



Network of African National Human Rights Institutions (NANHRI)



Strengthening African NHRIs' Protection Mechanisms for Human Rights Defenders

NAIROBI, KENYA

QUI CK REFERENCE HANDBOOK

November 2021

This page is left blank


**Strengthening African NHRIs'
Protection Mechanisms for Human
Rights Defenders**


© 2021 Network of African National Human Rights Institutions
(NANHRI)

CONTACT INFORMATION


Network of African National Human Rights Institutions (NANHRI)

P.O. Box 74359-00200
Nairobi, Kenya

 www.nanhri.org

 2nd Floor CVS Plaza,
Kasuku Rd off Lenana Road

 info@nanhri.org

 @NANHRI40

 Network of African National Human Rights Institutions

COPYRIGHT

The content of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of the Network of African National Human Rights Institutions.

This report is published by: The Network of African National Human Rights Institutions

COVER DESIGN AND LAYOUT

Intercode Solutions / hello@intercode.co.ke / www.intercode.co.ke



This project is funded by the
European Union



Acknowledgment

Over the last few decades, the human rights situation globally has been a growing concern. In response, human rights defenders (HRDs), including National Human Rights Institutions, have dedicated their work in addressing the human rights situation in line with their mandate.

For a better approach to expanding the shrinking civic space, the Global Alliance of National Human Rights Institutions (GANHRI) organised the 13th Triennial Conference under the theme: *'Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of National Human Rights Institutions'*. The meeting, which was held on 10-12 October, 2018 in Marrakech, Morocco, culminated in the adoption of the Marrakech Declaration.

On this basis, the Network of African National Human Rights Institutions (NANHRI) embarked on establishing and strengthening structures of preserving the rights of HRDs in Africa. To effectively deliver on this assignment, NANHRI sought to understand the status and gaps in the existing structures by commissioning a study. The study informed the development of this Quick Reference Book.

Development of the report and the Quick Reference Book has been made possible through the participation of a host of actors. We thank the NHRIs of Côte d'Ivoire, Kenya, Madagascar, Morocco, Tanzania and Zimbabwe for offering to be case studies. We also thank the Consultants – Dr. Tarisai Mutangi, Dr. Japheth Biegon and Dr. Ashwanee Budoo- for making time for the development of this report and subsequent tools. Special thanks go to the NANHRI Secretariat team for its dedication and infatigable support to the entire project.

We would also like to acknowledge technical support of African Commission on Human and Peoples' Rights through its Chairperson, Prof. Rémy Ngoy Lumbu, as well as The Danish Institute for Human Rights (DIHR), among others.

We are immensely grateful to the European Union for the financial support to the project without which this process would have not been completed.



Table of Contents

FOREWORD iii

PART /I
INTRODUCTION 1

PART /II
HUMAN RIGHTS DEFENDERS IN
INTERNATIONAL HUMAN RIGHTS
LAW 5

PART /III
PROVISION OF LEGAL ASSISTANCE
AND PROTECTION TO HUMAN RIGHTS
DEFENDERS 13

PART /IV
USING FORMAL COMPLAINTS
MECHANISMS TO PROTECT HUMAN
RIGHTS DEFENDERS 16

LIST OF KEY RESOURCES 18

FOREWORD

In a context of shrinking civic space around the world, and especially in Africa, the role of national human rights institutions (NHRIs) in protecting human rights defenders (HRDs) has become an important necessity. A growing number of African Governments have enacted laws and regulations that severely restrict or even criminalize the work of civil society and HRDs. The abuse of counterterrorism, cyber security, money laundering and defamation laws to intimidate and harass HRDs has become commonplace across the continent. Threats and attacks against HRDs, offline and online, have also increased.

The result is that many HRDs are living in perpetual fear or have been forced into hiding or exile. Others are languishing in detention after been subjected to grossly unfair trials. Their incarceration is nothing more than State-sanctioned punishment for doing human rights work, for exercising the right to defend human rights.

In response to the deteriorating situation for HRDs in domestic contexts, many NHRIs are rising to the occasion. They are championing the creation of a safe and enabling environment for HRDs. They are responding to the protection needs of HRDs, including by investigating violations and demanding accountability for perpetrators. Since October 2018, the work of NHRIs in relation to HRDs has been reinvigorated by and based upon the Marrakech Declaration. Adopted during the 13th International Conference of the Global Alliance of National Human Rights Institutions (GANHRI), held in October 2018 in Marrakech, Morocco, the Declaration contains commitments undertaken by NHRIs to expand civic space and protect HRDs, with a specific focus on women HRDs.

This *Quick Reference Handbook* prepared by the Network of African National Human Rights Institutions (NANHRI) is a timely and valuable offshoot of the Marrakech Declaration as it seeks to strengthen and equip African NHRIs to be more robust and effective in the noble task of protecting HRDs. Although it is designed for NHRIs, I am convinced that it is an equally useful resource for other national agencies and authorities

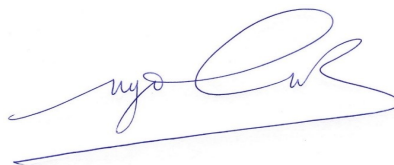
that are in one way or the other responsible for creating and ensuring a safe and conducive environment for human rights work to take place. These include gender commissions, attorneys general, national prosecution offices, judiciaries, and national police services.

One of the sections of this *Handbook* deals with regional instruments and mechanisms relating to HRDs. In this context, it bears recalling that the office of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa was established in 2004 through Resolution 69 of the African Commission on Human and Peoples' Rights. Resolution 69 specifically states that one of the mandate areas of the Special Rapporteur is to cooperate and engage in dialogue with a range of stakeholders, including NHRIs.

Based on this pillar of my mandate, I have committed to intensifying my interactions and engagements with NHRIs in diverse platforms, including at the sessions of the African Commission and during country visits. I look forward to continuing this noble engagement, especially now that with the encouragement and support of NANHRI, NHRIs across the continent are proactively developing or strengthening their protection mechanisms for HRDs.

Our collective work in protecting HRDs is indeed cut out. This *Quick Reference Handbook* is thus part of the HRDs' toolbox. It complements the *Compendium on the right to protection of human rights defenders*, which we published in 2018.

I implore all African NHRIs to put it to use even as they continue to strive for a continent in which human rights work is encouraged, supported and cherished by all State and non-State actors.

A handwritten signature in blue ink, appearing to read 'ngoy lumbu', with a long horizontal line underneath.

Prof Rémy Ngoy Lumbu

***Special Rapporteur on Human Rights Defenders
and Focal Point on Reprisals in Africa
and Chairperson, African Commission on Human
and Peoples' Rights***

PART / 1

Introduction

- ⇒ Background
- ⇒ National Human Rights Institutions and the Protection of HRDs
- ⇒ The Reference Handbook
- ⇒ Structure of the Reference Handbook

1.1 Background

In Africa, as in many other parts of the world, human rights defenders (HRDs) are living in exceptionally difficult times. The crucial work that they do, including investigating, documenting and exposing human rights injustices, fighting impunity, defending democracy and the rule of law, and educating the public about human rights, increasingly exposes HRDs to a wide range of threats and risks. For many HRDs, undertaking human rights work almost always involves risking one's life or liberty or that of their families, friends and colleagues. Indeed, an ever-growing number of HRDs in Africa and beyond are targets of reprisal and persecution aimed at silencing them or stopping their human rights work. Perpetrated primarily by the State, but sometimes by private or non-State actors, threats and attacks on HRDs come in different forms, including physical, psychological, economic and social.

Some of the traditional tactics that perpetrators deploy to punish and silence HRDs include unlawful detention, arbitrary arrest, judicial harassment, torture, sexual violence, abduction, enforced disappearance, and killing. All kinds of HRDs are prone to threats and attacks, but experience has shown that certain groups of HRDs (e.g. women, members of indigenous peoples, or lesbian, gay, bisexual, transgender or intersex persons) are often targeted purely because of their identity. Others are

“National human rights institutions, especially those mandated to receive complaints and follow individual cases, can be powerful allies of human rights defenders and contribute significantly to their security and protection. National human rights mechanisms that prioritize the protection of human rights defenders in their agenda and establish a focal point in this respect have an important role to play in creating an enabling environment for human rights defenders and facilitating their activities without any undue interference from outside.”

Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekkagya, A/HRC/13/22, 30 December 2009, para. 108

attacked because of the thematic or institutional focus of their work. Among the most at-risk group of HRDs in this regard include those combating corruption or working on land and environmental rights.

With the emergence of digital spaces as active and convenient sites for undertaking human rights work, threats and attacks on HRDs have also moved online. Online smear campaigns, stigmatization, trolling, defamation, death threats, and unlawful surveillance are a daily reality for many HRDs, with women HRDs suffering particularly malicious harassment on the internet. In many cases, offline and online threats and attacks have forced HRDs to escape into exile, leaving behind families and the life they have built in their home countries.

Threats and attacks on HRDs occur in a broader context or environment of a rapidly shrinking civic space. Many States in Africa and beyond have enacted laws and regulations that severely restrict or even criminalize the work of civil society and HRDs. The primary purpose of these laws is to mount hurdles that make it difficult or impossible to specifically exercise the rights to freedoms of expression, assembly and association. Similarly, restrictions targeting HRDs often take place under the pretext of enforcing counterterrorism, cyber security or money laundering laws and measures. Relevant provisions in such laws are usually broad and vague, in addition to granting State authorities sweeping powers to regulate, control, cancel or prohibit the peaceful activities of HRDs and human rights organizations. The number of HRDs charged with and/or imprisoned for alleged offences under such laws has grown steadily in the last decade globally and regionally.

The worsening situation of HRDs around the world has prompted a flurry of HRD protection initiatives and mechanisms at the national, regional and global levels. There is indeed now a burgeoning body of good practices in the protection of HRDs as outlined by former United Nations (UN) Special Rapporteur on HRDs, Michel Forst, in his February 2016 report to the Human Rights Council (HRC).¹ In this context, national human rights institutions (NHRIs) have been identified as key actors at the national level that can play a substantive role in protecting HRDs. They can also serve as a bridge between protection initiatives at national levels, on the one hand, and those established at the regional and international levels, on the other.

1.2 National Human Rights Institutions and the Protection of HRDs

As independent State institutions with a broad mandate to promote and protect human rights, NHRIs are uniquely and strategically positioned to respond to the situation of HRDs. In recent times, NHRIs around the world have thus sought to respond to the situation of HRDs. In a 2013 report,² Margaret Sekaggya,

¹Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/31/55, 1 February 2016.

²Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/22/47, 16 January 2013.

former UN Special Rapporteur on HRDs, outlined some of the commendable initiatives taken by NHRIs to protect HRDs. These included intervening through complaints mechanisms, engaging in advocacy in favour of a conducive work environment for HRDs, publicly supporting HRDs when violations against them are perpetrated, visiting HRDs in detention or prison, providing legal aid to HRDs, and strengthening the capacity of HRDs to ensure their security. However, the consistency with which NHRIs carry out these activities or more in the protection of HRDs varies considerably.

To foster consistency, the 13th International Conference of the Global Alliance of National Human Rights Institutions (GANHRI), held in October 2018 in Marrakech, Morocco, provided a platform for the exchange of ideas and good practices amongst NHRIs in the protection of HRDs. The conference was convened under the theme “*Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions*”. The theme reflected the convergence of several auspicious anniversaries: the 70th anniversary of the Universal Declaration of Human Rights (UDHR); the 25th anniversary of the adoption of the Paris Principles Relating to the Status of National Institutions and the establishment of GANHRI; and the 20th anniversary of the adoption of the UN Declaration on Human Rights Defenders.

During the conference, NHRIs discussed issues entwined in the protection of HRDs, including key elements of an enabling environment for HRDs, how to monitor civic space and threats to it, how to protect HRDs, and how to develop related communication resources.

The main outcome of the conference is the Marrakech Declaration. The Declaration acknowledges the fact that “Paris Principles compliant NHRIs can play an important role in promoting and protecting human rights for all by contributing to safeguarding and promoting civic space and protecting human rights defenders and women human rights defenders in particular”.³ With this understanding, the Declaration sets out commitments by NHRIs aimed at ensuring that they consistently respond to the situation of HRDs. These commitments are clustered in three main areas: promotion; protection; and cooperation and partnerships. In

What do HRDs do in practice?

- ⇒ They collect and disseminate information on human rights violations
- ⇒ They support victims of human rights violations
- ⇒ They take action to secure accountability and to end impunity
- ⇒ They support better governance and government policy
- ⇒ They contribute to implementation of human rights treaties
- ⇒ They undertake human rights education and training

Source: OHCHR, *Human rights defenders: Protecting the right to defend rights- Fact Sheet* 29

³Marrakech Declaration, Preamble, para 17.

this context, the Marrakech Declaration contains the most elaborate articulation by NHRIs themselves on their role in the protection of HRDs.

1.3 The Reference Handbook

In a context in which NHRIs are seeking to be consistent and proactive in the protection of HRDs, this Reference Handbook has been developed by the Network of African National Human Rights Institutions (NANHRI) to assist in their efforts to: (a) provide legal assistance to HRDs; and (b) use their complaints handling mechanisms to receive and determine complaints from HRDs. Since the adoption of the Marrakech Declaration, NANHRI has sought to work with African NHRIs to develop or strengthen their existing HRDs protection mechanisms. This engagement builds upon NANHRI's broader work of supporting and enhancing the capacity of African NHRIs to effectively and efficiently discharge their mandate as laid out in national law and the Paris Principles Relating to the Status of National Institutions.

1.4 Structure of the Reference Handbook

The Reference Handbook is structured into four main parts. Part I provides a background on the situation of HRDs and the rationale for the Reference Handbook. Part II provides an overview of the international human rights law relating to the protection of HRDs. Some of the issues covered in this Part include: defining HRDs, State responsibility to protect HRDs, and international and regional norms and mechanisms relating to HRDs. Part III discusses potential key NHRI interventions relating to provision of legal assistance to HRDs. Part IV examines how to use NHRI complaints handling mechanisms to address complaints filed by HRDs.

PART / II

Human Rights Defenders in International Human Rights Law

2.1 Who is a Human Rights Defender?

The term “human rights defender” has gained prominence since the adoption of the UN Declaration on Human Rights Defenders in 1998.⁴ It is now a term of choice for referring to individuals and organizations that work or act to promote and protect human rights. The definition of HRDs describes *what* they do rather than *who* they are. In other words, it is the act of promoting and protecting human rights that make individuals to be referred to as HRDs. In the words of UN Office of the High Commissioner on Human Rights (OHCHR), “it is through a description of their actions ... and of some of the contexts in which they work ... that the term can best be explained”.⁵

In this context, the UN Declaration on Human Rights Defenders implicitly defines HRDs as “individuals, groups and associations ... contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals”.⁶ There are no specific qualifications to be a HRD. Anyone can be a HRD if they choose to be. Indeed, everyone is encouraged to be a HRD. This also means self-identification is crucial in defining HRDs. However, it is important that anyone who claims to be a HRD accepts the universality of human rights as enshrined in the UDHR, is concerned with issues that fall within the scope of human rights, and undertakes activities in defence of those issues in a peaceful manner.

⁴The official title of the declaration is 'Declaration on the Right of and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', adopted by the UN General Assembly Resolution 53/144 of 9 December 1998.

⁵OHCHR Fact Sheet 29 - Human rights defenders: Protecting the right to defend rights, p. 2.

⁶UN Declaration on Human Rights Defenders, Preamble, para. 4.

- ⇒ Who is a Human Rights Defender?
- ⇒ NHRIs as Human Rights Defenders
- ⇒ Rights and Protections Guaranteed to HRDs
- ⇒ State Responsibility to Protect HRDs
- ⇒ Elements of a Conducive Work Environment for HRDs
- ⇒ Global Instruments and Mechanisms Relating to HRDs
- ⇒ Regional Instruments and Mechanisms Relating to HRDs
- ⇒ List of Key Resources

Given the deliberately broad scope of the term, it follows that HRDs hail from all walks of life, are found everywhere across the globe, and work on a multitude of human rights issues. Many HRDs take up human rights issues in a personal capacity. They have neither institutional affiliation nor specific training. Others do so in a professional capacity, for example, as lawyers, journalists or staff of human rights organizations. HRDs are usually non-State actors. However, individuals working with governmental or intergovernmental institutions can also be HRDs. This broad scope of the term ‘human rights defender’ is aptly reflected in the Marrakech Declaration.

“ We reaffirm the principle of self-identification of human rights defenders. In line with the Declaration on Human Rights Defenders this includes anyone working for the promotion and protection of human rights, which encompasses: professional as well as non-professional human rights workers; those working for women’s rights and gender equality; those working on the rights of ethnic, linguistic, sexual or religious minorities; persons with disabilities; defenders working on environmental and land issues; those working on indigenous rights; volunteers; journalists; lawyers; and anyone else carrying out, even on an occasional basis, a human rights activity”.

Marrakech Declaration, Preamble, para. 10

2.2 NHRIs as Human Rights Defenders

As their primary mandate is to promote and protect human rights, NHRIs also fall under the category of HRDs. This point was well articulated by former UN Special Rapporteur on HRDs, Margaret Sekaggya, in her January 2013 report on the role of NHRIs in the protection of HRDs. She observed as follows: “national institutions which operate in compliance with the Paris Principles relating to the Status of National Institutions and their members and staff, can be considered as human rights defenders, as they strive to promote and protect human rights”.⁷ Similarly, the Marrakech Declaration recognizes and affirms the fact that “independent and effective NHRIs, as well as their members and staff, are human rights defenders themselves”. In many cases, therefore, NHRIs experience more or less the same challenges that HRDs encounter. They thus equally need protection in their capacity as HRDs.

2.3 Rights and Protections Guaranteed to HRDs

HRDs are entitled to all rights and protections guaranteed under international human rights treaties and instruments. The UN Declaration on Human Rights

⁷Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/22/47, 16 January 2013, para. 23.

Defenders provides an elaborate list of the rights and protections that specifically apply to HRDs. These are:

- The right to promote and to strive for the protection and realization of human rights at the national and international levels (Article 1);
- The right to meet or assemble peacefully (Article 5(a));
- The right to form, join and participate in non-governmental organizations, associations or groups (Article 5(b));
- The right to communicate with non-governmental or intergovernmental organizations (Article 5(c));
- The right to know, seek, obtain, receive and hold information about human rights (Article 6(a));
- The right to freely publish, impart or disseminate views, information and knowledge on all human rights (Article 6(b));
- The right to study, discuss, form and hold opinions on the observance of human rights and to draw public attention to those matters (Article 6(c));
- The right to develop and discuss new human rights ideas and principles and to advocate their acceptance (Article 7);
- The right to participate in the government of his or her country and in the conduct of public affairs (Article 8(1));
- The right to submit petitions to governmental bodies and agencies and organizations (Article 8(2));
- The right to benefit from an effective remedy and to be protected in the event of the violation of those rights (Article 9(1));
- The right to submit a human rights complaint to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law (Article 9(2));
- The right to complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights (Article 9(3));
- The right to attend public hearings, proceedings and trials (Article 9(3));
- The right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms (Article 9(3));
- The right to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights (Article 9(4));
- The right to the lawful exercise of his or her occupation or profession (Article 11);
- The right to participate in peaceful activities against violations of human rights (Article 12(1));
- The right to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts that

- result in human rights violations and abuses (Article 12(3)); and
- The right to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights (Article 13).

2.4 State Responsibility to Protect HRDs

The State has the primary responsibility of protecting HRDs from threats and attacks, regardless of whether they are committed by State or non-State actors. This responsibility derives from the State's cardinal duty to protect all individuals within its jurisdiction from human rights violations and abuses. The specific duties of the State in respect of HRDs are stipulated in several provisions of the UN Declaration on Human Rights Defenders.

To begin with, Article 2(1) sets out the basic principle that the State is the primary duty-bearer in relation to the protection of human rights. Article 2(1) enjoins States to adopt legislative, administrative and any other necessary steps to ensure to ensure that the rights and freedoms enshrined in the Declaration are effectively guaranteed.

Article 12(2) of the Declaration specifically addresses the question of threats and attacks against HRDs. It provides that the State has the duty to "take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration". Other duties of the State as outlined in the Declaration are as follows:

- Duty to conduct prompt and impartial investigations of alleged violations of human rights (Article 9(5));
- Duty to promote understanding of civil, political, economic, social and cultural rights by the public at large (Article 14(1)-(2));
- Duty to establish and develop independent national institutions for the promotion and protection of human rights (Article 14(3)); and
- Duty to promote and facilitate the teaching of human rights at all levels of education and in training programmes for lawyers, law enforcement officials, armed forces and public officials (Article 15).

The ultimate goal of these duties is to ensure that the State creates a safe and conducive work environment for HRDs. A December 2013 report of the UN Special Rapporteur on Human Rights Defenders outlines the main elements of a safe and enabling environment for HRDs.⁸ These are listed in the box next page.

⁸Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/25/55, 23 December 2013.

Elements of a Safe and Enabling Environment for HRDs

- Existence of laws and provisions that protect, support and empower HRDs
- Institutional and administrative frameworks that are receptive and supportive of HRDs' work
- Prompt and independent investigation of all violations against HRDs
- Existence of strong, independent and effective NHRI
- Effective protection policies and mechanisms, including public support for the work of HRDs
- Special attention for risks and challenges faced by women HRDs and those working on women's rights and gender issues
- Non-State actors' respect and support for the work of HRDs
- Safe and open access to global and regional human rights bodies and mechanisms
- Strong, dynamic and diverse community of HRDs

2.5 Global Instruments and Mechanisms Relating to HRDs

The UDHR as well as the entire range of human rights treaties adopted by the UN are relevant to the protection of HRDs. For example, the International Covenant on Civil and Political Rights enshrines rights that are central to the defence of human rights, such as the right to freedoms of expression, assembly and association. Other UN human rights treaties are more relevant to specific groups of HRDs. For instance, the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) is relevant to women HRDs.

As highlighted in previous sections, the specific rights and protections guaranteed to HRDs are elaborated in the 1998 **UN Declaration on Human Rights Defenders**.

As aptly described in the Marrakech Declaration, the UN Declaration on Human Rights Defenders is recognized as "the international normative framework for human rights defenders".⁹ In 2013, the UN General Assembly adopted the first ever **Resolution on Women Human Rights Defenders**.¹⁰

The Resolution calls on States to, *inter alia*, take all measures necessary to ensure the protection of women HRDs and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights.

⁹Marrakech Declaration, Preamble, para. 8.

¹⁰A/RES/68/181, adopted by the General Assembly on 18 December 2013.

Beyond norm elaboration, the UN established the mechanism of the **Special Rapporteur on the Situation of Human Rights Defenders** in 2000. The mandate of the Special Rapporteur includes the following:¹¹

Mandate

1. Promote the effective implementation of the UN Declaration on Human Rights Defenders in cooperation and constructive dialogue with governments and other actors
2. Study trends, developments and challenges on the right to promote and protect human rights;
3. Recommend effective strategies to better protect HRDs and follow up on these recommendations;
4. Seek, receive, examine and respond to information on the situation of HRDs; and
5. Integrate a gender perspective throughout the work of the mandate, with a particular focus on women HRDs.

The tools that the mechanism of the Special Rapporteur uses to discharge its mandate include **country visits, letters of urgent measures or complaint**, and submission of **annual reports** to the HRC and the UN General Assembly. Complaints to the Special Rapporteur are submitted through an online submission form available on the website of the OHCHR.

Contact Details

Special Rapporteur on the situation of human rights defenders
c/o Office of the High Commissioner for Human Rights – Palais Wilson
United Nations Office at Geneva
CH 1211 Geneva 10 Switzerland
Email: defenders@ohchr.org / urgent-action@ohchr.org

2.6 Regional Instruments and Mechanisms Relating to HRDs

The African Charter on Human and Peoples' Rights (African Charter) is the principal human rights treaty in the African regional human rights system. The Charter was adopted by the Organization of the African Unity (OAU) in 1981. In addition to enshrining a catalogue of rights to which HRDs are entitled, the African Charter establishes the African Commission on Human and Peoples' Rights (ACHPR) as the premier regional human rights treaty body. Supplementary protocols or treaties to the African Charter that are currently in force include the Protocol on the Rights of Women in Africa (Maputo Protocol), and the Protocol on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol).

¹¹See <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Mandate.aspx>

The African regional normative framework relating to HRDs is found in a series of soft law instruments of the OAU/AU and the ACHPR. In the **Grand Bay Declaration and Plan of Action** of 1999, the first OAU ministerial conference on human rights called on African States to take appropriate steps to implement the UN Declaration on Human Rights Defenders. Similarly, the **Kigali Declaration** of 2003, being the outcome document of the first AU ministerial conference on human rights, recognized the important role of civil society and HRDs in the promotion and protection of human rights. It specifically called on States to protect HRDs.

The ACHPR has also adopted several resolutions and guidelines dedicated to the situation of HRDs.

Resolutions & Guidelines

1. Resolution 69 on the Protection of Human Rights Defenders in Africa (2004) called on States to promote and give full effect to the UN Declaration on Human Rights Defenders.
2. Resolution 104 on the Situation of Human Rights Defenders in Africa (2007) enjoined States to protect HRDs and “ensure that they have an environment which allows them to carry out their activities safely, without suffering any acts of violence, threats, reprisals, discrimination, pressure ad any arbitrary acts by State or non-State actors as a result of their human rights activities”.
3. Resolution 336 on Measures to Protect and Promote the Work of Women Human Rights Defenders (2016) urged States to, *inter alia*, recognize and address the specific protection needs of women HRDs.
4. Resolutions 345 of 2016 and 376 of 2017 on the Situation of Human Rights Defenders in Africa and the Cotonou Declaration on Strengthening and Expanding the Protection of HRDs in Africa (2017) reiterate the core State obligations relating to HRDs.

Key Global and Regional Instruments Relating to HRDs

Global	Regional
<ul style="list-style-type: none"> • Declaration on Human Rights Defenders, 1998 • Resolution on Women Human Rights Defenders, 2013 	<ul style="list-style-type: none"> • ACHPR Resolution 69 on the Protection of Human Rights Defenders in Africa, 2004 • ACHPR Resolution 104 on Situation of Human Rights Defenders in Africa, 2007 • ACHPR Resolution 336 on Measures to Protect and Promote the Work of Women Human Rights Defenders, 2016 • ACHPR Resolution 345 on the Situation of Human Rights Defenders in Africa, 2016 • Cotonou Declaration on Strengthening and Expanding the Protection of HRDs in Africa, 2017 • ACHPR Resolution 376 on the Situation of Human Rights Defenders in Africa, 2017

In 2004, the ACHPR established the mechanism of the **Special Rapporteur on Human Rights Defenders in Africa**. The mandate of the Special Rapporteur includes the following:¹²

Mandate

1. Seek, receive, examine and act upon information on the situation of human rights defenders in Africa;
2. Cooperate and engage in dialogue with Member States, NHRIs, relevant intergovernmental bodies, international and regional mechanisms of protection of HRDs, HRDs and other stakeholders;
3. Develop and recommend effective strategies to better protect HRDs and to follow up on his/her recommendations; and
4. Raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders.

Similar to the UN Special Rapporteur, the ACHPR Special Rapporteur uses **letters of urgent appeals** and **country visits** to discharge the mandate of the office. The Special Rapporteur also submits a report of activities undertaken to each ordinary session of the ACHPR. In 2014, the ACHPR extended the mandate of the Special Rapporteur to specifically cover the issue of reprisals against HRDs cooperating with the African human rights system. The special mechanism thus changed its official title to Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa. As the focal point on reprisals, the mandate of the Special Rapporteur is as follows:¹³

- Gather information on and effectively address cases of reprisals against civil society stakeholders;
- Document and maintain a database on cases of reprisals brought to its attention;
- Provide guidance to the ACHPR for the adoption of urgent measures to deal with specific cases of reprisals;
- Present reports on cases of reprisals at each ordinary session of the ACHPR in the Special Rapporteur's activity report; and
- Ensure a follow-up of registered cases.

Contact Details

Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa

African Commission on Human and Peoples' Rights

31 Bijilo Annex Layout, Kombo North District

Western Region, P.O. Box 673 Banjul

The Gambia

Email: au-banjul@africa-union.org

¹²ACHPR Resolution on the Protection of Human Rights Defenders in Africa, ACHPR/Res.69 (XXXV) 03.

¹³ACHPR Resolution on Extending the Scope of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa, ACHPR/Res.273 (LV) 2014.

PART / III

Provision of Legal Assistance and Protection to Human Rights Defenders

- ⇒ Introduction
- ⇒ Legal Assistance During Pre-Trial Phase
- ⇒ Legal Representation
- ⇒ Participation in Legal Proceedings in Other Capacities
- ⇒ Trial Monitoring
- ⇒ Developing Manuals and Guides for HRDs
- ⇒ Addressing Legal Gaps and Structural Issues
- ⇒ Contacting Global and Regional Mechanisms

Provision of legal assistance to HRDs is one of the crucial protection interventions that NHRIs can potentially play. This intervention has become critical given the rising number of HRDs who experience judicial harassment, arbitrary arrest, and unlawful detention across Africa.

3.1 Introduction

Provision of legal assistance to HRDs is one of the crucial protection interventions that NHRIs can potentially play. This intervention has become critical given the rising number of HRDs who experience judicial harassment, arbitrary arrest, and unlawful detention across Africa. In this context, there is a wide range of possible actions that NHRIs can take, including: supporting arrested or detained HRDs to be released on bail or bond; providing legal advice and representation to HRDs who have been arrested, detained or arraigned in a court of law; participating in cases involving HRDs as interested party or *amicus curiae*; trial monitoring; developing manuals and guides for HRDs on legal matters; addressing legal gaps and structural issues through advocacy and other strategies; and supporting HRDs to contact global and regional mechanisms.

3.2 Legal Assistance during Pre-Trial Phase

Many African NHRIs are mandated to conduct visits to police cells, detention centers and prisons. Visiting HRDs who have been arrested and detained is not only a show of solidarity, but it also has a protective effect. More importantly, NHRIs may offer legal advice and support to HRDs during the pre-trial phase. This may include advising HRDs on their rights and the applicable procedures for being released on bail or bond and assisting them to understand and navigate the system. Such legal assistance may be provided in partnership with other relevant State agencies (such as legal aid authorities), bar associations, or civil society organizations.

3.3 Legal Representation

Where HRDs are facing prosecution, NHRIs should consider the provision of legal advice and representation, especially to those who are unable to secure or afford such representation on their own.

3.4 Participation in Legal Proceedings in Other Capacities

African NHRIs often engage in human rights or public interest litigation at the national level in different capacities, including as applicant, interested party, or *amicus curiae* (friend of the court). The ability of NHRIs to undertake litigation generally derives from their legal status as body corporates capable of suing or being sued in their own name. In this context, NHRIs may file suit seeking to protect HRDs more generally or specifically named HRDs or join ongoing cases either as interested or *amicus curiae*.

3.5 Trial Monitoring

In a case where an NHRI is not offering legal representation or participating as an interested party or *amicus curiae*, it should consider monitoring the trial to ensure that the rights of the concerned HRDs are duly guaranteed, respected and protected.

“Independent and objective trial monitoring is a way of showing concern for the fairness and effectiveness of judicial systems. By observing court proceedings, gathering information on the trial of defenders and analysing legal practices, trial monitors demonstrate support for defenders and contribute more broadly to the strengthening of judicial systems.”

Report of the Special Rapporteur on the Situation of Human Rights

Defenders, A/HRC/31/55, 1 February 2016, para. 69.

3.6 Developing Manuals and Guides

As part of the broader strategy to provide legal assistance and protection to HRDs, NHRIs may develop resource materials on legal issues relevant to HRDs, such as guides on bail and bond procedures or a handbook on the criminal justice system. A 2015 publication of the Kenya National Commission on Human Rights (KNCHR) entitled *“Self-representation Manual for Human Rights Defenders in a Criminal Trial”* is a good example of this kind of initiative. The publication seeks to equip Kenya HRDs with the basic knowledge and skills needed to understand and engage with the criminal justice process in Kenya. It was prepared following a realization that many HRDs in the country represent themselves when faced with criminal charges.

3.7 Addressing Legal Gaps and Structural Issues

In addition to providing legal assistance to individual HRDs, NHRIs should also seek to address legal gaps in protection and structural problems impeding the work of HRDs. The primary focus should be to ensure that HRDs operate in a safe and conducive environment. This can be done through regular review of the legislative and policy landscape relevant to HRDs and advocating or proposing for any needed reform. For instance, the Uganda Human Rights Commission (UHRC), through its HRD desk, has established the practice of reviewing draft legislation relevant to HRDs on a regular basis with a view to informing its input in the legislative process.¹⁴

3.8 Contacting Global and Regional Mechanisms

Provision of legal assistance to HRDs at the national level should in appropriate cases be complemented with interactions and engagement with global and regional mechanisms for the protection of HRDs. In this context, NHRIs may contact these mechanisms on behalf of HRDs or support HRDs to contact the mechanisms themselves.

¹⁴Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/22/47, 16 January 2013, para. 92.

PART / IV

Using Formal Complaints Mechanisms to Protect Human Rights Defenders

- ⇒ Introduction
- ⇒ Identifying HRD Complainants
- ⇒ Disaggregating Complaints
- ⇒ Recommendations to Government
- ⇒ Seizing the Judicial System

4.1 Introduction

Most African NHRIs are mandated to receive complaints from victims of human rights violations or their representatives. The NHRIs have thus established formal complaints handling procedures or mechanisms that are open to everyone including HRDs. This Part of the Reference Handbook outlines ways of using the complaints mechanisms of NHRIs to ensure more effective and efficient protection of HRDs.

4.2 Identifying HRD Complainants

NHRIs receive complaints from the public at large. The first step to ensuring a complaints procedure serves the specific protection needs of HRDs is to identify if a complainant is a HRD. Some HRDs who file complaints with HRDs may identify themselves as HRDs. For those that do not, the NHRI should look at their work and/or the context in which they work to determine if they are HRDs.

This Part of the Reference Handbook outlines ways of using the complaints mechanisms of NHRIs to ensure more effective and efficient protection of HRDs.

“ The Special Rapporteur is convinced that effective protection of defenders ultimately starts with their identification, and self-identification, as “human rights defenders”. Without being perceived by others or perceiving themselves as such, they may not be aware of their rights as defenders, not seek support from peer or support networks and may not receive protection from the State, civil society and the international community. ”

Report of the Special Rapporteur on the situation of human rights defenders, A/HRC31/55, 1 February 2016, para 41

4.3 Disaggregating Complaints

Many NHRIs already disaggregate the complaints they receive using several parameters, including gender, region, violation, and perpetrator. Most do not filter out complaints submitted by HRDs. NHRIs are thus encouraged to do so, so as to understand any patterns, trends and prevalence of violations, risks and threats facing HRDs.

4.4 Linkages to other Protection Programmes

An NHRI complaints mechanism should be linked to other protection programmes of its own or those of other State agencies or civil society partners. For instance, a complaints mechanism should be linked to a witness protection or relocation programme.

4.4 Recommendations to Government

Most African NHRIs are mandated to provide recommendations to different agencies of the government on what actions should be taken to redress a complaint that they have received and determined. In formulating recommendations relating to HRD cases, NHRIs should base them on global and regional norms on the protection of HRDs. They should also consider the good practices relating to HRD protection as documented by the UN and the ACHPR Special Rapporteurs on the Situation of HRDs.

4.5 Seizing the Judiciary or Parliament

Some NHRIs are quasi-judicial bodies or have quasi-judicial powers. This means that the end-result of their complaints mechanisms are recommendations that lack legal obligation. Although the recommendations of NHRIs may not be binding, the State should consider them in good faith with a view to implementation. In cases of non-implementation, some NHRIs have the authority to submit these recommendations to the courts for judicial enforcement or to parliament for appropriate action.

List of Key Resources

African Commission on Human and Peoples' Rights (2014) *Report of the study group on freedom of association and assembly in Africa* Banjul: The Gambia

African Commission on Human and Peoples' Rights *Study on the status of women defenders of human rights* Banjul: The Gambia

Lumbu, R (2018) *Compendium on the legal protection of human rights defenders in Africa* Pretoria: Pretoria University Law Press

OHCHR *Fact Sheet 29 - Human rights defenders: Protecting the right to defend* Geneva: OHCHR

Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/22/47, 16 January 2013

Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/25/55, 23 December 2013

United Nations Special Rapporteur on the Situation of Human Rights Defenders (2011) *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* Geneva: OHCHR

