

Providing reparation for human rights cases: A practical guide for African States

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Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
AU	African Union
CSO	Civil Society Organisation
ECtHR	European Court of Human Rights
HRLIP	Human Rights Law Implementation Project
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGO	Inter-governmental organisation
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
OSJI	Open Society Justice Initiative
UN	United Nations
UPR	Universal Periodic Review

Introduction

Introduction

This Guide is designed to provide practical advice to State officials on steps that can be taken to implement decisions on individual cases from the African human rights bodies: the African Commission on Human and Peoples Rights (ACHPR); the African Court on Human and Peoples' Rights (ACtHPR); and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), as well as UN treaty bodies. These bodies are all mandated to receive complaints from individuals, known as '*individual communications*', about alleged human rights violations.

The Guide draws on the findings of a four-year independent research project the '*Human Rights Law Implementation Project*' (HRLIP), funded by the Economic and Social Research Council (ESRC). The HRLIP was a partnership between the Human Rights Implementation Centre of the University of Bristol; the Human Rights Centre at the University of Essex; the School of Law at Middlesex University; and the Centre for Human Rights at the University of Pretoria. The Open Society Justice Initiative (OSJI), part of the Open Society Foundation, was also a partner organisation for the HRLIP.¹

The aim of the HRLIP was to gain a better understanding of the various factors that influence the implementation of decisions in practice. In order to do so, it tracked selected decisions by the regional human rights bodies and UN treaty bodies against nine countries in Africa (Burkina Faso, Cameroon, Zambia), the Americas (Canada, Colombia, Guatemala) and Europe (Belgium, Czech Republic, Georgia), to examine the extent to which these States have implemented decisions, how and why. These countries were chosen based on a set of criteria to enable the HRLIP partners to examine approaches to implementation across a range of cases (new and old) from both the regional and UN human rights bodies; among countries with differing legal traditions; as well as various domestic political and socio-economic contexts. The HRLIP research combined desk-based document reviews with over 300 semi-structured interviews, numerous national and regional stakeholder workshops, and participant observations at regional and international treaty body meetings.

One of the key findings of the HRLIP was that there was more implementation of decisions on individual cases than was at first apparent. However, the HRLIP found that two of the main challenges for implementation was a lack of clear processes at the national level to respond and follow-up on decisions, and a lack of knowledge among State officials as to what precisely is required and by whom in order to provide reparation in practice. Implementation of decisions can therefore be frustrated due to administrative and practical challenges rather than a lack of 'political will'.

Furthermore, the HRLIP research highlighted the complexity posed by the fact that although decisions are directed to 'the State' to implement, this is not a single entity; 'the State' is composed of a range of organs and institutions such as the executive (and its various ministries and departments), parliament, the judiciary, prosecutors, as well as other administrative bodies and tribunals; and in Federal States, the concept of 'the State' is further diffused. Depending on the type of reparation required, one, several or all of these State actors may have a role to play in implementing the decision.

Accordingly, this Guide has been developed to help State officials to 'unpack' reparation measures and better understand the specific steps and choices that can be taken in order to ensure that reparation is provided. The Guide draws on case studies from State practice around the world to demonstrate how different States have responded to decisions and provided different types of reparation. It is hoped that they will inspire States to design their own implementation strategies for their particular circumstances.

A. How to use the Guide

The Guide is designed primarily as an online tool aimed at helping State officials to develop strategies to respond to decisions and provide reparation. The Guide will be updated periodically to include additional guidance and country examples as they become available.

It is hoped that State officials can use the information and examples in this Guide to develop their own implementation strategies on decisions, and consider ways to strengthen domestic mechanisms and procedures, where necessary. The Guide also provides information on where States can seek further assistance in order to build capacity, and/or to establish and maintain tools and procedures to help respond to decisions such as through the establishment of databases or national mechanisms on reporting and follow-up.

As well as assisting State officials, it is anticipated that the Guide will also be useful for litigators, civil society organisations, and national human rights institutions to help inform their litigation and advocacy strategies to promote the implementation of decisions and any reforms that may be necessary.

The **first section** provides an overview of the various categories of reparation measures; a summary of the bodies in place at the international and regional levels that have been empowered to consider individual communications; and considers why implementation of judgments and decisions from these supranational bodies is important.

The **second section** looks at ways in which different States across the globe have provided reparation in practice. The aim of these examples is to demonstrate how diverse States have been able to take steps to provide various types of reparation. It is hoped that this will provide ideas for State officials to apply or tailor to their own country specific context.

The **third section** provides examples of mechanisms that some States have put in place at the national level to assist with implementation. It also includes examples of tools that have been developed to help coordinate responses to decisions and judgments, as well as other findings from supranational bodies.

The **fourth section** provides numerous links to further resources that State officials may find useful. These include links to organisations that may be able to provide training and/or tools to help build capacity or to put in place mechanisms or processes to help respond to decisions from a range of bodies and to keep an up-to-date record of progress with implementation.

¹ More information on the HRLIP is available at: <https://www.bristol.ac.uk/law/hrlip/>

B. Note on terminology

To help the reader the following terms used within the Guide are defined as follows:

Implementation and compliance

The terms ‘implementation’ and ‘compliance’ are often used interchangeably and inconsistently among and between treaty bodies, governments, NHRIs, CSOs and others. The distinctions between them are frequently blurred or misunderstood. In this Guide we use the terms as follows:

- **Implementation** refers to the process by which States respond to and give effect to an adverse decision i.e. providing reparation.
- **Compliance** is broader than implementation and moves beyond the process to look at the outcome, i.e. it relates to whether a State’s ‘behaviour’ (e.g. laws, policies and practices) is in fact in line with their obligations under the relevant treaty. Compliance may occur even without the State taking measures to implement a specific decision.

Individual communication

The term ‘individual communication’ is the name given to cases submitted to human rights monitoring bodies, such as the African Commission on Human and Peoples’ Rights, the African Court on Human and Peoples’ Rights, the African Committee of Experts on the Rights and Welfare of the Child, and UN treaty bodies by individuals or groups alleging a violation of one or more of their rights under human rights law.

Decision

We use the term ‘decision’ in this Guide as shorthand to refer to the judgments of the African Court on Human and Peoples’ Rights, as well as the decisions of the African Commission on Human and Peoples’ Rights, the African Committee of Experts on the Rights and Welfare of the Child and UN treaty bodies after considering whether the facts as presented in an individual communication disclose a violation, and where a violation is found the required action to be taken by the State concerned to make amends.

I. Overview

I. Overview

A. What is reparation?

It is well established under human rights law that victims of violations have a right to 'redress' i.e. an effective remedy and reparation for any harm suffered. This right has been confirmed in numerous international and regional treaties, as well as the jurisprudence of human rights bodies, including the ACHPR, ACTHPR and the ACERWC.

The term 'reparation' refers to the range of measures States may have to take to make amends for a violation. These are commonly broken down into the following five broad categories:



Compensation – is a monetary, quantifiable award for any economically assessable damage e.g. lost opportunities, loss of earnings and moral damage



Guarantees of non-repetition – encompasses a range of measures aimed at preventing the violation from reoccurring e.g. legislative changes; institutional reform; human rights training and sensitisation of officials



Rehabilitation – is the provision of medical and psychological care as well as legal and social services to those who have suffered harm.



Restitution - aims to restore victims to their original situation, where possible, before they suffered harm e.g. restoration of liberty or employment, return of property



Satisfaction – includes a broad range of measures aimed at 'repairing' the damage done, the verification and acknowledgement of the truth, or ending ongoing violations e.g. searching for individuals who have disappeared, the recovery and reburial of remains, public apologies, commemoration and memorialisation

B. Judgments and decisions from international and regional

UN treaty bodies

At the international level, the UN treaty bodies established under the nine "core" human rights treaties have a mechanism by which individuals, and States, can submit communications alleging a violation of treaty rights to the body of experts monitoring the respective treaty.² When a treaty body determines that the facts disclose a violation by the State party of the complainant's rights under the treaty, it will issue its decision (sometimes called "Views") with recommendations as to the measures the State party needs to take to provide reparation.

The African human rights system

This Guide focuses on the three key African human rights bodies mandated to consider individual communications namely: the African Court on Human and Peoples' Rights (ACTHPR); the African Commission on Human and Peoples Rights (ACHPR); and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC).

The African Court on Human and Peoples' Rights

The African Court is the continental court established by African countries to ensure the protection of human and peoples' rights in Africa.³ It complements and reinforces the functions of the African Commission on Human and Peoples' Rights. The Court was established in by virtue 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, (the Protocol), which came into force on 25 January 2004. States parties to the Protocol can make a declaration to receive cases from NGOs and individuals.

The Court is composed of eleven Judges, elected by the AU Assembly, who serve in their personal capacity. The Court has two types of jurisdiction:



Contentious – to consider cases submitted to it concerning the interpretation and application of the African Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned



Advisory – to render advisory opinions on any matter within its jurisdiction, requested by the AU, member states of the AU, AU organs and any African organisation recognised by the AU.

The Court issues reasoned judgments indicating whether the facts constitute a violation or not of the rights protected in the Charter or any other relevant human rights instrument which the State party ratified. If it is ruled that violation/s have occurred, the judgment may also set out the reparations required. However, the Court may decide to give a separate ruling concerning the reparations.

The Court publishes the status of implementation of its judgments in its activity reports and has established a Monitoring Unit to assist in gathering information on implementation. States parties can submit information on implementation directly to the Court via its registry. If further guidance is needed to identify exactly what is required to address the violation/s, States can apply to the Court for an interpretation of the judgment.⁴ This provides a State with the possibility for further assistance in clarifying how it should implement a judgement.




² For more information on the UN individual communications procedures see: <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx>.

³ www.african-court.org/en/#:~:text=The%20African%20Court%20on%20Human,an%20Human%20and%20Peoples'%20Rights

⁴ Complainants can also apply for an interpretation of the judgement under Rule 77 of the 2020 Rules of Procedure of the Court (formerly, Rule 66).

The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (ACHPR) was established by the African Charter on Human and Peoples' Rights⁵ and derives its mandate from that treaty. The ACHPR was inaugurated in November 1987 and has its headquarters in The Gambia. The ACHPR's mandate consists of three main functions:

-  the protection of human and peoples' rights
-  the promotion of human and peoples' rights
-  the interpretation of the African Charter

The communications procedure forms part of the 'protective' mandate of the ACHPR. The ACHPR may receive complaints from individuals, or other States,⁶ alleging violations of rights contained in the African Charter by a State party. A communication may be submitted by the victim(s) or anyone on their behalf, including NGOs.




The Commission will issue a decision following a consideration of the merits. If the Commission determines that there has been violation/s of the African Charter it will set out its reasons and make recommendations for reparation measures to be taken by the State concerned. Typically the Commission requests information on any measures taken to implement the decision within 180 days. A Commissioner of the ACHPR will have been assigned as the Rapporteur (focal point) for the communication and information on implementation can be addressed to that Commissioner. The Secretariat of the ACHPR will send a follow-up letter(s) enquiring about the implementation of the recommendations with details of how and where to send information.

States can request additional guidance from the ACHPR for the implementation of decisions or interpreting an aspect of it. Although rarely used the ACHPR has on occasion also held 'implementation hearings' to hear from the parties to the communication. This can be a useful process to identify progress made and gain a better understanding of any remaining challenges in order to, for example, break any stalemate or to unpack what needs to be done in relation to any outstanding reparation measures.

As well as promoting progress at the national level, States have a number of avenues available to inform the ACHPR, and at the same time other States and NGOs, what is happening. For instance, in addition to sending regular updates directly to the Commissioner acting as the Rapporteur or to the Secretariat of the ACHPR, States can use the State party reporting process as an opportunity to highlight any progress made with implementing particular communications. Furthermore, States who send delegations to the ordinary sessions of the ACHPR can also make oral statements during those sessions to highlight any steps taken to implement. Missions by the ACHPR to States are a further opportunity to inform the relevant Commissioners of progress made and to open up discussions on any remaining challenges.

The African Committee of Experts on the Rights and Welfare of the Child

The ACERWC was established by the African Charter on the Rights and Welfare of the Child and formed in July 2001. The Committee's mandate is similar to that of the ACHPR consisting of the following inter-linked aspects:

-  To promote and protect the rights enshrined in the ACERWC
-  To monitor implementation of the ACERWC
-  To interpret the provisions of the ACERWC

The ACERWC has a mandate to consider individual communications alleging violation/s of the African Charter on the Rights and Welfare of the Child. Similarly, to the African Commission, the ACERWC will issue decisions on merits and if it considers there has been a violation/s by the State party will set out its reasons and make recommendations to provide reparation.

The ACERWC has produced guidelines for the implementation of its decisions setting out its procedure for holding implementation hearings. Where the ACERWC has found a violation, a member of the Committee will be designated as the Rapporteur of the communication and will be responsible for following up on implementation. States found to have violated the Charter will be requested to submit an implementation report and the Rapporteur will consider whether or not a hearing on implementation is required. If an implementation hearing is called the State party concerned will be invited to present an oral report before the Committee on all measures taken to implement the decision. The purpose of this hearing is for the Committee to be informed on the extent to which the decision has implemented and to identify factors any difficulties affecting the implementation of the decision and guide the State party on achieving full implementation.⁷

C. Why is implementation of judgments and decisions important?

It is acknowledged that there are competing and ever increasing recommendations and requirements directed towards States from a range of national, regional and international human rights bodies. With differing and sometimes competing priorities why should State officials devote time and resources to implement decisions from human rights bodies?

First and foremost, it must be borne in mind that implementation of decisions is 'righting a wrong'. States have an obligation to repair any harm done to victims of human rights violations. As the OHCHR has noted it is through "the adjudication of individual cases, that international norms that may otherwise seem general and abstract are put into practical effect. When applied to a person's real-life situation, the standards contained in international human rights treaties find their most direct application."⁸ It is widely recognised that best practice for reparation is an approach that puts the victim's needs and interests at the centre of the process and aims at restoring the dignity of the victim/s.

⁵ Available at: <https://www.achpr.org/legalinstruments/detail?id=49>

⁶ In accordance with Articles 47-59 of the African Charter the ACHPR can receive complaints from States against other States although such communications are rare.

⁷ For further details see the ACERWC Guidelines on Implementation available at: <https://www.acerwc.africa/guidelines-for-implementation-of-decisions-on-communications/>

⁸ Procedure for complaints by individuals under the human rights treaties, 2019 <https://www.ohchr.org/en/hrbodies/tbpetitions/Pages/IndividualCommunications.aspx>

However, the implementation of decisions on individual communications can have broader societal implications and benefits that go beyond the interests of the individual victim/s concern. Decisions on individual communications typically point to broader problems at the national level and can identify root causes for violations occurring in the first place, such as inadequately resourced, weak or dormant State institutions; poorly trained state officials and agents; systemic failings within the judicial system; discriminatory laws or practices; the existence of corruption; poverty etc. Accordingly, decisions on individual communications can help State officials to gain a better understanding of any changes or reforms that are needed at the national level in order to build a more effective framework to protect and respect human rights.

Notably, the decisions can be used by States to develop strategies that support ongoing institutional or legislative reform; capacity building and training of State officials and agents; anti-corruption initiatives and so on. Often it is not necessary to 'reinvent the wheel' to implement aspects of a decision; frequently linkages can be made with changes that are ongoing or existing action plans. For instance some of the measures required to implement a decision may mirror steps in existing action plans to implement recommendations from the Universal Periodic Review (UPR) process, or actions aimed at meeting the sustainable development goals; poverty reduction; or even tackling climate change.

Implementing the decisions on individual communications may also have a range of socio-economic benefits too; they can be used to identify domestic priorities, and feed into national action plans to review, adjust or confirm ongoing institutional, legislative or other reform efforts, thereby ensuring that resources are applied or re-

adjusted to where they may have the greatest impact. Consequently, providing reparation can form part of a process of institutional strengthening, capacity building or organisational development, ultimately helping to strengthen good governance and the rule of law.

Lastly, it is recognised that some reparation measures may be more easily implemented than others, and some may take a long time to achieve, for example legislative reform can be a time consuming and lengthy process involving, and dependent upon, a range of actors beyond the executive. Within this context, the HRLIP research found that transparency is important in building trust at both the national and regional levels. If States are open about what measures are being taken and any challenges to implementation this will help to build realistic expectations about what can be done and when. Where information is not forthcoming, unfortunately there is an assumption that nothing is being done, whereas the HRLIP found this was not so in many instances, and good practice by States was not being made public.

It is hoped that this Guide will illustrate how some States have taken steps to provide reparation, and demonstrate how by 'unpacking' decisions on individual communications States can determine which reparation measures need to be taken in the short-, mid- and long-term, in order to develop realistic strategies or action plans; identify key 'implementation partners'; set expectations; seek additional advice; and ultimately work towards full compliance.

II. Examples of State implementation of decisions

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The examples of State practice in this section are drawn from around the world; they demonstrate how different States have responded to decisions and judgements in order to provide reparation. The examples given are not necessarily practice that other States should follow or exhaustive of the types of actions taken by States, rather they illustrate some approaches different States have taken to respond to and implement decisions and judgments. It is hoped that they will inspire States to design their own implementation strategies for their own particular circumstances.



A. Adoption and amendment of legislation

Where the treaty body or supranational court requires the adoption of new legislation or amendment of existing legislation, this necessitates the involvement of the legislature, an entity that is independent of the executive. Consequently, there needs to be a process by which the legislature is informed of the decision or judgment and then prompted to act upon it.

i. Communicating the decision to parliament

The decision or judgment once adopted by the supranational body then needs to be known by parliament. This can be achieved in a number of ways:

- ◊ By the executive authorities sending the decision or judgment directly to the parliament (as in Australia) or to a Parliamentary Ombudsman (as in Sweden).
- ◊ Through the involvement of parliamentary committees mandated to monitor and review implementation of a decision or judgment (as in the UK and Germany).
- ◊ Through executive officials reporting directly to parliament on the status of implementation of decisions or judgments such as through the presentation of an annual report to parliament (as in the Netherlands).

ii. Introducing legislation or amendments to existing legislation

Where legislative amendments may be under consideration, the supranational decision or judgment can offer additional encouragement for their passage through parliament.



In **Burkina Faso** a review of legislation relating to defamation had, reportedly, commenced prior to the African Court's decision in *Lohé Issa Konaté* (Application No. 004/2013), which called for amendments to legislation on defamation in order to make it compliant with international treaty obligations. This judgment may have provided a further catalyst to the legislative review process and the passing of number of bills decriminalising defamation in 2015.



In **Bolivia**, the Inter-American Court's decision in *Trujillo Oroza v. Bolivia* (2002) reportedly helped to build advocacy around existing proposals for the criminalisation of forced disappearance under its domestic law. This led to the enactment of Law 326 which incorporated the crime of forced disappearance into Bolivia's penal code in 2006.

Where no such legislation is pending then it may rely on the usual processes for introducing and amending legislation. So, for example, the relevant ministry may need to introduce the law into parliament.



In **Finland** following the UN CCPR decision in *Torres v. Finland* (291/1988), the Aliens Act was revised by a Parliamentary Act and the ICCPR was incorporated into Finnish domestic law and became directly applicable.



In **Senegal**, in response to the Committee against Torture decision in *Guengueng et al. Senegal* (181/2001) in 2006, amendments were made in 2007 to the criminal code, whereby provisions were included on crimes of genocide, war crimes and crimes against humanity; and its civil code was also revised, addressing universal jurisdiction.



In **Zambia**, the President gave his assent to an Act in 2016 to amend the Constitution of Zambia that reflected the African Commission decision in the *Legal Resources Foundation v Zambia* (Communication No. 211/98 of 2001)

⁹ See Kate Fox Principi, Implementation of decisions under treaty body complaints procedures – Do states comply? How do they do it?, January 2017, Sabbatical leave report (hereinafter, Fox Principi, Implementation) fn.173.

¹⁰ See mandate of the UK Joint Committee on Human Rights available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/role>

¹¹ OSJI, From Rights to Remedies. Structures and Strategies for Implementing Human Rights Decisions, Open Society Foundations, New York, 2013 (hereinafter 'OSJI, From Rights to Remedies'), p. 66.

¹² OSJI, From Rights to Remedies, p.68.


¹³ Interview undertaken by the Human Rights Law Implementation Project, 12 December 2017

¹⁴ OSJI, From Rights to Remedies, p.67


¹⁵ Fox Principi, Implementation, p.66.


¹⁶ Fox Principi, Implementation, Fn.171

Particular procedures may enable amendments to legislation to be introduced by the executive authorities:


 In **Bosnia and Herzegovina**, an 'urgent parliamentary procedure' was used to deal with an amendment to legislation in response to a decision from the Human Rights Committee, and the 'regular parliamentary procedure' for dealing with a draft amended law.¹⁷


A parliamentary committee, if it is made aware of the decision, can ask questions of the executive and this can prompt legislative change.

 In **Finland** the parliamentary Constitutional Law Committee often draws on treaty body decisions when considering legislative proposals.¹⁸

 In **the UK**, following the decision in *Goodwin v. United Kingdom* (28957/95) in 2002 the Joint Human Rights Committee's scrutiny of the case assisted the draft Gender Recognition Bill that was in development being put before Parliament more rapidly, in July 2003.¹⁹

In some States, questions have been asked in parliament, during committee discussions, on how particular decisions were being implemented which ultimately led to legislative change.

 In **Hungary**, parliamentary questions regarding delays in the payment of compensation to the victim in the CEDAW decision in *A.S v. Hungary* (04/2004) helped to secure the eventual payment of compensation by the government in July 2009.²⁰

 In **South Africa** parliamentary committee hearings on the 2011 UN CCPR decision in *McCallum v. South Africa* provided an opportunity to promote a bill to criminalise torture, which subsequently passed into law in 2013.²¹



B. Measures involving judicial or prosecutorial interventions


As with parliamentary engagement, so too where the judiciary, prosecution or other independent entities need to take action, a process needs to be in place to enable them to do so.


There are a number of remedies and measures ordered by the supranational bodies which engage the judiciary or prosecuting authorities.


i. Release of individuals from detention


Decisions made by supranational bodies calling for the release of individuals from detention may be implemented in a number of different ways.

In some countries the release of individuals has been secured following a review of the decision by the executive or as a result of applying existing or new legislation:


 In **Australia**, following the UN CCPR decision in *Kwok v. Australia* (1442/2005) calling for the release of Ms. Kwok, she was granted a permanent residence visa, following a review of her case by the Minister for Immigration and Citizenship on 14 September 2010, under article 417 of the Migration Act 1958, and she was released from detention.²²


 In **Georgia** in relation to the UN CCPR decisions in the case of *Domukovsky v. Georgia* (623/1995), adopted on 6 April 1998, the release of the individual concerned was secured by a presidential pardon.²³

 In **Trinidad and Tobago**, following the UN CCPR decision in *Shalto v. Trinidad & Tobago* (447/1991), adopted in 1995, the Committee was subsequently informed in 1997 that Mr. Shalto had been released after a presidential pardon.²⁴

 In **Uruguay**, in the early 1980s numerous individuals were released following similar cases decided by the UN CCPR involving numerous arbitrary detention and fair trial rights violations. Many individuals were pardoned and released in accordance with the 'Law on National Pacification'.²⁵

It may also require the involvement and cooperation of actors beyond the executive; in some countries release of individuals from detention has occurred following a further review of the deprivation of liberty by a judicial body:

 In **Jamaica**, following the UN CCPR decision in *Clive Johnson v. Jamaica* (592/1994), which found violations of various fair trial and other rights under the ICCPR and called for the release of Clive Johnson, a practice was established by which decisions of the CCPR were submitted the case to the Privy Council (the highest court of appeal for the country). Following a judgment from the Privy Council which supported the UN CCPR's decision, Clive Johnson was released.²⁶

 In **Peru**, following the UN CCPR decision in *Carranza Alegre, Marlem v. Peru* (1126/2002), adopted on 25 October 2005, the Supreme Court adopted a judgment in November 2005 and the complainant was released.²⁷

¹⁷ *ox Principi, Implementation*, Fn.173, Prutina et al., 1917/2009, 1918/2009, 1925/2009 and 1953/2010, adopted on 28 March 2013 (CCPR/C/112/R.3).

¹⁸ OSJI, *From Rights to Remedies*, p.66.

¹⁹ OSJI, *From Rights to Remedies*, p. 64.

²⁰ Fox Principi, *Implementation*, p. 45.

²¹ OSJI, *From Rights to remedies*, pp.67 and 69.

²² Fox Principi, *Implementation*, p. 59.

²³ Fox Principi, *Implementation*, p. 57.


²⁴ See UN Doc. A/53/40/Vol 1, para. 502.


²⁵ Fox Principi, *Implementation*, p. 58.

²⁶ Fox Principi, *Implementation*, p. 55.

²⁷ Fox Principi, *Implementation*, p. 57.

Where decisions calling for restoration of liberty are indicative of broader failings within the criminal justice system or services, some States have established procedures or mechanisms to secure release and prevent a recurrence:


 In **Peru**, following decisions from the UN CCPR and the Inter-American human rights bodies raising concerns over the arbitrary detention of many individuals under anti-terrorism laws introduced in the 1990s, the President established a special commission to review cases of arbitrary detention of individuals in maximum security prisons on charges of terrorism. This review process resulted in the release of almost 800 people by presidential pardon.²⁸


 In **Sierra Leone**, following a series of UN CCPR decisions concerning the failure to provide an effective right of appeal following death sentences from conviction from court martial proceedings (*Mansaraj et al. v. Sierra Leone* (839/1998); *Gborie Tamba, v. Sierra Leone* (840/1998); *Sesay et al. v. Sierra Leone*, (841/1998)), the State subsequently re-instated a right of appeal from courts martial. The complainants were released.²⁹


ii. Reopening or starting investigations or procedures


A relatively common remedy ordered by supranational bodies is for States to move forward with any existing investigations, or for investigations to be started or reopened. This is an important remedy, and in some circumstances the only significant measure that will provide any meaningful reparation for the individual/s concerned.³⁰ Often, the decision alone is insufficient to enable the judiciary or prosecutor to act.


In some countries, the criminal code or legislation enables investigations to be begun or reopened on the basis of new facts; this has been interpreted as including a decision by a supranational body.


 In **Andorra**, following the ECtHR judgment in the case of *UTE Saur Vallnet* (16047/1029), legislative amendments were made in 2014 and 2016 to enable the reopening of domestic judicial proceedings (civil, criminal or administrative) on the basis of a judgment of the ECtHR.³¹

 In **Bulgaria**, the 2007 Code of Civil Procedure provides for a possibility of reopening of domestic proceedings if the ECtHR finds a violation.³²


 **Colombia's** amendments to its Criminal Procedural Code in 2004 now provide in Article 192(4) for an *acción de revisión* that permits proceedings to be reopened if an international decision finds them in breach of international obligations.³³


 In **Georgia**, the Prosecutor's Office is empowered to renew an investigation in response to a judgment from the ECtHR judgment, as happened in response to *Mikashvili v Georgia* (No.18996/06, judgment of 9 January 2013).³⁴

 In **Hungary** a judicial review is possible if the proceedings or decision of the national court were in violation of a treaty. In addition, before the Constitutional Court, cases can be reopened, 'if the circumstances have changed fundamentally in the meantime'.³⁵


 In **Kyrgyzstan**, the Code of Criminal Procedure of Kyrgyzstan enables the cancellation of court sentences, orders and rulings, including where a supranational body has found violations.³⁶

It may be possible for the individual victim to submit a case to the national court for it to be reopened:

 In the **Czech Republic**, where a violation of a human rights treaty has been found, it is possible to appeal to the Constitutional Court.³⁷

 **Lithuania's** Code of Criminal Procedure enables cases to be reopened where the UN CCPR or the ECtHR finds that the conviction of a person is contrary to the ICCPR or European Convention. An application to reopen proceedings can be lodged by the victim, or the successor of their rights or legal representatives, before the Supreme Court.³⁸

Other countries provide for 'extraordinary remedies':

 In **Serbia** an 'application for the protection of legality' was employed to implement a decision of the UN Committee against Torture which called on the State to provide information and outcomes of an impartial investigation after an individual had died in custody.³⁹ The Public Prosecutor utilised the 'protection of legality' procedure, available in the Criminal Procedure Code, to apply to the Supreme Court.⁴⁰

²⁸ L.Laplante, 'Heeding Peru's Lesson: Paying reparations to detainees of anti-terrorism laws', Human Rights Law Commentary, University of Nottingham, 2006, p.7 Available at: <https://www.nottingham.ac.uk/hrlc/documents/publications/hrlcommentary2006/reparationstoantiterrorismdetainees.pdf>

²⁹ Fox Principi, Implementation, p. 58

³⁰ For more information on the importance of this remedy see the European Committee of Ministers Recommendation No. R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgements of the European Court of Human Rights available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2f06

³¹ Committee of Ministers, Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, 2017, p.27 available at: <https://rm.coe.int/annual-report-2017/16807af92b>

³² Committee of Ministers, Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, 2017, p.177.

³³ Colombia – Congreso de la República. Ley 906 de 2004 por la cual se expide el Código de Procedimiento Penal. Adopted 31 August 2004, published in Official Gazette No. 45.658 on 1

³⁴ September 2004, in force since 1 January 2005. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=14787>.

³⁵ R Murray and C de Vos, 'Behind the State: domestic mechanisms and procedures for the implementation of human rights judgments and decisions', 12(1) Journal of Human Rights Practice (2020).

³⁶ See Fox Principi, Implementation, p.27.

³⁷ Fox Principi, Implementation, p. 28.


³⁸ Article 119 of law no. 83/2004, see Fox Principi, Implementation, p.90


³⁹ Fox Principi, Implementation, p.91.


⁴⁰ Nikolic v Serbia, (174/2000), CAT/C/35/D/174/2000 (2005).

⁴¹ Fox Principi, Implementation, para 65. See pp.95-96 for the text of the law in English.


An investigating judge, Ombudsman or other national institution may be also able to reopen an investigation.

 In **Burkina Faso**, the African Court's Judgment on Reparations in the *Zongo* case, called on the 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'.⁴¹ On 30 March 2015 the Prosecutor General of Burkina Faso requested the Examining Judge to reopen the investigation in the case of Norbert Zongo and on 8 April 2015 the Investigation Judge of the Ouagadougou High Court issued the reopening order.⁴² In December 2015, the Prosecutor of Burkina Faso indicted three soldiers who belonged to the former Presidential Security Regiment (RSP).

 In **Denmark**, it is 'standard practice' for asylum applications to be reopened by the Refugee Appeals Board after "criticism" by a treaty body. The relevant case is then heard by an entirely new panel consisting of members who have not previously been involved in the hearing of the case.⁴³

 In **Greece**, the Ombudsman is empowered to reopen administrative investigations in cases where the European Court has found the initial investigation ineffective.⁴⁴


In some States, a particular mechanism has been set up to implement a specific decision:


 In **Colombia**, to respond to the *Case of the Pueblo Bello Massacre* before the IACtHR, and specifically the requirement that it investigate, within a reasonable time, to determine the responsibility of all the participants in the massacre, as well as that of those responsible, by act or omission, for the failure to comply with the State's obligation to guarantee the violated rights, the Attorney General's Office (*Fiscalía General de la Nación -FGN-*) created a special investigative group.⁴⁵ This group was established for a specific period of time to examine the facts in the case, and carried out investigations leading, inter alia, to the identification of perpetrators other than those indicated by the IACtHR.⁴⁶

iii. Pardoning and reduction of sentences


Various supranational bodies have called on States to commute or reduce sentences imposed on individuals after their conviction at the national level of a criminal offence. Where states have implemented this measure, they have done so in a number of ways.

Firstly, through the use of discretionary means such as presidential pardons:

 In **the Philippines**, following a number of cases concerning the death penalty considered by the UN CCPR, through the application of executive clemency, the death sentences were reduced to long terms of imprisonment (*reclusion perpetua*).⁴⁷

 In **Zambia**, in a number of decisions of the CCPR relating to the mandatory imposition of the death penalty the sentences were either commuted to life imprisonment under Article 59 of the Constitution and the prerogative of mercy by the President (*Chisanga v. Zambia* (1132/2002)) or the individual received a presidential pardon and was released (*Mwamba v. Zambia* (1520/2006)).⁴⁸

National courts have also used the international decision or judgment as an interpretative tool.

 In relation to **Guatemala**, the Inter-American Court of Human Rights found in *Fermín Ramírez and Raxcacó Reyes*, that the death penalty violated the Convention. Guatemalan Courts retried Mr. Ramírez and resentedenced him and Mr Raxcacó each to 40 years in prison.⁴⁹ The Criminal Chamber of the Supreme Court of Justice then used the IACtHR's judgment to reconsider dangerousness and consequently pardoned several people who had been sentenced to the death penalty.⁵⁰ The Constitutional Court then held a number of articles of the Criminal Code to be unconstitutional thereby prohibiting the death sentence for many crimes.⁵¹

⁴¹ App.013/2011, *Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo & Burkinabe Human and Peoples' Rights Movement v Burkina Faso*, Judgment on Reparations, 5 June 2015, para 111(x).

⁴² African Court, Report on the activities of the African Court on Human and Peoples' Rights, 22-27 January 2017, EX.CL/999 (XXX), para 21(i). Repeated in African Court's Mid -Term Activity Report of The African Court on Human and Peoples' Rights, 1 Jan – 30 June 2017, p.13

⁴³ See CCPR/C/119/3; Fox Principi, Implementation, p. 38.

⁴⁴ Committee of Ministers, Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, 2017, p. 131.

⁴⁵ Interview undertaken by the Human Rights Law Implementation Project, 28 July 2017.

⁴⁶ R Murray and C de Vos, 'Behind the State: domestic mechanisms and procedures for the implementation of human rights judgments and decisions', 12(1) Journal of Human Rights Practice (2020).

⁴⁷ Fox Principi, Implementation, p.56.

⁴⁸ UN Doc. A/65/40. Fox Principi, Implementation, p. 56.

⁴⁹ IACtHR. Case of *Fermín Ramírez v. Guatemala*. Monitoring Compliance with Judgment. Order of the IACtHR of September 22, 2006. Available at: http://www.corteidh.or.cr/docs/supervisiones/Fermin_%2022_09_06_ing.pdf. Para. 6(a). IACtHR. Cases of *Fermín Ramírez and Raxcacó-Reyes v. Guatemala*. Monitoring compliance with Judgement and request for extension of provisional measures. Order of the President of the IACtHR of March 28, 2008. Available at: http://www.corteidh.or.cr/docs/supervisiones/raxcaco_28_03_08_ing.pdf, para. 35.

⁵⁰ Barrientos Pellecer, César Ricardo Crisóstomo. "El Poder Judicial de Guatemala frente a las sentencias de la Corte Interamericana de Derechos Humanos". 2011. Pp. 5-10

⁵¹ Prensa Libre. "Pena de muerte ya no podrá ser aplicada en Guatemala". 26 October 2017. Available at: <<https://www.prensalibre.com/guatemala/justicia/pena-de-muerte-en-guatemala-ya-no-podra-ser-aplicada>>. Amnesty International. "Public Statement – Guatemala: court decision ruling death penalty unconstitutional for most crimes is a key step on the path to full abolition". 7 November 2017. Available at: <<https://www.amnesty.org/download/Documents/ACT5074122017ENGLISH.pdf>>.



C. Compensation

The payment of compensation is a reparation measure typically included in decisions by supranational bodies. To ensure compensation is provided to the victim/s will require action at the domestic level and how this is achieved will depend on a range of factors and country-specific contexts.


i. Determining the quantum

The process to determine quantum will depend to a certain extent on the practice of the adjudicatory body considering the case. Typically the African Commission and UN treaty bodies do not specify the amount of compensation to be paid (although there are exceptions).⁵² Therefore there needs to be a further post-decision process for determining quantum at the national level.


The ACERWC has an emerging trend of specifying amounts of compensation in its decisions based on a consideration of information including that provided to it by the applicant in their submission, and any responses by the State. When determining amounts for non-pecuniary compensation the ACERWC has stated that this “is assessed by looking in to the various circumstances of a given violation and not through a mathematical formula”.⁵³


Applicants submitting cases to the African Court must make a request for reparation and the Court typically specifies amounts of compensation for pecuniary and non-pecuniary loss in its judgments on the merits based on a consideration of information including that submitted by the applicants, and any responses by the State. Sometimes the Court makes a separate ruling on reparation, following submissions from the parties to the case.

To determine quantum at the national level, some States have established a special body or scheme to respond to cases and determine and agree quantum with the victim/s.

 In **Slovenia**, an ad hoc compensation scheme was put in place following the ECtHR decision in *Kurić and Others v. Slovenia* (2012), concerning persons who had lost their status as permanent residents following Slovenia's declaration of independence in 1991. The scheme is governed by the Act Regulating Compensation for Damage to Persons Erased from the Permanent Population Register. By 26 February 2016 the Government reported that 7,268 persons had lodged applications for the determination of compensation, and 5,286 had already been granted compensation totalling EUR 21 985 500.⁵⁴

In other instances, ministries or existing bodies can be tasked with determining quantum and negotiating with the victim/s.


 In **Cameroon**, the Inter-ministerial Committee for monitoring the implementation of recommendations and/or decisions of international and regional human rights mechanisms established in 2011, is mandated to assist in determining the quantum of damages and offering compensation to victims.⁵⁵

 In **Guatemala**, the Presidential Commission on the Coordination of Human Rights Policy for the Executive (COPREDEH) is responsible for advising the President of the Republic on human rights matters, which includes on the implementation of decisions and judgements from supranational bodies. In relation to the IACTHR case of massacre of Plan de Sanchez, where more than 268 victims were massacred in 1982 in Guatemala, the Court ordered the payment of approximately 8 million USD to the victims. Payment of compensation was made possible through COPREDEH as the key state institution in Guatemala responsible for the implementation of the judgment.⁵⁶


Other measures that have been taken to help determine quantum in complex cases have included the use of an independent expert tasked with reviewing damages.

ii. The process of payment

Once quantum has been determined and agreed, payment of compensation can be achieved in a number of ways. Some victims have been paid compensation through ad hoc procedures responding specifically to that case.

 In **Senegal**, the President of Senegal instructed the Minister for Justice to pay a victim who had been arbitrarily detained. After negotiations with the victim he was provided with land, medical treatment by the President's doctor and financial compensation.⁵⁷

Out of Court settlements have been agreed in some cases:

 In **Canada**, the complainants took a civil case in the national courts against the City of Boisbriand and its insurers after violations were found in *Dumont v. Canada* (1467/2006). He received compensation as a result of an out of court settlement.⁵⁸

⁵² See for example African Commission decision in *Egyptian Initiative for Personal Rights and Interights v Egypt*, (323/2006) where the Commission specified that Egypt should pay Egyptian Pounds 57,000 to each of the four victims; and African Commission decision in *Mbiankeu Genevieve v Cameroon*, (389/10), where the Commission specified a number of compensatory amounts for the victim.

⁵³ ACERWC decision in *Institute for Human Right and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) V. The Government of Republic of Cameroon*. (006/Com/002/2015), para. 82, also citing the African Commission decision in *Equality now and EWLA v Ethiopia*, para 158.

⁵⁴ See Slovenia Action Report (18/03/2016) available at: <https://rm.coe.int/native/09000016806308bc>.


⁵⁵ See Cameroon's Fifth Periodic State Party Report to the UN Human Rights Committee, UN Doc. CCPR/C/CMR/5, paras.15-16 and Annex III.


⁵⁶ R. Murray and C. Sandoval, *The award of compensation by human rights treaty bodies: Challenges in defining and obtaining monetary awards*, on file with authors.


⁵⁷ Fox Principi, Implementation p.76. Koné v. Senegal (386/1989), adopted on 21 October 1994, A/61/40, CCPR/C/SR. 1619.

⁵⁸ Fox Principi, Implementation, para 103.


In others the money has come from an already established fund to which the individual can apply:


 In **Burkina Faso**, a Compensation Fund for Political Victims was used to pay compensation to Mr Zongo, following the African Court judgment relating to his case, and to victims following the African Commission decision *Mouvement Burkinabè des Droits de l'Homme et des Peuples v Burkina Faso* (204/97).⁵⁹


 In the **Czech Republic** a Programme for Holocaust Victims was the mechanism used to pay compensation in accordance with a series of cases from the ECtHR.⁶⁰

 In **Italy**, a payment system was established in 2005 run by the Ministry of Economic Affairs and Finance.⁶¹

A particular law to manage compensation awards from supranational bodies may also facilitate this process:


 **Colombia** adopted Law 288 of 1996 with respect to compensation ordered by the IACtHR and Human Rights Committee of the UN. The matter is considered by a Committee of Ministers (composed of ministries of the Interior, Foreign Affairs, Justice and Law, and National Defence), and a subsequent conciliation process.⁶² The Committee has its own budget and can directly implement certain measures, such as acts of acknowledgment of responsibility, publication of decisions, and building of monuments; and sometimes gets involved in promoting and coordinating compliance of other measures by other entities. For those matters which are not covered by Law 288, the same Committee can however arrange with the Ministry of Foreign Affairs for the case to be sent to the relevant ministry.⁶³

 **Lithuania's** Law on Reimbursement of Damage Caused by Illegal Actions by Public Authorities applies to decisions of the Human Rights Committee and European Court of Human Rights. Article 2(1), provides that the annual budget of the Ministry of Justice will be used to pay compensation.⁶⁴


 Article 8 of **Ukraine's** Implementation Law enables the treasury to pay for ECtHR judgments from a "relevant budgetary program".⁶⁵

iii. Facilitating enforcement through national courts or other bodies

Some victims have had to initiate an additional legal process at the national level in order to enforce the supranational body's decision or judgment.⁶⁶ Whilst this is not ideal, requiring the victim to pursue additional course of action, some States have attempted to find ways to facilitate this process.

 In **Greece**, Articles 104 and 105 of the Introductory Law to the Civil Code enables the administrative courts to deal with decisions in civil matters from a supranational body. A request for compensation can be submitted by the victim to the Legal Council of the State.⁶⁷

◇ Other statutory or constitutional bodies may be able to enforce the supranational decision or judgment:

 In **Austria**, the Ombudsman Board may be able to provide ad hoc payment of compensation to individuals granted such by a supranational body when the state authorities are unable to come to a settlement.⁶⁸

⁵⁹ See also <http://www.panapress.com/Burkina-Faso-to-compensate-victims-of-political-violence--13-455288-17-lang1-index.html>; Burkina Faso Unity – Progress – Justice Periodic Report Of Burkina Faso To The African Commission On Human And Peoples' Rights (A.C.H.P.R.) On The Implementation Of The African Charter On Human And Peoples' Rights October 1998 - December 2002, July 2003, pp.25-26; http://www.univie.ac.at/bimtor/dateien/burkina_faso_acomhpr_2003_2nd_periodic_report.pdf

⁶⁰ Fox Principi, Implementation, para 103.

⁶¹ OSJI, From Rights to Remedies, p.42.

⁶² Colombia – Congreso. *Ley 288 de 1996, por medio de la cual se establecen instrumentos para la indemnización de perjuicio a las víctimas de violaciones de derechos humanos en virtud de lo dispuesto por determinados órganos internacionales de Derechos Humanos*. Adopted on 05 July 1996, published in Official Gazette No. 42.826 of 09 July 1996. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=28597>.

⁶³ Colombia, President of the Republic. Decreto 1216 de 2016. 25 July 2016. Available at: <http://es.presidencia.gov.co/normativa/normativa/DECRETO%201216%20DEL%2025%20DE%20JULIO%20DE%202016.pdf>.

⁶⁴ As cited in and interpreted by Fox Principi, Implementation, p.101. See also, para 76; 1 April 2004, CCPR/CO/80/LTU.

⁶⁵ OSJI, From Rights to Remedies, p. 42.

⁶⁶ For example, in relation to the CCPR Decision in *Chongwe v Zambia*, (821/1998), an amount of compensation was agreed between Mr Chongwe and the government however following delays in payment, Mr Chongwe started proceedings in the High Court to enforce the agreement. The High Court upheld the author's claim and directed government to pay the agreed sum with interests at LIBOR rate. This decision was appealed by the Attorney General to the Supreme Court, which subsequently upheld the High Court's decision, see UN Doc. CCPR/C/119/3, p.72.

⁶⁷ Fox Principi, Implementation para 77.


⁶⁸ Fox Principi, Implementation, para 81. Applied in *Perterer* (1015/2001), (1015/2001), adopted on 20 July 2004




D. Rehabilitative measures

- Often decisions or judgments will include a requirement that victims receive rehabilitation for the harm they have suffered. Rehabilitation includes a broad range of measures aimed at helping the victim/s to reconstruct their life as far as possible. It includes measures aimed at restoring the victim's physical and mental health but it may also include other measures to restore their social and/or vocational independent or self-sufficiency.⁶⁹ The specific rehabilitative measures required will of course vary from case to case and depend on the particular needs and views of the victim/s.

In some States the right to rehabilitation is provided under national law which may specify how the costs of rehabilitation are to be paid. This right may also be enforceable through the national courts:


 In **Kenya**, the 2017 Prevention of Torture Act provides a legal basis for victims of torture to obtain rehabilitation. National courts can order the costs to be covered by the perpetrator; the cost of rehabilitation will also be covered by the Victim Protection Trust Fund, which was established by the Victim Protection Act in 2014.⁷⁰


 In **Uganda**, the 2012 Prevention and Prohibition of Torture Act includes the right to medical and psychological care, or legal and psycho-social services for victims. In accordance with this law rehabilitation can be ordered by national courts are part of the package of reparation for the victim; the costs of which may be satisfied by the person convicted of torture.⁷¹

i. Medical care and support


Decisions or judgments involving victims who have suffered physical or mental harm will require steps at the national level for the necessary and appropriate medical care and support to be provided to the victims. In some States such services may already be in place and victims need to be facilitated to access them. In other instances further measures may need to be taken to strengthen the provision of medical care and support and/or access to such services for victims of human rights violations.


Typically the decision or judgment will require that appropriate medical treatment is provided to the victim:


 In **Cameroon**, the CCPR in their decision in *Engo v Cameroon* (1397/2005) called on the State to ensure that Mr Engo received the provision of adequate ophthalmological treatment for his glaucoma. Subsequently the State informed the Committee that Mr Engo has access to an ophthalmologist as well as outpatient medical consultations.⁷²

 In **Ireland**, in relation to *Mellet v. Ireland* (2324/2013) the CCPR called on the State to make available any psychological treatment the victim required. Subsequently, the State informed the Committee that the Health Service Executive would ensure the availability of psychological services to her, including her being able to see a psychologist of her choice.⁷³

Some States have embarked on a series of reforms to strengthen the provision of medical services to implement rehabilitation measures:

 In **Brazil**, in *Pimentel v Brazil* (17/2008), a pregnant woman died as a result of lack of medical care. In response to the decision by CEDAW, among the measures taken were a series of reforms in the medical service including policies, amendments to protocols, and training.⁷⁴

 In **Gambia**, a substantial medical reform plan was developed following the African Commission decision in *Purohit Moore v The Gambia* (241/200) in 2003, which found violations on a large scale of persons with mental health problems. The African Commission called on the State to undertake legislative reform; to create a body to review the cases of all persons detained under the 'Lunatics Detention Act' and make appropriate recommendations for their treatment or release; and provide adequate medical and material care for persons suffering from mental health problems. Following this case, the Government requested technical assistance from the WHO in the development of a comprehensive draft mental health policy and plan, which was formally approved by the Government in 2007.

 In **Hungary**, as part of a series of measures to implement the CEDAW decision in *A.S. v Hungary* (4/2004) which involved the forced sterilisation without informed consent of A.S., as well as ensuring the necessary psychological and other support was provided to the victim, the State eventually also took measures to amend the Public Health Act in relation to the principle of informed consent.⁷⁵

⁶⁹ See, for example, General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution 60/147, 16 December 2005, para. 18; the African Commission's General Comment No. 4: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), (2017), paras. 40-43; D. Shelton, *Remedies in International Human Rights* (Oxford, Oxford University Press, 2005), p. 275.

⁷⁰ See Articles 17 and 19 of the Kenya Prevention of Torture Act 2017, available at: <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PreventionofTortureAct2017.pdf>

⁷¹ See Article 6 of the Uganda Prevention and Prohibition of Torture Act, available at: <https://uln.ug/legislation/act/2015/3-3>

⁷² Cameroon's Fifth Periodic State Party Report to the CCPR, UN Doc. CCPR/C/CMR/5, Annex 3, p.9. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fADR%2fCMR%2f25666&Lang=en


⁷³ CCPR Follow-up Report, UN Doc. CCPR/C/119/3. 2017, p.19-20. See also, Fox Principi, Implementation, p.74.


⁷⁴ Fox Principi, Implementation, p.70.


⁷⁵ See OSJI, From Rights to Remedies, p.24

ii. Other rehabilitative measures

As noted above rehabilitative measures are not necessarily restricted to the provision of medical care and support. Other rehabilitative measures can be taken, including measures at a community level, aimed at helping victims, their families and the community rebuild their lives.

 In **Argentina**, the IACtHR in the case of *Furlan and Family v Argentina* (2012) ordered the State to provide, inter alia, medical care to Sebastián Furlan, a teenager left with a range of disabilities and mental health problems following an accident. To ensure that any measures implemented helped Sebastián and his family to rebuild his life, the reparations measures called for the creation of a multidisciplinary team which, taking into account the opinion of Sebastián Furlan, will determine the most appropriate measures of protection and assistance for his “social, educational, vocational and labor insertion”.⁷⁷


 In **Guatemala**, the State was required to take a range of rehabilitative, and other, measures following the IACtHR's judgement in *Plan de Sánchez massacre v Guatemala* (2004). This case involved the killing of 268 persons, most of them members of the indigenous Mayan people at the village of Plan de Sánchez. The rehabilitative measures ordered by the Court included not only providing medical treatment, including free medicines and a health clinic, but also measures aimed at strengthening the transmission of Mayan culture, through bi-lingual education, studies, and training programmes; housing assistance; and infrastructure investment in roads, sewers and drinking water.⁷⁸


 In **Uganda**, the ACERWC in its decision in *Michelo Hunsungule and others (on behalf of children in northern Uganda)* No. 001/Com/001/2005, concerning inter alia child soldiers, called on the Government of Uganda, when considering accountability for children accused of violations, to take the best interest of the child as the primary consideration and promote the reintegration of the child into his or her family, community and society, including the use of restorative measures, truth-telling, traditional healing ceremonies, and reintegration programmes.⁷⁹




E. Guarantees of non-repetition

A common requirement in decisions or judgements from supranational bodies is for the State concerned to take measures to prevent a recurrence of the violation/s. The measures required to prevent a recurrence will be case and context specific. They can include a very broad range of actions requiring collaboration beyond the Executive with other State institutions and agents, the legislature, judiciary, as well as even NHRI and CSOs. For example, guarantees of non-repetition can include legislative and institutional reform; human rights training and sensitisation of officials.

 **Austria** put in place a number of measures aimed at preventing a recurrence in relation to the CEDAW decision in *Goekce v. Austria* (5/ 2005). This case concerned Mrs Goekce who was killed by her husband following a period of domestic abuse. CEDAW found that the State authorities had failed to exercise due diligence to protect Mrs Goekce and noted a lack of coordination between law enforcement and judicial officers. Subsequently, Austria took measures to strengthen the protection of women in criminal law and proceedings, including through the provision of psychosocial and legal assistance for victims of violent crimes.⁸⁰

 In **Guatemala**, the IACtHR's landmark judgment in the case of *Cuscul de pivaral et al v. Guatemala* (Series C No. 359, 23 August 2018) concerning 49 people diagnosed with HIV between 1992 and 2003, set out a series of measures the State must take to provide medical care and support to the victims, as well as a range of measures designed to guarantee non-repetition such as: i) to implement effective mechanisms for periodic supervision and monitoring of its public hospitals to ensure that they are providing comprehensive health care to people living with HIV ii) to implement a training program for health system officials iii) to guarantee that pregnant women have access to HIV testing, and undergo this if they so wish iv) a national awareness-raising campaign addressed at people living with HIV.⁸¹

 In **Spain**, a series of law reforms were instigated following a number of decisions against it by the CCPR, which had found, inter alia, violations of the right to appeal. Consequently, a law was passed in 2004 which introduced the remedy of appeal against the judgments of the national and provincial courts. Further, the State informed the committee it was taking action to reduce the backlog of cases before the Supreme Court.⁸²

 In **New Zealand**, in *E. B. v. New Zealand* (1368/2005), the Human Rights Committee found a violation of article 14(1) where a father's application to access his children took too long. A number of reforms were made by the government including the establishment of an out-of-court Family Settlement Dispute Service.⁸³

⁷⁶ WHO Expert Committee on Disability Prevention and Rehabilitation, Technical Report on Disability Prevention and Rehabilitation, 668, (Geneva, 1981), p. 9; the African Commission's General Comment No. 4: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), (2017), paras. 40–43;

⁷⁷ *Furlan y Familia v Argentina*, para. 288.

⁷⁸ IACtHR, *Case of the Plan de Sánchez Massacre v. Guatemala* Judgment of November 19, 2004 (Reparations) para. 125(7–9). See also D. Cassel, 'The Expanding Scope and Impact of Reparations Awarded by the Inter-American Court of Human Rights', p.95, available at: <https://www.corteidh.or.cr/tablas/r28153.pdf>.

⁷⁹ <https://acerwc.africa/wp-content/uploads/2018/07/decision-on-uganda-comment-edited.pdf>.

⁸⁰ See G. Tisheva, *Procedures under the CEDAW and the Optional Protocol to CEDAW as good practice in the fight against violence against women in the Member States*, Presentation to the Committee on Women's Rights and Gender Equality (FEMM), 2019, available at: <https://www.europarl.europa.eu/cmsdata/188993/Last%20version%20presentation%20Genoveva%20Tisheva%2018%20Nov%20FEMM-original.pdf>.

⁸¹ *Cuscul de pivaral et al v. Guatemala* (Series C No. 359, 23 August 2018), paras.224–230. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_359_ing.pdf.

⁸² Law 19/2003, of 23 December 2003, Fox Principi, Implementation, p. 11.


⁸³ Fox Principi, Implementation, p.68, citing UN Doc A/63/40, CCPR/C/NZL/6.




F. Other measures


As described in Section 1 above, there are a broad range of reparation measures that States may be required to take to provide reparation, dependent upon the particular circumstances giving rise to the violation. As well as the measures outlined above, other forms of reparation may include 'restitution' aimed at restoring victims to their original situation, where possible, before they suffered harm e.g. restoration of employment, return of property. The necessary measures to be taken will be case and context specific.


For example, it may require the application of an Executive order or action:

 In **Cameroon**, in relation to the CCPR decision in *Mazou v. Cameroon* (630/1995), Mr Mazou had been imprisoned for hiding his brother who was later sentenced to death for attempted coup d'état. Whilst in detention Mr Mazou was dismissed (by Presidential decree) from his position as magistrate.⁸⁴ Although, Mr Mazou was later reinstated in his post on 16 April 1998 in accordance with a Supreme Court order, which annulled the original decree that removed him from his post, he was not reinstated at the grade he would have been had his career progressed without interruption. The CCPR called on the State to reinstate Mr Mazou "in his career with all the attendant consequences under Cameroonian law",⁸⁵ and to compensation. Subsequent to the CCPR decision the State reported to the Committee on 5 April 2002 that Mr Mazou had been reintegrated into the judiciary, received his outstanding salary and a promotion, through a decree by the President.⁸⁶


 In **Croatia**, following the CCPR decision in *Vojnović v. Croatia* (1510/2006) that there had been an unreasonable delay in proceedings for the determination of the author's specially protected tenancy and interference with the home, the victim was provided with a comparable apartment in Zagreb.⁸⁷


In some instances legislative reform may be required to provide restitution:

 In **Paraguay**, following the IACtHR decision in *Sawhoyamaya Indigenous Community v. Paraguay* concerning the expulsion of members from the Sawhoyamaya Community from their land, a law on the expropriation of traditional lands was introduced in 2014 enabling some members of the Community to return to their land. Members of this Community also received homes and a community development fund was established.⁸⁸

 In **Romania**, a working group was established in December 2010 to consider how to respond to hundreds of ECtHR cases. These related to property which had been previously nationalised. The working group drafted legislation and involved numerous ministries.⁸⁹ In 2013 Law no. 165 was adopted which included measures for the process of restitution and provision of compensation for the loss of property.⁹⁰

◊ Other measures may be aimed at providing 'satisfaction' i.e. to repair the damage done, the verification and acknowledgement of the truth, or ending ongoing violations e.g. searching for individuals who have disappeared, the recovery and reburial of remains, public apologies, commemoration and memorialisation. In Argentina, among a range of reparation measures taken to implement the CCPR decision in *V.D.A/L.M.R v. Argentina* (1608/2007), concerning delays in court hearings to decide on a legal abortion after rape, a public apology was given by the provincial and national authorities to the victim and her mother.⁹¹

 In **Burkina Faso**, the CCPR's decision in *Sankara v Burkina Faso* (Communication No. 1159/2003) called on the State to 'provide Ms. Sankara and her sons an effective and enforceable remedy in the form, inter alia, of official recognition of the place where Thomas Sankara is buried, and compensation for the anguish suffered by the family'.⁹² This was authorised by a decree adopted on 4 March 2015 in the Council of Ministers.⁹³ Subsequent attempts have been made to identify the location of the burial site for Mr. Sankara and exhume any remains found.⁹⁴ In July 2017 a judicial investigation was reportedly opened to examine graves discovered at the place where Thomas Sankara was believed to have been buried.⁹⁵

 In **Guatemala**, as part of the range of reparation measures required to address the IACtHR decision in the *Plan de Sánchez Massacre* case, a public ceremony was held in Plan de Sánchez on 18 July 2005 on the 23rd anniversary of the massacre. It was attended by representatives of the government, led by the Vice President Eduardo Stein, delegations from the IACHR, as well as survivors and relatives of the victims. During the ceremony, Vice-President Stein apologised for the actions of the army.⁹⁶

◊ In *Williams Lecraft v. Spain* (1493/2006), discrimination on the basis of racial profiling was found to have violated the ICCPR. In response, the State made an oral and written public apology to the author. It also established training for the police.⁹⁷

⁸⁴ CCPR/C/72/D/630/1995, para 9.

⁸⁵ UN Doc. CCPR/C/72/D/630/1995, para. 9.

⁸⁶ Fox Principi, Implementation, p.78. Annual Report A/59/40, CCPR/C/80/FU1, also original submission from State party dated 26 April 2002.

⁸⁷ Fox Principi, Implementation, p.78, citing UN Doc. A/66/40.

⁸⁸ See https://www.corteidh.or.cr/supervision_de_cumplimiento_testimonios.cfm?lang=en; and https://www.corteidh.or.cr/docs/supervisiones/yakie_24_06_15.pdf; https://www.corteidh.or.cr/docs/supervisiones/sawhoyamaya_14_05_19.pdf.

⁸⁹ OSJI, *From Rights to Remedies*, p.50.

⁹⁰ Pavel, Mărgărit & Associates Blog, 11 January 2018, <http://www.avocatpavel.com/how-a-romanian-lawyer-specialized-in-property-recovery-can-help-you-in-restitution-of-property-in-romania/#:~:text=In%202013%2C%20in%20Romania%20was,over%20during%20the%20communist%20regime>.

⁹¹ Fox Principi, Implementation, p.69, citing UN Doc. CCPR/C/ARG/5.

⁹² CCPR/C/86/D/1159/2003, para 15.

⁹³ List of issues in relation to the initial report of Burkina Faso, Addendum Replies of Burkina Faso to the list of issues, UN Doc. CCPR/C/BFA/Q/1/Add.1, 21 April 2016, paras 4 and 5.

⁹⁴ List of issues in relation to the initial report of Burkina Faso, Addendum Replies of Burkina Faso to the list of issues, UN Doc CCPR/C/BFA/Q/1/Add.1, 21 April 2016, paras 4 and 5.

⁹⁵ See <https://burkina24.com/2016/10/12/dossier-sankara-mandats-darret-contre-blaise-compaore/>; <http://www.jeuneafrique.com/mag/459733/societe/burkina-justice-a-tombeau-ouvert-laffaire-thomas-sankara/>;

⁹⁶ See http://news.bbc.co.uk/1/hi/spanish/latin_america/newsid_4695000/4695401.stm.

⁹⁷ Fox Principi, Implementation, p.81, citing UN Doc. A/66/40.



G. Publication

Some decisions or judgments require that it is published in the official gazette and/or on a government website. Even without a specific request to do so it is good practice to publicise decisions or judgments as part of a process of ensuring transparency and building public trust and confidence in State institutions. Publication will also facilitate outreach and collaboration with key national actors who could assist the Government with implementation efforts, such as the national human rights institution, professional bodies other experts, as well as civil society organisations. It will also provide a platform to publicise positive action being taken to implement a decision or judgment.



In **Burkina Faso**, the Government has published the African Court's decisions in *Beneficiaries of Late Robert Zongo, Abdoulaye Nikiema Alias Ablasse, Ernest Zongo and Blaise Ilboudo & the Burkinabè Human and Peoples' Rights Movement* (No. 013/2011) in a range of publications including in the Official Gazette No. 07 of 9 November 2015, and newspapers such as L'OBSERVATEUR and SIDWAYA.⁹⁸ Similarly, the Government has also published the African Court's Decision in *Lohé Issa Konaté* (No. 004/2013) in the Official Gazette.⁹⁹



In **Cameroon**, the Ministry of Justice has published decisions from the CCPR, such as *John Njie Monika* (1965/2010), *Akwanga v Cameroon* (1813/2008) in their annual reports on Human Rights in Cameroon.¹⁰⁰



In **South Africa**, the Government posted a media statement on its website following the CCPR decision in *McCallum* (1818/2008). This statement provided a summary of the case and the findings of the CCPR and identified the steps the Government would take to implement the decision, including re-opening the investigation.¹⁰¹

⁹⁸ See <http://www.sig.bf/2015/09/decision-de-la-cour-africaine-des-droits-de-l'homme-et-des-peuples-sur-affaires-norbert-zongo/> (accessed on 28 January 2018); Interview undertaken by the Human Rights Law Implementation Project, 23 December 2017.

⁹⁹ Journal Officiel Spécial N°13, 15 October 2016

¹⁰⁰ See 2014 Annual Report available at: http://www.minjustice.gov.cm/pdf_download/droit_homme/English/Rapport_Minjustice_2014_Ang.pdf; and 2009 Annual Report available at: http://www.minjustice.gov.cm/pdf_download/droit_homme/English/Rapport_Minjustice_2009_Ang.pdf.

¹⁰¹ See media statement 29 September 2011 available at: <https://www.gov.za/response-south-african-government-findings-united-nations-human-rights-committee-matter-mccullum>.

III. Mechanisms and tools to assist follow-up and implementation


III. Mechanisms and tools to assist follow-up and implementation

A. National mechanisms for reporting and follow-up


An emerging trend among States is to establish national mechanisms for reporting and follow-up (NMRF) to help prepare reports and coordinate responses and measures to implement recommendations from supranational human rights bodies. NMRFs are part of the government structure, unlike national human rights institutions which are independent from the Executive. Some of the existing NMRFs established by States expressly include implementation of judgements or decisions within their mandate (see Cameroon below). Such mechanisms can help with the broad dissemination of a decision or judgement and development of implementation strategies. This is particularly useful because implementation often requires collaboration beyond the main State interlocutor for that decision or judgment (e.g. the embassy, diplomatic mission, or ministry of foreign affairs) with other stakeholders, such as other government ministries, parliament, and the judiciary. A national body, with a broad membership, can be useful to identify, agree on and coordinate the most effective responses and measures that need to be taken and for relevant institutions and actors to self-identify as to their responsibilities within any implementation strategy.¹⁰²

NMRFs created by States tend to be either ad hoc mechanisms established to complete a specific purpose and then disbanded or standing mechanisms with a more permanent basis for their work (although the latter may not necessarily meet on a regular basis). The NMRFs established by States to date tend to fall under one of the following types:¹⁰³


Single ministerial: these bodies are established in one ministry and comprised of members working within that ministry.

 **Mexico** has created the Directorate for Human Rights and Democracy in the Ministry of Foreign Affairs has been established to coordinate reporting to the UN and regional supranational human rights bodies.¹⁰⁴


Inter-ministerial: these bodies are comprised of representatives drawn from different ministries.


 in **Portugal** the National Human Rights Committee, is an inter-ministerial committee, chaired by the Ministry of Foreign

Affairs, responsible for intergovernmental coordination in order to promote an integrated approach to human rights policies.¹⁰⁵


 **Mozambique** has established a Directorate for Human Rights based in the Ministry of Justice, Constitutional and Religious Affairs. This body operates through an Inter-Ministerial Human Rights Working Group, involving the ministries of foreign affairs, education and human development, health, internal affairs and women and social action.¹⁰⁶

Inter-ministerial plus others: these bodies are comprised of members drawn from different ministries and also including other actors such as representatives from national human rights institutions and CSOs.

 **Cameroon** has an inter-ministerial committee which includes representatives from different ministries, as well as from the National Human Rights Commission. This Committee does not meet regularly but is convened by the Secretary General of Services of the Prime Minister's Office President's office. Significantly, its mandate expressly includes implementation of decisions of the UN Human Rights Committee and the African Commission.

 **Costa Rica** established the Inter-Institutional Commission for the Monitoring and Implementation of International Human Rights Obligations as a permanent advisory body on human rights of the executive branch in order to coordinate the national implementation of international human rights obligations.¹⁰⁷

Institutionally separate: these bodies are separate institutions but established by the Government and responsible for coordination, report writing and consultation in relation to the State's human rights obligations and interactions with supranational bodies.

 in **Morocco** an inter-ministerial Delegation for Human Rights was established which is led by an inter-ministerial delegate appointed by the King and answerable directly to the Head of Government. The Delegation is responsible for coordinating national human rights policies and for ensuring interaction with international human rights mechanisms.¹⁰⁸

¹⁰² R Murray and C de Vos, 'Behind the State: domestic mechanisms and procedures for the implementation of human rights judgments and decisions', 12(1) *Journal of Human Rights Practice* (2020).

¹⁰³ For more information on national mechanisms for follow-up and reporting see: OHCHR, *National Mechanisms For Reporting and Follow-Up: A Practical Guide to Effective State 102 Engagement with International Human Rights Mechanisms*, 2016, available at: https://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf.

¹⁰⁴ *Ibid.*, p.6.

¹⁰⁵ *Ibid.*, p.7.

¹⁰⁶ UNDP, *UN Country Team Support to Tracking the Follow-up of Human Rights Recommendations*, 2017, p.12.


¹⁰⁷ See Costa Rica's Sixth Periodic State Report to the UN CCPR, UN Doc CCPR/C/CRI/6, 4 July 2014, para. 2.

¹⁰⁸ OHCHR, *National Mechanisms For Reporting and Follow-Up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms*, p.8.


B. Other national mechanisms

Some States have put in place other mechanisms to assist coordination of decision-making and action to implement judgments or decisions from supranational bodies.

Focal points within ministries


 In **Belgium**, a unit within the Directorate General Legislation and Fundamental Rights and Freedoms of the Ministry of Justice coordinates implementation of European Court of Human Rights Decisions, and a separate unit in the Ministry of Foreign Affairs deals with UN treaty body decisions. There are measures in place to ensure coordination between these two ministries, including a spreadsheet which integrates the various judgments and decisions from e.g. the UN, UPR, and ECtHR. Responsibility for the implementation of these decisions and judgments is also detailed in this tool.¹⁰⁹

Parliamentary Committees

 In the **UK**, the Joint Committee on Human Rights is a standing committee which consists of twelve members, appointed from the House of Commons and the House of Lords, to examine matters relating to human rights within the UK.¹¹⁰ As part of its mandate the Committee monitors the UK Government's actions to implement judgments of the ECtHR. The Committee can request the department leading implementation to provide the Committee with a plan for execution (the Committee also receives a copy of the action plan that the UK submits to the Committee of Ministers in Strasbourg). The Committee can also examine witnesses and require the department leading on implementation to submit written evidence and documents.¹¹¹

C. Databases

Some States have found it useful to put in place databases to assist with the process of keeping track of the range of recommendations being generated by supranational bodies. Although in some instances databases have been instigated in response to the Universal Periodic Review (UPR) process, these databases can also be a useful tool for monitoring progress with the implementation of decisions and judgements. Databases can help to create 'joined-up' thinking and collaboration among ministries on the implementation of decisions and judgements, making more efficient use of resources and making it easier to report on progress. They can be useful in identifying linkages and avoiding duplication of efforts, for example actions aimed at addressing recommendations from the UPR, such as legislative reform, may also assist in the implementation of a decision or judgement from a supranational body.

 **Paraguay** has created 'SIMORE', a user-friendly, public online database of recommendations from human rights bodies, as a tool to help systematise, prioritise and keep

track of implementation.¹¹² SIMORE was established through an inter-institutional process led by the Ministry of Foreign Affairs and the Ministry of Justice as coordinators of the Human Rights Network of the Executive. This network is composed of 23 institutions, including representatives from the legislature, judiciary and civil society organisations. SIMORE was launched in 2014 and data for SIMORE is collated in a server of the Ministry of Foreign Affairs. Paraguay has continued to refine and strengthen this tool, including expanding the data to include recommendations relating to the sustainable development goals. This system has informed similar processes in other States such as in Ecuador and Mexico, and has also been instrumental in the development of the 'Inter-American SIMORE', by the Inter-American Commission, a similar online tool that systematically collects all recommendations made by the IACHR through its various mechanisms.¹¹³ (A link to detailed information on the various steps involved in building SIMORE in Paraguay is provided in the resource section below.)

 **Uganda** has created the 'Human Rights Recommendations Database and Search Engine' - an online platform hosted by the Uganda Human Rights Commission on behalf of the Government of Uganda. The database aims to (i) assist in the systematic monitoring of human rights recommendations from international, regional and national human rights mechanisms, such as the United Nations Human Rights Council's Universal Periodic Review (UPR), Treaty Bodies and Special Procedures, African Commission on Human and Peoples' Rights as well as the Uganda Human Rights Commission, issued to the Government of Uganda; (ii) facilitate follow up on implementation of these recommendations by responsible government Ministries, Departments and Agencies, and (iii) ensure wide dissemination of human rights recommendations that Uganda has received from these mechanisms among the general public in Uganda.¹¹⁴

◊ The Office of the High Commissioner for Human Rights (OHCHR), as well as providing support and technical assistance to States in the development of their own databases, such as in the case of Paraguay and Uganda detailed above, has developed a database package – *the National Recommendations Tracking Database (NRTD)*, for States to use and tailor to their own context and needs. The NRTD can be used to automatically download new recommendations received from all the UN human rights mechanisms (from OHCHR's Universal Human Rights Index database), and States can choose to add recommendations from regional and/or national bodies.¹¹⁵ (Further information on how to request assistance in putting in place and using the NRTD is provided in the resource section below). Enabling legislation and other measures.

¹⁰⁹ R Murray and C de Vos, 'Behind The State: domestic mechanisms and procedures for the implementation of human rights judgments and decisions' 12(1) *Journal of Human Rights Practice* (2020).

¹¹⁰ See <https://committees.parliament.uk/committees/93/human-rights-joint-committee/role/>.

¹¹¹ OSJI, *From Rights to Remedies*, p.63; see also <https://publications.parliament.uk/pa/cm200102/cmstords/27519.htm>.

¹¹² See <https://www.mre.gov.py/SimorePlus/Home/Page?idTipo=1>; and <https://acnudh.org/load/2019/07/045-Sistematizacion-SIMORE-English-version.pdf>.

¹¹³ See <https://www.oas.org/ext/en/human-rights/simore/About-SIMORE>.


¹¹⁴ <http://www.uhrcdatabase.ug/>.


¹¹⁵ For more information on the NRTD see <https://www.ohchr.org/Documents/HRBodies/UPR/NRTD.pdf>; and <https://www.youtube.com/watch?v=0likHkHUXuU>.


D. Enabling legislation or constitutional provisions

Some States have adopted enabling legislation or constitutional provisions which give international decisions the necessary national legal status to be implemented domestically. The idea behind such measures is that it provides a trigger for national action to occur,¹¹⁶ which can be more 'efficient, effective and less cumbersome.'¹¹⁷ In some States the national courts have recognised judgments or decisions of supranational bodies as having the same status as domestic judgments or constitutional hierarchy. Such laws and measures enable a decision from a supranational body to instigate executive, judicial and parliamentary action in the same way as a domestic court decision or gives competence to national courts to execute them.¹¹⁸


Enabling legislation:

 In **Burundi**, legislation was passed in 2005, *Loi. No.1/07, Regissant la Cour Supreme, Republique du Burundi Cabinet du President*, which includes a provision empowering the Supreme Court to enforce decisions from international human rights judicial and quasi-judicial bodies.¹¹⁹


 In the **Czech Republic**, the 2011 Act '*Providing Cooperation for the Purposes of Proceedings before Certain International Courts and Other International Supervisory Bodies*' (186/2011, established a national implementation mechanism for judgments of the ECtHR and decisions of the UN treaty bodies. It required that public authorities including the judiciary take measures to end the violations.¹²⁰


 In **Ukraine**, the 2006 Law '*On the Enforcement of Judgments and the Application of the Case Law of the European Court of Human Rights*' recognised that all ECtHR judgments "are binding and subject to enforcement throughout the whole territory of Ukraine".¹²¹


Constitutional provisions:

 In **Kyrgyzstan**, Article 41(2) of the Constitution ensures that individuals are able to petition international human rights bodies to seek protection of violated rights and freedoms. In the event that these bodies confirm the violation of human rights and freedoms, the Constitution guarantees that the "Kyrgyz Republic shall take measures to their restoration and/or compensation of damage."¹²²

E. Other measures recognising domestic application

 In **Colombia**, the Constitutional Court has held that supranational bodies' decisions and judgments, including those of the IACtHR, have constitutional hierarchy.¹²³

 In **Costa Rica**, a 1983 agreement with the Inter-American Court provides: "[t]he resolution of the Inter-American Court of Human Rights and its president, once communicated to the corresponding administrative and judicial authorities, of the republic, have the same legal authority and enforceability as the resolutions emitted by the Costa Rican courts."¹²⁴

 In **Guatemala**, in 2009, under the Presidency of Magistrate César Barrientos, the Criminal Chamber of the Supreme Court of Justice declared the self-executing nature of judgments issued by the IACtHR against Guatemala, in relation to its duty to investigate, prosecute, and punish those responsible for human rights violations in seven cases.¹²⁵ In practice this measure has enabled the Supreme Court to apply international law and judgments from the IACtHR directly, and enables victims to use a judgment of the IACtHR to go back and request their national courts to execute the judgment.

¹¹⁶ R Murray and C de Vos, 'Behind The State: domestic mechanisms and procedures for the implementation of human rights judgments and decisions', 12(1) *Journal of Human Rights Practice* (2020).

¹¹⁷ Fox Principi, Implementation, p.25.

¹¹⁸ R Murray and C de Vos, 'Behind The State: domestic mechanisms and procedures for the implementation of human rights judgments and decisions' 12(1) *Journal of Human Rights Practice* (2020).

¹¹⁹ See *Loi. No.1/07, Regissant la Cour Supreme, Republique du Burundi Cabinet du President*, 25 February 2005, Article 43(5), available at: https://www.assemblee.bi/IMG/pdf/loi%20n%C2%B01_07_du_25_fevrier_2005.pdf.

¹²⁰ Fox Principi, Implementation, p.85, and Annex II, section B.

¹²¹ OSJI, From Rights to Remedies, p. 171, citing Article 2 of the 2006 Law '*On the Enforcement of Judgments and the Application of the Case Law of the European Court of Human Rights*'.

¹²² Article 41(2) of the Kyrgyz Republic Constitution, unofficial translation available at: <http://extwprlegs1.fao.org/docs/pdf/kyr127812E.pdf>; see also Fox Principi, Implementation, p.23.

¹²³ See Colombia Constitutional Court. 2012. *Sentencia T-653/12*. 23 August 2012, available at: <http://www.corteconstitucional.gov.co/relatoria/2012/t-653-12.htm>

¹²⁴ OSJI, From Rights to Remedies, p.81, citing David Baluarte, "Structuring Implementation: The Inter-American Experience with National Mechanisms to Implement the Decisions of Human Rights Bodies," Paper presented in Issyk-Kul, Kyrgyzstan.

¹²⁵ César Ricardo Crisóstomo Barrientos Pellecer. "El Poder Judicial de Guatemala frente a las sentencias de la Corte Interamericana de Derechos Humanos". Available at: <http://ww2.oi.gob.gt/camarapenal/index.php/publicaciones/otras-publicaciones/doc/130/raw>, p. 3

IV. Resources

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A. Key websites and documents

African Commission on Human and Peoples' Rights:

- ◇ *Report of the Second Regional Seminar on the Implementation of Decisions of the African Commission on Human and Peoples' Rights 04 - 06 September 2018, Zanzibar, Tanzania* (2018) <https://www.achpr.org/news/viewdetail?id=3>
- ◇ *General Report of the Regional Seminar on the Implementation of Decisions of the African Commission on Human and Peoples' Rights 12 - 15 August 2017, Dakar, Senegal* (2017) <https://www.achpr.org/news/viewdetail?id=13>
- ◇ *Resolution on the Importance of the Implementation of the Recommendations of the African Commission on Human and Peoples' Rights*, (2006)

African Court on Human and Peoples' Rights:

- ◇ Fact Sheet on Filing Reparation Claims, https://en.african-court.org/images/Basic%20Documents/Reparations_Fact_Sheet-FINAL_25_Nov_2019.pdf

African Court Coalition:

- ◇ Booklet on the Implementation of Decisions of the African Court on Human and Peoples' Rights, African Court Coalition, 2017
- ◇ Centre for Human Rights, The impact of the African Charter and Women's Protocol in selected African states (PULP 2012) see http://www.pulp.up.ac.za/cat_2012_07.html

Danish Institute for Human Rights:

- ◇ *The role of national human rights systems in the implementation of international human rights standards and recommendations*, <https://www.humanrights.dk/research-project/role-national-human-rights-systems-implementation-international-human-rights>
- ◇ *The institutional turn of international human rights law and its reception by state administrations in developing countries*, <https://www.humanrights.dk/research-project/institutional-turn-international-human-rights-law-its-reception-state>

The Human Rights Implementation Project (HRLIP): www.bristol.ac.uk/law/hrlip

- ◇ NANHRI, 2016, Workshop Report, Role of NHRIs in the Implementation of the Decisions of the African Commission on Human and Peoples Rights and the Judgments of the African Court on Human and Peoples Rights, Banjul, the Gambia, 20-21 October 2016, <https://www.nanhri.org/wp-content/uploads/2016/10/draft-13-English-Version.pdf>

Office of High Commissioner for Human Rights:

- ◇ *Report of the Secretary-General on measures taken to implement resolution 9/8 and obstacles to its implementation, including recommendations for further improving the effectiveness, harmonization and reform of the treaty body system*, A/HRC/25/22, 17 January 2014, <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx>
 - ◇ Strengthening the UN Human Rights Treaty Body System, A Report by the High Commissioner for Human Rights, June 2012, <http://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf>
 - ◇ *Statement on Strengthening the Relationship between NHRIs and the Human Rights Treaty Bodies System*, June 2010, http://www2.ohchr.org/english/bodies/HRTD/docs/MarrakeshStatement_en.doc
 - ◇ *Dublin Statement on the Process of Strengthening the United Nations Human Rights Treaty Body System*, November 2009, <http://www2.ohchr.org/english/bodies/HRTD/docs/DublinStatement.pdf>
- Open Society Justice Initiative
- ◇ *From Rights to Remedies – Structures and Strategies for Implementing International Human Rights Decisions*, Open Society Justice Initiative, (2013), <https://www.justiceinitiative.org/publications/rights-remedies-structures-and-strategies-implementing-international-human-rights-decisions>
 - ◇ *From Judgment to Justice: Implementing International and Regional Human Rights Decisions*, Open Society Justice Initiative, (2010),

<https://www.justiceinitiative.org/publications/judgment-justice-implementing-international-and-regional-human-rights-decisions>

B. Tools/factsheets and organisations

Convention Against Torture Initiative, Providing Rehabilitation To Victims Of Torture And Other Ill-Treatment:
https://cti2024.org/content/images/CTI-Rehabilitation_Tool5-ENG-final.pdf

European Implementation Network (EIN):
<http://www.einnetwork.org/>

Redress, *Reaching for Justice: The Right to Reparation in the African Human Rights System*, (2013),
<https://redress.org/wp-content/uploads/2017/12/1310reaching-for-justicefinal.pdf>

C. Databases:

CEJIL case law database (for cases in the Inter-American system):
<https://sidh.cejil.org/>

Committee of Ministers of the Council of Europe, The Department for the Executions of Judgments of the ECtHR:
<https://www.coe.int/en/web/execution/tes>

Kyrgyzstan, Compendium of Recommendations:
<https://www.auca.kg/en/compendium/>

New Zealand's Online Action Plan: <https://npa.hrc.co.nz/>

SIMORE:

- ◊ for details of the various stages and decision-making process for the establishment of Paraguay's database, SIMORE see:

System for Monitoring Recommendations (SIMORE): The Paraguay Experience (2014):
<https://acnudh.org/load/2019/07/045-Sistematizacion-SIMORE-English-version.pdf>

OHCHR:

- ◊ for more information on how the OHCHR's National Recommendations Tracking Database (NRTD) functions see: <https://www.ohchr.org/Documents/HRBodies/UPR/NRTD.pdf>, and <https://www.youtube.com/watch?v=0likHkHUXuU>
- ◊ Technical support from the OHCHR to put in place a NRTD can be requested at: nrtddsupport@ohchr.org

SIDERECHOS (Ecuador):

- ◊ <http://www.siderechos.gob.ec/SIDerecho/web/Home.do>
- ◊ <https://www.universal-rights.org/blog/un-takes-important-strides-build-new-human-rights-implementation-agenda/>

OSS-Impact (URG), a civil society organisation, Universal Rights Group, has also developed software for States to establish databases : <https://www.universal-rights.org/oss-impact/>

United Kingdom's Equality and Human Rights Commission, tracker:
<https://humanrightstracker.com/en/>

Universal Human Rights Index: <https://uhri.ohchr.org/en/>

UPR Info: <https://www.upr-info.org/en>

