# Comments from Honourable Lucy Asuagbor on issues of Implementation in the African Commission on Human and Peoples’ Rights

October 2019

*Lucy Asuagbor is a member of the African Commission on Human and Peoples’ Rights. In this capacity she is also its Special Rapporteur on the Rights of Women in Africa. She is a Judge at the Supreme Court in Cameroon.*

# Can you tell us a little about what the African Commission has been doing to monitor the implementation of its own decisions?

At the outset, within the context of its work, there are at least four categories of decisions or recommendations issued by the African Commission on Human and Peoples’ Rights (African Commission), all of which are regarded as decisions requiring implementation and related follow-up. These are decisions on Communications/complaints; recommendations following the presentation of State Periodic Reports; recommendations following promotion and protection missions; and recommendations contained in thematic and country-specific resolutions. However, the following discussion will focus solely on the implementation of decisions on Communications.

The African Charter on Human and Peoples’ Rights (African Charter) and the 2010 Rules of Procedure of the African Commission (Rules of Procedure) prescribe a set of mechanisms for monitoring the implementation of the decisions of the Commission. Articles 45 and 46 of the African Charter establish the general provisions guiding the adoption of these measures while the Rules of Procedure provide further details. Rule 98(4) of the Rules of Procedure and Rules 112 and 118 detail the measures the Commission may take to monitor the implementation of its Provisional Measures and decisions on the Merits respectively. The Commission often does so in four stages: firstly, through information gathering, which includes proactive and reactive dialogue with the parties through various mediums and forums; secondly, an assessment, of the extent to which the measures or lack thereof adopted by a concerned Member State to implement the decision of the Commission meets the threshold for compliance; thirdly, reporting, on the findings of the said assessment; and lastly, the use of enforcement tools, where the Member State is found to have failed to meet the requisite threshold. The above stages are not distinct in all instances and often intersect. Further, they do not necessarily follow a prescribed process, in practice, the Commission has developed various mechanisms that are not expressly provided for under the 2010 Rules of Procedure.

To expatiate, at the stage of information gathering, the Commission often seeks or receives evidence from the parties to a Communication and or third parties, on the measures adopted by the State to implement the said Decision. Often, this information is gathered through email, telephonic or other correspondences to the parties or through dialogues with the relevant Member State at Public Sessions, especially during the consideration of State Reports. The Commission also visits relevant stakeholders during Promotion and Protection Missions for this purpose and in rare instances conducts implementation hearings, such as in the *Endorois* case. During this stage, the Commission, where requested, provides interpretive guidance and technical assistance on the modalities for compliance. Further, the Commission places itself at the disposal of the parties throughout the Communications procedure in a bid to secure a friendly settlement of the dispute, and as such works together with the parties in monitoring the implementation of its decisions.

The Commission, upon receiving the said information or where none is forthcoming, assesses the extent to which the State has complied with its decision. Following this assessment, the Commission, through a recent amendment to the structure of its Activity Report, reports publicly therein on the implementation status of decisions. Lastly, where non-compliance persists, the Commission employs a number of statutory and other ad-hoc measures to pressure the concerned States into compliance: these include, “naming and shaming”, by reporting on those States that have failed to implement its Decisions in its Activity Report; and lastly by referring cases of non-compliance to the African Court or a competent and operational organ of the AU.

Notably, in light of growing concerns within the Commission and the broader human rights community, the Commission has adopted a multi-party stakeholder approach to improving the implementation of its decisions, specifically, by broadening its information-gathering network. Increasingly, the Commission is taking proactive steps towards including non-governmental organizations and even more crucially, National Human Rights Institutions (NHRIs) and other relevant specialized institutions in the monitoring process. The Commission recently adopted the Guidelines on the Role of NHRIs in Monitoring Implementation of the Decisions of the Commission and organized two Regional Seminars on implementation. Additionally, the Draft Revised Rules of Procedure of the Commission propose to expressly include NHRIs and other specialized human rights institutions at the information-gathering stage.

# What challenges has you faced in doing so?

The Commission has faced numerous challenges in this respect and has often reported on these challenges in its Activity Reports, Studies and Outcome Documents of relevant Regional Seminars. These challenges may be grouped as follows:

## *Functional shortcomings*

* Non-establishment of a dedicated implementation unit/monitoring mechanisms at the Secretariat of the Commission to regularly monitor implementation of its decisions including country/field visits;
* Lack of sufficient clarity in the types of remedies granted by the Commission and the body/institution responsible for monitoring implementation at the national level;

## *Financial and institutional incapacity*

* The limited human resource capacity at the Secretariat of the Commission is probably the most pressing challenge in this respect, due to staffing constraints the Commission cannot establish a dedicated implementation unit within the Secretariat without adversely impacting other aspects of its continental mandate;
* Inadequate financial resources of the Commission;

## *Inadequate commitment by States*

* Lack of political will by some States Parties to implement the Commission’s decisions, often as a result of general misgivings of the binding nature of the Commission’s decisions, attempts to safeguard embedded traditional and cultural barriers/practices and other resource constraints;
* Non-compliance by state parties ‘with their commitment under Articles 62 of the African Charter and 26 of the Maputo Protocol;
* General reluctance by States to engage with regional mechanisms as opposed to international mechanisms such as the United Nation’s Universal Periodic Review;

## *Lack of communication and visibility*

* The Commission lacks an effective communication strategy as regards the adoption of decisions on the merits and their implementation resulting in a lack of awareness of the Commission’s recommendations/decisions;
* Lack of effective and sustained communication/interaction/engagement with State Parties;

# What role do you think the African Commission should be playing in monitoring the implementation of its own decisions?

To a large extent, the African Charter, read with the Rules of Procedure, already prescribe an expansive role for the Commission in monitoring the implementation of its decisions. Notably, Rule 112(6) of the Rules of Procedure, on the potential measures for monitoring the implementation of a decision, prescribe that a Commissioner Rapporteur may “make such contacts and take such action as may be appropriate to fulfil his/her assignment”. As such, in theory, the current role the Commission plays in monitoring its decisions, wherein it gathers information, assesses the extent of implementation, reports on the said implementation and attempts to pressure States towards compliance, is sufficient.

However, in light of the various resource constraints at the Commission, competing interests and concerns of States and the defective implementation framework within the broader AU structure, the Commission has not been able to effectively execute this role. Indeed, the Commission may need to limit its role in respect of its other mandates if it is to effectively monitor the implementation of its decisions on Communications.

# What support does it need to do this?

Similar to question 2 above, various suggestions have been proffered in this respect and are often reported by the Commission in its Activity Reports, Studies and Outcome Documents. These suggestions are often aimed at relevant stakeholders and may be listed as follows:

## *African Union:*

* Provide adequate human, financial and other resources to the Secretariat of the Commission to effectively execute its mandate;
* Establish an office within the AUC in Addis to serve as a liaison between the Commission and States to enhance communications;
* Operationalise the Executive Council on the Implementation of the Decisions of the African Union;

## *NHRIs:*

* Publicize vigorously, the decisions of the Commission at the national level;
* Proactively engage States and raise awareness on the decisions of the Commission with the different ministries and members of parliament;
* Regularly prepare advisories to States suggesting various modalities on the ways to respond to recommendations, decisions and resolutions of the Commission;
* Establish departments or focal persons designated to ensure effective follow-up and implementation of the decisions of the ACHPR while also ensuring an effective channel of communication with the ACHPR;

## *CSOs:*

* Lobby to ensure that the Commission's decisions are considered in national human rights action plans;
* Contribute to the wider dissemination of decisions of the Commission at the national level including through the use of social media;
* Issue press releases to publicize decisions of the Commission
* Include status of implementation of Commission’s decisions in statements made by NGOs at the Commission’s sessions for follow up where necessary;
* Designate focal persons to follow up decisions/recommendations of the Commission and other treaty bodies.

1. What recommendations would you make to States to assist them in improving the implementation of your decisions?

Similar to questions 2 and 4 above, various suggestions have been proffered in this respect and are often reported by the Commission in its Activity Reports, Studies and Outcome Documents. The Commission often implores Member States to:

1. ***Establish implementation mechanisms:***

* Establish a central mechanism or unit at the national level responsible for coordinating issues regarding implementation of decisions of the Commission;
* Ensure that the central mechanism is adequately funded and represented, with an open-ended composition of State actors, NHRIs, and inter-governmental organizations;
* Institutionalise focal points at the national level and capacitate them to execute their functions effectively;
* Provide adequate financial and other resources to facilitate the implementation of the decisions of the Commission;

1. ***Open and maintain channels of communication***

* Establish liaison persons to facilitate communication with the Commission;
* Report regularly to the Commission on the status of implementation of recommendations and decisions of the Commission and, where necessary, indicate challenges faced in the implementation of these decisions and recommendations.