

An appraisal of the Draft Framework for Reporting and Monitoring Execution of Judgments of the African Court on Human and Peoples' Rights

Suzgo Lungu*

<https://orcid.org/0000-0001-8554-0580>

ABSTRACT: Although the African Court on Human and Peoples' Rights (African Court) delivers landmark judgments on human rights violations by states party to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court (Court Protocol), the record of states' compliance with its judgments is dire. Execution of judgments and decisions of the African Court has been one of the major challenges facing the African Court since its inception as the Court lacks a monitoring mechanism to compel states to execute its judgments. In response to this challenge, the Executive Council of the African Union (AU Executive Council) authorised the African Court to propose a mechanism for reporting of states' non-compliance with its decisions. The African Court has come up with a Draft Framework for Reporting and Monitoring Execution of Judgments and other Decisions of the African Court (Draft Framework). The Draft Framework will be submitted to the Assembly through various organs of the AU including the Permanent Representatives Committee (PRC) and the Executive Council of the AU for adoption. The draft framework proposes the adoption of a hybrid model on monitoring state compliance with judgments of the African Court that combines both judicial and political mechanisms of enforcing state compliance. This article appraises the Draft Framework and argues that while the proposed model is a welcome step towards improving the enforcement of the Court's decisions and, indeed, developing a culture of compliance within the African human rights system, it needs strengthening. The article recommends that the African Court should start laying the foundation for a strong enforcement regime through the localisation of the enforcement of its judgments in member states' legal framework particularly through domestic courts.

TITRE ET RÉSUMÉ EN FRANCAIS:

Une évaluation du Projet de cadre pour l'établissement de rapports et le suivi de l'exécution des arrêts de la Cour africaine des droits de l'homme et des peuples

RÉSUMÉ: Bien que la Cour africaine des droits de l'homme et des peuples (Cour africaine) rende des arrêts historiques sur les violations des droits de l'homme par les États parties au Protocole à la Charte africaine des droits de l'homme et des peuples portant création d'une Cour africaine (Protocole de la Cour), le bilan de l'exécution de ses arrêts demeure désastreux. L'exécution des arrêts et des décisions de la Cour africaine est l'un des défis majeurs auxquels la Cour africaine est confrontée depuis sa création, car la Cour ne dispose pas d'un mécanisme de suivi pour contraindre les États à exécuter ses arrêts. En réponse à ce défi, le Conseil exécutif de l'Union africaine (Conseil exécutif de l'UA) a autorisé la Cour africaine à proposer un mécanisme pour

* PhD (Witwatersrand), International Justice and Business and Human Rights Programme Lawyer, Southern Africa Litigation Centre (SALC); suzgo.lungu@gmail.com.

identifier les cas de non-respect par les États de ses décisions. La Cour africaine a élaboré un projet de cadre pour l'établissement de rapports et le suivi de l'exécution des arrêts et autres décisions de la Cour africaine (le projet de cadre). Le projet de cadre sera soumis à la Conférence par l'intermédiaire de divers organes de l'UA, y compris le Comité des représentants permanents (COREP) et le Conseil exécutif de l'UA pour adoption. Le projet de cadre propose l'adoption d'un modèle hybride sur le suivi du respect par les États des arrêts de la Cour africaine qui combine à la fois des mécanismes judiciaires et politiques pour s'assurer que les États s'obligent. Cet article évalue le projet de cadre et fait valoir que, bien que le modèle proposé soit une étape importante vers l'amélioration de l'application des décisions de la Cour et, en fait, le développement d'une culture de respect de décisions au sein du système africain des droits de l'homme, il doit être renforcé. L'article recommande que la Cour africaine commence à jeter les bases d'un régime d'exécution fort en localisant l'exécution de ses jugements dans le cadre juridique des États membres, en particulier par le biais des tribunaux nationaux.

KEY WORDS: African Court, Draft Framework on Reporting and Monitoring Execution of Judgments, reforms, African Court's Rules and Procedure, localisation

CONTENT:

| | | |
|---|---|-----|
| 1 | Introduction | 145 |
| 2 | Background to the African Court's Draft Framework | 147 |
| 3 | Examination of the Draft Framework | 148 |
| 4 | Analysis of the proposed Draft Framework | 151 |
| 5 | Localisation of judicial decisions..... | 156 |
| 6 | Conclusion..... | 162 |

1 INTRODUCTION

The African Court on Human and Peoples' Rights (African Court) was created through the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Court Protocol), with the dual mandate of complementing and enhancing the protective mandate of the African Commission on Human and Peoples' Rights (African Commission).¹ In pursuance of this mandate, the African Court has issued several judgments in favour of victims of human rights violations, including reparation orders of compensation,² amendment to laws,³ provide legal aid to applicants,⁴ and release of detainees.⁵

An examination of the African Court's Activity Report presented to the Assembly of Heads of State and Government (Assembly) of the African Union (AU) for the period 1 January- to 31 December 2019 (Activity Report) shows that judgments of the African Court have either been partially complied with,⁶ or not complied with at all.⁷ Only a few judgments were fully complied with.⁸ As a result, several victims of

1 Court Protocol, art 2.

2 *Norbert Zongo et al v Burkina Faso*, Application 13/2011, para 111.

3 *Tanganyika Law Society et al v United Republic of Tanzania*, consolidated Application 9 & 11/2011; *APDF & IHRDA v Mali*, Application 46/16; *Lohe Issa Konate v Burkina Faso*, Application 4/ 2013, para 176.

4 *Wilfred Onyango Nganyi and 9 Others v Tanzania*, Application 6/2013.

5 *Alex Thomas v Tanzania*, Application 5/2013.

human rights violations still remain without justice and this has been the trend for the past decade. An analysis of the African Court's docket discloses two interesting issues. First, there is a rise in the number of matters, both contentious cases and requests for advisory opinions. Second, the same cannot be said for the compliance rate of the African Court's judgments. With no entity to enforce its decisions, the African Court relies on the goodwill of states for compliance. Since starting its operations in 2006, execution of its judgments has been one of the major challenges facing the African Court. With the permission of the Executive Council of the AU (Executive Council), the African Court was requested to propose 'a concrete reporting mechanism'⁹ for enforcing state compliance with its judgments.

This article analyses the Draft Framework for Reporting and Monitoring Execution of Judgments and Other Decisions of the African Court on Human and Peoples' Rights (Draft Framework), which was in 2018 adopted by the African Court for presentation to the Assembly through the Permanent Representatives Committee (PRC) of the AU on the enforcement of the African Court's judgments.¹⁰ The framers of the Draft Framework propose the adoption of a hybrid model that combines both the judicial and political systems of monitoring the African Court's judgments. This article argues that while the proposed model is a welcome step towards improving the enforcement of judgments and, indeed, developing a culture of state compliance with judgments, it needs strengthening. The African Court needs to start laying the foundation for enhancing the enforcement of judgments in the courts of state parties to the Court Protocol, using local legal frameworks through reforms. Localisation of judicial decisions entails the ability by states to allow the enforcement of decisions before, and by domestic courts using national rules and procedures. The article argues that the African Court can push through the principle of localisation by drawing lessons from existing and similar judicial organs at the sub-regional level of the African continent, namely, the Economic Community of West African States (ECOWAS) Court of Justice, the East African Community (EAC) Court of Justice, the Common Market

6 *Tanganyika Law Society and Legal Human Rights Centre and Reverend Christopher Mtikila*, consolidated Application 9 & 11/2011.

7 *John Lazaro v Tanzania*, Application 4/2014; See also *Evodius Rutachara v Tanzania*, Application 15/2016; *Alfred Agbesi Woyome v Ghana*, Application 1/2016; *African Commission v Kenya*, Application 6/2012. See also EX.CL/1204(XXXVI), *Decision on the Activity Report of the African Court on Human and Peoples' Rights* (2018) para 13; EX.CL/1126(XXXIV), *Activity Report of the African Court on Human and Peoples' Rights* (2019) para 18.

8 *Konate v Burkina Faso* (n 3); EX.CL/1204(XXXVI).

9 EX.CL/Dec.1013(XXXIII) *Decision on the Activity Report of the African Court on Human and Peoples' Rights* (2018), para 4; M Plagis 'Implementation of the judgments of the African Court on Human and Peoples' Rights' 6 August 2019, available at <http://www.acthprmonitor.org/implementation-of-the-judgments-of-the-african-court-on-human-and-peoples-rights/> (accessed 10 August 2020).

10 EX.CL/1126(XXXIV), *Activity Report of the African Court on Human and Peoples' Rights* (2019), Annex 1, available at <https://en.african-court.org/images/Activity%20Reports/Activity%20report%20January%20-%20December%20%202018.pdf> (accessed 30 October 2020) (Draft Framework).

for Eastern and Southern Africa (COMESA) Court, and the Southern Africa Development Community (SADC) Tribunal.

This article is structured as follows: the first part discusses the background to the adoption of the Draft Framework. The second part examines the draft framework by analysing the steps proposed for enforcing African Court's judgments including challenges that may possibly arise in future. The third part analyses the Draft Framework in detail while offering a critical commentary of the hybrid model as proposed by the African Court. The fourth part discusses the concept of localisation of judicial decisions as an additional tool to strengthening state compliance with decisions of the Court. The concluding part provides some recommendations for enhancing states' compliance with the African Court's judgments.

2 BACKGROUND TO THE AFRICAN COURT'S DRAFT FRAMEWORK

The jurisdiction of the African Court extends to cases of states' compliance with the African Charter on Human and Peoples' Rights (African Charter) and other international and regional human rights instruments ratified by member states. Once a judgment is delivered and communicated to respondent states, they are obligated to comply with its decisions. Over the years, state compliance with judgments of the African Court has been problematic. In cases of non-compliance, article 31 of the Court Protocol obliges the African Court to 'specify, in particular, the cases in which a state has not complied with' its judgment and report these instances to the Assembly during each of its regular sessions. According to article 29(2) of the African Court Protocol, the Executive Council is mandated to monitor execution of the judgments of the African Court on behalf of the Assembly.

However, it has not fully taken up its mandate to the satisfaction of many for various reasons including politics; non-imposition of sanctions; absence of enforcement mechanisms, both regionally and domestically; non-participation of national courts and the abusive usage of the principle of state sovereignty.¹¹ The Executive Council's failure to take up its monitoring obligation is also partly blamed on overreliance on non-compliance reports annually submitted by the African Court.¹² Current processes and mechanisms for monitoring judgments of the African Court are inadequate¹³ and need comprehensive evaluation.

11 RC Liwanga 'From commitment to compliance: enforceability of remedial orders of African Court of Human Rights' (2015) 41 *Brooklyn Journal of International Law* 98, 103; R Murray and others 'Monitoring implementation of the decisions and judgments of the African Commission and Court on Human and Peoples' Rights' (2017) 1 *African Human Rights Yearbook* 150-166.

12 Murray and others (n 11) 158.

13 Murray and others (n 11) 150.

In order to effectively take up its role and find a solution to this problem, the Executive Council requested the African Court

in collaboration with the PRC and the Commission, to undertake an in-depth study on mechanisms and framework of implementation, to enable the Executive Council effectively monitor execution of the judgments of the Court in accordance with Articles 29 and 31 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on human and peoples' Rights.¹⁴

It is interesting to observe that the Executive Council's request is directed at the African Court yet both article 29(2) of the Protocol and rule 64(2) of the Interim Rules of the Court emphatically delegate the monitoring function of states' compliance with judgments of the African Court to the Executive Council.¹⁵ The delegation of the above task, while misplaced, must be understood as an attempt by the Executive Council to benefit from independent evaluation of its roles in monitoring state compliance with judgments of the African Court.

3 EXAMINATION OF THE DRAFT FRAMEWORK

With the help of a consultant, the African Court proposes the adoption of an eight step-by-step Draft Framework for monitoring judgments of the African Court. The African Court's proposal is that states' compliance with its judgments should be monitored by a special unit called the 'formal Monitoring and Reporting Unit within the Registry' of the African Court (the Unit).¹⁶ The Unit must also act as a depository¹⁷ for the execution reports from member states and other interested parties. The focus of states' execution reports will be on progress made in line with the African Court's judgment.¹⁸ An extension on when compliance reports should be submitted may be granted to a state in accordance with Rules of Procedure and Practice of the African Court (Rules and Procedure) within which it may submit execution reports.¹⁹ In terms of assistance and technical support, a state may seek financing from the African Court or AU's policy organs through a yet to be set up fund.²⁰

Under the proposed Draft Framework, states will be required to submit their execution reports using a yet to be drawn up 'Implementation Reporting Template'.²¹ In order to come up with compliance reports, the African Court may seek information from various reliable sources including 'the United Nations, as well as institutions and organs of the African Union, (National Human Rights

14 EX.CL/Dec.1013(XXXIII) (n 9) para 4.

15 G.J. Naldi 'Observation on the Rules of the African Court on Human and Peoples' Rights' (2014) 14 *African Human Rights Law Journal* 366, 386.

16 Draft Framework (n 10) para 4(i), 2.

17 Draft Framework (n 10) para 11.

18 As above.

19 Draft Framework (n 10) para 7.

20 As above.

21 Draft Framework (n 10) para 2(ii).

Institutions) and Non-Governmental Organisations'.²² The credibility of both, the independent sources and submitted information will most likely attract scrutiny during this stage of the proceedings. A determination will only be issued by the African Court after adopting compliance reports from parties to the case and other stakeholders²³ and 'after the expiry of the reporting period'.²⁴ It is only in cases of non-compliance by a state with 'the decision in part or in full',²⁵ will the African Court convene compliance hearings.

The Draft Framework also proposes the holding of compliance hearings that will be based on a yet to be adopted Rules of Procedure and convened on two conditions. First, upon receiving a request from any party to the case²⁶ and second, pursuant to a decision arrived at by the African Court pursuant to its '*suo motu*' powers.²⁷ However, the African Court will only convene compliance hearings pursuant to its *suo motu* powers in four circumstances. First, when 'there is a dispute between the parties on whether or to what extent the decision has been implemented'.²⁸ Second, when 'the Respondent State has not submitted a compliance report to the African Court'.²⁹ Third, when there are no responses to the queries raised against a state's compliance report by the Court.³⁰ Finally, when the Court has received information about the respondent state's failure to comply with the African Court's judgment or that it 'is otherwise violating [its] order'.³¹ During the compliance stage, the African Court may 'undertake on-site visits (fact-finding mission) to directly appreciate progress on implementation'³² of the African Court's judgment or it may endorse consensual compliance agreements.³³

The African Court's compliance judgments must establish whether the state has fully, partially or completely failed to comply with its determination.³⁴ Its compliance judgment must not only 'refer to the original judgment as to which aspects of the order have or have not been implemented'³⁵ but also explicitly 'underscore the outstanding elements necessary to attain full compliance by the State'.³⁶ Where compliance hearings fail to take place, the African Court may instruct 'the Registry to notify the parties on the status of compliance for

22 Draft Framework (n 10) para 11.

23 Draft Framework (n 10) para 12.

24 As above.

25 Draft Framework (n 10) para 13.

26 para 13(a).

27 para 13(b).

28 para 13(i).

29 para 13(ii).

30 para 13(iii).

31 para 13(iv).

32 para 13(c).

33 para 14.

34 para 15.

35 As above.

36 Draft Framework (n 10) para 15.

purposes of reporting'.³⁷ Cases where a state has failed to comply will be labeled as 'non-compliant'.³⁸ Labeling of a case as 'non-compliant' will happen where 'none of the parties fails to respond';³⁹ or fails to submit 'a report within the stated time'.⁴⁰ A case will be removed from the 'non-compliant' category when 'the Respondent State has formally submitted its implementation report provided under the Protocol, and Court Rules'.⁴¹

The Assembly retains the power to impose sanctions against non-compliant states in accordance with the terms of article 23 of the Constitutive Act.⁴² However, sanctions may be imposed only in 'in deserving cases'.⁴³ What constitutes 'deserving cases' has not been defined under both the Constitutive Act and the proposed Draft Framework. It would be ideal for the Draft Framework to explicitly clarify the criteria for qualifying cases as 'deserving' under the African Court Rules and Procedure.

The Draft Framework permits the Assembly to discuss, 'prior to a final decision of the Assembly on the matter',⁴⁴ with non-complying state(s) any alternative measures for purposes of ensuring compliance. Where a state fails to implement a decision adopted by the Executive Council after being authorised to do so, the PRC may be requested to follow-up with the respondent state.⁴⁵ In the exercise of its powers under this authority, the PRC may recommend to the Executive Council for the deployment of a number of incentives including provision of support by any AU organ and other institution with relevant functions to the respondent state.⁴⁶ The PRC may also set down a timeframe of 'three months' within which the respondent state may engage with the AU organ on compliance.⁴⁷ The PRC may also give the responsible state flexibility on the time within which it should report its compliance. However, the period must not exceed six months, which can be extended by a further period of three months.⁴⁸ The provision of time extensions and other incentives to responsible states is a recipe for problems. States may capitalise on such provisions to delay the implementation process of the African Court's judgment.

37 para 18.

38 As above.

39 Draft Framework (n 10) para 18.

40 As above.

41 Draft Framework (n 10) para 18.

42 Constitutive Act of the African Union (2000).

43 Draft Framework (n 10) para 41(v).

44 para 41(ii), (iii).

45 para 27.

46 para 27(a).

47 para 27(b).

48 As above.

4 ANALYSIS OF THE PROPOSED DRAFT FRAMEWORK

As earlier stated, the Draft Framework proposes a hybrid model which combines the ‘judicial’⁴⁹ and ‘political’⁵⁰ models of supervising state compliance with judgments of the African Court. The ‘judicial’ and ‘political’ models are practiced by the Inter-American Court on Human Rights (Inter-American Court) and the European Court on Human Rights (European Court), respectively.⁵¹ The enforcement of judgments by the above two tribunals is slightly different. Supervision of state compliance with judgments of the European Court is undertaken by the Committee of Ministers of the Council of Europe (CoM).⁵² In practice, the CoM is advised and assisted by the Department for the Execution of Judgments of the Court.⁵³ Under this system, political institutions within the Council of Europe play an active role in ensuring that states comply with decisions of the European Court. The proposal to set up the unit under the Draft Framework is, therefore, drawn from this practice. Like the European Court, where the CoM, a political body, monitors states’ compliance with judgments of the European Court, the Unit is also earmarked for a similar role.

Under the Inter-American system, on the other hand, the Inter-American Court takes a central and active role in ensuring that states implement its judgments. The American Convention on Human Rights (American Convention) did not originally establish a body to monitor states’ compliance with judgments of the Inter-American Court. Judges developed this practice⁵⁴ and influenced its acceptance by the Organisation of American States (OAS) General Assembly.⁵⁵ The Inter-American Court relied on a number of provisions of the American Convention to establish its legal basis.⁵⁶ The Inter-American Court, on its own initiative, developed procedures where its compliance phase of litigation specifically focuses on developing measures that would compel states to implement its decisions including reparation orders. In other words, the Inter-American Court leaves the responsibility of

49 Draft Framework (n 10) para 9.

50 para 7.

51 See R Murray ‘Implementation of the judgments of the African Court on Human and Peoples’ Rights’ *The ACTHPR Monitor*, 6 August 2019, available at <http://www.acthprmonitor.org/implementation-of-the-judgments-of-the-african-court-on-human-and-peoples-rights/> (accessed 19 September 2020).

52 Article 46, European Convention of Human Rights and Fundamental Freedoms.

53 Council of Europe, *Department for the Execution of Judgments of the European Court of Human Rights: presentation of the Department*, available at <https://www.coe.int/en/web/execution/presentation-of-the-department> (accessed 6 August 2020).

54 *Baena-Ricardo et al. v Panama*, Inter-American Court (28 November 2003) (Competence) paras 110–113.

55 AG/RES.1330 (XXV-O/95), *Observations and Recommendations Concerning the Annual Report of the Inter-American Court of Human Rights* (1995).

56 *Velasquez Rodriguez v Honduras*, Inter-American Court (10 September, 1996) (Compliance with Judgment).

monitoring state compliance with its decisions to the Inter-American Court itself. This is where the Draft Framework slightly differs from the Inter-American Court as, although the African Court has the opportunity to monitor states' compliance with its judgments, it does not actively do so like the Inter-American Court. Although the OAS General Assembly receives reports on state compliance, it does not actively monitor implementation of the said judgements.

The adoption of a hybrid model by the African Court is opportune as it progressively equips it with the ability to adapt and utilise all available avenues for ensuring that its judgments are complied with by states. It also enables the African Court to be actively involved in ensuring that states comply with its judgments. With the proposed hybrid model, enforcement of the African Court's judgments is no longer the sole responsibility of, as it will be argued below, non-judicial institutions. However, the concern with the hybrid model is the over-reliance on non-judicial institutions in the enforcement of the African Court's judgments. This is significant considering that states are currently showing resistance to the determinations of both the African Court and the African Commission on Human and Peoples' Rights (African Commission). For instance, the PRC in 2018 adopted a decision criticising parts of the Activity Report of the African Commission and the African Court that condemned member states for failing to comply with their decisions. In this resolution, the PRC adopted the following decision:⁵⁷

The naming and shaming of Member States should be avoided to the extent possible as this does not create a conducive environment between the Court and member states. In this regard, it was proposed that the Court should have other channels of dialogue with Member States on challenges being faced by the Court.

The above decision was adopted in support of Rwanda's contention that the activity reports of the two bodies lack impartiality against the country.⁵⁸ At the PRC meeting, Rwanda

informed the PRC that the non-execution of the Court orders on provisional measures was deliberate in relation to the court accepting applications from genocide fugitive convicts. In addition Rwanda requested that paragraph 10 of the draft Decision, relating to the report of the African Court on Human and Peoples' Rights related to the refusal of the United Republic of Tanzania and the Republic of Rwanda to comply with provisional measures ordered by the Court be deleted.⁵⁹

The above unfavourable reaction of Rwanda is further compounded by the actions of some of the member states who have withdrawn their article 34(6) declaration to the African Court Protocol which allows individuals and non-governmental organisations direct access to the African Court.⁶⁰

57 See PRC/Rpt(XXXV)Rev.1, *Report of the Thirty-Fifth Ordinary Session of the PRC*, (2018), para 110 (xiii).

58 Draft Framework (n 10) para 110 (x).

59 As above.

60 Tanzania withdrew its declaration on 14 November 2019. See information on member states that withdrew their declaration from African Court's official website, available at <https://www.african-court.org/en/index.php/basic-documents/declaration-featured-articles-2> (accessed 7 August 2020).

While the position of the African Court in the eight step-by-step proposals contained in the Draft Framework are well articulated, there is an over-ascription to non-judicial institutions from step IV (submission of report to the Executive Council through the PRC)⁶¹ to step VII (Assembly adopting actions on enforcing the judgment).⁶² There is nothing inefficient in fortifying the enforcement of the Court's judgments through political institutions. However, it is difficult to reconcile concrete successes behind this practice internationally. Actually, on this point, the results are mixed and unconvincing.⁶³

With regard to step V of the Draft Framework, the PRC 'may' recommend a number of incentives to be deployed including establishing a fund which will go towards the responsible state's implementation of the decision.⁶⁴ When the report is taken to the Executive Council under step VI of the Draft Framework, it 'may' be referred 'back to the PRC for follow-up until a time to be decided, which will not exceed the timeline provided for follow-up under the PRC'.⁶⁵ The Draft Framework is silent on what will happen to those states that failed to comply with the orders of the African Court even after their cases were referred back to the PRC. It is also silent on what happens if a state's delay to implement the African Court's judgment is as a result of the conduct of one of the African Union's organs'. For instance, what will happen if, after the Executive Council refers back a case to the PRC, the latter exceeds 'the timeline provided for follow-up under the PRC'?⁶⁶ These are some of the issues that could be considered for interrogation in the Draft Framework.

Further, the Draft Framework provides that states that have complied with the judgment of the African Court 'may' be recognised and those that have failed to comply may be called upon 'to undertake necessary measures for implementation as set out by the Court or agreed during the engagement with the PRC and the Executive Council'.⁶⁷ In cases of non-compliance, the Assembly 'may decide to deploy' measures including 'recommendations and draft decisions submitted by the Executive Council'.⁶⁸ The above wording of the Draft Framework does not 'mandate' nor 'compel' AU's political organs to enforce judgments of the African Court. The provisions are simply not binding nor oblige a respondent state; instead the African Court is not only reduced to a spectator who is dependent on political processes to play out before intervening, but also powerless in light of the step-by-step format of the Draft Framework.

It is also significant to note that although the AU organs adopt decisions by consensus, the fact that the Draft Framework proposes the

61 Draft Framework (n 10) para 7.

62 Draft Framework (n 10) para 11.

63 Liwanga (n 11).

64 Draft Framework (n 10).

65 Draft Framework (n 10) para 33.

66 As above.

67 Draft Framework (n 10) para 34.

68 para 41.

consideration of compliance reports by various organs of the AU raises the challenge of voting procedures.⁶⁹ According to article 7 of the Constitutive Act, decisions of the Assembly are undertaken by consensus or an affirmative vote of two-thirds of the member states of the Union.⁷⁰ The same applies to voting procedures related to decisions of the Executive Council⁷¹ and the PRC.⁷² These voting procedures create the perception that political rather than legal reasons are behind the adoption of their decisions.⁷³ If politics dominate the decision making processes of the AU organs while monitoring state compliance with decisions of the African Court, there is likelihood that all the three AU organs proposed by the Draft Framework to monitor state compliance will be compromised and the monitoring process may face difficulties.

Another drawback relates to the invocation of sanctions. According to article 23 of the Constitutive Act, sanctions may be imposed only in 'deserving cases'. However, article 23 of the Constitutive Act is problematic in a number of ways. First, as observed by Liwanga, the adoption of sanctions against non compliant states is not mandatory.⁷⁴ Second, 'the characteristics of political and economic sanctions are ambiguous given that the provisions of the AU Constitutive Act on this issue are not 'eloquent' enough.⁷⁵

Another difficulty with the Draft Framework is the proposition of the hybrid model itself. As already alluded to, the hybrid model was settled for after a comparative study on how the Inter-American Court and the European Court monitor states' implementation of their judgments. Both the Inter-American Court and the European Court face numerous challenges pertaining to state compliance with their own judgments.⁷⁶ Studies conducted by a number of commentators

69 Liwanga (n 11) 137.

70 See also Rule 18 of the Rules of Procedure for the Assembly.

71 Article 11 of the Constitutive Act; also Rule 19 of the Rules of Procedure for the Executive Council.

72 Rule 13 of the Rules of Procedure for the PRC.

73 Liwanga (n 11) 137-139.

74 Liwanga (n 11) 139.

75 As above.

76 For a compressive and interesting analysis on the literature on this subject: SL Saborio 'Successes and failures of the Inter-American system of human rights in the case of *Baena Ricardo et al v Panama*' (Case Law 25) (2009) 5 *Revista Centre for Justice and International Law* 38; A Huneeus 'International criminal law by other means: the quasi-criminal jurisdictions of the human rights courts' (2013) 107(1) *American Journal of International Law* 1-44; D Baluarte 'Strategizing for compliance: the evolution of a compliance phase of Inter-American Court litigation and the strategic imperative for victims' representatives' (2012) 27 *American University International Law Review* 263; SR Ratner and others (eds) *Accountability for human rights atrocities in international law: beyond the Nuremberg legacy* (2009); BD Tittmore 'Ending impunity in the Americas: the role of the Inter-American human rights system in advancing accountability for serious crimes under international law' (2006) 12 *South Western Journal of Law and Trade America* 429; TM Antkowiak 'Remedial approaches to human rights violations: the Inter-American Court of Human Rights and beyond' (2008) 46 *Columbia Journal of Transnational Law* 351; JL Cavallaro and others 'Re-evaluating regional human rights litigation in the

have highlighted poor records on state compliance with judgments of the Inter-American Court.⁷⁷ Compliance with reparation orders for ‘money damages or costs’,⁷⁸ and ‘symbolic admissions of responsibility and apologies to affected persons’,⁷⁹ received high compliance levels. Statistically, ‘out of 31 such measures ordered by the [Inter-American Court], 84 have been implemented, which is a rate of approximately 64 percent.’⁸⁰ However, the record was different when it came to compliance with orders for states to conduct criminal investigations for crimes ‘characterised as an international crime’.⁸¹ This shows that there is selective implementation of reparation orders imposed by the Inter-American Court as not all of them are implemented by member states.

Baluarte’s study also established that for these types of measures only 1 had been fully implemented during the period under review (2012-2013), representing ‘a 2 percent compliance rate.’⁸² Judge Cancado Trindade once acknowledged the difficulties that the Inter-American Court faces when it comes to state compliance with its judgments and called for the ‘Europeanisation’⁸³ of the Inter-American Court’s system of state compliance if things were to improve. Europeanisation of the Inter-American Court entailed the involvement of the OAS General Assembly in monitoring state compliance with its judgments unlike the current practice where the latter is not involved.⁸⁴

The same is the trend with respect to state compliance with reparation orders of the European Court. A good example of this problem can be shown through what transpired in two cases involving the United Kingdom (UK). In the case of *Hirst (No. 2) v UK*,⁸⁵ and the pilot-judgment *MT and Greens v UK*,⁸⁶ both of which concerned the voting rights of prisoners, successive governments of the UK have failed

twenty-first century: the case of the Inter-American Court’ (2008) 102 *American Journal of International Law* 768; DH Hawkins & W Jacoby ‘Partial compliance: a comparison of the European and Inter-American Courts of Human Rights’ (2010) 6 *Journal of International Law and International Relations* 35; F Basch and others ‘The effectiveness of the Inter-American system of human rights protection: a quantitative approach to its functioning and compliance with its decisions’ (2010) 7 *Sur International Journal on Human Rights* 9.

77 DA Gonzalez-Salzberg ‘Do states comply with the compulsory judgments of the Inter-American Court on Human Rights? An empirical study of the compliance with 330 measures of reparation’ (2014) *Revista do Instituto Brasileiro de Direitos Humanos* 13.

78 Baluarte (n 76) 290-291.

79 Baluarte (n 76) 292.

80 As above.

81 Huneeus (n 76) 15-16; Baluarte (n 76) 298.

82 As above.

83 Baluarte (n 76) 281-282.

84 As above.

85 *Hirst v UK (No 2)* (2006) 42 EHRR 41; John Hirst, ‘Prisoner voting and the rule of law: the irony of non-compliance’, *Oxford Human Rights Hub*, available at <http://ohrh.law.ox.ac.uk/prisoner-voting-and-the-rule-of-law-the-irony-of-non-compliance/> (accessed 25 September 2020).

86 *MT and Greens v UK* (2011) 53 EHRR 21.

to comply with the two judgments of the European Court contrary to their treaty obligations.⁸⁷ The CoM also failed to enforce the judgment of the European Court in the case of *Khashiyev v Russia*,⁸⁸ where the Russian Federation was ordered to compensate the applicant and other victims. The above cases highlight the challenges facing the CoM in enforcing judgments of the European Court.

The foregoing observations, therefore, attest to the fact that although the Inter-American Court and the European Court have made tremendous progress in monitoring states' implementation of their judgments, they also continue to face challenges. The resolution by the African Court to adopt a hybrid model is an indication that both the political or judicial models, *per se*, are not persuasive for the African Court to adopt severally. The hybrid model gives the African Court, both the security and advantage, to utilise all available options including political mechanisms in enforcing its judgments. It also uniquely places the African Court in a position of strength as it has the option of choosing on which approach to take in a given situation depending on circumstances.⁸⁹

The limitations and challenges presented by the hybrid model should serve as a touchstone for evaluating the proposed Draft Framework; redesigning and restructuring it as a foundation for a strong enforcement regime for the African Court. The African Court needs to lay a foundation for a strong enforcement regime through legal reforms including localising the enforcement of its judgments in member states' legal framework. As the Draft Framework calls for an amendment to African Court's Rules of Procedure and other relevant documents that would enable the formalisation of new processes and practices,⁹⁰ it would be ideal for the enforcement of judgments to be localised in member states' legal systems.

5 LOCALISATION OF JUDICIAL DECISIONS

Localisation of judgments of the African Court entails the ability by states to allow the enforcement of its judgments before national courts, using national legal framework. It is a call for state parties to the African Court to explicitly provide in their legislative framework provisions that mandate national courts to 'adjudicate compliance issues with

87 M Foster '*Hirst v United Kingdom* (No 2): A Danger for Both the UK and Europe' (2013) *King's Student Law Review* online at <https://blogs.kcl.ac.uk/kslr/?p=409> (accessed on 11 August 2020). E Bates 'The continued failure to implement *Hirst v UK*' (2015) *European Journal of International Law Talk*, at <https://www.ejiltalk.org/the-continued-failure-to-implement-hirst-v-uk/> (accessed 25 September 2020).

88 *Khashiyev v Russia; Akayeva v Russia* (2005) EHRR 42.

89 On why a strong regional court like the African Court is important for democracy, rule of law and human rights in general, see K Nyman-Metcalf and others 'Why should we obey you? Enhancing implementation of rulings by regional courts' (2017) 1 *African Human Rights Yearbook* 167-190.

90 Draft Framework (n 10) para 4(vi).

international judgments'.⁹¹ Localisation is not an invitation for the African Court to replace national courts. It rather is a call for member states to utilise their already existing national legal frameworks to enforce the African Court's judgments.

This idea stems from the premise that in almost all African Court's member states there are laws and practices around enforcement of foreign judgments. The only difference is the manner in which these laws are enforced, particularly between common law and civil law jurisdictions.⁹² With the proposed Draft Framework, states need to redesign their laws in such a way that the definition of 'court' should include international tribunals like the African Court. The Rules of Court of the African Court should also incorporate the concept of localisation as defined above. Rule 64 of the Rules of the Court, which deals with notification of judgment of the African Court, and also empowers the Executive Council to monitor execution of judgments, must be amended to incorporate the principle of localisation.

The Constitutional Court of South Africa extended the concept of 'foreign court' under the country's common law principles to include an international 'tribunal'⁹³ when it was faced with an appeal against the order of the High Court. In *the Government of the Republic of Zimbabwe v Fick (Fick case)*,⁹⁴ the High Court of South Africa had authorised the registration and enforcement of a cost order against the Government of the Republic of Zimbabwe in favour of the applicant and other farmers. The facts leading to the Constitutional Court's application were that the SADC Tribunal had delivered a judgment in favour of a group of farmers whose land was expropriated by the Government of Zimbabwe without compensation. The farmers failed to enforce their orders before the SADC Tribunal. After failing on their numerous attempts to enforce the SADC Tribunal judgment, they approached the High Court to register and enforce the orders of the SADC Tribunal. The High Court granted the order and on appeal, the Constitutional Court held that the High Court had correctly allowed the enforcement of the order in South Africa. In order to arrive at this conclusion, the Constitutional Court 'developed the common law on the enforcement of foreign judgments and orders to apply it to the Tribunal'.⁹⁵ The foregoing extension allowed the Constitutional Court to find jurisdiction for the High Court and other domestic courts in the country to register the costs order. This reasoning ought to equally apply to the African Court.

91 Liwanga (n 11) 148.

92 T Maluwa 'The incorporation of international law and its interpretational role in municipal legal systems in Africa' (1998) 23 *South African Yearbook of International Law* 45-64; AO Adede 'Constitutionalism, culture and tradition: African experience on the incorporation of treaties into domestic law' (1999) 7 *African Yearbook of International Law Online* 239; RF Oppong 'Enforcing judgments of the SADC Tribunal in the domestic courts of member states' (2010) *Monitoring Regional Integration in Southern Africa Yearbook* 115.

93 *Government of the Republic of Zimbabwe v Fick and others* 2013 5 SA 325 (CC) para 72.

94 As above.

95 As above.

The execution of judgments of regional international tribunals before national courts is not new to most AU member states. It is a principle that is already part of the law of four sub-regional economic integration tribunals of ECOWAS Court of Justice, the EAC Court of Justice, the COMESA Court and the SADC Tribunal, to which most of the state parties to the African Court Protocol are also affiliated. Article 24(2) of the Supplementary Protocol to the ECOWAS Court of Justice⁹⁶ states as follows:⁹⁷

Execution of any decision of the Court shall be in form of a writ of execution, which shall be submitted by the registrar of the Court to the relevant Member State for execution according to the rules of civil procedure of that Member State.

Article 24(3) of the Supplementary Protocol to the ECOWAS Court of Justice also imposes an obligation on the appointed authority of an ECOWAS member state to enforce a writ issued by the ECOWAS Court in its territory. Once the national appointed authority verifies the authenticity of the writ, it cannot be questioned. Article 44 of the Treaty for the Establishment of the East African Community (EAC Treaty)⁹⁸ has a similar provision:⁹⁹

The execution of a judgment of the Court which imposes a *pecuniary obligation* on a person shall be governed by the rules of civil procedure in force in the Partner State in which the execution is to take place.

The responsibility for verifying the authenticity of the East African Court of Justice's judgment is vested in the Registrar of the Court.¹⁰⁰ According to article 40 of the Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA Treaty) an order for execution,

shall be appended to the judgment of the Court which shall require only the verification of the authenticity of the judgment by the Registrar whereupon, *the party in whose favour execution is to take place, may proceed to execution in accordance with the rules of civil procedure in force in that Member State.*¹⁰¹

Article 32(1) of the SADC Tribunal Protocol¹⁰² also explicitly states that the 'laws and rules of civil procedure for the registration and enforcement of foreign judgments in force in the territory of the state in which the judgment is to be enforced shall govern enforcement'.

96 Supplementary Protocol A/SP.1/01/05 Amending the preamble and articles 1, 2, 9 and 30 of Protocol A/P.1/7/91 Relating to the Court of Justice and article 4 paragraph 1 of the English version of the said Protocol, done at Accra, Ghana 19 January 2005, available at http://prod.courtecowas.org/wp-content/uploads/2018/11/Supplementary_Protocol_ASP.10105_ENG.pdf (accessed 25 September 2020).

97 Emphasis added. See also the Revised Treaty of the Economic Community of West African States (ECOWAS), Protocol (A/P.1/7/91) on the Community Court of Justice of the Economic Community of West African States, done at Abuja on 6 July 1991.

98 The Treaty for the Establishment of the East African Community, done at Arusha, Tanzania, 30 November 1991 (as amended on 14 December 2006 and 20 August 2007).

99 Emphasis added.

100 Article 44 of the EAC Treaty.

101 Emphasis added.

102 See Protocol on Tribunal in the Southern African Development Community done on 7 August 2000.

Member states of SADC are also obliged under article 32(2) of the SADC Protocol to 'take forthwith all measures necessary to ensure execution of decisions of the Tribunal' as they are binding and 'enforceable within the territories of the states concerned.'¹⁰³

Apart from the EAC and COMESA Courts' treaties allowing for domestic enforcement of *pecuniary obligations* only, and conferring the court discretion on where to enforce their judgments,¹⁰⁴ two themes stand out in the above sub-regional economic integration community treaties. First, they contain the principle of 'recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights'.¹⁰⁵ All the sub-regional economic integration tribunals reference the African Charter in their pursuit of 'recognition and observance of the rule of law',¹⁰⁶ among other values.¹⁰⁷ In the case of the African Court, the Rules of Procedure yet to be adopted need to also incorporate the domestic enforcement of 'any judgment' including cases with non-pecuniary obligations as most of its reparation orders are non-pecuniary in nature. Each state party to the African Court Protocol must equally move towards enforcing non-pecuniary foreign judgments. Second, the enforcement of judgments of all regional tribunals cited above is in accordance with the respective member states' rules of civil procedure. This means that once a judgment is delivered by the African Court, the petitioners may start proceedings on enforcement of judgments against the respondent state using the national legal framework. This makes the implementation of tribunal judgments potentially different among member states as common law and civil law systems sometimes follow different procedures and practices on the enforcement of foreign judgments.¹⁰⁸ What matters is that domestic processes on enforcing foreign judgments are followed.

It is also significant to note that a majority of the AU member states belong to one or two of the four major sub-regional economic integration Communities whose founding instruments entrench the

103 Article 32(3), SADC Tribunal Protocol.

104 Liwanga (n 11) 120.

105 Article 6(e) of the COMESA Treaty. In the EAC other provisions that also reference the promotion and protection of human rights include articles 3(3)(b), 5(1), (3)(f), 120, 123, 124, 146 and 147.

106 Article 6(g) of the COMESA Treaty.

107 Article 4 of the Consolidated Text of the Treaty of the Southern African Development Community; articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community, signed in Arusha Tanzania, on 30 November 1999; Preamble and article 4(g) of the Revised Treaty of the Economic Community of West African States (ECOWAS), done at Cotonou, Benin on 24 July 1993, also available online at <https://www.ecowas.int/wp-content/uploads/2015/01/Revised-treaty.pdf>, (accessed 11 August 2020); *Ousainoue Darboe and 31 Others v The Republic of Gambia*, 20 January 2020, (Suit No ECW/CCJ/APP/27/1) (Judgment No ECW/CCJ/JUD/01/20), available at <http://prod.courteco.was.org/wp-content/uploads/2020/03/JUD-ECW-CCJ-JUD-01-20-OUSAINOU-DARBOE-JUDGEMENT-FINAL-20-January-2020-3.pdf>, (accessed 25 September 2020); J Otieno-Odek *Judicial enforcement and implementation of EAC law* (2017) 467-485.

108 Liwanga (n 11) 140-141.

principle of enforcing their tribunal judgments before national courts using national laws and practices. ECOWAS has 15 member states,¹⁰⁹ SADC has 16 member states,¹¹⁰ COMESA has 19 member states¹¹¹ and the EAC has 5 member states.¹¹² Approximately 10 of these member states, who are also AU member states, belong to multiple regional economic integration community arrangements. This means that a majority of AU member states are parties to treaties that entrench the principle of enforcing foreign judgments before national legal frameworks. It is, therefore, difficult to reconcile why state parties to the African Court take a hostile position on this subject while belonging to the above cited sub-regional court arrangements. While most pieces of legislation on enforcement of foreign judgments are based on reciprocity between or among states, the fact that a majority of AU member states have ratified or consented to the above four treaties strengthens the case for the enforcement of African Court's judgments before national courts.

Strengthening national judicial and political systems for enforcing human rights violations also finds support in academic scholarship.¹¹³ Using the case study of the European Court's response to the growing backlog of cases filed by individual complainants, Helfer argues that the ECHR must recognise the principle of 'embeddedness' in national legal systems'.¹¹⁴ This principle aims at incentivising national courts to apply principles of the European Convention as interpreted by the European Court,¹¹⁵ so as to ensure that such principles are embedded in national laws. Helfer's argument calls for the redesigning and strengthening of international tribunals' supervisory systems so that instead of micromanaging the enforcement of state compliance with the European Court, they empower national courts to apply community principles domestically.¹¹⁶ The principle of 'embeddedness', with its focus on strengthening national or local mechanisms for enforcing human rights violations, is similar to localisation. Just like localisation, it targets the entrenchment of Community law principles in domestic legal systems thereby capacitating national courts in enforcing Community judgments.

109 Treaty of the Economic Community of West African States (ECOWAS) concluded at Lagos on 28 May 1975; The Revised Treaty of the Economic Community for West African States (ECOWAS) done at Cotonou, 24 July 1993.

110 The Consolidated Text of the Treaty of the Southern African Development Community, signed on 21 October 2015.

111 Treaty Establishing the Common Market for Eastern and Southern Africa, done at Kampala, Uganda, on 5 November, 1993.

112 Treaty for the Establishment of the East African Community, done at Arusha, Tanzania on 30 November, 1991 (as amended on 14 December 2006 and 20 August 2007).

113 LR Helfer 'Redesigning the European Court of Human Rights: embeddedness as a deep structural principle of the European Court of Human Rights regime' (2008) 19 *European Journal of International Law* 125-159, 126.

114 Helfer (n 113) 125.

115 Helfer (n 113) 153.

116 Helfer (n 113) 130.

Huneus' thesis, on the other hand, is that international tribunals must foster good relationships with national judicial and political mechanisms if state compliance with their judgments is to be improved.¹¹⁷ According to Huneus, international tribunals must 'reach out to the judicial organs of the nations against which they issue judgments',¹¹⁸ so that mutually beneficial relationships that 'foster the commitment of these state actors to the implementation project'¹¹⁹ are cultivated. While Huneus's thesis promotes advocacy initiatives between regional human rights tribunals and national courts to promote compliance, it is a call for community courts to 'be attendant to the national context'¹²⁰ in which such courts operate. Although Huneus's scholarship takes a slightly different approach to that of Helfer, they both advocate for the localisation of judicial operations so that remedies imposed by international tribunals are easily implemented at home. Their approaches encourage community courts to not lose sight of both the building of relationships with national courts and establishing synergies of their work.

Oppong argues that enforcing judgments before national courts is 'perhaps the most potentially effective means for securing compliance with decisions of international courts and enhancing the effectiveness of international adjudication.'¹²¹ According to him, the usage of national courts in the enforcement of tribunal judgments depoliticises 'the post adjudicative phase of international litigation.'¹²² He argues that the other benefit of enforcing international judgments in national courts is that this process helps in the linkage of the two systems,¹²³ which in the long run helps in the integration agenda of most African countries. Oppong also highlights the fact that post-adjudicative process in national courts, unlike international tribunals, is 'rule oriented, and can therefore be beneficial to individuals'¹²⁴ that brings up their claims before their international human rights tribunals. Oppong's thesis puts in perspective the need to reconsider and restructure the Draft Framework as, in its current state, it does not provide for the localisation of enforcing African Courts judgments. The Draft Framework does not promote the development of synergies and relationship building between the African Court and national courts.

The Draft Framework can be strengthened if it formalises the place of national legal processes in the enforcement agenda. While localisation of tribunal judgments has its challenges including the absence of national laws that incorporate the principles for its domestic application, it is a progressive way of ensuring that individuals who

117 Huneus (n 76) 493

118 Huneus (n 76) 526.

119 As above.

120 Baluarte (n 76), see also G Neuman 'Import, export, and regional consent in the Inter-American Court of Human Rights' (2008) 19 *European Journal of International Law* 101.

121 Oppong (n 92) 121.

122 As above.

123 Oppong (n 92) 121.

124 As above.

seek for remedy before international tribunals enjoy the fruits of their litigation. Since various AU organs will be required to consider the Draft Framework, the African Court can leverage the opportunity that is beginning to manifest with the proposed Draft Framework and enact a provision similar to the one contained in the Agreement establishing the Caribbean Court of Justice.¹²⁵ Article XXVI(a) of this Agreement calls for the

the enactment of legislation to ensure that [...] any judgment, decree, order or sentence of the Court given in exercise of its jurisdiction shall be enforced by all courts and authorities in any territory of the Contracting Parties as if it were a judgment, decree, order or sentence of a superior court of that Contracting Party.¹²⁶

The importance of this provision is that it shifts the responsibility of complying with treaty obligations to member states. State parties to the African Court Protocol cannot, therefore, object to complying with its judgment if the above provision is adopted as part of Community law, nor cite the existence of national law for its failure to comply. The EACJ in the case of *Peter Anyang Nyongo v The Attorney General of the Republic of Kenya*,¹²⁷ clarified this principle in the following way:¹²⁸

It cannot be lawful for a state that with others voluntarily enters into a treaty by which rights and obligations are vested, not only on the state parties but also on their people, to plead that it is unable to perform its obligation because its laws do not permit it to do so.

Localisation of decisions of the African Court in national legal mechanisms accords an opportunity for national courts to influence state compliance with judgments of international tribunals. As the Draft Framework focuses largely on the influence of political mechanisms at Community level with respect to the role of the PRC, the Executive Council and the Assembly, to monitor state compliance with decisions of the African Court leaving out national legal processes, there is need to include them in the reform agenda.

6 CONCLUSION

This article has analysed the Draft Framework for monitoring judgments of the African Court and also recommended ways of strengthening it. The article argues that while the Draft Framework gives the African Court a host of possible options which can be deployed to improve state compliance with its decision, it needs strengthening. One way of doing so is to localise the enforcement regime of the African Court in national legal systems. Localisation of the enforcement of African Court's judgments can be attained through the amendment of the Rules of the Court, and also where AU member states domesticate the enforcement of the Court's rules before their national legal framework. Incorporating provisions on enforcing judgments of the

125 Agreement Establishing the Caribbean Court of Justice, done at St. Michael, Barbados on 14 February 2001; Oppong (n 92) 127.

126 Article XXXVI(a) of the Agreement establishing the Caribbean Court of Justice.

127 *Peter Anyang Nyongo v The Attorney General of the Republic of Kenya*, EACJ Reference 1 of 2006, Judgment of 30 March 2007.

128 As above, 41.

African Court before national courts is not foreign to most of the member states belonging to the four sub-regional tribunals of ECOWAS, EAC, COMESA and SADC that have similar provisions and practices. Thus, the African Court's Rules and practices must focus on formalising the processes and practices of localisation so that a culture of compliance with judgments of the African Court can be developed.

The above discussion has disclosed that the African Court does not have a provision that compels state parties to the Court Protocol to enforce its judgments before national courts. It also does not provide for the obligation of member states to incorporate or domesticate the enforcement of African Court's judgments under their national laws. Prioritising the linkage between the enforcement regime of the African Court and member states' national courts must be the focus of the proposed Draft Framework. The reform agenda must incorporate the principles of localisation so that 'national courts [are empowered] to execute, more or less automatically'¹²⁹ judgments of the African Court. As it has already been discussed, empowering national courts to enforce judgments of international tribunals is not new to the African continent as the founding instruments of four regional integration communities of ECOWAS, EAC, COMESA and SADC also permit the enforcement of their judgments before national courts. However, this cannot be possible if member states of the African Court, particularly those from dualist systems, do not incorporate the principle of localisation of judgments under their laws. Liwanga rightly makes this observation:¹³⁰

Empowering domestic courts to have jurisdiction over noncompliance with the judgments of international courts, would increase the likelihood that the beneficiaries of international judgments could get them enforced by approaching the municipal courts of the defaulting States and Parties.

In light of the foregoing, therefore, the Draft Framework must call for the registration of judgments of the African Court before national courts in accordance with respective member states' national legal framework on enforcement of foreign judgments. To ensure certainty, a judgment of the African Court must not be subject to review before national courts and must have the same effect as judgments delivered by national courts for purposes of execution.¹³¹ Localisation of judgments of the African Court serves both functional and normative purposes in that resources and time spent on adjudicating cases before international tribunals are saved.¹³² As for the normative function, localisation of judgments of the African Court helps in providing 'a measure of deference to national actors in situations where such deference is appropriate'.¹³³

Another issue related to localisation of judgments of the African Court is that it helps in the relationship cultivation between Judges of the African Court and national courts. One area identified by Huneus

129 Helfer (n 113) 150.

130 Liwanga (n 11) 140.

131 Oppong (n 92) 134.

132 Y Arai-Takahashi *The margin of appreciation doctrine and the principle of proportionality in the jurisprudence of the ECHR* (2002) 235.

133 Helfer (n 113) 128.

for improving state compliance with decisions of the Inter-American Court was the relationship between the court, public ministries and judiciaries from member states.¹³⁴ She argued that the Inter-American Court must

reach out to the judicial organs of the nations against which they issue judgments and build relationships of mutual understanding to foster the commitment of these state actors to the implementation project.¹³⁵

The Draft Framework must, therefore, draw lessons from the above proposal and cultivate the establishment of institutional linkages between the African Court and superior national courts of member states.¹³⁶ One of the ways that the Inter-American Court introduced in order to enhance the improvement of state compliance with its judgments is the ‘joint hearings’ procedure which encouraged ‘discussions among the different representatives of the victims in each case and results in a more dynamic participation by the state officials responsible for implementing the reparations at the domestic level.’¹³⁷ The cultivation of the relationship between international and national judges and other stakeholders helps in developing dialogue on solutions among the parties to a case.¹³⁸

134 Huneus (n 76) 493.

135 Huneus (n 76) 526.

136 Huneus (n 76) 151.

137 Huneus (n 76) 73.

138 Huneus (n 76) 12.