

Report of the National Human Rights Institutions' Forum within the Margins of the 69th Ordinary Session of the African Commission on Human and Peoples' Rights

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List of abbreviations

AfCFTA	African Continental Free Trade Area
African Charter	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
CSOs	Civil Society Organizations
ESCR	Economic, Social and Cultural Rights
NANHRI	Network of African National Human Rights Institutions
NHRIs	National Human Rights Institutions
Resolution 275	Resolution 275 of the African Commission Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV) adopted in 2014

Executive summary

This report outlines the discussions and recommendations of the Third National Human Rights Institutions' (NHRIs) Forum held within the margins of the 69th Ordinary Session of the African Commission on 11 and 12 November 2021, virtually. The two-day Forum focused on the 40th anniversary of the African Charter on Human and Peoples' Rights' (African Charter) with the theme of **'40 years of implementing the African Charter on human and people's rights: harnessing our collective experiences towards the Africa we want.'** It focused on four different areas for the complementary relationship between the African Commission on Human and Peoples' Rights (African Commission) and the NHRIs namely: enhancing the affiliate relationship; follow up on decisions of the African Commission; Resolution 275 of the African Commission Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV) adopted in 2014, and business and human rights, including the African Continental Free Trade Area (Acta) Treaty. After the 2-days discussion, the Forum adopted a Declaration and Action Plan on Enhancing the Complementary Relationship between the African Commission and NHRIs and focused on how NHRIs can work with the African Commission on the four issues above. They were various recommendations as elaborated under each subsection with the main recommendations being: to convene a continental conference to interrogate the state of human rights in Africa; to advocate for COVID-19 vaccination equality and access; and to urge NHRIs without affiliate status to apply for the same and for those with affiliate status to submit activity reports every two years.

Background

The NHRI's Forum was convened virtually on the margins of the 69th Ordinary Session of the African Commission on 11 and 12 November 2021. Its objectives were to:

- Create awareness about the complementary 'affiliate status' relationship between the ACHPR and NHRIs and enhance the relationship through clear delineation of the rights and responsibilities of both the ACHPR and NHRIs for better outcomes towards the 50th anniversary of the Charter.
- Increase NHRIs awareness and resolve to undertake: the implementation and monitoring of Resolution 275; protection of business and human rights in the continent, and active follow up on implementation of the decisions of the ACHPR.

The forum was attended by various stakeholders, including the representatives of the following: National Human Rights Institutions, State Representatives, African Commission, Civil Society Organisations, Academic institutions, and Development partners.

The focus of the forum was 40 years of the African Charter. In June 2021, the African Commission launched the celebration of the 40th anniversary of the adoption of the African Charter which continues through the year. The 40th anniversary provides a unique opportunity to brainstorm on innovations that could facilitate better functioning of the African human rights system and implementation of human rights commitments, to accelerate the achievement of the Africa we want. The NHRIs forum at the margins of the 69th Ordinary Session was a commemorative event to reflect on the complementarity between the African Commission and NHRIs over the past 40 years; and devise

recommendations on how to enhance the complementarity & collaboration over the next decade as the continent marches towards the 50th Anniversary. The theme of the Joint Commemorative African Commission-NHRIs Forum was **'40 years of implementing the African Charter on human and people's rights: harnessing our collective experiences towards the Africa we want.'**

In addition to the welcoming and concluding remarks, the agenda was split into seven main sessions focusing on the following:

- i. The situation of Human Rights in Africa
- ii. Reflections on the Complementary Relationship between NHRIs and the African Commission over the past 40 years of the African Charter
- iii. Complementarity in the Promotion Mandate of the African Commission: A Focus on the Implementation of Resolution 275
- iv. Complementarity in enhancing the promotion and protection of human rights in the context of business activities: Presentation of an Overview of the NANHRI Business and Human Rights and Sustainable Oceans Survey
- v. Joint Commemorative Webinar: The Gains and Gaps in the Complementary Relationship between NHRIs and the African Commission over the Past 40 years of the Charter: A Focus on Affiliate Status
- vi. Complementarity in the Protection Mandate: A Focus on NHRIs Follow-Up on Implementation of African Commission Decisions Relating to Economic, Social, and Cultural Rights
- vii. Presentation and adoption of the declaration and action plan on enhancing the Complementary Relationship between the African Commission and NHRIs

Below is a summary of the discussions around these topics, key challenges, experiences and recommendations, if any.

Opening ceremony

This session traced the roots of the NANHRI Forum preceding the Ordinary Sessions of the African Commission to the 12th Biennial Conference of NANHRI held on 5th and 6th November 2019 in Cairo, where one of the resolutions was for the African Commission and NHRIs to exchange views on human rights in Africa. Following this, the 1st and 2nd editions of the NHRIs Forum were held on the margins of the 67th & 68th ordinary sessions of the African Commission. The 3rd NHRIs forum that was the subject of discourse was thus being held on the margins of the 69th ordinary session.

The session emphasized that since the establishment of the African human rights system, NHRIs have been working in collaboration with the African Commission, which gave rise to affiliate status that the African Commission grants to NHRIs. Such affiliate status was first established by the 1998 African Commission Resolution on Granting Affiliate Status to National Human Rights Institutions in Africa, which was later replaced by the African Commission Resolution 370 on Granting of Affiliate Status to National Human Rights Institutions and specialized human rights institutions in Africa - ACHPR/Res.370(LX) in

2017. The resolutions on granting affiliate status flow from articles 45 and 26 of the African Charter, and Rule 71 of the 2020 Rules of Procedure of the African Commission which provide as follows:

Article 45(1)(c) of the African Charter: *'The functions of the African Commission shall be ... to Promote Human and Peoples' Rights and in particular ... Co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights'*

Article 26 of the African Charter: *'States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.'*

Rule 71 of the 2020 Rules of Procedure of the African Commission:

(1) In accordance with the Commission's Resolution on the Granting of Affiliate Status to National Human Rights Institutions and specialized human rights institutions in Africa, such institutions, established by States Parties and functioning according to internationally and regionally recognized norms and standards, may be granted affiliate status with the Commission.

(2) Institutions having affiliate status with the Commission shall enjoy the rights and perform the duties stipulated in its aforementioned Resolution.

Hence, it is imperative for the two actors to exchange experiences and have discussions on emerging human rights issues. Acknowledging that NHRIs do not operate in silos, the NHRI Forum includes all relevant stakeholders such as CSOs and academics.

The session noted that the African Charter, which was adopted in 1981 and which turned 40 in 2021 is an innovative and progressive document that consolidated the indivisibility of rights and freedoms by including civil and political rights, economic social and cultural rights and group rights in one document. It can be considered as the steppingstone for the protection and promotion of human rights in Africa. The African Charter, with its different protocols and general comments adopted under the same ensure a holistic approach to human rights issues in Africa.

However, Africa is facing many challenges to realize the rights in the African Charter and the goals of Agenda 2063. Many of these are due to, amongst others, climate emergency; the Covid-19 virus with less than 5% of the African population being vaccinated; the failure by African States to meet the Abuja commitments to allocate 15% of the budget to health, and conflicts, and restrictions of freedoms during elections. Moreover, democracy is under threat with unconstitutional changes of Government in Guinea, Mali, Sudan and Chad, and with the escalating situation in Ethiopia expanding to Tigray region. Various violations of human rights law are happening which are in contravention of the Africa we want.

Hence, even though this is the time to celebrate the African Charter, we are living in a difficult time for the realization of human and peoples' rights. We are at a time that puts human rights under siege not only on accounts of human rights violations in various

contexts but the rise of various challenges globally and regionally. The legitimacy of the promise of the African charter is under enormous pressure and the will and courage and capacity and skills of institutions of protection of human rights are being tested. These are extra ordinary times necessitating extra ordinary measures and there is a need, as a collective, for all Africans to reflect on the situation of human rights in Africa.

Since NHRIs complement the work of the African Commission, they have an important role to play at the national level to ensure that they share best practices of human rights protection and realization amongst themselves and with the African Commission. They can do so by evidence-based research and by reporting to the African Commission. The rights in the African Charter cannot be realized at the domestic level without the support of NHRIs.

Recommendations from opening ceremony:

- NHRIs to work in collaboration with the African Commission and to submit their reports to the latter
- Stakeholders to convene a continental conference to interrogate the state of human rights on our continent

Session 1: The situation of human rights in Africa

This session had presentations from different NHRIs across the continent to highlight the best practices, the challenges and recommendations.

Region	Discussion
Northern Africa	There are many human rights issues including situations of persons in places of detention and vulnerable groups, being worsened by the Covid-19 pandemic. Moreover, HRDs are harassed with limitations on rights and freedoms. The role of NANHRI can be a bridge between the government and CSOs to understand human rights in Africa, and in North Africa. There is need for collaboration and capacity building to strengthen the capacities of NHRIs to fulfil their mandates; and to leverage technology is important to share information and best practices.
Southern Africa	These are trying times for the world and our continent which is experiencing existential crisis with 2 main elements: The Covid 19 crisis and high levels of carbon in the atmosphere. In South Africa, like many other countries, they have been faced with the devastating impact of the covid 19 pandemic, that also lead to an increase in gender-based violence. Moreover, Covid-19 has also led to low voter turnout for the local elections.
Eastern Africa	In terms of the impact of Covid 19 on human rights, just like any other country/region, this has a huge impact on livelihoods. The NHRI in Kenya released a report in June 2021 on enforcement of lockdown and excess use of force. Covid 19 also impacted on basic rights such as access to medical facilities during curfew hours and access to essential services. In terms of human rights

	in Kenya, the marginalised minority groups continue to suffer discrimination, includes slum dwellers, intersex persons, and indigenous persons who by virtue of their traditions reside in forest areas. There have also been an increased in police brutality when the police was enforcing covid 19 protocols, including enforced disappearances.
Western Africa	Lack of access to vaccines covid-19 (production and fake news); Unconstitutional changes in govt in Mali and Guinea; and other questions (terrorism, immigration issues, and climate change)
Central Africa	Many countries have not secured the resources for the Covid-19 vaccines. Rural areas have suffered by not being able to have water for washing hands etc. Many places do not also have access to Covid 19 tests due to the high prices. There has been discrimination concerning access to vaccines and a violation of the principle of universal access to health. Many political actors do not understand the importance of vaccines and they need to be sensitised about the same. Non-implementation or non-respect of most member States of the African Union of the decisions of the human rights mechanisms such as the African Commission and the African Court continues to be a problem.

Key recommendations from Session 1:

- To organise democratic and transparent elections
- To respect the rights of migrants
- To respect the freedom of assembly and association
- To respect human rights and guarantee just trials to human rights defenders
- To advocate for restrictions in terms of covid-19 to be human rights compliant
- To advocate for vaccination equality and access. Various stakeholders on the continent come together and develop capacity to manufacture vaccines.
- To encourage States to ratify the African human rights instruments
- To encourage States to meet the Abuja Declaration commitment of allocating 15% of the budget towards health as at the moment, only South Africa and Rwanda have met the target.

Session 2: Reflections on the Complementary Relationship between NHRIs and the African Commission over the past 40 years of the African Charter

This session focused on the complementary relationship between the NHRIs and the African Commission. The first NHRI was created in 1987 in Africa in Togo. In 1990s, the number of NHRIs in Africa increased exponentially which made it necessary to have a more defined relationship between NHRIs and the African Commission, hence the adopted of the 1998 Resolution.

The expert presentation started with the statutory basis and context of such complementary relationship and elaborated on the origins and evolutions of the relationship between the African Commission and NHRIs.

Year	Document adopted
February 1996	First conference of NHRIs in Africa where the Yaoundé Declaration was adopted where participating NHRIs agreed to negotiate for a proper representative status at the African Commission
October 1996	Adoption of the Mauritius Action Plan for the African Commission to seek the cooperation of NHRIs in fulfilling its mandate
April 1997	A paper on NHRIs' engagement discussed by African Commission
July 1998	Durban Declaration, paragraph 14: NHRIs urged the ACHPR to adopt, at its next session, an appropriate resolution on the effective participation of NHRIs in the work of the ACHPR.
October 1998	ACHPR Resolution 31 on granting observer status to NHRIs (New Criteria adopted in Resolution 370 of 2017)

Criteria for obtaining affiliate status (Resolution 370)

- Should be duly established by law
- Should be an NHRI or specialized human rights institution of a State party
- Its independence should be guaranteed in law
- Should have a broad mandate as possible, capable of promoting, protecting and monitoring human rights through various means.
- Should be characterized by effective functioning
- Should be adequately funded and not subject to financial control.
- Should be accessible to the general public
- Should be composed of diverse membership representative of society

Checklist for application for affiliate status

- A formal letter of application to the African Commission sent 3 months prior to the session in which the application will be considered.
- A copy of the law which establishes the NHRI
- Documentation showing how the NHRIs conforms to the criteria
- A list of the members of the NHRI
- Information on the sources of funding of the NHRI

Benefits of affiliate status

- Invitation to African Commission sessions
- Participation in African Commission deliberations on issues of interest, without voting rights
- Submission of proposals of agenda items
- Address the African Commission through oral statements

Obligations of NHRIs having affiliate status

- Assist the African Commission in its work
- Present activity reports every 2 years

Recommendations from Session 2:

- NHRIs should monitor implementation and follow up on decisions of the African Commission
- NHRIs without affiliate status should apply for the same
- NHRIs should submit alternative report during the State reporting procedure

Session 3: Complementarity in the Promotion Mandate of the ACHPR: A Focus on the Implementation of Resolution 275

This session delved where Resolution 275 of the African Commission on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV) of 2014 has been invoked and to assess the challenges that persons forming part of sexual orientation, gender identity and expression minorities (SOGIE) persons face during the Covid 19 pandemic. This Resolution was adopted after intense advocacy by CSOs across Africa. Resolution 275 is imperative as it clarifies the position of the African Commission on SOGIE issues by clearly providing that States have to protect persons forming part of sexual minorities from violence by enacting laws and by ensuring that human rights defenders working on these issues operate in a safe environment. While many have labelled this Resolution as contentious, there is nothing contentious per se because its crux is on ending violence against persons forming part of sexual minorities and violence cannot be justifiable under any circumstances.

After the adoption of Resolution 275 in 2014, NANHRI saw there was a gap since many NHRIs did not understand the challenges of SOGIE persons. From the year 2016 to earlier this year, NANHRI has been working with 5 NHRIs (Kenya, SA, Malawi, Uganda and Ghana) to capacitate the NHRIs to institutionalise SOGIE in their mandate and to extend the protection of SOGIE in their States. Some of the NHRIs had not actually interacted with the subject or have linkages with CSOs in the topic. They started interacting, having press releases and undertaking research on SOGIE matters, as well as integrating SOGIE matters in other cross-cutting areas of human rights. Based on the successes, they were able to extend the project to 5 more countries such as Liberia, Nigeria, Namibia, Cote d'Ivoire and Togo.

This session also elaborated on the different instances when Resolution 275 have been used by the African continent, specially by the African Commission. Some of them are:

- General comment number 2 under article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- Resolution 376 of the African Commission on the Situation of Human Rights Defenders in Africa adopted in 2017
- General Comment number 4 of the African Commission on the Right to Redress for Victims of Torture and Other Cruel, Inhumane or Degrading Punishment or Treatment
- Concluding observations, guidelines and principles of the African Commission

Recommendations from Session 3:

- NHRIs need to engage with Resolution 275
- NHRIs should have press releases, undertake research and investigations on SOGIE matters.

Session 4: Complementarity in enhancing the promotion and protection of human rights in the context of business activities

This session started with a presentation of an overview of the NANHRI Business and Human Rights and Sustainable Oceans Survey. This is a collaborative project between the Danish Institute for Human Rights (a national human rights institution and equality forum in Denmark), and NANHRI. It is a follow up to the 2013 mapping survey of African National Human Rights Institutions on Business and Human Rights. The survey is currently at analysis stage.

Over the past few decades, business activities have emerged as contributors to deterioration of human rights, hence the need for corporate accountability. The aim objective of the Survey was to:

- To support NANHRI and its members to strengthen their capacity in, develop research on, and implement collaborative activities related to the implementation of UNGPs, the 2030 Agenda for Sustainable Development, in particular SDG 14, and Agenda 2063.
- Programme has 10 main thematic areas around BHR and Sustainable Oceans.

In Business and Human Rights, NHRIs are key in:

- Monitoring state of human rights against international human rights standards and reporting on status of implementation
- Research (evidence - based) and advice;
- Human rights education and promotion;
- Investigation; conciliation and remedies on Business and Human Rights
- Cooperation with national and international organizations; and interaction with the judiciary
- Advocating for legal reforms

The key areas that the survey investigated are as follows:

- Activities on BHR and Sustainable Oceans
- National implementation frameworks
- Complaints handling mandate and/or mechanisms
- Role of NHRIs in the implementation and realization of Business and Human Rights and SDGs
- Engagement of NHRIs in Reporting processes
- Challenges limiting the work of NHRIs on BHR and SDGs
- Understanding of regional and international frameworks and mechanisms
- Business and Human Rights issues in the different regions and countries
- NHRIs institutional capacities on implementing work on BHR and SDGs
- National, regional and international cooperation between NHRIs and other actors.

The role of the NHRIs in the African Continental Free Trade Area (AfCFTA) Treaty implementation was also discussed. The AfCFTA is one of the flagship projects under the AU Agenda 2063. It is a framework agreement covering trade in goods and services, investment, intellectual property rights and competition policy. The AfCFTA envisages the creation of a single market with free movement of goods, services, capital and natural persons, as a way of promoting social and economic development in Africa. The Draft Strategic Framework of the AfCFTA emphasises the importance of ensuring that the process is all-inclusive, participatory and consultative with all stakeholders, particularly civil society groups at the national, sub-regional and continental levels.

Rising concerns around AfCFTA:

- The AfCFTA design process and negotiations have so far been **exclusive, opaque and shrouded in secrecy**, with little or no space for the involvement of critical stakeholders/constituencies whose interests are implicated.
- More importantly, the discussions have paid **minimal attention to the human rights implications of the AfCFTA**, which are likely to be significant.
- Rising skepticism towards trade and investment liberalization driven to a large extent by peoples' concerns that the **benefits of trade and globalization have not been equitably distributed to benefit vulnerable groups**.

Role of NHRIs

- The role of human rights actors including NHRIs in the regional and national consultative processes related to negotiations and implementation of the AfCFTA cannot be over-emphasized.
- NHRIs are uniquely placed to advise States on their obligations to conform to regional and international human rights instruments.
- However, we are aware that sometimes they often lack the requisite capacity, resourcing and political good-will to deliver on this mandate.

NANHRI's approach around this project is to provide support for capacity strengthening, to hold consultations and build consensus, and to strengthen the link between NHRIs and regional and global mechanisms.

Recommendations from session 4:

- NHRIs to integrate business and human rights issues in their work
- NHRIs to advocate for a human rights-based approach to development including the implementation of the AfCFTA.

Session 5: Joint Commemorative Webinar: The Gains and Gaps in the Complementary Relationship between NHRIs & the African Commission over the Past 40 years of the Charter: A Focus on Affiliate Status

This session focused on affiliate status and the difference between affiliate and observer status. There was first an expert presentation and a panel discussion on the gains and gaps in the complementary relationship between NHRIs and the African Commission.

Expert presentation

Currently there are 29 NHRIs that have been granted affiliate status and their work is significantly felt. Much has changed since the 2000s when the first NHRIs were given affiliate status. Comparing NHRIs and CSOs and their engagement at the African commission is almost akin to comparing apples and oranges since their working methods are different. NHRIs are governmental institutions and CSOs are non-governmental.

Criteria for obtaining observer status or affiliate status are different as below:

Affiliate Status (Resolution 370)	Observer Status (Resolution 361)
Duly established by law	Objectives and activities should be in consonance with AU Constitutive Act, African Charter & Maputo Protocol
African NHRI or specialised institution	NGO working in the field of human rights in Africa
Independence guaranteed in law	Declare their financial resources
Broad mandate	
Effective functioning	
Adequately funded/No financial control	
Accessible to the general public	
Diverse membership	

Benefits of observer status versus affiliate status

Affiliate Status	Observer Status
Invitation to sessions	Participate in public sessions
Participation in deliberations (without voting rights)	Access to non-confidential documents
Submit agenda proposals	Invitation to private sessions
Address the African Commission	Address the African Commission (sufficient lead time)
	Submit agenda proposals

Obligations of NHRIs versus CSOs

NHRIs	CSOs
Assist the African Commission in promoting and protecting human rights at national levels	Establish close cooperation with the African Commission and engage in regular consultations on matters of common interest
Present activity report every 2 years	Present activity report every 2 years

The ways in which NHRIs can engage with the African Commission are as follows:

- Participation in sessions
- State reporting (alternative reports)
- Country missions
- Standard setting and studies
- Litigation

Panel Discussion on the Gains and Gaps in the Complementary Relationship between NHRIs & the ACHPR (30 minutes)

This panel focused on how the African Charter provides the legal framework for human rights protection in Africa, with a chapter establishing the African Commission to promote, protect, respect and realise the rights in the document. NHRIs are established by the laws of their respective countries to ensure the protection and promotion of the laws in their countries. There is a therefore a convergence in their mandates namely promoting and protecting human rights in Africa. It is hence absolutely necessary for the African Commission and NHRIs to work together to promote human rights. Although many NHRIs have been granted affiliate status, few of them submit their reports and consistently attend the sessions of the African Commission.

The Paris Principles is at the core of the establishment of these institutions. NHRIs have been playing an important role and are complementary to other institutions for the protection and promotion of human rights.

The gains of such affiliate status are as follows:

- Opportunity to collaborate on a promotional and protective nature as both have similar mandates except that NHRIs operate at the national level and the African Commission has regional mandate. They are also recognised in the Grand Bay declaration. NHRIs have the legitimacy to work with the African commission
- The establishment of NANHRI which was created as a means of fostering relationships.
- Affiliate status gives NHRIs the rights and obligations similar to CSOs with observer status but NHRIs have the added requirement to assist the African

Commission in the promotion and protection of human rights at the regional and national level

- Activity and alternative reports of the NHRIs are taken into consideration by the African Commission when preparing concluding observations
- NHRIs can follow up on the implementation of the decisions of the African Commission at the domestic level

The gaps are as follows:

- The African Commission has not been proactive in this collaborate and depends more on the effort of NANHRI. Apart from workshops and panel discussions, working relationship between the two is invisible
- NANHRI's Constitution does not refer to the African Charter and the complementarity with the African Commission
- NHRIs do not consistently participate in the sessions of the African Commission
- There is no focal point for NHRIs at the secretariat of the African Commission with there being no response to correspondences in many instances
- The African Commission does not reprimand weak NHRIs which are not compliant with the Paris Principles
- The African Commission does not support NHRIs that face govt reprisals in the course of their work

Recommendations from session 5:

- NANHRI needs to reflect on how they can foster the relationship between NHRIs and the African Commission. It needs to identify areas of cooperation and to motivate NHRIs to engage with the African Commission
- There is a need for a better mechanism for the protection of whistle blowers and human rights defenders
- NHRIs with affiliate status have to present their reports to the African Commission every 2 years
- Need to assess how to make the African Commission and the NHRIs work closely beyond reporting and coming to sessions but through the constant flow of information
- The African Commission needs to assist NHRIs with B Status to upgrade and to operationalise
- The African Commission needs to speed up the applications of those NHRIs which have applied for affiliate status
- There is a need for a focal person on NHRIs at the African Commission

Session 6: Complementarity in the Protection Mandate: A Focus on NHRIs Follow-Up on Implementation of African Commission's Decisions Relating to Economic, Social, and Cultural Rights (ESCR)

This session assesses how NHRIs can assist the African Commission in the implementation of its decisions in African countries. The contestation around ESCR started with the adoption of the Universal Declaration on Human Rights which led to 2 separate instruments namely the International Covenant on Economic, Social and

Cultural Rights (for economic, social and cultural rights) and the International Covenant on Civil and Political Rights (for civil and political rights), thus creating 2 sets of rights. This did not influence the Organisation of African Unity at the time, which combined both civil and political rights and ESCR in the same document, which did not consequently have resource consideration for the implementation of rights. In 2001, the African Commission made it clear in the *SERAC versus Nigeria* case that there is an interdependence of rights, the obligation to protect, respect and fulfil rights irrespective of the type of rights. This was reiterated in the case of *Purohit versus the Gambia*.

These are the ways in which NHRI has followed up on the implementation of the decisions of the African Commission

Kenya	<p><i>Endorses case:</i> This was the first case of the African Commission to recognise the rights of indigenous people in Kenya – The <i>Endorois</i> filed this case as a consequence of their eviction from their land in Kenya and were challenging the violations of several rights in the African charter. Unfortunately, not much has happened but the NHRI has participated by convening other stakeholders and working on an advisory to the State on what if implemented would lead to a realisation of the rights in the African Charter. The government formed a task force and unfortunately it was not properly funded and they never had the opportunity to present the final report.</p> <p><i>Ogiek case:</i> The <i>Ogiek</i> case task force received inputs from different stakeholders and filed its final reports to the authorities about a year ago. Unfortunately, the report is not yet public.</p>
Nigeria	<p><i>SERAC versus Nigeria</i> is a landmark decision that has great effect on the jurisprudence on environmental protection. The NHRI has taken several steps to implement the decisions such as using the decision of the African Commission to resolve/deal with complaints, creating awareness at the local level on the implementation of ESCR citing decisions of the African Charter.</p> <p>In 2016 the NHRI created a human rights and investigation panel in Nigeria on oil pollution and oil degradation following the decisions of the African Commission. However, in the court of appeal, the decision of the court of first instance were reversed in that oil issues are not rights issues. They have appealed this decision to the Supreme Court and one of the authorities in this case is that of <i>SERAC versus Nigeria</i>.</p> <p>The NHRI has also created a link to the decisions of the African Commission so that these decisions can be made accessible locally. It has further adopted a national action</p>

	plan on human right and business issues so that ESCR is mainstreamed into the activities of all relevant stakeholders in Nigeria.
The Gambia	<i>Purohit versus the Gambia:</i> The NHRI became effective only in 2019 but there was progress before that. The specific facility in question has been relocated outside of Banjul since the decision. It is more spacious and sanitary issues have improved a bit. Since the overthrow of the former regime, the facility is more accessible and those responsible are more willing to talk to researchers and monitors around the country. The NHRI visited and noted some improvements. However, there is still issues in terms of legislation and law reform regarding persons with psycho-social disabilities. In 2021, a particular legislation was adopted with meant to provide protection for persons with disabilities – it domesticated the provisions of the Convention on the Rights of Persons with Disabilities. It includes mental disability in the definition of a person with disability.

Recommendations from session 6:

- There is need to join efforts both at the national and regional level to formulate strategies and coordinate efforts.
- NHRIs need to bring together CSOs and communities with the government to facilitate dialogues to charter the way forward to identify recommendations
- NHRIs that have a redress mandate can also participate in the activities of the African Commission
- There is need for NHRIs to participate in the hearings and the activities specially when the African Commission and the African Court are considering matters on a country that are in. They can also file amicus curiae briefs.
- NHRIs can contribute by empowering communities to constantly and repeatedly keep the State to account.
- NHRIs also engage in advocacy work to raise awareness about human rights and decisions of the African Commission
- The NHRIs only follow up on the implementation – they cannot exert pressure. It is only the African Union that can do so
- NHRIs should engage more at a political level and ensure greater awareness when it comes to the workings of the African Commission, specially concerning its decisions/recommendations
- There is need to train judges and lawyers to use the jurisprudence of the African Commission and to use landmark cases of the African Commission so that if the local courts take a decision on ESCR, it becomes binding on the State.
- The NHRIs need to be conversant with the Guidelines on the Role of NHRIs on Monitoring Implementation of Recommendations of the African Commission on

Human and Peoples' Rights and Judgments of the African Court on Human and People' Rights. See <https://www.nanhri.org/the-role-of-nhris-in-monitoring-implementation-of-recommendations-of-the-african-commission-on-human-and-peoples-rights-and-judgments-of-the-african-court-on-human-and-peoples-rights/>

Session 7: Presentation and adoption of the Declaration and Action Plan on Enhancing the Complementary Relationship between the African Commission and NHRIs

Following the discussions on the complementary relationship between the African Commission and NHRIs, NANHRI presented a Declaration and Action Plan on Enhancing the Complementary Relationship between the African Commission and NHRIs (see Annex 3). There were no major changes. It was proposed that the draft will be sent to members for further comments.

Closing ceremony and Conclusion

The closing ceremony emphasised on the affiliate status an important segment of interacting with the African Commission. However, as per a survey conducted by NANHRI in 2020, only a small proportion of staff of NHRIs indicated they understood the commitment under the African Commission and Resolution 370. The 3rd NHRIs' Forum was a very necessary convening as it looked at the human rights situation in Africa. The situation is not better in the north, it is not better in the south, it is not better in the east, it is not better in the west and not better in the centre. Human rights are under siege as pointed out and we need to have a conference discussing the same. We need to take concrete steps as we move to the 50th anniversary of the charter. At the end of this decade, we will be evaluated based on the commitment we have made in the Declaration and Plan of Action.

Annexes

Annex 1: Concept note of the Forum

Annex 2: Forum Agenda

Annex 3: Declaration and Action Plan on Enhancing the Complementary Relationship between the African Commission and NHRIs