

National Human Rights Institutions and African Regional Mechanisms



**Role of NHRIs 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**

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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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A. INTRODUCTION

In recent years, it has been recognized that a formidable gap exists between the decisions and judgments adopted by the African Commission and Court on Human and Peoples' Rights and the efforts made by States at the national level to implement them. There is evidence that this gap can nonetheless be reduced if actors, specifically in this context, National Human Rights Institutions (NHRIs) play a role in coordinating and strengthening national efforts to implement findings. Therefore, the collective efforts of the African Commission on Human and Peoples' Rights (African Commission) and African Court on Human and Peoples' Rights (African Court) with independent NHRIs can assist in building a culture of human rights in Africa.

The African Charter on Human and Peoples' Rights established the African Commission whose protection mandate includes the consideration of communications against States party to the Charter. Since its inception, the African Commission has adopted many decisions but the extent to which these have been complied with and implemented is not at all clear.

The AU's Human Rights Strategy for Africa has identified among its strategic objectives the importance of 'ensuring effective implementation of human rights instruments and decisions'. Likewise, the Strategy's 2012-2016 Action Plan calls for strengthening the collaboration on the implementation of findings of African human rights bodies. It states clearly in Objective 4 that it intends to do this through strengthening the enforcement and monitoring mechanism for compliance with decisions of AU human rights mandated organs such as the African Commission and African Court.

The African Commission, in carrying out its functions, should develop relationships with other key actors in the protection of human and people's rights in Africa. In

1. A set of principles approved by the United Nations General Assembly Res. 48/134 of 1993
2. OAU Doc. AHG/102/XVII; Was adopted in 1981 and came to force in 1986
3. African charter on human and people's rights, Articles 46-59
4. Human Rights Strategy for Africa
5. African Charter: Article 45 (1) (a) and (C)
6. Resolution 31 (XXIV) 98 on granting Affiliate Status to National Human Rights Institutions in Africa

this regard, the African Commission currently grants affiliate status to NHRIs. Since NHRIs should act as watchdogs for monitoring State compliance with findings, they are strategically positioned to make a significant contribution to the realization of the AU's major objective to improve implementation of decisions on communications.

B. GUIDING PRINCIPLES

NHRIs should be guided by the following principles when following up and monitoring the findings and decisions/judgments of the African Commission and African Court:

1. NHRIs should aim towards increasing the likelihood of implementation and compliance by the State with the findings and decisions of the African Commission and Court.
2. NHRIs should provide reliable, accurate and regular information to the African Commission/African Court on the level of implementation and compliance by the State with findings and judgments of the African Commission and Court
3. NHRIs should provide publicity and increase awareness of the findings at the domestic level in their respective jurisdictions.
4. NHRIs should act as a bridge between domestic implementation of the findings and the African human rights bodies.
5. NHRIs should consider providing technical assistance to the State in the implementation of decisions/judgments.
6. NHRIs should verify the reliability and accuracy of information received from the State on implementation of and compliance with the findings.
7. NHRIs should collaborate with relevant national stakeholders in monitoring implementation of the findings and judgments.
8. NHRIs should ensure a victim-centred approach to monitoring implementation of the findings.

C. DURING THE PROCESS OF A COMMUNICATION

Monitoring of implementation should not necessarily start once a decision has been adopted. It can be considered as integral to the process of submitting and processing the communication itself. NHRIs can play a role at various stages of the process.

9. NHRIs should encourage civil society organisations to engage with them prior to and during the communication procedure before the African Commission and the Court.

10. The NHRI can provide the litigant with relevant advice and other assistance and where appropriate may facilitate engagement with relevant government authorities or other national actors.

11. NHRIs can assist the African Commission to locate suitable legal assistance and counsel to represent the victim before the African Commission.

12. NHRIs should consider submitting *amicus curiae* briefs before the African Commission and African Court where appropriate.

D. PROCEDURE ONCE A DECISION OR JUDGMENT HAS BEEN ADOPTED AND PUBLISHED

13. Once a decision or judgment has been adopted and published the NHRI can play a useful role in follow-up.

14. It is imperative that the African Commission, as a matter of course, informs the specific NHRI of the adoption of a decision or judgment of the Court in relation to the State in which they are based.

15. The NHRI can contact the African Commission to ask for technical assistance on what is required in the communication. This can then be used to assist the State with implementation of the decision at the domestic level.

16. NHRIs with affiliate status should, as part of their report to the African Commission, include a section on the implementation of decisions of the African Commission.

E. MONITORING IMPLEMENTATION OF THE FINDINGS AT THE NATIONAL LEVEL

There are a number of ways in which NHRIs can engage with actors at the domestic level to monitor and assist in implementation of the findings.

Action Plans

17. The NHRI should work with the government, victims and relevant civil society organisations and other national actors to encourage the government to adopt an

action plan for implementation of each finding. This action plan should include:

- Identifying the relevant government department(s) who should be responsible for implementing specific aspects of the findings;
- Time frames for implementation;
- Any skills or resources needed to implement aspects of the findings;
- What support and assistance the NHRI could provide;
- Support and assistance available by other national actors.

18. The NHRI should encourage the government to share and discuss this action plan with the African Commission and the African Court.

Engage with Government

19. NHRIs should recommend to the government that it establishes a legal framework to ensure implementation of findings from the regional and international human rights bodies.

20. The NHRI can work with the government to identify and engage with the relevant specific departments responsible for specific aspects of the findings to provide assistance and support in its implementation. This could also identify the specific skills necessary for implementation. This could be done through, for example, inter-ministerial and inter-institutional groups, participation in budgetary discussions, and sending letters to specific government departments.

21. The NHRI could provide expert advice to the State and relevant government authorities on the practical measures required for implementation of the findings.

Consultative Meetings with Various Stakeholders

22. NHRIs should consider holding sensitisation workshops with CSOs and other domestic stakeholders to brief them on the findings, establishing a forum for discussion with how to implement and monitor the implementation by the State.

Coordinate and Facilitate Links Between Domestic Actors

23. The NHRI can also encourage the government to establish a mechanism at the domestic level to follow-up on the findings of the African Commission and the African Court.

Parliament

24. Parliament and parliamentarians are potentially powerful actors in monitoring implementation of findings of the African Commission and the African Court. The NHRI should consider engaging with parliamentary committees to alert them on the findings and to update them on the extent of implementation.

25. The NHRI should consider suggesting to relevant parliamentary committees that they summon the government department to answer to the findings.

26. The NHRI should establish formal and informal relationships with parliament and parliamentarians with respect to monitoring implementation of decisions of the African Commission and judgments of the African Court.

27. NHRIs in their annual report to parliament should include a section on implementation of the findings of the African Commission and the African Court.

Judiciary and the Legal Profession

28. The NHRI, to the extent to which its mandate permits, may consider approaching domestic courts to seek enforcement of the findings. The NHRI should also alert the judiciary and the legal profession to the decisions of the African Commission and the African Court.

29. The NHRI should engage with the Attorney-General in following-up on the findings.

Civil Society

Civil society are key actors in monitoring implementation of the decisions of the findings of the African Commission and the African Court.

30. NHRIs should engage, where appropriate, with civil society organisations involved in bringing the communication before the African Commission or the African Court.

31. NHRIs should, together with key civil society organisations, engage with victims and their legal representatives to hear their views about what steps the State should take to satisfactorily implement the findings.

32. NHRIs should collaborate with other national professional associations and other relevant national actors in monitoring implementation of the findings.

33. If the decision/judgment requires the adoption of new legislation or amendment to existing legislation, policy or training, the NHRI can offer expert advice.

Media and Communication

34. NHRIs should raise awareness of the findings at the national, regional and international levels.
35. The NHRI should assist in publishing the findings widely in relevant local languages at the national level.
36. The NHRI should consider using the Universal Periodic Review and other international mechanisms such as African Peer Review Mechanisms to publicise the findings and the government's response.
37. The NHRI should adopt a communiqué and press release on the findings.
38. NHRIs should have a media and communication strategy that includes monitoring findings from the African Commission and African Court.

Integrating Decisions into the Work of the NHRI

39. The NHRI should also consider ways in which it can integrate the findings and other jurisprudence of the African Commission and of the African Court into its own work. This could include:

- Noting the decision and extent of implementation in its annual report and any thematic reports;
- Establishing a focal point to follow-up on findings of the African Commission and the African Court;
- Using the African Commission and Court jurisprudence in its own findings, reports and documents.

40. The NHRI could also consider undertaking a study showing the state of implementation of findings of the African Commission and Court as well as other treaty bodies.

F. TOOLS AT THE REGIONAL LEVEL

There are a number of ways in which NHRIs can engage with the African Commission and African Court to monitor implementation of their findings.

Use of Affiliate Status before the African Commission:

41. NHRIs with affiliate status can attend the sessions of the African Commission, propose items for the agenda and speak to those items during the public sessions. This could be used as an opportunity to identify concerns as well as examples of best practice with respect to implementation of the African Commission findings.

42. In advance of a Commissioner undertaking promotional visits to the State, NHRIs should provide a report outlining the extent to which the findings of the African Commission have been implemented.

Participate in Relevant Working Groups of the Commission and Submission of Information to the African Bodies

43. NHRIs can submit reports to working groups and to individual Commissioners on the status of compliance with and implementation of the findings.

44. NHRIs can also consider the submission of independent alternative reports on compliance.

45. NHRIs can send regular reports to the African Commission on the level of implementation of its findings.

State Reporting

Although NHRIs cannot make comments during the public examination of the State report under Article 62 of the ACHPR, there are numerous ways in which this procedure can be used to highlight the extent of implementation of the findings of the African Commission's and Court.

Drafting the Report at the National Level

46. NHRIs are encouraged to get involved in the drafting of the State report at the national level, prior to its submission. Indeed, some African States have mechanisms to enable participation and consultation with NHRIs and CSOs during the drafting process. NHRIs can use this opportunity to make comments on the report and to highlight instances of failure to implement African Commission findings. It is important that NHRIs maintain their independence in this process.

47. NHRIs can encourage States to include a separate section on implementation of African Commission findings of the African Court judgments in their Article 62 State reports.

48. Where no mechanism exists, the NHRI itself could consider initiating a process

at the national level involving a range of stakeholders.

49. NHRIs can publicise the process of State reporting at the national level.

Use of Alternative Reports

50. NHRIs can draft their own alternative reports and submit these to the African Commission in advance of the examination of the State report at the session. These alternative reports can include references to the extent of compliance with African Commission findings and judgments of the African Court adopted against that State.

Submission of questions to Commissioners in advance

51. NHRIs can consider submitting questions to individual Commissioners regarding the implementation of findings. Commissioners can then use these questions during the oral examination of the State report.

Highlight examples of where states have implemented and good practice

52. NHRIs should also consider alerting the African Commission and the Court to examples of good practice and where States have implemented findings of the African Commission and the African Court.

Follow up concluding observations or request that information be put in the concluding observations

53. NHRIs can call on the African Commission to include in its Concluding Observations on the State report specific reference to findings which are yet to be implemented and measures that States should take to implement them.

Encourage states to set up mechanisms for feedback on concluding observations post report examination

54. NHRIs can encourage States to set up or use mechanisms at the domestic level to provide feedback on implementation of decisions of the African Commission.

Use of Sub-Regional and AU Organs

55. NHRIs could consider compiling and publishing documents on the extent of implementation of findings of the African Commission and the African Court. NHRIs should then send this to and engage with relevant sub-regional bodies and AU organs.



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