Human Rights Implementation Centre

Summary and recommendations from an expert seminar on identifying national mechanisms to follow up and implement decisions of the African Commission on Human and Peoples' Rights

21-22 November 2011

Background

Between 21 and 22 November 2011 the Human Rights Implementation Centre of the University of Bristol hosted an expert seminar at the UN Conference Centre, Addis Ababa, Ethiopia, to identify national mechanisms to follow up and implement decisions on individual communications adopted by the African Commission on Human and People's Rights (African Commission). The expert seminar took place within the context of a four year research project, funded by the Arts and Humanities Research Council (AHRC), which is examining the role of non-binding 'soft-law' documents in the development of international human rights law. The *"Implementation of Human Rights Standards project"* (IHRS project) is focusing on the implementation of standards to prohibit and prevent torture in Africa, and in particular the "Robben Island Guidelines" for the prevention of torture and other ill-treatment in Africa.

In accordance with Article 55 of the African Charter the African Commission can consider individual communications concerning alleged violations of provisions of the African Charter on Human and Peoples' Rights (African Charter) by States Parties. The objective of this seminar was to bring together representatives from governments; the African Union; the African Commission; The African Court on Human and People's Rights; UN treaty bodies; national human rights institutions; and civil society to share experiences and best practice on follow up to decisions on individual communications. The seminar sought to explore current and future opportunities for strengthening follow up procedures at the national and regional levels; to identify mechanisms that are in place at the domestic level to respond to communications; and to examine the role of the African Commission and the African Union with respect to follow up.

In light of the focus of the IHRS project the event drew upon examples of decisions on individual communications concerning Article 5 of the African Charter that have been adopted by the African Commission in recent years. Although the purpose of the seminar

was not to examine these cases specifically, but to look at the national and regional processes that may be in place to follow up and implement individual communications generally.

This report summarises the presentations and discussions that took place during the workshop and presents a number of practical recommendations based on issues identified by participants during the discussions. The workshop was held under the Chatham House Rules, which provide anonymity to speakers, in order to encourage openness and the sharing of information. Accordingly no statement or opinion will be expressly attributed to any named individual during this report.

1. Status of decisions on communications adopted by the African Commission

Before considering the follow up processes in place at the national and regional levels and the challenges faced by the various actors involved in these, an issue which cut across the discussions was the different stakeholders' opinion of the status of the decisions of the African Commission. It was striking that while many State representatives considered that the decisions of the African Commission on individual communications were not binding, the opinion of other stakeholders was that these decisions were binding. This is instructive because the desire by the regional bodies and civil society actors for these decisions to be regarded as binding was seen as necessary in order to insist upon implementation at the national level, whereas some States appeared to consider the fact that the decisions were, in their opinion, not binding as a hindrance to implementation at the domestic level.

However arguments advanced in support of these positions were not always consistent. So that on the one hand some States considered that the decisions needed to be embedded into national legislation in order for them to become binding and for action to be taken to implement them; whereas others noted that some national courts considered the decisions to be "foreign judgments" which are not recognised within their jurisdiction; or that the decisions interfered with notions of state sovereignty. It could be argued that if the decisions are considered to be non-binding *per se* by States the latter obstacles and arguments put forward by some States as reasons for not implementing them are less convincing.

Furthermore, the strong desire for other actors to accord these decisions with a binding status appeared to rely on a belief or assumption that States would be more likely to implement binding decisions or the pressure to implement would be greater. Thus civil society organisations (CSOs) and other actors were keen to advance arguments that the decisions were inherently binding. However, examples emanating both from Africa and other regions of the world were given of the poor record of implementation of findings that were unequivocally binding on a State. For example problems with the implementation of decisions of the European Court of Human Rights and the Inter-American Court of Human Rights were noted as evidence that whether a decision was regarded as binding or non-

binding was not the primary causal factor in the implementation of the decision at the domestic level. Whereas other examples were given of States taking action on non-binding decisions and recommendations. For instance it was noted that States seemed to be more actively involved in follow up activities on the Concluding Observations of the African Commission on State Party reports submitted in accordance with Article 62 of the African Charter, even though these could be considered to be non-binding. Thus other factors were identified that had more of an influence on follow up and implementation than the perceived status of the decision, namely:

1. Political will
2. The presence of an active civil society
3. The existence of an effective NHRI
4. The visibility of the case at the domestic, regional and international levels
5. The existence of opportunities for applying internal and external political pressure
6. Access to information on the status of a communication at the regional level
7. Access to key individuals at the State and regional levels
8. A judiciary that is well informed on matters of international human rights law
9. Coordination and dialogue among relevant Government Ministries
10. A litigation strategy aimed at implementation from the outset

Thus some participants noted that there was a need for a paradigm shift on the issue of decisions of the African Commission away from confrontation and towards constructive dialogue. It was noted that many Governments regard decisions as an embarrassment and the approach of some actors is to use decisions to "attack" Governments on their human rights record. It was suggested that this does not create a space for constructive dialogue and an environment within which implementation of a decision is easily obtained. Instead it was recommended that decisions of the African Commission should be regarded as an entry point for engaging with a Government on a particular issue and that the various stakeholders at both the national and regional levels should work together with the Government in a positive and constructive manner in order to rectify the problem highlighted by the decision. Such a shift would also mean that debates as to whether or not a decision was binding upon a State would be less significant.

2. Observations on the national follow up procedures and experience

a) State follow up procedures

Once a decision has been declared admissible by the African Commission the usual procedure is that the Government receives a "*note verbale*" informing them that the African Commission has declared a communication admissible and this is sent along with a copy of the decision, the complaint from the individual along with supporting documents, and the Government concerned is then informed that the next stage will be the decision on the

merits of the case and the Government is invited to submit arguments on the merit to the African Commission.

At the merit stage of the process, the State is informed of the decision and if the African Commission has decided that the Government concerned has violated one or several provisions of the African Charter then a copy of the decision along with recommendations to be implemented is forwarded to the State. It was observed that commonly it is either the Ministry of External Relations or Foreign Affairs that first receives notification of the adoption of a decision on a communication by the African Commission.

Some States have set up specific units within a Ministry to liaise with the African Commission and UN treaty bodies on individual communications and other matters. These units are commonly situated in either the Ministry of Justice or Ministry of External Relations/Foreign Affairs. The activities of these bodies varies from State to State but typically include helping to prepare the "defence" of the State before human rights bodies; to prepare advice to the Government on matters related to human rights; to liaise with human rights treaty bodies; and to act as a channel to disseminate decisions on communications received from treaty bodies.

A few States have established specific units on human rights issues that not only include members of the Executive but also representatives from the national human rights institutions (NHRIs) and CSOs. These bodies have a broad mandate that can include providing advice to the Government on human rights issues; receiving complaints of human rights violations; and conducting human rights training to various stakeholders. Where these bodies exist they also have a role to play in examining decisions and encouraging follow up on decisions on communications and the implementation of any recommendations contained within these decisions.

Some States have also established parliamentary committees to consider human rights issues, although it was noted that this was not common practice within the African region. However where they do exist these committees can play a valuable role in the follow up and implementation of decisions and should be kept regularly updated on the status of communications; any decisions received; and the remedial measures that are required to implement the decision.

During the discussions various challenges faced by the State when considering how to follow up and implement decisions were identified. Firstly it was acknowledged that capacity within Government structures needed to be strengthened, in particular within Ministries of Justice and External Affairs in order to follow up and implement decisions effectively. In particular it was noted that "everyone's task is nobody's task" and that there was a need for States to establish a focal point within the Government structure to take the lead on follow up processes and to liaise with other Ministries and Departments as required.

It was also acknowledged that Government officials needed to be sensitised on the working practices of the African Commission specifically and matters of international human rights law generally. It was suggested that secondments from Ministries to the African Commission could be a way to sensitise officials to the workings of the African Commission and would also assist in strengthening the capacity of the Secretariat of the African Commission.

Secondly, it was noted that decisions can take a long time to implement and may require substantial changes in national legislation, institutions or procedures in order to implement them fully. Accordingly it was recommended that time limits to follow up and implement decisions should take into account the particular complexity of a decision and be tailor-made for each decision.

Thirdly, some participants were of the opinion that the African Commission should provide clear guidance to States to assist them to follow up and implement decisions at the national level. By way of example it was noted that the quality and level of detail of the decisions varied greatly making it difficult sometime to ascertain what is required to implement the decisions. Thus decisions should address issues of follow up and implementation more precisely to enable the State, and other stakeholders, to determine what measures are required in order to implement the decision and should address both short and long term measures.

Fourthly, it was suggested that budgetary constraints leading to a lack of available funds for financial compensation was considered to be a further challenge for States in implementing decisions. Furthermore, it was also stated that sometimes the complainant is not flexible or willing to negotiate with the State on what is required to remedy the violation, which can hinder the implementation process.

Finally it was observed that notions that decisions of the African Commission were an unacceptable interference with state sovereignty still persist within the Continent. Linked to this it was stated that while the Constitutions of many African States contain an express provision that enables international treaties to be incorporated into domestic law, nevertheless it was argued the position is less clear with respect to the implementation of African Commission decisions particularly in cases where remedial measures are required to be taken, which, it was argued, should be decided by national courts. Within some States the decisions of the African Commission, and other bodies, are considered to be “foreign judgments” which are not formally recognised by the national courts. Thus some participants argued that decisions of the African Commission required some form of national legislation in order to incorporate them into the domestic legal and judicial framework for implementation. Others were of the opinion that the judiciary needed to be sensitised on matters relating to international human rights law.

Recommendations relating to States:

- States should create a focal point within their government structures to coordinate activities on decisions.
- States should establish parliamentary human rights committees and ensure that Parliamentarians are kept informed of the status of decisions and measures to implement them.
- States should consider encouraging friendly settlements at the earliest opportunity.
- States should carry out activities aimed at sensitising Government officials and the judiciary on matters of international human rights law and the working practices of the African Commission.
- States should consider secondments of their staff to the African Commission in order to increase awareness of the working practices of the regional body.
- States should establish a constructive dialogue with the litigant, NHRI and other relevant national actors in order address the needs of the victim/s and consider what is required to implement the decision fully.
- States should use the periodic reporting process as an opportunity to follow up on a decision and inform the African Commission of progress made with respect to the implementation of the recommendations contained within the decision.
- States with no NHRI should establish one and where an NHRI has been established States should work with it to ensure that it is fully compliant with the Paris Principles.
- States should establish a procedure for informing their NHRI of the status of a decision of the African Commission and opening up a dialogue with the NHRI and other relevant stakeholders on measures required to follow up and implement the decision.

b) The experience of and role for national human rights institutions in follow up procedures

While it was acknowledged that States bear the primary duty to implement the decisions of the African Commission, nevertheless it was agreed that NHRIs have the potential to play a central role in national and regional follow up and implementation measures on communications of the African Commission. Furthermore it was noted that the absence of an NHRI within a country was regarded as a substantial hindrance to effective national and regional follow up processes.

It was stated that within the past five years there has been an active debate and steps taken at an international level to ensure that NHRIs are given more recognition and that their role to promote and protect human rights at a domestic level is strengthened. The Paris Principles clearly set out that NHRIs must encourage ratification of international human rights instruments and ensure their implementation. Similarly, there is a recognition that

NHRIs should participate in the State reporting processes and cooperate with regional human rights mechanisms.

Participants were informed that the Conclusions of the International Roundtable of the Role of NHRIs and Treaty Bodies, held in Berlin in December 2006, stated that "NHRIs should follow up to treaty bodies assessment of complaints to monitor State Party action undertaken in relation to it" and "NHRIs should follow up on interim orders of Treaty Bodies given to States Parties in relation to complaints where irreparable harm is envisaged". Thus it was acknowledged that there was a clearly articulated mandate for NHRIs to follow up on decisions of treaty bodies, including the African Commission.

However a number of significant challenges to NHRIs playing an active role in follow up to decisions of the African Commission were identified.

Firstly it was noted that not all African countries have NHRIs and few of the NHRIs that have been established within the region are recognised as being fully compliant with the Paris Principles and have been granted A status with the Office of High Commissioner for Human Rights (OHCHR). It was recorded that the Network of African NHRIs (NANHRI) has 39 members and only 18 of these have recognised A status with the OHCHR. The Paris Principles are designed to ensure that NHRIs have a broad human rights mandate, are sufficiently resourced and are independent in their operation. The low number of A status NHRIs in Africa indicates that many are not functioning as independently as they should and many are insufficiently resourced to carry out their duties and responsibilities effectively. Accordingly, these NHRIs are weaker partners in matters of follow up and implementation than they could be for the African Commission, States and civil society organisations.

Thus it was argued that any conversation concerning follow up and implementation had to address strategies to strengthen and where necessary establish NHRIs.

Secondly it was acknowledged that one of the main obstacles to NHRIs, and indeed other actors, taking an active part in follow up on decisions on communications was the difficulty in accessing information on decisions specifically, and the individual communications procedure generally. It was noted that there was no formalised procedure to facilitate information sharing and a dialogue between NHRIs and the African Commission in relation to decisions. Linked to this it was noted that few NHRIs actually attended the sessions of the African Commission. Many reasons were put forward for this poor attendance of NHRIs including a lack of resources; the lack of a detailed timetable for the ordinary sessions of the African Commission which makes it difficult to plan to be at the session at the most strategic time; and a lack of financial and other assistance to attend.

Thirdly, it was also noted that the recommendations contained within decisions of the African Commission were often stated in very broad terms which made it difficult to

determine what exactly is expected of States and what could be expected of NHRIs in terms of follow up.

Lastly it was recalled that while the various existing mechanisms such as NHRIs could consider implementation issues as part of their mandate, on the whole they were not primarily set up to deal with implementation issues and so in the long term states should consider having specific implementation units whose work would be complemented by NHRIs and other stakeholders.

Recommendations relating to NHRIs:

- NHRIs should study decisions once they have been received in order to determine the synergies between their ongoing work and what is being recommended. Where the NHRI is not conducting work in relation to the issues raised in the communication the reasons for this must be reassessed and possible reprioritisation of key focus areas may be necessary.
- NHRIs should establish contact with lawyers or the organisation that assisted in the lodging of a communication in order to obtain background and other information on the circumstances that led to the lodging of a complaint and current status of the matter. This will also help to identify any gaps or failures that are either individual or systemic at a domestic level that gave rise to the complaint.
- NHRIs should report on the decisions and any actions taken in respect of follow up in its reports to treaty bodies and the UPR.
- NHRIs should develop a strategy for engaging with the African Commission more effectively.
- NHRIs should try and establish a constructive dialogue with the State, litigants and CSOs in order to address how to follow up and implement a decision effectively.
- NHRIs should consult with CSOs that work in a particular area and facilitate the sharing of information on decisions and discuss possible roles in relation to follow up.

c) The experience of and role for civil society actors in follow up procedures

Civil society organisations were recognised as key partners in any follow up and implementation processes. It was acknowledged that one of the strengths of CSOs was in building partnerships at the national level in order to engage various stakeholders and the broader community in follow up and implementation of decisions. However, it was also noted that CSOs and lawyers involved with assisting victims of human rights violations to submit a communication had a responsibility to them that went beyond merely the litigation process and they owed a duty to follow up themselves in order to try and secure implementation.

CSOs outlined a number of frustrations with respect to follow up and implementation of decisions on communications. Firstly it was noted that there was a lack of information from the African Commission and States on the status of communications and the follow up processes. Secondly, it was observed that it was difficult for CSOs to know exactly who in the Government and the African Commission to engage with on matters relating to decisions on communications and that frequently CSOs have to deal with a range of different people due to the long period of time that it took for the African Commission to consider a communication and subsequent follow up processes at the State level.

Thirdly, some civil society actors appeared to consider that the decisions needed to be regarded as more than "recommendations" but "findings" binding upon the State. Therefore it was suggested that the African Commission should consider adopting language that better reflected the binding status of the decisions. This was regarded by some CSOs as not just a matter of semantics but of vital practical importance as it was felt that applying stronger terminology around the decisions was necessary in order to apply pressure on States to take the decisions seriously.

Fourthly, it was stated that CSOs only find out about a decision on a communication once the African Commission's activity reports has been adopted by the AU. It was noted that this practice was problematic because the adoption of the activity reports is not automatic and can be deferred. Consequently the decisions on communications contained therein are unknown until such time as the AU decides to adopt that report.

Finally it was acknowledged that the political will of the State is paramount as to whether a decision is followed up and implemented. Unfortunately experience appeared to indicate that many States do not follow up or implement decisions adequately or promptly. This, it was suggested, indicated that the African Commission did not command respect from States. Further, some participants suggested that the fact that the African Commission cannot impose "sanctions", using the term in its broadest sense, for non-compliance with a decision was a significant impediment.

Notwithstanding the challenges outlined above, examples of good practice were identified. It was stated that when litigants had an implementation strategy in place at the start of the litigation process this greatly assisted the chances of an eventual decision being implemented to the satisfaction of the victim. Linked to this it was noted that where partnerships across sections and communities had been built by CSOs on a communication this also increased the likelihood of the State following up on a decision due to an increase in pressure points and groups and assisted with the sustainability of any implementation measures. In such a scenario it was noted that when a complaint was upheld this was not

just a “win” for the individual or group concerned but would be considered a success for the wider community.

As part of the process of building partnerships, it was also noted that it was essential for CSOs to build up a good relationship with parliamentarians and where they exist NHRIs. In addition the media were noted as a useful partner for CSOs to apply pressure on a State to follow up and implement a decision. Although it was also noted that sometimes involving the media in a “naming and shaming” strategy is not always the most effective way of engaging the State in a dialogue on implementation. Thus CSOs needed to develop multifaceted implementation strategies and be able to identify the best approach for a particular situation. It was noted by some participants that decisions should not be used to “punish” States but rather CSOs should use decisions as a way to establish a constructive dialogue with a State concerned in order to assist them to better protect human rights at the national level.

It was also noted that trying to secure friendly settlements was good practice as often these resulted in more substantive outcomes. It was suggested that one of the reasons for this was that before positions become entrenched States could “afford” to agree to more remedial measures and much more quickly than if it went to the decision of the merits stage at the African Commission. States also appeared to be in favour of negotiating friendly settlements at an early stage in the litigation process.

It was also noted that CSOs needed to be careful not to “re-litigate” a decision at the national level when trying to secure implementation, for example by involving national courts, as this may open up the decision on substantive issues.

Lastly, it was noted that a precedent has been set at the 50th ordinary session of the African Commission when litigants and CSOs involved in a decision with respect to Mauritania called for an “implementation hearing” at the African Commission on the decision. It is expected that this hearing will take place during the 51st ordinary session in 2012.

Recommendations relating to civil society organisations:

- More research should be conducted on effective implementation mechanisms and strategies from the region and other forums in order to identify and share good practice.
- CSOs should encourage the African Commission and States to establish focal points on follow up within their respective institutional frameworks.
- CSOs should encourage the African Commission to develop effective mechanisms to report on the status of communications and decisions.
- CSOs should create diverse partnerships including NHRIs, parliamentarians, the media, and communities.

- CSOs involved with litigation should build an implementation strategy into their overall litigation strategy.

3. Observations on the regional follow up procedures and experience

a) The African Commission

It was stated that the African Commission considers that the ratification of the African Charter implies an undertaking by States Parties that they will abide by its decisions.[1] In support of this opinion it was noted that the 2006 'Resolution on the Importance of Implementing the Recommendations of the African Commission on Human and Peoples' Rights by States Parties' establishes that '*State Parties in ratifying without any reservation, the African Charter on Human and Peoples' Rights have thus agreed to accept the authority and the essential role of the Commission in the promotion and protection of Human and Peoples' Rights throughout Africa*' and, accordingly, the Commission '*Calls upon all state parties to the African Charter on Human and Peoples' Rights to respect without delay the recommendations of the Commission*'.[2] However, although the African Commission considers that States Parties have an obligation to abide by their decisions, some participants were of the opinion that the African Commission should ask for a legal opinion on the binding status of its decisions.

It was noted that Rule 112 of the new rules of procedure for the African Commission sets out the follow up procedure on recommendations. This rule establishes that after the consideration of the African Commission's activity report by the AU Assembly, the Secretariat of the African Commission shall notify the parties within 30 days that they may disseminate the decision. Where there has been a finding of a violation the rule requires the parties concerned to inform the Commission within 180 days of being informed of the decision of all measures taken or being taken by the State Party to implement the decision.

Within 90 days of the receipt of the State's written response, the African Commission may invite the State concerned to submit further information on the measures it has taken in response to its decisions. If no response is received from the State concerned the African Commission may restate its request for a written response and allow a further 90 days for a reply.

Rule 112 also stipulates that the Rapporteur for the Communication, or any other member of the Commission designated for this purpose, shall monitor the measures taken by the

[1] Communication 227/99, *Democratic Republic of Congo v. Burundi, Rwanda, Uganda*, 20th Annual Activity Report, para. 53.
[2] See ACHPR/Res.97(XXXX) 06, adopted at the 40th Ordinary Session in Banjul, the Gambia, from 15 - 29 November 2006.

State Party to give effect to the African Commission's recommendations on each Communication. In accordance with rule 112, the Rapporteur may make such contacts and take such action as may be appropriate to fulfil his/her assignment including recommendations for further action by the Commission as may be necessary.

Furthermore, at each Ordinary Session, the Rapporteur shall present the report during the Public Session on the implementation of the African Commission's recommendations, and the African Commission shall draw the attention of the AU Sub-Committee of the Permanent Representatives Committee and the Executive Council on the Implementation of the Decisions of the African Union, to any situations of non-compliance with the Commission's decisions. Lastly, the African Commission shall include information on any follow-up activities in its annual report.

Furthermore, it was suggested that the State Party reporting procedure should be regarded as another form of follow-up where States, the African Commission, CSOs and other stakeholders can use the opportunity to raise questions or submit information regarding the status of implementation of a decision.

Notwithstanding these procedures, it was acknowledged that there were a number of significant problems with the African Commission's approach and rules relating to decisions on communications.

First, it was noted that the African Commission has set up a Working Group on Communications but that follow-up activities on decisions had not been expressly written into the mandate of this mechanism.

Second, it was observed that there was a crucial flaw with Rule 110 of the new Rules of Procedure. Rule 110(3) states that the decision of the African Commission shall remain confidential and shall not be transmitted to the parties until its publication is authorised by the Assembly of Heads of State and Government of the African Union (the Assembly). In practice it was noted that the Assembly has delegated this responsibility to the Executive Council, which in recent years has led to more substantial debate on the activity reports rather than simply being a "rubber-stamping" exercise. It was noted that where the authorisation of the activity report of the African Commission by the Executive Council is deferred, as is the case with the 29th activity report,[3] this can lead to a significant delay with the dissemination of a decision to the parties concerned. It was commonly observed that the length of time for informing the parties involved in a communication of a decision was unnecessarily long and that often the parties were unaware of when a decision had been adopted by the African Commission.

[3] See decision of the African Union Executive Council, EX.CL/Dec.666(XIX); available at http://www.au.int/en/sites/default/files/EX%20CL%20Dec%20644-667%20(XIX)%20_E.pdf

Third, it was acknowledged that whilst Rule 112 set up a procedure for follow up because the new rules of procedure are contained within the 29th activity report of the African Commission which has not yet been authorised by the Executive Council and therefore nothing can be done yet to give effect to this Rule.

Fourth, it was observed that the African Commission was significantly under resourced and lacks the full capacity to carry out follow-up activities effectively. In particular it was noted that the African Commission did not have many legal officers within the Secretariat.

Fifth, it was suggested that the African Commission has put too much focus on the promotional aspects of its mandate to the detriment of its protective mandate. It was noted that there were 14 Special Mechanisms and that most of their activities have focused on promotional missions and activities.

Sixth, it was stated that in some instances the African Commission finds it difficult to get information on follow-up from complaints once a decision has been adopted. A few reasons were advanced for this such as the length of time taken to obtain a decision; a lack of transparency with the decision-making process so that parties are unaware that a decision has been adopted; a lack of funds for follow-up; and a lack of interest.

Lastly, some participants were of the opinion that the time limit of 180 days for the parties to inform the African Commission of all measures taken or being taken by the State Party to implement the decision was too short and failed to acknowledge the fact that decisions may require many Government Departments to be involved with or consulted on implementation measures, and that national legislation may need to be changed or drafted in order to implement the decision fully.

Recommendations relating to the African Commission:

- The African Commission should review the mandate of the Working Group on Communications to ensure that follow-up is included within its activities.
- The African Commission should draft decisions precisely and in a way that assists States to implement them at the national level.
- The African Commission should ensure that time limits to follow up and implement decisions are appropriate to each decision and take into account the relative complexities of implementing a decision.
- The African Commission should establish an effective procedure for informing litigants and CSOs about decisions on communications.
- The African Commission and NHRIs should consider ways in which they can establish more formal lines of communication on their work.
- The African Commission should have a procedure in place that would ensure that decisions on communications are automatically shared with NHRIs.

- The main role of the African Commission with respect to follow-up should be one of arbitrator in order to coordinate a constructive dialogue between the parties concerned.

b) The role for other African Union organs and mechanisms

In respect of the role for the African Court on follow-up on decisions of the African Commission it was stated that it was inappropriate for the African Court to be involved. It was noted that in terms of the Protocol on the African Court and its own rules of procedure, the African Court cannot follow up on its own judgments this role is mandated to the Executive Council. Accordingly some participants stated that they could not envisage a role for the African Court in any follow up procedure of the African Commission. It was acknowledged that some people held the view that when decisions of the African Commission have not been complied with then these can be referred to the African Court who could play the role of "enforcer" for the African Commission. However, some participants believed that the Court could not do this. Instead it was stated that the African Court would need to develop its own opinion on any communication referred to it by the African Commission and this could entail looking at the facts and merits again.

Notwithstanding this it was acknowledged that the African Court and African Commission would need to collaborate and discuss how to send cases to each other. It was noted that the rules of procedure stipulate that they must meet once a year and this provided an opportunity to consider ways to establish a constructive relationship. However, it was recommended that the judges of the African Court would benefit from further orientation on the work of the African Commission as some regarded the African Commission as a "litigant" and were therefore reluctant to collaborate with this body.

It was suggested that the African Court could learn from the experience of the Inter-American Court of Human Rights (IAMctHR) which had decided to include in its rules of procedure that it will follow up on its own decisions. It was noted that one of the means by which the IAMctHR follows up on decisions is by holding implementation hearings where the parties concerned have an opportunity to report to the IAMctHR on any measures taken to implement the decisions, and complaints have the opportunity to say whether they are satisfied with the steps taken to implement a decision. However, some participants recalled that notwithstanding these efforts the level of implementation of decisions of the IAMctHR and the Inter-American Commission on Human Rights remained low.

The procedure for following up on decisions of the European Court of Human Rights (EctHR) was also used to highlight experiences from other forums that might be instructive for the African human rights system. It was noted that the responsibility for follow up on decisions

of the EctHR has been given to the Committee of Ministers, a political body, which has an established procedure for the execution of judgments. It was noted that each member State of the Council of Europe have appointed "agents" who deal directly with the EctHR and are given powers to make decisions on the spot with respect to *inter alia* matters of communications, follow up and implementation of judgments. These agents can also work on securing any provisional measures that are deemed necessary. It was suggested by some participants that member States of the African Union could consider a similar procedure within the African Union's human rights architecture.

In addition to the African Court, other African Union organs and mechanisms were identified that could or should have a role in matters of follow up and implementation of decisions of the African Commission. Most prominent among these were the Peace and Security Council; the African Peer Review Mechanism (APRM); and the Pan-African Parliament.

The Peace and Security Council (PSC) is an organ of the AU responsible for enforcing African Union decisions. The PSC is made up of fifteen Member States of the African Union who are elected by the Executive Council on a regional basis: three from Central Africa; three from East Africa; two from North Africa; three from Southern Africa; and four from West Africa. The PSC is responsible for the promotion of peace, security and stability in Africa; preventive diplomacy and the maintenance of peace; and the management of catastrophes and humanitarian actions. A panel of "Wise Persons" has also been established to support the work of the PSC. During the seminar it was suggested that the PSC could have a role to play in the follow up of decisions of the African Commission as they are entitled to have hearings to consult CSOs and other stakeholders within their mandate on conflict prevention. It was recommended that the PSC could look at decisions of the African Commission as indicators under their early warning system.

The African Peer Review Mechanism (APRM) was established in 2003 by the African Union in the framework of the implementation of the New Partnership for Africa's Development (NEPAD). The APRM, a process of state peer review, is used by member countries as a means to share experiences and to self-monitor all aspects of their governance and socio-economic development. The APRM conduct four types of review namely:

- A base review, which is the first country review carried out within 18 months after a country becomes a member of the APRM
- A periodic review that takes place every two to four years
- A Member country may, for its own reasons, request a review outside the framework of the periodically mandated Reviews
- Early signs of impending political and economic crisis in a member country could also be sufficient cause for commissioning a Review.

It was stated that the APRM do look at decisions relating to human rights as part of their mandate and could be an extremely useful process to follow up on decisions of the African Commission and to consider the steps taken or required to be taken in order to implement a decision at the national level. It was remarked that the APRM had a good record of constructive dialogue with States with respect to the implementation of recommendations. It was therefore suggested that synergies needed to be made between the African Commission and the APRM, and that CSOs and NHRIs should consider using the APRM within their implementation strategy on a decision.

The Pan-African Parliament (PAP) was regarded as perhaps one of the most crucial AU organs that had a role to play with follow up and implementation of decisions. PAP is the legislative body of the African Union and it has the following functions:

- To facilitate the effective implementation of the policies and objectives of the AU.
- To work towards the harmonization or co-ordination of the laws of Member States.
- To make recommendations aimed at contributing to the attainment of the objectives of the AU and draw attention to the challenges facing the integration process in Africa as well as the strategies for dealing with them.
- To request officials of the AU to attend its sessions, produce documents or assist in the discharge of its duties.
- To promote the programmes and objectives of the AU, in the constituencies of the Member States.
- To encourage good governance, transparency and accountability in Member States.
- Familiarize the peoples of Africa with the objectives and policies aimed at integrating the African continent within the framework of the establishment of the African Union.
- Promote the coordination and harmonization of policies, measures, programmes and activities of the parliamentary forums of Africa.

PAP is able to have public hearings which can be viewed “live” and they can put a range of issues on its agenda for debate. Therefore it was recommended that CSOs, NHRIs and other stakeholders should consider raising decisions of the African Commission within this forum to encourage a constructive dialogue on the steps required to implement a decision and as a further strategy to apply pressure on States to comply with a decision.

Recommendations relating to other African Union organs and mechanisms:

- The African Court and African Commission should use their annual meetings as a regular forum to discuss ways to their respective roles, and to further strengthen collaboration and lines of communication.
- Stakeholders should conduct sensitisation programmes for the judges and staff of the African Court so that they are better familiarised with the mandate and working practices of the African Commission.

- Stakeholders should use the APRM as a forum to follow up on a decision by raising awareness of the status of implementation and to highlight any steps required to implement a decision fully.
- Stakeholders should use PAP as a platform to follow up on a decision by raising awareness of the status of implementation and to highlight any steps required to implement a decision fully.

IHRS Team
University of Bristol
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