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## A contextual approach to strengthening state capacity to implement the decisions of the African Commission on Human and Peoples' Rights

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**Summary:** *The African Commission on Human and Peoples' Rights plays a pivotal role in promoting and protecting human and peoples' rights across the continent. Despite widespread ratification of the African Charter on Human and Peoples' Rights and related treaties, state parties continue to face significant challenges in implementing the African Commission's recommendations, largely due to governance and democracy deficits. These challenges are exacerbated by resource constraints, limited state capacity, poor inter-agency coordination and a lack of effective monitoring mechanisms. To address these issues, this article argues for a contextual approach to strengthening state capacity for implementing the African Commission's decisions. Proposed strategies*

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include fostering constructive engagement with states, building political will, and empowering national human rights institutions and civil society organisations to provide targeted support. Adopting an exploratory approach to the discourse, the article finds that only by deploying a tailored and context-specific approach can the African Commission work collaboratively with states to improve compliance with the African Charter, so as to foster a stronger human rights culture in Africa and enhance the legitimacy of the African Union's human rights framework.

**Key words:** context approach; state capacity; implementation; recommendations; African Commission

## 1 Introduction

The African Commission on Human and Peoples' Rights (African Commission), Africa's premier human rights institution, was inaugurated on 2 November 1987.<sup>1</sup> It has a mandate to promote and ensure the protection of human and peoples' rights in Africa, and has adopted several landmark decisions and resolutions on the protection and promotion of human rights in Africa.<sup>2</sup> In some cases, these decisions have influenced positive attitudes of states and their approach to human rights in Africa. As Ssenyonjo notes, there have been instances showing the influence of 'the African Commission's case law on African judiciaries as a guide to the interpretation and application of national law'.<sup>3</sup> The African Commission has provided extensive normative guidance to states, clarifying and interpreting human rights standards as enshrined in the African Charter on Human and Peoples' Rights (African Charter) and its supplementary

1 NJ Udombana 'Toward the African Court on Human and Peoples' Rights: Better late than never' (2000) 3 *Yale Human Rights and Development Law Journal* 45, 64. Also see African Commission 'Brief overview', <https://achpr.au.int/en/about> (accessed 14 November 2024).

2 R Murray & E Mottershaw 'Mechanisms for the implementation of decisions of the African Commission on Human and Peoples' Rights' (2014) 36 *Human Rights Quarterly* 349.

3 M Ssenyonjo 'Responding to human rights violations in Africa: Assessing the role of the African Commission and Court on Human and Peoples' Rights (1987-2018)' (2018) 7 *International Human Rights Law Review* 18. Also see, eg, *Ts'epe v The Independent Electoral Commission & Others* (2005) AHRLR 136 (LeCA 2005) paras 16 & 20; *Eric Gitari v Non-governmental Organisation Coordination Board & 4 Others* Petition 440 of 2013 [2015] eKLR (High Court of Kenya, Nairobi, 24 April 2015), in which the Kenyan High Court referred to the jurisprudence of the African Commission in the interpretation of the Bill of Rights of Kenya; *Sabally v Inspector General of Police & Others* (2002) AHRLR 87 (GaSC 2001) paras 11-12, in which the Supreme Court of The Gambia referred to the jurisprudence of the African Commission in *Constitutional Rights Project & Others v Nigeria* (2000) AHRLR 227 (ACHPR 1999).

protocols.<sup>4</sup> Since its establishment, the work of the Commission has aided states to better understand their obligations under the African Charter and its supplementary Protocols, promoting consistency in human rights interpretations, policy, development and legislative reforms.<sup>5</sup>

Despite the normative and institutional advances made by the African Commission, numerous governance and human rights challenges persist on the African continent and are significantly impeding the enjoyment of the human and peoples' rights of African peoples.<sup>6</sup> As Okoloise argues, the current relationship between state parties to the African Charter is 'one mired by defiance'.<sup>7</sup> State compliance with the decisions of the Commission remains an aspiration among African citizens. For Viljoen, 'compliance' is 'the fulfilment of a state obligation under a treaty'.<sup>8</sup> Consequently, states, particularly less democratic states, are failing or experiencing significant challenges in implementing the decisions and recommendations of the African Commission.<sup>9</sup> It is against this backdrop that the Commission needs to adopt a contextual approach (particularly in less democratic states) to strengthening the capacity of states to implement its decisions and recommendations domestically.

Despite the African Commission making normative and institutional advances, the state as the most important actor in the realisation of human rights at the domestic level is often slackened by numerous persisting challenges that significantly impede the

- 4 African Charter on Human and Peoples' Rights 1981; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa 2016; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities 2018; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security 2022; Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa 2024.
- 5 Human Rights Watch 'African Rights Commission's work more important than ever' 2 November 2022, <https://www.hrw.org/news/2022/11/02/african-rights-commissions-work-more-important-ever> (accessed 8 September 2023).
- 6 Africa Renewal 'Prioritising human rights in Africa' 22 March 2023, <https://www.un.org/africarenewal/magazine/april-2023/prioritising-human-rights-africa> (accessed 8 September 2023).
- 7 C Okoloise 'Circumventing obstacles to the implementation of recommendations by the African Commission on Human and Peoples' Rights (2018) 18 *African Human Rights Law Journal* 27-57.
- 8 F Viljoen & N Orago 'An argument for South Africa's accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in the light of its importance and implications' (2014) 17 *Potchefstroom Electronic Law Journal* 2555.
- 9 S Lagoutte 'The role of state actors within the national human rights system' in S Lagoutte, S Lorion & SLB Jensen (eds) *The domestic institutionalisation of human rights* (2021) 13-30; JD Mujuzi 'The rule of law: Approaches of the African Commission on Human and Peoples' Rights and selected African states' (2012) 12 *African Human Rights Law Journal* 94-95.

enjoyment of human and peoples' rights.<sup>10</sup> For instance, poor governance and leadership crises in many parts of the continent continue to affect the relationship between states and the African Commission.<sup>11</sup> Most recently, since 2020, Africa has experienced a resurgence of *coups*,<sup>12</sup> armed conflicts, terrorism, violent extremism, environmental pollution in the extractive industries by multinational corporations, and development-induced displacement of local communities that often lead to forced migration within and across local and international borders.<sup>13</sup> In some cases, the non-accountability of government institutions, pervasive corruption of public officials, excessive use of force by security services, the lack of access to information, non-consultation of vulnerable and marginal communities (including indigenous populations) in development projects, electoral irregularities, and ethnic domination continue to threaten the stability of African nations.<sup>14</sup> Given these numerous challenges, it is doubtful if states in this context of crisis have the capacity and the will to prioritise the implementation of decisions by the African Commission. In addition, it is argued that democracy on the continent is in steady decline, as evidenced by various democracy indicators focusing on Africa.<sup>15</sup> These factors undoubtedly raise questions and suspicion as to whether such crises provide a breeding ground for states to implement the decisions of the African Commission.

This article, therefore, attempts to articulate a contextual approach to strengthening the capacity of states to implement the decisions of the African Commission. It aims to assist the Commission to come out of the quagmire of state defiance by adopting a tailored

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- 10 United Nations General Assembly Resolution 60/251 Human Rights Council (2006) A/RES/60/251, [https://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251\\_en.pdf](https://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251_en.pdf) (accessed 15 November 2024).
  - 11 ISS 'Poor governance in Africa hampers progress', <https://issafrica.org/pscreport/psc-insights/poor-governance-in-africa-hampers-progress> (accessed 8 September 2023).
  - 12 *Coups* have occurred in Mali (2020 and 2021), Chad (2021), Guinea (2021), Sudan (2021) and Burkina Faso (2022). See A Mendy & O Mendy 'The resurgence of military *coups* and implications for democratic stability in sub-Saharan Africa' (2024) 10 *Jurnal Politik Indonesia* 1-16; CF Chigozie & PT Oyinmiebi 'Resurgence of military *coups* in West Africa: Implications for ECOWAS' (2022) 5 *African Journal of Social Sciences and Humanities Research* 52-64.
  - 13 UN Press 'Root causes of conflicts in Africa must be addressed beyond traditional response, special adviser tells Security Council debate on silencing guns', <https://press.un.org/en/2023/sc15249.doc.htm> (accessed 8 September 2023).
  - 14 United Nations 'World Social Report 2020: Inequality in a rapidly changing world', World Social Report 2020: Inequality in a Rapidly Changing World | DESA Publications (accessed 14 November 2024).
  - 15 ISSAfrica.org 'Democracy in decline in Africa? Not so fast' ISS Africa 4 November 2021, <https://issafrica.org/iss-today/democracy-in-decline-in-africa-not-so-fast> (accessed 8 September 2023); Freedom House 'Freedom in the world 2024' February 2024 1; Varieties of Democracies 'Pandemic backsliding: Democracy during COVID-19 (March 2020 to June 2021)', <https://v-dem.net/pandem.html> (accessed 8 November 2011).

and practical approach in its engagement with states based on the socio-political context and economic landscape of state parties to the African Charter. Currently, the African Commission applies the same engagement process to all state parties regardless of apparent disparities in their historical, political, economic, social and cultural setting and challenges. A contextual approach is one that prioritises the differentials between various state parties by taking into consideration the unique human rights challenges that each country faces in state-African Commission engagements. It requires that the Commission considers tailoring its recommendations and engagements to align with each country's unique political situation, economic realities and legal traditions. As Moka-Mubelo rightly states, 'there is an urgent need for a context-oriented approach to human rights' in order to better appreciate why some societies that do not protect some of their members should correctly be blamed for human rights violations.<sup>16</sup> Essentially, in Africa there is a need for the African Commission to adapt measures to the prevailing context of each state party to the African Charter, rather than stick to its historical straight-jacket approach to the application of the Charter to the state parties concerned.

The arguments in the article are presented in five parts. This part having introduced the rationale for adopting a contextual approach, the next part considers the mandate of the African Commission for ensure state party compliance with the provisions of the African Charter. The third part examines how the African Commission can navigate the challenges of democratic regression, *coups*, conflict and instability in order to support states implement the decisions of the Commission. The fourth part of the article considers the way forward for the African Commission considering challenges faced by national human rights institutions (NHRIs) and civil society organisations (CSOs) in Africa. The last part summarises the key points of the article and concludes the analysis.

## 2 The African Commission's mandate on monitoring states' compliance with the African Charter

The African Commission is established under article 45 of the African Charter.<sup>17</sup> The Commission was created as the primary treaty-monitoring mechanism responsible for promoting and protecting human and peoples' rights, redressing violations, and interpreting the

16 W Moka-Mubelo 'Towards a contextual understanding of human rights' (2019) 12 *Ethics and Global Politics* 40, 44.

17 Art 45 African Charter.

provisions of the African Charter and its supplementary protocols as well as any other international human rights treaty ratified by a state party.<sup>18</sup> Over more than the last three decades of its establishment, the African Commission has firmly and successfully established itself as the principal human rights body on the continent.<sup>19</sup> As part of its operational standards, the Commission regularly engages states through the reporting process and its monitoring of state party compliance, the adjudication of communications containing allegations of human and peoples' rights violations, and interpretation of the African Charter. In more than the three decades of its existence, the African Commission offers guidance to state parties on their obligations under the African Charter and its supplementary protocols.

Under article 62 of the African Charter, state parties are required to submit periodic reports to the Commission on the legislative and other measures taken domestically to give effect to the rights and freedoms enshrined in the Charter.<sup>20</sup> Similarly, article 26 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol),<sup>21</sup> the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Protocol on the Rights of Older Persons)<sup>22</sup> and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities (African Disability Protocol)<sup>23</sup> all also require state parties to submit periodic reports on compliance with their obligations under the respective thematic Protocols.<sup>24</sup> As a matter of practice, the content of the report includes information on the measures adopted to implement the African Charter and its supplementary instruments domestically, the progress made so far, and the challenges affecting their implementation in the state party concerned. Even though states have been shown

18 These include the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted 11 July 2003 (African Women's Protocol); the African Charter on Democracy, Elections and Governance adopted by the AU in 2007; the African Disability Protocol (the Protocol was adopted in 2018 as the Disability Protocol to the African Charter on Human and Peoples' Rights).

19 African Commission 'About ACHPR', <https://achpr.au.int/en> (accessed 8 September 2023).

20 Art 62 African Charter.

21 Art 26 African Women's Protocol.

22 Art 22(1) Protocol on the Rights of Older Persons 2016.

23 Art 34(1) Protocol on the Rights of Persons with Disabilities 2018.

24 See the State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment 2018; State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights 2012 (Tunis Reporting Guidelines); State Reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2010; Guidelines for National Periodic Reports under the African Charter 1989.

to respond favourably to the progress and challenges identified in the Concluding Observations and recommendations of the African Commission,<sup>25</sup> implementation challenges remain.<sup>26</sup>

Besides the reporting process, the African Commission adjudicates on communications received from individuals or groups (or even state parties) who allege that there has been a violation of the African Charter or other relevant international human rights instruments. In this regard, such communications need to comply with the admissibility conditions laid down in article 56 of the African Charter,<sup>27</sup> including the requirement that local remedies be exhausted. The conditions for receiving communications exist to afford the state party concerned ample opportunity to utilise its domestic system of justice to address grievances and prevent the African Commission from acting as a tribunal of the first instance.

In its three and a half decades of existence, the African Commission has considered and determined approximately 900 communications presented to it, over two-thirds of which have been decided.<sup>28</sup> These include notable communications such as *SERAC*,<sup>29</sup> *Endorois*<sup>30</sup> and *Jawara v The Gambia*.<sup>31</sup> More importantly, decisions made by the African Commission are recommendatory in nature; their implementation is dependent on the political will of state parties.<sup>32</sup> Under the framework of the African Union (AU), the African Commission continues to receive support to fulfil its mandate. Extra support is also given by partner institutions within and beyond the African continent such as the support enjoyed from the Norwegian Centre for Human Rights in 2012 and 2021.<sup>33</sup> Although this type of support is mainly technical and financial, they are often beclouded by

25 See eg African Commission 'Republic of Namibia: Promotion Mission, 12 to 16 June 2023' 18 June 2024, <https://achpr.au.int/index.php/en/mission-reports/namibia-promotion-mission-12-16-june-2023> (accessed 8 November 2024).

26 Ssenyonjo (n 3) 30.

27 Art 56 African Charter.

28 African Commission 'Decisions on communications', <https://achpr.au.int/en/category/decisions-communications> (accessed 8 November 2024).

29 *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (*SERAC*).

30 *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009) (*Endorois*).

31 *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000).

32 EA Ankumah *The African Commission on Human and Peoples' Rights: Practices and procedures* (2023) 74, 196; RH Murray & D Long *The implementation of the findings of the African Commission on Human and Peoples' Rights* (2015) 55.

33 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) 351, 391.



uncertainty, external priorities, the risk of politicisation and concerns that state parties might limit support to the African Commission.<sup>34</sup>

In dispensing its mandate of interpreting the provisions of the African Charter, the African Commission adopts resolutions, principles and guidelines, General Comments and model laws. Through these declaratory and interpretive instruments, the Commission gives clarity to the textual content of the rights and freedoms recognised in the African Charter and its supplementary Protocols. It is noted that at present, the Commission has adopted almost 600 resolutions,<sup>35</sup> 11 guidelines, seven General Comments and one model law.<sup>36</sup> However, most of these have been adopted in the last two decades of the AU's establishment. Furthermore, in carrying out its mandate of promoting rights, the African Commission operates through what is called 'special mechanisms'.<sup>37</sup> These 'special mechanisms' comprise experts, or a body of experts assigned to deal with specific thematic issues under the African human rights system.<sup>38</sup> At the African Children's Charter Secretariat, there are two categories of special mechanisms – Special Rapporteurs and working groups. Special Rapporteurs are single mandate holders, usually a commissioner, assigned to work on a particular thematic human rights area, while a working group is a body of experts in a particular field of human rights led by one of the commissioners.<sup>39</sup>

In the past decades, the African Commission has undertaken and continues to undertake numerous country visits and investigative missions to the territory of state parties whenever human and peoples' rights issues are involved.<sup>40</sup> As part of its promotional mandate, country visits to the territory of state parties are at the request of the African Commission and subject to the approval of the

34 African Commission 'Strategic Framework 2021-2025', <https://achpr.au.int/en/achpr-2021-2025-strategic-plan> (accessed 8 November 2024).

35 As of 6 November 2024, there were 604 African Commission resolutions. See African Commission 'Final Communiqué of the 81st ordinary session of the African Commission on Human and Peoples' Rights' 7 November 2024 para 31, <https://achpr.au.int/en/news/press-releases/2024-11-07/final-communique-81st-ordinary-session> (accessed 8 November 2024).

36 African Commission 'Soft law', <https://achpr.au.int/index.php/en/category/soft-law> (accessed 8 November 2024).

37 African Commission 'Special mechanisms', <https://achpr.au.int/en/special-mechanisms> (accessed 8 September 2023).

38 As above.

39 BTM Nyanduga 'Working Groups of the African Commission and their role in the development of the African Charter on Human and Peoples' Rights' in M Evans & R Murray (eds) *The African Charter on Human and Peoples' Rights: The system in practice 1986–2006* (2008) 379-405.

40 Conscientious Objector 'A conscientious objector's guide to the international human rights system', <https://co-guide.info/mechanism/african-commission-human-and-peoples-rights-overview> (accessed 8 September 2023).



state party concerned.<sup>41</sup> Such country visits and missions are often led by a Special Rapporteur or the Chairperson of the Commission. In the past two decades, a number of these visits have been successfully conducted by the Commission, while others have been met with resistance. On the one hand, the promotion mission to Namibia in June 2023, for example, was considered a success.<sup>42</sup> On the other hand, in 2006 Uganda vehemently objected to Resolution 94 on the human rights situation in Uganda, even though the government expressed its willingness to maintain constructive engagement with the African Commission,<sup>43</sup> and several requests to states for purposes of undertaking promotion/sensitisation missions have all fallen on deaf ears.<sup>44</sup> The Commission's mechanisms often fell short due to reliance on approval from states. Less democratic states often exercise control over these visits, and in some cases the work of the 'special mechanisms' is subject to surveillance by the host state.<sup>45</sup> States that are overly obsessed with the idea of state sovereignty in most cases could be problematic when it comes to subjecting themselves to scrutiny.

In spite of sovereignty concerns, the work of the African Commission has had a significant impact on the normative development of human and peoples' rights in Africa. It is noted that in its decisions on communications and thematic resolutions, it has given clarity to the tenor of the African Charter rights and provided a framework for the development of human rights in domestic law. It has been argued that this impact is more evident in its adoption

41 Rules of Procedure of the African Commission 2020 Rule 83(2).

42 African Commission 'Republic of Namibia: Promotion mission 12 to 16 June 2023' 18 June 2024, <https://achpr.au.int/index.php/en/mission-reports/namibia-promotion-mission-12-16-june-2023> (accessed 8 November 2024).

43 The Republic of Uganda 'Executive summary of the government of Uganda's response to the African Commission on Human and Peoples' Rights Resolution on the human rights situation in Uganda (99. ACHPR/Res. 94 (XXXVIII) 5 presented at the 39th ordinary session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia' 18 May 2006, <https://achpr.au.int/sites/default/files/files/2022-09/achpr39actrep202006eng.pdf> (accessed 15 November 2024). Also see F Viljoen 'Forging a credible African system of human rights protection by overcoming state resistance and institutional weakness: Compliance at a crossroads' in R Grote, MM Antoniazzi & D Paris (eds) *Research handbook on compliance in international human rights law* (2021) 362-390; Murray & Long (n 32) 62.

44 African Commission 'Intersession activity report of the Working Group on Death Penalty, Extrajudicial, Summary or Arbitrary Executions and Enforced Disappearances in Africa – 81OS' 26 October 2024. Also see African Commission 'Intersession activity report of the Committee on the Protection of the Rights of People Living with HIV and those at Risk, Vulnerable to and Affected by HIV in Africa (Committee) – 81OS' 25 October 2024 para 62; African Commission 'Intersession activity report of the Working Group on Extractive Industries, Environment and Human Rights Violations – 81OS' 26 October 2024 paras 51 & 54.

45 M Ackermann 'Survey of detention visiting mechanisms in Africa' (2013) 10 fn 60, file:///C:/Users/chair/Downloads/DetentionVisitMechanisms.pdf (accessed 15 November 2024).

of the Principles on the Freedom of Expression 2002;<sup>46</sup> the Robben Island Guidelines on Torture (2002);<sup>47</sup> the Principles and Guidelines on the Right to a Fair Trial (2003);<sup>48</sup> Access to Health and Needed Medicines in Africa (2008);<sup>49</sup> the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (2011);<sup>50</sup> and, more recently, the Guidelines on the Right to Water in Africa (2019),<sup>51</sup> to mention but a few. Of note, the African Commission has in line with its mandate undertaken research studies expounding on the contents of the rights recognised in the African Charter and has covered several thematic issues. These include the most contentious issues around climate change, land reforms, extractive industries, illicit financial flows and pastoralism in Africa.

Despite the strides made by the African Commission in the advancement of human rights and democratic accountability in Africa, it must be stated that its decisions, recommendations, standard-setting instruments and resolutions are only as good as the extent to which these are domestically implemented. To date, implementation of the Commission's decisions remains significantly low, as stated in its latest Activity Report,<sup>52</sup> and 'and the lack of implementation calls for an evaluation of the system in practice'.<sup>53</sup> So far, of all 54 state parties to the African Charter, only 19 states have submitted up-to-date reports.<sup>54</sup> About 13 states have failed to submit between five and 13 reports.<sup>55</sup> Roughly 16 states have defaulted by less than five reports.<sup>56</sup> Six state parties have never submitted an initial periodic report to the African Commission since ratifying the African Charter.<sup>57</sup>

46 The Principles on the Freedom of Expression 2002.

47 The Robben Island Guidelines on Torture 2002.

48 The Principles and Guidelines on the Right to a Fair Trial 2003.

49 Access to Health and Needed Medicines in Africa 2008.

50 The Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights 2011.

51 Guidelines on the Right to Water in Africa 2019.

52 African Commission '54th and 55th Activity Reports of the African Commission on Human and Peoples' Rights' (2024) paras 44-48, <https://achpr.au.int/en/documents/2024-03-08/54th-55th-combined-activity-reports> (accessed 15 November 2024).

53 GM Wachira & 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* 465-492.

54 Angola, Benin, Cameroon, Chad, Côte d'Ivoire, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Malawi, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Senegal, Uganda and Zambia.

55 Burundi, Cabo Verde, Central African Republic, Gabon, Ghana, Guinea, Libya, Madagascar, Republic of Congo, Seychelles, Sudan, Tanzania and Tunisia.

56 Algeria, Botswana, Burkina Faso, Djibouti, Democratic Republic of the Congo, The Gambia, Lesotho, Liberia, Mali, Niger, Rwanda, Sahrawi, Sierra Leone, South Africa, Togo and Zimbabwe.

57 Comoros, Equatorial Guinea, Guinea-Bissau, São Tomé and Príncipe, Somalia and South Sudan. See African Commission 'State reporting status', <https://achpr.au.int/en/states-reporting-status> (accessed 15 November 2024).

The disparity between the volume of African Commission recommendations and non-compliance suggests that while some progress has been made at a decision-making level, there may be substantial non-alignment with the socio-political realities on the ground. The implicit disconnect between the work of the Commission and states' incapacity or unwillingness to comply necessitates that the former should address the challenge of non-compliance with a made-to-measure attitude to its engagement with states. To realign its mission to the local context, it should pay closer attention to the multifaceted challenges bedevilling each state, including challenges such as political instability, *coups*, conflict and poverty, in order to remain relevant domestically to assess capacity for action. Its recommendations to states can no longer be a do-it-or-leave-it directive.

There are opportunities for the African Commission to leverage on its collaborative partnerships with international institutions such as the United Nations Human Rights Council (UNHRC) and the Office of the High Commissioner for Human Rights – under the framework of the Addis Ababa Roadmap on cooperation between the Special Procedures of the African Commission and the UNHRC<sup>58</sup> – to support and capacitate struggling states to better respond to local human rights challenges. As the UNHRC has noted, the capacity-building support to states 'must be based on the needs of the country concerned, as voluntarily expressed by that country – and not imposed – based on a mechanism's own reading of the situation'.<sup>59</sup> In the same way, the African Commission can strive to adapt its engagement and capacity-building efforts in collaboration with states based on the individual needs of states in order to improve compliance.

58 UN Special Procedures 'The Addis Ababa roadmap 2012-2022: A work in progress', [https://www.ohchr.org/sites/default/files/documents/hrbodies/special-procedures/2022-10-17/10-years\\_Addis-Ababa-Roadmap-brochure.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/special-procedures/2022-10-17/10-years_Addis-Ababa-Roadmap-brochure.pdf) (accessed 15 November 2024). Also see OHCHR 'Treaty body capacity building programme', <https://www.ohchr.org/en/treaty-bodies/treaty-body-capacity-building-programme> (accessed 15 November 2024).

59 M Limon "'A diamond in the rough": How to strengthen the Human Rights Council's delivery of technical assistance and capacity-building support (Item 10 reform)' June 2023 7, <https://tinyurl.com/Strengthen-Human-Rights> (accessed 15 November 2024).

### 3 Navigating the context of democracy regression, coups, conflict and instability to support state compliance

It is clear from the above parts that the context in which Africa finds itself requires the African Commission to adopt new skills and strategies to help states implement its decisions. Unlike in the past, the present circumstances of conflict and instability, the resurgence of *coups*, armed conflicts, terrorism, violent extremism, environmental pollution in the extractive industries by multinational corporations, and development-induced displacement of local communities, to mention but a few, position the continent as complex and requiring a multiplicity of solutions in improving state relations with the African Commission. Given these numerous governance challenges, it is doubtful to imagine uniform approaches in building the capacity of states and their will to implement decisions of the Commission. The state of governance and democracy in Africa does not provide a breeding ground for states to implement the decisions of the Commission.

#### 3.1 African Commission's support for NHRIs and CSOs should be contextual

The African Commission has immensely contributed to the growth and development of a progressive human rights culture in member states through active support for NHRIs<sup>60</sup> and vibrant CSOs on the continent.<sup>61</sup> In recognition of the work that NHRIs and CSOs do in the promotion and protection of human rights at the domestic level, the African Commission has endeavoured to not only promote their involvement in the development of the normative frameworks, but also consults and welcomes their participation in its public processes.<sup>62</sup> At the occasion of the eighty-first ordinary session held in Banjul from 17 October to 6 November 2024, the Commission noted that 38 NHRIs now have affiliate status with the Commission, while 579 CSOs enjoy observer status with the Commission.<sup>63</sup> The expanding participation of NHRIs and civil society in the Commission's activities is a highly commendable achievement despite the several challenges

60 African Commission 'NHRIs' 24 October 2022, <https://achpr.au.int/en/nhris> (accessed 8 September 2023).

61 H Shire 'State of civil society/strengthening regional mechanisms: Good practices for CSO participation at the African Commission on Human and Peoples' Rights' (2023) *Pan African Human Rights Defenders Network* 124.

62 African Commission 'Report of the promotion mission to the Republic of Namibia' (n 43) para 6.

63 African Commission 'Final Communiqué of the 81st ordinary session of the ACHPR' (n 35) para 24.

that they continue to experience within AU member states.<sup>64</sup> NHRIs and CSOs in less democratic or authoritarian states face enormous challenges compared to those in democratic states.

It is observed that some of the key challenges faced by NHRIs in less democratic states include limited independence, repressive legal frameworks, harassment and intimidation by the state, resource constraints, lack of cooperation from state authorities, and limited opportunity to ensure access to justice for victims of human rights violations.<sup>65</sup> NHRIs in less democratic states often face limitations on their independence and autonomy. They are subjected to government interference, restricted mandates and a lack of adequate legal protection, compromising their ability to operate impartially and effectively for citizens of African states.<sup>66</sup> It is noted that NHRIs operating in less democratic states may also encounter repressive legal frameworks that restrict their activities, limit their access to information, impede their investigations, and hinder their ability to advocate human rights.<sup>67</sup> These legal barriers can undermine the effectiveness and independence of the NHRIs. Furthermore, NHRIs in less democratic states are often susceptible to harassment, intimidation and threats from the state. Human rights defenders and staff members of NHRIs may face surveillance, arbitrary arrests, physical attacks, or even forced closure of their organisations.<sup>68</sup> These in the past have created a hostile working environment and impacted NHRIs' ability to freely carry out their mandates.<sup>69</sup>

The more obvious reason has been an issue of resources. It is noted that NHRIs in less democratic states often operate with limited financial resources and face resource constraints due to restrictive

64 R Carver 'A new answer to an old question: National human rights institutions and the domestication of international law' (2010) 10 *Human Rights Law Review* 24.

65 CM Peter 'Human rights commissions in Africa – Lessons and challenges' 17 September 2013, <https://gsdrc.org/document-library/human-rights-commissions-in-africa-lessons-and-challenges/> (accessed 8 September 2023).

66 L Chidzuza 'The Zimbabwe Human Rights Commission: Prospects and challenges for the protection of human rights' (2015) 19 *Law, Democracy and Development* 148.

67 T Pogram 'Diffusion across political systems: The global spread of national human rights institutions' (2010) 32 *Human Rights Quarterly* 737-739; R Murray 'National human rights institutions: Criteria and factors for assessing their effectiveness' (2007) 25 *Netherlands Quarterly of Human Rights* 189-220; LC Reif 'Building democratic institutions: The role of national human rights institutions in good governance and human rights protection' (2000) 13 *Harvard Human Rights Journal* 30-50.

68 United Nations Human Rights 'UNDP-OHCHR Toolkit: for collaboration with National Human Rights Institutions' 2010.

69 United Nations Development Programme 'Study on the state national human rights institutions (NHRIs) in Africa', <https://www.undp.org/africa/publications/study-state-national-human-rights-institutions-nhris-africa> (accessed 8 September 2023).

government policies or lack of donor support.<sup>70</sup> Therefore, insufficient funding often hampered NHRIs' abilities to conduct investigations, provide adequate support to victims of human rights violations, and to effectively fulfil their monitoring and reporting functions.<sup>71</sup> In many cases, NHRIs face non-cooperation or resistance from the authorities. For instance, government officials may ignore or dismiss their recommendations, refuse to provide information, or impede their access to detention facilities or other relevant places to conduct their work.<sup>72</sup> This obstructs the NHRIs' efforts to effectively address human rights violations and promote accountability. In Zimbabwe this has been reported to be the case regarding victims of political violence or political crimes.<sup>73</sup> Further, access to justice is a challenge in less democratic states. NHRIs in these states may encounter challenges in ensuring access to justice for victims of human rights violations. It is observed that the judiciaries in these states are often compromised and lacking independence, making it difficult for NHRIs to seek legal remedies or advocate justice for victims.

Finally, NHRIs may play a critical role in documenting human rights abuses, providing support to victims of human rights abuses, and advocating human rights reforms in spite of very challenging conditions. NHRIs in this context work under difficult circumstances to promote accountability, raise awareness, and empower civil society in advocating human rights and democratic principles.<sup>74</sup> To sum up, the African Commission's support for NHRIs and CSOs should consider context, as states face unique challenges and opportunities. Technical assistance and financial resources may impact on implementing African Commission decisions, especially in less democratic or hostile states.

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70 KE Dupuy, J Ron & A Prakash 'Who survived? Ethiopia's regulatory crackdown on foreign-funded NGOs' (2015) 22 *Review of International Political Economy* 419-456.

71 Peter (n 65).

72 United Nations Office of the High Commissioner for Human Rights 'National human rights institutions: History, principles, roles and responsibilities' (2010), <https://www.ohchr.org/en/publications/policy-and-methodological-publications/national-human-rights-institutions-history> (accessed 8 November 2024).

73 C Nyere 'The continuum of political violence in Zimbabwe' (2016) 48 *Journal of Social Sciences* 94-107.

74 Zimbabwe Human Rights NGO Forum 'The role of the Zimbabwe Human Rights Commission, Human Rights Bulletin' (2012) 66, 1, <http://www.hrforumzim.org/wpcontent/uploads/2012/03/The-role-of-the-human-rights-commission-66-WT-20337.pdf> (accessed 7 November 2024).

### 3.2 Support for civil society should vary given variations in their needs

As noted above, by November 2024, 579 CSOs enjoyed observer status with the African Commission.<sup>75</sup> In spite of this progress, CSOs in less democratic states are facing enormous challenges, such as repressive legal frameworks, in doing their work.<sup>76</sup> Less democratic states often impose restrictive laws and regulations that limit the space for CSOs. These laws may require excessive registration processes, impose burdensome reporting requirements, or criminalise activities deemed unfavourable by the government. Such legal frameworks are used to control and restrict the activities of CSOs. For example, the introduction of the Private Voluntary Organisations (PVO) Bill in Zimbabwe has been an attempt to shrink the CSO space and its activities. Amnesty International has expressed concern that the PVO Amendment Bill, in its current form, poses significant risks to CSOs engaged in human rights advocacy in Zimbabwe because it would severely restrict civic space by mandating that all CSOs register as PVOs. If passed, it would render unregistered organisations illegal, thereby stifling freedoms of association and expression critical for human rights work in Zimbabwe.<sup>77</sup>

The concern voiced by Amnesty International is not misplaced. If enacted, the Bill could block human rights organisations from registering based on their activities, such as defending freedoms of expression, association and assembly. This would worsen the crackdown on civil society, heighten human rights abuses, and go on to hinder public accountability of the government. More so, NGO staff and board members risk arrest and punishment, including imprisonment, for their work.<sup>78</sup>

Considering the above, CSOs in less democratic states are subject to harassment and intimidation. Not only are their rights to freedom of expression and peaceful assembly often curtailed, but they struggle to secure adequate funding due to restrictive government policies, limited donor support or donor restrictions. Financial and resource constraints are a major hindrance to the effectiveness and sustainability of their work. In addition, CSOs are stigmatised and

75 African Commission 'Final Communiqué of the 81st ordinary session of the ACHPR' (n 35) para 24.

76 USAID 'Zimbabwe Civil Society Assessment' 2021, [https://pdf.usaid.gov/pdf\\_docs/PA00XM8W.pdf](https://pdf.usaid.gov/pdf_docs/PA00XM8W.pdf) (accessed 8 November 2024).

77 Amnesty International 'Zimbabwe: President Mnangagwa must reject proposed new law that threatens rights and civic space' 2 February 2023, <https://www.amnesty.org/en/latest/news/2023/02/zimbabwe-president-mnangagwa-must-reject-proposed-new-law/> (accessed 8 September 2023).

78 As above.



labelled, portrayed as unpatriotic, foreign agents, or threats to national security, which undermines their credibility.<sup>79</sup> States often control the flow of information, making it challenging for CSOs to access reliable data and information essential for their work.<sup>80</sup> Finally, repressive states are often unresponsive to civil society's advocacy efforts and exclude them from decision-making processes, leading to no meaningful engagements and consultation, which hampers the ability of CSOs to contribute to policy development and democratic governance.<sup>81</sup> Thus, support for civil society as they help their states implement decisions of the African Commission should be contextual and vary given disparities in their needs.

### 3.3 Capacitating administration of the Secretariat of the African Commission

It is observed that administratively, the African Commission is composed of 11 commissioners selected from among African personalities of the highest reputation, recognised for their high morality, integrity, competence and impartiality in matters of human and peoples' rights. Although they perform an official function, members of the Commission serve in their personal capacities for a period of six years and are eligible for re-election.<sup>82</sup> The Secretariat of the Commission is hosted in Banjul, The Gambia.

The Commission organises its public meetings in the form of ordinary and extraordinary sessions. So far, the Commission has held 81 ordinary sessions and 36 extraordinary sessions.<sup>83</sup> The African Commission has approximately 12 legal officers assisting the commissioners and few supporting technical staff.<sup>84</sup> Considering this small number of administrative staff, it may seem beyond reason

79 V Madziyauswa 'The role of civil society organisations in shaping livelihoods under Zimbabwe's hybrid political system' (2024) 10 *International Journal of Scientific Research in Multidisciplinary Studies* 58, 59; M Oosterom 'The implications of closing civic space for sustainable development in Zimbabwe' (2019) *Mimeo, IDS and ACT Alliance* 1, 8 & 12; J Alexander & J McGregor 'Introduction: Politics, patronage and violence in Zimbabwe' (2013) 39 *Journal of Southern African Studies* 749, 761.

80 Amnesty International 'Zimbabwe: President's signing of "Patriotic Bill" a brutal assault on civic space' 15 July 2023, <https://www.amnesty.org/en/latest/news/2023/07/zimbabwe-presidents-signing-of-patriotic-bill-a-brutal-assault-on-civic-space/> (accessed 8 September 2023).

81 As above.

82 Arts 31 & 36 African Charter.

83 Centre for Human Rights (University of Pretoria) *A guide to the African human rights system* (2021) 19.

84 While there currently is no publicly available information on the staff capacity of the African Commission, both authors rely on their personal knowledge having previously served at the Secretariat between 2021 and 2023 in a technical capacity.

to assume that the Commission has requisite capacity to serve 54 state parties to the African Charter, several NHRIs and over 579 CSOs enjoying observer status with the Commission. It thus is in the interest of the AU to have the African Commission Secretariat capacitated to speed up its operation for the benefit of states, particularly less democratic states.

## 4 What is next for the African Commission?

Considering human rights and democracy and governance challenges in many African states, which have impacted the capacity of states to implement the decisions of the African Commission, it is imperative that the Commission adopts new strategies in its engagements with states. First, one of the significant challenges faced by the Commission is the lack of political will on the part of member states to fully implement its decisions.<sup>85</sup> These states are often reluctant to take the necessary actions to comply with the decisions due to various reasons, such as competing priorities or perceived threats to their sovereignty. Below are some of the ways that may be employed by African Commission to help speed up states' capacity and will to implement its decisions.

### 4.1 Strategic advocacy informed by context

It is our view in this article that the African Commission should within its promotional mandate adopt targeted strategic advocacy in engaging hostile and less democratic states. Strategic advocacy maybe referred to as a deliberate and planned approach to promoting a specific cause or advocating a particular issue.<sup>86</sup> It involves developing a comprehensive strategy and employing targeted tactics to achieve desired outcomes. For instance, strategic advocacy begins with defining clear and achievable goals. This means that the Commission should channel more resources to archivable goals.

85 G Bekker 'The African Commission on Human and Peoples' Rights and remedies for human rights violations' (2013) 13 *Human Rights Law Review* 499-528; 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* 15.

86 ME Keck & KA Sikkink *Activists beyond borders: Advocacy networks in international politics* (2014) 3; M Ganz 'Leading change: Leadership, organisation, and social movements' in N Nohria & R Khurana (eds) *Handbook of leadership theory and practice* (2010) 527-528.

In this regard, these goals should be specific, measurable, attainable, relevant and time-bound (SMART).<sup>87</sup> If the African Commission is to always have well-defined short-term goals that are commensurate with the available financial resources, it may help guide the advocacy efforts and measure success. It is more helpful for the Commission to have small gains than to have no gains at all within the available resources. To elaborate on this, it is crucial to have more resources allocated to NHRIs and CSOs to states that have potential, than where resistance is high and chances of success are little. This is not to say that effort and engagement must be stopped. Thus, reading context on the part of the African Commission may have some benefits and help to see states developing capacity to implement its decisions.

Legal scholars are starting to see the African Commission set the foundation for constructive engagement between it and state parties beyond the traditional template of the state reporting process. For instance, in 2024, as part of the programmes of its eighty-first ordinary session, the Commission took an innovative step towards breaking down states' resistance to the Commission's compliance monitoring by convening the first edition of the Pre-Session Forum of State Parties to the African Charter, held in Banjul from 15 to 16 October 2024. The Forum was structured similar to the Pre-Session CSOs Forum. While the primary aim of the Forum is to establish 'a genuine opportunity for strengthening the ACHPR's cooperation with the member states and exchanging on questions of common interest in relation to the promotion and protection of human and peoples' rights on the continent', the African Commission also seeks to use it as a conduit for address thematic priorities such as disability rights, older persons' rights, statelessness, and social protection and security.<sup>88</sup> There is reason to believe that the success of this cordial engagement with states will set the scene for the African Commission to adopt a tailored approach to engaging states on the need for compliance with their obligations under the African Charter.

Based on documentation supporting the convening of the Pre-Session Forum of State Parties, the African Commission proposed the Forum for Regular Engagement with the Permanent Representatives'

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87 SR Lane & S Pritzker *Political social work: Using power to create social change* (2018) 130, 412; JM Cook 'The Advocacy Action Plan' in M Pope and others (eds) *Social justice and advocacy in counselling* (2019) 74-81.

88 African Commission 'Invitation to the 1st Edition of the Pre-Session Forum of States Parties to the African Charter on Human and Peoples' Rights, Banjul, October 15-16, 2024' 30 September 2024, <https://achpr.au.int/en/news/announcements/2024-09-30/1st-edition-pre-session-forum-states-parties> (accessed 8 November 2024).

Committee (PRC).<sup>89</sup> The Forum aims to enhance dialogue, cooperation and experience sharing among state parties, the Commission and the PRC. It seeks to improve collaboration in addressing human rights concerns, fostering mutual learning and promoting adherence to regional and international human rights standards. The rationale of the Forum was predicated by the African Commission on the need to create a 'platform for constructive dialogue'; 'improved collaboration'; an avenue for sharing experiences; 'better understanding and appreciation of human and peoples' rights issues in Africa'; and an 'institutionalised and structured engagement' with state parties.<sup>90</sup>

Critically, the agenda of the first day of the Forum featured a session on the obligations of state parties under the African Charter, the special mechanism of the African Commission and an interactive dialogue (session I).<sup>91</sup> This was immediately followed by the Commission's state reporting procedures and promotion missions to the territories of state parties, the Commission's communications procedure and an interactive dialogue. The third session started off with an interactive dialogue on the AU Human Rights Strategy and the AU-UN Joint Human Rights Framework, followed by a consideration of the AU Second Ten-Year Implementation Plan and the Contributions of the African Commission. The fourth session discussed current human rights trends and priorities in Africa followed by an interactive dialogue. The last session of the day gave an outlook of the Commission's eighty-first ordinary session and again followed by an interactive discussion. On the second day of the Forum, the Forum's agenda was divided into five sessions that centred priority themes for the African Commission, namely, statelessness, disability rights, social protection and social security, a dialogue on the Commission's engagement with member states and how the PRC could better support the Commission's mandate, and a discussion of the future of the Pre-Session Forum with States. Each of these sessions was immediately followed by an interactive dialogue.<sup>92</sup>

By institutionalising constructive engagement in this way (that is, under the banner of 'interactive dialogues'), we believe that the

89 African Commission 'Concept Note: ACHPR 81st ordinary session – State Party Pre-Session Forum, Banjul, 15 and 16 October 2024' paras 2(a)-(e) (acting pursuant to AU Executive Council decisions EX.CL/1045(XXXIV) and EX.CL/1065(XXXV)).

90 As above.

91 African Commission 'Draft agenda: ACHPR 81st ordinary session – State Party Pre-Session Forum, Banjul, 15 and 16 October 2024' in African Commission (n 89) para 7.

92 As above.

Forum could lessen the tensions that arise from the state reporting process and in the long run bolster transparency, accountability and capacity-building. The initiative to introduce a less formal dialogue with and among states would also facilitate a deeper understanding of Africa's complex human rights landscape. This will bootstrap collaborative efforts between the African Commission and state parties to ensure effective, coordinated and tailored responses to national and continental human rights challenges.

There are several points of engagement at which the Commission can implement a bespoke approach to capacitating state parties. First, collaborative mechanisms developed from states' engagement in the interactive dialogues at the Forum can help customise or simplify the African Commission's recommendations to national realities in a way that enhances local ownership and state compliance. Second, the Commission and concerned state parties can work together with the support of CSOs to create advocacy and implementation mechanisms and action plans within the structures of NHRIs that specifically manage and report on the implementation progress of African Commission recommendations at the domestic level.<sup>93</sup> Third, the Commission, in collaboration with international partners and the AU, could initiate targeted capacity-building programmes that would provide legal and technical assistance tailored to specific national conditions, judicial bodies, training officials<sup>94</sup> and enforcement agencies on implementing African Commission recommendations within a realistic framework. Finally, a 'peer review' process modeled on the African Peer Review Mechanism (APRM) could be established within the framework of the Pre-Session Forum, where states regularly review one another's implementation efforts. We believe that this kind of regular inter-state dialogue within the structure of the Forum could further encourage states to adopt best practices from peers, exchange experiences, and collectively address obstacles to African Commission implementation.

However, we acknowledge that there is no silver bullet to the challenge of implementing the African Commission's recommendations. Additionally, coordinated research and analysis between Commission, NHRIs and CSOs can go a long way towards taking a measured approach that is suitable to the unique situation of each state party to the African Charter. It is our view that effective strategic advocacy requires a thorough understanding of the human rights issues at hand in each country, including its root causes, relevant

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93 Lagoutte (n 9).

94 W Cole 'Mind the gap: State capacity and the implementation of human rights treaties' (2015) 69 *International Organizations* 405.

policies, stakeholders, and potential barriers to overcoming these. Conducting coordinated research and analysis of all stakeholders may help to inform the development of informed and evidence-based advocacy strategies. This may strengthen the efforts of the African Commission. Unlike in the past where the Commission has issued statements of concern and glib messages about violations of human rights, such as the failure by Swaziland (now Eswatini) to implement Resolution 216,<sup>95</sup> and Sudan's failure to heed the Commission's 2023 letter of urgent appeal,<sup>96</sup> targeted messaging through unified efforts between the Commission, NHRIs across the continent and CSOs may yield positive results with far-reaching implications. Regularly crafting persuasive and targeted messaging, tailoring messages to resonate with policy makers and decision makers may increase the likelihood of gaining the support of concerned states. Like-minded organisations and individuals (of good influence) can enhance the impact of advocacy efforts.

#### **4.2 Strategic capacity-building efforts of NHRIs and CSOs informed by context and challenges**

Strategic capacity-building efforts for NHRIs in less democratic states involve targeted interventions to enhance their effectiveness, independence and impact. Conducting a comprehensive needs assessment (for every state) is an essential first step. This entails evaluating the capacity and specific challenges faced by the NHRI, including its mandate, structure, resources and human rights knowledge and expertise.<sup>97</sup> Identifying gaps helps focus capacity-building initiatives on areas that require the most attention. In addition, strengthening the legal framework surrounding the NHRI is crucial. This may involve advocating legal reforms to provide the NHRI with sufficient independence, mandate and protection, enabling it to operate without undue interference. Building alliances with other stakeholders (NHRIs and CSOs) engaged in legal advocacy can help advance this agenda.

Furthermore, providing tailored training programmes and professional development opportunities for NHRI staff and likeminded CSOs is critical to enhance their knowledge and skills

95 ACHPR 'Resolution on the Human Rights Situation in the Kingdom of Swaziland' ACHPR/Res.216 ( LI) 2012 (2 May 2012) paras i-iv.

96 ACHPR 'Statement on joint letter of urgent appeal to the Republic of Sudan' 31 December 2023 <<https://achpr.au.int/en/news/press-releases/2023-12-31/statement-joint-letter-urgent-appeal-republic-sudan>> (accessed 8 November 2024).

97 Lagoutte (n 9).

on human rights monitoring, investigation, documentation and advocacy in a state party concerned. These programmes can cover various areas, including research methodologies, international human rights standards, complaint handling and report writing. Assisting NHRIs in developing effective internal structures and systems is essential for their long-term sustainability and impact. This may involve strengthening governance structures, fostering transparent and accountable processes, improving strategic planning and management, and enhancing coordination within the NHRI and with external stakeholders. Capacity-building efforts should also focus on strengthening the NHRIs' capacity to conduct thorough and evidence-based research and documentation of human rights violations. This includes developing methodologies for data collection, analysis and reporting, as well as ensuring the integrity and confidentiality of sensitive information.

In less democratic states, the calibre of NHRIs' staff could be problematic due to interference by the state. Equipping NHRIs with skills in advocacy and communication is vital for effectively influencing public opinion and policy change. This may involve training on strategic advocacy techniques, media engagement, public awareness campaigns, and effective communication strategies to disseminate findings and recommendations. Finally, the African Commission should take a context-based approach in supporting NHRIs in resource-mobilisation efforts, which is crucial for their sustainability and independence. Some NHRIs need more support than others. Having targeted approaches in supporting NHRIs could yield better and much more measurable results.

#### **4.3 Strategic diplomatic engagements aimed at supporting states to develop positive attitudes towards the African Commission**

The several ambassadors that have a relationship with the African Commission could be given recognition by the Commission, as human rights ambassadors to spearhead some of the promotional activities of the Commission. When engaging less democratic states, there is a need to utilise diplomatic channels, such as engaging other organs of the AU, regional economic communities (RECs), to encourage non-compliant states to comply with the Commission's decisions. Strategic peer pressure can play a significant role in encouraging adherence to human rights standards.<sup>98</sup> The use of

<sup>98</sup> B Kioko 'The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention' (2003) 85 *International Review of the*



leaders in other organs of the AU, such as the Pan-African Parliament, could also yield results in advancing diplomatic engagements that may help states change their attitudes towards the work of the African Commission.<sup>99</sup>

#### **4.4 Enabling traditional and religious leaders to be champions of domestic implementation of African Commission decisions**

Adopting a localised approach that includes empowerment and capacity building of traditional leaders, religious leaders and the youth may be helpful to speed up implementation of African Commission decisions. Adopting a localised approach also entails using pan-African symbols, languages and other accepted localised ways of communication, to unpack and simplify what states are required to do by the African Commission. It is crucial to recognise the influence that traditional and religious leaders can have in their communities and governments. Engaging with these leaders to advocate the implementation of decisions of the Commission can be a valuable strategy. These leaders often have the trust and respect of their constituencies, and their support can help to garner broader public backing for important human rights issues. Additionally, their involvement can contribute to a more inclusive and diverse approach to advocacy and government engagement.

#### **4.5 Sanctions on states non-complying with the decisions of the African Commission**

At the AU level, there is need for the African Commission to recommend to the AU Commission (AUC) the possibility of exploring the use of targeted sanctions, as means of last resort, where state parties to the African Charter are found to have violated its provisions and subsequently wilfully flouted African Commission recommendations on compliance. Under the AU's Constitutive Act, member states are obligated to comply with AU laws, decisions, principles and policies, with non-compliance potentially resulting in

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*Red Cross* 807, 816; EM Hafner-Burton 'Sticks and stones: Naming and shaming the human rights enforcement problem' (2008) 62 *International Organisation* 692-696, 700-705; R Goodman & D Jinks 'How to influence states: Socialisation and international human rights law' (2004) 54 *Duke Law Journal* 626, 632-642.

99 M Killander 'The African Peer Review Mechanism and human rights: The first reviews and the way forward' (2008) 30 *Human Rights Quarterly* 41-75; T Murithi 'The African Union's evolving role in peace operations: The African Union mission in Burundi, the African Union mission in Sudan, and the African Union mission in Somalia' (2008) 17 *African Security Studies* 69-82. Also see OC Okafor *The African human rights system, activist forces, and international institutions* (2007) 141-162.

sanctions.<sup>100</sup> Non-implementation of Assembly decisions, directives and regulations can attract appropriate sanctions under article 23.<sup>101</sup> We argue here that sanctions may be triggered by a state party's violation of the fundamental human rights principles enshrined in the Constitutive Act and AU decisions, including decisions targeted at a state party's compliance with the African Charter and African Commission recommendations. The imposition of such sanctions, while discretionary, is guided by the Rules and Procedures of the AU Assembly, which set forth basic conditions for their application.<sup>102</sup> Conversely, there is a need to provide incentives such as increased development assistance or preferential trade treatment to states that demonstrate a commitment to implementing the Commission's decisions, and in the process discourage non-compliant states.

#### 4.6 Strengthening states' capacity and available regional mechanisms

There is a need for partners to collectively support the African Commission and other regional human rights bodies to enhance their effectiveness, resources and enforcement mechanisms. This includes ensuring compliance-monitoring mechanisms and enhancing their capacity to investigate and report on human rights violations. This is possible where there are no resource constraints and a more coordinated approach among partners may make this possible. In addition to supporting regional bodies, it is crucial to strengthen the capacity of individual state parties, as they often tend to lack the resources needed to effectively uphold their human rights commitments under African and international human rights instruments.<sup>103</sup> Enhancing state capacity will enable governments to implement human rights policies, monitor compliance and respond to violations within their jurisdictions. By providing technical assistance, funding and training, partners can help bridge gaps that hinder states from independently fulfilling their human rights obligations.

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100 Art 23(2) Constitutive Act.

101 Rule 33(2) AU Assembly Rules.

102 AU 'Rules of Procedure of the AU Assembly of the African Union' (ASS/AU/ 2(I)-a) 1st ordinary session 9-10 July 2002, Durban, South Africa.

103 VO Nmehielle 'The African Union and African Renaissance: A new era for human rights protection in Africa?' (2004) 8 *Singapore Journal of International and Comparative Law* 412-446.

#### **4.7 Regular monitoring and evaluation of the work of the African Commission and its decisions**

Monitoring and evaluating the impact of advocacy efforts is essential to assess the effectiveness of strategies and tactics. This involves tracking progress towards goals, collecting feedback, measuring changes in policies or public opinion and adjusting advocacy approaches as needed. Strategic advocacy requires a long-term perspective and adaptability to respond to changing circumstances. By employing a well-planned and targeted approach, strategic advocacy can effectively bring about change and advance important human rights causes, particularly on the implementation by states of the decisions of the African Commission.

### **5 Conclusion**

The African Commission has done a great deal of work in the protection and promotion of human rights in Africa. Its decisions continue to influence positive attitudes among states, including their approach to human rights in Africa. This article highlights the Commission's role in supporting states to better understand their obligations, promoting consistency in human rights interpretations, policy, development and legislative reforms. It also argued that, despite the advances made by the African Commission, numerous governance and human rights challenges persist on the African continent and significantly impede the enjoyment of human and peoples' rights of African peoples. As a result, states, particularly less democratic states, are failing or experiencing challenges in implementing the decisions and recommendations of the African Commission, thereby undermining their effectiveness.

In response to these challenges, the Commission has taken steps to strengthen engagement with state parties, notably through the establishment of the Pre-Session Forum. While it is intended to foster mutual learning and enhance understanding of human rights obligations, institutionalising 'interactive dialogues' for bootstrapping better African Commission-state collaboration, experience sharing and tracking implementation is only the first step to the complex national human rights challenges that African states often face. We propose that, to achieve greater compliance at the national level, the African Commission should adopt contextual approaches, particularly in less democratic states, with a view to strengthening the capacity of states to implement its decisions. Collaborative mechanisms, such as customised recommendations, capacity-building programmes and peer review processes, can help

improve state compliance with Commission decisions. However, we also note that while no solution is perfect, these efforts offer a promising path forward for strengthening the African Commission's impact and fostering greater state accountability in the long term.