AFRICAN UNION
الاتحاد الأفريقي

UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, Ethiopia P. O. Box 3243 Telephone: 5517 700 Fax: 5517844
Website: www.au.int

EXECUTIVE COUNCIL
Thirty-Fourth Ordinary Session
07 - 08 February 2019
Addis Ababa, Ethiopia

EX.CL/1126(XXXIV)
Original : English

ACTIVITY REPORT OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS (AfCHPR)

AFRICAN UNION

UNION AFRICAINE

الاتحاد الأفريقي

UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

ACTIVITY REPORT OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

1 JANUARY – 31 DECEMBER 2018

I. INTRODUCTION

1. The African Court on Human and Peoples' Rights (the Court) was established in terms of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol"), adopted on 9 June 1998, in Ouagadougou, Burkina Faso, by the then Organization of African Unity (OAU). The Protocol entered into force on 25 January 2004.

2. The Court became operational in 2006 and is composed of eleven (11) Judges elected by the Executive Council and appointed by the Assembly of Heads of State and Government of the African Union. The Seat of the Court is in Arusha, the United Republic of Tanzania.

3. Article 31 of the Protocol mandates the Court to *"…submit to each regular session of the Assembly, a report on its work. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment".*

4. The present Report is submitted in conformity with the above-cited Article of the Protocol. The Report describes the activities undertaken by the Court from 1 January to 31December 2018, in particular, the judicial, administrative and outreach activities, as well as the implementation of decisions of the Executive Council, relating to the functioning of the Court.

II. STATUS OF RATIFICATION OF THE PROTOCOL AND THE DEPOSIT OF THE ARTICLE 34(6) DECLARATION, ACCEPTING THE COMPETENCE OF THE COURT TO RECEIVE CASES FROM INDIVIDUALS AND NON-GOVERNMENTAL ORGANIZATIONS (NGOS)

5. As at 31 December 2018, the Protocol had been ratified by thirty (30) Member States of the African Union, namely: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Congo, Côte d'Ivoire, Comoros, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Uganda, Rwanda, Sahrawi Arab Democratic Republic, Senegal, South Africa, Tanzania, Togo and Tunisia. ***See Table 1.***

6. Of the 30 State Parties to the Protocol, only eight (8), namely: Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tanzania and Tunisia, had made the declaration under Article 34(6) thereof, accepting the jurisdiction of the Court to receive cases from individuals and non-governmental organizations (NGOs). ***See Table 2.***

Table 1: List of State Parties to the Protocol				
No.	**Country**	**Date of Signature**	**Date of Ratification/ Accession**	**Date of deposit**
1.	Algeria	13/07/1999	22/04/2003	03/06/2003
2.	Benin	09/06/1998	22/08/2014	22/08/2014
3.	Burkina Faso	09/06/1998	31/12/1998	23/02/1999
4.	Burundi	09/06/1998	02/04/2003	12/05/2003
5.	Cameroon	25/07/2006	17/08/2015	17/08/2015
6.	Chad	06/12/2004	27/01/2016	08/02/2016
7.	Congo	09/06/1998	10/08/2010	06/10/2010
8.	Cote d'Ivoire	09/06/1998	07/01/2003	21/03/2003
9.	Comoros	09/06/1998	23/12/2003	26/12/2003
10.	Gabon	09/06/1998	14/08/2000	29/06/2004
11.	The Gambia	09/06/1998	30/06/1999	15/10/1999
12.	Ghana	09/06/1998	25/08/2004	16/08/2005
13.	Kenya	07/07/2003	04/02/2004	18/02/2005
14.	Libya	09/06/1998	19/11/2003	08/12/2003
15.	Lesotho	29/10/1999	28/10/2003	23/12/2003
16.	Malawi	09/06/1998	09/09/2008	09/10/2008
17.	Mali	09/06/1998	10/05/2000	20/06/2000
18.	Mauritania	22/03/1999	19/05/2005	14/12/2005
19.	Mauritius	09/06/1998	03/03/2003	24/03/2003
20.	Mozambique	23/05/2003	17/07/2004	20/07/2004
21.	Niger	09/06/1998	17/05/2004	26/06/2004
22.	Nigeria	09/06/2004	20/05/2004	09/06/2004
23.	Rwanda	09/06/1998	05/05/2003	06/05/2003
24.	Sahrawi Arab Democratic Republic	25/07/2010	27/11/2013	27/01/2014

25.	Senegal	09/06/1998	29/09/1998	30/10/1998
26.	South Africa	09/06/1999	03/07/2002	03/07/2002
27.	Tanzania	09/06/1998	07/02/2006	10/02/2006
28.	Togo	09/06/1998	23/06/2003	06/07/2003
29.	Tunisia	09/06/1998	21/08/2007	05/10/2007
30.	Uganda	01/02/2001	16/02/2001	06/06/2001

# of Countries – 55 # of Signature – 52 # of Ratification – 30 # of Deposit - 30

Source: African Union Website.

Table 2: List of State Parties that have deposited the Article 34(6) declaration.			
No.	**Country**	**Date of Signature**	**Date of deposit**
	Benin	22/05/2014	08/02/2016
	Burkina Faso	14/07/1998	28/07/1998
	Côte d’Ivoire	19/06/2013	23/07/2013
	Ghana	09/02/2011	10/03/2011
	Malawi	09/09/2008	09/10/2008
	Mali	05/02/2010	19/02/2010
	Tanzania	09/03/2010	29/03/2010
	Tunisia	13/04/2017	29/05/2017

Source: African Union Website

Total # Eight (8)

III. CURRENT COMPOSITION OF THE COURT

7. The current composition of the Court is attached to the present Report as **Annex I.**

IV. ACTIVITIES UNDERTAKEN BY THE COURT

8. During the period under review, the Court undertook a number of judicial as well as non-judicial activities.

i. Judicial Activities

9. The judicial activities of the Court relate to the receipt and examination of judicial matters, through, *inter alia*, case management, organisation of public hearings and delivery of judgments, rulings and orders.

10. From 1 January to 31 December 2018, the Court was seized with twenty-nine (29) new cases. Since its establishment therefore, the Court has received a total of One-hundred and ninety (190) Applications in contentious matters and thirteen (13) Requests for Advisory Opinion. The Court has a total of one-hundred and fourty (140) Applications and one (1) Request for Advisory Opinion pending before it. Overall, the Court has rendered decisions and opinions as follows:

i.	Judgments on the merits	28
ii.	Rulings on admissibility	07
iii.	Rulings on jurisdiction	20
iv.	Judgments on Applications for Review	03
v.	Judgments on Interpretation of Judgment	03
vi.	Judgments on Reparations	05
vii.	Advisory Opinions rendered	12
viii.	Orders for Interim Measures	26
ix.	Rulings on Preliminary objections	02
	Total	**106**

a. Sessions held

11. During the reporting period, the Court held four (4) Ordinary Sessions and One (1) Extra-ordinary session, as follows:

i. 48th Ordinary Session, from 26 February to 23 March 2018, in Arusha, Tanzania;
ii. 49th Ordinary Session, from 16 April to 11 May 2018, in Arusha, Tanzania;
iii. 50th Ordinary Session, from 27 August to 21 September 2018, in Arusha, Tanzania;
iv. 51st Ordinary Session, from 12 November to 7 December 2018, in Tunis, Tunisia; and
v. 9th Extraordinary Session, from 24 to 28 September 2018, in Arusha, Tanzania.

b. Case Management

12. During the same period, the Court delivered seventeen (1) judgments and deferred 140 Applications and 1 Request for further consideration.

13. Table 3 below shows the number of Judgments delivered by the Court in 2018.

Table 3: Table 3: Judgments delivered by the Court in 2018

No.	Application No.	Applicant	Respondent	Remarks
1.	005/2015	Thobias Mang'ara Mango and Shukurani Masegenya Mango	United Republic of Tanzania	Judgment on the Merits
2.	006/2015	Nguza Vicking (Babu Seya) and Johnson Nguza (Papi Kocha)	United Republic of Tanzania	Judgment on the Merits
3.	022/2015	Rutabingwa Chrysanthe	Republic of Rwanda	Ruling on Admissibility
4.	010/2015	Amiri Mohamed Ramadhani	United Republic of Tanzania	Judgment on the Merits
5.	012/2015	Anudo Ochieng Anudo	United Republic of Tanzania	Judgment on the Merits.
6.	032/2015	Kijiji Isiaga	United Republic of Tanzania	Judgment on the Merits
7	002/2016	George Maili Kemboge	United Republic of Tanzania	Judgment on the Merits
8.	038/2016	Gombert Jean-Claude Roger	Republic of Côte d'Ivoire	Ruling on Admissibility
9.	040/2016	Mariam Kouma and Ousmane Diabate	Republic of Mali	Ruling on Admissibility
10.	046/2016	APDF & IHRDA	Republic of Mali	Judgment on the Merits.
11.	016/2016	Diocles William	United Republic of Tanzania	Judgment on the Merits
12.	O20/2016	Anaclet Paulo	United Republic of Tanzania	Judgment on the Merits
13.	027/2015	Minani Evarist	United Republic of Tanzania	Judgment on the Merits
14.	001/2015	Armand Guehi	The United Republic of Tanzania	Judgment on the Merits
15.	013/2017	Sebastien Gemain Ajavon	Republic of Benin	Judgment on the Merits
16.	024/2015	Werema Wangoko Werema and Waisiri Wangoko Werema	United Republic of Tanzania	Judgment on the Merits
17.	006/2016	Mgosi Mwita Makungu	United Republic of Tanzania	Judgment on the Merits
18.	003/2014	Ingabire Victoire Umuhoza	Republic of Rwanda	Judgment on Reparations

14. All the decisions taken on the above matters have been communicated to the parties, in accordance with Article 29(1) of the Protocol.

15. The Court is processing the pending matters before it in accordance with the relevant provisions of the Protocol and its Rules.

c. Public Sittings

16. From 1 January to 31 December 2018, the Court organised sixteen (16) public sittings, to hear oral arguments from parties, as well as deliver judgments and rulings.

17. Table 4 below indicates the public sittings organised during the period under consideration.

Table 4 – Public sittings organised in 2018

No.	Date of Public sitting	Purpose of public sitting	Application No.	Applicant	Respondent
1.	10 May 2018	Hear oral arguments	001/2015	Armand Guehi	The United Republic of Tanzania
2.	19-20 March 2018	Hear oral arguments	013/2015-	John Robert Pennesis	The United Republic of Tanzania
3.	11 May 2018	Delivery of Judgment	005/2015	Thobias Mang'ara Mango and Shukurani Masegenya Mango	The United Republic of Tanzania
4.	23 March 2018	Delivery of Judgment	006/2015	Nguza Vicking (Babu Seya) and Johnson Nguza (Papi Kocha)	The United Republic of Tanzania
5	11 May, 2018	Delivery of Judgment	022/2015	Rutabingwa Chrysathe	The Republic of Rwanda
6.	11 May 2018	Delivery of Judgment	010/2015	Amiri Mohamed Ramadhani	The United Republic of Tanzania
7.	21 March, 2018	Delivery of Judgment	012/2015	Anudo Ochieng Anudo	The United Republic of Tanzania
8.	21 March, 2018	Delivery of Judgment	032/2015	Kijiji Isiaga	The United Republic of Tanzania
9	11 May 2018	Delivery of Judgment	002/2016	Geoge Maili Kemboge	The United Republic of Tanzania
10.	21 March, 2018	Delivery of Ruling	038/2016	Gombert Jean-Claude Roger	The Republic of Côte d'Ivoire

11.	21 March, 2018	Delivery of Ruling	040/2016	Mariam Kouma and Ousmane Diabate	Republic of Mali
12.	11 May, 2018	Delivery of Judgment	046/2016	APDF & IHRDA	Republic of Mali
13.	8 May 2018	Hearing oral arguments	001/2017	Alfred Agbesi Woyome	Republic of Ghana
14.	9 May 2018	Hearing oral arguments	013/2017	Sebastien Gemain Ajavon	Republic of Benin
15.	28 September 2018	Delivery of Judgment	016/2016	Diocles William	United Republic of Tanzania
	28 September 2018	Delivery of Judgment	O20/2016	Anaclet Paulo	United Republic of Tanzania
	28 September 2018	Delivery of Judgment	027/2015	Minani Evarist	United Republic of Tanzania
16.	7 December 2018	Delivery of Judgment	001/2015	Armand Guehi	The United Republic of Tanzania
	7 December 2018	Delivery of Judgment	013/2017	Sebastien Gemain Ajavon	Republic of Benin
	7 December 2018	Delivery of Judgment	024/2015	Werema Wangoko Werema and Waisiri Wangoko Werema	United Republic of Tanzania
	7 December 2018	Delivery of Judgment	006/2016	Mgosi Mwita Makungu	United Republic of Tanzania
	7 December 2018	Delivery of Judgment	003/2014	Ingabire Victoire Umuhoza	Republic of Rwanda

d. *Status* of implementation of the Judgments of the Court

18. Under Article 31 of the Protocol, in submitting its Activity Report to the Assembly, the Court "…shall specify, in particular, the cases in which a State has not complied with the Court's judgment". The table below shows the extent of implementation of the Court's judgments, orders and rulings:

i. Implementation of decisions on the merits and orders for reparations

No	App. No.	Applicant	Respondent	Date of Judgment/ Order	Order of the Court	Remarks and status of implementation
1.	Consolidated Applications 009 and 011/2011	Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher Mtikila	United Republic of Tanzania	14/6/2013 (Judgment on Merits) & 13/6/2014 (Ruling on Reparations in Application 011/2011)	(i) Take constitutional, legislative and other measures within a reasonable time to remedy the violations found by the Court and to inform the Court of the measures taken. (ii) Publish the official English summary, of the judgment of 14 June 2013, developed by the Registry of the Court, which must be translated into Kiswahili at the expense of the Respondent State and published in both languages, once in the official Gazette and once in a national newspaper with widespread circulation; (iii) Publish the judgment of 14 June 2013 in its entirety, in English, on an official website of the Respondent State, and remain available for a period of one (1) year.	On 18 January 2016, Tanzania published the judgment of 14 June 2013 on an official government website. On 14 April 2016, the Court sent to the Government, a Revised Summary of the Judgment for purposes of publication in the Official Gazette and a newspaper with wide circulation. The government has not reported on the measures taken to publish the Revised Summary of the judgment. The government has also not taken the constitutional, legislative and other measures to remedy the violations found, as ordered by the Court since by the Respondent State's report dated 22 December 2017, the referendum on the proposed new constitution which provides for independent candidates is pending. The Court has not received any report indicating that this status has changed.

					(iv) Submit to the Court, within nine (9) months a report of measures taken to implement the orders.	
2.	013/2011	Norbert Zongo & Others	Burkina Faso	Judgment on Merits delivered on 28/3 2014 Ruling on Reparations delivered on 5/6 /2015 (Ruling on Reparations	In the Judgment on Merits, the Court found that the Respondent State has violated Article 7 of the Charter and consequently violated Article 1 of the Charter. In the Ruling on Reparations: (i) Orders the Respondent State, to pay twenty-five (25) million CFAF to each spouse; fifteen (15) million CFA F to each son and daughter; and ten (10) million CFAF to each father and mother concerned; (ii) orders the Respondent State in addition to pay a token sum of one (1) CFAF to the MBDHP; (iii) Orders the Respondent State to pay the Applicants the sum of forty (40) million CFAF being the fees owed to their Counsel; (iv) Orders the Respondent State to reimburse the Applicants the out-of-pocket expenses incurred by their	Regarding the Judgment on Merits and Ruling on Reparations, the Counsel for the Applicants, by email of 26 May, 2016, informed the Court that Burkina Faso has: (i) paid the Applicants the sum of 233,135,409 (two hundred and thirty three million one hundred and thirty five thousand four hundred and nine) CFA francs, representing the amounts owed to the beneficiaries of Norbert ZONGO and his three companions; (ii) On 30 March 2015, the Prosecutor General of Faso filed a motion with the Examining Magistrate seeking to reopen proceedings in the Norbert ZONGO case; (iii) on 8 April 2015, an Order to re-open investigations was issued by the Examining Magistrate of the Ouagadougou High Court and in December 2015, three soldiers belonging to the former Presidential Security Regiment (RSP), namely Christophe KOMBACERE (Soldier), Corporal Wamasba NACOULMA and Sergeant Banagoulo YARO were

					Counsel during their stay at the Seat of the Court in Arusha in March and November 2013, in the amount of three million one hundred and thirty-five thousand, four hundred and five CFAF and eighty cents (3,135,405.80); (v) Orders the Respondent State to pay all the amounts mentioned above within six months (from date of judgment), failing which interest will accrue for delayed payment, calculated at the rate applicable at the Central Bank of West African States (BCEAO), for the entire duration of the delay until full payment of the amounts owed; (vi) Orders the Respondent State to publish within six (6) months of the date of the Judgment: (a) the summary of the Judgment in French drafted by the Registry of the Court, once in the Official Gazette of Burkina Faso and once in a widely read national Daily; (b) the same summary on the website of the Respondent State and retain the	indicted by the Prosecutor for the murder of Norbert ZONGO and his companions. On 28 November 2016, the Respondent submitted copies of the Official Gazette Special *Bis* No. 07 of 9 November 2015 and the Newspaper Sidwaya of 10 September 2015 Edition Number 7997 where the summary of the Judgment was published. In July 2017, the Respondent through the Ambassador in Addis Ababa, Ethiopia, provided information that the summary of the judgment was published on the website www.sig.bf/category/actualites/page/53 from 9 September 2015. By emails dated 11 and 27 April 2018 the Respondent State transmitted the Report on measures it has taken to implement the judgment of the Court. The Report indicates that the publication of the judgment and summary thereof has been done, compensation ordered has been paid on 9 December 2015 and the investigations ordered have been opened.

					publication on the said website for one year; (vii) Orders the Respondent State to reopen investigations with a view to apprehend, prosecute and bring to justice the perpetrators of the assassination of Norbert Zongo and his three companions; and (viii) Orders the Respondent State to submit to it within six months, effective from date of judgment, a report on the status of compliance with all the Orders contained in the Judgment.	
3.	006/2012	ACHPR	Kenya	26/5/ 2016	i) Declares that the Respondent has violated Articles 1, 2, 8, 14 17(2) and (3), 21 and 22 of the Charter; ii) Declares that the Respondent has not violated Article 4 of the Charter; iii) Orders the Respondent to take all appropriate measures within a reasonable time frame to remedy all	The Respondent State has not reported on measures taken to implement the Judgment yet the time to do so elapsed on 25 November 2017 It is to be noted that information on the establishment of a Task Force on Implementation of the Judgment of the Court via Gazette Notice Number GN/10944/2017 dated 23 October 2017 as amended by Gazette Notice Number GN/2446/2018 dated 28 February 2018 is in the public domain.

					the violations established and to inform the Court of the measures taken within six (6) months from the date of this Judgment; iv) Reserves its ruling on reparations; v) Requests the Applicant to file submissions on Reparations within 60 days from the date of this judgment and thereafter, the Respondent shall file its Response thereto within 60 days of receipt of the Applicant's submissions on Reparations and Costs	The Registry wrote the Respondent on 19 September 2018 reminding the Respondent to file a report on the measures taken to comply with the Judgment. The Court has yet to receive a response from the Respondent in respect of the letter of 19 September 2018. Proceedings on reparations are on-going.

4.	002/2013	ACHPR	Libya	3/62016	i. Order the Respondent State to respect all the rights of Mr. Kadhafi as defined by the Charter by terminating the illegal criminal procedure instituted before the domestic courts. ii. Order Libya to submit to the Court on the measures taken to guarantee the rights of Mr. Kadhafi within sixty (60) days from the date of notification of this judgment.	To date Libya has not informed the Court of the measures it has taken to implement the Court orders, in spite the undertaking it made before the PRC in June 2017, to do so.
5.	004/2013	Lohé Issa Konaté	Burkina Faso	5/12/ 2014 (Judgment on Merits)	Order in Judgment on Merits i. To amend its legislation on defamation in order to make it compliant with Article 9 of the Charter, Article 19 of the International Covenant on Civil and Political Rights and Article 66 (2)(c) of the Revised ECOWAS Treaty: i. by repealing custodial sentences for acts of defamation; and	By emails dated 11 and 27 April 2018, the State transmitted a report detailing the measures taken to comply with the Judgment. The report indicated that all amendments ordered to be undertaken with regard to the decriminalisation of defamation were done through the promulgation of Law Number 057-2015/CNT of 04 September 2015, *Portant Régime Juridique de la Presse écrite au* Burkina Faso and Law Number 058-2015/CNT of 04 September 2015, *Portant Regime Juridique de la Presse en Ligne au* Burkina Faso.

					i. by adapting its legislation to ensure that other sanctions for defamation meet the test of necessity and proportionality, in accordance with its obligations under the Charter and other international instruments. ii. To report to the Court within a reasonable time, on the measures taken to implement the amendments to the above-mentioned legislation and in any case, not exceeding two years, from the date of the Judgment. In the Ruling on Reparations, the Respondent State was ordered: (i) To expunge from the Applicant's judicial records, all the criminal	

					convictions pronounced against him; (ii) To revise downwards the amount of fines, damages and costs charged against the Applicant to ensure that it is compliant with the criteria of necessity and proportionality as stated in the Court's Judgment on the merits regarding other sanctions; (iii) To pay the Applicant the sum of twenty-five million (25,000,000) CFA Francs, (equivalent to US$ 50,000), as compensation for loss of income; (iv) To refund the sum of one hundred and eight thousand	On 28 June 2016, the Counsel for the Respondent State wrote an

				Ruling on Reparations (3/6/ 2016)	(108,000) CFA Francs, (equivalent to US$ 216), incurred by the Applicant as medical and transport expenses; (v) To pay ten million (10,000,000) CFA Francs, (equivalent to US$ 20,000), to the Applicant as compensation for the moral damage suffered by him and his family; *(vi)* To pay all the amounts ordered within six months, effective from this date, failing which it will also be required to pay interest on arrears calculated on the basis of the applicable rate of the Central Bank of the Community of	email to the Registry to acknowledge receipt of the Judgment and requesting for the summary of the Judgment. On 17 August 2016, the Registry sent to him the summary of the judgement to be published. In his response the lawyer requested the Registry to assist in getting the bank account details of the Applicant's Lawyer, as the Ministry of the Finance of the Respondent State wished to make the payment ordered by the Court. The Registry forwarded the email to the Applicant's lawyer and advised Mr Anicet that he can contact the Applicant and his lawyers directly to finalise the payments. By an email of 11 April 2018, the Respondent State's Counsel transmitted an official report indicating that the Respondent State has complied with all the Court's Orders. The official summary of the Judgment was published in the official journal of 15 October 2015, all payments have been made as ordered and the Applicant's criminal records have been expunged.

					West African States (BCEAO), throughout the period of delayed payment and until the accrued amount is fully paid; (vii) To publish within six months, effective from the date of this Judgment: (a) the summary in French of this Judgment as prepared by the Registry of the Court, once in the Official Gazette of Burkina Faso and once in a widely read national Daily; and (b) publish the same summary on an official website of the Respondent State, and maintain the	

					publication for one year; (viii) To submit to the Court within six months from the date of publication of the Judgment, a report on the status of its implementation.	
6.	005/2013	Alex Thomas	Tanzania	20/11/2015	Take all necessary measures, within a reasonable time to remedy the violation found, specifically, precluding the reopening of the defence case and the retrial of the Applicant, and to inform the Court, within six (6) months from the date of the judgment, of measures taken.	The Respondent Applied for interpretation of the judgment and the Court delivered judgment on the Application on 28 September, 2017. After the Judgment on the Application for Interpretation of Judgment the Respondent State is yet to report on the measures taken to implement the Judgment on the Merits.
7.	006/2013	Wilfred Onyango Nganyi and 9 Others	Tanzania	18/3/2016	The Respondent to provide legal aid to the Applicants for the proceedings pending against them in the domestic courts. The Respondent to take all necessary measures within a reasonable time to	The Respondent filed a report dated 22 December 2016 that: 1. By the time the Court Ordered the Respondent to provide legal aid to the Applicants for the pending proceedings against them in the domestic court was delivered, the High Court had

					expedite and finalise all criminal appeals by or against the Applicants in the domestic courts. The Respondent to inform the Court of the measures taken within six months of this judgment.	already concluded the appeals filed by the Applicants, being criminal appeals No. 47 and 48 of 2014. The Judgment was delivered on 10 December 2015 where the High Court dismissed the Applicants appeals. 2. The Legal Aid Bill, 2016 is being prepared pursuant to a Cabinet decision. It is to regulate and coordinate the provisions of legal aid services to indigent persons, to recognise paralegals, to repeal the Legal Aid Criminal Proceedings Act, Chapter 21 of the Laws of Tanzania and provide for related matters. The Bill would be tabled for debate in the February 2017 Parliamentary Session. There has been no further updates from the Respondent State in this regard. Currently, the Court is finalizing proceedings on reparations.
8.	007/2013	Mohammed Abubakari	Tanzania	3/62016	The decision was that the Court Orders the Respondent State to take all appropriate measures within a reasonable time frame to remedy all violations established, excluding a reopening of the trial, and to inform the Court of the measure so taken	The Respondent Applied for interpretation of the judgment and the Court delivered judgment on the Application on 28 September, 2017. After the Judgment on Application for Interpretation of Judgment the Respondent State is yet to report on the measures taken to

					within six (6) months from the date of this Judgment.	implement the Judgment on the Merits. The proceedings on reparations are ongoing.
9.	001/2014	*Actions Pour la Protection des Droits de L'Homme*	Côte d'Ivoire	18/11/2016	The Order of the Court was as follows: (i) Rules that the Respondent has violated its obligation to establish an independent and impartial electoral body as provided under Article 17 of the African Charter on Democracy and Article 3 of the ECOWAS Democracy Protocol, and consequently, also violated its obligation to protect the right of the citizens to participate freely in the management of the public affairs of their country guaranteed by Article 13 (1) and (2)) of the African Charter on Human and Peoples' Rights (ii) Rules that the Respondent State has violated its obligation to protect the right to equal protection of the law guaranteed by Article 10 (3) of the African	The Respondent Applied for Interpretation of the judgment and the Court delivered judgment on the Application on 28 September, 2017. After the Judgment on Application for Interpretation of Judgment the Respondent State is yet to report on the measures taken to implement the Judgment on the Merits. The time in this regard elapsed on 17 November 2017.

					Charter on Democracy, Article 3 (2) of the African Charter on Human and Peoples' Rights and Article 26 of the International Covenant on Civil and Political Rights (iii) Orders the Respondent State to amend Law No. 2014-335 of 18 June 2014 on the Independent Electoral Commission to make it compliant with the aforementioned instruments to which it is a Party (iv) Orders the Respondent State to submit to it a report on the implementation of this decision within a reasonable time which, in any case, should not exceed one year from the date of publication of this Judgment	
10.	003/2014	Ingabire Victoire Umuhoza	Rwanda	24/11/2017	The Order of the Court was as follows: (i) Holds that the Respondent has not violated Article 7 (1) (b) and (d) of the	The time for the Respondent State to report on measures taken to implement the Judgment lapsed. It should be noted that during the presentation of the 2017 Activity Report of the Court before the Executive Council in January

					Charter as regards the right to presumption of innocence and the right to be tried by a neutral and impartial tribunal; (ii) Holds that the Respondent State has not violated Article 7 (2) of the Charter as regards the right to the application of the principle of equality of crime and punishment; (iii) Holds that the Respondent State has not violated Article 7 (1) (c) of the Charter relating to the searches conducted on the Counsel and on the defence witness; (iv) Holds that the Respondent State has violated Article 7 (1) (c) of the African Charter on Human and Peoples' Rights as regards the procedural irregularities which affected the rights	2018, the Respondent State reiterated its decision of not cooperating with the Court. On 15 September 2018, there were reports in the media that Mrs. Victoire Ingabire Umuhoza (the Applicant) had been released from prison following a presidential pardon. However, the Respondent State has not formally reported to the Court regarding these developments.

					of the defence listed in paragraph 97 of this judgment; (v) Holds that the Respondent State has violated Article 9 (2) of the African Charter on Human and Peoples' Rights and Article 19 of the International Covenant on Civil and Political Rights on freedom of expression and opinion; (vi) Orders the Respondent State to take all necessary measures to restore the rights of the Applicant and to submit to the Court a report on the measures taken within six (6) months; (vii) Dismisses the Applicant's prayer for the Court to order her direct release, without prejudice to the Respondent State's power to take the measure itself;	

					(viii) Defers its decision on other forms of reparation; (ix) Grants the Applicant, pursuant to Rules 63 of its Rules, a period of thirty (30) days from the date of this Judgment to file her observations on the Application for reparation and the Respondent State to file its Response within thirty (30) days from the date of receipt of the Applicant's observations.	
11	003/2015	Kennedy Owino Onyachi	Tanzania	28/9/2017	The Order of the Court was as follows: (i) Declares that the Respondent has not violated Article 3, 5, 7 (1) (a), 7 (1) (b) and 7 (2) of the Charter; (ii) Finds that the Respondent violated Article 1, 6, 7 (1) and 7 (1) (c) of the Charter;	The time for the Respondent State to report on measures taken to implement the Judgment elapsed on 3 April 2018 and no report has been filed.

					(iii) Orders the Respondent State to take all necessary measures that would help erase the consequences of the violations established, restore the pre-existing situation and re-establish the rights of the Applicants. The Respondent should inform the Court within six (6) months, from the date of this judgment of the measures taken; (iv) Grants, in accordance with Rule 63 of the Rules of Court, the Applicants to file submissions on the request for reparations within thirty (30) days hereof, and the Respondent to reply thereto within thirty (30) days of the receipt of the Applicant's submissions;	

					(v) Reserves its ruling on the prayers for other forms of reparation and on costs.	
12	011/2015	Christopher Jonas	Tanzania	28/09/2017	The order of the court was as follows: i. Holds that the Respondent has not violated Article 7 (1) of the Charter in terms of the Applicant's allegations that he was charged and convicted on the basis of a deposition, which does not corroborate the particulars on the charge sheet and that the 30 year prison sentence was not in force at the time the offence was committed; ii. Holds that the Respondent violated Article 7 (1) (c) of the Charter in terms of the Applicant's allegation that he did not have the benefit of free legal assistance, and that, consequently, the Respondent also violated Article 1 of the Charter; iii. Dismisses the Applicant's prayer for the Court to directly order his release from prison without prejudice to the Respondent	The Respondent has not reported on measures taken to comply with the Judgment. However, it should be noted that there was no specification in the operative paragraph of the Judgment on reporting on implementation and the period for doing so.

					applying such measure *proprio motu;* iv. Dismisses the Applicant's prayer for the Court to set aside his conviction and sentence without prejudice to the Respondent applying such measures *proprio motu;* v. Reserves its ruling on the Applicant's prayer on other forms of reparation measures; vi. Requests the Applicant to submit the Court his brief on other forms of Reparations within thirty days of receipt of this judgment; also request the Respondent to submit the Court its Response on Reparations within thirty days of receipt of the Applicant's Brief; vii. Rules that each party shall bear its own costs.	
13	012/2015	Anudo Ochieng Anudo	Tanzania	22/3/2018	The Order of the Court was as follows: (i) *Declares* that the Respondent State arbitrarily deprived the Applicant of his Tanzanian nationality in violation of Article 15(2) of the Universal	The time for the Respondent State to file the report on measures to implement the Judgment lapsed on 6 May 2018, and no report was submitted.

					Declaration of Human Rights; (vi) *Declares* that the Respondent State has violated the Applicant's right not to be expelled arbitrarily; (vii) *Declares* that the Respondent State has violated Articles 7 of the Charter and 14 of the ICCPR relating to the Applicant's right to be heard; (viii) *Orders* the Respondent State to amend its legislation to provide individuals with judicial remedies in the event of dispute over their citizenship; *(v) Orders* the Respondent State to take all the necessary steps to restore the Applicant's rights, by	

					allowing him to return to the national territory, ensure his protection and submit a report to the Court within forty-five (45) days. *(ix) Reserves its Ruling on the prayers for other forms of reparation and on costs.* *(vii) Allows* the Applicant to file his written submissions on other forms of reparation within thirty (30) days from the date of notification of this Judgment; and the Respondent State to file its submissions within thirty (30) days from the date of receipt of the Applicant's submissions.	
14	005/2015	Thobias Mango and Another	Tanzania	11 May 2018	The order of the Court was as follows: ii. Finds that the Applicants have not established the alleged violation of Articles 2, 3, 5 ,19 and 28 of the Charter and Articles 1 , 2, 5,6 and 7 of the Universal Declaration of Human Rights; iii. Finds that the Respondent State has not violated Article 7 of the	The Respondent has not reported on measures taken to comply with the Judgment. Proceedings on reparations are on-going.

					Charter as regards: the Applicants' identification; the changing of the I Magistrate hearing the case, the alleged failure by the national courts to apply the required standard of proof, the alleged lack of consideration of the Second Applicant's written submissions by the Trial Court and the allegation that the judgments against the Applicants were defective and erroneous; Consequently finds that the prayer that the Respondent State has violated Articles 8 and 10 of the Universal Declaration of Human Rights has become moot; iv. Finds that the incompatibility of Section 142 of the Evidence Act with the international standards on the right to a fair trial has not been established; v. Finds that the allegations relating to the dismissal of the Applicants' Application for Review and the rejection of the their Constitutional Petition have not been established; vi. Finds that the Respondent State has	

					violated Article 7(1) (c) of the Charter as regards: the failure to provide the Applicants with free legal assistance; and the failure to provide the Applicants with copies of some witness statements and the delay in providing them some witness statements; Consequently finds that the Respondent State has violated Article 1 of the Charter; vii. Does not grant the Applicants' prayer for the Court to directly order their release from prison, without prejudice to the Respondent State applying such a measure proprio motu; and viii. Allows the Applicants, in accordance with Rule 63 of its Rules, to file their written submissions on the other forms of reparation within thirty (30) days from the date of notification of this Judgment; and the Respondent State to file its Response within thirty (30) days from the date of receipt of the Applicants' written submissions.	

					ix. Decides that each Party shall bear their own costs.	
15	006/2015	Nguza Vicking and Johnson Nguza	Tanzania	23 March 2018	The order of the Court was as follows: i. Finds that the Respondent State has not violated Article 5 of the Charter; ii. Finds that the Respondent State has not violated Article 7 (1) (c) of the Charter as regards: the failure to promptly inform the Applicants of the charges against them and denying them an opportunity to call their Counsel; the manner of the Applicants' identification; the rejection of the Applicant's alibi defence; the failure to admit the reports of the Applicants' urine and blood tests as evidence and the alleged partiality of national courts; iii. Finds that the Respondent State has violated Article 7 (1) (c) of the Charter as regards: the failure to provide the Applicants copies of witness statements and to call material witnesses; the failure to facilitate the First Applicant to conduct a test	The time for the Respondent State to report on measures taken elapsed on 23 September 2018. There has been no report by the State.

					as to his impotence; consequently finds that the Respondent State has violated Article 1 of the Charter; iv. Finds that the allegations of violation of Articles 13 and 18 (1) of the Charter have not been established; v. Holds that the Applicants' prayer to be released from prison has become moot; vi. Orders the Respondent State to take all necessary measures to restore the Applicants' rights and inform the Court, within six (6) months from the date of this Judgment of the measures taken. vii. Defers its ruling on the Applicants' prayer on the other forms of reparation, as well as its ruling on Costs; and viii. Allows the Applicants, in accordance with Rule 63 of its Rules, to file their written submissions on the other forms of reparation within thirty (30) days from the date of notification of this judgment; and the Respondent State to file its Response within	

					thirty (30) days from the date of receipt of the Applicants' written submissions.	
16	010/2015	Amiri Ramadhani	Tanzania	11 May 2018	The order of the court was as follows: i. Finds that the alleged violation of Article 7 relating to irregularities in the Charge Sheet has not been established; ii. Finds that the Respondent State has not violated Article 7 (1) (b) of the Charter as regards the Applicant's allegation on procedural error in respect of the statement of PW 1; iii. Finds that the Respondent State has not violated Article 7(2) of the Charter as regards the applicability of the sentence at the time the robbery was committed; iv. Finds however, that the Respondent state has violated Article 7 (1) (c) of the Charter as regards the failure to provide the Applicant with free legal assistance during the judicial proceedings; and consequently finds that the Respondent State has also	The Respondent has not reported on measures taken to comply with the Judgment. The proceedings on reparations are ongoing.

					violated Article 1 of the Charter; v. Does not grant the Applicant's prayer for the Court to quash his conviction and sentence; vi. Does not grant the Applicant's prayer for the court to directly order his release from prison, without prejudice to the Respondent state applying such a measure proprio motu; vii. Reserves its decision on the Applicant's prayer on other forms of reparation viii. Decides that each Party bear its own Costs; ix. Allows the Applicant, in accordance with Rule 63 of its Rules, to file his written submissions on the other forms of reparation within thirty (30) days from the date of notification of this Judgment; and the Respondent State to file its Response within thirty (30) days from the date of receipt of the Applicants' written submissions.	

17	032/2015	Kijiji Isiaga	Tanzania	21 March 2018	The order of the court was as follows: ii. Holds that the Respondent State has not violated Articles 2 and 3 (1) and (2) of the Charter relating to freedom from discrimination and the right to equality and equal protection of the law, respectively. iii. Holds that the Respondent State has not violated the right to defence of the Applicant in examining the evidence in accordance with Article 7 (1) of the Charter; iv. Holds that the Respondent State has violated the Applicant's right to a fair trial by failing to provide free legal aid, contrary to Article 7(1) (c) of the Charter v. Does not grant the Applicant's prayer for the Court to order his release from prison, without prejudice to the Respondent applying such measure proprio motu. vi. Orders the Respondent State to take all necessary measures to remedy the violations, and inform the Court, within six	The time for the Respondent State to report on measures taken elapsed on 23 September 2018. The Respondent has not filed the report on measures taken to implement the Judgment

					(6) months from the date of this judgment, of the measures taken. vii. Reserves its ruling on the prayers for other forms of reparation and on costs. viii. Grants, in accordance with Rule 63 of the Rules, the Applicant to file written submissions on the request for reparations within thirty (30) days hereof, and the Respondent State to reply thereto within thirty (30) days.	
18	046/2016	APDF & IHRDA	Mali	11 May 2018	The order of the court was as follows: i. Holds that the Respondent State has violated Article 6(b) of the Maputo Protocol, and Articles 2 and 21 of the African Charter on the Rights and Welfare of the Child, on the minimum age for marriage; ii. Holds that the Respondent State has violated Article 6 (a) of the Maputo Protocol and Article 16 (1) (b) of the Convention on the Elimination of All Forms of Discrimination	The time for the Respondent State to report on measures taken elapses on 11 May 2020 The Court will await the Respondent State's afore-mentioned report

					against Women on the right to consent to marriage; iii. Holds that the Respondent State has violated Article 21 (1) and (2) of the Maputo Protocol, and Article 3 of the African Charter on the Rights and Welfare of the Child, on the right to inheritance for women and children born out of wedlock; iv. Holds that the Respondent State has violated Article 2 (2) of the Maputo Protocol, Articles 1(3) and 21 of the African Charter on the Rights and Welfare of the Child, and Article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women on the elimination of traditional and cultural practices harmful to the rights of women and children; v. Holds consequently that the Respondent State has violated Article 2 of the Maputo Protocol, Articles 3 and 4 of the African Charter on the Rights and Welfare of the Child, and Article 16 (1) of the Convention on the	

					Elimination of All Forms of Discrimination against Women on the right to non-discrimination for women and children; vi. Orders the Respondent State to amend the impugned law, harmonise its laws with the international instruments, and take appropriate measures to bring an end to the violations established; vii. Declares that the finding of the violations above-mentioned constitutes in itself a form of reparation for the Applicants; viii. Requests the Respondent State to comply with its obligations under Article 25 of the Charter with respect to information, teaching, education and sensitisation of the populations; ix. Orders the Respondent State to submit to it a report on the measures taken in respect of paragraphs x and xii within a reasonable period which, in any case, should not be more than two (2)	

					years from the date of this Judgment; x. Decides that each Party shall bear its own costs	
19	020/2016	Anaclet Paulo	Tanzania	21 September 2018	The order of the court was as follows: i. Declares that the Respondent State did not violate the Applicant's right to freedom as provided under Article 6 of the Charter; ii. Declares that the Respondent State did not violate Articles 2 and 3 (1) and (2) of the Charter on non-discrimination, equality before the law and equal protection of the law; iii. Finds that the Respondent State did not violate the Applicant's right to have his cause heard as provided under Article 7(1)(a) of the Charter; iv. Declares that the 30 years prison sentence is in accordance with the law and is not in violation of Article 7(2) of the Charter; v. Declares that the Respondent State violated	The time for the Respondent State to report on the measures taken will elapse on 27 March 2019.

					the Applicant's right to defence under Article 7(1)(c) of the Charter for failure to provide him with free legal assistance; vi. Awards the Applicant an amount of Three Hundred Thousand Tanzania Shillings (TZS 300,000) as fair compensation; vii. Orders the Respondent State to pay the Applicant the said sum and report to the Court thereon within six (6) months from the date of notification of this Judgment; and viii. Orders the Respondent State to pay the costs.	
20	027/2015	Minani Evaristi	Tanzania	21 September 2018	The order of the Court was as follows: On the merits: i. Finds that the alleged violation of the Applicant's right to be heard under Article 7(1) has not been established;	The time for the Respondent State to report on the measures taken will elapse on 24 March 2019

					ii. Finds that the alleged violation of the Applicant's right to equal protection of the law, provided for in Article 3(2) of the Charter, has not been established; iii. Declares that the Respondent State has violated the Applicant's right to defence under Article 7(1)(c) of the Charter for failure to provide him free legal assistance. iv. Dismisses the Applicant's prayer for the Court to annul his conviction and sentence and to order his release from prison; On Reparations v. Awards the Applicant an amount of Three Hundred Thousand Tanzania Shillings (TZS 300,000) as fair compensation; vi. Orders the Respondent State to pay the Applicant the said sum and report to the Court thereon within six (6)	

					months from the date of notification of this Judgment; and By a majority of Six (6) for, and Four (4) against, Justices Ben KIOKO, Ângelo V. MATUSSE, Tujilane R. CHIZUMILA and Stella I. ANUKAM dissenting: vii. Orders the Respondent State to pay the costs.	
21	016/2016	Diocles	Tanzania	21 September 2018	The order of the court was as follows: On the merits i. Finds that the alleged violation of Applicant's right to equal protection before the law provided for in Article 3 of the Charter, the content of which is similar to Article 13 (2) and (5) of the Tanzanian Constitution has not been established; ii. Finds that the Respondent State has violated Article 7(1)(c) of the Charter by failing to provide the Applicant with legal aid; iii. Finds that the Respondent State has	The time for the Respondent State to report on the measures taken elapses on 24 March 2019

					violated Article 7(1)(c) of the Charter by failing to hear the Applicant's defence witnesses; iv. Finds that the Respondent State has violated Article 7 of the Charter by convicting the Applicant on the basis of insufficient evidence and contradictory statements of the prosecution witnesses; v. Dismisses the Applicant's prayer for the Court to quash his conviction and sentence; vi. Dismisses Applicant's prayer for the court to directly order his release from prison; vii. Orders the Respondent State to reopen the case within six (6) months in conformity with the guarantees of a fair trial pursuant to the Charter and other relevant international human rights instruments and conclude the trial within a reasonable time and, in any case, not exceeding two (2) years	

					from the date of notification of this judgment. viii. Orders the Respondent State to report on the implementation of this judgment within a period of two (2) years from the date of notification of this judgment. ix. Decides that each Party shall bear its own costs.	
ii. Implementation of Orders for Provisional Measures						
	001/2015	Armand Guéhi	Tanzania	18/3/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	007/2015	Ally Rajabu	Tanzania	18/3/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 30 days from the date of receipt of the order on	The Respondent State has notified the Court that it will not implement the Order of the Court.

					measures taken to implement the order.	
	003/2016	John Lazaro	Tanzania	18/3/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	004/2016	Evodius Rutachura	Tanzania	18/3/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 30 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	015/2016	Habiyalimana Augustono and Another	Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	In the first report on implementation of the Order filed on 12 April 2017, the Respondent State disputes the authority of the Court to issue the measures without hearing the parties and the need to issue such measures as there is no risk of irreparable harm. In the second report on Implementation of the Order filed

						in 28 June 2017, the Respondent informed the Court that it will not implement the Order of the Court.
	017/2016	Deogratius Nicolaus Jeshi	Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	In the first report on implementation of the Order filed on 12 April 2017, the Respondent State disputes the authority of the Court to issue the measures without hearing the parties and the need to issue such measures as there is no risk of irreparable harm. In the second report on Implementation of the Order filed in 28 June 2017, the Respondent informed the Court that it will not implement the Order of the Court.
	018/2016	Cosma Faustine	Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	In the first report on implementation of the Order filed on 12 April 2017, the Respondent State disputes the authority of the Court to issue the measures without hearing the parties and the need to issue such measures as there is no risk of irreparable harm. In the second report on Implementation of the Order filed in 28 June 2017, the Respondent informed the Court that it will not implement the Order of the Court.

	021/2016	Joseph Mukwano	Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	024/2016	Amini Juma	Tanzania	5/6/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	048/2016	Dominick Damian	Tanzania	18/11/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	049/2016	Chrizant John	United Republic of Tazaniza	18/11/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date	The Respondent State has notified the Court that it will not implement the Order of the Court.

					of receipt of the order on measures taken to implement the order.	
	050/2016	Crospery Gabriel and Another	United Republic of Tanzania	18/11/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	052/2016	Marthine Christian Msuguri	United Republic of Tanzania	18/11/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	051/2016	Nzigiyimana Zabron	United Republic of Tanzania	18/11/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	053/2016	Oscar Josiah	United Republic 0f Tanzania	18/11/2016	(i) To refrain from executing the death penalty against the Applicant pending the	The Respondent State has notified the Court that it will not implement the Order of the Court.

					determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	
	056/2016	Gozbert Henrico	United Republic of Tanzania	18/11/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	057/2016	Mulokozi Anatory	United Republic of Tanzania	18/11/2016	(i) To refrain from executing the death penalty against the Applicant pending the determination of the Application; (ii) To report to the Court within 60 days from the date of receipt of the order on measures taken to implement the order.	The Respondent State has notified the Court that it will not implement the Order of the Court.
	001/2017	Alfred Agbesi Woyome	Ghana	24/11/2017	a) Stay the execution of attaching the Applicant's Property, until this Application is heard and determined; b) Report to the Court within fifteen (15)	On 9 January, 2018, the Respondent State filed its Report on its Implementation of the Court's Order for Provisional Measures. It stated as follows: i. The execution of the Applicant's property had already been effected before

					days from the date of receipt of this Order on the measures taken to implement this Order.	the Applicant's Application was brought before the Court. This was done through a writ of execution issued by the Supreme Court of Ghana on 29 July 2014. The valuation of the Applicant's properties had also been effected long before the Order for Provisional Measures order of the Court. i. The Supreme Court of Ghana considered the Order for Provisional Measures issued by the African Court through an application brought by the Applicant but declined to suspend its ruling on the order for the stay of execution of the Applicant's property on the basis of the finality of its orders as the highest Court in Ghana with sole and exclusive jurisdiction in matters concerning the interpretation of the Constitution of Ghana and that its orders where final. i. Although Ghana has ratified the Court's Protocol, it has not incorporated the provisions thereof into the laws of Ghana for the Protocol to become binding on the Ghanaian Courts, as required by the Ghanaian Constitution. That

						the Ghanaian Courts Act, 1993 (Act 459) sets out the process for substantial treatment, recognition and enforcement of foreign judgments by Ghanaian Superior Courts. The Act requires, in a nutshell, that the President of Ghana exercise this power through legislation. The foreign judgment must meet the conditions of being final and conclusive between the parties. The Applicant has pending processes before the Ghanaian Supreme Court that concern the reversal of two orders of the Supreme Court dated 8 June, 2017 and 24 July, 2017, respectively. The ruling on this motion was adjourned to 17 January 2018. The practice of the Ghanaian Supreme Court is that it will not continue with an execution when there are applications for reversal of its decisions pending, even though there is no order to stay the execution of a judgment by the Supreme Court. The Applicant has taken undue advantage of the care

						and caution of the Ghanaian Supreme Court by submitting various applications before the Supreme Court to avoid the execution of Supreme Court judgments. The properties for which the Applicant has obtained an Order for Provisional Measures from the African Court are claimed by other persons. Until the interests of various companies and individuals are determined by the Supreme Court, the sale of the properties will not be carried out. i. The Applicant obtained an Order for Provisional Measures from the African Court seeking to stay a sale of his properties and, at the same time, other entities in Ghana also claim to own the same properties, this confirms that the Applicant is resorting to *'legal subterfuge and manipulations'* so as to avoid a recovery of monies unconstitutionally and illegally paid to him. That the processes initiated by the Applicant at the Supreme Court in 2017 to avoid the execution of the Supreme

						Court's judgment of 2014 and the Application to the African Court is an abuse of process. i. The Respondent concluded that it would honour the Court's Order and requested the Court for an expedited hearing on the merits of the Application to avoid further injury to the Republic of Ghana and in light of the objections relating to jurisdiction and inadmissibility of the Applicant's claims.
	012/2017	Leon Mugesera	Rwanda	28/09/2017	(i) to allow the Applicant access to lawyers; (ii) to allow the Applicant to be visited by his family members and to communicate with them, without any impediment; (iii) to allow the Applicant access to all medical care required, and to refrain from any action that may affect his physical and mental integrity as well as his health; and (iv) to report to the Court within fifteen (15) days from the date of receipt of this Order, on measures taken to implement this Order.	The Respondent State has not informed the Court of measures it has taken to implement the Order. It should be noted that during the presentation of the 2017 Activity Report of the Court before the Executive Council in January 2018, the Respondent State reiterated its decision of not cooperating with the Court.

	016/2017	Dexter	Ghana	28/09/ 2017	i. Refrain from executing the death penalty against the Applicant until the Application is heard and determined. ii. Report to the Court within sixty (60) days from the date of receipt of the Order, on the measures taken to implement this Order.	On 28 May 2018, the Respondent filed a Report on the Implementation of the Order for Provisional Measures and this was transmitted to the Applicant for information by a notice dated 31 May 2018.

19. Regarding compliance with judgments and orders made against Tanzania, it is important to note that on 17 August 2018, the Solicitor General and Deputy Solicitor General for Tanzania paid a courtesy visit to the Court. During the visit, it was agreed that the Court would provide the office of the Solicitor General with more information in respect to cases filed against Tanzania. This further information was provided by the Court under cover of its letter dated 20 August 2016 and it included, among other things, details pertaining to the total number of cases filed against Tanzania.

20. Although Tanzania has, in the past, filed reports on compliance with the Court's judgments and orders, following the meeting of 17 August 2018, a general undertaking was made, by the Solicitor General, that Tanzania would file updated reports on compliance taking into account the clarifications provided by the Court. The new report, however, has yet to be filed.

(ii). Non-judicial activities

21. The main non-judicial activities undertaken by the Court during the period under review are described below:

a. Participation of the Court in the AU Summit

22. The Court took part in the 35th and 36th Ordinary Sessions of the Permanent Representatives Committee (PRC), the 32nd and 33rd Ordinary Sessions of the Executive Council, as well as the 30th and 31st Assembly of Heads of State and Government of the African Union, held in January and June 2018 in Addis Ababa, Ethiopia and Nouakchott, Mauritania. The Court also took part in the 11th Extra-ordinary Summit of the African Union from 14 to 18 November 2018 in Addis Ababa, Ethiopia.

b. Implementation of Executive Council Decisions

23. In its Decision EX.CL/Dec.994(XXXII), the Executive Council entrusted certain tasks to the Court and requested the latter to report to the June/July 2018 Session of Council. The Executive Council specifically requested the Court to:

> *i. finalize the study on the establishment of a Trust Fund for the Court for consideration by AU Policy Organs in June/July 2018 Summit (paragraph 2 of Decision).*

24. During the 35th Ordinary Session of the PRC, the draft study was submitted for consideration, however, the PRC deferred consideration of the same and requested the Court to prepare financial implications on the establishment of the Fund and present the study during its next meeting.

25. In view of the on-going African Union reform exercise, especially on sustainable financing , and theExecutive Council decision EX.CL/994(XXXII) adopted during its 32nd Ordinary Session held in January 2018to fund the Court 100% beginning from 2019, the Court is proposing that the establishment of this Fund be withdrawn.

> *iii. Ii. Undertake an in-depth study on mechanisms and framework for the implementation of Court judgments*

26. In its Decision EX.CL/Dec.1013(XXXIII) adopted during its 33rd Ordinary Session the Executive Council requested the Court, "…in collaboration with the PRC and the Commission, to undertake an in-depth study on mechanisms and framework of implementation, to enable the Executive Council effectively monitor execution of the judgments of the Court in accordance with Articles 29 and 31 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on human and peoples' Rights".

27. The Court has accordingly prepared the said study with financial implications which has been transmitted to the PRC, through the office of the Secretary General of the African Union Commission, and the Court will present the same during the 37th Ordinary Session of the PRC in Addis Ababa, Ethiopia.

c. Execution of the 2018 budget

28. The budget appropriated to the Court for 2018 stands at US$ 12,245,321.13, comprising $ 11,006,904.13 [89.89%] from Members States and $ 1,238,417 [10.11%] from International Partners. The total budget execution as at end of 31 December 2018 is $11,172,551.30, which represents a budget execution rate of 91.24%%. As at 31 December 2018, the Court had received subvention for the year 2018 amounting to, US$ 10,525,204.01 from Members States and $ 793,226.99 from Partners.

V. PROMOTIONAL ACTIVITIES

29. The Court undertook a number of promotional activities, aimed at raising awareness among stakeholders, about its existence and activities. The activities undertaken included, inter alia, sensitization visits and seminars, as well as participation in meetings organised by other stakeholders.

a. Sensitization visits

i. Sensitization visit to Sahrawi Arab Democratic Republic (SADR)

30. The Court undertook a sensitization visit to the Sahrawi Arab Democratic Republic (SADR) from 5 to 7 February, 2018, to encourage the country, which has already ratified the Protocol, to make the Declaration.

31. The delegation of the Court, led by its President, met and held fruitful discussions with high-ranking government officials from the SADR, including the President of the Republic, the Minister of Foreign Affairs, Speaker of Parliament and other high-ranking officials.

32. The authorities undertook to take necessary measures to deposit the declaration within the shortest time possible.

ii. Sensitization visit to Sierra Leone and Liberia

33. The Court undertook a back-to-back sensitization mission TO Sierra Leone and Liberia from 1 -3 August, 2018 and 6 - 8 August 2018, respectively. The Court delegation was composed of two Judges, including the President of the Court and Registry staff.

34. The mission in both countries included a training for the media on the Court and reporting, courtesy calls to government and other officials and a Sensitization Seminar for Stakeholders.

35. In Sierra Leone courtesy calls were paid on the President, the Minister of Foreign Affairs and International Cooperation, Minister of Justice and Attorney General, Minister of Internal Affairs and Minister of Social Welfare, Gender and Children's Affairs, as well as the Parliament, the Human Rights Commission of Sierra Leone and the Sierra Leone Bar Association.

36. In Liberia, **courtesy calls** were paid on the President, the Minister of Foreign Affairs, Minister of Justice, Minister of Gender, Social Protection, Minister of Internal Affairs, as well as the Independent National Commission on Human Rights, the National Legislature, the Supreme Court and the National Bar Association & Dean of the Law School of the University of Monrovia.

37. The authorities of both countries undertook to take necessary measures to ratify the Protocol and deposit the declaration within the shortest time possible.

b. Other promotional activities

38. In addition to the above activities, the Court also participated in a number of events organized by other stakeholders, including meetings organised by other African Union organs and institutions.

VI. NETWORKING

i. Relations with the African Commission on Human and Peoples' Rights

39. The Court and the African Commission continue to strengthen their relationship and consolidate the complementarity envisaged in the Protocol. To this end, the two organs held their 7th Annual Meeting in Banjul, The Gambia from 9 – 11 August 2018, to enhance the complementarity envisaged in the Protocol, and on 12 August 2018 at the same venue, the first Tripartite Meeting between the AU Human Rights Organs, that is, the African Court, African Commission and African Committee of Experts on the Rights and Welfare of the Child took place to consider ways and means to enhance the implementation of their decisions.

ii. Cooperation with external partners.

40. The Court continues to work with relevant stakeholders, including external partners, in the discharge of its mandate. The two principal partners of the Court, namely, the European Commission (EC) and the German International Cooperation (GIZ), continue to support the capacity development as well as outreach programmes of the Court, including sensitization missions, seminars and conferences. Other partners of the Court include the World Bank and the UN Office for the High Commissioner for Human Rights.

41. The Court has maintained a close working relationship with other stakeholders working on the protection of human rights on the continent, including Bar Associations and Law Societies, National Human Rights Institutions, the Coalition for an Effective African Court and the Pan African Lawyers' Union.

VII. HOST AGREEMENT

42. The Host Government and the Court held a meeting on 12 April 2018 at the Seat of the Court in Arusha, Tanzania, and discussed among other things, how to finalise the draft architectural designs and begin construction of the permanent premises of the Court. Focal points were identified from both sides to follow up on the effective implementation of the Host Agreement. The Host Government, the African Union Commission and the Court are still to discuss how to operationalise the Task Force established by the Executive Council in Decision EX.CL/Dec.994(XXXII).

VIII. ASSESSMENT AND RECOMMENDATIONS

i) Assessment

a) Positive Developments

43. The workload of the African Court has continued to increase. In 2018 the Court received a total of 29 new Applications, held 4 Ordinary Sessions, 1 extraordinary session and organized 16 public sittings, as well as delivered 18 judgments and rulings. With these positive indicators, there is good reason to remain optimistic that the number of cases filed before the Court will continue to increase and the Court will effectively discharge its role as the judicial arm of the Union. This increase is a demonstration of the fact that more and more States, NGOs, individuals and the civil society in general are becoming aware of the existence and work of the Court.

44. To sustain this momentum and build the Court as a viable pillar in Africa's quest for socio-economic and political development, Member States and all other stakeholders must play their respective roles, including in particular, ensuring universal ratification of the Protocol and making of the Article 34(6) declaration, facilitating individual and NGOs direct access to the Court, providing the Court with the necessary human and financial resources, and complying with orders, decisions and judgments of the Court.

b) *Challenges*

45. The above positive developments notwithstanding, the Court continues to face a number of challenges, which may compromise the successes recorded thus far and threaten its effectiveness. These challenges include, but are not limited to, the level of ratification of the Protocol, the slow rate of deposit of the declaration allowing individuals and NGOs direct access to the Court, lack of awareness of the Court, non-compliance with Court decisions and inadequate resources.

46. Almost two decades after the adoption of the Protocol, only thirty (30) of the fifty-five (55) Members States of the African Union have ratified it, and of these 30, only eight (8) have deposited the declaration required under Article 34(6) of the Protocol.

47. The fact that only 30 Member States are parties and only 8 have deposited the declaration means that the Court does not have jurisdiction to hear cases from individuals and NGOs from the majority of Member States of the Union, because the States have either not ratified the Protocol or deposited the declaration. Effectively therefore, the Court does not have the capacity to receive cases for alleged human rights violations from a large number of citizens of the Union, and this deprives the Court of the ability to ensure continent-wide protection of human rights and contribute meaningfully to the development of the continent.

48. Another major challenge the Court faces is the non-compliance with its judgments and orders. To date, the Court has rendered 28 judgments on the merits that established

violation of the provisions of the African Charter on Human and Peoples' Rights or other international human rights instruments, and in conformity with Article 27 of the Protocol, made orders on how these countries should remedy the violations.

49. Apart from Burkina Faso which has fully complied with the judgments of the Court, the other countries against which the Court has found a violation have either partially complied (Tanzania) or not complied at all (Côte d'Ivoire, Kenya, Libya, Mali and Rwanda). See table under paragraph 18 above on the status of implementation of orders and judgments of the Court.

50. Under Article 31 of the Protocol "[t]he Court shall submit to each regular session of the Assembly, a report on its work. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment". Article 29(2) of the same Protocol provides that "the [Executive Council] shall be notified of the judgment and shall monitor its execution on behalf of the Assembly".

51. During its 35th Ordinary Session held in January 2018, the PRC recommended to the Executive Council, and the latter endorsed the recommendation that Council's decisions on the Activity Report of the Court should no longer mention names of countries that have not complied with the judgments of the Court. In spite the intervention of the President of the Court during the 32nd Executive Council Meeting, explaining that such a decision would be contrary to the spirit and letter of Article 31 of the Protocol and would undermine the effectiveness of the Court in particular, and the African human rights protection system as a whole, the Executive Council proceeded not to mention the names of Libya, Rwanda and Tanzania which had not complied with the Judgments of the Court as at January 2018.

52. The Court is of the view that the Executive Council decision EX.CL/Dec.994(XXXII) adopted at its 32nd Ordinary Session not mentioning names of countries that do not comply with the Court's judgments does not give Council the opportunity to effectively monitor execution of those judgments on behalf of the Assembly as mandated under Article 29 of the Protocol. Furthermore, since Council communicates to the Assembly through decisions, the Assembly has no way of knowing that Council has discharged its mandate.

53. The Court meanwhile is encouraged by the decision of the Executive Council **EX.CL/Dec.1013(XXXIII) adopted during the latter's 33rd Ordinary Session held in** Nouakchott**, Mauritania, requesting "**the Court, in collaboration with the PRC and the Commission, to undertake an in-depth study on mechanisms and framework of implementation, to enable the Executive Council effectively monitor execution of the judgments of the Court in accordance with Articles 29 and 31 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on human and peoples' Rights"

54. The Court has undertaken the said study which will be considered by the PRC during the latter's 37th Ordinary Session for transmission to the Executive Council during the latter's 34th Ordinary Session in February 2019.

55. It is hoped that the study will be considered and a concrete and effective monitoring and compliance system adopted to ensure speedy and effective implementation of Court judgments.

56. From the administrative point of view, inadequate human and financial resources have also affected the smooth functioning of the Court. For the Court to be able to discharge its mandate effectively, and assert its independence, it must be provided with adequate funding. That is why the Court welcomes Executive Council decision EX.CL/Dec.994(XXXII) to fund the Court 100% starting in 2019.

57. A further difficulty facing the Court at the moment is the shortage of office space. The draft architectural designs for the construction of the permanent premises of the Court was submitted to the AUC by the Government of the Host State in 2016, however, there has been no concrete developments to finalise the designs and start the construction.

58. On 12 April 2018 a delegation of the Host State met with the Registry of the Court and discuss, among other things, measures to be put in place to expedite the finalization of the designs and commence construction of the premises. Further meetings are envisaged, which will discuss how to operationalize the Task Force set up by the Executive Council in decision EX.CL/Dec.994(XXXII).

ii) Recommendations

59. Based on the above, the Court submits the following recommendations for consideration and adoption by the Assembly:

i) The Member States of the Union that have not yet acceded to the Protocol and/or deposited the Declaration under Article 34(6) thereof are urged to do so;

ii) The Assembly should adopt the in-depth study on mechanisms and framework of implementation, to enable the Executive Council effectively monitor execution of the judgments of the Court in accordance with Articles 29 and 31 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on human and peoples' Rights, in accordance with Executive Council Decision **EX.CL/Dec.1013(XXXIII)**

iii) The Chairperson of the AUC should take all necessary measures to establish the Legal Aid Fund in accordance with the Statute for Legal Aid Fund for African Union Human Rights Organs, adopted by the Assembly in January 2016;

iv) The Assembly should invite and encourage all Member States and other relevant human rights stakeholders on the continent to make generous voluntary contributions to the Fund to ensure its sustainability and success;

v) Member States of the Union should cooperate with the Court and comply with its judgments.

ANNEX I

LIST OF JUDGES OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTSAS AT DECEMBER 31 2018

No.	Name	Term		Country
		Duration	Expiry	
1	Justice Sylvain Oré	6	2020	Côte d'Ivoire
2	Justice Ben Kioko	6	2018	Kenya
3	Justice Rafâa Ben Achour	6	2020	Tunisia
4	Justice Angelo Vasco Matusse	6	2020	Mozambique
5	Lady Justice Ntyam Ondo Mengue	6	2022	Cameroon
6	Lady Justice Marie-Thérèse Mukamulisa	6	2022	Rwanda
7	Lady Justice Tujilane Rose Chizumila	6	2023	Malawi
8	Lady Justice Chafika Bensaoula	6	2023	Algeria
9	Justice Blaise Tchikaya	6	2024	Congo
10	Lady Justice Stella I Anukam	6	2024	Nigeria
11	Lady Justice Imani Aboud	6	2024	Tanzania

DRAFT DECISION ON THE 2018 ACTIVITY REPORT OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The Executive Council;

1. **TAKES NOTE** of the Activity Report of the African Court on Human and Peoples' Rights (the Court) for the period 1 January 31 December 2018, and the recommendations therein;

2. **WELCOMES** the study on the setting up of a Monitoring Framework on the Implementation of the Judgments of the Court prepared by the African Court, in consultation with the PRC and the Commission;

3. **TAKES NOTES** of the said study and **CALLS ON** the PRC, the AUC, in collaboration with the Court and other relevant Organs of the Union, to indicate the feasibility of the setting up of such a mechanism, specifying the legal, structural and financial implications thereof and submit it to the January 2020 Session of the Executive Council;

4. **NOTES** the Court's request to suspend the establishment of a Trust Fund for the Court pending the outcome of the AU Institutional Reform Process;

5. **URGES** the Chairperson of the AUC to, in conformity with previous Executive Council Decisions, take all necessary measures to operationalize the Legal Aid Fund in 2019, and to this end, **INVITES** and **ENCOURAGES** all Member States of the Union as well as other relevant human rights stakeholders on the continent, to make generous voluntary contributions to the Fund to ensure its sustainability and success.

6. **Notes** that, two decades after its adoption, only thirty (30) Member States of the African Union have ratified the Protocol and only eight (8) of the 30 State Parties, have deposited the declaration required under Article 34 (6) thereof, allowing individuals and NGOs to bring cases to the Court;

7. **CONGRATULATES** the thirty (30) Member States that have ratified the Protocol, namely; Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Côte d'Ivoire, The Comoros, Congo, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, South Africa, Sahrawi Arab Democratic Republic, Senegal, Tanzania, Togo, Tunisia and Uganda.

8. **FURTHER CONGRATULATES** the eight (8) State Parties that have deposited the declaration under Article 34(6) of the Protocol, namely: Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tunisia and the United Republic of Tanzania.

9. **INVITES** those Member States that have not already done so, to accede to the Protocol and deposit the declaration required under Article 34 (6) of the Protocol.

10. **EXPRESSES** its appreciation to the Government of the United Republic of Tanzania for the facilities it has placed at the disposal of the Court, and for the architectural designs for the construction of the permanent premises of the Court submitted to the AUC, and **URGES** the Government of the United Republic of Tanzania, the PRC and the African Union Commission, in collaboration with the Court, working under the framework of the Task Force established by decision EX.CL/Dec.994(XXXII), to take steps to ensure the expeditious construction of the premises, bearing in mind the structures of the African Court of Justice and Human and Peoples' Rights.

11. **REQUESTS** the Court, in collaboration with the PRC and the AUC, to report at the next Ordinary Session of the Executive Council in January 2020, on the implementation of this Decision.

EXECUTIVE COUNCIL
Thirty-Fourth Ordinary Session
07 - 08 February 2019
Addis Ababa, Ethiopia

EX.CL/1126(XXXIV)Annex 1
Original : English

DRAFT FRAMEWORK FOR REPORTING & MONITORING EXECUTION OF JUDGMENTS AND OTHER DECISIONS OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

DRAFT FRAMEWORK FOR REPORTING & MONITORING EXECUTION OF JUDGMENTS AND OTHER DECISIONS OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

September 2018

A. Background on the establishment of the monitoring mechanism

1. Pursuant to Decisions Ex.Cl/Dec.806 (XXIV) of January 2016 and Ex.Cl/1012 (XXXIII) of June 2018, the Executive Council of the African Union requested *the Court to propose, for consideration by the PRC, a concrete reporting mechanism that will enable it to bring to the attention of relevant policy organs, situations of non-compliance and/or any other issues within its mandate, at any time, when the interest of justice so requires.*

2. In response to the request, the Court contracted a consultant to develop a study and a draft framework, which was discussed during a workshop held in November 2017 in Arusha, Tanzania. In March 2018, the consultant then submitted amended documents incorporating inputs from the workshop. The said documents were submitted to the Court for consideration before being tabled before the policy organs of the African Union (AU) for adoption tentatively during the January 2019 Summit of the AU.

3. Having perused the consultant's submissions, and noted that they required further adjustment to meet the specific needs of the Court, the Registry prepared the following draft step-by-step framework for consideration by the Court. The said framework presented in the table below adopts a hybrid approach to monitoring, which takes from both the so-called judicial and political models used in the two other regional human rights systems and also reflects best both the norms (Articles 29 and 31 of the Court Protocol) and current practice of the Court.

B. Proposed prerequisite for operation of the framework

4. This proposal is based on the followings prerequisites:

i. The Court will set up a formal Implementation Monitoring and Reporting Unit within its Registry. An outline for the Terms of Reference of the Unit is provided as an annex to this document. The Office of the Legal Counsel and that of the Secretary General of the African Union Commission will appoint focal points who will serve as liaison officers for reporting purposes.

ii. The Monitoring and Reporting Unit of the Court will draw an Implementation Reporting Template for use by Respondent States in submitting their reports to the Court.

iii. Respondent States will appoint focal points for monitoring and reporting purposes (unless advised otherwise, the Court will consider the representatives appointed at the start of the case as the focal points for a particular State).

iv. The Court decisions, especially its judgments on reparations, will be sufficiently detailed and time bound where possible, so as to facilitate the task of making an accurate determination on compliance.

v. The Court will introduce the practice of organising public hearings where necessary to monitor implementation and compliance with its decisions. The hearing may be held under the judicial oversight of a panel of judges who will then report to the plenary for endorsement of the outcome thereof.

vi. The Court will amend its Rules and other relevant documents for purposes of formalising the processes and practices ensuing from the adoption of this framework.

DRAFT MONITORING & REPORTING FRAMEWORK FOR JUDGMENTS AND OTHER DECISIONS OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

STEP I

DELIVERY AND DISSEMINATION OF THE DECISION

1. The Court issues a decision, whichtriggers the reporting and monitoring processes.

2. The Registrar of the Court notifies the parties and transmits the decision to the Executive Council and Members States through the Office of the Legal Counsel and the Secretary General of the AU Commission in terms of relevant provisions of the Protocol and the Court's Rules of Procedure.

3. The Registrar of the Court identifies and informs any relevant organs and institutions of the African Union of the decision and advises the Respondent State of the existing of the said entities, and the expertise and other resources that it may rely on in facilitating and supporting implementation of the decision.

4. Under the supervision of the Registrar, the Monitoring Unit of the Court logs the judgment on the post-judgment case management database to commence monitoring compliance reporting deadlines.

5. The Monitoring Unit of the Court classifies each case according to the gravity of the violations and/or urgency required for its effective and timely implementation. Judgments in relation to urgent or complex cases such as those involving massive violations, orders for provisional measures, will be classified under "enhanced monitoring", while other less complex and ordinary cases will fall under the category of "standard monitoring". These categories will determined the follow-up measures to be undertaken by the Monitoring.

STEP II

STATE REPORTING ON MEASURES TAKEN

6. The State begins to submit execution reports to the Monitoring Unit with a focus on progress made in line with the judgment. Reports will be made using the Implementation Reporting Template of the Court.

7. The State may request an extension for submitting a report, which will be considered and decided on as per the Court's Rules of Procedure and practice.

8. The State may also request the Court or the policy organs of the AU for assistance and technical support under the proposed fund to be established to that effect.

9. The Registrar of the Court will dispatch reminders to the Respondent State upon the expiry of submission deadlines, and will advise the Court on *suo motu* extensions and submit any related requests to the Court for consideration.

10. The Registrar of the Court will ensure that any submissions made regarding implementation is served on the other parties for response as per the established practices of the Court.

STEP III

ASSESSING COMPLIANCE FOR REPORTING PURPOSES

11. Where necessary, the Court may seek information from reliable sources and institutions on implementation of the decision. These may include relevant reports by agencies of the United Nations, as well as institutions and organs of the African Union, NHRIs and NGOs. Under the supervision of the Registry, the Monitoring Unit maintain a depository of such information and share the same with the parties for observations.

12. After the expiry of the reporting period, the Court makes a determination on the level of implementation by the Respondent State and adopts a report on compliance with respect to each case. This determination will consider not only the report submitted by the Respondent State but also any submissions made by

any party to the case and information submitted by stakeholders as provided above.

13. In instances where the State has not implemented the decision in part or in full, the Court may resort to the following monitoring options:

(a) Convene a compliance hearing[1] *upon the request* of any party;

(b) Decide *suo motu* to hold a hearing on compliance as necessary. This option will apply particularly where:

i. there is a dispute between the parties on whether or to what extent the decision has been implemented;

ii. the Respondent State has not submitted a report to the Court on execution of the decision within the time set out;

iii. the Respondent State has not replied to the Court's queries on the status of compliance; or,

iv. information has reached the Court that the Respondent State has not complied with the judgment or is otherwise violating the order.

(c) where it deems it necessary, or upon the recommendation of the panel of judges monitoring implementation, undertake an on-site visit (fact-finding mission) to directly appreciate progress on implementation. The procedures for undertaking such missions should be guided by the Rules of Procedure and any other relevant instrument the Court will develop in this regard.

14. Subsequent to the compliance hearing, the Court may issue a judgment or any other decision as it may decide, or endorse a memorandum of understanding between the parties under its auspices. The outcome of a compliance hearing whether a

[1] Modalities governing the compliance hearing before the Court will be laid out in the Rules of Procedure.

judgmentor an MoU may include a timetable for implementation as discussed between the parties and endorsed by the Court.

15. In cases where the Court issues a compliance judgment, the latter should make findings on whether the State has complied in full, partly, or not at all. The judgment will be specific and refer to the original judgment as to which aspects of the order have or have not been implemented; and it will underscore the outstanding elements necessary to attain full compliance by the State. In making its determination, the Court will rely on information obtained through all the processes mentioned earlier.

16. While preparing its report to the policy organs of the AU, the Court will include the main findings and orders contained in any of the documents adopted subsequent to the hearing on implementation.

17. At any time, including before the time of submitting regular reports to the policy organs of the AU, the Court may decide to immediately submit a progress report on compliance whether on one or several cases. The said instances will automatically include cases that require urgent action, such as with the execution of provisional measures or instances of massive violations.

18. Where there has not been a compliance hearing in a case, the Court will instruct the Registry to notify the parties on the status of compliance for purposes of reporting. In cases where 'non-compliance' is found, such notice will include a statement that status will be considered as 'non-compliant' in the event that none of the parties responds. The lack of submission of a report within the stated time will be considered as non-compliance and the matter will remain in the report of the Court until the Respondent State has formally submitted its implementation report as provided under the Protocol, and Court Rules.

STEP IV

SUBMISSION OF COMPLIANCE REPORT TO THE EXECUTIVE COUNCIL THROUGH THE PERMANENT REPRESENTATIVE COMMITTEE

19. The Court submits its compliance report to the Executive Council through the Permanent Representative Committee.

20. The compliance report shall contain: the actual report to be presented by the President of the Court (as per Article 31, Court Protocol); a copy of compliance status correspondences in instances where there was no hearing on implementation; a copy of the decision in instances where the Court held a hearing on implementation (judgment or MoU); and a table recording areas of compliance or non-compliance.

21. The AUC receives the Court's report highlighting the agenda items on non-compliance and makes internal arrangements for submission to the Executive Council through the PRC of the Court's report together with relevant documents.

22. For the above stated purpose, the AUC maintains a register of the compliance reports of the Court, the judicial decisions of the Court and the dates thereof, the States against which the said decisions were made, the deadlines set by the Court for implementation, the recommendations and decisions of the policy organs regarding non-compliance and action taken by the Respondent State.

STEP V

THE PERMANENT REPRESENTATIVE COMMITTEE CONSIDERS THE REPORT AND MAKES PROPOSALS TO THE EXECUTIVE COUNCIL

23. The PRC receives the compliance judgment (and related documents) on behalf of the Executive Council and places it on its agenda in the upcoming meeting. In instances of emergency reports, the Chairperson of the AUC and the focal point of the PRC will make the necessary consultations to seek the views of the PRC on the matter before the next meeting of the PRC.

24. The PRC examines the report on behalf of the Executive Council focusing on the issue of execution of the judgment in particular on the Court's assessment on compliance of the Respondent State.

25. The PRC submit to the to the Executive Council a report on its consideration of the Court's report and recommend the adoption of a decision that non-complying States must execute decisions where the Court has made a finding to that effect after the concerned parties were duly informed. The PRC highlights the outstanding measures that are to be adopted in conformity with the decisions ensuing from the Court's monitoring process.

26. The PRC undertakes an assessment of the engagement with and support received by the Respondent State from all relevant stakeholders, namely organs and other entities of the AU, as would have been advised by the Court, the AUC and PRC in implementing the concerned decision.

27. In instances where a State has not implemented the decision after the Executive Council has made a determination on the matter and requested the PRC to follow-up on the same, the PRC may recommend to the Executive Council that the following incentives be deployed:

(a) Request any AU organ and other institutions which perform functions that are relevant to the issues at stake to provide the Respondent State with the necessary support to the effect of implementing the concerned decision.

(b) Give the Respondent State a period of three (3) months to engage with any such organ to that effect.

(c) Request the Respondent State to report to PRC on the measures discussed and endorsed by the PRC for implementation within a time period to be determined. The said time cannot exceed six (6) months. In special circumstances, the PRC may decide to extend such period by three (3) months.

(d) Proposes the establishment of a fund for implementation of decisions to provide the States with the required technical and other assistance as deemed necessary.

28. After completion of the (6) month period or additional (3) month period, the PRC will request the Respondent State to report on implementation.

29. The PRC will consider the State's report on implementation and submit its recommendations to the Executive Council while preparing the agenda and meetings of the Executive Council.

30. Monitoring compliance with decisions of the Court remains a standing item on the agenda in every meeting of the PRC.

STEP VI

THE EXECUTIVE COUNCIL CONSIDERS THE REPORT OF THE COURT TOGETHER WITH THE PRC REPORT AND RECOMMENDATIONS

31. The Executive Council receives the PRC's report together with relevant documents, including the report submitted by the Court and the PRC's draft decision on that said report.

32. The Executive Council considers the said documents on behalf of the Assembly of Heads of State and Government in light of the outcome of the monitoring process conducted before the Court.

33. When the Executive Council deems it necessary, it may refer the matter back to the PRC for follow-up until a time to be decided, which will not exceed the timeline provided for follow-up under the PRC.

34. The Executive Council may decide to recognise States which have complied with decisions of the Court and call on others to undertake the necessary measures for implementation as set out by the Court or agreed during the engagement with the PRC or the Executive Council.

35. The Executive Council specifically adopts decisions on compliance in each case submitted to it based on the report of the Court, and the PRC draft recommendations, including deploying compliance incentives as determined above.

36. In addition, the Executive Council may propose to the Assembly to offer its good offices to arrive at an agreed settlement between the parties, appoint the AUC Chairperson or a Special Envoy, or undertake diplomatic consultations with the Respondent State.

37. The Office of the Legal Counsel and the Secretary General ofthe AUC will report directly to the Implementation Monitoring and Reporting Unit of the Court any progress made on implementing decisions at this stage or thereafter.

38. The Executive Council decisions will be published as is the case with all decisions of the Executive Council in detail basically incorporating the information on extent of compliance as contained in the Court's report.

39. The Executive Council submits draft decisions and resolutions to the AU Assembly as it prepares the latter's meetings.

STEP VII

ASSEMBLY ADOPTS APPROPRIATE ACTION TO ENFORCE THE JUDGMENT

40. The Assembly receives draft decisions and recommendations from the Executive Council.

41. In instances where the concerned decision has still not been implemented following the intervention and decisions of the PRC and Executive Council, the Assembly may decide the deploy the following measures:

i. Adopt the recommendations and draft decision submitted by the Executive Council.

ii. Offer its good offices to engage with the parties and especially the Respondent State in obtaining implementation or an agreed settlement that satisfies both parties.

iii. Request the Executive Council to remain seized of the matter and discuss at its next meeting any alternative measures to be deployed prior to a final decision of the Assembly on the matter.

iv. Request the AUC Chairperson to engage with the concerned States after three months of the summit during which the matter was considered to ensure that the decision is implemented.

v. In deserving cases, take appropriate action especially invoking article 23 of the Constitutive Act as may be strengthened through the AU Reform processes.

STEP VIII

THE COURT CLOSES AND ARCHIVES FILES IN CASES OF FULL EXECUTION

42. When it determines that the Respondent has complied in full or in part with its decision, the Court publishes its report accordingly.

43. The Court also indicates when it is no longer necessary to report on the implementation of the decisions already implemented.

44. Fully executed decisions only continue to be mentioned in further reports for purposes of statistics.

45. The Registry closes the file on fully executed decisions or recommendations.

FINAL PROVISIONS

46. At any stage of the monitoring process laid out in this framework, the Applicant, the Respondent State directly or through the policy organs of the AU may request the Court to supervise an amicable settlement process, conduct an on-site monitoring visit, hold a hearing or make a determination on implementation of the concerned decision.

C. Other issues for consideration

i. Upon serving it with a copy of the decision, the Court will inform the Respondent State of that the latter could consider the practice of developing an action plan to facilitate implementation and reporting. Over the years, the ECHR and the IACtHR have progressively adopted the practice of recommending to State parties the adoption of 'action plans' to facilitate the effective implementation of judgments in a timely manner. In these regional systems, the elaboration of an 'action plan' for the implementation of a judgment has shown to be an effective tool towards implementation.

ii. At the time of notification, the Court will inform the parties that, they may enter into an amicable settlement if they wish so, in which case the Court may facilitate such process. Amicable settlement is provided for under Article 9 of the Court Protocol and allows the Court "to reach an amicable settlement in a case pending before it". On the basis of this provision, the Registry proposes that the measure of amicable settlement be extended to the parties even post-judgment where, after being informed, the parties voluntarily approach the Court to agree on the modalities of implementation of the judgment.

D. Outline of terms of reference for the African court Implementation Monitoring and Reporting Unit

i. In line with international best practice, the Court plans to establish an Implementation Monitoring and Reporting Unit within the Registry. The Unit will be committed exclusively to monitoring and reporting on implementation with decisions of the Court.

ii. The Unit is to be headed by staff at the level of Principal or Senior Legal Officer.

iii. The Unit will be mandated to carry out follow-up in a systematic fashion in respect of all Court judgments;

iv. The Unit will handle all communication with the parties to follow up on the status of compliance by States;

v. Where such information is not forthcoming, the Unit takes an active role in the collection of objectively verifiable information from different sources;

vi. The Unit assesses the adequacy of measures adopted by a State to implement the decision and advises the Court accordingly.

vii. The Unit may recommend cases for holding compliance hearings and is responsible for the logistical arrangements for compliance hearings and or on-site visits.

viii. The Unit should be active in recommending initiatives to build capacity of national stakeholders to monitor compliance to enable them gather accurate and objectively verifiable information on implementation.

AFRICAN UNION
الاتحاد الأفريقي

UNION AFRICAINE
UNIÃO AFRICANA

Addis Ababa, Ethiopia P. O. Box 3243 Telephone: 5517 700 Fax: 5517844
Website: www.au.int

EXECUTIVE COUNCIL
Thirty-Fourth Ordinary Session
07 - 08 February 2019
Addis Ababa, Ethiopia

EX.CL/1126(XXXIV)Annex 2
Original : English

COMPARATIVE STUDY ON THE MONITORING AND REPORTING MECHANISMS OF RELEVANT INTERNATIONAL AND REGIONAL COURTS ON HUMAN RIGHTS

Comparative study on the monitoring and reporting mechanisms of relevant international and regional courts on human rights

Annex:

Reporting and Monitoring Framework

LIST OF ABBREVIATIONS

AHRS	AFRICAN HUMAN RIGHTS SYSTEM
ACDEG	AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE
AU	AFRICAN UNION
AUC	AFRICAN UNION COMMISSION
CoE	COUNCIL OF EUROPE
CoM	COMMITTEE OF MINISTERS
ECHR	EUROPEAN COURT OF HUMAN RIGHTS
IACRT	INTER-MAERICAN COURT OF HUMAN RIGHTS
IAS	INTER-AMERICAN SYSTEM
NGOs	NON-GOVERNMENTAL ORGANISATIONS
NHRIs	NATIONAL HUMAN RIGHTS INSTITUTIONS
OAS	ORGANISATION OF AMERICAN STATES
PACE	PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE
PAP	PAN-AFRICAN PARLIAMENT
PRC	PERMANENT REPRESENTATIVE COMMITTEE
RECs	REGIONAL ECONOMIC COMMUNITIES
STCs	SPECIALISED TECHNICAL COMMITTEES
USA	UNITED STATES OF AMERICA
USD	UNITED STATES OF AMERICA DOLLARS

Table of Contents

EXECUTIVE SUMMARY **6**
Objectives of the framework 6
Aims of the Study and Framework 6
Method of investigation 7
Main findings 7
The European human rights system 7
The Inter-American human rights system 8
The African human rights system 9
Conclusions 10
Recommendations 10
1. MONITORING IMPLEMENTATION OF HUMAN RIGHTS DECISIONS **12**
1.1 Introduction 12
1.2 Key Terms In Monitoring Implementation/Execution of 13
1.3 Purpose/Importance/Rationale Of Monitoring 13
2. THE EUROPEAN HUMAN RIGHTS SYSTEM – POLITICAL MODEL **15**
2.1 Introduction 15
2.2 Framework For Supervision Of Execution Of Judgments Of The Echr 16
2.3 The Institutional Framework 16
2.3.1 Committee of Ministers 16
2.3.2 The Committee Of Ministers Secretariat 19
2.3.4 Procedural Evolution On Supervision 22
2.3.5 Adoption of resolutions and recommendations 22
2.3.6 Consistent or persistent review 23
2.3.7 Peer pressure dynamics 24
2.4.8 Interim conclusion 24
2.4 OTHER INSTITUTIONS **25**
2.4.1 Department of Execution of Judgments 25
2.4.2 Parliamentary Assembly of the Council of Europe 25
2.4.3 Specific aspects recommended for adoption 27
3. INTER-AMERICAN SYSTEM (JUDICIAL MODEL) **29**
3.1 Introduction to the Inter-American System 29

3.2 Compliance Monitoring Framework 29
3.3 Legal Framework on Court's Remedial Powers 30
3.4 The range of remedies/reparations ordered by the Court 31
3.5 Remedial powers in provisional measures 33
3.6 The Practice & Procedure in Monitoring Compliance with Decisions 34
3.7 Compliance with pecuniary damages 34
3.8 Who monitors compliance and how? 35
3.9 The role of the Inter-American Court in monitoring compliance 35
3.10 The nature and scope of 'compliance hearings' 36
3.11 Sources of information on compliance 38
3.12 Nature of decisions in compliance hearings 39
3.13 Nature and form of activity report on compliance 39
3.14 Success rate and factors 40
3.15 Challenges 41
4. **MONITORING AND REPORTING COMPLIANCE IN THE AFRICAN 42**
4.1 Introduction 42
4.2 Legal framework for the compliance obligation 42
4.3 Reporting non-compliance: legal & institutional framework 43
4.4 Monitoring of Compliance: Institutional Framework 44
4.4.1 The Executive Council 45
4.4.2 The Permanent Representative Committee 45
4.4.3 Specialised Technical Committees 46
4.4.4 Conclusion on AU organs 46
4.5 The Role of the African Court in Monitoring its Decisions 47
4.5.1 African Court has no role in monitoring execution of its decisions? 47
4.5.2 African Court must monitor execution of its decisions 47
4.5.3 Sources of information on compliance 49
4.5.4 Compliance hearings 49
4.5.5 A compliance monitoring Unit for the Court? 50
4.5.6 Integrating monitoring into the case management system 50
4.6 Other institutions not cited in the Court Protocol 50
4.6.1 The Pan-African Parliament (PAP) 51
4.6.2 National Human Rights Institutions (NHRI) 52
4.6.3 The African Commission on Human and Peoples' Rights & African 53

4.6.4 Civil society organisations ... 54
4.7 Conclusion ... 54
ANNEXE 1 ... 57
5. THE REPORTING AND MONITORING FRAMEWORK ... 57
5.1 Introduction ... 57
5.2 Objectives of the framework ... 57
5.3 Aims of the framework ... 58
DRAFT REPORTING FRAMEWORK ... 58
DRAFT MONITORING FRAMEWORK ... 60

EXECUTIVE SUMMARY

This Study is a comparative account of reporting and monitoring frameworks to monitor implementation of decisions/judgments of international human rights courts. The Study focused on the European and Inter-American human rights systems and in particular the legislative and institutional arrangements for monitoring compliance therewith. The objective was to inform the development and implementation of a monitoring mechanism for the African human rights system focusing on decisions of the African Court.

Objectives of the framework

The following are some of the key objectives for devising a monitoring and reporting framework for the decisions of the African Court:

i) Undertake a comparative study (European and Inter-American models) and the existing legal and institutional framework of the African Union, propose in detail and preferably through scenarios, an appropriate monitoring and reporting framework for the African Court;

ii) Propose tools and identify modalities for the collection and analysis of data on implementation of decisions of the African Court;

iii) Map key stakeholders involved in the process of monitoring and reporting of decisions of the African Court and identify the respective roles and responsibilities;

iv) Propose recourse mechanisms to ensure compliance with decisions;

v) Identify challenges and opportunities of the proposed monitoring and reporting framework;

vi) Propose recommendations and critical success factors to enhance the viability of the monitoring and reporting framework.

Aims of the Study and Framework

The Study and Framework had the following aims:

- Ensure that African Union policy organs, the African Court and staff are guided in the process of monitoring and reporting on the decisions of the Court;
- The African Court's capacity to monitor and report on the implementation of its decisions is enhanced;
- Ensure timely execution of the decisions of the African Court;
- To achieve clarity on the roles and responsibilities for African Union policy organs and other stakeholders;
- To ensure that the legitimacy of the African Court among African Union Member States and victims is enhanced; and
- Ensure realisation of victims/applicant's right to an effective remedy and

guaranteeing non-recurrence of violations.

Method of investigation

The Study was a qualitative investigation of best practices in other human rights systems in order to inspire the African human rights system in relation to reporting and monitoring execution of human rights decisions. To that end the investigation took a comparative approach where the European and Inter-American systems were subjected to case studies. The justification was that these two systems are of similar regional standing with the African system and that they have horned their practice and procedures for more than half a century. Primary and secondary sources of data were studied from the two systems.

A great deal of data was gathered from experts from the three regional human rights systems by way of key informant interviews (face to face, telephone, skype, and other forms of instantaneous communication). Experts were selected on the basis of their unique expertise and experience in the regional systems.

Data was also gathered from key players in the human rights system such as Diplomatic Missions; AU organs such as the PAP, African Commission, African Committee of Experts, AU Commission; AU Reforms Unit; AGA NHRIs, and associations of non-governmental organisations. By and large, these sources of information evaluated the European and Inter-American systems and recommended elements to be adopted in the African system over and above speaking to the African context, political, legal, historical, and regional dynamics peculiar to Africa.

Main findings

The Study revealed that non-compliance with decisions of human rights courts is a general problem across regions. This sad reality renders illusory the illustrious jurisprudence of the courts in the hope that their decisions would change the circumstances of the victims. Successful implementation or execution of such decisions lies in the strength of a monitoring framework each system established based on its own context. The viability of each monitoring systems is premised on the political, legal and historical context of the region, as will be explained below.

The European human rights system

Convened under the Council of Europe, the key judicial institution is the European Court of Human Rights that oversees the compliance with the European Convention of Human Rights. On ratifying the Convention, member states undertake in terms of article 46 to comply with decisions of the Court in which they are parties. The Convention further designates the Committee of Ministers (CoM) as the body with the responsibility to monitor execution of court decisions. The CoM is a political body hence this monitoring system has been termed the ‘political model’.

Under this model the Court simply renders a decision and transmits it to

the CoM which then takes over the process of monitoring execution. The Court does not, except in exceptional circumstances, specify the measures a state must take to execute the judgment. It follows the principle of 'subsidiarity' which defers to the state the prerogative to choose the means by which it complies with an international obligation. Nevertheless, the CoM ensures that the means chosen are sufficient to execute the decision of the Court.

The CoM works with the assistance of a strong secretariat. It is in fact the success factor behind much of its work – a very strong secretariat that ensures that compliance remains rule-based as opposed to political negotiation. It is the secretariat that advises the CoM as to whether the state has adopted adequate measures or whether there has been full compliance to warranty closing the file; that chooses the cases for enhanced or standard supervision; that follows-up with national authorities compiling data for presentation to the CoM. Once the CoM opens a case for monitoring, it remains on its agenda until full compliance has been achieved.

It is only in respect of cases revealing structural or systemic problems in the domestic legal order of the state that the Court specifies exact measures the State must take in order to uproot the structural cause of the violation (pilot judgment cases).

Other institutions in the system such as the Parliamentary Assembly of the Council of Europe (PACE) are increasingly getting involved in seeking to influence the behaviour of states to comply with court decisions. The Venice Commission (European Commission for Democracy through Law) provides advisory services to the CoE for instance by providing technical advice to states especially with regards to legislative reforms at national level while executing court judgments.

The Inter-American human rights system

This system covers the Americas including USA and Canada. The system is convened under the auspices of the Organisation of American States (OAS). It is a region that was historically dominated by coups and other violation of rights such as enforced disappearances, extra-judicial killings among others. The key instrument is the Inter-American Convention of Human Rights that establishes the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights. On subscribing to the Convention, a state subjects itself to the contentious jurisdiction of the Court. The Convention vests in the Court unlimited remedial competence, which the Court has interpreted and utilised to render a highly diversified catalogue of reparations.

The Convention only requires the Court to report annually on its activities to the political organs of the OAS including a report on cases in which states have failed to comply with its decisions. The Court has been reporting but the policy organs have not been taking any action to

enforce compliance and redeem the dignity of the Court. The legal framework does not designate any institution with the responsibility to monitor compliance.

Perhaps for that omission, the Court out rightly took it upon itself to monitor compliance with its decisions. Once it renders a decision on reparations, it prescribes timelines within which the state concerned must report to it on the measures taken to implement (reporting obligations). It follows-up on overdue reports and uses other sources of information to verify state compliance claims. It sometimes holds 'compliance hearings' where parties are convened in private or public sessions to discuss progress and deal with hindrances to implementation. Thereafter it makes new orders or resolutions that must be complied with. It only closes the file when it considers the state to have fully complied with its decision. For these reasons, the system is regarded as the 'judicial model'.

The African human rights system

Being the youngest of the three regional human rights systems, the African system, is founded on the African Charter on Human and Peoples' Rights as the key instrument. By way of a Protocol, the African Court on Human and Peoples' Rights was established to 'complement the protective mandate of the African Commission on Human and Peoples' Rights'. Yet the African Charter on the Rights and Welfare of the Child establishes the African Committee of Expert on the Rights and Welfare of the Child. These are the three key judicial and quasi-judicial bodies. However, only the African Court renders binding decisions.

The legal framework for monitoring compliance with decisions of the Court appears to incorporate both the European (political) and Inter-American (judicial) models. Article 29(2) of the Court Protocol provides that the Executive Council of the African Union shall monitor execution of decisions. Article 31 restates the Inter-American position by providing for an annual reporting requirement in which report cases of non-compliance with court decisions must be mentioned. These provisions set the system into confusion as to the role of the Court in monitoring compliance. The role is dedicated to the Executive Council yet the Court must report on non-compliance thereby insinuating a monitoring role even if it is only for purposes of reporting.

To that end the monitoring framework can only be proposed in scenarios. The first scenario is where the Court 'defers' to the Executive Council the role to monitor execution. The second scenario is where the Court takes an eager and active role in monitoring execution to the extent of intervening to re-align implementation modalities. Both scenarios are possible under the existing framework.

On its part the Court is currently running an ad hoc approach to monitoring. Follow-ups are done but perhaps not consistently. There is no dedicated staff to conduct follow-ups. There is a tendency to mix up

reporting and monitoring frameworks as a unified process. There is no database that is consistently updated to reflect progress in execution of decisions. The Rules of Procedure are not updated to speak with clarity to monitoring of execution.

It is accepted that a host of other players exist to assists in influencing state behaviour towards execution of decisions of the Court. These include the Pan-African Parliament; national human rights institutions; the African Commission; the African Committee of Experts; the African Governance Architecture; the African Peer Review Mechanism; civil society organisations; media organisations and so on. However, these other players are not designated players in the monitoring framework but must be conveniently and strategically utilised to contribute to the implementation of decisions of the Court.

Conclusions

The European system represents the political model of monitoring compliance with decisions of human rights courts in that the process is under the control of the CoM – a purely political organ with support of secretariat predominantly made up of legal experts.

On the other hand, the legal and institutional framework of the Inter-American system lands it the label of a judicial model in that the political aspect of monitoring is 'non-existent' in text and in practice. The Court has, from its early days, taken responsibility over monitoring compliance with states and it has final say in deciding whether a state has fully complied with its decision.

On its part, the African system appears to adopt both approaches by designating a political body to monitor compliance yet in practice the hope lies with the Court to initiate and sustain a monitoring mechanism that will see its decisions complied with amid a general trend of non-implementation of all manner of AU decisions. A great deal of adjustment needs to be done to bring the system to the level of effective monitoring of execution of human rights decisions.

Recommendations

The recommendations were many and diverse in profile. On account of the fact that the Study was designed to inform the development of a monitoring and reporting framework for the African Court, the following were some of the recommendations:

- The African Court has a role to play in monitoring execution of its own decisions. The Protocol does not prohibit it.
- The Court must amend its Rules of Procedure to provide for monitoring execution of its decisions step-by-step;
- The Court must consider establishing a Monitoring Unit dedicated to this process on account of the inherent burden associated with monitoring;
- The Court must strive to issue decisions with high levels of clarity on the measures the state must take to correct the violation. Clarity of decisions

is critical to speedy and successful implementation;

- The Court must not hesitate to make specific orders against states. The practice of deference to states slows down the implementation process as much time is spent determine whether the measures chosen by the state are sufficient. The remedial provisions in article 27 of the Court Protocol allow the Court such an approach.
- The Executive Council must either establish a new working group on monitoring execution or review the mandate of the ***Ministerial Committee on the challenges of ratification/accession and implementation of the OAU/AU treaties.*** Its mandate maybe extended to monitoring decisions of the AU organs and those of the Court in particular. These changes must take into account on-going AU Reforms.
- The Executive Council must capacitate its secretariat with human and technical resources for it to execute the monitoring role. A strong secretariat, among other factors, is behind the success of the European system.
- Other players outside of the text of the Court Protocol have a huge role to play. They do not need to be direct participants in the monitoring framework, but input into it through opportunities opened by designated players. Otherwise the framework would be so convoluted and lose the clarity, simplicity and therefore effectiveness it must achieve.

1. MONITORING IMPLEMENTATION OF HUMAN RIGHTS DECISIONS

1.1 INTRODUCTION

The African Court on Human and Peoples' Rights (the African Court or the Court) was established to complement the protective mandate of the African Commission on Human and Peoples' Rights (the Commission). A key difference between the Court and Commission is that the Court makes binding decisions while the Commission issues recommendations.

Pursuant to Article 30 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Court Protocol), States undertake to comply with the judgments of the Court within the time stipulated by the Court and to guarantee their execution. Article 29(2) of the Court Protocol provides that the Executive Council of the African Union shall also be notified of the judgments of the Court and shall monitor their execution on behalf of the African Union Assembly. Further, pursuant to Article 31, the Court shall report non-compliance with its decisions to the Assembly by submitting an annual activity report.

To date, the Court has received 138 contentious cases, disposed of 28 and has 110 pending. The Court has issued 7 judgments on merits, in which it has found States Parties in violation of the African Charter on Human and Peoples' Rights (the African Charter). It has also issued three judgments/ rulings on reparations and issued orders for provisional measures in at least 12 cases. The Court has observed that most of the judgments, orders and rulings issued thus far have either not been complied with or are partially implemented. Presently, there is no formal mechanism in place to monitor execution of the decisions of the Court. It is evident that as the Court continues to render judgments, there will be a need to effectively monitor the compliance of its decisions by Member States.

In response to establish a monitoring mechanism for the Court's decisions, at its 24th Ordinary Session[1], the Executive Council adopted Decision Ex.Cl/Dec.806 (XXIV) which:

> *"Requests the Court to propose, for consideration by the PRC, a concrete reporting mechanism that will enable it to bring to the attention of relevant policy organs, situations of non-compliance and/or any other issues within its mandate, at any time, when the interest of justice so requires."*

This study is a comparative account of the practice and procedures of other international human rights systems and their courts in relation to the reporting and monitoring compliance with judgments. It was also informed by the views of a diverse profile of experts on the subject from the African system, the Inter-American system as well as the European human rights system. The best practices borrowed from other systems then informed the development of a Reporting and Monitoring Framework for the decisions of the African Court with

---

[1] Held from 21 – 28 January 2014.

possibility of adaption to include the African Commission and African Committee of Experts decisions. The Framework is attached to the Study as an Annexe.

1.2 Key terms in Monitoring Implementation/Execution of Orders

This Study is a systematic research, examination, identification, and understanding of the aspects or factors associated with monitoring and reporting on the implementation of human rights decisions of courts around the world.

Execution of a decision involves the deployment of actual measures by the state concerned to give effect to the orders of the court. It is the deployment of appropriate measures fully that determines whether a state has executed or implemented the decision against it. In some cases the court partcularises the measures a state needs to take in order to fully execute the order, while in others, for reasons ranging from the particular circumstances of the case to judicial deference to the state to determine appropriate measures as part of its exercise of sovereignty.

Monitoring execution or implementation then becomes an oversight role played by stakeholders so established and in whom such competence is vested by law, to take stock of the steps or measures a state has or is taking. The purpose of monitoring is to eventually determine the extent to which a state has executed the orders of the court. In the event that a state has not taken any measures, this is a disposition of non-execution of court orders that may trigger deployment of enforcement mechanisms by a body vested with such powers.

Enforcing execution of court orders is a second-tier process. It is triggered by non-implementation of court orders for reasons best known to the state concerned. Where, for instance, a state is required to execute an order of the court within a prescribed period of time and it fails to do so without explanation or request for more time, compliance incentive such as peer pressure, reporting non-compliance to policy organs of a human rights system or sanctions are then deployed to incentivize execution of court orders.

Measures to execute an order of a court fall into two categories according to European jurisprudence, namely, special and general measures. Special measures are those actions targeted at the individual circumstances of the victim in order to reverse, as far as possible, the negative consequences of a violation. On the other hand, general measures are targeted at the root cause of the violation, for instance, a law, with the view to guaranteeing non-recurrence of similar violations.

1.3 Purpose/Importance/Rationale of Monitoring

It is critical to understand that judgments and other rulings of international human rights courts are not self-executing although the rulings are legally binding and carry with them the legal and moral force of international legal rules. Monitoring execution of court orders guarantees compliance, or at least improves it. Non-execution of orders leaves victims of human rights without a remedy even after a court has found a violation and rendered appropriate relief.

Non-compliance with court orders goes to the root of the dignity and legitimacy of the court involved. A court plays a critical role in any democracy including within international inter-governmental organizations such as the AU. A court pronounces itself on state excesses of power reflected in actions of violations by declaring such as inconsistent with international law obligations contained in human rights treaties.

As such measures adopted to give effect to court orders must be accounted for in terms of appropriateness and sufficiency in relation to the violation concerned. More particularly in cases where the court defers to the state to choose the measures in order to fully execute the order of the court. In such cases state choice of options must be closely monitored and reported to ensure full execution of the court order to benefit the victim and consolidate the dignity of the court.

The following is a summarized case study of the European and Inter-American systems of human rights. The focus is to reveal the manner in which monitoring is conducted as guided by the objectives and purposes of these systems.

2. THE EUROPEAN HUMAN RIGHTS SYSTEM – POLITICAL MODEL

2.1 Introduction

The European human rights system exists under the auspices of the Council of Europe (CoE) whose institutions are based in Strasbourg, France.[2] The membership currently stands at 47. This system is anchored on the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) adopted in 1950 as the key human rights instrument providing for fundamental rights and freedoms. The European Court of Human Rights (ECHR) is the key judicial institution that 'oversees' the implementation of the European Convention through its contentious jurisdiction over contracting parties to the Convention. In 1998, the Court was transformed into a full-time compulsory court covering approximately 800 million individuals.[3]

Often labeled as a 'victim of its own success', the ECHR was confronted with an increasing caseload that, over the course of the following 15 years of its work, has built up to reach a current backlog of close to 54 000 by 31st December 2016,[4] as compared to 100 350 on 31 January 2014.[5] During the course of its work, a number of amendments by way of protocols have been made to the European Convention with the aim of improving efficiency in the manner the ECHR works as well as strengthening mechanisms for the supervision of execution of judgments.

In particular, Protocol 14 drafted in 2001 and entered into force in 2010 focused partly on increasing the admissibility threshold for new cases, introduced efficiency in measures for the workings of the ECHR and strengthened the relationship between the ECHR and the supervisor of execution – the Committee of Ministers (CoM). Specifically, Protocol 14 now empowers the CoM, if it decides by a two-thirds majority, to bring proceedings before the ECHR where a State refuses to comply with a judgment.[6] The CoM now also has competence to ask the Court for an interpretation of a judgment if lack of clarity is considered by

---

2 See www.coe.int for more details on the political inter-governmental organisation.

3 The rights contained in the Convention were originally protected by a two-tier voluntary system. Until 1998, the European Commission of Human Rights ('the Commission'), was the first port of call and had the authority to refer cases to the Court if a member state of the Council of Europe accepted the jurisdiction of the Court: see Drzemczewski, 'A Major Overhaul of the European Convention Control Mechanism: Protocol No 11', in Academy of European Law (ed.), The Protection of Human Rights in Europe – Collected Courses of the Academy of European Law (The Hague: Kluwer Law International, 1997) 121, cited in Basak Çalı and Anne Koch ,'Foxes Guarding the Foxes? The Peer Review of Human Rights Judgments by the Committee of Ministers of the Council of Europe' Human Rights Law Review, 2014, 14, 301–325.

4 ECHR Facts and Figure, Public Relations Unit of the Court, 2016. Available at www.coe.int (Accessed on 11 October 2017).

5 See Cal & Koch above, 306.

6 See Article 46(4) of the European Convention.

the CoM as a hindrance to full, effective and prompt execution.[7] This is to assist the CoM in its task of supervising the execution of judgments and particularly in determining appropriate measures necessary to comply with a judgment.

2.2 FRAMEWORK FOR SUPERVISION OF EXECUTION OF JUDGMENTS OF THE ECHR

Supervision of execution of judgments of the ECHR is anchored in article 46 of the European Convention. The provision also succinctly provides for the basic framework for monitoring/supervision of execution of decisions of the Court that was later clarified and amplified in practice. The relevant provisions read as follows:

Binding force and execution of judgments

> 1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> 3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee.
>
> 4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfill its obligation under paragraph1.
>
> 5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of 26 27 paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

2.3 THE INSTITUTIONAL FRAMEWORK

2.3.1 Committee of Ministers

Article 46 quoted verbatim above provides for the European framework for execution of judgments. The framework may be broken down into specific procedures and steps that guide the process from the time a final judgment is rendered by the ECHR until its full execution under supervision by the CoM. The CoM is the key institution in terms of monitoring execution of judgments. It is composed of the ambassadors of each member state to the CoE. These ambassadors operate as deputies ‘to the ministers of foreign affairs of respective governments. The CoM meets quarterly in a year to supervise member states’ compliance with Court judgments. These meetings are private and not open to the public and this has drawn criticism for lack of transparency. In practice, however, those who attend the quarterly human rights meetings are often legal

---

[7] See Article 46(3) of the European Convention.

experts stationed in permanent missions, or in some cases 'government agents located in ministries of justice or foreign affairs'.[8]

The institutional function of the CoM in securing compliance with judgments is provided for in the Convention itself. In terms of Article 46(2) of the Convention, the CoM is responsible for supervising the execution process, and with assessing the point at which the respondent state is adjudged as having fully executed the judgment. Practically, the role of the CoM under Article 46(2) has two faces, namely, the interpretation of the appropriate remedies of human rights judgments in cases where the ECHR does not specify; and the monitoring or supervising of the adoption of measures to execute them.

It appears as part of the institutional design of the system that the CoM is the ultimate authority to determine whether states have fully executed judgments or not. Until recently, it has been the practice of the ECHR to issue declaratory judgments without specifying the actual measures required to fully redeem the violations established by the Court. The primary reasons for such an approach were judicial deference to national authorities to choose or determine measures necessary in each particular case. As the Court explains[9]

> … subject to monitoring by the Committee, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment.

The ECHR changed course to its declaratory approach in 2004 upon request by CM through **Res(2004)3 on judgments revealing an underlying systemic problem**, that the Court assists the CoM to efficiently supervise execution of judgments in cases that revealed systemic or structural problems in order to guarantee non-recurrence of violations.[10] The response by the ECHR to the CoM request was to suspend the deference model and taking a robust interpretation of article 46 now reasoning that in some cases the Court[11]

> … exceptionally, seeks to indicate the type of measure that might be taken in order to put an end to a violation it has found to exist in order to assist a state to fulfill its obligations under Article 46 of the ECHR … in certain cases, the nature of the violation found may be such as to leave no real choice as to the measures required to remedy it

---

8 See Cali & Koch, 308.

9 See generally *Scozzari and Guinta v Italy* ECHR 2002; 35 EHRR 36 at para 249 as quoted by Cali & Koch, 309.

10 CM Res(2004)3 on judgments revealing an underlying systemic problem, 12 May 2004, available at:
wcd.coe.int/ViewDoc.jsp?id¼743257&Lang¼fr.

11 *O.H. v Germany* 54 EHRR 29 at para 116. See also Assanidze v Georgia 2004-II; 39 EHRR 32 at para 198; Fatullayev v Azerbaijan 52 EHRR 2 at paras 176 and 177 (asking for the release of the applicant); Maria Violeta Laˇzaˇrescu v Romania Application No 10636/06, Merits and Just Satisfaction, 23 February 2010 at para 27; Vyerentsov v Ukraine Application No 20372/11, Merits and Just Satisfaction, 11 April 2013 at para 95 (asking the state to address the legislative lacuna with regard to freedom of assembly); and Salduz v Turkey ECHR Reports 2008; 49 EHRR 19 at para 72 (asking for retrial of the applicant).

and the Court may decide to indicate only one such measure, such as, for instance, securing an applicant's immediate release.

Other than this approach, the ECHR also responded by devising the 'pilot judgments procedure'. Now with residence in Rule 61 of the Rules of Court,[12] the procedure targets those cases that 'reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications'.[13] The procedure is either party or court driven and in any case it is deemed appropriate, such case would be treated on priority basis.

Upon making a finding violation, the ECHR will 'identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting Party concerned is required to take at the domestic level',[14] which measures may have to be adopted within prescribed time limit taking into account 'the measures required' and the 'speed' at which the problem could be solved at national level.

While these measures are being implemented, the Court may adjourn consideration of other similar applications. However, in terms of Rule 61(8), consideration of adjourned applications may resume in the face of proof of non-compliance by the state with pilot judgment measures. Rule 61(9) requires that 'Committee of Ministers, the Parliamentary Assembly of the Council of Europe, the Secretary General of the Council of Europe, and the Council of Europe Commissioner for Human Rights shall be informed of the adoption of a pilot judgment' although their roles are not specified. All information to do with the pilot judgment procedure is published on the Court's website.[15]

Notwithstanding the ECHR refusal to monitor compliance with its own decisions holding that the **'Court reiterates that findings of a violation in its judgments are essentially declaratory ... execution being supervised by the Committee of Ministers',**[16] Protocol 14 seems to have settled the issue by providing for a mechanism based on the Convention that carves out the new role of the Court in post-judgment process of monitoring compliance. First, the pilot judgment procedure vests in the Court power to make the decision of whether a state executed a pilot judgment or not.

---

12 Rules of Court of 14 November 2016, Registry of the Court, Strasbourg. Available at http://www.echr.coe.int/pages/home.aspx?p=basictexts/rules&c (accessed on 11 October 2017).

13 Rule 61(1) of ECHR Rules of Court.

14 Rule 61(3) of the ECHR Rules of Court.

15 The first pilot judgment was Broniowski v Poland 2005-IX; 40 EHRR 32. Recent examples include: Ananyev and Others v Russia Applications No 42525/07 and 60800/08, Merits and Just Satisfaction, 10 January 2012; Torreggiani and Others v Italy Application No 43517/09, Merits and Just Satisfaction, 8 January 2013;U Kaplan v Turkey Application No 24240/07, Merits and Just Satisfaction, 20 March 2012; and Kuric´ and Others v Slovenia ECHR Reports 2012; 56 EHRR 20.

16 See Court's words in Vgt Verein gegen Tierfabriken v Switzerland (No 2) Application No 32772/02, Merits and Just Satisfaction, 30 June 2009 at para 61.

Second, in terms of article 46(3), the CoM can now request a post-judgment opinion from the Court if it deems that the execution of the judgment is hindered by a problem of interpretation of the judgment. This is the *advisory opinion procedure*. The Court would invariably be involved in particularizing the measures that need to implement in executing the judgment in question.

Third, again rooted in new Protocol 14 procedure, where the Committee is of the view that a state is deliberately refusing to abide by the judgment of the Court, it may refer the case in question back to the ECHR for a judicial determination of non-compliance. This is now the ***infringement procedure***. As a matter of fact, the ECHR would be assessing state measures or conduct in relation to nature of measures necessary to execute the judgment. In so doing, the ECHR would be monitoring execution in that particular case and determine where there is compliance or not. This is such a departure of note from its traditional approach to post-judgment processes prior to Protocol 14.

Nevertheless, the ECHR role in monitoring execution remains peripheral to the CoM dominance in this process. Even in cases where the Court makes post-judgment pronouncements on the measures necessary to implement the judgment, it remains with the CoM to determine whether the national measures adopted are sufficient to execute the judgment. Further, it remains the role of the CoM to monitor execution of judgments that have failed under the pilot judgments procedure and in any case to 'close the case' whenever full execution has been recorded. The ECHR cannot take over this role. This approach is said to mirror the principle of subsidiarity,[17] which underpins the ECHR system and according to which it is presumed that the national authorities are, in principle, better placed than the ECHR to identify and decide on appropriate measures to execute the judgment.

2.3.2 The Committee Of Ministers Secretariat

The CoM works through its Secretariat. Research has established a **'high degree of delegation of post-judgment interpretation and monitoring tasks to the Secretariat'**.[18] Such delegation has been applauded for placing more emphasis on the 'rule-bound domain' as opposed to a political process under the CoM, which however, retains the final decision-making authority. The delegation has also resulted in counter-balance between a political preference to a minimalist approach to compliance with court judgments to one that is fair, comprehensive and impartial. By focusing on interpreting the declaratory judgments, the secretariat could as well be regarded as an 'extension of the ECHR'.

Delegation of responsibilities to the secretariat occurs at two key post-judgment points. First is the **interpretation of compliance requirements** after a judgment has been rendered and transmitted to the CoM for supervision. In relation to declaratory judgments, interpretation involves the identification of the

---

[17] *Handyside v. the United Kingdom*, Appl. no. 5493/72, Judgment of 7 December 1976, at 48; Brighton Declaration, *supra* note 2, at 3.

[18] Cali & Koch, 313,

specific measures that give effect to the orders of a court in a particular judgment. This process also involves the identification of 'special' and 'general measures' required to be implemented in order to execute the judgment, which could be defined as follows[19]

> **Individual measures'** are those actions states have to take in order to remove the consequences of a human rights violation experienced by an individual applicant, such as reopening a trial when the trial was unfair, removing criminal records when the sentence was unlawful, or stopping the deportation of an individual when such action would be disproportionate. **'General measures'** are those that address the systemic and institutional failures that gave rise to the human rights violation in the first place. They encompass any measures a state needs to take to prevent future violations of a similar kind. General measures include changes to legislation, judicial case law, government policy or administrative practice.

With the increasingly widening scope of remedies required to satisfy modern violations of the Convention, the secretariat has been gradually transformed from a 'traditional record-keeping administrative institution' into a 'norm-guardian' and auditing institution in the ECHRS' as it participates in deciding the measures to be adopted by states and assesses whether such measures have in fact been fully implemented.

There could arise cases of 'interpretation disagreements' between the Secretariat and the State concerned in relation to the measures that are required to give effect to the judgment. Such disagreements are usually quickly resolved through consultations between these two actors. In such cases the Secretariat stands out as the 'guardian of the judgment' and insist on the right measures being adopted to fully execute the judgment.

Second, **the CoM has delegated monitoring compliance to its Secretariat**. This is two – pronged; there is on one hand the regular monitoring of the progress made by states regarding the implementation of judgments. As earlier stated, the monitoring process is anchored in the Convention but more elaborated in the CoM Rules of Procedure (2017). Rule 6(2) requires the adoption and submission of ***action plans*** by states 'to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment'. And in the course of implementation, the CoM, accepting the 'discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment', will ensure that just satisfaction is paid and that both individual (reversal of victim circumstances to original position) and general measures (guarantees against non-recurrence).[20]

Further, the CoM is empowered by Rule 8 to 'Access to information' by the CoM on progress in execution of judgments by member states. It achieves this by

---

[19] Cali & Koch, 314. See also Rule 6 of the ***Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*** (adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies and amended on 18 January 2017 at the 1275th meeting of the Ministers' Deputies)

[20] Rule 6(2) of the CoM Rules 2017.

virtue of its competence to collect or receive information from member states and the following sources regarded as alternatives:

i) State party concerned;

ii) Injured party and/ lawyers;

iii) Non-governmental Organizations;

iv) National institutions;

v) Any other body that participated in proceedings before ECHR (amicus).

Unless the CoM deems it necessary to protect the interests of the parties taking into account any requests for confidentiality and interests of inured or third party in favour of confidentiality,[21] such information availed to it by the sources cited above shall be brought to the attention of the State concerned for a response within five days, and the response shall be accessible to members of the public.[22] Also accessible to the public is the 'annotated agenda presented to the Committee of Minister' including decisions taken' taking into account instances where confidentiality has been granted.[23]

In a nutshell, such information includes measures that have been and are still to be adopted to implement judgments. Once all information is collected, the Secretariat prepares status of implementation reports for publication. In final analysis, it is the same body that prepare drafts resolutions to be adopted by the CoM that urge for three possible directives; that the CoM to remain seized with supervision, that it partially closes for supervision some items fully implemented, or that it decides to 'close the case' if Secretariat is convinced.

However, it must be continually noted that in practice it is the Secretariat that executes all these functions attributed to the CoM. This explains the extent to which the CoM has informally delegated the monitoring role to its Secretariat. Only in rare cases is lobbying by states defeat the strength of the Secretariat with cases pushing for closure of aspects of execution against the advisement of the Secretariat.[24]

The other dimension of delegation is the competence to set the agenda for identifying cases of inadequate compliance with judgments. This is often regarded as a significant 'tool for exerting peer pressure on states that fail to comply with a human rights judgment'. Such cases are singled out for oral debate and especially requesting the state to publicly defend before peers, its failure to execute the judgment. Public debate is the height of peer pressure.

---

21 Rule 8(3) of the CoM Rules, 2017.

22 Rules 9(6) of the CoM Rules, 2017.

23 Rules 8(4) and (5) of the CoM Rules, 2017.

24 Often cited is the inter-state cases of Turkey and Cyprus in Cyprus v Turkey 2001-IV; 35 EHRR 731 as cited by Cali & Koch, 318.

However, the agenda-setting competence of the Secretariat has, since 2011, been formalized in relation to the urgency and importance criteria. This resulted in categorization of cases for supervision into **'standard'** (those requiring usual approach) and **'enhanced'** (those requiring new, difficult, complex or urgent remedies). The former became the responsibility of the Secretariat while the latter of the CoM, with the possibility of cases 'crossing floors' between the two categories. This categorization has been venerated by scholars arguing that

> The enhanced procedure has the potential to overcome the under and over politicization of individual cases, to enable difficult cases to receive more attention from the Committee, and to offer a continuous window for advocacy by domestic non-governmental organisations, lawyers and applicants seeking to move forward implementation.[25]

2.3.4 Procedural Evolution On Supervision

Three procedures are critical to the CoM in carrying out its monitoring function. These are the issuing of general recommendations and resolutions reflecting the states' collective expectations when executing judgments; the routine quarterly review of member state compliance through HD Meetings; and evolution of procedural tools to exert pressure on non-complying states. These are some of the innovations behind the success of the European human rights system that morphed over the years.

2.3.5 Adoption of resolutions and recommendations

These are adopted as general guidelines to facilitate states adoption of measures to achieve full execution to the standard of the Convention. The guidelines are targeted for all member states notwithstanding being not parties to the current judgments. This is the 'orientation effect' of judgments.[26] The guidelines were horned out of realization that certain violations require specific measures to achieve the level of Convention standards of protection at national level. The leading ones are as follows:

(1) Recommendation on the publication and dissemination of the text of the Convention and the case law of the Court in member states;[27]

(2) Recommendation on the verification of the compatibility of draft laws, existing laws and administrative practices with the standards laid down in the Convention;[28]

---

[25] See Cali & Koch, 319.

[26] This is a principle that requires other member states to conform their conduct or laws in line with new jurisprudence from the Court notwithstanding that they were not parties to the dispute, rather than waiting for cases to be filed against the rest of the states. It is demonstration of collective responsibility for the promotion and protection of human rights.

[27] Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights, 18 December 2002.

[28] Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice

(3) Recommendation on the improvement of domestic remedies;

(4) Recommendation on the use of the Convention in university education and professional training;

(5) Recommendation on the development of efficient domestic capacity for rapid execution of Court judgments;[29] and

(6) Recommendation on effective remedies for excessive length of proceedings.

(7) Recommendation of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights.[30]

The guidelines provide common standards against which states are held accountable as assessed by the Secretariat. It also increases the required objectivity, uniformity and legitimacy of the CoM's peer review function. Probably equally important, the recommendations serve as basic guidelines for states facing challenges with technicalities of compliance at national level.

2.3.6 Consistent or persistent review

The rendering of a final judgment triggers the requirement that the state submits within six months its implementation plan of action to the CoM. From hence forth, the Secretariat places such a judgment on the agenda of the CoM. The judgment does not leave this platform (agenda) until the case is fully implemented and the 'case is closed'. During the course of oversight, all judgments are sub-categorized into phases of their implementation which are as follows:

(1) *Final resolutions* cover the formal closure of cases that in previous meetings were judged to be fully implemented;

(2) *New cases* are cases included on the agenda for the first time;

(3) *Just satisfaction* concerns payment issues;

with the standards laid down in the European Convention on Human Rights, 12 May 2004.

[29] Recommendation CM/Rec(2008)2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, 6 February 2008. 81 Recommendation CM/Rec(2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings, 24 February 2010.

[30] Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, (Adopted by the Committee of Ministers on 19 January 2000at the 694th meeting of the Ministers' Deputies). See a report on the implementation of this Recommendation at https://www.coe.int/t/dghl/standardsetting/cddh/reformechr/Reopening/Note-Reopening-en.pdf.

(4) *Cases raising special questions* principally concern the implementation of individual measures, but also unforeseen obstacles to implementation;

(5) *Supervision of general measures already announced* concerns the implementation of general measures; and

(6) *Cases presented with a view to the preparation of a draft final resolution* encompasses cases that are now deemed fully implemented due to new information since the last examination, and that the Secretariat recommends for closure at the next meeting'.

In final analysis, this approach makes sure that none of the active cases 'falls under the supervision radar' and could be utilised to identify cases that have taken too long to be finalized so that interventions could be made to re-align the cases along in the supervision framework.

2.3.7 Peer pressure dynamics

Considered as perhaps the most important aspect of the supervision process, exertion of pressure on a state by its peers, as supported by the Secretariat classifying cases and identifying specific ones for debate, the CoM sustains pressure on peers to execute judgments. While these cases are singled out for debate, the Secretariat still achieves objectivity by ensuring that not only specific states are exposed to sustained debate by including cases from a variety of countries. There is geographic balance in singling out cases. This is another demonstration of the even-handedness that punctuates the execution process which regards the monitoring as fair and unbiased.

Adoption of provisional resolutions on the extent of implementation ensures that the pressure is sustained and that CoM members are updated regarding the measures adopted and those outstanding regarding execution of judgment. Such resolution may also identify structural problems. Keeping cases perpetually on the agenda and only close them after full implementation builds the pressure.

2.4.8 Interim conclusion

The monitoring of international human rights can either be rendered more politically independent through formal delegation to judicial bodies or expert bodies (or a combination of both), or the monitoring can be left to the peers themselves, making a high degree of politicization more likely.

We submit that the difference between the ECHRS and its more legal and more political counterparts lies in the trade-off between legal authority and the precision of rules and procedures on the one hand, and political ownership of human rights compliance on the other.

This balancing of authority between the different actors allows for the involvement of political actors in the monitoring process. At the same time, the shadow of the Court and the strong Secretariat operate as buffers against both over and under politicization of an otherwise judicial process.

2.4 OTHER INSTITUTIONS

Although the CoM and the ECHR are the principal organs, there are other institutions under the CoE that have a key role to play in monitoring execution of judgments of the ECHR. They play a critical role in terms of feeding into the traditional execution process provided for in the Convention and related.

2.4.1 Department of Execution of Judgments

The Department for the Execution of Judgments of the European Court of Human Rights is a subsidiary institution of the Director General of Human Rights and Rule of Law. It advises and assists the CM in its supervisory role and provides support to member states in their efforts to achieve full, effective and prompt execution of judgments. According to the rules of the Committee of Ministers for the supervision of the execution of judgments and the additional indications contained in its working methods, the Department ensures a close and continuous follow up of the progress of the execution of all cases, irrespective of their supervision track (standard or enhanced).

It advises the CoM throughout the monitoring process. It makes proposals for the prioritization of the CoM supervision action in deciding whether to place the cases under the standard or enhanced framework. It also advises on subsequent transfer of cases between the two tracks depending on how the execution is panning out. The Department also issues proposals relating to cases requiring specific support from the Committee of Ministers through a detailed examination at its meetings.

It is the Department that is in contact with the injured party (ies), national institutions for the promotion and protection of human rights, non-governmental organisations to gather information regarding the execution of judgments of the ECHR. To this end, the Department is an integral part of the monitoring process in the European system.[31]

It operates as the heartbeat of the execution process as it literally keeps key players in touch with each other. These include Court Secretariat; state parties (national authorities); victims; other CoE organs; and other regarding progress being made in execution of decisions. It also prepares annual reports and makes execution information transparent by bringing the information (aggregated) to the public domain.

2.4.2 Parliamentary Assembly of the Council of Europe

This is the 'legislative arm' of the CoE. The PACE meets quarterly for week-long plenary sessions. The seat is in Strasbourg. It is made up of 324 representatives and 324 substitutes, who are appointed by national parliaments from among their elected members.[32] Accordingly, the parliament of each country sends a

---

31 For detail see https://www.coe.int/en/web/execution/home?desktop=true.

32 Rule 18 of the **Rules of Procedure of the Assembly (September 2017)** (Resolution 1202 (1999) adopted on 4 November 1999) with subsequent modifications of the Rules of Procedure.

delegation of between two and eighteen representatives, depending on the member's population. The composition of the delegation must reflect the balance of political dynamics in the parliament. The current rules require that at least one representative must also be a woman.[33]

Although without a legislative competence, the Assembly adopts three types of text in the aftermath of debate:

1. *Recommendations* – these are usually addressed to the CoM.
2. *Resolutions* – are adopted when the PACE expressions of its own point of view on a matter.
3. *Opinions* – the PACE may express opinion on membership applications, draft treaties or other issues referred to it by a relevant body within the CoE.

The work of the PACE is prepared by eight committees, which also meet between sessions to approve draft reports or hold hearings, and a Bureau.[34] The Standing Committee is a smaller body acting for and behalf of the Assembly when it is not in session, can also adopt texts. There is among the committees, the Committee on Legal Affairs and Human Rights. There is also a *Sub-Committee on Human Rights* and another *Sub-Committee on the implementation of judgments of the European Court of Human Rights*.

Over the years the PACE has become actively involved in monitoring execution of judgments of the ECHR thereby complementing the exclusive role of the CoM as the CoM would put it in the Report *Supervision of the Execution of Judgments and Decisions of the European Court Of Human Rights (2016)*[35]

> In addition, in 2000 the Parliamentary Assembly started to follow the execution of judgments on a more regular basis, in particular by introducing a system of regular reports, partly following country visits in order to assess progress concerning open issues in important cases. The reports have notably led to recommendations and other texts for the attention of the CM, the Court and national authorities.

Through the efforts of the Committee of Legal Affairs and Human Rights, in 2006 the PACE carried out 'special *in situ* visits' in Italy, the Russian Federation, Turkey, Ukraine and the United Kingdom 'to examine, with national decision-makers and parliaments, the urgent need to solve outstanding problems'.[36] The Committee proposed to continue to 'monitor the situation closely'. The PACE would then require national delegations from non-complying states to take

---

33 See for details: https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-directorate.

34 See Rule 44 of the Rules of Procedure of the PACE.

35 SUPERVISION OF THE EXECUTION OF JUDGMENTS AND DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS, 10th Annual Report of the Committee of Ministers (2016) page 19.

36 ***Implementation of judgments of the European Court of Human Rights*** Report, Committee on Legal Affairs and Human Rights (2006), Doc. 11020, 18 September 2006.

proactive roles in ensuring that their states comply with court decisions. Non-compliance is backed up by a soft threat couched as follows:

> If the parliamentary delegations of these states do not show, within six months, concrete results or realistic action plans which have or will solve substantial and often longstanding issues of non- compliance with Strasbourg Court judgments, **the Assembly should consider using Rule 8 of its Rules of Procedure (suspension of the right of national delegations to be represented in the Assembly).**

In the subsequent resolutions adopted by the Committee, and in a rather detailed approach, positive aspects of execution already deployed are mentioned and states are publicly commented for taking such measures. Then a recommendation is taken that primarily encourages the adoption by national parliaments of national measures aimed at accelerating the execution of decisions. This approach directly vests in the national parliaments the responsibility to ensure the executives are held to account for their actions in the manner, quality and speed of execution of judgments of the ECHR.

The latest report of the PACE was published in 2015 **(Implementation of judgments of the European Court of Human Rights Committee on Legal Affairs and Human Rights).[37]** The Assembly made clear recommendations to the CoM:

i) The prompt implementation of Strasbourg Court judgments;

ii) The setting up of effective domestic remedies and the creation of parliamentary procedures to monitor legislative changes needed to comply with the European Convention on Human Right;

iii) The CoM should also be encouraged to make use of the "infringement procedure" (Article 46, paragraphs 4 and 5 of the Convention) and to take stronger measures in case of dilatory or continuous non-execution of judgments. This is CoM referring non-compliance to the Court for interpretation and a finding of non-compliance;

iv) CoM to co-operate more closely with civil society and ensure a greater transparency of its supervision process.

The above shows the growing role of the PACE in monitoring execution of judgments of the ECHR even though the organ does not have legislative competence. Its efforts have direct impact at national level through the agency of national delegations, which are required to 'account' for the behaviour of their states and face sanction in cases of no significant progress.

2.4.3 Specific aspects recommended for adoption

- High level contacts are frequently an essential component of the search for a solution. The possibilities for the Secretary General to engage a constructive dialogue on the basis of his competence under Article 52 of

---

[37] Reference to committee: Resolution 1787 (2011), Reference 3847 of 9 March 2012. 2015 - Fourth part- session, Doc. 13864, 09 September 2015.

the Convention also appear to open interesting perspectives, especially through specific missions to the States concerned.

- The Inter-American System for Human Rights scores higher on legal authority, as well as on precision of rules and procedures, as all of these tasks are carried out by an independent judicial body. This has advantages for the objective and impartial determination of compliance steps.
- However, while shielding the compliance process from overt political pressure, these mechanisms score low on political ownership of the compliance process. They risk losing momentum and may even trigger active domestic opposition to externally imposed remedies.
- This increases the chances of domestic authorities 'buying in' to compliance requirements.
- The fact that the human rights reforms are not imposed by a court, an expert body or other states in isolation, but are instead worked out through a mixture of collective judicial, bureaucratic and political processes, also offers an important impetus for governments when bringing the judgment back home for compliance.
- Special effort was also made in recent years, in addition to the efforts made in the framework of the general Action Plans, to identify promptly targeted issues that can benefit for the rapid introduction of assistance activities. The financing is often provided by the ***Human Rights Trust Fund***, the European Union, States and certain organisations.

3. INTER-AMERICAN SYSTEM (JUDICIAL MODEL)

3.1 Introduction to the Inter-American System

The Inter-American Human Rights System took formal existence in 1948, with the adoption of the Organization of American States (OAS) Charter and the American Declaration on the Rights of Man and Citizen.[38] During its first decade, however, it was more aspiration than reality.[39] While the OAS Charter provided for the creation of a Commission, and the idea of a Court was already under discussion, the Inter- American Commission, based in Washington D.C., began its work only in 1959. The Commission construes its mission to include monitoring states through on-site visits, shaming through country reports, and also runs an individual petition system.

Although reports of the Commission's are largely advisory, the act of publicizing errant state practices has played an important role in the system. Way back in the 1970s in particular, the Commission emerged to confront military dictatorships engaged in practices of enforced disappearances, indiscriminate torture, among others. It also stood firm in garnering support for the creation of the Inter-American System (IAS) judicial institution - a court with binding decisions, but this took two decades longer. It was only in 1969 that the OAS member states adopted the American Convention on Human Rights (American Convention), which provides for binding rights and freedoms as well as creating the Court.

Accordingly, the key legal text for IAS is the **American Convention** (providing for menu of rights and freedoms) while the key supervisory institutions are **the Commission and Court**. Their relationship, as will be discussed in the context of monitoring execution of decisions below, is complementary and has been effective taken from that perspective.

3.2 Compliance Monitoring Framework

Monitoring of execution of decisions of the Commission has genesis in article 45 of the American Convention that provides for states, upon ratification or thereafter, to lodge a declaration accepting the competence of the Commission to receive individual petitions. If a petition passes the procedural requirements in article 46, it is then determined in terms of the procedure in articles 48 to 51 as read with Chapter II of the Commission Rules of Procedure.[40] The Commission

---

[38] By the Ninth International Conference of American States. See also *Brief History of the Inter-American Human Rights System*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, http://www.cidh.oas.org/what.htm

[39] Alexandra Huneeus 'Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights' 44 CORNELL INT'L L.J. 493 (2011) 498.

[40] Approved by the Commission at its 137th regular period of sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011 and during the 147th Regular Period of Sessions, held from 8 to 22 March 2013, for entry into force on August 1st, 2013.

in final analysis will prepare report (decision) making 'pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined'.[41] On expiration of the prescribed period, by an absolute majority the Commission must decide if the 'state has taken adequate measures (complied). The Commission follows up implementation by 'requesting information from the parties and holding hearings in order to verify compliance with friendly settlement agreements and its recommendations'.[42]

Non-implementation of measures within the time prescribed to remedy the violation triggers the process by the Commission of reaching the decision to refer the case to the Court 'provided that State in question has accepted the jurisdiction of the Inter-American Court in accordance with Article 62 of the American Convention'[43] taking into account the the position of the petitioner; the nature and seriousness of the violation; the need to develop or clarify the case-law of the system; and the future effect of the decision within the legal systems of the Member States.[44]

3.3 Legal Framework on Court's Remedial Powers

The Court's ordinary and provisional remedial competence is captured in the Convention as provided in article 63 as follows:

> 1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. ***It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party***.

The Court has shed some light on the meaning, scope and application of its remedial powers embodied in article 63(2). In the *Aloeboetoe* case – the leading authority on reparations in IAS, the Court held that this provision 'codifies a rule of customary law' in all of 'its aspects, such as, for example, its scope, characteristics, beneficiaries' such that 'compliance with which shall not be subject to modification or suspension by the respondent State through invocation of provisions of its own domestic law'.[45] The rule embodied there in being that every breach of an international law rule attracts the obligation to make reparations.

The approach of the Court to its remedial competence and reparation (various ways a state may address international responsibility it has incurred)

---

41 See article 51(2) of the American Convention.

42 Rule 48(1) of the Commission Rules of Procedure.

43 Rule 45(1) of the Commission Rules of Procedure as read with Article 35 of the RULES OF PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS Approved1 by the Court during its LXXXV Regular Period of Sessions, held from November 16 to 28, 2009

44 As above.

45 Aloeboetoe v Suriname, IACHR Judgment of December 4, 1991. Series C No. 11, paras 43 – 44.

jurisprudence has been described as **'activist remedial regime'**[46] after noting that in all its rulings, ***the Court orders extensive and detailed equitable remedies necessary to address the violation alongside compensation.*** The Court issues as a matter of practice long lists of detailed measures the state must take in order to fully execute the judgment of the Court.[47] This approach has been identified as a clear and stuck contrast with the ECHR which takes a rather declaratory approach to remedies leaving it to the state to determine the measures necessary to execute the decision under the supervision of the CoM, except in circumstances discussed above.

Pasqualucci argues that article 63 of the American Convention was intended to grant the Court **'the most expansive formal powers to order reparations of any human rights' violation**.[48] The preliminary draft of the same provision had only provided for compensatory damages with the current provision having been proposed by Guatemala to strengthen the powers of the judicial body. This remedial approach has led the Court to develop jurisprudence that defines 'a victim' in the broadest terms to include descendants, ascendants, siblings, spouses, permanent companions and so forth. For instance, denial of justice to the family of the disappeared and extra-judicially killed person is a violation of their own rights flowing directly from the disappearance itself leading to personal emotional anguish.

Nevertheless, the Court pursues a controlled approach in directing the extent of reparations. Under the principle of causation, the Court has ruled in *Aloeboetoe* case that reparations are only payable to those who suffer immediate effects of unlawful acts as **it is almost impossible for a perpetrator to erase all consequences of violation as some of them multiplied to immeasurable degrees.**[49] A victim who suffers emotional anguish and later dies is equally entitled to the one who then survives. The damages for the former are allocated to heirs through succession.[50]

3.4 The range of remedies/reparations ordered by the Court

This is a discussion that covers two aspects; first, the types of reparation the Court has ordered so far, and second, the degree of particularity the Court has reached when rendering such reparations. These two aspects answer the question: **to what extent can international human rights tribunal go in identifying measures a state must take in order to fully remedy a violation it has caused?**

---

46 Note Huneeus above, 501.

47 In its ruling against Mexico regarding the murders of the women of Ciudad Juarez, for example, it issued 15 separate orders; of these, 14 demanded injunctive relief with a high degree of specificity.

48 JM Pasqualucci *The Practice and Procedure of the Inter – American Court of Human Rights* (2003) 232.

49 Aloeboetoe v Suriname, IACHR Judgment of December 4, 1991. Series C No. 11, para 48.

50 Aloeboetoe, para 54.

In the *Barrios Altos* case, the Court set the tenor for its remedial approach in terms of reparations as follows:

> This Court has repeatedly stated in its case law that it is a principle of international law that any violation of an **international obligation which has caused damage carries with it the duty to make adequate reparation for it** … Reparation for damage caused by a breach of an international obligation **requires, whenever possible, full restitution (restitutio in integrum), which consists of reestablishing the previous situation.** If that were not possible, the international court must order that steps be **taken to guarantee the rights infringed, redress the consequences of the infringements, and determine payment of indemnification as compensation for damage caused**.[51]

It follows that any measures, whether indicated by the Court or chosen by the state concerned, must in the end achieve the full restitution to re-establish the previous situation. When that is no longer possible to achieve, compensation must be payable for the damage caused and that the rights must be guaranteed and 'consequences of the infringements' redressed and to deter future violations. **The reparations must be proportionate to the injury suffered**.

In the course of its work, the Inter-American Court has awarded a wide range or reparations upon establishing state responsibility for breach of the American Convention. These include:

i) Duty to investigate violation, identify perpetrators, publicise results of investigation and punish 'intellectual authors or masterminds' and executors (perpetrators) of the violation;[52]

ii) New trials at national level that guarantee fair trial and annulment of prison terms;

iii) Re-instatment in former employment including particulars of salary and benefits;

iv) Duty to amend laws to conform to Convention obligations, adopt a new law to facilitate specific acts or repeal domestic laws or judgments incompatible with the Convention;

v) Declarations those national laws have no legal effect if inconsistent with the Convention;[53]

vi) Ordering execution of a national judicial decision;

vii) Ordering mandatory or prohibitory interdicts;

viii) Exhumation and transportation of remains to family choice location and pay for funeral expenses;

---

[51] Barrios Altos Case, Judgment of November 30, 2001, Inter-Am Ct. H.R. (Ser. C) No. 87 (2001), paras 24-25.

[52] Bámaca Velásquez v Guatemala, Merits, IACHR Series C No 70, [2000] IACHR 7,

[53] See *Barrios* case above where an amnesty law was declared to be of no legal force or effect to the extent that it protected perpetrators of violation of rights from being held criminally or civilly accountable for their actions.

ix) Ordering official apology;

x) Orders specific amounts in monetary payments;

xi) Pecuniary damages including loss of wages, family expenses searching for victim, medical expenses (past and future), loss of profits, funeral expenses.

xii) Transfer of title to indigenous communities;

xiii) Moral damages to the victim or family members for emotional anguish as a result of violation;

xv) Moral damages for interfering with the victim's 'life-plan' (personal ambition and fulfillment in life, professionally or otherwise);

xvi) Legal costs and expenses (incurred in exhausting local remedies, and filing case before the Commission and Court, bringing witnesses and procurement of documentation.

xvii) Establishing trust funds for minors including their operational details.

xviii) Ordering release of a detainee from prison.

The above is some of the reparations ordered by the Court. It clearly appears that the Court may render any decision and order for any measures (unlimited) it deems pertinent and appropriate to achieve the overall purpose of reparations as provided for article 63(1) of the American Convention among other provisions.

3.5 Remedial powers in provisional measures

Once gain article 63 provides for the remedial competence of the Court when dealing with urgent situations of violation of fundamental rights and freedoms. It provides as follows

> 2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the ***Court shall adopt such provisional measures*** as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

The provision provides for the powers of the Court in cases of immediate danger and irreparable harm (urgency) *pendent lite*. The Court determined its authority to render provisional measures from the outset, relying first on its 'character as a judicial body and the power that derive therefrom' in the *Honduran Disappearance Cases*[54] as well on article 63 of the Convention. Inherent judicial authority is wider and almost unlimited as compared to statutory powers. While article 41 of the Statute of the International Court of Justice (ICJ), article 63 of the American Convention and article 27(2) of the African Court Protocol provide for statutory authority to render provisional measures, the European Convention

---

[54] Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988) & Godínez
Cruz Case, Judgment of January 20, 1989, Inter-Am. Ct. H.R. (Ser. C) No. 5 (1989).

does not do so thereby triggering the ECHR to decide in ***Varas and Others v. Sweden*** that it does not have such powers until such powers were codified in Rule 39 of the ECHR Rules.[55] However, **provisional measures are regarded 'an extra-ordinary instrument, one which becomes necessary in exceptional circumstances'**.

The Inter-American Court seems to have taken a different approach to provisional measures in terms of particularizing the measures the state is required to adopt. The measures are largely general and left to the **margin of appreciation of states to determine the measures to fulfill its protection obligations.** The Court often requests the State concerned to consult the beneficiaries of protection to devise appropriate measures while the Commission oversees their adequacy. However, once initial measures prove inadequate, the Court would particularize actions to be taken to offer the required protection.

Therefore, it is important to note that the Inter-American Court's approach to drafting remedial orders is one that prefers detailed measures expected of states in order to fully address the violation as opposed to the ECHR to simply declare a violation and leave the responsibility with the CoM to determine the parameters of the measures. However, a declaratory approach is preferred in provisional measures deferring to the margin of appreciation of states to determine the measures. Nevertheless, the Court's practice is that where a state freely chooses inadequate measures, the Court then reverts to its default approach of particularizing such measures as the situation requires.

3.6 The Practice & Procedure in Monitoring Compliance with Decisions

The duty of OAS states to comply with court judgments is premised on article 68(1) which provides that '…States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties'. The duty is further bolstered by the customary law principle of *pacta sunt servanda*.[56] Court judgments bind all organs of the state (Executive, judiciary, legislature) while national law is no basis to refute international obligations.[57]

3.7 Compliance with pecuniary damages

The Court orders payment in USD Dollars paid as such or in local currency of the state concerned. The exchange rate is the prevailing New York market on the day before date of payment. The payment is free from any form of tax, current or to be introduced in the future, although the interest earned on the amount could be subject to tax, but not for earnings on funds held in court-mandated trust funds. Payments are made to the victim directly or heirs. If not claimed within a prescribed time, they are to be paid into a trust fund created by the State for that purpose. If unclaimed for ten years, the moneys would be forfeited to the

---

55 Cruz Varas and Others v. Sweden, 46/1990/237/307 , Council of Europe: European Court of Human Rights, 20 March 1991, available at: http://www.refworld.org/cases,ECHR,3ae6b6fe14.html [accessed 24 October 2017].

56 Article 26 of the Vienna Convention the Law of Treaties.

57 As above.

State but the judgment would be regarded as fully executed.[58] Over the years, the Court used to specify the date upon which payment must have been made. Nowadays the Court allows the State six months complying with the payment order. Interest is levied on late payments based on prevailing bank rates in the State concerned.

3.8 Who monitors compliance and how?

It is critical to understand that judgments and other rulings of international human rights courts are not self-executing although the rulings are legally binding and carry with them the legal and moral force of international human rights law. However, the actual process of compliance falls to the states, and particularly to the executive branch hence the need to monitor compliance therewith.[59]

Monitoring (including reporting) compliance with judgments of the Inter-American Court is premised on article 65 of the Convention

> To each regular session of the General Assembly of the Organization of American States the Court **shall submit, for the Assembly's consideration, a report on its work during the previous year**. It **shall specify, in particular, the cases in which a state has not complied with its judgments**, making any pertinent recommendations

The case in point involving non-compliance with decisions of the Court leading to a report being submitted to the OAS was that of Honduras. This occurred in respect of its failure to pay interest and charges for late payment in the *Velasquez Rodriguez and Godinez Cruz* cases.[60] The Court, in accordance with article 65, reported the non-compliance to the OAS in its activity report. However, due to extensive lobbying of the OAS by Honduras, the statement eventually never made it to the agenda. Honduras, to leverage its lobbying efforts, also threatened to withdraw from the contentious jurisdiction of the court should the statement be read by the OAS.[61] Such hesitation by the OAS to execute its oversight mandate watered down the prospects of the political option of becoming ineffective. It rendered the mechanism as one for reporting and not monitoring compliance.

3.9 The role of the Inter-American Court in monitoring compliance

It has been observed that right from its first days, the Inter-American Court set itself up to develop jurisprudence and institutional practices and procedures **distinct from those of the ECHR, 'in response to a radically different political context'**.[62] The Court, perhaps due to the limited prospects under the executive organs intervention, **monitors compliance with its own rulings**. In the reparations orders, the Court usually orders states to report on their own compliance efforts within a set period. Once the state sends its report, the Court

---

58 Pasqualucci (2003), 283.
59 Hillebrecht 'Explaining Compliance with Human Rights Tribunals' in *Domestic Politics and International Human Rights Tribunals: The problem of compliance* (2014) 21.
60 As above.
61 Pasqualucci (2003), 289.
62 Huneeus, above.

gives the Inter-American Commission and the victims the opportunity to react to the state reports. In recent years, the Court has also begun the practice of summoning the parties to participate in **closed hearings on compliance.** The Court then usually issues its own compliance report.

In these compliance reports, the Court outlines or lists such aspects as the state must do, and orders the state to a report again on compliance within a specified period of time. It is important to note that the Court retains jurisdiction post-judgment until it decides that the state has fully complied with each of its numerous demands, miring it in years of detailed inquiries into the political and legal obstacles to compliance.

3.10 The nature and scope of 'compliance hearings'

Compliance reports gather information from three main sources: **the state, the victims and their representation, and the Commission**. The State takes the lead in the proceedings with the Commission and victim reacting to the report by the State concerned. The Court evaluates this information on a point-by-point basis. It then goes through each of the distinct obligations and determines if the state has fulfilled each one of them. The Court then designates compliance with each discrete obligation as either complete or pending. The Court facilitates discussion by way of allowing compromises, prescribing timelines for implementation or even alternative measures.[63]

A summary of the procedure for monitoring compliance by the Court and recent developments in this area are provided for in the *Annual Report of the Inter-American Court (2016)*.[64] In its own words, the Court says

> When assessing compliance with each reparation, the Court makes a thorough examination of the way in which the different components are executed, and how they are implemented with regard to each victim who benefits from the measures, because there are numerous victims in most cases. Currently, 182 cases are at the stage of monitoring compliance, and this entails monitoring 901 measures of reparation.[65]

Therefore statistically there are at least **182 cases** being monitored by the Court as at **December 2016**, translating to over **900 specific** measures that State concerned must implement to fully execute the judgments. While **182 cases** is a fraction of cases being supervised by the CoM, the number of reparations required also speaks to the wide range and degree of detail achieved by the Court when rendering decisions.

Once the Court renders a final judgment, the Court requires the State to present an initial report on the implementation of the measures required by it. **The Court then monitors compliance with the judgment by issuing further orders,**

---

63 Pasqualucci (2013), 304.
64 Available at: http://www.corteidh.or.cr/sitios/informes/docs/ENG/eng_2016.pdf (accessed on 26.10.2017).
65 Annual Report – Inter-American Court of Human Rights (2016) 72.

holding hearings, visiting the States found responsible, and daily monitoring by way of 'notes issued by the Court's Secretariat'.[66]

In 2015, the Secretariat established a unit dedicated exclusively to monitoring compliance with judgments of the Court. The Unit is called the ***Unit for Monitoring Compliance with Judgments.*** Its function is to follow up more thoroughly on State compliance with the diverse measures of reparation ordered by the Court.[67] Before this initiative came through, the responsibility to monitor compliance was spread throughout the legal department in the Secretariat multi-tasking with work related to contentious and advisory proceedings.

The Court's approach to monitoring hearings is two-fold:

Monitoring hearings on individual cases is monitoring each case individually. This is when focus is dedicated to a particular case against a state. These may be held in private or in public.

Joint monitoring hearings is when the Court monitors reparation ordered in judgments in several cases against the same State where the measures so ordered are the same and are facing 'common factors, challenges or obstacles' in their implementation. The joint monitoring practice also applies in 'compliance hearings' where 'joint hearings' are then held to deal with similar measures facing same difficulties. These are then addressed at once thereby reducing the need to duplicate such proceedings if cases were individually determined.[68]

The joint hearing procedure also enables the Court to encourage discussions among the different representatives of the victims in each case. This results in enhanced and dynamic participation by the national authorities responsible for implementing the reparations at the domestic level thereby giving the Court a fair assessment of progress made in that state as well as measures presenting the most scathing acrimony and difficulty.[69]

While majority of compliance hearings are held at the seat of the Court in San Jose, Costa Rica, the Court, with co-operation of the state concerned, may hold such hearings on the territory of the state part found with international responsibility. In 2016 alone, the Court held **10 hearings** in **38 judgments** and made **35 orders** on compliance achieving the following objectives:

i) Assess the degree of compliance with the reparations ordered;

ii) Request detailed information on the measures taken to comply with certain measures of reparation;

iii) Urge the States to comply and guide them on compliance with the measures of reparation ordered;

---

66 IACRT Annual Report, 72.
67 As above.
68 As above.
69 IACRT Annual Report, 73.

iv) Give instruction for compliance, and clarify aspects on which there was a dispute between the parties regarding the execution and implementation of the reparations.

All of the above was to ensure full and effective implementation of the Court's judgments. In the course of the hearings, cases were both individually and jointly monitored; three cases were closed for full compliance; Court declared non-compliance in four of the six cases; and instructed the Secretary of the Court to engage the specific State to explore 'the possibility of visiting that country in order to obtain relevant and precise information to monitor compliance with' in cases involving indigenous people.[70]

The hearings include provisional measures. The objective was 'to continue or, when appropriate, expand provisional measures; to lift the measures totally or partially, and (iii) to reject requests for provisional measures'. The Court, for the first time, carried out state visit to Brazil to monitor implementation of provisional measures.

In 182 cases under active monitoring by the Court, the Court received reports on the state of compliance from the Commission and parties following request by the Secretariat. States submitted over **200 reports** in **108 cases** of the **182 cases** under consideration. The above statics may be summed up as follows:

> By implementing the above-mentioned actions (requesting reports in the judgment, orders, hearings, requests for information or observations in notes of the Court's Secretariat, and the respective receipt of reports and observations), **in 2016, the Court monitored compliance in 99% of the cases; in other words, in 181 of the 182 cases at the stage of monitoring compliance.**

While there is no clear indication as to the rate of compliance by states as a result of these monitoring efforts, it is clear that the Court, almost at par with the CoM in Europe, has control over the process and largely aware of progress or lack of it at the domestic level of member states involved. This gives the Court a real feel of compliance trends within the Inter-American human rights system.

The Court reported in 2016 that out of the 182 cases under monitoring, 25 have been archived after full compliance. This converts to a full compliance rate of 13% so far. Of the 182 cases, 15 of them have not responded to deployment of monitoring measures involving 5 States with Venezuela responsible for two-thirds of this number (This is a rate of 8% of outright non-compliance). This fact is important to show that outright non-compliance is not so widespread in the Americas. However, since the Court is monitoring 99% of the cases, the compliance rate is likely to rise while non-compliance drops.

3.11 Sources of information on compliance

The Inter-American Court engages diverse sources when gathering information on the extent of implementation of reparations for purposes of monitoring

---

[70] As above, 75.

compliance. All along the Court would request and receive information from the following sources:

i) State concerned;

ii) The Commission;

iii) The victims;

iv) Victims' representatives;

v) Expert opinion.

However, since 2015, and backed by article 69(2) of the Rules of Procedure of the Court, the Court now directly requests information from other sources at national level such as prosecutor's office, national human rights institutions/ombudsman and national judiciaries.[71] The Rule provides that

> The Court may require from other sources of information relevant data regarding the case in order to evaluate compliance therewith. To that end, the Tribunal may also request the expert opinions or reports that it considers appropriate.

The Court has entered into agreements with national institutions of some State such as Coast Rica, Honduras, Peru, Panama, Mexico, Bolivia, Nuevo Leon, and Colombia. The national institutions, not only transmit information to the Court on state or progress of complicate, but also demand progress reports from relevant government departments at national level as part of their role to promote and protect human rights in respective state parties.

3.12 Nature of decisions in compliance hearings

The Court, after carrying out compliance hearing proceedings, assesses the information gathered from its various sources and makes a decision in each case as to aspects of the reparations that have been or are still to be complied with. The orders of the Court are in the form of resolutions which are legally binding. If certain aspects are still outstanding, the Court retains the file open and under continuous monitoring until full compliance, by way of another resolution, is achieved. Thereafter, the file is closed and archived. These resolutions are part of a detailed annual activity report that is submitted to OAS policy organs as required by the Convention.

3.13 Nature and form of activity report on compliance

The Court produces and submits a detailed report in all aspects of its work. In 2016, it submitted a 215-page document. The section of *Monitoring Compliance* is impressively detailed. It provides almost all details in relation to activities on monitoring compliance. The following detail is provided:

i) Recent developments in the practice and procedure, if any;

ii) Statistics of judgments under continuous monitoring including dates when reparations judgments became final;

---

[71] As above, 89 – 90.

iii) Statistics of closed cases having been fully complied with including case names and states concerned;

iv) Statistics of cases with zero compliance including case names and states concerned;

v) Statistics of cases in which States, the Commission and victims or their representatives' submitted compliance reports to Court;

vi) Number of compliance hearings held; whether private or public; whether individual monitoring or joint monitoring; case names; states concerned; location of hearings; content of the resolution adopted; link to resolution adopted; nature of reparations either implemented or still outstanding in each case; links to video clips of entire compliance hearing proceedings .

vii) Statistics of cases where states are not complying with reporting obligations (reporting on measures taken) including cases names and States concerned;

viii) List of national actors other than governmental authorities that provided information to the Court on state of compliance, case names, State concerned and nature of information supplied.

ix) Informal meetings held between the Court and delegations from national authorities engaging the Court outside formal proceedings where undertakings to comply are made, including names of persons in attendance for the Court and the delegation, and case names involved.

x) Other efforts by the Court to engage national players such as courts and the legislature in a bid to create a rapport that would facilitate exchange of information on compliance as well as complementarity of functions between the Court and national actors.

xi) Provisional measures proceedings including individual and joint monitoring compliance hearings; case names in which measures were declined, adopted, extended, or terminated; country visits if any; the actual nature of provisional measures adopted; state of compliance with active provisional measures; and States concerned.

3.14 Success rate and factors

- Compliance success rate averages 13% as at December 2016 while non-compliance (zero compliance) lies at 8%;
- The Court has interpreted its jurisdiction as 'unlimited' and even continues post-judgment to include competence to monitor compliance with its judgments;
- Active follow-up through compliance hearings where new binging orders are issued;

- Well-establishment of jurisprudence now prompting states to pre-empt the outcome of contentious proceedings and to accept international responsibility and nature of reparations to be ordered;
- Country-visits to collect information from national actors and to engage national authorities;
- Diversity of sources of information on the nature and extent of compliance;
- A dedicated *Unit of Monitoring Compliance* would go a long way rather than ad hoc arrangements prior to 2015;

3.15 Challenges

- Important challenges include its low budget and the threat of open confrontations from state parties.
- Limited to no monitoring role being played by OAS policy organs;
- Slow compliance with judgments of the Court in spite of continuous monitoring by the Court;
- Slow compliance rate in respect of non-monetary aspects of reparations;
- Non-universal ratification of the American Convention by states such as the United States of America (USA) and Canada.[72]

---

[72] Canadian parliamentary committee has issued a report recommending to the executive the ratification of the American Convention. Report available at: https://sencanada.ca/Content/SEN/Committee/372/huma/rep/rep04may03part1-e.htm (accessed 27.10.17).

4. MONITORING AND REPORTING COMPLIANCE IN THE AFRICAN HUMAN RIGHTS SYSTEM

4.1 Introduction

The African Human Rights System (AHRS) is a treaty-based human rights system, which means it is premised on the adoption of human rights treaties by the African Union policy organs (Assembly of Heads of State and Government – AU Assembly), which AU member states may individually ratify thereby becoming party to the AHRS. There are three-core treaties in the AHRS, namely, the African Charter on Human and Peoples' Rights (African Charter) (1986); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol) (2005); and the African Charter on the Rights and Welfare of the Child (1999). Then there is the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Court Protocol)(2004).

The Court Protocol is probably the most important instrument in terms setting up a framework for the monitoring and reporting of compliance by states with decisions of the African Court. It also identifies key players and allocates roles they play in monitoring and reporting compliance. Nevertheless, the Court Protocol does not provide in sufficient detail the nature of roles these various players are required to discharge their functions. It is also necessary to study the suitability of the institutional framework in relation to discharging the role of monitoring and reporting compliance in the context of on-going efforts to reform the AU as led by His Excellency, the President of Rwanda, Mr. Paul Kagame (Kagame Reforms) which are underway.[73]

4.2 Legal framework for the compliance obligation

Upon ratification, states make a profound undertaking in terms of adopting 'legislative or other measures to give effect' to fundamental rights and freedoms contained in the human rights concerned.[74] A similar provision in the American Convention was interpreted by the Inter-American Court to be part of that Court's jurisdiction to make orders requiring changes in domestic laws that are incompatible with international obligations under the treaty.[75] Interpreted generously, it follows that states have accepted that the oversight constitution may make any order provided it is meant to ensure the state 'gives effect' to its obligations under the statute. On the other hand, the provision speaks to states' sovereign authority to determine the means by which they give effect to their international. Both aspects are important when it comes to monitoring and reporting compliance by states with African Court decisions.

The African Court Protocol provides express provisions on states obligation to comply with decisions of the Court as follows:

---

73 See for more details: https://au.int/en/au-reform.

74 See article 1 of the African Charter; article 1(1) of the African Children's Charter.

75 See article 2 of the American Convention.

Article 27 FINDINGS

> 1. If the Court finds that there has been violation of a human or peoples' rights, it shall make **appropriate orders to remedy the violation**, including the payment of fair compensation or reparation.
>
> 2. In cases of **extreme gravity and urgency**, and when necessary to avoid irreparable harm to persons, the Court shall adopt such **provisional measures** as it deems necessary.

The African Court's remedial competence is reflected in these provisions. The Court is vested with unlimited powers to make orders appropriate to remedy the violation. The Court also has unlimited power to determine the necessity of such measures depending on particular circumstances of each case.[76] Following the footsteps of the Inter-American Court, the African Court should maintain its remedial approach in terms of which the guiding principle is 'appropriate orders' as opposed to any other extraneous factors. The legal framework in the African Court Protocol does not favour the European Court's declatory approach to remedies.

So far the African Court has rendered wide ranging reparations such as ordering changes of domestic laws to make them compatible with the African Charter; re-opening of national proceedings; payment of fair compensation; moral dames; order investigation and punishment of perpetrators; provision of legal aid;

Once the African Court has rendered a final decision, 'the States Parties to the present Protocol **undertake to comply with the judgment** in any case to which they are parties within **the time stipulated by the Court** and to **guarantee its execution**'.[77] This is the core provision in relation to States' obligation to comply with decisions of the African Court. This is a universal provisional common to all regional human rights systems.

4.3 Reporting non-compliance: legal & institutional framework

The African Court is saddled with the responsibility to report cases of non-compliance by states with its decisions. Article 31 provides that the

> Court shall submit to each regular session of the Assembly, **a report on its work during the previous year**. The report shall specify, **in particular, the cases in which a State has not complied** with the Court's judgment.

The provision is similar to article 65 of the Inter-American Convention. The report is invariably in the form of Annual Activity Report, which must provide detail in terms of what activities the Court did in the previous year in relation to its mandate under the African Court Protocol.

Non-compliance is generally regarded as the situation that follows state failure to adopt measures ordered by the Court within the prescribed time or at all. This includes ancillary obligations such as reporting obligations (report by the state

[76] See nature of provisional measures rendered in *African Commission v Kenya* (Ogieke case); and *African Commission v Libya* and death penalty cases against Tanzania.

[77] Article 30.

on the measures adopted to execute the decision), which are invariably part of the operative order of the judgment.

The question that arises is how does the African Court satisfy itself that a state has failed to comply with a judgment? If the state does not report on the measures it has taken to comply, should the Court conclude that there has been no compliance with the decision and report such with policy organs? How familiar must be Court be with progress at national level and how does it obtain such information to inform its activity report?

Upon reporting non-compliance, the Executive Council takes decisions on such matters. During the 28th Summit, the Executive Council decision on the activity of the Court in 2016 read partly as follows:

> 4. **CALLS UPON** Member States to comply with the Orders of AfCRHPR in accordance with the Protocol of the Court and URGES in particular the State of Libya to implement the Order of the Court;
>
> 5. **WELCOMES** the measures taken by both Burkina Faso and Tanzania to comply with the judgments of the AfCHPR, and URGES both States to take pursue the efforts undertaken to apply the AfCHPR's orders and report accordingly;
>
> …
>
> 7. **INVITES** State Parties that have not already done so, to appoint Focal Points for the AfCHPR from the relevant Ministries, to facilitate communication between the Court and State Parties;

It is critical here to identify the action that must follow decisions of this nature. It appears the reporting obligation of the Court is intertwined with the Executive Council's role of monitoring compliance. This is so since the states involved in reported cases are expected to adopt measures ordered by the Court and **'report accordingly'**. It is unclear as to whether non-compliant States must report to the Executive Council on the measures they have taken such that the Court is no longer involved. Or is it that the Court must continue to receive information on the progress being made at national level and report again in the next activity report. Such responsibilities will be clarified in the reporting framework.

4.4 Monitoring of Compliance: Institutional Framework

This part deals with identification of the legal and institutional framework in relation to the mandate of monitoring execution of judgments of the Court. The African Court Protocol identifies the Executive Council as that body though in a representative capacity.[78] Nonetheless, the *modus operandi* of the Executive Council is complex and interwoven with the work of other AU organs. Accordingly, it is necessary to unpack the complexity by identifying the other organs, their role in the work of the Executive Council, and discuss how the

[78] Article 29(2) of the African Court Protocol, which provides that the Executive Council monitors on behalf of the Assembly.

monitoring role could be properly located in the matrix in view of the general trend of non-implementation of AU decisions.[79]

4.4.1 The Executive Council

Article 29(2) identifies the Executive Council as the body to be 'also notified' of a judgment and 'monitor its execution on behalf of the Assembly'. Once a judgment is rendered, the Executive Council must be notified. This process is separate from the annual reporting obligation that takes place every year. This approach facilitates immediate transmission of a judgment to the Executive Council so that the monitoring may commence immediately. By the time the Court reports annually, it would be reporting on judgments already in the possession of the Executive Council and its subordinate organs. This gives the subordinate institutions sufficient time to discuss the matter before including it on the agenda of the Executive Council.

The Executive Council meets twice a year to prepare the work of the AU Assembly and 'monitor the implementation of policies', among other things.[80] Although its secretariat is the AU Commission, its work and agenda is in turn prepared by the Permanent Representatives Committee (PRC),[81] which is permanently present in Addis Ababa, Ethiopia. It is composed of one representative from all 54 AU Member States. The representatives are usually Ministers of Foreign Affairs but may be any minister designated by the Member State's government.[82]

The Executive Council adopts its agenda at the opening of each session. The provisional agenda for an ordinary session is drawn up by the PRC.[83] Provisional agendas are usually divided into two parts: items for adoption, where the PRC has reached agreement and Executive Council approval is possible without discussion; and items for discussion, where agreement has not been reached by the PRC and debate is required.

4.4.2 The Permanent Representative Committee

The PRC conducts the day-to-day business of the AU on behalf of the Assembly and Executive Council. It reports to the Executive Council, prepares the Council's work and acts on its instructions (under article 21 of the Constitutive Act). All AU Member States are members of the PRC. The PRC works through committees and sub-committees assigned to deal with specific mandates. Its functions are summarized in article 21(2) of the Constitutive Act mainly to prepare the work of the Executive Council. However, Rule 4 of its Rules of Procedure empowers it to **'monitor the implementation of policies, decisions**

---

[79] Interview transcripts conducted at AU Headquarters on 20th October 2017. See also same observation made in the AU Reform process available at: https://au.int/en/au-reform.

[80] See article 13(2) of the Constitutive Act of the African Union [Constitutive Act].

[81] Article 21(2) of the Constitutive Act.

[82] Article 10 of the Constitutive Act; Rules of Procedure, rule 3.

[83] https://au.int/sites/default/files/pages/31829-file-african-union-handbook-2017-edited.pdf.

and agreements adopted by the Executive Council'. The PRC meets at AU Headquarters at least once a month and extraordinary sessions may also be held. The agenda for each session is drawn up by the Chairperson in consultation with the PRC Bureau and AUC. Sessions are closed, except when the PRC decides otherwise.

The PRC operates with the assistance of sub-committees. There are currently 12 sub-committees under the PRC. Sub-Committee sessions are held at AU Headquarters at least once a month, and extraordinary sessions may also be held. The quorum is two-thirds of the Member States. The Chairperson draws up the agenda in consultation with the PRC Bureau, Sub-Committee Bureau and AU Commission. It could be necessary that another sub-committee on ***Monitoring Implementation of Decisions of AU Organs*** be established within the PRC. Rule 4 of PRC Rules of Procedure allows for this. A specialised sub-committee like that would be able to focus its energy on the specific issues of AU decisions that remain unimplemented including those of the Court, African Commission and African Committee of Experts.

4.4.3 Specialised Technical Committees

Another organ directly linked to the Executive Council is the Specialised Technical Committees (STCs).[84] These Committees are established in terms of article 14 of the Constitutive Act and are composed of 'Ministers or senior officials responsible for sectors falling within their respective areas of competence'.[85] One of their function is to **'ensure supervision, follow-up and the evaluation of the implementation of decisions taken by organs of the Union'**.[86] This function speaks directly to the issue at hand – monitoring implementation of decisions of the African Court. The Constitutive Act initially provided for seven STCs. At its February 2009 summit meeting, the Assembly enlarged this number to 14 to make their structure and thematic focus consistent with AU Commission portfolios including one on **'Justice and legal affairs'**.[87] In June 2011, the Assembly decided that the STCs should meet at ministerial and expert level every two years with some meetings once a year.[88]

4.4.4 Conclusion on AU organs

In essence therefore, it follows that the Executive Council, the STCs, the PRC, the AU Commission and Secretary General's Office, are key institutions for executing the role of monitoring decisions of the AU in general and those of the African Court in particular. However, where political supervision of decisions has been successful (European model through the Committee of Ministers), the success was partly pinned on sustained peer pressure by maintaining

---

84 For a brief history of STCs see https://au.int/en/organs/stc.
85 See article 14(3) of the Constitutive Act.
86 Article 15(b) of the Constitutive Act.
87 Decision Assembly/AU/Dec.227 (XII) adopted in February 2009 in Addis Ababa, Ethiopia.
88 Assembly/AU/Dec.365(XVII).

compliance issues on the agenda until full compliance. Further, the CoM meets more frequently than the Executive Council. It would be appropriate to allocate the role to an organ than meets more regularly. **In this case it is the PRC (meets at least once every month and prepares the work of the Executive Council through debate).** Nonetheless, there is need to locate this new assignment in the context of on-going reform efforts by establishing a sub-committee on monitoring implementation of decisions by AU organs and resource them technically and financially in order to be able to carry out country visits and other methods of monitoring progress at national level.

4.5 The Role of the African Court in Monitoring its Decisions

The African Court Protocol does not expressly vests in the Court the duty to monitor execution of decisions. Neither does it prohibit from carrying out that function. It expressly mentions the Court to the extent that it is required to report to the Executive Council annually regarding its activities. Accordingly, the African Court finds itself in the same situation with the Inter-American Court in that regard. The only difference is that the African Court Protocol identifies the Executive Council as responsible organ for monitoring compliance while the American Convention does not make reference to any role to be played by a policy organ of the OAS. There are two approaches to the issue:

4.5.1 African Court has no role in monitoring execution of its decisions?

This is founded partly on the express provisions of the African Court Protocol vesting the Executive Council with such responsibility. The role of the Court under this approach is to render final judgments and transmit them to the Executive Council in terms of article 29(2) of the African Court Protocol. It is then up to the Executive Council to decide to what extent it needs the assistance of the Court in monitoring compliance, for instance, by way of interpretation of its judgment in terms of article 28(4).

4.5.2 African Court must monitor execution of its decisions

There are a number of reasons that support this approach or school of thought. First, in order to accurately and effectively report non-compliance to the Executive Council, the Court must actively monitor execution of its judgments. Reporting a sovereign state to policy organs of the AU as non-compliant with AU principles (judgments of the Court) is a serious issue that must be backed up with accurate information gathered from reliable sources and under a credible methodology where objectivity is central. The Court would have engaged the state concerned over the non-compliance issue; hence the recommendation in by the Executive Council:

> **INVITES** State Parties that have not already done so, to appoint Focal Points for the AfCHPR from the relevant Ministries, to facilitate communication between the Court and State Parties.[89]

The essence of the communication between the Court and State Parties is, among others, exchange of information in the course of contentious and advisory proceedings before the Court, including reports on compliance and promotional visits.

Second, it is not possible for the Court to report non-compliance to the Executive Council without first monitoring compliance by the state with operative parts of the judgment. This explains the reason why the Court includes a reporting obligation in its judgment (a period of time within which the State must report on measures it has taken to execute the decision of the Court).[90] The only debatable issue becomes whether the purpose of monitoring is to facilitate reporting or to ensure compliance. It appears so far the Court is inclined towards the former.

Third, like the Inter-American Court, the African Court must interpret its jurisdiction in contentious proceedings as going into the post-judgment phase. Even the European Court is now to some extent required to participate in post-judgment phases when handling pilot judgment procedures or requested by the CoM to determine whether there has been full compliance with its decision.[91] It is submitted here that this is the preferred approach on account of unpreparedness by AU policy organs to execute the monitoring role with immediate effect. The best option is for the Court to exploit its reporting/monitoring role by following up on state progress complying with decisions.

In its 2016 Annual Activity Report, the Court inserted a table that, among other details, provides for '**Remarks and Status of Implementation**'.[92] The remarks in cases where the State has not done anything fall short of their purpose – report cases of non-compliance. There is no attempt to categorize cases into partial, full or non-compliance. It is unclear whether a state that has not communicated to the Court on the measures it has adopted to implement the orders has not complied or not. Furthermore, cases of willful disregard of the Court's orders such as in *Ally Rajabu v Tanzania* are not marked as non-compliance.[93] There is also no indication as to how the Court, in some cases, managed to receive

---

89 EX.CL/Dec.949(XXX), 30th Ordinary Session of the Executive Council, 25 - 27 January 2017, Addis Ababa (DECISION ON THE 2016 ACTIVITY REPORT OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS Doc. EX.CL/999(XXX)), para 7.

90 It varies depending on the nature and complexity of the measures to be adopted. For instance, monetary payments take shorter than legislative reforms at national level that are subject to constitutional processes.

91 See generally the section on the European system.

92 African Court Annual Activity Report, para 21.

93 Application No. 007/2015.

information from the parties. Did the Court request for the information? Was it volunteered?

4.5.3 Sources of information on compliance

Whether carried out for reporting purposes or to ensure states comply with judgments of the African Court, it is important that the African Court relies on trusted and accurate sources of information from national level. The Inter-American Court, prior to 2015, relied exclusively on parties, the Inter-American Commission, victims and their representatives. However, over time, it entered into agreements with national institutions such as national human rights institutions (NHRI) and other semi-autonomous government departments to obtain information on progress in implementation of court orders.

On its part, the CoM is now empowered by its Rules to receive information from civil society organisations pertaining to progress in the implementation process. This competence must be included in its Rules of Procedure. However, States bear the duty to report on measures adopted to implement decisions with other sources commenting on the state's report.

4.5.4 Compliance hearings

The purpose of states' obligation to report on the measures is to show progress made in implementation. In some cases, the African Court makes an order that clearly defers to the State the decision to choose measures to correct the violation. For instance, in *Alex Thomas v Tanzania,* the Court ordered the State to

> Take all necessary measures, within a reasonable time to remedy the violation found, specifically, precluding the reopening of the defence case and the retrial of the Applicant.[94]

It would be necessary at some point to assess whether the measures adopted by the State have fully implemented the order of the Court by correcting the violation. This is when compliance hearings come in. The Court would assess the measures, subject to additional or contributory information supplied by other sources, and make a determination as to whether the State has taken appropriate options. Such decisions (reparations decisions) are binding on the parties and must guide the Executive Council in its role in monitoring implementation. Reparation decisions would become an integral part of the Annual Activity Report and must show progress being made on a yearly basis.

Compliance hearings have other clear advantages. First, they bring together parties in contentious cases and facilitate implementation by collectively dealing with implementation problems peculiar to that state. Second, the hearing gives the Court invaluable insight into the nature of problems each country faces for purposes of future orders. Third, the involvement of the Court in post-judgment processes reduces the possibility of applications for interpretation of judgment

---

[94] Application No. 005/2013.

which delays implementation of Court decisions to the detriment of victims of human rights violations. These are incentives the Court must consider when weighing the role of compliance hearings as practiced in the Inter-American system.

4.5.5 A compliance monitoring Unit for the Court?

The African Court is currently operating in the footsteps of the Inter-American Court prior to the establishment of a compliance monitoring Unit in the latter Court in 2015 when there was no department dedicated to monitoring.[95] The Unit was later established after realizing the 'burden' inherent in monitoring compliance. Even in the European system, there is the Department of Execution of Judgments that operate as part of the Secretariat of the CoM. These were established especially to be the communication link between the supranational institutions and national authorities.

Currently, the role to receive any form of information concerning compliance with decisions of the African Court is allocated to the legal officer in whose portfolio the case has been appointed. This responsibility is additional to the core obligations of handling contentious and advisory cases. No doubt as the case load increases, the 'inherent burden' of monitoring compliance will weigh on the personnel concerned. Drawing inspiration from predecessors, the Court must initiate discussions on establishing a unit exclusively for monitoring and reporting on compliance, with appropriate technical capacity.

4.5.6 Integrating monitoring into the case management system

The African Court is currently developing a computer programme to manage cases as they are processed (case management software).[96] It is important that the software takes into account the nature of case management associated with post-judgment processes (monitoring and reporting on compliance). At the core of this phase is keeping with deadlines for the submission compliance reports, payments of monetary reparations, setting-down of cases for compliance hearings and new timelines that follow such hearings. Software integration would even lower the costs related to human resources required to handle the post-judgment phase. Furthermore, the integration also means that details or information on compliance with specific decisions would be readily available online should quick access be required.

4.6 Other institutions not cited in the Court Protocol

These are national and regional institutions that are not cited in the African Court Protocol but have some influence on state behaviour with regards to compliance. They are not primary players in the reporting and monitoring framework, but may get involved at critical points in the process. Including them

---

95 Inter-American Court Annual Activity Report (2016), 73.

96 The author interacted with the consultant tasked to develop the case management system for the Court at the seat of the Court in September 2017.

as direct players would convolute the frameworks and add more confusion rather than clarity of roles and responsibilities.

4.6.1 The Pan-African Parliament (PAP)

The PAP is an organ of the AU.[97] It was initially provided for under the Constitutive Act and the Treaty Establishing the African Economic Community (AEC).[98] In 2014, the AU Assembly adopted the Protocol to the Constitutive Act Relating to the Pan-African Parliament.[99] Its seat is in Midrand South Africa. Its membership is drawn from national parliaments. A delegation of five (5) members per state is eligible for accreditation provided at least one member is a woman. Currently its competences are purely advisory and consultative. Just like the PACE, it does not have legislative competences. The best it could do is to develop and adopt model laws and submit them to the Assembly for approval.[100]

The functions and powers of the PAP are provided for in the Protocol and Rules of Procedure. Article 3 of the Protocol includes as part of the objectives of the PAP 'facilitate effective implementation of the policies and objectives of the OAU/AU';[101] 'promote the principles of human and peoples' rights and democracy in Africa', among others. These objectives are relevant to the process of implementing decisions of the Court.

The PAP functions through committees. Rule 22 in Part V of the PAP Rules of Procedure provides for a list of 10 Parliamentary Committees including one on 'Justice and Human Rights'. It is proposed that the Court may develop a working relationship with the PAP whereby its decisions and Annual Activity Reports find their way to the PAP through this Committee. It is through specialised institutions like these that specific issues may be accorded the focus they deserve. Again through these committees, there is real possibility of carrying out country visits or at least engage with national authorities on measure they have taken to give effect to decisions of the Court.

Drawing inspiration from the PACE, it is possible for the PAP to implement measures that deny national delegations the right to vote if they do not provide information as to the state of compliance with decisions of organs of the AU including those of the Court. Thereafter, PAP takes resolutions on all matters debated in the plenary. These resolutions, though not binding, may be submitted to the Executive Council for appropriate action.

---

97 See article 5(1)(c) of the Constitutive Act.

98 Adopted in Sirte, Libya in 2001 and entered into force in 2003.

99 Only 5 states have so far ratified the Protocol yet it needs a simple majority of AU member states. See https://au.int/sites/default/files/treaties/7806-sl-protocol_to_the_constitutive_act_of_the_african_union_relating_to_the_pa.pdf.

100 See Model Laws on Child Marriages.

101 Article 3(1) of the

Exploiting its draft model law competence, the PAP may begin developing model law designed to facilitate implementation of decisions of AU organs, and those of the Court in particular.

4.6.2 National Human Rights Institutions (NHRI)

The umbilical code linking NHRIs to the AHRS is contained in article 26 of the African Charter, which provides that

> States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Generally, NHRIs refer to 'bodies established by governments to aid in the **promotion and protection of human rights within their respective jurisdictions** through, for example, handling complaints, conducting research, advocacy and educational programmes. In some countries, the Constitution has provided for the establishment of a NHRI and in other cases, such institutions are created by legislation or decree'.[102] The common guiding principle of NHRIs is that they are founded on the Paris Principles.[103]

At least 46 AU member states have established such institutions.[104] In some countries they are referred to as the Ombudsperson, national human rights commissions, public protectors, national councils, or such other names. The AU's *Human Rights Strategy for Africa* states that NHRIs play an important role in popularization of human rights norms and mechanisms, *monitoring state compliance with their obligations and contribute to the implementation of the decisions of AU organs and institutions*'.[105]

Due to their unique standing and access to governments, NHRIs have several opportunities to participate in the implementation of decisions of the African Court. The following are some of the points of intervention:[106]

i) NHRIs should provide reliable, accurate and regular information to the African Commission/African Court on the level of implementation and compliance by the State with findings and judgments of the African Commission and Court

ii) NHRIs should provide publicity and increase awareness of the findings at the domestic level in their respective jurisdictions.

---

102 See http://www.nanhri.org/what-are-nhris/.

103 Principles relating to the Status of National Institutions (The Paris Principles). Adopted by General Assembly resolution 48/134 of 20 December 1993.

104 http://nanhri.org/wp-content/uploads/2016/04/ACCREDITATION-FOR-AFRICAN-NHRIS-2016.pdf (accessed 29.10.2017).

105 Human Rights Strategy for Africa, Department of Political Affairs (2010), para 38.

106 The role of NHRIs in Monitoring Implementation of Recommendations of the African Commission on Human and Peoples´ Rights and Judgments of the African Court on Human and Peoples´ Rights, Network of African National Human Rights Institutions (2016) 8.

iii) NHRIs should act as a bridge between domestic implementation of the findings and the African human rights bodies.

iv) NHRIs should consider providing technical assistance to the State in the implementation of decisions/judgments.

v) NHRIs should verify the reliability and accuracy of information received from the State on implementation of and compliance with the findings.

vi) NHRIs should collaborate with relevant national stakeholders in monitoring implementation of the findings and judgments.

vii) NHRIs should ensure a victim-centred approach to monitoring implementation of the findings.

For the above to be achieved, NHRIs must read and interpret their mandate broadly and understand that domestic implementation of human rights decisions of regional bodies such as the Court, the African Commission and African Committee of Experts is integral to their ordinary role of promoting and protecting human rights at national level.

4.6.3 The African Commission on Human and Peoples' Rights & African Committee of Experts on the Rights and Welfare of the Child

These two human rights bodies occupy a unique position in their relationship with the African Court for the promotion and protection of human rights in Africa. Established to oversee implementation of key human rights treaties on the continent (African Charter and African Children's Charter), they must ensure that implementation of the decisions of the Court by and large fulfils their own mandates as well.

The relationship between the African Commission and Court has basis in the text of the African Court Protocol itself. Article 2 provides that the Court shall 'complement the protective mandate of the African Commission on Human and Peoples' Rights'. This relationship, vexing as it maybe to unpack, has been progressively explained and interpreted by these two institutions in their Rules of Procedure (harmonized in 2010). Part Four of the Commission Rules of Procedure deals with the complementarity relationship between these two institutions. Beyond joint yearly meetings, the Commission may refer cases of non-compliance with its decisions (including provisional measures) to the African Court;[107] cases of serious and massive violation of human rights;[108] or give its opinion on admissibility when requested by the Court to do so.

However, the unique position the Commission and Committee occupy is that of consideration of state reports when states report on the measures they have adopted to implement the Charters. This is a useful competence in relation to Court decisions in that these bodies may require states to report on the status

---

107 Rules 118(1) of the African Commission Rules of Procedure.
108 Rules 115(3) of African Commission Rules of Procedure.

of implementation of all human rights decisions (by the three human rights bodies) thereby ensuring that states are always put to task at any given opportunity.

Secondly, in cases of country visits by Rapporteurs, it is possible that they could engage national authorities as to why implementation of decisions, including those of the Court is not being achieved, after which such information may be transmitted to the Court.

Nevertheless, sight must not be lost of the fact that the work of these two institutions must be integrated into the reporting and monitoring framework being developed so that their own decisions are monitored for purposes of implementation. While follow-up modalities may differ, the three institutions must converge at the point of reporting non-compliance to AU policy organs.

4.6.4 Civil society organisations

Civil society organisations remain a strategic partner in the promotion and protection of human rights in Africa and world over. Their recognition is confirmed by their wide participation in the activities of the AU human rights bodies whether or not they have observer status before them. For instance the African Commission anticipates sharing its activity reports with the civil society among other stakeholders.[109] Part THREE of the Rules of the African Committee of Experts is dedicated to explaining the role civil society plays in the work of the Committee. As a matter of fact majority of cases filed before the African Commission and African Committee of Experts, and partly before the Court, were lodged by civil society organisations to vindicate the rights of persons unable to do so on their own.

However, when it comes to technical issues such as implementation of decisions of the Court and other bodies, there lacks capacity to do so. There is need, therefore, to build the capacity of civil society to understand the procedure and the technical issues so that related advocacy initiatives would be from an informed point of view. The publicity civil society generates around these issues is critical to keep states' eyes on the implementation ball. And being based in the territories where implementation takes place, they may provide accurate and useful information to the Court or other monitors concerning the measures a state has taken to implement a judgment.

4.7 African Governance Architecture (AGA)

The AGA is a platform for dialogue between the various stakeholders who have a mandate to promote good governance and strengthen democracy in Africa. Its stems from the AU Assembly Decision which put in place a 'Pan-African Architecture on Governance'.[110] In order to give effect to the Assembly decision

---

109 Rule 59(3) of the African Commission Rules of Procedure.

110 Decision of the 15th Ordinary Session of the Assembly of African Union (AU) Heads of State and Government (AU/Dec.304 (XV) held in July 2010 which recalled the decision adopted by the 16th Ordinary Session of the Executive Council of the AU and endorsed

on the Establishment of the Pan-African Governance Architecture, the AUC established AGA as a "platform for dialogue between the various stakeholders" who are mandated to promote good governance and strengthen democracy in Africa. The AGA is inspired by the Constitutive Act of the African Union (AU) that expresses the AU's determination to 'promote and protect human and people's rights, consolidate democratic institutions and culture and ensure good governance and the rule of law'.[111] The institutional framework of the AGA 'comprises all treaty-monitoring bodies of the AGA norms and standards. The bodies include the AU and RECs organs and institutions with a formal mandate to promote and sustain democracy, governance and human rights in Africa'.[112]

Among its objectives is one on co-ordinating 'evaluation and reporting on implementation and compliance with AU norms on governance and democracy as envisaged by article 44, 45 and 49 of the African Charter on Democracy, Elections and Governance' while the 'respect for democratic principles, human rights, the rule of law and good governance' has been accepted as a shared African Value.

The AGA draws its strength from a strong and diverse institutional arrangement involving AU organs and institutions as well as those from RECs that have the common mandate of promoting democracy, human and peoples' rights and governance. At a secondary level is the involvement of continental stakeholders in the private sector, development partners, civil society and the diaspora. This combination of membership is the ideal profile of key players in reporting and monitoring execution of decisions of the Court as part an integral part of ensuring implementation of shared values (human rights and freedoms as provided for in the African Charter, a key text of the AGA legal framework). The discussion on finding ways to implement decisions of the Court must find its way into this high profile and high quality deliberations.

The state reporting mechanism of the AGA in terms of article 45(c) of the ACDEG opens up further discussions with states that are failing or struggling to implement the shared values embodied in the decisions of the African Court.

4.8 Conclusion

The African Court Protocol provide for the reporting and monitoring of compliance by states with judgments of the African Court. While it identifies the key players, it does not clearly articulate their roles in detail. Probably it is the responsibility of subsidiary instruments such as Rules of Procedure to address such issues.

---

by the 14th Ordinary Session of the Assembly of African Union (AU) Heads of State and Government to dedicate the theme of the 16th Ordinary Session of the African Assembly to the Shared Values of the AU, that was held in Addis Ababa in 2011.

111 See for more details: http://aga-platform.org/about.

112 G e o r g e M u k u n d i W a c h i r a **Consolidating the African Governance Architecture** SAIIA Policy Briefing 96 (2014) 2.

Nevertheless, comparative study has shown that such provisions could be interpreted in a progressive manner that ensures wide participation by different players in order to ensure effective reporting and monitoring practices for the entire human rights system.

The provisions allow the African Court to render all manner of reparation orders; to report on them to policy organs as well as to monitor their implementation without usurping the role of political organs provided there is effective co-ordination between various players.

ANNEXE 1

5. THE REPORTING AND MONITORING FRAMEWORK

5.1 Introduction

This proposed framework is made in consequence of decision of the Executive Council during its 24th Ordinary Session held from 21 – 28 January 2014. Paragraph 9 of the Decision Ex.Cl/Dec.806 (XXIV) reads as follows:

> *Requests the Court to propose, for consideration by the PRC, a concrete reporting mechanism that will enable it to bring to the attention of relevant policy organs, situations of non-compliance and/or any other issues within its mandate, at any time, when the interest of justice so requires.*

The mechanism proposed herein must be read together with the "Proposals on the review of the Rules of Procedure of the Policy Organs", in which an attempt has been made to ensure effective monitoring and implementation of the decisions of the Court. Also of importance is the on-going AU Reforms which have provisionally observed the general problem of non-implementation of AU decisions.

This framework is inspired by a comparative study that anaylsed the legal and institutional frameworks of other international, regional and sub-regional human rights courts paying particular attention to their success factors.

5.2 Objectives of the framework

The following are some of the key objectives for devising a monitoring and reporting framework for the decisions of the African Court:

i) Draw from the comparative study (European and Inter-American models) and the existing legal and institutional framework of the African Union, propose in detail and preferably through scenarios, an appropriate monitoring and reporting framework for the African Court;

ii) Propose tools and identify modalities for the collection and analysis of data on implementation of decisions of the African Court;

iii) Map key stakeholders involved in the process of monitoring and reporting of decisions of the African Court and identify the respective roles and responsibilities;

iv) Propose recourse mechanisms to ensure compliance with decisions;

v) Identify challenges and opportunities of the proposed monitoring and reporting framework;

vi) Propose recommendations and critical success factors to enhance the viability of the monitoring and reporting framework.

5.3 Aims of the framework

- Ensure that African Union policy organs, the African Court and staff are guided in the process of monitoring and reporting on the decisions of the Court;
- The African Court's capacity to monitor and report on the implementation of its decisions is enhanced;
- Ensure timely execution of the decisions of the African Court;
- To achieve clarity on the roles and responsibilities for African Union policy organs and other stakeholders;
- To ensure that the legitimacy of the African Court among African Union Member States and victims is enhanced; and
- Ensure realisation of victims/applicant's right to an effective remedy and guaranteeing non-recurrence of violations.

DRAFT REPORTING FRAMEWORK

STEP 1 – RENDERING OF A FINAL DECISION BY THE COURT

- This triggers the reporting and monitoring processes.
- The Court Registry notifies the parties and transmits decisions to AU members States and the AU Commission (Article 29(1) of the Court Protocol).
- The Court Registry notifies the Executive Council about the decision.
- The decision shall be detailed and clear in terms of particularizing the measures the state must take in order to execute the judgment of the Court.
- The Monitoring Unit of the Court logs the decision on the post-judgment case management framework to commence monitoring compliance reporting deadlines.

STEP II – COURT FOLLOWS UP WITH STATE

- Court requests for Action Plan for implementation of the decision within six months of being notified about the decision.
- Monitoring Unit follows up on overdue compliance reports with states.
- Monitoring Unit requests for information on status of implementation from parties, national human rights institutions, and experts.

- The Court, if necessary, summons parties to compliance hearings/meetings to assess the measures adopted.

STEP III – COURT SUBMITS ACTIVITY REPORT TO THE EXECUTIVE COUNCIL SECRETARIAT (AU COMMISSION)

- The report is submitted to the Chairperson of the ***Ministerial Committee on the challenges of ratification/accession and implementation of the OAU/AU treaties.***
- The report must provide detail on the activities of the Court in relation to follow-up on compliance by States including proof of communications that solicited no response; or responses from States declaring inability to execute the judgments of the Court.
- The report to include in each case measures already adopted and those still outstanding and a determination as to whether a particular State has failed to comply with decisions against it.
- The Court also submits a copy of the report to PAP through the **Committee on Justice and Human Rights** to initiate debate on it and make resolutions as necessary.

STEP IV – THE PRC PLACES THE ACTIVITY REPORT ON AGENDA FOR DEBATE AND DECISION ON NON-COMPLYING STATES

- PRC debates the activity report with focus on non-complying states and make recommendations to Executive Council.
- PRC recommends to Executive Council that non-complying States must do so particularizing what they need to do as indicated by the Court in the report, and that they must report to the PRC sub-committee. This was the Reporting and Monitoring Frameworks merge to be one system going forward.
- PRC to recommend deployment of compliance incentives in cases of persistent non-compliance based the Court's annual reports that must reflect this.

STEP V – THE EXECUTIVE COUNCIL CONSIDERS THE PRC RECOMMENDATIONS ON ACTIVITY REPORT

- The Executive Council takes decisions based on PRC draft recommendations, including deploying compliance incentives provided in article 23 of the Constitutive Act and has strengthened through AU Reforms process underway.

STEP VI – EXECUTIVE COUNCIL ADOPTS A DECISION ON THE REPORT AND NON-COMPLAINT STATES IN PARTICULAR

- The Executive Council makes mention of cases complied with and commends those states for the conduct;
- It further notes cases of non-compliance, identifies the states and requires them to report to its Ministerial Committee thereby

merging the Reporting Framework with the Monitoring Framework.

- If the same cases come before it in the next meeting with no changes in compliance patterns, the Executive must consider deployment of compliance incentives and recommend same to the AU Assembly.

STEP VII – AU ASSEMBLY ADOPTS APPROPRIATE ACTION TO ENFORCE COMPLIANCE

- The AU Assembly takes appropriate action especially invoking the sanctions regime in article 23 of the Constitutive Act as strengthen through the AU Reform processes.

DRAFT MONITORING FRAMEWORK (SCENARIO 1) – Political Option

STEP 1 – RENDERING OF A FINAL DECISION BY THE COURT/PROVISIONAL MEASURES

- This triggers the reporting and monitoring processes.
- The Court Registry notifies the parties and transmits decisions to AU members States and the AU Commission (Article 29(1) of the Court Protocol).
- The Court Registry notifies the Executive Council about the decision.
- The decision shall be detailed and clear in terms of particularizing the measures the state must take in order to execute the judgment of the Court.
- The Monitoring Unit of the Court logs the decision on the post-judgment case management framework to commence monitoring compliance reporting deadlines.
- Court requests for Action Plan for implementation of the decision within six months of being notified about the decision.
- Monitoring Unit follows up on overdue compliance reports with states.
- Monitoring Unit requests for information on status of implementation from parties, national human rights institutions, and experts.
- The Court, if necessary, summons parties to compliance hearings/meetings to assess the measures adopted.

STEP II – THE COURT SUBMITS ITS DECISION TO THE EXECUTIVE COUNCIL SECRETARIAT

- The Executive Council Secretariat opens the file. It initiates and maintains contact with national focal points to get progress in the implementation of decisions.

- The ***Ministerial Committee on the challenges of ratification/accession and implementation of the OAU/AU treaties*** receives a judgment of the Court and requests Action Plans within six months of the date of judgment.
- Secretariat uses discretion to determine cases in need of urgent consideration by the Executive Council and puts those on the agenda of the next meeting for State concerned to explain difficulties they are facing in implementing the decisions of the Court.
- The Court also submits a copy of the decision to the PAP through the **Committee on Justice and Human Rights**.
- The Executive Council Secretariat maintains contact with the Monitoring Unit of the Court and share information on status of compliance.
- The Executive Council Secretariat in consultation with the Ministerial Committee prepares draft resolutions for adoption by the Executive Council.

STEP III – THE EXECUTIVE COUNCIL BEGINS MONITORING COMPLIANCE ISSUES AND MAINTAINS MONITORING AS A STANDING ITEM ON THE AGENDA IN ALL ITS MEETINGS

- Collects information on implementation from national sources such as NHRIs, civil society, parties, experts etc.
- If the Executive Council considers that the monitoring of the execution of a judicial decision of the Court is hindered by a problem of interpretation of the decision, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the Council Members.
- If the Executive Council considers that a State Party has failed to comply with a judicial decision of the Court in a case to which it is a party, it may, after serving a formal notice on that Party and by decision adopted by a majority vote of the Council Members, refer to the Court the question whether that Party has failed to fulfill its obligation under Article 30 of the Court Protocol.
- If the Court finds a violation of Article 30, it shall refer the case to the Executive Council for consideration of the measures to be taken. If the Court finds no violation of Article 30, it shall refer the case to the Executive Council, which shall close its examination of the cases.

STEP IV – EXECUTIVE TAKES DECISIONS ON COMPLIANCE IN INDIVIDUAL CASES

- After consideration of each case, the Executive Council takes a decision in the form of regulations, directives or decisions that are binding and in need of implementation.
- Decisions must acknowledge the steps or measures taken by the State concerned and point out the outstanding measures.
- Decisions to require the State concerned to report again to the Executive Council through its sub-committee on the new measures taken, which report will be table before the Executive Council in its next meeting.
-

STEP V - THE EXECUTIVE COUNCIL CLOSES THE FILE WHEN FULL COMPLIANCE IS ACHIEVED

- Upon advice of its Secretariat, the Executive Council decides that the decision is fully implemented and closes the file to mark the end of the monitoring process.

STEP VI - THE AU ASSEMBLY DEPLOYS APPROPRIATE COMPLIANCE INCENTIVES AGAINST A PERSISTENTLY NON-COMPLIANT STATE

- The Executive Council conducts a country visit to the State concerned to get more insight into difficulties it is facing in complying with the judgments of the Court.
- A final notice is served on the State concerned requesting for compliance failing which the sanctions regime would be activated.
- Deployment of enforcement mechanisms in article 23 of the Constitutive Act follows if the State remains.
- Deployment of sanctions to be communicated to the PAP and other organs of the AU for enforcement at every level.

DRAFT MONITORING FRAMEWORK (SCENARIO 2) – COURT'S MONITORING ROLE MORE ENHANCED

STEP 1 – COURT RENDERS A FINAL DECISION BY THE COURT/PROVISIONAL MEASURES

- A final decision triggers the monitoring processes.
- The Court Registry notifies the parties and transmits decisions to AU members States and the AU Commission (Article 29(1) of the Court Protocol).
- The Court Registry notifies the Executive Council about the decision.
- The decision shall be detailed and clear in terms of particularizing the measures the state must take in order to execute the judgment of the Court.

STEP II – COURT REQUESTS FOR NATIONAL ACTION PLAN FROM STATE PARTY CONCERNED

- Court requests for Action Plan for implementation of the decision within six months of being notified about the decision.
- The Monitoring Unit of the Court logs the decision on the post-judgment case management framework to commence monitoring compliance reporting deadlines.
- Monitoring Unit follows up on overdue compliance reports with states.
- The Court, if necessary, summons parties to compliance hearings/meetings to assess the measures adopted.

STEP III - MONITORING UNIT REQUESTS FOR INFORMATION ON STATUS OF IMPLEMENTATION

- Primary information to be from the Parties;
- Additional information to be provided by national human rights institutions, and other experts;
- Once a state submits information, the victim or representatives shall be allowed to comment on it.

STEP IV – COURT CONDUCTS COMPLIANCE HEARINGS IN SELECTED CASES

- Court assesses the information submitted by the parties and other sources for a full appreciation of progress made.
- Court facilitates discussions and approves alternative measures depending on circumstances.
- Court makes compliance orders with new or revised timelines and updates the case management system for monitoring.
- Updated compliance information published on the Court website and a growing data base is maintained.
- Court conducts joint hearings where several cases on the same subject matter e.g. Tanzania and death penalty cases so as to deal once and for all with challenged the state maybe facing in that area.

STEP V – COURT REPORTS ANNUALLY TO THE AU ASSEMBLY

- Court submits an annual report to the AU Assembly and cites cases in which there is non-compliance.
- The report has comprehensive details of all monitoring efforts it carried out in the year and the status of implementation in each case.

STEP VI – AU ASSEMBLY/EXECUTIVE COUNCIL TAKES DECISION IN CASES OF NON-COMPLIANCE

- The Executive Council or AU Assembly takes decisions.

- The decision maybe to require states to adopt appropriate measures and report to the Court thereby recognizing Court role to monitor.
- The decision could be to invoke the sanction regime in cases of persistent non-compliance taking into all efforts deployed by the Court as provided for in the consecutive annual reports.

STEP VII – COURT CLOSES AND ARCHIVES FILES IN ALL CASES OF FULL EXECUTION

- The Court monitors compliance with its decisions and only closes the file once it is satisfied that the state has fully implemented the decision as ordered in the reparations judgment as well as subsequent orders issues in compliance hearing proceedings.

Note on reporting and monitoring proposals

It is important to note that the proposals made above are general guidelines as the very first steps towards getting the African system to develop its own functional practice and procedure based on its own realities. They must convey a general trajectory of where the conversation should go as opposed to a strictly step-by-step approach to reporting and monitoring compliance.

The Study has revealed that the other regional human rights systems managed to develop own practice and procedure over a very long time based on experiments, mistakes and the willingness to keep improving their systems. They continue to do so to this day.

(End of Document)