As discussed earlier, the resolution retains earlier arrangements and practices for NHRIs participation in the Council and its subsidiary bodies as stipulated in resolution 74/2005 of the former Commission on Human Rights which accords: permission to speak under all items of the Council's agenda, allocation of dedicated seating in the council, permission to issue documents as official UN documents under their own symbol number; and necessary assistance for holding meetings of the ICC during the sessions of the council and for other regional and international meetings (the Secretary General is required to do so from within existing resources and from the UN Voluntary Fund for Technical cooperation)²²⁰. In their position as a bridge between the national and the international level, NHRIs have important roles to play in the various procedures of the HRC specifically in the procedure for the universal periodic review of the performance of all member states of their human rights obligations²²¹; and the Special procedures²²².

3.4.2.1. Universal Periodic Review and the engagement of NHRIs

The Universal Periodic Review (UPR) is one of the mechanisms established under General Assembly Resolution 60/251, which created the Human Rights Council. The Resolution provides that the Council shall:

“undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review

²¹⁸ *ibid*

²¹⁹ General Assembly resolution 60/251, para. 5(h)

²²⁰ *ibid*, para 11

²²¹ *ibid*,para.5(e)

²²² *ibid*,para 6

shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies.”²²³

The Commission on Human Rights had been widely criticized for selectivity and double standards in its response to the human rights situations within different countries²²⁴. The General Assembly came up with the UPR mechanism under which all countries are reviewed on the basis of the principles of universality, equality, non-selectivity and objectivity in an attempt to ensure the effectiveness of the mechanism in contributing to better protection and promotion of human rights in all countries²²⁵. The basis of the review, its principles and objectives, its process and modalities, and its outcome are outlined in Resolution 5/1 and included in the Report of the fifth regular session referred to as the ‘Institution building package’. Recommendations included in the ‘Outcome of the review of the work and functioning of the United Nations Human Rights Council’ (hence-forth referred as Outcome document) and annexed to the Human Rights Council resolution 16/21 supplement the institution-building package.

In this regard, given that NHRIs have “specialized human rights expertise in how to address the challenges and circumstances of local conditions in the implementation of international human rights obligations” and provided their awareness of the technical and capacity-building needs in their respective countries, they will have a paramount role to play²²⁶. Resolution 5/1 on institution building allows for an active engagement of national institutions in the Universal Periodic Review mechanism. It states that the UPR shall “ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251” which established the Human Rights Council²²⁷. The interaction between NHRIs and the Universal Periodic Review is one of mutual benefit in that there is also much that national institutions gain from the outcomes of the review including a call for their establishment and strengthening in the recommendations following the UPR.

²²³ *ibid*, para 5(e)

²²⁴ ICC Position Papers: *National Human Rights Institutions and the UN Human Rights Council– Volume III: Engagement of National Human Rights Institutions with the Universal Periodic Review Mechanism*, June 2007, para. 3

²²⁵ *ibid*

²²⁶ *ibid*, para 11

²²⁷ General Assembly resolution 60/251, para. 3 (m)

The primary basis of the review are the relevant provisions of the UN Charter, the Universal Declaration for Human Rights, human rights instruments to which states are party to and “voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council”²²⁸. In 2006 the Office of the High Commissioner for Human Rights suggested a number of elements for voluntary pledges and commitments for candidates to the Council which included the establishment and strengthening of NHRIs and since the first elections of the council in May 2006, many states pledged to strengthen their NHRIs²²⁹. Therefore, the council resolution 5/1 allows the examination of whether such promises are fulfilled by the UPR mechanism when States are reviewed. In States where NHRIs already exist, a review examines the legal framework governing NHRI and whether it conforms to the minimum standards provided in the Paris Principles²³⁰ while in states where NHRI are not present, the review process takes in to account the challenges and setbacks faced by the country concerned in establishing such an institution²³¹.

The resolution provides that “States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders”²³² including NHRIs. It appears that the UPR mechanism promotes constructive dialogue between the State under review and all other concerned parties such as NHRIs who are presented with the opportunity to play a role in the preparation, modalities and follow up²³³. Apart from their contribution in the consultation part, NHRIs can also provide information independently from the state as the institution package calls on the OHCHR to summarize and compile the “additional, credible and reliable information provided by other relevant stakeholders to the universal periodic review which should also be taken into consideration by the Council in the review”²³⁴. Given their mandate of monitoring and reporting on the human rights situation in a State and advising the State on its human rights obligations, NHRIs are better placed to provide reliable, objective and well-documented information (for example, on

²²⁸ Human Rights Council Resolution 5/1, para. 1(a-d)

²²⁹ ICC Position Papers, above at note 224, para. 13

²³⁰ *ibid*, para. 14

²³¹ *ibid*, para. 15

²³² Human Rights Council Res. 5/1, para. 15

²³³ ICC Position Papers, above at note 224, para. 18

²³⁴ Human Rights Council Resolution.5/1, para. 15(c)

commendable practices and challenges faced by the State concerned which can be done by submitting their annual reports)²³⁵. Thus, NHRIs partake in the process in a manner supporting a well-informed review which is based on a wide range of sources and material²³⁶.

The resolution allows “Other relevant stakeholders” to “attend the review in the Working Group”²³⁷ which includes NHRIS and such “relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary²³⁸. The Outcome document states that, during the adoption of the outcome of the review by the Council plenary, the NHRI of the State under review “shall be entitled to intervene immediately after the State under review”²³⁹. ‘Interactive dialogue’ between the country being reviewed and the Council takes place in the working group in which other stakeholders including NHRIs are invited to participate²⁴⁰. The interactive dialogue with participating States provides opportunities for NHRIs to contribute to the review by voicing their opinions. It is suggested that “the provision of a right to NHRIs to speak during a review would be consistent with an emerging practice from the treaty monitoring bodies allowing NHRIs to make statements and answer questions directly to the committee during the examination of the State report”²⁴¹.

The UPR should result in clear, concise and realistic recommendations to the State concerned, possibly including on the role to be played by NHRIs and other relevant stakeholders²⁴². Where NHRIs have not been established by a State, the Council might consider adopting a specific recommendation for the establishment of a NHRI based on the Paris Principles or for bringing an existing institution into compliance with these Principles²⁴³. NHRIs assist in the formulation of recommendations that are feasible to implement by the State to improve its fulfillment of human rights obligations and commitments²⁴⁴. The outcomes of the review should also contribute to

²³⁵ ICC Position Papers, above at note 224, para. 28

²³⁶ *ibid*, paras.19 and 24

²³⁷ Human Rights Council Resolution 5/1, para18(c)

²³⁸ *ibid*, para.29 and 31

²³⁹ Outcome of the review of the work and functioning of the United Nations Human Rights Council, para. 13 (Annex to Human Rights Council resolution 16/21).

²⁴⁰ Human rights Resolution 5/1, para. 21

²⁴¹ ICC Position Papers, above at note 224, para.31

²⁴² *ibid*, para.32

²⁴³ *ibid*, para.35

²⁴⁴ *ibid*, para. 19

enhancing national capacities to promote and protect human rights, including through the work of NHRIs²⁴⁵.

It is provided on resolution 5/1 that the outcome of the universal periodic review “should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders²⁴⁶. The Outcome document, in this regard, encourages states “to conduct broad consultations with all relevant stakeholders” during implementation of the outcome of the review. NHRIs can assist the State in the implementation and follow up of relevant recommendations from the UPR process as they have the mandate to advise the State regarding its human rights obligations and commitments²⁴⁷. NHRIs can assist in widely publicizing the outcome of the review through the use of various forms of information strategies²⁴⁸. In addition, NHRIs are also expected to undertake awareness raising programs and help build capacity on human rights within the State. If the recommendations call for particular capacity-building or technical assistance measures, NHRIs are better placed to deploy their expertise in their implementation²⁴⁹. NHRIs can therefore contribute to the follow up of UPR recommendations in concert with the State and other stakeholders such as the civil society on ensuring effective follow up.

3.4.2.2. Special Procedures and NHRIs

Special procedures are mechanisms established by the Human Rights Council to monitor, analyze and report on human rights issues and the situation in particular countries²⁵⁰. Special Procedures are either an individual (called ‘Special Rapporteurs’, ‘Special Representative of the Secretary-General’ or ‘Independent Expert’) or a working group usually composed of five members²⁵¹. At the time of writing, there are 39 thematic and 14 country mandates established and defined by the resolution creating them and mandate-holders of the Special Procedures serve in their personal capacity without

²⁴⁵ *ibid*

²⁴⁶ Human Rights Council Res. 5/1, para. 33

²⁴⁷ ICC Position Papers, above at note 224, para.38

²⁴⁸ *ibid*, para.36

²⁴⁹ *ibid*, para.39

²⁵⁰ ICC Position Paper: *National Human Rights Institutions and the UN Human Rights Council – Volume IV: Engagement of National Human Rights Institutions with the Special Procedures*, 1 March 2007, para.2

²⁵¹ See Special Procedures < <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> >

salaries²⁵². Usually, special Procedures receive information on specific allegations of human rights violations and send appeals or allegation to governments requesting clarification. Mandate holders also conduct country visits to investigate the human rights situation at the national level. On June 2007, the Human Rights Council adopted Resolution 5/1 which included provisions on the selection of mandate holders and the review of all special procedures mandates²⁵³. Latter In June 2007, the Council adopted Resolution 5/2, which contained a Code of Conduct for special procedures mandate holders. At the Annual Meeting of special procedures in June 2008, special procedures mandate holders adopted a Manual (providing guidelines on the working methods of special procedures) and an Internal Advisory Procedure to review practices and working methods²⁵⁴.

NHRIs and Special Procedures have mutually reinforcing relations in performing their responsibilities for the promotion and protection of human rights²⁵⁵. As noted earlier, NHRIs have specialized human rights experts in better position to understand and address local situations in the implementation of international human rights obligations from whose contribution the system of Special Procedures can benefit²⁵⁶. The ICC and its members (NHRIs) have a commendable track record of cooperation with the system of Special Procedures and have proved to be important partners of the system. Among earlier contributions by NHRIs are: providing the Special Procedures with information relevant to their individual mandates²⁵⁷, meeting with mandate holders in their visits to countries and collaborating on the implementation of projects to protect and promote human rights²⁵⁸. In case of an anticipated or ongoing human rights violation, NHRIs can act as an important link for early warning and may bring such situations to the attention of the SPs for their action²⁵⁹. SPs could include in their recommendations that an NHRI in full compliance with the Paris Principles be set up, that an existing NHRI be strengthened so that it fully complies with the Paris Principles, that adequate resources be provided to NHRIs, that an NHRI seeks accreditation through the ICC to

²⁵² *ibid*

²⁵³ *ibid*

²⁵⁴ *ibid*

²⁵⁵ Office of the High Commissioner for Human Rights, Discussion Paper on Interaction between National Human Rights Institutions and Special Procedures, June 2007, p.1

²⁵⁶ ICC Position Papers, above note at 250, para. 4

²⁵⁷ The SPs can make use of an NHRI as: a reliable source of information; a partner to verify the accuracy of information obtained from other sources; and an effective intermediary to acquire information from other parties. (Proposals for the interaction between NHRIs and SPs, annex to above note at 242, para.16)

²⁵⁸ ICC Position Papers, above note at 140, para. 23

²⁵⁹ Proposals for the interaction between NHRIs and SPs, annex to above note at 250, para.17

mention but a few²⁶⁰. Whenever an NHRI is under threat, relevant SPs could act to protect it through communications or other measures²⁶¹.

NHRIs play crucial roles before and during Country visits of the SPs. They can encourage the states to give a standing invitation (which means that governments are prepared to receive a visit from any special procedures mandate holder to all thematic SPs²⁶²). In cases where standing invitations are not extended by governments, NHRI can bring specific human rights situations to the attention of SPs related to the issue, and encourage the SPs to request a country visit to the Government²⁶³. To help the mandate-holders make adequate preparations for the visits ahead, NHRIs can propose reliable and relevant intermediaries between the former and the respective governments, and provide SPs with relevant background information which might include their annual reports or other reports relevant to the themes concerning the mandate holder²⁶⁴. While the SPs are carrying out their visits, they are expected to hold frequent meetings with the NHRI at which point they can discuss relevant issues and ask the NHRIs to assist in “the organization of the ‘unofficial’ part of the agenda”²⁶⁵. The OHCHR proposal suggests SPs to involve NHRIs in the formulation of the recommendations for the sake of specificity²⁶⁶. At the end of the visit, NHRIS can publicize the press release or public statements made by the SP mandate holder and disseminate and translate the country visit report to Government officials, Parliamentarians, NGOs and civil society groups²⁶⁷.

Following the presentation of a country mission report by a special procedure mandate holder, the Outcome documents states that, NHRIs “shall be entitled to intervene immediately after the country concerned during the interactive dialogue”²⁶⁸. This provides an important opportunity for NHRIs to comment on the concerned state’s response. During the general debates at the sessions of the Human

²⁶⁰ *ibid*, para.7

²⁶¹ *ibid*,19

²⁶² Special Procedures, above note at 241

²⁶³ Proposals for the interaction between NHRIs and SPs, annex to above note at 250, para. 2

²⁶⁴ *ibid*, para.3

²⁶⁵ *ibid*, para.5

²⁶⁶ *ibid*, para.7

²⁶⁷ *ibid*, paras. 8 and 9

²⁶⁸ Outcome of the review of the work and functioning of the United Nations Human Rights Council, para 28 (Annex to Human Rights Council resolution 16/21)

Rights Council, the ICC and NHRIs have the opportunity to further interact with special procedures mechanisms and submit written contributions on the SP's report²⁶⁹.

The interaction of NHRIs and SPs is also important at the follow-up stage of the recommendations of the latter. SPS might recommend NHRIs to monitor the implementation of SP recommendations on their reports and could also request information from the NHRI in order to assess the status of implementation of the recommendations made following a country visit²⁷⁰. NHRIs, in this regard, are expected to regularly inform mandate-holders whether their recommendations have been implemented or not and to what extent²⁷¹. When sources of information that have cooperated with a SP during a country visit are subject to retaliation, NHRIs are encouraged to promptly inform OHCHR of the incident so that the SP mandate holder knows of such instances²⁷². NHRIs are encouraged to organize follow up seminars including all the human rights stakeholders as well as the SP mandate holder²⁷³. NHRIs are encouraged to take relevant SPs' recommendations into account: when preparing their work-plan ; when assisting in the formulation of National Human Rights Action Plans and in other human rights related programming activities; and when submitting opinions, recommendations, proposals and reports to the Government, Parliament or other public body²⁷⁴.

NHRIs also have the opportunity to participate in the appointment of mandate holders, as well as in the Internal Advisory Procedure to Review Practices and Working Methods²⁷⁵. Resolution 5/1 mentions non-governmental organizations and other human rights bodies possibly including NHRIS²⁷⁶ among entities that may nominate candidates as special procedures mandate-holders²⁷⁷. The Outcome document clearly states that Paris principle compliant NHRIs may nominate candidates

²⁶⁹ Report of the UN Secretary General, A/HRC/27/39(June 30, 2014), para. 90

²⁷⁰ Proposals for the interaction between NHRIs and SPs, annex to above note at 250, Para. 10

²⁷¹ *ibid*, para. 12

²⁷² *ibid*, para.13

²⁷³ *ibid*, para. 14

²⁷⁴ *ibid*, paras. 11,15

²⁷⁵ The Internal Advisory Procedure is established to provide a mechanism for continuous consideration of the practices and working methods of the Special Procedures(Coordination Committee of Special Procedures, *Internal Advisory Procedure to Review Practices and Working Methods*, 25 June 2008, p.1)

²⁷⁶ ICC believes that such "... process should be transparent and allow stakeholders, including NHRIs, to present candidates for appointment" ICC Position Papers, above note 145, para.19

²⁷⁷ Human Rights Council Resolution 16/21, para. 42(d),(e)

as special procedures mandate holders²⁷⁸. Similarly, relevant stakeholders including NHRIs are entitled to bring issues relating to working methods and conduct to the attention of the Special Procedures Coordination Committee calling for the “examination of the effectiveness or appropriateness of the methods of work” or to voice concern regarding practices “prejudicial to the integrity, independence, and impartiality of the system of Special Procedures or to the protection of human rights”²⁷⁹. Apart from the afore mentioned involvements, NHRIs which are in compliance with the Paris Principles could also attend sessions of the HRC and make oral statement during the interactive dialogue after the presentation by the relevant SP mandate holder²⁸⁰.

²⁷⁸ Outcome of the review of the work and functioning of the United Nations Human Rights Council, para 22(a) , Annex to Human Rights Council resolution 16/21

²⁷⁹ Coordination Committee of Special Procedures, *Internal Advisory Procedure to Review Practices and Working Methods*, 25 June 2008, p.1

²⁸⁰ Proposals for the interaction between NHRIs and SPs, annex to above note at 250, para.24

4. National Human Rights Institutions in the African Human Rights System

4.1. Background

The Organization of African Unity (OAU) adopted a regional human rights treaty-the African charter of Human and Peoples' Rights (ACHPR) - only as late as 1981 which entered into force in 1986. Since the Constitutive Act of 2000 which laid the foundation for the establishment of the African Union (the organ which replaced the OAU) does not make specific reference to human rights, the ACHPR stands as the only major human rights document. The Charter was an important step ahead in a continent dominated by grave human rights violations and marked by the absence of national watch dog institutions. Article 26 of this charter provided that states parties shall "allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter".

Following the coming in to effect of the ACHPR, a Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) in 1991 came up with 'core values' which member states need to fulfill²⁸¹. These included: Good governance, such as accountability, transparency, the rule of law, elimination of corruption and unhindered exercise of individual rights as enshrined in the ACHPR; respect for and promotion of human rights, the rule of law and equitable social order as the foundation for national and continental stability; the rejection of unconstitutional changes of government; and the conduct of electoral processes in a transparent and credible manner²⁸². Having urged states to ratify and implement key human rights documents and to adopt measures to realize such instruments, the CSSDCA called for the establishment of national institutions, including human

²⁸¹ Zimber, Africa's Human Rights Architecture, 2008, p. 121

²⁸² See Conference on Security, Stability Development and Cooperation in Africa (CSSDCA), Memorandum of understanding on Security, Stability, Development and Cooperation in Africa, section I (core values), a-x.

rights commissions, independent electoral commissions, anti-corruption commissions, and prison-monitoring bodies²⁸³.

The establishment of national human rights commissions in Africa could be said to be an outcome of these regional political discussions and treaties. In some African countries, democratization slowly surfaced as government and civil societies came together to negotiate the process of political liberalization while in others governments surrendered to external and internal calls for multiparty elections and political liberalization²⁸⁴. Throughout the 1990s, national human rights institutions proliferated all over the continent their numbers raising from only one in 1989 to twenty four in 2008²⁸⁵. International support for the creation of human rights commissions by the 1990s also played a significant role besides the steps taken by African governments in founding NHRIs. In some countries, the creation of NHRIs appears to be a genuine expression of the government's promise to bring more transparency and accountability²⁸⁶. While in other countries, the creation of such institutions seemed to be motivated more by a desire to avoid criticism which comes as a result of the government's stubbornness to political liberalization²⁸⁷.

The human rights commissions in Africa come in varying forms when it comes to their founding legislation and their mandates. Some are constitutionally-based (followed by enabling legislation), as in Ethiopia, Ghana, Malawi, Niger, South Africa, Uganda and Zambia²⁸⁸. The majority have been created through the legislative national assembly or parliament, such as in Benin, Chad, Liberia, Rwanda, Senegal, Sierra Leone, and Togo²⁸⁹. Others have been created through presidential, prime ministerial or council of minister decrees, such as in Algeria, Cameroon, Kenya, Mali, Mauritania, Sudan, and Tunisia²⁹⁰. The stated mandates of these commissions vest them with the responsibility to promote and protect human rights, but with differences in the broadness of their mandate and powers. Within Africa, the range is broad-from the Mauritanian human rights commission which has only

²⁸³ Zimble, above note 281

²⁸⁴ Human Rights Watch, *Protectors or Pretenders: Government Human Rights Commissions in Africa*, 2001

²⁸⁵ Zimble, above note 281

²⁸⁶ Human Rights Watch, above note 284

²⁸⁷ *ibid*

²⁸⁸ *ibid*

²⁸⁹ *ibid*

²⁹⁰ *ibid*

advisory and promotional mandates to the Ugandan human rights commission which has quasi-judicial powers to adjudicate complaints²⁹¹.

After the advent of the AU in 2001, a series of conferences on human rights were held at ministerial level the notable-with regards to NHRIs-being the one in 2003. The conference urged states to “establish national human rights institutions and to provide them with adequate financial resources and ensure their independence”²⁹². It also underlined the necessity for co-operation between NHRIs and the African commission on Human and Peoples’ rights so that the respect for human rights could be greatly enhanced in Africa²⁹³. In 2004, the AU held a conference solely dedicated to the issue of NHRIs in which it envisaged to support “the work being done by existing national human rights institutions and to promote the creation of new national institutions where they do not exist”²⁹⁴. Besides contributing to the widespread establishment of NHRIs, capacity building of independent national human rights institutions in Africa was also stressed²⁹⁵.The Communiqué following the conference underscored the necessity of “cooperation among NHRIs, the African Union and its organs, the African Commission on Human and Peoples’ Rights, non-governmental organizations, and other institutions with Human Rights agendas”²⁹⁶.

Apart from calling for cooperation and compliance with international human rights instruments, the communiqué Called on “all National Human Rights Institutions to apply for affiliate status with the African Commission on Human and Peoples’ Rights, attend its sessions and provide or assist their governments to report regularly to the Commission”²⁹⁷. It also invited the African Union Commission, and in particular the Chairperson, to speak out on behalf of NHRIs to their respective governments, to provide them with “juristic, material and financial resources to enable them to effectively carry out their mandates”²⁹⁸. Finally the conference urged non-African states, international non-governmental organizations and the international community at large to recognize the legitimacy

²⁹¹ *ibid*

²⁹² Grand Bay(Mauritius) Declaration and Plan of Action,12-16 April 1999, para 15

²⁹³ *ibid* , para 23

²⁹⁴ Final Communiqué of First African Union Conference of National Human Rights Institutions 18th – 21st October 2004 Addis Ababa, Ethiopia

²⁹⁵ *ibid*

²⁹⁶ *ibid*, para 8

²⁹⁷ *ibid*, para 16

²⁹⁸ *ibid*, para 19

of NHRIs and the challenges they face and provide them with support to strengthen them²⁹⁹. It appears that since the AU does little beyond holding such conferences, the main responsibility of working with African NHRIs falls up on the ACHPR which is the main human rights body of the African Union.

4.2. The African Commission on Human and Peoples' Rights and NHRIs

Established by the African Charter on Human and Peoples' Rights which came into force on 21 October 1986 after its adoption in 1981 by the Assembly of Heads of State and Government of the Organization of African Unity (OAU.), the African Commission on Human and Peoples' Rights is charged with ensuring the promotion and protection of Human and Peoples' Rights throughout Africa³⁰⁰. The Charter provides for an eleven member independent African commission on Human and Peoples' Rights whose head quarter is in Gambia³⁰¹. The Commission is mandated to promote and protect human rights³⁰² and is charged with tasks which include: receiving reports from states on the measures they have taken to comply with the ACHPR³⁰³; making decisions on communications alleging violations of rights in the ACPHR which are submitted by individuals, NGOs and other bodies³⁰⁴; adopting resolutions on specific themes or regarding countries; holding seminars in cooperation with other bodies; and undertaking missions to state parties on a promotional or protective basis³⁰⁵.

It was as early as 1989 that the African Commission recognized the significance of national institutions which “help governments solve their national or local problems relevant to human rights, thus promoting a better awareness of issues related to Human Rights”³⁰⁶. The issue of NHRIs then

²⁹⁹ *ibid*, para 21

³⁰⁰ African Charter on Human and Peoples' Rights, art 30

³⁰¹ *ibid*, art 31

³⁰² *ibid*, art 45

³⁰³ *ibid*, art 62

³⁰⁴ *ibid*, art 47-59

³⁰⁵ *ibid*, art 45

³⁰⁶ ACHPR, Resolution on the establishment of committees on Human Rights or other Similar Organs at National, Regional or Sub Regional Level, 2nd Annual report, Annex VIII

became a common agenda in the sessions of the commission particularly since the 20th session in 1996. Since 1998 the African commission has established a formal place for NHRIs guided by its protective and promotional mandate stated under article 45 of the Charter as well as article 26 of the same which stipulates that State Parties shall have the duty to “allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter”. At the 21st session a document on the strengthening of cooperation between the commission and NHRIs was presented and this was given to two commissioners who would study the issue further and prepare a draft resolution on the advisory status of NHRIs³⁰⁷. In its 24th session in 1998, the proposal to offer NHRIs the opportunity to apply for affiliated status with the African commission was adopted³⁰⁸.

Taking in to account the “importance of the role on national institutions in the protection and promotion of human rights and in creating public awareness in Africa with regard to the institutional defense of human rights” the Resolution on Granting Observer /Affiliate Status to National Human Rights Institutions in Africa appreciated the moves by states to establish NHRIs³⁰⁹. It further recognized the right of each state to “establish, according to its sovereign prerogatives and within the most appropriate legislative framework, a national institution charged with the promotion and protection of human rights according to internationally recognized norms”³¹⁰. Underlining the significance of participation of African national institutions in the sessions of the ACHPR, the resolution noted the interest expressed by several institutions to be granted an observer status with the Commission and went ahead to grant “special observer status to any African national institution established in Africa and functioning according to internationally recognized norms and standards”³¹¹. Therefore, in as much as an NHRI fulfils one of the following, the resolution ensures that it shall be given an affiliate status:

“...the national institution should be duly established by law, constitution or by decree; that it shall be a national institution of a state party to the African Charter; that the national

³⁰⁷ Final communiqué Twenty-second Ordinary session of the African Commission on Human and Peoples’ Rights, November 1997, para 13

³⁰⁸ See ACHPR Resolution on the Granting of Observer Status to National human Rights Institutions in Africa, 1998

³⁰⁹ *ibid*, para 3

³¹⁰ *ibid*, para 2

³¹¹ *ibid*, para 4

institution should conform to the Principles Relating to the Status of National Institutions...; that a national institution shall formally apply for status in the African Commission.”³¹²

Once NHRIs are accorded with an affiliate/observer status, they have the right to be invited to sessions of the African Commission according to rule 6 of the Rules and Procedures of the ACHPR as well as be represented in public sessions of the Commission and its subsidiary bodies³¹³. They can also participate (although they do not have voting rights) in deliberations on issues which are of interest to them and submit proposals which may be put to the vote given that any one member of the commission requests such voting³¹⁴. In parallel to such rights, it is incumbent upon such NHRIs with observer status to submit reports to the Commission every two years on its activities with regard to the promotion and protection of the rights that are enshrined in the African Charter³¹⁵. As a general responsibility, the resolution requires that those NHRIs with an affiliate status shall be able to “assist the Commission in the promotion and protection of human rights at national level”³¹⁶. Presently, at the sessions of the commission, NHRIs are assigned with a separate sitting section and during debates they are allowed to speak after states and prior to NGOs on any agenda item in the public session with the exception of state reporting time³¹⁷. The recently adopted Rules of Procedure of the African Commission on Human and Peoples’ Rights states, under rule 63, that NHRIs with affiliate status “may request that the African Commission include in its agenda for an Ordinary Session a discussion on any human rights issue” sixty days in advance of the session.

However, following the advent of the status granting resolution, it has taken some time and discussion as to how to handle applications for affiliate status. Some of the first applications for such an observer status were deferred as a result of a possible confusion on the side of the commission with regard to establishing a procedure on how to examine an application for such a status³¹⁸. At first it was suggested that a subcommittee should examine applications and then pass it with its recommendation to the commission³¹⁹. However, the Commission chose to follow the approach it

³¹² *ibid*

³¹³ *ibid*

³¹⁴ *ibid*, para 5

³¹⁵ *ibid*, para 6

³¹⁶ *ibid*

³¹⁷ Murray, The role of National Human Rights institutions at the international and regional levels, p.49

³¹⁸ *ibid*, p. 50

³¹⁹ *ibid*

employs when receiving applications from NGOs³²⁰ who wish to get an observer status³²¹. The examination of applications is conducted in such a way that one commissioner handles the application who then presents It (as a rapporteur) to the public session of the Commission with a recommendation³²². The Commission then decides whether to grant, postpone or deny observer status after the other commissioners have commented on the recommendation of the rapporteur³²³.

Besides coming up with a resolution for affiliated status, the Commission has been doing a commendable job with regard to the establishment and strengthening of NHRIs. It has encouraged states to create a national institution where such institutions are absent. On the Resolution on the Establishment of Committees, it has invited state parties to the Charter to take appropriate measures to establish such institutions “where no national institutions as yet exist for the promotion and protection of human rights”³²⁴. Similarly, it requested state parties to facilitate the “establishment and improvement of appropriate national institutions for the protection and promotion of the rights and freedoms guaranteed by the charter” in accordance with article 26 of the same³²⁵. On another occasion, the commission urged states to “establish national or regional institutes for human and people’s rights responsible for conducting researches and studies in cooperation with the African Commission on Human and People’s Rights and for disseminating the knowledge and information” on Human rights³²⁶.

The commission also calls for states to consider establishing NHRIs during the examination of state reporting. Pursuant to Article 62³²⁷ of the African charter and other relevant legal instruments which supplement them, including the Protocol to the African Charter on the Rights of Women in Africa (Article 26), State Parties are expected to submit reports on the measures they have taken to give

³²⁰ See Resolution on the Criteria for Granting and Enjoying Observer Status to Non-governmental Organizations working in the field of Human Rights with the African Commission on Human and Peoples’ Rights, 1999

³²¹ Murray, above at note 317, p.50

³²² *ibid*

³²³ *ibid*

³²⁴ ACHPR, Resolution on the Establishment of Committees, above note 293, para 1

³²⁵ Sixth Annual Activity Report of the African Commission on Human and peoples’ Rights, , Annex VIII, 1992, para 3(b)

³²⁶ Recommendation on some modalities for promoting human and peoples’ rights, Second Annual Report of the African Commission on Human and Peoples’ Rights, Annex IX, para iii

³²⁷ Article 62 of the African charter provides that “Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter”

effect to the provisions of the African Charter and on the progress they have made³²⁸. Apart from states, institutions, organizations and other interested parties wishing to contribute to the examination of the Report, NHRIs are also at liberty to send their contributions, including shadow reports to the Secretary³²⁹. In addition, the rules of procedure of the commission provide that the secretary “may also invite specific institutions to submit information relating to the state report”³³⁰. During the consideration of the state report, the rules of procedure indicate that the Commission would explore all the pertinent information relating to the human rights situation in the State concerned, including statements and shadow reports from National Human Rights Institutions and NGOs³³¹. This makes it clear that the commission anticipates the involvement of NHRIs in the state reporting process.

The commission has raised the issue of NHRIs (as to whether the reporting states have established or have the intention to create NHRIs) during the examination of, for example, Mauritania’s, Swaziland’s and Egypt’s state report during its 37th session³³². Not only does the Commission urge establishment of NHRIs during state reporting, it also urges states to ensure that the institutions are independent and comply with the standards in the Paris Principles³³³, and also requires states to report on such issues on their reports³³⁴. To ensure the fact that African NHRIs are compliant to the Paris principles, rapporteurs of the African Commission do also contact national institutions during their visits to various countries³³⁵.

Apart from admitting NHRIs in the state reporting process, the Commission seems to have allowed national institutions to be able to submit individual communications to it. In line with its protective mandate, the African Commission is mandated (by Articles 47 –55 of the Charter) to consider complaints which may be brought both by State Parties and by entities or individuals other than State Parties; and to make recommendations to the State Party concerned and the Assembly of Heads of State and Government on measures to redress the human rights violation. Although the Charter and

³²⁸ Rules of procedure of the African Commission on Human and Peoples’ Rights(Revised),August 2010,rule 73

³²⁹ *ibid*, rule 74(2)

³³⁰ *ibid*, rule 74(4)

³³¹ *ibid*,75(5)

³³² Murray, above at note 317,p.52

³³³ On the report of the commission’s fact finding mission to Zimbabwe, it is noted that the state should strive to make its institutions credible and independent, Report of the Fact finding Mission to Zimbabwe, ACHPR, June 2002

³³⁴ Murray, above at note 317

³³⁵ *ibid*

the Commission's Rules of Procedure are silent with regard to persons who may bring Communication before it, the Commission has adopted an expansive approach to the concept to include NHRIs³³⁶. The jurisprudence of the Commission reveals that Communications have been filed by NHRIs regardless of their status with the Commission³³⁷.

4.3. The African Court on Human and People's Rights and NHRIs

The African Court on Human and Peoples' Rights was formally established to complement and reinforce the Commission by a Protocol adopted in 1998. The Protocol entered into force in 2004, and the Court finally came into being in 2006 when the first set of judges was appointed³³⁸. In 2008, African leaders voted to establish an African Court of Justice and Human Rights which would serve as the main judicial organ of the African Union (AU). While planning for the Court was still under way, the then Chairperson of the AU Assembly brought up an earlier idea of merging this Court with the African Court of Justice³³⁹. The AU's Constitutive Act identifies the African Court of Justice as the principal judicial organ of the AU and it was also in the process of being set up at the time of the suggestion³⁴⁰. Nevertheless, a Protocol establishing a merged court called the African Court of Justice and Human Rights was finally adopted by the AU Assembly³⁴¹. This merger agreement replaced the earlier Protocols establishing the two separate courts, and made clear that the merged Court will be the major judicial organ of the AU³⁴².

Unlike the protocols establishing the two earlier separate courts, the protocol on the Statute of the African Court of Justice and Human Rights clearly allows NHRIs to submit cases to the court. According to article 29 of this protocol, such entities as State Parties to the Protocol, the Assembly,

³³⁶ Network of African National Human Rights Institutions, *The Role of National Human Rights Institutions in Strengthening the African Commission on Human and Peoples' Rights*, 2009, p. 21

³³⁷ See Communication 74/92 Commission Nationale des Droit de l'Homme et des Libertés/Chad, 9th Annual Activity Report: 1995 -1996)

³³⁸ Sceats, *Africa's New Human Rights Court: Whistling in the Wind?*, Briefing Paper, Chatham House, 2009, P.4

³³⁹ *ibid*

³⁴⁰ *ibid*

³⁴¹ see Protocol on the Statute of The African Court of Justice and Human Rights

³⁴² *ibid*, art 2,

the Parliament (and other organs of the Union authorized by the Assembly) ,and staff members of the African Union are entitled to submit cases to the Court on any issue within the jurisdiction of the court³⁴³. On the other hand, some entities including NHRIs are entitled to submit cases to the Court on violations guaranteed by “the African Charter, by the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, or any other legal instrument relevant to human rights ratified by the States Parties concerned”³⁴⁴. The inclusion of NHRIs in this list of bodies appears to be a great step by the protocol in that African NHRIs can be able to bring their communications to the court without the need to come through other bodies such as the African Commission.

4.4. Network of African NHRIs

In addition to their involvement in the African Union, African NHRIs have also come up with a forum amongst themselves through which they co-ordinate their activities. African NHRIs have brought themselves together in various meetings and conferences which resulted in a number of crucial Declarations which led to the establishment and strengthening of a formal regional structure³⁴⁵. The Yaoundé conference, which was held in February 1996 and which was the first ever

³⁴³ Article 28 of protocol on the Statute of the African Court of Justice and Human Rights provides that: “The Court shall have jurisdiction over all cases and all legal disputes submitted to it in accordance with the present Statute which relate to: a) the interpretation and application of the Constitutive Act; b) the interpretation, application or validity of other Union Treaties and all subsidiary legal instruments adopted within the framework of the Union or the Organization of African Unity; c) the interpretation and the application of the African Charter, the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, or any other legal instrument relating to human rights, ratified by the States Parties concerned; d) any question of international law; e) all acts, decisions, regulations and directives of the organs of the Union; f) all matters specifically provided for in any other agreements that States Parties may conclude among themselves, or with the Union and which confer jurisdiction on the Court; g) the existence of any fact which, if established, would constitute a breach of an obligation owed to a State Party or to the Union; h) the nature or extent of the reparation to be made for the breach of an international obligation.”

³⁴⁴ *ibid*, art 30)

³⁴⁵ see Yaoundé Declaration, following the conference in February 1996, Durban Declaration, following the conference in July 1998, Lome Declaration, following the conference in March 2001, Kampala Declaration in august 2002, Abuja Declaration, following the conference in November 2005, Kigali Declaration following the conference in October 2007, Nairobi Declaration following the meeting in October 2008)

meeting for the African NHRIs, marked a prospect for establishment of the Coordinating committee of African NHRIs (CCANI). It was decided to create such a Committee which, in collaboration with the ICC and the UN center for Human Rights, would:

“...facilitate the activities of National institutions for mutual strengthening in the discharge of their respective mission; envisage other African meetings every two years alternating with international conferences; negotiate a proper representative status on the African commission on human and peoples’ rights, and support the efforts of the International coordinating committee in the search for National Institutions with the united nations bodies dealing with human rights issues”³⁴⁶.

With the rules of procedure for CCANI, the group was officially established in 2002. Article 2 of the rules of procedure states that the group is composed of all the African National Human Rights Institutions which are accredited or not by the International Co-coordinating Committee as long as they are registered at the permanent Secretariat of the Committee. The Committee is composed of eleven NHRIs from among African countries representing the five geographic regions of the continent, namely: Central Africa, East Africa, North Africa, Southern Africa and West Africa and representation is proportional to the number of NHRIs from each region provided that no region is represented by more than three members at a time³⁴⁷. Membership to the group however requires adherence to the Paris Principles. If in the majority opinion of the Committee, an institution does not comply with the Paris Principles or is not discharging its functions as a Member of the Committee, an ad hoc Committee will be established to investigate the matter and make a report to the Committee which in turn shall recommend whether to suspend the membership or take other steps to assist the Member³⁴⁸. The committee may go as far as making recommendation to the ICC Credential’s Committee to revisit the accreditation of the NHRI in question³⁴⁹.

During the 6th Conference of African National Human Rights Institutions held in Kigali in October 2007, the General Assembly of the Coordinating Committee signed the Constitution by which it has

³⁴⁶ Yaoundé Declaration ,First conference of African National Human Rights Institutions,1996, para 17

³⁴⁷ Rules of Procedure of The Coordinating Committee of African National Institutions for the Promotion and Protection of Human Rights, art 5

³⁴⁸ *ibid*, art 6

³⁴⁹ *ibid*, art 7

since been governed³⁵⁰. The signing of the Constitution not only saw a change in name of the coordinating body from the Coordinating Committee of African National Human Rights Institutions to the Network of African National Human Rights Institutions, but also introduced detailed rules of governance and specific objectives. The Network has as objectives to:

“Coordinate and arrange conferences, meetings, standing committees and commissions and other Networks; Raise funds, invite and receive donations and grants from any person; Take any steps that the Network considers expedient to procure contributions to the Network’s funds, by way of donations, grants, sponsorships or otherwise; Enter into any arrangements with any government or authority that seems conducive to the Network’s objectives, obtain from any government or authority any right, privilege or concession that the Network thinks it desirable to obtain, carry out, exercise and comply with any of those arrangements, rights, privileges and concessions; Do all other things that are incidental or conducive to attaining the Network’s objectives”³⁵¹.

With regards to membership, the constitution allows all national human rights institutions in the African Region that meet the requirements for membership and those subscribing to the present Constitution³⁵². The Network has 3 categories of members: Full members, Associate members and Observers³⁵³. National Commissions that fully comply with the Paris Principles may be admitted to the Network as Full Members while those striving to comply with the Paris Principles within a period of not more than two years may be admitted as Associate Members³⁵⁴. The last category consists of The Office of the United Nations High Commissioner for Human Rights, the International Coordinating Committee of National Human Rights Institutions, as well as African Networks working towards the protection and promotion of human rights who may be admitted to the Network as Observer Members. In addition to these, a National Commission which has applied for admission to the Network may be admitted as an observer member even if the request is still under consideration³⁵⁵. Although all the three types of members can seek assistance from the Network in its

³⁵⁰ See Constitution of the Network of African National Human Rights Institutions, 2007

³⁵¹ *ibid*, art 3

³⁵² *ibid*, art 5

³⁵³ *ibid*, art 6

³⁵⁴ *ibid*, art 7, 8

³⁵⁵ *ibid*, art 9

area of competence³⁵⁶, the Full Members have more rights in that they can vote at the ordinary and extra-ordinary sessions of the General Assembly and seek elective offices as well as exercise administrative and decision making authority³⁵⁷. Associate Members and observers can take part in the General Assembly session but they cannot vote or seek to be elected³⁵⁸.

A National Commission wishing to become a member of the Network does so by presenting an admission request to the Steering Committee of the Network. Such an institution should clearly indicate in the application whether the institution was established in compliance with the Paris Principles and ensure that its enabling legislation is in conformity with the constitution of the Network³⁵⁹. A Full Member may recommend the admission of another NHRI as an observer member provided that it justifies the national organization in question meets the requirements for observer status³⁶⁰. The Accreditation Committee then analyzes the request for membership and make its recommendations to the Steering Committee which makes a decision to admit as a full member, associate member or observer, or reject the request for admission³⁶¹. If the applicant is not satisfied with the decision taken by the Steering Committee, it is at liberty to lodge an appeal to the General Assembly³⁶².

The decision making organs of the Network are the General Assembly, the Steering Committee, the Accreditation Committee and the Network's office. The General Assembly is the highest organ of the Network and it is comprised of all the Network members represented by their agents³⁶³. The General Assembly of the Network is held once every two years in ordinary session during the biennial conference of the Network³⁶⁴. It is empowered to: define the general directions of the Network ; admit new members; and, in cases of appeal, rule on the complaints ; make decisions on expulsions mentioned in Articles 21 and 23 following the recommendations by the Steering Committee; amend the constitution; identify the location of the permanent secretariat; establish committees and ad hoc

³⁵⁶ *ibid*, art 17

³⁵⁷ *ibid*, art 16

³⁵⁸ *ibid*, art 18

³⁵⁹ *ibid*, art 10

³⁶⁰ *ibid*, art 11

³⁶¹ *ibid*, art 14

³⁶² *ibid*, art 15

³⁶³ *ibid*, art 26

³⁶⁴ *ibid*, art 28

bodies; set the amount of membership fees, annual subscriptions and contributions; elect the President and the Vice President of the Network; approve the budget and the financial statements of the Network; and approve reports of the Steering Committee and other Network organs³⁶⁵.

The Steering Committee and the Accreditation Committees are the other important organs of the network. The Steering Committee is mainly responsible for the general management of the Secretariat and appointment and supervision of the Executive Director and other Senior Staff of the Secretariat³⁶⁶. It is composed of nine members, being four outside office members and five elected from amongst the Full Members of the Network from each of the five regions³⁶⁷. The Steering Committee is also empowered to develop detailed rules to govern accreditation which “shall as far as possible be similar to the rules of the International Coordinating Committee”³⁶⁸. The Accreditation committee, on the other hand, has the responsibility to review and make recommendations to the Steering Committee on applications for membership to the Network, based on the rules of the International Coordinating Committee and its Sub-Committee on Accreditation³⁶⁹. The Accreditation Committee is comprised of five members who are nominated by each of the five regions of the Network at each General Assembly³⁷⁰.

Another important organ of the network is the Permanent Secretariat. A decision to establish a permanent secretariat for African NHRIs to be hosted by South Africa was taken as early as 2002 when the rules of procedure were adopted³⁷¹. With the advent of the constitution on 2007, the permanent secretariat of the Network was moved to Nairobi, Kenya and the permanent secretariat was decided to be independent of the national institution in the country where it is located³⁷². As an operational body of the network, the Permanent secretariat has such roles as: facilitating the co-ordination of activities of members of the Network; preparing and organizing meetings of the

³⁶⁵ *ibid*, art 27

³⁶⁶ *ibid*, art 34

³⁶⁷ *ibid*, art 35

³⁶⁸ *ibid*, art 46

³⁶⁹ *ibid*, art 43

³⁷⁰ *ibid*, art.44

³⁷¹ Kampala Declaration, Fourth Conference of African National Human Rights Institutions(2002),see preamble and para 5(I)

³⁷² Constitution of the Network of African National Human Rights Institutions, art 52

committees, the General Assembly, the biennial conference³⁷³; preparing projects of the Network; facilitating the establishment of national human rights institutions in conformity with the Paris Principles; keeping records of minutes and maintaining the archives of the Network; ensuring close co-operation with regional and international bodies working on human rights; drawing up a work plans of the Network; updating members of the activities and programs of the Network; and performing any other tasks that may be assigned by the Steering Committee³⁷⁴.

NANHRI has since its establishment worked not only to bring together all national institutions in the African region, but also to bring them to the attention of the African Union. The regional meetings and conferences it held over the years have called for an increased role for NHRIs in the African Commission on Human and People's Rights and the resolutions and declarations resulting out of the conferences have been transmitted to the ACHPR, UNHCHR and the ICC³⁷⁵. The network has on a number of occasions urged the ACHPR to adopt resolutions on the effective participation of NHRIs in the work of the commission³⁷⁶. It has also been at the same time urging NHRIs to apply for affiliated status from the ACHPR³⁷⁷ in order to improve African NHRIs' involvement in the undertakings of the Commission.

³⁷³ "The Network shall convene a conference every two years immediately, before or after the General Assembly of that year and the location of the meeting is rotated amongst the different regions of Africa", *ibid*, art 56

³⁷⁴ *ibid*, art 53

³⁷⁵ See Durban Declaration, second Conference of African National Human Rights Institutions(1998), para 14 ,and Lome Declaration, third Conference of African National Human Rights Institutions (2001) paraVII.1

³⁷⁶ Durban Declaration, second Conference of African National Human Rights Institutions (1998), para. 14

³⁷⁷ Lome Declaration, third Conference of African National Human Rights Institutions (2001) para. VII.1

5. Conclusions and Recommendations:

The way forward in the involvement of NHRIs in the AU system

It can be understood from the discussion under chapter three that the UN system has come a long way with regard to the involvement of NHRIs. In this final chapter, an attempt will be made to briefly discuss some of the lessons that could be learnt from the UN system which can help boost the participation of NHRIs in the AU system. The concluding remarks and recommendations thus focus on the AU system in general and on the human rights mechanisms of the AU in particular.

5.1. AU Commission/Assembly

The AU, since its advent in 2001, has placed the subject of NHRIs on its agenda on a better level compared to its predecessor, the OAU. Although much of AU's work in relation to NHRIs is limited to rhetorics, its recognition of NHRIs can be considered a step ahead. As pointed out in the preceding chapter, the AU has, from the outset: underscored the importance of NHRI, urged member states to establish and strengthen them, and at the continental Organization's level, underlined the necessity for co-operation between NHRIs and the ACHPR.

Although such efforts are not to be overlooked, more could be done with regard to involving NHRIs with in the general system of the AU. It is, for example, not clear what status NHRIs have in the African Commission or the AU assembly. NHRIs are not mentioned in the Rules of Procedure of the Assembly of the African Union.

In this regard, there are some lessons to learn from the UN-GA which has repeatedly recognized the role played by NHRIs. Its recognition and encouragement of NHRIs "...to participate in and to contribute to deliberations in all relevant United Nations mechanisms and processes"³⁷⁸ is showing enough as to the attention it accords to the involvement of NHRI. To ensure their effective

³⁷⁸ General Assembly Resolution 68/171, para. 13

contribution in the UN system, the UN-GA is also exploring possibilities for the independent participation of NHRIs in all relevant United Nations mechanisms and processes.

It is important that the AU commission explores possibilities for all Paris Principle compliant NHRIs to take part in all relevant mechanisms and processes including the AU Assembly as independent bodies.

5.2. African Commission on Human and Peoples' Rights (ACHPR)

The ACPHR, as discussed in chapter three, has accorded commendable attention to cooperation with NHRIs. It has always encouraged states to create a national institution where such institutions are absent and take appropriate measures to strengthen them. Since the adoption of the Resolution on Granting Observer /Affiliate Status to NHRIs in 1998, the ACPHR has opened its doors to NHRIs to take part in its proceedings. NHRIs are also allowed to send in their contributions, including shadow reports, to the Secretary. Apart from admitting NHRIs in the state reporting process, the Commission has allowed NHRIs to be able to submit complaints on human rights violations.

With regard to status, it is important that the ACHPR ,taking lessons from the UN HRC, clearly specifies that NHRIs have permission to speak under all items of the its agenda, and that they are allocated with dedicated seating in the Commission. Other lessons to be taken form the HRC include: permission to issue documents as official AU documents under their own symbol; and the provision of necessary assistance for holding meetings of the African Network of NHRIs, during the sessions of the Commission and for other continental and regional meetings.

Another area where ACHPR should focus on has to do with the accreditation of NHRIs. As discussed earlier, the Resolution granting Affiliate /Observer Status to African NHRIs grants the right for a special observer status to any African NHRI functioning according to internationally recognized norms and standards. However, there does not seem to be a well functioning system of accreditation. Gilbert Sebihogo, executive director of Network of African NHRIs notes that:

[T]here is a pressing need to adhere to a strict regime of granting affiliate status. A status granted to an NHRI should reflect its true capacity to effectively promote and

protect human rights on the continent. Adherence to a rigorous system of granting status is one credible way of making different NHRIs strive towards true excellence in discharging their duty³⁷⁹.

It cannot be more emphasized that a credible and strict process of accreditation is advantageous in creating legitimate and strong NHRIs. The ACHPR, apart from its expectation that NHRIs meet international standards, should clearly stipulate accreditation as a precondition for admission of NHRIs into its sessions and workings. As already mentioned the Human Rights Commission resolution 2005/74 stressed accreditation as an important criterion for NHRIs' participation. It also put accreditation as a license in order for NHRIs to address the commission under all agenda items to secure a dedicated seat. The UN HRC requires that any NHRI should pass through the rigorous process of ICC's accreditation. The ACPHR, thus, has the option to put ICC accreditation as a prerequisite or conduct an accreditation process of similar standard with that of ICC. This way, African NHRI's would strive to truly achieve Paris Principle requirements and their eventual accreditation would certainly reflect their capacity. As long as NHRIs participating in ACHPR processes are not well functioning, they would only play a nominal role in the Commission's system and be less helpful in the protection and promotion of human rights in the continent.

Finally, ACHPR should look in to possibilities of promoting the establishment and strengthening of NHRIs through out the continent. Providing financial, technical and logistic support to NHRIs and the network of African NHRIs should be high on the agenda of the Commission. The creation of truly Paris Principle compliant NHRIs requires a strong commitment from ACPHR, the biggest human rights body of the AU, in supporting such institutions in every way possible.

5.3. Review and Evaluation Mechanisms

Another area where the involvement of NHRIs in the UN HRC, particularly the Universal Periodic Review and Special procedures, can serve as a model is the review mechanisms in the AU system. The APRM and the evaluation process contained in the African Charter on Democracy, Elections and

³⁷⁹ Statement of Gilbert Sebihogo, Executive Director of NANHRI, 54th Ordinary Session of ACHPR, Banjul, Gambia, 22nd October – 5th November, 2013

Governance could highly benefit from the active involvement of NHRIs in the UPR and Special Procedures.

The African Peer Review Mechanism (APRM) is a voluntary self-monitoring mechanism which aims to ensure that the policies and practices of participating states conform to the values and standards contained in the 2002 Declaration on Democracy, Political, Economic and Corporate Governance³⁸⁰. The first stage of the Review involves a study of the political, economic and governance and development environment in the country to be reviewed, based on the background documentation prepared by various national and regional organs including the APRM Secretariat³⁸¹. Although NHRIs are not specifically mentioned, it can be assumed that they are among the national institutions which provide input to the review which serve as background documents.

Again, despite the absence of a specific mention of NHRIs, it can be assumed that they are included among the organs that work with the Review Team in the second and third stages of the review. During the visit of the Review Team to the Country in question, various governmental and non governmental bodies are mentioned as targets of the consultations to be conducted during the second stage³⁸². The information provided by the “official and unofficial sources” during the consultations serves as a basis for the Report to be prepared by the Review Team at the third stage³⁸³. In all the stages, NHRIs are possibly welcome to get involved during collection of background material, at the country consultations of the country to be reviewed, and indirectly in the report preparation.

Similarly, the evaluation process included in the African Charter on Democracy, Elections and Governance (ACDEG) can be understood to involve NHRIs although no reference is made about such institutions. The Charter provides that ACHPR shall coordinate evaluation of the Charter with other organs including “appropriate national-level structures”³⁸⁴.

Although a wide interpretation of the above provisions could mean that the involvement of NHRIs is permissible in the APRM and ACDEG processes, it will be important to clearly make reference to

³⁸⁰ African Peer Review Mechanism (APRM), Base Document, art. 1,2

³⁸¹ *ibid*, art. 18

³⁸² *Ibid*, art 19

³⁸³ *Ibid*, art 20

³⁸⁴ African Charter on Democracy, Elections and Governance, art 45

NHRIs and lay down a specific mode of involvement for NHRIs. The APRM Base Document or a possible future document on Rules of procedure could be used to introduce such improvements. As pointed out earlier, the UPR and Special Procedures can serve as helpful models in this regard. The immense role of NHRIs in the UPR and Special Procedures is made possible owing to the clear rules of procedure that entitle NHRIs to a deserved involvement from the outset of the process up to the follow up stages.

5.4. Treaty Bodies

The ACHPR and the APRM, discussed in the foregoing sections, and other Treaty Bodies of the AU such as African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Advisory Board on Corruption (ABC), have much to learn from the practice of the UN Treaty Bodies in relation to NHRIs. African NHRIs can play a vital role in the ratification of human rights treaties by encouraging State ratification and sensitizing the public to bring pressure on the State. Treaty bodies can thus involve NHRIs in a way that the latter can engage smoothly in such endeavors. AU Treaty bodies can also encourage national institutions to contribute in the state reporting process (by influencing states) and also present their own reports. Equally important are measures to boost the role of NHRIs to follow up the recommendations and decisions of the treaty bodies.

It is important that AU treaty bodies included the issue of NHRIs in their Recommendations and raise relevant questions to states regarding NHRIs. Treaty bodies should be able to: question the Independence of the institutions; urge governments to increase resources accorded to NHRIs and to provide more information on their reports; advocate for enhancement of the roles and powers of the NHRIs; encourage the establishment of NHRIs with specific mandates related to the particular treaty; and call on governments to comply with recommendation of NHRIs.

Finally, in the effort to involve NHRIs in the workings of AU treaty bodies, both NHRIs and AU treaty bodies could benefit much from a unified approach to be followed by all AU treaty bodies. Drawing single rules of procedure that applies through out the AU treaty body machinery will help in harmonizing the approaches of the various treaty bodies towards NHRIs.

5.5. Summary Conclusion

The thesis was set out to explore to what extent the UN system could be adapted to the system of the African Union or vice versa. As it is clear by now, there is a more developed system of NHRI involvement in the UN than the AU. The wide range of opportunities for NHRIs to take part in various processes and mechanisms of the UN can set an example to any of the regional organizations including the AU.

Having described the evolution, types and functions of NHRIs in the second chapter, I have tried to present the nature of the involvement of NHRIs in the UN and AU systems in the second and third chapters respectively. It can be noted that, apart from the widening space for NHRIs in the general processes and mechanisms of the UN, the possibility for NHRIs' involvement in the human rights mechanisms is worth learning from. With all its shortcomings, the UN system of NHRIs is moving forward with an encouraging pace.

The story is different when it comes to the AU and African NHRIs. It seems that, lately, nothing much is happening within the AU to involve NHRIs in the general mechanisms as well as the human rights processes. Although the ACHPR, the biggest treaty body and human rights organ of the AU has put in place a declaration granting an observer status to NHRIs, there seem to be shortcomings when it comes to implementation. As already mentioned earlier, the way NHRIs are admitted into the ACHPR sessions does ensure the presence of well functioning NHRIs. This is mainly because there is no rigorous system of accreditation for NHRIs and the manner by which NHRIs are granted the observer status does not reflect their true capacity. This creates the danger of involving less legitimate and ineffective NHRIs thereby slackening the influence of NHRIs at both the AU and national levels.

Apart from the ACPHR, all other treaty bodies and human rights organs have not yet clearly set rules and procedures by which NHRIs can participate in their workings. This is problematic in that it reduces the potentially vital role that NHRIs can play in the process of interaction between these AU organs and AU member states. In addition, the AU has a long way to go with regard to working together with the African Network of NHRIs and individually with each African NHRIs in terms of providing financial, technical, and other resources. Although the AU is an underfunded organization itself, it will be important for the AU to assume the leadership role in organizing internal and external support to African NHRIs and their network.

Generally, in order to affect real progress in the area of the protection and promotion of human rights in the African continent, the potential monumental role of African NHRIs should not be underestimated. This requires a concerted effort on the part of AU member states at the national level and the AU at the continental level. Taking relevant lessons from the practice of the UN General Assembly, the Human Rights Council and the various UN treaty bodies will be an important step forward for the AU.

Bibliography

Books and Articles

Boyle, Kevin (ed.), *New Institutions for Human Rights Protection* (Oxford, 2013)

Burdekin, Brian, *National Human Rights Institutions in the Asia-Pacific Region* (Martinus Nijhoff, 2007)

Bösl, Anton (ed.) and Diescho, Joseph (ed.), *Human Rights in Africa, Legal Perspectives on their Protection and Promotion* (Macmillan Education Namibia, 2009)

Gregory, Roy and Giddings, Philip, *Fighting Wrongs, The Ombudsman in Six Countries* (IOS Press, 2000)

Hossain, Kamal et al, *Human Rights Offices and Ombudsman Offices: National Experiences throughout the World* (Kluwer Law International, 2000)

Kjaerum, Morten, *National Human Rights Institutions Implementing Human Rights* (Danish Institute for Human Rights, 2003)

Lindsnaes, Brigit et al (eds.), *National Human Rights Institutions, Articles and Working Papers, Input to the Discussion on the Establishment and Development of the Functions of National Human Rights Institutions* (The Danish Centre for Human Rights, 2001)

Murray, Rachel, *The Role of National Human Rights Institutions at the International and Regional Levels: The African Experience* (Oxford: Hart Publishing, 2007)

Müller, Amrei and Seidensticker, Frauke, *Handbook on the Role of National Human Rights Institutions in the United Nations Treaty Body Process* (German Institute for Human Rights, 2007)

Pohjolainen, Anna-Elina, *The Evolution of National Human Rights Institutions: the Role of the United Nations* (The Danish Institute for Human Rights, 2006)

Ramcharan, Bertrand G (ed.), *The Protection Role of National Human Rights Institutions* (Martinus Nijhoff Publishers, 2005)

Reif, Linda C., *The International Ombudsman Anthology: selected writings from the International Ombudsman Institute* (Kluwer Law International, 1999)

Reif, Linda C., 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection', 13:1 *Harvard Human Rights Journal* (2000), pp. 1-69

Reif, Linda C. (ed.), *The Ombudsman, Good Governance, and the International Human Rights System* (Martinus Nijhoff Publishers, 2004)

Sceats, Sonya, *Africa's New Human Rights Court: Whistling in the Wind? Chatham House Briefing Paper*, (Chatham House, 2009)

Wouters, Jan (ed.) and Meuwissen, Katrien (ed.), *National Human Rights Institutions in Europe Comparative, European and International Perspectives* (Intersentia, 2013)

Zimble, Daniel Shea and Akokpari, John, *Africa's Human Rights Architecture* (Jacana Media, 2008)

Reports, Position Papers, Discussion Papers and other Publications

African Commission on Human and Peoples' Rights, *Report of the Fact finding Mission to Zimbabwe*, DOC/OS(XXXIV)/346a (June 2002)

African commission on Human and peoples' Rights, *Sixth Annual Activity Report of the African Commission on Human and Peoples' Rights*, ACHPR/RPT/6th (1992-93)

African Commission on Human and Peoples' Right, *Statement of the Executive Director of Network of African National Human Rights Institutions at the 54th Ordinary Session* (Banjul, Gambia 22nd October – 5th November, 2013), available at: http://www.achpr.org/sessions/54th/speeches/nhri_opening-_statement/

Commonwealth Secretariat, *National Human Rights Institutions: Best Practice* (London: Commonwealth Secretariat, 2001)

Coordination Committee of Special Procedures, *Internal Advisory Procedure to Review Practices and Working Methods*, 25 June 2008, available at: http://www.ohchr.org/Documents/HRBodies/SP/IA_P_WorkingMethods.pdf

Human Rights Watch, *Protectors or pretenders? Government Human Rights commissions in Africa*, 2001, available at: <http://www.hrw.org/legacy/reports/2001/africa/>

International Coordinating Committee of National Human rights Institutions , National Human Rights Institutions and the UN Human Rights Council– Volume III: *Engagement of National Human Rights Institutions with the Universal Periodic Review Mechanism* (Copenhagen: Danish Institute for Human Rights, 2007)

International Coordinating Committee of National Human rights Institutions, National Human Rights Institutions and the UN Human Rights Council – Volume IV: *Engagement of National Human Rights Institutions with the Special Procedures*(Copenhagen: Danish Institute for Human Rights,2007)

International Coordinating Committee of National Human rights Institutions, *Report and Recommendations of the Sub-committee on Accreditation of ICC*, 14-15 April 2005

Network of African National Human Rights Institutions, *The Role of National Human Rights Institutions in Strengthening the African Commission on Human and Peoples' Rights* (Nairobi: Network of African National Human Rights Institutions ,2009)

Office of the High Commissioner for Human Rights, *Discussion Paper on Interaction between National Human Rights Institutions and Special Procedures*, June 2007 available at: <http://www.ohchr.org/Documents/Countries/NHRI-SP.pdf>

Office of the High Commissioner for Human Rights ,Proposals for the interaction between NHRIs and SPs, Annex to Office of the High Commissioner for Human Rights, *Discussion Paper on Interaction between National Human Rights Institutions and Special Procedures*, June 2007, available at: <http://www.ohchr.org/Documents/Countries/NHRI-SP.pdf>

United Nations, Center for Human Rights, *National Human Rights Institutions, A Handbook on the Establishment and strengthening of National Institutions for the Promotion and protection of Human Rights*, Professional Training Series No 4 (Geneva: United Nations, 1995)

United Nations, Economic and Social council, *Effective Functioning of Human Rights mechanisms: National Institutions and Regional Arrangements: Report of the Secretary General*, E/CN.4/2006/101 (24 January 2006)

United Nations, Economic and Social Council, *Enhancing the Participation of National Human Rights Institutions in the Work of the Commission for Human Rights: Report of the Secretary General*, E/CN.4/2005/107 (19 January 2005)

United Nations, Economic and Social Council, *National Institutions for the Promotion and Protection of Human Rights: Report of the second International Workshop on National Institutions for the Promotion and Protection of Human Rights*, E/CN.4/1994/45, (23 December 1993)

United Nations, General Assembly, *Human Rights Questions: Human Rights Questions, including Alternative Approaches for Improving the Effective Enjoyment of human Rights and Fundamental Freedoms, National Institutions for the Protection and promotion of Human Rights: Report of the Secretary General*, A/50/452(20 September 1995)

United Nations, General Assembly, *National Institutions for the Promotion and Protection of Human rights, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General*, A/HRC/13/44(15 January 2010)

United Nations, General Assembly, *National Institutions for the Promotion and Protection of Human Rights: Report of the UN Secretary General*, A/HRC/27/39 (30 June 2014)

United Nations, General Assembly, *Outcome of the Review of the Work and Functioning of the United Nations Human Rights Council*, Annex to Human Rights Council resolution 16/21, Review of the work and functioning of the Human Rights Council, A/HRC/RES/16/21(12 April 2011)

United Nations, General Assembly, *Report of the United Nations High Commissioner for Human Rights*, A/50/36 (2 November 1995)

United Nations, International Human Rights Instruments, *Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies*, HRI/MC/2007/3 (7 February 2007)

United Nations, International Human Rights Instruments, *Draft Harmonized Approach to National Human Rights Institutions engagement with Treaty Body Processes*, Annex to United Nations, International Human Rights Instruments, *Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies*, HRI/MC/2007/3 (7 February 2007)

International Instruments

Commission on Human Rights Resolution 1994/54, *National Institutions for the Promotion and Protection of Human Rights*, E/CN.4/1994/132 (4 March 1994)

Commission on Human Rights Resolution 1999/72, *National Institutions for the Promotion and Protection of Human Rights* (28 April 1999)

Commission on Human Rights Resolution 2005/74, *National Human Rights Institutions for the Promotion and Protection of Human Rights*, E/CN.4/2005/L.10 (20 April 2005)

General Assembly Resolution 60/251, *Human Rights Council*, A/RES/60/251 (3 April 2006)

General Assembly Resolution 66/169, *National Institutions for the Promotion and Protection of Human Rights*, A/RES/66/169 (11 April 2012)

General Assembly Resolution 68/171, *National institutions for the promotion and protection of Human rights*, A/RES/68/171 (23 January 2014)

General Assembly Resolution 65/281, *Review of the Human Rights Council*, A/RES/65/281 (17 June 2011)

Human Rights Council Resolution 5/1, *Institution-building of the United Nations Human Rights Council*, A/HRC/RES/5/21 (18 June 2007)

Human Rights Council resolution 20/14, *National institutions for the promotion and protection of human rights*, A/HRC/Res/20/14 (16 July 2012)

Human Rights Council resolution 16/21, *Review of the work and functioning of the Human Rights Council*, A/HRC/RES/16/21(12 April 2011)

Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (the Paris Principles), Adopted by General Assembly Resolution 48/134 (20 December 1993)

Rules of Procedure of the International Coordinating Committee for National Human Rights Institutions (14 April 2008)

Statute of the International Coordinating Committee for National Institutions (Amended), 30 July 2008

Vienna Declaration and Program of Action, Adopted by the World Conference on Human Rights in Vienna (25 June 1993)

African Instruments

Abuja Declaration, Fifth Conference of African National Human Rights Institutions (2005), Available from http://www.nanhri.org/index.php?option=com_phocadownload&view=category&id=2&Itemid=631&lang=en

African Charter on Democracy, Elections and Governance, Adopted by the Eighth Ordinary Session of the Assembly on 30 January 2007

African Charter on Human and Peoples' Rights, Adopted in Nairobi 27 June 1981,
Entered into Force 21 October 1986

African Commission on Human and Peoples' Rights , *Resolution on the Criteria for Granting and Enjoying Observer Status to Non-governmental Organizations working in the field of Human Rights with the African Commission on Human and Peoples' Rights*, ACHPR /Res.33(XXV)99 (5 May 1999)

African Commission on Human and peoples' Rights, *Resolution on the establishment of committees on Human Rights or other Similar Organs at National, Regional or Sub Regional Level* (April 1989)

African Commission on Human and Peoples' Rights, *Resolution on the Granting of Observer Status to National human Rights Institutions in Africa*, ACHPR/Res.31 (XXIV)98 (31 October 1998)

African Peer Review Mechanism (APRM), Base Document (2003), accessed from <http://aprm-au.org/document/aprm-base-document-0>

Africa Union, *Final Communiqué of First African Union Conference of National Human Rights Institutions*, Addis Ababa, Ethiopia ,18th – 21st October 2004

Conference on Security, Stability Development and Cooperation in Africa(CSSDCA), Memorandum of understanding on Security, Stability, Development and Cooperation in Africa, section I (core values),a-x.

Durban Declaration, Second Conference of African National Human Rights Institutions (1998), Available from :http://www.nanhri.org/index.php?option=com_phocadownload&view=category&id=2&Itemid=631&lang=en

Grand Bay (Mauritius) Declaration and Plan of Action, Adopted at Grand Bay, Mauritius on 16 April 1999

Kampala Declaration, Fourth Conference of African National Human Rights Institutions, (2002), Available from http://www.nanhri.org/index.php?option=com_phocadownload&view=category&id=2&Itemid=631&lang=en

Kigali Declaration, Sixth Conference of African National Human Rights Institutions (2007), Available from http://www.nanhri.org/index.php?option=com_phocadownload&view=category&id=2&Itemid=631&lang=en

Lome Declaration, Third Conference of African National Human Rights Institutions (2001), Available from http://www.nanhri.org/index.php?option=com_phocadownload&view=category&id=2&Itemid=631&lang=en

Nairobi Declaration, Seventh Conference of African National Human Rights Institutions (2008), Available from http://www.nanhri.org/index.php?option=com_phocadownload&view=category&id=2&Itemid=631&lang=en

Protocol on the Statute of The African Court of Justice and Human Rights, adopted at the AU Summit in Sharm El-Sheikh, on 1 July 2008

Rules of procedure of the African Commission on Human and Peoples' Rights (Revised), August 2010

Yaoundé Declaration, First Conference of African National Human Rights Institutions (1996), Available from http://www.nanhri.org/index.php?option=com_phocadownload&view=category&id=2&Itemid=631&lang=en

Websites

United Nations, Office of the High Commissioner for Human rights, Monitoring the core international human rights treaties (2014), Available at <http://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx>

United Nations, Office of the High Commissioner for Human Rights, OHCHR and NHRIs (2015), Available from <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>

United Nations, Office of the High Commissioner for Human Rights, Special Procedures of the Human Rights Council (2014), available from <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

United Nations, Office of the High Commissioner for Human Rights, United Nations Human Rights Council (2014), available from <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>