

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

04 - 06 September 2018, Zanzibar, Tanzania

1. The African Commission on Human and Peoples' Rights (Commission) organised the "Second Regional Seminar on the Implementation of Decisions of the Commission" from 04 - 06 September 2018, in Zanzibar, United Republic of Tanzania, for countries of East and Southern Africa, with the financial support of the European Union (EU) under the Program on Strengthening the African Human Rights System (PANAF Program).
2. The overall objective of the Seminar was to strengthen the African human rights system, through the Commission's human rights promotion and protection mandate. The specific objectives included an assessment of the status of implementation of Concluding Observations and other decisions of the Commission with the aim to enhance implementation by State Parties.
3. The Seminar brought together a total of seventy-two (72) participants drawn from State Parties (Ministries of Foreign Affairs and Justice), National Human Rights Institutions (NHRIs), Civil Society Organisations (CSOs), African Human Rights Experts and Academics as well as Honourable Commissioners of the Commission. The Regional Seminar was also serviced by staff of the Secretariat of the Commission.
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 Chairperson of the Commission, Honourable Commissioner Soyata Maiga, and graced by the Minister of State Constitution, Legal Affairs, Public Service and Good Governance of Zanzibar, Honourable Haroun Ali Suleiman who was represented by the Deputy Minister of State, Second Vice President's Office, Honourable Miyayo Nhunga.
6. In her welcome address, the Chairperson of the Commission welcomed the participants and thanked them for honouring the Commission's invitation. She recalled that the Seminar was the second of its kind following the First Regional Seminar organized in August 2017 for the West, Central and Northern regions of the Continent. She gave an assessment of the working methods and challenges faced in the implementation of the Commission's decisions and recommendations. The Chairperson further outlined the practical benefits and the intended goals of the regional seminar, namely, experience sharing and capacity-building for States Parties, NHRIs and civil society actors with the aim of reducing the gap in information of the African Human Rights system and increasing the rate of implementation of the decisions and recommendations of the Commission. She also thanked the Government of the United Republic of Tanzania for the hospitality extended to the participants and for the country's constant support to the Commission as well as the European Union (EU) for its financial and technical support through the PANAF programme, which made the holding of the regional seminar possible.
7. In his opening statement, Honourable Miyayo Nhunga welcomed all participants to Zanzibar, Tanzania. He further commended the work of the Commission as the premier human rights supervisory body on the continent and urged States Parties to proactively respond to established violations and implement the decisions made by the Commission. In this regard, he highlighted that the impact of the Commission's work has been affected by the perception among States Parties that its decisions are not legally binding. He, therefore, emphasised that despite other protection mechanisms such as the African Court on Human and Peoples' Rights (African Court) which issue binding decisions, the Commission's protective mandate remains valid and that the Commission's output should not be pre-judged by its nature or capabilities, but by the provisions of the African Charter on Human and Peoples' Rights (African Charter) under which the Commission operates. While recognizing the challenges that impede implementation of decisions of the Commission, he also highlighted the relevance of reforms and the need to take concrete measures at the national level, to facilitate implementation of the decisions of the Commission. He concluded by reiterating need for all stakeholders to take positive action, in order to make positive contributions to human rights protection and promotion on the continent.

II. Presentations

8. During the Seminar, presentations were made, followed by extensive discussions: Professor Frans Viljoen, from the Centre for Human Rights, University of Pretoria, made the first presentation, 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”. He stated that the primary responsibility for implementing the African Charter and the Protocol to the African Charter on the Rights of Women (Maputo Protocol) lies with State Parties but that generally, implementation is a joint endeavour, involving not only the State and the Commission, but also NHRIs; litigants in Communications, and Civil Society. His presentation also highlighted recommendations aimed at fostering implementation of Concluding Observations; recommendations emanating from Promotion Mission Reports, including Fact-finding Missions; Communications and Urgent Appeals. In conclusion, he noted that a comprehensive approach to implementation should be adopted, with a dedicated unit within the Commission’s Secretariat taking responsibility for monitoring recommendations.
9. The second presentation by Commissioner Maya Sahli Fadel 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 provided a brief overview of the Structure of the Commission, its history and mandate and the legal basis on which the Commission issues its various decisions. She then detailed the process of State Reporting and the Communications procedure before the Commission and listed the types of decisions that the Commission has issued in the thirty-one years of its existence as well as some challenges faced by the Commission in monitoring implementation of its decisions. In conclusion, she highlighted the Commission’s ongoing efforts to improve relationships with NHRIs and NGOs and develop an implementation database and strategy, to ensure effective monitoring of implementation of its decisions.
10. The third presentation by Professor Rachel Murray was on the “Implementation of decisions – the experiences of the African Court on Human and Peoples’ Rights, the African Committee of Experts on the Rights and Welfare of the Child, the Inter-American Commission on Human Rights, and the European Court of Human Rights”. Professor Murray’s presentation detailed findings from a three year research project being undertaken with the Centre for Human Rights of the University of Pretoria, in conjunction with two other universities, which attempts to track the status of remedies ordered and recommended in decisions adopted by regional and UN treaty bodies.
11. Professor Murray stated that based on research, some African States have taken measures to implement the decisions of the afore-mentioned treaty bodies. She noted specifically that the UN encourages States to set up national reporting and monitoring committees,

which include within their constitutive instruments the mandate to monitor the implementation of treaty body recommendations. She listed, the Inter-Ministerial Committee in Cameroon, mechanisms in Zambia to monitor implementation of the Universal Peer Review (UPR) recommendations and the ad hoc committees in Burkina Faso to respond to judgments of the African Court, as a few examples of the steps taken by African states. However, she noted that although one may expect Government authorities to engage with the victim(s), or at least the complainant(s) in order to ensure implementation of the decision, research found that the authorities did not always do this and it was not clear whose responsibility it was to inform the victim or complainant and initiate contact with them. Her presentation specifically touched on decisions involving compensation to victims and identified various challenges, noting specifically that:

- where the amount was set by the international treaty body, this could cause problems if it was not considered by the government to be in line with national level quantum;
- where the African Commission or treaty body defers to the State to determine the amount to grant the victims, the State would need to initiate a process of negotiation with the victim, whereas it was not often clear how to begin this process and who should initiate it;
- rulings by international or regional treaty bodies do not trigger, in the same way as a domestic court decision, the process to ensure that the individual victims are actually paid.

12. Professor Murray noted lastly that a central factor necessary for the implementation of decisions was ministerial engagement, and ownership of and responsiveness to decisions at the highest level. She finally stressed the importance of assigning government offices with the responsibility to coordinate implementation activities by States.

III. Panel discussions

13. Three panel discussions, aimed at sharing experiences, were moderated by Commissioners and included presentations by representatives of State Parties, NHRIs and CSOs. The panel discussions identified challenges, best practices and proposed recommendations.
14. The first panel discussion, comprising representatives from Madagascar and Kenya, was on “States Parties’ Perspective: Mechanisms established to follow up on the implementation of decisions of the Commission”. From the contributions of the representatives, it emerged that their States and generally most African States in the East and Southern Region, with a few exceptions, 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, the representatives highlighted that these committees face certain operational challenges, including inadequate financial resources; capacity constraints such as limited knowledge of

instruments; competing priorities; coordination challenges of committee members; lack of national statistical data on various rights obligations; and the legal and political ramifications of implementing the Commission's decisions.

15. The second panel discussion, comprising Mr Michel Vieilliesse, Member of Mauritius National Human Rights Commission and Advocate Bongani Christopher Majola, Chairperson of the South African Human Rights Commission, was on the "NHRIs Perspective: Mechanisms established to monitor the implementation of decisions of the Commission". The panel discussion explored the legislative and organisational structure of the respective NHRIs, provided an update on their activities and identified the challenges faced. Notably, both panellists decried the lack of legislative authority of NHRIs to hold their Governments accountable, or compel them to implement their decisions and recommendations, further exacerbated by efforts of States Parties to leave NHRIs on 'shoe-string budgets' that often place severe limitations on their output. The panelists also provided best practices to combat these challenges.
16. The third panel discussion on "NGOs Perspective: Mechanisms established to follow up on the implementation of decisions of the Commission" consisted of Mr Omar Ali Ewado of Ligue Djiboutienne des Droits Humains (LLDH) and Mr Antonio Ventura of Associação Justiça, Paz e Democracia (AJPD). The discussions focused on the role of and the main challenges faced by NGOs in monitoring the implementation of the decisions of the Commission. Both presentations stressed the need for information sharing between the Commission and NGOs to ensure that NGOs play a proactive role in the implementation of the decisions of the Commission.

IV. Breakout sessions

17. To expound on the topics raised in the various experience-sharing presentations, four 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 working relationship 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.
18. The four groups identified challenges faced by various stakeholders and made recommendations on the way forward.

Outcomes from the Presentations, Panel discussions and Breakout sessions.

19. From the various presentations, panel discussions and breakout sessions, 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 raised reiterated those of the First Regional Seminar and include:

I. Challenges Highlighted

Challenges faced by State Parties:

a) Institutional and financial constraints

- ⇒ Lack of an implementation and monitoring plan of the Decisions of the Commission by State Parties at the national level;
- ⇒ Lack of focal points and designated government ministries to follow up on implementation of decisions;
- ⇒ Lack of coordination within government ministries;
- ⇒ Lack of adequate financial resources and limited staff capacity to implement the Commission's decisions;
- ⇒ 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;
- ⇒ Non- harmonization of national laws in accordance with regional/international laws;

b) Limited knowledge

- ⇒ Limited knowledge of State Parties on the operation of the Complaints procedure and other decision-making processes of the Commission;
- ⇒ Limited knowledge of State Parties on the working methods of the Commission;
- ⇒ Limited knowledge of State Parties obligations regarding implementation of the decisions of the Commission;
- ⇒ General misgivings of the credibility and acceptability of decisions of the Commission;

Challenges faced by the Commission:

a) Inadequate commitment by State Parties

- ⇒ General misgivings of the binding nature of the Commission's decisions resulting in an optional/voluntary approach to their implementation;
- ⇒ Lack of political will by some States Parties to implement the Commission's decisions and recommendations, including provisional measures;
- ⇒ General reluctance by States to engage with regional mechanisms as opposed to international mechanisms such as the United Nation's Universal Periodic Review;

⇒ Non-compliance by States with their commitment under Articles 62 of the African Charter and 26 of the Maputo Protocol;

b) Financial and institutional constraints

⇒ Inadequate staffing levels at the Secretariat of the Commission often delaying the adoption and publication of Concluding Observations on State Reports, as well as the handling of correspondences/Communications;

⇒ Inadequate financial resources of the Commission due to inadequate funding from State Parties resulting in the Commission's reliance on donor funds;

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 and other relevant stakeholders;

⇒ Ineffective dissemination of decisions of the Commission at the national level;

⇒ Non-responsiveness of State Parties to Communications, urgent appeals and provisional measures;

⇒ Failure by States Parties to authorize promotion missions and/or visits by the Commission;

⇒ Lack of popularization of the instruments of the Commission and its work within the State Parties.

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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 constraints

⇒ 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.

Challenges faced by NHRIs

- ⇒ Gap in the involvement of NHRIs in the work and activities of the Commission;
- ⇒ Limited involvement and lack of understanding of the role of NHRIs in monitoring the status of government implementation of the Commission's decisions;
- ⇒ Lack of funding and staff constraints of NHRIs;
- ⇒ Lack of a consistent focal point within NHRIs dedicated to working with the Commission;
- ⇒ 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.

Challenges faced by NGOs

- ⇒ Limited familiarization or understanding by NGOs of the work of the human rights system particularly the African system and the Commission;
- ⇒ Limited Funding to be able to execute their roles, including to follow up on implementation at national level;
- ⇒ Shrinking of civic space -including through legislative and policy means thereby deterring advocacy, lobbying and awareness-raising;
- ⇒ Restrictive Criteria for observer status before the Commission bars smaller grassroots NGOs from engaging at the institutional level with the activities of the Commission;
- ⇒ Limited knowledge of and accessibility to decisions of the Commission and statistical data on the activities of 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;
- Enhance communication/engagement between the Commission, State Parties and all other Stakeholders;
- Increase capacity-building activities between the Commission and relevant stakeholders for increased compliance with decisions;
- Dissemination of the Outcome Document of the regional seminar for institutional feedback.

B. Specific recommendations

a) To States Parties:

- i) *Inadequate commitment by States Parties
States Parties should:*

- Take all necessary measures to implement the Charter through integrating it in their Constitutional and legislative provisions rather than focussing on the non-binding nature of decisions of the Commission;
- Develop national plans for implementation and follow-up of decisions from regional and international treaty bodies. These plans should clearly indicate the activities and the stakeholders responsible for implementation;
- Provide information to the Commission on the concrete steps taken to implement decisions of the Commission;

ii) *Institutional and financial constraints*

States Parties should:

- Establish a central mechanism or unit at national level responsible for coordinating issues regarding implementation of decisions of the Commission;
- Ensure that the central mechanism is adequately funded and represented, with an open-ended composition of State actors, NHRIs, and inter-governmental organizations;
- 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;

iii) *Lack of knowledge*

States Parties should:

- Improve the popularization of instruments of the Commission and their work through training of several stakeholders in the country and engaging the media;
- Disseminate documents of the Commission especially during promotion missions and other activities of the Commission;
- Organize national conferences on human rights issues which put an emphasis on African mechanisms on human rights and involve all stakeholders in the process;
- Develop statistical data on the various thematic areas of the Commission to ensure updated knowledge of the rights situation in the country at a given time;

iv) *Lack of communication*

States Parties should:

- Establish liaison persons to facilitate communication with the Commission;
- 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 Commission matters;

- Ensure that documents transmitted by the Commission are transmitted to the relevant/responsible organs immediately without delay;
- Acknowledge receipt of decisions within one hundred and eighty days (180) days and report to the Commission outlining measures to be taken to implement decisions.

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

i) Financial and institutional capacity

The ACHPR should:

- Ensure effective follow up with the AU regarding the recruitment of Legal Officers in order to address the problem of understaffing which leads to inefficiency in the delivery of its services;
- Ensure effective follow-up on implementation, including by setting up an implementation unit in the Secretariat;
- Identify and concentrate on mandate areas of comparative advantage by refocusing financial and human resources on these areas;
- Always copy the relevant State Embassies in Addis Ababa for all correspondences to, and from the Commission;

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 relevant stakeholders to increase the level of implementation of the Commission's decision including during promotion missions;
- Organize additional implementation seminars to ensure continued dialogue with and between States Parties, NHRIs and NGOs;

iii) Lack of monitoring mechanisms

The ACHPR should:

- Institutionalise a mechanism to monitor the implementation of its recommendations and decisions;
- Continuously report on the non-implementation of its decisions to the policy organs, to enable the Executive Council to urge State parties to comply;

iv) Support to Stakeholders

The ACHPR should:

- Proactively engage with NHRIs and NGOs during the process for application of Affiliate Status and Observer Status with the Commission and ensure that they comply with their duties therein, including ensuring regular attendance at sessions;
- Organise training sessions and implementation seminars on its working methods, the complaints handling procedure and related issues for all stakeholders;
- Develop guidelines in the respective AU working languages with indicators to assist States Parties, NHRIs and CSOs in monitoring the implementation of its decisions/recommendations;
- 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 an office within the AUC in Addis to serve as liaison person between the Commission and States to enhance communications.

d) To National Human Rights Institutions

i) Dissemination of information at the national level

NHRIs should:

- Actively promote the use of materials and documents of the Commission, including case studies and resolutions during their capacity building processes;
- Publicize vigorously, the decisions of the Commission at the national level;
- Ensure effective dissemination of information on the work of the Commission within its internal structures;
- Host an annual celebration of the African Day of Human Rights on 21 October to promote the regional human rights dispensation;
- Proactively engage with the Media in all its forms to ensure effective dissemination of its activities;
- Proactively engage States and raise awareness on the decisions of the Commission with the different ministries and members of parliament;
- Regularly prepare advisories to States suggesting various modalities on the ways to respond to recommendations, decisions and resolutions of the Commission;

ii) Institutional Capacity

NHRIs should:

- Actively seek to ensure that States have legislative frameworks governing their powers;
- Establish departments or focal persons designated to ensure effective follow-up and implementation of the decisions of the ACHPR while also ensuring an effective channel of communication with the ACHPR;
- Develop a fundraising strategy to sustain their activities;

iii) *Cooperation with the Commission*
NHRIs should:

- Engage effectively in the work of the Commission, including by applying for affiliate status, participating in ordinary sessions and providing information, including information on progress made by State in the monitoring and follow-up of the decisions of the ACHPR;
- Establish departments or focal persons designated to ensure effective follow-up and implementation of the decisions of the ACHPR while also ensuring an effective channel of communication with the ACHPR;
- Make use of the “Guidelines of the Role of the NHRIs in following the implementation of the recommendations and decisions of the ACHPR.

e) To Civil Society Organisations

i) *Dissemination of information at the national level*
CSOs should:

- Comply with their reporting obligations under the Resolution on the Granting and Withdrawal of Observer Status with the Commission;
- Lobby to ensure that Commission’s decisions are considered in national human rights action plans;
- Contribute to the wider dissemination of decisions of the Commission at the national level including through the use of social media;
- Issue press releases to publicize decisions of the Commission;

ii) *Organisational capacity*
CSOs should:

- Collaborate with NHRIs and other NGOs in capacity building initiatives;
- Improve/encourage relationship with other NGOs, NHRIs and Government, to work in concert as partners and not competitors;

iii) *Corporation with Commission*
CSOs should:

- Apply for Observer Status with the Commission for those that have not done so and seek the technical support of other NGOs with Observer Status to finalise the process;
- Include status of implementation of Commission’s decisions in statements made by NGOs at the Commission’s sessions for follow up where necessary;

- Designate focal persons to follow up decisions/recommendations of the Commission and other treaty bodies;

V. 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. Bisereko Kyomuhendo who thanked all the participants present at the Regional Seminar and the Commission for organising the said Seminar. He also recalled a humorous anecdote on the importance of such gatherings and reiterated the renewed commitment by all present to enhance activities geared towards implementing the decisions of the Commission.
22. The Closing remarks were then delivered by the Chairperson of the Commission, Commissioner Soyata Maiga and Tanzanian Deputy Minister for Foreign Affairs and East African Cooperation, Honourable Dr. Susan Alphonse Kolimba (MP) on behalf of the Tanzanian Minister for Foreign Affairs and East African Cooperation, Honourable Dr. Augustine P. Mahiga (MP) who was unavoidably absent.
23. During her closing remark, the Chairperson offered some words of thanks, particularly to the Tanzanian government for hosting the Seminar in their country and to the Honourable Deputy-Minister for her attendance at the closing ceremony. She recalled the various presentations, panel discussions and breakout sessions that occurred during the Seminar and acknowledged the ways in which they each contributed to enriching the discussions. She expressed her appreciation for all the relevant recommendations provided and the many ways in which the Commission has been enabled to strengthen its working methods. The Chairperson specifically noted the recommendations arising from the Seminar imploring the AU to deal effectively with the financial and other constraints of the Commission. Finally, she urged all stakeholders to commit to actively engage with the decision-making processes of the Commission towards monitoring and ensuring State Parties' implementation of its decisions.
24. The Honourable Deputy Minister, in her closing remarks, offered some words of thanks to the African Commission and all participants present and conveyed the appreciation of the United Republic of Tanzania in hosting the Regional Seminar. She acknowledged the timeliness of the Seminar in light of pressing human rights challenges on the continent and noted that the deliberations and contributions arising from the Seminar will have the impact of renewing commitment to work towards enhancing implementation of the Commission's decisions. She, however, acknowledged the many challenges identified by participants at the Seminar noting particularly the various institutional and resource constraints. Reiterating the recommendations adopted at the Seminar, the Honourable Deputy-Minister, called

for the establishment of dedicated Focal Points by State Parties at the national level for the implementation of the Commission's decisions as well as cooperation and engagement between all human rights stakeholders to address some of the challenges identified. She thus urged the Commission to move towards organising similar programs and seminars, which create awareness and capacity building in AU Member States and other human rights stakeholders. She reiterated Tanzania's commitment to continue advocating for human rights and to effectively cooperate with the work of the Commission. Finally, she requested all participants to take the opportunity to enjoy the beautiful beaches, historical sites and hospitality of the local people of Zanzibar and wished them a safe journey back home to their families. She officially closed the Seminar.