

AFRICAN UNION		UNION AFRICAINE
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Report of the Regional Seminar on the Implementation of Decisions of the African Commission on Human and Peoples' Rights

12 - 15 August 2017, Dakar, Senegal

1. The African Commission on Human and Peoples' Rights (Commission) organised from 12 - 15 August 2017 in Dakar, Senegal, a Regional Seminar on Implementation of the Decisions of the Commission for countries of Central, North and West Africa, with the financial support of the European Union (EU) under the Programme on Strengthening the African Human Rights System (PANAF Programme).
2. The overall objective of the Seminar was to strengthen the African human rights system, in particular the Commission's human rights promotion and protection mandate. The specific objectives included an assessment of the status of implementation of concluding observations, recommendations and other decisions of the Commission towards the effective implementation by States Parties.
3. The Seminar brought together a total of seventy-seven (77) participants drawn from States Parties (Ministries of Foreign Affairs and Justice), NHRIs and Representatives of Networks of NGOs from the West, Central and North Africa regions, Civil Society Organisations, African Human Rights Experts and Academics as well as Honourable Commissioners of the African Commission. The Regional Seminar was also serviced by staff of the African Commission Secretariat.
4. The Seminar included the following agenda items:
 - I. Opening ceremony
 - II. Presentations
 - III. Panel discussions
 - IV. Breakout sessions
 - V. Closing Ceremony

I. Opening ceremony

5. The opening ceremony was presided over by the Vice-Chairperson of the Commission, Honourable Commissioner Soyata Maiga, and the Minister of Justice and Keeper of the Seals of Senegal, represented by Ms Aminata Fall Cisse, Director of Cabinet at the Ministry of Justice.
6. In her welcome address, the Vice-Chairperson of the Commission conveyed the apologies of the Chairperson and thanked participants for honouring the Commission's invitation. She gave a background to the establishment of the Commission and its mandate under Articles 30 and 45 of the African Charter on Human and Peoples' Rights and outlined the objectives of the regional seminar, which mainly include capacity-building of States Parties, National Human Rights Institutions (NHRIs) and other stakeholders from Central, North and West African regions and an assessment of the working methods and challenges faced in the implementation of the Commission's decisions. She thanked the Minister of Justice of Senegal for the efforts made in the promotion and protection of human rights in Africa, as well as the EU for its financial and technical support through the PANAF programme which made the holding of the seminar possible, and the Government of Senegal for its constant support to the work of the Commission.
7. In her opening statement, the Director of Cabinet at the Ministry of Justice welcomed all participants to Senegal. She conveyed the apologies of the Minister and extended the best wishes of the Government of Senegal. She indicated that the Republic of Senegal shares the Commission's objectives to promote and protect human rights in Africa and that it recognizes the human rights of all persons. She underscored that the regional seminar is very timely, given that during its 30 years of existence, the Commission has issued several important decisions such as that in the SERAC case which contributed to establishing jurisprudence on human rights on the continent. She also called on the Commission to continue to work in close collaboration with all States Parties and stakeholders in order to achieve better results. She declared the seminar open.

II. Presentations

8. During the Seminar, presentations were made, followed by extensive discussions: The first presentation was made by Prof. Frans Viljoen, from the Centre of Human Rights, University of Pretoria, entitled "Working methods of the African Commission and the various recommendations it issues (recommendations following Promotion Missions, State Reports and Communications) and how these are communicated to the States concerned". His presentation highlighted four categories of recommendations issued by the African Commission on Human and Peoples' Rights, namely: decisions on Communications/complaints; recommendations following the presentation of State Periodic Reports; recommendations following promotion and protection missions; and recommendations contained in thematic and country-specific resolutions. He also

identified some reasons why some States Parties do not implement the Decisions of the Commission, and proposed some recommendations on how to enhance States' implementation of the Commission's Decisions.

9. The second presentation by Commissioner Reine Alapini Gansou was on the "Follow-up Mechanism of the Commission, Status of Implementation of Various Decisions of the Commission and the Challenges Faced in Following up on its Decisions". She traced the history of the establishment of the Commission and its mandate and provided the legal basis on which the Commission issues its various decisions. She then highlighted the process of State Reporting and the Communications procedure before the Commission and the various types of Decisions that the Commission has issued in the thirty years of its existence as well as identified some challenges faced by the Commission in following up on the implementation of its Decisions. In conclusion, she stated that the Commission is committed to improving the situation and is currently working on an implementation database and strategy to be able to systematically monitor compliance and keep updated records, in addition to developing collaborative relations with NHRIs, NGOs and other actors who can assist in collection and publication of information.
10. The third presentation was on the "Implementation of decisions - the experiences of the African Court on Human and Peoples' Rights, the Inter-American Commission on Human Rights, and the European Court of Human Rights" and was made by Dr Robert ENO and Prof. Rachel Murray.
11. Dr Robert ENO made an assessment of the functioning of the African Court on Human and Peoples' Rights, laying emphasis on decisions of the Court and the causes of States Parties' non-compliance with the decisions. He shared concrete actions taken which enable the Court to better monitor its decisions, and made the following proposals:
 - Disseminating best practices;
 - Improving the effectiveness of national judicial institutions;
 - Publishing decisions at the national, regional and international levels;
 - Amending the Rules of Court to include the establishment of mechanisms to monitor the implementation of decisions;
 - Organising a judicial dialogue between the Court and national courts to facilitate the implementation of decisions of the Court.
12. Professor Murray presented on "Implementation of decisions: The Experience of the IACHR, ECtHR and ACHPR - A Comparative Analysis". She stated that based on research, it will be erroneous to think that little is done regarding the implementation of Decisions. She reiterated that with Rules 112 and 118 of the Commission's Rules, one can talk of a mechanism in place and more has been done by the Commission in monitoring implementation, although it is not visible, or made public. She further said that the

African Human Rights System can only borrow and not replicate what obtains in the American and European systems, as those systems are also plagued by challenges. She highlighted some reasons why State Parties do not implement decisions of the Commission and proposed ways by which these challenges can be overcome.

III. Panel discussions

13. Three panel discussions, aimed at sharing experiences, were moderated by representatives of State Parties, National Human Rights Institutions and civil society organizations. The panel discussions identified challenges, best practices and proposed recommendations.
14. The first panel discussion, comprising representatives of Algeria, Ghana and Cameroon, was on “States Parties’ Perspective: Mechanisms established to follow up on the implementation of decisions of the Commission”. From the contributions of participants, it emerged that most African States, except a few, have established inter-ministerial committees to monitor decisions of treaty bodies and prepare reports in accordance with the ratification of legal human rights instruments. However, it was highlighted that these committees face certain operational challenges, including: the mobility of committee members, lack of clear guidelines for the drafting of reports, limited knowledge of instruments, and inadequate financial resources.
15. The second panel discussion, comprising Mr Gilford Kimathi (NANHRI) and Mr Joseph Whittal (CHRAJ), was on the “NHRIs Perspective: Mechanisms established to monitor the implementation of decisions of the Commission”. The panel discussion underscored the responsibilities of NHRIs, provided an update on the activities of the network and identified the challenges faced.
16. The third panel discussion on “NGOs Perspective: Mechanisms established to follow up on the implementation of decisions of the Commission” consisted of Mr Gaye Sowe (IHRDA) and Mr Alpha Sesay (OSIWA). The discussions focused on the main challenges and specific activities to be conducted by NGOs in monitoring the implementation of the decisions of the Commission.

IV. Breakout sessions

17. In order to further expound on the various presentations, five breakout groups were constituted to discuss the following:
 - The Challenges faced in the follow up and implementation of decisions of the Commission, recommendations on the best way forward to ensure implementation including best practices to be adopted;
 - The Challenges faced in the engagement between State Parties and the Commission- How it can be mutually improved to ensure a more effective service oriented

Commission for its stakeholders;

- The role of NHRIs in ensuring an effective relationship with the Commission and follow up mechanism on monitoring and implementation of decisions at national level;
 - The role of Non-Governmental and Civil Society Organisations in monitoring implementation of decisions of the Commission, successes, challenges and the way forward;
 - The Challenges faced in the engagement between civil society stakeholders and the Commission- How it can be mutually improved to ensure a more effective service oriented Commission for its stakeholders.
18. The five groups identified challenges faced by various stakeholders and made recommendations on the way forward.

V. Outcomes from the Presentations, Panel discussions and Breakout sessions.

19. During the various Presentations, Panel Discussions and Breakout Sessions that enriched the Seminar, the following Challenges were highlighted as impacting on implementation of the Decisions of the Commission, and the following Recommendations made. Some of the key challenges include:

I. Challenges Highlighted

Challenges faced by State Parties:

a) Institutional and financial limitations

- ⇒ Institutional instability in States, including restructuring of government departments and frequent changes of office holders which affect effective follow up on implementation;
- ⇒ Lack of coordination and limited staff capacity at the national level;
- ⇒ Lack of key ministries or national authorities in some countries, to lead the implementation of decisions of the Commission;
- ⇒ Lack of adequate financial resources to implement the Commission's decisions;
- ⇒ Non-harmonization of national laws in accordance with regional/international laws;
- ⇒ Lack of technical and financial support at the regional level to assist State Parties in meeting their reporting obligations under the African Charter and other regional human rights instruments;

b) Lack of knowledge

- ⇒ Limited knowledge of State parties and other actors on the working methods of the Commission;

- ⇒ Limited understanding by States Parties of the importance of their presence at ordinary sessions of the Commission;
- ⇒ State parties do not have sufficient understanding of the operation of the Complaints procedure;

c) *Lack of communication*

- ⇒ Lack of effective communication between the Commission and States Parties;
- ⇒ Lack of information by the parties on decisions taken in the complaints handling procedure.

Challenges faced by the Commission:

a) *Inadequate commitment by States*

- ⇒ Lack of political will by some States Parties to implement the Commission's decisions and recommendations, including provisional measures;
- ⇒ Non-compliance by state parties 'with their commitment under Articles 62 of the African Charter and 26 of the Maputo Protocol;
- ⇒ Attachment of greater importance by State parties to the Universal Periodic Review than their obligation under Articles 62 of the African Charter and 26 of the Maputo Protocol;
- ⇒ Some States view implementation of recommendations on Communications as voluntary because it is a quasi-judicial organ;
- ⇒ Non- implementation to safeguard embedded traditional and cultural barriers/practices;

b) *Financial and institutional capacity*

- ⇒ Inadequate financial resources of the Commission;
- ⇒ The limited human resource capacity at the Secretariat of the Commission has often delayed the adoption and publication of Concluding Observations on State Reports, as well as the handling of correspondences/Communications;

c) *Lack of communication and visibility*

- ⇒ Lack of a communication strategy to effectively promote its visibility in the continent and beyond;
- ⇒ Lack of awareness of the Commission's recommendations/decisions due to non- or delayed publication for appropriate action and/or public consumption;
- ⇒ Lack of an effective and sustained communication/interaction/engagement with State Parties;

d) *Lack of monitoring mechanisms*

- ⇒ Lack of provisions in the Commission's Rules of Procedure for the implementation of the Commission's recommendations contained in mission reports, resolutions and urgent appeals;

- ⇒ Non-establishment of a dedicated implementation unit/ monitoring mechanisms at the Secretariat of the Commission to regularly monitor implementation of its decisions including country/field visits;
- ⇒ Lack of guidelines to assist the various stakeholders in monitoring the implementation of the Commission's decisions / recommendations;

e) Functional shortcomings

- ⇒ Lack of sufficient clarity in the types of remedies granted by the Commission and the body/institution responsible for monitoring implementation at the national level;
- ⇒ Lack of sufficient authority given to the Commission by the African Charter to enforce its decisions at the national level;
- ⇒ Lack of consultation between the Commission and States Parties when developing soft law instruments such as General Comments;

Challenges faced by NHRIs

- ⇒ Insufficient involvement of NHRIs in the work and activities of the Commission;
- ⇒ Lack of understanding of the role of NHRIs in supporting the mandate and activities of the Commission;
- ⇒ Lack of knowledge by NHRIs of the regional and international human rights systems;
- ⇒ Lack of independence of some NHRIs at national level;
- ⇒ Limited use of the coordination/collaborative role of the Network of African National Human Rights Institutions (NANHRI) to enhance the interaction and flow of information between NHRIs and the Commission

NGOs

- ⇒ Lack of sufficient understanding of the role of NGOs in strengthening the Commission's visibility, or assisting in the implementation of its decisions;
- ⇒ Lack of timely access to the latest jurisprudence of the Commission due to delayed publication;
- ⇒ Non- institutionalization of Focal Points for the Commission

II. Recommendations

20. After identifying the main challenges in the implementation of the decisions of the Commission, participants held discussions on possible ways and means of addressing the issues, and made recommendations to all the relevant stakeholders.

A. General recommendations – to participants

- Dissemination of the decisions of the Commission among all stakeholders;
- Report back to the respective institutions on the outcome of the regional seminar as well as popularisation of the recommendations at the national level for action;

- Enhance communication/engagement between the Commission, State Parties and all other Stakeholders;
- The Commission, Court and all AU Organs to conduct capacity building activities for increased compliance with decisions.

B. Specific recommendations

a) To States Parties:

i) Inadequate commitment by States Parties

States Parties should:

- Comply with their obligations Article 1 of the African Charter, which extends to implementation of decisions of the Commission, rather than focussing on the non-binding nature of decisions of the Commission;
- Enact the necessary laws to promote the effective implementation of decisions of the Commission without going through the AU political process;
- Domesticate regional and international treaties that they have ratified, as well as comply with their obligations therein;
- Provide information to the Commission on the concrete steps taken to implement decisions of the Commission;

ii) Institutional and financial shortcomings

States Parties should:

- Establish a national mechanism responsible for the implementation and monitoring of decisions of the Commission and inform the Commission accordingly;
- Institutionalise focal points at the national level and capacitate them to execute their functions effectively;
- Provide adequate financial and other resources to facilitate implementation of the decisions of the Commission;
- Establish reporting mechanisms between States Parties and the Commission on decisions of the Commission;

iii) Lack of knowledge

States Parties should:

- Organise training sessions on the communications/complaints handling procedure and working methods of the Commission and invite the Commission to provide expertise for the training;
- Popularize the African Charter at the national level, including integrating the Charter into the training of magistrates and lawyers;

iv) Lack of communication

States Parties should:

- Report regularly to the Commission on the status of implementation of recommendations and decisions of the Commission and, where necessary, indicate challenges faced in the implementation of these decisions and recommendations;
- Ensure continuous engagement with the Commission at all stages of the complaints handling procedure;
- Provide updated information to the Commission on the changes in contact information of focal points or body responsible for ACHPR matters.

b) To the African Commission on Human and Peoples' Rights

i) Financial and institutional capacity

The ACHPR should:

- Ensure effective follow-up on implementation, including by setting up an implementation unit in the Secretariat;
- The Commission's mandate is too broad and the resources are limited (human and financial). The Commission should identify the area in which it has comparative advantage and concentrate on that to get maximum result;

ii) Lack of communication and visibility

The ACHPR should:

- Develop a communication strategy taking into account the special relationships between the Commission, States Parties, NHRIs and CSOs and consult these stakeholders in the formulation of the strategy;
- Collaborate with all stakeholders including NHRIs in disseminating recommendations and decisions of the Commission with a view to ensure maximum visibility for necessary action;
- Ensure sustained communication/interaction/engagement with State Parties to increase the level of implementation of the Commission's decision;
- Train journalists from each region who could be invited to Commission activities and called upon to report on matters of significance to the Commission;

iii) Lack of monitoring mechanisms

The ACHPR should:

- Include a provision on monitoring of decisions in its Rules of Procedure;
- Institutionalise a mechanism to monitor the implementation of its recommendations and decisions;
- Establish an effective and systematic implementation process for implementation of provisional measures adopted by the Commission;
- Develop a database with up-to-date information on the status of implementation of decisions by State parties;
- Evaluate every two years, the level of implementation of its decisions;
- Continuously report on the non-implementation of its decisions to the policy organs, to enable the Executive Council to urge States to comply;

- Develop Guidelines to assist the various stakeholders in monitoring the implementation of its decisions/recommendations;

iv) Functional shortcomings

The ACHPR should:

- Deliver its decisions with sufficient clarity and precision on the types of remedies granted in order not to give States discretionary powers regarding implementation;
- Develop a system whereby States Parties can revert to seek clarification on its decisions;
- Include a specific clause in each decision requiring the State Party concerned to widely publish the decision at the national level;
- Adopt Concluding Observations during the same Session at which the State Report is considered to ensure greater impact;
- Ensure the timely publication of recommendations/decisions to enable stakeholders have access and assist in the implementation of decisions;
- Ensure wider consultations with States Parties prior to the adoption of soft law instruments such as General Comments;

v) Support to Stakeholders

The ACHPR should:

- Organise training sessions on its working methods, the complaints handling procedure and related issues for all stakeholders;
- Develop guidelines with indicators to assist States Parties, NHRIs and CSOs in monitoring the implementation of its decisions/recommendations;
- Showcase best practices;
- Provide information to NHRIs on concluding observations and other decisions through NANHRI, with a view to widely disseminate and publicize decisions at the national level;
- NANHRI and the Commission to strengthen collaborative relationship including, to utilize the resources at the disposal of NANHRI.

c) To the African Union

The AU should:

- Provide adequate human, financial and other resources to the Secretariat of the Commission to effectively execute its mandate;
- Establish a trust fund to assist States in implementation of decisions of the Court and the Commission;
- Establish the Pan African Human Right Institute to strengthen State parties' capacity to implement decisions.

d) To National Human Rights Institutions

i) Dissemination of information at the national level

NHRIs should:

- Publicize adequately the decisions of the Commission at the national level;
- Conduct effective advocacy on the implementation of decisions of the Commission;
- Engage the national Government in its advisory capacity to take concrete measures to implement decisions of the Commission;
- Engage Parliament, where possible through participation in parliamentary committees to discuss implementation of decisions including, by providing updates on the status of implementation;

ii) *Cooperation with the Commission*

- Engage effectively in the work of the Commission, including by applying for affiliate status, providing information and participating in ordinary sessions;

e) To Civil Society Organisations

CSOs should:

- Contribute to the wider dissemination of decisions of the Commission at the national level.
- Take steps to enhance the visibility of the Commission as well as ensure implementation of the Commission's recommendations/decisions through sustained advocacy and engagement;
- Comply with their reporting obligations under the Resolution on the Granting and Withdrawal of Observer Status with the Commission.

Closing Ceremony

21. A summary of the report of proceedings of the seminar was adopted by all participants present. This was followed by delivery of the Vote of Thanks on behalf of all participants by Mr Joseph Whittal who thanked God/Allah for ensuring that the Seminar took place in a peaceful manner as well as the Commission and its partners for making possible the organisation of the Regional Seminar. He then thanked all the representatives of State Parties who attended and participated in the deliberations of the Seminar as well as their renewed commitment to work towards enhancing implementation of decisions of the Commission. He further thanked the NHRIs represented and NANHRI for their enthusiasm to deepen collaboration with the Commission and Civil Society Organisations for their active participation. He urged the Commission to do more capacity building programmes for States, NHRIs, and CSOs to strengthen their capacity in effective implementation of decisions. He finally commended all participants for their contribution and participation and called on them to put the recommendations to good use and to invite the Commission to any relevant activities organised in this regard.
22. The Closing remark was delivered by the Vice Chairperson of the Commission, Commissioner Soyata Maiga, on behalf of the Chairperson who was unavoidably absent. She offered some words of thanks, particularly to the Senegalese government for hosting the Seminar in their country. She further expressed her pleasure at the high level representation from State Parties at the Seminar, and on behalf of the Commission

thanked everyone who had travelled to attend the Seminar. She recalled that several themes had been discussed during the Seminar, and the opportunities that were provided to exchange on best practices. She stated that the debates were at times heated, but constructive and enriching. She also noted that while the primary responsibility for implementation rests on State Parties, however without the support by NHRIs and CSOs, the commitments made would be reduced to simple statements that are never implemented. She expressed her appreciation for all the relevant recommendations which will enable the Commission to improve its working methods and, noted the recommendation to the AU to increase financial and other resource support to the Commission for the effective implementation of its various mandates. She confirmed that the next Regional Seminar will be held for countries in Eastern and Southern Africa, but took note of the suggestion that more seminars of this nature be organised around the continent and on a regular basis. She also reiterated the Commission's gratitude to the EU for providing the financial support for the organisation and holding of this first Regional Seminar, and the staff of the Secretariat and the interpreters for their work during the Seminar. Finally, she wished all participants a safe journey back home to their families.