Journal of Human Rights Practice, 12, 2020, 163–170
doi: 10.1093/jhuman/huaa015
Advance Access Publication Date: 4 July 2020
Practice Note

OXFORD

Practice Note

Perspective from the African Court on Human and Peoples' Rights

Ben Kioko*

Abstract

This practice note seeks to highlight the experience of the African Court on Human and Peoples' Rights in monitoring and ensuring the implementation of its decisions. It outlines the implementation mechanisms in place, some specific areas and judgments and their status of implementation. An attempt is also made to outline the tools that have worked, challenges, and key lessons to be learned.

Keywords: African Court on Human and Peoples'Rights; implementation; judgments; monitoring

This practice note seeks to highlight the experience of the African Court on Human and Peoples' Rights in monitoring and ensuring the implementation of its decisions. Written from the personal perspective of my time as Vice President of the Court, it outlines the implementation mechanisms in place, some specific areas and judgments and their status of implementation. An attempt is also made to outline the tools that have worked, challenges, and key lessons to be learned. It argues that dialogue, in various forms, between the parties and the Court can facilitate implementation of the Court's judgments.

1. The effectiveness of mechanisms in place to monitor and ensure implementation of the decisions of the African Court

Although a significant number of states within the African Union (AU) have ratified the Protocol establishing the African Court on Human and Peoples' Rights (30 states), only ten made the declaration under Article 34(6) of the Protocol enabling it to receive applications directly from individuals or non-governmental organizations (Daly and Wiebusch 2018), and two of these have withdrawn (Rwanda and Tanzania). Nevertheless, the Court has, since it began operating in 2006, received over 270 applications and finalized 90 (see African Court on Human and Peoples' Rights, Statistics as at March 2020 http://en.afri

* Justice Ben Kioko is Vice-President of the African Court on Human and Peoples' Rights.

© The Author(s) 2020. Published by Oxford University Press. All rights reserved.
For permissions, please email: journals.permissions@oup.com

Downloaded from academic.oup.com/jhrp/article/12/1/163/5867254 by Hekima University College user on 01 September 2026

can-court.org/index.php/cases). The Court Protocol obliges states to comply with its judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution (Article 30 of the Court Protocol). Once the Court renders a decision, the Executive Council of the African Union (Executive Council) must be notified of the judgment and is required to monitor its execution on behalf of the Assembly of Heads of State and Government (Assembly) (Article 29 of the Protocol). This provision is intended to ensure that compliance with the Court's decisions is not dependent on a state's goodwill as is the case before the African Commission on Human and Peoples' Rights (ACHPR). The Rules of Court also make specific provisions for the implementation both of interim measures and of the Court's judgments. It should be noted that the Court's report to the Assembly must specify, in particular, the cases in which a state has not complied with the Court's judgment (Article 27 of the Protocol).

The choice of the Executive Council as the monitoring and implementation body makes sense since it has more time than the Assembly to deal with the essential issues relating to the execution of individual cases. Yet the approach that the Executive Council has adopted is perhaps an indication of the lack of clarity over what precise role (persuasive, promoting dialogue, or more coercive) it should be playing in the monitoring process (see Sandoval, Leach and Murray, this issue). Thus, the Executive Council has not yet undertaken this responsibility in a robust manner by discussing and asking states to specifically indicate reasons for non-compliance. The Executive Council has also not yet approved a proposal by the Court to set up a committee of ministers to undertake this task on its behalf and to report back for endorsement. In addition, the Executive Council did not endorse a request by the Court for states' representatives to go to Libya, rather than the Court's judges as requested by Libya, to check the conditions of the detention of the applicant, Seif Al Islam Gaddaffi (see *ACHPR v. Libya*).[1]

During the January and July 2018 sessions of the Executive Council, a number of states demanded that the Court's practice of 'naming and shaming' states must stop, based on a proposal by Rwanda, which had been cited for non-compliance, and supported by others (including Egypt and Morocco), some of whom are not states parties to the Protocol. The Court's insistence that this was a requirement of the Protocol, that Council communicates with states through decisions, fell on deaf ears. This assault on human rights institutions also affects the African Commission and the African Committee of Experts on the Rights and Welfare of the Child who also adopt decisions finding violations of AU treaties (namely, the African Charter on Human and Peoples' Rights (Banjul Charter) and the African Charter on the Rights and Welfare of the Child) which states are required to implement, and about which there has been ongoing discussion on the role the AU political organs should play in this process. It also suggests that dialogue, with the Court playing some role, may be needed to move implementation forward in some of these cases (Raustiala and Slaughter 2002).

2. The areas on which the Court has given judgments so far and the status of implementation

The Court has issued many judgments on merits in different areas. The following are examples of some of the areas and the cases in which the Court has delivered judgments.

1 Details of cases mentioned in this paper are listed at the end, after the References list.

Downloaded from academic.oup.com/jhrp/article/12/1/163/5867254 by Hekima University College user on 01 September 2026

They reflect the range of reparations that the Court has ordered, and the varying responses of the states (see http://en.african-court.org/index.php/cases).

2.1 Women's and children's rights

In the case of *Association pour le Progrès et la Defense des Droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali* the Court had to make a determination on issues which involved a tussle between traditional and religious values allowing marriage without verification of consent of married couples on one side, and human rights norms requiring consent and specifying age limits for marriage, on the other hand. At the centre of the case was the age of consent and the verification of the consent of the girl child to marriage, as well as rights to inheritance. The Court found that the Persons and Family Code, adopted by the National Assembly of Mali on 3 August 2009, by, among other things, recognizing a religious marriage without requiring verification of consent of married couples violated a number of women and children's rights which are protected by various human rights instruments, to which Mali is a party.

As an indication of the range of reparations that the Court can order, it required that the respondent state amend the impugned law, harmonize its laws with the international instruments, notably the Banjul Charter, the international Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the African Charter on the Rights and Welfare of the Child and take all appropriate measures to bring an end to the violations established. Furthermore, the respondent state was ordered to comply with its international obligations with respect to information, teaching, education and sensitization of the population.

—Implementation status

This judgment was delivered in May 2018 and at the time of writing the time limit of a maximum of two years to submit a report to the Court has not yet expired.

2.2 Freedom of expression

In *Lohe Issa Konate v. Burkina Faso* the Court held that Burkina Faso's defamation laws that provide a custodial sentence for defamation allowed disproportionate interference with the applicant's rights to freedom of expression in violation of various international human rights instruments. The Court ordered Burkina Faso 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 (Economic Community of West African States) Treaty, by repealing custodial sentences for acts of defamation, and by adapting its legislation to ensure that other sanctions for defamation meet the test of necessity and proportionality. Further, Burkina Faso was ordered to report to the Court within a reasonable time on the measures taken and, in any case, not exceeding two years from the date of the judgment.

—Implementation status

By a report submitted on 11 April 2018, the respondent state indicated that it had complied with all the Court's orders as required by the ruling on reparations. This ruling was published in the official journal of 15 October 2015, all payments were made as ordered and the applicant's criminal records were expunged. It is based on this that the Court declared that the respondent had fully complied with its order.

Downloaded from academic.oup.com/jhrp/article/12/1/163/5867254 by Hekima University College user on 01 September 2026

2.3 Democracy and elections

2.3.1 Tanganyika Law Society v. Tanzania and Rev. Christopher R. Mtikila v. Tanzania

In Consolidated Application *Tanganyika Law Society v. Tanzania* and *Rev. Christopher R. Mtikila v. Tanzania*, the Court, in its judgment on the merits of 14 June 2013 and its ruling on reparations of 13 June 2014, held that the Tanzanian Constitution violated the applicant's right to participate freely in the government of one's country by not allowing independent candidates to stand for presidential, parliamentary or local government elections in Tanzania. The Court, in this case, directed the respondent to take constitutional, legislative and all other necessary measures within a reasonable time to remedy the violations found by the Court. Further to publish the official English summary, as well as the judgment in its entirety, in identified media, and to submit to the Court, within nine months, a report of measures taken to implement the orders.

—Implementation status

On 18 January 2016, in implementation of the Court's decision, the respondent published the judgment of 14 June 2013 on an official government website. However, the respondent has neither reported on the measures taken to publish the revised summary of the judgment nor has it indicated the constitutional, legislative and other measures to remedy the violations found, as ordered by the Court. According to the respondent state's last report dated 22 December 2017, the referendum on the proposed new constitution which provides for independent candidates is pending.

2.3.2 Actions Pour la Protection des Droits de l'Homme (APDH) v. Republic of Cote d'Ivoire

The judgment of the Court in the matter of *APDH v. Cote d'Ivoire* also relates to elections. In this application, the Court found that the respondent had violated its obligation to establish an independent and impartial electoral body as provided for under Article 17 of the African Charter on Democracy, Elections and Governance (ACDEG) and Article 3 of the ECOWAS Democracy Protocol. The Court also found that by not placing all candidates on equal footing the law violated the principle of equal protection of the law, guaranteed by Article 10(3) of the ACDEG, Article 3(2) of the Banjul Charter and Article 26 of the International Covenant on Civil and Political Rights. The Court, therefore, ordered the respondent state to amend Law No. 2014-335 of 18 June 2014 on the Independent Electoral Commission to make it compliant with the identified instruments to which it is a party, and submit a report on the implementation of the decision within a reasonable time not exceeding one year from the date of publication of the judgment.

—Implementation status

The respondent applied for interpretation of the judgment and the Court delivered judgment on the application on 28 September 2017, declaring the application inadmissible. Since then, the respondent has not yet reported on measures taken to implement the judgment of 18 November 2016, within the allotted time, which elapsed on 17 November 2017.

2.4 The rights of indigenous communities/peoples

In *ACHPR v. Republic of Kenya* the Court held that by expelling the Ogiek community from their ancestral lands against their will, without prior consultation and without respecting the conditions of expulsion in the interests of public need and, by failing to

Downloaded from academic.oup.com/jhrp/article/12/1/163/5867254 by Hekima University College user on 01 September 2026

recognize the Ogieks' status as a distinct tribe like other similar groups and thereby denying them the rights available to other tribes, the respondent state had violated the right to non-discrimination (Article 2), culture (Article 17(2) and (3)), religion (Article 8), property (Article 14), natural resources (Article 21) and development (Article 22) as enshrined in the Charter. The Court ordered the respondent to take all appropriate measures within a reasonable time frame to remedy all the violations established and to report on measures taken within six months from the date of the judgment.

— *Implementation status*

The respondent did not file any report on the implementation of the Court's judgment within the time limit, which elapsed on 25 November 2017. However, information on the establishment of a Task Force on Implementation of the Judgment of the Court via Official 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.

2.5 The right to a fair trial

It is important to underline here that most of the applications filed before the Court and consequently many of the judgments handed down by the Court are centred on the right to a fair trial. It may suffice to highlight two of those cases, which shall form the basis of future simplified judgments of the Court.

2.5.1 Alex Thomas v. United Republic of Tanzania

In the case of *Alex Thomas v. United Republic of Tanzania* the applicant alleged, amongst other things, that he was not afforded an opportunity to defend himself during the trial and was not afforded assistance of a lawyer during the trial and the appeal as required by the Tanzanian Constitution. The Court held that the respondent state violated Articles 1 and 7(1)(a), (b) and (c) of the Charter and ordered the respondent to take all necessary measures within a reasonable time to remedy the violations in question, specifically precluding the reopening of the defence case and the retrial of the applicant, and to inform the Court within six months of the measures taken to remedy the violations.

—*Implementation status*

The respondent did not file any report on the implementation of the Court's judgment within the time limit, which lapsed on 20 May 2016. However, the respondent filed an application seeking interpretation of the Court's judgment, arguing that the order of the Court requiring it to take 'all necessary measures within a reasonable time to remedy the violations found, specifically precluding the reopening of the defence case and the retrial of the Applicant is un-implementable since it is ordering the Respondent to reopen the defence case and retry the Applicant at the same time', as, in its view, the Court was ordering the respondent to reopen the defence case and retry the applicant at the same time.

In its decision on the application for interpretation of the judgment, the Court observed that 'the expression "all necessary measures" includes the release of the Applicant and any other measure that would help erase the consequences of the violations established, restore the pre-existing situation and re-establish the rights of the Applicant' (Interpretation of Judgment of 20 November 2015, *Alex Thomas v. United Republic of Tanzania*). Since the said decision, the respondent state has not yet reported on the measures taken to implement the judgment on the merits.

Downloaded from academic.oup.com/jhrp/article/12/1/163/5867254 by Hekima University College user on 01 September 2026

2.5.2 Christopher Jonas v. United Republic of Tanzania

In the case of *Christopher Jonas v. United Republic of Tanzania* the Court reiterated its position in *Alex Thomas v. United Republic of Tanzania* that by not affording the applicant free legal assistance for a serious case of armed robbery which carries a mandatory and minimum 30-year sentence of imprisonment, the respondent state violated Article 7(1)(c) and Article 1 of the Charter.

—Implementation status

The respondent has not reported on measures taken to comply with the judgment. However, it should be noted that contrary to its established practice, the operative paragraph of the judgment did not specify the period for reporting back on measures taken to remedy the violations. Nevertheless, the Court's Registry is entitled to seek information from the respondent regarding the extent of compliance with the judgment.

3. The extent of the problem of non-compliance and the challenges experienced by the Court

Presently compliance can be characterized as a mixed bag approximately 30–40 per cent implemented, although there are challenges with providing a precise figure given the complexities involved in measuring implementation rates (taking into account time taken to implement, the actors involved, and whether all or only some of the reparations have been implemented). The Court increasingly faces a huge challenge of non-compliance with its decisions and it is clear that these challenges will be compounded in the future, in the absence of a body fully committed to addressing this issue. For example, in spite of repeated reminders from the Court, over four Executive Council Decisions, and several meetings between the Court and the Libyan delegation to the African Union summits, Libya continues in its non-compliance with the Court's orders for provisional measures in the matter of *ACHPR v. Libya*. While Libya's non-compliance is to some extent caused, understandably, by the ongoing conflict in the country and the fact that Seif Al Islam Gaddaffi is not in the custody of the internationally recognized government, its continued failure not to communicate to the Court, in spite of repeated promises to do so, made to the Court delegation to the AU Summits, is inexplicable.

Another recurring issue of non-compliance involves Tanzania, which, while it has complied with some of the Court's judgments, is yet to fully comply with the orders of the Court in *Rev. Christopher R. Mtikila v. Tanzania*. Furthermore, Tanzania has expressed its unwillingness to comply with the Court's orders for provisional measures in cases such as *Armand Guehi v. United Republic of Tanzania*, *Amini Juma v. United Republic of Tanzania* and others, alleging that the Court does not have the power to issue interim measures with respect to suspension of the death penalty for cases decided by the Court of Appeal. A proper understanding of the reasons behind Tanzania's approach to implementation is yet to be obtained and requires additional resources in order to be able to explore further the challenges faced by the state authorities.

Non-compliance is no doubt caused by a complex web of many factors. The following are some of the reasons, drawn from my personal experience on the Court, why there is a low rate of compliance with the decisions of the Court.

Firstly, there is still no functioning monitoring and follow-up mechanism at the Court. Consequently, it is difficult to determine exactly what the state has done to implement the judgment, whether it is facing any challenges in doing so, and what role the Court can play in this process. Secondly, currently, enforcement of the Court's judgments is left to the

Downloaded from academic.oup.com/jhrp/article/12/1/163/5867254 by Hekima University College user on 01 September 2026

Executive Council and often the Court does little else beyond presenting the reports to Council. Some further thought needs to be given to the relationship between the Court and the Executive Council and what role each can play to facilitate implementation of the Court's judgments. This relates to the third factor, namely, the Executive Council's commitment and willingness to make meaningful and concrete enforcement since its members represent the same states that have been found to be in breach. This is always going to be an issue with respect to political organs playing a role in monitoring implementation. Yet it can be used to enhance implementation, not detract from it, if used in a way which encourages peer-to-peer solutions and dialogue (see Sandoval, Leach and Murray, this issue).

4. Key lessons learned in ensuring implementation of the decisions of the Court

For any regional court to be effective, the commitment from member states is critical and this is all the more important with regard to implementation and compliance with the decisions of the Court. The Court has started to consider whether the practice of the Inter-American Court of Human Rights, of engaging with states on implementation and holding hearings on this aspect, is a good practice in the African context. As articles elsewhere in this special issue evidence (Sandoval, Leach and Murray), the hearings, both public and private, developed by the Inter-American Court to monitor the implementation of its judgments have been shown to be effective in progressing implementation by the state authorities. They have increased the visibility of the issues, and holding some of these hearings in the country itself has further provided the Court with invaluable insights into the challenges of implementation as well as providing opportunities to engage with key state officials. The recent inaugural meeting of the International Human Rights Forum, enabling exchanges between the three regional courts, highlighted the need to share practice on enforcement of judgments (ACtHPR, ECtHR, IACtHR 2019—Kampala Declaration).

Furthermore, there is need for the Court to consider whether to engage in bilateral dialogue with states on implementation of decisions in addition to the current practice of sending formal communications such as notes verbales or letters. Although the meetings with Libya were made at its request, these engagements were appreciated by Libya even if they did not in the end produce the desired result. Relatedly, the current practice of naming and shaming member states that have not complied with the judgments of the Court has been vigorously opposed by concerned states and their friends at the level of the Executive Council. It is thus worth considering whether an approach of engagement before naming and shaming could be explored by the Court.

Finally, there is a need to address some of the practical challenges in monitoring implementation. Thus, it may be more effective for the Executive Council to set up a committee to undertake the groundwork on implementation on its behalf rather than leaving it to the Council itself with representatives of 55 states. It is hoped that the new Permanent Representatives' Committee (PRC) Sub-Committee on Democracy, Governance and Human Rights might help in creating awareness and in the implementation of decisions of the African Court. Similarly, the Specialized Technical Committee on Justice and Legal Affairs composed of the Ministers of Justice and Attorneys General, ministers in charge of human rights, constitutional affairs, and the rule of law may also prove to be useful.

For its part, the Court should consider setting up a unit within the Registry which will be in charge of monitoring and implementation of decisions.

Downloaded from academic.oup.com/jhrp/article/12/1/163/5867254 by Hekima University College user on 01 September 2026

Funding

No funding was received for this piece, but it was commissioned by the Human Rights Law Implementation Project that was funded by the Economic and Social Research Council.

References

ACtHPR (African Court on Human and Peoples' Rights), ECtHR (European Court of Human Rights), and IACtHR (Inter-American Court of Human Rights). 2019. Kampala Declaration. First International Human Rights Forum 28–29 October 2019, Kampala, Uganda.

Daly, T., and M. Wiebusch. 2018. The African Court on Human and Peoples' Rights: Mapping Resistance Against a Young Court. *International Journal of Law in Context* 14(2): 294–313.

Raustiala, K., and A. Slaughter. 2002. International Law, International Relations and Compliance. In W. Carlnaes, T. Risse, and B. Simmons (eds), *The Handbook of International Relations*, pp. 538–57. Sage.

Cases

ACtHPR (African Court on Human and Peoples' Rights)

Actions pour la Protection des Droits de l'Homme (APDH) v. Republic of Cote d'Ivoire, Application 001/2014, Judgment on Merits 18 November 2016.

African Commission on Human and Peoples' Rights (ACHPR) v. Republic of Kenya, Application 006/2012, Judgment of 26 May 2017.

African Commission on Human and People's Rights (ACHPR) v. Libya, Application 002/2013, Order for Provisional Measures 15 March 2013.

Association pour le Progrès et la Defense des Droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali, Application 046/2016, Judgment of 11 May 2018.

Armand Guehi v. United Republic of Tanzania, Application 001/2015. Order for Provisional Measures 18 March 2016.

Christopher Jonas v. United Republic of Tanzania, Application No. 011/2015, Judgment of 28 September 2017.

Amini Juma v. United Republic of Tanzania, Application 024/2016, Order for Provisional Measures 3 June 2016.

Lohe Issa Konate v. Burkina Faso, Application 004/2013, Judgment on Merits 5 December 2014.

Lohe Issa Konate v. Burkina Faso, Application 004/2013, Ruling on Reparations 3 June 2016.

Tanganyika Law Society and the Legal and Human Rights Centre v. Tanzania and *Reverend Christopher R. Mtikila v. Tanzania*, Consolidated Applications 009/2011 and 011/2011, Judgment on Merits 14 June 2013.

Reverend Christopher R. Mtikila v. Tanzania, Application 011/2011, Ruling on Reparations 13 June 2014.

Alex Thomas v. United Republic of Tanzania, Application. 005/2013, Judgment on Merits 20 November 2015.

Application 001/2017, Interpretation of Judgment of 20 November 2015, *Alex Thomas v. United Republic of Tanzania*, Judgment of 28 September 2017.

Downloaded from academic.oup.com/jhrp/article/12/1/163/5867254 by Hekima University College user on 01 September 2026