The Role of National Human Rights Institutions in Promoting and Protecting the Rights of Refugees in Africa

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Background and Context
- Sub-Saharan Africa hosts approximately seven million refugees and asylum seekers
- South Africa and Kenya, which are the focus of this study, host large numbers of refugees and asylum seekers. In 2017, Kenya hosted over 430,000 refugees and about 56,000 asylum seekers while South Africa hosted approximately 50,000 refugees and over 100,000 asylum seekers
- Given the fragility that the countries of origin continue to face, it is more likely that both South Africa and Kenya will continue to receive and host refugees for a significant period of time.
- There is need to safeguard and expand legal protection for refugees in Africa, which is a role that national human rights institutions (NHRIs) could play.

What are NHRIs?
- NHRIs are independent statutory State institutions created specifically to promote and protect human rights e.g. the South African Human Rights Commission
- NHRIs play an oversight role in ensuring States’ compliance with international human rights norms and standards and they hold States accountable for the realisation of human rights including refugee rights
- As the implementation of refugee law occurs at the domestic level, NHRIs can influence the development of a domestic protection regime favourable to refugees. This may in turn influence outcomes at the international level through e.g. NHRI participation in UN processes

Statement of the Problem
- The renewed discourse on the need to reform the international protection regime for refugees focuses not only on reforming the international protection regime itself but also reforming its implementation to include a defined role for mechanisms such as national human rights institutions (NHRIs).
- However, there is paucity in empirical research on a defined role for NHRIs within the refugee protection regime and a dearth in evidence about the extent to which NHRIs have performed a role within the refugee protection regime.

Rationale
- The refugee problem continues to persist and has increased in complexity, thus, the recognition of a defined role for NHRIs within the refugee protection regime and their potential to enhance the refugee protection regime warrants an understanding based on evidence

Aims and Objectives
This study explores the nature and extent of the role of NHRIs within the refugee protection regime using South Africa and Kenya as case studies.
- The specific objectives are to:
  - Identify the normative gaps in international and regional refugee law in order to highlight the role of NHRIs to address the protection issues linked to refugees;
  - Examine the extent to which NHRIs protect the rights of refugees;
  - Identify the challenges and barriers that impact on NHRIs’ responsibility to effectively promote and protect the rights of refugees; and
  - Identify opportunities to strengthen NHRIs’ capacity to effectively promote and protect the rights of refugees.

Research Questions
- Do NHRIs have the capacity to effectively promote and protect the rights of refugees?
- To what extent are NHRIs bridging the existing protection gap within the refugee protection regime in South Africa and Kenya?
- Are there any challenges or barriers that impact on the NHRIs’ responsibility to effectively promote and protect the rights of refugees in South Africa and Kenya respectively?
- How can the NHRIs in South Africa and Kenya strengthen their capacities to effectively promote and protect the rights of refugees?

Methodology
- Uses a non-doctrinal legal research method which utilises a qualitative research approach, triangulated with desk research to examine the extent to which the NHRIs in Kenya and South Africa promote and protect the rights of refugees
- The desk research includes reviewing literature that supports a defined role for NHRIs within the refugee protection regime.
- The qualitative research approach involves semi-structured interviews with refugees and key informants from NHRIs and refugee rights organisations

Preliminary Findings
- Legislation and Policy- NHRIs have contributed to the development of domestic refugee legislation and policy e.g. development of refugee protection framework in South Africa including specific law to criminalise hate crimes (based on xenophobia) against refugees and asylum seekers. NHRIs have an oversight role in ensuring that implementation complies with international obligations, norms and standards.
- Strategic Litigation- NHRIs have litigated on refugee matters to ensure States comply with international obligations e.g. Kenyan National Commission on Human Rights and closure of Dadaab refugee camp; South Africa demanding Government’s compliance with implementation of domestic refugee law
- Monitoring places of detention – South African NHRI implementing court order to ensure Government’s compliance with rights of detainees including access to health
- Ensuring international standards in RSD-Kenyan NHRI will have a direct mandate in RSD process if revised refugee law passes
- Access to international and regional human rights mechanisms- NHRIs compliant with Paris Principles submit shadow reports, engage with mechanisms e.g. special rapporteurs, participate in UN processes such as the Global Compact on Refugees

References
- UNHCR Statistical Yearbook, 2017