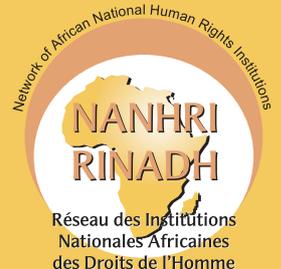


# WORKSHOP REPORT

**Role of NHRIs in the Implementation of the Decisions of the African Commission on Human and Peoples Rights and the Judgments of the African Court on Human and Peoples Rights**



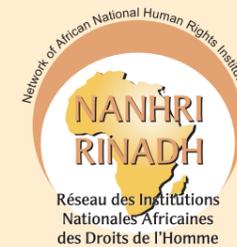


## WORKSHOP REPORT

### Role of NHRIs in the Implementation of the Decisions of the African Commission on Human and Peoples Rights and the Judgments of the African Court on Human and Peoples Rights

Banjul, the Gambia  
20-21 October 2016

Jointly organized by:



Network of African National Human Rights Institutions



Department of Political Affairs of the African Union Commission

Supporting partners:



## The Network of African National Human Rights Institutions (NANHRI)

The Network of African National Human Rights Institutions (NANHRI) is a not-for-profit- organization and regional umbrella body that brings together 44 National Human Rights Institutions (NHRIs) in Africa. NANHRI, whose Secretariat is based in Nairobi, Kenya, is registered under Kenyan laws as an independent legal entity. It has been operational since 2007.

The Network works towards the establishment and strengthening of the NHRIs in Africa. It also facilitates coordination and cooperation amongst NHRIs and links them with other key human rights actors at the regional and international level. It supports these institutions through capacity building to meet their objective of protecting and promoting human rights at the national level.

### Vision

A continent with effective NHRIs; contributing to an enhanced human rights culture and justice for every African.

### Mission

To support, through national, regional and international co-operation, the establishment and strengthening of NHRIs to more effectively undertake their mandate of human rights promotion, protection, monitoring and advocacy.

### Values and Guiding Principles

To achieve its mission and vision, NANHRI is committed to the following: -

Transparency, Accountability, Openness, Cooperation, Professionalism and Gender Equality

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*Group photo with the participants of the workshop*

## LIST OF ABBREVIATIONS AND ACRONYMS

<b>ACHPR</b>	African Commission on Human and People's Rights
<b>AfCHPR</b>	African Court on Human and People's Rights
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>DPA</b>	Department of Political Affairs of the African Union Commission
<b>HRSA</b>	Human Rights Strategy for Africa
<b>NANHRI</b>	Network of African National Human Rights Institutions
<b>NHRI</b>	National Human Rights Institution
<b>OIF</b>	Organisation Internationale de la Francophonie
<b>OSJI</b>	Open Society Justice Initiative



## EXECUTIVE SUMMARY

On October 20-21, 2016, NANHRI and DPA/AUC hosted a two-day workshop on the implementation of AU human rights organs' decisions by the African human rights institutions at the Senegambia Hotel, in Banjul the Gambia. The workshop was part of the activities held jointly between NANHRI and the DPA/AUC following the signing of a memorandum of understanding between the two institutions to guide collaboration and partnership on human rights and related issues of mutual interests.

Besides the fundamental role of implementation of the African Charter on Human and Peoples' Rights by the member states, the Charter entrusts African Commission on Human and Peoples' Rights (ACHPR) and the African Court on Human and Peoples' Rights (AfCHPR) with the mandate to investigate and adjudicate human and peoples' rights violations respectively. They are also expected to safeguard the enjoyment of human rights and fundamental freedoms in all the AU member states. The Charter, however, provides specific responsibilities to all the AU-member states at the national level to recognize the rights, duties and freedoms that are enshrined in the Charter and to adopt all the necessary legislative and other administrative and policy measures to give implementation effect to the provisions of the Charter.

However, a formidable gap exists between the recommendations and judgments made by ACHPR and AfCHPR respectively, and the efforts made by States at the national level to implement them. This gap can nonetheless be reduced if actors, specifically in this context, the National Human Rights Institutions (NHRIs) effectively play a role in coordinating and strengthening national efforts to implement findings.

It is in the context of the foregoing among other explanations that the African Union Commission

and the Network of the African National Human Rights Institutions (NANHRI) under their MoU on Promotion and Protection of Human and Peoples' Rights in Africa, in collaboration with the Open Society Justice Initiative (OSJI), the Human Rights Implementation Centre of the University of Bristol and the *Organisation Internationale de la Francophonie* (OIF) developed the "Guidelines on the Role of National Human Rights Institutions in Monitoring Implementation of Recommendations of the African Commission on Human and Peoples' Rights and Judgments of the African Court on Human and Peoples' Rights".

As a follow up to this development, NANHRI and the African Union Commission organized the two-day workshop aimed at enhancing the capacity of the NHRIs members to pro-actively engage in the implementation of the recommendations and judgments of the ACHPR AND the AfCHPR at the national level, as well as to encouraging cooperation among NHRIs with International and Regional Mechanisms.

The workshop focused on the Guidelines, and how the NHRIs can utilize them to enhance their work on implementation of the findings of the regional human rights mechanisms within their jurisdiction.

The workshop made recommendations to further improve the role of the NHRIs in monitoring the implementation of the decisions of the AU human rights bodies. Mostly, these were regarding the flow of information and the strengthening of the interaction between the regional bodies and national institutions.

## BACKGROUND

The establishment of human rights bodies is a significant milestone in the evolution of initiatives to promote and protect human rights, justice and the rule of law in Africa. An integrated regional human rights system involving the regional and national systems brings value to the human rights discourse.

The African Charter on Human and People's Rights (Art. 45,1,c) provides for cooperation of these bodies with the other African and international institutions concerned on promotion and protection of human and peoples' rights in Africa.

The Human Rights Strategy for Africa (HRSA), under its objective four (4) clearly states that HRSA is part of a broader process to establish greater coordination amongst AU organs such as the Commission and the Court and calls for strengthening the collaboration on the implementation of decisions of African human rights bodies.

The 2011-2016 Action Plan of the HRSA, Output 4 highlights effective implementation of human rights instruments and decisions as one of the key focus areas to be realized.

Unfortunately, an implementation crisis has and continues to affect negatively these human rights bodies charged with the promotion and protection of human rights at all levels in the continent.

Over the years, many states that have accepted the jurisdiction of the Charter have not sufficiently developed the domestic infrastructure required for the effective implementation of the recommendations and judgments made by these human rights bodies despite the fact that the Charter provides specific responsibilities to African Union (AU) member states to give effect

to the African Charter at the domestic level.

Therefore, there is an urgent need for a paradigm shift from the sole focus on the state towards a multi-stakeholder process based on a constructive dialogue between various stakeholders. The recommendations and judgments should be regarded as an entry point for engaging various actors at the national level on a particular human rights violation.

Hence, the various actors at the national and regional levels should work together with the government to resolve the identified human rights violations. Even though the implementation process is the primary responsibility of the state, NHRIs have a critical role to play in the process. Three critical responsibilities of the NHRIs as provided within the framework of the African Human Rights System are: (i) to promote and ensure the harmonization of national legislation and practices with the international human rights instruments to which the state is a party; (ii) to encourage ratification of the above-mentioned instruments or accession to those instruments; and (iii) to ensure their effective implementation. From the foregoing, monitoring implementation of the findings by various actors at the national level is considered a key responsibility of the NHRIs emanating from their respective mandates. NHRIs are therefore increasingly being recognized nationally and internationally as essential mechanisms to ensure respect for the effective implementation of international human rights standards at the national level by virtue of their central position.

## WORKSHOP OBJECTIVES

The overall objective of the Workshop was to enhance the institutional capacity of African NHRIs in the implementation processes of the regional human rights mechanisms.

Specific objectives were: (i) To familiarize the NHRIs with the implementation processes and procedures of the ACHPR and the AfCHPR; (ii) To equip NHRIs with practical knowledge on the use of the guidelines to monitor the implementation process at the national level; (iii) To explore ways of integrating the implementation process into the work of the NHRIs at the national level; and (iv) To explore entry points and develop a framework for collaboration between NHRIs and other actors on the implementation processes and procedures.

## EXPECTED WORKSHOP OUTPUT

The Workshop was expected to result to: (i) create consensus and commitment by African NHRIs leadership to develop a strategy for effective implementation process; and (ii) develop action points for collaboration with the African Human Rights Mechanisms identified.

## WORKSHOP PARTICIPATION

The Workshop was attended by the Honorable Commissioners, Judges and Representatives of African Union Commission, African Commission on Human and People's Rights, African Court on Human and People's Rights, African Committee of Experts on the Rights and Welfare of the Child, National Human Rights Institutions, Civil Society Organizations and Development Partners respectively.

## METHODOLOGY

The two-day workshop was facilitated by human rights practitioners with extensive experience with the Regional Human Rights Mechanisms. The workshop sessions entailed: oral expert presentations, participation in working groups and discussions and the plenary discussions between participants and facilitators. Practical cases in countries where cases have been determined by the AU human rights bodies were discussed to assess the applicability of the guidelines to the specific contexts.



Participants follow workshop proceedings during the opening session

## CONTENTS/ RECORD OF WORKSHOP DELIBERATIONS



Dr Khabele, the Director of DPA/AUC moderating the opening session of the workshop

## OPENING SESSION

### Remarks by Mr Gilbert Sebihogo – Executive Director of NANHRI Secretariat



Mr Sebihogo making remarks at the opening session

Mr Gilbert Sebihogo began his remarks by thanking the Representatives of the African Union Commission Organs, Representatives of National Human Rights Institutions, Representatives of the Civil Society Organisations and Representatives of Development Partners for their attendance in the workshop. He noted that the workshop was part of the Network of African National Human Rights Institutions' activities to celebrate the African Year of Human Rights with

Particular Focus on the Rights of Women.

Mr Sebihogo also indicated that the Network was concerned that implementation crisis has continued to affect negatively the effectiveness of the human rights bodies charged with the promotion and protection of human rights at all levels in the continent. In addition, many states have not sufficiently developed the domestic infrastructure required for the effective implementation of the findings made by these human rights bodies despite the fact that the Charter provides specific responsibilities to African Union (AU) member states to give effect to the African Charter at domestic level.

He ended his remarks with a call for practicable actions to be taken towards enhancing the capacities of African NHRIs to influence the implementation of African Commission's and Court's decisions so as to contribute to the improvement of the human rights situation in Africa.

### Remarks by Ms. Delphine Matsumoto, the Representative of the Organisation Internationale de la Francophonie (OIF)

In her remarks, Ms. Delphine underscored the importance of promoting and protecting human rights as the best tool to promote justice, the



*Ms. Matsumoto making remarks at the opening session*

alleviation of conflicts, and the advancement of the rule of law. She mentioned that OIF, together with other actors, was taking actions aimed at consolidating the rule of law, respect for human rights and the development of a culture of democracy, based on the Bamako Declaration adopted on 3rd November 2000.

The Declaration affirms the need to “intensify the cooperation between the OIF and International and regional organizations, to develop concerted action towards democratization of international relations, and to support initiatives on frameworks to promote democracy.”

Ms Delphine went on to say that the creation of regional mechanisms for human rights was an important step in protecting and promoting human rights in Africa, and that much had been achieved in that direction, including through the work of the African Union. She mentioned that as we celebrate the African Year of Human Rights -2016 - it was equally important to recall the role of national actors such as national human rights institutions (NHRIs), which are essential actors in the promotion and protection of Human Rights in Africa, and that it was good seeing

so many of them participate in the workshop. NHRIs provide a bridge between regional and international human rights instruments on the one hand, and States and civil society, on the other. This role was recognized by the African Commission which granted affiliate status to more than twenty of these institutions.

In concluding her remarks Ms Delphine said that OIF supports promotion of human rights at national level and implements a program for strengthening national human rights institutions, through the Francophone Association of National Human Rights Commissions (Association francophone des commissions nationales des droits de l’Homme -AFCNDH). She noted that despite these advances, the involvement of national human rights institutions in regional human rights system remains inadequate, to enable them thoroughly monitor the decisions and recommendations of the African Commission and Court on Human and Peoples Rights. She was hopeful that the workshop would promote fruitful exchanges and enable full participation of NHRIs in regional mechanisms.

#### **Remarks by Med Kaggwa – Commissioner of the ACHPR**



*Commissioner Kaggwa making remarks at the opening session*

Making remarks on behalf of the Commission Chairperson, Commissioner Kaggwa highlighted that the Workshop came at the right time considering the much required support of the National Human Rights Institutions, by the African human rights bodies in monitoring implementation of decisions at the national level. Noting that that NHRIs are empowered specifically to promote and protect human rights at the national level, their role is indispensable despite the fact that the primary responsibility lies with Member States to ensure victims receive justice. NHRIs support this by ensuring that recommendations and judgments by human rights bodies are acted upon by the actors at national level.

He concluded his remarks with a call to NHRIs to initiate and sustain follow-up measures on implementation of decisions of the African human rights bodies.

#### **Remarks by Hon. Judge Sylvain Oré, President of the AfCHPR**

Hon. Sylvain Oré, began his remarks by underscoring the importance of the Workshop, noting that the initiative by NANHRI was in line with the vision of the African Union and its bodies responsible for the protection and promotion of human rights in the continent as it came at a time when the AU human rights bodies were gathered to reflect on their journey as well as carrying out introspection of the African system of protection of the human rights.

He said that the workshop was the much needed opportunity for dialogue on the current issue of the implementation of the decisions of the AU human right bodies as well as proposing a practical tool to enable follow-up on the implementation in the context of the African human rights system. He added that the Guidelines developed adopted an inclusive approach to the implementation question thereby including both the political and

technical bodies of the African Union, as well as the national authorities and the civil society organizations.

Emphasizing the crucial role of the NHRIs, Judge Ore said that these institutions promote the implementation of human rights instruments either through advocacy or in many cases through the investigation of complaints on violation of human rights. NHRIs also act as an interface between governments and non-governmental



*Hon. Judge Sylvain Oré making remarks at the opening ceremony*

entities; this gives them a distinctive privilege in monitoring the implementation of decisions of international human rights bodies.

He concluded his remarks by applauding the contribution of NANHRI to the strengthening of the African human rights system through organizing for the workshop which was expected to promote exchanges that will lead to the adoption of the Guidelines by institutions of the African Union. He assured the workshop that in the process of engaging with the political organs of the African Union, the Court would draw as much as possible from the Guidelines produced.

**Key Note Address By H.E. Dr. Aisha L. Abdullahi, Commissioner for Political Affairs at African Union Commission**



*H.E. Dr. Aisha Abdullahi making official workshop opening address*

The Commissioner of Political Affairs of the African Union Commission, H.E. Aisha L. Abdullahi thanked the participants for creating time out of their busy schedules to attend the meeting. She indicated that the newly signed MoU between the AUC and the Network of African Human Rights Institutions will create opportunities for the two institutions to make more accomplishments in their efforts at deepening the culture of human rights on the continent.

Dr Abdullahi emphasized that the implementation of the Africa's Agenda 2063 – Africa's development blueprint to support socio-economic development and the structural transformation of the continent – is a way of implementing the global 2030 Agenda for Sustainable Development, since the two work in harmony. Africa's Agenda 2063 will promote inculcation of a culture of human rights as well as silencing the guns by 2020. She also highlighted that the African

Governance Architecture was playing a crucial role in enhancing the capacity and optimizing the impact of the various institutions in light of the challenges in governance, democracy, elections and human rights areas in Africa.

On the role of the NHRIs, Dr Abdullahi highlighted that NHRIs are essential partners in the implementation of the African Charter on Human and Peoples' Rights and other regional as well as international human rights mechanisms. These institutions are best positioned in advising states, disseminating information and providing human rights education, as well as providing access to legal services to ordinary citizens. It is for this reason that the AUC signed a memorandum of understanding with the Network of African NHRIs this year. The NHRIs are becoming key instruments for domestic application of human rights instruments and standards. They exhibit flexibility in being responsive to the prevailing circumstances and needs, in the efforts to enhancing and promoting human rights in Africa.

Dr Abdullahi also emphasized the need for compliance to the Paris Principles in the establishment and support to the NHRIs. The NHRIs should have guaranteed independence at all times work with impartiality and have plurality as key elements for their functioning. She also underscored the crucial role of the NHRIs as mechanisms for ensuring accountability of the governments and civil society to the sustenance of human rights culture in the continent.

Reiterating on the need for strengthened collaboration, Dr Abdullahi said that AUC believes that NHRIs can be of great assistance to the promotion of the African Charter and the promotion and protection of human rights in the continent.

## SESSION ON OVERVIEW OF THE AFRICAN HUMAN AND PEOPLES' RIGHTS SYSTEM

### Presentation by: Commissioner Pansy Tlakula - Chairperson African Commission on Human and Peoples' Rights

In her Presentation, Commissioner Tlakula gave an overview of the African human rights system with highlights on the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights; and the Committee of Experts on the Rights and Welfare of the Child. The following are highlights from her presentation:

### The African Commission on Human and Peoples' Rights

The first regional mechanism for the promotion and protection of human rights for the continent of Africa was established under the African Charter on Human and Peoples' Rights (the African Charter). The African Charter established the African Commission on Human and Peoples' Rights (the Commission) inaugurated on 02 November 1987, in Addis Ababa, Ethiopia.

In addition to performing any other tasks which may be entrusted to it by the Assembly, the Commission is officially charged with three major functions:

- (i) the protection of human and peoples' rights;
- (ii) the promotion of human and peoples' rights;
- and
- (iii) the interpretation of the African Charter. The Commission is assisted by its Secretariat, which is based in Banjul, The Gambia.

The principal means of protection within the Commission is through its Complaints procedure. The Commission is empowered to receive and consider: Communications submitted by

one State claiming that another State party to the Charter has violated one or more of the provisions in the Charter (Articles 48-49); and other Communications from individuals and organizations alleging that a State party to the Charter has violated one or more of the rights guaranteed therein (Article 55).

Commissioner Tlakula making a presentation on the African Human and People's Rights System and Communication Procedures for Submission to ACHPR and AfCHPR

On Inter-State communications the Commission has considered and adopted a decision on only one inter-state communication; that is Communication 227/99: DRC v. Burundi, Rwanda and Uganda, which was decided on the merits in 2004.

In the Individual Communications procedure, the Commission receives and considers complaints from NGOs and individuals alleging that a State Party to the African Charter has violated the rights guaranteed in the African Charter. After registering the Communication, there are three main stages: Seizure, Admissibility and the Merits stage. The Commission has, over time, adopted jurisprudence, which has contributed to development of the admissibility requirements. A remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint."

In its Promotional mandate the Commission carries out sensitization, public mobilization and information dissemination through seminars, symposia, conferences and missions. Additionally, the Commission undertakes Promotional Visits or Missions to promote the African Charter, in addition to other relevant human rights instruments, to collect information on the general human rights situation, engage in



H.E. Dr. Aisha Abdullahi making official workshop opening address

dialogue with the Government on the legislative and other measures taken to give full effect to the provisions of the African Charter and to monitor implementation of its recommendations. Following the Missions, the Commission issues recommendations to the State concerned.

The Commission consider Reports on the measures undertaken by the State Party to give effect to the rights guaranteed in the Charter. Following consideration of the Reports, during the Commission's Public Session, the Commission adopts Concluding Observations on the Reports, noting the positive aspects, areas of concern, and finally makes recommendations which the State should implement in order ensure fulfillment of the rights enshrined in the African Charter and Maputo Protocol.

The Commission invites interested parties to submit shadow reports, on the Periodic Reports received from the State Parties. Shadow reports should be submitted at least 60 days prior to consideration of the Periodic Report.

The Commission adopts Resolutions on various thematic and country specific issues, with the

view to raising awareness on certain issues, and to call for action to be taken regarding the promotion and protection of human rights.

On the implementation of the Commission's Decisions and Recommendations, the Commission adopts an Activity Report during its Sessions, which is presented during the African Union Summit, in accordance with Article 59 of the African Charter.

The Commission has issued a number of well-regarded decisions, which advanced human rights jurisprudence on the African continent. These include: Communication 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria – in which the Commission held that, "Governments have a duty to respect their citizens, not only through appropriate legislation and enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties." Communication 241/01: Purohit and Moore v. The Gambia – The Commission held that The Gambia fell short of satisfying the requirements of Articles 16 and 18(4) of the African Charter, and further stated that the enjoyment of the right to health is crucial to the realization of other fundamental rights and freedoms and includes the right of all to health facilities, as well as access to goods and services, without discrimination of any kind; and Communication 276/03: Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya – the Commission pronounced on the right to development under the African Charter, and also elaborated on the rights of indigenous people in Africa. The Commission's decisions can be accessed at its website: <http://www.achpr.org/>

### African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights

(the African Court) was established through a Protocol to the African Charter, in order to complement the protective mandate of the Commission. The Protocol on the Establishment of an African Court on Human and Peoples' Rights (the Court Protocol) was adopted in Ouagadougou, Burkina Faso, on 09 June 1998, and entered into force on 25 January 2004. The Court consists of eleven (11) judges elected by the AU Assembly from a list of candidates nominated by member states of the AU. The Court can make binding decisions, including orders of compensation or reparations.

The Court's Jurisdiction is provided in Article 3, stated that, "The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned." "In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide."

At the request of a Member State, the AU, any of its organs, or any African organization recognized by the AU, the Court may provide an opinion on any legal matter relating to the African Charter, or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.

If the Court finds that there has been violation of a human or peoples' right, it makes appropriate orders to remedy the violation, including the payment of fair compensation or reparation. In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court adopts such provisional measures as it deems necessary.

The Court notifies the parties to the case, of its judgment and transmits it the Member States of the AU and the Commission. The Council of

Ministers are also be notified of the judgment and monitors its execution on behalf of the Assembly.

The States parties undertake to comply with the judgment in any case to which they are Parties, within the time stipulated by the Court and to guarantee its execution. The Commission, State Parties to the Protocol and African inter-governmental organizations are entitled to submit cases to the Court.

Additionally, non-governmental organizations (NGOs) with observer status before the Commission and individuals from State Parties that have made a declaration accepting the jurisdiction of the Court, can also institute cases directly.

As at September 2016, thirty (30) African States had ratified the Court Protocol, and only seven (7) of the thirty (30) States Parties to the Protocol had made the declaration recognizing the competence of the Court to receive cases from NGOs and individuals; Benin Burkina Faso, Cote d'Ivoire, Ghana, Mali, Malawi and Tanzania. The Republic of Rwanda submitted its declaration accepting the competence of the African Court to receive cases brought by individuals and NGOs in January 2013. However, in March 2016, Rwanda withdrew the declaration, thereby denying its citizens of the opportunity to obtain legal redress at the African Court.

The Court has issued Judgments on a number of cases. Of note is Lohé Issa Konaté v. Burkina Faso and Ernest Zongo & Burkinabe Human and Peoples' Rights Movement v. Burkina Faso. In Lohé Issa Konaté v. Burkina Faso, the African Court ruled that imprisonment for defamation violates the right to freedom of expression while criminal defamation laws should only be used in restricted circumstances. The Court ordered Burkina Faso to change its criminal defamation laws. In Ernest Zongo & Burkinabe Human and Peoples' Rights Movement v. Burkina Faso,

concerning the assassination of the Burkinabe journalist, Norbert Zongo, and of three of his companions, the African Court found that Burkina failed to act with due diligence in seeking, trying and judging the assassins of Norbert Zongo and his companions, and as a result violated the rights of the victims to be heard by competent national courts. Decisions of the Court can be accessed at the Court's website: List of Cases - <http://en.african-court.org/index.php/cases#finalised-cases>

### The Committee of Experts on the Rights and Welfare of the Child

The African Committee of Experts on the Rights and Welfare of the Child (the Committee) was established to promote and protect the rights and welfare of the child. The Committee draws its mandate from Articles 32 to 46 of the African Charter on the Rights and Welfare of the Child (the Children's Charter), which was adopted by on 11 July 1990, and came into force on 29 November 1999. The Charter provides for an eleven (11) member Committee of Experts.

The Committee is mandated to promote and protect the rights stipulated in the Children's Charter, monitor its implementation, and to interpret its provisions. State Parties to the Children's Charter are required to submit State Reports setting out measures they have adopted to implement the provisions of the Charter. The Committee is also competent to receive Communications from individuals, groups, NGOs and State Parties to the Children's Charter.

The Committee's first finding, in 2011, dealt with the failure of the Republic of Kenya to register and provide nationality to children of Nubian descent in the country, and found Kenya in violation of the Children's Charter.

## PLENARY SESSION ON THE AFRICAN HUMAN AND PEOPLES' RIGHTS SYSTEM



*Hon. Judge Oré moderating the session on overview of African Human and People's Rights System and the Communication Procedure for Submission to the ACHPR and AfCHPR*

According to Art 62 of Charter members states are supposed to submit reports every two years on measures taken to implement provisions and recommendations. These reports are discussed in open sessions. A challenge experienced is that reports are often sparse and don't give sufficient information on implementation.

Although the Court was put in place to implement decisions of the Commission, the implementation of its still depends on the political buy-in of State Parties.

There is also no PRC sub-committee currently. While there is necessity to have interlocutor to handle sensitive issues, discussions with PRC are ongoing to operationalize the sub-committee on Democracy, Elections, Human Rights and Good Governance. The African Commission was encouraged to interact more with the PRC in monitoring the implementation of its decisions. The access to the court is another issue which



*A Participant making remarks during the plenary session*

is unsettled. Thirty member states have ratified the protocol establishing the AfCHPR, while only 8 of these have submitted declaration allowing access direct of the court by citizens and NGOs. Although they can also access it through the ACHPR.



*Commissioner Maya of ACHPR commenting on the Communication procedures of the ACHPR*

There is need to make information more visible to the public on adherence to decisions and judgments. This will also promote the sharing of examples of good practice. More transparency and visibility of the extent of implementation of the judgments and decisions of AfCHPR and ACHPR is required.

Information provided on the implementation of cases before the Court suggested that in respect of Burkina Faso, good will had been shown by the government to implement the rulings; there had been no information with respect to Libya; and partial implementation of the Mtikila judgment. It is the state's responsibility to ensure that their NHRIs are compliant with the Paris Principles.

Victims also need to understand the various levels at which they can seek redress – particularly when and if they've exhausted means at the local/national level.

National institutions must also build relationships with their government Ministries in charge of Justice and such bodies in order to ensure implementation of decisions of the Court and the Commission.

## THE SESSION ON OVERVIEW OF THE GUIDELINES ON MONITORING THE IMPLEMENTATION OF RECOMMENDATIONS AND JUDGMENTS OF THE AU HUMAN RIGHTS ORGANS

**Presentation by: Prof Rachel Murray – Director of the University of Bristol Human Rights Implementation Centre.**

The presentation provided highlights of the Guidelines developed through a consultative process involving the NHRIs and representatives of the regional bodies charged with human rights mandates. See copy of the guidelines in the annexes.

Participants were encouraged to provide feedback and further comments in order to ensure that the Guidelines adequately reflected the potential to engage with all the regional human rights bodies.



*Prof Murray making a presentation on the Guidelines for NHRIs in monitoring the decisions of AU human rights bodies*

## IN COUNTRIES WHERE RECOMMENDATIONS/JUDGMENTS HAVE BEEN MADE

In the Group Work Sessions, the participants shared implementation experiences and identified action points for collaboration at national and regional levels.

The purpose of the first group work session was to discuss what role NHRIs have played so far, if any, in following up decisions of the African Commission or judgments of the African Court. Questions discussed in this first session included:

- “Are NHRIs aware of decision/judgments that have been adopted? Are they informed by the African Commission/African Court?
- Has any NHRI had any experience of following up decisions or judgments?
- If not (and where there have been decisions/judgments against your country), why not? If so:
  - o What did they do?
  - o What challenges did they face?
  - o What was effective?”

The second group work session was used to discuss the avenues of intervention by NHRIs in monitoring implementation. The purpose was to interrogate how NHRIs can play a role at the national level, what practical steps they could do and what they need to be able to perform this role. Questions discussed included:

- “What do you think the recommendations/ ruling in this case require the State to do (as the recommendations are not always clear or precise)
- How can you, as NHRIs, assist the State in achieving implementation? Using the Guidelines, to discuss, the role of the NHRI in e.g.

- Organizing events at the national level;
- Acting as a facilitator between the complainants and State authorities;
- Providing technical assistance on what the recommendations might mean, etc.”

In the plenary sessions participants proceeded to discuss issues affecting the implementation of the decisions following the experiences shared in the two cases studies, that is the Kenya Endorois case and the Cote d’Ivoire cases.



*Group discussions*



*Group discussions*

## KEY OBSERVATIONS ON CHALLENGES FACING IMPLEMENTATION:

The following are key observations made by the workshop on the challenges hindering the implementation of the decisions of AU human rights bodies at the national level:

- Access to information is poor in countries where cases have been determined. NHRIs, civil society and even the citizens are hardly ever aware of the results of the determination. Thus the NHRIs lack sufficient information to enable them exercise their mandate of monitoring the implementation.
- It was noted that apart from the affiliate status NHRIs are granted with the ACHPR, there is no framework for direct engagement between the NHRIs and the regional human rights bodies.
- NHRIs in some countries have inadequate capacity to undertake the monitoring the implementation of decisions of regional bodies. On the other hand there is minimal involvement of the civil society. While some NHRIs experience challenges of adequate capacity, there are civil society that have developed capacities in regional mechanisms. Involving them would not only promote an inclusive approach, but also leverage on their synergy.
- African Civil Society Organizations working on human and peoples’ rights such the Pan African Lawyers Union (PALU) have enormous experiences on information sharing on Court judgments; similar organizations should be strengthened and utilized to disseminate the decisions and activities of AU human rights bodies on the continent
- On the concern by NHRIs that the Commission recommendations are unspecific and thus difficult to monitor implementation, it was noted that the Commission’s recommendations are different from the specific reparations ruled by domestic courts. The Commission thus provides general recommendations which are to be implemented through the domestic frameworks.

## RECOMMENDATIONS TO IMPROVE IMPLEMENTATION OF THE DECISIONS OF AU HUMAN RIGHTS BODIES

Following a discussion on the challenges that hinder successful implementation of the recommendations and decisions of AU human rights bodies at the national level, the workshop made the following recommendations:-

### General recommendations

The workshop recommended:-

That the approach adopted in disseminating information should ensure that the victim is the focus, especially in ensuring reparations.

### Recommendations to NHRIs

The workshop recommended that:-

- NHRIs establish focal points and committees specialized in dealing with the regional mechanism to promote continued interaction between the NHRIs and the regional human rights bodies.
- NHRIs adopt a collaborative approach between them and the civil society to leverage on the existing capacity of other actors on the regional mechanisms
- NHRIs utilize relevant provisions in their laws to support implementation of the AU human rights bodies' decisions in AU member states, where the recommendations/judgments have been issued.
- NHRIs with affiliate status include information on implementation in their reports to the African Commission.

- NHRIs utilize their advisory role to monitor and promote implementation of AfCHPR and ACHPR decisions

- NHRIs institutionalize knowledge on regional mechanisms, particularly on the monitoring of the implementation of decisions of the regional human rights bodies.

- NHRIs develop proposed plans of action within six months on monitoring of the decisions of the regional human rights bodies in their respective countries.

### Recommendations to AU member states

The workshop recommended that:-

- That AU members states accept the recommendations of the AU bodies with mandate on human rights rather debate their findings.

### Recommendations to NANHRI

That workshop recommended that:-

- The newly signed Memorandum of Understanding between the AUC and the NANHRI be explored to overcome the communication challenge between NHRIs and the relevant AU human rights bodies, through establishment of a viable communication mechanism. This may among other things include establishing contact with communication focal points in NHRIs and relevant AU human rights institutions to stimulate effective information flow to and from the NHRs, particularly when a decision is adopted. This way they can play a pivotal role in disseminating information about a decision or judgment from the regional human rights bodies to the NHRIs.
- NANHRI institutes a mechanism for information and experience sharing among the NHRIs in Africa on good practices and up-to-date information on the human rights situations in African states.

- NANHRI to conduct follow ups with the NHRIs on the execution of their commitments on ensuring effective monitoring of implementation of decisions of regional human rights bodies.

### Recommendations to sub-regional bodies

That workshop recommended that:-

- That at the sub-regional levels, institutions such as the ECOWAS Court popularize the mechanisms it has been using to promote implementation of the sub-regional court decisions;

### Recommendations to AU regional human rights bodies

That workshop recommended that:-

- The regional human rights bodies establish strategic avenues for information sharing and direct collaboration with the NHRIs.
- The AfCHPR and the ACHPR consider sensitizing the NHRIs on their working mechanisms, activities and the recommendations and judgments made on cases to facilitate effective implementation at the national level.
- The AU human rights bodies ensure regular reporting on the human rights and humanitarian situation in the region to the AU Peace and Security Council.
- The PRC Sub-Committee on Democracy, Elections, Human Rights and Good Governance and be established urgently.



*Amb Salah, Senior Human Rights Expert of the DPA/AUC commenting on the engagement with NHRIs*

## PILOT PROJECT AND WAY FORWARD

In closing the workshop, it was agreed that the NHRIs will collaborate with AU Organs with a mandate on human rights, the Network and the development partners in supporting application of the Guidelines. The NHRIs made commitments to develop action plans towards improving their role in monitoring the implementation of the decisions of the AU human rights bodies. It was also agreed that the NHRIs with cases that have been decided on by the AU human rights bodies be used for the pilot projects to promote in-country stakeholder involvement in the implementation processes. Kenya, Cote d'Ivoire, Sierra Leone and South Africa were identified as possible countries to begin with.



and circulated to the workshop participants and the NHRIs.

#### **Vote of thanks by Ms Madeleine Nirere – Chairperson of Rwanda National Commission on Human Rights**

Ms Nirere thanked the participants for their attendance and contribution.

She noted that the workshop was required considering that implementation of the decisions of the human rights bodies continues to hinder the effectiveness of the institutions. She mentioned the Study carried out by NANHRI with respect to what the NHRIs know about the AfCHPR indicated that the NHRIs awareness and involvement with the Court is lacking. Moreover, there has been a huge gap between the recommendations issued on various human rights cases, and the steps taken by the states in implementation. There is therefore an urgent need for a multi-stakeholder approach to dealing with the situation, and that NHRIs are well positioned to promote this engagement from the national level.

Ms Nirere also emphasized that there is need for actors on human rights in Africa to combine efforts in supporting the work and institutions of the African Union and its organs.



*Ms Nirere, Vice Chairperson of NANHRI giving a vote of thanks at the closing session*

#### **Closing remarks by Dr Matlosa Khabele – Director of the Department of Political Affairs of the AUC.**

Dr Khabele began by noting this was the first collaborative event co-organized by DPA, AUC and NANHRI following the signing of the MoU between the two institutions done early 2016, and that NHRIs were pleased with this partnership which has ensured the resounding success of the NANHRI's interventions to support the role of NHRIs in Africa. He also expressed gratitude to AU human rights institutions whose contributions enriched the discussions during the workshop, as well as the NHRIs and CSOs for their active participation.

Underscoring the important role by NHRIs, the Director of the Department of Political Affairs said that the contribution of NHRIs is integral in the struggle for good governance, constitutionalism, rule of law, justice, and a peaceful and secure Africa as envisioned in agenda 2063. He added that the noble goals and objectives of agenda 2063 and the 2030 global agenda on sustainable development would not be achieved if human and people's rights were not upheld, promoted and protected in Africa.

Dr Khabele noted that while the progress made towards inculcating a culture of human rights over the last fifty years is appreciated, there are concerns about continuing human rights violations in some African countries, which contributed to the current "democratic recession" and authoritarian backsliding on the continent. He added that the situation requires AU bodies to work together with NHRIs and CSOs.

Lastly he thanked the Secretariat NANHRI and the Department of Political Affairs for the efforts in ensuring success of the event. While closing the workshop, Dr Khabele also thanked all the partners who supported the activity and called for continued collaboration and efforts on initiatives

to support regional and national human rights bodies towards improving the culture human rights in Africa.

## **CLOSING SESSION**

### **Adoption of the Workshop Report**

On the last day of the Workshop, a summary of the workshop proceedings was read out to the participants. The summary report was consequently adopted. It was however agreed that the comprehensive report would be generated



# WORKSHOP REPORT

