

# Human Rights Institutions in Africa

by Mary Ellen Tsekos \*

During the 1990s there was an exponential increase in the establishment of national human rights institutions in Africa. As recently as 1989, only one African country had established some form of human rights monitoring body. By the beginning of 2000, twenty-four African countries had provisions in their laws for national human rights bodies. The United Nations and other funders in the international donor community have directly encouraged and supported, both technically and financially, the growth of these institutions. The international community lends its support because it considers the process of establishing national human rights institutions to be an indication that a government is willing to abide by international human rights norms. Also, African nations consider the establishment of national human rights bodies to be integral to international acceptance.

Many human rights activists are, however, concerned that some of these human rights bodies enable abusive governments to cover up human rights violations. Both non-governmental and independent studies on the effectiveness of national human rights bodies demonstrate that an institution's success depends largely upon the existence and strength of particular legal, financial, political, and social factors. Such factors include whether democratic governance exists and whether the institution is operationally independent from the government. Despite these findings, there is little correlation between the funding and technical support offered by UN entities and international donors, and the actual effectiveness of a human rights institution. Funding generally is available to any country that expresses an interest in establishing a national human rights body, regardless of the institution's likelihood of success.

It is questionable whether international funding is spent wisely. Sierra Leone, for example, relied on international funding to establish its national human rights body. The success of Sierra Leone's human rights institution has been inconsistent. The ineffectiveness of human rights institutions thus demonstrates that international funds and technical support can be used ineffectively and not carefully implemented. Although continued international support for African human rights institutions is vital, it is crucial that such support not be given unconditionally. Rather, the UN and international donors should carefully evaluate the effectiveness of the entities they support.

## National Human Rights Institutions

There are two types of national human rights institutions: human rights commissions and ombudsmen. These institutions have similar characteristics: neither institution is judicial in nature nor has lawmaking abilities. Rather, both institutions play an ongoing advisory role regarding human rights matters, at both the national and international levels. The main difference between the two institutions is that an ombudsman's primary role is to monitor human rights

abuses perpetrated by government entities, while a human rights commission generally addresses the actions of private entities and individuals as well as governmental conduct.

## The International Community's Role in Establishing Human Rights Institutions

Throughout the past two decades, the international community has greatly increased its focus on establishing national human rights bodies in Africa. Promoting these national institutions has emerged as one of the UN's most important strategies for improving the protection of human rights in the region.

To promote these institutions effectively, the United Nations created the Program of Advisory Services and Technical Cooperation in the Field of Human Rights (Program of Advisory Services) as early as 1955. In 1987, then-Secretary-General Javier Perez de Cuellar established the Voluntary Fund for Technical Cooperation in the Field of Human Rights (Voluntary Fund) with an eye toward strengthening and supporting the work of the Program of Advisory Services. The Voluntary Fund was set up to establish and offer technical support to national and regional institutions aimed at implementing international standards of human rights at the local level. The program currently offers its services to governments that are considering, or are in the process of establishing, a national human rights institution. The assistance that the Voluntary Fund provides includes training on effective investigation of human rights violations, conflict resolution, obtaining and managing resources, conducting reviews and evaluations, and drafting reports for UN treaty bodies. A regular UN operating budget and private donations fund the program. Since 1988, the program has received \$19 million in pledges and contributions, indicating the widespread support for its work.

In 1991 the UN International Workshop on National Institutions for the Promotion and Protection of Human Rights formalized UN assistance for national human rights institutions. The workshop produced guiding principles regarding the status, powers, and functioning of national human rights institutions. In 1993, the UN General Assembly endorsed these principles, which are known as the Paris Principles. These principles constitute the fundamental guidelines, which the UN uses to assist countries in establishing national human rights bodies. The guidelines enumerate the requisite factors for a human rights institution's effectiveness: (1) a founding constitutional or legislative statute; (2) a broad mandate; (3) an independent appointments procedure, with terms of office specified by law; (4) a pluralistic and representative composition; (5) regular and effective functioning; (6) independence from the executive branch; and (7) adequate funding. Further, the Paris Principles place particular attention on the need for human

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Credit: Peter C. Andersen

A young girl in Koidu, Sierra Leone.

rights institutions to be empowered to make public statements on their work.

UN support has not been the only impetus for the rise of these institutions. The creation of the African Charter on Human and People's Rights, which came into effect in 1986, specifically encourages "... the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter." The recognition of the need for national institutions as well as the general changes in the African political and social landscape and growing international pressure have greatly increased the profile of human rights issues within Africa. Increasingly, African governments are realizing that international credibility is intimately tied to improvements in their human rights records.

### Advantages of Creating National Human Rights Institutions

International bodies often encounter problems related to cultural relativism when they attempt to impose international norms. Typically, the most effective education and information campaigns are those that have been designed and carried out at the national level and are culturally sensitive. National human rights institutions meet this criteria. By supporting the creation of these national human rights institutions, the international community is able to work actively toward improving human rights standards without having to struggle with designing and implementing a culturally sensitive system for each country. Further, by funding government-created institutions, the international donor community does not need to be concerned about funding NGOs whose agendas might not be politically popular internationally or with the local government.

For these reasons, national human rights bodies are an appealing means of promoting human rights. Much of the appeal lies in the inherent cultural sensitivity of the national entities. The UN's technical support, however, potentially impedes the cultural sensitivity of the national institutions by virtue of its generic nature. The Office of the High Commissioner for Human Rights employs two assistance procedures to help countries establish human rights bodies. Theoretically, the first procedure—the technical assistance program—integrates support for national institutions with other forms of UN assistance.

The second assistance procedure is a Special Advisor on national institutions, regional arrangements, and preventive strategies, whose role is to provide technical assistance to governments in both creating and supporting human rights commissions. Special Advisors have enabled the UN to acquire a wealth of comparative knowledge, which has been used effectively in many countries. The Special Advisor assistance procedure is not, however, without flaws. Because one individual holds the position of Special Advisor, it is difficult to obtain country-specific advice. It is unrealistic to presume that one person could develop enough country-specific knowledge for each country in which a Special Advisor operates. Consequently, a Special Advisor's advice is often generic. This problem could potentially be alleviated if the program work of the technical assistance program and the country desk officers were more integrated with the work of the Special Advisor.

### Disadvantages of the International Community's Support for National Human Rights Institutions

The international community's non-discriminatory distribution of assistance poses a substantial problem to the development of effective human rights bodies. Understandably, the international community wants to encourage concern about human rights not only in countries with good human rights records, but also in countries with poor records. Yet in practice, the even-handed approach actively supports weak commissions with little attempt to evaluate the effectiveness of these institutions or suggest how such institutions might be more effective. One could easily construe this international support as legitimizing weak human rights commissions that operate to cover up serious governmental abuses. According to Human Rights Watch, many national commissions "... see [their] role as being a mouthpiece to defend repressive government policies or to deny the existence of abuses."

Moreover, the failure to criticize weak commissions carries with it negative repercussions. Rather than passively supporting government-established commissions that are not always the most effective instruments for change, the international community should be working actively to find

ways in which their support will be most effective in bringing about positive change in a country. The Office of the High Commissioner for Human Rights, however, appears to be extremely reluctant to publicly critique weak human rights commissions, although the same office seems to criticize abusive governments openly. It is difficult to discern the rationale behind this reluctance. Conceivably, the High Commissioner may

feel that even an ineffective human rights institution exerts pressure on a government that otherwise would not have existed. By characterizing its support as such, the UN justifies supporting the very existence of such an institution, albeit a weak one. Further, the UN may be operating under the notion that it is more palatable to criticize a foreign government than to criticize one's programming. Yet the failure to recognize and identify flaws precludes the possibility of remedying and strengthening these institutions. Moreover, the international community appears to lend legitimacy to weak commissions.

Additionally, it is problematic that international funding is not contingent on an institution's effectiveness. Studies by both nonprofit organizations and legal scholars have demonstrated that the elements enumerated in the Paris Principles are vital to the creation of an effective national human rights institution. There have, however, been few studies regarding whether national institutions funded by the international community actually meet the criteria established by the Paris Principles. Although the technical assistance program works to help institutions meet the technical standards, they do not guarantee effectiveness in promoting human rights. International funding should be tied to the institution's effectiveness in promoting human rights, thus creating an incentive for effective human rights protection.

It is still crucial for the UN to support these national institutions. Focusing attention on the creation of such human rights institutions helps bring human rights issues to the forefront of international affairs. It is also vital that the international community refrain from passively supporting ineffective government-established institutions.

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## Sierra Leone

Appalling human rights abuses occurred during Sierra Leone's eight-year civil war. Although both sides committed atrocities, the rebel Revolutionary United Front (RUF) perpetrated the most serious abuses, which included summary execution, systematic rape and enslavement of women, use of civilians as human shields, abduction and use of child soldiers, wanton destruction of property, and limb amputation. The international community condemned the RUF's widespread human rights abuses.

The situation in war-torn Sierra Leone exemplifies the dire need for a strong human rights institution. International support for institutions such as Sierra Leone's human rights commission have positive and negative effects. As with the political situation, the stability of Sierra Leone's human rights commission has been tenuous. The predecessor to the current commission, the National Commission for Democracy (NCD), was established in 1994 by Sierra Leone's then-military government. The NCD's independence, however, was severely undermined by provisions in its founding decree, which stated that the organization could only perform functions determined by the ruling party. Also, the NCD's activities were limited to promoting democracy, educating the public about the constitution, and encouraging nationalism, patriotism, and loyalty to the state. Accordingly, the NCD undertook little human rights monitoring, focusing almost exclusively on the transition toward a multi-party democracy. In 1996 the election of President Ahmar Tejan Kabbah re-established democratic rule in Sierra Leone, and the NCD's mandate was modified to include human rights concerns.

The re-named commission—the National Commission for Democracy and Human Rights (NCDHR)—was established on December 23, 1996. In May 1997, however, the opposition Armed Forces Revolutionary Council (AFRC) took power, suspended the constitution, banned political activity, and announced rule by military decree, effectively suspending the Commission's work. The AFRC also joined forces with the RUF. Their nine-month reign was characteristically brutal and blatantly disregarded the rule of law. In February 1998, the AFRC were ousted by the Economic Community of West African States Cease-Fire Monitoring Group (ECOMOG) peacekeeping forces, which re-instated President Tejan Kabbah. A period of war followed, with atrocities on both sides. In July 1999, the two sides—ECOMOG and AFRC—signed the Lome Peace Accord.

Since the signing of the accords, the NCDHR has been in a state of flux, with its fate being heavily debated even as recently as early 2000. In its current state, the NCDHR lacks fundamental functions to ensure independence, such as the power to subpoena witnesses, and to compel documentation, evidence, or records. The Commission also lacks the power to institute proceedings or represent cases in a court of law. Not surprisingly, the NCDHR is unable to rely on much support from the country's government, which must rebuild a devastated economy and thus has little to contribute. In 1998 the Commission received a mere U.S.\$6,300 from the government, and since the war, it is unlikely the Commission will receive more funding. Thus, the NCDHR has had to rely heavily on funding from the international community.

Funding and support from the international community has been both effective and detrimental in Sierra Leone. The

international funding is targeted and aimed at specific projects or goals. For example, in 1998 the UN Development Program (UNDP) awarded the NCDHR a U.S.\$1.6 million grant for a program entitled "National Awareness Raising Program." The program started prior to the signing of the Lome Peace Accord and was aimed at increasing public support for the signing of the treaty. Since the signing in 1999, the program has continued to educate the public about basic human rights, and to increase support for the Lome Accords. The program has been tremendously successful in accomplishing its goals.

There can be little question that the UNDP-funded "National Awareness Raising Program" has been effective. The effectiveness of the awareness program does, however, have its costs: the monopolization of staffing and funds has precluded the Commission from carrying out other programs. Members of Sierra Leone's NGO sector complain that although the program has been helpful in educating individuals about their rights, it has so overwhelmed the attentions of the NCDHR staff members that they have been unable to focus much attention on the documentation of human rights abuses. In 1997 the Commission attempted to establish monitoring committees to document human rights

abuses and advocate on behalf of victims of human rights abuses. The following committees were proposed: police, prisons, women and children, and a general committee. NCDHR even worked with the UN Mission in Sierra Leone to set up training for committee members. Despite initial enthusiasm, the efforts fell apart largely because of a lack of focus on the part of the NCDHR staff. Appar-

ently, the NCDHR lacks the capacity to handle multi-oriented programming.

As the situation in Sierra Leone demonstrates, it is critical that international support for national human rights institutions be planned more effectively. It is also important to consider the context in which the international community lends its support: international support for NCDHR's work comes at a time when the organization still lacks many of the powers that are necessary for the effective functioning of a human rights institution. Although supporting such a weak institution seems counterproductive, entirely cutting off international support for the NCDHR simply because it is not as strong as it could be is the wrong response. The international community might appropriately respond by continuing to assist the NCDHR as it develops organizationally and structurally while simultaneously working with local actors to ensure political stability in Sierra Leone.

Second, international funding should be better coordinated. While the UNDP was funding a large education project in Sierra Leone, the UN Mission in Sierra Leone was assisting with the establishment of human rights monitoring bodies. If both projects were coordinated more effectively, the UN would have realized that the NCDHR staff would be unable to accomplish both tasks successfully. It was imperative, for the success of the mission, for the UN to have developed an overarching strategy for human rights promotion in Sierra Leone. As the experience of Sierra Leone's commission demonstrates, the international community must coordinate and implement its strategies more carefully if it is to help establish effective national human rights monitoring bodies.

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### Conclusion

Despite numerous setbacks and uneven results in the attempts of African nations to establish human rights institutions, there have been some positive developments, particularly within the last decade. Clearly, the increasing international commitment to the establishment of national human rights bodies has raised the profile of human rights issues within Africa, and has tied international legitimacy to the continent's efforts to improve human rights protection.

On the other hand, the international community's involvement in the establishment of these commissions has not always been an effective way of promoting or protecting human rights. The advice and funding given is often generic and not tailored to a country's particular needs. Further, there tends to be little coordination between the various funding sources. As in Sierra Leone, this lack of coordination often results in development and support for only one successful project at a time, but no effective overall strategy.

The international community's indiscriminate support for all human rights commissions, regardless of their effective-

ness, might suggest support for commissions that blatantly fail to expose or protect against human rights abuses. As Afronet Online, an African NGO based in Zambia, remarked, ". . . [i]t would seem that pronouncements made loudly at appropriate fora, coupled with structures put in place by African governments, are part of the grand deception of their people (and the international community) to give an impression of the improving human rights record in their respective countries." Clearly, the international community does not want to be seen as supporting attempts to overlook or conceal human rights abuses.

International donors and institutions must consider what is needed to help countries develop institutions for the promotion and protection of human rights. There is a need for greater analysis of how international funding is being distributed, as well as the need for a more result-oriented process for supporting effective national human rights bodies. ☉

*\* Mary Ellen Tsekos is a J.D. candidate at the Washington College of Law and a staff writer for the Human Rights Brief.*

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on mandates to study the broader context in which the abuses occur and the structural elements of the government, security forces, and society that make patterns of violations possible. Analysis and reporting that could guide government policy would be particularly relevant regarding the violations against women's rights.

A truth and reconciliation commission can serve an important and necessary function in the nation building process, particularly when there has been a stream of human rights violations inflicted upon the population, as in Afghanistan. This function is not a substitute for criminal prosecution. In fact, a commission of inquiry into human rights has worked well when implemented in tandem with criminal proceedings by collecting testimony and documenting abuses later used in criminal prosecution cases.

### Jirga

The traditional process by which Afghans have solved issues ranging from local disputes to those of national importance has been through the *Jirga* (Assembly). Representatives of tribes and communities gather to decide questions that affect their families, villages, tribes, region, and nation. Groundwork for a *Jirga* to address war crimes can be modeled after the arrangement made by the Bonn Agreement for the convening of a *Loya Jirga* (Grand Assembly). An independent commission of twenty-one constitutional and customary law experts has been charged with convening an assembly for the purpose of selecting a transitional government. Similarly, a commission of international and customary law experts can be established to lay the framework for accountability. Because representatives to the *Jirga* have traditionally been male tribal elders, special attention will have to be paid to the representation of women. One option would be to establish a sub-commission to address the violence and abuses faced by women and girls.

Many advantages will result from domestic prosecution of war crimes in an indigenous Afghan mechanism familiar to the population. There will also be great need, however, for

outside support to ensure compliance with international law standards. Because Afghanistan's infrastructure has been destroyed and its human and material resources depleted, serious challenges exist for an exclusively domestic response. Significantly, Annex II, point 6 of the Bonn Agreement retains the right of the UN to investigate human rights violations and recommend corrective measures. The international community, particularly those non-governmental organizations that have been monitoring and documenting the situation in Afghanistan, can play an essential role as advisors, experts, and investigators.

### Conclusion

It is indisputable that Afghanistan must address severe violations of humanitarian and human rights law. Such a course of action must be taken immediately, as the threat of war criminals entering the transitional government and potentially destabilizing Afghanistan once again looms.

Each of the mechanisms discussed has an important role to play in the effort to hold violators of humanitarian and human rights law accountable while rebuilding Afghanistan. Shared domestic and international cooperation is necessary to criminally prosecute those responsible for the most egregious violations, such as massacres. Non-criminal sanctions can be employed to ensure that those culpable—even if not prosecuted criminally—do not assume positions of authority. A truth commission has the advantage of beginning promptly and moving the country toward reconciliation, as well as compiling a historical record to prevent the past from repeating itself. Ethnic minorities and women must receive adequate representation and attention in these proceedings, as they have faced some of the most systematic and widespread violence. Although challenges exist to attaining accountability, Afghanistan's compliance with international and customary law standards and its realization of sustainable peace and reconstruction requires the new government to meet the challenge.

*\* Ossai Miazad is a J.D. candidate at the Washington College of Law and a staff writer for the Human Rights Brief.*