STUDY ON THE STATE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIs) IN AFRICA

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Study on the State of National Human Rights Institutions (NHRIs) in Africa

This Report is produced by:

BLANDFORD CONSULTING

For:
United Nations Development Programme (UNDP) and
Network of African National Human Rights Institutions (NANHRI)

UNDP and NANHRI would like to acknowledge the cooperation of the National Human Rights Institutions from Burundi, Cameroon, Egypt, Kenya, Mozambique, Rwanda, Seychelles, South Africa and Tunisia.

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List of Acronyms

Acronym	Description
ACDEG	African Charter on Democracy, Elections, and Governance
ACHPR	African Commission on Human and People's Rights
AUC	African Union Commission
CESR	Centre for Economic and Social Rights
CHRAJ	Commission for Human Rights and Administrative Justice in Ghana
CSOs	Civil Society Organizations
ECOSOC	United Nations Economic and Social Council
GAC	Ghana AIDS Commission
GCE	General Certificate of Education
GDP	Gross Domestic Product
HIV	Human Immunodeficiency Virus
HRBA	Human Rights-based Approach
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
KIDDP	Karamoja Integrated Disarmament and Development Program
KNCHR	Kenya National Commission on Human Rights
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
NANHRI	Network of National African Human Rights Institutions
NCHRF	National Commission on Human Rights and Freedoms in Cameroon
NDP	National Development Plan
NGOs	Non-Governmental Organization
NHRIs	National Human Rights Institutions
OPERA	Outcomes, Policy, Efforts, Resources and Assessment
PEAP	Poverty Eradication Action Plan
UNDP	United Nations Development Program
UHRC	Uganda Human Rights Commission
UN	United Nations
UPR	Universal Periodic Review

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Executive Summary

Promoting the establishment and strengthening of NHRIs in accordance with the Paris Principles has emerged as one of the United Nations most important strategies for improving human rights protection in the African region.

This is a Report on the findings and recommendations emanating from a study (undertaken from June 2014 to March 2015) on the state of National Human Rights Institutions (NHRIs) in Africa, conducted for the United Nations Development Program (UNDP) and the Network for African Human Rights Institutions (NANHRI).

This Report is in line with the UNDP's Strategic Plan 2014-2017, which places human rights at the center of its work and implements this commitment through three strategic areas of intervention: supporting the strengthening national human rights systems; promoting the application of a human rights-based approach to development programming; and greater engagement with the international human rights machinery.

NHRIs play an essential role in a country towards the advancement of the human rights agenda, good governance and sustainable development. This Report therefore, responds to the work of the African Union Commission (AUC) on the Human Rights Strategy for Africa, which includes the state of institutions that support democracy and human rights and in particular Member States' readiness to implement the African Charter on Democracy, Elections, and Governance (ACDEG).

In analyzing the state of African NHRIs in relation to their role and capacity to promote and protect human rights, this Report:

☐ Establishes the state of NHRIs in Africa, through a literature review of African NHRIs generally and an in-depth study of 9 sample NHRIs;

☐ Focuses on 6 key areas: establishment and oversight; independence; financing; capacity; stakeholder engagement; and rights-based service delivery and development; and

☐ Highlights best practices, capacity challenges/constraints and subsequently recommends policy options for adoption by NHRIs, Government, as well as regional networks and development partners.

Key Findings and Recommendations:

NHRIs are an integral part of the structure for the human rights protection system in Africa, with 47 NHRIs established on the continent out of 54 UN member states. The study confirms that since establishment, there is a significant degree of stability and consistency in the operations of the sample institutions. In order to be able to effectively promote and protect human rights, in line with the Paris Principles, the following recommendations are made:

Legal Frameworks	There are precise legal provisions supporting the legal autonomy of all sample NHRIs. However, there are instances where the legal framework has some substantive deficiencies e.g. executive regulations that curtail the NHRI's independence, ambiguous processes for dismissal of NHRI members (Commissioners), insufficient functional immunity for staff etc. NHRIs should undertake a substantive review of their enabling legal framework to identify gaps and make appropriate proposals to Government.
Political environment	The political environment (e.g. the level of political will, freedom of speech and political stability) is a key factor that consistently affects the optimal functioning of NHRIs during both inception phases as well as their continuous operation. Governments should provide appropriate political will for the legal, financial and operational autonomy of NHRIs. In particular, Governments should guarantee NHRIs with a secure and conducive operational environment in which the institutions have the capacity to discharge their mandate and make informed decisions unencumbered by external pressure.
Finance and human resources	The case studies show that NHRI capacity (institutional and functional capacity, as well as ability to deal with emerging human rights issues) is generally a substantial growth area for the sample institutions, which is particularly due to human and financial constraints. Capacity deficiencies are generally more apparent within the recently established sample institutions. NHRIs should undertake comprehensive needs analysis (with appropriate benchmarks for deriving budgets, infrastructure requirements and human resource capacity) that should underpin their engagement with government and donors for funding and technical support. Government funding should include administrative and program costs, as well as escalation rates to cater for inflation and future institutional requirements. In addition, Governments establishing new NHRIs should ensure appropriate financial provisions for set-up costs and awareness campaigns.
Corporate governance	Although, there is the existence of procedures and policies, the study highlights the need to improve the corporate governance systems that articulate lines of responsibility and accountability in terms of the strategic versus operational functions. This is important to ensure a harmonious working environment within the institutions. NHRIs should ensure that they have appropriate operating policies and procedures, corporate governance systems (including measures against conflicts of interest), as well as long-term strategies, which should be periodically reviewed against changes in their operating environment. These systems should be appropriately documented and disseminated, including through training.
Human rights-based approach (HRBA) to service delivery and development	Despite being a relatively new concept, the vast majority of the sample NHRIs have undertaken several pro-active approaches in implementing the HRBA within their respective organizations and countries. However, it appears that in most of the sample NHRIs, the HRBA is undertaken more on an *ad hoc* basis than strategically built into their long-term plans. The case studies show that NHRIs need to have strong HRBA champions among relevant government agencies, as well as technical and financial capacity for effective implementation. NHRIs should firstly understand the concept of HRBA internally, including through stakeholder engagement, developing a primer and training of staff. The concept of HRBA should form part of the core strategy for NHRIs.

Overall, NHRIs should adopt the culture of continuous improvement towards

their long-term effectiveness and sustainability. Constant stakeholder engagement and collaboration (at national, continental and international levels), as well as monitoring and evaluation of the impact of their activities and programs, should underpin this process.

1 Introduction

1.1. Overview

The study seeks to establish the state of NHRIs in Africa, in relation to their role and capacity to promote and protect human rights. The study highlights best practice, constraints and recommends policy options for NHRIs, Governments, as well as regional networks and development partners.

The Paris Principles

The study is based on the internationally agreed Principles Relating to the Status of National Institutions ("Paris Principles"), which are broadly accepted as the benchmark against which a NHRIs' legitimacy and credibility is assessed. The Principles, endorsed by the UN General Assembly in 1993, provide an NHRI with clear guidelines in terms of their competence and responsibilities, composition and guarantees of independence and pluralism, methods of operation, as well as additional principles concerning the status of commissions with quasi-jurisdictional competence.[1]

1.2. Project Objectives

Drawing on experiences across Africa, including 9 case studies, the study identifies key challenges, good practices and opportunities for strengthening African NHRIs

The objectives for this study are as follows:

a) To establish the state of NHRIs in Africa, through a literature review and an in-depth study of 9 sample NHRIs. This is with the aim of highlighting good practices, identifying gaps and capacity challenges in terms of human rights promotion and protection on the continent.

b) To provide key lessons that can be applied generally to strengthen the capacity, effectiveness and functioning of NHRIs in Africa.

c) To identify key elements, frameworks and tools that can be recommended for further discussion and subsequent adoption by policy makers in Africa.

d) To establish the baseline for review and/or development of NHRIs capacity development program(s).

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[1] United Nations: *"Principles relating to the Status of National Institutions (The Paris Principles)"* retrieved from http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx.

1.3. Project Rationale

a) The Report will facilitate high-level policy discussions on key aspects of the effectiveness of NHRIs in Africa, such as: establishment, independence, financing, stakeholder engagement and rights based service delivery. The Report also highlights the capacity requirements of African NHRIs to support the development of capacity building programs.

b) Drawing on the case studies, the Report identifies key challenges, good practices and opportunities for establishing, operationalizing and financing NHRIs. The Report proposes feasible policy options and models for these thematic areas while assessing and suggesting the most sustainable means of financing and enhancing rights based service delivery and development by African NHRIs.

c) The Report also serves as the basis for developing appropriate strategies for application by African NHRIs in accessing and managing development funding.

1.4. Methodology

1.4.1. Project Scope

The following key areas have guided the development of this Report:

a) Establishment and oversight;

b) Independence;

c) Financing;

d) Capacity;

e) Stakeholder engagement; and

f) Rights-based service delivery and development.

1.4.2. Approach

In developing this Report, the project team applied the following approach:

a) An Inception Meeting with a Reference Group that includes key subject matter experts, representatives of African NHRIs, human rights experts in Africa and internationally, NANHRI, UNDP and the team from Blandford Consulting, which was appointed to undertake the study. This meeting established the parameters of the study, which include: the scope; objectives; key thematic focus areas; and selection of sample NHRIs.

b) A review of available literature regarding state of NHRIs in Africa, as well as current and historical human rights issues and the socio-political context of each of the 9 sample NHRIs.

c) Preparation for the fieldwork phase, which included identifying and engaging with relevant key stakeholders of the sample NHRIs, as well as the development and distribution of the self-assessment questionnaire to these institutions.

d)   The sample NHRIs provided submissions to the research team, comprising of a completed self-assessment questionnaire and supporting documentation.

e)   During the fieldwork phase, the research team visited the 9 sample NHRIs to engage with them on their submissions. This was structured through a meeting with the staff member(s) and/or Commissioners designated by the respective NHRIs to engage with the research team. The research team then held focus group and/or bilateral discussions with external stakeholders of each sample NHRI, including Civil Society Organizations (CSOs), Government officials and academics.

f)   Analysis of all data and information gathered during fieldwork and drafting the Report, which was then sent to the Reference Group for comments.

g)   Finalization of the Report, involving mainstreaming the comments from the Reference Group.

1.4.3.
Selection of case study NHRIs

The Reference Group decided to adopt a case-study approach in order to ensure an in-depth examination of 9 NHRIs across the continent. This was seen as a valuable means of obtaining key lessons that can be applied generally to strengthen the functioning of NHRIs in Africa.

During the selection of the 9 sample NHRIs, the Reference Group included NHRIs from widespread environments, based on the following considerations:

a)   To ensure the representation of NHRIs established in different periods, including recently established NHRIs;

b)   To include NHRIs with a well established constitutional framework;

c)   To examine an NHRI from a small island state and at least one NHRI in a country emerging from conflict or post-crisis; and

d)   The Reference Group, through long hard deliberations, sought to also ensure that there was a language representatively (English, French and Portuguese) and a geographic coverage within the sample. The final selection was as follows:

Figure 1.1: Criteria for the Selection of the Nine Sample NHRIs

S/n	NHRI / Country	Primary Criteria	Additional Context	Accreditation Status	Type of Model
1.	**Burundi**	Established 2010 to date	North-East Africa French	A	Commission
2.	**Cameroon**	Established prior to 2000	West- Central Africa English and French	A	Commission
3.	**Egypt**	Established between 2000 and 2010	North Africa Arabic and English Recent internal uprising	A	Commission
4.	**Ghana**	Well established constitutional framework	West Africa English	A	Hybrid
5.	**Kenya**	Established between 2000 and 2010	East Africa English Recent change to a well established constitutional framework	A	Commission
6.	**Mozambique**	Established between 2000 and 2010	Southern Africa Portuguese Recently operational (2012)	Not Yet Accredited	Commission
7.	**Rwanda**	Country emerging from conflict or post-crisis	North-East Africa French and English	A	Commission
8.	**Seychelles**	Small Island State	Recently established (2009)	Not Yet Accredited	Commission but operating as a Hybrid
9.	**Tunisia**	Established prior to 2000	North Africa French Recent internal uprising	B	Commission

In some instances, some of the selected sample NHRIs fulfill more than one criterion. It is important to note that the Reference Group did not emphasize accreditation status and operating models as the primary criteria for selection.

During the selection of sample NHRIs, the Reference Group decided to prioritize the inclusion of NHRIs that were not part of recent self-assessment exercises facilitated by NANHRI. This is to provide more opportunity for other NHRIs to be closely studied. In this regard, the results of recent self-assessments from Mauritania, Senegal and Zambia formed part of the secondary material

During the study, it was not conducive for the research team to undertake fieldwork at the Commission for Human Rights and Administrative Justice (CHRAJ) in Ghana, as it was a sensitive period for the NHRI at the time. As a result, it was decided to replace CHRAJ with another NHRI that possesses a well-established constitutional framework. This led to the selection of the South African Human Rights Commission (SAHRC) as one of the sample NHRIs.

**1.4.4.
General Notes
and Advisory**

a) It is important to note that a number of topics within the study's respective thematic areas are cross-cutting and interrelated e.g. NHRI financing.

b) As decided by the Reference Group, this study is not intended as a comparison of NHRIs that formed part of the sample, but rather to use the case studies to provide an illustration of the state of African NHRIs, as well as to elicit key lessons that can be applied generally.

c) The case study approach involved a self-assessment by the sample NHRIs. As such, the results may be slightly skewed due to the element of subjectivity by the respondents. The project team has mitigated this risk by engaging with key external stakeholders to get a clearer view of respective sample NHRIs. However, it is important to note that several of these external stakeholders did not have in-depth knowledge of the internal operations of the NHRIs.

d) Where countries have sensitive political environments, this may impact on the veracity of information provided by respondents in those countries.

e) The level of available literature about African NHRIs in general also posed a challenge to the research team.

1.5. Structure of the Report

Following the introductory chapter, the findings of the study is structured within the next six chapters that cover the thematic areas of the study. Each chapter comprises of sub-themes that are pertinent to the chapter. In this regard, the Report: provides an overview of each chapter; introduces the international normative position for each sub-theme; and reviews available literature in the area (that elicits key issues about the state of NHRIs across the continent). Thereafter, the findings from the study of the 9 sample NHRIs are presented and analyzed. The summary of key findings and recommendations are presented in Chapter 8 of the Report.

2 Establishment and Oversight

2.1. Overview

Towards discussing the establishment and oversight of African NHRIs, the focus of this chapter is structured in terms of the following areas:

- ❑ Establishment and operationalization;
- ❑ Legal framework;
- ❑ Mandates, powers and functions;
- ❑ Type of model;
- ❑ Accreditation;
- ❑ Procedures and systems;
- ❑ Widespread accessibility of the institution nationally;
- ❑ National context and priorities; and
- ❑ Accountability and oversight.

In this chapter, an overview of the African context is provided through a literature review, including an examination of NANHRI's 2014 profiles of African NHRIs. This is supported by a detailed analysis of the findings from the 9 sample NHRIs.

2.2. Establishment and Oversight: State of African NHRIs

2.2.1. Establishment and operationalization of NHRIs in Africa

The Paris Principles prescribes that "a national institution shall be vested with competence to promote and protect human rights."[2]

NHRIs are an integral part of the structure for the human rights protection system in Africa, with 46 NHRIs established on the continent out of 55 UN member states, in terms of which 44 are members of NANHRI.[3]

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[2] Ibid.

[3] NANHRI website *"Members Of The Network Of African National Human Rights Institutions (NANHRI)"* retrieved from http://www.nanhri.org/index.php?option=com_content&view=article&id=107&Itemid=828&lang=en.

Figure 2.1: Period of Establishment of African NHRIs [4]
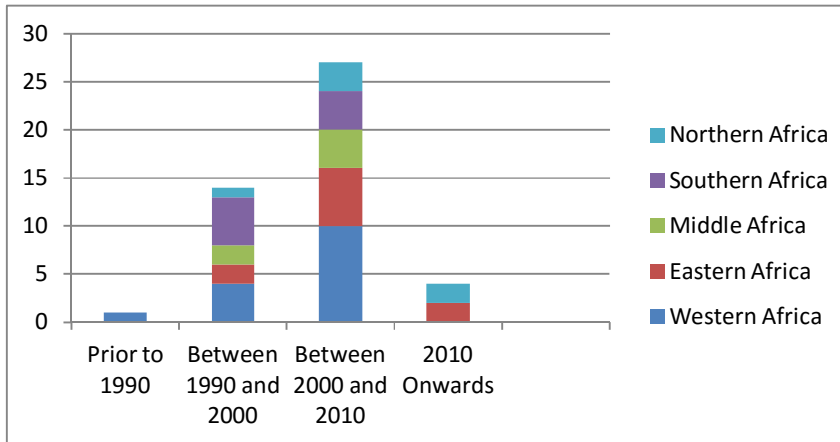
The majority of the sample NHRIs became fully operational within 12 months of their establishment, with the exception of an NHRI that took 3 years to become fully operational. From the case studies, the main factors that affect the immediate operationalization of NHRIs, after their establishment, are the lengthy processes and/or delays in appointing members and setting up the secretariat, which require the immediate disbursement of funds for infrastructure and human resources. In this regard, 2 of the sample NHRIs established from 2009 onwards, indicate challenges resulting from limited material and human resources that affected their operationalization. Technical and financial assistance from donors and multilateral agencies help to ameliorate these challenges. Also, some recently established sample NHRIs benefit from mentorship by other African NHRIs and regional networks, such as NANHRI.

The case studies indicate that African NHRIs have a significant degree of stability and consistency in their operations, with only a few instances of disruptions to their operations, often occurring during transitional periods, as a result of lengthy processes or delays in the appointment of new members. From the case studies, political will, inadequate funding and political instability in a country are also key factors that impact the smooth operations of African NHRIs.

Following establishment, some African NHRIs have experienced some sort of restructuring and/or re-establishment, often with a different name, legal basis and/or mandate. [5] The case studies show that sample NHRIs, which underwent re-establishment processes, have strengthened their legal frameworks i.e. from decree to legislation (2 sample NHRIs) and from a legislative to a Constitutional basis (1 sample NHRI).

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[4] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission and Cardenas S (2014) *"Chains of Justice: The Global Rise of State Institutions for Human Rights"* pg 145, retrieved from https://books.google.co.za/books?id=smjOAgAAQBAJ&pg=PA145&lpg=PA145&dq=angola+NHRI+established&source=bl&ots=cbvJgZy-Qf&sig=-9gqQjwXM5gxyEjAtGlbS5Z_Z9g&hl=en&sa=X&redir_esc=y#v=onepage&q=angola%20NHRI%20established&f=false.

[5] Khan, F.B. (2009), *"NHRIs and the challenges of independence in a Kenyan context"*, pg 43, retrieved from: http://www.lunduniversity.lu.se/lup/publication/1787374 and Sekaggya L. (2009) *"Africa and International Human Rights: Assessing National Human Rights Institutions,"* in Handbook of Africa's International Relations ed. Murithi, T, Routledge International Handbooks, pg 211.

**2.2.2.
Legal
Framework,
Mandates,
Functions and
Powers**

Where the NHRI's existence is based on a Presidential decree, for instance, then its mandate, powers and existence depend greatly on the will of the Executive, and can be tampered with when it suits the latter.[6] The Paris Principles state 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."[7]

*Legal basis for
African NHRIs*

The establishment of 54% of African NHRIs is rooted in the Constitution, whether on it's own or coupled with a specific decree or statute.

Figure 2.2: Classification (%) of 45 African NHRIs according to their Legal Framework [8]
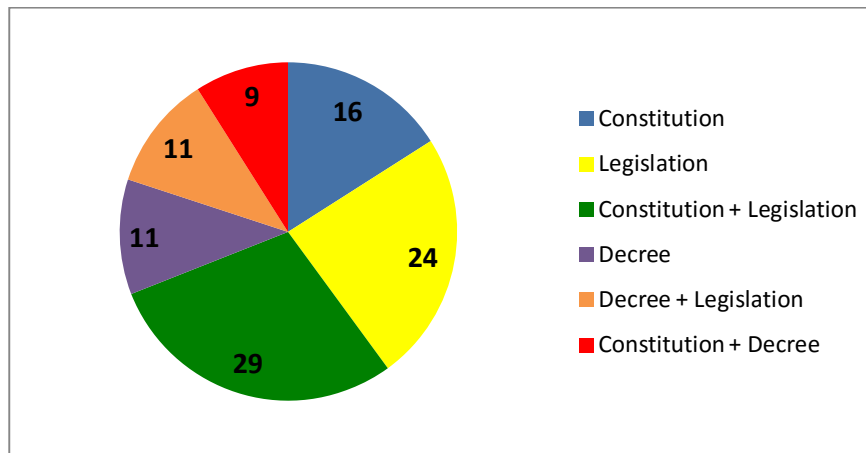
*Legal basis for
sample NHRIs*

The legal basis for the entire sample NHRIs meets the minimum standards of the Paris Principles. 3 of the 9 sample NHRIs have a legislative legal framework, while the legal basis for one sample NHRI comprises of both a decree and legislative legal framework. In one of the sample NHRIs, it is observed that the legal basis for the institution comprises of a number of decrees and legislation that were recently supplemented with enabling constitutional provisions. The remaining 4 of the sample NHRIs have both constitutional and legislative legal frameworks. Out of the 5 sample NHRIs that have constitutional frameworks, it is observed that 2 NHRIs have more detailed and substantive provisions stipulated for them within their constitutions, which should be benchmarked as best practice.

*Functions and powers
conferred to NHRIs
by their legal mandate*

The Commonwealth Best Practice guide mentions that "an NHRI should have a broad mandate covering the full range of human rights issues, while taking into account the universality, interdependence, interrelatedness, and indivisibility of human rights, which should be defined according to both domestic and international standards of law, whether or not relevant treaties have been ratified by government."[9]

All 9 sample NHRIs have precise legal provisions that clearly define their respective mandates. The 9 sample NHRIs indicate that their powers and functions are sufficient to enable them fulfill their respective mandates in accordance with the Paris Principles.

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[6] Mehta, S., "*Human Rights Commission and Oversight of Police*", pg 2, retrieved from:
http://www.humanrightsinitiative.org/programs/aj/police/res_mat/hrc_oversight_of_police.pdf.
[7] United Nations Human Rights op cit
[8] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

Since establishment, 3 out of 9 sample NHRIs experienced changes to their respective mandates. The legal basis for 2 sample NHRIs changed from a legislative to a constitutional framework, while one sample NHRI has a recent Resolution that broadened the mandate of the institution, to include its role as the National Preventative Mechanism against Torture. However, changes in mandates do not always have positive ramifications for the NHRI. Notably, during the shift from a legislative to a constitutional framework, one of the sample NHRIs lost its ability to take a Government department to trial for allegations of human rights abuses as its mandate is now limited to only making recommendations to the relevant state parties.

It is important to note that, despite fulfilling the minimum standard of the Paris Principles regarding having a legislative framework, there are instances where the Executive is statutorily empowered to create new regulations that may result in changes to the NHRIs' enabling legal environment. This has the potential to diminish the legal autonomy, functions and powers of the NHRI. In 2 of the sample NHRIs, whose legal basis are founded on legislative frameworks, the statutes respectively provide that *"a Decree of the President of the Republic shall define the conditions of implementation of this law";* and *"the President may make such regulations as he thinks fit for the purposes of this Act."*

3 of the sample NHRIs raise the concern that their respective mandates overlap with that of other state institutions, thereby resulting in the duplication of functions, with the tendency to confuse stakeholders about the institution's roles and functions. 4 of the sample NHRIs express the concern that they are limited to only making recommendations, without sufficient authority, in practice, to ensure that their recommendations are implemented. This indicates the need to ensure that NHRIs' recommendations are accorded appropriate credence with the relevant parties, including state agencies and the Judiciary.

The sample NHRIs are able, to varying extents, to successfully exert influence in the promotion and protection of human rights within their respective countries. This includes making recommendations to their respective Governments with regards to the harmonization of domestic laws with international standards. However, there are factors that hinder the optimal fulfillment of their mandates, such as: the political environment (e.g. reluctance to criticize the Government and/or the level of freedom of speech in the country), inadequate human and financial resources and unproductive dynamics amongst key role players (e.g. internal conflicts between Commissioners).

2.2.3. Types of NHRI Operating Model

Five different types of NHRI models are in existence globally:[10]

- ☐ Human Rights Commissions;
- ☐ Ombudsman Institutions;
- ☐ Hybrid Institutions;
- ☐ Consultative / Advisory Institutions; and
- ☐ Institutes and Centres.

In Africa, however, only three model types are found, namely the Human Rights Commission, the Ombudsman Institution and the Hybrid Institution.[11]

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9 Commonwealth Secretariat (2001) "*National Human Rights Institutions Best Practice,*" pg 22, retrieved from: http://www.asiapacificforum.net/members/international-standards/downloads/best-practice-for-nhris/nhri_best_practice.pdf.
10 UNDP et al (2010) *"UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions"* pg 21 – 27, retrieved from http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf.
11 Ibid pg 29 – 30.

As seen below, the majority of African NHRIs are established as Commissions. 8 out of the 9 sample NHRIs follow the Commission model. The operating model and structure for one of the sample NHRIs is somewhat unclear, as the NHRI is established as a Commission, yet it is hosted within the Ombudsman, has the same leadership as the Ombudsman and relies on the Ombudsman's staff, therefore, suggesting that it is operating as a Hybrid. The challenge observed with this institution's operating model is that while there is a reliance on the staff of the Ombudsman office, there is no evidence that they have the requisite background and knowledge to be able to promote and protect human rights effectively.

Figure 2.3: Classification (%) of 47 African NHRIs according to type of model
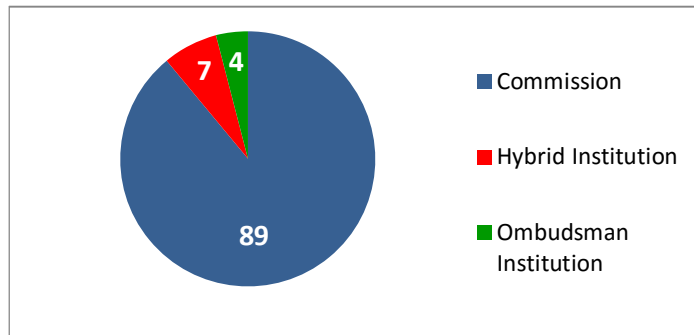
2.2.4.
ICC
Accreditation

According to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), NHRIs are subjected to an accreditation process, during which they are assessed in terms of their alignment with the Paris Principles: [12]

"A" Status:	Voting member – complies fully with the Paris Principles
"B" Status:	Observer member – does not fully comply with the Paris Principles or has not yet submitted sufficient documentation to make that determination
"C" Status:	Non-member – does not comply with the Paris Principles

Rating of African NHRIs

Based on available accreditation information on 44 African NHRIs (including the nine sample institutions), there are:
- ☐ 18 institutions with an A-status;
- ☐ 8 institutions with a B-status;
- ☐ 2 institutions with a C-status;
- ☐ 15 institutions that have not yet been accredited; and
- ☐ 1 institution whose accreditation has lapsed.[13]

6 out of 9 sample NHRIs have an A-status, while 1 sample NHRI has a B-status. The remaining 2 sample NHRIs, which are recently established (2009 onwards) are not yet accredited, due to not possessing all the relevant documentation (e.g. annual report) that are required during the accreditation process.

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[12] The International Coordinating Committee for National Human Rights Institutions website "*ICC Sub-Committee on Accreditation (SCA),*" retrieved from: http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx.

[13] NANHRI Member Profiles (2014); International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) (2014), *"Chart of the Status of National Institutions"* pg 3 – 9, retrieved from http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf and case study on Seychelles National Human Rights Commission.

Figure 2.4: Classification of African NHRIs according to their accreditation status [14]

NO	INSTITUTION'S COUNTRY	INSTITUTION NAME	ACCREDITATION
1	Algeria	National Consultative Commission for Promotion and Protection of Human Rights of Algeria	**B**
2	Benin	*Commission béninoise des droits de l'homme*	**C**
3	Burkina Faso	*Commission nationale des droits humains*	
4	Burundi	*Commission nationale independante des droits de l'homme*	**A**
5	Cameroon	*Commission nationale des droits de l'homme et des libertés*	**A**
6	Cape Verde	National Commission for Human Rights and Citizenship	
7	Chad	*Commission nationale des droits de l'homme*	**B**
8	Comoros	*Commission Nationale des Droits de l'Homme et des Libertés* (CNDHL)	
9	Congo Brazaville	*Commission nationale des droits de l'homme*	**B**
10	Côte d'Ivoire	National Human Rights Commission	
11	Democratic Republic of Congo	*Commission Nationale des Droits de l'homme*-RDC	
12	Djibouti	*Commission nationale des droits de l'homme*	
13	Egypt	National Council for Human Rights	**A**
14	Ethiopia	Ethiopian Human Rights Commission	**B**
15	Gabon	*Commission nationale des droits de l'homme*	
16	Ghana	Commission on Human Rights and Administrative Justice	**A**
17	Guinea-Bissau	*Comissao national dos direitos humanos*	
18	Guinea- Conakry	*Institution Nationale Indépendante des Droits Humains* (INIDH)	
19	Kenya	Kenya National Commission on Human Rights	**A**
20	Liberia	Independent National Commission for Human Rights	
21	Libya	National Council for Civil Liberties and Human Rights (NCCLHR)	**B**
22	Madagascar	*Commission Nationale des Droits de L'Homme de Madagascar*	**C**
23	Malawi	Malawi Human Rights Commission	**A**
24	Mali	*Commission nationale des droits de l'homme du Mali*	**B**
25	Mauritania	*Commission nationale des droits de l'homme*	**A**
26	Mauritius	National Human Rights Commission	**A**
27	Morocco	National Human Rights Council	**A**
28	Mozambique	National Human Rights Commission of Mozambique	
29	Namibia	Office of the Ombudsman	**A**
30	Niger	Commission nationale des droits humains	
31	Nigeria	National Human Rights Commission of Nigeria	**A**

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[14] Ibid.

32	Rwanda	National Commission for Human Rights of Rwanda	A
33	Senegal	Senegalese Committee for Human Rights	B
34	Sierra Leone	Human Rights Commission of Sierra Leone	A
35	South Africa	South African Human Rights Commission	A
36	South Sudan	South Sudan Human Rights Commission	
37	Sudan	National Commission for Human Rights of Sudan	
38	Swaziland	Commission on Human Rights and Public Administration	
39	Tanzania	Commission for Human Rights and Good Governance	A
40	Togo	*Commission nationale des droits de l'homme*	A
41	Tunisia	High Committee for Human Rights and Fundamental Freedoms	B
42	Uganda	Uganda Human Rights Commission	A
43	Zambia	Human Rights Commission	A
44	Zimbabwe	Human Rights Commission of Zimbabwe	

2.2.5. Procedures and Systems

To enable the smooth functioning of an NHRI, in accordance with the expectations of the Paris Principles, NHRIs should possess "mission and values statements, strategic objectives and plans, staff codes of ethics, quality standards and procedural handbooks."[15]

Prior to this study, self-assessments undertaken by some members of NANHRI, indicate that although they possess substantive policies and procedures, their growth areas include appropriate delegation of authority frameworks, dissemination and staff training.[16]

Figure 2.5 presents the results of a self-assessment rating by the 9 sample NHRIs in the present study on the adequacy of their policies and procedures.

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[15] Danish Institute for Human Rights (2013) *"NHRIs' Independence and Accountability"* pg 38 – 39, retrieved from http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Sonstiges/NHRIs_Independence_and_Accountability.pdf

[16] la Commission Nationale des droits de l'homme de la Republique Islamique de Mauritanie (2011): *"Methodologie De L'analyse Des Lacunes De La Commission Nationale Des Droits De L'homme De La Republique Islamique De Mauritanie",* report produced with the support of NANHRI and the Danish Institute for Human Rights pg 10; Comite Senegalais des Droits de l'Home(2012)*"Evaluation du Comite Senegalais des Droits de l'Homme"* report produced with the support of NANHRI and an independendent consultant pg 7; and The Human Rights Commission of Zambia (2012), *"Capacity Assessment"* report produced with the support of the UNDP regional centre in South Africa, network for African National Human Rights Institutions and Office of the High Commissioner for Human Rights pg 59.

Figure 2.5: Adequacy of Policies and Procedures for 9 Sample NHRIs
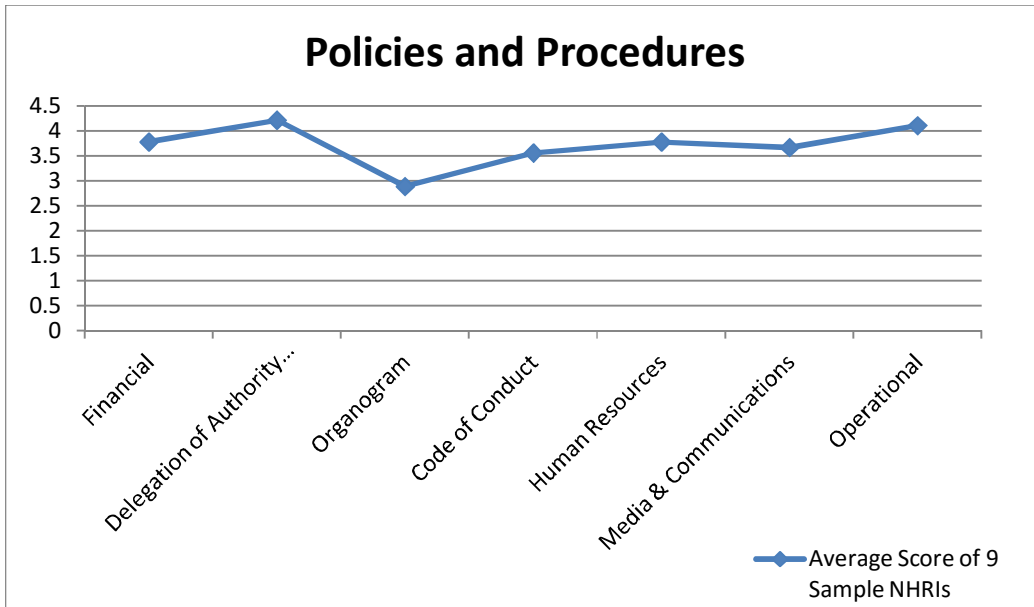
Rating Scale
1: Not existing
2: Existing but not well developed
3:Average
4: Very developed
5: Excellent

Overall, the 9 sample NHRIs rated their policies and procedures as average to highly developed, thereby, highlighting the *prima facie* existence of good operating systems.

Although the sample NHRIs have rated their delegation of authority frameworks highly, when this is compared to the rating ascribed to organograms, the results appear slightly skewed. This is because of the interdependency of both areas when creating a comprehensive structure for the effective functioning of an NHRI.

From the fieldwork, it is clear that:

- ☐ In 5 of the sample NHRIs, efficient corporate governance systems with clear lines of responsibility and accountability (particularly regarding strategic versus operational functions) have not been well defined, which has led to some tensions amongst role players within these institutions.

- ☐ As observed in at least 3 sample NHRIs, operational policies and procedures are not always clearly documented and disseminated.

- ☐ 2 sample NHRIs indicate the need to improve the overall coordination and functioning of their structures and systems, including the harmonization of existing policies and procedures.

- ☐ The implementation of policies and procedures for 3 sample NHRIs is affected by inadequate financial resources.

- ☐ For areas covered by State regulations that are applicable to the institution, NHRIs have not developed substantial internal policies and procedures. For example, one sample NHRI does not have internal financial policies and procedures due to finances being controlled according to state rules by a financial controller.

- ☐ Some recently established NHRIs, without permanent staff of their own, have not fully established policies and procedures for human resources, including a code of conduct.

Strategic plans From the graph below, it is clear that annual plans are the most common form of strategy development among the sampled NHRIs. 6 out of the 9 sample NHRIs consistently rate their annual, mid-term and long-term planning highly. A good practice found in these 6 sample NHRIs is the alignment between their long-term and short-term plans, which potentially provides further credence to their operational strategy. Strategic planning is a growth area for the remaining 3 sample NHRIs due to factors, such as political upheavals, human and financial resource constraints, which limit the ability of these institutions to plan strategically.

Figure 2.6: The Adequacy of Strategies for 9 Sample NHRIs
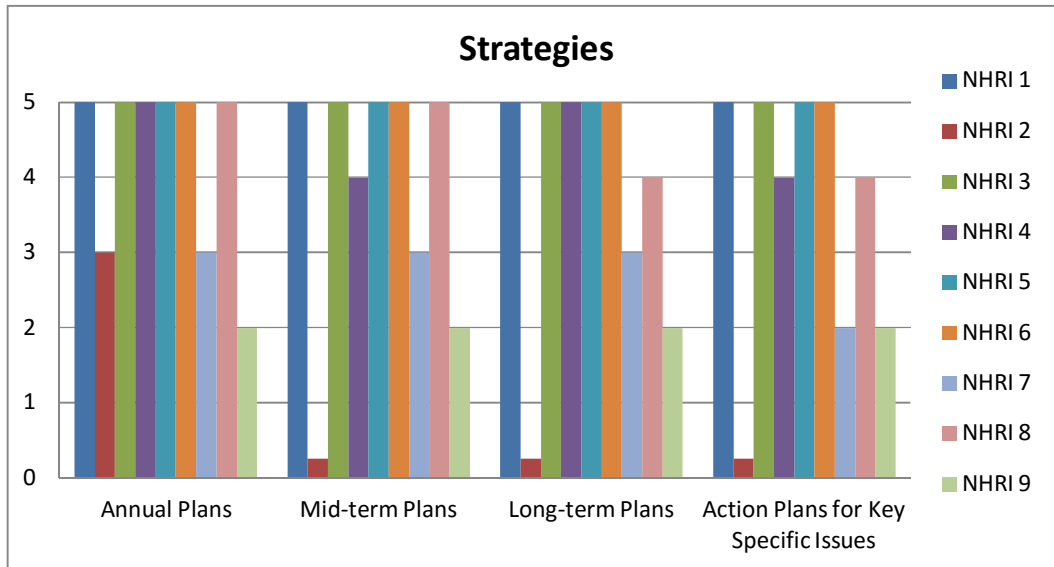
Rating Scale
1: Not existing
2: Existing but not well developed
3:Average
4: Very developed
5: Excellent

**2.2.6.
Widespread
accessibility of
the institution
nationally**

The Paris Principles prescribe that an NHRI should be responsible for "drawing the attention of the government to situations in any part of the country where human rights are violated". [17] To effectively fulfil this requirement, it is important for NHRIs to firstly, be accessible to citizens throughout the country, including rural and marginalized groups. Secondly, NHRIs should pro-actively have sound knowledge of the human rights climate across their respective countries. Broad physical presence, through establishing local offices in provinces and districts, is a good indication of widespread accessibility of an NHRI nationally. This is also encouraged where the institution handles complaints.[18]

Available literature on this area shows that the majority of African NHRIs (56%) have provincial offices in addition to their national headquarters. Although it can be observed from Figure 2.7 below that NHRIs in countries with large geographical areas more often possess provincial offices, there are some exceptions, notably Chad and Mali, which do not have provincial offices. The data shows that countries with small geographical areas are less likely to possess provincial offices, although there are exceptions such as Comoros.[19]

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[17]   United Nations Human Rights op cit

[18]   The International Council on Human Rights Policy (2005) *"Assessing the Effectiveness of National Human Rights Institutions"* pg 16, retrieved from http://www.ohchr.org/Documents/Publications/NHRIen.pdf.

[19]   NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

Figure 2.7: NHRI Provincial Representation [20]

S/N	COUNTRY	NUMBER OF SATELITE / PROVINCIAL OFFICES (AS AT 2013)	S/N	COUNTRY	NUMBER OF SATELITE /PROVINCIAL OFFICES (AS AT 2013)
1.	ALGERIA	5	21.	MOROCCO	13
2.	BURKINA FASO	1	22.	MOZAMBIQUE	0
3.	BURUNDI	3	23.	NAMIBIA	3
4.	CAMEROON	5	24.	NIGER	0
5.	CAPE VERDE	0 (Contact person in charge of provincial interaction appointed by the NHRI)	25.	NIGERIA	23
6.	CHAD	0 (Secretary General is responsible for provincial interaction)	26.	RWANDA	0
7.	COMOROS	3	27.	SENEGAL	14
8.	CONGO BRAZZAVILLE	0 (Contact person in charge of provincial interaction appointed by the NHRI)	28.	SEYCHELLES	0
9.	DJIBOUTI	0	29.	SIERRA LEONE	4
10.	EGYPT	5	30.	SOUTH AFRICA	9
11.	ETHIOPIA	6	31.	SOUTH SUDAN	8
12.	GABON	0 (Contact person in charge of provincial interaction appointed by the NHRI)	32.	SUDAN	0
13.	GHANA	10 provincial offices + 102 District offices	33.	SWAZILAND	0
14.	GUINEA BISSAU	0 (President of the NHRI is responsible for provincial interaction)	34.	TANZANIA	5
15.	KENYA	5	35.	TOGO	4
16.	LIBYA	1	36.	TUNISIA	0 (Contact person in charge of provincial interaction appointed by the NHRI)
17.	MALAWI	1	37.	UGANDA	10
18.	MALI	0 (Contact person in charge of provincial interaction appointed by the NHRI)	38.	ZAMBIA	5
19.	MAURITANIA	0	39.	ZIMBABWE	0
20.	MAURITIUS	0 (Contact person in charge of provincial interaction appointed by the NHRI)			

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[20] Ibid.

Towards ensuring widespread accessibility, some African NHRIs have developed unique structures. In Morocco, for instance, the NHRI has 13 provincial commissions with their own commissioners, mandated to protect and promote human rights in their respective provinces. Similarly, the NHRI in Namibia has developed 80 visiting points to provide mobile complaint intake clinics towards enabling indigenous people to lodge complaints. [21]

Widespread Accessibility of the 9 sample NHRIs

The case studies show that despite efforts of the sample NHRIs to ensure their widespread accessibility, this is an area that requires continuous improvement in general, particularly for 2 of the recently established NHRIs. 5 of the 9 sample NHRIs possess provincial offices in at least two or more provinces within their respective countries, although, inadequate human resources hinders the effectiveness of provincial structures within 2 sample NHRIs in this category.

Only one sample NHRI (which notably possesses the highest NHRI budget in Africa) has offices in every province within their country. Despite this, the NHRI indicates the need for the creation of more satellite offices in rural areas, in order to extend its coverage and accessibility. The remaining 4 sample NHRIs do not possess provincial offices in their respective countries. One of the sample NHRIs cited insufficient funds, inadequate human and material resources, while another NHRI did not deem local offices to be necessary due to their country's small geographical land mass.

The case studies show a number of innovative efforts by the sample NHRIs to increase their accessibility through the following means:

- ☐ Partnering with CSOs as a means of receiving complaints from people in areas where the NHRI has limited presence and /or access.
- ☐ Appointing liaison people in the provinces to represent the NHRI.
- ☐ Engaging in promotional activities aimed at diverse groups.
- ☐ Developing public information about the NHRI and its programs.

An observation from the fieldwork is that there is the need to ensure the accessibility of NHRI buildings, both headquarters and provincial offices. Some of the sample NHRIs are situated on upper floors of buildings, without elevators to accommodate persons with disabilities, wishing to access the NHRI. Also, there are instances where the headquarters is spread across three different buildings, without appropriate signage, which is unsatisfactory.

2.2.7. National context and priorities

The Paris Principles state that an NHRI shall bear the responsibility of preparing "reports on the national situation with regard to human rights in general, and on more specific matters." [22] In this regard, specialist units and working groups within the NHRI should be established based on national priorities.[23]

Literature indicates that the work of African NHRIs is targeted. NHRIs are adapting their programs and activities to suit their respective national human rights contexts and development priorities. Figure 2.8 below provides an indication of these main priority focus areas and their level of engagement by several NHRIs in Africa. The figure shows that, while the prevention of torture is high on the list of priorities of the vast majority of African NHRIs in Africa, sexual minority rights have generally not received high levels of engagement. Also, there has been moderate engagement generally with regards to business and human rights.

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[21] Expert Interview from Aleksandra Plesko Associate Human Rights Officer, Office of the United Nations High Commissioner for Human Rights.

National context and priorities in the 9 sample NHRIs

All sample NHRIs are seen to attach high levels of priority to certain thematic areas, which indicate particular relevance to their national context. For example, one sample NHRI has indicated that civil and political rights are highly prioritized (following the period of political unrest), while another sample NHRI has highly engaged in terms of children's rights (due to a high number of orphans after a period of internal conflict). 7 of the 9 studied NHRIs display high levels of engagement regarding torture, which is an area that remains highly relevant on the African continent. 6 of 9 sampled NHRIs display high levels of engagement in terms of business and human rights, which is an important emerging thematic area for NHRIs. Only 2 of the 9 sample NHRIs are highly engaged with regards to sexual minority rights, which is another emerging human rights issue on the continent.

Figure 2.8: Indication of Priority Thematic Areas for African NHRIs as at 2013 [24]

Country	Prevent Torture	Business & Human Rights	Persons with Disabilities	Sexual Minority Rights	Gender & Human Rights	Migration & Human Rights	Children	Socio-Economic Rights	Civil & Political Rights	Health	Cultural Rights & Practice
Algeria	Red	Yellow	Red	Green	Red		Red				
Benin											
Burkina Faso	Green	Green	Green	Yellow	Green	Yellow					
Burundi	Red	Yellow	Red	Green	Red		Red	Red			
Cameroon	Red	Red	Red	Yellow	Red	Red			Red		
Cape Verde	Green	Green	Yellow	Green	Red	Red					
Chad	Yellow	Yellow	Red	Green		Yellow					
Comoros	Red	Red	Red	Green							
Congo											
DRC	Red	Red	Red	Green	Red	Red					
Djibouti	Red	Red	Red						Red		Red
Egypt	Red								Red		Red
Ethiopia	Red	Yellow	Red	Green	Red	Green					Red
Gabon	Green	Green	Green	Green	Green	Green					
Ghana	Red	Yellow	Red	Yellow	Red	Green					
Guinea Bissau	Red	Yellow	Red	Green	Red	Red					
Guinea Conakry											
Ivory Coast	Red	Red	Red	Green	Red	Red					
Kenya	Red	Red	Red	Yellow	Red	Red		Red			
Liberia											
Libya											
Madagascar											
Malawi	Red	Yellow	Red	Green	Red	Green	Red	Red	Red		Red
Mali	Red	Green	Green		Red						
Mauritania	Red	Yellow	Red		Red	Yellow					Red
Mauritius	Red	Yellow	Green		Green						
Morocco											
Mozambique	Red	Red	Yellow	Yellow	Red		Red		Red	Red	
Namibia	Red	Green	Yellow	Red	Green	Green					
Niger	Red	Red	Red		Red	Red					
Nigeria	Red	Red	Red	Yellow	Red	Green		Red	Red		
Rwanda	Red	Red	Red	Red	Red	Red	Red			Red	
Senegal	Red	Yellow	Red	Green	Red	Red					
Seychelles	Yellow	Green	Red		Yellow	Red		Red			
Sierra Leone	Red	Red	Red	Yellow	Red	Yellow		Red	Red		

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22   United Nations Human Rights op cit.
23   UNDP et al op cit pg 133.
24   NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

South Africa	Yellow	Red	Red	Red	Red	Red	Red	Red		Red	
South Sudan[25]	Red	Yellow	Yellow	Green	Red	Red					
Sudan	Red	Red		Green	Red	Red			Red		Red
Swaziland	Green	Yellow	Red	Green	Red	Green					
Tanzania	Red	Yellow	Yellow	Green	Yellow	Green					
Togo	Red	Yellow	Yellow	Green	Red	Yellow					
Tunisia	Red		Red						Yellow	Red	
Uganda	Red	Red	Red	Yellow	Red	Yellow					
Zambia	Red	Yellow	Red	Green	Red	Yellow	Red	Red			
Zimbabwe	Red	Red	Red	Green	Red	Green	Red	Red	Red		

Level of Engagement by the NHRI	
High / Very High	Red
Moderate	Yellow
Low / Very low / No Engagement	Green
Information Not Available	White

As highlighted in Figure 2.9 below, the majority of the sample NHRIs (6 out of 9) have, to a high level, aligned their priorities to include emerging human rights issues within their respective countries. Further detail about the capacity of NHRIs to deal with emerging issues is discussed within chapter 5 (section 5.2.3) of this report.

Figure 2.9: Alignment (%) of emerging human rights to priorities of 9 sample NHRIs
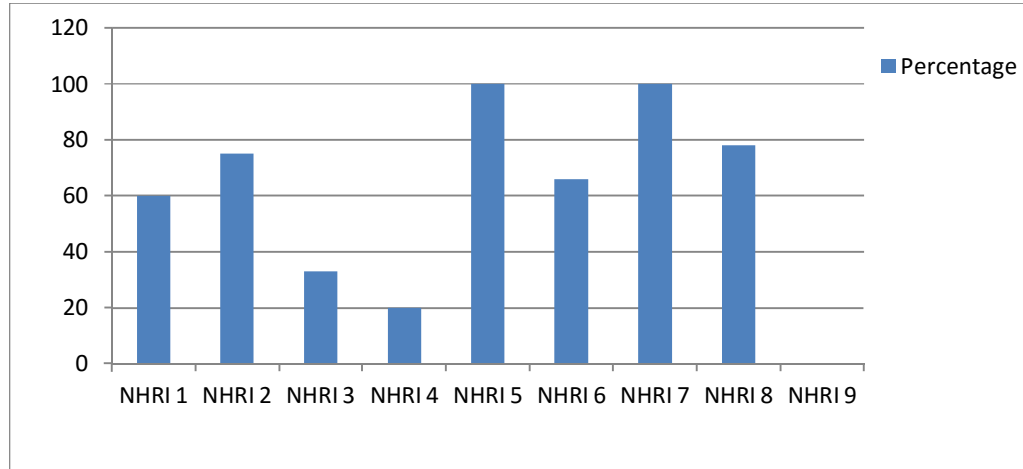
2.2.8. Accountability and Oversight

Once an NHRI is established, accountability is crucial for its proper functioning, legitimacy and credibility.[26] Accountability is a fundamental pillar of governance and occurs on two main levels. Firstly, in terms of the internal oversight, responsibility and accountability chain within the institution's hierarchy. Secondly, NHRIs are transparent and accountable to external stakeholders. These may include the Government, Parliament, donors, civil society, country citizens and victims of human rights abuses etc.[27] In fact, reporting annually on aspects of the NHRIs work is an important part of communication that ensures accountability by the NHRI.[28] Many African NHRIs usually produce an annual report, which is submitted to Parliament or

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[25] Additionally, for South Sudan, the levels of engagement for Genocide and Internally Displaced People (IDPs) are respectively moderate and high.

the State. Annual reports are also a prerequisite for accreditation by the ICC.

Internal Accountability within the 9 sample NHRIs

All of the sample NHRIs adopt the Commission Model, although, one of them is in practice, functioning more as a Hybrid. The case studies reveal that the internal accountability and responsibility chains within the majority of the sample NHRIs (5 out of the 9 sample) are unclear. This is particularly with regards to the strategic versus operational roles. For example, there are several instances where Commissioners are also conveners of various departments and are able to supervise the implementation of approved work plans simultaneously with the Head of the Secretariat and Directors that are responsible for the same departments. This situation is problematic and results in duplication of roles, tensions and in-fighting amongst key functionaries, which affect the performance of the institution.

External Accountability within the 9 sample NHRIs

African NHRIs are either accountable to Parliament, the Head of State or both. This is confirmed by the sample NHRIs (as shown in figure 2.10 below), in terms of which they are required (by their legal framework) to submit periodic reports that outline the technical, financial and administrative work of the NHRI. As good practice, the Parliaments of some African countries (including at least 3 sample NHRIs) have either established standing committees to deal exclusively with human rights or have included human rights in the mandates of existing Parliamentary Committees.[29] For instance, in addition to submitting an annual report, one of the sample NHRIs, is required to make oral presentations to the relevant Parliamentary Portfolio Committee on an on-going basis and to provide a quarterly performance monitoring report to Parliament.

It is important to note that 3 of the sample NHRIs have not consistently provided annual reports to Government accountability structures. This is due to delays in operationalization, political instability or lack of technical, financial or administrative oversight by the relevant State structure.

Figure 2.10: Accountability to Government Structures for 9 sample NHRIs

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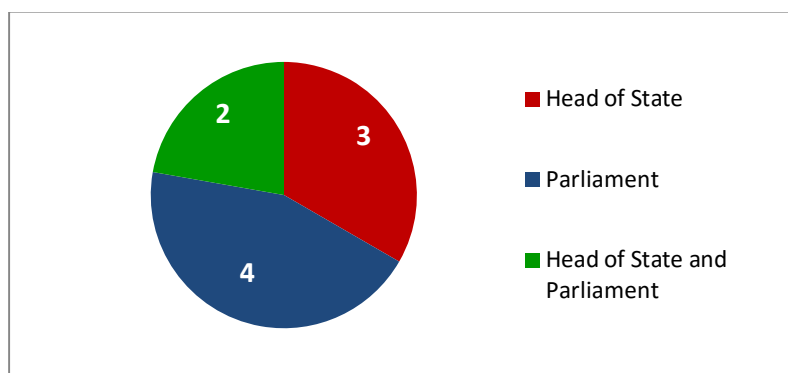
[26] Smith, A (2006), "The Unique position of National Human Rights Institutions", pag 908, retrieved from http://www.constitutionalvalues.org/pdf/docs/general/Smith,%20The%20Unique%20Position%20of%20National%20Human%20Rights%20Institutions%20A%20Mixed%20Blessing.pdf20National%20Human%20Rights%20Institutions%20A%20Mixed%20Blessing.pdf.

[27] The International Council on Human Rights Policy op cit pg 23.

[28] Ibid.

[29] National Democratic Institute for International Affairs (2005), *"Parliamentary Human Rights Committees,"* pg 9, retrieved from: https://www.ndi.org/files/parlhrscommittees_080105.pdf.

To varying extents, the sample NHRIs are accountable to civil society and victims, through various forms of stakeholder engagement processes that include feedback mechanisms. This has emerged as one of the areas that require strengthening within the NHRIs. Please refer to chapters 5 and 6 respectively for further analysis regarding capacity and stakeholder engagement within the sample NHRIs.

As part of bilateral arrangements with donors, 6 sample NHRIs (which receive donor funding) are required to account for received resources. A key concern raised by these sample NHRIs is the amount of time required to produce accountability reports, particularly the opportunity cost for the institutions in terms of managing time and resources that should be dedicated to implementing their mandate.

Please refer to Chapter 4 of this Report (Section 4.2.4), which deals with the issue of Financial Accountability more substantively.

Independence

3.1. Overview

In this chapter, the discussion of the independence of African NHRIs focuses on the following criteria:

a) Independence through legal autonomy;

b) Independence through operational autonomy within the political and democratic space;

c) Independence through appointments; and

d) Independence through composition and pluralism.

The chapter looks at these key elements, employing a combination of a literature review that draws out common trends across Africa, supplanted by the findings from the fieldwork engagement with internal and external stakeholders of the 9 sample NHRIs.

3.2. Independence: State of African NHRIs

3.2.1. Independence through Legal Autonomy

The effectiveness of an NHRI largely depends upon the existence and strength of particular legal, financial, political and social factors. These factors include whether democratic governance exists and whether or not the institution is operationally independent from the government in the country it operates in.[30]

The independence of African NHRIs is often secured by the strength of its legal autonomy, which requires clearly stipulated legal provisions within the enabling legislation or Constitution that safeguards the institution's independence, functions and powers.[31]

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[30] Tsekos ME (2002), *"Human Rights Institutions in Africa"*, pg 22, retrieved from
http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1449&context=hrbrief.
[31] Smith, A op cit pg 913

Requirement for strong legal basis to guarantee the independence of NHRIs

As discussed in the preceding chapter, NHRIs require a strong legal basis to guarantee their independence. Available literature on the subject matter indicates a number of key issues that have the tendency to compromise the independence and effectiveness of African NHRIs. These include the following:

☐ Weak legal basis for the existence of the NHRI e.g. where the institution is created by Executive Orders, such as a Presidential Decree, which are more easily repealed or amended and thus afford no real guarantee for the continued existence or independence of an NHRI.[32] As such, having a strong constitutional and/or legislative framework has been shown to support the independence of NHRIs.[33]

☐ Structural limitations and restrictive mandates imposed on an African NHRI by its enabling legislation. [34] In addition, poorly written legislation and ambiguous law on the powers and functions of human rights institutions can be a hindrance to the promotion and protection of human rights by African NHRIs and its functionaries.[35]

☐ Inadequate protection within the enabling legislation for the institution and its leadership, particularly with regards to security of tenure. [36]

As discussed in the foregoing chapter, the legal existence of the 9 sample NHRIs are in accordance with the minimum standards prescribed by the Paris Principles. The existence of the sample NHRIs is based on at least a legislative framework, with the majority (5 out the 9 sample NHRIs) also having a constitutional backing.

All 9 sample NHRIs have precise legal provisions that clearly define their respective mandates. The 9 sample NHRIs also indicate that their powers and functions are sufficient to enable them fulfil their respective mandates in accordance with the Paris Principles.

Although there are precise legal provisions supporting the legal autonomy of all 9 sample NHRIs, there are instances where the Executive is statutorily empowered to create new regulations that may result in changes to the NHRIs' legal environment, thereby, limiting the legal autonomy of the institution. This is seen in 2 of the sample NHRIs, whose legal basis is founded on legislative frameworks.

The members (Commissioners) of the 9 sample NHRIs are legally provided with security of tenure, which range from 3 to 7 years. In 6 of the sample NHRIs, the tenures for members are renewable for an additional term, while only one sample NHRI's founding law does not explicitly state how many terms a Commissioner is allowed to serve. The tenure for members is non-renewable in 2 of the sample NHRIs.

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[32] Tsekos op cit pg 22 and Smith op cit pg 914.
[33] Sekaggya, op cit pg 211.
[34] Mehta, op cit pg 7.
[35] Sekaggya, op cit pg 211 and Zimbabwe Human Rights Act (2012) pg 2-18 retrieved from http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_232685.pdf.
[36] Sekaggya, op cit pg 208.

3.2.2.
Independence through Operational Autonomy within the political and democratic space

Operational autonomy signifies the ability for an NHRI to execute its mandate without external interference, control, influence or obstruction from any branch of government or any public or private body or person.[37] The Paris Principles state that an NHRI should be able to "freely consider any questions falling within its competence."[38] This requires the existence of a substantive level of political will by politicians in power to promote and protect human rights,[39] by guaranteeing NHRIs with a secure and conducive operating environment.

Threats to the operational autonomy of African NHRIs

Available literature on the subject matter highlight a number of areas, where the operational autonomy of African NHRIs have been threatened:

☐ There have been several reported cases of human rights defenders in Africa being harassed, intimidated, arbitrarily arrested and there have even been cases of murder of human rights defenders.[40]

☐ Withholding adequate financing has historically been a common tactic, through which the State and/or Executive seek to exert control over NHRIs on the continent.[41]

Interference to the operational autonomy of sample NHRIs

The case studies indicate a number of threats to the operational autonomy of some of the sample NHRIs, albeit to varying extents. Although, 5 of the 9 sample NHRIs have not experienced explicit or implicit threats or interferences to the implementation of their mandates to date, 4 sample NHRIs have had occurrences of interference with their work. This includes: refusals to include the NHRI in certain committees; denied access to project sites; and harassment of NHRI staff during investigations. In addition, some of these NHRIs have experienced frustration and tacit constraints due to a lack of political will and cooperation. This study reveals that where Governments are repressive and freedom of speech is virtually non-existent or compromised, there is not much importance placed on human rights within the country, thereby, hindering the overall independence of the NHRI.

While NHRIs may be independent in theory, the actions and courage of Commissioners and staff may differ in practice. For instance, in one sample NHRI, Commissioners appointed on a part-time basis are hesitant to speak out against human rights abuses as a result of conflicts of interest in terms of their roles at the NHRI vis-à-vis their primary employment/constituency. In another sample NHRI, in-fighting and a lack of consensus amongst Commissioners has had the same effect on the institution's operational independence, as this has led to the inability of the Commission to address instances of human rights violations in a timely and effective manner.

Functional immunity

Functional immunity [42] is provided within the legal environment for Commissioners in 8 out of the 9 sample NHRIs, while staff members are

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[37] Smith op cit pg 912.

[38] United Nations Human Rights op cit.

[39] Peters, (2009) *"Human Rights Commissions in Africa – Lessons and Challenges'*, in Human Rights in Africa, Legal Perspectives on their Protection and Promotion, Bösl, Anton and Diescho, Joseph (eds.), Macmillan Education Namibia, Windhoek, pg 351retrieved from http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/11_Peter.pdf.

[40] Sekaggya, op cit pg 216 and United Nations General Assembly, Human Rights Council (2010) "*Working Group on the Universal Periodic Review, 8th session"* National Report submitted in accordance with para. 15 (a) of the annex to Human Rights Council Resolution 5/1 Kenya, UN Doc. A/HRC/WG.6/8/KEN/1 pg 13-20 retrieved from www.ohchr.org/EN/HRBodies/UPR/PAGES/KESession8.aspx.

[41] Uganda Human Rights Commission (2014), "*UHRC 16th Annual Report"* pg 64 retrieved from http://www.uhrc.ug/uhrc-16th-annual-report and Smith op cit pg 920.

of sample NHRIs | accorded this protection in only 4 out of the 9 sample NHRIs. In one of the sample NHRIs, staff members are unable to speak out against human rights abuses, as the law does not provide for their functional immunity. The situation within this NHRI is exacerbated where the Commissioners are reluctant to act due to conflicts of interest (as described above).

Figure 3.1: Provision of Functional Immunity for Members and Staff of sample NHRIs

Functional Immunity

- Commissioners and Staff
- Commissioners only
- No immunity for either
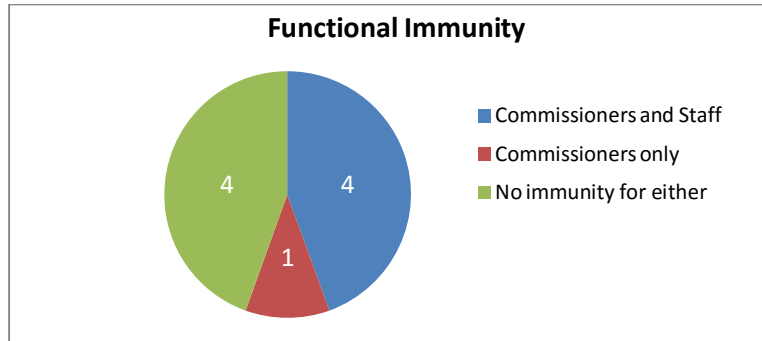
Financial independence of sample NHRIs | *Please refer to Chapter 4 of this Report (Section 4.2.3), which deals with the issue of Financial Management (including Financial Independence) more substantively.*

3.2.3. Autonomy through Appointments

Appointment mechanisms are one of the most important ways of guaranteeing the independence of NHRIs. The Paris Principles provides that the appointment of members of the national institution "shall be effected by an official Act, which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured."[43] Best practice requires involving the legislature and civil society in making the appointments, through "wide consultation and a process for public nomination of candidates." [44]

Available literature indicates that:

☐ The appointment process for NHRI members across the continent is not consistent. While the appointment process for members of NHRIs in some African countries is legally provided for, with provisions for broad consultation that involves civil society actors,[45] there are instances where the executive branch of government unilaterally appoints the members of the institution e.g. the Prime Minister appointing the Secretary General of the Commission, without sufficient consultation or transparency. [46] Some experts indicate the existence of bias towards political affiliation in the appointment process of some NHRIs in Africa, particularly where the

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[42] This refers to immunity granted to people who perform certain functions of state in their official rather than personal capacity.

[43] United Nations Human Rights op cit.

[44] International Coordinating Committee of National Human Rights Institutions (2006), *"Appointment Procedures of National Human Rights Institutions"*, Paper for the Discussion for the ICC, pg 3, retrieved from http://www.constitutionalvalues.org/pdf/docs/creating/OHCHR_Appointments_Procedure_Paper.pdf.

[45] Section 4 of the Malawi Human Rights Act, 1998 and Section 3 Human Rights Commission of Sierra Leone Act, 2004 retrieved from http://www.icnl.org/research/journal/vol13iss4/special_1.htm#_ftn123.

[46] Ssenyonjo, M. (2009) *"Economic, Social and Cultural Rights in International Law"* Bloomsbury Publishing, pg 193, retrieved from https://books.google.co.za/books?id=PALcBAAAQBAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

appointment process appears to be consultative in form, without the necessary substance, which is more likely when civil society organizations are not involved in the process.[47]

☐ Lengthy delays in the processes for appointments and re-appointments of NHRI members are a key challenge that affects the institution's effectiveness and independence.[48]

☐ Staggered tenures are not provided in some African NHRIs, to enable them to maintain institutional memory, through the structure of appointments, reappointments and removals.[49]

Processes for appointments in sample countries

The majority of the sample NHRIs (8 of the 9) have a legislative framework that outlines the processes for appointing and reappointing Commissioners of the NHRI. The case studies show that appointments of NHRI members are made by the Executive in conjunction with National Assembly in 5 sample NHRIs; the Executive in consultation with various sectors in 2 sample NHRIs; and National Assembly in one NHRI (see figure 3.2. below).

Figure 3.2: Appointment Structure in the 9 sample NHRIs
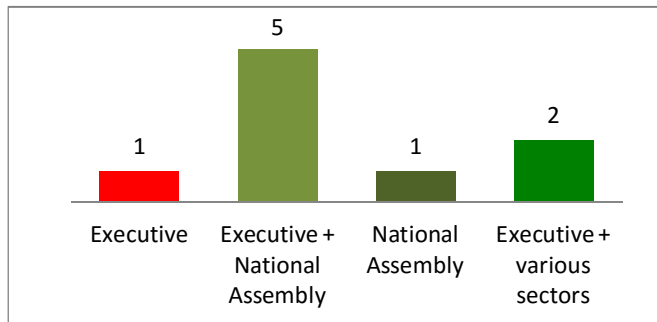
In addition, many of these institutions exhibit good practices that mainstream a broad consultation process. Examples include involving the national assembly, minority groups and the general public. Also, towards preserving their institutional memory, 2 sample NHRIs provide staggered tenures for Commissioners within their enabling legislation.

The appointment procedure for members of 2 of the sample NHRIs may soon be legally reformed as part of the transitional process that the respective countries are presently going through, following recent civil unrest and regime change. This indicates that appointment processes and their legal basis are not static, as they may be subject to different political dispensations.

Fairness of appointment Processes in sample NHRIs

The majority of the sample NHRIs indicate that the process for appointing Commissioners are fair and guarantee the appointment of people with integrity, skill, qualification and competence. There are however, some perceived challenges in the appointment process by stakeholders in 4 sample NHRIs. These relate to concerns regarding the control of the appointment process by the dominant political party or religious group, thereby resulting in the presence of political appointees in strategic positions within the

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[47] Sondem, S. (2012) *"National Human Rights Institutions - the Ghanaian experience",* Journal for European Issues Eurodialogue, pg 250, retrieved from http://studiorum.org.mk/evrodijalog/16/pdf/Evrodijalog_br_16_7_S-Sondem_ENG.pdf and Ssenyonjo op cit pg 197.

[48] Sekaggya, op cit pg 210.

[49] Peters op cit pg 368.

institution.

Figure 3.3: Fairness of the processes for Appointing Commissioners in sampled NHRIs
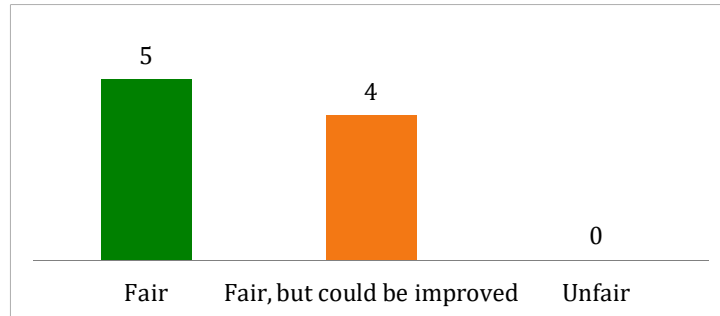
Criteria for Appointing Commissioners in the sample NHRIs

All sample NHRIs have stringent criteria for appointing Commissioners in their enabling legislation. The most prevalent criterion in 8 of the 9 sample NHRIs is a substantial human rights knowledge and experience. This is a good practice and indicates the conscious effort to appoint competent members. A number of criteria in the sample NHRIs directly relate to the national context e.g. in a country emerging from internal conflict, candidates are required to have no record of prior conviction relating to involvement in genocide. This is commendable, as it shows efforts to ensure the applicability of global standards to suit local realities.

Figure 3.4: Criteria for Appointments of Commissioners in sample NHRIs

Criteria and Process for reappointments of Members in sample NHRIs	Reappointment of Commissioners is permissible in 7 out of the 9 sample NHRIs, in terms of which the process for reappointment is similar to that of initial appointments. This shows consistency in the approach for appointments. Criteria for reappointment within the relevant sample NHRIs include: performance and integrity (regarding absence of conflict of interest) of serving members. The reappointment of members may be dependent on their constituency e.g. where civil society selects their representatives. Also, the reappointment of members of Parliament depends on their term in Parliament.
Removal of NHRI Members in Sample NHRIs	There are legal provisions with clear and objective criteria for the removal of Commissioners in 7 of the 9 sample NHRIs, with the most prevalent criteria being gross misconduct and conflicts of interest (see figure 3.5). In terms of the 2 sample NHRIs that are deficient in this area, There are current efforts to include necessary provisions regarding the criteria for removal of members in one sample NHRI, as part of amendments proposed by the institution to the legislature during the country's transitional process. The other NHRI indicates that such provisions are not pertinent for them since the NHRI is composed of a majority of part-time Commissioners, who are seen more as advisors. This explanation is unacceptable, as clear and objective criteria for dismissals are required irrespective of whether or not the members are appointed on a full-time. It is important to note however, that detailed procedures for the removal of members is articulated in the founding laws of only 5 sample NHRIs. While 1 of the other sample NHRIs has detailed procedures within their internal code of conduct, this may not provide adequate protection of the institution's independence, particularly in a tense political environment.

*Figure 3.5: Criteria for Dismissals of Commissioners in sample NHRIs*
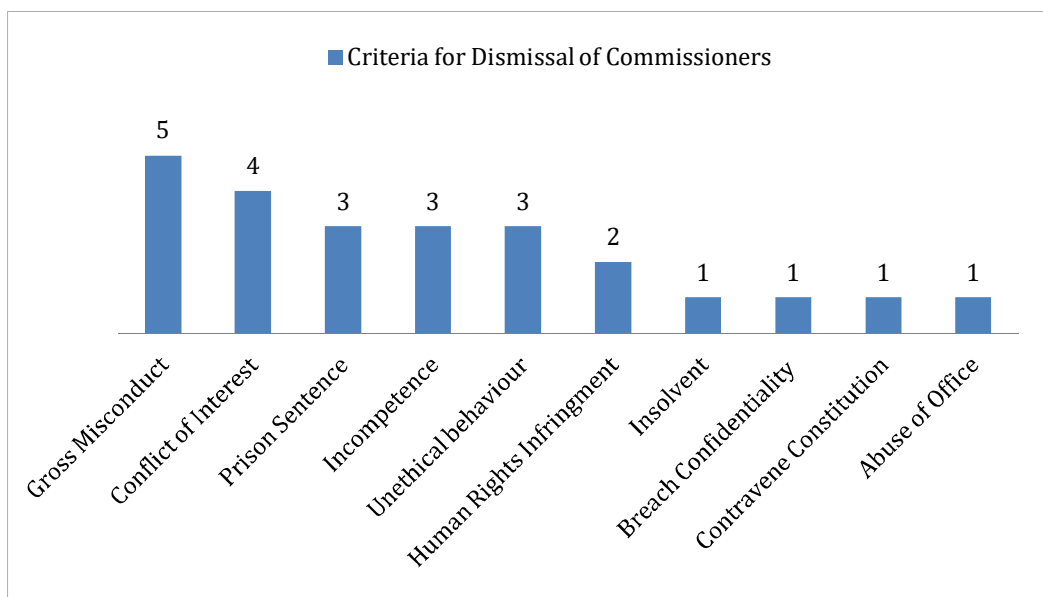
The procedures for removals of members are clear and objective in 3 of the 5 NHRIs that have provisions in this regard within their legal frameworks. The sample NHRIs that are the exception within this group, have some inherent deficiencies and/or ambiguities in their founding legislation. For instance one sample NHRI has legal provisions that *prima facie* allows the President to remove a member (except in cases of illness or disability) without a fairly stated process. This situation hinders the independence of the NHRI. Also, this NHRI and 2 others within the sample do not have clear procedures for petitions to be brought to the Executive or National Assembly, towards the removal of a member. These are technical details that can substantially affect the institution's independence and performance in executing its mandate. This is especially where in 2 of those sample NHRIs, the Executive is statutorily empowered to suspend a member once the National Assembly starts examining the petition. As good practice, 2 of the sample NHRIs provide that such petitions should be signed by two-thirds majority vote by the other NHRI members. Demonstrating good practice, the legal framework of the other 2 sample NHRIs, restrain the Executive from suspending a member until the National Assembly establishes that there are sufficient grounds for an inquest.

Although none of the sample NHRIs has ever dismissed a member, it is important for the institutions that are deficient in this area to improve in order to safeguard the independence of their institutions.

The challenge of lengthy delays in the appointments and reappointments of members of sample NHRIs

The case studies confirm the challenge of lengthy delays in appointment and reappointment of members faced by NHRIs in Africa. 5 of the sample NHRIs have experienced delays in this area, which affected their functioning, albeit to varying extents. It is interesting to note that several of these delays occurred even where the NHRI has legal provisions that prescribe the time period for appointing new members. The reasons proffered for these delays include: political will; administrative protocol, including at a sectoral level; and the practical amount of time to have a widespread consultation. In some instances, there is a lack of urgency on the part of the NHRI particularly where it is functioning as a Hybrid. This is because when the tenure of Commissioners lapses, the tenure of the Ombudsman, who is also the chairperson of the NHRI, may subsist.

Figure 3.6: Delays in the Appointments and Reappointments of Commissioners in Sample NHRIs
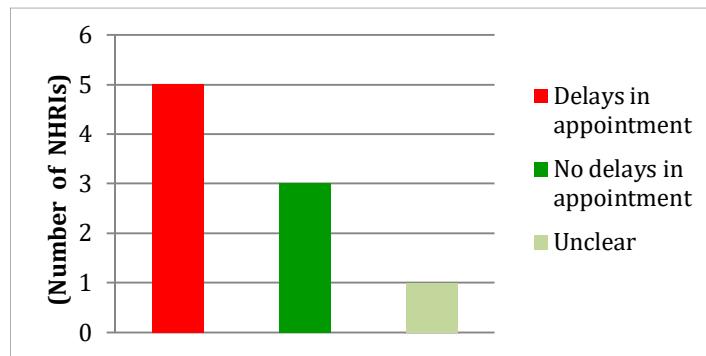
Appointment of staff in sample NHRIs

Overall, the appointment, reappointment and dismissal of staff are undertaken in an objective and independent manner.

The appointment of staff are based on either the law governing public functions or civil servants (in 4 sample NHRIs); or follow internal processes based on their founding laws, which provide them with the autonomy to recruit their own staff (in 5 sample NHRIs). In one of the sample NHRIs, the appointment process for new staff members is particularly lengthy due to an Administrative Court having to approve the selected candidates, in line with public recruitment processes.

The procedures for the recruitment of staff across the studied NHRIs are of a similar nature. All studied NHRIs place advertisements on websites or in local newspapers, and thereafter, conduct a standard formal interview process, which informs the decision for the selection of suitable candidates. 6 out of the 9 sample NHRIs indicated the fairness of their staff recruitment process, and their ability to select the most skilled and qualified candidates through the adoption of a competence-oriented approach. 2 of the sample NHRIs that are recently established have yet to recruit staff and are respectively relying on: seconded staff from Government and donor agencies; and human resources from the Ombudsman. This does not suffice as good practice in terms of ensuring the independence and effectiveness of the institution. Some stakeholders within one of the sample NHRIs highlight the challenge of nepotism during the NHRI's recruitment processes, particularly, during the shortlisting phase. This is seen to potentially affect the quality of the staff and capacity of the NHRI to deliver on its mandate. A good practice from one of the sample NHRIs in terms of avoiding similar challenges is where the services of an external consultant is utilized in developing and administering a competency test during the recruitment phase.

Reappointment of staff in sample NHRIs

The trend emerging from the case studies is that staff members are appointed on a full-time basis and thus, do not get re-appointed. The exception is seen in 2 sample NHRIs (with well established constitutional frameworks), where the appointment of senior staff are structured on the basis of a 5-year contract. These contracts are renewable basis of satisfactory performance, although in one NHRI, there is no guaranteed expectation of renewal. There are advantages and disadvantages of using contract staff for African NHRIs. While there is greater flexibility, reduced overall costs and often a greater specialization that contractors bring to the institution, there may be challenges, such as the level of morale, loyalty, courage and reliability.

Dismissal of staff in sample NHRIs

The conditions for dismissals of staff in the studied NHRIs' are found in their respective Internal Codes of Conducts and/or labor and administrative laws. The procedure for staff dismissals is similar across the 9 assessed NHRIs: following the reporting of an act of misconduct, a disciplinary process is instituted, the outcome of which may result in a warning or dismissal. Only 3 out the 9 sample NHRIs have previously dismissed a member of staff. Reasons for the dismissals include: incompetency, insubordination, dishonesty, unprofessionalism and inappropriate behavior. One of the NHRIs, though having never dismissed a member of staff, cited an episode of misconduct, which led to corrective counseling but no dismissal.

3.2.4. Independence through composition and pluralism

The Paris Principles prescribe that "the composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights..." [50] In addition, the ICC requires that "consideration must be given to ensuring pluralism in the context of gender, ethnicity or minority status."[51]

Available literature indicates that:

☐ Most African NHRIs demonstrate a good measure of pluralism within the composition of their members and Commissioners.[52] Besides human rights experts, the composition of members of African NHRIs *inter alia* includes persons with parliamentary and governmental backgrounds, as well as civil society, religious figures and members of the legal profession. [53]

☐ In some instances, African NHRIs possess a good composition of gender diversity[54] and inclusion of minority groups, which is seen as a good practice. [55]

☐ The enabling legislations of some African NHRIs, however, are not clear on member composition in terms of diversity and representativeness,[56] with some enabling legislations completely eliminating the opportunity for pluralism among the NHRI.[57] Despite not having a deliberate attempt at pluralism, certain African NHRIs still achieve it. [58]

Pluralism within the composition of members in sample NHRIs

With the exception of one institution, all sample NHRIs comprise of members that represent different segments of society (see Figure 3.7). A pluralistic composition is provided for within their respective legal frameworks, which differ in the specificities. In addition, there is an emerging trend towards the inclusion of members from key professions that are represented across board in all 9 sample NHRIs. The one exception within the sample NHRIs comprises of three members that are all lawyers, thereby, clearly lacking a pluralistic composition. In this regard, the enabling legislation of the NHRI does not provide for diversity and representativeness. Despite having a pluralistic composition, there are indications in at least 3 sample NHRIs that political appointees, who show a particular political affiliation or bias due to historical events, are in key strategic roles and functions within the institution.

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[50] United Nations Human Rights op cit.

[51] International Coordinating Committee Of National Institutions For The Promotion And Protection Of Human Rights (Icc) (2013) *"General Observations of the Sub-Committee on Accreditation"* pg 20, retrieved from http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf.

[52] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

[53] Ibid and section 131(1) (c) of the Constitution of the Republic of Malawi and section 4(1) of the Human Rights Commission Act (1998).

[54] The Southern Sudan Human Rights Commission Act, 2009, provides that the aggregate composition of the Commission shall contain at least 25% of women.

[55] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

[56] Section 8 of the Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000.

[57] Quashigah, K (2000), *"The Ghana Commission on Human Rights and Administrative Justice"* in National Human Rights Institutions Articles and working papers ed. Lindsnaes, B et al, Danish Institute for Human Rights, pg 204, retrieved from http://www.nhri.net/pdf/nhribook.pdf and Ghana's Commission on Human Rights and Administrative Justice Act (1993).

[58] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

Figure 3.7: Compositions of Commissioners in Sample NHRIs

Sample NHRI	ACTUAL COMPOSITION OF COMMISSIONERS							
	Number of NHRI members	Civil society e.g. NGO media, academia	Government / Parliament	Trade unions	Key professions (e.g. legal & health)	Women, youth & disabled persons	Country-wide representatives (Provinces)	Others (e.g. religious groups)
NHRI 1	7	■			■	■		■
NHRI 2	30	■	■	■	■	■		■
NHRI 3	25	■		■		■	■	
NHRI 4	4	■			■	■	■	
NHRI 5	11	■	■		■			
NHRI 6	5	■	■				■	
NHRI 7	3				■			
NHRI 8	7	■	■		■			
NHRI 9	41	■	■		■			■

Pluralism within the Composition of Staff in Sample NHRIs

None of the sample NHRIs makes provision, within their legal framework, for the pluralistic composition of staff. There are provisions within the legal frameworks of the majority of the sample NHRIs for a Head of Mission, Chief of Divisions, Secretary-General, or all three. It came out strongly in the discussions with the sample NHRIs that due to the macro environment in some countries, in some instances, it may be challenging to find a balance between employing qualified personnel and ensuring pluralism amongst staff.

It does not appear that ethnic and/or religious diversity is a particular area of focus for the majority of the sample (7 out of the 9 sample NHRIs), which make no mention of either, which is often due to the national context. For instance, NHRI stakeholders in countries emerging from recent conflict made specific mention the fact that it is against the law to ask someone about his or her ethnicity or religion, and that more importance is placed on nationality rather than ethnicity and religion.

Despite the abovementioned dynamics in staff recruitment, it is important for African NHRIs to also a pluralistic composition within their staff, as having a diverse work force would improve the accessibility of an institution to the population throughout its respective country. [59]

From the chart below (Figure 3.8), it is clear that the gender diversity of staff within the vast majority of the sample NHRIs is generally balanced, albeit to varying extents. This shows that the sample NHRIs are taking gender diversity into account during recruitment, which is commendable as good practice.

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[59] The International Council on Human Rights Policy op cit pg 16 – 17.

Figure 3.8. Gender Diversity among Staff of the Sample NHRIs

Staff Gender DIversity (%)

- Male
- Female

NHRI 1: 70, 30
NHRI 2: 58, 42
NHRI 3: 59, 41
NHRI 4: 66, 34
NHRI 5: 50, 50
NHRI 6: 30, 70
NHRI 7: 0, 0
NHRI 8: 41, 59
NHRI 9: 30, 70
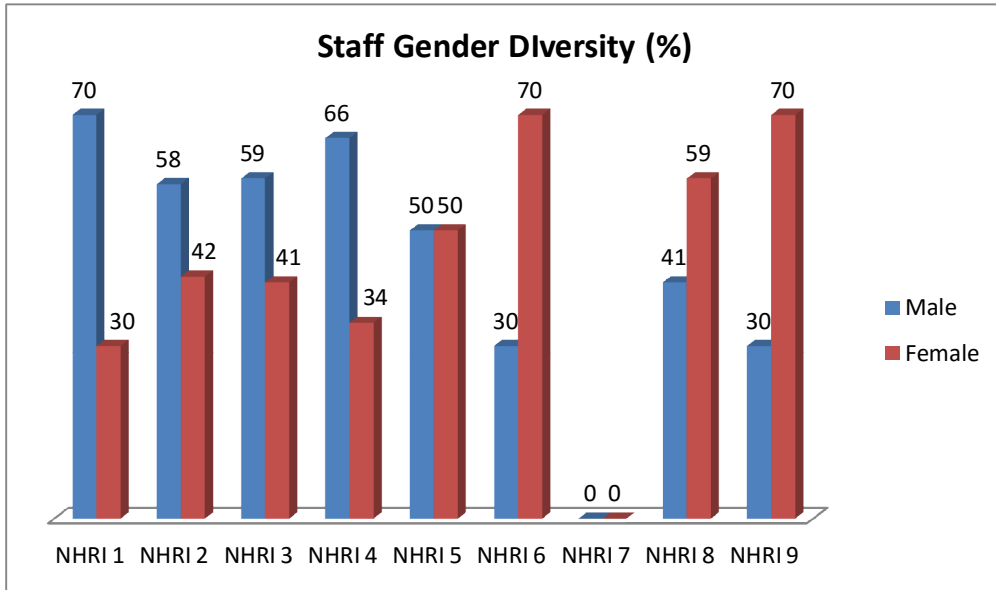
Financing

4.1. Overview

This chapter will deliberate on the following elements of NHRI financing:

- ☐ Budgets of African NHRIs;
- ☐ Funding Sources;
- ☐ Financial Management; and
- ☐ Accountability by African NHRIs.

There is limited available literature regarding the financing of African NHRIs. As such, the literature review on African NHRIs' financing is briefly discussed and explored. The analysis of the 9 case studies provides key lessons regarding the trends, challenges, gaps and best practice linked to the financing of NHRIs in Africa.

4.2 Financing: State of African NHRIs

4.2.1. Budgets of African NHRIs

An NHRI should have sufficient funding in order to undertake its mandated responsibilities effectively. The Paris Principles state "The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence." [60]

NHRI budgets are inadequate in many African countries. Several experts identify limited resources as one the key factors, alongside limited jurisdiction and weak powers of investigation, which render the institutions "automatically ineffective". [61] Results of a 2009 study on NHRIs globally found that, among its African respondents, the difficulty of NHRIs in achieving their mandate of protecting and promoting human rights emanates from "limited funding and resources, and the subsequent difficulty in measuring the institution's impact."[62] Literature also indicates that some African NHRIs have historically been reported to suffer budget cuts for criticizing the government. [63]

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[60]   United Nations Human Rights op cit.

[61]   Cardenas, S., "*State Compliance and National Human Rights Institutions*", retrieved from: http://www.constitutionalvalues.org/pdf/docs/national/Cardenas,%20State%20Compliance%20and%20National%20Human%20Rights%20Instituions.pdf, pg 8 and Mushwana, M.L. (2012) "*The Role of NHRIs in the promotion and implementation of the RIG*" paper presented at Commemorative Seminar on the 10th Anniversary of the Robben Island Guidelines, pg 5.

[62]   OHCHR (2009), *"Survey On National Human Rights Institutions",* retrieved from:

Figure 4.1. Budgets of African NHRIs in relation to GDP and Population Size

S/n	Country	NHRI Budget in USD (2013)[64]	GDP in millions of USD (2013)[65]	Population in millions (2013)[66]	NHRI Budget Per Capita in USD (2013)
1.	ALGERIA	3, 853,982	210,183	38.3	0.1
2.	BENIN	Not Available	8,307	9.6	Not Available
3.	BURKINA FASO	30,000	12,126	18.0	0.002
4.	BURUNDI	872,563	2,714	10.9	0.08
5.	CAMEROON	2,440,000	29,567	21.5	0.11
6.	CAPE VERDE	256,682	1,837	0.5	0.51
7.	CHAD	5,455	12,949	12.2	0,0004
8.	COMOROS	95,807	618,664	0.8	0.12
9.	CONGO REPUBLIC	Not Available	Not Available	4.4	Not Available
10.	DRC	Not Available	30,014	71.1	Not Available
11.	DJIBOUTI	150,000	1,456	0.9	0.17
12.	EGYPT	2,800,000	271,972	84.7	0.33
13.	ETHIOPIA	3,500,000	47,524	89.2	0.39
14.	EQUATORIAL GUINEA	Not Available	15,580	0.8	Not Available
15.	GABON	208,960	17,205	1.6	0.13
16.	GHANA	833,000	48,584	26.1	0.32
17.	GUINEA BISSAU	Not Available	Not Available	1.7	Not Available
18.	GUINEA CONAKRY	Not Available	Not Available	11.8	Not Available
19.	IVORY COAST	1, 900,000	31,292	21.1	0.09
20.	KENYA	7,975,862	54,930	44.2	0.18
21.	LIBERIA	Not Available	1,945	4.4	Not Available
22.	LIBYA	Not Available	65,509	6.5	Not Available
23.	MADAGASCAR	Not Available	10,613	22.5	Not Available
24.	MALAWI	Not Available	3,883	16.3	Not Available
25.	MALI	Not Available	11,111	15.5	Not Available
26.	MAURITANIA	325,000	5,057	3.7	0.09
27.	MAURITIUS	600,000	11,928	1.3	0.46
28.	MOROCCO	9.000.000	103,914	33	Not Available
29.	MOZAMBIQUE	No Government Funding in 2013	15,457	24.3	No Government Funding in 2013
30.	NAMIBIA	1,790,000	12,932	2.4	0.75
31.	NIGER	563,382	7,683	16.9	0.03
32.	NIGERIA	9,000,000	514,964	173.6	0.052
33.	RWANDA	1,700,000	7,522	11.1	0.15
34.	SENEGAL	74,886	14,791	13.5	0.006
35.	SEYCHELLES	74,767	1,411	0.1	0.75
36.	SIERRA LEONE	1,800,000	4,928	6.2	0.29
37.	SOUTH AFRICA	12,000,000	366,057	53.0	0.23
38.	SOUTH SUDAN	1,600,000	11,804	9.8	0.16
39.	SUDAN	1,000,000	66,480	34.2	0.03
40.	SWAZILAND	300,000	3,530	1.2	0.25
41.	TANZANIA	4,150,000	44,333	49.1	0.085
42.	TOGO	551,828	4,338	6.2	0.089
43.	TUNISIA	265,825	46,994	10.9	0.02
44.	UGANDA	Not Available	24,703	36.9	Not Available
45.	ZAMBIA	2,800,000	26,820	14.2	0.20
46.	ZIMBABWE	Not Available	13,490	13.0	Not Available

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http://www.nhri.net/2009/Questionnaire%20-%20Complete%20Report%20FINAL-edited.pdf.
[63] Smith op cit pg 920.
[64] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.
[65] The World Bank (last modified 2015), "*Gross Domestic Product 2013 (Current US$)*", retrieved from:
http://data.worldbank.org/indicator/NY.GDP.MKTP.CD?order=wbapi_data_value_2013+wbapi_data_value&sort=desc.
[66] Population Reference Bureau (2013) *"2013 World Population Data Sheet"* retrieved from
http://www.prb.org/pdf13/2013-population-data-sheet_eng.pdf.

| *Macro elements including GDP, population size and budget*	Based on data gathered from NANHRI Member Profiles (2014) matched with economic indicators from the World Bank (see Figure 4.1 above), it is evident that:

□ Overall, funding to NHRIs in Africa is weak. Budgets range from less than USD 10,000 [67] to over USD 10,000,000. However, these are on the average, significantly less than the budgets of some NHRIs across the world. For instance, there exists an NHRI in Europe with a budget of over USD 100,000,000.[68]

□ With the exception of Nigeria and South Africa (the two biggest economies in Africa) that also possess the largest NHRI budgets although disproportionately, there is no direct relationship between an African NHRI's budget size and its country's Gross Domestic Product (GDP).

□ There is no directly proportional relationship between country population and NHRI budget size. For example, Nigeria, which has a population over thrice as large as that of South Africa, has a lower budget than the latter. Moreover, Egypt, with a population size twice as big as that of Algeria, has a lower budget than the latter. Kenya's NHRI has twice the budget of Tanzania's NHRI, although, it has a slightly smaller population.

□ The budget per capita for African NHRIs[69] is poor, with less than USD 1 allocated per person across the continent. The budget per capita for African NHRIs range from USD 0.002 (Burkina Faso) to USD 0.75 per person (Cape Verde and Namibia).

□ The data suggests that other factors within the macro environment may play a larger role in determining the budgets of African NHRIs'.

Formulation of budgets by sample NHRIs	The case studies confirm that there is no consistent formula or criteria (including population size) that is generally adopted among African NHRIs for deriving their budgets. Only 3 out the 9 sample NHRIs indicate that their budges are derived from a comprehensive needs analysis undertaken on an annual basis. As good practice, the needs analysis undertaken by 1 of these NHRIs is based on a 5-year spending trend, with an annual 15% escalation, in line with their country's financial regulations. A general trend that emanates from the case studies is that the budgets of these institutions, particularly from government funding, are mainly estimated in terms of administrative and operational costs, without enough pro-active attention given to programs and future institutional requirements.

Figure 4.2. Average Budget Allocation (%) in sample NHRIs

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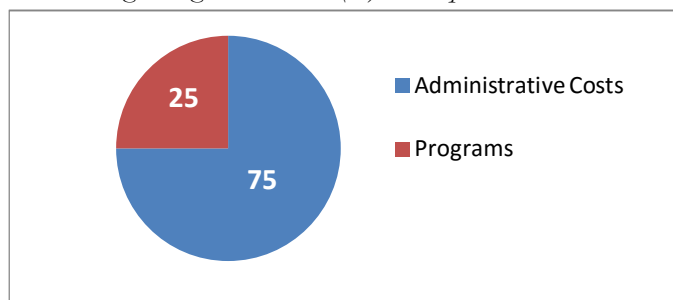
[67] NANHRI Member Profiles (2014) and OHCHR, op cit pg 16

[68] OHCHR, op cit pg 16.

[69] The annual budget of an NHRI divided by their country's total population.

There are indications from the case studies that budgets of African NHRIs may be limited by the performance of their country's economy, highlighting the role that both political will and the macro environment play in determining the budgets of African NHRIs.

Adequacy of budget within sample NHRIs

The case studies confirm that the budgets of the sample NHRIs are generally insufficient for the execution of their respective mandates, thereby, indicating that this is one of the key areas within the study that requires serious improvement. On the one hand, only 3 out of the 9 sample NHRIs believe that their budgets are sufficient for them to carry out their mandate. One of these NHRIs is presently unsure of the sustainability of their funding from government, as a result of new statutes that came into effect after recent civil unrest and subsequent regime change. On the other hand, 6 sample NHRIs indicate that the budget they receive from their respective governments are insufficient for them to execute their mandate effectively and to expand the scope of their operations. This is despite 4 sample NHRIs within this category indicating that their salary levels are competitive and sufficient for the recruitment of motivated staff members with strong backgrounds in relevant fields.

A key trend emerging from the case studies is that funding for newly established institutions is not sufficient. This indicates that governments place more emphasis on the legal establishment of the NHRIs, without commensurate attention devoted to financial planning and provisions. It is apparent that set-up costs were not sufficiently provided by government in 2 of the 3 recently established institutions. For instance, 1 of the sample NHRIs that was established in 2009 only received its first subvention from government in 2014.

Figure 4.3. The Opinion of Sample NHRIs about the adequacy of their Budgets
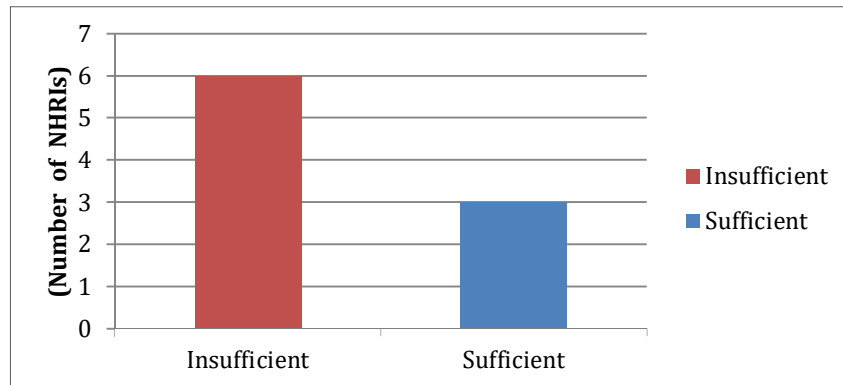
Another trend emerging from the case studies is that between the periods of 2009 to 2013, there is a noticeable difference between the requested budgets versus awarded budgets from government, which is seen in 4 sample NHRIs (including the 3 NHRIs whose budgets are based on comprehensive needs analysis). There is consistency in terms of the requested and awarded budgets in only 3 sample NHRIs. 1 of the sample NHRIs established in 2009 has only received a subvention from government in 2014. While in the remaining sample NHRI, the institution received more than their requested budget in 2010.

Figure 4.4: Allocated Budget from Government to Sample 1 NHRI (2011 - 2013)

Figure 4.5: Allocated Budget from Government to Sample 2 NHRI (2009-2013)

Figure 4.6: Allocated Budget from Government to Sample 3 NHRI (2009 – 2010)

Figure 4.7: Allocated Budget from Government to Sample 4 NHRI (2009 - 2013)

Figure 4.8: Allocated Budget from Government to Sample 5 NHRI (2014)

Figure 4.9: Allocated Budget from Government to Sample 6 NHRI (2009 - 2013)

Figure 4.10: Allocated Budget from Government to Sample 7 NHRI (2009 - 2013)

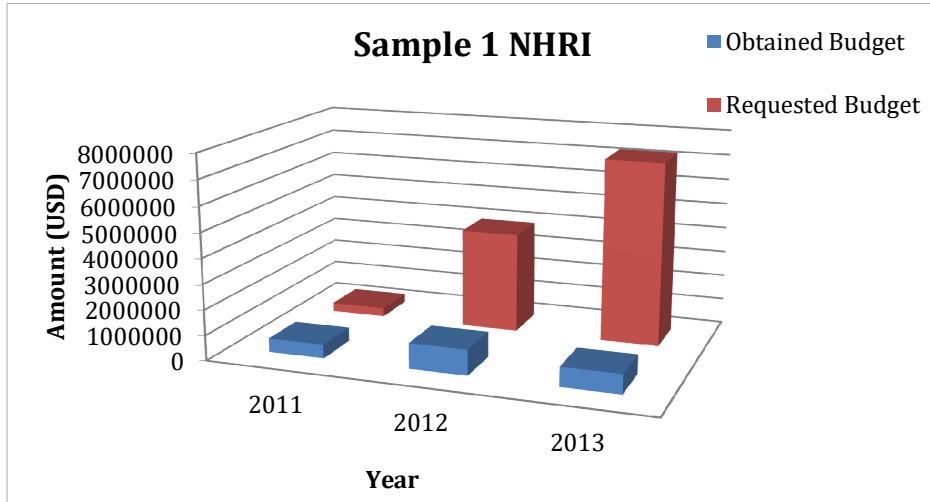*Figure 4.11: Allocated Budget from Government to Sample 8 NHRI (2010 - 2013)*

Figure 4.12: Allocated Budget from Government to Sample 9 NHRI (2009 - 2013)
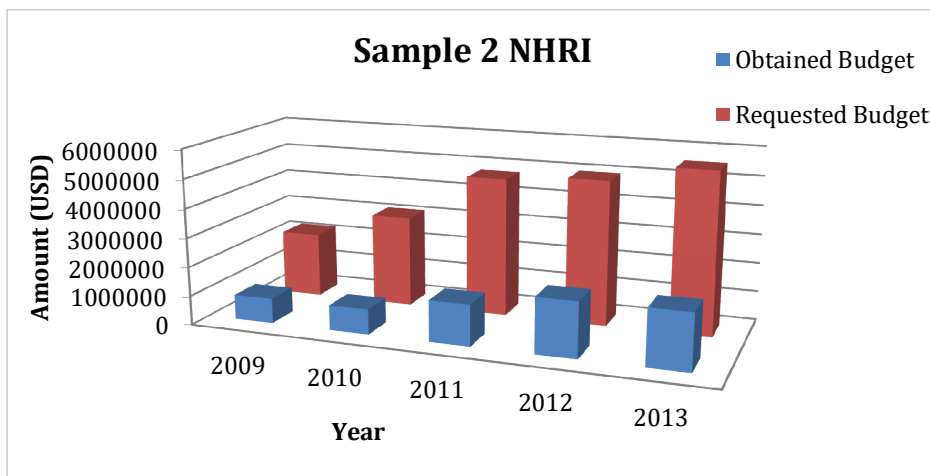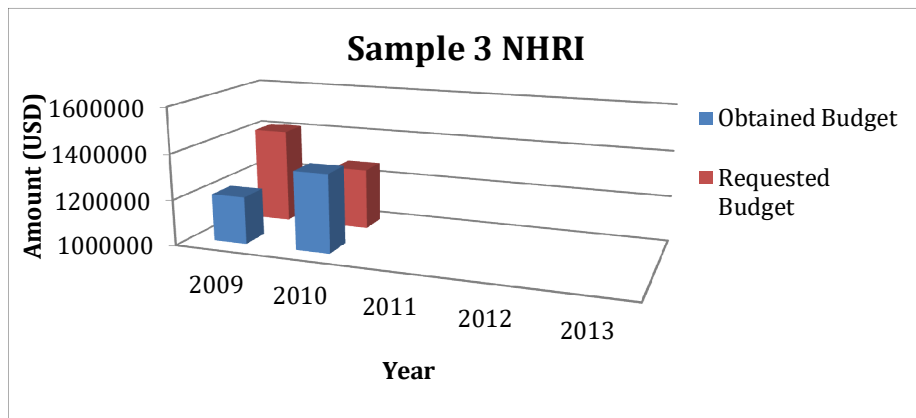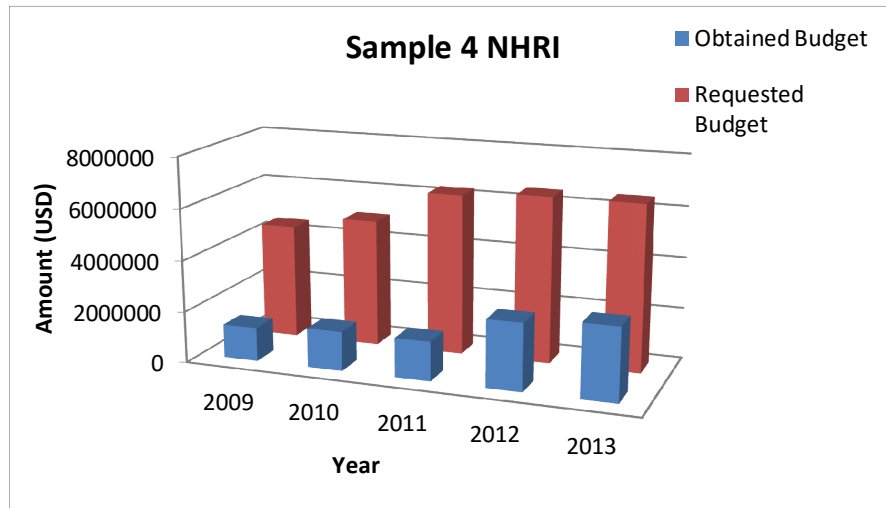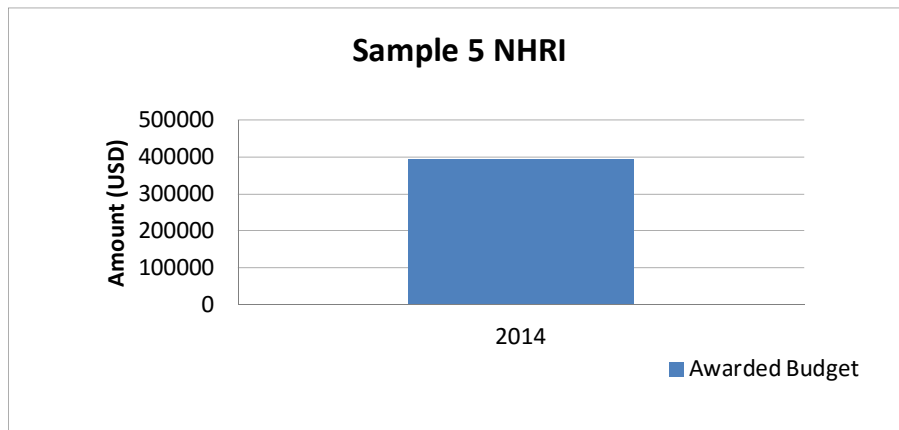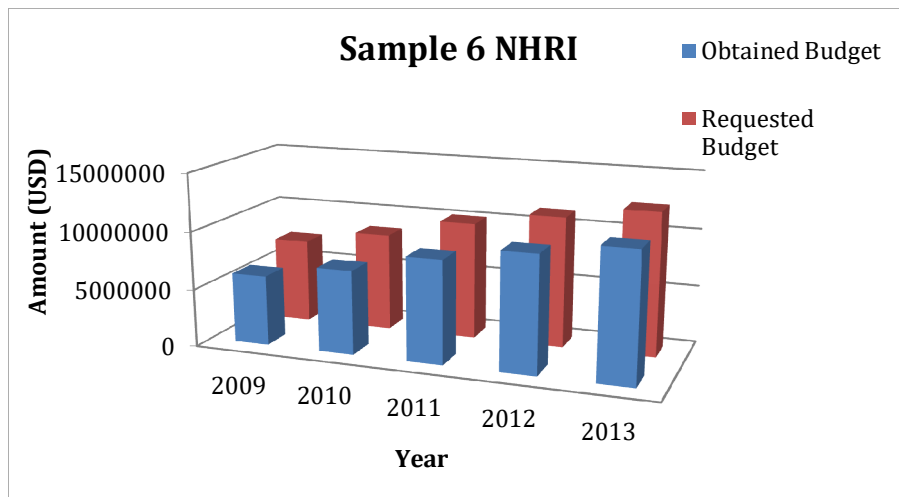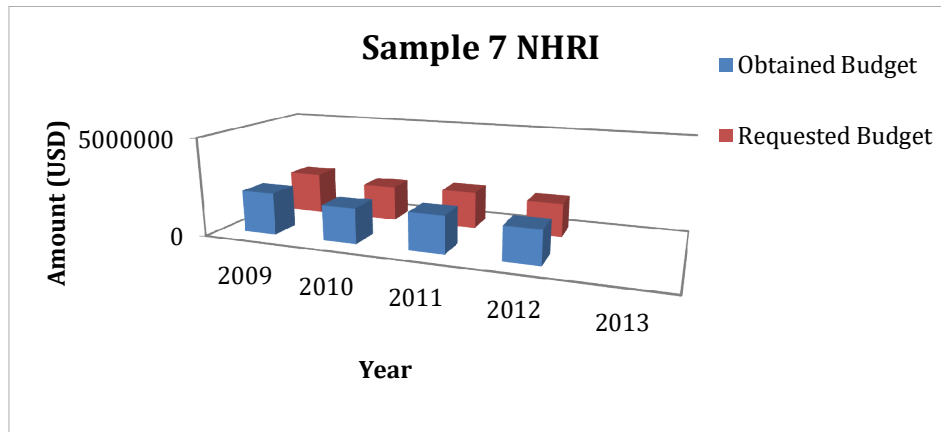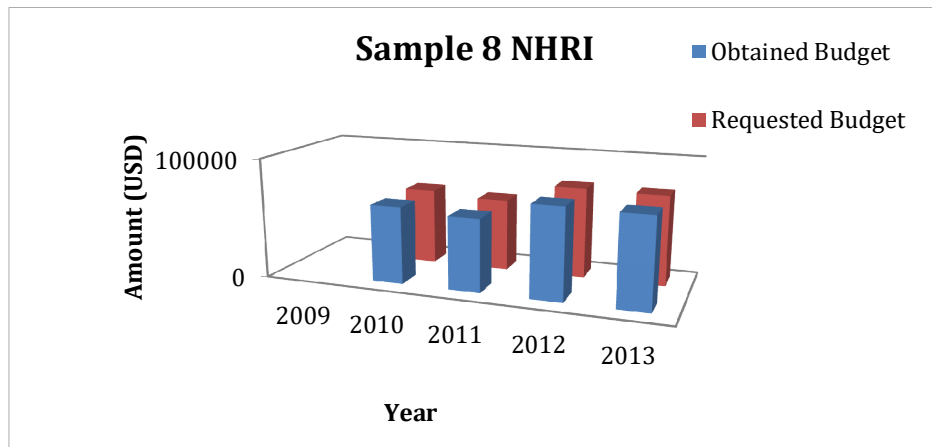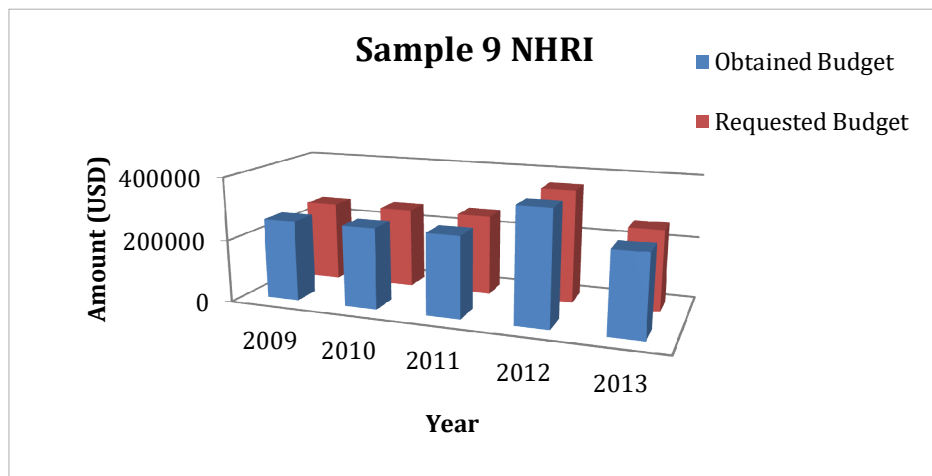
The shortfall between requested and awarded budgets from government has significant impact on the capacity of the institutions to execute their mandate effectively, including carrying out investigations and handling complaints. This is problematic, as due to budgetary constraints, staff members within several sample NHRIs conduct more deskwork than fieldwork. Another consequence of limited finances from the sample NHRIs is the tendency to resort to simply identifying "symbolic cases" to handle. Also, the inadequacy of NHRI's budgets leads to budget being spent more on administrative costs rather than on programs that are necessary for the realization of the core mandate of the NHRI. In addition, insufficient budgets preclude the development of the staffing structure of the affected NHRIs and force the majority (6 sample NHRIs) to rely on donor funding in order to support their programs. Furthermore, the insufficient financing from government results in some NHRIs devoting too much time to securing funding, which distracts their attention from their core mandate.

In some instances, budgetary constraints of an NHRI are due to administrative and structural limitations that prevent the institution from directly negotiating their budget with Parliament. This is noticeable in 1 sample NHRI, where the institution has to engage with its supervising state department for its government subventions, thereby, hindering the independence and financial means of the NHRI. Similarly, administrative delays in the appointment of Commissioners also affect the financial standing of the affected institutions. This is because in circumstances where the NHRI lacks leadership, its ability to raise funds from both government and donors becomes limited.

4.2.2. Funding Sources

Governments that create NHRIs have a responsibility to fund them in a manner that maintains their institutional independence,[70] although, NHRIs should be permitted to seek funds from other sources, such as private or foreign donor agencies. [71]

Most African NHRIs have statutory provisions for government funding, to a larger extent, than the rest of the world. A 2009 study on NHRIs globally found that the founding laws of 79% of African NHRIs contain a provision obligating the government to provide sufficient funding (as opposed to 33%, 47.6% and 66% of American, European and Asian NHRIs respectively).[72] Yet, in practice, many African NHRIs are not able to fully rely on government funding.[73] Although there is, overall, limited publicly available information on aid flows to African NHRIs,[74] some are known to receive substantial donor funding beyond their government subventions. Sierra Leone, for example, was at the time of its establishment, funded entirely through donors.[75]

In fact, the majority of African NHRIs are explicitly allowed to seek funding, either from donors, international agencies or alternative sources, in order to enable these institutions to carry out human rights promotion and protection

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[70] Corkery, A (2011) "*National Human Rights Institutions*", in Ways and Means of Realizing Social and Economic Rights and Achieving the MDGs, pg 4, retrieved from:
http://www.cesr.org/downloads/WaysAndMeans.corkery.chapter.pdf.
[71] The International Council on Human Rights Policy op cit pg 13.
[72] OHCHR, op cit pg 16
[73] Ibid.
[74] Herbert, S. (2013), "*Aid to National Human Rights Institutions*", pg 3, retrieved from
http://www.gsdrc.org/docs/open/HDQ928.pdf
[75] Tsekos, op cit pg 21.

activities.[76] Some experts, however, have indicated that international donor support should not be an excuse for domestic governments to abdicate their responsibility to provide their NHRIs with adequate funding.[77] A general trend, which can be observed (Figure 4.13), is that on average, African NHRIs receive about 80% of their total budget from their respective governments.

Figure 4.13: Proportion of Funding from Government received by 32 African NHRIs (2013) [78]
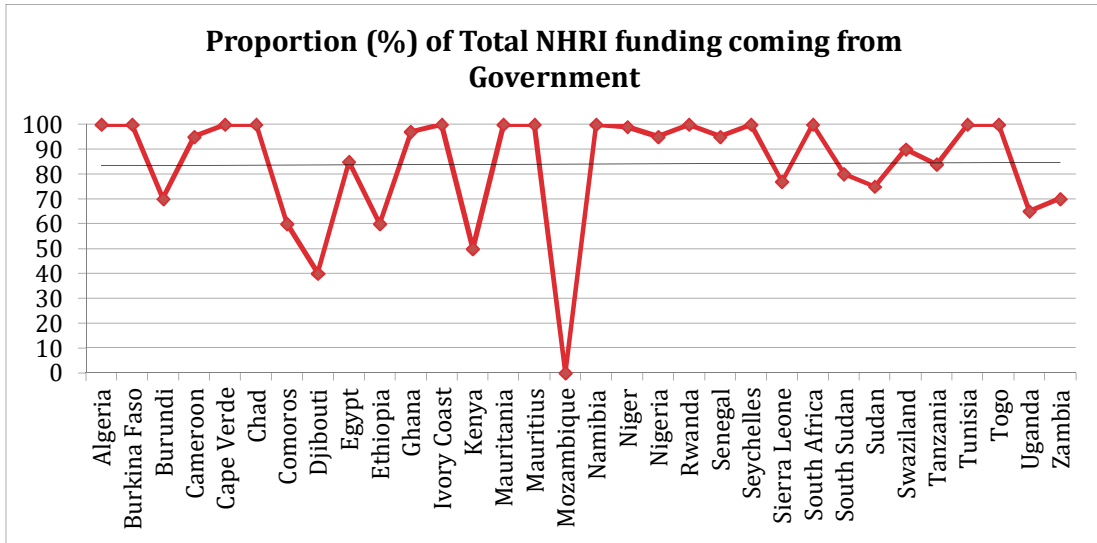
The case studies confirm that the majority of funding for African NHRIs emanates from government. Only 3 out of 9 sample NHRIs do not receive donor funding and, as a result, obtain 100% of their funds from government (see Figure 4.14 below). 1 of the recently established institutions had only donor funds between its establishment in 2009 and 2013. The case studies indicate that where NHRIs are unduly dependent on donor funding to support their activities and programs, lengthy donor funding approval procedures delay the NHRIs' effective implementation of activities.

Figure 4.14: Sources of funding for sample NHRIs (on average for the period 2009 - 2013)
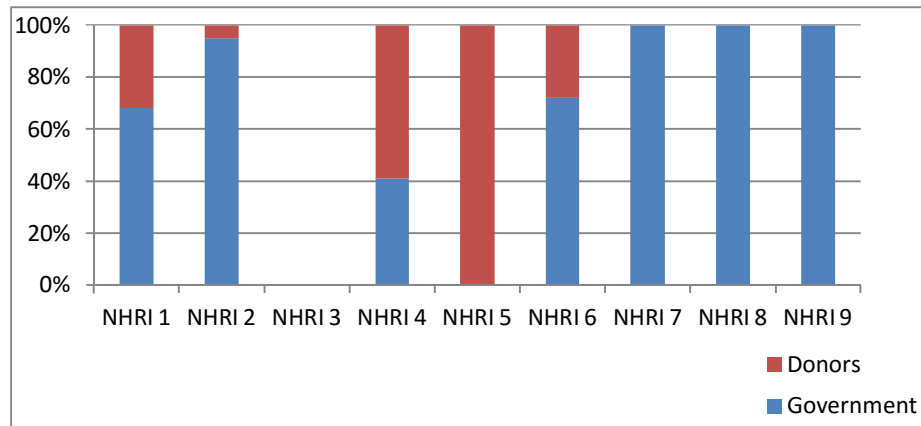
76 Amnesty International (2001) *"National Human Rights Institutions: Amnesty International's recommendations for effective protection and d promotion of human rights"*, pg 23 retrieved from http://www.nhri.net/pdf/IOR4000701.pdf.
77 Smith, op cit pg 921.
78 NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

The case studies also show that NHRIs also receive indirect funding from government and donors. These forms of support are often through the provision of a governmental building in which NHRIs take up office (from government) and in the form of technical assistance (from donors).

4.2.3. Financial management and independence

Funding for NHRIs should be structured in a manner that enables them to be independent of government, so as not to be subject to financial control, which might affect their independence.[79] As best practice, the Human Rights Watch states that the budget for African NHRIs should have a separate budget line that is voted by the legislative body, and not allocated by the Executive, to emphasize its accountability to the population. Once allocated, the NHRI's budget should be self-administered without interference, subject to standard auditing rules.[80]

Financial independence from the Executive within sample NHRIs

The majority of the sample (5 NHRIs) do not have a separate budget line that is voted by Parliament annually. In this regard, these sample NHRIs are dependent on the Executive arm of government (e.g. Office of the President or Prime Minister, Ministry of Finance or other supervising government department) for their budgets. In 1 of the recently established NHRIs within the sample, the institution is unable to discuss budget issues directly with the state, as the supervising ministry undertakes the discussion about the budget on behalf of the NHRI. These circumstances significantly decrease the financial autonomy of the affected NHRIs vis-à-vis the executive arm of government, which is unsatisfactory. The case studies confirm that this lack of appropriate financial autonomy is exacerbated in countries with sensitive political environments, as some NHRIs are concerned about the sustainability of their finance from government, resulting in a reticence to denounce governments.

The case studies indicate that where the legal framework does not safeguard the NHRI's state financing, including assets ceded to the institution by government, these resources may subject to the unilateral will of the Executive. For instance, 1 of the sample NHRIs complained that the plot of land allocated by the state to the institution for its new building, was subsequently taken away from them after the NHRI had already expended financial resources towards developing the property, including undertaking impact assessment reports.

Financial control among sample NHRIs

The majority of the sample NHRIs indicates that once their budgets have been allocated from government, their financial management system allows them to exercise autonomous control over their budget. Only 1 sample NHRI does not have the ability to maintain sufficient levels of financial control over their budgets, as a Resident Financial Controller from the Minister of Finance directly manages their funds. This apparent lack of financial control by this institution means that the Financial Controller has to authorize their activities as a condition for disbursement of funds. This often results in the denial of funds and/or late disbursement of funds, as well as arbitrary allocation. This situation precludes the NHRI's overall independence and makes it difficult for the institution to effectively fulfil its mandate.

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[79] United Nations Human Rights op cit and the International Council on Human Rights Policy op cit pg 13.
[80] Human Rights Watch (2001), *"Protectors Or Pretenders?: Government Human Rights Commissions in Africa"*, New York pg 21 retrieved from
https://books.google.co.za/books?id=Ia_C4vfqFIoC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

The case studies indicate that the NHRIs often have more flexibility regarding government funds than donor funds. This is because the latter are for specific programs and activities. In one of the recently established NHRIs that is highly dependent on donor support, a Financial Officer from the donor agency directly administers the funds. The sample NHRIs that receive donor support were unanimous in stating that donor funding increases their independence, considering the limited funding from government.

Figure 4.15: Autonomous and Unfettered Control over Budget among Sample NHRIs
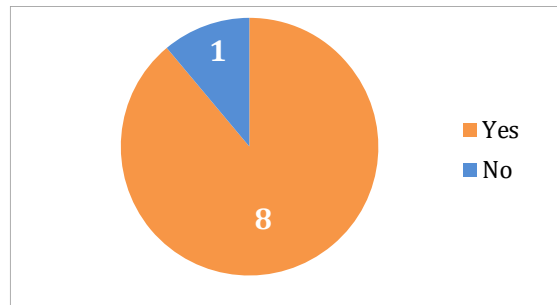
4.2.4. Financial accountability by African NHRIs

It is important for NHRIs to be transparent about their sources of income as well as their expenditure. They should provide reports about their administrative and operating costs as well as the costs of their programs and activities. NHRIs are expected to ensure financial probity, through regular public financial reporting and a periodic (preferably annual) independent audit.[81]

From prior literature, it is clear that many African NHRIs are obliged to comply with the financial accountability requirements of the state and of other stakeholders such as donors. In this regard, many African NHRIs are usually audited under state laws, often by an auditor general or independent auditor and in the same manner as other state agencies. In some countries, there are structures in place, which allow the investigating of alleged acts of financial impropriety within NHRIs, in a manner that still respects the institution's independence.[82]

Financial accountability by sample NHRIs

The case studies confirm that the vast majority of the sample NHRIs are subject to public finance management regulations of their respective countries, which include audit and financial reporting mechanisms for state institutions, although, differing in the specificities. For instance, the financial records of 7 sample NHRIs are audited by the Auditor General or Court of Auditors. There are 2 notable exceptions. 1 sample NHRI does not have any government auditing and as a result, the institution engages with an independent international audit firm to undertake an annual external audit. Another sample NHRI that is recently established is yet to be audited because they only received government funds for the first time in 2014, although, there is a provision for the NHRI to be audited in terms of which the institution is expected to provide financial reports to the Ministry of Finance. The financial accountability processes of the sample NHRIs are adequate in terms of ensuring probity vis-à-vis management of public funds, and as such,

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[81]   The International Council on Human Rights Policy op cit pg 13.
[82]   Ghana Broadcasting Corporation (2014), *"Budget Committee Of Parliament To Investigate Commissioner Of CHRAJ Over Accommodation Saga"*, retrieved from: http://gbcghana.com/1.1844551.

do not compromise the independence of the sample NHRIs.

The case studies also confirm that NHRIs that receive donor funding (6 sample NHRIs) are subject to accountability mechanisms, which have some commonalities, although differing according to individual donor requirements. The donor requirements usually include: financial and narrative reports for each activity/program, monitoring and evaluation processes, as well as mid-term and annual reporting requirements. Specific donor requirements may also include annual strategic planning with the donors, joint bank accounts for the programs and annual auditing of the NHRI by the donor.

An emerging concern from the sample NHRIs that receive donor funds relates to very lengthy and cumbersome processes of ensuring accountability to donors. This can be a challenge for the institution, when considering simultaneous accountability and reporting of NHRIs to state and donor structures. This is often onerous on these institutions and distracts them from implementation of activities and programs that fulfill their core mandate.

Capacity

5.1 Overview

In accordance with the *Paris Principles*, it is expected that NHRIs should have the requisite capacity and ability to execute their mandate in promoting and protecting human rights in their jurisdiction.

This Chapter will cover three main intrinsic components of NHRI capacity:

☐ Institutional and organizational capacity that (in the context of this study) refer to the ability of the NHRI to effectively generate, allocate and use human, material and financial resources to attain its mandate of promoting and protecting human rights on a sustainable basis.

This component focuses on the following key elements:

- Human resources, including number of staff members, skills, staff development and retention; and

- Leadership and Management.

Please refer to chapter 2 (section 2.2.8) on Accountability and chapter 4 on Finance with regards to the discussion on NHRI capacity in those areas.

☐ Functional capacity, which refers to the ability of the NHRI to effectively implement its mandate. This includes the capability of the NHRI to:
- Handle complaints and investigations;
- Provide advisory services towards influencing policy and legislation within the human rights space;
- Provide education on human rights; and
- Monitor and report on human rights violations.

☐ The capacity of an NHRI to respond to emerging human rights issues within the country.

The chapter will discuss these three abovementioned aspects of NHRI capacity, through a literature review and an in-depth look at the 9 sample NHRIs.

5.2 Capacity: State of African NHRIs

Figure 5.1: Staff Strength of African NHRIs in relation to Population Size

S/N	Countries	Population of the Country in millions [83]	Number of NHRI Staff [84]	Additional information about NHRI[85]	Ratio of Population to NHRI Staff
1.	Algeria	38.3	51	Includes members of governing body	750 980 : 1
2.	Benin	9.6	No Information		No Information
3.	Burkina Faso	18.0	34	Includes members of governing body	529 412 : 1
4.	Burundi	10.9	25	7 members and 18 members of staff	436 000 : 1
5.	Cameroon	21.5	120		179 167 : 1
6.	Cape Verde	0.5	39	Includes members of governing body	12 821 : 1
7.	Chad	12.2	33	Includes members of governing body	369 697 : 1
8.	Comoros	0.8	28	Includes members of governing body	28 571 : 1
9.	Congo Republic	4.4	45	Includes members of governing body	97 778 : 1
10.	DRC	71.1	No Information		No Information
11.	Djibouti	0.9	27	Ten representatives from Public Ministry	33 333 : 1
12.	Egypt	84.7	150	Includes members of governing body	564 667 : 1
13.	Ethiopia	89.2	294	Includes members of governing body	303 401 : 1
14.	Equatorial Guinea	0.8			No Information
15.	Gabon	1.6	66	Includes members of governing body	24 242 : 1
16.	Ghana	26.1	733	Includes members of governing body	35 607 : 1
17.	Guinea Bissau	1.7	30	Includes members of governing body	56 667 : 1
18.	Guinea Conakry	11.8	No Information		No Information
19.	Ivory Coast	21.1	37	There are 37 (thirty-seven) Board members including members of the governing body	570 270 : 1
20.	Kenya	44.2	90	Includes members of governing body	491 111 : 1
21.	Liberia	4.4	No Information		No Information
22.	Libya	6.5	54	Includes members of governing body	120 370 : 1
23.	Madagascar	22.5	No Information		No Information
24.	Malawi	16.3	73	Out of the 144 provided by the Law.	223 288 : 1
25.	Mali	15.5	41	Includes members of governing body	378 049 : 1
26.	Mauritania	3.7	32	Includes members of governing body	115 625 : 1
27.	Mauritius	1.3	23	Includes members of governing body	56 522 : 1
28.	Morocco	33	176	Includes members of governing body	187 500 : 1
29.	Mozambique	24.3	18	10 Part-time Commissioners, I Chairman and 7 seconded staff from government	1 350 000 : 1
30.	Namibia	2.4	35	Under the Office of the Ombudsman-Namibia is 35.	68 571 : 1
31.	Niger	16.9	26	Includes members of governing body	650 000 : 1
32.	Nigeria	173.6	550	Includes members of governing body	315 636 : 1
33.	Rwanda	11.1	58	Includes members of governing body	191 379 : 1
34.	Senegal	13.5	35	Includes members of governing body	385 714 : 1
35.	Seychelles	0.1	3	Only 3 Commissioners	33 333 : 1
36.	Sierra Leone	6.2	52	Includes members of governing body	119 231 : 1
37.	South Africa	53.0	136	Includes members of governing body	389 706 : 1
38.	South Sudan	9.8	56	Includes members of governing body	175 000 : 1
39.	Sudan	34.2	25	Includes members of governing body	1 368 000 : 1
40.	Swaziland	1.2			No Information
41.	Tanzania	49.1	212	Includes members of governing body	231 604 : 1
42.	Togo	6.2	67	Includes members of governing body	92 537 : 1
43.	Tunisia	10.9	41	Includes 11 members of governing body	265 854 : 1
44.	Uganda	36.9	219	59 of them being volunteers in the various offices under UHRC.	168 493 : 1
45.	Zambia	14.2	61	Includes members of governing body	232 787 : 1
46.	Zimbabwe	13.0	16	Includes members of governing body	812 500 : 1

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[83] World Bank op cit page 1.

[84] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

[85] Ibid.

**5.2.1
Institutional
and
Organizational
Capacity**

The Paris Principles require NHRIs to have an infrastructure that enables the institution to execute its mandate in a seamless manner. This necessitates that NHRIs should have diverse staff with the necessary professional skills and knowledge of human rights, as well as an organizational structure that allows for the most effective use of the NHRI's resources, budget and powers. [86]

(a) Human Resources

Several expert accounts allude to African NHRIs being chronically under-resourced, short-staffed, and unable to retain top employees, who often depart to better-paying positions at other sectors.[87] As shown from the NANHRI Member Profiles (2014), there are instances where African NHRIs are operating with less number of staff members than are statutorily stated, where staff strength is explicitly specified within the founding legislation. Analysts also allude to inadequate capacity amongst African NHRIs to effectively handle existing complaints as a result of staff strength, including the lack of appropriate skills. [88]

Ratio of Population to NHRI staff in Africa

The table above (Figure 5.1) indicates the capacity of African NHRIs in terms of their staff strength vis-à-vis the population of their respective countries. It is clear that there is a high population to NHRI staff ratio in Africa. This ranges from 12,821 people for every staff member (Cape Verde) to 1,368,000 people for every staff member (Sudan). This shows that African NHRIs are generally under-resourced in terms of staff numbers.

Figure 5.2: Number of Staff in the Past 5 Years for Sample NHRIs

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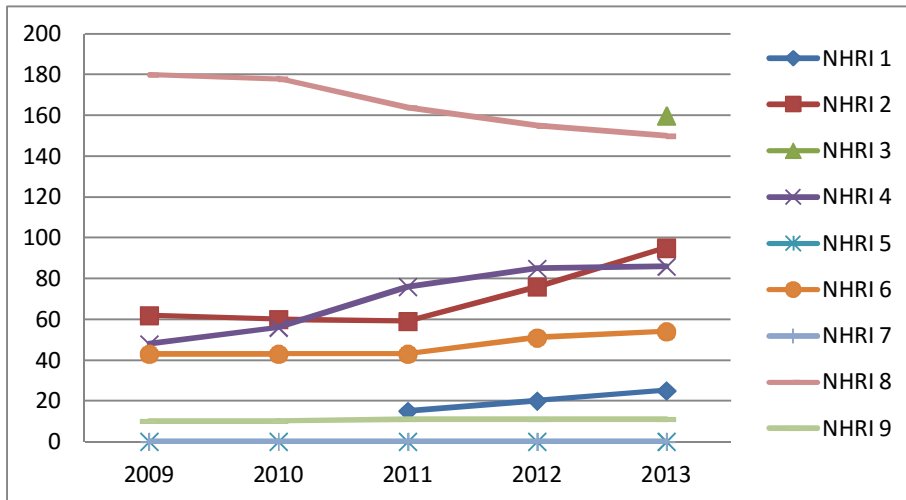
[86]   United Nations Human Rights op cit and OHCHR op cit pg 18.

[87]   Bossman A, (February 26–28, 2008) *"Promoting and Protecting Human Right, Ensuring Administrative Justice and Fighting Corruption in Ghana"* paper presented at the Commonwealth Conference of National Human Rights Institutions, London 10, pg 6 retrieved from http://www.chrajghana.com/wp-content/uploads/2012/08/anna_speech.pdf.

[88]   Ayebaesin, B (2014) *"The role and effectiveness of National Human Rights Commissions in advancing domestic implementation of socio-economic rights in Commonwealth Africa"*, (PHD Diss, University of Pretoria) pg 365.

Number of staff members in sample NHRIs

The case studies confirm the high population to NHRI staff ratio. In fact, a comprehensive needs analysis conducted by an independent consultant showed that 1 of the sample NHRIs is currently under staffed by about 120 people. Despite this fact, there has been a steady increase of staff numbers (between 2009 – 2013) among 5 sample NHRIs. The opposite is the case for 1 NHRI that has experienced a steady decrease of staff due to the restructuring of the organization that resulted in a large number of voluntary retrenchments (see Figure 5.2 below). It is important to note that 2 out of the 3 sample NHRIs that are recently established (from 2009) still have no staff of their own. These NHRIs either use seconded staff from various sources, including government departments and donors or (in a hybrid institution) make use of the Ombudsman's staff that may not necessarily have sufficient human rights knowledge. This situation among recently established NHRIs indicates a lack of sufficient attention, political will and financial resources dedicated towards the development of human resources for new NHRIs following their establishment.

The case studies reveal that recruitment among NHRIs is hindered when Government generally restricts recruitment for state institutions. In such circumstances, any proposed recruitment requires the approval of the executive arm of government. This was exacerbated in 1 sample NHRI, which struggled to lift the embargo on recruitment due to delays in the appointment of its Commissioners.

Figure 5.3: Capacity to Manage Human Resources in the Sample NHRIs
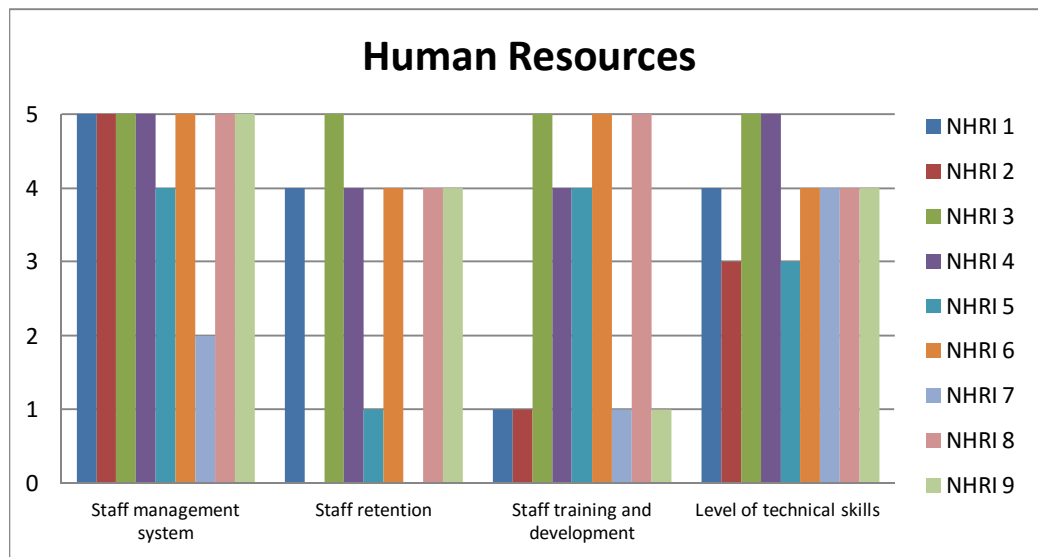
0	No Capacity
1	Very Low Capacity
2	Basic or Low Capacity
3	Partially-Developed Capacity
4	Well-Developed Capacity
5	Fully-Developed Capacity

Human resource management within sample NHRIs

The case studies also indicate a high level of capacity within the majority of the sample NHRIs in terms of the development and implementation of staff management systems.

The level of technical skill possessed by staff is highly rated by the sample NHRIs. This is attributed to high salaries levels that are competitive and sufficient to allow for the recruitment of motivated staff members with strong backgrounds in relevant technical fields. The capacity regarding staff development and training varies among the studied NHRIs. Majority of the trainings are either inconsistent or organized on an *ad hoc* basis. The study shows that the irregular staff development and training are as a result of limited funding within the institutions. Staff development, including through training and capacity building, is a significant growth area for 4 sample NHRIs.

7 of the sample NHRIs have certain good practices geared towards retaining staff, although, only 3 of them possess formal staff retention policies. The case studies show that the high level of unemployment in some countries is a factor that has helped some NHRIs to ensure staff retention over the years. However, the study reveals that 2 sample NHRIs have experienced a high turnover of staff despite possessing strong retention policies and strategies. These turnovers were as a result of the restructuring within one sample NHRI that led to number of voluntary retrenchments, while many staff left due to a perceived lack of internal career progression path in the other NHRI.

Figure 5.4: The Adequacy of Infrastructure in Sample NHRIs
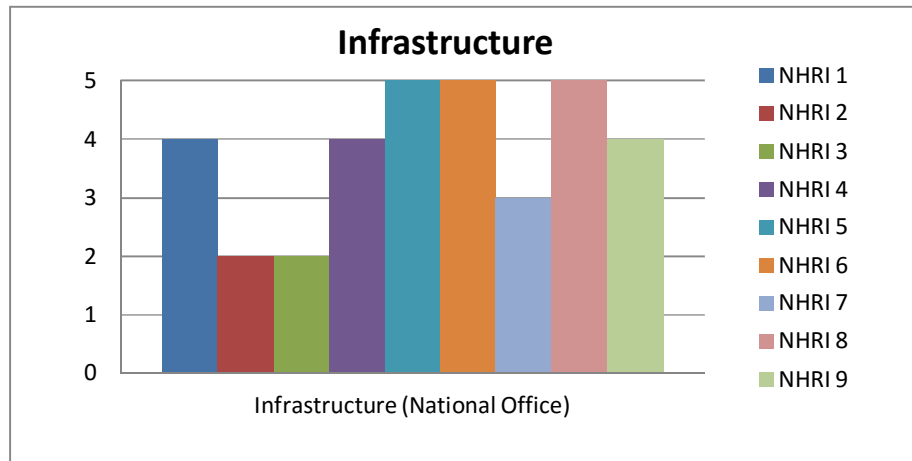
Rating Scale
1: Not existing
2: Existing but not well developed
3: Average
4: Very developed
5: Excellent

Adequacy of infrastructure within sample NHRIs

Only 3 sample NHRIs indicated that their national infrastructure (adequate workspace, state of building, office equipment etc.) are poorly to averagely developed. These are for various reasons, including: NHRI's head office being spread across three buildings; damage to the NHRI's offices during political uprising in the country; and where an NHRI shares the ombudsman's office.

(b) Leadership and Management	The leadership of NHRIs (both strategic and day-to-day operational functions) is crucial for their effectiveness, credibility, public perception and relationship with other stakeholders, including government, civil society and the general public. While prior reports highlight the sterling headship demonstrated by the leaders of some African NHRIs,[89] however, some criticisms of African NHRIs stem from issues relating to leadership. For instance, some experts have articulated their concerns about politically biased appointees to NHRIs,[90] NHRI leadership using their positions as leverage for future government appointments,[91] as well as complaints of incompetence and ineptitude. [92] There have also been instances of allegations of misappropriation of funds by the leadership of African NHRIs.[93]
Leadership capacity in sample NHRIs	During this study, the leadership and management capacity within the sample NHRIs were generally highly rated, although to varying extents, with some indicators requiring further improvement (see Figure 5.4 below).

Figure 5.4: Capacity of NHRI Leadership in the Sample NHRIs
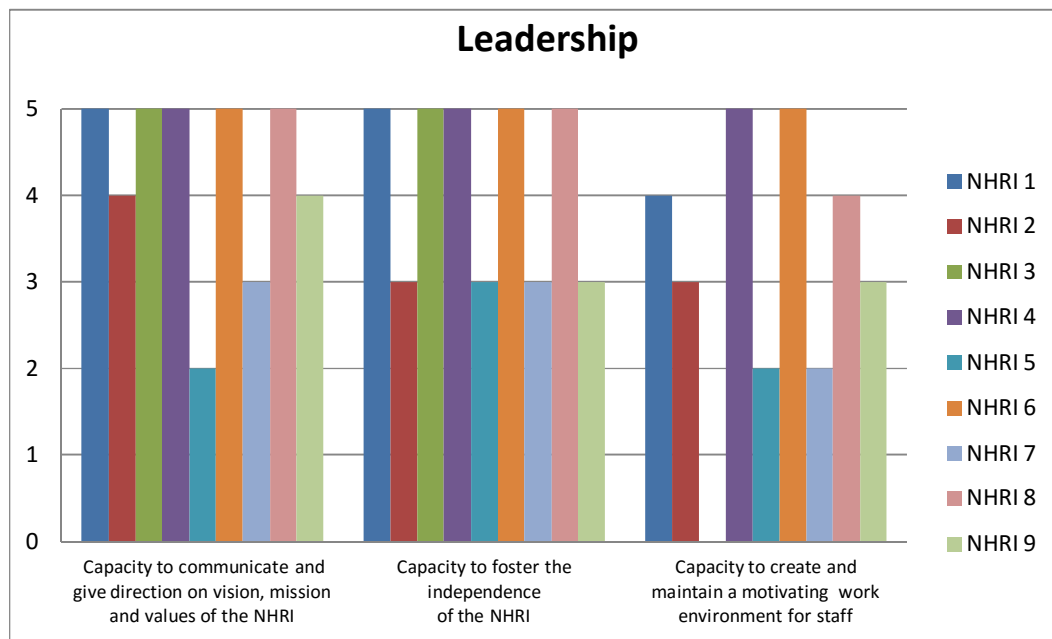
|	
0	**No Capacity**
1	**Very Low Capacity**
2	**Basic or Low Capacity**
3	**Partially-Developed Capacity**
4	**Well-Developed Capacity**
5	**Fully-Developed Capacity**

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[89] Smith op cit pg 927 and Sekaggya op cit pg 211
[90] Peters op cit pg 20.
[91] Ibid.
[92] Smith op cit pg 927.
[93] CITI News (2014) *"CHRAJ is losing its credibility"* retrieved from http://www.citifmonline.com/2014/12/05/chraj-is-losing-its-credibility-emile-short/.

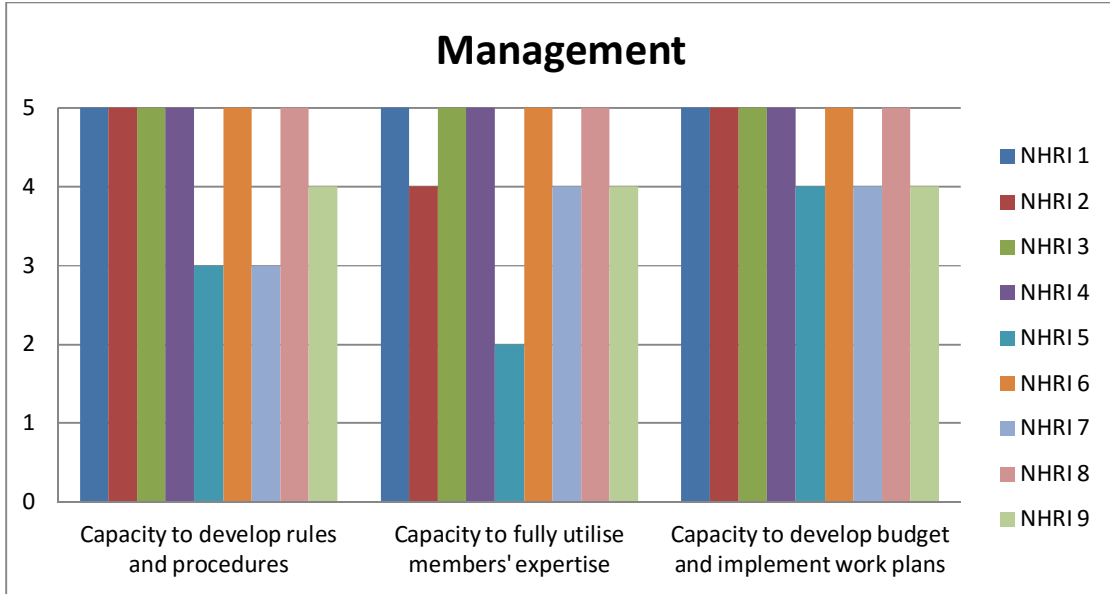|	
Leaderships capacity to develop, communicate and give direction on the vision, mission and values of sample NHRIs	The leadership of the sample NHRIs have the capacity to develop, communicate and give direction on the vision, mission and values of the respective institutions. However, there are a number of concerns emanating from the case studies. Stakeholders in 3 countries allude to a lack of visibility of the NHRI's vision, values and direction. Another issue is the lack of a clear leader in some NHRIs that becomes the face of the institution that the public relates to. There is also an impasse (in 1 sample NHRI) among NHRI members from diverse backgrounds with varying viewpoints regarding the strategic direction for the institution. This indicates that pluralism should be managed through appropriate governance structures to be a source of strength and not a hindrance.
Leaderships capacity to foster the independence of the sample NHRIs	5 of 9 sample NHRIs indicate that their leadership have full capacity to foster the independence of the institution. A number of factors are seen to affect the ability of the members within 4 of the sample NHRIs to foster independence. These include strong political affiliations on the part of some Commissioners, which create a perception of lack of independence among stakeholders. There are instances, where members that are political appointees are seen to act or omit to act in a manner that scores them points politically. Another similar factor relates to conflicts of interest among part-time members vis-à-vis their primary organizations or constituencies.
Leadership capacity to create and maintain a conducive working environment within the sample NHRIs	The capacity of leadership to create and maintain a conducive and harmonious working environment that is endearing (to members, staff and other stakeholders) was seen to be well developed in only 4 of the sample NHRIs. This therefore highlights this area as one that requires further improvement. A number of challenges have been highlighted in terms of this area, such as the heavy workload on available personnel due to human and financial constraints. This contributes to low staff satisfaction with regards to working conditions. It has emerged from the case studies that there are several tensions within some institutions i.e. relationship between: NHRI members and senior management; senior management and staff; and members / Commissioners themselves. These tensions, which affect the human dynamics and effectiveness of the NHRIs, are often as a result of a lack of clear expectations on the part of different functionaries. This is mainly due to the absence of appropriate corporate governance mechanisms particularly the clear line of responsibility and accountability within several of these institutions.
Management capacity within the sample NHRIs	7 of the 9 sample NHRIs indicate that their management has the capacity to develop and implement rules and procedures for making key decisions and managing of the staff. Such rules and procedures are only partially developed within 2 recently established NHRIs within the sample (with no permanent staff). While the procedures are being developed, their management is still learning about the implementation of actual procedures.

The majority of the sample NHRIs believe that they have the capacity to fully utilize the individual expertise of members in building a strong NHRI. These members are generally seen to possess diverse profiles and experienced backgrounds. A pluralistic composition in the sample NHRIs is seen to allow for a greater diversity of backgrounds, thereby enabling the institution to cover more fields of expertise. Challenges that arise in this regard include when members are employed on a part-time basis and are thus not readily available and where their expertise are not transferred to staff of the NHRI. |

Figure 5.5: Capacity of NHRI Management in the Sample NHRIs

0	No Capacity
1	Very Low Capacity
2	Basic or Low Capacity
3	Partially-Developed Capacity
4	Well-Developed Capacity
5	Fully-Developed Capacity

All 9 sample NHRIs indicated a high overall management capacity to develop a budget and implement work plans for managing the programs and activities of the respective NHRIs. While overall sample NHRIs indicated a high capacity with regards to this, two challenges emerged through discussions with stakeholders. These include the fact that work plans are not always fully implemented due to a lack of funds, as well as the fact that funding for some sample NHRIs are not consistently aligned with the work plan for these institutions, thereby affecting their ability to work optimally.

5.2.2. Functional Capacity of African NHRIs

The Paris Principles provide that an NHRI may be authorized to hear and consider complaints and petitions concerning individual human rights situations. In such circumstances, the institution may: seek an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions; inform the party who filed the petition of his rights, available remedies, and promote his access to them; hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law; and make recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices. [94]

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[94]   United Nations Human Rights op cit and OHCHR op cit pg 19.

Capacity to investigate and resolve complaints

Currently, most African NHRIs are able to investigate and resolve complaints that they receive from individuals and groups. [95] In some instances, the functional capacities of NHRIs are limited. For instance, an NHRI may be primarily established to perform a more consultative role and does not possess the capacity to handle complaints.[96] In some African NHRIs, there are no departments to handle complaints, even though the institution has the legal mandate to do so and as a result, victims of human rights violations usually seek redress through the usual justice system.[97] In some instances, especially for hybrid institutions that have wider responsibilities, the NHRI may be unable to fully handle complaints effectively due to capacity and funding limitations.[98]

The Annual Reports of some African NHRIs indicate a low-level of successfully resolved cases, with a vast difference regarding received, resolved and pending complaints, therefore, highlighting the low-level of capacity to address complaints in a timely manner. [99]

Figure 5.6: Capacity to Handle Complaints and Conduct Investigations in the Sample NHRIs
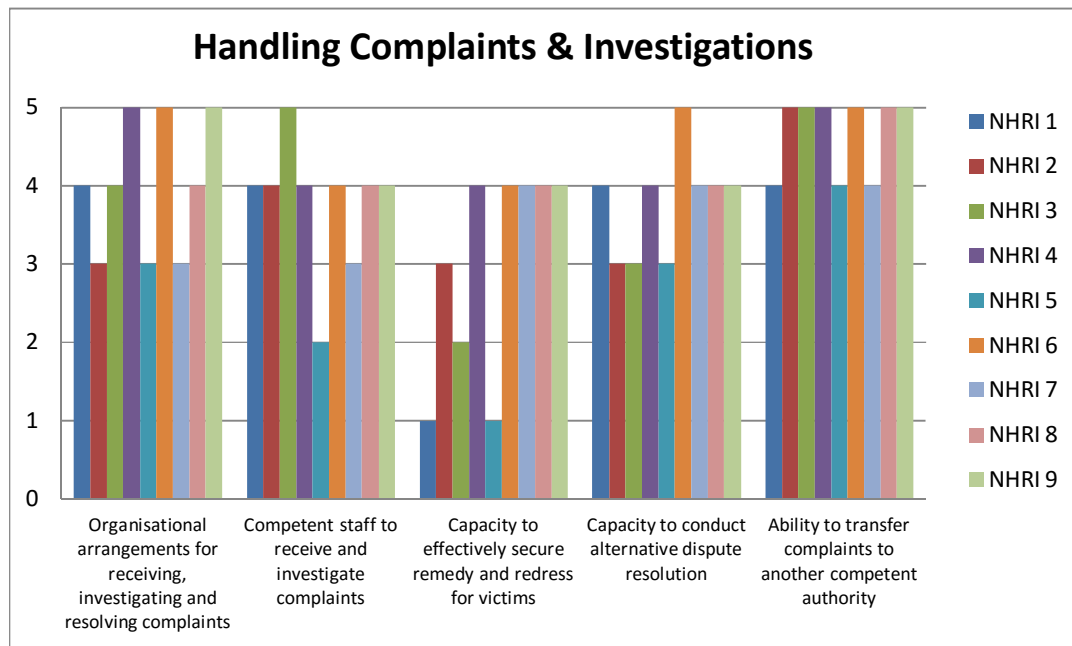
0	No Capacity
1	Very Low Capacity
2	Basic or Low Capacity
3	Partially-Developed Capacity
4	Well-Developed Capacity
5	Fully-Developed Capacity

[95] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

[96] l'Homme de la Republique Islamique de Mauritanie op cit pg 28

[97] Comite Senegalais des Droits de l'Home opcit pg 17

[98] Sodem, op cit pg 245

[99] Malawi Human Rights Commission (2013) *"Annual Report 2013",* pg 21 retrieved from http://www.hrcmalawi.org/2013annualreport.pdf and Tanzania Commission for Human Rights and Good Governance (2014) "Taarifa ya Mwaka ya Utendaji Kazi idara ya Utawala Bora" (Tanzania Annual Report 2013/2014) pg 2 retrieved from http://www.chragg.go.tz/docs/UR/TAARIFA_YA%20MWAKA_YA_IDARA_YA_UTAWALA_BORA.pdf.

Handling complaints and investigations in sample NHRIs	The sample NHRIs all have organizational arrangements for handling and resolving complaints (see Figure 5.6 above). This capacity is however, only partially developed in 3 of the sample institutions, including 2 NHRIs that are recently established. Again, financial constraints and human resources are key issues that affect the capacity of the sample institutions to handle complaints effectively and in a timely manner. In some NHRIs, this has resulted in staff conducting more investigations from their desk rather than on the field. Another growth area identified pertains to appropriate guidance for staff involved in managing complaints, including documentation of the procedure.

The majority of the sample NHRIs have competent and skilled staff to receive and investigate complaints of human rights violations, although, it has emerged that additional training is required to bolster the capacity of staff in this area. Some of the NHRIs within the sample are operating below optimal staffing levels and are thus, unable to fully address all complaints received. This is more prevalent among 2 of the recently established NHRIs within the sample, which are operating with seconded staff that do not possess all the necessary skills to receive and investigate complaints.

The area that requires the greatest amount of strengthening in this category is with regards to the capacity of the sample NHRIs to effectively secure remedy and redress for victims. While none of the sample NHRIs demonstrates full capacity in this area, 2 recently established NHRIs are clearly struggling in this aspect.

While the level of funding and human resources are constant constraints, the main challenge faced by several sample NHRIs is that they are only able to make recommendations in terms of redress, whereas, the final decision rests with other state authorities. In this regard, the capacity of several of the sample NHRIs to follow-through on their recommendations is sporadic. The case studies show that it is much easier for NHRIs to secure remedy and redress for victims where there are clear constitutional and/or statutory safeguards and processes for the redress of human rights violations in the country.

All 9 sample NHRIs have the capacity in terms of informing relevant parties of their rights and access to remedies. The capacity to conduct alternative dispute resolution, through mediation, arbitration and conciliation, is available within all sample NHRIs, although, this capacity is only well developed within 6 sample NHRIs.

The ability to transfer a complaint to another authority was rated highly by all nine studied NHRIs. The majority of sample NHRIs have the ability to transfer complaints to the Attorney General. A good practice is seen where one sample NHRI hosts a Referral Partners' Network (comprising of all constitutional commissions in the country), which has helped the NHRI to improve redress over the years.

Capacity to provide advisory services within sample NHRIs	The Paris Principles provide that NHRIs shall have the responsibility of submitting "to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights". [100]

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[100] United Nations Human Rights <u>op cit</u> and OHCHR <u>op cit</u> pg 19.

Figure 5.7: Capacity to provide Advisory Services in the Sample NHRIs
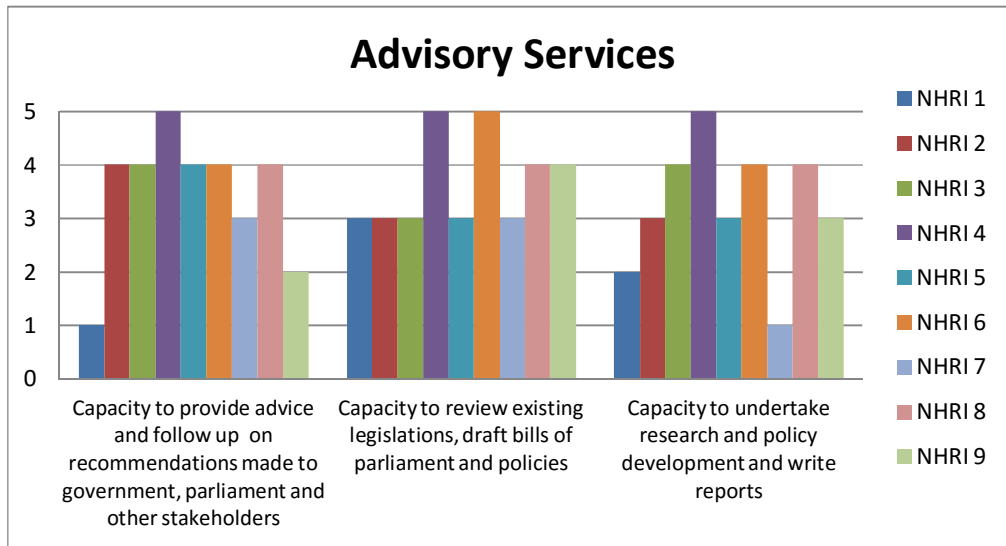
0	No Capacity
1	Very Low Capacity
2	Basic or Low Capacity
3	Partially-Developed Capacity
4	Well-Developed Capacity
5	Fully-Developed Capacity

Most African NHRIs are able to make recommendations to the Government, Parliament and other competent bodies on proposed or existing legislative and administrative provisions.[101] The factors that limit an African NHRI's advisory capacity include the limited numbers of qualified and competent staff to undertake analysis and policy reviews, as well as the non-implementation and delayed response by organs of the state to recommendations made by the NHRI.[102]

There is the capacity within the majority of the sample (6 NHRIs) to provide advice and follow up on recommendations made to Government, Parliament and other stakeholders. Key issues that affect performance in this area include: the lack of existing strategies by some NHRIs to ensure that their recommendations are adopted by government; insufficient interaction by some NHRIs with relevant parliamentary portfolio committees (besides occasional reports); and some sample NHRIs state that they only provide advice to government when they are invited to do so by the Executive.

The majority of the sample (5 NHRIs) only possess partially developed capacity regarding the review of existing legislation, draft bills of parliament and policies for compliance with human rights standards. Although, 4 sample NHRIs have at least a well-developed capacity in this area, there is the need to strengthen the capacity of the majority, in terms of human resources and technical ability, to also become well developed.

The capacity to undertake research and policy development, as well as prepare

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[101] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission and The Human Rights Commission of Zambia, op cit pg 38.
[102] Ibid.

reports that are based on law and evidence and convincing in advocacy is the aspect of advisory capacity that requires the greatest attention. The limitations faced by the sample NHRI in this aspect are as a result of a lack of technical capacity and financial constraints. One sample NHRI has tried to compensate for a lack of technical capacity by engaging the expertise of external consultants when necessary.

Capacity regarding public education and awareness

The Paris Principles require that NHRIs should assist in the formulation of research and education programs towards increasing public awareness (including schools, universities and professional circles) on human rights, especially through information and media. [103]

Research indicates that despite difficult national contexts, African NHRIs are constantly trying to implement human rights education and awareness campaigns.[104] One of the key challenges remains the low literacy rates across the continent, [105] which makes the promotion of human rights a mammoth task for NHRIs. As such, African NHRIs have to prepare very simplified materials and radio and television programs in order to effectively communicate information. This task requires a considerable amount of resources, which most of these institutions do not have,[106] which affects the level of pro-activeness by African NHRIs to innovatively structure their outreach programs through the media.[107] Sometimes, African NHRIs lack the capacity to simultaneously handle multiple programs.[108]

Figure 5.8: Capacity to Educate on Human Rights in the Sample NHRIs

0	No Capacity
1	Very Low Capacity
2	Basic or Low Capacity
3	Partially-Developed Capacity
4	Well-Developed Capacity

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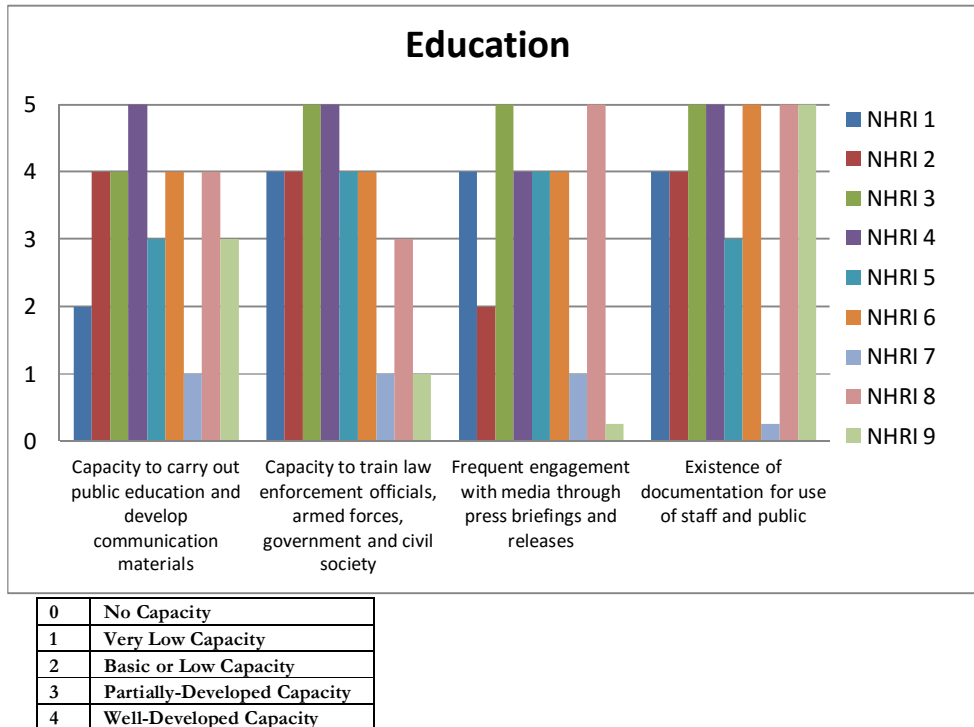
[103] United Nations Human Rights op cit and OHCHR op cit pg 19.
[104] Peters, op cit pg 369.
[105] UNICEF Website (2014) "Literacy Rates", retrieved from http://data.unicef.org/education/literacy.
[106] Peters, op cit pg 369.
[107] The Human Rights Commission of Zambia, op cit pg 38.
[108] Tsekos, op cit pg 21.

As seen in Figure 5.8 above, there is developed capacity to carry out public education and awareness on human rights (including developing communication and outreach materials) within the sample NHRIs. The exceptions in this instance are the recently established institutions that are still in the process of developing this capacity. It is important to note that several stakeholders in the respective countries (of the sample NHRIs) allude that the NHRIs have low visibility, albeit to varying extents. Although the stakeholders' perceive the respective NHRIs to be well known to CSOs, they do not believe that the general public has been adequately sensitized.

6 out of the 9 sample NHRIs indicate full to well-developed capacity to train law enforcement officials, armed forces, government officials, members of parliament, judiciary, community leaders and civil society. As good practice, one sample NHRI created a Human Rights Desk in prisons, with officers appointed to man each desk. NHRIs that have indicated partial to low-developed capacity in this area have stated that while they have the technical capacity to do so, the NHRI often lacks sufficient funding to conduct far-reaching training to these stakeholders. It is important to note that only minimal training of these stakeholders was conducted by the sample NHRIs situated in countries with little political freedom.

6 out of the 9 sample NHRIs indicate full to well-developed capacity to engage with the media, through press releases and briefings e.g. some of these institutions invite journalists to events such as the presentation of its annual report to Parliament. Despite the capacity to engage with the media, the case studies reveal that a country's political climate (including the level of freedom of speech that is practiced) and the level of independence of the institution and its members largely influence the visibility of NHRIs through engagement with the media. Several stakeholders from the vast majority of countries (of the sample NHRIs) raise the concern that these institutions have not publicly supported victims enough, or have not been vocal enough during major human rights crisis in their respective countries. The case studies also show that in terms of certain sensitive issues, some of the sample NHRIs prefer to negotiate with key stakeholders, employing a measure of quiet diplomacy rather than being vocal. This is an area that requires serious attention and improvement amongst NHRIs, considering the importance of public perception vis-à-vis the legitimacy and creditability of the institution.

The vast majority of the sample NHRIs rate their capacity highly in terms of established documentation on human rights for the use of their staff and the general public. Good practice is seen where the NHRI possesses a library, which is open to the public and staff members, and contains a multitude of information pertaining to human rights and where all publications are made available on their website. One sample NHRI has a fully capacitated resource center, which has recently implemented an online catalogue, which is open to the public and scholars. Despite these laudable efforts, several stakeholders from the vast majority of countries (of the sample NHRIs) raise the concern that this is an area that requires significant improvement. For instance, stakeholders indicate that there are not enough materials developed in different languages (including colloquial languages) that are accessible to different strata of society. Also, stakeholders indicate that facilities (e.g. functional libraries) should not be limited to the head office alone, but also

Capacity to monitor and report on human rights

extended to all regional offices. In addition, stakeholders opine that there has not been enough development of innovative materials, including the use of new media technology.

The Paris Principles require that NHRIs should have the ability to monitor all public entities, particularly law enforcement agencies. As good practice, NHRIs should also be mindful of their impact in terms of their activities and programs. [109]

Prior literature shows that the practice of monitoring and evaluation is not always particularly strong within African NHRIs.[110] Firstly, African NHRIs demonstrate a limited ability to monitor and evaluate the outcomes of recommendations made to government and other bodies.[111] Secondly, while there are indications that some African NHRIs are monitoring and evaluating their performance in key areas (such as complaints handling),[112] some African NHRIs are limited in their capacity to holistically and periodically monitor and evaluate their programs due to low staffing levels and financial constraints.[113]

Figure 5.9: Capacity of NHRIs to Monitor and Report in the Sample Countries
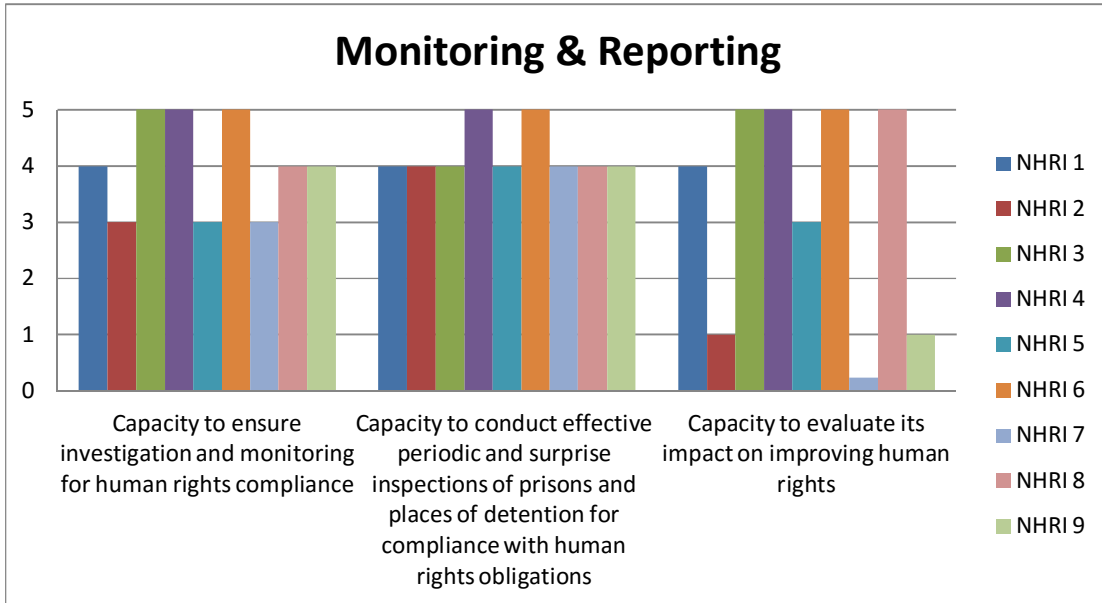
0	No Capacity
1	Very Low Capacity
2	Basic or Low Capacity
3	Partially-Developed Capacity
4	Well-Developed Capacity
5	Fully-Developed Capacity

The 9 sample NHRIs all possess (to varying extents) capacity to monitor human rights compliance through investigations. It emerged through the case studies that despite the capability to monitor compliance within government

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[109] United Nations Human Rights op cit and OHCHR op cit pg 19.
[110] Tsekos, op cit pg 21and Corkney, op cit pg 137.
[111] l'Homme de la Republique Islamique de Mauritanie, op cit pg 28 and The Human Rights Commission of Zambia, op cit pg10.
[112] Malawi Human Rights Commission, op cit pg 24.
[113] The Human Rights Commission of Zambia, op cit pg 10 and OHCHR op cit pg 16.

agencies, hospitals and detention centers etc., the sample NHRIs are limited by financial constraints, which hinders their ability to conduct more investigations and site visits. This challenge is also exacerbated by the wrong perception that these institutions lack the legitimacy to investigate (due to segments of society mistaking NHRIs as civil society organizations). This results in access denials to sites earmarked for investigation and monitoring. Some stakeholders within the NHRIs also believe that the institutions are not sufficiently monitoring the private sector for human rights violations.

All of the sample NHRIs highlight a well to fully developed capacity in terms of conducting effective periodic and surprise inspections of prisons and places of detention, to ensure compliance with human rights obligations. From engagement with stakeholders, it emerged that one of the sample NHRIs (with a strong constitutional framework) still has limited access to prisons and detention centers. The institution is expected to notify the prisons of any intended visit, thereby, diminishing its capacity to undertake surprise visits and inspections, which limits the NHRI's ability to monitor and report on human rights violations.

The case studies indicate the need for improving the capacity of the sample NHRIs to evaluate their impact (including activities and programs) regarding the promotion and protection of human rights in their respective countries.
4 of the 9 sample NHRIs have indicated high capacity in this area, with some good practices emerging e.g. commissioning independent impact studies of the institution's activities within delimited periods. However, discussions with these institutions reveal that there is significant room for improvement, particularly in terms of the regularity of these assessments. It is important to note that 5 out of the 9 sample NHRIs have not yet conducted a comprehensive evaluation of their impact (including activities and programs). Notably, monitoring and evaluation mechanisms within these institutions are not well developed. Several of the institutions opine that an independent consultant, which requires financial resources, should objectively undertake monitoring and evaluation of their impact.

7 of the 9 sample NHRIs prepare and disseminate reports on the human rights situation in the country and the activities of the institution. This is usually in the form of an Annual Report. As good practice, at least 3 of these institutions also provide periodic reports on key thematic areas that are pertinent in the human rights environment. In addition, 2 sample NHRIs undertake periodic presentations on the human rights situation to the relevant Parliamentary portfolio committees. In some instances, the Executive requests for feedback and advice on a specific human rights issue or policy. A key issue that emerged during engagement with stakeholders relate to the dissemination of these reports by the sample NHRIs, which they opine should be more widely disseminated. In the 2 sample NHRIs that are deficient in this area, their capacity is affected by key factors, such as financial and human capacity constraints. Also, the inactivity of these NHRIs (due to political instability and lengthy inception phase) affected their capacity to report on the state of human rights in their respective countries and their own activities.

5.2.3. Capacity to Respond to Emerging Issues

A key factor by which the credibility and effectiveness of African NHRIs are increasingly being assessed relates to their capacity to respond to emerging human rights issues and situations within their respective jurisdictions.[114]

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[114] UNDP et al op cit pg 194 and Murray, R (2007) *'National Human Rights Institutions: Criteria and Factors for Assessing their Effectiveness'*, 25(2) Netherlands Quarterly of Human Rights pg 189-220.

Emerging macro issues facing NHRIs in the African contexts

Available literature indicates a number of recent human rights issues that are emerging in Africa. These include international terrorism, national security and human rights, Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) rights; [115] business and human rights;[116] and human rights and health (the Ebola crisis in West Africa). [117].

Figure 5.10: Key Emerging Issues in Sample NHRIs

Sample NHRI	Key Emerging Human Rights Issues
NHRI 1	Political violence (2015 presidential elections); poverty; governance and corruption; gender-based violence; and business and human rights
NHRI 2	Homosexuality; terrorism; refugee rights; and conditions of detention
NHRI 3	Terrorism; corruption; and political violence
NHRI 4	Insecurity (terrorism and serious crimes); access to health services, and other socio-economic rights; the protection of human rights defenders; political violence (electoral reforms); and access to justice.
NHRI 5	Political tension; premature marriage of girls; business and human rights and domestic violence
NHRI 6	Rights of individuals; genocide-induced poverty; youths and drug abuse; domestic violence; land rights (expropriation, right to habitat); and business and human rights
NHRI 7	Prisoners' rights; rights of persons with disabilities; and rights of migrants
NHRI 8	Business and human rights; LGBTI rights; racism; access to information; access to justice; access and quality of health care; and farm evictions
NHRI 9	Rights of martyrs of the revolution and children's rights

Response to emerging issues in sample NHRIs

As seen in Figure 5.10 above, each of the sample NHRIs highlight key emerging human rights issues that are relevant to their local context. The case studies indicate that the sample NHRIs are developing responses to these emerging issues. In this regard, the majority of the sample NHRIs (6 out of 9) have, to a high level, aligned their priorities, activities and programs to include emerging human rights issues within their respective countries.

Technical capacity of sample NHRIs to deal with emerging issues

From the graph below (Figure 5.11), it is clear that the majority of the sample NHRIs possess well-developed technical capacity to deal with emerging human rights issues within their national context. Only 3 sample NHRIs have a partial to low capacity in this area, which is as a result of a number of factors. Firstly, these NHRIs highlight the need for further training on these new issues, which should include their staff and not just Commissioners, as

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[115] Human Rights Watch (2014) *"Uganda: Anti-Homosexuality Law Will Come at a Serious Cost"* retrieved from http://www.hrw.org/news/2014/02/19/uganda-anti-homosexuality-law-will-come-serious-cost and The Guardian (2012) *"Nobel peace prize winner defends law criminalising homosexuality in Liberia"* retrieved from http://www.theguardian.com/world/2012/mar/19/nobel-peace-prize-law-homosexuality and Human Rights Watch, op cit pg 1 and Wu, J (March 2015) *"Uganda's 'Kill the Gays' Bill Is Back",* The Daily Beast, retrieved from http://www.thedailybeast.com/articles/2015/03/01/uganda-s-kill-the-gays-bill-is-back.html and News24 (September 2014), *"Ugandan MPs working to reintroduce anti-gay law"* retrieved from http://www.news24.com/Africa/News/Ugandan-MPs-working-to-reintroduce-anti-gay-law-20140903
[116] NANHRI (2013) *"Report on the Mapping Survey on Business and Human Rights: The Role of NHRIs"* pg 1-126 retrieved from http://www.nanhri.org/phocadownload/mapping%20survey%20on%20bhr%20-%20role%20of%20nhris%20-%20final%20version.pdf.
[117] World Health Organization (2014) *"Ebola Response Roadmap Situation Report"* retrieved from http://apps.who.int/iris/bitstream/10665/145679/1/roadmapsitrep_17Dec2014_eng.pdf?ua=1 and UNDP (2014) *"UNDP marks Human Rights Day with a spotlight on front line Ebola workers"* retrieved from http://www.sl.undp.org/content/sierraleone/en/home/presscenter/articles/2014/12/10/undp-marks-human-rights-day-with-a-spotlight-on-front-line-ebola-workers0/#.

has been the practice hitherto.

Figure 5.11: Responses to Emerging Issues by Sample NHRI
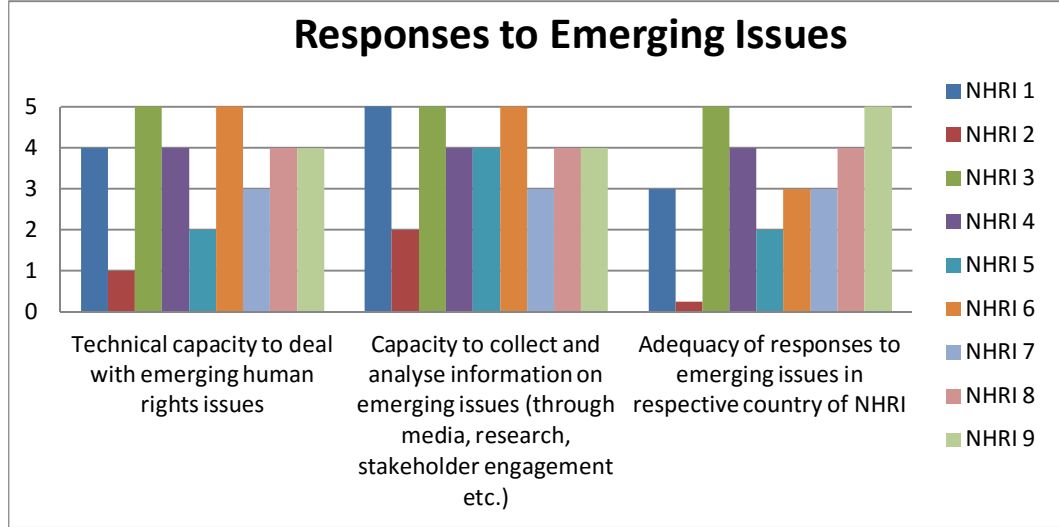
0	No Capacity
1	Very Low Capacity
2	Basic or Low Capacity
3	Partially-Developed Capacity
4	Well-Developed Capacity
5	Fully-Developed Capacity

Despite the fact that it has the ability to report emerging issues to government and in reports, 1 sample NHRI indicates that the institution has not yet received any cases on emerging issues. Absence of new cases should not be an excuse for inaction by the NHRI in this area. NHRIs should be proactive in identifying emerging issues and developing its capacity to deal with the issues accordingly, including facilitating conversations between multi-stakeholders, towards averting the occurrence of serious crisis.

Capacity within sample NHRIs to collect and analyze information on emerging issues

The majority of the sample (7 NHRIs) indicates that they have a well-developed capacity to collect and analyze information on emerging human rights issues, through various sources e.g. the media, research projects and stakeholder engagement. Only 2 sample NHRIs (including 1 recently established NHRI without its own staff) have indicated a partial to low capacity in this area. The insufficient capacity is attributed to the lack of dedicated staff in this area. This highlights the need to ensure the allocation of appropriate resources, including provision of training and capacity building, to enable NHRIs (particularly recently established institutions) to consistently possess the capacity to collect and analyze information on emerging human rights issues.

Capacity of sample NHRIs to respond to emerging issues

The majority of the sample (5 NHRIs) have either a partial to low capacity to respond to emerging human rights issues within their respective countries. This indicates a significant growth area for the institutions, as only 4 sample NHRIs indicate a well-developed capacity in this area. The insufficient

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capacity demonstrated is attributed to the lack of financial and human resources, which hinders the ability of the institutions to take pro-active measures to implement their internally formulated approach.

Stakeholder Engagement

6.1. Overview

The Paris Principles emphasize the importance of continuous engagement by NHRIs with a range of stakeholders at the national, continental and international levels.

As such, the discussion regarding stakeholder engagement by African NHRIs focuses on the following areas:

a) Engagement at the national level;
b) Engagement at the continental level, including peer support;
c) Engagement at the international level, including donor relationships;
d) Monitoring and evaluation of stakeholder engagement.

The chapter looks at these key elements, employing a combination of a literature review (where available) that draws out common trends across Africa, supplanted by the findings from the fieldwork engagement with internal and external stakeholders from the 9 sample NHRIs.

6.2. Stakeholder Engagement: State of African NHRIs

6.2.1. Engagement at the National Level

Efficient stakeholder engagement allows NHRIs to undertake their mandates by enhancing their independence and pluralism; improving their effectiveness by deepening their public legitimacy; ensuring they reflect public concerns; and giving them access to expertise and valuable networks.[118] It can also prevent a State from attempting to compromise the independence and neutrality of an NHRI.[119] NHRIs are expected to consult regularly at every stage (from planning to implementation and evaluation) with their stakeholders, including the public, government, CSOs, community-based bodies and organizations that have a professional interest in human rights.[120]

The NANHRI Member Profiles (2014) indicates that, at the national level, African NHRIs mostly engage with CSOs and government.[121] African NHRIs, to varying extents, engage with their governments towards adopting

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[118] Ibid pg 23.
[119] United Nations op cit pg 137.
[120] International Council on Human Rights Policy op cit pg 23.
[121] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

and domesticating recommendations of international treaty bodies.[122] NHRIs also provide advice on human rights to government and parliament.[123] In addition, several African NHRIs provide training for public officials and law enforcement on human rights norms and standards e.g. prevention of torture.[124] Several African NHRIs also demonstrate the ability to use their mandate to engage with other stakeholders, such as NGOs, in order to improve public awareness on specific thematic issues.[125]

The case studies confirm that African NHRIs are engaging with government and CSOs, albeit to different extents. All 9 sample NHRIs are engaging with their respective governments (the Executive, Judiciary and Parliament). Firstly, there is engagement in terms of influencing human rights legislation, policies and practices that are structured through advisory, recommendations, training, monitoring and reporting activities. Secondly, the sample NHRIs engage with government in relation to administrative aspects of their respective statutory obligations, including financing and accountability.

There are a number of key factors (identified throughout this report) that affect the quality of the sample NHRIs' engagement with their respective Governments. The political environment (political will and stability); state agencies trying to dominate the engagement with NHRIs and/or treating NHRIs as CSOs rather than statutory bodies; and the technical and/or financial capacity of the particular NHRIs in terms of its core functions (e.g. following through on recommendations made to government, delivering training, advisory services, monitoring and reporting) are all factors that affect the substantive engagement of NHRIs with government.

The case studies also show that in some countries, there are strong synergies between NHRIs and CSOs. These include NHRIs enhancing their accessibility through working with CSOs; NHRIs acting as an interface between CSOs and government on human rights issues; CSOs are also able to refer cases to NHRIs; NHRIs provide capacity, expertise and assistance, information sharing and expertise exchange to CSOs whenever they request it and *vice versa*. In some instances CSOs are part of NHRI working groups on key issues.

Stakeholders in the majority of the sample (6 NHRIs) indicate that NHRI engagement with CSOs requires improvement, particularly in terms of partnering more in outreach activities to the general public. Factors that inhibit the engagement of sample NHRIs with CSOs include: financial and technical capacity; lack of clear strategy for engagement; sensitive political environments, including where CSOs do not have the space to operate. It came out strongly from civil society stakeholders that their NHRI (recently established sample NHRI that operates as a hybrid) has no contact with the CSOs in the country and does not attend meetings or forums held under the national umbrella for CSOs. As a result, there is a perceived lack of interest by the NHRI in terms of engaging with stakeholders in the country, which is exacerbated by the lack of human resource capacity with the institution to

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[122] Kingdom of Morocco National Human Rights Council (2013), *"CNDH President Highlights Role of NHRIs in Advancing Rights of Older Persons and Persons with Disabilities"*, retrieved from: http://www.cndh.org.ma/an/bulletin-d-information/cndh-president-highlights-role-nhris-advancing-rights-older-persons-and

[123] Comite Senegalais des Droits de l'Home op cit pg 10 and The Human Rights Commission of Zambia op cit pg 11.

[124] Mehta, op cit pg 7.

[125] Office for Democratic Institutions and Human Rights (2012), "*Handbook on National Human Rights Institutions on Women's Rights and Gender Equality",* pg 43 retrieved from http://www.osce.org/odihr/97756?download=true.

specifically handle human rights.

A clear challenge facing the sample NHRIs is their level of engagement with the general public, which is important in order to raise awareness, educate, and to receive complaints. The case studies show that although the 9 sample NHRIs engage with the general public through the use of media, there are a number of key factors that affect their success in this area. These factors include: lack of sufficient feedback mechanisms to victims; insufficient dissemination of information about the institution's programs and activities, using local languages and innovative media; the hesitation to address human rights violations through the media; and financial and capacity constraints. There are also concerns raised by stakeholders, with regards to 2 sample NHRIs, that the institutions do not communicate enough through the private media. These factors affect the visibility, as well as the public's perception about the level of independence and credibility of the institution.

Figure 6.1: Methods of Media Engagement by Sample NHRIs
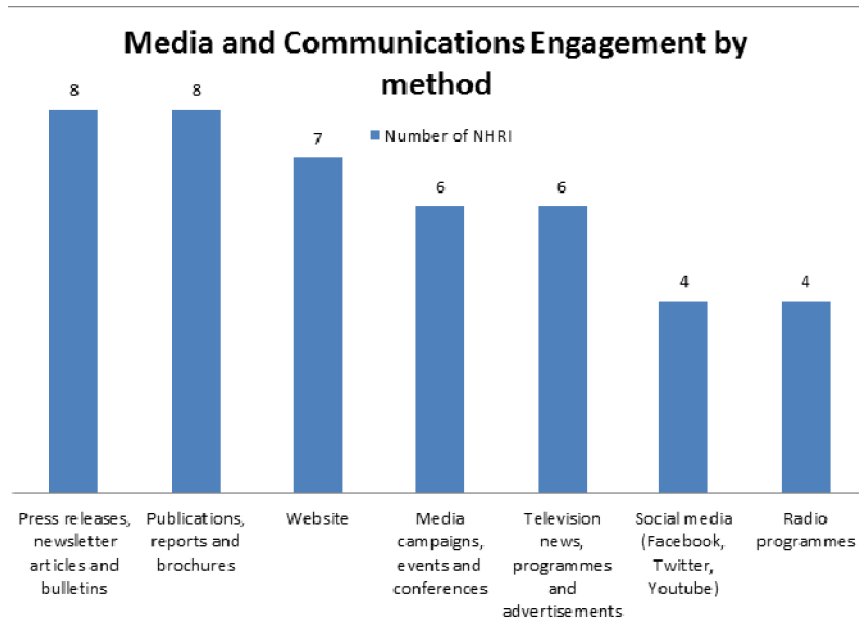
As seen from Figure 6.1 above, the most common forms of communication through the media are press releases, newsletters and articles, often in local newspapers, along with publications, reports and brochures (observed in 8 of 9 sample NHRIs). These methods of media communication are prevalent even in environments (2 sample NHRIs) where freedom of speech is perceived to be a stumbling block. Overall, the trend remains inclined towards newspaper articles and publications, although most NHRIs are seen to be increasing their digital footprint. It is important to note that 1 recently established sample NHRI does not use the media as a tool for engaging with the public, which has left a vacuum in terms of their visibility as well as sensitizing the public on human rights issues.

**6.2.2.
Engagement at
the Continental
Level**

*Membership of
regional networks,
such as NANHRI*

At a continental level, the Paris Principles requires NHRIs to cooperate with regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights.[126]

African NHRIs thus have the option of obtaining membership from networks, such as the NANHRI, tasked with creating a platform for the establishment, cooperation and strengthening of NHRIs across Africa. Members of NANHRI benefit from support services such as networking, capacity building and attending conferences. [127] Two regional NHRI associations also exist namely the Association of NHRIs of the East African Community, which is yet to be operational and the Network of West African NHRIs, which is established but is facing a number of operational challenges.[128]

The vast majority of African NHRIs are presently members of NANHRI (44 NHRIs out of 47 established NHRIs on the continent)[129] Only 1 sample NHRI is not a member of NANHRI.

Aside from being members of networks such as the NANHRI, African NHRIs have historically engaged with the African Commission on Human and People's Rights (ACHPR) by attending sessions aimed at assisting the ACHPR in the protection and promotion of human rights.[130] Similar to ICC accreditation, NHRIs can obtain an "Affiliate" status within the ACHPR if they conform to the Paris Principles.[131] As of 2015, there were 24 NHRIs with Affiliate status at the ACHPR,[132] including 6 of the sample NHRIs.

The case studies reveal that through these continental networks (particularly NANHRI) as well as bilateral arrangements between NHRIs, there are instances of peer support among African NHRIs. These include opportunities for knowledge exchange and information flows (including sharing of experiences and best practice); and support in terms of technical capacity. The case studies show that recently established NHRIs that benefit from peer support, during their inception periods, perform better in terms of capacity and effectiveness.

Some comments from the sample NHRIs indicate the usefulness of these networks with regards to building their capacity, including towards dealing with new emerging human rights issues e.g. business and human rights. However, the sample NHRIs express the need for further training and

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126 United Nations Human Rights op cit and UNOHCHR (2010), "*National Human Rights Institutions: History, Principles, Roles and Responsibilities",* pg 134, retrieved from: http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.
127 NANHRI (2014) "*The Joint NANHRI/APT Training for African NHRIs"* retrieved from http://www.nanhri.org/index.php?option=com_content&view=article&id=234:the-joint-nanhri-apt-training-for-african-nhris&catid=89&Itemid=647&lang=en.
128 Expert interview with Gilbert Sebihogo, Executive Director of NANHRI.
129 NANHRI Website op cit pg 1.
130 African (Banjul) Charter on Human and Peoples' Rights (1986), pg 1, retrieved from: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf.
131 Viljoen, F (2012) "International Human Rights Law in Africa" Oxford University Press pg 389, retrieved from http://books.google.co.za/books?id=2-nWT4Cu1Q0C&pg=PA389&lpg=PA389&dq=frans+viljoen+NHRI+in+Africa+independence&source=bl&ots=9aQiq4tl4P&sig=mhJEHUcQAagpKE9FmdkGZJCazVM&hl=en&sa=X&ei=14l8VLy7IfHd7Qbp8oHABg&ved=0CCYQ6AEwAg#v=onepage&q=frans%20viljoen%20NHRI%20in%20Africa%20independence&f=false
132 African Commission on Human and Peoples' Rights Website (last modified 2015) *"National Human Rights Institutions"* http://www.achpr.org/network/nhri/.

6.2.3. International Level Engagement

capacity building opportunities to be organized and funded by these networks. African NHRIs are actively involved with the international human rights system in accordance with the Paris Principles, which require that NHRIs should cooperate with the United Nations (UN) and with organizations in the United Nations system, for instance the Human Rights Council and its mechanisms. [133]

Majority of African NHRIs are engaged with the *UN's United Universal Periodic Review (UPR),*[134] a process tasked with assessing the human rights situation in all 193 UN member states. The UPR process benefits from the involvement of African NHRI, notably in terms of monitoring and reporting. African NHRIs engage with the UPR on specific thematic issues by, for example, highlighting current issues in UPR stakeholder reports and providing additional information on those issues during UPR interactive dialogue sessions. The role of NHRIs in the UPR process also includes, among other duties, engaging with Government on the implementation of UPR recommendations, and monitoring follow-up.[135]

African NHRIs also actively engage with the UN special procedures to improve their performance such as establishing a Right to Health Unit to assist the Ministry of Health (in an East African country) with delivering a human rights-based approach in the Health sector.[136]

The case studies indicate that 6 of the sample have participated in the UPR processes of their respective countries. 2 recently established sample NHRIs have not been involved in this review yet and 1 sample NHRI has not been involved in their country's UPR due to a previously restrictive political climate.

It is clear from the case studies that the engagement of the majority of the sample NHRIs with international stakeholders is in the form of partnerships with donor agencies and international development partners. These stakeholders provide much needed technical and financial support to 6 of the sample NHRIs. Where donor support is feasible, the relationships are structured on bilateral terms between the development agency and the relevant sample NHRI. The 3 sample NHRIs that do not receive donor support indicate the following reasons: lack of development agencies that have expressed interest in providing support; restrictions by prior government/regime; and the intention to rely on government funding.

6.2.4. Monitoring and Evaluation of Stakeholder Engagement

The case studies indicate that the practice of periodically monitoring and evaluating stakeholder engagement is a significant growth area for the vast majority of sample NHRIs. Only 3 of the 9 sample NHRIs have clear monitoring and evaluation mechanisms for stakeholder engagement. A good practice is seen in one instance where the sample NHRI indicates that it has a monitoring and evaluation framework, as well as tools to monitor engagements with stakeholders, although it is still in the process of conducting

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[133] United Nations Human Rights op cit.

[134] NANHRI Member Profiles (2014) and case study on Seychelles National Human Rights Commission.

[135] ICC (2011), *National Human Rights Institutions And Universal Periodic Review Follow-Up,* pg 1-9 retrieved from: http://nhri.ohchr.org/EN/IHRS/UPR/Documents/FINAL%20ICC%20paper%20on%20NHRIs%20UPR%20follow%20up.pdf

[136] HRBA Portal (2011)*"National Human Rights Institutions"* retrieved from pg 2 http://hrbaportal.org/wp-content/files/e-info-tool_national_human_rights_institutions.pdf.

its first annual review of stakeholder engagements.

5 of 9 sample NHRIs do not have a mechanism for monitoring and evaluating their engagement with stakeholders vis-a-vis their stated objectives. This is mainly due to the absence of cogent stakeholder engagement strategies and mapping exercises that are a key foundation for subsequent monitoring and evaluation exercises. Only 3 sample NHRIs formally undertake stakeholder-mapping exercises, which is noticeably another growth area for the recently established institutions. This vacuum also reflects on the overall stakeholder engagement strategies developed by the sample NHRIs, as only 4 institutions within the sample have formally developed cogent strategies in this area. Other factors that affect monitoring and evaluation of stakeholder engagement includes: lack of requisite systems (particularly for recently established institutions); and political instability, which hinders an NHRI's ability to undertake this exercise in a difficult political environment.

Rights-based Approach to Service Delivery and Development

7.1. Introduction

The concept of a human rights-based approach

It is now widely accepted that advancing human rights is essential for human development. The Human Rights-Based Approach (HRBA) involves incorporating standards and norms of the international human rights system into the improvement of public policies. This approach is increasingly being adopted across the globe by multilateral organizations and national governments towards promoting development. [137] Implementing a HRBA entails applying a human rights process at all stages of a policy cycle, including assessment, analysis, planning, implementation, monitoring and evaluation.[138] Analysts indicate that a key challenge to implementing this approach is that international human rights principles do not inform countries on what exact policies need to be executed to improve the human rights situation.[139] As such, African NHRIs need to undertake comprehensive needs analysis within their own country to identify patterns of prejudice, segregation, impunity and powerlessness.[140]

This chapter explores how African NHRIs are using their role to cultivate a rights-based approach to service delivery and development. This includes the extent to which the institutions are pro-actively ensuring the adoption of preventative measures towards protecting and promoting human rights. In particular, this study looks at the extent to which African NHRIs are using their powers and functions (including advocacy, advice, training and awareness) to innovatively influence policy and practice towards holistically incorporating human rights in a manner that ensures equality and non-discrimination, participation and inclusion, accountability and the rule of law.

The chapter begins with a literature review that draws out good practices from NHRIs on the continent. Thereafter, the chapter provides an analysis of the efforts, opportunities and challenges in terms of the 9 sample NHRIs towards promoting a rights-based approach to service delivery and development in the execution of their respective mandates.

In an in-depth manner, the chapter also presents innovative programs currently being implemented by 2 sample NHRIs in this area. Firstly, the creation of awareness through the education system (Cameroon) and the development of a practical tool for NHRI staff in terms of monitoring

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[137] Corkery, A et al, *"Rights-Based Policy Monitoring: KNCHR Primer on Assessing Compliance with Economic and Social Rights Obligations"*, Center for Economic and Social Rights, New York, 2012 retrieved from pg 4 http://www.cesr.org/downloads/knchr.escr.primer.pdf?preview=1.

[138] Ibid pg 5.

[139] Ibid. pg 7.

[140] Ibid.

economic and social rights (Kenya).

7.2. Rights-based Approach to Service Delivery and Development by African NHRIs

Despite the HRBA to service delivery being a relatively new concept, literature indicates that some African NHRIs are mainstreaming this approach as part of their programs and activities. This is seen in Ghana and Uganda, where the NHRIs in those countries are contributing to endogenous development by promoting inclusion and empowerment of the most marginalized and excluded groups of society to help improve their lives.

Using a Reporting System to Protect the Rights of People Living with HIV and Key Affected Populations: The Ghanaian Experience

In Ghana, the Commission on Human Rights and Administrative Justice (CHRAJ), in conjunction with a consortium of partners, developed an innovative web-based discrimination reporting system to protect the rights of people living with HIV and key affected populations. [141]

In collaboration with the Ghana AIDS Commission (GAC) and non-governmental partners, CHRAJ works to:

☐ Document the nature and extent of stigma and discrimination on the basis of HIV status, gender identity or sexual orientation in order to inform national policy and programming priorities;

☐ Engage with people who have experienced discrimination, on the basis of their HIV status, gender identity or sexual orientation, to inform them of their rights under the Ghanaian legal framework; and

☐ Investigate cases (including through direct follow-up and/or referral to the police) to provide redress for people who have experienced discrimination on the basis of their HIV status, gender identity or sexual orientation. [142]

This system is successfully facilitating access to justice in the country and forms a critical part of the country's human rights protection mechanism. [143] In Ghana, the combination of a supportive legal framework, an institutional home with the right mandate and capacity, as well as stakeholder engagement have created a favorable environment for developing such a system. [144]

Despite key challenges (such as: low literacy rates and lack of human rights awareness exacerbated by slight levels of mistrust by local populations; capacity of victims and CSOs to use the web-based system; the lengthy process for resolving cases; and the need for strong institutions for resolving disputes), CHRAJ has made important strides toward linking

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[141] Williamson, RT et al (2014) *"Using a Reporting System to Protect the Human Rights of People Living with HIV and Key Populations: A Conceptual Framework"*, Health and Human Rights Journal Volume 16, pg 148 retrieved from http://www.hhrjournal.org/wp-content/uploads/sites/13/2014/06/Williamson1.pdf.

[142] Commission on Human Rights and Administrative Justice in Ghana op cit pg 1.

[143] Health Policy Project *"How Can People Living with HIV and Key Populations Access Justice in Ghana?"* retrieved from http://www.healthpolicyproject.com/index.cfm?ID=CHRAJupdate.

[144] Williamson, RT et al op cit pg 152.

government and civil society to address human rights violations against people living with HIV and key affected populations. Other African NHRIs could replicate this system.[145]

Promoting Pro-Human Rights Policies: The Ugandan Experience

Since 2001, the Uganda Human Rights Commission (UHRC) has been pro-active in mainstreaming a HRBA within the government's planning process, particularly in terms of poverty eradication, which is a major challenge in Uganda with 38% of the population living in poverty. The UHRC's participation resulted in the inclusion of human rights issues in the formulation of the Poverty Eradication Action Plan (PEAP) 2004/5- 2007/8 (government's over-arching framework to eliminate poverty in the country).[146] The UHRC's guidance and advisory services to the Uganda National Planning Authority has also been instrumental in mainstreaming PEAP as well as a human rights based approach in the National Development Plan (NDP).[147]

In addition, the UHRC influenced the government regarding addressing internal conflict in the country due to the displacement of the Karimojong (pastoralists), who illegally possess large quantities of firearms. The UHRC adopted several measures towards ensuring that during the process of disarming the pastoralists, security personnel did not infringe on the rights of innocent Karamoja people (especially the vulnerable groups such as children, woman and the elderly). In this regard, the UHRC efforts included: advising government on the training syllabus for the Prisons Service, the Police and the Army; establishing civil-military operations centers (in conjunction with CSOs, the Police and the Army) in the conflict regions of the country to monitor the process; and investigating human rights violations committed during the disarmament process.[148]

Through the above interventions in Karamoja:[149]

☐ There was an improvement in the overall human rights and security situation, as well as improved relations between affected communities and the Army.

☐ The UHRC was able to document and publish reports on the human rights impacts of the disarmament exercise in the Karamoja region.

☐ The UHRC advised government on the best practices during the disarmament exercise, which resulted in the implementation of the Karamoja Integrated Disarmament and Development Program (KIDDP) 2005-2008.

☐ Victims of human rights violations reported their complaints with the UHRC. These complaints were investigated and some victims achieved remedies mainly in form of compensation.

The UHRC however notes that the measures for addressing the plight of the poor and vulnerable may not seem wholly satisfactory from a rights-based perspective. As such, the Commission sought to have all the sectoral plans to be based on human rights principles, which was unsuccessful.

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[145] Health Policy Project op cit.

[146] Omara, A. *"The Role of a National Human Rights Institutions in Pro-Human Rights Policies: The Uganda Experience",* pg 4, retrieved from http://www.ohchr.org/Documents/Issues/SForum/3sfMrOmaraUganda.pdf.

[147] Input from Ruth Sekindi, Director for Complaints, Investigations and Legal Services (CIL), Uganda Human Rights Commission.

[148] Omara, A. op cit pg 4 and Input from Ruth Sekindi op cit.

[149] Ruth Sekindi op cit.

7.3. The Experience of Sample NHRIs

7.3.1. Emerging Trends

Emerging trends from the sample NHRIs

The case studies confirm that despite HRBA being a relatively new concept, there has been uptake by the vast majority of the sample NHRIs. However, it appears that HRBA is undertaken more on an *ad hoc* basis than strategically built into the long-term plans of most of the sample NHRIs.

HRBA is more prominent within the vast majority of the sample institutions, as part of their preventative measures. This is particularly in terms of promoting inclusion and empowerment of the most marginalized and excluded groups of society to help improve their lives. It is clear that sample NHRIs usually select a target population, sector and development priorities in terms of their measures towards HRBA. In this regard, there has been a lot of attention towards promoting and integrating human rights as part of school curriculums and training in the education sector, which is prominent within 4 sample NHRIs (including Cameroon, which is profiled below).

Also, there has been significant effort by 3 sample NHRIs towards analyzing and contributing to national development plans. In addition, sample NHRIs are mainstreaming HRBA through engagements with key stakeholders towards promoting awareness and mainstreaming HRBA within these processes, which is commendable. This is seen in 5 out of the 9 sample NHRIs that have hosted meetings, workshops and seminars with different ministries and government agencies regarding promoting a common understanding of HRBA. A good practice is seen where 1 sample NHRI assigns a rapporteur (generally a Commissioner) to engage with government agencies, in order to mainstream a rights-based approach and to create synergies among implementing agencies.

Challenges in implementing the HRBA within sample NHRIs

The fieldwork with the 9 Sample NHRIs indicates that there are several limitations facing the institutions in terms of mainstreaming the HRBA to service delivery. Firstly, the low-level of understanding within the respective NHRIs and government agencies about the HRBA is a prominent challenge. It came out strongly that differentiating between the HRBA and the results-based approach is often a challenge in terms of developing a common understanding about the HRBA among stakeholders. The case study from Kenya (below) highlights good practice by the NHRI, which is seeking to internalize this concept within the NHRI as an important foundation towards mainstreaming the HRBA into the monitoring of economic and social rights in the country.

Also, the case studies show that NHRIs need to have strong HRBA champions among relevant government agencies, as well as technical and financial capacity for effective implementation. In addition, the experiences of the sample NHRIs indicate that mainstreaming the HRBA to service delivery and development is a time consuming process, particularly in terms of the time it takes for the NHRIs to fully consider, internalize and engage with stakeholders on proposed development plans and policies. Furthermore, implementing the HRBA requires a stable political climate. In this regard, 2 sample NHRIs (from countries that have new political dispensations) indicate that past restrictive political environments did not foster the implementation of the HRBA.

The following 2 case studies from Cameroon and Kenya provide more insightful and informative look at pro-active measures by sample NHRIs in terms of mainstreaming the HRBA to service delivery and development.

7.3.2. Promoting Human Rights in Education: The Cameroon Experience

Background to the HRBA Program by the NCHRF

Cameroon's National Commission on Human Rights and Freedoms (NCHRF) recognizes that the lack of public awareness on human rights within the country, significantly affects their capacity to promote and protect human rights. As such, practices such as female genital mutilation are still found in some parts of the country. Leveraging on the fact that primary education is compulsory for children, the NCHRF (with funding support from UNDP) undertook preventive measures in 2006. This entailed systematically creating, developing and implementing an education curriculum on human rights (National Program of Education for Human Rights) for primary and secondary schools within the country. This was geared towards ensuring that, through the HRBA within the education sector, public awareness of human rights occurs at the grass roots level.[150]

Key features of HRBA program

The project had a three-tiered approach, which included training of teachers, developing teaching manuals on the area of human rights and then rolling out the curriculum to 80 pilot schools.

Results of the program

Key success findings from the monitoring and evaluation of the program include:[151]

- ☐ Human rights are no longer a new concept: the majority of students in these pilot schools are aware of their fundamental rights.
- ☐ The Commission has estimated that as at 2014, more than 20,000 teachers were trained by the NCHRF directly, external trainers and the Ministry of Basic and Secondary Education, which has rolled-out the training in all ten regions.
- ☐ Although there are no precise numbers, there is a noticeable increase in the number of reported violations to the Commission.
- ☐ The creation of partnerships with the Ministry of Basic and Secondary Education has enabled the training of teachers to continue beyond the initial 80 pilot schools.
- ☐ The NHRI has built strong partnerships that constitute a key leverage for influencing Government departments in terms of mainstreaming the HRBA in their policies and strategies.
- ☐ The project's strong monitoring component enabled the successful evaluation of the program.

Challenges

There were a number of difficulties experienced during the pilot phase including: monitoring of the teaching of human rights in some institutions were hampered by the frequent transfer of teachers; lack of interest on the part of exam classes of students in English-speaking regions because human

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[150] Commission Nationale des droits de l'homme et des Libertés "Rapport surl'etat des droits de l'homme au Cameroun en 2012" pg 54, retrieved from http://www.cndhl.cm/index.php/repository/func-startdown/13/ and Expert Interview with Eva Etongue Mayer, Head of Division, Cameroon National Commission on Human Rights and Freedoms.

[151] Commission Nationale des droits de l'homme et des Libertés op cit pg 54 and Expert Interview with Eva Etongue Mayer, Head of Division op cit.

rights are not registered in the General Certificate of Education (GCE) program; lack of textbooks and qualified teachers to teach human rights; difficulties encountered by students in technical schools to assimilate certain teaching methods such as role play; and the reluctance of parents to inculcate the values of the rights to their children because of the weight of tradition in some areas.

Although, due to financial constraints, the Commission has not been able to continue training beyond the initial project, the Ministry of Basic and Secondary Education has taken this training beyond the pilot schools. The impact of the continued training by the Ministry still needs to be evaluated.

7.3.3. Promoting Economic, Social and Cultural Rights: The Kenyan Experience

Background to the HRBA program by KNCHR	During the transition to a new legal status as a constitutionally based Commission (following the promulgation of Kenya's Constitution of 2010), the question was raised during internal debates as to what the Commission could do differently. Under the KNCHR's strategic plan of 2009-2013, the NHRI committed itself to using the HRBA to plan, implement, monitor, and evaluate its work.[152]

The KNCHR therefore initiated partnerships with the Ministry of Justice, National Cohesion and Constitutional Affairs; the Office of the High Commissioner for Human Rights (Kenya Office); and the Centre for Economic and Social Rights (CESR). Following a series of training workshops on the HRBA for the partner institutions and key stakeholders, it was agreed that each participating organization would carry out institution-wide training on the HRBA, as part of building internal capacity first, before seeking to build that of other public institutions. |
| *Key features of HRBA program* | This led to the development of a primer as part of an eighteen-month project, titled: 'Enhancing the Capacity of National Human Rights Institutions to Monitor Economic, Social and Cultural Rights'. This collaborative project between KNCHR and CESR was implemented from 2010 to 2011.[153] This primer is designed to assist the staff at the KNCHR when implementing programs and activities related to monitoring economic and social rights (ECOSOC rights).

The primer simplifies complex and unfamiliar tasks for staff and includes the definition of key concepts, particularly the linkages between the HRBA to development and ECOSOC rights. The primer presents various benchmarks, tools and techniques for assessing ECOSOC rights e.g. outlines the application of the OPERA (Outcomes; Policy; Efforts; Resources; and Assessment) framework for mainstreaming ECOSOC rights in monitoring activities. The primer also provides guidance in terms of budget analysis, focusing on how to monitor the government's obligation to use the its available resources effectively to fulfill ECOSOC rights. |
| *Results of the program* | The primer and the training project have a number of innovative elements and pro-activeness from the part of the Kenya's KNCHR. These include:

    ❑   The primer and programme link the monitoring of ECOSOC rights, |

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[152] Corkery, A et al op cit pg 1.
[153] Ibid.

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through a right-based approach, while contextualising it to the Kenyan environment.

☐ The primer provides a practical tool for staff to use while monitoring and conducting investigations.

☐ The programme involved all relevant stakeholders including civil society, Office of the High Commissioners for Human Rights (Kenya Office) and the CESR, as well as key role players from Government, such as the Ministry of Justice and the National Cohesion and Constitutional Affairs, to guarantee sustainability of the approach by building a culture of human rights through the work of multiple institutions.

☐ The programme looked at building internal capacity within the NHRI firstly before seeking to build that of other public institutions.

☐ The primer goes one step further than just relating ECOSOC rights to a human rights-based approach by focusing on how to monitor the government's obligation to use the maximum of its available resources to fulfil ECOSOC rights.

☐ Since the training of KNCHR's staff within this programme, 27 Officers of the Ministry of Devolution and Planning were trained on human rights-based approach and were able to integrate human rights indicators in the Government's 2030 Vision and the second medium term plan for the years 2013-2017. Other trainings have been extended to the judiciary, security sector, line ministries and non-state actors. Training curriculum and manuals have been developed to support the trainings. The hope is that this training will also be provided as a course in institutions of higher learning.

Challenges	Key challenges taken from discussions with the NHRI include:

☐ There is lack of common understanding of the human rights-based approach in the public sphere of Kenya.

☐ The application of a human rights-based approach to service delivery and development in different sectors of the economy can be confusing and onerous.

☐ Differentiating the human rights-based approach from the results-based approach has sometimes proved difficult as well as developing and appreciating a common understanding of human rights-based approach.

☐ While sections of the primer have used by NHRI staff in at least five training workshops for county government, the NHRI has not trained all of its own staff on the entire document.

☐ There is little evidence to demonstrate the primer's impact as the NHRI has yet to evaluate and monitor its impact.

Summary of Key Findings and Recommendations

This chapter presents summary findings and recommendations, based on the contextual information provided in the preceding chapters (thematic areas) of the study. Although the observations and advisory outlined in this chapter are drawn from the case study of 9 sample NHRIs, they provide key lessons that can be applied generally to strengthen the effectiveness and functioning of NHRIs in Africa. The recommendations are grouped according to the thematic areas of the study.

8.1. Establishment and Oversight

In accordance with the Paris Principles, the sample NHRIs have a legal basis that is entrenched in the constitution and/or legislative framework. It is observed that 2 NHRIs have more detailed and substantive provisions stipulated within their constitutions, which should be benchmarked as good practice. The legal frameworks for the sample institutions clearly define their respective broad mandates. However, there are concerns about the mandates of some NHRIs overlapping with that of other state institutions, which has the tendency to confuse stakeholders regarding the functions of these institutions.

On the whole, the 9 sample NHRIs are well established, with the vast majority becoming operational within 12 months of their legal establishment. One of the recently established institutions however, took up to 3 years to become fully operational, as a result of delays in funding by government, appointment of Commissioners and setting up the secretariat. Since establishment, there is a significant degree of stability and consistency in the operations of the sample institutions. Although, there is the existence of procedures and policies, the study highlights the need to improve the corporate governance systems that articulate lines of responsibility and accountability in terms of the strategic versus operational functions. This is important to ensure a harmonious working environment within the institutions. In addition, improvements are required regarding documentation of operational policies and procedures and the overall coordination of these systems, as well as strategy development (particularly, long-term planning) by these institutions. The study highlights a number of efforts by the sample NHRIs to increase their accessibility nationally, including through provincial offices and partnerships with CSOs etc. However, this is an area of continuous improvement that requires both strategic and innovative approaches by the institutions. While the sample NHRIs demonstrate a commendable level of accountability to both Government and donors, accountability to CSOs and victims are growth areas.

The sample NHRIs are able, to varying extents, to successfully exert influence in the promotion and protection of human rights within their respective countries, including regarding the harmonization of domestic laws with international standards. All sample NHRIs are seen to attach high levels of priority to certain thematic areas, which are relevant to their respective

national contexts, which (in the majority of the sample institutions) includes emerging human rights issues.

The sample NHRIs are established in accordance with a Commission model, although, one of the newly established institutions is in practice operating as a Hybrid, due to its inextricable link with the Ombudsman. However, the reliance of this NHRI on the staff of the Ombudsman, which may not have a sufficient human rights background, is problematic. The majority of the 9 sample NHRIs have an A-status with the ICC, although, the non-accreditation of 2 recently established sample NHRIs indicates their non-alignment with the Paris Principles. This reflects throughout the study, as the sample NHRIs with an A-status (with one exception), generally show more consistency in their performance.

The political environments (e.g. the level of political will, freedom of speech and political stability); inadequate human and financial resources; and unproductive dynamics amongst key role players (e.g. internal conflicts between Commissioners) are key factors that consistently affect the optimal functioning of NHRIs during both inception phases as well as continuous operations. A key challenge that also negatively affects the smooth operations of NHRIs is overdrawn transitional periods due to lengthy delays in the appointments and/or re-appointments of NHRI members.

Recommendations:

a) African NHRIs:

- ☐ NHRIs should undertake periodic reviews in terms of the adequacy of their enabling legal framework and make appropriate proposals to Government.
- ☐ NHRIs (particularly recently established institutions) should undertake comprehensive needs analysis that should underpin their engagement with government and donors for funding and technical support.
- ☐ Within the ambit of their enabling legal environments, NHRIs should pro-actively engage with Government and key stakeholders to facilitate timely appointments and/or re-appointments of members.
- ☐ NHRIs should ensure that they have appropriate operating policies and procedures, corporate governance systems, as well as long-term strategies, which should be periodically reviewed against changes in their operating environment. These systems should be appropriately documented and disseminated, including through staff training.
- ☐ Irrespective of an NHRI's operating model, the institution should have appropriate financial and specialized technical capacity for the promotion and protection of human rights. All hybrid NHRIs should ensure that they have competent staff specifically dedicated to human rights.
- ☐ Innovations in outreach methodologies (including staff diversity and partnerships with community-based organizations operating in marginalized areas) should be developed to increase the widespread accessibility of NHRIs nationally.
- ☐ All NHRIs should strive towards obtaining and/or maintaining an A-status accreditation and should have clear procedures and systems in place in order to make sure all documentation are prepared and submitted to the ICC.
- ☐ Put in place accountability mechanisms (including feedback and stakeholder engagement) to improve accountability to victims and CSOs.

b) *Governments:*

- ☐ Provide appropriate political will for the long-term effectiveness of the NHRI.
- ☐ Ensure that the legal framework for their NHRI is as strong as possible i.e. entrenched in the Constitution and/or legislative framework, with precise and unambiguous text that provide for the NHRI's independence, powers, functions and mandates. Also, ensure that NHRI mandates compliment that of other state institutions *(and vice versa)* without duplication.
- ☐ Governments seeking to establish an NHRI should commit to ensuring the operationalization of the institution within a maximum period of one year. Recently established NHRIs should be supported and adequately and sustainably resourced to ensure that they have sufficient capacity to fulfill their mandate. A sustainable funding model should be developed and instituted as part of the establishment process for NHRIs, based on a cogent needs analysis.
- ☐ Governments should ensure timely appointment and/or re-appointment of NHRI members.
- ☐ When establishing an NHRI, A promotonal/campaign plan should be put in place by Government (with appropriate budgetary provisions) in order to sensitize the population about the institution.

c) *Regional Networks and Development Partners:*

- ☐ Provide support to NHRIs in terms of outreach to Government to address any identified gaps regarding the substantive provisions of their enabling legal framework.
- ☐ Provide guidance to Government in terms of implementing their obligations and commitments when establishing an NHRI.
- ☐ Provide support to recently established NHRIs during their establishment process and inception periods. This should involve: mentorship; facilitating bilateral exchanges with other NHRIs; and providing technical and financial assistance.
- ☐ Provide support (including training and capacity building) to NHRIs towards developing and/or reviewing their operating policies and procedures, corporate governance systems, as well as long-term planning.
- ☐ Provide technical and financial resources to assist NHRIs to have widespread accessibility nationally, as well as improve their accountability to victims and CSOs.

8.2. Independence

There are precise legal provisions supporting the legal autonomy of all sample NHRIs, including security of tenure. However, there are instances (in 2 sample institutions, whose legal basis is founded on legislative frameworks) where the Executive is statutorily empowered to discretionarily create new regulations that may alter the NHRIs' legal environment, thereby, limiting the legal autonomy of the institution. Functional immunity is provided within the legal environment for Commissioners in the vast majority of the sample NHRIs. However, staff members are accorded this protection in only 4 out of the 9 sample NHRIs, which is unsatisfactory as it affects the operational independence of staff members.

The majority of the sample NHRIs (8 of the 9) have a legislative framework that outlines the processes and criteria for appointing and reappointing members of the NHRI, with 2 sample NHRIs providing for staggered tenures for members to ensure institutional memory. The practice of consultation is common in the appointment process for NHRI members in the vast majority of the institutions. Lengthy delays in the process for appointing and/or reappointing members, is a key challenge in the highlighted by stakeholders in 4 sample NHRIs. The

experience of 2 sample NHRIs show that appointment processes and their legal basis are not static and may be subject to political dispensations. Although none of the sample NHRI have experienced the removal of members, only 3 sample NHRIs have clear and objective procedures in this regard within their legal frameworks. This indicates the need to strengthen the procedures for removals of NHRI members within the majority of the sample institutions. Generally, the appointment, reappointment and dismissal of staff are undertaken in an objective and independent manner. However, there are concerns (in 1 sample NHRI) that nepotism during recruitment processes affects the quality and capacity of staff. With the exception of 1 NHRI, the sample institutions have a good pluralistic composition of members, which creates a measure of objectivity, particularly where there are concerns of political appointees emanating from the appointment processes. One sample NHRI is struggling to manage the diversity of its members, which results in in-fighting and a lack of consensus amongst Commissioners.

The case studies indicate some threats to the operational autonomy of some of the sample NHRIs. 4 sample NHRIs have experienced occurrences of interference with their work, including: refusals to include the NHRI in certain committees; denied access to project sites; and harassment of NHRI staff during investigations. In addition, some of these NHRIs have experienced frustration and tacit constraints due to a lack of political will and cooperation. This study reveals that where governments are repressive and freedom of speech is virtually non-existent or compromised, there is not much importance placed on human rights within the country, thereby hindering the overall independence of the NHRI. However, conflicts of interest among part-time members is noted as a key challenge affecting the operational independence of NHRIs and indicates that while NHRIs may be independent in theory, the actions and courage of Commissioners and staff may differ in practice.

A key challenge facing the sample NHRIs is their level of financial autonomy. The case studies reveal that the financial and material resources available to the vast majority of these institutions are insufficient to enable them to discharge their mandate effectively. This is discussed in more detail (with more substantive recommendations) within the subsequent section.

Recommendations:

a) African NHRIs:

☐ NHRIs should undertake a substantive review of their enabling legal framework to identify gaps in terms of their legal autonomy (e.g. processes for dismissal of members, security of tenure, staggered tenures for members, functional immunity for staff and Executive regulations) and make appropriate proposals to Government.

☐ Within the ambit of their enabling legal environments, NHRIs should pro-actively engage with Government and key stakeholders to facilitate timely appointments and/or re-appointments of members.

☐ Irrespective of an NHRI's operating model, the institution should have a pluralistic composition, in accordance with the Paris Principles.

☐ NHRIs should develop their own internal governance charters for managing diversity and conflicts of interest of members. Also, NHRIs to plan team-building exercises to manage internal dynamics, as well as build unity and collective responsibility.

☐ Stricter structures and processes should be put in place during staff recruitment to avoid nepotism and ensure staff diversity. Where necessary, NHRIs may consider engaging external consultants towards objectively developing and administering competency tests during the recruitment phase.

☐ NHRIs should continuously seek innovative ways to engage with Government (including Executive, Judiciary and Parliament) about their work and opportunities for synergies in terms of the promotion and protection of human rights.

b) Governments:

☐ Provide appropriate political will for the legal and operational autonomy of the NHRI. In particular, Governments should guarantee NHRIs with a secure and conducive operational environment in which the institutions have the capacity to discharge their mandate and make informed decisions unencumbered by external pressure.

☐ During legislative reviews, Governments to consider and adopt proposals by NHRIs towards ensuring the strongest possible guarantees of legal and operational autonomy for NHRIs.

☐ While ensuring pluralism of members, Governments should ensure timely appointment and/or re-appointment of NHRI members, through wide consultations (involving civil society and the public).

c) Regional Networks and Development Partners:

☐ Provide support to NHRIs in terms of outreach to Government to address any identified gaps regarding the substantive provisions of their enabling legal framework.

☐ Assist NHRIs by helping to create stronger standards and establish benchmarks in terms of the obligations of Governments e.g. focus on substantive legal provisions that guarantee NHRI independence and guidelines for timely appointments of members.

☐ Facilitate training and sensitization of African Governments (including the Executive, Judiciary and Parliament) in terms of the promotion and protection of human rights. This should include focusing on the importance of having independent NHRIs with clear mandates and functions.

☐ Assist NHRIs with technical and financial support for developing governance charters for managing diversity and conflicts of interest of members. Also, to facilitate team-building activities.

8.3. Finance

The case studies confirm that there is no consistent formula or criteria (including population size) that is generally adopted among African NHRIs for deriving their budgets, with only 3 out the 9 sample NHRIs deriving their budges from a comprehensive needs analysis undertaken on an annual basis. As good practice, the needs analysis undertaken by one of these institutions is based on a 5-year spending trend, with an annual 15% escalation. Between the periods of 2009 to 2013, there is a noticeable difference between the requested budgets versus awarded budgets from government, which is seen in 4 sample NHRIs (including the 3 NHRIs whose budgets are based on comprehensive needs analysis). This highlights the role that both political will and the macro environment (e.g. economic performance of a country) play in determining NHRI budgets.

The majority of funding for the sample NHRIs emanates from government. A general trend is that budgets of these institutions, particularly from government funding, are mainly estimated in terms of administrative and operational costs, without enough pro-active attention given to programs and future requirements of these institutions. As a result, the budgets of the vast majority of the sample NHRIs are generally insufficient for the execution of their respective mandates, thereby, indicating that this is one of the key areas within the study that requires serious improvement. Funding for newly established institutions is not sufficient, indicating that governments place more emphasis on the legal establishment of the NHRIs, without

commensurate attention devoted to financial planning and provisions for set-up costs.

The majority of the sample (5 institutions) do not have a separate budget line that is voted by Parliament annually, which makes these institutions dependent on the Executive arm of Government for their budgets. In one of the recently established NHRIs, the institution is unable to discuss budget issues directly with the state, as the supervising ministry undertakes the discussion about the budget on behalf of the NHRI. These circumstances significantly decrease the financial autonomy of the affected NHRIs vis-à-vis the executive arm of government, which is unsatisfactory. The case studies confirm that this lack of appropriate financial autonomy is exacerbated in countries with sensitive political environments, as some NHRIs are concerned about the sustainability of their finance from government, resulting in a reticence to denounce governments.

The case studies indicate that where legal frameworks do not safeguard the NHRI's state financing (including assets ceded to the institution by government) these resources may subject to the unilateral will of the Executive.

The vast majority of the sample NHRIs indicate their financial management system allows them to exercise autonomous control over their budget, once allocated. In one sample NHRI (which is the exception) a Resident Financial Controller from the Minister of Finance directly manages their funds, which often results in the denial of funds and/or late disbursement of funds, as well as arbitrary allocation.

The sample NHRIs are subject to public finance management regulations of their respective countries (including audit and financial reporting), which do not compromise the independence of these institutions. The case studies also confirm that the 6 sample institutions that receive donor funding, are subject to accountability mechanisms in accordance with individual donor requirements. Concerns from the institutions that receive donor funds relate to: lengthy and cumbersome processes of ensuring accountability to donors; and lengthy donor funding approval procedures that often delay the NHRIs' timely implementation of activities.

Recommendations:

a) African NHRIs:

☐ NHRIs should undertake comprehensive needs analysis (with appropriate benchmarks for deriving budgets) that should underpin their engagement with government and donors for funding and technical support. This should include: administrative and program costs, as well as escalation rates to cater for inflation and future institutional requirements.

☐ NHRIs should make appropriate proposals to Government (based on a substantive gap analysis of their enabling legal framework) in terms of their financial autonomy, including unfettered control and management of NHRI funds, as well as appropriate safeguards over their budget lines and assets.

☐ It is recommended that African NHRIs improve strategically in terms of their planning for funding, which is incumbent upon the leadership of NHRIs. It is recommended that NHRIs diversify their funding sources, as their independence may be compromised where they are overly dependent on one particular funding source.

☐ NHRI financial accountability processes should be used as a leverage to engage with Parliament on budgetary aspects.

☐ NHRIs should create structures, processes and capacities to enable them to manage financial accountability requirements, without compromising the opportunity to pursue the institution's core programs and activities.

b) Governments:

☐ Provide appropriate political will for the financial autonomy of the NHRI. This includes prioritizing financial allocations to NHRIs regarding adequate financial, material and human resources, including escalations to cover inflation and future institutional requirements. In this regard, Governments should work with the NHRI towards developing a clear and structured formula and benchmarks for deriving NHRI budgets, including for administration and programs.

☐ Governments intending to establish new NHRIs should ensure appropriate planning and provisions for the institution, especially earmarking budget for set-up costs and timely disbursements of NHRI funds.

☐ Governments of recently established NHRIs should immediately assess the deficiencies inherent within the institution's infrastructural, human and financial resources and thereafter address the shortfalls.

☐ Consider and adopt proposals for legislative review by NHRIs towards ensuring the strongest possible guarantees of financial autonomy for the institution. This should include appropriate legal safeguards over their budget lines and assets.

☐ The Executive should not arbitrarily allocate NHRI budgets. Rather, in order to emphasize the NHRI's financial autonomy, the legislative body should provide a separate budget line for NHRI budgets based on a cogent needs analysis. Also, NHRIs should be empowered to defend their budgets directly before Parliament.

c) Regional Networks and Development Partners:

☐ Assist NHRIs with the development of tools, benchmarks and standards for comprehensively undertaking their needs analysis and budget development. Also, support NHRIs in developing innovative funding models and widening their sources of funding.

☐ Facilitate training and sensitization of African Governments (including the Executive and Parliament) in terms of the role of NHRIs and their financing.

☐ Provide technical and financial support to NHRIs towards augmenting financial provisions from Government.

☐ Provide support to NHRIs in terms of outreach to Government to address any identified gaps regarding the substantive provisions of their enabling legal framework.

☐ Donors should simplify the processes for fund disbursement and accountability, without compromising the monitoring and evaluation of funded programs and activities.

8.4. Capacity

The case studies show that NHRI capacity is a substantial growth area for the sample institutions, which is due to human and financial constraints, as well as non-conducive political environments. It is important to note that 2 of the 3 recently established sample institutions are generally struggling in the area of capacity.

It is clear that the majority of the sample have existing human resources management systems, as well as the ability to recruit competent staff, through competitive salary levels. However, the sample NHRIs are significantly under-resourced in terms of numbers of staff, with only 3 sample institutions possessing formal staff retention policies. During this study, the leadership and management capacity within the sample NHRIs were highly rated, although to varying extents. However, the ability to create conducive and harmonious working environment has emerged as a growth area, due to the lack of sufficient corporate governance systems. Also, there are concerns

about the visibility and credibility of the institutions in the eyes of the public. This is attributable to the lack of "a face" that resonates nationally as a brand for the institutions, as well as the level of trust that is reposed in them by the general public. While 7 of the sample NHRIs indicate that their national infrastructure (adequate workspace, state of building, office equipment etc.) are average to well developed, 2 institutions identify this as a key area for improvement.

Regarding the capacity to handle complaints and investigations, the sample institutions generally have the: requisite organizational arrangements; competent staff (although requiring additional numbers and further training); and abilities to conduct alternative dispute resolution and transfer complaints to relevant authorities. However, none of the sample institutions demonstrate full capacity in the area of securing redress and remedy for victims. This is attributable to the institutions being only able to make recommendations (while the final decisions rests with other state authorities), as well as the capacity of the NHRIs to follow-up with their recommendations.

The majority of the sample NHRIs have the capacity to provide advisory services towards the promotion and protection of human rights. However, there is the need to strengthen the capacity these institutions with regards to research, policy development and review of existing policies (legislation and draft parliamentary bills) for compliance with human rights. The majority of the sample NHRIs have the capacity to carry out public education and awareness on human rights (including training of law enforcement, CSOs, Parliament, Government and the Judiciary). There is the need to generally improve the dissemination of information about human rights and the role of NHRIs to the general public. In this regard, it is important to strengthen the ability of the sample institutions to engage with the general public through the media. The study also shows that taking a firm stance, through public demonstration of support for victims, is a pertinent leverage that has not been fully utilized by the sample institutions towards building their credibility and reputation.

To varying extents, the sample NHRIs possess the capacity to monitor and report on human rights compliance, although, human and financial constraints limit the level of performance in this area. As a result, the sample institutions are only able to conduct a limited number of investigations, fieldwork and site visits. The monitoring and reporting of human rights compliance appears to concentrate on prisons, hospitals and detention centers etc., without enough attention to human rights compliance within the private sector. In some instances, access to sites for investigations is still a challenge. The case studies indicate the need to improve the capacity of the sample NHRIs with regards to monitoring and evaluating their own impact, including activities and programs.

The case studies show that the majority of the sample NHRIs possess well-developed capacity to collect and analyze information regarding emerging human rights issues. However, there is the need to strengthen their technical capacity to be able to deal with these issues and implement their responses. Again this involves appropriate provisions for financial and human resources.

Recommendations:

a) African NHRIs:

☐ NHRIs should create capacity development programs. This should be based on a comprehensive needs analysis (with appropriate benchmarks) in terms of their human capacity and infrastructural requirements. The institutions should ensure that they have a sufficient number of competent and skilled staff to effectively support their respective programs and activities.

☐ NHRIs should develop appropriate human resource policies in order to attract and retain the highest caliber of staff.

☐ NHRIs need to have clear strategies and long-term plans in terms of optimally utilizing the available resources to discharge their mandates effectively.

☐ NHRIs should develop and implement appropriate corporate governance systems to foster a harmonious and conducive working environment, particularly to manage dynamics among internal stakeholders. This should also enable a clear delineation of the institution's leadership in terms of strategic and operational functions.

☐ NHRI leadership should explore opportunities, through wide consultation, for ensuring the visibility, credibility and widespread accessibility of the institution to the general public. This should also include establishing a media strategy and public demonstration of the NHRI's stance on human rights promotion and protection.

☐ NHRIs should explore innovative ways of delivering training on human rights promotion and protection (including emerging human rights issues) to staff as well as key stakeholders.

☐ NHRIs should engage and sensitize Government and key stakeholders on their role and functions to secure access to investigation sites. Where the need arises, NHRIs have to boldly take legal action to enforce their statutory powers.

☐ Within the staff complement, NHRIs should prioritize having sufficient dedicated staff that is able to undertake fundamental aspects of the institution's functions. This should include ensuring that the institution possesses sufficient capacity for research, policy review and development.

☐ NHRIs should ensure that they have adequate capacity to follow-up on their recommendations to other relevant authorities. Also, NHRIs should fully utilize their statutory powers towards obtaining redress and remedy for victims.

☐ NHRIs should ensure that internally they have requisite technical capacity and common understanding in terms of dealing with emerging human rights issues. This should include training and capacity building of staff and members (Commissioners). NHRIs to consider dedicating staff/units to specifically deal with key emerging human rights issues.

☐ NHRIs should implement the recommendations from the NANHRI's Report on the Mapping Survey on Business and Human Rights: The Role of NHRIs (2013).

☐ It is important that all programs and activities have strong monitoring and evaluation components in order to assess their impact and sustainability.

b) *Governments:*

☐ Provide adequate political will for the NHRI to function effectively. This includes prioritizing financial allocations to NHRIs regarding adequate financial, material and human resources. This should also include necessary adjustments to cover inflation and future institutional requirements.

☐ Governments should ensure that all state organs respect the statutory powers, mandates and functions of NHRIs.

☐ Governments intending to establish new NHRIs should ensure appropriate planning and provisions for the institution, especially earmarking budget for set-up costs, adequate human resources with specialized technical skills on human rights protection and promotion.

☐ Governments of recently established NHRIs should immediately assess the deficiencies inherent within the institution's infrastructural, human and financial resources and thereafter address the shortfalls.

☐ Governments should consult and work closely with NHRIs in order to pro-actively address emerging human rights issues.

c) Regional Networks and Development Partners:

☐ Assist NHRIs with the development of tools, benchmarks and standards for comprehensively undertaking their needs analysis in terms of staff capacity.

☐ Provide technical and financial support to NHRIs towards attaining the optimal staff levels, especially for key functional areas.

☐ Facilitate training and capacity building for NHRI staff and members (Commissioners) regarding key functional areas, including emerging human rights issues.

☐ Regional networks and development partners should implement the recommendations from the NANHRI's Report on the Mapping Survey on Business and Human Rights: The Role of NHRIs (2013).

☐ Undertake studies on key emerging human rights issues towards creating capacity development programs for NHRIs.

☐ Facilitate capacity building and assist NHRIs in terms of developing human resource policies, long-term strategies, corporate governance systems and media engagement plans etc.

☐ Need for regional conferences to focus on best practice, key lessons, common challenges and approaches in terms of NHRIs' visibility, credibility and stakeholder engagement.

☐ NANHRI should facilitate training and capacity building for members and senior management to build leadership capacities.

8.5. Stakeholder Engagement

The case studies confirm that the vast majority of the sample NHRIs are engaging with numerous stakeholders (albeit to different extents) at the national, continental and international levels.

At the national level, all the sample NHRIs are engaging with their respective governments both in terms of influencing the promotion and protection of human rights, as well as financing and accountability aspects. Factors that affect the quality of this engagement include: the political environment (political will and stability); state agencies trying to dominate the engagement with NHRIs and/or treating NHRIs as CSOs rather than statutory bodies; and the technical and/or financial capacity of the particular NHRIs in terms of its core functions. The case studies also show that in some countries, there are strong synergies between NHRIs and CSOs. However, stakeholders in the majority of the sample (6 NHRIs) indicate that NHRI engagement with CSOs requires improvement, particularly in terms of partnering more in outreach activities to the general public. Factors that inhibit the engagement of sample NHRIs with CSOs include: financial and technical capacity; lack of clear strategy for engagement; sensitive political environments, including where CSOs do not have the space to operate. A clear challenge facing the sample NHRIs is their level of engagement with the general public through the media. This is attributed to: the lack of sufficient feedback mechanisms to victims; insufficient dissemination of information about the institution's programs and activities, using local languages and innovative media; the hesitation to address human rights violations through the media; and financial and capacity constraints. These factors affect the visibility, as well as the public's perception about the level of independence and credibility of the institution.

The vast majority of the sample NHRIs are presently members of NANHRI (8 out of 9 sample institutions), while 6 of them have Affiliate status at the ACHPR. The case studies reveal that the NHRIs that engage at the continental level, particularly NANHRI members, immensely benefit from mentorship, peer support and technical assistance, as well as knowledge exchange and information flows (including sharing of experiences, lessons and best practice). The case studies show that recently established NHRIs that have the opportunity for peer support during their inception periods perform better in terms of their capacity and effectiveness.

It is clear from the case studies that the majority of the sample NHRIs engage with international stakeholders through partnerships with donor agencies and international development partners, who provide much needed technical and financial support to these institutions. Factors that contribute to a lack of engagement with donors include: the availability of interested donors; restrictions by government; and the reliance on government funding. The case studies also indicate that 6 of the sample NHRIs have participated in the UPR processes of their respective countries. 2 recently established sample NHRIs have not been involved in this review yet and 1 sample NHRI has not been involved in their country's UPR due to a previously restrictive political climate.

The case studies indicate that the practice of periodically monitoring and evaluating stakeholder engagement is a significant growth area for the vast majority of sample NHRIs. 5 of 9 sample NHRIs do not have a mechanism for monitoring and evaluating their engagement with stakeholders vis-a-vis their stated objectives. This is attributed to: the absence of cogent stakeholder engagement strategies and mapping exercises; lack of requisite systems (particularly for recently established institutions); and difficult political environments.

Recommendations:

a) African NHRIs:

☐ NHRIs should periodically undertake comprehensive stakeholder mapping exercises and cogent stakeholder engagement strategies (including with regards to their respective programs, activities and national contexts). In addition, NHRIs should undertake stakeholder perception surveys (at least bi-annually) as well as monitoring and evaluation of their performance and impact in terms of stakeholder engagement.

☐ NHRIs should also develop media engagement plans (including social and private media) particularly in reaching out to different segments of society.

☐ NHRIs should pro-actively sensitize stakeholders about their functions, activities and programs through various innovative approaches including training, media and simplified material (e.g. infographics, posters, pamphlets) etc.

☐ Partner more actively with CSOs particularly in terms of outreach activities to the general public and improving the NHRI's accessibility nationally.

☐ All NHRIs are encouraged to actively engage at a continental level with their peers and networks (particularly NANHRI and ACHPR).

☐ NHRIs should actively participate in the UPR of their respective countries.

☐ NHRIs are encouraged to seek partnerships with international development partners and donors that can contribute to their technical and financial capacity.

b) Governments:

☐ Develop strategies for supporting the visibility and accessibility of NHRIs nationally. This should also include sensitizing different organs of state (ministries, departments and agencies, including security and law enforcement) on the NHRI's mandates and functions.

☐ Work with NHRIs as a key stakeholder during the country's UPR processes.

☐ Government should provide more opportunities for their engagement with NHRIs.

☐ Make provisions within NHRI budgets for the institution to engage at both the continental and international level e.g. membership fees to NANHRI and international travel budgets etc.

c) *Regional Networks and Development Partners:*

- ☐ Assist NHRIs with technical and financial support in the development of tools, benchmarks and standards for: comprehensively undertaking stakeholder mapping exercises; developing cogent stakeholder engagement strategies; stakeholder perception surveys; and monitoring and evaluation of their performance and impact in terms of stakeholder engagement.
- ☐ Facilitate training and sensitization of African Governments in terms of NHRI role, functions and requirements for stakeholder engagement.
- ☐ Assist NHRIs with technical and financial support towards developing media engagement plans (including social and private media) suitable for different segments of society.
- ☐ Facilitate training on models of partnerships and engagements with CSOs.
- ☐ Provide financial support for NHRIs to engage at both the continental and international level.

8.6. *Rights-based Approach to Service Delivery and Development*

Despite being a relatively new concept, the vast majority of the sample NHRIs have undertaken several pro-active approaches in implementing the HRBA within their respective organisations and countries. However, it appears that in most of the sample NHRIs, the HRBA is undertaken more on an *ad hoc* basis than strategically built into their long-term plans.

The study shows that HRBA is more prominent within the vast majority of the sample institutions, as part of their preventative measures. It is clear that sample NHRIs usually select a target population, sector and development priorities in terms of their measures towards HRBA. In this regard, there has been a lot of attention towards promoting and integrating human rights as part of school curriculums and training in the education sector. Also, there has been significant effort by 3 sample NHRIs towards analyzing and contributing to national development plans. In addition, sample NHRIs are mainstreaming HRBA through engagements with key stakeholders towards promoting awareness and mainstreaming HRBA within these processes, which is commendable.

The fieldwork with the 9 Sample NHRIs indicates that there are several limitations facing the institutions in terms of mainstreaming the HRBA to service delivery. Firstly, the low-level of understanding within the respective NHRIs and government agencies about the HRBA is a prominent challenge. It came out strongly that differentiating between the HRBA and the results-based approach is often a challenge in terms of developing a common understanding about the HRBA among stakeholders. In this regard, good practice is seen in Kenya, where the NHRI, is internalizing this concept as an important foundation towards mainstreaming the HRBA into the monitoring of economic and social rights in the country.

The case studies show that NHRIs need to have strong HRBA champions among relevant government agencies, as well as technical and financial capacity for effective implementation. Furthermore, the experiences of the sample NHRIs indicate that mainstreaming the HRBA to service delivery and development is a time consuming process, particularly in terms of the time it takes for the NHRIs to fully consider, internalize and engage with stakeholders on proposed development plans and policies. Finally, applying the HRBA requires a stable political climate to foster the implementation of the HRBA.

Recommendations:

a) African NHRIs:

☐ NHRIs should firstly understand the concept of HRBA internally, including through stakeholder engagement, developing a primer and training of staff.

☐ The concept of HRBA should form part of the core strategy for NHRIs.

☐ NHRIs should engage with governments, CSOs and other key stakeholders in order to develop common understanding about the HRBA; obtain buy-in; and develop key relationships, including identifying champions from the respective sectors. This is important to ensure that their programs and activities have long-term sustainability and success.

☐ All NHRIs should proactively consider mainstreaming the HRBA into the National Development Plans of their respective Governments.

☐ NHRIs should build activities and programs to mainstream the HRBA into their core budgets. Where there are budgetary constraints, the NHRI should explore partnerships with key stakeholders.

☐ It is important that all programs and activities have strong monitoring and evaluation components in order to assess their impact and sustainability.

b) Governments:

☐ Governments should sensitize themselves about the HRBA.

☐ Governments should adopt the HRBA to service delivery and development, integrating this consistently within their development plans, legislation and policies.

☐ Governments should engage and partner more with NHRIs as a key stakeholder in terms of mainstreaming the HRBA.

☐ Governments should integrate and prioritize the HRBA into budgets and financial planning processes.

c) Regional Networks and Development Partners:

☐ Facilitate training and capacity building for NHRIs towards ensuring a common understanding among all NHRIs with regards to the concept of HRBA.

☐ Provide technical and financial assistance to NHRIs to develop strategies, engage with stakeholders and implement the HRBA as part of their core programs and activities.

☐ Facilitate the sensitization of key stakeholders (including Governments, CSOs, media and academia etc.) through training, information sessions and conferences.

☐ Facilitate peer engagement among NHRIs to highlight best practice, key lessons and strategies for mainstreaming the HRBA even in difficult environments.

☐ Regional networks (e.g. NANHRI) should consider having a desk / designated officer dedicated to this area.

☐ Regional networks should assist NHRIs in developing models and benchmarks for integrating the HRBA into their strategies, as well as monitoring and evaluation processes.

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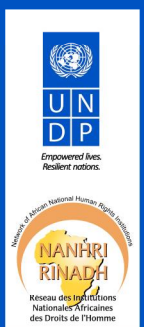www.ohchr.org/EN/HRBodies/UPR/PAGES/KESession8.aspx

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