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The role of the African Commission in enhancing implementation monitoring through dialogue and documentation

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Summary: *This article examines how the African Commission on Human and Peoples' Rights may use two critical tools – dialogue and documentation – in order to improve implementation of its decisions. Dialogue is understood as conversation between the African Commission and national actors. Implementation documentation is understood as the process of putting in place a publicly accessible database on the communications finalised by the Commission, the recommendations contained in those communications and any possible implementation measures taken by states. Several studies have demonstrated that judicial and quasi-judicial bodies have a role to play in monitoring the implementation of their decisions. In Africa, judicial monitoring is crucial due to the ineffectiveness of political monitoring by African Union policy organs. While the African Commission has several tools to choose from in monitoring the implementation of its decisions, this article focuses on dialogue and documentation. The African Commission is an adept user of dialogue through the state reporting process (which has been described as a form of 'constructive dialogue'), implementation hearings, promotional visits to states and other dialogue-based processes. However, there is a general lack of consistency, coherence and clarity in*

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how the Commission uses these tools in monitoring the implementation of its decisions. While these tools may appear overly political, the African Commission is by design mandated to interface with national political actors as a direct consequence of its promotional mandate under article 45 of the African Charter. Using a combination of desk research and document analysis, based on existing scholarship in this area of law, this article argues that dialogue and implementation documentation are requisites for monitoring state compliance with decisions of the Commission. It further argues that the African Commission is better suited (compared to the African Court on Human and Peoples' Rights) to these discursive and dialogic processes as a result of its institutional design. Effective use of these processes could turn states from acting or positioning themselves as 'uncooperative and reluctant bystanders' to gradually becoming cooperative and enthusiastic compliance partners.

Key words: *African Commission on Human and Peoples' Rights; implementation; dialogue; documentation; state reporting process; implementation hearings; promotional visits*

1 Introduction

The effectiveness of a treaty system is determined by the extent to which the treaty regime has influenced policies, legislation, judicial decisions and human rights outcomes at the domestic level.[1] As a general statement, quantitative studies have shown that the adoption of human rights treaties has resulted in notable positive outcomes at the domestic level.[2] Several theories have been developed to explain why international law or international human rights treaties usually have effects at the domestic level.[3] Some of these theories focused

1 CH Heyns & F Viljoen (eds) *The impact of the United Nations human rights treaties on the domestic level* (2002) 1; CH Heyns, F Viljoen & R Murray (eds) *The impact of the United Nations human rights treaties on the domestic level: Twenty years on* (2024); F Viljoen *International human rights law in Africa* (2012) VO Ayeni (ed) *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 1; D Cassel 'Does international human rights law make a difference?' (2001) 2 *Chicago Journal of International Law* 121.

2 E Neumayer 'Do international human rights agreements improve respect for human rights?' (2005) 49 *Journal of Conflict Resolution* 925; BA Simmons *Mobilising for human rights* (2009); C Hillebrecht *Domestic politics and international human rights tribunals: The problem of compliance* (2014).

3 See, generally, M Burgstaller *Theories of compliance with international law* (2005) 13-140; VO Ayeni 'Why states comply with decisions of international human rights tribunals: A review of the principal theories and perspectives' (2019) 10 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 1-11; ES Bates 'Sophisticated constructivism in human rights compliance theory' (2015) 25 *European Journal of International Law* 1170; AT Guzman 'A compliance-based theory of international law' (2002) 90 *California Law Review* 1849; WC Bradford, 'International legal compliance: An annotated bibliography' (2004) 30 *North*

on power and self-interest (realist theory); cooperation, reciprocity and reputation (institutionalism); internal democracy and adherence to democratic norms (liberalism), while others focused on identity, ideas, beliefs, social norms, non-state actors and international institutions (constructivism). Of particular interest to this article are the process-based theories that concern the actual process of human rights change such the 'spiral model of human rights change' and 'transnational legal process theory'.[4] These theories have been applied to African human rights treaties such as the African Charter on Human and Peoples' Rights (African Charter) as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol).[5] One central theme common to most studies of international human rights treaty compliance is that domestic treaty effects usually depend on the domestic peculiarities of each state and factors specific to each treaty regime.[6]

This article is not concerned with what legal scholars refer to as 'first-order compliance', which is a branch of international law compliance focused on whether states comply with human rights treaties and why they do so.[7] Rather, the article is concerned with 'second-order compliance', that is, compliance with decisions of the several bodies set up under the various human rights treaties to monitor the implementation of the treaties. In Africa, the primary human rights monitoring bodies are the African Court on Human and Peoples' Rights (African Court), the African Commission on Human and Peoples' Rights (African Commission) and the African Committee of Experts on the Rights and Welfare of the Child (African

Carolina Journal of International Law and Commercial Regulation 379-423; A-M Slaughter 'International relations: Principal theories', www.princeton.edu/~slaughtr/Articles/722_IntlRelPrincipalTheories_Slaughter_20110509zG (accessed 9 September 2023); HH Koh 'How is international human rights law enforced?' (1999) 74 *Indiana Law Journal* 1398; HH Koh 'The 1998 Frankel lecture: Bringing international law home' (1998) 35 *Houston Law Review* 626.

4 T Risse, SC Ropp & K Sikkink 'The socialisation of international human rights norms into domestic practices: Introduction' in T Risse, SC Ropp & K Sikkink (eds) *The power of human rights: International norms and domestic change* (1999) 1; HH Koh 'The 1994 Roscoe Pound lecture: Transnational legal process' (1996) 75 *Nebraska Law Review* 181.

5 See Ayeni (n 1) 1-12.

6 DW Hill 'Estimating the effects of human rights treaties on state behaviour' (2010) 72 *Journal of Politics* 1161; GW Downs, DM Rocke & PN Barsoom 'Is the good news about compliance good news about cooperation?' (1996) 50 *International Organisation* 379; Simmons (n 2).

7 BA Simmons 'Compliance with international agreements' (1998) 1 *Annual Review of Political Science* 78; N Strain and others 'Compliance politics and international investment disputes: A new dataset' (2024) 27 *Journal of International Economic Law* 73; C Romano, K Alter & Y Shany (eds) *Oxford handbook of international adjudication* (2014) 377; MP Ryan 'The logic of second order compliance with international trade regimes' (1992) *Working Paper No 694 of the University of Michigan* 2-3.

Children's Committee). Various studies have shown that human rights bodies can and do play some roles in triggering compliance with their decisions.[8] Of course, the roles the respective African human rights bodies would play in each case would depend on their institutional design. According to Çalı and Koch, 'institutional design of supranational human rights bodies and the properties of respondent states … constitute key variables influencing outcomes'.[9]

African human rights bodies have a variety of tools at their disposal to monitor the implementation of their judgments and decisions. These tools include implementation hearings, resolutions, judicial referral, political referral, state reporting process as well as advocacy visits, missions and other promotional activities. Aspects of these measures have been examined in previous studies.[10] Despite its limited resources, the African Commission has used a number of the measures or tools to monitor states' implementation of its decisions, including facilitating workshops and seminars; the amendment of its Rules of Procedure; extending the mandate of its Working Group on Communications to capture implementation monitoring; active engagements with civil society organisations (CSOs) and national human rights institutions (NHRIs); and requesting states to appoint national focal persons.[11]

This article examines the role of the African Commission in implementing its decisions, asking in particular how the Commission may use two critical tools – dialogue and documentation – in order to improve state compliance, implementation and domestic impact of their decisions. Ayeni and Von Staden assessed and compared African human rights bodies' implementation monitoring measures against 17 indicators comprising a total of 34 points,[12] finding that

8 C Sandoval, P Leach & R Murray 'Monitoring, cajoling and promoting dialogue: What role for supranational human rights bodies in the implementation of individual decisions?' (2020) 12 *Journal of Human Rights Practice* 72.

9 B Çalı & A Koch 'Lessons learnt from the implementation of civil and political rights judgments' (2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id¼1858663 (accessed 9 September 2023); C Hillebrecht 'Compliance: Actors, context and causal processes' in W Sandholtz & CA Whytock (eds) *Research handbook on the politics of international law* (2017) 27-54.

10 VO Ayeni & A von Staden 'Monitoring second-order compliance in the African human rights system' (2022) 6 *African Human Rights Yearbook* 1-27; R Murray & D Long 'Monitoring the implementation of its own decisions: What role for the African Commission on Human and Peoples' Rights?' (2021) 21 *African Human Rights Law Journal* 838; R Murray and others 'Monitoring implementation of the decisions and judgments of the African Commission and Court on Human and Peoples' Rights' (2017) 1 *African Human Rights Yearbook* 150.

11 Murray & Long (10) 836.

12 The 17 indicators are as follows: 'the status of the decision, whether binding of recommendatory; whether the AHRB issues detailed periodic compliance reports; whether the compliance reports are widely disseminated; the existence of an up-to-date database on the status of implementation; whether the implementation database is available on electronic platforms; active engagement with CSOs in

the African Commission scores 13 points (representing 38 per cent) while the African Children's Committee scores 11 points (32 per cent) and the African Court scores 9 points (representing 27 per cent of the total).[13] With each African human rights body scoring less than 50 per cent of the total possible points, there thus is significant room for improvement for each African human rights body.

Starting with the African Commission, this article asks the following question: What implementation-monitoring measures or tools, if improved upon by the Commission, could have the greatest impact in improving states' compliance with decisions of the Commission? This author believes that the two most impactful measures that could change the compliance narrative in relation to the African Commission are dialogue and documentation. However, before delving into the main substance of the analysis and how the African Commission may improve state compliance with its decisions through the effective use of dialogue and documentation, it is apposite to consider within the available data the status of compliance with the Commission's decisions.

2 Status of compliance with decisions of the African Commission

It is generally agreed that effective implementation of the decisions of human rights bodies remains a significant challenge across the three regional human rights systems and the United Nations (UN).[14] Thus, non-compliance is not peculiar to the African human rights system. Even relatively more advanced regional human rights systems, such as the European and Inter-American systems, still battle with the problem of non-compliance by states. Hillebrecht, for example, in 2014 combined quantitative method with case studies from seven countries selected from Europe and the Americas.[15] Her

implementation monitoring; the existence of a dedicated implementation unit within the Secretariat of the AHRB; the establishment of a dedicated special rapporteur for follow-up; the use of implementation hearings to follow up on decisions; whether or not the AHRB uses innovative implementation hearing formats such as joint hearings and hearings in situ; and whether or not the AHRB uses resolutions, press releases, state reporting process as well as promotional state visits for monitoring its decisions; whether or not the AHRB is able to refer its decisions to a judicial body for implementation review; whether or not the AHRB is mandated to refer its decisions to a political body and whether there is evidence of a direct or indirect impact of monitoring'. See Ayeni & Von Staden (n 10) 19.

13 Ayeni & Von Staden (n 10) 19-21.

14 Sandoval and others (n 8) 71. See also KF Principi 'Implementation of decisions under treaty body complaints procedures: Do states comply? How do they do it?' (2017) 9 Sabbatical Report, Treaty Bodies Branch, UN Office of the High Commissioner for Human Rights (OHCHR).

15 Hillebrecht (n 2) 3.

empirical results revealed that the European Court of Human Rights (European Court) has 49 per cent compliance rate while the Inter-American Court of Human Rights (Inter-American Court) has 34 per cent compliance rate.[16]

There is no systematic study by the African Commission of the status of compliance with its decisions from inception to date. As early as 1997, barely 10 years of the Commission's existence, the Chairperson of the Commission observed that none of the decisions of the Commission had been implemented.[17] The issue of non-compliance with its decisions was further discussed by the Commission in 1998 during the Commission's deliberation on a document prepared by its Secretariat, which showed that only one of the several recommendations of the Commission had been implemented by states.[18] Also writing in the same year, Odinkalu and Christensen stated: 'In those few cases that have been decided on their merits there remains, as yet, no evidence that the states complied either habitually or at all with the views of the Commission.'[19] Several scholars writing in the early years have put the blame for states' non-compliance at the feet of the Commission.[20]

The African Commission responded to the various criticisms on non-implementation of its decisions by holding a retreat in Addis Ababa, Ethiopia, in September 2003 where the issue of follow-up was reiterated by participants,[21] and subsequently in 2005 established a Working Group on Specific Issues Relevant to the Commission's Work

16 Hillebrecht (n 2) 11. It should be noted that in another study published in 2007 by Hawkins and Jacoby, the compliance rate for the Inter-American Court was put at 6%. Partial compliance and non-compliance were put at 83% and 11% respectively. See D Hawkins & W Jacoby 'Partial compliance: Comparison of the European and Inter-American courts of human rights' (2010-2011) 6 *Journal of International Law and International Relations* 35-85.

17 J Biegon 'Compliance studies and the African human rights system: Reflections on the state of the field' in A Adeola (ed) *Compliance with international human rights law in Africa: Essays in honour of Frans Viljoen* (2022) 15. See also R Murray 'Report of the 1997 session of the African Commission on Human and Peoples' Rights – 21st and 22nd sessions: 15-25 April and 2-11 November 1997' (1998) 19 *Human Rights Law Journal* 169, 170.

18 See 'Non-compliance of state parties to adopted recommendations of the African Commission: A legal approach' 24th ordinary session, Banjul, 22-31 October 1998, Doc/OS/50b/(XXIV), reprinted in R Murray & M Evans (eds) *Documents of the African Commission on Human and Peoples' Rights* (2001) 758.

19 C Odinkalu & C Christensen 'The African Commission on Human and Peoples' Rights: The development of its non-state communications procedure' (1998) 20 *Human Rights Quarterly* 279-280.

20 See, eg, N Ndombana 'Toward the African Court on Human and Peoples' Rights: Better late than never' (2000) 3 *Yale Human Rights and Development Law Journal* 45. See also J Oloka-Onyango 'Human rights and sustainable development in contemporary Africa: A new dawn or retreating horizon' (2000) 6 *Buffalo Human Rights Law Review* 39.

21 See Report of the Retreat of Members of the African Commission on Human and Peoples' Rights (24-26 September 2003). See also Biegon (n 17) 16.

with clear mandate to follow up on the Commission's various decisions and recommendations.[22] In May 2006 the Commission again held a brainstorming session with the African Union (AU) Commission where the issue of non-compliance with decisions of the African Commission was the subject of discussion. It was suggested at the session that the Peace and Security Council could assist in 'enforcing' decisions of the Commission.[23] Further, in November 2006, the Commission adopted a resolution calling on all state parties to the African Charter to respect all existing decisions of the Commission 'without further delay, and for any future decisions, to report on steps taken to comply within 90 days of being notified'.[24] The timeline was later increased to 180 days (six months) under Rule 112 of the Commission's Rules of Procedure 2010[25] and, more recently, Rule 125 of the 2020 Rules of Procedure of the Commission.[26]

Despite the provisions of the 2010 and 2020 Rules of Procedure, 'the Commission in many cases has no information regarding the implementation of its recommendations, and without such information it is extremely difficult to measure the level of implementation'.[27] As a result, scholars engaged only in armchair commentary on the status of compliance and factors responsible for compliance with decisions of the African Commission.[28] There was no empirical analysis or data to back up the claims, until Frans Viljoen and one of his doctoral students, Lirette Louw, took up the challenge. The seminal study by Viljoen and Louw, which analysed the status of compliance with recommendations contained in 44 merit decisions of the African Commission as at 2004, put the compliance rate of the African Commission at 14 per cent (representing six out of the 44 study cases).[29] Partial compliance was recorded in 14 cases, representing 32 per cent of the finalised cases, while non-compliance

22 See Resolution on the Creation of a Working Group on Specific Issues Relevant to the Work of the African Commission on Human and Peoples' Rights, adopted at the 37th ordinary session, ACHPR/Res 77(XXXVII)05.

23 Report of the Brainstorming Meeting on the African Commission on Human and Peoples' Rights: 9-10 may 2006, Banjul, The Gambia, 20th Activity Report, Annex II.

24 Resolution on the Importance of the Implementation of the Recommendations of the African Commission on Human and Peoples' Rights by State Parties adopted during the 40th ordinary session, Banjul, The Gambia, 29 November 2006 ACHPR/Res 97/(XXXX)06.

25 Rules of Procedure of the African Commission 2010, Rule 112(2).

26 Rules of Procedure of the African Commission 2020, Rule 125(1).

27 Ayeni & Von Staden (n 10) 8.

28 See, generally, G Mukundi & A Ayinla 'Twenty years of elusive enforcement of the recommendations of the African Commission on Human and Peoples' Rights: A possible remedy' (2006) 6 *African Human Rights Law Journal* 465.

29 F Viljoen & L Louw 'State compliance with the recommendations of the African Commission on Human and Peoples' Rights, 1994-2004' (2007) 101 *American Journal of International Law* 5; L Louw 'An analysis of state compliance with the recommendations of the African Commission on Human and Peoples' Rights' unpublished LLD thesis, University of Pretoria, 2005 61.

was found in 13 cases, representing 30 per cent of the finalised cases.[30] Following Viljoen and Louw's ground-breaking study, the era of doctrinal analysis of compliance with decisions of the Commission was gone; there emerged increased use of empirical research and preference for in-depth case studies. Popular assumptions are now being challenged on the basis of hard data, and there is an attempt to redirect the analytical lens towards the sub-regional court system.[31]

2.1 Nigeria, The Gambia and Zimbabwe as case studies

Viljoen and Ayeni compared state compliance in respect of decisions and judgments of regional and sub-regional human rights tribunals (HRTs) in Africa, decided or delivered over a period of 15 years (between 1 January 2000 and 31 December 2015), using five countries – Nigeria, The Gambia, Tanzania, Uganda and Zimbabwe – as case studies. See Table 1 below:[32]

Table 1: Number of cases decided by HRT per country (2000-2015)

Country	African Commission	African Court	Children's Committee	ECCJ	EACJ	SADC Tribunal
Nigeria	4	–	–	6	–	–
The Gambia	2	–	–	3	–	–
Tanzania	–	2	–	–	1	–
Uganda	–	–	1	–	4	–
Zimbabwe	6	–	–	–	–	3
Total	12	2	1	9	5	3
Group total	**Regional: 15 cases**			**Sub-regional: 17 cases**		

As a part of the broader analysis, the authors assessed the status of compliance with decisions of the African Commission between the

30 Viljoen & Louw (n 29) 5-6; Louw (n 29) 61.
31 Biegon (n 17) 22-28.
32 See F Viljoen & V Ayeni 'A comparison of state compliance with reparation orders by regional and sub-regional human rights tribunals in Africa: Case studies of Nigeria, The Gambia, Tanzania, Uganda and Zimbabwe' (2022) 26 *International Journal of Human Rights* 5.

same time period (2000 to 2015) in relation to three states, namely, Nigeria, The Gambia and Zimbabwe.[33] From 1994 to 2015, the African Commission found Nigeria in violation of various provisions of the African Charter in 20 individual communications.[34] A majority of these cases were decided before 2000 when Nigeria was under military dictatorship. However, between the study period (2000 to 2015), the Commission found Nigeria in violation of the African Charter only in six cases, and only four of the six cases are included in the study because the decision of the Commission in one has not been published,[35] while the Commission did not issue any remedial order for the state to implement in the other.[36] Between 2000 and 2015, 17 communications were submitted to the Commission against the government of Zimbabwe, but only eight resulted in merit decisions.[37] The Commission found no violation against Zimbabwe in two of the eight decisions.[38] As at 2015, the Commission has found The Gambia in violation of the African Charter only in two cases, namely, *Jawara*[39] and *Purohit*.[40] In total, the study compared the status and pattern of compliance with the 12 selected decisions of the Commission involving the three studied countries.

The analysis in Table 1 shows some form of regression, with non-compliance cases toppling the table, followed by partial compliance cases and then full compliance. The Commission in the 12 cases issued a total of 27 remedial orders for the three states to implement.[41] Only five (19 per cent) of the 27 orders were fully complied with by the studied states. The result above aligns with the findings of Viljoen and Louw, which put the rate of full compliance at 14 per cent of the cases finalised by the Commission as at 2003.[42]

33 VO Ayeni 'State compliance with and influence of reparation orders by regional and sub-regional human rights tribunals in five selected African states' LLD thesis, University of Pretoria, 2018.
34 See Ayeni (n 33) 97. See also African Commission 'Nigeria', http://www.achpr.org/states/nigeria/ (accessed 9 September 2023). This figure is based on an analysis of the communications decided by the African Commission (on file with author).
35 Communication 270/03 *Access to Justice v Nigeria*, decided by the African Commission at its 13th extraordinary session in February 2013. See M Killander & B Nkrumah 'Recent developments: Human rights developments in the African Union during 2012 and 2013' (2014) 14 *African Human Rights Law Journal* 275, 286. See also Ayeni (n 1) 198.
36 *Huri-Laws v Nigeria* (2000) AHRLR 273 (ACHPR 2000).
37 See Ayeni (n 33) 97. See also African Commission 'Zimbabwe', http://www.achpr.org/states/zimbabwe/ (accessed 20 September 2023).
38 For a list of the six cases where the African Commission found violations against Zimbabwe between 2000 and 2015, see Ayeni (n 33) Annexure I, 384.
39 *Sir Dawda Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000) (*Jawara*).
40 *Purohit & Another v The Gambia* (2003) AHRLR 96 (ACHPR 2003) (*Purohit*).
41 Viljoen & Ayeni (n 32) 5-7.
42 Viljoen & Louw (n 29) 5.

Table 2: Status of compliance in the studied countries (2000 -2015)[43]

Countries	Total number of cases	Remedial orders issued	Full compliance	Partial compliance	Non-compliance
Nigeria	4[44]	9	n = 3	n = 5	n = 1
The Gambia	2[45]	4	n = 0	n = 3	n = 1
Zimbabwe	6[46]	14	n = 2	n = 1	n = 11
TOTAL	12	27	5	9	13
Percentages	**100%**	**100%**	**18.5%**	**33%**	**48%**

Specifically, out of the nine remedial orders issued by the African Commission for Nigeria between 2000 and 2015, only three were fully implemented.[47] The Commission issued four orders against The Gambia between 2000 and 2015. None of the orders have been fully complied with.[48] In the case of Zimbabwe, the Commission issued 14 remedial orders between 2000 and 2015. The government of Zimbabwe complied fully with only two of the remedial orders. The above are not isolated cases; they are representative of the pattern of state compliance with decisions of the African Commission. At the end of 2020, the Commission had adopted 147 decisions on the merits, and only a handful of these decisions have been implemented by states.[49]

2.2 Lessons from the various compliance studies

Since the Viljoen and Louw's study, three questions have preoccupied second-order compliance researchers in relation to the decisions

43 See Viljoen & Ayeni (n 32) 9.
44 *Aminu v Nigeria* (2000) AHRLR 258 (ACHPR 2000); *Media Rights Agenda v Nigeria* (2000) AHRLR 262 (ACHPR 2000); *Civil Liberties Organisation & Others v Nigeria* (2001) AHRLR 75 (ACHPR 2001); *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (*SERAC*).
45 The two cases are *Jawara* (n 39) and *Purohit* (n 40).
46 *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006); *Zimbabwe Lawyers for Human Rights & Another v Zimbabwe* (2009) AHRLR 235 (ACHPR 2009); Communication 294/2004 *Zimbabwe Lawyers for Human Rights and IHRD v Zimbabwe* (2009) AHRLR 268 (ACHPR 2009); *Scanlen & Holderness v Zimbabwe* (2009) AHRLR 289 (ACHPR 2009); Communication 288/2004 *Shumba v Zimbabwe*; and Communication 295/04 *Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi v Zimbabwe*.
47 Ayeni (n 33) 120-121.
48 Ayeni (n 33) 121.
49 Ayeni & Von Staden (n 10) 8; Report on the Status of Communications and Intersession Report of the Working Group on Communications, August-November 2020 para 25, https:/ /www.achpr.org/sessions/sessionsp?id=354 (accessed 9 September 2023).

of the African Commission: To what extent do states comply with decisions of the African Commission? What factors are responsible for the possible low rate of compliance? Is compliance rate a true and accurate reflection of the overall influence and impact of decisions of the African Commission? Several scholars have attempted to answer one or more of these questions in the African human rights system. I, too, have alone and in collaboration with other scholars interrogated aspects of these questions.[50] What have we learned from the various studies?

As early as 1995, writing on ways to improve states' compliance with human rights standards, Chayes and Chayes emphasised the need to replace the 'enforcement model' with a 'managerial model' that entails the use of 'iterative process of justificatory discourse'.[51] Some of the instruments in aid of the managerial model include transparency, reporting, monitoring, dispute settlement and strategic review. Koh suggested what he called a transnational legal process theory involving interaction, interpretation and internalization, whereby human rights norms and standards are continuously interpreted through the interactions of transnational actors before being internalised into the domestic legal system.[52] Risse, Ropp and Sikkink's 'spiral model' of human rights change demonstrates that states pass through five distinct phases before implementing human rights, and dialogic engagement using information politics helps propel them from one phase to another.[53] Concluding, based on a study of the impact of the African Charter and the African Women's Protocol in selected African states, Ayeni noted that human rights impact, including the impact of human rights decisions, depend, among others, on 'the level of interaction, persuasion and pressure applied on states by domestic and international compliance partnerships'.[54]

The focus on state compliance has also been criticised with some scholars recommending an adjustment of the analytical lens towards implementation, impact or effectiveness,[55] for instance,

50 See, eg, Ayeni (n 33) Viljoen & Ayeni (n 32). See also VO Ayeni 'Implementation of the decisions and judgments of African regional human rights tribunals: Reflections on the barriers to state compliance and the lessons learnt' (2022) 30 *African Journal of International and Comparative Law* 560-581; VO Ayeni 'Beyond compliance: Do decisions of regional human rights tribunals in Africa make a difference?' in Adeola (n 17) 35.

51 A Chayes & AH Chayes *The new sovereignty: Compliance with international regulatory agreements* (1995) 135.

52 Koh (n 4) 181.

53 Risse and others (n 4) 8.

54 Ayeni (n 1) 15.

55 See Ayeni 'Beyond compliance' (n 50) 35; R Howse & R Teitel 'Beyond compliance: Rethinking why international law really matters' (2010) 174 *New*

that too much focus on compliance 'obfuscates the character of international legal normativity'.[56] Compliance centric analysis does not provide the complete picture, focuses only on state actors as well as state institutions, and they are 'ill-designed to evaluate the vertical and horizontal influences of the interpretive enterprise in which HRTs are engaged'.[57] The most debilitating shortcoming of the compliance-centric approach is its limited appreciation of the criticality of interpretation, interaction and internationalisation to how decisions and reparation orders of HRTs obtain their meaning, become transported through national borders and are eventually implemented.[58] There is significant legal scholarship in support of the proposition that human rights decisions are finished goods, but a part of transnational legal process within a broader social context.[59]

Alkoby pointed out – quite rightly – that 'even after binding commitments are made, their clarification, interpretation and implementation is constantly renegotiated and reflected upon in light of changing circumstances, new information, or a deepening consensus among the key actors'.[60] Accounts of rates of compliance are, to say the least, simplistic and reductionist and do not capture the repeated interactions, pressure, persuasion, activist struggle and socio-political contexts that resulted in the implementation.

Overall, most studies on human rights judgment compliance agree on three key factors that predict whether a decision issued by a human rights tribunal (HRT) would be implemented or complied with. These are (a) the nature of the remedial orders issued in the decision;[61] (b) the domestic composition or peculiarities of the state required to take action;[62] and (c) the degree of follow-up and monitoring by various actors, including by the HRT that issued the decision.[63] Remedial orders followed up by the human rights bodies that issued them are much more likely to be complied with than those without

York University Public Law and Legal Theory Working Papers 1; OC Okafor *The African human rights system: Activist forces and international institutions* (2007) 276.

56 Howse & Teitel (n 55) 2.

57 Ayeni 'Beyond compliance' (n 50) 37.

58 As above.

59 See Koh (n 4) 181-207; A Alkoby 'Theories of compliance with international law and the challenge of cultural difference' (2008) 4 *Journal of International Law and International Relations* 151.

60 Alkoby (n 59) 152.

61 Eg, minimalist measures on the average tend to attract higher compliance than broad structural measures.

62 Authoritarian regimes are less likely, and harder to persuade, to comply with human rights decisions than open, stable and democratic states.

63 Viljoen & Ayeni (n 32) 12; Ayeni (n 33) 214-227; F Viljoen 'The African human rights system and domestic enforcement' in M Langford, C Rodríguez-Garavito & J Rossi (eds) *Social rights judgments and the politics of compliance: Making it stick* (2017) 360.

such follow-up and monitoring by the HRTs themselves and other pro-compliance partners.[64] This article examines two of the power tools that African human rights bodies may use – namely, dialogue and documentation – to monitor and enhance the implementation of their decisions.

3 Using dialogue to enhance state compliance

The case for dialogue is straightforward. Whenever difficulties exist and progress is stalled in any sphere of life, dialogue has always been the first option offered to resolve the difficulty, and compliance complexities ought not to be an exception.[65] In the context of implementation monitoring, Sandoval, Leach and Murray define dialogue as

> the reviewing process carried out by supranational human rights mechanisms of the implementation of their decisions, which includes the utilisation of tools to encourage the parties to explore ways of moving implementation forward, either between themselves or with the direct help of the monitoring body.[66]

Implementation dialogue entails a back-and-forth process of engaging diverse compliance actors at national, sub-national and supra-national level with a view to sharing and obtaining information about implementation and possible challenges to implementation, listening to parties, cajoling and buying them over and, most importantly, reinforcing the merits of the decision in line shared values in an atmosphere of mutual trust.

Implementation dialogue is a consequence of the principle of subsidiarity. States generally have primary responsibility for the protection of human rights of those under their jurisdiction subject to the minimum threshold of international law.[67] This is why dialogue with national actors is crucial. I advance four arguments in favour of reconceptualising dialogue as a tool for monitoring the implementation of the decisions of the African Commission:

(a) *Failure of political monitoring:* Political mechanisms for monitoring the implementation of decisions and judgments of African

64 Sandoval and others (n 8) 71; Ayeni & Von Staden (n 10) 5; see Murray & Long (n 10) 838.
65 EL Abdelgawad 'Dialogue and the implementation of the European Court of Human Rights' judgments' (2016) 34 *Netherlands Quarterly of Human Rights* 352.
66 Sandoval and others (n 8) 78.
67 Viljoen (n 1) 21.

human rights bodies are largely ineffective.[68] Implementation monitoring, which ought to be largely a political process, has remained mostly judicial and administrative in the African human rights system. Rules 125(8) and (9) of the Rules of Procedure of the African Commission 2020 require the Commission to refer cases of non-compliance by states to competent AU organs. The Commission may also request the AU Assembly to 'take necessary measures to implement its decisions'.[69] AU policy organs do not take enforcement actions subsequent to receiving reports of non-compliance from African human rights bodies. In fact, the Executive Council, which ought to take these actions, has no internal mechanisms for monitoring the execution of decisions and judgments of AHRBs.[70] Ayeni and Von Staden stated that post-judgment, African human rights bodies may need to 'focus primarily on developing dialogical processes with critical compliance constituencies in respondent states rather than hoping that AU political organs will enforce its decisions through sanctions and other measures'.[71] The authors concluded that since there are limited prospects for political monitoring due to a lack of political will by members of the AU Executive Council, implementation monitoring, at least in the immediate future, will depend on civil society actors and the African human rights bodies themselves,[72] and effective dialogue remains the most important tool in the arsenal of African human rights bodies.

(b) *Dialogue is the Commission's unique advantage:* The African Commission is not a judicial body in the same sense as the African Court. Being a quasi-judicial body, its decisions are legally speaking not binding in the same sense as judgments of the African Court.[73] The Commission itself does not regard its recommendations as binding, but emphasises that states must respect and implement these.[74] Being a quasi-judicial body, the African Commission is less constrained than the African Court in following up its decisions through a variety of tools. The greatest merit of quasi-judicial bodies over judicial human rights monitoring bodies is their leverage over dialogue.

68 See Okafor (n 55) 41. See also Murray & Long (n 10) 838.
69 Rules of Procedure of the African Commission 2010, Rule 125(1).
70 Ayeni & Von Staden (n 10) 22.
71 Ayeni & Von Staden (n 10) 26.
72 Ayeni & Von Staden (n 10) 33.
73 Viljoen (n 1) 339. See also F Viljoen & L Louw 'The status of the findings of the African Commission: From moral persuasion to legal obligation' (2004) 8 *Journal of African Law* 1.
74 See Resolution on the Importance of the Implementation of the Recommendations of the African Commission on Human and Peoples' Rights, adopted at the Commission's 40th session, November 2006.

The Commission's attitude to incorporating dialogue broadly in its work is best demonstrated through the Commission's disposition towards amicable settlement of communications. Despite using the amicable settlement procedure in only a few cases, the Commission's record in this regard has been criticised for being too deferential to the state, and showing little regard for human rights and the victims' interests.[75] In several cases where the amicable settlement procedure was used, it is not clear that the consent of the victims or their legal representatives was obtained. The genius of the drafters of the African Charter was to create an African Commission whose strength would depend on its power of relationship with the AU (formerly the Organisation of African Unity (OAU)) and also with each member state. Accordingly, dialogue and dialogical processes remain the Commission's strength and leverage, and these tools are no less effective if used effectively. According to Huneeus, courts exert a kind of 'soft power' when they mobilise 'compliance constituencies',[76] and there is a plethora of literature on the far-reaching impact of soft power diplomacy (the capacity to co-opt rather than coerce) as well as the transformative effects of soft law in promoting greater cooperation and inclusivity.[77] In a previous study, it has been found that the African Commission, being less constrained than the African Court, has more implementation-monitoring tools at its disposal and more opportunities to engage in continuous dialogue and engagement with states than the African Court and other judicial human rights bodies.[78]

(c) *Dialogue is a darling of international law compliance theories:* The post-judgment phase of any international judicial body is a 'communicative phase'. As a result, most theories of international law compliance are unanimous that incorporation, transformation and persuasion are the mechanisms by which international law norms cascade or transfuse into the domestic level.[79] What several decades of research in international law compliance have revealed is that social mobilisation, persuasion and interactions are the principal pathways to

75 VO Ayeni & TO Ibraheem 'Amicable settlement of disputes and proactive remediation of violations under the African human rights system' (2019) 10 *Beijing Law Review* 411-414.

76 AV Huneeus 'Compliance with judgments and decisions' in CP Romano, KJ Alter & Y Shany (eds) *Oxford handbook of international adjudication* (2014) 438-459.

77 See D Shelton *Commitment and compliance: The role of non-binding norms in the international legal system* (2003) 1; DL Shelton 'Soft law' in D Armstrong (ed) *Routledge handbook of international law* (2008) 1.

78 Ayeni & Von Staden (n 10) 26.

79 See D Shelton (ed) *International law and domestic legal system: Incorporation, transformation and persuasion* (2011) 1.

making international human rights law have significant effect at the domestic level.[80] These mechanisms create ripples that result in massive waves of social change. According to Helfer, 'compliance with international law increases when international institutions, including tribunals, can penetrate the surface of the state to interact with government decision-makers'.[81] It is not so much the hardness of the law or the binding nature of the decision, but the ways in which the decisions have been deployed by pro-compliance partners and the partnership forged with national actors by the HRT. Human rights decisions are tools, and their effects depend on how they are deployed to negotiate certain outcomes from state actors.

(d) *Dialogue has intrinsic value:* Dialogue 'strengthens relationship and trust, forge(s) alliances, find(s) truths that bind together, and bring(s) people into alignment on goals and strategies'.[82] Without trust, cooperation is limited, and without cooperation, there is no progress. It is only through dialogical process that the African Commission could more effectively forge alliances with pro-compliance constituencies and partners. Several activities of human rights bodies, including engagements with representatives of states, are framed as 'debates'. Dialogue is not debate. In a debate, the point of departure is that there is only one right or best answer and there is no willingness to see another person's point of view.[83] In dialogue, it is assumed that several people may have parts of the answer and the goal is to bring the diverse pieces together to form one new whole.[84] It should be noted that there is absolutely no basis for debating the merits findings of the Commission in a communication. Doing so may be counter-productive and would be unwise. The substantive finding of the Commission in respect of a communication is final. However, the actual process and the modalities for implementing the Commission's remedial recommendations may be debated or discussed.

80 See Simmons (n 2).
81 LR Helfer 'Redesigning the European Court of Human Rights: Embedded-ness as a deep structural principle of the European human rights regime' (2008) 19 *European Journal of International Law* 132.
82 D Yankelovich *The magic of dialogue: Transforming conflict into cooperation* (1999) 217.
83 C Watson and others 'Fostering constructive dialogue: Building toward more effective communication in the educational technology field' (2004) 44 *Educational Technology* 54.
84 As above.

3.1 Principles of dialogic engagements

According to Kent and Taylor, dialogic theory comprises five major principles, namely, 'mutuality, propinquity, empathy, risk and commitment'.[85] A dialogic engagement should end with a feeling that the other side has been treated as valued, and there should be repeated interactions, on the basis of trust and the dialogic activities or engagements should be perceived as mutually satisfying.[86] In order for the African Commission to effectively use dialogue as a tool of enhancing compliance with its decisions, the following dialogic orientations should be deployed: positive regard to the other actors (in conversational tone, politeness and cultural sensitivity), mutuality (recognising other actors as colleagues or partners, not enemies or detractors to be vanquished); empathy (being supportive and sympathetic); genuineness (being honest and truthful); commitment to the conversation (non-competitive conversation and admitting when the organisation is wrong); and commitment to interpretation (seeking to understand how others perceive their work).[87] This approach also supports organisational listening.[88] In this regard, the Commission should employ Macnamara's four elements of organisational listening, namely, culture of openness, willingness to listen, adopting policies that allow for listening and putting in place structures and processes for large scale listening.[89]

The use of dialogue in the European human rights system, albeit not totally new, has become 'much more critical and visible in recent years'.[90] Dialogue is aimed at an exchange of opinions with the view to reaching an amicable settlement of issues.[91] At the European human rights system, where enforcement measures by the political organs are strong, yet 'supervision of execution is treated as a co-operative task and not an inquisitorial one'.[92] According to Sundberg, 'confidential dialogue with Ministries of Foreign Affairs and permanent representations in Strasbourg has been progressively

85 ML Kent & M Taylor 'Toward a dialogic theory of public relations' (2002) 28 *Public Relations Review* 21-37.
86 ML Kent & M Taylor 'Understanding the rhetoric of dialogue and the dialogue of rhetoric' in O Ihlen & RL Heath (eds) *Handbook of organizational rhetoric and communication: Foundations of dialogue, discourse, narrative, and engagement* (2018) 315-327.
87 As above.
88 J Macnamara *Organizational listening: The missing essential in public communication* (2016) 116.
89 As above.
90 Abdelgawad (n 65) 341.
91 As above.
92 See Council of Europe 'Human rights working methods – Improved effectiveness of the Committee of Ministers' supervision of execution of judgments' (7 April 2004) cited in Abdelgawad (n 65) 343.

replaced by more public dialogue involving more actors'.[93] Because of the complexity of cases, dialogue in relation to judgments of the European Court is gradually moving from 'collective, political and confidential' to 'more bilateral, technical and public dialogue'.[94] In their piece, Cheng and Sin described a court judgment as dialogue or a dialogic problem to be solved.[95] According to them, a court judgment is a multi-layered dialogue between judges and between courts and the legislature.

3.2 Appraising the use of dialogue by the African Commission

Within the African human rights system, the African Commission could be described as an adept user of dialogue. The Commission uses dialogical engagements through various channels, including correspondences with domestic actors at regular intervals, protective missions, promotional visits and review of state party reports via the process of 'constructive dialogue'.[96] However, the goal of the analysis in this part is to demonstrate, first, that the Commission should take more seriously its dialogic mandate and should more often hold implementation dialogues with states and other actors; second, that the existing constructive dialogue framework should be reconfigured to give more room and attention to monitoring the implementation of decisions of the Commission; and, third, that the Commission should redefine its role in the dialogic process not as that of a supervisor or an adjudicator but as a co-equal partner with state actors in the process of implementation. Implementation dialogue, especially during the state reporting process and implementation hearings, should be framed more as a cooperative task and not an inquisitorial exercise.

The African Commission has several opportunities for implementation dialogue and dialogical engagements. Written dialogue or correspondence with parties is at the heart of the implementation monitoring process.[97] Traditionally, much of the procedure for monitoring the implementation of decisions of the Commission takes place in writing. For example, the revised Rules of Procedure of the Commission 2020 contain several provisions

93 F Sundberg 'Le dialogue entre le CM et les autorités nationales' in P Boillat and others (eds) *Les mutations de l'activité du Comité des Ministres, la surveillance de l'exécution des arrêts de la CourEDH par cet organe du Conseil de l'Europe* (2012) 70, cited in Abdelgawad (n 65) 343.
94 Abdelgawad (n 65) 343.
95 L Cheng & KK Sin 'A court judgment as dialogue' in E Weigand *Dialogue and rhetoric* (2008) 267-284.
96 Viljoen (n 1).
97 Ayeni & Von Staden (n 10) 13; Sandoval and others (n 8) 81.

mandating exchanges of information between the parties to a case and the Commission. Written correspondence is a form of dialogue and is a measure of choice because it is less costly and requires limited logistics compared to holding a physical meeting. In many cases, the Commission's interlocutor on behalf of the state is the Ministry of Foreign or External Affairs. Rule 125 requires that parties report within 180 days to the African Commission on actions taken to implement the Commission's decisions. Within 60 days, the Commission under the provisions of the Rules must forward any information received from the state to the other party. The Commission may also request additional information within three months.[98]

Implementation hearing is another opportunity for dialogue. Unfortunately, the African Commission seldom holds this form of hearing.[99] While the Commission in 1995 devoted its second extraordinary session to monitoring the implementation of its decisions in Nigeria,[100] and has held fully-fledged implementation hearings in two cases, namely, *Malawi African Association & Others v Mauritania*[101] and *Endorois*,[102] it has no coherent approach nor consistent practice on implementation hearing, including 'when and where to hold an implementation hearing, who should be present at such hearing and what the expectations are for the parties involved'.[103] Seen as a form of compliance dialogue, implementation hearings should be held more frequently or consistently. A great deal of the obstacles besetting the implementation of the Commission's decisions, including a lack of information from states, could be addressed if the Commission holds periodic implementation hearings. The African Commission also needs to adopt guidelines for the conduct of implementation hearings, including for joint hearings and hearing *in situ*.

The state reporting process is yet another great opportunity for constructive dialogue on the status of implementation of the Commission's decisions. The Commission has always emphasised the non-confrontational nature of the encounter.[104] The review takes place in public session in the presence of other states. The process

98 Rules of Procedure of the African Commission (2020) Rule 125.
99 See Ayeni & Von Staden (n 10) 13.
100 See Second Extraordinary Session Final Communiqué, 18-19 December 1995 para 1 and Account of Internal Legislation of Nigeria and the Dispositions of the Charter of African Human and Peoples' Rights, Second Extraordinary Session, Kampala, 18-19 December 1995, DOC. II/ES/ACHPR/4.
101 (2000) AHRLR 149 (ACHPR 2000).
102 *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009) (*Endorois*).
103 Ayeni & Von Staden (n 10) 15.
104 Viljoen (n 1) 350.

of preparing the report is an opportunity for national dialogue and introspection involving not only multiple government agencies but also CSOs and other actors.[105] However, implementation dialogue does not occupy a central place in the state reporting process, which it ought to. The Commission should give decision monitoring a pride of place in the state reporting process. Implementation dialogue is also a part of missions and promotional visits to states. In all of these activities, the Commission ought to be guided by the principles of dialogic engagements: positive regard to the other actors, mutuality, empathy, genuineness, commitment to the conversation, commitment to interpretation and organisational listening.

3.3 The African Commission and national dialogue

Compliance with human rights decisions is a domestic affair.[106] In the European system, national actors are obligated by the Council of Europe to improve dialogue with the European Court and other Strasburg actors and also dialogue with one another.[107] According to Mottershaw and Murray, 'the flow of timely and detailed information between stakeholders within the country is an important component of implementation'.[108] The authors also advocate that 'a central coordinating point has the potential to improve gathering and disseminating information'. Along this line, in March 2015 the Brussels Conference enjoined its state parties to

> establish 'contact points', wherever appropriate, for human rights matters within the relevant executive, judicial and legislative authorities, and create networks between them through meetings, information exchange, hearings or the transmission of annual or thematic reports and newsletters.[109]

The African Commission must insist that the national focal person should hold regular meetings with human rights implementation coordinators across government ministries to meet with officers of the Ministry of Justice and the Ministry of Foreign Affairs to discuss decisions and judgments relating to each country. The practice is already well established in the European system.[110] The state periodic report, for example, ought to capture the steps taken in each state to

105 Viljoen (n 1) 351.
106 Hillebrecht (n 2) 39.
107 Abdelgawad (n 65) 354.
108 E Mottershaw & R Murray 'National responses to human rights judgments: The need for government co-ordination and implementation' (2012) 6 *European Human Rights Law Review* 639, 646.
109 Abdelgawad (n 65) 355.
110 As above.

hold periodic national dialogue on the implementation of decisions of the Commission.

4 Role of implementation documentation and database

The African Commission has a rich repository and robust documentation practice. Within the Commission's Secretariat, there is the Information and Documentation Centre (IDOC) which provides 'appropriate, reliable, timely and efficient information services to the Commission, the Secretariat, and other users, as appropriate'.[111] Information at the disposal of IDOC includes audiovisual materials (CD, DVD, VHS); professional and scholarly texts and journals; initial/periodic reports of AU member states; regional and international instruments; journals, periodicals, reports and newsletters; constitutions (including the amended texts) of all AU member states; and official documents of government institutions, non-governmental organisations (NGOs) and agencies.[112]

The Commission's website also has information about its past sessions, mission reports, state reports and adopted resolutions,[113] including decisions on communications.[114] However, an area where the records of the Commission fall short is in relation to information on the status of implementation of its several decisions. In this area, the African Court, without doubt, deserves more credit than the Commission.

Table 3: Comparison of African human rights bodies' implementation documentation practice

S/N	Indicator[115]	African Court	African Commission	ACERWC
1.	Dedicated Special Rapporteur/working group with mandate to follow up Decisions	0	1	1

111 African Commission 'The Information and Documentation Centre', https://achpr.au.int/index.php/en/commission/idc (accessed 4 September 2023).
112 As above.
113 African Commission 'Sessions statistics table', https://achpr.au.int/en/sessions-statistics-table (accessed 4 September 2023).
114 African Commission 'Decisions on communications', https://achpr.au.int/index.php/en/category/decisions-communications (accessed 4 September 2023).
115 Note on score: AHRBs that meet the requirements of an indicator receive 1 point; those that do not meet the requirements at all receive zero points.

2.	Existence of a dedicated implementation unit within the secretariat of the AHRB	1	1	0
3.	Issuance of detailed periodic compliance reports	1	0	0
4.	Dissemination of compliance report	1	0	0
5.	Regular update of the compliance report	1	0	0
6.	Up-to-date database on the status of implementation	0	0	0
7.	Availability of implementation database on electronic platforms	0	0	0
	Total	**4**	**2**	**1**

With a cumulative score of two (representing only 29 per cent) compared to the African Court's score of four (58 per cent), the African Commission clearly lags behind the African Court in implementation documentation. As at September 2024, there is no section of the Commission's web page where visitors can systematically access information about the status of implementation of the Commission's decisions. The primary purpose of international human rights law is to take 'root at the national level' as well as 'flourish in the soil of states and to bear fruits in the lives of people'.[116] It is ironic, according to a former president of the International Court of Justice, Robert Jennings J, that 'courts' work up to delivery of judgment is published in lavish details, but it is not at all easy to find out what happened afterwards'.[117] A decision does not translate into automatic protection of human rights; it is through implementation and the impact of decisions that the human rights of real people is protected, and human rights cannot be said to have been protected unless the wrong or injury suffered is in fact remedied.

Although it is accepted that several states are reluctant to provide the African Commission with information on the implementation of decisions concerning them, a handful of states are willing to supply at least some information. There should be a platform where the limited information may be accessed. Fortunately, a handful of empirical scholarships have emerged in this area, pioneered by Viljoen and his

116 Viljoen (n 1) 529.
117 Robert Jennings J cited in C Paulson 'Compliance with final judgments of the International Court of Justice since 1987' (2004) 98 *American Journal of International Law* 434.

doctoral students.[118] The findings of these various studies could be re-evaluated by a committee or working group set up by the African Commission (Committee/Working Group on the Implementation of Decisions of the African Commission) with a view to proposing an official implementation report for the adoption of the Commission, which report would from time to time be published and updated. The Committee may propose appropriate categorisation criteria for the Commission. Interestingly, this progressive and piece-meal approach could inspire NGOs and other domestic agents, including state actors that have relevant information not yet captured or inappropriately captured in the Commission's initial implementation report, to come forward. Eventually, the content of the report may be migrated to the web page of the Commission for easy accessibility by stakeholders and everyone having an interest in the work of the Commission.

The Inter-American Court monitors its owns decisions.[119] The Court directs states to report on their compliance efforts within set dates, summons parties to a compliance hearing, and issues its own compliance reports.[120] It conducts individual hearings and joint hearings for several cases involving the same state.[121] In 2015 the Inter-American Court established a unit, the Unit for Monitoring Compliance with Judgments, exclusively dedicated to monitoring implementation and compliance.[122] The European Court and the Inter-American Court each has a system of grading or categorising implementation status. The European Court has an electronic platform – HUDOC-EXEC (coe.int) – which provides access to the documents relating to the execution of the judgments of the European Court. The Human Rights Committee (HRC), for instance, formally established a follow-up procedure in July 1990. The HRC currently has a Special Rapporteur on Follow-up on Views, which submits reports to the Committee annually on the status of implementation of the Committee's views. The African Court publishes in its Annual Report the status of implementation of each of its final judgments, and the Court has been more consistent and effective than both

118 Louw (n 29); Ayeni (n 33); see also Adeola (n 17).
119 See A Huneeus 'Court resisting court: Lessons from the Inter-American Court's struggle to enforce human rights' (2011) 44 *Cornell International Law Journal* 501.
120 As above. See also JL Cavallaro & SE Brewer 'Re-evaluating regional human rights litigation in the twenty-first century: The case of the Inter-American Court' (2008) 102 *American Journal of International Law* 768, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1404608 (accessed 9 September 2023).
121 See Annual Report of the Inter-American Court of Human Rights (2016) 70-74, http://www.corteidh.or.cr/tablas/informe2016/ingles.pdf (accessed 9 September 2023).
122 As above.

the African Commission and the African Children's Committee in preparing, updating and disseminating its compliance reports.[123]

5 Conclusion

The role of multi-level dialogue, proper documentation and comprehensive databases in monitoring the implementation of decisions of the African Commission is generally underestimated. In international law compliance, the only viable substitutes for the dialogical process are sanctions and enforcement measures. Unfortunately, these political tools are unavailable or ineffective in the African human rights system due to the reluctance of AU policy organs to take enforcement actions against non-compliant states following their consideration of the Activity Report of the African Commission. In the absence of political monitoring, the African Commission, at least in the interim, has a major role to play in monitoring the implementation of its decisions.

While the African Commission may, as highlighted in various studies, resort to an array of tools to monitor the implementation of its decisions, the main contribution of this article is to expound on the role of dialogue and documentation in the implementation process. Given that the prospect of political enforcement is bleak and the recommendations arising from the Commission's decisions are generally not considered binding, the article argues that the Commission should more fully and consistently explore its comparative strength of engaging in various dialectical process with national actors.

Regarding the form of implementation dialogue required, it is suggested that the African Commission should constantly engage in respectful implementation dialogue with state, non-state and civil society actors. The suggestions in this regard include holding regular implementation hearings; giving more time slots to monitoring the implementation of the Commission's decisions during the state reporting process; and raising the implementation of the Commission's decisions during promotional visits to states. The Commission is urged to make its decisions and monitoring of these more transparent, and publicly accessible. Also, a more robust compliance-monitoring framework should be considered for the African Commission. The Commission should develop a more formalised structure and consistent practice of holding

123 See Ayeni & Von Staden (n 10) 26.

implementation hearings, including adopting guidelines on implementation hearings. Sustained implementation dialogue could help to address problems of delay, neglect or negligence in implementation, track progress, eliminate obstacles and bottlenecks, clarify misconceptions and ambiguities, and assist the Commission in appreciating the practical challenges that complainants and state actors face in the implementation of the Commission's decisions.

In order to effectively carry out implementation dialogue and documentation, the African Commission should establish a special mechanism, such as a working group, dedicated to monitoring the implementation of its decisions, or revise the mandate and terms of reference of the Working Group on Communications to unequivocally include implementation monitoring. Similarly, the Commission should adequately equip the implementation unit within its secretariat to provide technical and secretarial assistance to its special mechanism responsible for monitoring implementation. Members of the unit should be exposed to training, especially the exchange of ideas with the European Court's Department for Execution of Judgments and the Inter-American Court's Implementation Monitoring Unit.

The African Commission should set up an implementation database and prepare periodic compliance reports for presentation to AU policy organs alongside its Activity Reports. The Commission should increase the frequency and quality of its dialogic engagements with state, non-state and civil society actors with regard to the implementation of the its decisions. A state that complies with decisions of the African Commission is more likely to comply with the provisions of the African Charter and soft law standards of the African Commission. Accordingly, the state reporting process should prioritise the implementation of the Commission's decisions. A state in defiance of clear recommendations of the African Commission has (already) lost the standing to demonstrate its respect for the African Charter.