



# African Court Coalition Virtual Training on Engagement with African Court and Commission

**Module IV (Session 1): Regional Level  
Tools and Mechanisms for Monitoring  
Implementation**

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## Three Quotes

- The level of compliance by State Parties with the Commission's Decisions, Requests for Provisional Measures and Letters of Urgent Appeal is relatively low ...”.
- Monitoring State compliance with the decisions and recommendations of ACERWC is therefore key to the full realization of children's rights. Despite this fact, the ACERWC is facing challenges due to non-implementation of States with its decisions and recommendations”.
- “Compliance with a Court's judgment is essential to the success of any justice system and the proper administration of justice. Non-compliance not only destroys the very raison d'être of a Court but undermines public confidence in the justice system”.

# Context

- Implementation/compliance is at the heart of any human rights system.
- With the growth and maturity of the African system, the question of implementation has become prominent in academic and policy discourse and activities.
- An “**implementation crisis or deficit**” has been identified.
- Regional bodies have thus increased efforts aimed at ensuring implementation and strengthening their monitoring/follow-up role.



# States' Obligation on Implementation

- **African Charter, Art. 1:** “The member states ... shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them”.
- **African Court Protocol, Art. 30:** “The state parties ... undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution”.



# Models of Monitoring Implementation

- **Enforcement model:** sanctions for non-implementation, naming and shaming, pressure, etc.
- **Political model:** A political organ of the parent intergovernmental organization monitors implementation of decisions of the treaty body.
- **Reactive model:** Treaty body receives information on implementation
- **Persuasive model:** dialogue to induce/promote implementation
- **Judicial model:** The treaty body monitors implementation of its own decisions
- **Hybrid model:** A mix of political and judicial model
- **Proactive model:** The treaty body goes out and seeks information, which it evaluates

# African Commission: *Ad hoc* Monitoring Tools

- Thematic and Country-specific resolutions
  - Resolution on the Importance of the Implementation 2006
  - Resolution Calling on Kenya to Implement Endorois Decision 2013
- State reporting procedure
  - Concluding observations on Kenya 8<sup>th</sup>-11<sup>th</sup> periodic reports, adopted 2016
- Country visits (promotion and advocacy missions)
  - Mission to Kenya, March 2010
- Implementation hearing (Endorois hearing April 2013)
- Referral to the African Court (Libya cases – provisional measures)

# African Commission: Formal Monitoring Procedure

- **Working Group on Communications:** Mandate expanded in 2012 to include monitoring the status of implementation of decisions
- **Rule 125 of the 2020 Rules of Procedure**
  - Reporting by state party
    - 180 days for first report on implementation; comments by complainant within 60 days
    - Request for additional information within 90 days
    - Reminder if no response is received
  - Reporting by African Commission / Rapporteur
    - Commission: Activity report / website
    - Rapporteur: each ordinary session (public sitting)
  - Request to NHRIs
  - Referral to the relevant AU political organs

# Examples of Reporting/Referral

- “During the reporting period, the Commission wishes to report with commendation that the Government of Cameroon informed the Commission on 29 June 2019, of the implementation of the Decision adopted in Communication 389/10 - Mbiankeu Geneviève v. Cameroon”.

**47<sup>th</sup> Activity Report, Feb 2020**

- “The Commission would like to bring to the attention of the Executive Council the refusal of the Republic of Botswana to implement the Commission’s Decision in Communication 313/05 – Kenneth Good v. Botswana. Through Diplomatic Note Ref: 10/12 BEA5/21 C VIII (4) AMB of 23 March 2012, the Republic of Botswana unequivocally stated the following: “the Government has made its position clear; that it is not bound by the decision of the Commission.” ... The Commission is bringing this refusal to the attention of the Council for appropriate action”.

**32<sup>nd</sup> & 33<sup>rd</sup> Activity Report, Jan 2013**



# African Court: Practice Until Now

- **African Court Protocol, Art. 29(2):** “The Council of Ministers shall also be notified of the judgment and shall **monitor** its execution on behalf of the Assembly”.
- **African Court Protocol, Art. 31:** The Court shall submit to each regular session of the Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases in which a state has not complied with the Court’s judgment”.
- The Court includes a table on status of implementation in its activity reports on
- In one instance (Libya case, 2013), the Court prepared a dedicated report on non-compliance



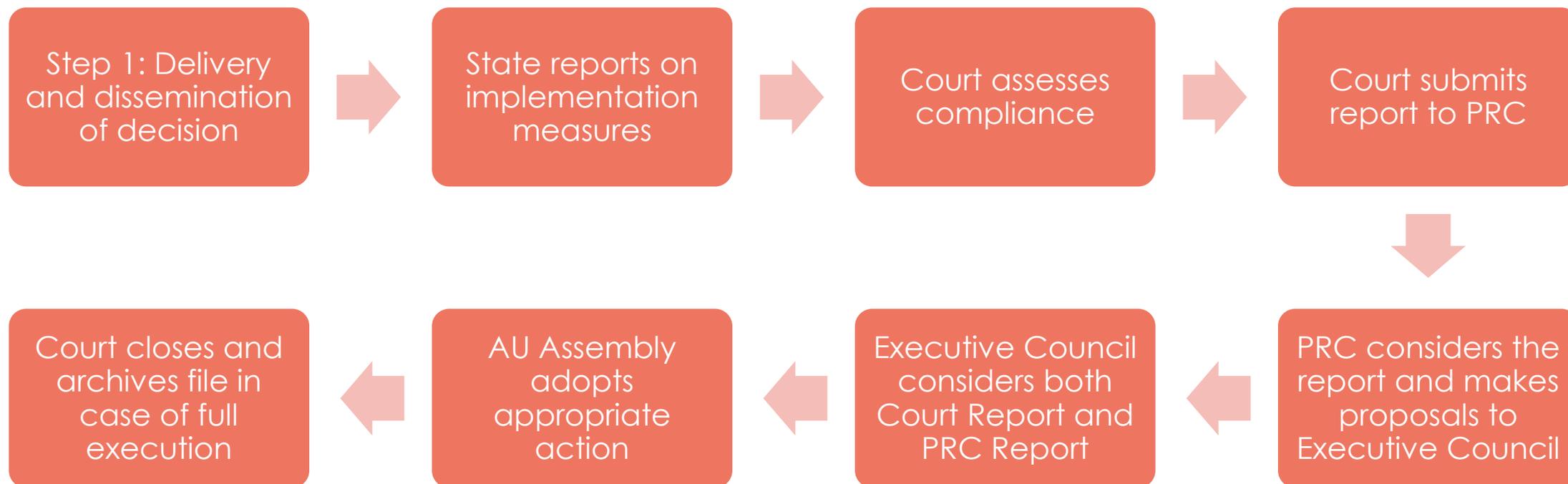
# African Court: 2020 Rules of Court

- **Rule 81** now provides for the procedure of monitoring compliance with decisions of the Court
- State to submit compliance report to the Court within stipulated time
- State report to be forwarded to complainant for observations
- Court may obtain relevant information from credible sources
- In case of dispute as to compliance, Court to hold implementation hearing
- Refer cases of non-compliance to AU Executive Council
- In January 2018, the Executive Council decided to no longer include the names of non-compliant states in its decision relating to the Court

# African Court: Draft Framework for Reporting and Monitoring Execution

- Framework developed at the request of Executive Council
- It adopts a hybrid approach to monitoring
- The Court will set up a formal monitoring and reporting unit
- AU Legal Counsel and Secretary General to appoint a focal person each as liaison officers
- The Unit will prepare a template for reporting by states
- States to appoint focal points

# Proposed Monitoring and Reporting Procedure





# Thank You!

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