



1

INTRODUCTION

*Charles M Fombad**

1 Introduction

In the last three decades, the recognition and protection of fundamental human rights have become as commonplace in Africa as in the rest of the world. The primary responsibility for ensuring that these rights are respected lies with states. They negotiate and ratify international human rights instruments and are required to create mechanisms to safeguard the rights. It is at the level of implementing these commitments effectively that serious challenges remain.

Generally, enforcing human rights has never been easy. Apart from the government, numerous entities are involved in their enforcement, ranging from the judiciary, law enforcement agencies and legislature to educational institutions providing human rights programmes, civil society organisations (CSOs), international non-governmental organisations (INGOs), donor institutions, and national human rights institutions (NHRIs). Among these institutions and organisations, NHRIs play a unique role and are the cornerstone of any effective national human rights protection system.

Africa's increasing recognition and protection of human rights have been accompanied by a surge in the number of NHRIs established with broad mandates to promote and protect human rights. The mandates and

* Institute for International and Comparative Law in Africa, Faculty of Law, University of Pretoria.

powers of the NHRIs vary from country to country, as does their ability to deliver on these mandates. Indeed, the rapid increase in the number of NHRIs in Africa has come with a variety of substantive and operational challenges. In the face of such challenges, those who work in NHRIs need to understand the broader regional and global context in which the institutions operate and the changing nature of human rights issues.

This compendium provides an overview of NHRIs in eastern and southern Africa. It is guided to a large extent by the internationally agreed-upon Principles Relating to the Status of National Institutions, referred to as the Paris Principles. These Principles are broadly accepted as the benchmark against which the legitimacy and credibility of NHRIs can be assessed.¹ Endorsed by the United Nations General Assembly in 1993, the Paris Principles provide NHRIs with guidelines as to their competence and responsibilities, their composition and guarantees of independence and pluralism, and their methods of operation; additional principles relate to the status of commissions with quasi-jurisdictional competence.

In spite of the common minimum international standard against which most of Africa's NHRIs purport to have been established, there are wide variations in their level of performance. This is reflected in their different levels of accreditation by the International Committee of National Institutions for the Promotion and Protection of Human Rights, which uses the Paris Principles as one of its main assessment instruments.²

In focusing on the NHRIs in some of the countries in eastern and southern Africa, the objectives of this compendium are to:

- provide a unique compilation of important legal instruments regulating the NHRIs in each country, ranging from the national constitution and other pieces of legislation to important internal instruments and codes of conduct;
- serve as reference material for legal professionals and policy-makers to increase awareness and understanding as well as practical knowledge of best practices;
- serve as a source of information for promoting exchanges of views on best practices and a means of creating new good practices;
- assist scholars, researchers, students, lawyers, judges and other professionals interested in NHRIs; and

1 See United Nations, Principles Relating to the Status of National Institutions (The Paris Principles), adopted by General Assembly resolution 48/134 (20 December 1993), available at <https://bit.ly/2WckyGL> (accessed in April 2019).

2 Global Alliance of National Human Rights Institutions, *Chart of the Status of National Institutions*, available at <https://bit.ly/30368Lb> (accessed in April 2019).

- identify gaps and challenges that NHRIs face and see what key lessons can be drawn to inform strategies for addressing them.

The compendium covers the following 15 countries: Angola, Botswana, Burundi, the Democratic Republic of the Congo, Eswatini (formerly Swaziland), Ethiopia, Kenya, Lesotho, Malawi, Mauritius, Rwanda, South Africa, Tanzania, Zambia, and Zimbabwe.

The next chapter is a general overview of the NHRIs of these countries, after which individual chapters are devoted to each country. Each chapter is divided into two parts. The first, part A, provides an introductory commentary on the NHRI of the country in question; the second, part B, contains some selected human rights documents and materials from that country.

The introductory commentary on each country covers four areas:

- First, it looks at the way in which each NHRI was set up and how it has evolved over time.
- Secondly, it examines the nature of the institution, particularly its legal framework. This encompasses issues such as the manner in which staff are appointed, the scope of their independence, the level of human capacity and professional skills, the relationship between the institutions and other actors that play a role in promoting human rights, the extent of financial autonomy, and the level of access to the institution by victims of human rights abuses.
- Thirdly, the introductory commentary examines the mandate of the NHRI, taking note of how elaborate it is and how it conforms to the Paris Principles.
- Finally, the commentary assesses the level of public accountability of the institutions. The critical questions in each instance is to see to what extent these institutions are able to discharge their mandate of promoting and protecting human rights in the country; in this regard, the good practices as well as gaps and challenges for each country are identified.

A crucial feature of a credible, legitimate and effective human rights protection system is the legal framework on which it is based. In this respect, part B of each chapter provides selected human rights documents for each country. These documents cover three key areas:

- The first section deals with the constitutional provisions setting up the NHRI and similar institutions with a human rights mandate.
- The second section provides some of the key legislative and regulatory instruments relating to the NHRI. These may consist of primary legislation and other regulatory instruments such as statutory instruments, presidential proclamations, orders or directives, and ministerial orders or decrees.

- The third section contains some of the important internal rules and regulations designed to enhance the performance and efficiency of the institution, such as staff codes of ethics or conduct, quality standards and procedural handbooks, Memoranda of Understanding (MOUs) with government departments, non-governmental organisations, and other state institutions.

The selection of eastern and southern African countries in this compendium takes account of the region's diversity of legal and constitutional traditions (the English Common law in Anglophone countries and the civil law in Francophone and Lusophone countries) as well as the diversity of the languages spoken in the regions (English, French and Portuguese).

Highlighting the human rights documents and instruments is a critical aspect of this compendium. Although the Paris Principles serve as a uniform benchmark to guide states, the national legal frameworks regulating each of the NHRIs differ considerably from one another. The differences certainly have an impact on the NHRI's ability to discharge its mandate. What lessons can be learnt, then, from the approach adopted by the different countries in regulating their NHRIs?

Due to the challenges of translation, it was not possible to include a full range of human rights documents and instruments from every country. What is more, the decisions as to which materials to include was also dictated by the nature of the lessons, both positive and negative, that could be drawn from the national legal framework and its impact on the quality of human rights protection in the country.

The compendium ends with a conclusion that seeks to draw some overarching lessons from the country case studies and assess prospects for the future. It is clear that the fate of human rights protection is inextricably linked to how much progress each country has made in regard to democracy; conversely, when threats to democracy begin to mount through a resurgence of authoritarianism, one of the first signs of this is an increase in human rights violations. What emerges from the case studies is that more needs to be done to strengthen NHRIs in Africa.

References

- Global Alliance of National Human Rights Institutions, *Chart Of the Status Of National Institutions*, available at <https://bit.ly/2WckyGL> (accessed in April 2019)
- United Nations, Principles Relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly Resolution 48/134 of 20 December 1993, available at <https://bit.ly/2WckyGL> (accessed in April 2019)