

PRESENTATION TO A WEBINAR

**IMPLEMENTATION OF DECISIONS AND JUDGMENTS OF THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES' RIGHTS, AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS AND
THE AFRICAN COMMITTEE ON THE RIGHTS AND WELFARE OF THE CHILD**

TAKING STOCK OF THE PRESENT AND FUTURE STRATEGIES

11 MARCH 2021

Outline

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- Status of implementation of decisions of the Court (by categories)
- Possible reasons for the poor level of compliance
- Measures put in place to ensure compliance:
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 - African Court initiatives (Rules of Court, Framework, Monitoring unit, recruitment of Compliance officer, Human Rights Trust Fund)
 - Networking with stakeholders – NHRIs, Bar Associations, AU Organs, etc.
- Challenges to implementation

Introduction

The new Rules of Court adopted on 25 September 2021 defines a decision of the Court to mean any pronouncement of the Court, in the exercise of its judicial powers, which is in the form of a judgment, ruling, opinion or order.

For the purpose of this presentation, we will look at only two of these decisions, that is judgments and Rulings – in particular, Rulings for provisional measures. These are the two main decisions that require actions from the Respondent state to give effect to the Court decision that affects the rights of the Applicant.

The nature of these decisions and the actions to be taken by the parties concerned are described under articles 27 to 31 of the Protocol.

Introduction continue...

- i. Article 27 (1) – where the Court finds a violation it shall make orders for remedies, including compensation and reparations.
- ii. Article (27)(2) – in cases of extreme gravity and urgency – interim measures
- iii. Article 28 (2) the majority judgment shall be final and not subject to appeal. Article 28(3) – judgment can be reviewed, and 28(4) Court can interpret own judgment.
- iv. Article 29 (1) – judgment is notified to all the parties and MS, and 29(2) it is notified to Executive Council that shall monitor implementation on behalf of the Assembly.
- v. Article 30 – execution: State parties undertake to execute the judgments of the Court to which they are parties within the time stipulated and to guarantee their execution.
- vi. Article 31 – reporting: court shall report in its activity report to the Assembly, in particular cases in which there has been non-compliance with Court judgments.

Status of implementation of Court decisions...

As indicated, this presentation will focus on judgments and Rulings for provisional measures.

The 2020 Activity Report of the Court paints a very bleak picture of the status of implementation of these two categories of Court decisions.

- i. Implementation of Judgments: in 2020 the level of full compliance with the Court's judgments stood at a meagre 7%. In 18% of the Applications the Court noted partial compliance with the Court's judgments and in 75% of the Applications there was no compliance with its judgments at all.

- i. Implementation of Rulings for provisional measures: the status here is even worse. There has been no full compliance (with hesitation) from only one state (Ghana). Some states have submitted report on the status of compliance which were disputed by the Applicants – this includes Libya, Kenya and Cote d'Ivoire. In the majority of cases, there has been no report at all.

Possible reasons for the poor level of compliance

- The Court has not undertaken an independent research to ascertain the reasons for the poor level of compliance. However, interaction with stakeholders reveal the following:
 - i. **lack of a compliance monitoring system** – EC has not put in place a mechanism for monitoring compliance as required under Article 29(2) of the Protocol
 - **Lack of understanding of the decisions of the Court**, especially meaning of interim measures – see experience with Tanzania, Ghana, Benin and Cote d’Ivoire
 - **Lack of understanding/or definition of the status of the Court judgment** – is it a foreign judgment or self-executing at domestic level. What measures have states put in place to execute Court judgments. See practice of ECOWAS and EACJ
 - **Lack of use of national mechanism to get enforce judicial decisions (Applicants wait to be paid instead of asking for payment before the domestic competent authority, like Ministry of finance)**
 - **Degradation/poor environment at national level in terms of Rule of law and political rights and freedoms.**
 - **Lack of political will** – see reasons advanced for not complying with judgments and orders

Measures put in place to enhance compliance

To enhance compliance with Court decisions/judgments, two main approaches have been provided: treaty-based measures and Court initiatives.

- a. **treaty-based: Article 29 and 31 provides for treaty based measures to monitor compliance with Court judgments. 29 mandates the EC to monitor compliance on behalf of the Assembly. However, the EC has not developed any mechanism to ensure and report on this monitoring.**

Article 31 mandates the Court to report to the Assembly and in particular cases where states have not complied with its judgments. The Court does report on a regular basis and indicate in tabular form the status of implementation of its decisions, including cases of non-compliance.

In the past, the Executive Council would adopt a decision on the Activity Report of the Court calling on states to take steps to comply with the judgments and decisions of the Court, and in some cases, calling on the Court and the AUC to report to the next session of Council. However, in January 2018, the Executive Council took a decision that the names of countries that have not complied with Court Judgment should no longer feature in the decisions of the Executive Council, even if the Court retains the names in its activity reports. The EC disapproved with the naming and shaming approach.

Since then the Court has mention countries that have not complied with its judgments/Rulings only in its activity reports and not in the Executive Council decisions.

The Court's argument that that this was contrary to Article 31 fell on death ears.

Measures Continued

b. **Court initiatives:**

Having realized the poor state of compliance with its judgments, the Court itself took a number of initiatives to mitigate the situation, including:

- i. *Development of a Framework for compliance and monitoring:* to fill the gap in the EC ability to monitor compliance on behalf of the Assembly, the Court developed a compliance monitoring framework that will assist the EC and policy organs to effectively monitor compliance with Court judgment. This framework which has an 8-step approach is very simple and easy to monitor. It was presented and endorsed by the November 2020 session of the STC Justice and Legal Affairs and will be presented to the Executive Council by the OLC to be adopted as one of the Legal Instruments of the AU. Once this is done, the framework will become operational as a tool for monitoring compliance with Court judgments within the AU.

8-steps framework in brief

STEP I : DELIVERY AND DISSEMINATION OF THE DECISION

STEP II : STATE REPORTING ON MEASURES TAKEN

STEP III : ASSESSING COMPLIANCE FOR REPORTING PURPOSES

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

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

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

STEP VII: ASSEMBLY ADOPTS APPROPRIATE ACTION TO ENFORCE THE JUDGMENT

STEP VIII: THE COURT CLOSES AND ARCHIVES FILES IN CASES OF FULL EXECUTION

Measures Continued

- ii. **ENFORCEMENT OF DECISIONS OF THE COURT**

Under Rules 80 and 81 of the new Rules, the Court has provided for how it can itself be involved in the monitoring of execution of its judgments.

Rule 81: reiterate the undertaking by States under Article 30 of the Protocol for State Parties to fully comply with the decisions of the Court and guarantee their execution within the time limits set by the Court, and all Parties shall comply with the decisions of the Court.

Rule 81 provides for procedure for Monitoring Compliance with Decisions of the Court, which include:

- State Parties to submit reports on compliance with the decisions of the Court and these reports shall, unless otherwise decided by the Court, be transmitted to the Applicant(s) for observations.
- The Court may obtain relevant information from other credible sources in order to assess compliance with its decisions.
- In case of a dispute as to compliance with its decisions, the Court may, among others, hold a hearing to assess the status of implementation of its decisions. At the end of the hearing, the Court shall make a finding and where necessary, issue an order to ensure compliance with its decisions.
- Where a State Party has failed to comply with its decision, the Court shall, in accordance with Article 31 of the Protocol, report the non-compliance to the Assembly.
- The Court will make available to the Assembly, all relevant information it may deem useful for the purpose of execution.

Measures Continued

iii. *Establishment of a Monitoring Unit within the Registry:*

To facilitate the monitoring and compliance process, the Registry has established a monitoring Unit and is in the process of recruiting a SLO for Compliance and Monitoring of Court decisions. This Unit is the first port of call to initiate the monitoring process as soon as a judgment is delivered.

The Unit will develop a monitoring template and a timetable for reporting which will be sent to the Respondent State and the other parties. It will use this to follow up with the parties and advise the Court on a regular basis, preferably during the quarterly sessions.

Measures Continued

iv. *Nomination of Focal points at national Level:*

The Registry had invited States to submit focal points that will liaise with the Court on Court related matters, including in particular, those charged with implementation of Court Judgments. Unfortunately, only few countries have sent focal persons, but the Court continues to encourage states to do so.

Measures Continued

v. *Enhanced networking with stakeholders*: the Court is working with various stakeholders, including NHRIs, AU Organs, Bar Associations, the Media, Coalition for an Effective African Court, etc. These stakeholders are very instrumental in encouraging States to comply with the judgments of the Court and may be instrumental to providing relevant information to the Court to make a determination of compliance.

END

Thank you for you kind attention