

PRACTICE NOTE 4

# IMPLEMENTATION OF DECISIONS

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**REDRESS**

Ending torture, seeking justice for survivors

This guide is part of a series of **Practice Notes** designed to support holistic strategic litigation on behalf of torture survivors. It is aimed at lawyers, researchers, activists, and health professionals who assist survivors in the litigation process.

This Practice Note provides guidance for individuals and organisations litigating before regional and international human rights treaty bodies and courts on how to facilitate the implementation of their decisions and judgments. It includes advice and examples on not only legal strategy and how to ensure victims' involvement, but also on working with local communities, communications, and advocacy. Suggestions are also provided on staffing and fundraising for these activities in an organisation. While the guidance is primarily for those engaging in regional or international litigation, it is also relevant for cases before national courts relating to torture.

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## INTRODUCTION

Implementation of decisions through reparation measures is important for survivors and also for States. It ensures that victims obtain redress for the violations they have suffered. It can help to achieve wider reforms including the adoption and amendment of national laws, policies, and practices. It can be used to start a process of constructive dialogue on areas of reform across State institutions and with civil society organisations. Implementing reparations also sends the message to victims that they are rights-holders and that their entitlements are as valuable as those of anyone in society. Where national authorities do provide the reparations ordered, this can build trust in State institutions and increase the credibility of the human rights system.

The UN treaty bodies as well as the regional human rights systems – the African Commission and Court on Human and Peoples’ Rights, the Inter-American Commission and Court of Human Rights, and the European Court of Human Rights – adopt decisions and judgments. In many instances these decisions and judgments contain recommendations or reparation orders (sometimes in a separate ruling, such as those of the African Court) which set out what the State authorities should do to remedy the human rights violations they have found.

Strategic litigation can be defined as bringing a legal claim with an objective of change beyond the individual case. As such, litigation is “strategic” because it involves selecting those cases with the potential to advance a specific legal, social or human rights change, whether preventing a particular behavior, or requiring authorities to initiate legal and policy reforms or a general change of attitude.

This means that the decision is not the end of the campaign, but probably only the half-way point. In order to bring redress to the individual victims involved in the case, as well as to a broader group of affected communities in a similar situation,

civil society groups will need to build a programme of activities to implement the decision. These may include outreach to explain the decision, advocacy to push for the necessary structural reforms required by the decision, and community engagement for the survivors groups to be involved in the process.

### **A note on terminology**

*Decisions.* The UN treaty bodies and the regional human rights systems use different language to refer to their findings. The UN treaty bodies and the Inter-American Commission issue “views”. The African Commission on Human and Peoples’ Rights issues “decisions”. The European Court of Human Rights issues “judgments”, whereas the Inter-American Court issues “judgments on the merits” which sometimes contain the reparations, but sometimes issues a separate “ruling on reparations”. For simplicity, this Practice Note refers to all of the above as “decisions”.

*Remedies, redress, and reparation.* The regional and UN systems differ in their use of these terms. In this practice note, we use “remedies” as something that is ordered by a legal body, whereas “reparations” is a broader concept that has its own definition in international law.

# IMPLEMENTATION IN THE HUMAN RIGHTS SYSTEMS

Each of the regional human rights systems, as well as the UN Treaty Bodies, has its own way of monitoring whether the State effectively implements the reparations that have been proposed or ordered.

## African Human Rights System

The African Commission and African Court on Human and Peoples' Rights currently monitors the implementation of their own decisions and judgments, usually requiring States to report back to them, within a defined time, on the measures they have taken. They write letters to the parties asking for information and (occasionally, in the case of the African Commission, and regularly for the African Court) publish limited information on the responses. The African Court is in the process of developing a framework which foresees greater engagement by Africa Union policy organs in monitoring implementation.

The African Commission has held a couple of hearings on implementation under Rule 112 of its former Rules of Procedure, but this is not an established practice. However, it has asked questions of States during the Article 62 State reporting procedure, and has undertaken missions to States during which it has, on occasion, sought information on the implementation of its decisions.

### Case Study: visiting delegations of the African Commission

During a promotional visit to Nouakchott in 2012, the Chair of the Committee for the Prevention of Torture in Africa (CPTA) discussed a decision of the African Commission on discrimination against Black Mauritians with the national authorities (see the Report of the Promotional Mission to the Islamic Republic of Mauritania, held between 26 March –1 April 2012, at p.13). Similarly, in a mission to Botswana in 2005, the visiting delegation requested information on the steps taken to implement recommendations on the decision on *Modise v. Botswana* that related to the deprivation of citizenship of Mr Modise, resulting in him being forced to live in the ‘no-man’s land’ between Bophuthatswana and Botswana (see the Report of the Promotional Mission to the Republic of Botswana, held between 14-18 February 2005, at p.13).

### Inter-American Human Rights System

The Inter-American Court establishes the forms of reparations with which the State must comply in its judgments, while the Inter-American Commission makes recommendations in its report on the merits. At the Commission, it is also possible for the parties to the case to enter into a friendly settlement agreement. Both the Commission and the Court monitor implementation of their recommendations and orders. They have available different tools to this end, such as State reporting, on site visits, and hearings.

The Court has adopted some innovative tools to monitor and trigger implementation, in particular, private and public hearings, joining similar orders in various cases against a State to monitor compliance of specific orders like rehabilitation or the duty to investigate, prosecute and punish, adopting resolutions on monitoring compliance, and using provisional measures to prevent States from taking backwards steps.



Referral from the Commission to the Court for failure to implement a decision of the former is an option, although it is more frequently used in relation to States that have accepted the jurisdiction of the Court and have ratified the American Convention on Human Rights.

### **Case Study: Molina Theissen v. Guatemala (2004)**

Marco Antonio Molina Theissen was 14 years old in 1981 when he was disappeared, and his sister Emma Guadalupe was illegally detained and raped. The authorities failed to conduct a proper investigation with due diligence. In 2004, the Inter-American Court ordered Guatemala to provide compensation, name a school after Marco Antonio, carry out an investigation with due diligence, identify the perpetrators and bring them to account, set up a genetic bank to find the disappeared, and to find Marco Antonio. The government responded by providing compensation and naming the school after Marco Antonio relatively quickly. However, all the other measures required the Court to put in place its best efforts to trigger compliance by Guatemala. In this process, the Court used resolutions to monitor implementation, providing very specific instructions as to what Guatemala should do, for example, to investigate according to the standards set up by the Court. It also held hearings, including joint hearings with other cases related to gross human rights violations that took place during the armed conflict, where impunity was also rampant, to ensure that justice could serve its course. These included public hearings where Guatemala was publicly called to account for its last attempt to revive its amnesty law and extend it to those who had been found guilty for the disappearance in 2018. The attempt by Guatemala to provide an amnesty led the Court to order provisional measures, given that victims were at risk of imminent and irreparable harm.

## European Court of Human Rights

The European Court of Human Rights, with the exception of pilot and Article 46 judgments, simply adopts a judgment indicating the measures that should be adopted to implement it, usually limited to awarding compensation, and occasionally indicating other measures to be taken.

Supervision of that judgment then passes to the Committee of Ministers of the Council of Europe, which is a diplomatic body made up of all the 47 members of the Council of Europe, supported by the Department for the Execution of Judgments. The Committee of Ministers holds four meetings a year to review the implementation of judgments.

States found in violation of the European Convention must present an “action plan” to the Committee of Ministers within six months of the judgment, indicating how they intend to implement the judgment. There then follows a process of peer review, where those measures are reviewed by the other members of the Committee of Ministers. Particularly complex or controversial judgments are put on the agenda for debate, and specific resolutions are issued at the conclusion of the meeting as to the necessary steps to be taken.

National Human Rights Institutions and civil society – including legal representatives and NGOs– can engage in this process by submitting reports on implementation to the Committee of Ministers under Rule 9 of their rules of procedure, although the meetings are private and confidential.

## United Nations Treaty Bodies

Several of the UN treaty bodies have created focal points from among their members responsible for the implementation of “follow-up” of their Views. These focal points seek information from the parties, including through sending regular letters to them, on what has been done to implement the decision. The Treaty Bodies utilise their other procedures to gather information, such as the State reporting process, and

informal and formal engagement with State representatives and civil society during their sessions. They also provide a grade which assesses the level of implementation.

Since 1990, the UN Human Rights Committee has appointed one of its members as the Special Rapporteur for the Follow-Up of Views, serving for a two-year renewable term. Their role is set out in Rule 106 of the Committee's Rules of Procedure, which states that the rapporteur "may make such contacts and take such action as appropriate for the due performance of the follow-up mandate." This includes making recommendations for further action, reporting to the Committee on activities undertaken for follow-up, and contributing information on follow-up in the annual report to the UN General Assembly. The procedure is a public one, unless the Committee decides it needs to be confidential. In practice, the Committee in its Views usually requires States parties to submit proposed actions in response to the Views within six months. When a response is provided, the Petitions Unit of the secretariat of the UN Office of the High Commissioner for Human Rights will forward the reply to both the member of the Committee who acted as rapporteur in the individual case, and the author's representatives. This then provides an opportunity for those representing the petitioners to also make submissions on what needs to be done. The Committee also has the power to conduct a follow-up mission to the country concerned, although in practice this does not happen due to budgetary restraints.

The UN Committee against Torture also requires States parties to provide within six months a proposal for how they will respond to the decision of the Committee. Rule 120 of their Rules of Procedure provides that the Committee may designate one or more Rapporteurs for follow-up on decisions, to ascertain the measures taken by States parties to respond to the decision. They may make such contacts and take such action as is necessary, report back to the Committee with recommendations, and make visits.

# REMEDIES FOR TORTURE

Under international human rights law, five forms of reparation have been recognised: restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition. There are good examples of the different types of remedies that can be claimed in cases relating to torture and ill-treatment, and which will then need to be implemented once the decision has been obtained.

## Satisfaction

The concept of “justice” is an important part of strategic litigation for survivors of torture, and the factual findings that can be made by a court or tribunal form a specific part of that.

**Publication of Judgment.** Human rights courts and bodies may order that their judgment is published in a newspaper, or on an official government website. This is a good way to promote the findings. NGOs can also ensure strong coverage of the decision through good social media and press work.

**Public Apology.** Governments are sometimes ordered to make a public apology to torture survivors. This needs to be made by a public official and must have a public element.

### Case Study: Public apology for torture in Chile (2014)

Leopoldo Lucero García was brutally tortured in Chile under the Pinochet regime. In 2013, the Inter-American Court of Human Rights found that the State was responsible for his torture - in the first such case against Chile - and required a public apology. In February 2014, at the Chilean Embassy in London, the State offered a formal apology: "saying sorry does not erase physical or psychological pain; neither does it relieve the suffering of relatives and loved ones. However, it is an act of contrition. It makes us confront our shameful past acts, come to repent them, and ensure that they are never repeated".

**Memorials.** The erection of a monument, memorial or some other form of commemoration can acknowledge the harm done to victims of violations. For example, after the adoption of the ruling by the African Court in *Zongo*, the government renamed a road and the University of Koudougou to the Université Norbert Zongo de Koudougou.

### Restitution

Reparation requires that survivors of torture are returned to where they would have been but for the torture. This may mean that they should receive things such as employment, housing, or education, where they lost that as a result of the torture. These remedies are usually specific to individual survivors but can also apply to communities.

### Compensation

Survivors need to be compensated for what happened to them, partly to provide them with the necessary means to rebuild their lives (pecuniary damages), and partly to recognise the damage that was done to them (non-pecuniary, or moral, damage).

## Rehabilitation

This form of reparation should be holistic and include psychological and medical care as well as legal and social services. This should enable the victim to reintegrate into society and restore their independence. This is a long-term form of reparation that cannot be fulfilled by the provision of a one-time service. It should be tailored to each individual, according to their needs and the circumstances surrounding their case, and their social context etc.

## Guarantees of non-repetition

These are measures to prevent the future recurrence of the crime of torture and other violations. These measures can include legislative change, such as ratifying and implementing the UNCAT into domestic law to require measures such as oversight of places of detention. The measures can also include training and awareness-raising for the police, detention officials, the armed forces, judicial authorities, medical staff and all other relevant actors to better understand and apply anti-torture standards. Non-repetition also refers to the transformation of social norms to end the climate of permissibility and impunity for such acts, and removing barriers to the absolute prohibition of torture.

## IMPLEMENTATION AND IMPACT

There are a number of ways that strategic litigation against torture can have an impact, beyond the immediate benefit to the client or a change in the law. Not all forms of impact will be relevant for each campaign, and lawyers and activists, together with survivors, will need to deploy different tactics to enhance each impact.

REDRESS has developed a framework for evaluating the impact of strategic litigation against torture. This identifies the most frequent impacts that result from such litigation, and then defines the frequent outcomes that are produced. Not all 10 will be relevant for every campaign.

The 10 impacts that are included in the REDRESS impact framework are:

- **Justice.** For many survivors, a declaration that their rights have been violated is why they brought the case, and the finding of a violation may be sufficient satisfaction. This can also be in the form of a public apology.
- **Truth.** Courts can make definitive factual findings, which may be of crucial importance in a campaign for accountability. This can be enhanced through strong media coverage of the case.
- **Material.** Specific benefits to the client brought about through the litigation, including changes to their situation, employment, health care, education, and compensation. This may often include physical or psychological rehabilitation.
- **Community.** Beyond the individual clients, many others in a similar situation are often impacted by a decision, particularly where the court declares that impunity measures are not acceptable, or contributes to building a historic record of the violations committed.

- **The Movement.** Litigation can energise the human rights movement, act as a catalyst for change, empower networks, and encourage new champions and cases.
- **Stakeholders.** Litigation can change the attitudes and practice of stakeholders, such as politicians, judges, and the police, which is a pre-requisite to changing policies and laws.
- **Policy.** Litigation can result in commitments to change policy by the government, police, and in the legal system, including making financial commitments to deliver that change.
- **Legal.** Litigation can bring changes in legal standards, whether through caselaw or legislation.
- **Governance.** Litigation can trigger actual changes to the relevant procedures, budgets, and institutions, although this tends to take time.
- **Social.** Beyond the specific case, litigation can result in changes in the tolerance of, and response to, the particular human rights violation in the country or region concerned.

See the *Practice Note on Evaluation of Impact* for more information on this framework.



## TACTICS FOR IMPLEMENTATION

There is not a 'one-size fits all' approach to implementing a decision. Instead, it is crucial to understand the political context in which it takes place, the nature of the rights violated, whether dialogue or some greater degree of enforcement is suitable, and the sources of pressure that the State is most likely to respond to. This requires a deep comprehension and familiarity with the situation in the country and engagement with national actors, both before and after the adoption of the decision.

Some decisions may not be implemented immediately, but many of them could be implemented at least partially or, over a period of time, in full. This is particularly so when the case involves guarantees of non-repetition and structural or societal changes are needed to implement the decision.

An implementation strategy can set out the goals and objectives of the implementation, the tactics that will be deployed, and the appropriate timeframe.

- **1. Litigating for Implementation.** The way in which a case is litigated can have a real impact on the likelihood of eventual implementation, whether that is in preparing the case, making the claim for reparations, building the evidence, or engaging in further claims post-decision.
- **2. Accompaniment.** Lawyers and activists must work closely with survivors and their communities so as to accompany them throughout the process, which can take time. This is particularly important during the implementation phase, so as to manage expectations.
- **3. Advocacy.** Dialogue with the Respondent State and specific ministries, departments and individuals can be very effective. This may mean that quite early in the process lawyers and activists should be in communication with the department or individual who will ultimately make the change that is needed.

- **4. Community Engagement.** Identifying the ‘pro-compliance constituency’, both at the national and international levels, that is likely to support implementation of the decision, can help its implementation. However, it is equally important to identify those actors that could be hostile so as to plan how they may be engaged, or how to resist or limit their impact on implementation.
- **5. Media and Communications.** In general, the more visible the decision, the greater the likelihood of it being implemented. This is particularly the case where part of the impact is about changing the attitudes of stakeholders, and implementation involves changes in law and procedure.

### **Case Study: Mwanga Gunme v. Cameroon (2009)**

The African Commission found that Cameroon had discriminated against the Anglophone population including through the use of language in business transactions, and moving individuals from the English-speaking regions to Francophone parts of the country for trial. These violations have a historical and colonial context which creates a complex political environment in which to implement the Commission’s findings. Although the situation has deteriorated since the decision of the Commission, a few aspects, such as translation of key laws into English, were implemented. This illustrates that even in the most challenging of cases, certain aspects of the decision and some of the reparations could still be implemented.

## **1. Litigating for Implementation**

There must be a clear understanding of the eventual outcome of the campaign when litigating a case, even before you start. Implementation is sometimes neglected, and not thought about until the judgment is obtained. By ensuring that the remedies claim is firmly aligned with the planned impact, that the legal arguments ensure that the decision contains language that will assist with implementation, and that there

will be factual findings to support it, the litigation and implementation phases will support each other.

### **Before the decision**

The way in which the initial submission is drafted is crucial to the eventual implementation of the decision, in relation to both the substantive claims that are made and the specific remedies that are requested. In some systems, these will be separate stages.

*Establishing the facts.* For the remedies ordered in an individual case to have an impact beyond the individual client, the judgment should contain specific findings as to the broader legal and factual context that enabled the torture to take place. Those findings can later be used to argue why there must be comprehensive reform to fully implement the decision. This means that the legal and factual submissions in the case should contain an analysis of the situation in the State relating to the reparations sought, which can help the court or tribunal to determine what remedies are necessary. Such an analysis could include:

- An overview of key events in the State, and the political context (e.g. recent or expected change in government).
- An analysis of the existence of domestic actors who can assist in implementing or who may have a vested interest in the issues.
- The role of the National Human Rights Institution, and assessments from respected CSOs as to their independence.
- The existence of relevant parliamentary committees or parliamentarians that might be allies in the implementation of the recommendations.
- The role of the judiciary and the extent to which they are able to, and indeed do, use and uphold international decisions in their own judgments.

- The sub-regional and regional context: which institutions the State engages with, how politically powerful it is within them, and the influence of other States and organs.
- Engagement with the Respondent State: the possibilities that exist for meeting with States' representatives during key political events; and opportunities to engage with representatives in the territory.

*Remedies and reparations.* The application should include a specific claim for remedies, which is not an afterthought, but the core of the case. This will include your specific asks, but could also include broader issues such as:

- A timeframe by which the reparation should be implemented.
- The criteria to be used by the treaty body or court, if appropriate, to monitor compliance with its orders or recommendations, such as how to comply with the duty to investigate, prosecute and punish or with guarantees of non-recurrence.
- Recommendations for the establishment of a particular mechanism to move compliance forward, where appropriate.

### **The Inter-American Court: good and bad practice**

In Bamaca Velasquez v. Guatemala, the Inter-American Court ordered the State to put its domestic law “in line with international human rights law”, which was too broad to be of much practical use. In contrast, the Court usually asks States to report back to the Court within 12 months of the notification of the judgment, and it may even distinguish between different measures. For example, in Pueblo Bello v. Colombia, concerning the enforced disappearance of 43 victims by paramilitary forces in 1990, the Court ordered Colombia to report on all measures ordered every 6 months. And in the Mapiripan Massacre case, the Court ordered Colombia to establish an official mechanism to monitor compliance with compensation, the search for the bodies of the disappeared, and to protect victims from threats.

*Monitoring.* When drafting the remedies or reparations submissions, consider whether it might be useful to ask for the insertion of clauses which require some form of monitoring of implementation. For example:

- The treaty body's involvement during the implementation phase.
- A requirement that the State publish at the national level the decision/ruling and any measures taken towards implementation.
- A requirement that the State designate a particular ministry as a focal point for implementation with responsibility for coordinating and reporting back to the treaty body or monitoring mechanism. Alternatively, the State might establish a particular body to oversee implementation that includes key state representatives and members of civil society organisations, including the legal representatives in the case.

### **Case Study: The Kilwa Case (DRC) (2016)**

In the Kilwa case, the Institute for Human Rights and Development in Africa proposed among the reparations that the government be required to 'ensure that the implementation of the present decision is supervised by a Monitoring Committee which includes the representatives of victims and their successors, and a Member of the African Commission on Human and People's Rights in charge of the country'. This was adopted by the African Commission (Communication 393/10, Institute for Human Rights and Development in Africa and others v. Democratic Republic of Congo, 18 June 2016).

*Prioritisation.* It may be useful to consider whether the list of reparations ordered could be prioritised. This could be based on a number of criteria:

- The urgency of each proposed measure for the victims as well as their views on what should be prioritised.

- An assessment of the likelihood, given what is known of the political context, of the State implementing each of the reparations ordered or recommended.
- Whether any of those may be ‘easy wins’, which the State is more likely to want to implement than others. This can be used to build a constructive dialogue with the State which will be helpful for other more complex or long-term reparations.
- Categorisation of recommendations into those which should or could be achieved in the short, medium or longer term.
- Linking guarantees of non-repetition in individual cases with those present in reports by the regional treaty bodies, UN treaty monitoring or Charter bodies or as part of the UPR system, for example.

To generate good will, consider the likelihood of the reparations being ordered, and whether some could be inserted which are more likely to be implemented than others.

*Compensation.* States are likely to pay compensation, and may do so promptly, particularly where the court or treaty body orders or suggests a specific amount to be paid. This can have a profound impact on the situation of the survivor. The claim for compensation should be carefully prepared. In some instances, the amount requested by the applicants can strongly influence the decision of the treaty body. However, too high a figure can lead to an impasse in negotiations between the State authorities and the victims. If you want to request a specific amount of damages, then it may help to clarify the rationale and criteria on which this is based.

- Include examples of similar cases before international courts and treaty bodies and the amounts that have been ordered in compensation.
- Include the categories under which compensation should be paid, such as moral damages (also known as general damages), the cost of restitution, past and future loss of earnings, and the costs of rehabilitation.

- Include evidence in support of the claim, which may be specific documents explaining the losses, or expert evidence explaining how the survivor has been impacted by what happened to them.

See the REDRESS *Practice Note on Compensation* for further information.

### **Gathering evidence on implementation**

In order to submit information to relevant supranational or national bodies on the measures taken by the State to implement the decision or ruling, it is helpful to have a method for gathering and maintaining a record of this information. In addition, you could:

- Cross-check evidence obtained with other sources to verify its accuracy.
- Maintain a database recording the measures taken by the State to implement the decision/ruling.
- Ensure that key actors with expertise, particularly in relation to guarantees of non-repetition, the duty to investigate and punish, and measures of rehabilitation, are able to present, as happens in the Inter-American Court, amicus on the implementation of particular measures.

### **After the decision or judgment**

*Interpretation.* It is possible that some of the reparations ordered by the treaty body or court may be vague. Some of the supranational bodies, such as the Inter-American Court of Human Rights and African Court on Human and Peoples' Rights, allow the possibility to request interpretation of the judgment within a specific period of time after the judgment is notified to the parties. Consider using this option to clarify the meaning of some forms of reparation if they are vague, and as a way to engage with the State.

### **Case Study: La Rochela Massacre v. Colombia (2007)**

In the La Rochela Massacre case, where members of the justice system were killed while undertaking an investigation of the disappearance and execution of 19 tradesmen, the Court ordered that the result of the criminal investigations be released to the public. The State asked for clarification of the measure, which the Court provided, saying that they meant “the criminal judgments of final nature, which lead to the end of the procedure and resolve the main controversy, whether these are acquittals or convictions. These results must be made known to the public, so that society may know the facts analysed and, should it be the case, those responsible for them.”

*Collecting Information.* One tactic is to prepare an implementation ‘dossier’, i.e. collate documents and evidence relating to the implementation of each of the reparations, to keep track of the implementation process.

### **Case Study: Mauritanian cases**

The Institute for Human Rights and Development in Africa produced an extensive document containing evidence relating to implementation of a series of cases against Mauritania. They presented this to the African Commission for them to consider the implementation of the cases (Communication Nos.54/91-61/91, 98-93-164/97, 196/97, 210/98, Malawi Africa Association et al v. Mauritania, Implementation Dossier. For presentation to the African Commission on Human and Peoples’ rights on the occasion of the 50<sup>th</sup> ordinary session, October 2011).

*Re-litigation.* In particularly difficult cases, an option is also to return to the national courts to try to enforce a decision of a regional or UN treaty body or court.



### Case Study: Chongwe v. Zambia (2000)

The UN Treaty Bodies rarely specify the amount of compensation that should be paid to victims of human rights violations. Dr Chongwe, chair of an opposition alliance, brought a case to the UN Human Rights Committee after he and the former President of Zambia were shot at by the police who then fired tear gas at them. The Committee found that Dr Chongwe's rights had been violated and called on Zambia to pay compensation without stating the amount. After negotiations between the Attorney General and the victim, Dr Chongwe took the case to the Zambian High Court and then the Supreme Court, which confirmed the amount of damages and the obligation on the government to pay them.

## 2. Accompaniment

In some cases, a formal decision finding that someone was tortured may be sufficient satisfaction for the survivor. However, in most cases involving torture, implementation of the decision is more complicated. NGOs who represent survivors of torture in legal claims need to support their clients and accompany them through the implementation process. This involves carefully consulting with survivors, enabling their participation in the process, and ensuring that they receive the medical, psychological, and social support that they need.

### Consultation

While with strategic litigation there is a "cause beyond the client", many of the specific measures included in the decision will refer specifically to the individual who brought the case. Lawyers must make sure to consult carefully with their clients as to how the implementation should take place.

Not all forms of reparation are of the same importance to victims. In many cases NGOs will need to prioritise the implementation of reparations that relate to particular victims over, for example, guarantees of non-repetition. In particular, measures like

rehabilitation for physical and psychological health, or compensation to support such rehabilitation need to be prioritised. While they might be difficult to implement, they remain of crucial importance for victims to exercise other rights or benefit from other forms of reparation.

Lawyers must be careful to manage the expectations of survivors, given the difficulty in fully implementing decisions. This may include the likelihood of financial compensation being paid, of measures of restitution, and the length of time that a new investigation into their torture may take. Clear instructions should be taken from the survivor, and confirmed in writing.

### **Participation**

Not all survivors will want to participate in the process of implementation, but they should be given the opportunity to do so. Some survivors may want to move on in their lives, or may be too vulnerable to deal with the public profile that may be part of an implementation campaign.

Where the individual survivors who were represented in the case, or members of their community, do want to be involved in the implementation campaign, they will be a critical part of that campaign. Their views will be essential to prioritise measures of implementation, to inform the campaign through their lived experience, and to ensure that their needs and expectations are taken into account. Their voices should be at the heart of any media or advocacy campaign.

### **Holistic Support**

As part of the process of accompanying survivors through the implementation process, lawyers need to ensure the psychological, medical, and social welfare of the client and their family, by providing support, or referring them to appropriate agencies who are able to do so. The implementation will only succeed while the needs of the client are provided for, and measures are in place to support their recovery.

In rare situations, there may also be a direct threat to the safety of the survivors, due to the profile of the case. In such situations, specialist advice should be sought from NGOs who specialise in the support of human rights defenders.

### 3. Community Engagement

Some forms of reparations benefit the survivor community and not just the individuals involved in the case, or may have specific relevance to that broader community. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law define victims as those who individually or collectively suffered harm. The term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims or to prevent victimisation (para.8). This can include members of the community in a similar situation, or a targeted ethnic minority.

This means that some of the reparations will have to be implemented for that wider group. Group reparations can include measures such as the building of schools or medical centres, or providing group rehabilitation. It is important to identify those groups and engage with them, to ensure that they are aware of the impact of the decision, and that they are involved in any process to identify the way in which the reparations should be implemented.

For example, the Extraordinary Chambers in the Courts of Cambodia (ECCC) permitted the representation of not only direct victims but also indirect victims who personally suffered injury as a direct result of the crime committed against the direct victim. Indirect or secondary victims can include family members and extended family members, and people from the same community or ethnic group.<sup>1</sup>

Effective engagement with survivor communities will need specific planning and funding, as it can be complex when the groups are not all in the same place, and it can

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1 ECCC, Case 004/2, *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*, Opinion of Judges Baik and Beauvallet, 30 June 2020.

take time to consult effectively. NGOs can also encourage survivors to self-organise in a democratic structure, so that there can be a committee who can represent the views of the larger community.

### **Case Study: The victims of Hissène Habré**

The Extraordinary African Chambers (EAC) and the domestic courts of Chad found Hissène Habré and other high officials responsible for widespread torture and sexual slavery. The EAC awarded reparations to victims of torture and rape, as well as to the indirect victims (families, widows and orphans). The national courts also awarded reparations to 7,000 of Habré's victims. In 2018, the African Union adopted the Statute of a Trust Fund, but it is not yet operational. The Association Tchadienne pour les Victimes de Hissène Habré represents 7,000 victims in cases to enforce the reparations orders before the domestic courts and the African Commission on Human and Peoples' Rights. The victims are scattered throughout the country, many living in rural communities that are difficult to access. The task of keeping them all informed is immense.

## **4. Media and Communications**

For a decision to have impact, people need to know about it. The audience will depend on what it is that you are trying to change. For a decision that sets a legal precedent, it is important that the legal community is aware of it. Where the audience is the national authorities, there will need to be a concerted campaign to ensure that those who may be able to bring pressure to bear on those authorities understand it. This can include raising visibility not only of the decision but also of the response by the national authorities and whether they have taken any action to implement the reparations. This is not just about provoking an immediate response to the decision, but also ensuring long-term engagement on the issues.

There may be situations where it is appropriate to be more discreet. Depending on what has been ordered by the treaty body or court, engaging with the State more confidentially may be more effective. This may be the case if the issues are particularly politically sensitive or if the victim was badly damaged or could be put at risk. This could be the case for victims who, for example, face a situation of discrimination because of their sexual orientation or gender identity.

### **Communications**

Human rights decisions are often long, and not easily understood. You should prepare a media summary of the decision that tells the story of the case, states what the findings were, and says what needs to be done to implement it. This can be publicised on your website, so that journalists and other experts can easily find information on the case, and you can refer your social media back to it. This information can be updated periodically with the actions that the State has taken (or not taken) to implement the decision.

#### *The Press*

Before the decision comes out, you should identify supportive journalists and other media outlets who can draw attention to the case and the extent to which it is implemented. You could expand your focus beyond the national media. International exposure could be pivotal to encouraging States to take important measures to implement decisions and judgments.

Consider who is the best person to talk about the case to the media. This may sometimes be the claimants, although journalists are likely to ask questions about the underlying torture, and so this should only be done when the survivor is in the appropriate psychological state to do so. Other members of the survivor community might also be good spokespersons, and lawyers and activists can also speak about the measures needed to implement the decision.

In addition to the communications materials suggested above, you will also want a press statement, and a press pack, with background information on the case. In

some countries, a press conference is still a way of attracting attention. Similarly, a statement from the courtroom steps is effective, but make sure to prepare two statements in advance: one in the event of a positive decision, and one in the event of a negative decision.

Once journalists have covered the case, prepare periodic updates for them to provide information on implementation.

### *Social media*

The easiest way to get attention on the case is through social media. You will need to prepare digital communications materials, including images, infographics, quotations, podcasts, and possibly short videos. These can all direct back to your website, where you have the broader information on the case.

## 5. Advocacy

With strategic litigation, it is important to have a clear idea early in the case as to what you want to change, and who can bring about that change. At a very concrete level, you should be in contact with the person who will be responsible for changing the law, or amending judicial practice, or training police or prison guards in new skills. You should also be aware of the key national, regional, and international actors who can support you in this advocacy.

### **At the national level**

Although the State authorities have the responsibility for implementing the decision, they may not be clear which particular authorities need to play a part or precisely what should be done. You can facilitate this by:

- Identifying and asking to **meet with the key government departments**, or the State focal point or Agent if there is one, who will have responsibility for implementing the decision.

- Even if it is not expressly mentioned in the recommendations or reparations in the decision, you could consider encouraging the government to adopt an **action plan** which could identify the appropriate government ministries to lead on implementation, timelines, and additional resources needed to implement the decision.
- If a **national implementation mechanism** has been established by the government to follow up on implementation of decisions, you could consider ways of engaging with this mechanism. If such a mechanism does not exist, you could promote its establishment. For example, the Kolegium in the Czech Republic coordinates the implementation of judgments from the European Court of Human Rights. It has a broad composition including, besides ministerial representatives, those from parliament, the judiciary, legal profession, civil society and academia.
- Consider friendly **parliamentarians** or parliamentary committees who may have an interest in the case and could champion its implementation at the national level.

It is worth asking what **partnerships** (for example, with other civil society organisations, the local national human rights institution or other statutory bodies, academics and others) could be developed at the national level. You could establish or engage with a local coalition of civil society organisations who have an interest in the issues raised by the decision or judgment. Such a coalition can maintain links on the ground, will have a subtle understanding of the political context, and be able to maintain communication and links with the government.

Engaging with those who may be **hostile** to the decision or the issues that it raises can also be beneficial to identify the opposition at an early stage, and to try to find a response to their concerns.

You could hold **sensitisation workshops** or meetings with key stakeholders at the national level to highlight the decision or judgment and identify ways to facilitate its implementation.

### At the regional or UN level

As noted above, the various treaty bodies and courts have numerous mechanisms available to them, only some of which are specific to follow-up, which can be exploited when attempting to monitor implementation of a decision or judgment. The different bodies have their own follow-up procedures which set out what role they will play and when and how information should be submitted to them.

In addition, and if appropriate according to the procedures of the relevant treaty body or court:

- Send them **updates** within their mandate on the current status of implementation. Also immediately inform the treaty body or court if the State takes regressive measures that could hamper the implementation of the orders/recommendations in the given case.
- Consider if any of the issues arising in the orders/recommendations engage **other UN treaty monitoring bodies or regional bodies** and engage them for their views. UN special procedures, for example, could be approached if they are considering a particular thematic issue, undertaking a visit to the country, or able to highlight the matter in their reports.
- Attend sessions to have an **in-person dialogue** to discuss the issues informally with key individuals and to make oral statements on the status of implementation, where appropriate. For example, NGOs with observer status before the African Commission can use the opportunity to make statements during the session on items on the public agenda. UN treaty bodies have established formal procedures to engage with CSOs and have set aside time during their sessions for this dialogue.
- Send information on implementation as a **shadow report** if the treaty body has a reporting mechanism, with specific questions that could be asked of the State during the oral examination.
- Find out if a special procedure of the treaty body is **visiting the State** and submit a report in advance, outlining the extent to which the decision or judgment has



been implemented and identifying questions which could be asked of the State during the mission.

- Identify how the treaty body can use its **other mechanisms** (e.g. holding hearings, adopting a resolution or press release, noting the case in its activity reports) to highlight the extent to which the State has implemented the decision or judgment.

### **Engaging with related political supranational organs**

Peer-pressure from other States is a very good way to persuade respondent governments to implement decisions. Awareness can be increased if it is disseminated to policy organs at the regional and international levels. You could therefore consider engaging with these organs, such as by:

- Submitting **information** on the measures the State has or has not taken to implement.
- Approaching **key diplomats** of the respondent State within the missions and embassies at the UN, AU, OAS, and CoE.
- Identifying and contacting exemplary States that have (often) taken considerable measures to implement decisions from regional mechanisms, to serve as **champions** in advancing discussions on implementation within these international platforms.

## PLANNING FOR IMPLEMENTATION

Strategic litigation tackles complex institutional and organisational problems which take a long time to solve. The implementation phase may last longer than the initial litigation. This means that it needs to be carefully planned, and that the NGOs involved have the resources needed for a sustained implementation campaign.

An implementation plan which identifies key partners, tasks, timelines and priorities, is essential for managing the implementation process, can enable your organisation to allocate resources and staffing, and can assist in obtaining funding for these activities.

Gathering information on what the State authorities have done, and how you have developed a strategy to track the implementation of your cases, can be useful in reporting back to funders, indicating the impact of your activities, and assisting your organisation in prioritising and in the allocation of staffing and resources.

There are a number of ways in which your organisation can take into account implementation of decisions and judgments in your own working practices:

- Maintaining a record for each case can be helpful to keep track of what activities were carried out in terms of facilitating its implementation and any strategy that was adopted. You can then draw upon this for: examples of good practice; to inform funders and others of impact; to enable you as an organisation to keep track of your work; and to inform your future strategies as well as those of State institutions and supranational bodies. The record should include names and contact details of key people that have supported the case in and outside of the State.
- Consider developing an implementation strategy for each case, which covers not only the pre-filing of submissions, but also whilst the case is pending, as well as post-decision/judgment. Review this regularly.

- Identify who is responsible within your team for leading on implementation of the case but ensure that work on pre-filing submissions on reparation, as well as on implementation, are fully included within the litigation strategy of the case and not seen as separate from it.

**Budget.** Strategies around implementation should take into account the costs involved such as: ongoing engagement with victims and domestic partners; attendance at national and international meetings; organisation of workshops; and media and communications.

# IMPLEMENTATION CHECKLIST

When developing a plan for implementation, including for the purpose of raising funds to support it, some of the considerations that practitioners could take into account include the following.

## Planning

*Strategy.* What impact was the case intended to achieve, what was the original strategy of the case, and does the strategy still stand? How should the strategy be modified to meet the strategic goals of the case in the current context?

*Reform.* What it is that you are trying to change through the implementation of the case, e.g. legal reform, improvements for the survivor or their community, or a broader social change? Will you need to change legislation, guidance, or regulations? Will you propose specific changes?

*Decision maker.* Who is the person who can make that change? What is the most effective way to engage that stakeholder (through public pressure, advocacy, etc.)?

*National Bodies.* Which national organisation can you partner with to work towards the implementation of the decision? Consider National Human Rights Institutions, universities, parliamentary committees, civil servants, professional bodies and unions.

*Community mobilization.* Has the impacted community been engaged in the decision? Plan for consultations and active engagement with the community so that they can be involved in the implementation campaign.

*International Advocacy.* What are the international targets and opportunities to raise implementation in the regional human rights system and at the United Nations?

*Materials.* Prepare a short summary of your implementation plan which you can use to promote the campaign.

## Activities

*Planning.* Set out the activities you will deliver, such as meetings, events, and opportunities to raise the case.

*Staffing.* Identify the staff who will work on the implementation campaign.

*Partners.* Identify national and international partners, and agree roles with them.

*Management and Oversight.* Ensure you know who is responsible for ensuring that the plans are delivered.

*Be ready to adapt.* Implementation often takes years, and it is important for practitioners to adapt and reassess depending on the political context and opportunities.

# RESOURCES

## UN Treaty Bodies

- See Note by the UN Human Rights Committee on Implementation
- African Human Rights System
- African Commission, Working Group on Communications
- University of Bristol Human Rights Implementation Centre, Reparations Guide for African States

## European Human Rights System

- European Implementation Network, Handbook on Implementation of Judgments of the European Court of Human Rights (2018)
- Inter-American Human Rights System
- See the section on implementation on the website of the Inter-American Court.
- Par Engstrom, Inter-American Human Rights System: Impact beyond Compliance (2019)
- CEJIL, Implementación de las Decisiones del Sistema Interamericano de Derechos Humanos. Jurisprudencia, Normativa y Experiencias Nacionales (2007)

## Reports

- Open Society Justice Initiative, From Judgment to Justice, Implementing International and Regional Human Rights Decisions
- Open Society Justice Initiative, From Rights to Remedies, Structures and Strategies for Implementing International Human Rights Decisions

- University of Bristol Human Rights Implementation Centre, Implementing Human Rights Decisions: Reflections, Successes, and New Directions
- University of Bristol Human Rights Implementation Centre – further resources available at [www.bristol.ac.uk/law/hrlip](http://www.bristol.ac.uk/law/hrlip)
- Journal of Human Rights Practice, Righting Wrongs: The Dynamics of Implementing International Human Rights Decisions (2020)

**REDRESS** is an international human rights organisation that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators, and advocates for legal and policy reforms to combat torture.

**The Human Rights Implementation Centre (HRIC)** is a leading institution for the implementation of human rights working in collaboration with a number of organisations and bodies.

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