



HUMAN RIGHTS LAW IN PERSPECTIVE

**The Role of National Human Rights
Institutions at the International and
Regional Levels**

The Experience of Africa

Rachel Murray

The Role of National Human Rights Institutions at the International and Regional Levels

The Experience of Africa

Rachel Murray



• HART •
PUBLISHING

OXFORD AND PORTLAND, OREGON

2007

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA

Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: www.isbs.com

© Rachel Murray 2007

Rachel Murray has asserted her right under the Copyright, Designs and Patents Act 1988,
to be identified as the author of this work.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system,
or transmitted, in any form or by any means, without the prior permission of Hart Publishing,
or as expressly permitted by law or under the terms agreed with the appropriate reprographic
rights organisation. Enquiries concerning reproduction which may not be covered by the above
should be addressed to Hart Publishing at the address below.

Hart Publishing, 16C Worcester Place, OX1 2JW
Telephone: +44 (0)1865 517530 Fax: +44 (0)1865 510710
E-mail: mail@hartpub.co.uk
Website: <http://www.hartpub.co.uk>

British Library Cataloguing in Publication Data
Data Available

ISBN-13: 978-1-84113-394-2 (hardback)

Typeset by Hope Services, Abingdon
Printed and bound in Great Britain by
TJI Digital, Padstow, Cornwall

THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS AT THE INTERNATIONAL AND REGIONAL LEVELS

National Human Rights Institutions (NHRIs), defined by the UN as bodies established to promote and protect human rights, have increased in number since the General Assembly adopted principles governing their effectiveness in 1993. The UN and others have encouraged states to set up such institutions as an indication of their commitment to human rights, and now over 20 such institutions exist in Africa and many more will follow. These institutions have taken various forms including ombudsmen, commissions, or a combination of the two. They differ in terms of how they are established; some by constitution, some by legislation and some by decree. These NHRIs have varying functions, usually both promotional and protective, such as giving advice to government, parliament, and others, making recommendations on compliance with human rights standards, awareness raising, and analysis of law and policy. Despite the considerable variations in the method of their creation, powers and composition, most of these institutions have chosen or indeed been mandated, to become involved in international and regional fora. This book examines these institutions in the African region, the way in which they use the international and regional fora, the effectiveness of their contributions and how they are able to participate.

Human Rights Law in Perspective : Volume 11

Human Rights Law in Perspective

General Editor: Colin Harvey

The language of human rights figures prominently in legal and political debates at the national, regional and international levels. In the UK the Human Rights Act 1998 has generated considerable interest in the law of human rights. It will continue to provoke much debate in the legal community and the search for original insights and new materials will intensify.

The aim of this series is to provide a forum for scholarly reflection on all aspects of the law of human rights. The series will encourage work which engages with the theoretical, comparative and international dimensions of human rights law. The primary aim is to publish over time books which offer an insight into human rights law in its contextual setting. The objective is to promote an understanding of the nature and impact of human rights law. The series is inclusive, in the sense that all perspectives in legal scholarship are welcome. It will incorporate the work of new and established scholars.

Human Rights Law in Perspective is not confined to consideration of the UK. It will strive to reflect comparative, regional and international perspectives. Work which focuses on human rights law in other states will therefore be included in this series. The intention is to offer an inclusive intellectual home for significant scholarly contributions to human rights law.

Volume 1 Importing the Law in Post-Communist Transitions

Catherine Dupré

Volume 2 The Development of the Positive Obligations Under the European Convention on Human Rights by the European Court of Human Rights

Alastair Mowbray

Volume 3 Human Rights Brought Home: Socio-Legal Studies of Human Rights in the National Context

Edited by Simon Halliday and Patrick Schmidt

Volume 4 Corporations and Transnational Human Rights Litigation

Sarah Joseph

Volume 5 Human Rights in the Community: Rights as Agents for Change

Edited by Colin Harvey

Volume 6 Human Rights, Culture and the Rule of Law

Jessica Almquist

Volume 7 Property and the Human Rights Act 1998

Tom Allen

Volume 8 Gender, Culture and Human Rights

Siobhán Mullally

Volume 9 Monetary Remedies for Breach of Human Rights

Lisa Tortell

Volume 10 Judicial Review, Socio-Economic Rights and the Human Rights Act

Ellie Palmer

Acknowledgements

This book is a much better product due to the involvement of a number of people. First, the Socio-Legal Studies Association (SLSA) provided funding to enable me to visit the UN in Geneva and crucially to observe the 17th session of the International Coordinating Committee of National Human Rights Institutions. Marianne Haugaard and Orest Nowosad were particularly helpful in facilitating my access to this forum and in providing me with relevant documentation. I am also grateful for discussions I had with Alpha Connelly (Irish Human Rights Commission), Bukhari Bello (then Executive Secretary of the Nigerian National Human Rights Commission) and Catherine Mumma (Kenya National Human Rights Commission).

Funding from the SLSA also enabled a trip to be made to South Africa to speak to members of the South African Human Rights Commission and the Secretariat of the African National Human Rights Institutions. I am very grateful to Bharat Malkani for undertaking this trip on my behalf, conducting the relevant interviews and taking useful and readable notes. I would also like to thank Tseliso Thipanyane from the South African Human Rights Commission for agreeing to be interviewed.

I am very grateful to those who took time to read earlier drafts of this book, providing me with useful feedback and comments. Thanks to Tonia Novitz and Tony Prosser, as well as, in particular, Ibrahima Kane for their invaluable views.

The African Commission on Human and Peoples' Rights has continued to provide me with access to its sessions and without its former documentalist, Jan Jalloh, I would have been unable to obtain many of the documents used here. In addition, I am also very grateful to Ben Kioko at the AU in Addis Ababa for providing relevant material.

Given that this book has taken rather longer than I initially envisaged, I would like to thank Richard Hart for his patience and understanding, and particularly for accommodating my initial delays and changes to his timetable.

Rachel Murray
January 2007

Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ANHRI	African National Human Rights Institutions
AU	African Union
CCANI	Coordinating Committee of African National Human Rights Institutions
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination Against Women
ECOSOC	United Nation's Economic and Social Council
ECOSOCC	African Union's Economic, Social and Cultural Council
ECOWAS	Economic Community of West African States
ICC	International Coordinating Committee of National Human Rights Institutions
ICCPR	International Covenant on Civil and Political Rights
ICERD	Committee on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
NGOs	Non-Governmental Organisations
NHRI	National Human Rights Institution
OAU	Organization of African Unity
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the UN Convention Against Torture
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Committee Against Torture
UNCRC	United Nations Committee on the Rights of the Child
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund

Contents

<i>Acknowledgements</i>	v
<i>Abbreviations</i>	ix
<i>Chapter 1: The Role of National Human Rights Institutions at the International and Regional Levels</i>	1
INTRODUCTION	1
INDEPENDENCE	5
THE SCOPE OF THIS STUDY	7
<i>Chapter 2: Legitimacy of NHRI Participation</i>	11
TO ENSURE GOVERNMENT ACCOUNTABILITY BY PROVIDING AN ALTERNATIVE VOICE TO GOVERNMENT AS EXPERTS	11 18
AS A COLLECTIVE VOICE FOR NHRIs	21
TO PROTECT HUMAN RIGHTS DEFENDERS	21
OTHER REASONS FOR NHRI PARTICIPATION	23
CONCLUSION	24
<i>Chapter 3: The Role of NHRIs in the United Nations</i>	27
UN HUMAN RIGHTS COMMISSION AND SUBSIDIARY BODIES AND THE ICC	28
THE INTERNATIONAL COORDINATING COMMITTEE OF NHRIs (ICC)	30
THE POSITION UNDER THE NEW HUMAN RIGHTS COUNCIL	34
BEFORE UN TREATY MECHANISMS AND AT UN CONFERENCES	36
OTHER INTERNATIONAL FORA	43
CONCLUSION	44
<i>Chapter 4: NHRIs at the Regional Level</i>	45
THE AFRICAN UNION (AU)	45
THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS	47
SUB-REGIONAL LEVEL	55
FORA CREATED BY AFRICAN NHRIs THEMSELVES	55
CONCLUSION	57

<i>Chapter 5: NHRIs as State or Non-State Actors</i>	59
NHRIs AS STATE OR NON-STATE ACTORS	59
SUBJECTS AND OBJECTS OF INTERNATIONAL LAW	61
NHRIs AS PARTICIPANTS	64
CONCLUSION	68
<i>Chapter 6: Ensuring the Accountability of NHRIs: What Role for the International and Regional Bodies?</i>	69
WHAT IS ACCOUNTABILITY?	70
WHO IS ACCOUNTABLE?	72
FOR WHAT ARE THEY ACCOUNTABLE?	75
TO WHOM ARE NHRIs ACCOUNTABLE?	77
HOW ARE NHRIs ACCOUNTABLE? PROCESS OF ACCOUNTABILITY	78
RE-ACCREDITATION AND REVIEW PROCESS	85
CONCLUSION	87
<i>Chapter 7: Conclusion</i>	89
<i>Appendix</i>	89
Appendix I: The Paris Principles	93
Appendix II: Resolution on the Granting of Observer Status to National Human Rights Institutions in Africa	97
Appendix III: ICC Rules of Procedure	101
Appendix IV: Rules of Procedure of the ICC Sub-Committee on Accreditation	107
Appendix V: Rules of Procedure of the Coordinating Committee of African National Institutions for the Promotion and Protection of Human Rights	111
<i>Bibliography</i>	117
<i>Index</i>	135

The Role of National Human Rights Institutions at the International and Regional Levels

INTRODUCTION

NATIONAL HUMAN RIGHTS Institutions (NHRIs), namely those defined by the UN as 'a body which is established by a government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights,'¹ have increased in number since the UN General Assembly adopted principles governing their effectiveness in 1993.² The UN and others have encouraged states to set up such institutions as an indication of their commitment to human rights and now over twenty such institutions exist in Africa³ and where none

¹ United Nations, *National Human Rights Institutions. A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, Professional Training Series No 4, 1995, at para 39.

² Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (The Paris Principles), Resolution 1992/54, endorsed by UN General Assembly Resolution 48/134, 20 December 1993, Annex.

³ These include Algeria's Commission Nationale des Droits de l'Homme, Commission Béninoise des Droits de l'Homme, Burkina Faso Commission Nationale des Droits de l'Homme, Haut Commissariat aux droits de l'homme et à la bonne gouvernance of Central African Republic, Cameroon National Commission on Human Rights and Freedoms, Chad's Commission Nationale des Droits de l'Homme, Democratic Republic of Congo's Observatoire Nationale des Droits de l'Homme, Egypt's National Council for Human Rights, Gabon's National Human Rights Commission, Ghana's Commission on Human Rights and Administrative Justice, Kenya Human Rights Commission, Madagascar National Human Rights Commission, Malawi Human Rights Commission, Mauritania's Commissariat des Droits de l'Homme à la Lutte contre la Pauvreté et la Insertion, Mauritius Commission Nationale des Droits de l'Homme, Morocco Conseil Consultatif des Droits de l'Homme, Namibia Office of the Ombudsman, Niger Commission Nationale Des Droits de l'Homme et des Libertés Fondamentales, Nigerian Human Rights Commission, Commission Rwandaise des Droits de l'Homme, Comité Sénégalaise des Droits de l'Homme, South African Human Rights Commission, Tanzanian Commission for Human Rights and Good Governance, Togo Commission Nationale des Droits de l'Homme, Tunisia Higher Committee on Human Rights and Fundamental Freedoms, Uganda Human Rights Commission, Zambian Permanent Human Rights Commission. See earlier discussion on some of these: Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commissions in Africa* (New York, Human Rights Watch, 2001).

exist, those states across the African continent and the world have recently chosen to⁴ or are considering doing so.⁵

These institutions have taken various forms including ombudsmen, commissions, or a combination of the two.⁶ They differ in terms of how they are established, some by constitution,⁷ some by legislation⁸ and some by decree.⁹ Appointment of their members, some of whom are the sole Commissioner as in Ghana,¹⁰ others who form a team of over ten, on full and part time bases, can be done by the legislature,¹¹ the government,¹² or a combination of the two. These NHRIs have varying functions, usually both promotional and protective, such as giving advice to government, parliament, and others, making recommendations on compliance with human rights standards, awareness raising, and analysis of law and policy. Some, such as the Ghanaian Commission on Human Rights and Administrative Justice have the power to examine complaints,¹³ some can undertake visits to places of detention.¹⁴

Despite these considerable variations in the method of their creation, powers and composition, most of these institutions have chosen or indeed been mandated, to become involved in international and regional forums. There has been very little attention in literature to the way in which NHRIs use these forums, the effectiveness of their contributions and how they are able to participate. This book seeks to fill the gap. By looking at the African region, the book aims to analyse what role African NHRIs play at the international and regional levels.

Studies on African NHRIs indicate various concerns with their operation. For example, the important Human Rights Watch report in 2001, *Protectors or*

⁴ Eg in Angola, Sudan and Liberia, see Commission on Human Rights, *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements*, Report of the Secretary-General, E/CN.4/2006/101, 24 January 2006, paras 35, 36 and 40.

⁵ Eg Zimbabwe is considering establishing a national human rights institution, see 'Human Rights Body Gets Nod' *The Sunday Mail*, 26 March 2006, <http://www.sundaymail.co.zw/inside.aspx?sectid=365&cat=12>; in the Federation of Comoros, a bill concerning the creation of a Commission Nationale des Droits de l'Homme is being discussed by the National Assembly. For examples in other states see also: United Nations Office of the High Commissioner for Human Rights (OHCHR), Africa Region, Quarterly Reports of Field Offices, March 2005, at 25.

⁶ Eg, Ghana's Commission on Human Rights and Administrative Justice (CHRAJ) fused a Human Rights Commission, an Ombudsman and an Anti-Corruption Agency, Commission on Human Rights and Administrative Justice Act 1993, Act 456 of 6 July 1993.

⁷ Eg South African Human Rights Commission, firstly by the interim Constitution of 1993, then consolidated in the final Constitution of 1997, s 184.

⁸ Eg Ghana's Commission on Human Rights and Administrative Justice, Commission on Human Rights and Administrative Justice Act 1993, Act 456 of 6 July 1993; Nigeria's National Commission on Human Rights, Human Rights Commission Act 1995.

⁹ Eg the Nigerian National Human Rights Commission, Human Rights Commission Act 1995.

¹⁰ Supported by two deputy Commissioners.

¹¹ As in the case of the Kenya Human Rights Commission, Kenya National Commission on Human Rights Act 2002, s 4(1) which provides that nine Commissioners are to be nominated by the National Assembly and then appointed by the President. The Chair of the Commission is appointed from among the Commissioners.

¹² Eg the members of the Mauritanian Commissariat aux Droits de l'Homme à la lutte contre la Pauvreté et à l'Insertion, decree of 2 July 1998, Arts 4 and 7.

¹³ As does, for example, the Nigerian National Human Rights Commission.

¹⁴ Eg Uganda Human Rights Commission, Nigerian Human Rights Commission.

Pretenders?¹⁵ considered a number of institutions on the continent and concluded that although at that stage they are,

a mixed bag. Given the needs of their societies, to date the performance of most has been disappointing. . . . Unfortunately, even where human rights commissions in Africa function reasonably well, they have their limitations. . . . It is noticeable, in fact, how the national commissions in Cameroon, Chad and Togo, among others, have become less outspoken over the years due to government pressures and how the commissions in Benin and Senegal, for example, have been less active than might have been expected given the generally positive political climates in which they are able to operate. By contrast, certain other commissions have achieved a relatively strong record of inactivity in much less favourable political conditions.¹⁶

There are various reasons why a government may choose to establish an NHRI in its country. It may be part of wider constitutional change, as in South Africa; it may be an indication of the government's commitment to human rights, as in Ghana, Malawi and Senegal,¹⁷ or as a defence to criticisms over its human rights record, as was the case in Nigeria¹⁸ and more recently in Zimbabwe.¹⁹ The possibility of external funding for such bodies, from the (United Nations Development Programme (UNDP))²⁰ or other donors,²¹ may also be an incentive.

The thrust of the approach of the UN, its agencies, particularly the UNDP, the African Commission on Human and Peoples' Rights and others has been that NHRIs are a good thing that should be encouraged, thereby advocating the establishment of NHRIs in countries where none exist and being prepared to

¹⁵ Above n 3.

¹⁶ Ibid, at 4–5. Similarly, see J Matshekga, 'Toothless Bulldogs? The Human Rights Commissions of Uganda and South Africa: A Comparative Study of their Independence' (2002) 2(1) *African Human Rights Law Journal* 68–91; A Makubuya, 'Breaking the Silence: A Review of the Maiden Report of the Uganda Human Rights Commission' (1999) 5 *East African Journal of Peace and Human Rights* 213; J Hatchard, 'A New Breed of Institution: The Development of Human Rights Commissions in Commonwealth Africa with particular Reference to the Uganda Human Rights Commission' (1999) *Comparative and International Law Journal of South Africa* 28; OC Okafor and SC Agbakwa, 'On Legalism, Popular Agency and "Voices of Suffering": The Nigerian National Human Rights Commission in Context' (2002) 24 *Human Rights Quarterly* 662–720.

¹⁷ Human Rights Watch, above n 3, at 29.

¹⁸ AMO Obe, 'Working with National Human Rights Commissions. The Experience of Nigeria' www.scu.edu.tw/hr/research_imgs/Ayo.pdf.

¹⁹ See above, n.5.

²⁰ 'Supporting national human rights institutions has been one of UNDP's priorities in a number of countries, most often countries with challenging political environments. UNDP's support to national human rights institutions can be clustered under two phases: (1) the pre-establishment phase; and (2) the consolidation phase', Statement of United Nations Development Programme (UNDP) to 61st Session of the UN Commission on Human Rights. See discussion of UNDP role in Human Rights Watch, above n 3, at 77–78.

²¹ 'International donor pressure and financial support for human rights commissions has been the impetus for African governments to create human rights commissions, in part to reassure donors of their commitment to human rights. For example, both the Kenyan and Zambian human rights commissions were created shortly before donor meetings to discuss renewal of aid conditioned on human rights and economic reforms. International funding is increasingly available to governments who announce their intention to create a human rights commission,' *ibid*, at 76.

support those already functioning even if they have dubious credentials.²² This has not been matched by any systematic consideration of whether it may be appropriate to have an NHRI in that particular jurisdiction, or a detailed analysis of the effectiveness of many of these institutions.

What consideration is undertaken of these issues centres around compliance with the Paris Principles. The 1993 Paris Principles provide for competence and responsibilities of such institutions, including that they have 'as broad a mandate as possible' and detailing a number of responsibilities from giving advice to government, parliament and others, examining legislation and administrative measures for their compliance with human rights standards, considering violations, preparing reports on human rights matters, reacting to events, teaching and research and publicising forms of discrimination. They contain a number of provisions outlining what NHRIs could do at the international level, such as encouraging states to ratify relevant treaties, contributing to reporting procedures and co-operating with international and regional bodies. The Principles also suggest ways in which the state can guarantee the independence of the NHRI, from ensuring that the appointment of its members reflects a variety of representation of different sectors of society, that it has funding to enable it to operate effectively and independently and that there is some stable mandate in their appointment. Methods of how an NHRI should operate include that it freely considers issues that fall within its competence; is able to hear individuals and obtain necessary documents; makes public statements, through the media if necessary; meets regularly, and establishes working groups and consults with others, particularly with NGOs. For those NHRIs which have 'quasi-judisdictional competence,'—namely the ability to hear complaints of violations—the Principles state that such NHRIs could include powers to come to amicable settlements, inform the parties of their rights, hear the complaint or transfer it to another authority and make recommendations to relevant bodies.

These Principles have been taken as the benchmark against which NHRIs have been assessed. They are referred to at the national, regional and international levels as the standards to which governments should adhere when considering the establishment of such bodies, and are central to discussions at the international and regional levels concerning the role that NHRIs play there.

Despite this, they are a crude instrument in assessing the effectiveness of NHRIs. Research has shown that many factors impact on whether an NHRI can operate effectively and have a positive impact in promoting and protecting human rights.²³ These include not only factors dealt with by the Paris Principles such as the conditions under which it is created, namely how its members are

²² 'UNDP has given funding to some of the least credible human rights commissions on the African continent, and is not providing support to all of the strong or promising human rights commissions in Africa,' *ibid*, at 78.

²³ S Livingstone and R Murray, *Evaluating the Effectiveness of National Human Rights Institutions: The Northern Ireland Human Rights Commission and Comparisons with South Africa*, 2005, on file with author.

appointed, whether it is established by legislature or constitution, who is chosen to sit on the NHRI, but takes into account how the institution performs. Does it have a strategy? Does it use its money and powers effectively and to their full extent? Does it have an appropriate media and communication strategy and a coherent organisation and managerial structure? Furthermore, it is also necessary to examine the effectiveness of an NHRI in light of how it is perceived by others, whether that is government, the legislative, civil society, media, or the wider public. It is a combination of all these factors which renders an NHRI effective.²⁴ While some of these are in the control of government, others, particularly if they do in fact operate separately from government influence, will be dependent on the NHRI itself. As will be seen in chapter 6, whether one holds a government or an NHRI itself accountable for the NHRI's activities should, ideally, depend on what particular aspect of the NHRI is being considered. Yet, the model adopted by the UN and regional bodies is not to probe that closely into how an NHRI operates, but simply to take the Paris Principles as the checklist against which they should be assessed and the extent of their participation in international and regional forums determined.

INDEPENDENCE

In order to be an effective watchdog on government it is argued that NHRIs must be independent from government. The Paris Principles have a specific section on 'composition and guarantees of independence and pluralism' which includes:

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. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act 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.²⁵

The very nature of an NHRI, however, is that its establishment at the very least requires government commitment and involvement. NHRIs obtain their very influence by the fact that, unlike NGOs, they are official bodies that have a constitutional or statutory status but which, at the same time, are able to operate separately from government. The notion of independence is a difficult one to define. Dictionary definitions suggest 'freedom from the influence or control of others,' namely not depending on another for financial support. While the Paris

²⁴ Ibid.

²⁵ Paris Principles, paras B(2) and (3).

Principles capture certain elements of this, they do not reflect the subtleties of the relationship that an NHRI should have with government. Indeed, it is crucial if the NHRI is to have any impact that it operates on an inside track with government and is respected by it and brought into its trust.²⁶ NHRIs are different from NGOs because they are presumed to occupy some semi-official position. On the other hand, an NHRI is presumed to be the watchdog of government and in order to do so, must not be in the pocket of government; it must ideally have integrity to step back and make decisions alone which may conflict with the views of government:

While the aim of the Paris Principles is to ensure as much autonomy from government, particularly the executive, in practice most commissions find it difficult to maintain such a distance. This is, in a way, both a strength and a weakness. By being close to or a part of government, a commission may lend legitimacy to the notion of human rights, whether or not this accords with the state's intention. Even in the most repressive regimes, the establishment of an official state body devoted to human rights may, on occasion, create an official space for a human rights discourse and may foster greater, even if limited, activism and awareness. . . . And if a state sponsored national human rights commission issues a hard-hitting statement or document, so officially acknowledging that a particular problem exists or abuse has taken place, it can be much more difficult for a government to dismiss than, say a similar statements or report issued by a local or international NGO.²⁷

How NHRIs themselves tread this difficult line and for what they should be accountable has not been fully explored by the UN or African bodies.

Independence in terms of the Paris Principles is usually equated with independence from government. But it is clear that to be effective an NHRI should also be able to co-operate without succumbing to pressure from other actors, whether that be NGOs, parliamentarians or other statutory agencies, for example. But this is an issue that is not applied by the UN and regional bodies when examining an NHRI's independence. Furthermore, it is also essential that NHRIs work closely with all these other actors in order to have any impact on human rights in their society. As it is inevitably linked to government, the NHRI can be viewed with suspicion by civil society and others. As Human Rights Watch note:

The proliferation of national human rights commissions, with many established in repressive states, poses something of a dilemma for human rights activists who are more accustomed to challenging the state on rights issues than collaborating with it. For them and others, the question to be considered is: are such state-sponsored human rights bodies to be regarded with suspicion and distrust or should their development be encouraged and supported?²⁸

²⁶ Livingstone and Murray, above n 23.

²⁷ Human Rights Watch, above n 3, at 3.

²⁸ *Ibid*, at 1.

As this book will discuss, the notion of independence is cited as central to the effectiveness of an NHRI and therefore the extent to which it should be able to participate at the level of the UN and regionally, and yet it is not an issue that has been discussed in great detail. The ways in which the UN and regional bodies have approached this concept of independence is therefore not particularly satisfactory. In part because NHRIs are relatively new institutions, and in part because the issue of independence is not satisfactorily resolved at the national level, this tension has been played out at the international and regional levels. This becomes apparent in a number of ways such as where NHRIs have sat in meetings²⁹ and what their role is perceived to be—are they part of state apparatus and thus assessed along with state commitments or are they part of the supervisory mechanisms to keep a check on government compliance with international obligations?³⁰

THE SCOPE OF THIS STUDY

Although there has been considerable research done on NHRIs,³¹ less has looked at either specific institutions,³² or specific parts of an NHRI's mandate. Despite the very similar roles that these institutions play, and powers they possess, and although various seminars and workshops have brought NHRIs and others together to discuss examples of best practice,³³ there has been little critical analysis of the effectiveness of such bodies in respect of any of these particular functions.

The Paris Principles advocate that NHRIs should have 'as broad a mandate as possible.' Within this, considerable attention is paid by the Paris Principles to the international role that NHRIs can play. Thus, they advocate that among the responsibilities an NHRI should have, it should:

- (b) promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

²⁹ See, eg J Black, 'Regulatory Conversations' (2002) 29(1) *Journal of Law and Society* 163–96.

³⁰ See chs 2 and 6 below.

³¹ Eg Commonwealth Secretariat, *National Human Rights Institutions. Best Practice* (London, Commonwealth Secretariat, 2001); K Hossain, L Besselink, H Selaiss and E Volker (eds), *National Human Rights Commissions and Ombudsman Offices: National Experiences Throughout the World* (Dordrecht, Kluwer Law International, 2001); Human Rights Watch, above n 3; International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions* (Geneva, ICHRP, 2000); International Council on Human Rights Policy, *Assessing the Effectiveness of National Human Rights Institutions* (Geneva, International Council on Human Rights Policy, Office of the UN High Commissioner for Human Rights, 2005); Livingstone and Murray, above n 23; S Livingstone and R Murray, 'The Effectiveness of National Human Rights Institutions' in S Halliday and P Schmidt (eds), *Human Rights Brought Home: Socio Legal Perspectives on Human Rights in the National Context* (Oxford, Hart Publishing, 2004) 137–64; LC Reif, 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection, (2000) 13 *Harvard Human Rights Journal* 1–59.

- (c) encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (d) contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (e) cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights.³⁴

While clearly the focus of an NHRI is going to be what happens in the country in which it is based, most NHRIs look to the international arena and aim to get involved, whether this is through the various UN forums, those conferences and events organised by NHRIs themselves at an international or regional level, or regional human rights mechanisms, namely the UN Commission on Human Rights, UN treaty bodies, the AU and the African Commission on Human and Peoples' Rights. The founding legislation and document of NHRIs vary in the extent to which they recognise this role. For example, the Uganda Human Rights Commission Act 1997 provides that the Commission shall 'monitor the Government's compliance with international treaty and convention obligations on human rights.'³⁵ Other legislation has been less explicit and there has been criticism from some quarters that an NHRI should focus on doing work at home, rather than operating at the international level. In turn, however, NHRIs themselves have consistently stressed the importance of the international level for their work.

There are a number of reasons given by international bodies and by the NHRIs themselves as to why it is important for them to operate at both international and regional levels. As indicated by the Secretary General of the UN:

³² See, eg Livingstone and Murray, above n 23; M Gomez, 'Sri Lanka's New Human Rights Commission' (1998) 20(2) *Human Rights Quarterly* 281–302; S Nfor Gwei, 'The Cameroon Experience in Creating and Running a National Commission for the Promotion and Protection of Human Rights', in K Hossain et al, *Human Rights Commissions and Ombudsman Offices. National Experiences Throughout the World* (Dordrecht, Kluwer Law International, 2001) 169–86; C Idike, 'Deflectionism or Activism? The Kenyan National Commission on Human Rights in Focus' (2004) 1(1) *Essex Human Rights Review* (2004) 40–53; C Norch, 'The National Human Rights Commission of India as a Value-Creating Institution' in J Montgomery (ed), *Human Rights: Positive Policies in Asia and the Pacific Rim* (Hollis, New Hampshire, Hollis Publishing Company, 1998); A Whiting, 'Situating Suhakam. Human Rights Debates and Malaysia's National Human Rights Commission' (2002) 39 *Stanford Journal of International Law* 1.

³³ Eg J Hatchard, *Workshop on the Use of Public Inquiries and Formal Hearings by Commonwealth Human Rights Commissions*. Report. Organised by British Council and the Uganda Human Rights Commission, 25–27 February 2003.

³⁴ Paris Principles, para 3.

³⁵ Uganda Human Rights Commission Act 1997, 2 May 1997, s 8(1)(i); Constitution of the Republic of Uganda, Art 52(1)(h).