REPORT OF THE AFRICAN COURT COALITION 2025 STAKEHOLDERS' PLATFORM ON THE MARGINS OF THE 76TH ORDINARY SESSION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

30 JANUARY – 3 FEBRUARY 2025

PAPU TOWER

ARUSHA, TANZANIA

Abbreviations

ACC	African Court Coalition
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHR	African Commission on Human and Peoples' Rights
AU	African Union
AU	African Union Commission
AUEC	African Union Executive Council
CHR	Centre for Human Rights
CSOs	Civil Society Organisations
EAC	East African Community
EALS	East Africa Law Society
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
IHRDA	Institute for Human Rights and Development in Africa
ISLA	Initiative for Strategic litigation in Africa
NANHRI	Network of African National Human Rights Institutions
NHRIs	National Human Rights Institutions
OHCHR	Office of the High Commissioner for Human Rights
PALU	Pan African Lawyers Union
PAP	Pan African Parliament
RWI	Raoul Wallenberg Institute of Human Rights and Humanitarian Law
UN	United Nations

INTRODUCTION AND BACKGROUND

This is a Report of the African Court Coalition Stakeholders' Platform (the Platform) held on the margins of the 76th Ordinary Session of the African Court on Human and Peoples' Rights. The Platform was convened in Arusha, Tanzania from 30 January to 3 February 2025.

The Coalition for an Effective African Court on Human and Peoples' Rights (the "African Court Coalition" or "the Coalition" or "ACC") is a membership-based organisation made up with Civil Society Organisations, human rights institutions, law societies and individual members with interest in the promotion and protection of human rights in Africa.

The key purpose for the establishment of the Coalition is to advocate for an effective, independent and accessible African Court on Human and Peoples' Rights (the African Court or the Court) to provide redress to victims of human rights violations and strengthen the human rights protection system in Africa.

The Coalition mission is to mobilize and coordinate the diverse stakeholders of the African Court to support building of an institutionally strong and independent Court that delivers effectively and efficiently on its mandate. The Coalition also works towards strengthening the complementary relationship between the African Court and the African Commission on Human and Peoples' Rights (the African Commission or the Banjul Commission).

The African Court on Human and Peoples' Rights is the judicial arm of the African Union (the AU) which was established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the African Court Protocol or Protocol). The Court started its operations in the year 2006 at its permanent seat in Arusha, the United Republic of Tanzania where it has its permanent seat.

INTRODUCTION AND BACKGROUND

The mission of the Court is to complement the protective mandate of the African Commission by strengthening the human rights protection system in Africa and ensuring respect for and compliance by member states with the African Charter, as well as other international human rights instruments, by rendering binding judicial decisions.

Since its operationalization in 2006, the African Court has contributed in advancing the African human rights jurisprudence and the protection of human and peoples' rights on the continent through a wide range of issues from socio-economic to civil and political rights.

However, two decades after the adoption of the Court Protocol, the Court is still facing several challenges including but not limited to the following;

1. Non-universal ratification of the Protocol by AU Members States;
2. Substantially low number of State parties to the African Court Protocol that allow direct access to the African Court for individuals and NGOs with observer status before the Banjul Commission;
3. Low level of States' compliance with decisions of the Court;
4. Withdrawals of declarations from State Parties that allow direct access to the Court for individuals and NGOs with observer status before the Banjul Commission;
5. Insufficient financing for its operations; and
6. Non-establishment of the Legal Aid Fund for African Union Human Rights Organs by the African Union Commission (AUC); and low visibility and limited understanding of its mandate across Africa.

Finding solutions to the ever-growing challenges of the African Court; as well as reflecting on the progress and sharing ideas on how the Court can improve its effectiveness and efficiency, require collective efforts from different stakeholders. It is for this reason that the African Court Coalition organized the Stakeholders' Platform which will now be an annual event of the Coalition.

Forum Objectives

The main objective of the Forum was to establish a platform where diverse stakeholders with interest in the work of the African Court and the African Human Rights system can have an opportunity to convene and discuss on various matters that are pertinent to the mandate of the African Court in order to enhance its effectiveness, and that of the African Human Rights system, while at the same time have an open space to constructively engage with the Court.

Structure and Format

The Stakeholders' Platform has been established to take place once annually on the margins of the ordinary sessions of the African Court, preferably the first session of the judicial year which normally takes place in the month of February/March each year. The 2025 Platform was conducted in the form of panel discussions for three days where panellists deliberated on specific topics and the audience had an opportunity to contribute to the discussions. The subsequent Platforms may offer more diverse forms of deliberations which may take the form of panel discussions, side events, training sessions, consultative meetings and special interest group discussions.
The 2025 Stakeholders' Platform took place before the opening of the 2025 judicial year of the African Court. After the completion of the Platform, participants had an opportunity to participate in the official opening of the 2025 judicial year of the Court.

Themes and Topics

Thematic areas of discussions included the following:

- challenges faced by stakeholders in accessing the African Court;
- challenges that affect the effectiveness of the Court in discharging its mandate;
- challenges in implementation of decisions of the African Court;
- opportunities to improve access, effectiveness and efficiency of the Court; and
- The AU and the African Court 2025 themes on Reparations; "Justice for Africans and People of African Descent through Reparations"/"Advancing Justice through Reparations"

DAY 1:

OPENING SESSION

Welcome Remarks:

- Sophia Ebby, Coordinator, African Court Coalition
- Frank T. Mmbando, Representative from the Office of the Regional Commissioner of Arusha

Opening Statements:

- *Donald Deya, Representative of the African Court Coalition Executive Committee & CEO of Pan-African Lawyers Union;*
- *Chris Muthuri, Deputy Regional Director - Africa, Raoul Wallenberg Institute;*
- *Brian Kagoro, Managing Director of Programs, Open Society Foundations OSF;*
- *Catherine de Prue, Office of the High Commissioner for Human Rights;*
- *Foluso Adegalu, Programs Officer, Network of African National Human Rights Institutions; and*
- *Ramadhan Abubakar, President, East Africa Law Society.*

Remarks from the African Court:

- *Grace Wakio-Kakai, Deputy Registrar, African Court on Human and Peoples' Rights.*

Speech by the Guest of Honour:

- *Hon. Dr. Damas D. Ndumbaro, Minister of Constitutional and Legal Affairs, The United Republic of Tanzania.*

The Opening Session effectively set the tone of the Platform through delivery of opening remarks by different speakers expressing their appreciation to the ACC for convening the inaugural Platform on the sidelines of the African Court Session. The speakers also thanked partners for supporting this noble initiative. The remarks collectively reaffirmed each stakeholder's commitment to working together for the effectiveness of the African Court's mandate. Several speakers successfully linked the objectives of the event to the AU and African Court's 2025 themes on Reparations.

The remarks befittingly traced the establishment of the ACC several decades and adoption of its objectives; the operationalisation of the African Court assisted by its partners. It also reflected on the future form of the Court now that the African Court of Justice and Human Rights is being operationalised by the AU to be temporarily accommodated by the current African Court.

Speakers also emphasised the need to support the African Court as a true African judicial institution that delivers justice to Africans and develop an African reparations jurisprudence that is alive to the context of realities lived by Africans. More particularly because the rest of systems under which Africans live were developed during colonial periods such as education, conceptions of justice and reparations, thus, there is need to deliberately review these with the view to achieving the prominence of African traditions and practices. These African virtues ought to be reflected in the work of the African Court.

The session also revealed the concerns the stakeholders have concerning limited access to the African Court due to non-universal ratifications of the African Court Protocol and even a smaller number of States that have submitted the declaration in terms of article 34(6) of the Court Protocol allowing access to the Court by individuals and non-governmental organisations. Further compounding the non-universal ratifications and declarations challenges is the withdrawals of declarations by State parties to the African Court Protocol which to date accounts to four States.

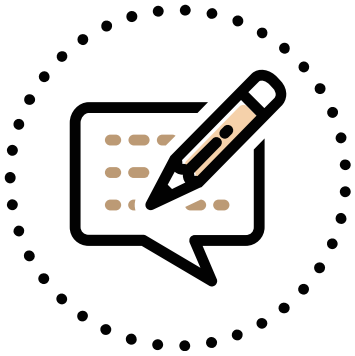
The Guest of Honour, Hon. Dr. Damas D. Ndumbaro (Minister of Constitutional and Legal Affairs of the United Republic of Tanzania) reflected on a contemporary dialogue around Tanzania's withdrawal of Article 34(6) declaration in 2019. He sought out the audience to reflect on the need to harmonise the criminal justice of member states and Court jurisprudence; matching the Court's work and the expectation of Africans on this work;

Further, concerns were raised by speakers in the opening session in relation to low implementation of the African Court decisions and remarked that such a trend undermines the authority of the Court before the eyes of Africans and deprives the Court of its effectiveness, which the Forum seeks to improve. Thus, speakers hoped the meeting will come up with strategies to address this issue.

Finally, the speakers indicated that the inaugural Platform was a platform to learn how the future Platforms would be convened; and wished the participants fruitful deliberations. At this point the Guest of Honour declared the Platform open.

DAY 1:

SESSION 1:



THE ROLE OF CSOS, NHRIS, CHAMPION STATES AND OTHER KEY STAKEHOLDERS IN ENHANCING EFFICIENCY AND ACCESS TO THE AFRICAN COURT

Panellists:

- Dr. Japhet Biegon, Africa Regional Advocacy Coordinator, Amnesty International
- Victor Lowilla, Senior Legal Officer, African Court on Human and Peoples' Rights
- Pedro Rosa Có, Senior Legal Officer & Head of the Protection Team, African Commission on Human and Peoples' Rights
- Vivian Abena Opoku-Agyakwa, Chief State Attorney, Office of the Attorney-General, Republic of Ghana
- Foluso Adegalu, Programs Officer, NANHRI
- Prof. Frans Viljoen, Centre for Human Rights, University of Pretoria

Panel Chair:

- Lloyd Kuveya, Assistant Director, Centre for Human Rights, University of Pretoria

Session 1 reflected on the potential role stakeholders could play in influencing the universal ratification of the African Court Protocol and deposit of Article 34(6) Declaration by States to allow direct access to the Court. It further explored how they can engage at national, regional and continental level to achieve this objective. The panel also reflected on the role of the African Commission and State champions to enhance access to the Court.

Consequently, the session outcomes included key action points that can be implemented by stakeholders to:

- Influence universal ratification and deposit of Article 34(6) Declaration to enhance access to the African Court,
- Enhance the efficiency of the Court, and
- Support initiatives for inclusive and transparent processes in identification of African experts suitable for appointment as Judges/ Commissioners/ Members of African Human Rights organs.

From a CSOs perspective, the speaker shared innovative awareness-raising initiatives they undertook across the continent utilising social media platforms (uploading short video on the relevance of the African Court to Africans) to popularise the African Court and its work. It was satisfying to observe that African citizens participated by downloading the uploaded media and statics showed that much interest have been coming from citizens from Algeria, Cameroun, DRC, Senegal, Guinea, Mali, and Ivory Coast (in no particular order).

It was further shared that key national actors such as NHRIs have a lot of potential based on their status as quasi-state institutions in terms of engaging with governments using evidence-based strategic advocacy despite backlash from States. The Kenya National Human Rights Commission (KNHRC) was singled out as a pace-setter in this regard based on its engagement with the Attorney-General's office.

On their part, the academia was singled out the leaders in research, teaching and training; and they should lead in the review of the jurisprudence of the African Court even before an event such as this Platform and review the Strategic Plan of the African Court and act as a sounding board.

Highlights were shared on the 2024 African Court jurisprudence. Aspects such as jurisdiction and admissibility had some feedback to analyse. The key take home points were that about a quarter of the cases were declared inadmissible and there was observed a very narrow violation rate in cases against countries other than Tanzania.

Six out of 25 cases were adjudged inadmissible. This means that lawyers litigating the cases were not well-prepared or unaware on how to frame issues before the African Court. As for the merits, 14 of the 19 cases were against Tanzania and two cases did not established violations. In respect of the other cases, the violation rate was very narrow (only in a case against Tunisia).

The State representative from Ghana was quite unequivocal about their country's favourable stance on the African Court, namely that they are not afraid of cases being filed against the State. So far, the only case filed against Ghana was declared inadmissible for failing to exhaust local remedies. The representative expressed Ghana has no philosophical quarrel or any other disagreement with the African Court whatsoever and would diplomatically lobby other AU Member States to ratify the Court Protocol and deposit the declaration and afford their citizens the opportunity to assess both national and regional court. However, awareness-raising will be necessary for citizens and national lawyers to better interact with the African Court; while more budgetary allocation could make all judges permanent and make the Court more effective.

Further perspectives were shared on the practical meaning of complementarity between the African Commission and the African Court. Clearly access to the Court is restrictive while accessing the Court through the Commission would be one of the most ingenious ways to overcome challenges posed by article 34(6) declaration. It also appears the Commission and the Court are working on a more robust approach on this issue buoyed by the upcoming implementation hearing on the Ogiek case in which the Commission is the applicant. Participants were apprised about the Complementarity Roadmap between these two bodies to enhance cooperation in various ways especially though referrals between the two bodies.

It was presented that the African Court has Memorandum of Understandings (MOUs) with different stakeholders (bar associations; PALU; NANHRI, CHR and others); holds thematic conferences such as the 2023 Implementation Conference held in Arusha to stimulate debate and crafting of strategies around enhancing implementation of decisions of the African Court. Court also holds public hearings of cases before it as well as conducting "judicial diplomacy" with States over ratifications of the Court Protocol and deposit of article 34(6) to allow direct access to the Court for citizens and NGOs. Further, the Court trains lawyers on its procedures among other initiatives.

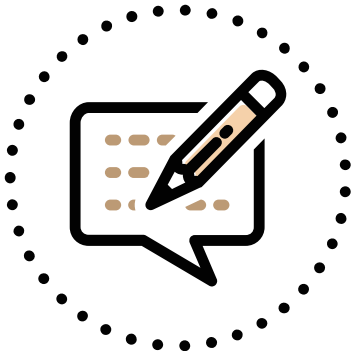
Over the course of the discussion, the panellists put up for discussion a number of proposals on furthering multi-stakeholder engagement with each other for the benefit of the African Court:

- Putting sustained efforts in countries whose citizens have shared interest in the African Court to influence ratification of the Court Protocol and or depositing of article 34(6) declaration.
- NHRIs should engage with the African Court at regional level and governments at national level based on evidence gathered through research to advocacy either advocacy around ratification or influencing implementation of decisions.
- Sub-regional collaboration between like-minded organisations working around these issues, be they NHRIs, CSOS, or bar associations.
- Training lawyers/bar associations on litigating at the regional level.
- Seeking to develop African-specific jurisprudence of the Court taking into account the context.
- Propose timelines in submitting cases to the African Court after exhausting local remedies.

The presentation transitioned into a robust plenary where participants shared both comments and questions pertaining to insights they also had based on their own experiences engaging with the African Court. In final analysis, the major take home point was that stakeholders should continue to devise creative ways to navigate the limitations and restrictions imposed by the legal instruments on access to the African Court.

DAY 1:

SESSION 2:



THE AU REFORMS: A NEED TO AMEND ARTICLE 34(6) & ARTICLE 5(1) OF THE COURT PROTOCOL TO ENHANCE ACCESS FOR AFRICAN CITIZENS AND THE ACERWC

Panellists:

- Victor Lowilla, Senior Legal Officer, African Court on Human and Peoples' Rights
- Opal Masocha Sibanda, Legal Researcher, African Committee of Experts on the Rights and Welfare of the Child – ACERWC
- Dr. Owiso Owiso, International Justice Adviser, Atrocities Watch Africa - AWA
- Brian Kagoro, Managing Director of Programs, Open Society Foundations - OSF

Panel Chair:

Mai Aman, Legal Officer, Initiative for Strategic Litigation in Africa - ISLA

This Session focused on the discussions on the need to amend Article 34(6) & Article 5(1) of the African Court Protocol in line with the on-going AU Reforms to enhance access to the African Court.

The Session outcome was adoption of recommendations on the effective and inclusive amendment process of the Articles under discussion; and identification of modes of engagements and follow up strategies for CSOs to ensure an inclusive process.
The speakers underscored the need for the African Committee of Experts to be allowed to access the Court because the Court was established to complement the African human rights system by rendering binding decisions, thus giving credence to the need to reform article 5(1) of the Court Protocol in so far as it provides for a closed list of persons with standing before the Court.

Regarding article 34(6), the panellists expressed the view that article 34(6) remains the greatest impediment to accessing the Court. Reflecting on the situation, they expressed the view that there could be no new declarations to be expected from States. Rather, more withdrawals could be coming. Nevertheless, the question was how can we still utilise the Court?

The house was advised that the Court once wrote to President William Ruto in his capacity as the Chair of the AU Institutional Reforms highlighting issues of reform and concerns, article 34(6) was one of them. In its response, the AU Institutional Reforms Committee advised the Court to give the alternatives.

The panel suggested the following alternatives;

1. That the ratification of the Protocol should be deemed to include contentious jurisdiction.
2. That there be no need for the respondent State party to have lodged the declaration in cases of massive violations.
3. That there be a stipulated timeline within which a State should deposit a declaration following its ratification of the African Court Protocol; say within two years of ratification.

Several strategies were suggested, namely;

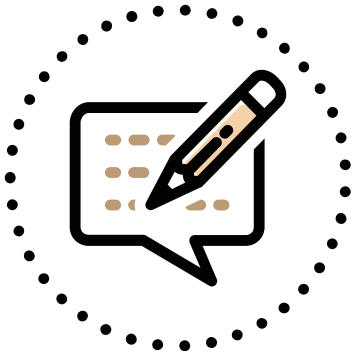
- Stakeholders lobbying their own States to sue one another to protect rights of their citizens. Either way citizens get justice for violation of rights.
- Submitting an advisory opinion to the Court on this issue on the question of whether there is an obligation to submit the article 34(6) declaration as it appears State party discretion only lies in when to lodge it.
- Developing another enforcement mechanism to support the reform of article 34(6) to enhance access.

The session ignited a lively discussion during plenary with some of the following questions put forward;

- What is the future of the African Court?
- Is it convenient to file a request for an advisory opinion to the African Court right now or allow the on-going engagement by the Court with AU policy organs?
- Can we seek interpretation of the Protocol from national courts?

DAY 1:

SESSION 3:



ADVISORY OPINION TO THE AFRICAN COURT: CHALLENGES AND OPPORTUNITIES FOR CSOS, STATES AND OTHER STAKEHOLDERS

Panellists:

- Donald Deya, CEO, Pan-African Lawyers Union - PALU
- William Carew, Head of Secretariat, African Union Economic, Social and Cultural Council -AU-ECOSOCC
- Isabella Mwangi, *African Renaissance*

Panel Chair:

Dismas Nkunda, CEO, Atrocities Watch Africa

Session 3 focused on understanding the eligibility criteria for NGOs to submit requests for advisory opinion from the African Court; the associated challenges and the AU-ECOSOCC proposals on accreditation for AUC observer status for NGOs in Africa in line with the AU Institutional Reform agenda.

Panellists in this session also reflected on the opportunities for States and other stakeholders to submit requests for advisory opinions to the Court by utilising this mandate of the Court and develop its jurisprudence.

The envisaged outcome of the Session were recommendations on how to engage and follow-up with ECOSOCC and relevant AU organs to ensure adoption of a non-restrictive accreditation process for NGOs to be granted the AUC observer status.

As a background, participants were informed that so far 15 requests for advisory opinions have been filed before the African Court. Of these, 11 have been orders to strike out requests e.g. for failing to prosecute the request; one was struck out because the matter was already filed before the African Commission; and 9 also struck off because of the narrow definition of an 'African Organisation recognised by the AU/OAU'.

Challenges inherent in the advisory procedure include the narrow definition of 'African organisation recognised by the AU/OAU'. The Court only recognises proof of such recognition either in the form of observer status or having an MoU with the AUC. The house was advised that this is a very narrow interpretation. Ideally, **ANY ORGANISATION** recognised by **ANY AU ORGAN** should suffice.

The panellists endeared the house to consider ECOSOCC role and use it to access the African Court. The ECOSOCC is in the process of promoting the adoption of its Harmonised Accreditation Framework, which has its own requirements mainly the need to submit financial statements annually. Currently the Framework is being pushed back by States since 2022. If adopted, it will be ECOSOCC that will deal with accreditation. It is the right organ to deal with CSOs. Accreditation has nothing to do with membership to the ECOSSOC. Organisations should meet accreditation criteria on their own.

However, as a short-term measure and pending the adoption of the Framework, participants were again endeared to partner with those organisations that have recognition such as PALU and file requests for advisory opinions as coalitions. For those seeking their own recognition, it was recommended that it is better to seek MoU with the AU Commission than observer status, which was last granted over 20 years ago.

On the aspect of gender and Advisory Opinion, both successes and ongoing challenges in integrating gender perspectives were highlighted. The speaker acknowledged the African Court's progress in recognizing how laws disproportionately affect women, such as vagrancy laws, where women are more vulnerable to criminalization due to poverty and gender-based violence. However, she pointed out that there are still significant challenges in ensuring that gender-sensitive jurisprudence is fully embraced across Africa. One key issue that the speaker raised is that many States are reluctant to engage deeply with gender dynamics, often due to entrenched patriarchal norms.

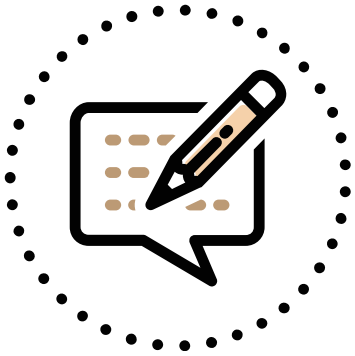
While the Court's advisories are a positive step, there is a need for States to move beyond basic compliance and adopt a gender-inclusive approach to legal reforms. The emphasis was also put on the importance of addressing intersectionality, acknowledging how factors like class, race, and geography affect women's experiences. She concluded by stressing the need for continued advocacy, training for judicial officers, and cross-sector collaboration to ensure that gender equality becomes an integral part of legal systems across Africa. While the challenges are real, there are opportunities to drive meaningful reforms for women's rights.

Some questions that were put before the panellists demonstrated that the house was engaged with the speakers and sought a deeper understanding of some issues. Some of the questions asked and answered were as follows:

- What challenges have you met dealing with advisory opinions and whats their impact in and out of Africa?
- If an opinion has been sought and the requester is not happy with the opinion, do they have a remedy?
- Am I correct that there was a point where there was a need to produce financials back-dated to 3 years, and for entities less than 3 years how do they get accredited?
- What are the chances that the African Court will double-down on its interpretation of "African Organisation recognised by the AU/OAU"?
- Those organisations that need to sign MoU with AU Commission, how do they go about it as we have tried but with no end in sight?

DAY 2:

SESSION 4:



CSOS LITIGATION INITIATIVES: LEVERAGING SYNERGIES TO STRENGTHEN STRATEGIC LITIGATION AND ENHANCE ENGAGEMENT WITH THE AFRICAN COURT INCLUDING MORE ENGAGEMENTS TO ADDRESS VIOLATIONS ON THE RIGHTS OF WOMEN

Panellists:

- Michael Gyan Nyarko, Deputy Executive Director, Institute for Human Rights and Development in Africa - IHRDA
- Maxwell Kadiri, Senior Legal Counsel, Open Society Justice Initiative - OSJI
- Deborah Nyokabi, Program Officer, Legal Equality Program - Equality Now
- David Sigano, CEO, East Africa Law Society - EALS

Panel Chair:

Esther Muigai -Mnaro, Programme Manager, Pan-African Lawyers Union - PALU

For this session, focus was placed on the discussions on how CSOs that have direct access to the African Court can effectively coordinate strategic litigation initiatives with other CSOs/individuals that do not have direct access through collective efforts by taking advantage of amicus curiae procedures and other strategies.

The house was advised that there is not a lot of litigation especially on women's rights in Africa though challenges remain in terms of access to the African Court as discussed by earlier panels. Five cases over 20 years which were filed by the IHRDA is not a good rating. Yet, patriarchy and discrimination of women was observed to be still rife across the continent.

Women's rights were correctly interpreted as naturally justiciable but obstacles such as the exhaustion of local remedies rule and locus standi remain a hindrance to the utilisation of the contentious and advisory jurisdiction of human rights organs.

As for opportunities, they include positive jurisprudence enforcing the rights of women and girls in Africa being developed. Although the case against Tanzania was dismissed (Application 042/2020 - Tike Mwambipile & Equality Now Vs Tanzania) due to the same case pending before the African Committee of Experts, the African Court lost a chance to pronounce itself on this case despite receiving a lot of amicus briefs including from the NHRI of Tanzania.

Like in other sessions, the panellists again endeared the African Court to adopt a purposive approach to eliminate the narrow approach of the definition of 'African organisation recognised by the AU' where there are cases of systematic marginalisation of people especially women. The narrow approach has restricted the space especially where advisory opinions take the place of contentious proceedings.

Another challenge observed was that generally organisations across the continent do not have the capacity to litigate at regional level other than specialised ones such as IHRDA; CHR; PALU and a few others. There is need to build that synergy with such organisations and build enduring collaborations. Such collaborations would ensure access to victims and contacts on the ground, which is difficult without cooperation of organisations working with grass root organisations. There is a need to capacitate a lot of institutions to be able to litigate. For instance, most IHRDA cases begin at Case Identification Workshops and developed into full blown litigation cases. These platforms should be utilised.

The challenge relative to the specific question of implementation of decisions regarding women's rights was noted. Though monetary decisions against EA States were honoured, but very few cases were complied with especially those that required changes such as reform of national law. As a follow-up strategy, the EALS has written letters to these States and conducted missions but not much have changed. This has left litigants to self-help including filing cases at the EAC states for non-compliance.

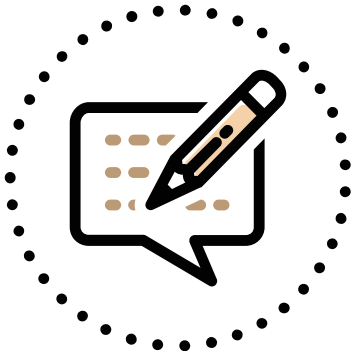
Speakers also alluded to the question of the shrinking donor basket to fund strategic litigation because its impact take long to be realised, it was recommended that there is need for OSJI to partner with other donors and support this. A few other suggestions from the panellists were as follows;

- Explore building a global strategic litigation fund to achieve a balance between the global north and south, where all organisations have access to the fund on the basis of an objective criterion.
- We should consider local or continental (domestic) funding of CSO work, but the question that remained was how to go about it.
- Participants were urged to consider the role of bar associations in providing expertise and funding (human capacity); pro bono; private legal aid etc. In fact, the EALS has filed several cases in which it funded its own expenses. Only in a few cases where the matter is complex and requires synergies with experts in the area and collaborations, and that's when we look for resources.
- There is need to interpret impact in a broad way such as developing the case itself; point of filing the case; and obtaining a positive remedy, should all be understood as impact, not merely the changes the decision could cause on the ground.
- The amicus curiae is an important procedure to join on-going proceedings as alternative where direct access to the African Court is impeded by restrictive locus standi requirements.
- Raising awareness of the Court's work and its existence is a reality even in top government offices.

In the final analysis, the house was advised that there are several guidelines in existence guiding the implementation of decisions or monitoring the same, yet State parties remain difficult nuts to crack. The discussions of the Opening Session were again put in perspective as an example of State parties' attitude and thought process when faced with the obligation to implement decisions. The question of the role played by the Court's decisions in the implementation process was explored in the following session.

DAY 2:

SESSION 5:



THE REPARATIONS APPROACH OF THE AFRICAN COURT AND ITS IMPACT ON STATES' COMPLIANCE

Panellists:

- Dr. Sègnonna Horace Adjolohoun, Head of Legal Division, African Court on Human and Peoples' Rights
- Dr. Mwiza Joy Nkhata, Principal Legal Officer, African Court on Human and Peoples' Rights
- Prof. Frans Viljoen, Centre for Human Rights, University of Pretoria
- Dr. Tarisai Mutangi, Head of Legal Postgraduate Programmes, University of Zimbabwe

Panel Chair:

Dr. Chipo Irene Rushwaya, Legal Officer, Institute of Human Rights & Development in Africa - IHRDA

This session reflected on the African Courts' reparations approach and its impact on implementation of its decisions by State parties. The session also explored strategic ways that can be adopted by litigants in requesting reparations that can bring positive reforms and enrich the African human rights jurisprudence.

The expected outcome of the Session included recommendations on enhancing implementation of the African Court decisions through creatively utilising the reparations philosophy of the Court.

The representatives of the Court on the panel took the participants on a path to explain the reparations approach taken by the African Court. The Court has established its reparations regime within the framework of leading international jurisprudence such as the Chorzow Factory Case that enunciated the principle of "repair following an international law" – a norm of customary international law.

The house further heard that the Court appears to have established its reparations approach in three of its early cases, namely; *Mtikila, Konate* and *Zongo*. In those cases, the Court referred with approval to international jurisprudence on the five tentacles of reparations. These are compensation, restitution, satisfaction, rehabilitation and guarantees of non-recurrence. The outstanding aspect of this philosophy is the wide definition of the term "victims" as developed in the *Zongo case*.

In all this, article 27 of the Court Protocol is the lynchpin provision regarding the Court's remedial competence, and the Court seems to have properly interpreted this provision as conferring unlimited competence to the extent that the Court in some instances awarded reparations the applicant did not request in their papers. For instance, publication of judgment seems now to be a standard reparation whether or not the applicant requested for it.

In this vein the Court is striving to deliver clear orders that include the timeframe within which to pay compensation, including strategies such as hedging compensation by charging interest for as long as awards remain unpaid.

It would appear "controversial" in decisions include those implicating mandatory death penalty; systemic issues (right to fair trial); socio-economic rights; elections; independence of the judiciary; legal aid for persons accused with rape. One key quarrel is that convicts of rape at national level should not have access to reparations at regional level when the African Court has established that they deserved legal aid but were not afforded one. The Court seems to be adjusting on this issue by introducing the concept of reparations by judgment and awarding no further reparations.

Whether or not reparations should be linked to prospects of implementation should ordinarily not arise where national or international rule of law is at play. However, it has been observed that decisions sounding in money have high chances of implementation as opposed to those demanding structural changes of national systems such as law reform.

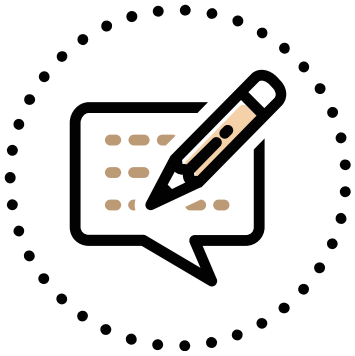
The panellists shared further that it may be necessary to consider that there are contextual and case-specific factors that determine whether or not reparations will be implemented. But what also lacks are instruments and tools to guide States with the implementation process. For this reason, the PAP has since adopted a Model Law on Implementation of Decisions and will soon be available to the public.

The panellists came up with several strategies that stakeholders could adopt to enhance the reparations approach of the Court and facilitate implementation:

- Adopt the UN Mechanism for Implementation and Follow-up process used to follow-up on implementation of decisions under the UN human rights treaty system.
- Form or establish national compliance constituencies in each country or region (all national stakeholders) to exert energy on the State and influence compliance.
- Clearly link choice of rights violated to implementation strategy. Conceive these from the outset.
- Victim-centred process in the crafting of remedies during the conception of the case.
- Clarity of measures enhance compliance – craft clear remedy and why asked for, as well as explain how the measure should look like including the timeframe.
- Attempt to identify the national actor responsible for taking measures to implement the decision although this may ruffle the prerogative of the State concerned to choose the means to comply.
- Consider the amount of compensation – the bigger the amount the less likelihood to be paid. Consider the Benin decision.
- Explore amicable settlements as these appear to be more likely to be implemented.

DAY 2:

SESSION 6:



ENHANCING IMPLEMENTATION OF DECISIONS THROUGH THE AFRICAN COURT IMPLEMENTATION FRAMEWORK: OPPORTUNITIES, CHALLENGES AND POSSIBLE INTERVENTIONS

Panellists:

- Dr. Micha Wiebusch, Senior Legal Officer, African Court on Human and Peoples' Rights
- Pedro Rosa Có, Senior Legal Officer, African Commission on Human and Peoples' Rights
- Foluso Adegalu, Programs Officer, Network of African National Human Rights Institutions - NANHRI
- Alice Banens, Legal Advisor-Africa, Amnesty International

Panel Chair:

Chris Muthuri, Deputy Regional Director – Africa, Raoul Wallenberg Institute - RWI

Session 6 focused on understanding the status of the African Court Implementation Monitoring Framework; its potential in enhancing implementation of its decisions; and exploring possible interventions by other stakeholders to influence its adoption by the AU Executive Council.

Participants were informed that sometime in 2020, and at the request of the AU Executive Council, the African Court carried out comparative research and adopted the Framework to guide implementation of its decisions by the AU member states. It will have to be adopted by the AU policy organs for it to take legal effect. It has been outstanding since.

The speakers apprised the house that the Framework (IF) is not yet an official document as it is pending adoption by the AU Policy Organs. However, participants were further informed that some of its aspects especially those in purview of the African Court are being implemented. These included the establishment of the compliance unit within the African Court; convening of implementation hearings; and implementation plans/reports, and so on. States have been pushing back on some of these initiatives challenging the Court's competence to carry them out or require action of States.

The house further heard that other aspects are still pending with the document as they pertain to other actors especially AU policy organs. On their part, States are not submitting implementation reports. This development implies that there is need for in-depth to gauge the accurate implementation status of reparations pending before all the nine States.

The AUC are the Secretariat of the AU Policy Organs hence they can also play a part in the implementation process e.g. those cases dealing with election matters. The AUC needs to set aside time to deliberately deal with implementation issues. Although Art.29(2) imposes on the AU Executive Council the role to monitor implementation, there is no department within the AUC responsible for monitoring implementation of decisions. This means implementation is not an issue on the regular functions of the AUC. There is need for the AUC to structure and analyse Human Rights organs reports and pursue recommendations they make upstream to facilitate the required changes.

The panellists further shared that complementarity is critical as was the case with the *Konate case* (Application 004/2013 – Lohé Issa Konaté vs Republic of Burkina Faso) which Special Rapporteur form the African Commission took around every country she visited, and the case was ultimately cited by a superior court marking its acceptance and awareness by national authorities.

The house was also informed that NHRIs have access to national courts and parliaments and can also have MPs bring updates from national courts when they convene for their business. Generally, it is necessary that they provide information on the status of implementation by their respective governments.

In the context of the reporting obligation that the African Court has under article 31 of the Protocol, participants were informed that the African Court has established a dedicated unit to oversee the implementation of its decisions. This unit plays a crucial role in following up on the implementation status of the Court's decisions by contacting States and other relevant sources. However, among other things, its effectiveness depends on receiving accurate and timely information from various actors including AU organs like the Executive Council, the Banjul Commission, the Pan-African Parliament, the AU Office of the Legal Counsel, as well as NHRIs and CSOs. The speaker stressed on the need for a centralized database to systematically collect, verify, and disseminate information on the status of implementation, making it easier to track compliance.

Additionally, the importance of further discussions and considerations was emphasized on the merged implementation framework initiated by the three human rights organs (the African Court, the Banjul Commission, and the ACERWC). A unified framework would strengthen their complementarity, enhance coordination, and create a more effective system for monitoring and enforcing human rights decisions in Africa.

As to how the African Commission can assist in the implementation of Court decisions:

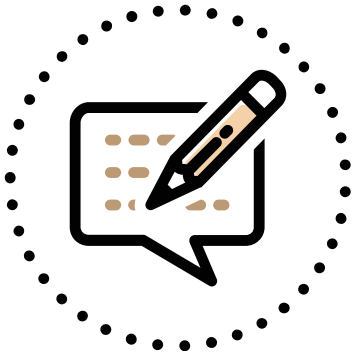
- It was created by the African Charter and first to be established.
- It has produced jurisprudence in the African system up to this stage.
- It interacts regularly with stakeholders in its promotional role as well as interpretation.
- It can issue directives and soft laws and interact with CSOs and partners who find these studies and drafting of soft laws.
- It is responsible for popularising the African Court as the latter is a passive actor which cannot promote itself.
- The Commission can be useful in the implementation process – complementarity need to expand to other roles the Commission plays in promoting the Court and raising awareness of decisions of the Court.
- The Commission has many mechanisms including state party reporting; and fact-finding missions; country reports - the Commissioner responsible should gather information on the status of implementation in the countries assigned to them.

The speakers briefly delved into the role of the Court in enhancing the implementation process. For instance, it was suggested that the Court has to render decisions that are clear specifying the action/measures required to be implemented. Stakeholders were invited to ask the question: Is non-compliance due to the decision or State? It should never be due to the nature of the decision that falls to implementation.

As for other players such as CSOs, their role includes requesting for reparations that are implementable at the national level, not just a wish-list, especially now that stakeholders appreciate the connection between reparations and implementation.

DAY 3:

SESSION 7:



DISCUSSIONS ON THE AU 2025 THEME ON REPARATIVE JUSTICE; "JUSTICE FOR AFRICANS AND PEOPLE OF AFRICAN DESCENT THROUGH REPARATIONS" AND THE 2025 AFRICAN COURT THEME "ADVANCING JUSTICE THROUGH REPARATIONS"

Keynote Address:

Brian Kagoro, Managing Director of Programs, Open Society Foundations - OSF

Panellists:

- Waikwa Wanyoike, Director, Strategic Litigation and Learning, Open Society Justice Initiative - OSJI
- Dr. Rudo Sithole, Founding/Executive Director, African Museums and Heritage Restitutions-AFRIMUHERE
- Gretchen Rohr, Legal Counsel, Open Society Justice Initiative - OSJI
- William Carew, Head of Secretariat, African Union Economic, Social and Cultural Council -AU-ECOSOCC
- Henrietta M. Ekefre, Legal Advisor -Africa Reparations Program, Africa Judges and Jurists Forum - AJJF

Panel Chair:

Don Deya, Pan-African Lawyers Union - PALU

This session fully explored ideas on how to advance and shape the conversation on reparative justice in conformity with the AU 2025 theme of the year; "Justice for Africans and People of African Descent through Reparations". Consequently, the Session outcome included creative ideas and recommendations on stakeholders' engagements from the legal and jurisprudential perspective for a broader reparations discourse.

The panel introduced the session by providing a critical timeline tracing international discussions and meetings around the question of reparations:

- December 1990 - First World Conference on Reparations was held at the Nigerian Institute of International Affairs;
- June 1991 at the 27th AU Assembly of Heads of State and Government and the 55th Council of Ministers – Reparations Resolution was adopted;
- June 1992 at the 28th Summit of Heads of States and Governments – appointed Group of Eminent Persons in Reparations;
- 1993 – First Pan-African Conference on Reparations – Abuja, Nigeria;
- 1993 - there was an attempt to come up with an Africa Reparations Act;
- 1994 – Pan-African Congress in Kampala Uganda the seventh African Congress – there are resolutions on reparations;
- 1999 in Accra a Declaration on Reparations was adopted;
- 2001 – Durban Racism Conference where there was a resolution and attempt reparations;
- 2008 - Civil Society gathered in Accra and adopted a Declaration;
- In 2013 at the AU 50th Anniversary a communique was issued which included the question of Repair;
- In 2022 there was another Accra Declaration on Reparations and Healing;
- In 2023, the Ghanaian Government hosted on behalf of the African Union, the Global Conference on Reparations at which a Declaration was adopted.

Though it appears there are many declarations, there has been little progress, and the problem has in part been, lawyers and Africans appearing to understand "reparations" as a concept of international practice that is confined within a western construct of what is possible at law.

There was a historical understanding that black people were not "actual humans" and thus could not own property but could themselves be bought, sold or owned just like property. The natives were regarded as having no sense of ownership; hence the blacks' land was labelled terra nulius (no man's land). For this reason, there were resolutions to evict blacks as they owned no land, could be raped, arrested and jailed for daring to demand their freedom.

Africans are being repaired for the atrocity of dehumanisation that came up with slave trade; colonisation and apartheid, where blacks were not regarded as people but property.

The legal precedent for reparations is there e.g. in the US. So far it has focused more in monetary compensation as opposed to the full scope of reparations for colonisation, slave trade, apartheid etc.

Compensation is not only about payments but re-establishment of equal humanity for instance in pandemics our people are still being used for experimentation for new medicine.

Also shared in the panel discussions is the issue of looting of cultural artefacts and even human remains of African ancestry taken to the western world. The power imbalance between locals and settlers is a testimony that ancestors fought back against settlers. That intrigue could have caused the settlers to expatriate their remains perhaps as show of victory.

The Kumasi expedition when gold was looted; Madala expedition of 1868; and Benin expedition of 1889 – looted objects about the life of Benin people and the whole city was burnt in the process. There are estimated 200 000 in Germany; 180 000 in Belgium; 70 000 in Paris; and 66 000 in the Netherlands; etc.

Africans have been pursuing reparations of these artefacts. There have been two movements one chasing after reparations and another restitution, but these two have since converged into a singular movement. Its important to interview people and hear their stories of torture; humiliation; expropriation; and non-burial of murdered ancestors.

Prominent African leaders have been vocal about this. In 1973, Mobutu spoke about colonial pillage and advocated for the return of cultural heritage as he addressed the UN General Assembly. In 1999 Nelson Mandela called for the remains of Sarah Baartman, a South African woman whose remains were exported to the west, finally in 2002, her remains were returned to South Africa. In 1982 Robert Mugabe spoke on the return of the soap stones and remains of ancestral leaders whom they continue to deny that they are there, and his successor Emmerson Mnangagwa continues on the call.

Speakers also informed the house that lawyers have a role to play in the reparations discourse. There is no international framework covering reparations as a human rights violation. No framework adjudges colonisation and apartheid as crimes against humanity.

The Herero and Nama case in Namibia is a good example where Germany has proposed payment of USD 1 Billion over time, against government of Namibia's valuation of EUR35 Billion over a shorter time, though victim communities have a grievance that they have not been consulted. The Mau Mau case in Kenya was adjudicated in the UK to the tune of EUR19 Billion. Backlashes by countries with the duty to repair include independence and continuing obligations of new governments. It must be understood that violations took place back then and not under current governments.

More precedents on reparations include;

- Jewish Holocaust Reparations;
- Indigenous Land Restitutions in Canada and Australia;
- US-Japanese to American Internment Reparations;
- Herero/Nama in the US – failed;

As on legal framework, participants were further informed that Article 14 of the UN Principles on the Right to Remedies adopted in 2005 remains one of the most advanced legal frameworks when dealing with such issues, as other frameworks are inherently restrictive. By and large the legal framework is so inadequate to hold foreign government accountable. At the end of the day, African governments need to be at the forefront of this agenda due to the inherent limitations of the law.

The legal framework should answer questions such as the following:

- Who is the violator? Or were these violations succeeded by the independence governments?
- Who is the victim?
- What is the nature of the harm? Is it backward or forward looking?
- Which law is applicable? Tort law or similar?
- How do we deal with statutes of limitations?
- What is the jurisdiction of the chosen forum?

The Barbados Ten Point Agenda Plan on Reparations Plan could be a starting point and summarised as follows:

- Seeking a formal apology;
- Development Programmes;
- Funding for reparations to Africa;
- Establishment of cultural institutions;
- Return of cultural heritage;
- Assisting in remedying public health crisis;
- Enhancement and development of cultural knowledge and exchanges;
- Psychological rehabilitation as a result of transmission of trauma;
- Right to development through the use of technology;
- Debt cancellation

The house was further apprised that in the aftermath of the Accra Global Conference in 2023, the AU has indicated its intentions to draw a common position on reparations and a raft of institutions such as the African Committee of Experts on Reparations, which body shall define "reparations" from an African perspective. However, the movement cannot wait for this as this may take a while.

Speakers stressed on the need to decolonise the mind; educational systems; the legal frameworks; curriculum etc. Decolonisation is a condition precedent to the reparations agenda. This should be done in schools and more so in legal education across the African continent. There is need for a hard law on this subject to support this agenda.

Participants were also informed that any reparations regime or movement should be victim-centred and tangible. It should be about the victim and nothing else. The reparations ought to suit the circumstances of victims, thus forms of reparations such as apology and acknowledgment should be part of this. This is key as it is part of the right to be heard.

Proposals:

- Focus on return of cultural artefacts;
- Study compensation for various injustices to make solid cases;
- Consider climate change effects in Africa and include it in the reparations discourse because of environmental damage by the global north countries;
- Develop a policy framework outlining reparations scope, eligibility criteria and funding mechanisms where relevant.
- Institution-building – establish an institute to oversee reparations implementation including managing claims and distributing any compensation;
- Community engagement – no compensation but debt cancellation; educational programmes; economic development; infrastructure; cultural restitution etc.
- Reparation regime with all tentacles of reparations.
- Adopt a reparations strategy that is victim-centred and tangible.
- Adopt a strategy that is both back and forward looking in terms of reparations.

Closing Remarks:

***Hon. Lady Justice Imani Daud Aboud,* President of the African Court on Human and Peoples' Rights**

The Honourable President of the African Court appreciated the invite and the convening of the event which is geared towards making the work of the African Court and the African human rights system stronger and more efficient. She recalled that the house discussed the critical matters such as access to the Court for CSOs and individuals. She informed the house on the statics around ratification of the African Court Protocol. She indicated that only 34 of the 55 States are parties; and only 12 out of those deposited the declaration but 4 have since withdrawn leaving only 8 States that allow direct access to the Court for African citizens, this have retarded access by individuals to the Court.

Participants were further apprised about the alarming low compliance rate of the Court decisions, which stands at under 10%. The Honourable President noted this as an issue of concern. She emphasised that it undermines the authority of the Court and deprives victims of the redress they deserve.

The Honourable President of the Court identified participants as strategic partners in the implementation of Court decisions and underscored the fact that the Platform theme on reparations aligned well with the AU 2025 theme of the year, which is also the 2025 theme of the African Court. She stressed that reparations go beyond compensation to cover other practical aspects such as restitution, satisfaction, rehabilitation, and guarantees for non-recurrence.

The Honourable Lady Justice pointed out that no single actor can address these challenges alone. All stakeholders have a key role to play. On their part, States should take immediate concrete measures to fulfil their obligations.

On a final note, the Honourable President of the African Court endeared non-State actors such as CSOs to sustain advocacy efforts around ratification of the African Court Protocol; deposit of article 34(6) declaration and monitoring/reporting on implementation of the Court's decisions; while the academia should continue to deepen stakeholders' understanding of the jurisprudence of the African Court and integrate it into national discourses.

CONSULTATIVE SESSION TO EXCHANGE IDEAS & RECOMMENDATIONS FOR SUBSEQUENT STAKEHOLDERS' PLATFORMS

Objective:

Exploring ideas, lessons and best practices to be considered in shaping the Stakeholders Platform that adds value, and which is responsive to the issues relevant to the mandate of the African Court.

Outcome:

Recommendations on key aspects to consider when convening future Platforms.

Once formal proceedings came to end at the Closing Ceremony, participants convened a Consultative Session to achieve the objective and outcome as stated above. This Session was necessary as it was predicated on the fact that this was an inaugural convening, and more similar gatherings will be held in future hence the need to brainstorm around their future form and content.

The Box below contains a full list of recommendations made during the session

Box 1: Ideas and recommendations for subsequent Stakeholders' Platforms

- The need to get more lawyers in Africa to participate in the Platform.
- Promote the participation of more State lawyers/attorneys in the future.
- The need for participation of more bar associations;
- Promote representation of more AU organs;
- The need to promote participation of journalists and media houses to the Platform;
- Consider/review costs (fees) for participation.
- There is need for more development partners to participate in the Platform.
- Consider how to properly infuse the AU Theme of the Year but not allow it to overshadow the event so as to not lose focus on the objective of the Platform which is established to focus on discussions around the effectiveness of the African Court.
- The need for more preparations before the Platform e.g., research into new judgments; status of implementation; number of ratifications and driving factors behind these.
- The need to establish a permanent panel discussion in each Platform to review and discuss the Court's case laws of the previous year.
- The need to see more representation of stakeholders from countries that have ratified the African Court Protocol;
- The Platform should be more inclusive with regional representation from across the continent;
- How are we engaging during the inter-session period;
- Continue allocating enough time for plenary;
- Inclusion of local young lawyers/universities in future Platforms.
- Have a think-tank group to work on the substantive agenda/organising committee working on the upcoming Platform;
- Training of trainers so they can train grassroots;
- Consider break out sessions in the forthcoming Platforms;
- Be more intentional in infusing gender in terms of programme design; selection of experts and themes for discussions;
- Leverage the Arusha Initiative during the Platform to see what's coming up for elections at the AU Summit;
- Ensure Swahili is one of the workshop languages;
- Deliberate support to ACC in all its efforts to ensure responsibilities of the general membership are not attributed to the ACC secretariat.

The African Court Coalition is grateful to the Partners below whose support contributed to the successful organization of the 2025 Stakeholders' Platform on the Margins of the 76th Ordinary Session of the African Court on Human and Peoples' Rights

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