



## *What do National Human Rights Institutions (NHRIs) know about the African Court on Human and Peoples' Rights (Court)?*

### *How could NHRIs support effective implementation of the decisions by the Court?*

#### **Background information:**

As at October 2015, the Court's jurisdiction applies only to 29 states which so far have ratified the African Court's Protocol. Complaints by individuals and Non-Governmental Organizations (NGOs) are investigated by the Court upon referral by the African Commission on Human and Peoples' Rights (Commission).

Only seven African Union (AU) member states have made optional declarations under article 34 (6) of the Protocol that entitles citizens to present individual complaints directly. For this document, NANHRI sent questionnaires to NHRIs from these seven countries (Burkina Faso, Cote d'Ivoire, Ghana, Malawi, Mali, Rwanda and Tanzania) that deposited the declaration.

Not all NHRIs are recognized as being fully Paris-Principle compliant. Currently NANHRI has 44 members and only 18 are A-status. The low number of A-status NHRIs in Africa indicates that many are not functioning as independently and competently as they should. Many NHRIs have serious capacity constraints to carry out their duties and responsibilities effectively. This does not render them strong partners in matters of follow-up of the Court decisions and monitoring of their implementation. For a number of NHRIs, any conversation concerning follow up and implementation has to address strategies to strengthen and build their capacity to do that.

#### **(1) Engagement with the African Commission on Human and Peoples' Rights:**

Since a decision by the Commission from 1998, NHRI can become affiliates with the Commission. Both NHRIs and the Commission are not doing much in terms of establishing a more formal link between them to improve on their relationships. NHRIs are not making serious efforts to engage the Commission. The African Activity Reports from 52nd to 56th Ordinary Sessions indicate that 24, 32, 42, 18 and 43 NHRIs respectively attended these sessions. However, during the same period, an average of five NHRIs issued statements.

#### **(2) Engagement with the African Court on Human and Peoples' Rights:**

Most of the NHRIs maintain that they have not engaged with the Court while various Court Reports mention meetings, joint promotional activities and joint workshops. This glaring contradiction can be explained either by the issues of staff turn-over and the lack of organizational memory at the NHRIs or the fact that those who do attend these meetings do not report back adequately or that the Court does not target the adequate people at the NHRIs for these engagements. Despite the attempts, the work of the Court has remained alien to most of the NHRIs.

- Only a few NHRIs are even aware that someone from their countries has submitted an application to the Court directly or indirectly.
- Only Cote d'Ivoire's NHRI confirms having been involved in the domestic advocacy processes that led to the ratification of the Court's protocol and their state depositing of the declaration instrument accepting individuals and NGOs to access the Court.
- Most of the NHRIs do not know the Court's processes of submission of applications/requests for advisory opinions; neither do they know the Court's rules of procedure.
- NHRIs have confirmed that they have never received any requests from individuals or NGOs for assistance to access the Court. This observation is significant since it highlights the question of relevance and legitimacy pertinent to the Paris principles.
- NHRIs are aware that some people from their respective states have accessed the Court, but they are not aware of how that was done. They are unaware if these people need any kind of assistance with their cases, be it legal or non-legal.

- NHRIs may request to access the court as amicus curiae and provide additional legal or factual information in a specific case.
- Do NHRIs have *locus standi* before the Court? Some analysts and some NHRIs themselves maintain that NHRIs cannot and other say they could present an application to the Court. NHRIs as state institutions should access the court if the provision that allows the States to access it is to be interpreted broadly. NANHRI can move ahead to test its practicality at the Court by submitting a case.
- Lack of proper information flow between the Court and the NHRIs. NHRIs are of the opinion that a NHRIs focal point at the Court and a Court focal point at the NHRIs may bridge this information divide.

### (3) Implementation of Decisions:

The Commission on Human Rights and Good Governance (NHR in Tanzania) refers to Tanzania's dualist system as a barrier for the Court's decisions to apply automatically. However, for some analysts, underlining dualism or monism as a prevailing system does not count much so long as states have agreed to be bound by international treaties as a matter of principle (Dinokopila, R. Bonolo, Beyond paper based affiliate status: National Human Rights Institutions and the African Commission on Human and People's Rights, African Human Rights Law Journal, 2010).

The AU's Human Rights Strategy for Africa and the International Roundtable of the Role of NHRIs and Treaty Bodies (2006) have clearly stated that NHRIs should follow up on treaty bodies assessment of complaints to monitor state party actions undertaken in relation to it and that NHRIs should follow up on interim orders of Treaty Bodies given to states parties in relation to complaints where irreparable harm is envisaged.

- Some NHRIs interpret their mandates narrowly. They do not see any role that they can play to follow up on the implementation of the Court decisions. In fact, some are of the opinion that it would be an interference to the work of the Court. Some even think that to be active in following up the Court's decisions would be usurping the role of the Court.
- The Court's Protocol demands that "states parties shall undertake to comply with the judgment" and do so within the time period set forth by the Court. The AU Council of Ministers, on behalf of the Assembly, shall monitor the execution of the Court's orders. Some analysts observe that this increased pressure to comply with the judgments' may give member states more incentive to comply. The Protocol only states that the Court shall submit an annual report to the Assembly identifying the states that have not complied with its decisions. An offending state may avoid its duty to comply by simply waiting for the decision of the Council of Ministers. If a state does this, then the matter is in the hands of the Assembly, the same political body that previously hindered the Commission's effectiveness.
- Identified elements for successful implementation include:
  - Political will
  - The presence of an active civil society
  - The existence of an effective NHR
  - The visibility of the case at the domestic, regional and international levels

- The existence of opportunities for applying internal and external political pressure
- Access to information on the status of a communication at the regional level
- Access to key individuals at the State and regional levels
- A judiciary that is well informed on matters of international human rights law
- Coordination and dialogue among relevant Government Ministries
- A litigation strategy aimed at multi-stakeholder monitoring and implementation from the outset

*In short: a multi-stakeholder process based on a constructive dialogue between various stakeholders.*

- The significance of the provisional measures by the Court that aim to prevent further gross or mass violations, makes the case for monitoring their implementation more serious than even that for monitoring the judgements. Since all NHRIs have the monitoring of human rights violations as part of their mandate, the need to monitor the Court's provisional measures definitely falls squarely within their tasks.
- Functions of some NHRIs, like Burkina Faso and Uganda, include monitoring of the governments compliance with international treaty and conventions, and human rights violations.

### General Recommendations:

1. Engagement between Court and NHRIs:
  - Sensitization of NHRIs
  - NHRIs should advocate being part of the court decisions implementation process
  - NHRIs should establish African court Focal Points
  - The Court to establish an NHRIs Focal Point
2. NHRIs should include in its report to the treaty bodies and then UPR the state of compliance with the court decisions.
3. NHRIs should work with the court and other national stakeholders to establish an implementation framework for the court decisions that takes cognizance of every state's context.