

Special Focus: Implementation of decisions of the African Commission on Human and Peoples' Rights

Editorial

Background to the Special Focus

This Special Focus is devoted to the implementation of decisions of the African Commission on Human and Peoples' Rights (African Commission), the longest-standing African supranational human rights body with continental coverage. The nine articles in this Special Focus were presented as papers at a conference on the theme 'Implementation and domestic impact of the decisions of the African Commission on Human and Peoples' Rights', held from 13 to 15 September 2023, in Pretoria, South Africa. The conference, organised by the Centre for Human Rights, Faculty of Law, University of Pretoria (Centre), in collaboration with the African Commission, provided a scholarly platform for scholars, practitioners and other stakeholders to address the critical gap between the issuance of decisions by the African Commission and their effective implementation at the national level. The editors of the Special Focus at the time were the director of the Centre, the co-manager of the Centre's Litigation and Implementation Unit, and a post-doctoral fellow in that unit.

The conference brought together 55 participants, including presenters of 23 presentations that offered technical, policy and case study analyses of implementation challenges and successes. A unique feature of the conference was the participation of members of the African Commission and its Secretariat, who provided comments on the papers presented. This interaction ensured that the insights and proposals incorporated in this Special Focus are not only theoretically sound but also practically aligned with the African Commission's operational realities and priorities. After the conference, presenters were given an opportunity to incorporate the comments by commissioners, Secretariat staff and other participants. Selected papers were subsequently sent for peer review.

The conference built on two regional seminars held under the auspices of the African Commission in Dakar, Senegal (2017) and Zanzibar, United Republic of Tanzania (2018), also focusing on the implementation of the African Commission's decisions. Recommendations from these earlier seminars emphasised the importance of bolstering national legal frameworks, fostering collaboration with stakeholders, and improving monitoring and follow-up mechanisms. However, persistent challenges necessitated further discussions, making the 2023 Pretoria implementation conference a significant consolidative milestone in the ongoing discussion on implementation.

While 'decisions' most often refer to recommendations adopted by the African Commission in respect of 'communications' (under the individual complaints mechanism), the term, in this special issue understood more broadly, is to encompass all recommendations made by the African Commission, including those adopted as part of Concluding Observations (after the examination of state reports); those contained in country-specific resolutions; and those included in reports of visits by the Commission's special mechanisms.

The effective implementation of decisions by the African Commission remains a persistent challenge across the continent, undermining its ability to deliver justice and uphold human rights. Despite widespread ratification of African human rights treaties, the gap between ratification and implementation reveals systemic and contextual barriers that hinder progress. This Special Focus explores these challenges and presents transformative strategies to enhance compliance, accountability and impact.

Introductory overview

The first contribution, by Kembabazi, provides a bird's eye view of the topic. It examines the challenges and opportunities faced by the African Commission in ensuring compliance with its decisions on individual communications. It highlights the gap between the African Commission's potential effectiveness and its actual implementation record, with systemic barriers such as lack of political will, insufficient state cooperation, and inadequate resources playing significant roles. The article underscores the importance of follow-up mechanisms, and briefly surveys the steps taken by the African Commission to address the low compliance rate by providing greater normative clarity in its 2020 Rules of Procedure; by integrating implementation into its state reporting procedure, missions of special mechanisms, promotional missions and other promotional activities; by conducting implementation hearings; by adopting resolutions drawing attention to and encouraging implementation; through collaboration with civil society organisations; by reporting to the African Union (AU) Executive Council; and – to a limited extent – by way of referral of three communications (cases) to the African Court on Human and Peoples' Rights (African Court).

Low level of implementation and emerging challenges

Obwogi and Kremte evaluate the implementation of decisions by the African Commission in three countries: Botswana, Kenya and Ethiopia. While none of these states has fully complied with any of the Commission's recommendations with respect to them, Kenya has at least partially implemented some decisions. The authors highlight the measures taken in response to the recommendations in the *Endorois* decision, including the registration of the Endorois Welfare Council; the sharing by the Endorois in the annual earnings from the reserve; and community participation in employment opportunities in the reserve. However, they also indicate how these measures still fall short of 'full implementation'. The implementation challenges they identify include the perception of the African Commission's remedial recommendations as non-binding; a lack of state commitment linked to the socio-political context of the implementing states; the lack of clarity and specificity of the Commission's recommendations; the inadequate institutional follow-up capacity of the African Commission; and constraints on the functioning of civil society, constraining their role of mustering domestic pressure towards improved implementation.

Biegon examines the impact of the African Commission's country-specific resolutions through the lens of 'naming and shaming', a method aimed at pressuring states to improve human rights practices. While these resolutions often attract international attention and raise public awareness, Biegon argues that full compliance by targeted states is rare. Most cases demonstrate situational or partial compliance driven by political transitions or other contextual changes rather than deliberate adherence to the African Commission's recommendations. Examples such as Ethiopia's revision of restrictive civil society laws and Zimbabwe's amendments to draconian legislation illustrate indirect impacts influenced by broader pressures. However, many states, including Eritrea and Eswatini, have shown persistent non-compliance, demonstrating the limited enforcement power of the African Commission. Biegon also suggests leveraging collaborations with regional and international actors to amplify pressure on non-compliant states, combining naming and shaming with practical tools such as technical assistance and diplomatic interventions. These strategies aim to transition the African Commission's resolutions from situational impacts to significant, sustained improvements in human rights practices across Africa.

Role of national judiciaries (with a focus on Kenya)

Juma and Orai examine the role of the Kenyan judiciary in implementing decisions and recommendations from African regional human rights mechanisms, particularly the African Commission. It highlights a dual approach: The judiciary has sometimes harmonised these decisions with domestic law, enhancing their value and relevance in interpreting constitutionally-guaranteed rights. However, courts more often adopt an avoidance approach, downplaying or outright rejecting the applicability of these decisions due to perceptions of their non-binding nature or conflicts with domestic laws. This inconsistent engagement diminishes the impact of the African Commission's rulings, weakening their potential to enhance human rights protection in Kenya.

Exploring non-confrontation: Dialogue, negotiation and documentation

Diplomatic tools, such as dialogue and negotiation, can foster constructive engagement and align state practices with human rights norms. Promoting the integration of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol) and other frameworks into national policies, particularly for marginalised

groups such as persons with disabilities, is crucial for inclusive policy development. These non-confrontational measures are also more likely to facilitate capacity-building initiatives and the provision of technical assistance.

Mbanje and Okoloise argue that the African Commission's significant challenges in ensuring state compliance with its decisions are exacerbated by governance deficits, political instability and weak institutional capacity within states. Their article critiques the African Commission's one-size-fits-all approach to engagement with states, noting that a lack of tailored strategies undermines its effectiveness. It calls for a contextual approach to strengthen state capacity, emphasising the importance of addressing the unique political, economic and social realities of each state. The need for greater collaboration with national human rights institutions and civil society is highlighted as a critical step in bridging the gap between the African Commission's recommendations and domestic implementation. The authors recommend the adoption of a range of strategies to improve compliance that, in their view, would strengthen the African Commission's effectiveness in advancing human rights across Africa.

Ayeni argues that the African Commission can enhance the implementation of its decisions by prioritising dialogue and documentation. Dialogue involves engaging with national actors, civil society and other stakeholders to address implementation challenges through collaborative communication, while documentation entails establishing a publicly-accessible database to track decisions, remedial measures, and their implementation status. These approaches align with the African Commission's quasi-judicial nature, leveraging its ability to engage constructively rather than impose binding decisions. The current lack of systematic monitoring and comprehensive data has hindered progress, leaving the African Commission reliant on *ad hoc* methods and minimal state cooperation. In this regard, there is a need for institutionalising dialogue mechanisms, such as regular implementation hearings, and incorporating implementation tracking into state reporting processes. By focusing on respectful engagement and systematic tracking, the African Commission could foster greater state compliance and enhance its role in promoting and protecting human rights across the continent.

Purmah focuses on the African Commission's decisions regarding the rights of persons with disabilities. His contribution attributes implementation challenges of these rights to systemic barriers, including attitudinal, environmental and political factors that hinder implementation. The article underscores the critical role of diplomatic

mechanisms, such as dialogue, negotiation and cooperation, in fostering compliance. It advocates leveraging the African Disability Protocol and mechanisms such as the Working Group on the Rights of Older Persons and Persons with Disabilities and the state reporting process. These tools aim to promote constructive engagement, tailored recommendations and sustained dialogue to align state practices with human rights norms and enhance the Commission's credibility and impact. Purmah emphasises the use of diplomatic tools to encourage states to integrate disability rights into their national policies, align with the African Disability Protocol, and prioritise inclusive policies. By fostering a cooperative rather than confrontational approach, these strategies aim to enhance the implementation of the African Commission's decisions and improve the human rights landscape for persons with disabilities across the continent.

Targeted action by the African Commission: A dedicated special follow-up mechanism

Okoloise submits that the African Commission has struggled to effectively monitor the implementation of its decisions and recommendations due to systemic and resource-based constraints. Despite its broad mandate under the African Charter on Human and Peoples' Rights (African Charter), the African Commission lacks a dedicated and institutionalised mechanism for tracking compliance by state parties. This deficit, compounded by vague procedural rules and insufficient funding, has resulted in low implementation rates and a diminishing credibility for the African Commission. *Ad hoc* methods, such as relying on commissioners' promotion activities or sporadic regional seminars, fail to effectively address the growing volume of non-compliance. Drawing on the example of the Working Group on Implementation of Decisions, established by the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee), he urges the African Commission to take urgent action by setting up a dedicated special mechanism responsible for the follow-up of domestic implementation.

African governance architecture, with a focus on the Peace and Security Council

The African Commission operates within the framework of the African Governance Architecture (AGA), the AU's platform to coordinate its initiatives in respect of governance, democracy and human rights. A number of contributions in this Special Focus emphasise the political dimension of implementing the decisions of the African Commission,

exemplified by the lack of political will on the part of member states. This emphasis underscores the potential role of AU organs such as the Pan-African Parliament, the African Peer Review Mechanism, the Economic, Social and Cultural Council and the Peace and Security Council (PSC) in this process.

Olajuwon and Asamoah explore the pivotal role of one of most important of these, the PSC. They argue that while the African Commission primarily focuses on human rights, its recommendations often intersect with broader peace and security issues. Tasked with conflict prevention, management and resolution, the PSC can bridge this gap by enforcing the African Commission's recommendations, especially in contexts of grave human rights violations that threaten peace and stability. The authors emphasise the need for effective collaboration between the PSC and the African Commission to foster compliance with human rights norms, enhance the Commission's credibility, and address challenges such as state non-compliance, limited resources and political constraints. This collaboration can be achieved by strengthening the operational and financial capacity of the PSC, improving the coordination between the PSC and the African Commission, and revising the PSC's legal framework to resolve ambiguities and enhance its enforcement capabilities. They further suggest diversifying funding sources for the Peace Fund, leveraging sanctions and incentives to encourage compliance, and employing technology and skilled personnel to enhance the PSC's early warning systems and follow-up mechanisms. By adopting these strategies, the PSC can more effectively support the African Commission.

Conclusion

Understandably, much of the Special Focus draws attention to the role of national executives, judiciaries and legislatures, as well as national human rights institutions, in the implementation of decisions. Much emphasis, however, is also placed on the crucial complementary role of civil society coalitions comprising victims, families, communities, traditional and religious leaders, to act as local implementation champions.

However, the Focus most pertinently reveals the central and undeniably neglected role of the African Commission in persuading, coaxing, cajoling and pushing all relevant actors towards domestic implementation through effective follow-up. Establishing robust follow-up mechanisms to sustain engagement and monitor state responses will ensure continued pressure and accountability. These integrated strategies can collectively enhance the implementation

of the African Commission's decisions and strengthen its role in promoting and protecting human rights across Africa.

The African Commission should understand the core of its protective mandate as being closely linked to the effective enforcement of its decisions. Focusing on the role of the African Commission in this process, three broad approaches emerge from the Special Focus.

The first approach requires deliberate and transformative action towards institutional reform within the African Commission's institutional ecosystem. A dedicated implementation unit should urgently be set up within the African Commission (whether a secretarial operational 'department' or 'unit', a working group or special mechanism, or a combination of some of these), in order to increase coordination, transparency and accountability. Resources should be prioritised for this purpose. Now is the time to convert into reality the repeated seminar and conference calls for the adoption of such a measure.

The second approach, ironically, is to *implement* the already-existing *implementation and follow-up framework*. There is less need for more procedural clarity than there is for the straightforward, consistent and complete adherence by the African Commission to its existing 2020 Rules of Procedure concerning implementation. Consistently conforming with these Rules does not require a significant increase in allocated resources, although the human resource capacity may have to be strengthened. Improving transparency regarding implementation status is key. The African Commission's systematic compliance-monitoring practice should include a completely updated implementation database, setting out the recommendations and implementation status of all its merits decisions in which violations have been found. This database should be updated in its annual reports and, at all times, be publicly accessible on its website. Other related measures that can be taken include consistently adopting remedial recommendations with greater specificity and clarity to increase their actionable impact; developing a thematic case digest to improve the accessibility and applicability of its decisions; and developing further guidelines on remedies and implementation to potential litigants.

The third approach is to leverage existing implementation-focused efforts within the AU by improving collaboration and coordination. Based on the truism that human rights implementation is a collective responsibility, the African Commission should vigorously formalise and consistently draw on partnerships with AU organs, including policy organs, to leverage political and financial support. Country-

specific engagement, through initiatives such as the first Pre-Session Forum facilitating constructive dialogues with states, is a step in the right direction. Together with the policy organs, the African Commission should increasingly explore sanctions or incentives to encourage state compliance.

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