



**East African Regional Office**



**Human Rights Implementation Centre**

## **High level seminar on the role of AU bodies in follow up to decisions of the African Commission on Human and Peoples' Rights**

**17<sup>th</sup> September 2012**

**Addis Ababa, Ethiopia**

On 17<sup>th</sup> September 2012 the Human Rights Implementation Centre (HRIC) of the Bristol Law School and the Office of the High Commissioner for Human Rights held a high level seminar examining the role of AU bodies in following up decisions of the African Commission on Human and Peoples' Rights. The aim of this expert seminar was to bring together key representatives from the African Union, the African Commission on Human and Peoples' Rights (African Commission), and the African Court on Human and Peoples' Rights (African Court), the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) to discuss follow-up and implementation of decisions of the African regional human rights treaty bodies. In particular the event sought to identify current opportunities for follow-up and implementation issues being considered within the AU, to share experiences and best practice, and to identify future opportunities for strengthening follow up and implementation procedures and mechanisms.

This event was organised within the context of a four year research project funded by the Arts and Humanities Research Council examining the role of non-binding 'soft-law' documents in the development of international human rights law. The 'Implementation of Human Rights Standards project' is considering how so called 'soft law' human rights documents are used in practice and it is anticipated that this research project will contribute to a better understanding as to how these types of documents impact upon the development of international human rights law.

The agenda in Annex I of this report, and a list of participants attached.

This report aims to provide a summary of the key discussions and conclusions of the event.

### **1. Importance of involving policy organs**

The participants reiterated the importance of engaging with and involving the AU policy organs in following-up findings of the African Commission, ACERWC and the African Court. This was considered crucial for a number of reasons. Firstly, such policy organs could provide relevant political support to these treaty bodies. Secondly, the AU policy organs are the interface with states and could alert them to the concerns of the treaty bodies. Thirdly, many human rights issues fell within the mandates of a range of AU organs. There was also a need for the human rights bodies to be able to address the AU policy organs directly.

However, in order for this to happen there needed to be space for the policy organs of the AU to be able to listen to the human rights treaty bodies and debate their findings. This did not always occur. While there was a general good will to engage, there was an overall lack of awareness of what each other was doing with respect to human rights and considerable overlap and potential duplication of activities.

For example, although the African Commission is required to submit its report to the relevant AU organs which has to be adopted by the Assembly of the AU before its publication in accordance with Article 59 of the African Charter on Human and Peoples' Rights, its findings on communications are contained in an annex to the report which is not seen by the relevant political organs of the AU and therefore not discussed. There were no other opportunities for the AU organs to debate the findings of the Commission on its communications. This gap needed to be addressed. A number of recommendations were made in this regard.

Firstly, it was suggested that the meetings held previously in 2007 between the African Commission and the AU organs should be repeated to enable more concrete systems to be put in place to ensure meaningful engagement of the AU organs with the findings of the Commission.

Secondly, it was suggested that further thought needed to be given to various forum or opportunities for each policy organ of the AU to be aware of and engage in detail with the findings of the African human rights treaty bodies.

Thirdly, this may require that the relevant human rights treaty bodies highlight specifically the parts of their reports which have particular relevance to AU organs to which they are addressed and in this way adopt a more nuanced and strategic approach to dissemination of their findings. It was considered that simply publishing the annual report of the African Commission with the communications contained in an annex was insufficient to ensure that it reached the relevant policy organ and prompted the required level of debate.

Fourthly, it was proposed that the African Commission, the African Court and the ACERWC should each map out their possible partners, at the policy level including at the AU, who could be involved in supporting the treaty body towards following up its decisions.

Fifthly, there was a need for a focal point in the African Commission to liaise with a focal point in each of the relevant AU organs.

Lastly, it was stressed that it was the responsibility of the relevant human rights treaty bodies (the African Commission, the African Court and the ACERWC) to initiate and lead discussion with the policy organs of the AU. These bodies should develop a more proactive media and outreach strategy with respect to communications and the work of the treaty bodies in general.

## **2. The need for further analysis on the exact role of the ACoHRP with respect to follow up**

Prompted by discussion on the relationship between the African Commission and the African Court, a broader debate was held on what exactly the role of the African Commission was with respect to follow-up.

A detailed presentation was made on the various tools currently used by the African Commission to follow up its decisions. In this regard, mention was made of the state reporting procedure, promotional missions and lastly more recent work undertaken by the Commission's Working Group on Communications. An implementation hearing had also recently been held where the complainants had presented a dossier of their findings on the extent to which implementation had occurred on a decision of the African Commission. Although it was only at present informally part of its mandate, the latter had now started to examine the issue of follow up and discuss the strategy which the

Commission should adopt to approach this issue. It recognised however numerous challenges in undertaking this role. These included: the lack of information flow from the parties; the limited capacity of the Commission to follow up its own recommendations due to lack of resources and staff; the extent to which states saw the recommendations from the African Commission as being binding; the length of time taken to adopt the decisions of the African Commission; and the failure to comply with time limits.

This led to a question of what the role of the African Commission should be in such circumstances. As one participant noted, such treaty bodies should be active but not necessarily activist. It is worth reiterating that it is the responsibility of the state to implement its human rights obligations, and it is the role of other actors, including the treaty bodies, to monitor that implementation.

Whilst it was clear that the African Commission had spent some time considering the detail of how it would follow up its decisions, the process in doing so posed considerable challenges and required significant additional resources. A particular challenge was where states do not respond or cooperate with the African Commission, particularly where the Commission had adopted a decision on this basis. This then had implications in terms of follow up and implementation of that decision. A number of practical suggestions were made to address some of these issues:

Firstly, it is crucial that the African Commission (and the African Court and ACERWC when relevant) consider what its role should be with respect to follow-up. It was suggested that rather than gather its own evidence, send out missions to the state, etc. which was time consuming and resource-intensive, it should be requesting the parties to the case to submit the information to it, with the appropriate standards of evidence. The African Commission could then make a decision based on the information available before it, which may then prompt it to send cases to the Court, forward them to the relevant policy organ, and disseminate them to relevant national actors, as well as using its own procedures to reiterate the state obligations. In this context the African Commission needed to carefully consider and formalise the remit and mandate of its Working Group on Communications with respect to follow up.

Secondly, it was stressed that informal diplomacy can be a very useful tool in obtaining information and encouraging states to cooperate with the African Commission. Attendance by states at the sessions was one way to facilitate this dialogue.

Thirdly, it was also noted that it was the treaty body which should be taking the initiative here and facilitating the links between the information received from the parties and the relevant AU policy organs.

### **3. The role of the African Court in following-up decisions of other African human rights treaty bodies**

A great deal of time had clearly been given to developing the relationship between the African Commission and the African Court and as part of this, to examining under what circumstances the African Commission should be referring cases to the African Court, particularly with respect to Rule 118(1) of the African Commission's Rules of Procedure. The consideration of when to do this raised a number of challenges. Firstly, once the African Commission had submitted the case to the Court, what was the role of the African Commission? At present it was seen as the litigant which then placed it in a difficult position with respect to how it collected the evidence, the reliance on the evidence and information provided for by the initial complainants, what role the complainants and victims then played before the Court, and the impact on its independence in becoming a party to the case.

In some respects these challenges were inevitable given the early days in clarifying this relationship. The fact that the respective rules of procedure of the African Commission and African Court set out

how the two should interact provided a structure and opportunities for engagement and detailed debate on these matters. It was recommended that further thought did need to be given to the role of the African Commission in this regard.

#### **4. Importance of revising and consolidating Memorandum of Understanding with key partners**

The importance of the African Commission engaging with a variety of different actors, including policy organs was stressed, particularly with respect to follow-up. Over the years a number of Memorandum of Understanding (MoU) has been adopted between the African Commission and key partners. Some of these could now be amended to include greater reference to the need to engage on follow up of the African Commission findings. It was recommended that, firstly, the African Commission should undertake a review of the existing MoU, in terms of the actors involved and the content of the MoU to ensure that they were up to date and opened up opportunities for engagement on follow-up.

Secondly, there may also be a need for new MoU to be signed with additional partners in this regard and this should be considered by the African Commission, the African Court and ACERWC.

#### **5. Importance of engaging with UN TBs and others**

African human rights organs had held a meeting with members of UN human rights treaty bodies in June 2012.<sup>1</sup> This had recommended a number of things including the issuing of joint statements and joint advocacy. It was recognised at this event in September that these needed to be consolidated further. This could be done in a number of ways. Firstly, the relevant organs needed to make clear lines of communication between themselves and relevant UN treaty bodies. This would enable discussion to ensure that there was no duplication, there were joint activities and that each could be involved in drafting for example general comments and other documents where relevant.

Secondly, with respect to follow-up, the African human rights bodies should be aware of when certain states were due to report to UN treaty bodies so that they could forward information on their decisions to them for inclusion in questions on state reporting.

Thirdly, the UPR process may provide further opportunities to highlight findings of the African Commission and African human rights treaty bodies and may assist in particular where states had failed to respond to the Commission.

Finally, some greater thought needed to be given to developing a clearer strategy on engagement with each of the relevant UN treaty bodies and special procedures.

#### **6. Conclusion**

The seminar underscored the importance of AU policy level engagement with the findings of the African human rights treaty bodies. At present there are numerous gaps in information sharing and the opportunities for detailed consideration of African Commission findings were limited. There was a clear need to increase the information being shared between the African Commission and the AU organs, and the African Commission, more generally, needs to develop effective lines of communication and strategic partnerships. Greater thought needed to be given to how to maximise meaningful engagement in order to ensure that states took seriously the findings of the African Commission, Court and ACERWC.

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<sup>1</sup> Implementation of Human Rights Instruments. Note by Secretary-General, A/67/28442, July 2012.

The Human Rights Implementation Centre at the University of Bristol remains disposed to assisting further discussions on this issue.

ANNEX I



Human Rights Implementation Centre

<p><b>High level seminar on the role of AU bodies in follow up to decisions of the African Commission on Human and Peoples’ Rights</b></p> <p><b>17 September 2012</b></p> <p><b>Radisson Blu Hotel</b></p> <p><b>Addis Abba</b></p>	
<b>AGENDA</b>	
09.00-09.30	Registration and tea/coffee
<b>09.30-10.00</b>	<b>Welcome and outline of the seminar:</b> Professor Rachel Murray and Mr. Musa Gassama
<b>10.00-11.15</b>	<p><b>Session 1: Follow-up by the African Commission</b></p> <p><b>Chair: Prof. Rachel Murray</b></p> <ul style="list-style-type: none"> <li>• <b>Follow-up procedures and strategies of the African Commission on its decisions on communications</b></li> </ul> <p><b>Speaker: Commissioner Med Kaggwa</b></p> <ul style="list-style-type: none"> <li>○ What does the Commission see its role as being with respect to follow-up?</li> <li>○ What is the role of the working group on communications?</li> <li>○ What information does it collect so far?</li> <li>○ What have been the challenges in obtaining this information?</li> <li>○ How does it ensure its time limits are followed?</li> <li>○ Is there a process for informing litigants of the process of the follow up?</li> </ul> <ul style="list-style-type: none"> <li>• <b>Strategy of the African Commission for submitting cases to the Court for follow up</b></li> </ul> <p><b>Speaker: Mr. Samuel Tessema</b></p> <ul style="list-style-type: none"> <li>○ What is the current strategy?</li> <li>○ What challenges are there for the Commission?</li> </ul> <p><b>Q &amp; A</b></p>
11.15-11.30	Coffee break

11.30-13.00	<p><b>Session 2: What is the role for and practice of other AU organs regarding follow up?</b>  <b>Chair: Dr Feyi Ogunade</b>  <b>Speakers:</b></p> <p style="padding-left: 40px;"><b>Dr. Benyam Mezmur</b></p> <ul style="list-style-type: none"> <li>○ What role do they already play?</li> <li>○ What are the opportunities for strengthening their role in follow up?</li> <li>○ What are the main challenges or limitations?</li> <li>○ What other bodies should or could be involved in follow up?</li> </ul> <p><b>Q &amp; A</b></p>
13.00-14.00	<i>Lunch</i>
14.00-15.15	<p><b>Session 3: Experience of other bodies with respect to follow up on individual communications?</b>  <b>Chair: Ms. Debra Long</b>  General discussion:</p> <ul style="list-style-type: none"> <li>○ What lessons can be learnt from the experience of UN bodies?</li> <li>○ What strategies have UN and other bodies put in place for follow up on decisions?</li> <li>○ What are the main challenges or limitations?</li> <li>○ What other actors should or could be involved in follow up?</li> </ul>
15.15-15.30	<i>Coffee break</i>
15.30-17.00	<p><b>Session 4: How to develop a coherent strategy for follow up of decisions of the African Commission and Court</b>  <b>Chair: Mr. Musa Gassama</b>  General discussion:</p> <ul style="list-style-type: none"> <li>○ What are the barriers in place at the moment for developing such a strategy?</li> <li>○ How can these be overcome?</li> <li>○ What further discussion is needed?</li> </ul>
17.00-17.15	<b>Close: Prof. Rachel Murray and Mr. Musa Gassama</b>
Dinner	