

**Enforcement of the Orders of the African  
Court for Payment of Fair Compensation  
to the Victims of Human Rights Violations:  
A Comparative View**

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## Abstract

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Enforcement of the orders of an international tribunal ensures justice for the victims of human rights violations by holding accountable the perpetrators of violations. The right to an effective remedy and reparations for the breach of human rights are the fundamental principles of international law that courts and tribunals have recognised over the years.

This paper adds to the wealth of literature on the enforcement and implementation of the decisions of the African Court on Human and Peoples' Rights (African Court). It answers the question: when the African Court issues an order for monetary compensation, are there sufficient mechanisms at the international level to enable victims of human rights to realise their rights?

The emphasis shall be on the new Rules of the Court adopted in September 2020 with a comparative view with other international human rights tribunals. The paper will also analyse the challenges imposed by the very nature of the regional Court and the opportunities available for the victims and litigants before the Court.

## 1. Introduction

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The concept of enforcement and compliance with the decisions of international human rights courts and tribunals has been well exhausted by scholars within the African human rights system and beyond. Their propositions on how to effectively implement and enforce compliance cut across; not only the African Court on Human and Peoples' Rights (the African Court) but also the African Commission on Human and Peoples' Rights (the Commission), the African Committee of Experts on the Rights and Welfare of the Child (Committee on the Right of the Child) as well as sub-regional courts such as the East African Court of Justice (EACJ).<sup>1</sup>

Traditionally, the obligation to enforce international law was placed on the states - 'state-centric'.<sup>2</sup> Meron puts it well that contemporary international law trends treat individuals as victims of violations of international norms. With that in mind, this paper proposes that the victims of human rights violations ought to realise their rights to reparations after an international court or tribunal has made its declaration affirming the violations. This can be a reality only if there are implementation mechanisms in place.

The right to reparations for the breach of human rights obligations is a fundamental principle of international law.<sup>3</sup> In the context of the African Court, an order for compensation or any other form

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<sup>1</sup> A. K. Abebe, Compliance with International Human Rights Law in Africa: Essays in Honour of Frans Viljoen in A. Adeola (ed), *'Horizontal' Compliance with Decisions of the African Court on Human and Peoples' Rights* (Oxford University Press, 2022) p.182.

<sup>2</sup> T. Meron, *The Humanization of International Law* (2006) p.270.

<sup>3</sup> UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by General Assembly Resolution 60/147 of 16 December 2005, <[www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation](http://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation)>, visited 11 August 2022 [Basic Principles on the Right to Remedy].

of reparation is usually given after the Court has found that there has been a violation of human or people's rights.<sup>4</sup> However, reports on non-compliance with the Court's orders are prevalent;<sup>5</sup> and this has become the main challenge the Court faces. Some schools of thought have used the level of non-compliance with the decisions of the Court to measure its effectiveness. Here, they equate the understanding of the domestic legal systems with the international human rights regime.<sup>6</sup> Some scholars propose State led initiatives by engaging all arms of the government, meaning the Executive, the Judiciary and the Legislature. The propositions and solutions posed to the notorious problem of non-implementation of the decisions of international tribunals are diverse. If adopted, they may bring the desired result. However, as rightly pointed out by Abebe, the emphasis has been on the obligation of the States, leaving out other players, such as non-state actors.<sup>7</sup>

For a victim of human rights to enjoy fair compensation, especially in the African context, it depends on the willingness of the State to implement the decision of the specific tribunal. Amidst that, the victims of human rights violations have not been given enough attention.<sup>8</sup> The African Court has recognised the obligation of States to comply with the fundamental principles of international law, meaning that the breach involves an obligation to make reparation adequately. A good example is a decision in *Reverend Christopher Mtikila's* case.<sup>9</sup> In this case, the Court categorically reiterated the principle by emphasising that “[o]ne of the fundamental principles of contemporary international law on State responsibility, which constitutes a customary norm of international law, is that any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation”.

There is not enough emphasis on payment of adequate reparation to the victims of human rights, either pecuniary or nonpecuniary. Also, it can be seen that most African States have no culture of compliance with decisions issued by adjudicating bodies, even at the domestic level. An example can be taken from the East African Court of Justice (EACJ), which has issued several judgments that illustrate the challenges of ensuring compliance. In the case of *Burundi Journalists Union v. Attorney General of Burundi*,<sup>10</sup> the EACJ found that the Burundian government had violated the rights of journalists by prohibiting them from practising their profession. Despite the court's ruling, the government did not comply with the decision, and the journalists continued to face harassment and intimidation. This case highlights the challenges of enforcing court decisions in the face of non-compliance by state authorities. Also, the case of *Hon. Kabwegyere v. Attorney General of Uganda*.<sup>11</sup> In this case, the EACJ found that the Ugandan government had violated the rights of a former government minister by terminating his appointment without due process. Despite the court's ruling, the

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<sup>4</sup> Art. 27 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights [Protocol on the African Court] see also Rule 69 of African Court on Human and Peoples' Rights, Rules of the Court, September 2020.

<sup>5</sup> See Activity Reports of the African Court on Human and Peoples' Rights on diverse years, <[www.african-court.org/wpafc/activity-report/](http://www.african-court.org/wpafc/activity-report/)> visited 12 August 2022.

<sup>6</sup> V. Ayeni Compliance with International Human Rights Law in Africa: Essays in Honour of Frans Viljoen in A. Adeola (ed), 'Do decisions of Regional Human Rights Tribunals in Africa make a Difference?' *Rights* (Oxford University Press, 2022) p.36.

<sup>7</sup> Abebe, *supra* note 1 p.179.

<sup>8</sup> Meron, *supra* note 2.

<sup>9</sup> *Reverend Christopher Mtikila v United Republic of Tanzania* (14 June 2013) 1 AfCLR 72.

<sup>10</sup> Reference No. 7 of 2013

<sup>11</sup> Reference No. 3 of 2007

government did not comply with the decision, and the former minister was not reinstated. This case illustrates the challenges of enforcing court decisions against powerful state actors.

These cases, among others, demonstrate that many African states have a culture of non-compliance with court decisions, even at the regional level. This culture of non-compliance has been carried over to the international level, where African states have been criticised for failing to implement decisions issued by international courts and tribunals.<sup>12</sup>

Delayed non-compliance means delayed realisation of rights by the victims. Whether with the push at the domestic or international level, there ought to be a humanisation of international law in the sense that implementation of the decisions of international tribunals to be ‘victim-centric’.

The paper considers the efforts made by the African Court to motivate applicants or legal practitioners to use the African Court to obtain redress in matters of human rights. Undeniably, the compliance level of a tribunal’s decision is one of the tests of the effectiveness of the international human right system. It is, therefore, imperative for the Court to inspire confidence that there are mechanisms in place that can be employed to ensure enforcement of the Court's orders on reparations in appropriate cases.

In this paper, the term fair compensation has been used interchangeably with reparations. In the context of this paper, reparations means pecuniary and nonpecuniary compensation. In addition, term implementation in the context of this paper is limited to the actual steps or measures taken by a state to give effect to the orders of the Court and adherence to the judgment of the Court.<sup>13</sup> Executive promises of implementation in that regard are not considered partial implementation in the context of the paper. The term implementation has been used interchangeably with the term compliance. While compliance with the decision of a supranational body is left to the states, this paper focuses on enforcement mechanisms at the international level, specifically, how best the tribunal or Court can be a catalyst in enforcing its own decisions.

The paper will also adopt the scope of the definition of victims as persons who individually or collectively suffered harm. This includes physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that constitute gross violations of international human rights law. The term also includes immediate family or dependants of the direct victim and persons within the national context. They might have suffered harm in intervening to assist victims in distress or to prevent victimisation.<sup>14</sup>

Considering the number of cases that the Court has already decided on merit,<sup>15</sup> the paper will analyse the decisions passed by the Court against five countries, namely Kenya, Tanzania, Burkina Faso, Rwanda and Benin while drawing lessons from the European Court of Human Rights (European

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<sup>12</sup> M. Mutua, The Banjul Charter and the African cultural fingerprint: An evaluation of the language of duties. *Human Rights Quarterly*, 26(4), 2004, p. 947-978.

<sup>13</sup> African Court on Human and Peoples’ Rights, Booklet on the Implementation of Decisions of the African Court on Human and Peoples’ Rights by Coalition for an Effective African Court on Human and Peoples’ Rights, p.5 <[www.africancourtcoalition.org/files/2021/08/ACC-Implementation-Booklet\\_ENGFR\\_2021.pdf](http://www.africancourtcoalition.org/files/2021/08/ACC-Implementation-Booklet_ENGFR_2021.pdf)> visited 14 August 2022.

<sup>14</sup> Basic Principles and Guidelines on the Right to a Remedy, *supra* note 3.

<sup>15</sup> According to the African Court website, the Court has a total of 328 cases, finalised 147 cases, and 181 are still pending, <[www.african-court.org/cpmt/latest-decisions/judgments](http://www.african-court.org/cpmt/latest-decisions/judgments)>, visited 14 August 2022.

Court) and the East African Court of Justice, albeit a sub-regional mechanism.

The paper is divided into four sections; the first introduces the concepts. It defines the parameters of the paper; the second section expounds on the enforcement mechanisms set out by the supranational tribunals. The third section examines the concept of fair compensation to the victims of human rights violations while looking at the mechanisms which the African Court has employed, drawing inferences from the European Court on Human Rights and other mechanisms, and finally concludes on how best the victims of human rights violations can realise their right to fair compensation.

## 2. Implementation Mechanisms

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It is a general understanding that international decisions should be implemented at the domestic level. Moreover, the effectiveness of the implementation process has been seen to vary from State to State, whether through administrative, judicial or political means.

The instruments governing the implementation of the decisions of the African Court are the African Charter on Human and Peoples' Rights (African Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol). Article 1 of the African Charter obliges member states of the African Union to recognise the rights, duties and freedoms enshrined in the Charter and 'to undertake to adopt legislative or other measures to give effect to the rights. Building on that, the Protocol compels its States Parties to 'undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and guarantee its execution.'<sup>16</sup>

Similarly, the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) provides the binding force for the execution of judgments; it states that "the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties".<sup>17</sup> Further, Article 46(2) provides that the Court's final judgment shall be transmitted to the Committee of Ministers, which shall supervise its execution.

## 3. Payment of Fair Compensation

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As noted earlier, compliance and implementation of the decision of the international tribunal are mainly dependent on the political will of the State. Analysis of the levels of compliance reveals that they vary. In some instances, it has been done comprehensively, while there are instances of partial compliance and non-compliance. An example of non-compliance is the Court's decision in the *Sebastien Germain Ajavon v Republic of Benin*.<sup>18</sup> In this case, the Court made Reparations Order for the State to take all the necessary measures to annul judgment made by a domestic court in a way that erases all its effects and to report thereon to the Court within six (6) months and also to pay the Applicant and his family

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<sup>16</sup> Protocol on the African Court, *supra* note 4, art. 30.

<sup>17</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), art. 46.

<sup>18</sup> Application No. 053/2016.

pecuniary compensation to the tune of 39,870,444,947 CFA for material loss and moral damages. The State has yet to comply as of November 2022.

Other examples of non-compliance are *Majid Goa v United Republic of Tanzania*<sup>19</sup>, *Ally Rajabu and others v the United Republic of Tanzania*,<sup>20</sup> and *Kennedy Ghana and Others v The Republic of Rwanda*,<sup>21</sup> in which the State categorically informed the Court that it would not participate in the proceedings of the Court.<sup>22</sup> Hence, the State's obligation to comply is mostly in line with its political policies and not necessarily based on the responsibility of the State to make compensation.<sup>23</sup>

A notable State that has complied with the decisions of the African Court to a certain degree is Burkina Faso. In the case of *Norbert Zongo and others v Burkina Faso*,<sup>24</sup> it is reported in African Court's Activity Report<sup>25</sup> that Burkina Faso took measures to execute the judgment of the Court by paying the Applicants compensation. The State also published the judgment and reopened the investigation as ordered. Burkina Faso has also complied with all orders made by the Court in *Lohé Issa Konaté v Burkina Faso*<sup>26</sup> by making amendments to the impugned laws, publishing summaries of the judgment and paying monetary compensation as ordered. This is an uncommon sight in the African context.

Tanzania has been labelled as notorious for non-implementation of the decisions of the Court. "Being a host country, especially before its withdrawal of the declaration made under Article 34(6) of the Court Protocol, many cases were filed against Tanzania. The Court has issued several orders against the State. However, none has been complied with directly".<sup>27</sup> For example, in *Tanganyika Law Society and the Legal and Human Rights Centre, and Rev. Christopher R. Mtikila v the United Republic of Tanzania*, the State was ordered to take constitutional and legislative measures within a reasonable time to remedy the violations. The State reported that the implementation of the Court's judgment was contingent on the outcome of a referendum on the proposed Constitution since the State was undergoing the process of adopting a new Constitution. The referendum has not been held as of November 2022.

On the other hand, the State has not complied with any monetary compensation awarded to victims. For example, the decision of the Court in *Alex Thomas v the United Republic of Tanzania*;<sup>28</sup> judgment on

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<sup>19</sup> Application No. 025/2015.

<sup>20</sup> Application No. 007/2015.

<sup>21</sup> Application No. 017/2015.

<sup>22</sup> The 2021 Activity report of the African Court of Human and Peoples' Rights p 10.

<sup>23</sup> F. Viljoen and L. Louw 'State Compliance with the Recommendations of the African Commission on Human and Peoples' Rights 1994-2004', *American Journal of International Law* (2007) pp.1-34.

<sup>24</sup> The beneficiaries of the late *Norbert - Zongo Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo vs Republic of Burkina Faso*, Application 013/2011.

<sup>25</sup> 2021 Activity Report of the Court notes that the Applicants, by email on 26 November 2016, indicated that they had been paid 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 them; that 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 which was granted on 8 April 2015 and in December 2015, three soldiers were arrested as suspects to the murder of Zongo and his companions; On 28 November 2016, the Respondent State published the Court's judgment in their official gazette and one of the daily newspapers 'Sidwaya'. In July 2017, the Respondent State indicated that its official website had published the judgment summary. <<https://www.african-court.org/wpafc/report-of-the-african-court-on-human-and-peoples-rights-afchpr-1-january-31-december-2021/>> visited 11 August 2022.

<sup>26</sup> Application 004/2013.

<sup>27</sup> Telephone Interview with E Mnaro on 9 August 2022.

<sup>28</sup> Application 005/2013.



the merits of the case was issued on 20 November 2015, and in 2019, the State was ordered to pay monetary reparation amounting to TZS 4,500,000. Despite the Respondent State's application seeking interpretation of the Court Judgment having been given, the Respondent State has not filed a report on the implementation of the said Order. Another case of *Wilfred Onyango Nganyi & 9 Others v the United Republic of Tanzania*,<sup>29</sup> the Judgment on merits and reparations were issued in 2016 and 2019, respectively, where the State was ordered to pay pecuniary reparation total of 65,500 US Dollars and 3,000,000 Tanzanian Shillings as moral damages. Still, the Respondent has not yet filed any report regarding the implementation of the reparations judgment.

Other countries, such as Rwanda<sup>30</sup> and Benin,<sup>31</sup> are also in the same boat as Tanzania. Tanzania and Rwanda have withdrawn their declaration made under Article 34(6) of the Protocol, which allows individuals and NGOs to assess the Court, which can be said to be among the reasons for their non-implementation; however, the underlying factor which cut across these states is lack of political will.

Some states lack a clear policy or mechanism to ensure compliance with international tribunal decisions. In Tanzania, for example, the expectation has been that the Executive, with its agencies such as relevant ministries, will ensure compliance. However, there is no straightforward procedure on how the relevant government ministry will go about it. The Judiciary, which could be a part of enforcing machinery, is left out of the implementation process. It is only expected to adopt the jurisprudential value of the decisions. This gap necessitates rethinking how best the Judiciary can be involved.

The phenomenon of non-compliance is not peculiar to the African system; it has been noted elsewhere.<sup>32</sup> Paulson notes regarding the International Court of Justice that "it is ironic that Court's business up to the delivery of judgment is published in lavish details, but it is not easy to find what happens afterwards".<sup>33</sup>

It is imperative to note how the international instruments have laid down the steps to ensure implementation. The African Court is obliged to notify the parties of its judgment. The Protocol states that the Court shall transmit the decision of the Council of Ministers (currently known as the Executive Council of the African Union), which is also vested with the power to monitor implementation on behalf of the AU Assembly of Head of States and Government.<sup>34</sup>

Looking at the European Convention, the implementation of the decisions of the European Court has been given extra force. The Convention, in addition to placing the obligation of execution on the Council of Ministers, goes the extra mile, unlike the Protocol to the African Charter,<sup>35</sup> by making a provision in circumstances where the Council of Ministers considers the likelihood of non-compliance.

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<sup>29</sup> Application 006/2013.

<sup>30</sup> *Ingabire Victoire Umuhoza v Rwanda* Application No 3/ 2014.

<sup>31</sup> *Sebastien Germain Ajavon v Republic of Benin* Application No. 053/2016.

<sup>32</sup> C. Paulson 'Compliance with Final Judgments of the International Court of Justice since 1987', *American Journal of International Law* (2004) pp. 434-461.

<sup>33</sup> *Ibid.*

<sup>34</sup> Protocol on the African Court, *supra* note 4, art. 29.

<sup>35</sup> *Ibid.*

Article 46(4) of the European Convention reads:

"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 a 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 fulfil its obligation under paragraph 1."

In addition, Protocol 11 to the European Convention was adopted to improve the Convention's enforcement machinery by examining human rights complaints by a single court within a reasonable time.<sup>36</sup>

The prevailing practice is that African Court has been making follow-ups on implementation of its decisions via letters to the parties enquiring about the level of compliance and making statements during meetings with AU officials. Sadly, the Court has been reporting a high rate of non-compliance with its decisions through its Activity Reports. For instance, in the case of the *African Commission (Saif Gaddafi) v Libya*,<sup>37</sup> several initiatives were taken to ensure implementation. The Court indicated in its Activity Report for the year 2014 that the matter was received on 31 January 2013; the same year, the Court issued an Order for Provisional Measures on 15 March 2013. The State was ordered to allow the accused access to a lawyer of his choice and family visits and to refrain from taking any action that may affect his physical and mental integrity and health. However, by the time of reporting, Libya had not complied with the Order. The Executive Council urged Libya "to inform the Court of concrete measures it has taken to implement the Order of Provisional Measures". For three years until 2016, when a Judgment in Default was delivered, there was still no report on the Order's implementation for provisional measures. The Court urged the African Union Commission (AUC) to consider authorising a fact-finding mission to Libya to investigate the situation of Mr Al Islam Gadhafi and encourage Libya to fully comply with the orders of the Court as well as the Judgment of the Court. Until the end of 2021, the Court reported that the Respondent state had not filed any reports and the time limit for Libya to file its report elapsed since 22 November 2016.<sup>38</sup>

The European Court, on the other hand, places an obligation on the member states to remove any obstacles in their domestic legal system that might prevent the applicant's situation from being addressed.<sup>39</sup> Quoted from *Maestri's case*:<sup>40</sup>

"It follows from the Convention, and Article 1 in particular, that in ratifying the Convention, the Contracting States ensure that their domestic legislation is compatible with it. Consequently, the respondent State must remove any obstacles in its domestic legal system that might prevent the applicant's situation from being

<sup>36</sup> A. Gita, Unpublished LL.M Thesis 'Human Rights Protection Institutions: A Comparative Analysis of the Complaints Procedures in Africa, Europe and Inter- America' (2010) pp.34-35 <[www.etd.ceu.edu/2011/gatitu\\_antony.pdf](http://www.etd.ceu.edu/2011/gatitu_antony.pdf)> visited 13 June 2022.

<sup>37</sup> Application 002/2013 *ACHPR v. Libya*.

<sup>38</sup> Reported in the 2014 Activity Report of the Court. Irrespective of non-compliance, the Court also stated that unconfirmed media reports indicated that Mr Kadhafi was released in 2017.

<sup>39</sup> Guide on Article 46 of the European Convention on Human Rights <[echr.coe.int/Documents/Guide\\_Art\\_46\\_ENG.pdf](http://echr.coe.int/Documents/Guide_Art_46_ENG.pdf)> visited 14 June 2022.

<sup>40</sup> *Case of Maestri v Italy* (Application no. 39748/98) [hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-61638%22](http://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-61638%22), accessed 16 June 2022.



adequately redressed.”

If the nature of the breach allows restitution in *integrum*, it is for the respondent State to effect it. If the national law does not allow – or allows only partial – reparation for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to be appropriate.<sup>41</sup> It is not disputed that the implementation is most effective at the domestic level. However, this paper argues that mechanisms should also be strengthened internationally. This is because relying on the Executive's willingness has sporadic positive results in some States, leaving the victims of human rights violations at the mercy of the respondent states. In most instances, without the assurance of when they will realise their rights if the State chooses not to comply.

The scholars who have linked international remedies and domestic enforcement have advocated for precise orders for remedies by an international court for ease of compliance.<sup>42</sup> It is said that giving an open-ended declaration by an international tribunal adds to the likelihood of non-compliance. Even in such circumstances, the parties may go back to Court to seek interpretation or clarity; it is costly and time-consuming and should be avoided.<sup>43</sup>

Mutangi proposes that in fulfilment of the obligation to implement decisions of international tribunals, all branches of the government are expected to depend on the nature of measures required to contribute to the enforcement. If there is political will, the Executive can execute; otherwise, an activist Judiciary or human rights-minded Parliament is expected to ensure enforcement.<sup>44</sup>

In the common law system, which adopts an adversarial system, for the Judiciary to act, usually, there ought to be a force from the complainant to initiate the move- someone ought to move the Court. Enforcing the decisions of the African Court as foreign judgments or moving the domestic courts for retrial by suspending the principle of *res judicata* is a sound proposition. However, that can only become a reality if the complainant becomes more active in pursuing their rights and pushing domestic courts into making declarations and acknowledging the decisions of international tribunals like the African Court. It can be argued that this is a long shot and depends on different variables, including the ‘human rights-minded’ bench.

This paper proposes that to catalyse the enforcement process, the African Court should be precise by incorporating in its instruments or rules of procedure the measures that should be taken at the domestic level to ensure compliance. Borrowing an example from the East African Court of Justice Rules, which state that “where a judgment of the Court imposes a pecuniary obligation on a person, its execution shall be governed by the Rules of Civil Procedure in the Partner State in which the execution is to take place”.<sup>45</sup> A system in place shifts the burden of ensuring compliance to the non-

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<sup>41</sup> Guide on Article 46 of the European Convention on Human Rights. <[https://echr.coe.int/Documents/Guide\\_Art\\_46\\_ENG.pdf](https://echr.coe.int/Documents/Guide_Art_46_ENG.pdf)> visited on 16 June 2022.

<sup>42</sup> T. Mutangi, Compliance with International Human Rights Law in Africa: Essays in Honour of Frans Viljoen in A. Adeola (ed), *Enforcing compliance with the Judgments of the African Court on Human and Peoples' Rights: Prospects and Challenges* (Oxford University Press, 2022) p.190.

<sup>43</sup> Guide on Article 46, supra note 39.

<sup>44</sup> Mutangi, supra note 42 p.200.

<sup>45</sup> Article 44 of the Treaty for the Establishment of the East African Community, read with Rule 85(2) of the Rules of Procedure of the EACJ.

state actors or even the victims.

An enforcement provision in the EAC Treaty is there because the partner states of the East African Community intend to “standardise judgments of courts within the Community”.<sup>46</sup> This can be a point of departure with the African Court; however, directing the use of the rules of civil or criminal proceedings or taxation of legal fees is one way of guaranteeing that the victims will have an avenue and higher chances of realising their rights in the whole implementation process.

### **3.1. Employment of Mechanisms set by the Court**

On 1 September 2020, the Court adopted revised Rules, which entered into force on 25 September 2020, replacing the 2010 Rules.<sup>47</sup> The Court Rules introduced new Rules that were not in the 2010 version, such as Rule 80, which is titled compliance with the decision of the Court. This Rule emphasises that all parties comply with the orders of the Court.<sup>48</sup> The introduction of this practice can be said to be going an 'extra mile' from the provisions of Article 30 of the Protocol, which only obliges state parties to comply with the Court's judgments and guarantee its execution.

Placing an obligation to the other parties to the case before the African Court is in tandem with the proposal made by Meron. He proposes that the international community should recognise the role of individuals as not only victims of violations of international norms but also as violators of those norms and recognise a growing role for international organisations in enforcing those norms.<sup>49</sup> Most of these cases are filed by non-Governmental organisations, law societies, and regional bar associations.<sup>50</sup> Therefore, giving them a role in the implementation process can push the State Parties to comply with the orders of payment of pecuniary reparations. Not only that, but also comply with other orders on non-pecuniary reparations to restore the status of the victims of human rights violations to a state before the breach.

The Rules of the African Court go further to set up under Rule 81 the procedure for Monitoring Compliance with the decisions of the Court, which include submission by a State Party report on compliance with the Court's decisions, which shall be transmitted to the Applicants for observations. Of importance is the obligation that the Court has imposed upon itself to obtain relevant information sources to assess compliance with its decisions. This position also makes the Court active in implementing its decisions to allow it to monitor compliance, even on a partial or progressive basis.

The information gathered by the Court will illuminate the accurate picture in which the decisions of the Court are effective at the domestic level. It is also a process that brings a shift into perspective that the decision of any human rights tribunal should be a broader process for the internalisation of

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<sup>46</sup> Article 126 (1) of the EAC Treaty.

<sup>47</sup> African Court on Human and Peoples' Rights <[www.african-court.org/wpafc/wp-content/uploads/2021/04/Rules-Final-Revised-adopted-Rules-eng-April-2021.pdf](http://www.african-court.org/wpafc/wp-content/uploads/2021/04/Rules-Final-Revised-adopted-Rules-eng-April-2021.pdf)> visited 11 August 2022.

<sup>48</sup> African Court, Rule 80(2).

<sup>49</sup> Meron, *supra* note 2.

<sup>50</sup> Organisations, such as Pan African Lawyers Union (PALU), East African Law Society (EALS), and Tanganyika Law Society (TLS).

norms. Implementation should be a process and not a final product.<sup>51</sup>

Rule 81 also proposes a hearing to assess the implementation status in case of a compliance dispute.<sup>52</sup> Previously a party that initiated the proceedings, in most cases Non-Governmental Organisations, took the initiative to write to the Court to enquire on the implementation status, which in most cases was fruitless, primarily if the orders were issued against a State party that is labelled as notorious in non-implementation.<sup>53</sup> The Rule that proposes a hearing has not been tested; however, it is celebrated by non-state actors, and some have a signified intention to try it.<sup>54</sup> In Rule 81, reporting non-implementation of the decision of the African Court to the AU Assembly has been put as a matter of last resort.

The latest decision of the African Court against Kenya, passed in June 2022, incorporated the aspects of the implementation procedure as per Rule 81.<sup>55</sup> This reparation application was filed in 2012 by the ACHPR originating from a Communication filed in the Commission by the Centre for Minority Rights Development and Minority Rights Group International, both acting on behalf of the Ogiek of Mau Forest in Kenya. The judgment on merit was delivered in 2017 when the Court found the Respondent State violated the African Charter. After thorough deliberation, the Court made specific orders on pecuniary and non-pecuniary reparations. Among others, the Respondent was ordered in consultation with the victims to establish and operationalise the Committee for management of development funds that were ordered in the judgment of the Court. Further, the State was ordered to submit a report on the implementation of the orders of the Court within one year. The Court also shall conduct a hearing on the status of the execution of the orders made in that judgment one year after the decision date.

It has only been a few months since the judgment was issued. However, it has been reported that the State has been silent, not responding to correspondences initiated by the leaders of the minority group, even though they remain hopeful and willing to continue pursuing implementation through dialogue with the new government as 2022 is the election year in Kenya.<sup>56</sup>

## 4. Conclusion

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Until 2020, implementation of the decisions of the African Court was placed primarily on the State Parties, while other actors were left with little or no obligation to ensure enforcement of the decision of the Court. It can be argued that relying solely on the States to adopt appropriate measures to ensure enforcement of the findings of the Court has not been very fruitful. The evolution of the Court Rules has allowed both parties- the State and the victim(s) or their representatives to initiate measures to

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<sup>51</sup> V. Ayeni, *supra* note 6 p. 38.

<sup>52</sup> Rule 81(3).

<sup>53</sup> Telephone interview with E Mnaro on 9 August 2022.

<sup>54</sup> Telephone interview with P Joseph on 9 August 2022.

<sup>55</sup> *African Commission on Human and Peoples' Rights v. Republic of Kenya* Application No. 006/2012 <[www.african-court.org/cpmt/storage/app/uploads/public/62b/aba/fd8/62babafd8d467689318212.pdf](http://www.african-court.org/cpmt/storage/app/uploads/public/62b/aba/fd8/62babafd8d467689318212.pdf)>, accessed 11 August 2022.

<sup>56</sup> Interview of the legal representative D Deya and leadership of Minority groups, D Kobey and E Kimaliti, KTN News <[www.youtube.com/watch?v=vACOpEVzmI4](https://www.youtube.com/watch?v=vACOpEVzmI4)> visited 11 August 2022.

ensure compliance for their benefit.

It is indisputable that the Court is vested with the power to order payment of fair compensation to restitution victims of human rights violations once it has been declared that the violations took place, however as the position is, the execution of the decisions of the African Court is vested on the Executive Council of the African Union with no elaborated procedure to be adopted in case of non-compliance. At the same time, other human rights mechanisms, such as the European Court, anticipated that and set a mechanism for compliance. Therefore, the amendment of the African Court's rules of procedure to incorporate specific procedures that the State and the victims ought to take to implement the decision of the Court is celebrated. It is a positive step toward ensuring that victims of human rights violations are fairly compensated. Still, there is a need to incorporate specific implementation procedures in the Rules of Procedure of the Court that should be followed. This should reference how enforcement can be done via domestic courts to allow the victims to realise their right to fair compensation.

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