The Network of African National Human Rights Institutions (NANHRI)

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

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

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

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

Values and Guiding Principles
To achieve its mission and vision, NANHRI is committed to the following: -
Transparency, Accountability, Openness, Cooperation, Professionalism and Gender Equality

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We acknowledge the ANHRIs for their cooperation and dedication in providing information required to develop this report. As the key actors mandated to champion the promotion and protection of human rights, we appreciate your time and technical support in reviewing and validating the findings of the baseline assessment.

Finally, NANHRI sincerely appreciates the dedicated work of the independent consultant who was commissioned to undertake the lengthy and arduous assignment, Mr. J. M. Aliro of the Human Rights Centre, Uganda. The dedication, passion and patience demonstrated in the course of undertaking the assignment is commendable. NANHRI remains grateful by his commitment to incorporate all the feedback received from NHRIs and partners.
Foreword

National Human Rights Institutions (NHRIs) are considered as fundamental pillars of national human rights protection systems. They serve as key mechanisms that contribute to the domestication and application of international human rights standards at national levels. The Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights Human Rights, known as the “Paris Principles”, provide that to be considered effective, an NHRI should have complaints handling as one of its core mandate. A complaints mandate is important for an NHRI to exercise the role of protecting human rights which is a fundamental responsibility of NHRIs. In a bid to undertake the mandate of handling complaints, most NHRIs have within their structure and operations a complaints handling system which is usually elaborated by documents such as Complaints Handling Manuals and/or Complaints Rules of Procedures.

The Network of African National Human Rights Institutions (NANHRI) and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) have within the context of the 2012/16 joint programme cooperation conducted training workshops for staff of NHRIs dedicated to complaints handling as well as an assessment of the electronic complaint handling system. An assessment of these activities revealed a need to undertake an in-depth review of the complaints handling practices used by African NHRIs.

It is against this backdrop that NANHRI and RWI commissioned a baseline and mapping survey to inter alia assess the complaints handling systems in place in Africa; identify the NHRIs with a complaint handling mandate, manuals and tools for complaints handling; and examine the strengths and weaknesses of these systems. The survey was further conducted to develop appropriate recommendations that will inform strategic interventions necessary to strengthen the capacities of ANHRIs to effectively handle complaints of human rights violations.

Though the findings reveal that most NHRIs have a clear mandate for complaints handling, nearly half of ANHRIs lack the power to investigate complaints and receive complaints from other parties besides the victims of human rights violations. Worse still, there is no known and documented robust strategy for most NHRIs to engage other bodies, institutions or organizations whose jurisdiction is to implement and/or enforce the recommendations. Lack of well documented procedures to systematically handle and address complaints emerged as a common weakness as well as non-automated systems to support expeditious conclusion of cases of human rights violations. These and other challenges require the concerted efforts of different actors to support review of legislation and strengthen the capacity of NHRIs to institute effective complaints handling and investigations, and thereby contribute to the promotion of respect for the rule of law, the administration of justice and fight against impunity.
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<td>Alternative Dispute Resolution</td>
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CHAPTER I
INTRODUCTION

1.1 Introduction
This report is prepared on commission by Network of African National Human Rights Institutions (NANHRI) and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) to conduct an assessment of current complaints handling systems used at Africa National Human Rights Institutions (ANHRIs). The assessment was to: provide NANHRI with a baseline assessment of Complaint Handling Systems of NHRIs in Africa; identify ANHRIs with a complaint handling mandate, complaints manuals and tools; and identify the strengths and weaknesses of the complaints systems at the ANHRIs.

The assessment involved a survey of 44 ANHRIs that are members of NANHRI. It therefore required interactions with Anglophone and Francophone speaking NHRIs in the African region. The study reviewed information that was made available and that were accessible on the complaints handling processes of some of the 44 ANHRIs in the African continent that are members of NANHRI.

This report is therefore an outcome of a mapping and assessment of the complaints handling processes used by ANHRIs whose laws, manuals and rules of procedures were made available or were obtainable by other means. As required by the terms of reference the report includes a section on the mapping and assessment of the ANHRIs and a section on analysis of the complaints mandate of each of the ANHRIs. Finally the report points out gaps in the complaints system and proposes interventions in form of recommendations.
1.2. Justification for the assessment

Complaints handling is a core function of ANHRIs. It is an important function that gives NHRIs the mandate with which to act against human rights violations and provide victims an opportunity to pursue redress. NHRIs with a complaints handling mandate should therefore have in place effective complaints procedures failure of which they may lose credibility with the public for failure to satisfactorily provide redress.

Over the past years, the Network of African National Human Rights Institutions (NANHRI) and RWI have implemented a programme that had the objective of enhancing the capacities of ANHRIs to handle complaints. This was achieved through generalized workshops that included a session on complaints handling, trainings purely dedicated to complaints handling as well as an assessment of the electronic complaint handling system.

This assessment report is a result of the identified need by NANHRI and RWI to conduct a mapping and baseline-assessment of current complaint handling practices used by African NHRIs. The assessment and mapping was aimed at providing a better understanding of the African Regional complaints systems for the handling of complaints of human rights violations. With a better understanding, appropriate recommendations will be made as to what strategic interventions are necessary to further strengthen the capacities of ANHRIs to effectively handle complaints about human rights violations.

1.3. Objectives

The survey was commissioned for the purpose of collecting information that would provide NANHRI with: a baseline assessment of Complaint Handling Systems in place in Africa; identifying the NHRIs with a complaint handling mandate, manuals and tools for complaints handling; and the strengths and weaknesses of these systems. In particular the terms of reference required a brief description of the ANHRIs with a complaints handling mandate.

1.4. Methodology

Many complaints resolution systems in NHRIs fail to function efficiently and effectively because of failure or inability to find effective solutions to the following problems that often occur in the complaints process:

- The slow progress in resolving complaints;
- Respondents’ refusal or neglect to comply with the process especially in responding to requests for information;
- Delays in the process due to procedural technicalities;
- Staff shortages;
- Parties getting frustrated because they cannot easily have access to decision makers at the NHRIs;
- Complaints processes being overly litigious;
- Applying systems that are too complex for ordinary persons which hinder accessibility;
- Big case backlog due to lengthy processes;
- Poor management of the complaints systems;
- Failure to deal with systemic issues effectively.
- Insufficient funds for complaints handling especially for the investigation stage.
The above issues are important to bear in mind when assessing the effectiveness of a NHRI’s complaints system. Other than these there are equally important competing principles and issues that a complaints system must address in order for it to be considered effective. These issues are complex but the key important questions that must be taken into account when undertaking the assessment is to determine whether the system has the capacity that can effectively promote the following:

a) Speedy resolution of complaints but to the satisfaction of the parties;

b) Simplicity and fairness of the process;

c) Flexibility: Different types of complaints are brought to NHRIs notably large and small cases, complex issues, straightforward cases, individual cases and cases with systemic implications, cases that merely turn on credibility and those that require extensive investigation. A complaints management system should be flexible enough to appropriately deal with all manner of cases;

d) The Right to be heard: this calls for the building of a human element in the system that allows parties to interact with officials of the NHRI;

e) Use of both administrative and judicial types of decision-making processes to, as appropriate, resolve complaints;

f) Admissibility and or assessment of complaints: This calls for the system to cater for the proper handling of the various stages and turning points at which decisions are made about admissibility. Issues regarding admissibility are many and must be addressed by the system. Examples include: informal barriers to accessibility e.g. ignorance of one’s rights and of the complaints system, language barriers etc. informal filtering and triaging at point of contact with the system; determination of jurisdictional criteria; determining admissibility based on policy etc.

All the issues listed above are important and must form the broad concerns to be looked at when reviewing human rights complaints system for NHRIs.

The mapping and assessment methodology broadly involved the use of both quantitative and qualitative approaches. Different evaluation questions were posed and answered using different sources of information. Both primary and secondary data sources were used to gather data and information for the assessment. With a view to obtain a better understanding of the status of complaints systems at ANHRIs and to gather information for the analysis of the strengths and weaknesses of the system, a set of questionnaires was administered by email to elicit the critical information from the NHRIs.

Documents were also reviewed to collect information that would supplement findings from the survey instrument among the beneficiaries and interview results. A comprehensive desktop study / review was done and research was conducted in which a mapping and identification of NHRIs with complaints mandates was done. The desk review also analyzed the NHRI operational complaints manuals, laws, and rules of procedure with the intention of identifying the legal, organizational and institutional strengths and weaknesses of the NHRIs with regard to complaints handling.

The study method adopted was to apply secondary and primary research to gather the required information. This principally involved reviewing: literature on NHRIs particularly their legal framework, reports of their activities and other available information on each of them. However, the study was limited by the fact that not all the NHRIs completed the questionnaires. In addition some of the NHRIs either did not have websites...
or their websites were not functional or had limited available information. Given limited information on some of the NHRIs, it was not possible to have an in-depth report on all ANHRIs.

1.5. NHRIs and complaints handling functions

National Human Rights Institutions (NHRIs) are now regarded as one of the fundamental pillars of national human rights protection systems. They are considered as key mechanisms that contribute to the domestication and application of international human rights standards at national levels. The Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights Human Rights, known as the “Paris Principles”, adopted by the United nations General Assembly in 1993, established the broad normative standards for the “status, structure, mandate, composition, power and methods of operation”\(^1\) of these institutions.

NHRIs are state bodies with a constitutional and/or statutory mandate to promote and protect human rights. The key principles that define the nature and roles of NHRIs are provided in the Paris Principles. The Paris Principles require that NHRIs should be established by law. The law should guarantee their independence and autonomy, and they should have pluralistic membership composed through fair and transparent appointment procedures. NHRIs can be human rights commissions, ombudsmen, consultative and advisory bodies, or hybrid institutions combining human rights and anti-corruption mandate. They can also be quasi-judicial institutions with jurisdiction to adjudicate over human rights matters. The mandate of NHRIs usually involve complaints handling and investigation, monitoring and reporting on human rights, civic education, research and reporting and advising government on human rights issues. They also monitor government compliance with national and international human rights standards.

NHRIs because of the nature of their mandates are ideally placed to contribute to an integrated strategy to promote and protect human rights. They can contribute towards development of policy and legislation, lobby government to ratify relevant regional and international human rights instruments, and advocate for legal reforms particularly for laws that criminalize and adequately punish violations of human rights. They can also monitor the implementation of legislative and policy framework that impact on human rights related issues and state compliance with international conventions and laws. They can investigate human rights violations, train relevant stakeholders on strategies for protecting human rights and create the much needed awareness. They are better placed to undertake collaborative actions with international and national bodies including the civil society.

The Paris Principles provide that to be considered effective a NHRI should have complaints handling as one of its core mandate. A complaints mandate is important for a NHRI to exercise the role of protecting human rights which is a fundamental responsibility of NHRIs. The human rights protection mandate of NHRIs extends to the promotion of respect for the rule of law, the administration of justice and fighting impunity. Handling complaints and investigating human rights violations is therefore central because NHRIs ensure that the administration of justice conforms to human rights standards and also provide effective remedies, particularly to minorities and to the most vulnerable in society. While there are differences in how NHRIs approach their protection responsibilities, some typical roles and responsibilities include investigations; alternative dispute resolution; seeking redress or remedies on behalf of victims through the courts or

\(^1\) General Observations (as updated May 2013) International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC)- General Observations of the Sub-Committee on Accreditation
specialized tribunals, including by addressing courts as amicus curiae where legally warranted; receiving and hearing individual complaints (for NHRIs with quasi-jurisdictional powers); conducting public inquiries into systemic human rights violations; and monitoring and reporting on the situation of human rights in the country.

In a bid to implement the mandate of handling complaints, most NHRIs have within their structure and operations a complaints handling system. Despite the complaints handling mandate being largely cross cutting among African NHRIs, the actual application and management of complaints handling may vary from NHRI to NHRI. This can be explained by the fact that national dynamics and contexts are heterogeneous, and there is therefore really no single standardized way of handling complaints. Nevertheless there are some key features of the complaints handling cycle that are core to the process and therefore should largely be applied by all NHRIs engaged in complaints handling. These features are usually elaborated by NHRIs in key documents known mostly as Complaints Handling Manuals and/or Complaints Rules of Procedures.
2.1. Introduction

In order to map out which of the ANHRIs have or do not have the mandate to handle complaints, a review of the constitutive laws of ANHRIs was undertaken. A review of the available complaints manuals or rules of procedures was also carried out to enable an understanding of the complaints system each of the ANHRI apply to manage and resolve complaints of human rights violations. However, only 23 ANHRIs out of the 44 made available information that was requested. The Table below show which NHRIs supplied information and which did not.
Table I: ANHRIs which did or did not provide information for the assessment

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<th>Countries whose NHRIs provided information</th>
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2.2. The Complaints Systems: Strengths and Weaknesses

A mapping of all African NHRIs was done and to identify which ANHRIs have a complaints mandate and the nature of the mandate a review of their legal framework was conducted to understand the nature of the mandate, its strength and weaknesses. In addition research was done to map out which ANHRIs have complaints manuals and or complaints rules of procedures and the nature of the manuals or rules. Below is a country by country mapping and assessment of the ANHRIs presented in alphabetical order. A matrix consisting of detailed information on the complaints mandate of the ANHRIs is presented in ANNEX I of this report.

2.2.1. ALGERIA - Commission Nationale Consultative de Promotion et de Protection des Droits de l’Homme

The Commission Nationale Consultative de promotion et de Protection des droits de l’Homme (CNCPPDH) (Algerian National Advisory Commission for the Promotion and Protection of Human Rights) was established by Presidential Decree No. 09-04 of 27 August 2009. It has the mandate to investigate allegations of human rights violations, provide advice and make recommendations on human rights issues; raise awareness and write annual reports on the human rights situation. To carry out the mandate to receive and investigate complaints of human rights violations, the Commission has established a system for receiving, considering and making decisions on complaints. The Commission has five permanent sub-committee including the Standing Committee on Protection of Human Rights and the sub-committee on Mediation and Protection of Human Rights which meet once or twice a month to assess and handle requests or complaints received by the CNCPPDH.

The Sub-Committee on the Protection of Human Rights has the authority to receive, investigate and monitor all petitions pertaining to human rights violations, while the Sub-Committee on Mediation is responsible for reviewing allegations of human rights violations committed by government authorities, including in the education sector, healthcare, bureaucracy, housing, employment as well as justice sector (if all remedies are exhausted), the Sub-Committee on monitoring is responsible for examining and monitoring situations of human rights and taking appropriate measures in this regard in coordination with the relevant authorities. Complaints can be made in writing or verbally but recorded and by the relevant department and a complaint must be accompanied by various documents and evidence in the possession of the complainant which will be examined by both Sub-Committees. A petition is considered admissible if the complainant has exhausted all other legal remedies and if the judgment or ruling is final.

Weaknesses: A review of the legal framework and information the NHRI made available suggests the complaints system has weaknesses. There was no evidence that the Commission has a Complaints Manual or Rules of Procedure. The Decree that establishes the Commission is silent on how the Commission should conduct investigations and on whether the Commission has powers to make regulations for handling complaints. The Decree is also silent on matters of witness protection and on how the Commission should handle the complaints of vulnerable persons. The requirement that a complainant must first exhaust all other legal remedies before coming to the Commission is an important weakness that can be an obstacle to access to the Commission’s complaints system. It is a great disadvantage to victims of human rights violations especially those who may have difficulty accessing formal courts for reasons that may include inability to afford legal costs.
2.2.2. BENIN - Commission Béninoise des Droits de l’Homme

The Commission Béninoise des Droits de l’Homme (CBDH) (the Benin Human Rights Commission) is established by law 89-004 which was passed by the National Assembly in April 29, 1989. Article 4 of the law establishing the Commission states that its role is “promoting and safeguarding human rights in the Republic of Benin.” On the promotional side, the commission can recommend the ratification of international human rights instruments; participate in the preparation of reports by the government owed to various U.N. bodies and make recommendations to the government to “enact the deliberations of U.N. and OAU organs or of any international governmental or nongovernmental human rights institution.

The Commission is also vested with broad powers to provide human rights protection, including the task of promoting the rule of law in Benin. It can serve “as mediator between the citizen and government and may receive individual or group complaints lodged by citizens.” Victims of human rights violations caused by government action or inaction as well as NGOs may also petition the CBDH. In conducting investigations, the CBDH has unrestricted access to all reports, registrars, official documents, and locations they may judge useful to the investigation. In order to ensure effective redress, the executive board has powers to order all measures likely to resolve the reported case; to research with the government ways to redress the violation and/or to find just and equitable reparation; and to pursue reconciliation. The Commission may also suggest measures, including recourse to the legal system, the national assembly or the president; and to initiate a legal case on behalf of the complainant. The CBDH also has the power to define other rules of procedure, as necessary, under Article 6 of the law.  

Weaknesses: - Given the Commission strong mandate, independent appointments procedures, and the relatively conducive political climate in Benin, there appear to be no major impediments to its effecting such a transformation. It therefore ironic that this human rights commission, of all those in the region, is not as active as it should be.

2.2.3. BURUNDI - Commission Nationale Indépendante des Droits de l’Homme

The Commission Nationale Indépendante des Droits de l’Homme (CNIDH) has a clear legal mandate to handle complaints of human rights violations. The constitutive law Act No.1/04, 2011 mandates the CNIDH to ensure the protection of fundamental rights in Burundi. The Commission has powers to requisition, enforce, inquire and launch on its own motion investigations into alleged human rights violations and access information it considers relevant while conducting its investigations. Every citizen who has suffered a human rights violation has a right to bring a claim to the CNIDH. The Commission operates a no fee policy for filing a complaint, submission and proceedings. Furthermore, the Commission accepts submissions in any language and provides interpretation services where they are required. The CNIDH cannot hear cases that are before a tribunal except where there is a denial of justice or cases that are outside its jurisdiction.

The CNIDH employs alternative dispute resolution mechanisms where it deems appropriate. The commission is empowered to give its opinion, make decision and recommendations based on the facts of the case and publish them. CNIDH can refer a case to court where there is non-compliance with its rights.

2. Section 6 of Law No. 89-004 of the Commission Béninoise des Droits de l’Homme
opinions/recommendations. It can also refer to the Public Prosecutor any crimes revealed in a complaint it has received.

Weaknesses: - There are significant weaknesses with the Commission's complaints system. The rules of procedure do not prescribe timelines within which each of the stages of the complaints process should be finalized. The constitutive law as well as the rules of procedure are silent about witness protection neither is there a prescribed procedure for conducting investigations, mediation and follow-up on cases that the Commission refers to other bodies.

**2.2.4. CAMEROON - National Commission of Human Rights and Freedoms**

The National Commission of Human Rights and Freedoms (NCHRF) was established by law No. 2004/16 as an independent institution with the mandate to consult, monitor, evaluate, dialogue, take concerted action to promote and protect human rights.\(^3\) It has the specific mandate to receive complaints relating to violations to human rights and freedoms, and conduct inquiries and to carry out investigations on the complaints it receives. In order to discharge its duties, the Commission may, summon any party and/or witness for a hearing; request the competent authorities to carry out searches and require the production of any document or evidence in accordance with ordinary law; refer any offence noted in matters falling within the remit of this law to the minister in charge of justice; use mediation and conciliation between parties in non-criminal matters falling within the remit of this law; provide legal assistance or measures to furnish any form of assistance, in keeping with the laws in force; intervene in any case, to participate in upholding the interests of victims of human rights violations.\(^4\)

The NCHRF is also mandated to conduct human rights studies as well as conduct human rights education and coordinate NGO actions in human rights. It is also empowered to visit detention sites. The Commission has prescribed various ways of receiving complaints and this can be person coming physically to the Commission or by letters, emails, fax, over the telephone. The Commission can issue opinions and recommendations following investigations which it transmits to the relevant public authority. It can also apply alternative dispute resolution mechanisms notably mediation, conciliation and negotiation as means for settling complaints. The Commission refers cases to competent authorities and follows up on the referred cases.

Weaknesses: - There are key weaknesses in the Commission’s complaints system. The Commission does not issue binding orders after investigations and it does not have the power to go to court to enforce its orders; the Commission has no Complaints Manual as well as prescribed procedures for investigation or referring of cases. It was not apparent from the information availed whether the Commission has strategies for dealing with systemic human rights violations.

**2.2.5 CHAD - Commission Nationale des Droits de l’Homme**

The Commission Nationale des Droits de l’Homme (CNDH) was established in 1994 and began operations in March 1996. The CNDH law of 1994 provides the mandate of the CNDH under Article 3 to advise the government on human rights matters; to provide assistance to national and international institutions

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3. Section 1 of Law No 2004/016 of the NCHRF Act
4. Section 3 of Law No 2004/016 of the NCHRF Act
concerned with human rights in Chad; and to participate in the revision and drafting of laws to render them consistent with the Bill of Rights (Charte des droits de l’homme) adopted by the National Conference as well as regional and international human rights treaties.5

The law insists on the autonomy of the commission and its “right of initiative.” Article 6 provides that the CNDH is autonomous as to the choice of issues that it examines at its own initiative. The CNDH is also independent with regard to opinions makes to government and disseminates to the public. In addition, the 1996 presidential decree provides it the CNDH to treat individual or private complaints where it states that: - “Notwithstanding the right of initiative recognized to the commission, any person who deems himself the victim of a human rights violation may address the commission.” Under Article 12, the Commission is however limited from handling or investigating cases pending before the courts where there is a manifest denial of justice. The directorate of the CNDH must meet within a week of receiving the complaint to name a rapporteur to investigate. The rapporteur has recourse to broad authority, roughly equivalent to subpoena power that includes access to individuals, places, objects and documents linked to the investigation; the rapporteur must be accorded the cooperation of government authorities, including direct superiors of any implicated government official. The authority to resolve complaints is less clear. Under Article 15, a report must be made by the rapporteur to the CNDH within twenty days at which point the commission meets to take necessary measures which might include recourse to the courts, the parliament, or the president. In addition to these powers linked to individual complaints, the commission has broad authority to effectuate its general mission. Under Article 11 of the 1994 law, for example, the commission has “free access to any governmental or nongovernmental institution in order to obtain useful information and/or any verification necessitated by its mission.” The president of the commission may also request government ministries to undertake studies for them.

**Weaknesses:** - The law is silent on the role of the commission in human rights education and traditional promotion activities.

**2.2.6. EGYPT- National Council for Human Rights**

The National Council for Human Rights was established by the National Human Rights Act 94/2003 with a mandate to advise and make recommendations to Government and public institutions on human rights issues. It has the mandate to receive and examine complaints of human rights violations, then refer at its discretion any such complaints to competent bodies.

**Weaknesses:** - The complaints system has notable weaknesses. Lack of enforcement powers or right to seek enforcement of its decisions in a court of law deprives the Commission of the power to grant effective remedies for human rights violations. When findings or decisions of a NHRI cannot be enforced they face the risk of being ignored as is often the case in many African countries. The National Council also does not have a complaints manual or procedures for the management and resolution of complaints. It also has no procedure of handling systemic human rights violations.

**2.2.7. ETHIOPIA - Ethiopian Human Rights Commission**

The Ethiopian Human Rights Commission was established by the Ethiopian Human Rights Commission Establishment Proclamation No. 210 of 2000. Under Section 3 of the Proclamation, the Human Rights
Commission of Ethiopia is established as an autonomous organ of the Government having its own juridical personality. The objectives of the Commission are stipulated under section 5 of the proclamation which stipulates that the objective of the Commission is to educate the public to be aware of human rights, to see to it that human rights are protected, respected and fully enforced, and to take necessary measure where human rights are found to have been violated. The Commission has a wide mandate that includes the power to investigate complaints reported to it and can at its own initiation investigate human rights issues that come to its attention. Under Section 7, the Commission has full powers to receive and investigate all complaints on human rights violations made against any person, save for cases brought before the House, the House of the Federation, Regional Council or before the courts of law, at any level.

The powers and duties of the Commission are indicated under section 6 of the proclamation to:- ensure that the human rights and freedoms provided for under the Constitution are respected by all citizens, organs of state, political organizations and other associations as well as by their respective officials; ensure that laws, regulations and directives as well as government decisions and orders do not contravene the human rights of citizens guaranteed by the Constitution; educate the public, using the mass media and other means, with a view to enhancing its tradition of respect for, and demand for enforcement of, rights upon acquiring sufficient awareness regarding human rights; undertake investigation, upon complaint or its own initiation, in respect of human rights violations; make recommendations for the revision of existing laws, enactment of new laws and formulation of policies; provide consultancy services on matters of human rights; forward its opinion on human rights reports to be submitted to international organs; translate into local vernaculars, international human rights instruments adopted by Ethiopia and disperse same; participate in international human rights meeting, conferences or symposia; own property, enter into contracts, sue and be sued in its own name; perform such other activities as may be necessary to attain its objective.

The complaints handling (investigation) mandate of the Commission is contained in detailed rules of procedures under part three of the Proclamation that established the Commission. The Commission has also developed a detailed investigation procedure manual. The Proclamation gives the right to lodge a complaint to any person who claims that his/her rights have been violated. A spouse, family member, representative of a victim or a third party can also file a complaint on behalf of the victim. The Commission does not only entertain complaints or petitions from third parties who have a vested interest in the case, but also from any third party who has no direct stake or vested interest in the case. This provision has made it possible for the Commission to entertain cases of victims who, for various reasons, are not in a position to directly claim their rights. Unlike many NHRIs the EHRC may receive and entertain anonymous complaints especially where the allegation is of grave human rights violations. The Commission handles human rights complaints free of charge.

The rules of procedure allow complaints to be lodged in writing, verbally or in any other manner. Thus, the method of lodging complaints is left open ended, allowing complainants to resort to all possible means of communication including electronic communication. In line with this the Commission has a free hot line telephone complaint lodging system.

5. Article 3 of the CNDH Law
8. Article 22 (1) of the Establishment Proclamation.
9. Article 22 (2) of the Establishment Proclamation.
10. Ibid, article 23 (1).
The investigation procedure rules confers quasi-judicial powers on the Commission namely the power to compel the appearance of those complained against, witnesses and any person in possession of evidence relevant to the case\(^\text{11}\). Non-compliance with summon of the Commission without good cause is punishable by a fine or imprisonment or both\(^\text{12}\). Interference with or causing harm to witnesses is equally punishable by fine or imprisonment or both\(^\text{12}\). Persons who lodge complaints to the Commission are protected from suits for defamation based on the facts of the complaint. Investigators from the Commission are granted immunity from arrest throughout the investigation process of a complaint unless he/she is caught in flagrante delicto for a serious crime. The Proclamation establishing the Commission also empowers the Commission to effectively engage with the public prosecution offices to address criminal issues that may arise or be revealed by the investigation process. This means, where the Commission, in the process of conducting investigation, prima facie, finds out that a crime or administrative fault is committed, it must forthwith notify the concerned organ or official\(^\text{13}\).

Most importantly, the Commission is empowered to take action to secure effective remedy for victims through measures that include prosecution when its recommendations on a complaint are not implemented. In this regard, article 41 (2) of the Proclamation stipulates that any person who fails to take measures within three months from receipt of reports, recommendations and suggestions of the Commission on a violation of human rights and fails to state the reason for such failure shall be punishable with imprisonment for three to five years or with a fine from six thousand to ten thousand Birr or with both\(^\text{14}\).

The investigation manual of EHRC in addition to detailing the procedures for handling complaints also prescribes the principles and ethical standards to be complied with when handling and investigating complaints and these are impartiality and neutrality, accountability, efficiency, accessibility, priority to amicable dispute resolution and taking special measures for processing complaints of vulnerable groups\(^\text{15}\). Chapter four of the investigation procedure manual details the rights and duties of parties to an ADR arrangement and the procedures that shall be followed in such process. The manual emphasizes that opting for amicable resolution of a dispute is all up to the full and free consent of the disputing parties\(^\text{16}\). This discretion of the parties remains with them throughout the process. A maximum time limit for ADR process is 30 days and the results of a successful ADR are final and binding.

The EHRC complaints system fixes time-lines for handling complaints. The complaints manual fixes the timelines but the time line varies according to the nature of the case depending on the complexity of the case at hand. For the purpose of setting time-lines the manual has three categories of complaints: complex, regular and simple. Complex cases include cases that necessitate a systemic investigation; cases involving the right of nations and nationalities, cases concerning a particular section of the society and violations that are categorized by international human rights instruments as grave violations of human rights. Complex cases are to be finalized within 90 days from the date a complaint is referred for investigation. Simple cases are complaints implying a clear violation of human rights that do not need much effort to collect evidences. Such cases are to be decided within 30 days from the date of referral for investigation. And regular cases are those cases other than complex and simple. These types of cases have to be decided within 48 days from

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\(^{11}\) Ibid, article 25.
\(^{12}\) Ibid, article 41 (1).
\(^{13}\) Ibid, article 28.
\(^{14}\) Ibid, article 41 (2).
\(^{15}\) Article 5 of the EHRC Investigation Procedure Manual.
\(^{16}\) Ibid, articles 28 (2) and 37.
the date of reference for investigation. For complaints involving vulnerable groups the investigation process has to be finalized within 60, 30, 15 days for complex, simple and regular cases respectively.

The manual provides guidance to investigators as to how they shall weigh evidence in order to reach a plausible conclusion. In doing so, it adopts the principal of preponderance of evidence. Where the result of the investigation implies violation of the right/rights the investigator shall suggest an appropriate recommendation that can redress the same. The report of the investigation implying violation shall be in writing and, inter alia, shall clearly indicate the list of rights violated and appropriate recommendations. The recommendation may also include payment of indemnity to the victim in appropriate circumstances.

Chapter seven of the manual provides a detailed procedure, as to how to follow up and enforce decisions, orders, recommendations and remedies given by the Commission. The ultimate responsibility to follow up the enforcement of any kind of decision by the concerned organs or authorities is given to the investigator. Nevertheless, if any person or authority fails to take measures in spite of the effort and a default notice given by the investigator, and such failure is not substantiated by a good cause, the Commission shall institute a proceeding before a court of law against the same for such failure.

The EHRC has been developing its structure to improve accessibility to its complaints function. Up until 2011 the Commission was operating only at the head quarter level and in effect had only one investigation unit. However, since 2011 the Commission has launched eight branch offices at different regional states of the country, all with their own separate investigation units. Consequentially, today the Commission has nine separate investigation units functioning throughout the country. This has enabled it to significantly enhance its accessibility and efficiency. The free telephone hot line launched in 2014 has significantly improved accessibility to the complaints mandate for complainants unable to travel long distances to the urban centre-based branch offices. In the first year of its launch the hot-line system received 9,377 complaints.

2.2.8. GHANA-Commission on Human Rights and Administrative Justice

Chapter 18 of the Ghana Constitution provides for the establishment of the Commission of Human Rights and Administrative Justice (CHRAJ) and the Commission was established by an Act of Parliament, Section 1 of Act 456 of 1993 to investigate complaints of violations of fundamental human rights and freedoms, injustice and corruption; abuse of power and unfair treatment of persons by public officers in the exercise of their duties, with power to seek remedy in respect of such acts or omissions and to provide for other related purposes. The Commission has a broad mandate which encompasses a National Human Rights Institution; an Ombudsman institution to ensure administrative justice, as well as an Anti-corruption agency. Through its mandate, the Commission receives and investigates cases on human rights violations which may be lodged by any person by phone, email, post, and fax or in person. A complaint may also be made orally or in writing. The Commission investigates complaints of human rights violations against individuals or institutions and resolves the cases through various methods, including mediation, negotiation, and formal hearings. All costs and expenses related to investigations conducted by the Commission into a complaint are free of charge and borne by the Commission.

Section 7 of the CHRAJ Act lists the functions of the Commission which are:- (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment

17. Ibid, article 71 (2).
of any person by a public officer in the exercise of his official duties; (b) to investigate complaints concerning
the functioning of the Public Services Commission, the administrative organs of the State, the offices of
the Regional Co-ordinating Council and the District Assembly, the Armed Forces, the Police Service and the
Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those
services or fair administration in relation to those services; (c) to investigate complaints concerning practices
and actions by persons, private enterprises and other institutions where those complaints allege violations
of fundamental rights and freedoms;

The Commission is also mandated to take appropriate action to call for the remediying, correction and
reversal of instances specified in (a), (b) and (c) through such means as are fair, proper and effective including
negotiations, causing the complaint and its finding to be reported to the superior of an offending person;
bringing proceedings in a competent court for a remedy to secure the termination of the offending action
or conduct, or the abandonment or alteration of the offending procedures; and bringing proceedings to
restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or
conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise
ultra vires

In addition to the above, the Commission has a mandate to investigate allegations that a public officer
has contravened or has not complied with a provision of Chapter Twenty four (Code of Conduct for Public
Officers) of the Constitution; to investigate all instances of alleged or suspected corruption and
the misappropriation of moneys by public officials and to take appropriate steps, including reports to the
Attorney-General and the Auditor-General, resulting from such investigation; to educate the public as
to human rights and freedoms by such means as the Commissioner may decide, including publications,
lectures and symposia; and to report annually to Parliament on the performance of its functions. Section 8
lists the quasi-judicial powers the Commission has, namely, the powers to issue subpoenas requiring the
attendance of any person before the Commission and the production of any document or record relevant
to any investigation by the Commission; to cause any person contemptuous of any such subpoena to be
prosecuted before a competent court; to question any person in respect of any subject matter under
investigation before the Commission; and to require any person to disclose truthfully and frankly any
information within his knowledge relevant to any investigation by the Commissioner

CHRAJ has power to investigate violations of human rights; injustice; abuse of power; corruption by public
officials and the practices and actions of private persons and institutions where these are alleged to violate
human rights as well as allegations of breaches of the code of conduct for public officials and if after an
investigation, the Commission considers that the decision, act or omission amounts to a breach, it shall
report its decision and the reasons for it to the appropriate person. The Commission has no direct
enforcement powers but can apply to court for enforcement of any remedies including injunctions when
necessary in the course of investigations. Where the recommendations of the Commission are ignored or
not effected it has the right to take the matter to court for enforcement. The good practice to be emulated
is that when the Commission takes its decision to court for enforcement the court does not reopen the
matter by inquiring into its merit but only deals with the issue of enforcement. The Commission has an

20. CHIRAJ’s anti-corruption mandate is supplemented by other legislations such as the Whistleblowers Act.
21. Section 8 of the Commission of Human Rights and Administrative Justice Act, 1993 (ACT 456)
22. Section 18 (1) (f) of Act 456 of 1993 (Act 456)
elaborate Complaints Rules of Procedure. The Commission also conducts special investigations into human rights violations which may be systematic or in public interest. It conducts research, field investigations, and public hearings in the course of these investigations. The services offered by the Commission are free of charge and it uses ADR in the resolution of most of its cases.

More importantly, the CHRAJ is also vested with strong enforcement powers under Section 8 of the Commission on Human Rights and Administrative Justice Act, including the power to issue subpoenas for the attendance of a witness or any relevant information or evidence and the ability to pursue contempt charges in the courts against any person failing to obey its request. The CHRAJ is empowered to enforce a remedy “through such means as are fair, proper and effective,” including: negotiation and compromise; reporting the findings to a superior officer; bringing court proceedings to stop or change actions or conduct that violate rights; challenging any law that violates constitutional rights; taking appropriate steps to address corruption, including reports to the attorney-general and the auditor-general resulting from such investigations; and restoring property confiscated by the two previous military governments under specified conditions enumerated in Article 35(2) of the Transitional Provisions of the 1992 Constitution.

Unlike most human rights commissions in Africa, the CHRAJ has a nationwide network of offices. Article 220 of the constitution specifies that the enabling legislation shall provide for the creation of regional and district branches of the CHRAJ. The Commission on Human Rights and Administrative Justice Act has interpreted this to mean that each region and all districts should have offices. This has meant that the CHRAJ is truly seen as a national body that protects rights and has some meaning to Ghanaians in the rural areas.

Weaknesses: - The CHRAJ mandate is very broad as required by the Paris Principles. The mandate encompasses issues of maladministration, human rights and anticorruption. Whereas this can be taken as strength the wide mandate requires a high staff structure and resource base which may be difficult to sustain. With a staff strength of approximately 780 nationwide the Commission has had to contend with challenges of getting adequate resources and ensuring an appropriate mix of expertise for the diverse mandates requiring human rights experts, legal experts, anti-corruption and governance experts as well as seasoned administrators to cover the different fields of human rights, maladministration and anti-corruption and governance. The Commission’s expansion and requirement to have an office in each region and district has required enormous staff and resource commitments that often overstretch the capacity of the CHRAJ. The wide mandate also requires high funding to effectively implement the various mandates.

The other weakness is that, the Commission has no power to investigate human rights violations on its own initiative and acts of administrative injustice. It can only do so in cases of allegations of corruption.

2.2.9. KENYA - Kenya National Commission on Human Rights

The Kenya National Commission on Human Rights (KNCHR) is an autonomous national human rights institution established under Article 59 of the Constitution of Kenya 2010 with the core mandate of furthering the promotion and protection of human rights in Kenya. It is a successor to the body of the same name established by an earlier Act of Parliament in 2002, that later became operational in July 2003. The KNCHR succeeded the Standing Committee on Human Rights established in 1996 through presidential decree. Under Article 252 of the Constitution, the KNCHR has the mandate to conduct investigations on its own initiative or on a complaint made by a member of the public; it has the powers necessary for conciliation, mediation and
negotiation; and may perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by this Constitution\(^\text{23}\). In addition, the Commission has powers to issue summons to witnesses for the purposes of its investigations.

A complaint to the Commission may be made by any person entitled to institute court proceedings. The Commission has the mandate to investigate, on its own initiative or upon a complaint made by any person, the violation of any human rights. It has powers to issue summons, power to call documents, records, reports, power to enter any land or premises, power to require attendance and question any person and require information relevant to any investigation before it. The Commission can apply alternative dispute resolution mechanisms to resolve complaints namely mediation, negotiation and conciliation.

The KNCHR operates an Electronic Complaints Handling system. It maintains a telephone messaging short code (SMS), a website and social media platforms which enable citizen to lodge complaints and report human rights violations. This is a good practice not only for receiving complaints but has also served to build a vibrant social movement of citizens who monitor and report on human rights violations and government compliance with human rights standards. The KNCHR’s database system known as Complaints Management System (CMS) allows users to input personal particulars of the person lodging the complaint (also known as petitioner) such as name, identity number, telephone, postal address, sex, citizenship, age, education, occupation, county and Sub County. Once duly completed the user saves the details and an account number is assigned to that complaint. The CMS is capable of processing reports for general and analytical purposes and can generate reports categorized into reports on civil political, economic social cultural rights and group rights.

**Weaknesses:** - Despite a legal foundation providing KNCHR with a broad mandate, several factors, such as legal proceedings against the Commission; political influence of the appointment procedures; attempts by politicians to undermine its credibility; and attempts by politicians to direct the work of the Commission threaten to undermine the independence of the Commission.

2.2.10. MALAWI - Malawi Human Rights Commission

The Malawi Human Rights Commission (MHRC) was created by the 1994 Constitution of Malawi\(^\text{24}\). The Human Rights Commission Act 1998 gives the Commission broad functions and powers and reinforces its legal independence and autonomy. The Act is a well-drafted law that gives the Commission broad powers to be effective and autonomous. Section 12 states that the “Commission shall be competent in every respect to protect and promote human rights in Malawi in the broadest sense possible and to investigate violations of human rights on its own motion or upon complaints received by any person, class of persons or body.” Section 15 gives the Commission broad powers to hear and obtain any necessary evidence, to conduct searches after obtaining a warrant issued by a magistrate, and to exercise unhindered authority to visit detention centre with or without notice.

In addition, section 15 of the Republic of Malawi Constitution recognises the capacity of the Malawi Human Rights Commission as a mechanism through which persons whose human rights have been violated can

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\(^{23}\) Article 59 of the Constitution of Kenya 2010

\(^{24}\) Articles 129-131 of the Malawi Constitution, 1994
access redress. The section provides that; “any person or group of persons with sufficient interest in the protection and enforcement of rights under this Chapter shall be entitled to the assistance of the courts, the Ombudsman, the Human Rights Commission and other organs of Government to ensure the promotion, protection and redress of grievance in respect of those rights”. Further, section 46 of the Constitution provides that, “Any person who claims that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled--(a) to make application to a competent court to enforce or protect such a right or freedom; and (b) to make application to the Ombudsman or the Human Rights Commission in order to secure such assistance or advice as he or she may reasonably require.

The law encourages the commissioners to “develop work relationships” with the NGO human rights sector and to foster cooperation with other government agencies on human rights issues. The commissioners can comment publicly on any human rights issue and make recommendations to the executive and legislative branch. Any person, including government employees, who interfere or obstruct the work of the Commission, can be subject to a fine and to imprisonment up to five years\textsuperscript{25}. The Commission has powers under section 15 to hear and obtain any evidence and to attach and remove documents, to conduct searches after obtaining a warrant from a magistrate. The MHRC has power to conduct administrative proceedings concerning cases including those of torture and other ill-treatment. It holds hearings and makes recommendations accordingly. Amongst its powers are the powers to promote conciliation where possible and powers to recommend cases to the DPP for prosecution.

The Commission has an elaborate Complaints Manual for the management of complaints and prescribes some timelines for handling complaints. The complaints handling manual, for examples, requires that a decision to admit or refer a complaint must be taken within 14 working days from the date of registration. Complaints that require urgent action are dealt with without going through the Complaints Handling Committee. Complaints/violations alleging facts which are 36 months old or more are not admissible unless the Chairperson of the Commission approves the admission upon an application by the complainant.

The MHRC’s complaints system has made it possible for the Commission to handle and resolve many complaints annually since 1998. In addition to the normal complaints handling process the Commission conducts public inquiries to deal with systemic human rights violations. In the last three years the Commission has conducted five public inquiries. One other important method that MHRC uses to resolve complaints is litigation including public interest litigation which the Commission resorts to in order to seek solutions for some complaints that come before it.

**Weaknesses:** - The MHRC has no legal powers to enforce the outcome of its investigations. The lack of enforcement powers is a weakness that has in some instances undermined the Commission’s efforts to hold perpetrators accountable. This lack of enforcement powers is compounded by the fact that the Annual Reports of the Commission to Parliament have not been debated by Parliament which would hold the concerned authorities accountable for failure to implement some of the recommendations of the Commission. Notwithstanding the lack of direct enforcement powers the MHRC has been successful in securing compliance with many of its recommendations. The Commission reports that there has been a significant rate of compliance with its recommendations on complaints.

\textsuperscript{25} Section 34 of the MHRC Act
2.2.11. MAURITANIA: La Commission Nationale des Droits de l’Homme

The Commission Nationale des Droits de l’Homme (CNDH) (National Commission for Human Rights) was created on July 12, 2006 by decree no. 2006/015 of 12 July 2006 and later repealed by Act 2010-031 of July 20, 2010. The CNDH is entrenched in the constitution by law no. 015-2012 of 20 March 2012. It is therefore a National consultative institution for promotion and protection of human rights with a national jurisdiction (Article 1 of the decree).

The CNDH can receive complaints on human rights violations from victims either victims or human rights organizations. The CNDH relies on national laws as well as international conventions to determine its decision on a violation. This includes, receiving a complaint, prior to the procedures that determine the admissibility of a complaint and its management.

The CNDH has no judicial power, however, it can examine all human rights violations either reported or brought to its attention and can take appropriate measures in consultation and in collaboration with competent authorities on the matter. (Article 5 of Law 2010-031). In practice, the CNDH receives complaints on human rights violations. In order to resolve these complaints, the CNDH conducts field visits to investigate after which recommendations to end the violation are made to the concerned authorities. The report is also posted on the CNDH’s website: www.cndh.mr

In addition, the CNDH is a National Preventive Mechanisms with Mauritania having ratified the Optional Protocol to the Convention Against Torture (OPCAT) on 3rd October 2012. The CNDH is also an advisory body but has the mandate to receive and investigate complaints of human rights violations, monitor human compliance with human rights standards, mediate and make recommendations to government on the observance of human rights.

Weakness: The CNDH has no complaints handling manual. The existing legal framework does not provide the Commission with powers to enforce its decisions on complaints. Also it does not empower the Commission with any specific method by which the Commission may seek enforcement of its recommendations.

2.2.12 MAURITIUS - National Human Rights Commission

The National Human Rights Commission (MNHRC) was established under the Protection of Human Rights Act 1998, but it did not commence operation until 2001. Its complaints mandate empowers it to receive and conduct investigations into complaints on its own volition or following a complaint of human rights violations against a public official. By law the Commission’s first line of resolving complaints is to seek conciliation, but where conciliation fails the Commission sends a written report to the relevant government institution such as the Director of Public Prosecution’s (DPP’s) office and the Discipline Forces Services Commission. The National Human Rights Commission is also a National Preventive Mechanisms with Mauritius having ratified the Optional Protocol to the Convention against Torture (OPCAT) on 21st June 2005.

Weaknesses: Apart from expecting a feedback on its written report the Commission has no powers to enforce its recommendations and to provide legal assistance to victims of human rights violations. The Commission also indicated that it has financial and human resource constraints which have affected its capacity to handle complaints. It was also not clear from its response whether it has developed a complaints
system such as having in place complaints rules of procedure or manual, electronic complaints management system etc.

2.2.13. MOROCCO - Conseil National des Droits de l’Homme

The Moroccan National Council for Human Rights (CNDH) is established by Royal Decree- Dahir No. 1.1.19 of 1 March 2011 as an “independent institution to deal with all matters relating to the defence and protection of human rights and freedoms, guarantee their enjoyment and promotion, and safeguard the dignity, rights and freedoms of citizens, collectively and individually, in strict compliance with the relevant national and universal benchmarks.”

The CNDH using powers vested in it under Article 4 of the Decree monitors violations of human rights in all regions of the Kingdom of Morocco and to that end it conducts investigations and enquiries into human rights violations irrespective of their nature of origin.

The CNDH can look into all human rights violations either on its own initiative or following a complaint by the parties concerned. Upon conclusion of its investigations or enquiries it draws up reports on its findings and or results of its monitoring or investigations and inquiries which are then submitted to relevant authorities along with its recommendations for addressing any violation established to have occurred. The founding law (Article 5) states that the Council shall examine, handle and follow up on complaints, and shall submit its recommendations to the relevant authorities.

The CNDH has a Monitoring and Protection Department. This department is in charge of: observing and monitoring the situation of human rights locally, regionally and nationally; conducting visits to penitentiary institutions, child protection facilities, mental health and psychological treatment centres and detention centres for foreigners in illegal situation; and monitoring implementation of relevant legislations.

The Council has regional Commissions in charge of protecting human rights at the regional level. The staff members working on the protection mandate are divided between the headquarters and the 13 regional commissions. The Protection Department includes senior staff with strong experience in complaint handling, monitoring of detention conditions, and reporting. There are also young professionals whose capacities need to be developed further, especially with the introduction of new redress mechanisms to be discharged by the Department. The mechanisms include the national preventive mechanism against torture and redress mechanisms on the rights of children, persons with disabilities and against discrimination. Generally, the skills required for the protection staff related to investigation techniques, reporting, mediation and human rights academic knowledge do exist.

Generally there is need to enhance the skills required for the protection staff related to investigation techniques, reporting, mediation and human rights academic knowledge. The CNDH training centre was in the process of arranging for the training in these areas. The CNDH is also benefiting from a capacity building twinning project with other European NHRI s, financed by EU. The staff members also receive trainings on human rights organized inside the country (e.g. at the International University of Rabat) and abroad (e.g. at the National Administration School of Paris).

26. Article 1 Dahir No. 1.1.19 of 1 March 2011
The CNDH has developed a complaint system, which facilitates complaint receiving and handling at the level of the central office, and 13 regional offices. Complaints can also be submitted to the 25 or 30 regional commissioners (the number differs from one regional commission to another), who all come from various geographical locations in the same region. Complaints can be filed in person or submitted by fax, telephone, email post or registered mail.

A draft complaint and investigation manual was being developed. There is however a general Rules of Procedures which among other things provides procedures for receiving complaints, and their admissibility criteria, the procedure for hearing persons and parties concerned and the terms and conditions of awarding damages.

Under the Rules of Procedures the President of CNDH refers all local and regional complaints of human rights violations which he receives to the regional commissions for investigations and issuing of conclusions and recommendations on the complaints. The CNDH can receive cases from national and international human rights bodies and organizations, administrations. The Secretary General of the Council has the responsibility of recording all referrals that the Council receives to relevant regional commissions for investigations.

The CNDH has an operational electronic system, with a centralized database accessible to all regional commissions. While there have been challenges in mastering the system and technical problems related to data entry, the system has been useful and has helped in the classification of complaints on the basis of gender and their geographical location. The electronic system is also under revision to be able to disaggregate complaints on the basis of age, type of violation, type of rights, etc.

The CNDH receives very many complaints annually indicating that its existence and services are significantly well known in the country. From March 2011 to December 31, 2013, a total of 41,704 complaints and requests were received by the Council. Out of 7,987 complaints received in 2014, only 857 complaints were resolved that year indicating that there are challenges in resolving complaints in a timely manner. The challenges that affected the speedy resolution of complaints results from the slow and vague response from government ministries and departments to inquiries from the Council.

Weaknesses: The weaknesses of CNDH’s complaints system are mainly the following: the slow resolution of complaints due to factors that include slow response by government ministries and departments to inquiries from the Council; the Council has the challenge of handling complaints in a timely manner; The Council’s complaints system lacks standardized procedures, supporting manuals to classify complaints which are yet to be developed; The Council also faces the challenge of handling the large volume of complaints most of which do not fall within its jurisdiction and therefore indicating a weak awareness of the Council’s true mandate and the need to clearly define the Council’s admissibility criteria beyond what is in Article 54 of its rules of Procedure; And the fact that the Council has no enforcement mechanisms and can only issue recommendations following investigations could be a weaknesses unless the Government is fully committed to respecting recommendations of the Council.

27. Chapter Four of the Rules of Procedures of 1st November 2011
2.2.14. MOZAMBIQUE - Mozambique National Human Rights Commission – Comission Nacional dos Direitos Humanos (CNDH)

The Mozambique National Human Rights Commission / Comissao Nacional dos Direitos Humanos (CNDH) derives its mandate under Law No 33/2009. The Commission is young its first commissioners having been sworn in September 2012. The CNDH is a legal body with adequate powers to implement its mandate. It has the mandate to oversee the promotion and protection of human rights in the country. It can receive and investigate individual complaints and provide advice to victims and issue recommendations. It has powers to summon people to answer questions. The Commission is also the National Preventive Mechanisms the country having ratified the OPCAT on 1st July 2014. It can refer cases of a criminal nature to the Attorney General's office for further investigations. It has powers to conduct administrative proceedings on complaints and make recommendations. It can also provide legal assistance to victims of human rights violations.

Weaknesses: The Commission has no power to enforce the implementation of any of its decisions and recommendations. The law recommends that public authorities cooperate with the Commission, but there is no duty to comply with the Commission's decisions. While CNDH has powers to conduct administrative proceedings on complaints its decisions on the complaints is limited to making recommendations. The Commission can only petition the Supreme Court or appeal to the President to seek implementation of its recommendations. The absence of a sure mechanism that ensures respect and implementation of decisions on complaints limits the impact of the Commission's complaints mandate. There was no sufficient information to assess whether the Commission has a well-developed complaints system.

2.2.15. NIGERIA – National Human Rights Commission of Nigeria

The National Human Rights Commission (NHRC) was established by the National Human Rights Commission Act (NHRC Act) 1995 as amended by the NHRC Act 2010 to promote and protect human rights. The Commission is mandated to monitor, investigate and assist victims of human rights violations and seek appropriate redress and remedies on their behalf. The Commission receives complaints in writing or orally, via email, text messages or through the online submission. The Commission also takes up cases of human rights violations on its own motion (suomotu), and has also made arrangements with the Nigeria Postal Services to collect petitions free from petitioners and transmit them to the Commission which in turn pays for the postal service. Investigations are carried out on the complaint through- on the spot investigation, communication, invitation, meetings and interviews. The Commission has powers to mediate or conciliate a complaint.

The NHRC's investigations are guided by the Standing Orders and Rules of Procedure of the National Human Rights Commission of Nigeria which is prescribed as part of the NHRC Act. These Standing Orders and Rules make provision for matters that include the working language of the Commission, summons, interviews, tape recording of meetings, use of interpreters and translation if required. The services of the Commission are free of charge. The decisions made by the Commission on complaints are final and its awards are binding on the parties.

2.2.16. RWANDA – National Commission for Human Rights

The National Commission for Human Rights was established by Law No. 04/99 of 12/3/1999 and was
confirmed by the Constitution of 2003 as revised in 2015. This Law was amended by Law No. 37/2002 of 31/12/2002 which in turn was amended by the Law No. 30/2007 of 6/7/2007. In order to better clarify the functions and powers of the Commission, and in order to comply with the requirements of the Paris Principles governing National Human Rights Institutions, this law was in turn revised by the Law No. 19/2013 of 25/3/2013 to determine missions, organization and functioning of the National Commission for Human Rights.

Article 42 of the Constitution of the Republic of Rwanda of 2003 as amended in 2015 stipulates that the promotion of human rights is a responsibility of the State, and this responsibility is particularly exercised by the National Commission for Human Rights. The Law No. 19/2013 of 25/03/2013 that determined the missions, organisation and functioning of the National Commission for Human Rights provided that the overall mission of the Commission shall be to promote and protect Human Rights. Under its article 3, the Commission shall be independent in fulfilling its mission and shall not be subject to any instructions from any other organ.

Regarding the protection of human rights, Article 6 gives the following mandate to the Commission namely it can: receive, examine and investigate complaints relating to Human Rights violations; examine and investigate Human Rights violations in Rwanda committed by State organs; examine and investigate abuse of powers by those who work in the public service, associations and by individuals; carry out visits to places of detention with the purpose of inspecting whether the rights of detainees are respected and urge relevant authorities to address identified cases of violation of the rights of detainees; particularly monitor respect for the rights of the child, women, persons with disabilities, people living with HIV/AIDS, refugees, migrant workers and members of their families and elderly; and it can monitor respect for Human Rights during elections process and submit report to relevant organs.

The law (Articles 4 to 6 of Law No 19/2013) gives the Commission adequate powers to examine and conduct investigations on alleged human rights abuse or violations. It has the following powers namely the power to: receive and consider testimonies on Human Rights violations; have access to any place where human rights violations are alleged or reported to have been or is being committed including places of detention; contact, interrogate and seek explanations from any person likely to have evidence, information, responsibility and expertise necessary for the Commission’s investigations; have access to documents, consult them on the spot or get their copies as well as any other document required by the Commission for its investigations on condition that they are returned to owners within a period not exceeding three (3) months; conduct mediation and conciliation between parties in a complaint; request relevant organs to unconditionally restore the rights of any person where his/her rights have been violated; request relevant organs to bring to justice any person having committed offences related to the violation of Human Rights.

Besides the above powers the law gives Commissioners permanent judicial police powers throughout the territory of Rwanda while discharging their duties. If deemed necessary, a member of staff of the Commission may be given judicial police powers by a competent authority upon request by the Chairperson of the Commission. Persons summoned by the Commission are compelled by law to appear before the Commission and can be prosecuted if they fail to do so. Importantly the Commission has powers to file legal proceedings in civil, commercial, labour and administrative matters to seek redress for violation of human rights provided by the Constitution, international treaties ratified by Rwanda and other laws. In that regard, the Chairperson of the Commission may request the relevant authority to authorize an employee of the
Commission to represent the Commission in court. The Commission may also be represented in Court by a counsel of its choice (Articles 8 & 9).

The Commission may issue penalties as provided under Article 29 of the law which states that “Any person who jeopardises the responsibilities and the powers of the Commission referred to in articles 4, 9 and 10 of this Law shall be liable to an imprisonment from one to two (2) months and a fine from fifty thousand (50,000) to one hundred thousand (100,000) Rwanda Francs or any of those penalties.” In addition, the Commission is not subject to any time limitation regarding any matter under its investigations in order to discover the truth and enforce the law.28

The Commission currently has no complaints handling manual. The internal rules of procedure however describe in sufficient detail the procedures for handling complaints.

2.2.17. SENEGAL - Comité Sénégalais des Droits de l’Homme

The Comité Sénégalais des Droits de l’Homme (CSDH) (the Senegalese Human Rights Committee) was established by Law No. 97-04. The 1997 law defines the CSDH as an “independent institution of consultation, observation, evaluation, dialogue, concertation and proposals” in matters of human rights. The mandate of the CSDH includes promotion and protection of human rights, as well as reporting on human rights conditions in the country.29 With respect to protection, broadly viewed, the CSDH can act on individual cases as well as broader issues. The CSDH must take action when it becomes aware of human rights violations, independently or is informed of them by the authorities; it may “draw the attention” of public authorities to violations of human rights and propose solutions. The CSDH may also issue opinions or recommendations on all matters relevant to human rights, including “laws, regulations or administrative practices”.

The Senegalese Committee for Human Rights (CSDH) has a complaints mandate. The Committee acts on allegations of human rights violations that are brought to its attention or those it becomes aware of at its own initiative. It has Committees that process and conduct mediations on complaints. If a complaint is complex the Committee can collect more information about it after which it can conduct mediation or refer it to another institution. The CSDH is also a forum for mediating disputes and or relations between civil society and the government on human rights related issues. The law guarantees also transparency and grants broad discretion to the CSDH in choosing its priorities and the cases on which it will focus. All its recommendations and opinions are required to be made public. Its annual report, which has included all the internal communications and notes of meetings, is also published.

**Weakness:** The weakest aspect of the CSDH is the absence of investigative powers or formal role in the review of laws. There is no automatic procedure by which the CSDH is consulted during the process of drafting laws that implicate human rights. The absence of express powers also affects the CSDH’s role in pursuing its mandate in respect of individual violations. The law calls on it to take action in the case of violations, but there is no clear indication of action it can take, other than to highlight the abuse through private or public communication. There are no express powers of investigation, including for example, the right to obtain documents or question officials. The assumption is that the CSDH will serve as a reconciliatory forum for settling problems amicably.

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28. Article 30 of N° 30/2007
29. Article 2 of the CSDH Law No 97-04
2.2.18 SIERRA LEONE - Human Rights Commission of Sierra Leone

The Human Rights Commission of Sierra Leone (HRCSL) was established by Act No. 9 of 2004, with a mandate to protect and promote human rights in Sierra Leone. The HRCSL can receive, investigate and conduct hearings on complaints of human rights violations. Under its constitutive Act, the Commission can initiate investigations or inquiries into human rights violations that have come to its notice. The HRCSL has an elaborate complaints handling procedure set out in the Human Rights Commission of Sierra Leone (Complaints, Investigations and Inquiries) Rules 2008. The Rules provide comprehensive procedures for receiving, investigations, and formal hearings by a tribunal and for conducting public inquiry into systemic violations of human rights. The Rules of Procedure also allows ADR mechanisms including conciliation, mediation, negotiation and arbitration. In addition to the Rules of Procedure the Commission has developed a very detailed Complaints Handling Manual which provides guidance on what to do at every stage of the complaints process as stipulated in the Rules of Procedure. The HRCSL has a well written and easy to understand complaints handling manual and therefore a very useful guide for the application of the Complaints, Investigations and Inquiries Rules of the Commission.

The procedure at hearings is less formal. The rules of operation are relaxed so as to increase the Commission’s efficiency. Parties without legal representation are assisted by Counsel for the Commission to prepare for their cases. The Commission also uses public inquiries to investigate systemic human rights violations to identify underlying causes of human rights violations that cannot be addressed case by case. It has an elaborate Inquiry Rules of Procedure that guides the Commission in conducting public inquiries.

The HRCSL has developed the Referral Partnership Forum. A Referral Partnership Policy and it terms of reference has been developed together with a comprehensive list of Ministries, Departments and Agencies to which cases may be referred. There is also a quarterly referral partnership meeting held to follow-up on cases referred.

The HRCSL has also established an electronic case management system named ‘Go Live’, which is an online application for managing information about human rights violation. The system allows complaints to be logged, enables easy management of case material, provides templates for correspondence and sets reminders for follow up.

Weaknesses: -The Commission does not have the power to enforce its decisions. The electronic complaints system is not operational. The HRCSL also experiences financial constraints and backlog of cases in its complaints system.

2.2.19. SOUTH AFRICA - South African Human Rights Commission

The South African Constitution provides, over and above the traditional structures like the judiciary and so forth, the establishment of statutory institutions that strengthen constitutional democracy in South Africa. The South African Human Rights Commission (SAHRC) is one of these institutions. In terms of the Constitution, these bodies are independent and subject only to the Constitution and the law. They are required by the Constitution to be impartial and must exercise their powers and perform their functions

30. Section 2 (a) of the Human Rights Commission of Sierra Leone Act
without fear, favour or prejudice. These institutions are also only accountable to Parliament (the National Assembly) and report their activities and the performance to Parliament once a year.

The SAHRC, as a national human rights institution to promote and protect human rights, was established along the guidelines provided by the Paris Principles. The constitutional functions of the SAHRC are: to promote respect for human rights and a culture of human rights; to promote the protection, development and attainment of human rights; and to monitor and assess the observance of human rights in South Africa. In order to carry out these functions, the SAHRC has the following powers: to investigate and to report on the observation of human rights; to take steps to secure appropriate redress where human rights have been violated; to carry out research; and to educate the population on human rights. In addition to these functions, the Commission has specific constitutional powers to monitor and assess the realisation of social and economic rights. In this regard, the Commission is obliged to require from relevant organs of state each year, measures taken by such organs towards the realisation of rights in the Bill of Rights pertaining housing, health care, food, water, social security, education and the environment.

The Commission also has additional powers, duties and functions in terms of the South African Human Rights Commission Act, 40 of 2013. Some of these are: to develop and conduct information programmes to foster public understanding of the South African Human Rights Commission Act, the Bill of Rights and the role and activities of the Commission; to consider recommendations, suggestions and requests concerning fundamental human rights it may receive any source; to bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or group or class of persons; to endeavour to resolve any dispute or rectify any act or omission emanating from or constituting a violation of or threat to any fundamental right by mediation, conciliation or negotiation; to conduct or cause to be conducted any investigation on any alleged violation of fundamental rights either on its own initiative or on receipt of a complaint; and to require any person in relation to any investigation to appear before it and provide necessary oral and documentary evidence relevant to the investigation. In this regard the Commission has powers to enter, search any premise and seize any material connected to any investigation being conducted by the Commission.

The Constitutive laws provide the Commission adequate powers to support the implementation of its functions. It has powers to conduct administrative proceedings and to access information, documents, or persons in relation to its investigations. On completion of investigations, the Commission may take several steps as it deems appropriate: The matter may be resolved through conciliation or mediation; concluded by submission of a report after a hearing; or it may institute legal proceedings in its own name or on behalf of a person or group or class of persons in a competent court or tribunal. The Commission implements programmes for investigating complaints alleging human rights violations. It can also initiate investigations on a situation even where there is no complaint. It can conduct public hearings on human rights situations of public interest.

The SAHRC has a comprehensive complaint handling procedures which sets out procedures for complaints handling spelling out procedures on receiving complaints, investigations and formal hearings. The Procedures gives guidance on handling the different types of complaints and categories complaints into simple and complex cases. It also has an Electronic complaints management system (Flow centric”) which is based on the adopted Complaints Handling Procedure of SAHRC. It has a fully-fledged legal department which also handle complaints.

32. See section 7(1) (e) of the Human Rights Commission Act, & section 20(1) (f) of PEPUDA
Weaknesses: The Commission has no direct enforcement powers or mechanisms for its recommendations. It therefore relies on the fact that in terms of the South African Human Rights Commission Act, all organs of state are obliged to afford the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its duties and functions and thereby implement recommendations she makes on complaints. This challenge is however mitigated by the power given to the Commission to represent victims in court or competent tribunals. The requirement to go to court on behalf of a victim to enforce a decision has the effect of delaying access to redress and therefore negatively affects the right to effective remedy.

2.2.20. SOUTH SUDAN - South Sudan Human Rights Commission

The South Sudan Human Rights Commission (SSHRC) has a complaint mandate which is well spelt out in the Constitution and its constitutive Act of Parliament. It can investigate into allegations of human rights violations either on its initiative or upon receiving a complaint. It is vested with sufficient powers to investigate complaints namely power to summon persons, conduct interviews, search premises, and require production of documents, articles. It can also conduct systemic inquiries. The SSHRC can also conduct hearings and make decisions or recommendations. The NHRI has an elaborate complaints rules of procedure and rules for public inquiry. Like the HRCSL the SSHRC has designed a comprehensive complaint manual that explains every step of the complaints process and contains description of indicative acts that constitute violations of key human rights and freedoms.

Weaknesses: The Commission has no enforcement powers or mechanisms for enforcing its recommendations. It also has serious financial and human resource challenges with regard to complaints handling.

2.2.21. SUDAN - Advisory Council for Human Rights

The Advisory Council for Human Rights was created by presidential decree in 1994. It is advisory in nature but nevertheless responsible for all human rights activities in the country. The presidential decree states that the Advisory Council for Human Rights, in coordination with the competent state agencies, shall have the following functions and powers: provide advice and consultancy on human rights to the State; conduct the necessary human rights research and studies and reply to such queries as may be addressed to the State; require the necessary information and data from any State or other agency; participate in relevant local, regional, and international conferences and committees; organize and prepare for visits by individuals and organizations related to human rights in Sudan; and make international regulations necessary to regulate the business of the Advisory Council for Human Rights.

The role of the Advisory Council for Human Rights is further elaborated in the enabling legislation to ensure that the government meets its regional and international reporting requirements and to participate in the drafting of the country reports; to respond when allegations against the government are raised and to provide information to the international community about human rights concerns; and to follow up with cases of persons detained by the security forces to press for release or for charges to be brought. The Advisory Council for Human Rights is divided into eight thematic subcommittees which include; places of detention; women’s rights; children’s rights; religious tolerance; slavery/disappearances; peaceful assembly; judicial review; and freedom of speech.

33. The South Sudan Human Rights Commission Act, 2009, Section 7 (1) (b)
Weaknesses: The Commission plays more of an advisory role and lacks the mandate to receive and investigate complaints of human rights violations, and its operations are not in line with the Paris Principles.

2.2.22. SWAZILAND- Swaziland Commission on Human Rights and Public Administration

The Swaziland Commission on Human Rights and Public Administration (SCHRPA) was established in 2009 and derives its mandate under Part II of the Constitution of Swaziland. Its primary mandate is to investigate complaints of alleged violations of fundamental rights and freedoms. The Commission may on its own initiative, by request of a member of parliament or upon receiving a complaint investigate individual complaints. The SCHRPA has powers to interview complainants and subpoena respondents to a hearing. It may where necessary issue a subpoena for the production of any documents required for its investigations, in accordance with section 165(1) (a) of the constitution. The Commission makes orders and directions on the completion of investigations, which may include referring the matter to the DPP for appropriate action and publicising its findings and recommendations.

Weaknesses: The SCHRPA did not respond to the survey but a search on the internet indicates it is not fully established because of financial and human resource constraints. It has no staff for its operations. It has no organizational structure except a proposed one. It has no complaints system in place in terms of rules of procedure or complaints manual. It however has a strategic plan developed by the UNDP in 2013 which stresses the need to establish a fully functional SCHRPA.


2.2.23. TANZANIA - Commission for Human Rights and Good Governance

The Commission for Human Rights and Good Governance (CHRAGG) was established under Article 129(1) of the Constitution and operationalized by the Commission for Human Rights and Good Governance Act 7/2001. It has a wide complaints mandate. The Commission is mandated to receive complaints of violation of human rights and conduct enquiries into matters involving violation of human rights and contravention of the principles of administrative justice. It is also required to investigate or inquire into complaints concerning practices or actions by persons holding office in the service of the government, public authorities or other public bodies, including private institutions and private individuals where those complaints allege abuse of power, injustice, unfair treatment of any person, whether complainant or not, in the exercise of their official duties.

Computerized Case Management System (CMS)

CHRAGG has installed a computerized Case Management System (CMS) in order to expedite complaints handling. Under this system, a data base was created to expedite complaint processing. The system keeps the complaint documents and other records in an easily retrievable way by any authorized person (CHRAGG staff), facilitates quick record searching, automates file creation, and helps in checking the status of a complaint by any CHRAGG staff in a speedy and accurate manner.
SMS for Human Rights Program

In order to facilitate lodging of complaints to the Commission, on July 2013 CHRAGG through the support from the Swedish Program for Information and Communication Technology (ICT) in Developing Regions (SPIDER) launched SMS for Human Rights System. The SMS for Human Rights Program enables many people specifically from rural areas to easily lodge complaints by sending a short message through a mobile phone to the CHRAGG. The SMS web-based reporting tool of the Commission captures data through the SMS stock count messages available in a secure reporting website. The system has been installed and tested whereby the Commission’s staff have started using the SMS parallel to the ongoing Case Management System in receiving and registering complaints. The response from the public is impressive.

When necessary the Commission may institute proceedings in court designed to terminate activities involving the violation of human rights or redress the right or rights so violated, or the contravention of the principles of administrative justice. The CHRAGG Act further provides that the general public, employees, public and private institutions, political parties, the media, socially disadvantaged groups, prisoners and people in detention facilities may lodge complaints with the Commission and to seek legal advice. The Commission’s first line of action on complaints is often to resolution of complaints handled through ADR including mediation, conciliation and negotiation. The Commission has a complaints handling manual which provides for the complaints handling procedures, the inquiry procedures and the procedures of mediation, conciliation and negotiation.

Weaknesses: The Commission faces funding challenges to effectively handle its wide mandate of human rights and mal-administration issues. Due to the wide mandate, the Commission is also faced with issues of under staffing and limited expertise in the diverse fields of human rights, maladministration. The wide mandate also requires high funding to effectively implement the various mandates.

2.2.24. TOGO - Commission Nationale des Droits de l’Homme

The Commission Nationale des Droits de l’Homme (CNDH) (National Commission for Human Rights of Togo) was established by Act Parliament Law No. 87-09 of 9 June 1987 as a national mechanism for the promotion and protection of human rights. It was later promoted to be one of the public institutions of the Republic of Togo by the Constitution of 14 October 1992, which was revised by the Organic Law No. 96-12 of 11 December 1996, and later amended and supplemented by the enabling Law No. 2005-004 of February 9, 2005.

Togo ratified the Convention against Torture in 1987 and its Optional Protocol on 20 July, 2010 and has been designated as a National Mechanism for the Prevention of Torture (NPM). The CNDH was designated by the government to host this mechanism. In this perspective, a new enabling law of the CNDH was adopted by the National Assembly on 11 March, 2016. The CNDH of Togo has a broad mandate to promote and protect human rights as well as prevent torture. The complaints handling procedure forms part of the enabling Law of the CNDH. Thus, anyone who considers that their right has been violated may submit their complaint to the CNDH. Complaints can also be received from a third party or a non-governmental organization.

Upon receiving the complaint, the CNDH sets up its Executive Board meeting within forty-eight (48) hours. But if the violation is found to be grave and continuous, the Executive Board shall meet without delay. If it

considers that the conditions of admissibility are met, a special rapporteur will be selected among the board members for the purpose of setting up a public inquiry. The Special Rapporteur together with the concerned party explores the best avenues and means to end the violation. The rapporteur may then appeal to the concerned authority to end the violation and make recommendations for remedy where applicable. The rapporteur shall within fifteen (15) days submit a report to the CNDH detailing the procedures followed, the decision and recommendations where applicable.

If the violation persists, the CNDH shall immediately hold a meeting to review the Special Rapporteur’s report and explore all avenues to end the violation including calling on; the President of the National Assembly who shall in turn report to the National Assembly; or the head of state; and the courts. Where the measures taken under the law prove ineffective; the CNDH then immediately makes the content of the report public.

Weaknesses: There is no complaint handling manual in place and there was no sufficient information to determine the operations of the institution in complaints handling. The Commission did not respond to the survey but from its Act and manual it has no direct enforcement powers for its decisions on complaints.

2.2.25. UGANDA - Uganda Human Rights Commission

The Uganda Human Rights Commission (UHRC) is established by Article 51 of the 1995 Constitution of the Republic of Uganda and operationalized by the Uganda Human Rights Act, 1997. The Commission has a mandate to receive and investigate complaints on its own initiative or upon receiving of a complaint. Any person, (whether victim or not), body or organization may lodge a complaint with the Commission. The UHRC is entrusted with a wide variety of functions, including the ability to initiate investigations of human rights violations; to have access to and monitor detention conditions; to conduct educational and other activities to promote human rights awareness; and to monitor and make recommendations for government compliance with its international obligations.

The UHRC is empowered to subpoena any witness or document, order the release of any detained person, and recommend payment or compensation, or any other legal remedy after it finds the existence of a human rights abuse. However, the Commission cannot investigate any matters pending before a court of law, matters relating to Uganda’s dealings with other countries or international organizations, or matters relating to the prerogative of mercy. The powers, functions, and structure of the UHRC are implemented in greater detail by the Uganda Human Rights Commission Act passed by parliament in 1997. Unlike most of the ANHRIs the UHRC has a permanent Tribunal that conducts hearings on complaints that are referred to it following investigations and has power to make binding decisions. The UHRC Act gives the Commission powers to issue summons or orders requiring the production of documents, articles and the attendance of any authority before the Commission. No fees are charged for lodging complaints.

The UHRC has developed a comprehensive complaints handling manual which provides details, steps and timeframes for the complaints handling processes and mediations, as well as an investigators’ manual which provides for the process and methods of conducting investigations. According to the Manual complaints are received by walk-in, letters, emails, fax or phone call, toll-free lines, through mobile complaints clinics, community “barazas” (meetings) or through referrals from other organizations. The Manual deals in-depth on issues likely to occur in the complaints process and has included possible acts that violate the various human rights and fundamental freedoms to guide officials handling complaints.
Weaknesses: - The Commission faces challenges of a backlog and unpaid awards by Government, which means that the victims do not get the desired timely redress despite the Commission orders for compensation. The binding decisions of the Commission can however be enforced by a successful party in the same way a court decision is enforced. The challenge with this is that most of the decisions are against the Government which in practice does not give priority in complying with these decisions. Government property cannot by law be attached in settlement of court or tribunal decisions.

2.2.26. ZAMBIA- Zambia Human Rights Commission (ZHRC)

The Zambia Human Rights Commission (ZHRC) is established under Article 230(1) of the Zambian Constitution as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 which is a predecessor to Article 125 of the Constitution of Zambia as amended in 1996. According to Article 230 (2) the Human Rights Commission has the mandate of ensuring that the Bill of Rights is upheld and protected; to investigate and report on the observance of rights and freedoms; to take necessary steps to secure appropriate redress where rights and freedoms are violated; to endeavour to resolve a dispute through negotiation, mediation or conciliation; to carry out research on rights and freedoms and related matters and to conduct civic education on rights and freedoms. The Zambia Human Rights Commission’s autonomy, functions and powers are spelt out by the Constitution and the Human Rights Commission Act Chapter 48 of the Laws of Zambia. It is a hybrid institution dealing with human rights and administrative justice. Its functions include investigation of human rights violations and maladministration. The Commission has powers to conduct investigations on allegations of human rights violations. It receives individual complaints. The NHRI also has powers to issue summons or orders requiring the attendance of any authority before the Commission. The mandate of the Commission is broad. According to Section 9(a)-(f) of the Human Rights Commissions Act (1996), the commission's functions are to: investigate human rights violations; investigate any maladministration of justice; and propose effective measures to prevent human rights abuse. Its investigatory powers include the power to investigate any rights abuses on its own initiative or on receipt of a complaint. According to sections 10(2) and (3), the Commission is empowered to: “issue summons or orders requiring the attendance of any authority before the Commission.” The Commission also possesses powers to recommend the: release of a person from detention; the payment of compensation to a victim of human rights abuse. Under Section 13(1), the Commission may send written reports of its findings to the parties concerned; and may make such recommendations as it considers necessary to the appropriate authority.

The Commission has developed a complaints handling manual\textsuperscript{35}. The manual describes administrative procedures for dealing with lodged complaints and standardizes the complaints handling process. Under Chapter 15 of the manual it is provided that the complaints handling process must be completed within 6 months of receipt of a complaint except if it is referred to a public hearing. The manual also emphasizes confidentiality. If a complainant wishes his or her identity to remain confidential their wish shall be granted. The officer therefore shall not reflect personal particulars on the complaint form or divulge them to the respondent depending on the circumstances. The Manual further provides for the principles of investigative interviewing which emphasize considerate treatment of vulnerable persons such as minors, those with mental or physical disabilities or with learning difficulties.

Weaknesses: - The Commission has limited powers of enforcement after making public its findings. Instead, it can only make recommendations to the appropriate government agency. The appropriate authority is

required within thirty days from the date of such recommendation to make a report to the Commission, on any action taken by such authority to redress any human rights violation. Failure to abide by such recommendation is criminalised by Section 13 (3) of the Human Rights Commission Act Chapter 48 of the Laws of Zambia. A further weakness is lack of power to conduct administrative proceedings, or to provide legal representation to victims of human rights violations, although it can refer individuals to relevant institutions for legal redress.

2.2.27. ZIMBABWE - Zimbabwe Human Rights Commission (ZIMHRC)

The Zimbabwe Human Rights Commission (ZIMHRC) derives its mandate from the Constitution and Zimbabwe Human Rights Commission Act. Its functions includes promoting and protecting human rights, monitoring and assessing observance of human rights, investigation and handling of human rights complaints and securing appropriate redress for victims, including recommending the prosecution of violators of human rights, directing the Commissioner-General of Police to investigate cases of suspected criminal violations of human rights or freedoms and report back to the Commission. It investigates human rights complaints brought to the Commission by members of the public and on its own initiates investigations of any human rights abuses in the country. After investigating and concluding that there has been a human rights violation, the Commission can make recommendations it sees fit to redress the situation and also send this information to the Minister of Justice and the Legal Parliamentary Affairs.

The Commission has a Complaints and Investigations Unit fully charged with the responsibility of receiving and investigating human rights. Decisions on complaints are made in a meeting of commissioners who convene once a month to consider investigation reports. It has a Standard Operations Procedure which describes the steps for processing complaints. The Commission has also developed a comprehensive Complaints Manual that guide the management of complaints.

**Weaknesses:** The ZIMHRC is a new institution that is yet to develop full capacity to handle complaints effectively. It has inadequate staff and financial resources to support its complaints functions. The Commission has no effective system to receive complaints around the country as it is yet to establish field offices neither does it have a mobile complaints clinic. The current Act of the Commission compels it to report to the Minister of justice contrary to the Constitution which grants the Commission independence. Amendments are being pursued to have a law that conforms to the Constitution and the Paris Principles.

ZIMHRC lacks the power to enforce its decisions. It cannot even bring legal proceedings to enforce its findings on complaints.
CHAPTER III

ASSESSMENT OF THE COMPLAINTS HANDLING MANDATE, MANUALS AND RULES OF PROCEDURE OF ANHRIs

3.1 Introduction

The mandate to receive, investigate and resolve complaints about human rights violations is a demanding and challenging responsibility. It calls for organizational ability, determination, tact and efficiency in the method of work. It requires putting in place and implementing a complaints mechanism that will resolve complaints to the satisfaction of the parties and the general public. It is one mandate that can lead to loss of faith and credibility in a NHRI if not effectively executed.
3.2. Overall assessment of ANHRIs complaints system

3.2.1 Mandate to receive and investigate alleged human rights violations

In order to assess the complaints mandate of the ANHRIs they were asked to make available by email their legal framework. A search was also made online in an attempt to access some of the legal framework of the NHRI. Out of the 44 ANHRIs that constitute membership of the Network of African National Human Rights Institutions (NANHRI), it was not possible to obtain adequate information from 17 ANHRIs. Information was however obtained from 27 ANHRIs of which 21 of the NHRI have the mandate to receive and investigate complaints on human rights violations. It was not possible to determine whether the other 19 ANHRIs have or do not have a complaints mandate because they either did not respond to the survey or information on them was not sufficient to support a finding. Four ANHRIs have a complaints mandate without the power to conduct investigations.

The survey found that the Chad, Morocco and Niger NHRI do not have the legal mandate to investigate complaints of human rights violations. Interestingly though, the Chad NHRI has the mandate to mediate complaints but not the mandate to investigate complaints. Morocco and Niger NHRI also have more of monitoring and advisory roles on human rights issues.

![Chart I: Number of ANHRIs with and without complaints mandate](image)

![Chart II: Information received from various ANHRIs](image)
The assessment found that the legal framework of some ANHRIs give the institutions broad mandates and powers to receive and handle complaints against government institutions such as ministries, departments and agencies. Some can receive and investigate complaints against private bodies and private individuals. In addition, NHRIs such as that of Ghana, Uganda, Kenya, South-Africa, Sierra-Leone, South Sudan and Zambia allow persons or organizations who are not direct victims to file complaints (representative action) on behalf of victims of human rights violations. This is a positive good practice which can enhance the protection of human rights because it allows a NHRI to receive complaints or petitions from a broad range of parties, including from complainants who are not necessarily direct victims of violations. This practice serves to allow activists and organizations to pursue redress on behalf of victims who are not in a position to directly claim their rights for reasons that include lack of awareness by a victim of human rights violation.

In addition to being seized with the mandate to institute investigations into alleged human rights violations against both the state and non-state actors, many of them can initiate investigations into a human right issue even where a complaint has not been lodged on that particular issue.

3.2.2. Complaints Handling Manuals and Rules of Procedure

The Paris Principles require NHRIs to handle complaints from any person and obtain any information, documents or articles necessary for assessing complaints falling within their legal competence. To be able to manage, investigate and resolve complaints, a NHRI should have clearly defined systems and strategy and this should include well-defined rules of procedures or regulations or manuals that can not only guide but also govern the handling of complaints from the receiving to the resolution stage.

The system in place should be able to capture and analyse data including tracking the various stages of the complaints resolution process. A complaints system should also empower the NHRI to effectively engage with public prosecution offices to address criminal issues that may arise or be revealed by the complaints process. And where legally empowered they should develop the capacity to engage courts of law as parties to the suits or as amicus curiae. Last but not least NHRIs should be in position to secure effective remedy for victims through measures that include persuading and influencing state officials or respondents to implement any decisions or recommendations made on complaints, in the absence of enforcement powers.

Out of the 44 ANHRIs, the Burundi, Cameroon, Kenya, Malawi, Sierra-Leone, South-Africa, South-Sudan, Tanzania, Uganda, Zambia and Zimbabwe NHRIs have developed Complaints Handling Manuals. The Ghana and Togo NHRIs have detailed complaints procedure rules or regulations without Manuals. Kenya, Sierra-Leone, South Sudan and Tanzania have both Complaints Rules/regulations or procedures and Complaints Manuals that consist of explanations and guidance on issues related to complaints handling. Zimbabwe has a Complaints Manual without Rules of Procedures.
## Table II: ANHRIs with Manuals, Rules of procedures or both

<table>
<thead>
<tr>
<th>S/N</th>
<th>Country</th>
<th>NHRI</th>
<th>Existence of Manuals or rules of procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Algeria</td>
<td>Commission nationale consultative de promotion et de protection des droits de l'homme</td>
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</tr>
<tr>
<td>2</td>
<td>Burundi</td>
<td>Commission Nationale Indépendante des Droits de l'Homme</td>
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<tr>
<td>3</td>
<td>Cameroon</td>
<td>National Commission on Human Rights and Freedoms</td>
<td>Yes</td>
</tr>
<tr>
<td>4</td>
<td>Ethiopia</td>
<td>Ethiopian Human Rights Commission</td>
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<tr>
<td>5</td>
<td>Ghana</td>
<td>Commission on Human Rights and Administrative Justice</td>
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</tr>
<tr>
<td>6</td>
<td>Kenya</td>
<td>Kenya National Commission on Human Rights</td>
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<td>7</td>
<td>Malawi</td>
<td>Malawi Human Rights</td>
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<tr>
<td>8</td>
<td>Morocco</td>
<td>Commission National Council for Human Rights</td>
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<tr>
<td>9</td>
<td>Nigeria</td>
<td>National Human Rights Commission</td>
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<td>10</td>
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<tr>
<td>11</td>
<td>Sierra-Leone</td>
<td>Human Rights Commission of Sierra Leone</td>
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<td>12</td>
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<td>South Africa Human Rights Commission</td>
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<tr>
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<td>South Sudan Human Rights Commission</td>
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<td>14</td>
<td>Tanzania</td>
<td>Commission for Human Rights and Good</td>
<td>Yes</td>
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<tr>
<td>S/N</td>
<td>Country</td>
<td>NHRI</td>
<td>Existence of Manuals or rules of procedure</td>
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<tr>
<td>-----</td>
<td>----------------</td>
<td>-------------------------------------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>15</td>
<td>Togo</td>
<td>Commission Nationale des Droits de l’Homme</td>
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<td>16</td>
<td>Uganda</td>
<td>Uganda Human Rights Commission</td>
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<td>17</td>
<td>Zambia</td>
<td>Zambia Human Rights Commission</td>
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<tr>
<td>18</td>
<td>Zimbabwe</td>
<td>Zimbabwe Human Rights Commission</td>
<td>Yes</td>
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</tbody>
</table>

Table III: - ANHRIs with Manuals, Rules of procedures or both

<table>
<thead>
<tr>
<th>S/N</th>
<th>Country</th>
<th>NHRI</th>
<th>Existence of Manuals or rules of procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Egypt</td>
<td>The National Council for Human Rights Commision</td>
<td>No</td>
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<tr>
<td>2</td>
<td>Mauritania</td>
<td>Nationale des Droits de l’Homme</td>
<td>No</td>
</tr>
<tr>
<td>3</td>
<td>Mauritius</td>
<td>National Human Rights Commission</td>
<td>No</td>
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<tr>
<td>4</td>
<td>Mozambique</td>
<td>Mozambique Human Rights Commission</td>
<td>No</td>
</tr>
<tr>
<td>5</td>
<td>Senegal</td>
<td>Comité Sénégalais des Droits de l’Homme</td>
<td>No</td>
</tr>
<tr>
<td>6</td>
<td>Swaziland</td>
<td>National Human Rights Commission of Swaziland</td>
<td>No</td>
</tr>
</tbody>
</table>
3.2.3. Procedures for complaints handling

The survey determined that the Cameroon, Ghana, Kenya, Malawi, Sierra-Leone, South-Sudan, South-Africa, Tanzania, Togo, Uganda and Zambia have comprehensive and well defined complaints procedures/manuals which detail the complaints handling procedures and guide on various stages and steps to be taken when handling cases. The South African Human Rights Commission’s manual is exceptional because it defines procedures for handling different kinds of complaints. The Manual categorises complaints into Non-complex (simple), Complex, Exceptional and High risk matters and stipulates procedures to be followed when handling each category of complaint.

All the manuals and regulations reviewed provide for the admissibility criteria for complaints, clearly stating the complaints that can or cannot be admitted by each NHRI. They also provide procedures or methods for lodging complaints. According to the rules/manuals complaints can be lodged in writing or verbally, and in all cases, verbal complaints should be reduced to writing by the staff of the NHRIs. Complaints can also be received by telephone, walk-ins or by electronic means such as e-mail or social media. In addition to defining complaints lodging processes, the NHRIs of Zambia, Kenya, South Africa, South Sudan, Uganda, Ghana and Sierra Leone have developed investigation procedures, standard forms such as complaint forms, standard letters, appeal forms, forms for summons, referral forms and other standardized instructions for complaints handling. The manuals of these NHRIs also stipulate situations when complaints should be registered by the NHRI, mediated, or referred to another institution or body. The South Sudan Human Rights Commission’s complaints manual in particular provides useful explanations on each of the various steps of the complaints handling process and puts forward practical guidance on solutions to be applied on problems that may be encountered on each stage of the complaint process.

Ease of access to a NHRI’s complaints system by victims or would be complainants, is an important matter that should be addressed by all NHRIs. Access to the complaints system can be hampered by factors that include distance to the known offices of a NHRI, or lack to an electronic assess. To mitigate such a challenge and to increase accessibility to its complaints function the Uganda Human Rights Commission has been implementing a mobile complaints handling mechanism where its staff move from district to district or village to village around the country, sensitizing communities on their rights and thereafter registering complaints on human rights violations that may be raised. The mobile system is reported to have been effective in creating awareness about the UHRC. It has been useful to rural communities who are sometimes intimidated by formal court-like system or not keen on travelling long distances to urban centres to lodge their complaints due to financial constraints. The UHRC has indicated that it is able to reach more people in a short time and with limited resources using the mobile complaints handling mechanism.

3.2.4. Case-flow designs

A complaints system should incorporate a case flow design that indicates and describes the various stages a complaint goes through. The case flow designs should be simple and un-complicated processes for receiving and investigating cases. The ANHRIs with a complaints mandate all had a case flow design reflected in their rules of procedure and the design covered the following:

- Receiving of complaints and the determination on jurisdiction
- Preliminary decisions as to whether the NHRI has jurisdiction to handle the complaint;
- Referral of cases outside the NHRI’s mandate or jurisdiction

- Early resolution through mediation, conciliation and negotiations;
- Investigation of cases especially the more complex matters and reports prepared;
- Decision-making and recommendations to relevant authorities, bodies or institutions;

The following diagram is illustrative of the case flow design derived from the complaints manuals or procedures of the ANHRI that have developed procedures and manuals for handling complaints.

**Chart III: - illustrating the complaints handling processes**

The assessment identified concerns about the efficiency of the complaints handling system and noted a number of common factors that affect the efficiency at the three major stages of the complaint handling system. The chart below shows the identified causes of delay or inefficiencies at various levels of the complaint handling system.

**Chart IV: - illustrating challenges at various levels of the complaints handling processes**
3.2.5. Identification of human rights Violations

Identification of human rights violations is a key aspect in complaints handling. To correctly admit a complaint and investigate it properly it is of critical importance that officers handling complaints have a proper understanding of human rights standards applicable to facts narrated in a complaint. The officers need good guidance on analysis of violations of particular rights. One way of achieving this is for a NHRI to incorporate into a complaint manual indicative conducts that constitute violations of the major human rights standards and the ingredients of each violation.

Of the manuals that were availed for review only the manuals of the Human Rights Commission of Sierra Leone, the South Sudan Human Rights Commission, the South African Human Rights Commission and Uganda Human Rights Commission provides guidance on the identification of human rights violations. These NHRIs manuals described in reasonable detail the ingredients of each of the many human rights susceptible to violation and gave a description of indicative acts that violate these rights. This innovation is said to be very useful in helping the concerned staff to have a common understanding of these rights as well as in identifying and interpretation of violations.

3.2.6. Procedure for investigating human rights violations

Every investigation attempts to uncover the truth of a specific event or incident. Most investigations are initiated in response to the receipt of an allegation that some wrongdoing affecting someone’s human rights has occurred. As such, human rights investigations are intended to collect evidence to verify whether or not a violation has taken place. Each allegation poses key questions which the investigator should attempt to find an answer through thorough investigations. These questions include “what, who, when, where, why and how”. In this regard therefore, the assessment noted that while most ANHRIs have the legal mandate to receive and investigate complaints, the legal frameworks do not provide regulations that stipulate the conduct of investigations.

A few NHRIs, using the power granted to them to make regulations, notably the Kenyan, South-African, Sierra-Leonean, Ugandan and Cameroonian NHRIs have developed procedures to be followed by staff investigating complaints. The procedures are essentially guidelines on how complaints should be investigated and analysed. They also provide rules on the summoning of parties, conducting of interviews, mediation, and conciliation and collecting of physical evidence. The UHRC has in this aspect, unlike others, has developed an investigator’s handbook which details the process of investigating complaints, interviewing of witnesses, questioning techniques and how to deal with different and vulnerable witnesses among others.

3.2.7. Quasi-judicial competence

Some ANHRIs have been conferred with quasi-judicial competence. Quasi-judicial NHRIs have powers and procedures similar to those of a court of law or judicial tribunal, and are obliged to adhere to procedural fairness to objectively determine in dispute and draw conclusions from them so as to provide the basis of an official action. Such actions include providing appropriate redress in the form of compensation, reparation or legal penalties, and may affect the legal rights, duties or privileges of specific parties. In this regard therefore, such NHRIs have power not only to investigate complaints, but may formally conduct hearings of petitions and either make decisions or recommendations to competent authorities on possible remedies in
ANHRIs with quasi-judicial powers also have the legal authority to compel the appearance of witnesses, the production of document and articles as well as to obtain access to premises to conduct searches. A number of the ANHRIs have powers to issue summons and orders to compel persons to appear before them or produce evidence including materials or documents relevant to their investigations. ANHRIs with such powers include Ghana Commission of Human Rights and Administrative Justice, the Human Rights Commission of Sierra Leone, the South-Sudan Human Rights Commission, and the Uganda Human Rights Commission which have powers of enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; as well as powers of compelling the production of any document or evidence.

NHRIs in Algeria, Ethiopia, Cameroon, Ghana, Kenya, Malawi, Sierra Leone, South Sudan, South Africa, Tanzania, Togo, Uganda, and Zambia are some of the institutions that have the power to hear complaints or petitions or transmit them to any other competent authority, body or institution with the jurisdiction. They also have the mandate to make recommendations to the competent authorities on possible remedies required for victims. Ghana Commission of Human Rights and Administrative Justice, the South-Sudan Human Rights Commission, the Human Rights Commission of Sierra Leone, and Uganda Human Rights Commission have powers to issue or make orders or directions to enforce their decisions. The UHRC in particular has a tribunal where complaints are formally heard and decided to ensure that victims get remedies. The South African Human Rights Commission on the other hand conducts preliminary assessments through public hearings regarding public interventions and thereafter prepares report based on its assessments.

The question as to whether a NHRI should both investigate and hear complaints and proceed to issue binding orders, has been questioned because it is said to make the NHRI a judge in its own cause, and in this case a prosecutor and judge at the same time. Indeed a challenge to the powers of the KNCHR to exercise such powers was successfully made in the Kenyan High Court which removed the powers of the KNCHR to hear cases.

### 3.2.8. Time-lines for handling complaints

One of the challenges that is often encountered by NHRI’s in complaints handling is the delay in complaints resolution and ultimately unresolved backlog of complaints. ANHRI should have effective mechanisms and systems to ensure quick and satisfactory resolution of complaints. One way of doing this is to institute and adhere to timelines for completion of each stage of the complaints process. In this regard therefore, there should for example, be timelines for determining admissibility of a complaint, timelines for putting allegations to respondents, timelines for receiving replies from respondents, timelines for completing investigations and timelines within which a complaint filed with the NHRI should be conclusively resolved. The review of the complaints manuals indicate that NHRIs in Ethiopia, Kenya, South Africa, Sierra Leone and Uganda have prescribed timeframes within which complaints different stages and levels of a complaint should be finalized. The South African Human Rights Commission manual prescribes timelines and detailed procedures for complaints management which are exemplary covering the management of complaints from the time it is lodged to the point of resolution. Other than the manuals of the NHRIs mentioned here above, the rest of the manuals that were reviewed are silent on the specific timeframes within which complaints should be handled and concluded. While the Algerian NHRI offers good guidelines on processing complaints, it does not provide for timelines within which complaints are required to move from one level to another. The Ghana NHRI on the other hand provides that “a complainant shall be given reasonable time (depending..."
on the circumstances) within which to check on his complaint”. The Ghana, South Africa, Sierra Leone and Uganda NHRI have prescribed timeframes within which respondents should respond to allegations against them.

3.2.9. Referrals and follow-up of complaints

NHRI as a matter of practice or law do refer complaints that do not fall within their jurisdictional competence but raise valid claims that require legal or administrative redress to relevant agencies or government departments. As a matter of law or practice NHRI offer free services and consequently are often presented with all manner of complaints many of which may fall outside its mandate. Some complaints may fall within the mandate of the NHRI but the NHRI may lack the capacity to provide appropriate remedy or solution sought by the complainant. In such situations the NHRI should be able to refer the complaint to an appropriate authority or institution. By referring complainants to other institutions or bodies which can help them with their particular issues, the NHRI is in essence effectively meeting its client’s needs and thus helping them move a step closer to resolve whatever is troubling them.

As a general principle NHRI should make referrals if:-

- The NHRI knows or believes that another body, agency or institution is better suited in competence to handle and resolve a particular matter.
- The NHRI is in doubt of its capabilities to effectively resolve the issue,
- The NHRI lacks jurisdiction to handle the complainant’s case.
- There is an NHRI institutional conflict of interest.

Referral therefore means putting complainants in touch with authorities, agencies and institutions that have the capacity to help them resolve their complaints. NHRI are therefore responsible for bringing the person and the service together and should take interest in following whether or not the referred complainant has been professionally assisted.

To facilitate referrals, it is important that a NHRI puts in place policies, strategies and procedures that facilitate referrals. The assessment established that all the ANHRI with a complaints mandate have prescribed some form of referral mechanisms. The South African Human Rights Commission in particular lists in its complaints manual organizations, institutions and bodies where complaints outside the Commission’s jurisdiction can be referred. The Kenyan and Ugandan NHRI also indicated that they have established networks and lists of partners with whom they have developed working documents guiding referral of complaints between them. The UHRC has established a partnership strategy where the UHRC signs Memoranda of Understandings (MoUs) with identified NGOs and government institutions spelling out modalities for referring complaints. However, despite the existence of referral mechanisms in these NHRI, all the manuals do not prescribe follow-up procedures to determine the fate complaints that are referred. It is important that NHRI follow-up on cases referred to other bodies or institutions to ascertain the actions taken on the referred matters. This can help generate public trust and confidence that the NHRI has the ability to attend to all persons and provide assistance in various ways.
3.2.10. Witness protection

One of the challenges that have been cited by the ANHRIs as affecting complaints handling is the reluctance of witnesses to come forward to give evidence or testify. Most of the complaints often received and investigated by ANHRIs involve investigating persons in position of authority who have the ability or opportunity to frustrate investigations through measures that can include threats, intimidation, physical or other harm to witnesses or their relatives. In the absence of a program to protect witnesses from such dangers or reprisals, witnesses may not be forthcoming thereby paralysing the investigation process. Indeed victims of human rights violations tend to be vulnerable persons and as such are afraid of testifying against government officials and security personnel for fear of reprisals. Such vulnerable witnesses would therefore need protection if they are to confidently come out to give evidence against such personalities.

The review of the legal framework of the ANHRIs and their complaints manuals or rules of procedures established that none of the ANHRIs has mechanisms or arrangements for ensuring witness protection. But for a provision in the rules of procedure of some of the ANHRIs that a complainant’s identity can be concealed in appropriate cases, the legal frameworks of the NHRI are silent on the protection of complainants and witnesses from the threat of reprisals or intimidation.

Additionally to the witness protection, NHRI should have a risk management strategy. This is fundamental to accepting complaints handling mandate. I am not sure this has been taken into consideration when assessing the commissions.

3.2.11. Enforcement of decisions, orders, recommendations, remedies

The right to effective remedy upon a violation of human rights is a fundamental right that is guaranteed under international law. It encompasses the victim’s right to the equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. Reparation takes the form of restitution (return to the position before the violation occurred), rehabilitation and/or (material) compensation. A remedy when awarded must be actualized otherwise it is of no consequence.

The assessment found that the ANHRIs with the mandate to handle complaints either have powers to make non-binding recommendations or powers to make binding orders. NHRI with the powers to make recommendations first receive and investigate the complaints and then make recommendations for redress to the responsible agencies, bodies or government departments. In addition, NHRI like the South African Human Rights Commission investigates and hears the complaints, before making recommendations to the responsible bodies for redress. The Uganda Human Rights Commission on the other hand, has a tribunal where cases are heard and orders are made for effective redress. It was however noted that after making the recommendations, decisions or orders, none of the NHRI reviewed had the mandate to execute its recommendations, decisions or orders.

3.2.12. Mediations and Conciliations

Majority of the ANHRIs use the alternative dispute resolution (ADR) approach, specifically mediation.
and conciliation, to resolve some of the complaints registered. ADR is often a preferred option in dispute resolution because parties are in position to find their own practical solutions to the dispute without being coerced. The process is also preferred because it is informal, cheaper, faster, non-adversarial, neutral with no decision making power, creates win-win solutions and allows long conflicting parties to hear each other out.

Even though ADR or mediation is mentioned as a procedure used by various institutions in handling human rights violations, most of the manuals reviewed were silent about the mediation process despite providing for it. However, the Tanzanian Commission for Human Rights and Good Governance provides for procedures on mediation, conciliation and negotiation. In addition, the Ethiopia Human Rights Commission, South-Sudan Human Rights Commission and the Human Rights Commission of Sierra-Leone provide very good guidance on mediation and conciliation processes with precise detail on when and how mediations and conciliations should be conducted.

3.2.13. Knowledge and skills for complaints handling

One challenge that confronts ANHRIs is shortage of staff. The total number of staff of ANHRIs in relation to the total national population they serve is small. The UHRC for example has 160 members of staff serving a population of 35 million people which is a ratio of one person to six hundred and forty thousand people (1:640,000). Such ratios present a huge challenge in terms of the capacity of ANHRIs to adequately reach out to most of the populations especially to remote communities. Although most ANHRIs have tried to mitigate this outreach challenge by opening regional offices and utilizing the services of volunteers, they are still overstretched in terms of the number of staff available to render services like complaints handling.

Some of the ANHRIs that responded to the survey confirmed the challenge of having limited staff to handle and investigate complaints. Others like Egypt indicated the lack of adequate skills and therefore pointed out the need for training of staff on complaints handling and investigation procedures. Some of the ANHRIs admitted lacking the capacity to handle complex or emerging human rights issues for example human rights issues relating business and human rights; climate change and environmental rights; rights of sexual minorities; among other issues. This can partly be attributed to the fact that the human rights issues associated with these rights are continuing to evolve with new definitions and or elaborations as the world changes in terms of technological and social developments. It is therefore important that NHRIs employ adequate skilled professionals, or train and build capacity of the existing staff on how to adequately investigate all human rights violations.

3.2.14. Electronic complaints management systems

It is desirable for NHRIs to have electronic data systems through which statistical data can be retrieved based on reported cases or violations. Electronic data management systems (EDMS) are critical to an organization’s ability to process and share information quickly and in helping employees make decisions faster. They are also relevant for:

- Allowing employees to instantly access documents anywhere at any time.
- Implementing an electronic workflow.
- Taking advantage of EDMS document search and retrieval capabilities.
- Integrating an EDMS with other core institution applications to drive efficiency and manage IT costs.
• Guaranteeing document recovery in the case of a disaster. EDMS allows multiple backups to be stored at offsite locations providing a means to recover data.

The South African Human Rights Commission has an electronic Complaints Management System which is designed to provide control by facilitating the automation of complaints handling processes. The NHRIs of Sierra Leone, Egypt and Uganda have both electronic and manual case management systems. Even though Egypt and Sierra Leone have in place the system both indicated facing challenges using them: the challenges include hacking and frequent breaking down of servers. Sierra Leone pointed out further that the system is not used because the staff have not been properly trained to apply the electronic system.

3.2.15. Addressing systemic violations of human rights

In the course of handling complaints over a period of time it may become apparent to a NHRI that certain violations of human rights are recurrent and systemic and therefore continued handling similar individual complaints will not provide a cure for the systemic issues giving rise to the violations. Such systemic violations may target or affect a class or group of people or region of the country. It is usually institutionalised, recurrent, and the method of violation is always the same and for the same purported purpose or objective. Systemic cases may be identified when the institution receives several cases on the same issue, where there is a pattern of similar problems appearing over time, or when an examination of an individual case shows that the cause or proximate cause of a problem is found in faulty legislation, regulations, policy or practice rather than individual behaviour.

Addressing systemic cases help to: identify potential serial violations; investigate the underlying causes and impact and document the findings; highlight the wrongs that are accepted as right or otherwise not acknowledged; raise awareness on what systemic violations are and how to deal with them; cause structural adjustments for the good of all; and to make recommendations on possible remedies in solving the systemic violations.

Conducting national inquiries or public hearings is therefore as a form of investigations into systemic violations is an important strategy that NHRIs can apply to find solutions to the problem of systemic human rights violations. Such investigation involves an in-depth examination with a far reaching or wide impact into emerging trends, patterns or practice that could be a result of legislation, policies or programs that are either non-existent or if existent, defective or unimplemented. Conducting systemic investigations help to address the big picture which individual complaints handling do not. The aim of a systemic investigation is to make public the findings and recommendations with a view to influencing review of legislation, policies, administrative practices or the institution of other practical remedies.

Out of all the ANHRIs reviewed in the survey, only the Human Rights Commission of Sierra Leone and the Uganda Human Rights Commission have manuals and procedures for conducting public hearings that address systemic violations of human rights.
3.2.16. Dealing with Vulnerable Persons

The mandate of NHRIs to protect and promote human rights requires a comprehensive strategy that includes measures for the protection of the rights of vulnerable persons. Often it is the vulnerable who are susceptible to abuse and deprivation of their fundamental rights and freedoms. People may be vulnerable because of discrimination based on factors that include: sex, race, age, experience, social status, disability, illiteracy, emotional maturity, dependency and many other reasons. Accordingly a complaint system put in place by a NHRI should be sensitive to the plight of vulnerable groups and their special challenges and issues. For example the system should be able to deal with the difficulties vulnerable persons may encounter accessing the complaints system. Another example is the need for arrangement to handle the emotional stress that some vulnerable complainants may experience. It should never be taken for granted that the special problems of vulnerable persons will be dealt with on a case by case basis without the need to elaborate in sufficient detail some kind of guidelines or rules on how the special needs of vulnerable persons should be dealt with in the complaints process. Except for that of EHRC, all the complaints manuals or rules of procedure of the ANHRIs that were availed for review have not prescribed or required the adoption of special measures for processing complaints of vulnerable persons. The EHRC Manual provides shorter time frames for processing complaints of vulnerable persons.
CHAPTER IV

STRENGTHS, GAPS, LESSONS AND RECOMMENDATIONS
4.1. SWOT analysis of ANHRIs complaints systems

The following SWOT analysis was generated from the examination of the legal framework, complaints rules of procedure and or complaints manuals that were available. This matrix below provides information on the strengths and weaknesses of the complaints system at ANHRIs.

<table>
<thead>
<tr>
<th>STRENGTHS</th>
<th>WEAKNESSES</th>
<th>OPPORTUNITIES</th>
<th>THREATS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most ANHRIs have Complaints Mandate</td>
<td>All ANHRIs except one have no power to make binding decisions</td>
<td>Availability of expertise and good practices within ANHRIs</td>
<td>Uncertain funding</td>
</tr>
<tr>
<td>Most ANHRIs have adequate powers to conduct investigations</td>
<td>All ANHRIs have no power to directly enforce decisions and recommendations on complaints</td>
<td>Expert exchange programmes between ANHRIs</td>
<td>Weak political will of national governments to build strong NHRI</td>
</tr>
<tr>
<td>Some ANHRIs have very good Complaints Manuals or Complaints Rules of Procedure</td>
<td>Some ANHRIs have no mechanism at all to seek enforcement of their decisions or recommendations</td>
<td>Interest of NANHRI, the international community and other stakeholders’ in promoting human rights and capacity of NHRI.</td>
<td></td>
</tr>
<tr>
<td>Some ANHRIs have developed electronic complaint management systems</td>
<td>Some ANHRIs have not developed proper policies, procedures or complaints manuals to guide their complaints handling processes,</td>
<td>Emerging international interest in promoting emerging human rights issues,</td>
<td></td>
</tr>
<tr>
<td>One NHRI has quasi-judicial powers and can make binding decisions on complaints</td>
<td>Most ANHRIs do not have electronic complaints management system</td>
<td>Availability of information from other stakeholders</td>
<td></td>
</tr>
<tr>
<td>Some ANHRIs can go to court to seek enforcement of decisions or recommendations on complaints</td>
<td>Most of the ANHRIs have not set timeframes for finalizing different stages of a complaint and are beset with unresolved backlog of cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Many ANHRIs have good procedures for receiving complaints</td>
<td>Most of the ANHRIs refer cases but have no referral policies and system to follow-up the fate of referrals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All ANHRIs have power to refer cases to other bodies</td>
<td>Many ANHRIs reported limited human resource and skilled staff in investigations,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Many ANHRIs have staff with knowledge and skills in complaints handling</td>
<td>All reported inadequacy of financial resources for complaints handling.</td>
<td></td>
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<tr>
<td>Some ANHRIs have set timeframes within which each stage of the complaints handling process must be finalized</td>
<td>Most ANHRIs reported lacking capacity to handle emerging human rights issues including economic social and cultural rights</td>
<td></td>
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<tr>
<td>All ANHRIs do not charge fees for handling complaints</td>
<td></td>
<td></td>
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<tr>
<td>Some ANHRIs have capacity to handle emerging human rights issues</td>
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</table>

SWOT analysis of ANHRIs complaints systems
4.2. Best practices from the survey

The evaluation identifies some important best practices which can be replicated or further strengthened. These are given in general terms.

1) In general the wide mandates of most of the ANHRIs to handle complaints are impressive as they allow many of the ANHRIs to deal with a broad spectrum of violations of human rights. With the wide complaints mandate and powers some of the ANHRIs like the SAHRC, KNCHR and UHRC have been able to receive and handle emerging human rights issues including those related to economic social and cultural rights.

2) In terms of coordination and collaboration, information received through the questionnaires indicates reasonably good working relationship between ANHRIs and state institutions as well as CSOs and other partners in handling complaints. While most of the ANHRIs have no enforcement powers many have successfully forged good relations with relevant government institutions to ensure that recommendations for redress to victims of human rights violations are implemented.

3) ANHRIs such as the UHRC have adopted innovative complaints receiving methods to increase accessibility to their complaints services. UHRC runs a mobile complaints handling system where officials travel to the countryside on appointed days to receive complaints. This has not only taken complaints services closer to the people but also served to address the urban-rural disparities in accessing UHRC services.

4) The SAHRC has developed the good practice of categorizing complaints into complex and simple cases. These has the advantage of applying simple administrative measures and procedures that solves the simple cases without the need to subject such cases to the same long procedures that would be required to deal with complex cases.

5) Some NHRIs do implement a system that has prescribed timelines for finalizing every stage of the complaints process. This is a good practice that can check unnecessary delays in the handling of complaints and can minimize accumulation of case backlog of unresolved complaints.

6) Strategies to ensure that victims of human rights violations receive effective remedy are important for human rights protection. Unfortunately most ANHRIs do not make binding decisions and have no enforcement powers. ANHRIs could lobby for change in their laws to allow them make binding decisions or go to court to enforce their decisions as is the case with other ANHRIs.

7) Some NHRIs have developed Rules of Procedures and an explanatory complaints manual. Others have an investigative handbook that guides on investigations. Others have manuals that describe indicative acts and ingredients of human rights violations of human rights and freedoms. This is good practice that helps standardize procedures and promotes a common understanding for officials handling complaints and minimizes the possibility of making mistakes.

8) All the ANHRI services were free of charge which means that people can demand access to justice and victims can receive redress without much financial burden. NHRIs with toll free lines enabled people to call in for inquiries or lodge complaints without having to travel long distances. This was also an
effective way of reaching people at the grass roots.

9) The referral system for most ANHRIs enables them to partner with other institutions or organisations since NHRIs cannot handle every violation and abuse. ANHRIs with public hearings also provided an effective way in ensuring that victims received effective redress.

4.3. General observations and recommendations

Based on the information obtained from the various sources used in this assessment, there are some major issues or gaps which need attention in order to strengthen the ANHRIs’ capacity to effectively protect human rights through handling and investigating cases on human rights violations.

1) The mandates of most ANHRIs are very clear, and while majority of the ANHRIs make recommendations to various agencies, there is no known and documented robust strategy for most in engaging other bodies, institutions or organizations whose jurisdiction is to implement the recommendations. While some commendable efforts have been initiated by some ANHRIs in regard to this area, strategies needs to be developed and implemented to actualize and integrate the enforcement mechanisms among the core activities of the NHRIs. By increasingly engaging and lobbying other actors in enforcement of the ANHRI services, their relevance and organizational sustainability will be ensured. Better still each ANHRI that faces this challenge in the complaints process should lobby for a change in the law to have powers of enforcement either directly or by seeking court orders.

2) ANHRIs without a well-developed complaints system should take steps to develop and have the required procedural frameworks either in the form of complaints manuals or rules of procedures and other related guides for receiving and investigating complaints. While many have these manuals or rules of procedure, some of the manuals require revising to include a number of good practices applied by other ANHRIs. Majority of NHRIs still rely on the legal framework, but the laws are silent on the details of how and when complaints should be handled. Such institutional frameworks provide the legal and procedural basis for conducting investigations. A proper procedural framework sets clear standards, procedural guidance and sends a clear message to all concerned including to the general public. When the procedural framework is in place it will be the responsibility of the NHRIs to implement the laws and regulations. This will call for training of staff on effective investigative skills.

3) Some NHRIs only receive complaints from persons directly affected by a violation (victims). Some do not receive complaints against non-state actors. NHRIs mandated to receive complaints should receive complaints from any person, body or institution concerned or those not directly affected. They should also have broad powers to receive complaints against public bodies, private bodies that carry out public functions as well private individuals who violate human rights. NHRIs should always have authority to take up individual or collective issues at their own initiative, without a complaint having been lodged.

4) ANHRIs should respond to complaints in a timely manner. Efforts should be made to ensure that internal procedures are in place to establish timeframes for dealing with complaints and for informing the parties of the status of the complaint. In particular, authorities against whom complaints are made should be required to make an initial response within a certain time. In this regard therefore, complaints should be thoroughly investigated.
5) Emerging human rights issues and violations of economic social and cultural rights are areas that should receive attention from ANHRIs. ANHRIs need to embark on scaling up their efforts towards the second degree rights like economic, social and cultural rights. While some NHRIs have particular focus on ESCR, and efforts have been directed to these rights, majority have not prioritized them and focus is not as robust as with other civil and political rights.

6) ANHRIs should endeavour to develop the automation of their data systems as this will see a radical shift from some manual processes to electronic systems not only in the entire information management architecture. Care should be taken in putting appropriate safe measures. Having back up options and alternative information processing strategies is a possible solution where technology may fail to address certain concerns. In areas where automation may not be possible due to factors beyond the control of the NHRIs, robust manual systems in such areas are needed.

7) ANHRIs need to come up with clear robust and inclusive strategies to address the enormous challenges brought about by the wide geographical coverage their services focus and the number of people who require and continue to require their services. One strategy revolves around establishing and adequately facilitating regional offices to enable them reach various areas of the population.

8) The survey reveals challenges faced by various NHRIs that are not necessarily unique one institution but are typical of challenges faced by most, if not all ANHRIs. Nevertheless the ANHRIs must rise to the challenges by seeking to implement their constitutional and or statutory functions and powers. Regarding lack of political will for example it is the responsibility of the NHRIs to contribute to building the political will. This is because the creation and existence of these NHRIs is to some extent the affirmation of the commitment of the governments to fundamental rights and freedoms. The Governments must continuously be reminded of this commitment and challenge to live to the expectations that this commitment placed on them.
## ANNEXES

### ANNEX I

**Mapping of Complaints mandates and systems of ANHRIs**

<table>
<thead>
<tr>
<th>NO</th>
<th>COUNTRY</th>
<th>NHRI</th>
<th>LEGISLATION</th>
<th>COMPLAINTS MANDATES</th>
<th>COMPLAINTS TOOLS: RULES OR MANUALS</th>
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<tbody>
<tr>
<td>2</td>
<td>Benin</td>
<td>Commission Béninoise des Droits de l’Homme</td>
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<tr>
<td>3</td>
<td>Burkina Faso</td>
<td>Commission Nationale des Droits de l’Homme</td>
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<tr>
<td>6</td>
<td>Cape Verde</td>
<td>Commission Nationale des Droits de l’Homme et du Citoyen</td>
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<tr>
<td>7</td>
<td>Chad</td>
<td>Commission Nationale des Droits de l’Homme</td>
<td></td>
<td>Mediate conflicts;</td>
<td>None</td>
</tr>
<tr>
<td>8</td>
<td>Rep. of Congo Brazzaville</td>
<td>Commission Nationale des Droits de l’homme</td>
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<td>9</td>
<td>Cote d’Ivoire</td>
<td>Commission Nationale des Droits de l’Homme</td>
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<td>10</td>
<td>Comoros</td>
<td>Commission Nationale des Droits de l’Homme et des Liberté (CNDHL) des Comores</td>
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<td></td>
<td>Democratic Republic of Congo</td>
<td>Observatoire National des Droits de l'Homme</td>
<td>Articles 167, 168 and 169 of the Constitution</td>
<td>Monitoring body for the promotion and protection of human rights</td>
<td>None</td>
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<td>12</td>
<td>Djibouti</td>
<td>Commission Nationale des Droits de l'Homme</td>
<td>Law No. 5-2003 of January 18, 2003,</td>
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<td>13</td>
<td>Egypt</td>
<td>The National Council for Human Rights</td>
<td>Article 214 of the constitution</td>
<td>Receive and examine complaints on human rights violations and can at its discretion, refer them to competent bodies and follow-up on such referrals</td>
<td>None</td>
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<td>14</td>
<td>Ethiopia</td>
<td>Ethiopian Human Rights Commission</td>
<td>Article 55 (1) and (14) of the Constitution</td>
<td>Investigate human rights complaints at own initiative or when reported to it.</td>
<td>Complaints Handling (Investigations) Manual</td>
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<td>15</td>
<td>Gabon</td>
<td>Commission nationale des droits de l'homme</td>
<td>Proclamation No. 210/2000</td>
<td></td>
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</tr>
<tr>
<td>17</td>
<td>Guinea Bissau</td>
<td>ComissaoNationale Para osDereitosHumanas,</td>
<td></td>
<td>Investigate complaints concerning practices and actions of non-state actors regarding human rights violations</td>
<td></td>
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<tr>
<td>18</td>
<td>Guinea Conakry</td>
<td>Observatoire National de la Democratie et des Droits de l'Homme</td>
<td></td>
<td>Power to go to court to seek enforcement of decision on a complaint</td>
<td></td>
</tr>
<tr>
<td>19.</td>
<td>Kenya</td>
<td>Kenya National Commission on Human Rights</td>
<td>Article 59 (e) &amp; (f) of the Constitution</td>
<td>Investigate human rights violations; Investigate and conciliate complaints Power to compel attendance and production of documents/articles No enforcement powers but can seek enforcement in courts</td>
<td>Complaints management system (CMS); KNCHR Complaints Admissibility Criteria; KNCHR Rules and Regulations.</td>
</tr>
<tr>
<td>20.</td>
<td>Libya</td>
<td>National council for Civil Liberties and Human Rights of Libya</td>
<td>Independent National Commission for Human Rights Act</td>
<td></td>
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</tr>
<tr>
<td>22.</td>
<td>Madagascar</td>
<td>Commission Nationale des Droits de l’Homme</td>
<td></td>
<td></td>
<td>None</td>
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<tr>
<td>27.</td>
<td>Morocco</td>
<td>Conseil National des Droits de l’Homme (CCDH)</td>
<td>Law No. 1.00.350 issued 15 Moharem, 1422 A.H. (10 April, 2001 A.D); CCDH Internal Rules of Procedure;</td>
<td>Receive cases of human rights abuse and make relevant recommendations to the competent authority;</td>
<td>CNDH Internal Rules of Procedure</td>
</tr>
<tr>
<td>No.</td>
<td>Country</td>
<td>Institution</td>
<td>Legal Framework</td>
<td>Functions</td>
<td>Remarks</td>
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<tr>
<td>28.</td>
<td>Mozambique</td>
<td>Mozambique Human Rights Commission</td>
<td>Law 33/2009 in 2009; Constitution - Article 25 (2); Ombudsman Act (Act 7 of 1990)</td>
<td>Mandate to receive, investigate cases of human rights violations and make recommendations. Power to petition Supreme Court or appeal to the President to seek enforcement of recommendations on a complaint</td>
<td></td>
</tr>
<tr>
<td>29.</td>
<td>Namibia</td>
<td>Office of the Ombudsman</td>
<td>Constitution of 25 November 2010; Law no. 2012-44 of 24 August 2012; Decree no. 2013-169/PRN/MJ of 31 May 2013; Internal rules and regulations; Administrative rules and regulations</td>
<td>Enquire into; investigate violations or infringements of fundamental rights and freedoms, and abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official. Power to go to court to seek enforcement of its orders</td>
<td></td>
</tr>
<tr>
<td>31.</td>
<td>Nigeria</td>
<td>National Human Rights Commission</td>
<td>NHRC Act N0.22 of 1995;</td>
<td>Monitor and investigate cases of human rights violations and make appropriate recommendations; Assist victims of human rights violations and seek appropriate redress and remedies on their behalf;</td>
<td></td>
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**Annex**
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<tbody>
<tr>
<td>32</td>
<td>Rwanda</td>
<td>National Commission for Human Rights</td>
<td>Law No. 19/2013 of 25/03/2013</td>
<td>Receiving Complaints; Examining Violations of human rights; Carrying out investigations into human rights abuses and violations; Filing legal proceedings in civil, commercial, labour and administrative matters that violate human rights provided by the Constitution, international treaties ratified by Rwanda and other laws</td>
<td>Internal Rules and Regulations of National Commission for Human Rights describe the process of handling complaints.</td>
</tr>
<tr>
<td>33</td>
<td>Senegal</td>
<td>Comité Sénégalais des Droits de l’Homme</td>
<td>Law No.97-04 of 10 March 1997</td>
<td>Examination of complaints and claims and decide action to be taken; Alert in case of serious and repeated violations of human rights; Investigate or inquire into allegations of human rights violations or abuse at own initiative or on complaint by any person and to make written report and recommendations on them</td>
<td>Complaints Handling Manual 2013; HRCSL Complaints, Investigations and Inquiries Rules 2008; HRC Complaints Procedures;</td>
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<tr>
<td>34</td>
<td>Sierra Leone</td>
<td>Human Rights Commission of Sierra Leone</td>
<td>HRC Act 2004; HRC Complaints, Investigations and Inquiries Rules 2008;</td>
<td>Investigate or inquire into allegations of human rights violations or abuse at own initiative or on complaint by any person and to make written report and recommendations on them</td>
<td>Power to conduct formal hearings or public inquiries; Complaints Handling Manual 2013; HRCSL Complaints, Investigations and Inquiries Rules 2008; HRC Complaints Procedures;</td>
</tr>
<tr>
<td></td>
<td>Country</td>
<td>National Human Rights Institution</td>
<td>Interim Constitution of South Sudan 2011; SSHRC Act</td>
<td>Investigate human rights violations; Conduct public inquiries; Issue reports, provide remedies and or recommendations on complaints investigations</td>
<td>SSHRC Complaints Investigations and Inquiries Rules of Procedure Complaints Manual</td>
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<tr>
<td>36.</td>
<td>Sudan</td>
<td>The National Commission for Human Rights of Sudan</td>
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</tr>
<tr>
<td>37.</td>
<td>South Sudan</td>
<td>South Sudan Human Rights Commission</td>
<td></td>
<td>Investigate complaints of alleged violations of human rights and fundamental freedoms at its own initiative, by request of a member of parliament or upon receiving a compliant</td>
<td></td>
</tr>
<tr>
<td>38.</td>
<td>Swaziland</td>
<td>National Human Rights Commission of Swaziland</td>
<td>Part II of the Constitution of Swaziland</td>
<td>Investigate complaints of the violation of human rights, Conduct enquiries into matters that violate human rights and contravene the principles of administrative justice, Institute proceedings in court to terminate activities that violate human rights or to seek redress for victims</td>
<td></td>
</tr>
<tr>
<td>41.</td>
<td>Tunisia</td>
<td>Comité Supérieur des Droits de l’Homme et des Libertés Fondamentales</td>
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<tr>
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<td>Country</td>
<td>Human Rights Commission</td>
<td>Legal Basis</td>
<td>Investigative Powers</td>
<td>Other Resources</td>
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<tr>
<td>44</td>
<td>Zimbabwe</td>
<td>Zimbabwe Human Rights Commission</td>
<td>Sections 100R(6) and (7) of the Constitution; ZHRC Act[Chapter 10:30] - Act 2/2012;</td>
<td>None</td>
<td>None</td>
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ANNEX II

SURVEY OF HUMAN RIGHTS COMPLAINTS HANDLING SYSTEMS AT NATIONAL HUMAN RIGHTS INSTITUTIONS IN AFRICA

Survey Questions

Name of your NHRI:

1. Enabling Environment
   1.1. Mandate and powers
   1. Do you have the mandate to receive, investigate and provide redress or remedies to complaints of human rights violations?

2. Describe the nature of the mandate and powers to handle complaints

3. Is the mandate to receive, investigate and provide redress backed with strong legal powers that support effective complaints handling. If not what are the gaps in the legal powers?

4. Other comments

1.2. Capacity
   1. Do you have a department/directorate/section dedicated to complaints handling and if so describe its structure? How many staff does it have and is the number enough?
   If you have an updated organogram or similar documented outline, you can send such to NANHRI.

2. Do the personnel in the department have the required human rights knowledge/training and practical experience for complaints handling?

3. Are the personnel in the complaints department fulltime, on long term or short term contract, seconded or volunteers?

4. Has there been a staff turn-over and what is being done to retain skills and knowledge within the department/unit handling complaints?

5. Do complaints handling receive enough funds (what is the proportion to your total budget)? What is the main source of funds for complaints handling?

6. Have you developed an effective complaints system to guide the receiving, assessment, administration, investigations and resolution of complaints and enforcement/implementation of decisions on a complaint e.g. orders, recommendations remedies granted?
7. Have you developed complaints and investigations procedure or manual that describes and guides processes for complaints handling?

8. Do you have electronic system of managing complaints? Is the system being utilized well and if not what are the challenges using the system?

9. Other comments

2. The Accessibility of the Complaints system
1. Do you have sub-national/regional/district offices around the country where people can make complaints?

2. Do you have arrangements for physical receiving of complaints around the country other than at established offices?

3. Do you have special arrangements to accommodate people with disabilities (e.g. a ramp to access the NHRI)

4. Do you have a working system for receiving complaints through the internet, by SMS or through the post? Have there been challenges receiving complaints through these methods?

5. Have the officers responsible for receiving complaints been trained in the standards and on the best practice of handling complainants?

6. What arrangements have been made to protect the identity of potential complainants who want to remain anonymous because they could be in danger?

7. How widely and well-known is your complaints mandate? How have you ensured that your mandate is widely known especially in places far out of urban centres and to reach vulnerable and marginalized groups (both urban and rural)?

8. Do you collect information about how complainants came to learn about your complaints mandate? How did most complainants come to hear about your mandate?

9. Do you disaggregate data on the kind of complainants that come to your institution? Who are most of the complainants: women, men, rural or urban folk?
10. Do you have arrangement in your complaints system for handling the challenges of vulnerable groups including gender perspectives in the complaints handling process?

11. How flexible is your complaints system: How does it deal with complex and simple cases or issues that are not addressed by the complaints system?

12. What mechanisms are in place to remove barriers that make it difficult for parties in a complaint to access and interact with officials involved in the complaints process e.g. language barriers, ignorance of the complaints system etc.

13. Other comments

3. Information/data on complaints handling
1. How many complaints do you receive in a year? Is there an increase or decrease in the number of complaints and if so why?

2. Out of the cases received per year how many cases are being handled and resolved per year?

3. What has been the average period for a complaint to be resolved? What areas in the complaints process presents with more challenges and what are these challenges?

4. What are the reasons for delays in the resolution of complaints?

5. Other comments

4. Complaints Outcomes
1. In the resolution of complaints which of these do you have the power to make: an enforceable order, grant for redress and remedy, recommendations/advice?

2. Do you conduct alternative complaints resolution? Is the outcome binding and enforceable?

3. Do you have arrangements to refer complaints to other bodies for better management? Have you developed a policy that includes criteria for referring cases as well as a system to follow up on such complaints?

4. How are the complaints outcomes utilized – to inform research into a specific area, to inform the programming/strategic plan of the NHRI, to initiate further investigations etc.
5. Other comments

5. Challenges in complaints handling
1. Do you consider that your complaints system is effective and meets the needs of intended beneficiaries? Give reasons why it is effective or not effective.

2. In the experience of your institution what have been the strengths and weaknesses of your complaints handling system?

3. What are the challenges you often experience in complaints handling and why?

4. Which areas (institutional, operational) are in need of strengthening to make your complaint handling system more effective?

5. Are there specific areas in complaints handling that your institution requires capacity strengthening?

6. Other comments

6. Any other comments
Please provide any other comments you would like the evaluation to consider

Please also send us any relevant documents or extracts from assessments that could be useful (such as capacity assessment of structure and staff, organograms, complaint handling manuals) and you have not already submitted.
Annex

Annex III
TERMS OF REFERENCE

Assessment of current complaint handling systems used at African NHRIs

Resource Person
August-November 2015

Background

Under the Sida funded Regional Africa Programme, the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) and the Network of African National Human Rights Institutions Secretariat (NANHRI) are working in close partnership to enhance the role of African NHRIs in the protection and promotion of human rights in the national and regional setting, including in promoting strategies and good practices related to peace and conflict. NANHRI is composed of 44 National Human Rights Institutions (NHRIs) across Africa and, amongst others, supports the strengthening of NHRIs’ institutional and individual capacities. NANHRI has identified a number of strategic priority areas, including ensuring that NHRIs have the capacity to institute an effective complaint handling process, including using Alternative Dispute Resolution techniques as appropriate.

Complaints handling is one of the core mandates of NHRIs as provided for in the Paris principles. Following from this, most African NHRIs have within their structure and operations a complaints handling function. Despite this complaints handling mandate being largely cross cutting among African NHRIs, the day to day operationalization may vary from NHRI to NHRI. This can be explained by the fact that national dynamics and contexts remain heterogeneous, NHRI mandates differ from country to country and therefore there is really no one-size fits all way of handling complaints.

Even so, there are some key features/steps of the complaints handling cycle that are core to the process and therefore largely the same from NHRI to NHRI. All these are usually elaborated in key documents within NHRIs known mostly as complaints handling manuals and/or rules of procedures for complaints handling.

Previously under this programme, NANHRI and RWI have addressed complaints handling through a generalized workshops that include a session on complaints handling and also a through a training purely dedicated to complaints handling as well as an assessment of the electronic complaint handling system within the Zambia Human Rights Commission.

In the past year the Kenyan, Namibia and Zambian NHRI have gone through a process of reviewing their complaints handling manual and/or procedures and other NHRIs have indicated the need to do the same in the coming years. Africa has also witnessed the establishment of new NHRIs (such as Zimbabwe which has recently set up a Secretariat) and others are continuously being strengthened/restructured (e.g. Mozambique, Swaziland) and they may eventually require resources and/or support in strengthening their complaints handling mandate.

Based on these developments, NANHRI and RWI have identified the need to conduct a mapping and an assessment of current complaint handling practices used at African NHRIs in order to get a better
understanding of the systems in place. It is anticipated that the assessment will be used as a baseline and can identify areas in need of capacity strengthening support.

**Expected Results and Objective**

The purpose of the consultancy service as outlined in these Terms of References is to provide NANHRI with a baseline assessment of Complaint Handling Systems in place in Africa, identifying the NHRIs with a complaint handling mandate, manuals and tools in place as well as strengths and weaknesses of these systems.

**Tasks and Responsibilities of the Consultant**

The consultant shall undertake the following:

1. Identify African NHRIs with a Complaint handling Mandate and provide a brief description.
2. Review available documentations (e.g. manuals) to identify complaint handling processes at African NHRIs. This includes also material from Francophone NHRIs with a complaint handling mandate. Selected French material will be translated into English if not already available. Additional documents such as training and assessment reports will be reviewed as well, when such are available and relevant to the assignment.
3. Produce an inception report with an outline of the next steps and methodology, suggested survey and interview questions as well as preliminary findings from the desk review.
4. Through telephone interviews, email communication, and online survey collect information from African NHRIs on their complaint handling processes and how it is applied.
5. Analyze the documentation and the information received from the respondents and conduct a mapping of systems and tools along with a SWOT analysis, including processes and human resource capacity.
6. Draft a report to NANHRI and RWI with the findings (as per below deliverable description)

The Consultant shall undertake necessary preparatory work for the assignment, reviewing existing documentation and other measures that may be required to carry out the assignment.

The Consultant shall take into account gender perspectives and those of other vulnerable groups when carrying out the assignment and drafting the report.

The Consultant shall exercise all reasonable skill, care and diligence in the performance of the assignment and shall carry out all responsibilities in accordance with recognised professional standards.

**Deliverables**

A short inception report with an outline of the next steps and methodology, suggested survey and interview questions, as well as preliminary findings from the desk review.

A final report mapping the NHRIs with complaint handling mandates and systems and with an analysis of the strengths and weaknesses and similarities and differences. The report should also identify areas in need of capacity strengthening interventions and an outline of potential activities to this end.
The Consultant shall undertake necessary preparatory work for the assignment, reviewing existing documentation and other measures that may be required to carry out the assignment.

The Consultant shall take into account gender perspectives and those of other vulnerable groups when carrying out the assignment and drafting the report.

The Consultant shall exercise all reasonable skill, care and diligence in the performance of the assignment and shall carry out all responsibilities in accordance with recognised professional standards.

**Timeframe**

The assignment is estimated to be conducted from August to November 2015, and with 20 working days.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Timeframe</th>
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<tbody>
<tr>
<td>Identify African NHRIs with a Complaint handling Mandate and provide a brief description</td>
<td>August</td>
</tr>
<tr>
<td>Desk review</td>
<td>September</td>
</tr>
<tr>
<td>Inception report</td>
<td>Early October</td>
</tr>
<tr>
<td>Survey and interviews</td>
<td>End of October</td>
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<tr>
<td>Analysis</td>
<td>Early November</td>
</tr>
<tr>
<td>Final report</td>
<td>15 November 2015</td>
</tr>
</tbody>
</table>

RWI should communicate any comments on draft materials submitted by the Consultant within seven (7) working days.

The Consultant’s contact person with RWI for the assignment is Ms.Madelene Eichhorn, Programme Officer (e-mail: madelene.eichhorn@rwi.lu.se) and submission of documentation shall at all times be made to Ms.Eichhorn.
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