OPEN SOCIETY JUSTICE INITIATIVE

From Rights to Remedies

Structures and Strategies for Implementing International Human Rights Decisions

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The status of cases and legislation discussed in this report is current as of February 2013. The Open Society Justice Initiative bears sole responsibility for any errors or misrepresentations.

Abbreviations

CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESAPI	Special Commission to Follow-Up on International Procedures (Peru)
CNDH	National Council for Human Rights (Peru)
COE	Council of Europe
COM	Committee of Ministers
COPREDEH	Comision Presidencial Coordinadora de la Politica del Ejecutivo en Materia de Derechos Humanos, (Guatemala)
CSDH	Comité Senegalais des Droits de l'Homme (Senegal)
EAC	East African Community
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
FCO	Foreign and Commonwealth Office (United Kingdom)
HRC	Human Rights Committee
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
JCHR	Joint Committee on Human Rights (United Kingdom)
JLOS	Justice, Law and Order Sector (Uganda)

MDAC	Mental Disability Advocacy Center
MFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
NHRI	National Human Rights Institution
OAS	Organization of American States
OGA	Office of the Government Agent
PACE	Parliamentary Assembly of the Council of Europe
PDO	Public Defender's Office
SADC	South African Community Development Tribunal
UPR	Universal Periodic Review

Executive Summary

The Open Society Justice Initiative's 2010 report, *From Judgment to Justice: Implementing International and Regional Human Rights Decisions*, concluded that an "implementation crisis" afflicts the regional and international legal bodies charged with protecting human rights. While the hope that individuals might obtain redress at the international level when their national systems fail them fuels these procedures, they are imperiled by the risk that their decisions will be ignored by states unwilling (or unable) to implement them. The report also revealed that few states have effective structures to ensure the swift execution of judgments—or to prevent the recurrence of human rights violations. *From Rights to Remedies* advances these findings to address a crucial issue: the structures and processes by which states execute international decisions, and strategies advocates can harness to that end.

Domestic structures play a vital role in implementation: they can penetrate the internal workings of administrative institutions and serve as functioning channels for compliance. As implementation processes become more institutionalized, pathways begin to develop and the prospect for compliance with decisions—and human rights norms more generally—improves. This approach is consistent with scholarship that emphasizes a managerial theory of compliance, focusing not only on the will of state actors to implement international rules and decisions (which remains crucial), but also on the ability and capacity of states to effectively manage that process. These systems play an important normative role as well: they can help build a political culture more receptive to international human rights and supranational authority.

Three overarching conclusions inform this report's findings. First, many states that have accepted the jurisdiction of international human rights courts and treaty bodies have not sufficiently developed the domestic infrastructure needed to ensure the implementation of judicial recommendations and decisions. As this report details, some states have sought to develop novel approaches to the execution of judgments, including high level inter-ministerial committees and working groups, standing parliamentary committees, enabling legislation, and direct enforcement through national court systems. Such approaches, however, remain the exception. Instead, implementation is largely an *ad hoc* process driven by mid-level bureaucrats who lack the political standing to make implementation a priority. Moreover, disorganization, duplicated efforts, and delay too often characterize decisions implicating multiple agencies because executive ministries frequently lack established frameworks for communication and cooperation.

Second, political will remains the most important factor for the successful implementation of human rights judgments. A state can have sophisticated domestic enforcement structures at its disposal but, without a genuine commitment by key political actors to reform, their promise will remain illusory. Nor does the mere existence of implementation structures imply that a state's commitment to implementation is genuine. While some of the practices and processes detailed in this report represent good faith efforts by states to take their human rights commitments seriously, other structures remain—by design or neglect—poorly resourced, badly staffed, and politically feeble. As a result, mechanisms can risk creating the illusion of compliance.

Third, implementation involves disparate state actors who operate in different institutional settings and often have different or competing political interests. At the same time, domestic political arrangements or disagreements cannot be used as an excuse for non-compliance. A crucial recommendation of this report is thus to better structure the multiple points at which implementation occurs and to build stronger synergy amongst national authorities engaged in the execution of judgments. This report therefore looks at implementation as a process that implicates multiple political institutions—courts, legislatures, executives and, here, national human rights institutions (NHRIs). The report examines these four institutions in turn.

Executive Branch

The executive branch typically manages the implementation of international decisions; however, a wide range of government sectors often shares responsibility, posing significant coordination and coherency challenges. The state's formal interlocutor before international courts and treaty bodies (often referred to as the office of the government

agent, or OGA) plays a critical role in this regard. In many cases, government agents play a dual role as advocates for the state in judicial proceedings and, later, as focal points and/or coordinators of implementation when an adverse judgment is issued. Agents must possess the appropriate level of political standing and clout if they are to carry out this function. The agent and the policy/lead team responsible for implementation must communicate effectively as well.

Beyond the individual role of the agent, executive ministries—particularly those of justice and foreign affairs (also referred to as the ministry of the exterior)—must coordinate. States need to consider the sorts of ministerial arrangements that best facilitate implementation. In many cases, the government agent has an office located in foreign affairs ministries, which can be poorly suited to the task of coordinating the implementation process, particularly when international decisions substantively engage the jurisdiction and competencies of other ministries, e.g., justice, finance, or the interior.

Effective ministerial arrangements also depend on leadership and coordination. To that end, some states have issued executive decrees establishing frameworks for implementation, which can assist in clarifying the roles and duties of different state actors. The growing practice of convening inter-ministerial committees and working groups to ensure better coordination amongst ministries is an important development in this regard. A standing inter-ministerial committee can strengthen coordination and minimize the risk of miscommunication and duplicated efforts; it could likewise serve as the natural interlocutor with other political branches, including legislative actors, national courts, and national human rights institutions.

Key recommendations:

- ***Coordination.*** Create a coordinated procedure at the executive level to facilitate the implementation of judgments. In particular, a coordinating body—either located within a particularly ministry or as a standing, inter-ministerial committee—should serve as a standing forum for coordinating implementation. This body should have a high position within the government, with clear communication channels to the policy team(s) responsible for implementation.
- ***Liaison officers.*** Liaison officers should operate within every executive ministry that contributes to the implementation of judgments. Ministries should ensure that these liaison officers hold a high rank and can ensure coordination for implementation across all areas of the agency's responsibilities.
- ***Effective communication.*** Tools to facilitate communication—implementation forms, action plans, and circular letters—can better ensure that judgments receive the proper level of attention. Regular translation of judgments (or summaries of judgments) into the national language of states is also crucial.

- ***Budget measures.*** Ministries should incorporate a line item in their annual budgets for the payment of international human rights judgments as well as friendly settlements; alternately, states should adopt (through legislation) a standing fund for the payment of reparations.
- ***Court oversight.*** Where member states have substantially failed to implement judgments, international courts and treaty bodies should continue to use their authority to encourage the development of domestic implementation mechanisms.

Legislatures/Parliaments

While advocates have historically overlooked legislators and parliamentarians as implementers, data suggests active parliamentary involvement correlates with greater compliance with human rights obligations and decisions. In particular, parliamentary involvement can play a preventive role by creating domestic legislation compatible with a state's treaty obligations. Parliamentary involvement can also add political weight and bring greater accountability to the implementation process.

Parliamentary actors can contribute to implementation by enacting legislation that establishes a national framework and procedure to execute human rights judgments. Domestic legislation can enumerate the authority and duties of respective state actors, as well as establish deadlines to help ensure that implementation proceeds in a timely manner. Parliamentary human rights committees can also hold executive actors and agencies to account in the implementation process, monitor a state's overall compliance record, and facilitate legislative amendments to ensure that state practice conforms to international human rights standards. Such committees can also serve as natural forums for advocates to raise concerns about implementation.

Systematized dialogue between parliamentary actors and executive agents responsible for implementation (either at a policy or coordinating level) will enhance parliamentary engagement. Where reporting mechanisms are absent, parliamentarians should avail themselves of other domestic procedures, including posing questions to relevant executive level actors.

Key recommendations:

- ***A clarified role.*** Pass national legislation that establishes the role, responsibilities, and procedures of government actors throughout the implementation process.
- ***Designated responsibility.*** Establish a standing human rights committee or similar legislative body whose mandate includes the implementation and regular

monitoring of international decisions and recommendations. These committees should have the authority to exercise subpoena power, call witnesses, and issue recommendations.

- ***Parliamentary authority.*** Parliamentary bodies should be empowered to introduce legislative proposals/amendments to enforce compliance with international human rights decisions. Parliamentary committees should likewise have within their remit the ability to scrutinize government bills for their compatibility with human rights standards, taking into account the relevant jurisprudence of international courts and treaty bodies.
- ***Reporting procedures.*** Regular reporting procedures should keep legislative actors informed of adverse decisions rendered by international courts and treaty bodies, and of the measures taken to comply with them.
- ***A stronger role for international parliamentary bodies.*** National parliamentarians who also participate in international/regional parliamentary bodies should use their dual status to encourage the development of implementation structures at the domestic level.
- ***Budget measures.*** A state's annual budget should include provisions for the payment of damages ordered by international courts and treaty bodies, just as ministries' annual budget should have this provision.

National Courts and Judges

Like the executive and legislative branches, domestic courts are state organs: they can ensure consistency between a state's laws and its international obligations, and can ensure that international human rights treaties (and the decisions that interpret them) are given domestic effect. Yet despite the potential of courts and judges to serve as forums for vertical enforcement, a variety of factors—ranging from institutional constraints to restrictive interpretative canons—serve to limit the role that courts play in this process.

States can maximize domestic judicial forums through judicial monitoring units and other oversight mechanisms, i.e., administrative units that monitor implementation of judicial decisions. Domestic court systems can also assure that there is an ordered process for disseminating the jurisprudence of regional human rights courts and treaty bodies; this would help to ensure that judges throughout the national legal system are aware of the relevant law and how to apply it.

More directly, states should use complementary domestic litigation as a strategic arm to buttress and/or enforce international judgments. While compliance with national court judgments, as with international court judgments, depends on state institutions for enforcement, domestic courts are entrenched within a state's national legal order and address their decisions to a particular institution or agency, making national court judgments important avenues to compel action. Courts that issue progressive decisions on the enforceability of international human rights judgments also play an essential role in facilitating compliance at the national level, and in providing interpretive authority for a state's duty to implement. To that end, greater regional dialogue and awareness between international and national judicial systems is crucial.

Key recommendations:

- ***Implementation programs.*** National judicial systems should develop programs to monitor the implementation of both domestic and international judgments. A high level contact point should also exist within the national judicial system in order to facilitate communication with implementation coordinators at the executive level.
- ***Clarified status.*** Domestic judiciaries should seek to clarify the application of international decisions and, where necessary, the status of international law within a state's national legal framework. Where legislation could better clarify these questions, domestic courts should encourage legislative actors to provide such clarification.
- ***Stronger judicial awareness.*** Judicial awareness of international conventions and their case law should be strengthened. Domestic judicial authorities must have access to summaries of international judgments, while law school and continuing legal education curricula should incorporate international convention standards and relevant jurisprudence.
- ***Cooperation agreements.*** Cooperation agreements between international courts and domestic judicial bodies—particularly constitutional courts and supreme courts—can help foster judicial dialogue between international and domestic courts. International courts and human rights bodies must also cultivate their relationships with national judiciaries and bridge gaps between the international and domestic sphere.
- ***Strategic litigation.*** Human rights litigators and advocates should pursue strategic litigation at the domestic level—particularly, where possible, through constitutional challenges—in order to build domestic judicial pressure for the implementation of international judgments. This approach can also help integrate international treaty norms into the practice of national courts.

National Human Rights Institutions

In light of their grounding in a country's domestic law, NHRIs are in a unique position to help facilitate the implementation of international human rights judgments; indeed, they are themselves emblematic of how governments embed international human rights norms in domestic structures. Although states must implement the decisions of human rights courts and treaty bodies, national institutions can serve as implementation facilitators—assisting in the process of developing remedial legislation and monitoring the execution of judgments on the ground. Ombudsmen offices can draw attention to deficient implementation, if they are independent and have high quality staff. National institutions and ombudsmen can also bring unique pressure to bear in linking the implementation of judgments to compliance with human rights norms more generally.

Key recommendations:

- ***Formal mandate.*** NHRIs should satisfy the minimum criteria set forth in the Paris Principles. Their formal mandate should include the authority to monitor the implementation of international human rights decisions and recommendations, and to audit executive agencies for compliance.
- ***Communication with human rights systems and institutions.*** The international/regional human rights systems and domestic human rights institutions should have strong, formalized mechanisms for communication. Human rights courts and treaty bodies should adopt clear guidelines for NHRIs' roles in litigation and post-litigation.
- ***Communication with state actors.*** NHRIs must ensure that they communicate effectively with other state actors on matters relating to implementation. Where inter-ministerial implementation committees exist, NHRIs should be standing members; likewise, there should be a national framework for cooperation between NHRIs and parliaments.
- ***Broad competencies.*** NHRIs should have broad competencies to initiate legislation and propose remedial measures ordered by international courts and treaty bodies.
- ***Contextualization.*** NHRIs should seek ways to link the implementation of international decisions with a state's broader human rights obligations.

I. Introduction

In 2010 the Open Society Justice Initiative published the report *From Judgment to Justice*, which concluded that an "implementation crisis" afflicts the regional and international legal bodies charged with protecting human rights.[1] This crisis poses a grave threat to the integrity and perceived legitimacy of the regional human rights systems (African, American, and European), the growing number of sub-regional human rights courts, and the U.N. treaty bodies. While these procedures are fueled by the hope that individuals might obtain redress at the international level when their national systems fail them, they are imperiled by the risk that their decisions will be ignored by states unwilling (or unable) to implement them. The report also revealed that few states have effective structures or procedures in place—at the executive, the legislative, or the judicial level—to ensure the swift execution of judgments and that the violations that gave rise to them do not recur. *From Rights to Remedies* advances these findings to address a crucial element of human rights ligation: the structures and processes by which states execute international decisions, and the strategies advocates can harness to that end.

A Success Story: *A.S. v. Hungary*

In 2006, the Committee on the Elimination of Discrimination Against Women (CEDAW) decided the case of *A.S. v. Hungary*.[2] The events of that case dated back to January 2001, when a Hungarian woman of Romani origin was rushed to a public hospital. Known as

Ms. A.S., she required an emergency caesarean section following a miscarriage. While on the operating table, she signed a statement of consent, appended to a "barely legible," hand-written doctor's note containing the Latin word for "sterilization."[3] Only after it was too late—when she asked the doctor when she might try to have another baby—did Ms. A.S. learn that she could no longer bear children.

Ms. A.S. sought relief for the hospital's negligence from the Hungarian court system but the courts found that she had "failed to prove a lasting handicap and its causal relationship with the conduct of the hospital."[4] As a last resort, she turned to the committee, submitting a complaint in February 2004 under its newly established individual communications procedure. The committee rejected the Hungarian courts' conclusions, holding that the hospital performed sterilization surgery on Ms. A.S. without her informed consent, and that it "must be considered to have permanently deprived her of her natural reproductive capacity."[5] The committee recommended that the Hungarian government compensate Ms. A.S. in a manner "commensurate with the gravity of the violations of her rights," and that it review its domestic legislation—notably provisions of the Public Health Act—on the principle of informed consent, in conformity with international medical standards.[6]

The case marked a victory not only on paper, but in practice as well; however, implementation of the committee's major recommendations proved long in coming. More than three years of consultations between the Hungarian government and Ms. A.S.'s attorneys followed the committee's decision, and agencies involved ranged from the Ministry of Social Affairs and Labor, which was coordinating implementation on behalf of the state, to the Ministry of Health, which had responsibility to amend the Public Health Act, to the Ministry of Justice (MOJ). Judit Geller, a legal officer with the European Roma Rights Centre (ERRC) who participated in follow-up advocacy for the case, recalls her predecessors meeting with a variety of officials and sending identical letters to four Hungarian ministries as well as the prime minister, asking for the state's official standpoint concerning the implementation of *A.S.* and the committee's recommendations.[7] No one in these offices knew who the appropriate interlocutors within the Hungarian government were to compensate Ms. A.S.[8]

Partial victory came in April 2008, when the Health Ministry indicated it would amend the Public Health Act's provisions on informed consent, but the issue of Ms. A.S.'s compensation remained. Various offices told the ERRC that she could not receive individual compensation, and ERRC could not determine which ministerial budget might pay reparations. Progress stalled until 2009 when the ERRC and its local partner, the Legal Defense Bureau for National and Ethnic Minorities (NEKI), shifted their efforts to the media and, later, the Hungarian legislature. At NEKI's request, a parliamentarian submitted an interpellation to parliament, asking why Ms. A.S. had not received compensation. At last, the government relented: in July 2009, Ms. A.S.

received compensation from the Ministry of Social Affairs and Labor, bringing an end to her eight-year long battle.[9]

That the state complied with an international human rights decision at all makes Ms. A.S.'s case unusual; such uphill battles often end in failure. ERRC's success required engagement with various organs of the state, including executive branch ministries, members of the Hungarian legislature, as well as the media. Moreover, as Ms. A.S.'s representatives quickly learned, they had to communicate with multiple interlocutors from a variety of ministries, often without knowing whether one was communicating with the other.

The challenges in implementing *A.S. v. Hungary* illustrate the barriers common to human rights systems around the world. Indeed, the Open Society Justice Initiative has faced similar frustrations with states throughout the human rights systems in which it litigates. In 2011, a victory on behalf of Kenyan Nubian minors before the African Committee of Experts on the Rights and Welfare of the Child[10] exposed the need for greater coherence at the national level in Kenya. Laura Bingham, a legal officer with the Justice Initiative, describes interactions with various government entities that have been "haphazard, dispersed across different branches and institutions because there is no clear government interlocutor for [civil society organizations] and stakeholders."[11] And in South Africa, against whom the UN Human Rights Committee recently issued its first decision, the state never even appeared to defend itself, a failure the government, in publicly acknowledging the committee's decision, attributed "to a number of factors, including inadequate communication amongst Government Departments."[12]

Rights Require Remedies: Importance of Implementation Structures

States have the primary responsibility to implement the decisions of human rights courts and treaty bodies. A fundamental principle of the international human rights system is that only state actors, by cooperating with the international and regional systems and effecting remedies that satisfy their decisions, can make its promise real. Thus, while the quality of the recommendations and decisions made by international systems matters, how states realize those obligations, and the degree of various state actors' involvement in that process matters at least as much—if not more.

The importance of states' role in the international human rights system has gained ground as states grapple with crucial questions about the structure and resourcing of the U.N. and regional human rights systems. Faced with an unsustainably large backlog of cases and a rising number of judgments never fully executed, the Parliamen-

tary Assembly of the Council of Europe (PACE) adopted a resolution stating that, "[a] major reason for deficient compliance with Strasbourg Court judgments is the lack of domestic mechanisms and procedures to ensure swift implementation."[13] To that end, the Committee of Ministers (COM) has made improved implementation the centerpiece of ongoing reform of the European Court of Human Rights (ECtHR), recommending that member states design a range of mechanisms to ensure "efficient domestic capacity" for the effective execution of Strasbourg judgments.[14] Motivated by similar concerns, a 2011 report on the workings of the Inter-American system recommended that states prepare a "guide or reference document on successful experiences and best practices in the area of institutional mechanisms or domestic laws to assist in implementing the recommendations of the [Inter-American Commission] and the decisions of the Inter-American Court of Human Rights."[15] The latter, having formally defined its mandate to include supervising the execution of its remedies,[16] has also ordered states in certain cases to identify agents responsible for carrying out the implementation of decisions at the national level.[17]

While the African and U.N. treaty body systems have less settled juridical practices than their regional partners, there, too, attention has begun to shift to domestic implementation structures. In 2008, a gathering of African ministers of justice and attorneys general recommended a series of measures—developing national strategies to address the lack of political will, bureaucratic coordination, and improving technical capacity—to more efficiently implement international treaties.[18] Having approved in 2009 a series of measures to more efficiently implement international treaties, the African Commission on Human and Peoples' Rights will soon consider the adoption of a model law to improve the ratification and implementation of treaties, in particular to ensure their effective incorporation into the domestic law of all member states.[19] Similarly, the U.N. Human Rights Committee, as part of its reporting procedure, now requests all states to identify the process by which they will undertake to implement treaty body recommendations and decisions.[20] Some human rights conventions also contain textual provisions that require states to establish focal points and individual monitoring mechanisms to evaluate compliance at the domestic level.[21] In the words of one scholar, these mechanisms create "unique links between national implementation and monitoring and international oversight of the monitoring process."[22]

Reflecting a growing attention to second-order compliance with the mandates of international enforcement bodies, academic literature increasingly recommends building effective mechanisms for reception of international judgments at the national level.[23] For instance, a recent study of nine Council of Europe (COE) states found a "robust" correlation between implementation and government effectiveness—defined as "the capacity of state institutions to coordinate and formulate policies in a timely manner"[24]—and counseled that such effectiveness could be understood by considering

the "domestic structures that state authorities have put in place for implementing Court judgments."[25] A leading study of implementation in the African human rights system similarly concluded that the "most important factors predictive of compliance are political, rather than legal,"[26] while a recent analysis of the Inter-American Court's jurisprudence on remedies found a correlation between the likelihood of implementation and the number of separate state branches or institutions an injunctive order involves.[27]

Structures, Strategy, and Compliance

This report emphasizes the crucial role that domestic structures can play in compliance and the strategies that human rights advocates can harness to that end. Scholars who have emphasized a managerial approach to the study of compliance, which recognizes that problems of noncompliance often owe to a lack of capacity, not merely a lack of political will, tend to take this approach.[28] However, the approach has a normative dimension as well insofar as implementation processes help to embed international laws within national practice. As implementation becomes a more institutionalized process, normative pathways develop and compliance with decisions—and human rights norms more generally—improves.[29] This process in turn exercises a socializing function: it brings international institutions past the surface of the state, enabling them to interact with state actors.[30] In this sense, implementation is part of what Harold Koh calls a "transnational legal process," which "begins when different international and domestic actors force interactions with one another resulting in legislation, an executive order, a court decision, or bureaucratic regulation; through [it], adherence to international law becomes increasingly commonplace."[31] These processes play an important preventive function as well, making compliance less vulnerable to reversal in the face of domestic political opposition.[32]

The measures of compliance that Koh describes also call attention to the fact that implementation implicates a state's component political institutions—courts, legislatures, executives, and, here, NHRIs. Thus, a crucial premise of this report is the recognition that although all branches and levels of government bear the obligation of human rights, implementation rests on specific political institutions within the state.[33] Whereas one decision might call upon legislators to pass new laws or amend old ones, another might require domestic judiciaries to reopen criminal proceedings or investigate suspected human rights violations. One challenge for states, then, is to institutionalize the involvements of these multiple actors and strengthen synergy between them.[34]

At the same time, while domestic enforcement structures are important, the existence of these structures is not the same as political will, which remains the most important factor in the successful execution of judgments. Implementation always

operates in a political context and the existence of implementation mechanisms alone neither immunizes implementation from political considerations, nor guarantees execution of judgments. Indeed, as this report details, the United Kingdom has developed some of the most sophisticated domestic implementation structures to date; nevertheless, strong ideological opposition to Strasbourg persists. The U.K. government has yet to execute several important ECtHR judgments—notably those pertaining to prisoner voting rights.[35] Moreover, while some of the practices and forums detailed in this report represent good faith efforts by states to take their human rights commitments seriously, other structures remain—by design or neglect—poorly resourced, badly staffed, and politically feeble. In short, mechanisms can create the false appearance of compliance.[36]

For this reason, strategy as well as structure is important.[37] Whereas executive or legislative systems might admit implementation mechanisms more easily, domestic judicial systems, for instance, have the institutional constraints that call for broader conceptions of domestic mechanisms, such as strategic enforcement litigation or the importance of fostering judicial dialogue between international and domestic courts. This report discusses both of these in greater depth in chapter four. Similarly, legislative bodies can serve complementary functions by scrutinizing draft legislation's conformity with human rights standards as well as monitoring decision implementation. In this vein, this report focuses on how the structures of the state can be arranged or improved to facilitate implementation, as well as strategies that civil society—both international and domestic—can bring to bear on those structures.

Outline of the Report

The chapters that follow explore in detail various political structures and mechanisms of coordination that states use to implement international decisions. Some of these procedures are administrative in nature, while others are legislative or judicial; some have existed for quite some time, while others are only recently established.

The three primary institutions of government—executive, legislative, and judicial—divide chapters two through four, while chapter five addresses NHRIs. NHRIs vary enormously in structure and function, as well as in their degree of independence from the state itself; however, because of the promise they hold, this report considers them vital partners for human rights advocates and government actors alike in the implementation process. In an effort to provide concrete illustration of domestic implementation structures at work, each chapter includes case studies and text boxes that highlight the experiences of particular states. Each chapter also concludes with general conclusions and recommendations to help guide the development of new implementation structures or improve upon existing ones. Appendices I–IV gather the texts of

several implementation mechanisms discussed herein. Several of these were previously unavailable in English.[38] These documents follow the order of the chapters in addressing executive, legislative, and judicial issues and include executive orders, legislation establishing national implementation frameworks, and copies of the parliamentary acts that established two different joint human rights committees. A copy of the implementation form used by the U.K. MOJ to coordinate the execution of European Court judgments amongst executive ministries also appears here, along with the guidelines that the U.K. Joint Committee on Human Rights (JCHR) has issued to executive departments responsible for implementation.

While every effort has been made to draw on relevant experiences across all of the regional courts and treaty body systems, it is an unfortunate fact that some member states—notably in the European and Inter-American systems—have practices more developed than others'.[39] This report reflects this uneven practice because many states have far to go in ensuring that their domestic structures complement the scope and depth of their international commitments. To that end, we hope not to prescribe institutional arrangements for implementation—no single approach will work everywhere—but rather to highlight structures and arrangements for implementation that all states can explore, based on the challenges and experiences detailed herein.

II. Managing Ministries: Executive Level Mechanisms

Introduction

Although all national authorities—governments, legislatures, and courts—must share in the responsibility to implement judgments, attention often predominates at the executive level. In the context of the Council of Europe, it has been noted that the domestic structures that state authorities have put in place "share a common feature: their institutional arrangements predominantly rely on the executive and in most countries they are characterized by a strong degree of centralization in the latter."[40] Another scholar similarly notes that "executives have (nearly) free reign over the decision to comply with international law" and that, in the case of human rights tribunals' rulings and recommendations, "the executive branch controls the flow of cases, facilitating or hampering the delegation of compliance responsibility to other domestic actors."[41]

As a result, the executive branch typically manages the implementation of international decisions, including compensation and remedies for applicants, and, where needed, engaging with other legislative and judicial actors. In 2008, the COE's Committee of Ministers issued a recommendation that called for, *inter alia*, the designation by each member state of a "national coordinator of judgments" and for putting in place a mechanism to ensure the "effective dialogue and transmission of relevant information" between the coordinating entity and the Strasbourg-based Committee of Ministers.[42]

The Inter-American Court has followed a similar approach, having ordered states on several occasions to identify (or appoint) executive agents responsible for carrying out the implementation of its decisions.[43]

This chapter discusses executive-level implementation structures and practice as they have developed in several countries. It focuses on three such structures or mechanisms: (1) the Office of the Government Agent (OGA); (2) executive ministries; and (3) inter-ministerial committees and working groups. With respect to the OGA, this report pays particular attention to the dual role that government agents often play as both advocates for the state in judicial proceedings and, later, as focal points and/or coordinators for the implementation of adverse judgments. Ensuring that agents possess the appropriate level of political standing and clout is critical if they are to successfully carry out this function.

The second section addresses the role of executive ministries more broadly—particularly the ministries of justice and foreign affairs (also referred to as the ministry of the exterior)—and emphasizes the need for states to carefully consider the sorts of arrangements that best facilitate implementation. The final section discusses the emerging practice of convening inter-ministerial committees and working groups to ensure better coordination amongst ministries. Given the recent origins of many of these committees and working groups, their full impact on implementation remains uncertain; however, the chapter reviews some successes in which they played a role.

Office of the Government Agent

The OGA is the executive body or agency designated to represent states before an international or regional human rights body.[44] Once an international court has rendered a decision, the office of the agent typically receives a "note verbale" communicating information about the judgment. However, in addition to its role as the state's advocate, the OGA frequently acts as the official or *de facto* implementation coordinator as well. Ukraine, for instance, which passed a law on the enforcement of European Court judgments, defines the office as "a body in charge of representation of Ukraine before the European Court of Human Rights and coordinating the implementation of its decisions."[45]

The office of the agent can reside in different ministries; therefore, its institutional location within the executive branch varies depending on the state. In the Slovak Republic, the OGA is part of the structure of the Ministry of Justice (MOJ); in the United Kingdom, the agent is part of the Foreign and Commonwealth Office, while the MOJ has lead responsibility for the receipt and coordination of judgments rendered by the

European Court. Member states of the Inter-American and African systems have similar variations.[46] For instance, in Colombia, responsibility for Inter-American litigation resides in the Foreign Ministry, while, in Brazil, the Commission for the Protection of Human Rights—which is charged with engaging in all stages of Inter-American human rights litigation—is located within the Justice Ministry's State Secretariat of Human Rights.

Despite the important role played by the OGA in implementation, the three regional human rights conventions make little substantive reference to the office; only the Inter-American and European courts' rules of procedure offer a brief definition.[47] Moreover, while some states have adopted regulations that stipulate the scope of the agent's powers, in many others few rules govern the selection, appointment, or duties of the office. In the context of the COE, for instance, the "matter was not discussed in the process of drafting Protocols No. 11 and No. 14" and Deniz Akçay, the government agent for Turkey, has asked why "no thought was ... given to defining the role of government agents in the process of [their] drafting."[48] Although the passage of the Committee of Ministers' Recommendation 2008 (2) sought to bring clarity to the function and scope of the office, "in most instances ... there is [still] no clear definition of agents' role."[49]

Ukraine: Formalizing the Agent's Role

In 2006, Ukraine became one of the few countries to pass a national law governing implementation. The law was designed, in part, to improve the standing of the OGA by creating a statutory basis for the agent's authority during the execution stage of judgments. As Pavlo Pushkar notes, the law "widens the scope of jurisdiction of the Government's Agent of the (European) Court and their status in the domestic executive."[50] It stipulates, for instance, that, at the request of the OGA, bodies in charge of the execution of individual measures shall provide information about the status and results of their implementation efforts; reply "effectively and without undue delay" to the agent's submissions; and inform the government agent about the completion of additional individual measures' execution.[51]

Challenges and Constraints

Government agents often play a dual role as litigators in international judicial forums and as implementation coordinators for those bodies' adverse decisions. Importantly, agents themselves are not responsible for implementation—the nature of the violation(s) determines which organ(s) are required to execute a particular judgment—but the agent's role as coordinator requires regular communication with the policy team responsible for implementation.

This dual role may seem natural and, occasionally, an asset; however, tensions can also beset the arrangement. For instance, Maud De Boer-Buquicchio, deputy secretary general of the COE, notes that "pleading cases ... and ensuring execution of judgments are two very different things, and they both demand a lot of resources."[52] And in Deniz Akçay's words, when litigation shifts to the "extremely sensitive" execution phase, it is "difficult to 'convert' to upholding the Court's judgment when one has previously defended—for several years in some cases—contentions and arguments" that the court has rejected.[53]

The OGA's location within a given ministry, typically either the MOJ or MFA, may impose structural constraints. This is particularly true where the execution of a judgment triggers the competencies of other ministries or departments, which is often the case. In Romania, for instance, the OGA is located in the Foreign Affairs Ministry, yet the vast majority of cases decided by Strasbourg implicate reforms of the country's judicial system. As a result, the agent cannot initiate relevant legislation independently; rather, he or she must convince colleagues in the Justice Ministry to do so.[54] Similarly, Francesco Crisafulli, co-agent for the Italian government, notes that while he "virtually had a free hand" in his task of defending the government before the European Court, this was not the case post-judgment. In his words:

> At the Committee of Ministers' human rights meetings ... I represented (on behalf of the Permanent Representative and in my capacity as legal adviser) both the complex political hierarchy of the Ministry of Foreign Affairs, which speaks for the government on the international stage but is often unfamiliar with violations found by the Court and the obligations that may derive from such judgments, and the Ministry's no less complex relationships with the ministries, administrative departments and authorities that are generally responsible for the measures to be taken in execution of the judgment, but in some cases have little sense of the European and international dimensions of their tasks. I was subject to more constraints when wearing this hat.[55]

These sorts of constraints underscore the importance of agents' ability to effectively engage with their domestic political counterparts during the implementation stage. In Crisafulli's words, agents "must be able to exert a certain influence on national decision-makers so as to encourage them to take the measures that are actually necessary and overcome the resistance that may ... sometimes impede the execution process."[56]

The Importance of Political Standing

The OGA's institutional location is also important: where agents are relatively weak or lacking in political power, they are less likely to have the necessary influence to effectively oversee implementation. As one recent study on the response of national authorities to "pilot judgments" of the European Court concluded, "The extent of a Government agent's authority vis-à-vis domestic institutions is a significant factor in facilitating an appropriate response to Strasbourg judgments. The higher their status, the more successful they are likely to be in communicating with the relevant Ministries and public bodies, and in persuading them of the need to respond adequately to a European Court judgment."[57] Similarly, De Boer-Buquicchio notes, "The agent's unique expertise on the [European] Convention should be recognized where appropriate by providing an adequate standing within the national legal system."[58]

The same applies at the policy level. Martin Kuijer, a senior legal adviser in the human rights section of the Dutch MOJ, notes that the OGA's authority is one of the most important factors in the implementation process.[59] Indeed, one of the key tests for the efficiency of implementation is the degree of access that those responsible for crafting policy have to their minister: the fewer steps in the communication ladder, the greater the likelihood that implementation will be a political priority. This is particularly the case where more systemic problems are at stake since such problems will necessitate political decisions at "either at the highest level of government or in conjunction with government decision-making by national parliaments."[60]

As an example, Diana Olivia-Hatneanu, executive director of the Romanian NGO Association for the Defence of Human Rights in Romania—the Helsinki Committee, notes that the agent's weak position within the state bureaucracy has stymied Romania's OGA. Whereas previously the OGA held a rank akin to that of a dignitary—meaning the agent could talk to other ministers "like you were talking to a colleague"—the position has since been downgraded to "something more like a director."[61] In Hungary, there is no separate ministerial office for a government agent: a department with the MOJ, staffed by three lawyers and one secretary, is "incapable of doing more than responding to communicated cases on time."[62]

Similarly, in Russia, the OGA was housed in the administration of the president from 1999 to March 2007; however, the Kremlin later relegated the office to the Justice Ministry. As a result, as Russian legal scholar Alexei Trochev notes, "Russia's representative to the European Court now serves at the pleasure of the justice minister, who can be replaced at any time by the president and therefore lacks any incentive to build this office in the long term."[63] Other commentators have likewise noted that the office "lacks the resources and political weight to engage in a comprehensive coordination of the execution of judgments" on more systemic issues.[64] They add that the office "appears to

lack enforceable powers to ensure meaningful cooperation between all the relevant State authorities and to put pressure on those offices or officials unwilling to cooperate."[65]

United States: Interagency Working Group on Human Rights Treaties

The United States, which is party to several U.N. human rights conventions (though not the Inter-American Court or any U.N. individual communications procedures), provides an instructive example on the importance of political standing. In 1998, President Clinton established by executive order an Interagency Working Group on Human Rights Treaties.[66] Part of the group's mandate included coordinating responses to human rights complaints submitted to the U.N. and the Organization of American States (OAS), including the Inter-American Commission on Human Rights.

Importantly, the National Security Council served as the group's designated convener and chair, and the order itself required participation in the group at the assistant secretary level (or higher) from the Departments of State, Justice, Labor, Defense, and the Joint Chiefs of Staff.[67] The order further required concrete steps such as the appointment of a single contact officer responsible for coordinating treaty implementation within areas of each federal agency's jurisdiction. Catherine Powell argues that the council's coordination "gave the Working Group the authority and weight of the White House, which meant that other agencies felt compelled to be represented at its meetings and that it was able to take a strong lead in interagency coordination."[68] Unfortunately, following Clinton's terms in office, this practice of interagency coordination fell into disuse.

In addition to the office's political standing, the agent herself matters: effective execution of judgments often relies on personal engagement and political connections. As De Boer-Buquicchio notes, "when the source of [a] violation is related to a practice inconsistent with the [European] Convention, the agent's personal involvement can be decisive in putting an end to the violation."[69] Francesco Crisafulli adds that the decision to take further action on the part of some legal advisers can come down "largely to individual initiative, personal standing and experience."[70]

Russia's early experience with the European Court is illustrative in this regard. There, Pavel Laptev, a former procurator and legal expert in the Russian parliament headed the OGA until 2007.[71] According to Alexei Trochev, Laptev worked diligently for

a number of years to formalize the relationship between his office and other executive agencies, whose cooperation was critical for enforcing ECtHR judgments. Moreover, he used his privileged status as part of the presidential administration to persuade several ministries—internal affairs, defense, finance, the head of the Judicial Bailiff Service, and the procurator general—to issue detailed instructions to their subordinates about treating his requests for assistance seriously. These instructions, Trochev argues, "helped Laptev to insist that bureaucratic sabotage of his requests would be punished."[72] While Russian cooperation with the European Court has since waned, Laptev's early support of Strasbourg had critical impact, ranging from convincing the procurator general's office to press lower-level prosecutors to investigate the cases of ECtHR petitioners (including applicants from Chechnya), to persuading Russian appellate judges to quash the decisions of lower courts that might violate the convention. In one case, Trochev notes, Laptev secured the payment of 94,000 rubles to an ECtHR complainant after personally contacting the chairperson of the Ivanovo regional court, the governor of the region, and the head of the region's pension fund.[73]

Effective Ministerial Arrangements

Implementation also requires effective ministerial arrangements. As two researchers of the European system have concluded, "The strong statistical association with government effectiveness suggests that the greater the capacity and effectiveness of state institutions to coordinate formulation and implementation of policies, the more efficacious and conducive they are likely to be" in complying with Strasbourg rulings.[74]

Justice or Foreign Affairs as Coordinator

While there are a variety of ways of structuring the implementation process, arrangements that privilege coordinating roles for the ministries of foreign affairs and/or exterior predominate. For a long time, this reflected states' view of human rights as a foreign policy issue; however, as states have increasingly come to understand human rights as part of their domestic legal order, institutions have been (re)designed accordingly.[75]

Presently, the OGA is located within the foreign affairs ministry in slightly fewer than half of COE member states, although the JURISTRAS study of nine COE countries found that in seven cases the Ministry of Foreign Affairs (MFA) or the chief executive had primary responsibility for execution whereas only two—the United Kingdom and Germany—had other mechanisms.[76] Both of those countries assign competence to the MOJ and, as the following chapter discusses, also involve parliamentary actors in the implementation process. Within the African system, foreign affairs ministries tend to

predominate, while the Inter-American system is largely split between foreign affairs ministries and MOJs.

Effective communication becomes even more crucial where the OGA is located outside of the ministry that is responsible for executing a judgment at the policy level. In the Netherlands, for instance, the government agent is formally part of the Dutch MFA, but works very closely with the legislation directorate of the Ministry of Security and Justice, which, because the vast majority of Strasbourg cases implicate the justice sector, often takes responsibility for implementation at the policy level. In Germany, the agent can also play (in an informal manner) an advisory role in determining the measures necessary to execute a judgment.[77]

Germany, which has the best implementation record of COE states, vests authority for coordinating implementation in the Federal MOJ (*Bundesministerium der Justiz*). The commissioner's mandate includes disseminating ECtHR judgments, initiating legislative change, and coordinating with the Federal Parliament.[78] In two cases concerning the length of proceedings before the Federal Constitutional Court, for example, the ECtHR held that proceedings exceeded the reasonable time referred to in Article 6(1) of the European Convention.[79] Following these judgments, the ministry sent letters to the Federal Constitutional Court informing it of the adverse judgments and stating that the court should adapt its practice of joining similar cases so as to avoid unjustified delays; as a result, the number of legal staff assigned to the court also increased.[80] Since 2004, the ministry has also published an annual report on the European Court's case law, focusing on cases against Germany, and all adverse judgments are publicly available from the ministry's website.

Germany's experience suggests the efficacy of locating coordination responsibilities within the justice ministry. At a practical level, it makes sense because the vast majority of cases adjudicated by international human rights bodies concern substantive and procedural challenges to the administration of criminal justice, the organization of domestic judiciaries, and civil procedure. (Many cases also affect ministries of the interior to the extent that international decisions implicate immigration and nonrefoulement obligations, though these decisions likewise implicate domestic judicial systems.) In this vein, Dia Anagnostou argues that responsibility for implementation is "best centered on ministries of justice or other branches of the executive that are more concerned with internal affairs, issues of rights, rule of law and justice."[81] The closer these ministerial functions are to the substance of adverse judgments, the more likely government actors are to have the power and authority they need to effect timely execution.

United Kingdom: From Foreign Affairs to the Ministry of Justice

It was not until 2000 that the European Convention began to play a formal part in the proceedings of the United Kingdom's parliament or its executive bodies. At that time, the Foreign and Commonwealth Office (FCO) housed the OGA, which also performed a coordinating role in the execution of judgments. Now, the MOJ has lead responsibility for the receipt and coordination of international judgments rendered by the European Court. Nevertheless, the FCO and MOJ meet on a regular basis to discuss recently communicated cases, the details of which are "forwarded to the departments and the devolved administrations identified at those meetings as having potential interest."[82] Both the FCO and MOJ then follow up with other relevant ministries to ensure that the Committee of Ministers receives confirmation that the appropriate state institutions have been notified of the adverse judgment, and that the necessary information has been published in at least two relevant publications.

Other countries, like Italy, Austria, and Ukraine, vest responsibility for implementation with their head of government, which then collaborates with competent ministries and judicial actors. Notably, in 2006, Italy transferred implementation of European Court judgments from the MFA to the office of its prime minister. Known as the "Azzolini Law," this measure specifies the prime minister's powers and duties relating to the enforcement of the European Court's judgments against Italy.[83] The main thrust of this law has been, in principle, to better link the functions of different branches of the Italian government and regulate a new "information channel" between the prime minister and parliament, so that the former must now notify the latter in a timely manner of ECtHR judgments and draft an annual report to the it on the implementation of these judgments.[84]

Francesco Crisafulli argues that because the prime minister oversees the government's activities and ensures "the consistency of the executive's policies," the transfer of authority from the MFA "implicitly makes the implementation of the Court's judgments a central focus of political activity."[85] Another commentator notes that "[s]uch a choice has, above all, a strong symbolic meaning. The principle behind the law is the direct responsibility of the Prime Minister and his Office to comply with the [European Court], in order to give importance and priority to compliance with the Convention."[86]

A similar logic informed Ukraine's 2006 implementation law, which stipulates that the Office of the Prime Minister, upon receiving remedial proposals from the OGA,

"shall determine [the] central executive bodies in charge of the execution of general measures and immediately provide them with relevant instructions."[87] Notably, Cameroon has also established an inter-ministerial committee within the Prime Minister's Office charged with overseeing the implementation of international recommendations and decisions. Active since April 2011, the committee's placement within the office has helped elevate the importance of implementation politically and, according to one government official, may lead to the resolution of several U.N. Human Rights Committee cases that have yet to be implemented.[88]

From Strasbourg to Moscow: Coordination at the Executive Level

In Russia, the OGA has a coordinating role for monitoring implementation from within a division of the MOJ. In 2011, a presidential decree further established a framework for monitoring decisions of both the European Court and Russian Constitutional Court.[89] The decree is meant to ensure the enforcement of judgments necessitating legislative reform and empowers the ministry to, *inter alia*, seek input on the execution of judgments from various state actors and civil society, make recommendations for remedial legislation to the president, set annual deadlines, and publish the results of its monitoring activities.[90] In turn, the ministry has signed an agreement to work with a private firm, with which it will "create joint working groups" on the monitoring of the enforcement of decisions.[91] However, the office's relocation to the Justice Ministry from the Office of the Prime Minister may have politically diminished the OGA's role. Moreover, as several commentators have noted, the office appears to lack "enforceable powers to ensure meaningful cooperation between all the relevant State authorities and to put pressure on those offices or officials unwilling to cooperate."[92]

CASE STUDY: KYRGYZSTAN

Kyrgyzstan has been trying to develop a domestic implementation mechanism. International treaties have had direct effect domestically in the Kyrgyz Republic since 1993; however, as a result of a series of constitutional reforms, a recent provision in the constitution also permits individuals to appeal to international human rights bodies.[93] Moreover, the constitution stipulates the state will provide restoration and compensation for human rights violations. Currently, both the U.N. Human Rights Committee and the committee that adjudicates the Convention on the Elimination of All Forms

of Discrimination Against Women can receive individual communications against Kyrgyzstan.

Despite these developments, implementation continues to languish. Presently there are eleven outstanding decisions by the UN Human Rights Committee (HRC), none of which have been implemented. Moreover, no legal body has authorization to coordinate the implementation of committee decisions. According to two experts, "The new constitutional provision establishing the duty of the state to take measures on restoration of the violated rights and reparation does not work, because there are no mechanisms of legal regulation of this process."[94] Another study found that key government agencies had little awareness of HRC decisions, and no regulatory framework provides for the dissemination of information of treaty body recommendations or views.[95] Indeed, although the country's ombudsman prepares an annual report to parliament, the 2011 report was the first to include issues raised by the HRC.[96]

Towards this end, a working group of NGOs—who were integral in securing the new constitutional provisions—has been developing an implementation mechanism for treaty body decisions and recommendations.[97] According to the group, a law regulating such a mechanism should "specify the responsible state agency in detail to consolidate its functions as well as the responsibilities of other government agencies"; moreover, the mechanism should "include defining the role of courts and corrective actions in the judicial system."[98] The main challenge, according to Masha Lisitsyna, a program manager with the Justice Initiative, has been to "determine the place of the body" that would coordinate implementation.[99]

The working group considered three basic models. One focused primarily on the domestic courts in Kyrgyzstan while another focused on executive ministries; as elsewhere, discussions centered on the ministries of justice and foreign affairs.[100] Ultimately, the group decided to recommend a third model—an inter-ministerial commission involving the newly empowered prime minister.[101] In this arrangement the commission will be a permanent coordinating body under the office of the prime minister (also known as the "Office of Government"), supported by a permanent secretariat. The committee would include, *inter alia*, the ministries of justice, foreign affairs, and the interior; the offices of the prime minister and the president; the ombudsman; the General Prosecutor's Office, and possibly civil society representatives as well.[102] The two-fold advantage of this approach is that it vests implementation within a strong governance model, while also ensuring the participation of relevant ministries through a standing body.

While no mechanism has yet been formalized in Kyrgyzstan, the process thus far has been instructive.[103] The country's constitutional changes afforded an opportunity for civil society and government actors alike to cooperate in developing an effective implementation mechanism. Various government agencies participated in consultative

meetings throughout 2011 creating good prospects for political buy-in to the structure. These consultations, which the local office of the U.N. High Commissioner for Human Rights supported, also allowed key players to carefully consider the relative advantages and practical consequences of the proposed models. In Masha Lisitsyna's words, the working group hopes the country will gain a new "institutional culture" with a structure sufficiently strong—in political standing, resourcing, and membership—to engage all of the necessary actors in the implementation process.[104]

Which Ministry Pays?

Like other elements of judgments, the payment of compensation implicates multiple ministerial actors, and can needlessly draw out implementation. Although states generally comply more easily with the payment of monetary reparations than with other components of international decisions, this is not always the case, as *A.S. v. Hungary* illustrates. In a number of countries in the European system, where compliance with just satisfaction orders is generally high, the ministry of finance oversees payment of these orders.[105]

Compensation also depends on the existence of a budgetary line from which a payment can be drawn. In Colombia, for instance, the state will identify the responsibility of each ministry in a particular human rights case and require it to pay its share of the damages. To that end, the Ministry of Defense has now incorporated a line item in its annual budget for the payment of international human rights decisions.[106]

Italy set up a centralized payment system in 2005 under the authority of the Ministry of Economic Affairs and Finance, in order to simplify and accelerate the payment of monetary reparations. The measure also introduced an arrangement whereby the state could recover sums it paid from local or autonomous bodies, to hold accountable those authorities and officials whose actions caused the violation.[107]

Ukraine and Peru have also passed legislation that spells out the compensation payment process. Ukraine's law provides that the state treasury shall take money from the "relevant budgetary program" to effect payment for any judgments of just satisfaction the European Court awards.[108] Moreover, the state's draft budget must disclose funds for the enforcement of court judgments. In Peru, a 2001 implementation law provides that all decisions requiring compensation be referred by order of a national court judge to the MOJ, which must make payment within ten days.[109]

Leadership and Coordination

Effective ministerial arrangements also depend on leadership and coordination. As Viviana Krsticevic notes, "One of the main areas of difficulty in the implementation of decisions [is] the lack of a coordinated response by state actors of different powers, ministries, and agencies."[110] In particular, effective implementation depends on a coor-

dinated structure that brings responsible ministries together in states where systems of public administration are highly fragmented.

As noted, the United Kingdom's domestic approach to the execution of judgments has focused on improved coordination since 2010. The MOJ now performs what the government refers to as the role of "light-touch coordinator for the implementation of adverse judgments."[111] This means that the MOJ takes responsibility for coordinating the information coming from the leading government department(s) on particular cases and transmitting it to the FCO, as well as the U.K. delegation to the COE. Although the delegation represents the United Kingdom at the Committee of Ministers' quarterly meetings on the execution of judgments, it retains lead responsibility for the implementation of a particular judgment. According to the MOJ, "[m]ore time is needed to give any assessment of the effectiveness of this arrangement,"[112] but early indicia are promising. Officials from the ministry's Human Rights Policy Team note, in particular, that having the team in charge of the "light touch" coordination based in London rather than Strasbourg (as they used to be), allows them to follow up on difficult issues directly with the team in the lead department.[113]

Focal Points and Interim Measures

Focal points are particularly important when international human rights bodies issue interim or provisional measures, which require speedy implementation and swift communication amongst various actors. In the Netherlands, an interim measure that halts the expulsion or extradition of an individual triggers an internal procedure involving focal points at various government departments. The Dutch agent (located in the MFA) first seeks contract with a focal point in the legislation directorate of the Ministry of Security and Justice, which, in turn, seeks contract with a focal point in the Ministry of Interior, which stops the deportation pending further review.[114]

In the Inter-American system, Colombia's Foreign Affairs Ministry tends to play a similar "light touch" coordinating role. Generally, the ministry will convene a compliance meeting following a court decision, inviting representatives from other ministries with a stake in implementation; these usually include the Defense Ministry and the Public Ministry. However, because no law formalizes its role, the MFA must rely on its political influence to bring representatives from the different ministries together.[115] Implementation can easily be downgraded as a priority for the ministry.

Coordination can also play a crucial role in sensitizing government actors to judgments that concern other states but are relevant to their own state. For instance, in the U.K., while primary responsibility for identifying significant cases rests with the department that leads on the affected policy areas, the MOJ monitors those European Court judgments that bear on existing U.K. cases and issues.[116] The ministry's legal team subsequently produces and circulates a bi-monthly, cross-Whitehall bulletin that highlights significant developments before the court as well as domestic jurisprudence that deals with cross-cutting human rights issues. Germany follows a similar practice: since 2004, the MOJ has published an annual report on Strasbourg case law, focusing on cases against Germany. It also distributes German translations of "more important" judgments concerning Germany, as well as judgments concerning other countries to all authorities directly concerned to avoid similar violations of the convention.[117]

The United Kingdom's coordinated approach includes a specifically designed implementation form, which lead government departments use in responding to adverse judgments. According to the MOJ's recent report to the U.K. Joint Committee on Human Rights, the form "provides lead departments with advice on the completion of the Action Plan for implementation required by the COM," in addition to helping ensure that the COM and the FCO have all the information needed to oversee the implementation process.[118] The deadlines set in the implementation form also help to ensure that the COM receives required information on time. The implementation form has significantly improved communication within the MOJ and other relevant ministries. One official notes that the form has "worked well as a way of gathering together the basic, relevant information at an early point in the implementation process and allows [the] team to keep an eye on progress."[119] (The form has recently been shortened for efficiency purposes; Appendix I has a copy.)

Other states have designed similar forms. According to Adam Bodnar and Renata Uitz, in Poland, the Ministry of Justice's Department of Human Rights has prepared a special instruction (called the "algorithm") that describes the different steps required to execute Strasbourg judgments.[120] These steps include informing the government agent of the dissemination of ECtHR judgments; identifying the domestic courts or prosecution units that a given judgment implicates; making translation summaries of select judgments; and, when appropriate, sending those translations to the president of all Polish appeal courts to disseminate to members of the bench.[121] The Netherlands also employs what is known as a "blauwe brief" or "blue letter," which a minister can opt to send to a ministerial colleague as a signal to accelerate the execution process of a particular judgment.[122] Although this instrument has rarely been used in the Netherlands, in theory the minister of foreign affairs (responsible for the OGA) would send it to those colleagues responsible for the relevant domestic policy area, in cases where inaction by

the policy team might attract international condemnation. In Martin Kuijer's words, "It would be a forceful way of asking attention for a particular issue."[123]

Coordination and Compliance: Post-Fujimori Peru

Peru has historically had a tense relationship with the Inter-American human rights system (and a poor implementation record); indeed, in 1999, it took the unprecedented step of attempting to withdraw from the court's contentious jurisdiction. However, the country attracted attention for reforms undertaken by former President Valentin Paniagua, who came to power on a platform of respect for human rights. Shortly after taking office, Paniagua issued a decree regulating procedures for following up on recommendations of international human rights bodies with non-binding jurisdiction, notably the Inter-American Commission.[124] The decree charged the MOJ's National Council for Human Rights (*Consejo Nacional de Derechos Humanos*, CNDH) with the responsibility of following up on all commission recommendations, and directed the Foreign Affairs Ministry to communicate all such recommendations to the council's secretariat along with its observations.[125] It further provides that the secretariat should communicate the recommendations to the full council along with all relevant observations (including its own), so that the CNDH's president can determine which actions correspond to different executive offices.[126]

Peru has made gradual improvements in implementing Inter-American judgments since 2001 as well. Whereas Peru had submitted no reports on compliance with court judgments between 1996 and 1999, by 2000 it had complied with nearly all parts of one decision and had commenced implementation in six other outstanding cases. Kali Wright-Smith notes that since that time, Peru has partially complied in multiple cases, including having paid $15 million in financial reparations.[127] Similarly, in 2000, Peru began to interact with the Inter-American Commission, proposing to settle a large number of outstanding cases and reaching friendly settlements in at least ten other cases. Peru is also the only state to date in the Inter-American system that has fully complied with an order to investigate and prosecute.[128]

"Everyone's Task is Nobody's Task": Inter-Ministerial Committees

By their very nature international decisions implicate multiple government actors; accordingly, implementation requires communication and effective working relationships amongst various ministries. At a recent conference convened on follow-up and implementation of decisions of the African Commission, two government delegates noted that coordination of the various stakeholders was one of the primary challenges they faced in executing judgments.[129] To that end, Viviana Krsticevic and Michael Camilleri have argued for the importance of the "adoption of formal implementation policies or similar coordination mechanisms, such as *ad hoc* or permanent committees that bring together the various government agencies for implementing reparations measures."[130]

In recent years, states have begun to develop such mechanisms, several of which are detailed below.

European System: Poland

In 2006, the government agent for Poland, realizing that the execution of ECtHR judgments affected the competence of various ministries, proposed the establishment of a special inter-ministerial task force.[131] The Council of Ministers (consisting of the prime minister and executive ministers) endorsed the initiative and experts from 14 ministries—including finance, economy, construction issues, labor and social policy, state treasury, justice, interior and administration, foreign affairs, transport, and health—participated in the task force.[132] Together, they submitted an action plan, approved in May 2007, to the council that aimed at "increasing the efficiency of the execution of [ECtHR] judgments... and preventing new violations."[133]

According to Jakub Wolasiewicz, the plan focused on such areas as rules governing the application of detention on remand, increasing the effectiveness of domestic remedies for complaints about the length of domestic proceedings, extension of access to Polish courts, and increasing the effectiveness of parental contacts with children that national courts had ordered.[134] The task force also focused on a number of "pilot judgment" decisions that the European Court had issued against Poland, including effective realization of so-called "Bug River" claims. As a result of the task force's work, several draft laws were submitted to parliament and the Ministry of Justice issued an ordinance that improved regulations concerning searches of detained persons, in compliance with the court's judgment in *Iwanczuk v. Poland*.[135]

Significantly, the task force's plan further envisioned a permanent inter-ministerial committee for matters concerning the European Court (*Zespot do spraw Europejskiego*

Trybunalu Praw Czlowieka), which the prime minister established as Decision No. 73 in July 2007.[136] Headed by the MFA's representative to the European Court, the MFA representative's two deputies as well as member experts of various ministries and the president of the General State Treasury Representative Organ (*Prokuratoria Generalna*) compose this "working team."[137] Under Decision No. 73's provisions, "organs of the governmental administration and other subordinated units"[138] are obliged to assist the team in the execution of its tasks, which include making remedial proposals with respect to the most important problems arising from ECtHR judgments; reporting to the Council of Ministers; scrutinizing draft laws' compatibility with convention standards; discussing problems stemming from adverse Strasbourg judgments against *other* COE states; and preparing semi-annual reports on implementation, which the MFA submits to the council and to the prime minister.[139]

The committee's work has been generally welcomed and Wolasiewicz argues that it "constitutes a platform for the exchange of information on the Court's case-law within the Government,"[140] which raises awareness of the European Convention. Other commentators, however, have argued that although the team has successfully resolved several crucial cases and problems, it does not meet or report as regularly as it should.[141] Moreover, while certain ministries cooperate well, the relatively weak position of the OGA hampers cooperation in other ministries.[142]

Inter-American System: Paraguay and Peru

In Peru, former President Paniagua approved in April 2001 the CNDH's regulations through presidential decree, which created the Special Commission to Follow-Up on International Procedures (*Comision Especial de Seguimiento y Atencion de Procedimientos Internacionales,* CESAPI).[143] As a result, CESAPI—composed of the CNDH president, a representative from the MFA, and an international law expert named by the MOJ—receives and responds to all communications from international human rights bodies established under the auspices of the United Nations, the OAS, or other multilateral organizations in which Peru participates.[144] The decree also charges CESAPI with supervising the implementation of the decisions and recommendations (both binding and non) of international human rights bodies,[145] and with recommending compliance measures, such as legislative proposals, to the president of the CNDH.[146]

More recently, in Paraguay, the president issued an executive decree establishing an inter-institutional commission to organize the implementation of decisions of the Inter-American system's human rights courts.[147] Situated in the Attorney General's Office, the commission will provide technical support and includes the membership of the ministries of finance, interior, foreign affairs, public health, justice and education. An advisory board composed of representatives from 17 different state agencies supports the commission as well; notably, the board includes the petitioner from the

particular Inter-American case at issue as a "special invitee."[148] As in other models, the commission has responsibility for developing an implementation schedule and grants it substantial powers to develop its own working methods.

CASE STUDY: GUATEMALA

After many years of stonewalling, there has been a dramatic shift in the attitude of the Guatemalan state towards the Inter-American system. The government has, over the past 15 years, increasingly accepted responsibility for violations in a number of historical cases and expressed a willingness to negotiate friendly settlements in more recent ones. The executive agency that represents the state before the Inter-American and U.N. human rights bodies—the Presidential Commission on Human Rights (*Comision Presidencial Coordinadora de la Politica del Ejecutivo en Materia de Derechos Humanos*, COPREDEH)—is also charged with coordinating human rights activities of the country's executive ministries and institutions. Created as a result of a UN independent expert's recommendation, COPREDEH was established by executive order and is located under the presidency; a representative designated by the president leads it. Its membership includes the ministers of foreign affairs, government, national defense, the attorney general, as well as the chief of the Public Ministry.

While it has been noted that COPREDEH is "structurally weak compared to other state institutions"[149]—and has had varied relationships with successive presidential administrations—the commission has nonetheless played a key role in assisting with the implementation of decisions rendered by both the Inter-American Commission and Court. In one case concerning the death of former presidential candidate Jorge Carpio Nicolle, the Foreign Affairs Ministry for many years denied state responsibility and refused to pay damages; it was only in 2004, when the case was handed over to COPREDEH, that the state reversed course.[150] In other cases, where individuals and communities have been unprepared to receive large financial settlements, COPREDEH has offered beneficiaries training in financial management and assistance in opening bank accounts.[151] In one friendly settlement, COPREDEH "agreed to provide technical training to family members of the victim on the creation of an association for investment of the funds to be paid in financial compensation."[152]

The presence of a specialized executive agency can also assist international courts in the implementation process. For instance, in *Molina Theissen v. Guatemala*, the Inter-American Court ordered Guatemala to name state agents as interlocutors when COPREDEH informed it that relevant state institutions were not responding to its request for assistance.[153] The court specifically ordered the state to identify an agent from the National Commission for Follow-Up and Support on the Strengthening of

Justice (*Comisión Nacional para el Seguimiento y Apoyo al Fortalecimiento de la Justicia*) to work with COPREDEH to develop a four-month time frame for investigation, and to identify a member of the legislative branch with which COPREDEH could work to develop a comprehensive plan for implementing the necessary administrative and legislative procedures.[154]

African System: Cameroon, Mali, and Uganda

Few member states of the African human rights system have domestic implementation mechanisms. In 2011, Cameroon established by ministerial decree a committee charged with overseeing the implementation of recommendations and decisions of the African Commission of Human and Peoples' Rights, the U.N. HRC, and the Universal Periodic Review (UPR) process. Prior to April 2011, the Ministry of External Relations was solely responsible for coordinating implementation; however, since then, the inter-ministerial committee (located in the Prime Minister's Office) took over these functions.[155] According to the government, this shift has meant that the committee's secretariat now liaises with various stakeholders in order to advise it on the way forward, whereas before the foreign affairs ministry had to proceed within strict hierarchical lines before it could convene the necessary stakeholders.[156]

Members of the inter-ministerial committee include a representative from the Office of the Prime Minister, as well as from the ministries of justice, external affairs (which acts as the intermediary between the African Commission and MOJ), communication, social affairs, and labor and the National Commission of Human Rights and Freedom, which is closely involved in the follow up process.[157] The committee also has a technical secretariat. Its responsibilities include monitoring implementation of recommendations and decisions, assuring the effectives of the implementation of proposed solutions, and steering the internalization of particular observations and recommendations at the domestic level.[158] At present, however, the committee only meets when the committee's president determines it is needed, rather than having regular standing meetings.[159]

This inter-ministerial committee is new, and more time is required to review its efficacy; however, according to one official, it has spurred renewed efforts to implement outstanding HRC decisions.[160] Cameroon is also one of the few states to have fully implemented a decision of the African Commission on Human and Peoples' Rights.[161] The committee's establishment is a promising sign for engagement with the commission and African Court, which would benefit from having focal points to work with amongst member states.[162]

In Mali, a 2009 ministerial decree created a standing inter-ministerial committee similar to Cameroon's model. The decree charged the committee with "collecting

and processing" all relevant information to determine the status of implementation at the national level of international conventions ratified by Mali, as well as following the implementation of all recommendations issued by international human rights bodies.[163] A representative of the minister for foreign affairs presides, while representatives of every ministerial department serve on the committee.[164] Unlike Cameroon, Mali's committee meets at least three times annually (in theory) but can convene extraordinary sessions at the presider's request.[165] The decree also specifies that the operational costs of the committee be financed through the state's budget.[166]

Finally, another interesting mechanism to note is Uganda's Justice, Law and Order Sector (JLOS), which has acted since 2001 as the government coordinating body for justice issues. Although JLOS does not possess any authority to handle the implementation of international decisions, the committee is another example of a system that uses working groups to coordinate various issues throughout the justice sector as a whole.[167] As a convening body, JLOS also provides a focal point for engagement with other international actors—notably donor governments—and civil society organizations. It includes representatives of 15 government agencies, including the Ministry of Justice and Constitutional Affairs, the Ministry of Internal Affairs, the Uganda Police Force, the Prison Service, the Directorate of Public Prosecutions, and the Uganda HRC. A technical committee prepares items for the JLOS steering committee, which meets once every two months.[168]

Ad Hoc Committees and Working Groups

Even in the absence of more formal or standing implementation mechanisms, interministerial working groups can develop case-specific remedial measures.[169] Although such groups tend to serve as exceptional responses to cases that require systemic remedies, they can nevertheless provide a potential lever for compliance and for more coordinated communication amongst different government agencies.

In Romania, the prime minister established a working group in December 2010 to develop a policy response for the nearly 700 Strasbourg cases involving property nationalized during the communist period, following the European Court's placement of these cases under its pilot judgment procedure.[170] Charged with drafting a property restitution reform law, the group included the ministries of foreign affairs, justice, public finance, the interior, environment, and agriculture, and the National Authority for Property Restitution.[171] Similarly, the government agent in Serbia chairs an interdisciplinary task force—comprised of representatives from the ministries of justice, foreign affairs, finance, as well as the Constitutional Court and the National Bank of Serbia—established to draft an action plan for the government's failure to abide by domestic judgments.[172]

Recommendations

While several states have begun to develop promising designs for implementation within their national legal frameworks, effective implementation depends on careful coordination within the executive branch. Much remains to be done. The following recommendations set out several areas of good practice that states should consider adopting.

- **Executive ministries should establish a coordinated procedure to facilitate the implementation of judgments.**

  A high-ranking official (at the under secretary level or higher) should play a coordinating role in the execution of judgments. Often this official may be the OGA; however, regardless of title, the official must have sufficient political influence over other ministers and departments to compel cooperation when necessary. As previous commentators have noted, "someone who is thoroughly engaged in the process, who understands the need for change, and who adopts a proactive approach, can be an effective catalyst."[173] States should further ensure that clear communication channels exist between the coordinating body and the policy/lead team responsible for implementation.

  In addition to this central point of liaison, states should also establish focal points within each of the ministries responsible for implementation at a policy level. The Office of the United Nations High Commissioner for Human Rights has suggested that a central focal point complement intra-departmental focal points.[174] At a minimum, these departments/ministries should include those of justice, finance, health, defense, and the interior. Ministries should ensure that their liaison officer is high-ranking (at an under secretary level or higher), and can ensure overall coordination for implementation across all areas of the agency's responsibilities. Executive decrees, internal regulations, or national legislation should clearly define these roles, which can help minimize confusion and turf battles in addition to creating a more structured execution process generally.

- **States should develop an inter-ministerial committee or working group—highly positioned within the government—to serve as a standing forum for implementation.**

  Responsibility for implementation is often dispersed across a wide range of government sectors, which poses significant coordination and coherency challenges. The creation of a standing inter-ministerial committee can serve to strengthen

such coordination and minimize the risk of miscommunication and duplicated efforts; it could likewise serve as the natural interlocutor for other political branches, including legislative actors and national courts. The committee must have sufficient authority and standing to compel the engagement of all committee members. To this end, states should carefully select the office or agency to play this convening role, in order to ensure that implementation remains a political priority. Several studies and state practice suggest that the MOJ may be best suited to this task, or that the body be itself freestanding (with some affiliation to the president or prime minister's offices), with clear lines of authority over its constituent members.

Where such committees already exist, states should ensure ongoing review of their membership to ensure the inclusion of all agencies whose mandate encompasses human rights. In states where such committees exist but can only oversee implementation of the recommendations of human rights bodies, their mandates should encompass individual decisions as well.

- **Ministries should incorporate a line item in their annual budget to pay any damages awarded; alternately, states should adopt (through legislation) a special fund to this end.**

  Timely payment of damages ordered is a crucial component of compliance and a vital interest of those bringing claims before international human rights bodies (particularly when negotiating friendly settlements). Ministries should earmark funds from their annual budgets to be used for reparations payments. Alternatively, states could pass legislation to create a standing fund for reparations.

- **Tools to facilitate communication—implementation forms, action plans, circular letters, and translations of judgments—should be used to improve coordination and communication amongst ministries.**

  The development of an implementation form (see Appendix I) or "circular letters" has proven useful in ensuring coordination and communication amongst ministries. State agencies that do not make use of such forms should consider adopting similar modes of communication.

  Regular translation of judgments into the national language of state parties would also do much to deepen awareness of international decisions through executive ministries and agencies. As an early report noted in the context of the European system, translated material "should be distributed as widely as possible, particularly within public institutions such as courts, investigative bodies, prison

administrations, and non-state entities such as bar associations and professional organizations."[175]

Ministries responsible for incorporating human rights into their work must also ensure that their personnel know—for instance, through regular training and/or continuing legal education programs—the regional and international human rights bodies to which the state has committed itself.

- **International human rights courts and bodies should facilitate the creation of domestic implementation mechanisms through the use of their remedial regimes.**

  Where states have failed substantially to implement judgments, international courts and treaty bodies should direct (or encourage) them to establish national implementation mechanisms, e.g., through the appointment of focal points or the creation of inter-agency working groups. To date, the Inter-American Court has articulated the most progressive jurisprudence in this regard; other courts and treaty bodies should do the same. Litigants should also press courts to play a proactive role in encouraging the establishment of national mechanisms to implement court orders.[176] In particular, where a number of unimplemented cases affect similarly situated individuals, advocates could consider making a collective request that the state identify individuals and/or agencies responsible for implementation and urge the creation of an *ad hoc* inter-ministerial committee or working group to that end.

III. Bringing Parliaments In: Legislators as Implementers

Introduction

Legislative bodies rarely monitor international judgments because many countries regard international affairs—and, by extension, compliance with international commitments—as the province of the executive.[177] Christos Pourgourides notes that legislative bodies may feel that implementation falls outside their scope because the executive branch almost exclusively carries out implementation of judgments, while Carolyn and Simon Evans argue that the role of legislatures has thus far attracted scant attention because of a focus on the judiciary's role.[178] Martin Kuijer remarks that a national parliament's role in implementation of international human rights is also "strongly linked with the status of international norms as such in the domestic legal order," which varies from one country to another.[179]

In the context of the regional human rights systems, analysts have largely focused on the European context over parliamentary systems within the Inter-American or African systems.[180] Even within the Council of Europe, however, national parliaments are still thinly engaged in implementation.[181] A survey of parliamentary involvement in human rights implementation carried out by the COE's Parliamentary Assembly noted the lack of pre-established and systematic parliamentary procedures for "Strasbourg vetting" and the "urgent need to build national parliaments' capacity to provide effec-

tive oversight of human rights implementation."[182] Moreover, in its survey of nine COE states, the JURISTRAS project concluded that in seven of those countries, domestic structures for execution of ECtHR judgments generally had minimal or no parliamentary involvement in monitoring judgments or "assessing their implications for national laws and policies."[183] By contrast, the two states surveyed with the best implementation records—Germany and the United Kingdom—have active involvement of parliamentary actors.

Fortunately, attention has increasingly turned to parliaments as implementation agents. Former PACE member Marie-Louise Bemelmans-Videc noted in 2008 the "readiness of an increasing number of parliaments to take a more pro-active approach to help ensure that appropriate and rapid following-up is given after an adverse finding by the Strasbourg Court."[184] Both the Parliamentary Assembly and the COM have also issued resolutions affirming that parliaments share in the responsibility of executing court judgments.[185] Similarly, Australia established a Parliamentary Joint Committee on Human Rights in May 2012, with a mandate that encompasses scrutinizing new legislation for its compatibility with international human rights standards.[186] (Unfortunately, monitoring of U.N. treaty body decisions, which Australia has increasingly refused to implement, is not yet within the committee's remit.[187])

This chapter highlights parliamentary actors' role in developing a legislative basis for the implementation of human rights decisions and recommendations. Several models for such interaction—the passage of national implementation legislation, the establishment of parliamentary human rights committees, and reporting methods—are highlighted, in addition to drawing upon relevant examples. The key objective of this chapter is to better explain the extent to which (and the ways in which) legislatures are already involved in implementation, and how such involvement can be made more effective. The final section offers several recommendations.

Why Parliaments?

As the primary task of legislators is to establish and develop a state's legal framework, parliamentarians necessarily have key roles to play in the protection of human rights. These roles have both negative and positive dimensions. Legislatures must oversee the actions of the executive branch and protect against unjustifiable interference by its policies, but they must also take action in favor of human rights where necessary. In some states, parliamentary action will be the only effective remedy in cases where courts identify that domestic legislation is incompatible with domestic or international human rights standards. And with respect to enforcement, legislative action might entail scruti-

nizing executive actions taken in order to implement a judgment, questioning ministers and government departments (either orally or in writing), adopting necessary legislative measures (e.g., implementing legislation), and undertaking thematic inquiries.

Legislators also play an important financial role in implementation insofar as they generally establish policy priorities and approve a state's budget; hence, only legislators can ensure sufficient funds and proper use of them.[188] For example, the Mexican Congress approved a budget of 30 million pesos at the end of 2010 to establish a reparations fund specifically designated to fulfill judgments of the Inter-American Court, as well as to compensate victims of past human rights violations.[189] (The creation of the fund followed six judgments against Mexico, which recognized the court's jurisdiction in 1998.) In April 2012, the congress also passed a comprehensive law to benefit victims of Mexico's on-going drug-related violence: the legislation sets up a national register for victims and a reparations trust fund, as well as a "National Attention System for Victims" to coordinate its implementation.[190]

All of these functions—executive scrutiny, budget allocation, and legislative action—underscore the fact that implementation is a political process, requiring the involvement of actors who understand the challenges that executing a judgment may present given the political context of a particular country. As Andrew Drzemczewski and James Gaughan have argued in the European context, "national Parliaments may be able in specific instances more effectively than the Committee of Ministers, to identify the social or political problems underlying a violation and understand the measures required to prevent the recurrence of similar infringements."[191] Drzemczewski and Gaughan conclude, however, that parliaments need a procedure of prompt and systematic notification of judgments and the status of their implementation to perform this role.

Legislative bodies' involvement in implementation can also confer legitimacy on a process that some have criticized as anti-democratic, in light of the power it gives to (unelected) judges. To that end, "domesticating" human rights—writing them into national law and involving them in the legislative drafting process—can play an important role in mitigating what some critics have referred to as the "democratic deficit" in human rights.[192] Parliamentary debate can also be a persuasive factor in a court's assessment of whether a convention violation has taken place. Indeed, in *Hirst v. United Kingdom* (one of the most contentious cases that the U.K. government has yet to implement), the ECtHR took into account the absence of parliamentary debate about the proportionality of the United Kingdom's blanket ban on prisoner voting in deeming the ban a violation of the European Convention.[193]

Implementation from Above

International human rights courts can play an important role in prompting national parliaments into action. For instance, in 2000, the Committee of Ministers launched a program urging national governments to take legislative action to authorize member states' national courts to reopen judicial proceedings following an adverse ECtHR judgment. As of 2006, 80 percent of COE states have legislation providing for the reopening of criminal procedures; in civil and administrative cases, reopening is available as a remedy in more than half of member states.[194]

The legislative process also serves to embed implementation within a more permanent political structure, one that is better able to withstand changes in administration or shifts in policy. To that end, Ukraine and Peru's legislatures have passed laws that formally regulate the implementation of international decisions. In Peru, following the 2001 presidential elections, former President Alejandro Toledo oversaw the passage of a law regulating the procedure for the execution of sentences issued by supranational courts.[195] And in Ukraine, a special statutory law passed by the *Verkhovna Rada* in 2006 (amended in 2011) regulates the enforcement and the implementation of European Court judgments. Similarly, the Italian "Azzolini Law," also passed in 2006, creates a legislative basis for supervising the implementation of ECtHR judgments by the government and Italian Parliament. These laws embed implementation more deeply within the institutional and legal structures of the state. Successive administrations have had difficulty overturning them—unlike executive decrees.

Finally, legislative involvement in implementation can play a preventive role. As many of the human rights systems struggle under the weight of rising applications, parliamentary engagement can help ensure compatibility between domestic legislation and a state's treaty obligations, thereby minimizing the likelihood of new violations.[196] Similarly, where adverse judgments implicate systemic problems at the national level, corrective legislation action can stem what could threaten to become a flood of applications at the international level. The European Court has already sought to respond to this phenomenon through the innovation of "pilot judgments," but over 70 per cent of Strasbourg judgments continue to involve repetitive applications—the result of states having failed to comply with their earlier implementation obligations.

The examples below highlight some of the more notable instances of good practice for parliamentary engagement in implementation. As most national constitutions endow parliaments with the competence to structure their work and proceedings as

they deem appropriate, there is no one model or process for parliamentary engagement with human rights.

National Implementation Legislation

Parliamentary actors can contribute to implementation by providing a national legislative framework that brings together all government actors with jurisdiction over implementation, and by adopting legal mechanisms to ensure adequate compliance.[197] Domestic legislation can also enumerate the authority and duties of respective actors—the legislature, the executive, and the judiciary—and clarify how the domestic legal order should apply international human rights conventions. It can also establish deadlines to help ensure timely execution of judgments.

In the Inter-American system, Colombia and Peru have both passed implementation legislation of considerable scope. Colombia was amongst the earliest states to do so when, in 1996, the congress approved Law 288, which established a procedure for the payment of pecuniary damages in adverse decisions by either the U.N. Human Rights Committee (HRC) or the Inter-American Commission.[198] The law sets up a national committee—composed of representatives from the ministries of the interior, foreign affairs, justice, and defense—that must pursue a judgment until it can "pronounce a favorable opinion on the fulfillment" of a decision. The law outlines the process by which the committee will consider whether to implement the recommendations of the international body and stipulates that it must do so within 45 days from the official notice of judgment; it also regulates how indemnification, if approved, should be effectuated.[199]

Peru's comprehensive implementation legislation complements the presidential decrees passed by interim President Valentin Paniagua. Specifically, following the 2001 presidential elections, then-President Alejandro Toledo oversaw the passage of a law that established a process to give effect to decisions of supranational courts requiring either the payment of pecuniary damages or declaratory relief.[200] Under its provisions, the MFA must transmit international decisions to the Supreme Court, which then transmits it to the jurisdictionally appropriate national court (notably, the law requires that the ministry maintain a fund for this purpose).[201] If the decision requires the payment of a specific monetary amount, the national court judge referred to the case should order the MOJ to pay the amount within ten days.[202] Where the amount of payment is undetermined, the national court must initiate a process that takes no longer than 30 days to determine an appropriate amount.[203] The law further provides a process for the resolution of conflicts that arise between national laws and the decisions of relevant

supranational courts, as well as procedures to sanction state officials found responsible for human rights violations.[204]

While the Peruvian law is not without its critics, it provides "what is possibly the most comprehensive model of national implementation legislation in the Americas."[205] A European counterpart exists in Ukraine, which passed similarly comprehensive implementation legislation in 2006 (with amendments in 2011), as part of the government's attempt to respond to the persistently high number of petitions registered in Strasbourg, and the high number of unimplemented judgments.[206] As noted previously, the law seeks in part to improve the standing of the OGA by creating a statutory basis for the agent's authority during the execution stage of judgments. It stipulates, for instance, that, at the request of the OGA, bodies in charge of the execution of individual measures shall provide information about the status and results of their implementation efforts; reply "effectively and without undue delay ... to submissions" made by the agent; and inform the government agent about the completion of additional individual measures' execution.[207] The law also empowers the OGA to take action with regard to general measures, including drafting amendments to legislation, proposals to changes in administrative practice, and proposals "to be taken into account during the drafting of laws."[208] The agent is required to propose these requisite measures to the Cabinet of Ministers once Strasbourg judgments become final, and to prepare an analytical review for the Supreme Court, including proposals to bring the case law of national courts into conformity with the European Convention.

Since its passage, the Ukrainian law has had beneficial results with respect to individual measures, but problems of political will remain.[209] To address these problems, the state signed a memorandum of understanding in 2010 with the rapporteur for PACE's Legal Affairs Committee, indicating parliament would also monitor compliance pro-actively.[210] Coding this intention into law has taken time, however, and parliament has not yet passed amendments (drafted in 2012) to strengthen parliamentary control of implementation.[211] If and when these amendments pass, they would expand parliamentary oversight of the execution of judgments with respect to general measures. For instance, they would require the OGA to send its proposal to the *Verkhovna Rada* as well as the Cabinet of Ministers and require annual reporting on implementation by the government agent, including making proposals on legislative amendments required by Strasbourg judgments.[212] Such amendments would seek to remedy, to some extent, criticisms that have been raised as to the OGA's "ill-defined powers *vis-à-vis* the Government," which limit its capacity to initiate legislative changes consistent with Strasbourg judgments.[213]

Like Ukraine, Italy passed an implementation law in 2006 that "defines relations between the major actors involved in executing the Strasbourg judgments."[214]

In particular, it created a new information channel between the prime minister (as the representative of the Italian state before the European Court) and the parliament, and enumerates the minister's duties for communicating judgments to parliament and reporting annually on the state of implementation of judgments. The law was passed, in part, to ensure that parliamentarians were regularly informed about Strasbourg judgments and to facilitate a more prompt adoption of legislative measures. While the impact of the law is still unfolding, one Italian legal scholar suggests that it "can be seen as an effort to link the functions of different branches of the Italian administration in implementing ECtHR jurisprudence, in line with a more open attitude of the Italian institutions towards the Convention system."[215]

Ongoing Legislative Efforts: Argentina and Brazil

Both Argentina and Brazil have attempted to develop legislative mechanisms for the implementation of international human rights decisions. In Brazil, an original 2000 law that sought to make orders for monetary reparations enforceable through the national judicial system referred only to the Inter-American system; a 2004 proposal referred to all international human rights bodies, including U.N. treaty bodies.[216] Similar legislative proposals have been proposed in Argentina, the most recent of which proposes the establishment of a "committee of ministers," to consist of the ministries for foreign affairs, international trade, justice and human rights, and economy. While neither of these measures has yet passed into law, they reflect attempts to expand the scope of such laws.

Despite these examples, countries whose legislatures have sought to formally regulate the implementation of international decisions remain exceptional. These measures are important not only insofar as they help formalize a complex set of administrative procedures but also because, unlike the presidential decrees described in the previous chapter, there is less potential for them to be undone by executive fiat. Moreover, even legislative frameworks inadequate to make real change in implementation provide a basis to amend and improve state practice. The following section considers more closely the role that parliamentary human rights committees can play in this process.

Parliamentary Human Rights Committees

Parliaments perform their work mainly through committees, which have been referred to as the "engine rooms" of parliament.[217] Defined as a "group of parliamentarians appointed by one chamber (or both chambers, in the case of joint committees in a bicameral parliament),"[218] committees perform a variety of specified tasks, including undertaking legislative and oversight functions, preparing the work of the plenary, scrutinizing proposed legislative texts, and submitting recommendations.[219] Parliamentary committees may be standing or *ad hoc* in nature: the former "operate on a continuing basis from one parliamentary term to the next, [and] carry out the bulk of parliamentary business, whereas the latter are created to inquire into and report on a particular matter."[220] Committees across parliaments also differ according to legislative procedure. Whereas some committees serve a formal legislative function and have the power to stop legislation incompatible with a state's human rights obligations, other committees might only have recommendatory powers.

Each parliament has its own committee system; however, with respect to human rights, they generally adopt two different approaches to committee work. One model creates "select committees": dedicated, standing committees whose mandates specifically encompass human rights and could include, where appropriate, oversight of human rights treaty norms and decisions. Any standing committee may also establish subcommittees to address specific human rights issues like the implementation of judgments. For instance, in 2007, the Romanian Chamber of Deputies set up a standing sub-committee of its Legal Affairs Committee specifically mandated to monitor the implementation of Strasbourg judgments (unfortunately, little is known about the committee other than it meets infrequently).[221] Christos Pourgourides, former rapporteur for the PACE Committee on Legal Affairs and Human Rights, notes that the subcommittee approach can have clear advantages as it "pools competences and provides direction."[222] Such committees, according to the Parliamentary Human Rights Committee, can also send a "strong political message, not only to the people but also to the government and other state bodies."[223]

CASE STUDY: UNITED KINGDOM JOINT COMMITTEE ON HUMAN RIGHTS

At present, few parliaments have standing committees dealing exclusively with human rights (much less the implementation of judgments). One notable exception is the U.K. Parliament's Joint Committee on Human Rights, which has been among the most lauded for its effectiveness in monitoring the implementation of Strasbourg judgments

and scrutinizing the conformity of draft legislation with human rights standards. Established as a consequence of the 1998 Human Rights Act, which incorporated the European Convention into U.K. national law, the JCHR is appointed by the House of Lords and the House of Commons, with a maximum of six members appointed by each house.[224] The JCHR's 12 members work with a professional secretariat that includes two assistant legal advisors and a legal advisor.

The committee monitors the implementation of ECtHR judgments by corresponding with the relevant executive ministries about the steps they have taken to execute court judgments; it then publishes that inter-agency correspondence and analyzes the progress made in periodic monitoring reports. According to the committee's guidelines, the department leading execution must provide the committee with a plan for execution within four months of the European Court's judgment; the committee also receives a copy of the action plan that the United Kingdom submits to the COM in Strasbourg.[225] Importantly, the committee has the power to require the leading department to submit written evidence and documents, to examine witnesses, and to meet at any time (except when parliament is in recess or has been dissolved). The committee also holds oral evidence sessions with government ministers, during which time it can ask questions relating to the application of convention rights.

In addition to providing essential legal advice to JCHR members, the secretariat helps write the questions that committee members pose during these sessions.[226] As noted, the JCHR's mandate also empowers it to scrutinize proposed legislation for its compatibility with the European Convention and other applicable human rights instruments. According to Anthony Lester, a Liberal Democrat member of the committee, "This reduces the need for judicial interpretation of the scope of the new provision, providing greater legal and administrative remedy."[227] The committee can also make recommendations as to general measures the government should undertake even before a Strasbourg judgment becomes final.[228]

Joint Committee on Human Rights: Success Stories

One example of the JCHR's involvement at an early stage of a bill was the Draft Gender Recognition Bill, which dealt, in part, with the issue of legal recognition of the acquired gender for transsexual people.[229] The JCHR's pressure on parliament following the European Court's 2002 decision in *Goodwin v. United Kingdom*[230] led to parliament's considering the bill by July 2003, only one year after the case had been decided.[231] Now known as the Gender Recognition Act, it came into effect in April 2005.

More recently, in *Gillan and Quinton v. United Kingdom*, the European Court ruled that the lack of adequate safeguards on police powers to stop and search individuals under the U.K.'s Terrorism Act fell afoul of the convention.[232] In that case, the JCHR recommended amending the impugned provisions promptly in light of the seriousness of the issues and the unlikelihood of the case succeeding on appeal before the ECtHR's Grand Chamber.[233] The committee's secretariat also subsequently prepared two reports on "no suspicion" police stops and search powers, which complemented part of a wider review that the government undertook with respect to its counter-terrorism powers. Prior to the passage of provisions to replace the impugned sections in early 2012 as part of the Protection of Freedoms Bill, the U.K. Home Secretary also signed an urgent remedial order at the committee's recommendation to ensure compliance with the Strasbourg ruling while the new bill was pending.[234]

Over the years, the Joint Committee has added to its remit in important ways. In 2006, it implemented a new process to publish annual progress reports of decisions rendered by Strasbourg.[235] These invaluable reports provide candid assessments of the government's implementation record. A March 2010 report, for instance, chastised the government for its "minimal compliance"[236] approach to court judgments and criticized it for failing to implement several high-profile decisions, notably *Hirst v. United Kingdom*, which concerns the issue of prisoner voting rights.[237] The committee noted:

> However good the record in the majority of cases, inexcusable delay in some cases undermines the claim that the Government respects the Court's authority and takes seriously its obligation to respond fully and in good time to its judgments. ... The U.K., with its strong institutional arrangements for supervising the implementation of judgments, is in a good position to lead the way out of the current crisis facing the Court, but leaders must lead *by example*.[238]

Another change was to begin to recommend amendments to bills to give effect to JCHR recommendations.[239] And as of 2011, the United Kingdom has begun to proactively report to the JCHR as well (rather than responding post facto), further entrenching dialogue between the two branches of government.[240]

The UK Joint Committee's Impact on Parliamentary Debate

According to a recent study on the impact of the JCHR, "substantive references" to committee reports have increased significantly in the past ten years, rising from just 23 in the first five years of the committee's existence to 1,006 references in the 2005–10 parliamentary period.[241] Approximately 60 percent of such references were devoted to legislative scrutiny of various kinds, while a smaller percentage involved responses by ministers or other government representatives to JCHR concerns. The study further found that references to its reports "often drew substantive responses by Government ministers and representatives, resulting in sustained dialogue about the justification for legislative measures and whether or not bills or existing law should be changed or amended."[242] Indeed, in at least 16 references to the JCHR's work, the government offered amendments to a bill or agreed to do so.[243] The government revised one such bill, the Police and Justice Bill, to ensure conformity with the U.N. Convention on the Rights of the Child.

Select committees have advantages, but they also have downsides. While these committees can develop great expertise in implementation, select committees may also tend to divorce human rights standards from mainstream policy debates. As George Kunnath of the Westminster Foundation for Democracy notes, "An overwhelming majority party can determine how much dialogue is devoted to human rights."[244] For this reason select committees work better in some countries than others. In countries dominated by one political party, for instance, a special human rights committee may have to give up independence or risk being marginalized politically.[245] As one commentator notes, for such committees to function effectively, a country needs to support the idea that the executive has accountability to the parliament; likewise, the parliament should be "willing ... and able ... to exercise parliamentary supervision of the execution process."[246]

Finland: Legislating through International Norms

A study prepared by the International Law Association found that the legislative process in Finland had "fairly extensive reference to treaty body output in the legislative process."[247] In particular, the parliamentary Constitutional Law Committee makes frequent use of international standards in drafting and scrutinizing legislative proposals. The committee relies heavily on treaty body decisions and general comments—particularly those of the Human Rights Committee—and there are "many examples of reference in government Bills to treaty body findings (or to pending cases)," both in relation to Finland as well as other countries.[248]

A more common approach to parliamentary involvement has been for individual parliamentary committees or legislative units to consider human rights issues as they arise within the scope of their respective mandates. This approach treats human rights as a cross-cutting issue; in effect, "every parliamentary committee is ... considered a 'human rights committee.'"[249]

Germany, for instance, has a standing human rights committee but several parliamentary committees actively engage in implementation issues: the Committee of Human Rights and Humanitarian Aid, the Committee on Legal Affairs, and the Petitions Committee. By contrast, the Netherlands (like most COE member states) does not have a specific parliamentary committee on human rights, nor is there a specific parliamentary procedure for verifying the compatibility of draft laws with the European Convention. Rather, when drafting legislation, ministries (typically the MOJ) are required to specify why the legislation is compatible with the Dutch constitution and relevant provisions of international law, including obligations arising from Strasbourg judgments.[250] According to Martin Kuijer, approximately 400 annual requests are received annually from within the Dutch MOJ and outside ministries, seeking reviews of legislative compatibility.[251]

As noted, most but not all of the involvement of parliamentary committees in implementation monitoring occurs in Europe. However, the Human Rights Committee in the Brazilian House of Representatives played a decisive role in the implementation of the Inter-American Commission's first decision against the country. The case, *Canuto v. Brazil*, concerned the death of Joâo Canuto, a labor activist who was assassinated in 1985.[252] Amongst the recommendations the commission made, it asked that Brazil make reparations to members of Canuto's family, and that Canuto's killers be punished.

In 1999, the Human Rights Committee successfully organized a national campaign to make government authorities aware of the importance of paying the reparations, which it eventually did.[253]

Mexico's Congress provides another notable example of legislative involvement. The congress's Chamber of Deputies approved, at the end of 2010, a budget of 30 million pesos to fulfill judgments handed down by the Inter-American Court of Human Rights (IACHR).[254] In approving the establishment of this fund, three select committees played a pivotal role: the Human Rights Commission, the Budget Commission, and the Special Commission on Femicide. Mexico's Congress has also taken an active role in seeking to implement portions of the Inter-American Court's 2009 ruling in *Radilla Pacheco v. Mexico*, which ordered the state to remove offenses committed by military members against civilians from the jurisdiction of its military justice system.[255] In January 2010 the Permanent Commission requested the Mexican government to comply with the *Radilla* ruling, including the necessary reforms to military legislation to ensure that civilian courts investigate and try human rights violations committed by the military.[256]

Bolivia: Legislative Action and Law 326

Legislative action played an important part in Bolivia's compliance with the Inter-American Court's decision in *Trujillo Oroza v. Bolivia*, which ordered the state to criminalize forced disappearance under its domestic law.[257] While the legislature had first introduced a proposal to do so in 2001, the court's 2002 decision lent renewed impetus to the process. Indeed, in response to the executive's urgings, the legislature began working on a technical report for the proposal in 2005.[258] By the start of the following year, the enactment of Law 326 incorporated the crime of forced disappearance into Bolivia's penal code.[259]

While parliamentary engagement in implementation of individual cases is perhaps least developed in the African context, there are promising examples there as well. Notably, South Africa has developed a more active role for parliamentary actors in implementation: parliament debates all national reports to the U.N. treaty bodies, including holding public hearings, calling in ministers, and reviewing documents and reports from a wide range of departments and citizens' groups.[260] South African parliamentarians also take part in national delegations to CEDAW Committee proceedings. This involvement helps lawmakers to understand the committee's recommendations and how to implement them.[261]

As with select committees, the cross-cutting model also has limitations. For instance, in a weak system of parliamentary committees, mainstreaming human rights might have little effect. In Greece, for example, the absence of any committee explicitly mandated to monitor ECtHR decisions has meant that implementation of ECtHR decisions receive little attention. According to two commentators, this reflects, in part, "the strong party discipline that characterizes Greek parliamentary life, as well as ... the endemic weakness of a parliamentary system controlled by the governing party, to actually engage in control of the executive."[262] Moreover, different committees have different powers: while some might be able to stop legislation that contravenes human rights standards, others might perform a more general oversight function, and have only recommendatory or advisory powers. Similarly, tacking human rights on to the mandates of other standing committees runs the risk of thin commitment to, and insufficient time and resources for, implementation.

Reporting Procedures

Systematizing dialogue between executive agents responsible for implementation and their parliamentary colleagues will also enhance parliamentary engagement.

In the Netherlands, since 1996, the government agent before the European Court reports annually to both houses of parliament on Strasbourg judgments. Following a request by the senate in 2006, the report now also includes information as to the status of implementation by the Dutch government as well. If parliament deems the government's actions unsatisfactory, the parliamentary Justice Committee poses questions to the government concerning the agent's report and provides recommendations. According to Martin Kuijer, whereas debate on human rights was quite minimal when the Netherlands ratified the European Convention, it has become increasingly important to the daily work of Dutch parliamentarians; the introduction of structured reporting helped mainstream these debates at the parliamentary level.[263]

Germany's Bundestag also has several useful reporting mechanisms. First, since 2007, the Parliamentary Committee on Human Rights and Humanitarian Aid receives, along with the Legal Affairs Committee, annual reports from the federal government concerning adverse judgments of the ECtHR and their implementation in Germany.[264] Both reports are published on the website of the Federal Ministry of Justice. Second, the government often submits, on an *ad hoc* basis, oral and written reports on human rights issues to the Committee on Human Rights and Humanitarian Aid. Finally, the government submits a bi-annual general human rights report to parliament along with an action plan for improvement.

Notably, reporting in both the Netherlands and Germany also encompasses decisions rendered against other COE states. Since 2009, the Dutch annual report contains "where appropriate" references to judgments against other state parties that have had "a direct or indirect effect on the Dutch legal system."[265] And since 2010 the annual report also takes note of admissibility decisions before the European Court, i.e., what is *not* a violation. This practice has led to several instances where European Court judgments rendered against other countries nevertheless contributed to the Dutch government's bringing its legislation into conformity with Strasbourg jurisprudence. Martin Kuijer notes, for instance, that the European Court's decision in *Salduz v. Turkey* had "immediate effects in the Dutch legal order" and led to parliamentary debate because the Netherlands has similar problems with ensuring that a suspect has access to legal assistance during the investigation stage of criminal proceedings.[266] In this manner, reporting can contribute not only to implementation of international decisions but further their *res interpretata* effect.

From Geneva to Cape Town: *McCallum v. South Africa*

South African legislators have played a part in the U.N. individual communications procedures, following the Human Rights Committee's issuance of its first decision against South Africa.[267] In November 2011, the South African Human Rights Commission (the country's NHRI), as well as the Association for the Prevention of Torture, the Institute for Security Studies, and the Civil Society Prison Reform Initiative provided testimony before the parliamentary Portfolio Committee on Correctional Services.[268] Judith Cohen, who heads the South African Human Rights Commission's Parliamentary and International Affairs Unit and appeared before parliament on the commission's behalf, says that the hearing helped raise the profile of not only the case but also South Africa's failure to criminalize torture, a draft bill for which has been sitting with the Department of Justice and Constitutional Development since at least 2003.[269] At the briefing, Cohen urged that the bill be brought before parliament and that the committee could assist in the process, a proposal that several of its members supported.[270] The hearing also attracted the attention of a South African journalist, who helped bring national attention to Bradley McCallum's case—and the government's failure to implement it—several months later.[271]

While such reporting structures are important, like parliamentary committees, there is a risk that they can be more ceremonial than substantive. Several commentators have noted that while reporting itself is welcome, the more pertinent issue is the degree of follow-up on such reports. Nevertheless, the likelihood that parliamentary debate and legislative amendments will follow from an adverse court judgment only increases where reporting procedures do exist. In Pourgourides' words, reporting procedures bring together "the responsibility taken on by the parliament in monitoring implementation of judgments by the government, and the responsibility for legislation, which is the core of parliamentary work."[272]

Questioning Ministers

In parliamentary systems where executive ministers are also members of the legislature, the regular questioning of ministers—orally and in writing—is another important procedure for overseeing implementation. Where more formal reporting structures do not exist, or where parliamentary committees are weak, legislative actors can take advantage of questions as important tools to press for compliance. Such questioning, or interpellation, involves parliamentarians asking ministries to explain their policies on a particular issue. The procedures often differ from one country to another (presidential systems do not have the same procedures for the routine questioning of ministers as parliamentary systems do) but "asking questions remains one of the best ways for members of parliament to hold the executive to account."[273] As a report by the Inter-Parliamentary Union notes, "when working properly, parliamentary questions are a significant investigative and oversight mechanism."[274]

Interpellation proved important in the *A.S. v. Hungary* case highlighted in the introduction to this report. There, after nearly two years of the Hungarian government's refusing to award compensation to Ms. A.S., one of her representatives—Bea Bodrogi, an attorney with Legal Defense Bureau for National and Ethnic Minorities—approached József Gulyás, a Liberal member of parliament (at the time), to discuss the Hungarian government's unwillingness to compensate her client, as the CEDAW Committee had recommended. MP Gulyás agreed to the request and, in February 2009, took to the floor of the parliament to question the prime minister on Ms. A.S.'s case.[275] He drew attention to the fact that the CEDAW Committee, after issuing its decision, had further condemned Hungary for its non-compliance in compensating Ms. A.S. during its periodic review in 2007. Gulyás concluded by asking the government to rethink its position and, if the prime minister intended to act, when he would do so. Lajos Korozs, the state secretary of the Ministry of Social Affairs and Labor, replied on the govern-

ment's behalf.[276] Although in private meetings with Ms. A.S.'s counsel the ministry had declined to pay compensation,[277] Mr. Korozs reversed that position, leading to a series of private negotiations between Ms. A.S.' attorneys and the Hungarian government.

Reflecting on her colleagues' decision to seek Mr. Gulyás's assistance in pushing for implementation, Judit Geller of the ERRC sees it as an important strategic choice in the case's trajectory, one that played a significant role in the government's decision to reverse course.[278] While the outcome was unusually positive, Geller notes that the interpellation served the additional function of bringing the case to public attention, whereas before it had been largely confined to closed door negotiations with government officials. Just as the parliamentary hearing in *McCallum* opened a wider door for drawing attention to torture and cruel treatment in South Africa, the parliamentary intervention in *A.S.* helped bring attention to the broader issue of equality and fair treatment of Roma. Geller also emphasizes that the interpellation is itself part of normal parliamentary procedure in Hungary. This speaks to the importance of maintaining case-specific strategies for compliance, even in the absence of formal implementation mechanisms.[279]

Recommendations

Parliamentarians legislate the legal framework for human rights at the national level, and thus have the unique responsibility to ensure the proper implementation of decisions made by international human rights bodies, and also to ensure the protection of norms set forth in their treaties. In the words of the Inter-Parliamentary Union, if human rights are to "become a reality for everyone, parliaments must fully play their role and exercise to this effect the specific powers they have."[280] These powers may vary but, at a minimum, broad compliance with human rights decisions depends on a strong mechanism of legislative scrutiny.

- **States should pass legislation that identifies the role, responsibilities, and procedures to be followed by government actors throughout the implementation process.**

  While executive degrees and other administrative regulations can structure a state's implementation process, national legislation offers an opportunity to entrench the substantive and procedural framework. National legislation should aim to clarify how the domestic legal order will apply certain human rights conventions, as well as the responsibilities of different state actors in this process. Such legislation can also help minimize the turf battles that often attend the

implementation process, and offer valuable protection in situations where a future executive proves hostile to supranational jurisdiction.

- **Legislatures and parliaments should identify or establish a dedicated human rights committee whose mandate encompasses the implementation and monitoring of international decisions and recommendations.**

  Select human rights committees should consider establishing a subcommittee to specifically address implementation-related issues of relevant regional and sub-regional human rights courts and treaty bodies; existing committees that already oversee the implementation of recommendations/concluding observations should expand their remit to encompass international judgments as well.[281] Legislatures should scrutinize state reporting to U.N. treaty bodies, and monitor the most significant recommendations. Committees should likewise scrutinize government bills for their compatibility with international human rights standards, taking into account the relevant jurisprudence of international courts and treaty bodies. Where the establishment of a select committee is not advisable or practicable, other relevant committee or analogous structures should be pursued.

  Whatever the particular form or structure, attention to the scope of legislative bodies' authority is essential. Committees should have the authority to exercise subpoena powers over other government actors and should establish guidelines that establish expectations of the government in terms of timelines and action plans. Committees should be as inclusive as possible of political parties represented in the legislature and members should have demonstrated expertise and interest in human rights.[282] Committees should also have proper resources and the support of a specialized staff with legal and policy expertise in human rights.

- **Legislative actors should establish a procedure to propose legislation that would satisfy the execution of judgments.**

  In addition to parliamentary committees, legislatures should endeavor to mainstream human rights across the range of their function; their ability to introduce legislative proposals that would comply with international judgments makes this crucial. Legislative actors should exercise this power of initiative promptly when implementation requires new laws or amendment to existing legislation. Parliamentary bodies also have a role to play in budgetary allocation and should ensure that this includes the payment of reparations, where so ordered.

- **States should ensure that regular reporting procedures are in place so that legislative actors are informed of implementation measures.**

  Reporting procedures are an important means of ensuring communication between the executive and legislative branches, and allow the latter to monitor the effectiveness of the measures taken to implement a judgment. Reporting also serves the important purpose of ensuring that legislatures are made aware of adverse decisions rendered against their state and other states. Where reporting is not feasible or advisable, individual legislators and/or committees should consider other procedures that fall within their competency in order to obtain responses from executive ministries about the status of judgments.

  In addition to government actors, legislatures and parliaments need to develop relationships with civil society interlocutors and other parts of the national human rights machinery, e.g., ombudsmen and/or NHRIs. International actors—including special rapporteurs—are also key interlocutors.[283]

- **Parliamentary bodies at the international and regional level should maximize their "dual" status to encourage the development of implementation structures at the national level.**

  Just as parliamentary committees must ensure that they remain in close contact with relevant regional and international human rights machinery, these systems must maintain a close relationship with parliaments and legislatures at the domestic level. This is particularly important in countries without supervision mechanisms and procedures, or where the executive dominates the execution of judgments. To that end, international parliamentary bodies and their delegates should use the advantage of their dual role to apply political pressure to create monitoring structures within the legislature.[284]

  In the European context, PACE is increasingly involved in monitoring compliance and has played a leading role in emphasizing the dual role that parliamentary actors can play at the national level and in Strasbourg. No analogue to PACE exists in the African or Inter-American systems; however, other international parliamentary bodies—such as the Pan-African Parliament, the East African Legislative Assembly,[285] and the Latin American Parliament—could begin to forge a similar practice. Their priorities should include promoting increased visibility of implementation; advocating a more consistent and rigorous review of measures taken by the state to comply with judgments; and engaging proactively with domestic authorities in their home states to press for implementation.

IV. Justice at Home: Domestic Courts and Judges

Introduction

In many ways, compliance with national court judgments raises the same difficulties as the decisions of international courts do, since both depend on state institutions for enforcement. But, like the political branches of the state, domestic courts are state organs: they must undertake to ensure that the domestic laws of a state are consistent with its international obligations, and that international human rights treaties—as well as the decisions that interpret them—have domestic effect. National courts that issue progressive decisions as to the enforceability of international human rights judgments play an essential role in facilitating compliance at the domestic level, and in providing interpretive authority for a state's duty to implement.[286] Moreover, because domestic judiciaries, unlike international courts, are more firmly entrenched within a state's national legal order and address their decisions to a particular institution or agency, they can be important avenues to compel those actors into compliance with international judgments.

This chapter examines the role of courts and judicial systems as implementers of international judgments. It first reviews the important role that domestic judiciaries can play in implementation and highlights several of the challenges that often obstruct domestic courts from playing a more positive pro-compliance role. It then looks at three

avenues for maximizing domestic judicial forums: (1) the development of monitoring units and other oversight mechanisms by domestic judicial institutions; (2) the use of complementary domestic litigation as a strategic arm to buttress and/or enforce international judgments; and (3) the importance of building greater regional dialogue and awareness between international and national judicial actors. The chapter concludes with several recommendations to give domestic courts and judicial systems a more significant role in implementation, and the strategies human rights advocates can harness to this end.

Courts as Implementers

National courts serve as vertical enforcement mechanisms for international agreements and decisions.[287] The concept of a national court giving effect to an international obligation, as André Nollkaemper notes, means that it "ensures that the obligation is actually applied or enforced. Depending on the nature of the international obligation, the court ensures that the conduct prescribed by an international obligation is carried out, or that the result that is required is achieved."[288]

On a practical level, international decisions frequently demand that domestic prosecutorial or judicial authorities take some sort of action, including, notably, the reopening of criminal and civil proceedings, undertaking criminal investigations, and, where appropriate, prosecuting alleged human rights violators. As Viviana Krsticevic and Michael Camilleri note, "special mechanisms and procedures in the judicial sphere can significantly assist compliance in what is often the most difficult area: criminal prosecution of individual rights violators. In particular, special prosecutorial units or teams ... can greatly facilitate compliance, as well as independent tribunals that issue progressive decisions with regard to the enforceability of international judgments."[289]

At a broader level, national judges are also the conduits through which international judgments become effective in national legal orders. As Helen Keller and Alec Stone Sweet have noted, "Judges play a special role in the reception process."[290] Keller and Stone Sweet note in particular that the European Convention supervises judges more systematically than most government actors and that therefore "national high courts have a powerful interest in closely monitoring the ECtHR's activities, and in staying one step ahead of the latter when it comes to developing standards of rights protection."[291] Likewise, while international law "in principle recognizes that national courts have the primary role in the adjudication of international claims,"[292] the access of petitioners to international judicial review is a powerful incentive for courts at the domestic level to ensure the compatibility of national laws with international conven-

tions. National judges therefore have a vested interest in ensuring that the substance of their jurisprudence is consistent with the case law of other relevant international human rights bodies.

Unfortunately, a variety of obstacles can inhibit national courts and judges from exercising as significant a role as they could. The discussion below highlights three forms these obstacles can take.

Status of International Decisions

The contested status of international human rights decisions as legally binding perennially hinders implementation. Although this vexed debate does not (usually) extend to decisions of the ECtHR, the Inter-American Court, or the newly established African Court of Human and Peoples' Rights, it remains alive with respect to the African and Inter-American commissions as well as the U.N. treaty bodies. Indeed, this obstacle is particularly serious given that the African and Inter-American courts can hear only a fraction of the cases brought before their respective commissions. Abiola Ayinla and George Mukundi Wachira note that the non-binding character of the African Commission's recommendations is "the most cited reason why states have not been inclined to enforce [them]."[293] Markus Schmidt similarly argues that the "major lacuna of U.N. individual complaints procedures...remains the absence of binding and thus legally enforceable decisions"; as a result, the committees have "little leverage to ensure that states comply with recommendations."[294] The lack of legally binding effect can discourage the enforcement of decisions by courts at the national level.

Political and Interpretive Challenges

Sufficient understanding and awareness of the human rights systems and the international decisions they render present other challenges to implementation. Many times national courts fail to refer to international decisions, either because they are unaware of relevant jurisprudence or because they are reluctant to supplant an international court's opinion with their own. Part of this is about awareness—national judges often do not know about relevant international decisions because of a failure to translate and/or disseminate them[295]—but there are larger challenges as well, ranging from a lack of clarity as to what position the rulings of international courts hold in national law to concerns that international decisions represent a threat to sovereign judicial decision making. For instance, in one case where a petitioner sought to use the decision of the U.N. Human Rights Committee as a basis for asking the Sri Lankan Supreme Court to exercise its inherent powers of revision, the chief justice deemed Sri Lanka's ratification of the protocol invalid, saying it violated Sri Lankan courts' constitutionally granted judicial power.[296]

Because the application of international human rights law can rest uneasily with domestic statutes and political priorities, interpretive challenges also confront national judiciaries. As Eyal Benvenisti noted in an early article on the subject, "national courts tend to interpret international rules so as not to upset their governments' interests, sometimes actually seeking guidance from the executive for interpreting treaties" and taking care "not to impinge with their decisions on their governments' international policies and interests."[297] While in some countries courts have developed interpretive canons to resolve ambiguity between a state's international legal commitments and domestic statutory provisions,[298] many judges may nevertheless ignore them.[299] In Ukraine, for instance, despite legislation that now makes the ECtHR's case law a direct source of law, the Constitutional Court recently refused to consider ECtHR jurisprudence when interpreting the provisions of the Ukrainian Constitution and code of criminal procedure that govern pretrial detention.[300] Similarly, in Argentina, although constitutional reforms in 1994 provided a constitutional basis for the supremacy of treaties (including the American Convention on Human Rights) over national law, one commentator notes that the country's Supreme Court has been "inconsistent in its recognition of the binding nature of [international] decisions."[301]

Institutional Factors

Implementation is often constrained by the very feature that is otherwise revered in domestic judiciaries: their independence. As Courtney Hillebrecht notes, "In states where there are constraints on the executive, such as political competition and/or an independent judiciary, involving other actors inherently introduces uncertainly into the compliance process and introduces the possibility that the executive can no longer control the compliance outcomes."[302] Thus, while it is often assumed that independent national courts might heighten compliance with international human rights regimes, this autonomy can cut both ways. Although an independent judiciary may be more inclined to hold other branches of government accountable to their international human rights commitments, they may also be more prone to challenge the juridical status of international courts and resist enforcing their orders, even in spite of executive pressure.

The principle of the separation of powers can also trouble implementation. In Guatemala, for instance, the 2004–2008 administration of President Oscar Berger significantly improved compliance with symbolic and financial reparations ordered by the Inter-American Commission and Court. Moreover, Berger named Frank LaRue, former director of the Center for Human Rights Legal Action and a victim's representative in several cases before the Inter-American system, as director of the Presidential Office for Human Rights.[303] But whereas the executive branch coordinated these measures, compliance with investigations and prosecutions, which are controlled by the police and

judiciary, made little progress.[304] Similarly, in Hungary, while the government agent monitors the Hungarian legal system's compliance with ECtHR decisions, the agent may not interfere with the functioning, much less the decisions, of the national judiciary. The agent may only raise concerns with national court jurisprudence before the National Council of Justice, the Hungarian judiciary's administrative forum (to which the state's MOJ belongs).[305]

National courts and judges are clearly vital actors in implementation; however, the fact that international human rights decisions often point to a failing on the part of these very actors, may impede their willingness to abide by international decisions. The institutional independence of judicial actors also challenges implementation, even when executive or legislative actors support it. The following section explores three avenues that courts and advocates alike have pursued with some success in order to build better synergies between courts and judges at both the international and national level.

Monitoring Units and Oversight Mechanisms

While the core task of national courts remains the adjudication and interpretation of legal claims, several judicial systems have developed internal mechanisms to monitor implementation and promote better compliance. These models, some of which explicitly encompass international human rights decisions, can be instructive for states whose domestic judiciaries might be able to develop and perform an oversight role during the implementation process.

Judicial Monitoring

Some courts facilitate implementation through administrative units designed to educate national judges on the case law of regional and international human rights bodies, or to monitor compliance. In Poland, for instance, special units exist within the Constitutional Court, the Supreme Court, and the Supreme Administrative Court devoted to analyzing and educating judges on European Convention standards; as a result, Adam Bodnar notes that all of these courts "quite naturally refer to ECtHR jurisprudence."[306] Notably, however, Strasbourg standards (particularly with respect to pre-trial detention) remain largely ignored by the country's lower courts, requiring "continuous support by the Ministry of Justice and the National Council of the Judiciary."[307]

Similarly, in the Netherlands, each court within the country has a coordinator for European law and human rights (*Gerechtscoördinator Europees recht en mensenrechten*, or "GCE"), which compiles a monthly report summarizing all significant case law issued by both the ECtHR and the European Court of Justice (ECJ); this includes, where relevant, judgments against other countries. These specialists also function, according to

the Hague Institute for the Internationalisation of Law, as "contact persons for [European] law matters in their court," and they meet regularly in the context of a network (the"GCE-netwerk"), which is, "at national level, a vital instrument for exchange of information, mutual assistance and judicial cooperation in [European] law matters."[308] This initiative is now ten years old and is supported by the Council for the Judiciary (*Raad voor de Rechtspraak*), which has administrative competencies for quality management within the Dutch judiciary, as well as other operational tasks.[309] Sweden also offers an interesting example of judicial involvement—the Law Council, which is composed of judges from the country's highest courts, scrutinizes draft bills. While not binding, the council renders an opinion on consistency with high-ranking legislation, such as the constitution, EU treaties, and European Court jurisprudence.

CASE STUDY: COSTA RICA

In Costa Rica, the Constitutional Chamber of the Supreme Court adopted an innovative system of compliance monitoring with orders made under its *amparo* and habeas corpus jurisdiction.[310] The state established the program, which it funds, in 2009 following a major constitutional change in 1989.[311] This contributed to a dramatic increase in the use and scope of judicial review in Costa Rica; at the same time, the state created a new constitutional chamber of the Supreme Court known as the *Sala Cuarta* ("Chamber IV"), with exclusive and final competence on constitutional matters.[312]

Compliance rates with Sala IV decisions prior to 2009 are largely unknown; however, they were probably poor—as low as 40 percent in some cases. Jorge Vargas Cullell, deputy director of the research center *Estado de la Nación*, notes that a key problem in this regard was the court's inability to get public officials to answer their request for information.[313] The development of a compliance monitoring system was relatively straightforward, however, and premised in part on a strategic effort to generate publicity about compliance patterns, as well as to "raise awareness among agencies and to make it easier for the media to follow up on problem areas."[314]

The system begins with a compliance team—staffed by two full-time lawyers—working in the *Centro de Jurisprudence Constitucional*, an administrative office located within the Sala IV. The center selects a random sampling of decisions on a monthly basis and, at the time the decision indicates the state should have taken an action, contacts the claimant to inquire into the status of the case. If the claimant is satisfied the center registers the answer in a database; if not, the center contacts the relevant defendant institutions or agency for an explanation. The center records all calls and assesses cases as non-compliant after five unanswered calls. At the end, the center assesses the degree of compliance—complete, partial, or none—based on the specificity of the court's orders and the information collected. When defendants fail to comply, the

center documents the reasons given or offers its own determination as to why action was not taken.

In the three years since it was developed, the program has yielded impressive results: compliance rates with Sala IV decisions have risen upwards of 85 percent. Cullell attributes this largely to the reputational damage that executive agencies fear should their non-compliance become a matter of public interest.[315] Indeed, six months after the unit had launched, the Sala IV held a press conference in March 2010 announcing the preliminary results of its monitoring. The conference was widely advertised and well attended, and received careful national press coverage the following day. During that same period, the chamber's President discussed the unit's findings with agency heads and gave a series of interviews on the subject, all of which contributed significantly to improved compliance rates.

The Costa Rican model, although not itself extending to the enforcement of international judgments, has garnered attention from the World Bank and governments of the Dominican Republic, Colombia, and Brazil have looked to emulate the model. The model may be extended to other countries where the justice sector struggles with similarly high rates of non-compliance, as well.[316]

National Legislation

In some countries, legislation has also specifically carved out a role for domestic courts in implementation. Such legislation, to the extent that it clearly delineates judicial actors' responsibilities, can minimize the risk that courts will fail to act or otherwise evade enforcement through the use of prudential doctrines. (Although domestic courts might still choose to ignore it.) One of the earliest countries to pass such legislation is Costa Rica, which promulgated an agreement with the Inter-American Court in 1983 that states: "The resolution of the Inter-American Court of Human Rights and its president, once communicated to the corresponding administrative and judicial authorities, of the republic, have the same legal authority and enforceability as the resolutions emitted by the Costa Rican courts."[317]

In Burundi, the same principle has been constitutionalized: the country's new constitution incorporated key human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, and the CEDAW as an "integral part" of the country's new constitution in 2005.[318] Moreover, Burundi's Supreme Court, the country's highest court, has specific competence to execute the decisions of all international courts and quasi-judicial supranational bodies.[319]

Likewise, Ukraine's implementation law transforms ECtHR judgments by making the court's jurisprudence a direct source of law. This compels Ukrainian courts to

consider Strasbourg jurisprudence, which they had previously applied, according to two commentators, "only occasionally and inconsistently."[320] Similarly, Peru's national legislation regulates execution by domestic courts of supranational courts' judgments that require either the payment of pecuniary damages or declaratory relief.[321]

Maximizing Domestic Judicial Forums: Enforcement Litigation

Like international decisions, domestic judgments rely on other state actors for their execution. At least with respect to actions outside of their immediate competence, domestic courts therefore have greater institutional limits than executive or legislative branches. Nevertheless, several recent cases underscore the value of using national courts as direct forums for implementation.

Complementary Domestic Litigation

Human rights advocates can undertake strategic litigation at the national level promptly following the issuance of a successful judgment by an international human rights body. As Dmitri Bartenev and Yuri Marchenko concluded from the experience of litigating before the European Court of Human Rights, a successful decision "may not necessarily be the culmination of the litigation cycle of a strategic case."[322] Post-judgment strategic litigation carried out at the domestic level can not only spur national courts to action but also help build a complementary jurisprudence between the domestic and international level.

Shtukaturov v. Russia

One recent successful instance of compliance came in the case of *Shtukaturov v. Russia*, which was primarily litigated by Bartenev, on behalf of the Mental Disability Advocacy Center (MDAC), in Strasbourg and later before the Russian Constitutional Court. In that case the applicant, Pavel Shtukaturov, had been stripped of his legal capacity in 2004 following domestic judicial proceedings from which he was deliberately excluded. As he had no legal standing in Russian courts, he could not appeal the decision; moreover, he was later detained in a psychiatric hospital for more than six months over his objections, with no recourse to judicial review. Shtukaturov's lack of legal standing led him to Strasbourg, and in 2008 the European Court held, *inter alia*, that deprivation of capacity was a "very serious" interference insofar as it applied indefinitely, and that Russia's guardianship law was disproportionate in that it failed to make provisions for a "tailor-made response" in determining incapacity.[323] The court further

found that Shtukaturov's exclusion from the guardianship proceedings was a convention violation.

Unfortunately, no Russian authorities took steps to implement the European Court's decision. As a result, Bartenev followed up on the judgment by bringing an identical complaint before the Russian Constitutional Court with the aim of achieving an explicit finding that provisions of the country's Psychiatric Care Act and the Code of Civil Procedure—both of which had been the basis for Shtukaturov's detention and incapacitation—were unconstitutional. In February 2009, the court did so, striking down a number of legislative provisions that the European Court's decision had criticized.[324] Notably, the court referred expressly to the Strasbourg judgment in its decision, a Russian translation of which Bartenev had personally submitted to the court.[325]

According to Bartenev, the "obvious legal advantage" of the Russian court's judgment was the direct legal effect it had within the country: it struck down a number of legislative provisions that Strasbourg had criticized but which the European Court, consistent with the principle of subsidiarity, had refrained from ordering amended.[326] As a political matter, it also demonstrated that Russia's guardianship system fell short of both the country's constitutional standards and international human rights standards, framing both bodies of law as complementary with the other. The Constitutional Court's decision, in turn, led to the engagement of a coalition of Russian NGOs in drafting revised guardianship legislation, which passed the Duma in April 2011[327] and, in some respects, exceeded what the Constitutional Court had ordered.[328]

Moreover, only recently, a second case brought before the Russian Constitutional Court (again by Bartenev and MDAC) quashed as unconstitutional provisions of the Civil Code on full legal incapacity and plenary guardianship.[329] The only measure available for protection of persons with mental disabilities had previously been full civil incapacity, and the court found that this legal framework was open to abuse. Accordingly, the court, which relied on both of the previous Shtukaturov judgments in reaching its decision, ordered the federal government to amend the guardianship law to allow a court to take into account a person's degree of understanding of the meaning of his actions and his ability to control them.[330] This opinion is particularly significant as it affects for the first time substantive aspects of Russia's guardianship law, whereas Shtukaturov's case had only challenged its procedural deficiencies.

Bartenev credits the European Court's judgment as having "provided an impetus for long-overdue reform of Russia's guardianship legislation."[331] He notes, in particular, that the constitutional court had previously rejected similar challenges; having the weight of Strasbourg behind the case made a significant difference.[332] At the same time, the domestic follow-up litigation was crucial for engaging with parliamentary actors and in securing the support of the Russian ombudsman, who hosted the first implementation roundtable organized by MDAC and its local partners.[333] The media

attention generated by the court's ruling has also been vital in increasing awareness of the abuses of the guardianship system and mobilizing a domestic constituency for reform, whereas mental disability had previously been low on the government's list of priorities. "The domestic litigation changed that," Bartenev says, "It helped make the European Court decision matter."[334]

International Judgments in Domestic Courts

In another emerging strategy, advocates have sought the direct enforcement of international decisions in the domestic courts of *other* member states, akin to having the judgment of one state executed in the court of another. While this approach has rarely been tested, several commentators have previously expressed support for using national courts to enforce the judgments of international courts.[335] The following section discusses two such cases, both of which have arisen on the African continent in the context of civil and criminal proceedings.

Campbell v. Zimbabwe

In 2010, the high courts of Zimbabwe and South Africa decided two separate applications that were made to register and enforce judgments of the South African Community Development Tribunal (SADC). Unlike the African Commission or Court, SADC was, at the time, a sub-regional court operating under a regional economic integration treaty.[336] Its applicability is nevertheless instructive as it faces similar challenges to those of international courts (including those relating to the execution of judgments) and because its competence extends to certain human rights violations.[337]

In one case, the lead applicant, Mike Campbell, challenged the compulsory acquisition of his farm—part of President Mugabe's land reform program—as inconsistent with the SADC treaty. In 2008, the tribunal agreed: it found that the Zimbabwean government's program constituted unlawful racial discrimination, that it infringed the right of access to the country's national courts, and that it amounted to arbitrary expropriation without compensation.[338] The tribunal ordered Zimbabwe to protect against the occupation of Cambell's land, in addition to ordering it to pay him fair compensation. The Zimbabwean government persistently refused to enforce the SADC judgment, however, and ignored a subsequent 2009 contempt ruling that the tribunal also issued.

In January 2010, Campbell unsuccessfully sought to enforce the SADC judgments in Zimbabwe's own courts, but the Zimbabwe High Court ruled that the orders were contrary to the country's public policy and unenforceable domestically.[339] By contrast, Campbell's attorneys successfully applied for execution of the judgment before the South Africa High Court, which held (unfortunately in a short, conclusory judgment) that the SADC decision was enforceable and should be recognized by the South African

government.[340] Several Cape Town properties belonging to the Zimbabwean government were subsequently attached for sale at public auction, the proceeds of which were used to (partly) satisfy the SADC tribunal's order.[341] Notably, Zimbabwe later sought to annul the South Africa High Court's decision, arguing that immunity protected its assets and that the SADC protocol had never been properly ratified. In a longer, separate opinion, the South African court firmly rejected these arguments. The country's constitution required it to consider international law, the court held, and "the old doctrine of absolute immunity has yielded to a restrictive doctrine ... in relation to human rights affairs."[342]

While admittedly a small measure compared to the larger remedies ordered by the tribunal, the *Campbell* case is a rare example—perhaps the only to date—of a national court ordering the execution of an international judgment against another state. In one commentator's words, the significance of such an approach "cannot be underestimated," as it represents "perhaps the most potentially effective means for securing compliance with decisions of international courts and enhancing the effectiveness of international adjudication."[343] This strategy raises many questions—for instance, whether a national court would enforce an international decision that contradicted its own judgment or possible constitutional conflicts[344]—but advocates can and should address these on a case-by-case basis. Alternatively, Richard Oppong urges states to enact legislation to facilitate the enforcement of judgments in national courts, in order to ensure greater predictability and uniformity in their application.[345] Regardless, enforcement through national courts can, in certain circumstances, offer a better prospect than through political or diplomatic processes. As Oppong argues, while Zimbabwe was referred on three occasions to the SADC heads of state without consequence, a decision of a national court to enforce one of the tribunal's decisions would probably not have been met with "the same degree of inertia."[346]

Enforceability of International Treaties

The principle that decisions of international courts are equivalent to a foreign judgment—and enforceable under the same municipal procedures—has gained greater traction; indeed, some of Africa's economic integration treaties contain such provisions. Article 44 of the East African Community (EAC) Treaty provides that "the rules of civil procedure in force in the Partner State in which the execution is to take place" shall govern the execution of any EAC court judgment that imposes a financial obligation on a person."[347] The Economic Community of West African States and the SADC Tribunal Protocol have similar provisions.[348] Cases presently pending before the EAC tribunal include a suit against the Ugandan government for the arbitrary arrest and killing of innocent people during Uganda's "walk to work" protests of March 2011, as well as a claim against the Kenyan government for failing to prevent or investigate over 3,000 cases of murder, torture, or inhuman treatment committed by its security forces in the Mount Elgon region.[349]

International Criminal Court (ICC) Arrest Warrants

Advocates have litigated other recent cases of implementation through domestic courts on the African continent as well, several of which have arisen in the context of the ICC and states' execution of its warrants. For instance, an application filed by the Kenyan Section of the International Commission of Jurists led to a November 2011 decision by a Kenyan High Court ordering the government to abide by the ICC's arrest warrant against Sudanese President Omar al-Bashir.[350] Despite being a party to the Rome Statute since 2005 (and having domesticated its provisions through the International Crimes Act), the Kenyan government had previously failed to arrest President Bashir during his visit to Kenya in 2010, when he attended the inauguration of the country's new constitution. To that end, ICJ-Kenya petitioned the court to pronounce upon government's duty to execute the international arrest warrant, on the basis that the government would "again fail to effect an arrest against him."[351]

In his opinion, Justice Nicholas Ombija found that the government was obliged to arrest Bashir under both the ICA and the Rome Statute,[352] the latter having become part of Kenyan law by virtue of the Kenyan Constitution.[353] Under the principle of universal jurisdiction, Judge Ombija further reasoned that the duty to prosecute international crimes had attained the status of customary international law, "thus delegating States to prosecute perpetrators wherever they may be found."[354] On this basis, the court found that any legal person "with locus"—including ICJ-Kenya—could apply for a warrant for

arrest and, accordingly, it issued a provisional warrant to be enforced by the attorney general and the minister for internal security.[355] In the court's words:

> The International Crimes Act, 2008 anticipates a situation where the state may acquiesce or renege on its obligations and makes provisions for other persons other than the Government to seek for a provisional arrest warrant from the High Court, and serve it on the Minister in charge of Internal Security, *thereby reminding the Government of its international and domestic obligations*, ... and demanding that the Government honour its obligations.[356]

Judy Gitau, an attorney with ICJ-Kenya who worked closely on the case, acknowledges the novelty of this sort of litigation but considers it an increasingly important avenue for advocacy.[357] In addition to "breathing life" into Kenya's new constitution, she argues that advocates can use such litigation to create good precedent on a number of important international legal issues, while also "widening the space" for the progressive application and implementation of international obligations.[358] Indeed, the Kenya High Court's judgment had precedent. In South Africa, for instance, the South African Litigation Centre made a similar application in May 2009 following word that President Bashir planned to attend the inauguration of President Jacob Zuma. Following this litigation, South Africa announced that it would not abide by a 2009 African Union resolution that sought to halt cooperation with the ICC.[359] In reaching that decision, the Department of Foreign Affairs released a statement noting that the fact that the Hague-based court's arrest warrant "had been received and endorsed by a [South African] magistrate" had been a premise for its decision.[360]

Enforcement of the Rome Statute's provisions has recently taken on new dimensions in South Africa as well, where, in another case brought by the South African Litigation Centre, a High Court judge held that the government is legally obligated to open an investigation into allegations of torture committed as crimes against humanity against members of Zimbabwe's opposition party, the Movement for Democratic Change.[361] The court found that, under South Africa's ICC Act of 2002, reasonable suspicion of criminal acts was itself sufficient to trigger an investigation. In particular, in light of the "collapse" of the rule of law in Zimbabwe, the unlikelihood of securing accountability from the judiciary there, and the fact that it was in the "public interest" do so,[362] the government was required to investigate war crimes, crimes against humanity and genocide, "regardless of whether they were committed in South Africa or by South African nationals."[363] In doing so, the court found that both "international law and South African law" imposed these obligations.[364] The court further rejected the government's political and practical objections as extraneous to the decision to investigate, ordering it to undertake the "necessary expeditious and comprehensive investigation"

of the alleged crimes insofar as it was "practicable and lawful," including by invoking mutual assistance treaties.[365]

Enforcing Precautionary Measures in Colombia

The Inter-American Commission on Human Rights is empowered to issue precautionary measures—"preventive, expedited, and summary procedures"[366] that serve to prevent irreparable harm pending the full adjudication of a human rights claim. While several states have argued that these measures are only discretionary, the Colombian Constitutional Court has made clear in repeated rulings that they are mandatory and binding as a matter of domestic law.[367] One immediate consequence of these rulings is that petitioners seeking to enforce precautionary measures ordered by the commission may pursue a *tutela* action (akin to a writ of protection or *amparo*) to enjoin "government authorities to comply with the orders contained in those measures."[368]

Domestic litigation cannot guarantee that international and domestic courts will develop complementary jurisprudence but, as these recent decisions attest, they may. And while domestication by national courts of international law might not by itself lead to implementation, a number of advocates agree that giving international decisions the force of domestic law can create added pressure on governments, while also serving as a valuable awareness raising tool. Indeed, even when national courts reject the holdings of their international counterparts, these rejections can illustrate important challenges if national implementation is to improve. As Nigel Rodley notes in the context of the *Singarasa* case, the Sri Lankan Supreme Court's holding demonstrated a "complete misunderstanding of the international legal significance of accession to the [ICCPR's Optional] Protocol";[369] however, at the same time, the court's rejection of the HRC's opinion raised the challenge of how international and domestic courts should engage with each other. The following section turns to this challenge.

Courts to Courts: Transnational Judicial Dialogue

In a revealing study of the Inter-American human rights system, Alexandra Huneeus found that of the 114 contentious cases in which the court issued remedies between 1979 and 2009, over two-thirds required action by a national judiciary to achieve full

compliance.[370] Unfortunately, while states implement the "majority of orders that primarily require executive action, they implement only one in ten orders that invoke action by justice systems."[371] Moreover, "the more separate state branches or institutions an injunctive order involves, the less likely" it is to be implemented.[372] Huneeus notes, for instance, that where an injunctive order from the Inter-American Court invokes only executive action or action by the legislature and the executive, compliance stands roughly at 50 percent and 22 percent respectively; however, where orders require action by three state institutions—the executive, the public prosecutor, and the judiciary—compliance falls to a mere two percent.[373] Similar challenges confront other regional systems as well.[374]

While executive actors' relationship with international bodies builds their engagement into the international litigation process, national courts have no such automatic engagement. International courts and treaty bodies must therefore more deliberately and strategically engage with domestic courts and foster relationships beyond the executive. Such an approach would not only educate national judges and prosecutors about the relevant regional human rights systems and their jurisprudence, but it would also allow them, in Huneeus' words, to "feel more directly responsible for compliance" and "identify as part of the transnational judicial dialogue on human rights."[375]

Shtukaturov illustrates the need for judicial dialogue on several levels. On the one hand, the 2009 opinion of the Russian Constitutional Court specifically referred to the 2008 European Court judgment in striking down portions of the Civil Procedure Code and Psychiatric Care Act; effectively, its conclusions mirrored those of Strasbourg. MDAC itself, however, provided a translation of the European Court's judgment, without which the Russian court might never have been aware of Strasbourg's opinion.[376] Moreover, the fact that Shtukaturov only regained his legal capacity through an unrelated application that the state guardianship authority had made in light of an apparent improvement in his condition further underscores the disconnect between Russian courts and Strasbourg.[377] In the end, it was a St. Petersburg district court that ordered Shtukaturov's legal capacity restored, though in doing so it made no mention of the European Court or Russian Constitutional Court's decisions in his favor, or indeed of the decision that first led to his incapacitation. This speaks not only to the need to build more formal systems of communication between international and national courts, but also to promote dialogue between a state's higher judicial authorities and lower domestic courts. Alexei Trochev notes that the Russian Supreme Court will occasionally issue circular letters "about the importance of applying ECtHR judgments" at the request of Russia's government agent; however, the response of courts to these letters is far from uniform.[378]

Other more practical obstacles reflect a failure on the part of international systems to clearly address their domestic judicial counterparts. For instance, greater specificity

can help overcome what Huneeus calls the "paralysis states can fall into (or excuse they can use)" when they lack a clear procedure to reach compliance.[379] For instance, in the case of *Radillo v. Mexico*, the Supreme Court met for four days to discuss compliance with the Inter-American Court's decision, but those discussions stalled on whether the court could even entertain the case since the ruling was not directed to it per se.[380] To that end, international courts and treaty bodies should seek to break down their orders and clearly identify the actor responsible for each remedy. Not only does empirical evidence increasingly support the contention that clarity of remedies influences the reaction of state governments,[381] but breaking down responsibility by an order can draw the lines of separation of powers more clearly, so that judges can, as one commentator notes, "target their increasingly precise remedial orders and recommendations directly to their domestic judicial counterparts."[382]

By the same token, courts and treaty bodies could cite to the arguments national courts have made in interpreting their own national law, particularly where doing so might positively affect the outcome of the case. Being more mindful of national high courts could mitigate the tensions inherent when international courts criticize the work of national justice systems and suggests that national courts might implement orders more willingly if they view international courts as respectful of their own jurisprudence, for instance by citing to it where appropriate.[383]

The European Court did just this in the 2009 case of *M. v. Germany*, which concerned whether national courts could order preventive detention retrospectively against persons whose offenses predated the statutory establishment of a country's preventive detention regime.[384] The constitutional courts of France and Germany had both addressed this question before, but in different ways: the French *conseil constitutionnel* found the practice unconstitutional,[385] while the German Federal Constitutional Court upheld Germany's relevant statute in 2004 on the grounds of public security.[386] When the Strasbourg court in *M.* ruled against the German authorities, it made explicit reference to the analysis of the decision of the *conseil constitutionnel*, agreeing with its conclusions.[387] In turn, the German court overturned its 2004 ruling in 2011—on the grounds that the ECtHR's opinion constituted a significant change in the legal situation—acknowledging its dialogic relationship with Strasbourg in doing so.[388]

Salduz Magnified: Pretrial Detention in Europe

In France, Strasbourg litigation has drawn national judges increasingly into dialogue on the country's practice of *garde a vue*, i.e., the police detention and interrogation of criminal suspects. The number of suspects held in g*arde a vue* has doubled in the past ten years in France, such that detention has become routine rather than exceptional; moreover, until recently, the regime did not allow suspects to be informed of their right to silence, or allow lawyers during police interrogation.[389] Following the European Court's 2008 decision in *Salduz v. Turkey*, which ruled that confessions by suspects without access to legal representation were illegal, the French government initially denied that the decision called its own procedures into question.[390] In July 2010, however, the *conseil constitutionnel* held that the *garde a vue* regime was unconstitutional and a violation of Article 6 of the European Convention.[391] In October, the European Court held the same in *Brusco v. France*,[392] a ruling that was later endorsed by the *cour de cassation,* France's court of final appeal for civil and criminal matters.[393] Moreover, the court in that opinion ruled that courts should rely on the European Convention directly and that the execution of the Strasbourg judgment should take immediate effect.[394] The French minister of justice ordered prosecutors to implement the reforms that very afternoon.[395]

As international human rights systems increasingly address themselves to the judicial branches of their member states, it is important that a more robust judicial dialogue continues to grow. While this project may seem daunting, it is worth noting that enormous shifts have already occurred. French courts, for instance, viewed the European Convention's applicability with suspicion for many years, until an evolution in judicial attitudes began to take root in the past decade.[396] Furthermore, Alexei Trochev notes that the Russian Constitutional Court referred to the European Convention on Human Rights as binding on only three occasions before 1998 (when Russia ratified the convention); between that date and 2006 the court has mentioned the convention in more than 200 decisions and cited the judgments of the ECtHR in ninety decisions.[397] Oksana Klymovych, a Ukrainian legal scholar, similarly notes that ten years ago the idea that the European Convention would be directly applicable in Ukraine seemed fanciful; today, it is a reality.[398]

Recommendations

Like other branches of government, national legal systems have a critical role to play in ensuring compliance with the decisions of international courts and human right norms. Yet despite the potential of courts and judges to serve as national agents for implementation, a variety of potential factors—ranging from institutional constraints to restrictive interpretative canons—limit the role of domestic courts in this process.

- **National judicial systems should develop programs to monitor the implementation of international decisions and actively entrench international human rights norms within national legal frameworks.**

  As this chapter detailed, domestic judiciaries have implemented mechanisms at the national level to monitor compliance with their own decisions in a number of innovative ways. Where such projects exist, they could and should expand to encompass the execution of international decisions by domestic courts as well, particularly in countries where executive and/or legislative monitoring is weak. Responsible monitoring units within the judiciary should collect such data and exchange this information with actors from the executive and legislative branches. Implementation coordinators at the executive level should also hold regular meetings with the highest judicial authorities to promote dialogue and awareness throughout the government. And as with the executive, a high level contact point should exist within national judicial systems in order to facilitate communication.

  More broadly, judiciaries should institute efforts at the national level to clarify the application of international decisions and, where necessary, the status of international law within a state's domestic legal framework. Where there is ambiguity as to the application of human rights norms and case law, its relationship to national constitutional law, or the competence of national courts to implement international judgments, the high courts of each state should seek to clarify these issues (in a manner that conforms with the state's international treaty obligations). If legislation could better clarify these questions, domestic courts should encourage legislative actors to provide such clarification.

- **Judges should have stronger awareness, training, and education on international conventions and their case law.**

  Domestic courts and judges know too little of the decisions of international commissions, courts and treaty bodies. To that end, they should receive copies of such judgments (or at least summaries) in a language they understand. Law school cur-

ricula and continuing legal education should likewise incorporate and teach international conventions standards.[399] Advocates must also make domestic judges aware of their duty to know, and take due consideration of, current human rights case law and decisions by relevant international courts and treaty bodies.[400]

Cooperation agreements between international courts and domestic judicial bodies—particularly constitutional courts and supreme courts—will help build awareness as well. A recent cooperation agreement signed between the Inter-American Commission and the Supreme Court of Mexico provides a good model.[401] Another model is the Justice Studies Center of the Americas (*Centro de Estudios de Justica de las Americas*), an agency within the Inter-American system, "which supports the institutional development of the region's justice systems through cooperation, research, exchange of experiences, information dissemination, and training."[402] These kinds of arrangements can provide particular benefit where a state's legal order has become more internationalist, either as the result of constitutional amendment or domestic case law.[403]

Paul Mahoney, former registrar of the European Court, makes a related proposal to establish standing judicial training institutes, which could "bring together, in a more economical, focused and ordered form," the variety of training activities by different actors.[404] Such an institute could prove valuable for all three regional systems and would seek to rationalize, not duplicate, various training activities and *ad hoc* initiatives already undertaken by the intergovernmental and judicial arms of the COE, OAS, and the African Union. By housing these efforts (and their costs) within a clearly visible and coordinated unit, expertise, Mahoney says, could be "plugged directly into each national judicial circuit" in order to ensure national judiciaries take a "'like-minded' approach" to the application of international human rights treaties.[405]

- **Foster judicial dialogue and engagement between international and domestic courts.**

  Constructive engagement between national and international courts presents a key challenge for improved implementation. As Gerald Neuman has argued of the Inter-American Court, international human rights bodies "need to induce, and not merely exhort, the support of the regional community of states.[406] In a similar vein, Laurence Helfer and Anne-Marie Slaughter have remarked of the ECJ that it successfully and deliberately "wooed national courts."[407] Implementation of international judgments depends on this kind of connection.

International courts and human rights bodies must thus consider how best to cultivate their relationships with national judiciaries and bridge gaps between the international and domestic sphere. This includes:

- Clarity and specificity in judgments: international courts should ensure that they take care to address themselves to domestic judicial actors in their reasoning and/or when crafting remedies.
- Citation of the progressive case law of domestic courts in international judgments, for instance by referencing opinions where national judges have taken supportive positions on issues like self-execution of treaties, statutes of limitation, and immunities.
- The development of greater professional networks between international and national judges, as well as with lawyers and legal activists.[408]
- Promoting visits by domestic authorities—especially higher judicial authorities and chief prosecutors—to international courts.

Advisory opinions might also build dialogue. Here, the ECJ provides an interesting example insofar as national courts refer cases to the court itself and often cite its jurisprudence favorably. Indeed, referrals are one of the primary ways in which the ECJ and national courts interact and can provide a less adversarial framework for doing so.[409]

- **Develop complementary and strategic enforcement litigation at the national and international level.**

  Anchoring the rights stipulated in human rights conventions within the legitimacy of national level judgments could strengthen human rights protection enormously. To that end, human rights litigators and advocates should continue to pursue strategic enforcement litigation at the domestic level—particularly, where possible, through fast-track constitutional challenges—in order to bring domestic judicial pressure to the implementation of international judgments. This approach can also help develop complementary domestic case law, expand judges' opportunities to directly enforce international treaty commitments, and better integrate treaty norms into the practice of national courts.

V. Implementation Partners: National Human Rights Institutions

Introduction

While it is the duty of states to implement the decisions of human rights courts and treaty bodies, national institutions and civil society organizations have a crucial role to play in holding government actors to account in the process. NHRIs—broadly defined as "quasi-governmental or statutory institution[s] with human rights in [their] mandate"[410]—are relatively new actors to this scene, but represent a promising connection between international standards and implementation.[411] In particular, NHRIs can provide the national mechanisms to oversee implementation of the decisions and recommendations of international bodies.[412]

This chapter discusses NHRIs as implementation facilitators, focusing on the constructive role they can play in monitoring the execution of judgments. It highlights three factors: formal communication frameworks between NHRIs and regional human rights systems, the considerable influence that national institutions can have on compliance dynamics, and the unique pressure NHRIs can bring to bear in linking implementation to compliance with human rights standards more generally.

The Rise of New Inter/National Actors

Although the United Nations has supported the development of NHRIs since the 1960s, only the Western European and Commonwealth countries benefited until the late 1980s, at which point NHRIs spread to Southern Europe, Latin America, Central and Eastern Europe, the Middle East, and Africa.[413] This process gained momentum with the democratization wave of the early 1990s, the adoption of the Vienna Declaration in 1993 (which explicitly "encouraged the establishment and strengthening of national [human rights] institutions"[414]), and the U.N. General Assembly's adoption that same year of standards for NHRIs, known now as the "Paris Principles" (see Appendix IV). These principles set forth the minimal criteria the effective functioning of NHRIs requires and provide guidance on issues ranging from the competence and composition of such institutions to their methods of operation.[415] The principles, however, permit a wide margin of variation for institutions in size, encompassing the handful of officials who make up New Zealand's NHRI to the 70 who serve in the French commission. Mandates vary as well: NHRIs can be both promotional and protective in nature, with some institutions capable of receiving and considering complaints of human rights violations in their own right.[416]

By their nature, NHRIs are hybrid actors: their establishment requires government support and involvement yet they monitor government violations of and compliance with international norms as well.[417] Julie Mertus describes NHRIs as occupying an "imagined space somewhere between the state and civil society," while Steven Greer sees them as "intermediate institutions" because they use public funds and have public accountability, but function (or are meant to function) independently.[418] This unique arrangement can occasionally lead to tensions around the scope of NHRIs' mandates and their institutional independence. Indeed, Mertus notes, NHRIs contend with manipulation by governmental actors and "the often conflicting agendas of the various segments of civil society."[419]

In spite of these challenges, the U.N.'s Office of the High Commissioner for Human Rights and, to a lesser extent, the regional human rights systems have made NHRIs an increasingly important priority. Since the mid-1990s the U.N. has established an International Coordinating Committee of National Institutions, to accredit institutions according to their compliance with the Paris Principles. Only "A status" institutions, which the committee deems compliant with the principles, can appear before human rights treaty bodies and other U.N. organs or participate in their human-rights-related meetings. The High Commissioner's office also now includes a special post devoted to NHRIs and the remit of the European Commissioner for Human Rights, established in 2000, includes the encouragement of human rights structures at the national level. Regional coordinating networks of NHRIs have also developed,

including the Network of African National Human Rights Institutions, the European Group of NHRIs, the Network of National Institutions in the Americas, and the Asia-Pacific Forum for National Human Rights Institutions.

Building Frameworks for NHRI Participation

In spite of their potential to contribute to the implementation process, the framework for NHRIs to do so remains largely undeveloped. Advocates have only recently given attention to the role NHRIs might play in the implementation of international decisions. At the U.N. level, for instance, conclusions emanating from an international roundtable in 2006 recommended that NHRIs follow up on treaty bodies' assessments of human rights complaints and monitor state party action undertaken to that end; they also recommended that NHRIs should follow up on interim orders "in relation to complaints where irreparable harm is envisaged."[420] NHRIs also participate in their own right at the U.N. Human Rights Council (notably, during the UPR process)[421] and report with increasing frequency to treaty bodies, during both the state reporting process and follow-up procedures.

Of the regional human rights systems, the European Court has established the clearest framework for NHRIs' participation in implementation monitoring to date. The COM played an early role in opening up channels of communication between the COE and national institutions. As early as 1997, the committee passed a resolution affirming "the importance of the role of such institutions, in particular in providing information about human rights to both the public authorities and civil society."[422] Moreover, as noted, in 1999, the Commissioner for Human Rights was established with the specific mandate of facilitating the work of national ombudspersons and NHRIs.[423] Finally, under Rule 9 of the committee's amended rules of procedure, NGOs and NHRIs may now make written submissions regarding a state's implementation of individual and general measures, which the secretariat "shall bring, in an appropriate way ... to the attention of the Committee of Ministers."[424] Unfortunately, as Philip Leach has previously noted, NGOs and NHRIs have yet to use these expanded participatory rights to their full effect, being "fully aware of [neither] the possibilities, nor of the mechanics, of engaging in this process."[425]

Unlike Strasbourg, the commissions/courts of the Inter-American and African systems have a less clear relationship to NHRIs. For instance, NHRIs can engage with the African Commission (including making statements to the plenary during public sessions of the commission's examination of states' periodic reports), but no formalized mechanism governs communication between national institutions and the commission with respect to follow-up and implementation, nor is there a formal mechanism yet

developed before the African Court.[426] Importantly, however, Article 30 of the Protocol on the Statute of the African Court of Justice and Human Rights (which, theoretically, will replace the African Court on Human and Peoples' Rights) lists African NHRIs as one of the entities that can submit cases directly to the court. NHRIs can also be represented before the court under Article 36(4).[427] Similarly, there is an absence of rules for formal participation of NHRIs in compliance proceedings before the Inter-American Court of Human Rights.[428]

Creating a Foundation for Implementation Monitoring

Several NHRIs have the mandate to monitor government compliance with international treaties. Senegal's Human Rights Committee, the *Comité Sénégalais des Droits de l'Homme* (CSDH), which had its powers significantly modified by legislation in 1997, is one example. Under its new mandate, CSDH became a formally independent institution with a "wide jurisdiction and great latitude in taking up cases and issues and a wide discretion in its choice of means and subject matter."[429] [430] One of its main functions, set out in article 3 of the 1997 legislation, is to review all state submissions to U.N. treaty bodies and regional human rights bodies, and to cooperate with such organs to ensure that Senegal meets its obligations to them. According to Ibrahima Kane, a former CSDH commissioner, this authority extends to the implementation of human rights decisions; accordingly, it is the government's "typical practice" to pursue an "institutional and participatory approach" to implementation, and to request that committees "make proposals for the implementation of the decisions being considered."[431] Indeed, it was through the CSDH's exercise of its mandate that *Famara Koné v. Senegal*, the first decision rendered against Senegal by the U.N. Human Rights Committee, was successfully implemented.

Implementation Facilitators

As noted, NHRIs can take different forms. In the commission model, the NHRI generally has multiple members and a broad mandate to monitor and promote human rights within the domestic realm." An ombudsman institution's jurisdiction is limited to public administration; hybrid institutions combine aspects of both models. This section examines two different models to illustrate the various ways in which each can facilitate the implementation of judgments.

Office of the Ombudsman: Czech Republic

While ordinarily considered the most limited form of NHRI, because its jurisdiction is often limited to public administration, the office of the ombudmsan can be a key force in facilitating the implementation process, successfully managing, in the words of one commentator, "a creative tension between the complaints they receive and a systemic approach to human rights issues."[432] One example of an ombudsman making good use of a limited mandate is the Czech Republic's Office of the Public Defender of Rights (currently Pavel Varvarovsky since 2010).[433] Functioning since 2000, the defender's "primary function is to protect the rights of individuals who are victims of unjust and improper treatment by state organs and agencies," particularly those acting in an administrative capacity.[434]

One such capacity is public education, where government intransigence continues to stall effective implementation of *D.H. v. Czech Republic*, the European Court's landmark decision against the Czech government's policy of disproportionally assigning Roma children to "special schools"—sub-standard institutions designed for students Czech law deemed "mentally deficient."[435] Five years on, little progress has been made at the national level to give the *D.H.* judgment real effect. In the face of the government's inaction, however, the Office of the Public Defender recently carried out on its own initiative a survey of 67 randomly selected elementary schools that underscored the continuing extent of the problem: although Roma constitute less than three percent of the country's population, Romani children still comprise 32 percent of pupils attending what the government now refers to as "practical elementary" schools nationwide.[436] In highlighting the extent of Roma over-representation within these schools, the defender recommended that the government explicitly prioritize the integration of pupils with special educational needs—whether Roma or not—into standard elementary schools; special schools, the report made clear, should only be used in truly exceptional cases.[437]

In addition to the public attention the ombudsman's report brought, it gave the COM's recent review of *D.H.* extra weight. (Although the Public Defender's Office [PDO] did not communicate with the committee directly through its Rule 9 procedures, it has been in touch with the Czech agent in Strasbourg.[438]) The review "expressed concern" at the slow pace of action and emphasized the importance of accelerating implementation in *D.H.* It ordered the Czech government to submit a new plan of action, as well as a new timeline and benchmarks for implementation.[439]

Filip Rameš, who works on implementation-related advocacy for *D.H.*, describes the ombudsman's office as having been a "great ally"—collaborative and proactive—on a range of discrimination-related issues. Rameš notes, for instance, that the ombudsman's report not only provided empirical evidence that the government has failed to execute the court's decision, but that the office's position as an independent state institution gave the report a legitimacy and credibility that it might not otherwise possess.[440]

Indeed, the ombudsman has also played a key role in investigating accusations by Roma women that the government forcibly sterilized them. According to Julie Mertus, following a series of complaints, the defender performed his own investigation and, in 2005, published a report supporting the allegations and identifying a pattern in which doctors asked for an immediate decision on sterilization under stressful conditions.[441] The defender recommended that the state pay restitution to the victims and that the Chamber of Deputies amend the state's draft Act of Public Healthcare. Like the *D.H.* case, the defender's advocacy on this issue generated considerable publicity: after the report was issued, the CEDAW Committee and the Committee on the Elimination of Racial Discrimination drew upon its findings to call for the implementation of the ombudsman's recommendations.

Involving Domestic Actors

When a domestic court judgment validates an international court ruling, the ombudsman's office can play an important role in catalyzing the implementation process. In *Shtukaturov v. Russia*, for instance, the momentum ensuing from the judgment helped secure the support of the Russian ombudsman, who hosted the first implementation roundtable following the courts' judgments and, in so doing, helped increase public attention to Russia's punitive guardianship laws.[442] The roundtable attracted Russian parliamentarians, the Ministry of Health, as well as local guardianship authorities, all of which later played an important role in the legislative amendments to the Psychiatric Care Act and the Code of Civil Procedure.

Like parliamentary committees, ombudsman institutions can have a significant role in scrutinizing legislation for compliance with human rights standards. Richard Carver notes that the institution "usually has a close relationship with the human rights structures within the legislature, to which it is accountable, which helps ensure that [it has] early warning of impending draft laws."[443] In Uzbekistan, for example, the ombudsman has bilateral agreements with several ministries which submit drafts to the office for review.[444] Ombudsman institutions can also make recommendations for legislative reform, as the Georgian PDO did when it used its biannual report to highlight the state's failure to incorporate the definition of torture by the U.N. Convention Against Torture (CAT) in its domestic criminal code; as a result, the state amended its constitution and code of criminal procedure. Similarly, the recommendations of the Lithuanian children's ombudsman brought the criminal code into conformity with provisions of the U.N. Convention on the Rights of the Child.

Individual Complaints, International Standards

Ombudsman institutions often refer to international standards in handling individual complaints. According to Richard Carver, the Georgian Public Defender's Office "frequently invokes international standards," and has referred to the European Convention and ICCPR in the case of a prisoner who was not released upon completing his sentence, as well as to the European Court's decision in *Goodwin v. United Kingdom* in the case of a journalist forced to reveal a confidential source.[445]

While the ombudsman model is not without weaknesses,[446] the office can be a powerful tool for implementation. In the Czech Republic, the office has played a key role in ensuring that a case like *D.H.* remains under COE scrutiny, in spite of continued political intransigence. In Mertus' words, the Czech ombudsman "has shown how even the most modest ombudsman's office can expand its reach significantly by broadening its mandate to include the regular inspections of state-run institutions ... and by including in its work special reports on systemic abuses."[447]

Human Rights Commissions: South Africa

NHRIs can also play an important role in linking the implementation of international decisions to a state's broader human rights obligations. As Steven Greer describes, they can help to "domesticate" the debate over how to give effect to human rights standards by "providing a form of nationally institutionalized pressure, particularly on executive institutions, to take more effective action" in honoring convention obligations.[448]

In a recent example, South Africa's multi-member human rights institution has used a recent U.N. HRC decision—the first issued against the state—as a tool to improve government engagement with U.N. monitoring, and to emphasize larger deficiencies in its compliance with international obligations. The case concerned claims of torture and ill treatment by a former prison inmate, Bradley McCallum, who alleged that he experienced violent and degrading treatment during the course of his incarceration at a prison facility in the Eastern Cape in July 2005. After the government failed to even appear before the committee during the course of its deliberations, the U.N. committee determined South Africa had never adequately investigated McCallum's claims and that he had been held incommunicado for one month, in violation of the covenant.[449] Following the HRC's decision, Judith Cohen, who heads the South African Human Rights Commission's (SAHRC) Parliamentary and International Affairs Unit, initiated

a letter-writing campaign to members of South Africa's Parliament and "all relevant ministries," trying to bring attention to the case.[450] Unfortunately, with no procedures in place, it took nearly one year before a parliamentary committee—the Portfolio Committee on Correctional Services—responded positively to the request.[451] A stakeholder hearing on the "prevalence of torture in correctional centres" before the committee ensued in November 2011, which helped bring national attention to the case and the government's failure to implement the decision.[452] Furthermore, various members of the SAHRC have picked up on the case, and Cohen notes that is has become a "key issue" in discussions with government members.

In Cohen's view, the case is symptomatic of South Africa's general lack of engagement with its international reporting obligations (to date, all of the state's treaty body reports are late, with the exception of CEDAW), and the HRC's decision has become a "hub" around which to press for improved compliance with all of the state's human rights obligations.[453] The coming year promises more opportunities to link *McCallum* with a range of anti-torture advocacy. These opportunities include South Africa's second UPR cycle, a forthcoming commemoration of the drafting of the Robben Island Guidelines, renewed priority on a bill to criminalize torture (which has been with the justice department since 2003), and prioritization of the Optional Protocol to the Convention Against Torture, which South Africa has signed but not ratified. At all of these events, Cohen says, "*McCallum* will come up."[454]

Implementing U.N. Decisions: *Famara Koné v. Senegal*

Senegal's NHRI played a facilitating role in the U.N. Human Rights Committee's 1994 decision in *Famara Koné*, where the HRC held that the victim, a Senegalese citizen, had suffered torture and inhuman treatment at the hands of the government.[455] Following the committee's decision, the prime minister asked CSDH to propose a settlement.[456] Imbrahima Kane, a former commissioner, recalls being appointed as a rapporteur to work on the case and the role that the committee successfully played in negotiating an agreement between the petitioner and the Senegalese government.[457] In 1997, the commission successfully brokered a compromise between both parties: Mr. Koné accepted as compensation a plot of land and a sum of CFA 500,000 (nearly 800 Euros), as well as medical insurance.[458] CSDH also played a key role in Senegal's adoption of legislation criminalizing torture under its domestic criminal code, consistent with the language of CAT.[459]

Recommendations

The constitutional or statutory grounding of NHRIs in a country's domestic law puts them in a unique position to help facilitate the implementation of international human rights judgments. As Sonia Cardenas notes, NHRIs are themselves emblematic of "the importance of domestic political structures," insofar as they "reflect how government embed international human rights norms in domestic structures, and thereby reshape state-society relations."[460]

- **NHRIs should satisfy the minimum criteria set forth in the Paris Principles and should include as part of their formal mandate the authority to monitor the implementation of international decisions, and to audit executive agencies for compliance.**

  In order for NHRIs to play an effective role in monitoring the follow-up actions of states, they must meet the minimum standards of independence and transparency set out in the Paris Principles. Notably, the principles require that NHRIs have the power to recommend treaties that states should ratify and monitor national legislation for compliance with international human rights standards. In addition, NHRIs' remit should include the authority to monitor the execution of international decisions/recommendations and to audit executive agencies for compliance with court orders.

- **NHRIs should be formally empowered to communicate with international courts and treaty bodies, as well as with implementation actors at the national level.**

  International/regional human rights systems and institutions at the national level need a strong, formal channel of communication. While communication between U.N. treaty bodies and NHRIs has improved considerably in recent years, too many NHRIs can overlook communications and lack the resources and capacity to monitor events in Geneva. Indeed, in the case of *McCallum*, Judith Cohen credits luck and the resourcefulness of an intern when explaining how the HRC's decision happened to come to the attention of the SAHRC.[461] All U.N. treaty bodies should also adopt clear guidelines (or joint guidelines) on the role of NHRIs and clarify what particular contributions they may bring to communications, reporting, and follow-up procedures.

  In turn, NHRIs should ensure that they remain closely engaged with the international systems' follow-up machinery by, for instance, communicating with relevant special rapporteurs and helping to host follow-up and oversight missions in country. National institutions should likewise increase public education and

awareness of the regional human rights systems and U.N. human rights system—treaty bodies, special procedures, and the UPR—as tools for facilitating improved implementation of international norms.

At the domestic level, NHRIs must also ensure that they communicate effectively with other state actors on matters relating to implementation, including by providing advice and substantive input on the best ways for a judgment to be implemented. The use of inter-ministerial implementation committees that include an NHRI representative would be a positive step, as would the establishment of a national framework for cooperation between NHRIs and parliaments/legislatures. Notably, the United Nations adopted principles towards this end in February 2012 to help define the relationship between these two institutions.[462] Government agents, particularly those acting in an implementing coordinating role, should likewise strive to increase their interaction with NHRIs.

- **NHRIs and/or ombudsmen should have broad competencies to initiate legislation and propose remedial measures.**

  NHRIs and local civil society partners can play a crucial role in assessing the remedies that domestic governments have designed to give effect to a judgment. Accurate, realistic information about the status and manner of implementation helps ensure that international courts and monitoring bodies receive information that fairly reflects the situation on the ground. To that end, international courts and treaty bodies must ensure that their own working methods grant broad scope for participation to NHRIs during the implementation and follow-up process.

  While several NHRIs in Latin America—notably, in Colombia and Peru—currently have the power of legislative initiative, the ability to propose and amend legislation directly remains rare. Giving NHRIs this power could speed implementation of the individual and general remedies ordered by international courts and treaty bodies. Similarly, NHRIs should possess the ability to present new or amended legislative proposals to sympathetic parliamentarians, such as members of the parliamentary committee responsible for human rights, who can formally present them. This lacks the directness of legislative initiative, but, as one commentator notes, NHRIs have generally used it "effectively and with discretion."[463]

- **NHRIs should seek ways to link the implementation of international decisions with a state's broader human rights obligations.**

  Because NHRIs and/or ombudsmen offer a unique form of nationally institutionalized pressure, they should use the power of their office to link compliance

with international decisions to compliance with a state's broader human rights commitments. In particular, where judgments raise large-scale or structural problems, NHRIs should target them as advocacy issues, drawing on their unique promotional and protective mandates to do so. Consistent with NHRIs' broader promotional mandates, this approach can help "generate publicity about compliance patterns—to raise awareness among agencies and to make it easier for the media to follow up on problem areas."[464]

VI. Conclusion

This report has sought to draw attention to the challenges raised in implementing international human rights treaties and the judgments rendered in their name. As states grapple with crucial questions of structure and resourcing of their human rights systems at the U.N., regional, and sub-regional levels, domestic implementation rightly shifts the focus to states as the first line defenders of human rights.

Meaningful compliance requires political commitment to confronting the obstacles that the execution of an international judgment may present. However, as this report has shown, compliance also requires the development of domestic structures to facilitate this process. Domestic implementation structures—at all levels of government—can help nurture and maintain pro-compliance constituencies, in addition to helping embed international human rights norms into national practice. While implementation is virtually impossible without political will, degrees of political will often translate into degrees of implementation. Domestic structures can facilitate that process.

These structures are political as well as technical: they range from ensuring domestic actors have the necessary political standing and authority to exert pressure in favor of implementation, to building the administrative infrastructure needed to coordinate a variety of state actors and institutions. Moreover, while the executive, legislative, and judicial branches all have important roles to play in ensuring the execution of international decisions, the panoply of state actors who could (and should) be involved means that implementation is always a complex, political process—one that can occur at both competing and complementary points.

At the same time, international human rights courts, their monitoring bodies, and advocates should not take the creation of structures and mechanisms at face value. Structures are only as effective as the people who create and inhabit them allow them to be: too often the institutions designed to facilitate implementation remain, by design or neglect, politically weak and easily marginalized. Strategy therefore matters as much as structure. Domestic implementation structures alone will not ensure that judgments are faithfully executed; rather, civil society actors and, where possible, NHRIs must strategically engage, to bring pressure and attention to implementation.

Ultimately, the implementation of human rights judgments is both an act and a process—it relies not only on the coordinated actions of political and judicial actors, but on building national legal orders receptive to the human rights system at its international, regional, and sub-regional levels. As these systems become increasingly entrenched in the domestic structures and processes of states, so too can the rights they are designed to protect.

Notes

1. Open Society Justice Initiative, From Judgment to Justice: Implementing International And Regional Human Rights Decisions (November 2010), 11.

2. CEDAW Comm., Case No. 4/2004, *A.S. v. Hungary* (August 29, 2006). *A.S.* was the second case against Hungary to be decided on the merits; the first, *A.T. v. Hungary*, held that the state had violated its conventon obligations by failing to protect the applicant against domestic violence, despite her attempts to seek shelter and public services. While the committee closed *A.T.*, many Hungarian advocates consider its implementation inadequate. *See* CEDAW Comm., Case No. 2/2003, *A.T. v. Hungary* (January 26, 2005).

3. *A.S. v. Hungary*, para 2.2.

4. *Id.* at para 2.8.

5. *Id.* at para 11.4.

6. *Id.* at para 11.5(II). The committee particularly recommended that Hungary "consider amending the provision in the Public Health Act whereby a physician is allowed 'to deliver the sterilization without the information procedure generally specified when it seems to be appropriate in given circumstances.'" *Id.*

7. E-mail communication with Judit Geller, ERRC, March 12, 2012.

8. Interview with Judit Geller, ERRC, February 23 and June 19, 2012. Ms. Geller assisted in follow-up advocacy on implementaton in the post-litigation period of *A.S.* but Bea Bodrogi, an attorney with NEKI (the Legal Defense Bureau for National and Ethnic Minorities), and Anita Danka from ERRC litigated the case before Hungary's domestic courts and later CEDAW. Bodrogi and Danka also participated in a number of consultations with the Hungarian government. During the post-judgment proceedings of *A.S.*, the ERRC also presented at CEDAW's periodic review

of Hugary in 2007 and delivered an oral statement, leading the committee to reiterate its previous recommendations to the government in its concluding observations.

9. ERRC Press Release, "Hungary Provides Compensation to Coercively Sterilised Romani Woman" (February 24, 2009, noting that MP József Gulyás posed a question to the Hungarian prime minister regarding the sterilizaiton of Ms. A.S.; Lajos Korozs, the state secretary of the Ministry of Social Affairs and Labor, responded that the ministry would provide compensation to her).

10. ACERWC Comm., No. Com/002/2009, *Nubian Minors v. Kenya* (March 22, 2011), *available at* http://www.opensocietyfoundations.org/sites/default/files/ACERWC-nubian-minors-decision-20110322.pdf.

11. E-mail communication with Laura Bingham, Open Society Justice Initiative, February 21, 2012.

12. *See* Department of Correctional Services, "Joint Media Statement: Response by South African Government to the Findings of the U.N. Human Rights Committee in the Matter of McCullum [sic]," The Star (October 6, 2011).

13. PACE, Resolution 1787(2011) *Implementation of Judgments of the European Court of Human Rights* (January 26, 2011), para 9 ("Resolution 1787(2011)").

14. Committee of Ministers Recommendation (2008) 2 *On Efficient Domestic Capacity for Rapid Execution of Judgments* (February 6, 2008) ("COM Recommendation 2008 (2)"). A 2010 ministerial declaration likewise noted "the fundamental role which national authorities, i.e. governments, courts and parliaments, must play in guaranteeing and protecting human rights at the national level." *See* Interlaken Declaration, February 19, 2010.

15. OAS, *Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a View to Strengthening the Inter-American Human Rights System for Consideration by the Permanent Council*, GT/SIDH-13/11 rev. 2 (December 13, 2011), 9.

16. *See* IACtHR Rules of Procedure, Art. 63 ("Procedure for monitoring compliance with the Judgments and other decisions of the Court"); *see also* IACtHR, *Saramaka People v. Suriname*, Monitoring Compliance with Judgment (November 23, 2011).

17. *See, e.g.*, IACtHR, *Molina Theissen v. Guatemala*, Series C No. 108 (November 16, 2009).

18. *See* "Décision sur l'état de la signature, de la ratification des traités de l'OUA/UA et harmonisation des procédures de ratification," Doc. Ex.CL/Dec. 459 (XIV), para 4 (recommendations cited in Projet de Loi modèle sur la ratification des traités; draft on-file).

19. Interview with Ibrahima Kane, Open Society Initiative for Eastern Africa, July 24, 2012.

20. Interview with Patrick Mutzenberg, Centre for Civil and Political Rights, March 23, 2012.

21. *See, e.g.*, Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 Article 33 ("National Implementation and Monitoring)"; Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 57/199, Article 3 and Part IV (mandating the creation of national visiting bodies with the authority to conduct regular visits to places of detention and to make recommendations to government authorities).

22. Eilionóir Flynn, From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities (Cambridge University Press, 2011), p. 1.

23. One recent study of the European Convention sought to examine what it termed the "dynamics of reception" of the European Convention amongst 18 COE states, focusing, in part, on the "mechanisms of coordination that have emerged in national legal orders over time." *See* Helen Keller and Alec Stone Sweet, eds., A Europe of Rights: The Impact of the ECHR on National Legal Systems (Oxford University Press, 2008). *See also* Philip Leach, et al., Responding to Systemic Human Rights Violations: An Analysis of 'Pilot Judgments' of the European Court of Human Rights and Their Impact at National Level (Intersentia, 2010), 178 ("States have not developed a systematic response mechanism in respect of European Court judgments.").

24. *See* D. Anagnostou, "Mainstreaming European Human Rights Case Law Domestically: A Policy Brief on State Implementation of Strasbourg Court Judgments," JURISTRAS Project (2009), 7; D. Anagnostou and A. Mungiu-Pippidi, "Why Do States Implement Differently the European Court of Human Rights Judgments? The Case Law on Civil Liberties and the Rights of Minorities," JURISTRAS Project (April 2009), 20–25.

25. D. Anagnostou and A. Mungiu-Pippidi, 23.

26. Frans Viljoen and Lirette Louw, *State Compliance With the Recommendations of the African Commission on Human and Peoples' Rights: 1994–2004*, Am. J. Int'l L. 101(1) (January 2007), 32.

27. Alexandra Huneeus, *Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights*, Cornell Int'l L.J. 44 (2011), 504–05.

28. *See, e.g.,* Abram Chayes and Antonia Handler Chayes, *On Compliance*, International Organization 47(2) (March 1993), arguing that limitations on the capacity of states, and the absence of effective domestic regulatory apparatuses, can account for non-compliance; *see also* Anne-Marie Slaughter, A New World Order (2004), 185–86 which states, "The task of maximizing compliance with a given set of international rules is thus a task more of management than enforcement, ensuring that all parties know what is expected of them, that they have the capacity to comply, and that they receive the necessary assistance."

29. *See, e.g.,* Sonia Cardenas, Conflict and Compliance: State Responses to International Human Rights Pressure (University of Pennsylvania Press, 2007).

30. Laurence R. Helfer, *Redesiging the European Court of Human Rights Embeddedness as a Deep Structural Principle of the European Human Rights Regime*, Eur. J. Int'l L. 19(1) (2008), 131. *See also* Beth A. Simmons, Mobilizing for Human Rights: International Law in Domestic Politics (Cambridge University Press, 2009).

31. Harold Koh, *Transnational Legal Processes*, Neb. L. R. 181(1996); Koh argues that states come to comply with international law through a process of "interaction, interpretation, and internalization."

32. Cardenas, 23.

33. *See, e.g.,* ICCPR, G.A. Res. 2200A (XXI), Art. 50 ("The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions"); Vienna Convention on the Law of Treaties, Art. 27 ("A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty").

34. Elisabeth Lambert Abdelgalwad, *The Execution of Judgments of the European Court of Human Rights: Towards a Non-Coercive and Participatory Model of Accountability*, Heidelberg J. Int'l L. 69(3) (2009), 487.

35. *See, e.g.,* ECtHR Grand Chamber, App. No. 74025/01, *Hirst v. United Kingdom (No. 2)* (October 6, 2005). The U.K. remains one of several countries highlighted by the Parliamentary Assembly's Committee on Legal Affairs and Human Rights as raising "particularly problematic instances of late and of non-execution." My thanks to Basak Cali for emphasizing this point; e-mail communication of October 24, 2011.

36. *See, e.g.,* Sonia Cardenas, Conflict and Compliance: State Responses to International Human Rights Pressure (University of Pennsylvania Press, 2007), noting that, in inviting scrutiny of its human rightc record, "Argentina's national leaders were creating an image of complying without actually complying."

37. On the importance of strategy, *see, e.g.*, David Baluarte, *Strategizing for Compliance: The Evolution of a Compliance Phase of Inter-American Court Litigation and the Strategic Imperative for Victims' Representatives*, Am. U. Intl. L. Rev. 27(2) (2012).

38. Please note that all translations are unofficial.

39. While this report focuses on the implementation of international court and treaty body decisions, a number of the policies it proposes can and should apply to the recommendations of other U.N. and regional human rights bodies, including treaty bodies, thematic rapporteurs, and special procedures mandate holders.

40. D. Anagnostou and A. Mungiu-Pippidi, 20.

41. Courtney Hillebrecht, "The Domestic Mechanisms of Compliance with International Law," 7.

42. COM Recommendation 2008(2).

43. *See, e.g.,* IACtHR, *Molina Theissen v. Guatemala*, Monitoring Compliance with Judgment, Series C No. 108 (November 16, 2009).

44. *See, e.g.,* IACtHR Rules of Procedure, Art. 2(1) "the term 'agent' refers to the person designated by a State to represent it before the Inter-American Court of Human Rights." Notably, there is no reference in the European Convention to the function of the government agent.

45. Law No. 3477-IV (2006), Art. 1 ("Ukraine Implementation Law," see Appendix II).

46. *See* David Baluarte, "Structuring Implementation: The Inter-American Experience with National Mechanisms to Implement the Decisions of Human Rights Bodies," Paper presented in Issyk-Kul, Kyrgyzstan (December 2011, on-file).

47. IACtHR Rules of Procedure, Art. 2(1). Rule 35 of the European Court's rules of procedure provides the sole basis for the function of the government agent: "The Contracting Parties shall be represented by Agents, who may have the assistance of advocates or advisers."

48. *The Role of Government Agents in Ensuring Effective Human Rights Protection*, Seminar Organized under the Slovak Chairmanship of the Committee of Ministers of the Council of Europe (Bratislava, April 3–4, 2008), 66 ("ECtHR Agents Report").

49. *Id.* at 66–67.

50. Pavlo Pushkar, "Application and Implementation of the European Convention on Human Rights in Ukraine: Recent Developments," European Human Rights Advocacy Centre Bulletin 7 (Summer 2007), 3–4.

51. Ukraine Implementation Law, Art. 12 ("Actions which the bodies in charge of the execution of additional individual measures shall take").

52. ECtHR Agents Report, 18.

53. *Id.* at 70.

54. Interview with Diana Olivia-Hatneanu, APADOR-CH, July 24, 2012. In Romania, legislation can only be initiated by ministries within their relevant field of competence; hence, the Foreign Affairs Ministry could not itself propose legislation that implicates domestic judicial reform.

55. ECtHR Agents Report, 72.

56. *Id.,* at 83.

57. Leach, et al., Responding to Systemic Human Rights Violations, 179.

58. ECtHR Agents Report, 17. Deniz Akçay.

59. Interview with Martin Kuijer, Ministry of Security and Justice, the Netherlands, July 19, 2012.

60. *Id.* at 68 (intervention of Ms. Deniz Akçay).

61. As a result, the agent's ability to serve as an effective coordinator has suffered; indeed, Romania has already passed its deadline for setting up a national prevention mechanism under the Optional Protocol to the Convention Against Torture, which the country ratified in 2009. Interview with Diana Olivia-Hatneanu, APADOR-CH, July 24, 2012. Similar cricticism has been raised in the Ukrainian context as well. *See* Leach, et al., Responding to Systemic Human Rights Violations, 150–151 (noting the view that "the Government Agent's Office does not in practice have sufficient authority to carry out its duties" and that its designated role as coordinator between various Government agencies was described as "untenable").

62. Open Society Justice Initiative, "National Implementation of the Interlaken Declaration" (October 2012), para 55.

63. Alexei Trochev, *All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia*, Demokratizatsiya (2009, available as PaperNo. 1082, University of Wisconsin Law School, Legal Studies Research Paper Series), 151.

64. Maria Issaeva, Irina Sergeeva, and Maria Suchkova, *Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent Developments and Challenges*, SUR—International Journal on Human Rights 8(15) (December 2011), 74.

65. *Id.*

66. U.S. Executive Order 13107, Implementation of Human Rights Treaties (December 10, 1998, see Appendix I).

67. *Id.*, Secs. 2, 4, 4(b).

68. Catherine Powell, *Human Rights at Home: A Domestic Policy Blueprint for the New Administration*, American Constitution Society for Law and Policy (October 2008), 13–14. Importantly, Powell also notes that the Working Group's focus on interagency cooperation and coordination had the important effect of "prevent[ing] any single office from monopolizing domestic human rights policy without transparency or safeguards—as occurred in the Bush Administration, when the Justice Department's Office of Legal counsel monopolized policy relating to detention and interrogation." *Id.* at 13.

69. ECtHR Agents Report, 19.

70. *Id*. at 72.

71. "Procurator" is a term used in many Roman legal system; it is analogous to both a detective and public prosecutor.

72. Trochev, *All Appeals Lead to Strasbourg?*, 151.

73. *Id*. at 152.

74. D. Anagnostou and A. Mungiu-Pippidi, 21.

75. Indeed, in the past 10–15 years a number of states have created specialized human rights divisions within their justice ministries; in some cases, these units have achieved ministerial status in their own right. Marcia Bernardes notes that although Brazil had established a human rights secretariat within the Ministry of Foreiign Affairs since 1977, "it was only in the 1990s that the Secretariat assumed a more active role in human rights litigation, both in regard to the litigation itself, and to the negotiations with other domestic organs with jurisdiction to deal with the topics being discussed internationally." Marcia Nina Bernardes, *Inter-American Human Rights System as a Transnational Public Sphere: Legal and Political Aspects of the Implementation of International Decisions*, SUR—International Journal on Human Rights 8(15) (December 2011), 138.

76. The nine countries reviewed by the JURISTRAS project were Austria, Italy, Germany, France, the United Kingdom, Romania, Greece, Bulgaria, and Turkey. *See* JURISTRAS Project, *available at* http://www.juristras.eliamep.gr/.

77. Xavier Konter, "Institutionalizing Janus in the European Human Rights System: How Can the Instituional Position of the Government Agent Before the European Court of Human Rights Be Strengthened?" VU University Amsterdam, Faculty of Law (16 January 2012, LLM Thesis, on-file), 65 (quoting Amut Wittling-Vogel, Government Agent for the Federal Republic of Germany).

78. Presentation of Almut Wittling-Vogel, Representative of the Federal Government for Matters Relating to Human Rights, Federal Ministry of Justice, Conference on "Redressing the Democratic Deficit in Human Rights" (London, 18 April 2012, on-file).

79. ECtHR, App. No. 17820/91, *Pammel v. Germany* (July 1, 1997); ECtHR, App. No. 20950/92, *Probstmeier v. Germany*, (July 1, 1997).

80. Elisabeth Lambert Ambdelgawad and Anne Weber, *The Reception Process in France and Germany*, in A Europe of Rights (Oxford University Press, 2008), 135–36.

81. Anagnostou (2009), 8.

82. Report of the United Kingdom to the Committee of Ministers of the Council of Europe on the implementation at national level of the Interlaken and Izmir Declarations (December 2011), 10.

83. The law reads: "The Prime Minister, either directly or by delegating a minister: ... shall promote the fulfilment of the government's responsibilities arising from judgments of the European Court of Human Rights in respect of the Italian State; shall immediately communicate the said judgments to Chambers so that they can be examined by the competient parliamentary standing committees, and submit an annual report to Parliament on the position as regards the execution of the said judgments." ECtHR Agents Report, 78 (see Appendix II).

84. Mercedes Candela Soriano, *The Reception Process in Spain and Italy*, in A Europe of Rights (Oxford University Press, 2008), 432–433.

85. ECtHR Agents Report, 78.

86. Serena Sileoni, *The European Convention on Human Rights in the Italiam System: From a Rights Approach to Strategic Litigation*, Ital. J. Pub. L. 1 (2011), 79. Other researchers have noted, however, that the law's effect in practice has been mixed, and that "insuffiicient measures have been taken as a result." *See* Leach, et al., Responding to Systemic Human Rights Violations, 128–129.

87. Ukraine Implementation Law, Arts. 15(1) and 15(2).

88. Interview with Hermine Kembo, Cameroon Ministry of Justice, November 22, 2011.

89. President of Russia, Decree No. 657, *On the Monitoring of the Application of Law in the Russian Federation* (May 20, 2011) (see Appendix I). Notably, it would appear that Russia's adoption of these regulations were, in part, a bid to help Russia join the World Trade Organization and the Organization for Economic Cooperation and Development. *See* Sergei Blagov, "Russia Adopts New Regulations to Counter Graft, Eyeing WTO, OECD Membership," WTO Reporter (June 2, 2011).

90. Maria Issaeva, Irina Sergeeva, and Maria Suchkova, 75.

91. Press Release, Pepeliaev Group, "Monitoring the Russian Justice Ministry's Enforcement of the Law" (January 2012).

92. Maria Issaeva, Irina Sergeeva, and Maria Suchkova, 74.

93. Constitution of the Kyrgyz Republic, Art. 41(2) (adopted by referendum June 27, 2010, unofficial translation prepared by the EU-UNDP Project on Support to the Constitutional and Parliamentary Reforms and OSCE/ODI), *available at* http://aceproject.org/ero-en/regions/asia/KG/kyrgyzstan-constitution-27-june-2010/view.

Art. 6(3) ("International treaties to which the Kyrgyz Republic is a party that have entered into force under the established legal procedure and also the universally recognized principles and norms of international law shall be the constituent part of the legal system of the Kyrgyz Republic.").

94. Dinar Turdumalieva and Ulugbek Azimov, "General Description of Situation" (June 25, 2011) (on-file). Interview with Masha Lisitsyna, Open Society Justice Initiative, August 23, 2011 and July 31, 2012.

95. Research summary provided by Youth Human Rights Group (June 25, 2011) (on-file).

96. Interview with Masha Lisitsyna, Open Society Justice Initiative, July 31, 2012.

97. The group has been led by the Youth Human Rights Group, along with its partners NotaBene and the Independent Human Rights Center; the U.N. High Commissioner for Human Right's office has also been supportive of the process and helped coordinate a seminar on the implementation mechanisms in December 2011.

98. Project Proposal,Youth Human Rights Group (on-file).

99. Interview with Masha Lisitsyna, Open Society Justice Initiative, August 23, 2011.

100. While the working group ultimately recommended an inter-ministerial commission, discussions about the relative merits of the MOJ or MFA were nonetheless instructive. Some favored

the MFA, arguing it had the authority to bring together the three main branches of government and that locating the commission there would respect the connection between foreign policy and Kyrgyzstan's international commitments. At the same time, others noted that the ministry had no specific powers to influence the activities of the legislature and the judiciary, whereas the MOJ has a strategic goal related to improving legislation and conforming with international standards. Research summary provided by Youth Human Rights Group (June 25 2011) (on-file).

101. Interview with Masha Lisitsyna, Open Society Justice Initiative, July 31, 2012.

102. Project Proposal, Youth Human Rights Group (on-file). In addition to overseeing the implementation of individual communications, the commission would also be responsible for preparing Kyrgyzstan's periodic reports to U.N. treaty bodies, participating in the Universal Periodic Review process, and communicating with U.N. special procedures. *Id.*

103. Having gained support for the inter-miniserial commission model from within the government, the working group is now working on drafting a law (possibly with the participation of government agencies) with technical support from the Office of the High Commissioner for Human Rights; it is hoped that this will be prepared for debate and consideration by 2013. Interview with Masha Lisitsyna, Open Society Justice Initiative, July 31, 2012.

104. *Id.*

105. Committee of Ministers A*nnual Report, 2011—Supervision of the Execution of Judgments and Decisions of the Eurpean Court of Human Rights* (April 2012), 48 (noting 861 payments made within deadline in 2011; 249 payments outside deadline).

106. Open Society Justice Initiative, From Judgment to Justice, 87 (citing interview with Michael Camilleri, CEJIL, November 2009).

107. ECtHR Agents Report, 77.

108. Ukraine Implementation Law, Art. 8.

109. Law No 27.775, Regulate the Procedure for the Execution of Judgments Emitted by Supranational Tribunals, Art. 2(b) (June 27, 2002) ("Peru Implementation Law") (see Appendix II). Where the amount of payment is undetermined, the national court must initiate a process to determine an appropriate amount; this should take no longer than thirty days.

110. Viviana Krsticevic, *A Strategy for Improving the Level of Implementation of Judgments in the Inter-American System*, Interights Bulletin 16(2) (Winter 2010), 93.

111. *Responding to Human Rights Judgments: Report to the Joint Committee on Human Rights on the Government's Response to Human Rights Judgments, 2010–11* (September 2011), 9. In Greece as well, the role of the agent in the execution of European Court judgments is "one of a coordinator between competent ministers." *See* ECtHR Agents Report, 89.

112. *Id.* at 27

113. E-mail communication with officials from Human Rights Policy Team, United Kingdom Ministry of Justice (on-file).

114. Konter LLM Thesis, 54.

115. Open Society Justice Initiative, From Judgment to Justice, 88.

116. Report of the United Kingdom to the Committee of Ministers of the Council of Europe on the Implementation at National Level of the Interlaken and Izmir Declarations (December 2011), 11.

117. Lambert Abdelgawad and Weber, 155.

118. *Responding to Human Rights Judgments: Report to the Joint Committee on Human Rights on the Government's Response to Human Rights Judgments 2010–11*, Ministry of Justice (September 2011), 27.

119. E-mail communication with officials from Human Rights Policy Team, United Kingdom Ministry of Justice (on-file).

120. Bodnar and Uitz Report, 93–94 (citing "Algorythm sposobu postepowani wryokami Europejskiego Trybunalu Praw Czlowieka przez Departament Praw Czlowieka Ministerstwa Sprawiedliwoci").

121. *Id.*

122. Konter LLM Thesis, 80.

123. E-mail communication with Martin Kuijer, Ministry of Security and Justice, the Netherlands, 22 January 2013.

124. Supreme Decree 014-2000-JUS, *Regulate the Procedure to Follow-Up on the Recommendations of International Human Rights Bodies* (December 22, 2000).

125. Open Society Justice Initiative, From Judgment to Justice, 85.

126. Notably, the decree limits the council's authority to implement general remedies: in those cases, the council may only make recommendations to the legislative and judicial branches and request that they inform the CNDH of any actions taken. *Id.*

127. Kali Wright-Smith, "Competing Explanations for Compliance: Lessons from the Inter-American Court of Human Rights" (Spring 2010), 18–22.

128. *See* IACtHR, *Castillo-Paez v. Peru*, Monitoring Compliance with Judgment (May 19, 2011).

129. Summary and Recommendations, University of Bristol Human Rights Implementation Centre and Arts & Humanities Research Council, "Expert Seminar on Identifying National Mechanisms to Follow Up and Implementation Decisions of the African Commission on Human and Peoples' Rights" (Addis Ababa, November 21–22, 2011) (on-file) ("Addis Ababa Summary and Recommendations").

130. Michael J. Camilleri and Viviana Krsticevic, *Making International Stick: Reflections on Compliance with Judgments in the Inter-American Human Rights System*, in Proteccion Internacional de Derechos Humanos y Estado de Derecho (2009), 243.

131. ECtHR Agents Report, 86.

132. The task force's work was also supported by the the General Solicitor of the State Treasury, the State Electoral Commission, and the Central Board of the Prison Service. *Id.*

133. *Id.*

134. *Id.* at 87–88.

135. ECtHR App. No. 25196/94, *Iwanczuk v. Poland* (November 15, 2001), findiing volations of Articles 3, 5 and 6 in petitioner's allegations of mistreatatment while in detention and excessive length of criminal proceedings.

136. Adam Bodnar and Renata Uitz, "Efficient Enforcement of Judgments of the European Court of Human Rights in Poland and in Hungary," Ernst & Young "Better Government" Program (2011), 27 ("Bodnar & Uitz Report") (on-file).

137. *Id.*

138. *Id.*

139. *Id.*; *see also* ECtHR Agents Report, 88.

140. ECtHR Agents Report, 89.

141. The authors state only six plenary meetings were organized between 2008 and 2010, although some members have met in smaller working groups more frequently. Bodnar and Uitz Report, 28, n. 45. The authors acknoweldge that the resolution of both of Poland's pilot judgment cases—*Broniowski v. Poland* and *Hutten-Czapska v. Poland*—was the result of the working team's efforts. *Id.*

142. *Id.* at 29.

143. Supreme Decree No 015-2001-JUS, Approve the Regulations of the National Human Rights Advisory and Create the Special Commission to Follow-Up on International Procedures (April 27, 2001).

144. *Id.* at Art. 22 and 23(a).

145. *Id.* at Art. 23(c), (d).

146. *Id.* at Art. 23(d), (e), (f).

147. Baluarte, "Structuring Implementation."

148. *Id.*

149. Marcie Mersky and Naomi Roht-Arriaza, *Guatemala*, in Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America (Due Process of Law Foundation, 2007), 14.

150. *Id.* (citing IACtHR, *Carpio Nicolle et al. v. Guatemala*, Series C No. 117 (November 22, 2004)).

151. *Id.* at 20–21 (citing the *Plan de Sánchez Massacre* case).

152. *Id.* at 21 (citing the *Chuj* friendly settlement); e-mail communication with Ina Zoon, Open Society Justice Initiative, February 23, 2013.

153. IACtHR, *Molina Theissen v. Guatemala*, Monitoring Compliance with Judgment, Series C No. 108 (November 16, 2009).

154. Open Society Justice Initiative, From Judgment to Justice, 83.

155. Presentation of the Government of Cameroon, "Expert Seminar on Identifying National Mechanisms to Follow Up and Implementation Decisions of the African Commission on Human and Peoples' Rights" (Addis Ababa, November 21–22, 2011) (notes on-file).

156. *Id.*

157. *See* Republique du Cameroun, Arrete No. 081 CAB/PM, Ch. II, Art. 3 (April 15, 2011) (unofficial translation; on-file) (see Appendix I).

158. *Id.* at Ch. II, Art. 7.

159. Interview with Hermine Kembo, Cameroon Ministry of Justice, November 22, 2011.

160. *Id.*

161. Comments of Chidi Odinkalu, Open Society Justice Initiative, October 13, 2011. African Commission on Human and Peoples' Rights, *Pagnoulle v. Cameroon*, Comm. No. 39/90 (1997), concerning a magistrate who was imprisoned by order of a military tribunal without proper judicial protections. This case appeared before before the U.N. Human Rights Committee, which decided the case in 2001; *see* U.N. Hum. Rts. Comm., Case No. 630/1995, *Mazou v. Cameroon* (July 26, 2001). In 2002, Cameroon reported that it had reinstated the applicant to the judiciary, and that it had offered him compensation, which he refused to accept because he considered it to be inadequate. *See* Reports of the HRC, U.N. Doc. A/57/40 (Vol. II) (2002), para 235 and U.N. Doc. A/59/40 (Vol. I) (2003), 133 (noting that the Special Rapporteur "recommedned that this case should not be considered further under the follow-up procedure as the State party had complied with the Views").

162. Addis Ababa Summary and Recommendations, 4.

163. *See* Republique du Mali, Decret No. 09-049/PM-RM, Ch. I, Art. 2 (February 12, 2009) (unofficial translation; on-file; see Appendix I).

164. *Id.*, Ch. II, Art. 3.

165. *Id.*, Ch. II, Art. 6.

166. *Id.*, Ch. III, Art. 9.

167. For additional information on JLOS, see the Open Socity Justice Initiative report authored by Eric Witte, Putting Complementarity Into Practice (2011).

168. *Id.* at 77.

169. *See, e.g.,* Viviana Krsticevic, *A Strategy for Improving the Level of Implementation of Judgments in the Inter-American System*, 91–94.

170. *See* ECtHR Apps. Nos. 30767/05 and 33800/06, *Maria Atanasiu and Others v. Romania* (October 12, 2010), giving Romania 18 months to remedy its restitution system.

171. Andrei Popovici, "Romania's Coming Property Restitution Reform: Nine Months Left to Solve a 21 Billion Euro Problem," Policy Memo No. 23 (Soros Foundation Romania, October 2011), 22.

172. Konter LLM Thesis, 66 (citing interview with Slavoljub Caric, Government Agent for the Repubic of Serbia).

173. Leach, et al., Responding to Systemic Human Rights Violations, 179.

174. *Thematic Study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities* (Geneva: United Nations, 2009) A/HRC/13/29, 9.

175. *See Report of the Group of Wise Persons to the Committee of Ministers*, paras 72–74 (noting that "responsibility for translation, publication and dissemination of case-law lies with the member states and their competent bodies"; further, the "basic principles of international and European law should be compulsory subjects in both secondary and university-level education").

176. *See, e.g.,* IACtHR, *Tibi v. Ecuador*, Series C No. 114 (September 7, 2004), para 13 (requesting the state to develop an "inter-institutional committee to define and execute the training programs on human rights and treatment of inmates").

177. E-mail communication with Ingeborg Schwarz, Inter-Parliamentary Union, June 28, 2012.

178. C. Pourgourides, "Implementation of Judgments of the European Court of Human Rights," Doc. 12455 (December 2010), paras 205–07. C. Evans and S. Evans, *Evaluating the Human Rights Performance of Legislatures*, H.R.L.R. 6(3) (2006), 545–569 (arguing that "there is very little published detailed analysis on the performance of legislatures in the protection of human rights domestically").

179. Remarks made by Martin Kuijer, Conference on "Redressing the Democratic Deficit in Human Rights," London, April 18, 2012 (on-file).

180. At a seminar on follow-up and implementation held with several African governments, it was noted that the establishment of human rights parliamentary committees is "not common practice within the African region." *See* Addis Ababa Summary and Recommendations, 4.

181. *See, e.g.,* C. Pourgourides, "Implementation of Judgments of the European Court of Human Rights," PACE Committee on Legal Affairs and Human Rights, AS/Jur (August 2009), paras 36, 31.

182. C. Pourgourides, "National Parliaments: Guarantors of Human Rights in Europe," PACE Committee on Legal Affairs and Human Rights, Doc. 12636 (June 6, 2011), paras 6, 91.

183. D. Anagnostou and A. Mungiu-Pippidi, 22–23. *See also* Leach, et al., RESPONDING TO SYSTEMIC HUMAN RIGHTS VIOLATIONS, 179 ("In our case studies [Poland, Slovenia, Italy] we hear little evidence to suggest that national Parliamentarians are engaging effectively in the process of ensuring compliance with human right standards, either in 'auditing' draft legislation or in responding to judgments of the European Court of Human Rights.").

184. Marie-Louise Bemelmans-Videc, "The Effectiveness of the European Convention on Human Rights at National Level: The Parliamentary Dimension" (June 9, 2008).

185. See Resolution 1787(2011), para 9 and Recommendation 1955(2011). The Committee of Ministers acknowledged that the implementation of court judgments "has greatly benefited in the past and continues to benefit from the Parliamentary Assembly's and national parliaments' greater involvement" (Reply to Assembly Recommendation 1764(2006)). PACE Resolution 1516(2006) further invited all national parliaments to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the court's judgments on the basis of regular reports by the responsible ministries.

186. Parliament of Australia, "Resolution to Establish the Parliamentary Joint Committee on Human Rights," *available at* http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/ctte_info/index.htm (see also Appendix III).

187. *See, e.g.,* Open Society Justice Initative, FROM JUDGMENT TO JUSTICE, 129–30. Phil Lynch has likewise noted that the "tide has receded" in recent years, with Australia "increasingly refusing" to respect and implement decisions of the Human Rights Committee and Committee Against Torture. *See* Phil Lynch, "Australia's Duplicitious Approach to UN Treaty Bodies Undermines Human Rights," *available at* www.hrlc.org.au (September 1, 2012).

188. "Parliamentary Human Rights Committees" (National Democratic Institute for International Affairs: Rule of Law Series Paper, 2004), 8 ("Parliamentary Human Rights Committees Report").

189. Carson Osberg, "Mexican Congress Approves Reparations Fund for Victims of Human Rights Violations to Comply with Inter-American Court Judgments," *available at* http://hrbrief.org/2011/03/mexican-congress-approves-reparations-fund-for-victims-of-human-rights-violations-to-comply-with-inter-american-court-judgments/ (March 11, 2011).

190. Paulina Vega-Gonzalez, "The Mexican Victims' Law: All You Need to Know" (on-file); Tracy Wilkinson, "Mexico enacts law to help drug war victims," LATIMES.COM (January 9, 2013).

191. A. Drzemczewski and J. Gaughan, Implementing Strasbourg Court Judgments: The Parliamentary Dimension, in EUROPEAN YEARBOOK ON HUMAN RIGHTS (Vol. II, Wolfgang Benedek, Wolfram Karl and Anja Mihr, eds., 2010), 233–244.

192. *See., e.g.,* Murray Hunt, Hayley Hooper, and Paul Yowell, PARLIAMENT AND HUMAN RIGHTS: REDRESSING THE DEMOCRATIC DEFICIT (Arts & Humanities Research Council Policy Series No. 5, 2012).

193. ECtHR Grand Chamber, App. No. 74025/01, *Hirst v. United Kingdom (No. 2)* (October 6, 2005), paras 79–80 ("As to the weight to be attached to the position adopted by the legislature and judiciary in the United Kingdom, there is no evidence that Parliament has ever sought to weigh the competing interests or to assess the proportionality of a blanket ban on the right of a convicted prisoner to vote.").

194. *Ensuring the Continued Effectiveness of the European Convention on Human Rights—The Implementation of the Reform Measures Adopted by the Committee of Ministers at its 114th Session*, COM 116th Session, CM(2006)39 final (May 12, 2006), para IV., II.

195. Law No 27.775, Regulate the Procedure for the Execution of Judgments Emitted by Supranational Tribunals (June 27, 2002, see Appendix II). Whereas earlier efforts by the Peruvian state also sought to give Inter-American Court rulings domestic effect, these were decrees of the executive, which could be overturned by successive administrations.

196. *See, e.g.,* PACE, Resolution 1726(2010), para 5 ("The Assembly stresses the key role national parliaments can play in stemming the flood of applications submerging the Court by, for instance, carefully examining whether [draft] legislation is compatible with the Convention's requirements and in helping states to ensure prompt and full compliance with the Court's judgments.").

197. Ariel E. Dultizky, *The Inter-American Commission on Human Rights*, in VICTIMS UNSILENCED, 145.

198. Law No. 288/96, Regulate the Procedure for the Indemnity of Victims of Human Rights Violations (July 5, 1996) ("Colombia Implemenation Law") (see Appendix II). It should be noted that while compliance with Inter-American Commission decisions has been generally good, payment with respect to HRC decisions (a number of which are over 15 years old) continues to be met with resistance. Notably, no such law exists with respect to the Inter-American Court as the state already recognizes its judgments as legally binding and gives its decisions ordering pecuniary damages full effect. As previously noted, however, problems nevertheless persist in the implementation process. *See* FROM JUDGMENT TO JUSTICE, 87.

199. Colombia Implementation Law, Arts. 2–14.

200. Peru Implementation Law, Art. 2.

201. *Id*. at Art. 2(a).

202. *Id*. at Art. 2(b).

203. *Id*. at Art. 2(c).

204. *Id*. at Art. 2(d), 3–5.

205. Open Society Justice Initiative, From Judgment to Justice, 86.

206. Law No. 3477-IV (2006) (as amended by Law No. 3135-VI (2011)). Although an English translation of the 2011 law is not yet available, the amendments were largely of a technical nature, e.g., the definitions of "judgment" and "creditor" in Article 1 were amended; the required period of time for publishing summaries of judgments was extended from 3 to 10 days; summaries need now only be published in one newspaper; notification of a final judgment must be made within 10, rather than 3, days; and, pursuant to Article 14, the OGA now sends proposals on general measures to the Cabinet of Ministers on a quarterly, rather than monthly, basis. E-mail communication with Alice Donald, London Metropolitan University (formerly), August 20, 2012 (information provided by Dmytro Kotliar, former Ukraine deputy justice minister).

207. Ukraine Implementation Law, Art. 12 ("Actions which the bodies in charge of the execution of additional individual measures shall take").

208. *Id*. at Art. 14 ("Actions which the Office of the Government's Agent shall take with regard to general measures"). The previous version of the law required agents to submit a motion of general measures within one month of European Court judgments becoming final; however, under the 2011 amendments, the agent must now submit her proposals to the Cabinet of Ministers on a quarterly basis.

209. E-mail communication with Alice Donald, London Metropolitan University (formerly), August 20, 2012. Leach and others likewise note that, according to their Ukrainian interlocutors, "the law is ineffective because the Government Agent's Office does not in practice have sufficient authority to carry out its duties." Leach, et al., Responding to Systemic Human Rights Violations, 150–151.

210. Maria Suchkova, *An Analysis of the Institutional Arrangements Within the Council of Europe and Within Certain Member States for Securing the Enforcement of Judgments*, Eur. H.R. L.Rev. (2011), 461.

211. After laying dormant for several months, the draft amendments were passed by parliament on first reading in May 2012. Since that time, the amendments have not passed second reading and are unlikely to do so before the October 2012 elections. E-mail communication with Alice Donald, London Metropolitan University (formerly), August 20, 2012.

212. Table of Draft Amendements in the Law of Ukraine (on-file).

213. Leach, et al., Responding to Systemic Human Rights Violations, 150–151.

214. Law No. 12/2006 (Italian Official Bulletin No. 15, 10 January 2006); *see also* ECtHR Agents Report, 76.

215. Serena Sileoni, 81.

216. Baluarte, "Structuring Implementation."

217. Parliamentary Human Rights Committees Report, 9.

218. *Id.* at 15.

219. *Id.* at 15.

220. C. Pourgourides, "National Parliaments: Guarantors of Human Rights in Europe," para 25.

221. The committee began its work in April 2011 under the chairmanship of Tudor Pantiru, himself a former European Court of Human Rights judge. Unfortunately, its performance is not well regarded: very few have heard of the sub-commiittee; to date, it has only met a handful of times, with little information publicy available; and the quality of its membership is poor. Interview with Diana Olivia-Hatneanu, APADOR-CH, July 24, 2012.

222. C. Pourgourides, "National Parliaments: Guarantors of Human Rights in Europe," para 29.

223. Parliamentary Human Rights Committees Report, 9.

224. For more information, *see* United Kingdom Parliament, Joint Select Committee Human Rights, *available at* http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/.

225. *See Guidelines for Departments on Responding to Court Judgments on Human Rights* (2010) (see Appendix III), paras 15–18. In the past, the committee has also examined the steps taken by government to address the recommendations of U.N. treaty monitoring bodies concerning the UK's compliance with the ICCPR and other specialized U.N. conventions.

226. Interview with Murrat Hunt, UK Joint Committee on Human Rights, 10 October 2011.

227. Anthony Lester, *Parliamentary Scrutiny of Legislation Under the Human Rights Act 1998*, VUWLR 33 (2002), 16.

228. *Enhancing Parliament's Role in Relation to Human Rights Judgments*, Fifteenth Report of Session 2009-10, HL Paper 85/HC 455 (March 26, 2010), 69 ("The Committee will begin to consider any compatibility issues raised by judgments of the European Court of Human Rights or declarations of incompatibility even before the judgment or deliberation is final").

229. Interview with Lord Lester of Herne Hill, Member of the Joint Committee on Human Rights, September 2009.

230. ECtHR Grand Chamber, App. No. 28957/95, *Goodwin v. United Kingdom* (July 11, 2002).

231. Interview with Lord Lester of Herne Hill, Member of the Joint Committee on Human Rights, September 2009.

232. ECtHR, App. No. 4158/05, *Gillan and Quinton v. United Kingdom* (Jan. 12, 2010).

233. Interview with Murray Hunt, U.K. Joint Committee on Human Rights, 10 October 2011. *See also Legislative Scrutiny: Crime and Security Bill; Personal Care at Home Bill; Children, Schools and Families Bill*, HL 67/HC 402, paras 1.91–1.97 (arguing that the seriousness of the issues justified an immediate reconsideration of the law on stop and search). In June 2010, the European Court's Grand Chamber refused the U.K. government's request for a further hearing.

234. Interview with Murray Hunt, U.K. Joint Committee on Human Rights, October 10, 2011.

235. In 2006 an important review of the JCHR was undertaken that resulted in a number of changes to its working practices. See *The Committee's Future Working Practices*, HL 239/HC 1575 (23rd Report of 2005–06).

236. *Enhancing Parliament's Role in Relation to Human Rights Judgments*, HL Paper 85/HC 455 (15th Report of 2009–10, March 26, 2010), 52 ("One of the recurring criticisms we have made in this and previous reports on the implementation of human rights judgments has been that the Government generally adopts an approach of 'minimal compliance' with Court judgments.").

237. In May 2012, the European Court held that Italy did not violate the rights of a convicted prisoner who lost his right to vote when he was sentenced to life for murder; in so doing, it rejected the invitation by the U.K. government, which had been granted leave to make submissions as a third party, to overturn *Hirst*. *See* ECtHR Grand Chamber, App. No. 126/05, *Scoppola v. Italy* (May 22, 2012). Rather, the Grand Chamber affirmed *Hirst* in finding that, while states enjoy a margin of appreciation in imposing limitations on the right to vote, such restrictions must be carefully tailored; they cannot affect a group of people generally, automatically, and indiscriminately as they did in the United Kingdom. Prior to hearing *Scoppola*, the European Court had placed *Hirst* under its pilot judgment procedure, on the grounds that the there had been no amendement to the law in the United Kingdom since the *Hirst (No. 2)* judgment in 2005. *See* EctHR, App. Nos. 60041/08 and 60054/08, *Greens and M.T. v. United Kingdom* (November 23, 2010). The U.K. government has six months from the date of the *Scoppola* judgment to comply with the court's decision in *Greens*.

238. *Enhancing Parliament's Role in Relation to Human Rights Judgments*, 59.

239. Interview with Murray Hunt, U.K. Joint Committee on Human Rights, October 10, 2011.

240. *See Responding to Human Rights Judgments: Report to the Joint Committee on Human Rights on the Government Response to Human Rights Judgments 2011-12*, Ministry of Justice (September 2012); *Responding to Human Rights Judgments: Report to the Joint Committee on Human Rights on the Government's Response to Human Rights Judgments 2010–11*, Ministry of Justice (September 2011); *Responding to Human Rights Judgments: Government Response to the Joint Committee on Human Rights' Fifteenth Report of Session 2009–10,* Ministry of Justice (July 2010).

241. Hunt, Hooper, and Yowell, 22–23.

242. *Id*. at 7–8.

243. In addition to these amendments, the report found at least seven instances in which the government "issued guidance on the basis of recommendation in JCHR reports (or agreed to do so) to administrative and law enforcement officials." *Id*. at 44.

244. Remarks made by George Kunnath, program director, the Westminster Consortium, Conference on "Redressing the Democratic Deficit in Human Rights," London, April 18, 2012 (on-file).

245. *See, e.g.*, "Russia's Beleaguered Opposition" NY Times (August 1, 2012), noting tht Russia is "growing more rigid and intolerant by the day under President Vladimir Putin" and that "his Parliament moved to tighten control over Internet sites, protesters and nonprofit organizations."

246. Suchkova, 461. *See also* Janet L. Hiebert, *Parliament and the Human Rights Act: Can the JCHR Help Faciliate a Culture of Rights?*, Int'l J. Con. L. 1 (2006), 11 (noting that an emphasis on executive government in political systems characterized by strict party discipline can promote a political cuture hostile to human rights considerations).

247. International Law Association, *Final Report of the Committee on International Human Rights Law and Practice of the International Law Association on the Impact of U.N. Human Rights Treaty Bodies Findings on the Work of National Courts and Tribunals* (Berlin, August 2004), 36–38. Indeed,

section 74 of the Finnish constitution guarantees that "the Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties." *See* Constitution of Finland (2000), secs. 22, 42, 74, 109.

248. *Id.*; *see also* Human Rights Handbook for Parliamentarians (Inter-Parliamentary Union and Office of the United Nations High Commissioner for Human Rights, 2005).

249. C. Pourgourides, "National Parliaments: Guarantors of Human Rights in Europe," para 28.

250. Remarks made by Martin Kuijer, Conference on "Redressing the Democratic Deficit in Human Rights," London, 18 April 2012 (referencing Instruction 254).

251. *Id.*

252. IACtHR, *João Canuto de Oliveira v. Brazil*, Report No. 24/98, Case No. 11.287 (April 7, 1998). The commission concluded that the Brazilian state violated its convention obligations by failing to provide Mr. Canuto with appropriate protection and for failing to conduct an effective investigation and prosecution into the circumstances of his death.

253. *See* Human Rights Handbook for Parliamentarians, 69 (example cited). Notably, however, no prosecutions were ever brought in Canuto's case. *See* Eugenio Jose Guilherme de Aragao, "Setting Standards for Domestic Prosecutions of Gross Violations of Human Rights Through the ICC: International Jurisdiction for Wilful Killings in Brazil?" (EIUC Conference, Venice, 2005), 16, n. 57.

254. Congress used the fund, which was drawn from its annual budget, to pay all of Mexico's outstanding compensation awards as well as the payment of some friendly settlements in cases filed before the Inter-American Commission. It has since run out of money and it is not yet clear whether authorization will be renewed. Interview with Alejandra Nuño, CEJIL, June 22, 2012.

255 *See* IACtHR, *Radilla-Pacheco v. Mexico*, Series C No. 777/01 (November 23, 2009)). In particular, the court stated that legislative amendment of Article 57 of Mexico's Military Justice Code and section 215A of the Federal Penal Code was necessary.

256. The Permanent Commission acts when the Chamber of Deputies and the Mexican Senate are in recess; it consists of 19 deputies and 18 senators. The members are named by their respective chambers during the last ordinary session and remain on the commission during the legislative recess. The Permanent Commission has no legislating function and, in general, its responsibilities are of an administrative nature. *See* Patricia Flores Elizondo, "The Parliamentary System of the Chamber of Deputies."

257. IACtHR, *Trujillo Oroza v. Bolivia,* Judgment (Reparations and Costs), Series C No. 92 (February 27, 2002), para 141(2).

258. *See* IACtHR, *Trujillo Oroza v. Bolivia,* Monitoring Compliance with Judgment (September 12, 2005).

259. Law No. 3326, Annex 26 (January 18, 2006).

260. Parliament and Democracy in the Twenty-First Century: A Guide to Good Practice (Inter-Parliamentary Union, 2006), 160.

261. *Id.* Uruguay follows a similar model: parliament holds a session to follow-up on the CEDAW Committee's recommendations and call on members of the government to discuss them.

262. Dia Anagnostou and Evangelia Psychogiopoulou, "Supranational Rights Litigation, Implementation and the Domestic Impact of Strasbourg Court Jurisprudence: A Case Study of Greece," JURISTRAS Case Study Report, 14.

263. Remarks made by Martin Kuijer, conference on "Redressing the Democratic Deficit in Human Rights," London, 18 April 2012.

264. Reports on judgments against Germany had been prepared since 2004; however, it was not until 2007, at the parliament's request, that measures to implement court judgments were included. Remarks made by Almut Wittling-Vogel, German Federal Ministry of Justice, conference on "Redressing the Democratic Deficit in Human Rights," London, April 18, 2012.

265. Remarks made by Martin Kuijer, Conference on "Redressing the Democratic Deficit in Human Rights," London, April 18, 2012.

266. *Id.*; *see* ECtHR Grand Chamber, App. No. 36391/02, *Salduz v. Turkey* (November 27, 2008), finding Article 6 applicable to pretrial proceedings, as evidence and preparation during this stage determines "the framework in which the offense charged will be considered at trial." Kuijer notes that judgments against third countries have "frequently" led to changes in Dutch legislation, for instance following the 1979 *Marckx* judgment against Belgium and the 1988 *Brogan* judgments agains the United Kingdom. *Id.*

267. U.N. Hum. Rts. Comm., Case No. 1818/2008, *McCallum v. South Africa* (October 25, 2010).

268. South African Human Rights Commission, "Presentation to the Portfolio Committtee on Correctional Services: Torture in Correctional Centres in South Africa" (November 30, 2011) (on-file).

269. Interview with Judith Cohen, South African Human Rights Commission, July 23, 2012.

270. "Stakeholder Hearings on the Prevalence of Torture in Correctional Centres" (November 30, 2011) (on-file), Mr. V. Magagula (ANC): "the Portfolio Committee could certainly be approached to assist in getting this Bill through."

271. *See* Carolyn Raphaely, *Raped Inmate Sues Prison Service*, Saturday Star (3 March 2012).

272. C. Pourgourides, "National Parliaments: Guarantors of Human Rights in Europe," PACE Committee on Legal Affairs and Human Rights, Doc. 12636 (June 6, 2011), para 75.

273. Parliamentary Human Rights Commissions Report, 37.

274. Parliament and Democracy in the Twenty-First Century, 133–135.

275. Interpelláció, Országgyulés Képviselo, Budapest (February 17, 2009) (on-file).

276. Reply of Mr. Lajos Korozs (February 24, 2009) (on-file); *see also* ERRC Press Release, "Hungary Provides Compensation to Coercively Sterilised Romani Woman."

277. Interview with Judit Geller, ERRC, June 19, 2012; Letter of the Permanent Mission of the Republic of Hungary to the U.N. Office and other International Organizations in Geneva (July 20, 2009) (indicating payment was made by the Hungarian State Treasury to Ms. A.S.'s bank account in June 2009) (on-file).

278. *Id.*

279. *See, e.g.,* Viviana Krsticevic, *A Strategy for Improving the Level of Implementation of Judgments in the Inter-American System*, Interights Bulletin 16(2) (Winter 2010), 91–94.

280. Human Rights Handbook for Parliamentarians, iii. While legislative institutions go by various names depending on whether a state follows a presidential or parliamentary system of government, this report will largely refer to them as "parliaments" or, with respect to the legislators themselves, "parliamentarians."

281. For instance, although Australia's newly established Parliamentary JCHR is empowered to examine bills and legislative acts' compatibility with international human rights, it is not explicitly within its remit to review or monitor the implementation of U.N. treaty body decisions.

282. Bicameral parliaments should consider whether their human rights committee should be a joint committee of both houses. The Australian Joint Committee on Human Rights, for instance, provides that the committee shall consist of 10 members, four of whom must be nominated by opposition leaders or non-aligned members. *See* Human Rights (Parliamentary Scrutiny) Act 2011, Art. 1(a).

283. For instance, in the course of a fact-finding mission that the Canadian Senate's Human Rights Committee undertook to Geneva and Strasbourg to inquire into Canada's compliance with the ICCPR, it learned that U.N. special rapporteurs came to Canada to meet with government officials and business officials but never met with Canadian parliamentarians. As a result, the committee concluded that it "would be desirable that the special rapporteurs also meet with Canadian parliamentarians when they come to Canada." Parliamentary Human Rights Committees Report, 20.

284. Suchkova, 461.

285. The East African Legislative Assembly is the legislative arm of the East African Community, whose judicial body is the East African Court of Justice. Although not a human rights court in the strict sense, the treaty that established the court—the East African Community Treaty—commits member states to abide by the rule of law. Under this provision, litigants have recently prevailed in a case against Uganda concerning the prosecution of a man that the Ugandan High Court had ordered released by military tribunal. *See* Ben Batros, "CaseWatch: East Africa's Fledgling Court Feels its Way" (February 27, 2012) (citing Reference No. 1 of 2007).

286. As Denis Galligan and Deborah Sandler have argued: "[A] judgment of a national court, addressed to an institution of government or administration, has a better chance of being implemented than a similar judgment from an international court, addressed to the state *quq* state." Galligan and Sandler, *Implementing Human Rights*, in Human Rights Brought Home: Socio-Legal Perspectives on Human Rights in the National Context (Simon Halliday and Patrick Schmidt, eds., Hart Publishing, 2004), 43.

287. On vertical enforcement networks, see Anne-Marie Slaughter, A New World Order (Princeton University Press, 2004).

288. André Nollkaemper, National Courts and the International Rule of Law, (Oxford University Press, 2012), 117. Broadly speaking, courts can give such effect in two ways: indirect (through national law), or direct. The former, which is the more common method, means that courts "secure the performance of an international obligation by applying domestic law that substantively incorporates or encompasses that obligation," or by "applying a law that has implemented (or 'transformed') that obligation in national law," otherwise known as implementing legislation (see Chapter 3). In contrast, a court gives "direct effect" to an obligation it "it enforces that obligation as such, not in domesticated form. The effect is 'direct' in the sense that it does not depend on an intervening legislative step." *Id.* at 117–118.

289. Camilleri and Krsticevic, "Making International Law Stick," 243–44.

290. Helen Keller and Alec Stone Sweet, *Assessing the Impact of the ECHR on National Legal Systems*, in A Europe of Rights, 687.

291. *Id.*

292. Nollkaemper, 25.

293. Abiola Ayinla and George Mukundi Wachira, *Twenty Years of Elusive Enforcement of the Recommendations of the African Commission on Human and People's Rights: A Possible Remedy*, Af. Hum. Rts. L.J. 6 (2006), 456.

294. Markus G. Schmidt, *Follow-Up Mechanisms Before UN Human Rights Treaty Bodies and the UN Mechanisms Beyond*, in The UN Human Rights Treaty System in the 21st Century (Anne F. Bayefsky, ed., 2000), 233.

295. In Italy, for instance, interviews conducted by researchers at London Metropolitan University found that "Italian lower courts judges are insufficiently aware of the [European] Convention," and that "the higher [Italian] courts rather than the lower courts tend to invoke the Convention in their judgments." *See* Leach, et al., Responding to Systemic Human Rights Violations, 106. A similar phenomenon has been noted in the Russian context. *See* Trochev, *All Appeals Lead to Strasbourg?*, 159–165 ("Unlike the [Russian Constitutional Court], the 116-member [Russian Supreme Court] only rarely deals with the 1950 convention or with ECtHR judgments.").

296. Nigel Rodley, *The* Singarasa *Case:* Quis Custodiet ...*? A Test for the Bangalore Principles of Judicial Conduct*, 41 Isr. L. Rev. (2008), 504–05. Sir Rodley, a member of the HRC, resists the "temptation to speculate that the *Singarasa* case is no more than a petty settling of scores with the Committee" or that the chief justice was "simply overly executive-minded," but does characterize the decision as "not dictated by any doctrinally recognizable exposition of the law." *Id.* at 512–13.

297. Eyal Benvenisti, *Judicial Misgivings Regarding the Application of International Law: An Analysis of Attitudes of National Courts*, Eur. J. Int'l L. (1993), 160.

298. For instance, in the United States, the so-called *Charming Betsy* canon animates the Restatement (Third) of Foreign Relations Law: "Where fairly possible, a United States statute is to be construed so as not to conflict with international law or with an international agreement of the United States." Restatement (Third) of Foreign Relations Law § 114 (1987); *see also Murray v. Schooner Charming Betsy*, 6. U.S. 64 (1804).

299. *See, e.g., Medellin v. Texas*, 552 U.S. 491 (2008), holding that the International Court of Justice's rulings are not self-executing and declining to give effect to the ICJ's *Avena* judgment in the absence of implementing legislation. *See also Avena and Other Mexican Nationals (Mexico v. United States of America)* (Merits) [2004] ICJ Rep 12.

300. *See In x ALA*, Constitutional Court of Ukraine, N 2-51/2011 (13 October 2011), *available at* http://zakon2.rada.gov.ua/laws/show/v049u710-11 (citing ECtHR, App. No. 16447/04, *Nikolay Kucherenko v. Ukraine* (February 19, 2009). Yuri Lutsenko, Ukraine's former minister of internal affairs, who has been detained on charges of abuse of office since December 2010, brought the appeal. In February 2012 Lutsenko—who insists his prosecution has been politically motivated—was sentenced to four years in jail (with confiscation of his property) for embezzlement and abuse of office, although the European Court recently ruled that his arrest and provisional imprisonment

violated the convention. *See* ECtHR, App. No. 6492/11, *Lutsenko v. Ukraine* (July 3, 2012). Interview with Oksana Klymovych, Kyiv National University, July 31, 2012.

301. Damian A. Gonzalez-Salzberg, *The Implementation of Decisions from the Inter-American Court of Human Rights in Argentina: An Analysis of the Jurisprudential Swings of the Supreme Court*, SUR—International Journal on Human Rights 8(15) (December 2011), 124. Gonzalez-Salzberg notes that, in a significant 2004 opinion, the Argentine Supreme Court "decided that it was necessary, in principle, to subordinate their decisions to the rulings of the [Inter-American] Court given the binding nature of the decisions" (citing Corte Suprema de Justicia de la Nacion, *Esposito, Miguel Angel* (2004)). However, only three years later, the court "behaved in a complete contradictory way" when it rejected the Inter-American Court's decision in *Caso Buenos Alves v. Argentina*, "failing even to make reference to in its own ruling." *Id*. at 123 (citing IACtHR, *Buenos Alves v. Argentina*, Series C No. 64 (2007) and Corte Suprema de Justicia de la Nacion, *Derecho, Rene Jesus*, Causa No. 24.079 (2007)).

302. Courtney Hillebrecht, *Implementing International Human Rights Law at Home: Domestic Politics and the European Court of Human Rights*, Human Rights Rev. (2012).

303. Kali Wright-Smith, "Creating Explanations for Compliance: Lessons from the Inter-American Court of Human Rights" (Spring 2010), 28.

304. *Id*. at 29.

305. Bodnar and Uitz Report, 57

306. Adam Bodnar, Interights/OSJI Conference, "The Implementation of Human Rights Judgments: The Litigators Perspective," 3 (on-file).

307. *Id*.

308. Handout Presentation, "National Judges as European Union Judges: Knowledge, Experiences and Attitudes of Lower Court Judges in Germany and the Neterlands," Hague Institute for the Internationalisation of Law (September 29, 2011).

309. For more information on the council, see http://www.rechtspraak.nl/English/The-Council-for-the-Judiciary/Pages/default.aspx. For links to the monthly GCE reports, see http://www.rechtspraak.nl/Zoeken/Pages/default.aspx?k=GCE.

310. According to a recent paper on the unit, the "majority of cases being monitored involved individual claims for medications, pensions, or labor rights." *See* Varun Gauri, Jeffrey Staton, Jorge Vargas Cullell, "A Monitoring Mechanism for Constitutional Decisions on the Costa Rican Supreme Court," 2012 International Congress of the Latin American Studies Association (May 21, 2012).

311. The Inter-American system itself had a profound influence on the jurisprudential direction of Costa Rica's Sala IV. As Gauri, Staton, and Cullell note: "[R]eformers with ties to the Inter-American Court ... influenced [its] early decision making ... encouraging the enforcement of social and economic rights that ... had previously been understood to be non-justiciable and merely aspirational." *Id*. at 9.

312. A constitutional amendment granted a new chamber of the court the power of nationally centralized judicial review, and lowered the requirement for a vote of unconstitutionality from two-thirds to a simple majority of the court. Access to the newly created chamber was also liberalized,

leading to a sharp increase in the court's caseload: whereas only 1,600 filings were registered in 1989, that figure jumped to about 20,000 by 2010. *Id.*

313. Interview with Jorge Vargas Cullell, 18 June 2012.

314. "A Monitoring Mechanism for Constitutional Decisions on the Costa Rican Supreme Court," Programa Estado de la Nacíon, 5.

315. Interview with Jorge Vargas Cullell, *Estado de Nacion*, 18 June 2012. Indeed, Cullell posits that this tool has proven far more useful than the court's actual legal recourse to *desacato* (akin to the doctrine of contempt) since, in Costa Rica, that is a criminal charge under the control of the public prosecutors, not the chamber.

316. Interview with Vivek Maru, Namati, April 13, 2012.

317. Agreement signed by Costa Rica and the Inter-American Court of Human Rights (November 1983) (cited in Baluarte, "Structuring Implementation").

318. Interview with Ibrahima Kane, Open Society Initiative for Eastern Africa, July 24, 2012.

319. Loi No. 1/07 Regissant la Cour Supreme, Republique du Burundi Cabinet du President (February 25, 2005), Art. 43(5) (on-file).

320. Olga Glukhovska and Serhii Sviriba, "Enforcement of ECHR Judgments" (International Law Office, September 12, 2006), *available at* http://www.internationallawoffice.com/newsletters/detail.aspx?g=9d8bc87e-153c-db11-859c-00065bfd3168.

321. Law No 27.775, Regulate the Procedure for the Execution of Judgments Emitted by Supranational Tribunals (June 27, 2002) (see Appendix II). Whereas earlier efforts by the Peruvian state also sought to give Inter-American Court rulings domestic effect, these were decrees of the executive, which could be overturned by successive administrations.

322. Dmitri Bartenev and Yuri Marchenko, *Implementation of* Shtukaturov v. Russia*: Challenges and Strategies*, INTERIGHTS Bulletin 16(2) (Winter 2010), 64.

323. ECtHR, App. No. 44009/05, *Shtukaturov v. Russia* (March 27, 2008).

324. *See* Judgment of February 27, 2009, No. 4-P.

325. Interview with Dmitri Bartenev, MDAC, June 28, 2012.

326. *Id.* As the domestic litigation proceeded, the European Court, which due to Shtukaturov's legal incapacitation had refrained from issuing a judgment of just satisfaction, pronounced on the issue in 2010. Shtukaturov was awarded 25,000 EUR in "reparation for the anxiety, inconvenience and uncertainty caused by the violation." In arriving at this sum—the largest compensation ever awarded to an applicant in a disability rights case—the court took note of the government's failure to implement its 2008 order and noted that neither of the domestic court decisions were sufficient to remedy Shtukaturov's past wrongs, which "continued to infringe some of the applicant's most fundamental rights." *See* ECtHR, App. No. 44009/05, *Shtukaturov v. Russia* Judgment (Just Satisfaction) (March 4, 2010).

327. *See* MDAC Press Release, "Russia: Strategic Litigation Leads to Law Reform" (April 22, 2011).

328. Interview with Dmitri Bartenev, MDAC, June 28, 2012. In addition to requiring that legal capacity proceedings must always take place with the participation of the person concerned, a per-

son deprived of legal capacity in Russia may now apply to court in order to seek restoration of his/her capacity, and may appeal against an incapacity judgment personally or thorough his/her representative. Furthermore, informed consent must be sought and obtained from anyone for mental health care interventions, regardless of the person's legal capacity; placement also now requires the consent of the person, or if he/she lacks the functional capability to decide, the local authority must make a decision. *See* "Analysis of Legal Capacity Law Reform in Russia," Mental Disability Advocacy Center (April 22, 2011).

329. In that case the petitioner, Irina Delova, had spent over 20 years in a social care home for people with mental disabilities in St. Petersburg. According to MDAC, she had managed her pension up until 2010 when—at the request of the social care home—she was recognized as legally incapable by a court and lost the opportunity to manage all her property, including her pension. Rather than tailoring the scope of Delova's incapacitation, she was stripped of all her civil rights. *See* MDAC Press Release, "Russian Constitutional Court Criticises Abusive Guardianship Law" (June 28, 2012).

330. *Id.*

331. Bartenev and Marchenko, 63.

332. Interview with Dmitri Bartenev, MDAC, June 28, 2012.

333. Bartenev and Marchenko, 65.

334. Interview with Dmitri Bartenev, MDAC, June 28, 2012.

335. In an early article, W.M. Reisman proposed a draft protocol for enforcing ICJ judgments, wherein signatories would undertake "to enact such internal legislation as is necessary to require domestic courts and tribunals to enforce judgments, and rights arising thereon, solely and exclusively upon certification of the authenticity of said judgment." *See* W.M. Reisman, *The Enforcement of International Judgments*, Am. J. Int'l L. 63(1) (1969), 27.

336. Presently, the status and future of the SADC tribunal is in doubt. Following the decision in *Campbell*, Zimbabwe pulled out of the tribunal and, in 2010, the SADC summit ordered a review of the tribunal's functions and terms of reference, effectively suspending its operations. At the 2012 summit, member states resolved to confine the court's mandate to "interpretations of the SADC Treaty and Protocols relating to disputes between member states"; as a result, neither indivuals nor companies will now be able to bring cases before it. *See* Richard Lee, "Fight Goes on To Save SADC Tribunal," OSISA News (August 21, 2012). The summit's decision flies in the face of the legal advice it had solicited—which affirmed that the the tribunal had been lawfully established and should be reconstitituted—and poses a grave risk to the larger project of regional integration. At the same time, the reaction underscores the fragility of supranational jurisdiction. One expert has argued that the *Campbell* case "should never have been among the first cases heard" because new courts—domestic or regional—are "fragile creatures," which "depend for their survival on an acceptance of their legitimacy and authority. As they cultivate this culture of acceptance, they can ill afford to take on the most politically contentious matters." *See* Nicole Fritz, "SADC Leaders Hot Air Blows Down Tribunal," OSISA Opinion/Comment (September 10, 2012).

337. Treaty of the South African Development Community, Art. 4 (August 17, 1992) ("SADC and its Member States shall act in accordance with the following principles ... human rights, democracy, and the rule of law.").

338. *See Campbell Ltd. v. The Republic of Zimbabwe*, Case No. 2/2007 (S. Afr. Dec. Cmty. Trib. 2008); *see also* Ben Freeth, MUGABE AND THE WHITE AFRICAN (Lion Press, 2008). While the violence and destruction that attended the forced redistribution of Zimbabwe's white commercial farms were rightly condemned, it should be noted that the policy has not been the unmitigated economic disaster it is often thought to be. *See* Lydia Polgreen, "In Zimbabwe Land Takeover, A Golden Lining," NY TIMES (July 20, 2012) (noting that "the success of ... small-scale farmers has led some experts to reassess the legacy of Zimbabwe's forced land redistribution, even as they condemn its violence and destruction").

339. *See* Gramara Ltd. v. Zimbabwe, HC 33/09 (High Ct. Zim., 2010).

340. Case No. 47954/10 (Rabie, J.). The court's reluctance to provide a longer opinion may have been attributable, in part, to the fact that Zimbabwe withdrew its appearance to defend; thus, the application was granted on an unopposed basis.

341. *See* "Farmers Win Battle to Sell Zimbabwe State Assets" Business Live (June 7, 2011).

342. *Government of the Republic of Zimbabwe v. Fick, Etheredge, Campbell, et al.*, Judgment (June 6, 2011) (RD Claasen, J.), 15.

343. Richard Oppong, *Enforcing Judgments of the SADC Tribunal in the Domestic Courts of Member States,* in MONITORING REGIONAL INTEGRATION IN SOUTHERN AFRICA YEARBOOK (2010), 121.

344. Indeed, following the South African High Court's ruling, other member states issued statements that the SADC decision would not apply in their jurisdiction. *See* "Zimbabwean Government Could Lose More Assets in SADC," *Namibia Economist* (April 23, 2010).

345. Oppong, 129–131.

346. *Id.* at 131.

347. Treaty Establishing the East African Community, *available at* http://www.afrimap.org/english/images/treaty/EACTreaty.pdf ("EAC Treaty").

348. EAC Treaty, Art. 44; ECOWAS Court Protocol, Art. 24(2); SADC Tribunal Protocol, Art. 32(1)(2)(3). Notably, while the ECOWAS provision speaks only of judgments that impose a "pecuniary obligation," the ECOWAS and SADC protocols refer to "any judgments" and "judgment" respectively, which suggests they would ecompass equitable remedies as well.

349. *See* Ben Batros, "CaseWatch: East Africa's Fledgling Court Feels its Way" (February 27, 2012) (citing Reference No. 3 of 2010)

350. *Kenya Section of the International Commission of Jurists v. Attorney General & Another, High Court of Kenya at Nairobi*, Ruling (November 28, 2011) ("Kenya ICJ Ruling").

351. Republic of Kenya in the High Court of Kenya at Nairobi, Misc. Criminal Application No. 685 (filed November 18, 2010).

352. Section 4(1) of the ICA Act provides that provisions of the Rome Statute "shall have the force of law in Kenya" in relation to, *inter alia*, the "making of requests by the ICC to Kenya for assistance and the method of dealing with those requests." See The International Crimes Act, 2008, *available at* http://www.kenyalaw.org/Downloads/Acts/The_International_Crimes_Act_2008.pdf.

353. Article 2(6) of the Kenyan Constitution provides that "Any treaty or convention ratified by Kenya shall form part of the law of Kenya." *See* The Constitution of Kenya (2010), *available at* http://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf.

354. Kenya ICJ Ruling, 18.

355. The court further ordered that in the event that the officers fail to enforce the warrant, ICJ-Kenya or any other private person "who has the requisite mandate and capacity," may have them compelled to do so by bringing an application for a writ of mandamus. *Id*. at 24.

356. *Id*. at 11 (emphasis added). Presently, the High Court opinion is on appeal in two different judicial forums. Before Kenya's newly constituted Supreme Court is the procedural question of whether the attorney general, who appealed the decision, has standing to do so (under Kenya's new constitution it is the Department of the Public Prosecutor who has competence over criminal matters); before the Court of Appeal is the merits of the High Court's decision. Interview with Judy Gitau, ICJ-Kenya, June 28, 2012. Notably, the warrant remains in effect as these appeals are pending and one MP recently filed in High Court to have the warrant lifted on the grounds that its issuance was "unprocedural." *See* Alphonce Mungahu, "Court Allow ICJ's Plea in Bashir Arrest Warrant Suit," *The Star* (April 18, 2012).

357. Interview with Judy Gitau, ICJ-Kenya, June 28, 2012.

358. *Id*.

359. *See* "South Africa Legally Rebuts AU Resolution on Arresting Bashir," Sudan Tribune (August 3, 2009), *available at* http://www.sudantribune.com/TEXT-South-Africa-legally-rebuts,31996 (contains full text of statement by South Africa's Foreign Ministry).

360. *Id*.

361. *South African Litigation Centre and Zimbabwe Exiles Forum v. National Director of Public Prosecutions*, Case No. 77150/09, North Gauteng High Court, Judgment (May 8, 2012). While this decision remains pending on appeal, in February 2013 the South African National Prosecuting Authority and the Directorate for Priority Crimes Investigation of the country's police service agreed to open an investigation following the filing of another legal submission, this time requesting that authories investigate and prosecute widespread cases of that were rape perpetrated in the lead-up to Zimbabwe's 2008 presidential elections. The submission included testimony from over 80 victims, reports from witnesses, doctors, and domestic and international NGOs, and the names of over 200 suspected perpetrators. *See* Geoffrey York, "In ground-breaking move, S. Africa steps in over alleged Zimbabwe mass rapes," The Globe and Mail (February 25, 2013).

362. *Id*. at para 13.4.

363. *Id*. (citing section 4(3) of 2002 South Africa ICC Act).

364. *Id*. at para 15.

365. *Id*. at para 33.5. *See also* para 29 ("At that stage, it was not their obligation to take political or policy considerations into account. These change in any event from time to time, whilst a proper jurisprudence remains a concrete basis for a stable society living under the twinkling but stern eyes of the Rule of Law. Any such considerations would [e]ffectively destroy the efficacy of the ICC Act.").

366. Carolina Restrepo, *The Binding Nature of Precautionary Measures under Colombian Law*, Aportes DPLF 16(5) (June 2012), 36.

367. *Id*. (citing, *inter alia*, Colombian Constitutional Court, Judgment T-558 (2003); Colombian Constitutional Court, Judgment T-786 (2003); Colombian Constitutioanal Court, Judgment T-327 (2004)).

368. *Id.* at 38.

369. Rodley, 506.

370. Huneeus, "Courts Resisting Courts," 502.

371. *Id.* at 494–95.

372. *Id.* at 508.

373. *Id.* at 508–09. Another scholar notes that, "the greatest weakness of the [Inter-American human rights system] today is the failure of national courts to fulfill their obligation to prosecution those responsible for human rights violations." Gonzalez-Salzberg, 124.

374. *See* Open Society Justice Initiative, FROM JUDGMENT TO JUSTICE, 37–38.

375. Huneeus, "Courts Resisting Courts," 520.

376. Interview with Dmitri Bartenev, MDAC, June 28, 2012.

377. *See* MDAC Press Release, "MDAC Hails Compensation 'Milestone for Global Human Rights'" (March 11, 2010) (noting the "extraordinary way in which Mr Shtukaturov's legal capacity was eventually restored in May 2009 by a St. Petersburg district court").

378. Trochev, *All Appeals Lead to Strasbourg?*, 161. In Russia, at the request of the OGA, the Russian Supreme Court will occasionally send out "circular letters" about the importance of applying European Court judgments. While this practice is not uniform, it has proven effective for informing lower courts about Strasbourg judgments and, according to Trochev, "some courts respond to these letters effectively." *Id.* at 160.

379. Huneeus, "Courts Resisting Courts," 524.

380. *Id.* at 524–25.

381. Jeffrey K. Staton and Alexia Romero, "Clarity and Compliance in the Inter-American Human Rights System" (February 12, 2011), 19; Huneeus, "Courts Resisting Courts," 522 ("The findings of this study affirm the suggestion of a breakdown of orders into simple units, but add that the breakdown should follow the lines of separation of powers."). See also Steven Greer, THE EUROPEAN CONVENTION ON HUMAN RIGHTS: ACHIEVEMENTS, PROBLEMS AND PROSPECTS (Cambridge University Press, 2006), 160.

382. Helfer, 150.

383. Huneeus, "Courts Resisting Courts," at 525. As an example, Huneeus notes that in *Almonacid v. Chile*, the Inter-American Court failed to cite Peruvian and Argentine courts for "the courageous decisions" they had made in striking down national amnesties in order to re-open closed cases; rather, the court merely celebrated its "own *Barrios Altos* ruling as 'well-known and renowned within international legal circles.'" *Id.* at 528–529 (citing *Almonacid v. Chile* at 69, para 2 (concurrence of Trinidade, J.)).

384. ECtHR, App No. 19359/04, *M. v. Germany* (December 17, 2009). In this case, the applicant had been preventively detained for a period of ten years, which was the maximal period allowed under the statute at the time.

385. Eirik Bjorge, *National Supreme Courts and the Development of ECHR Rights,* INT'L J. CONST'L L. 9(1) (2011), 30–31 (citing Decision No. 2008-562 *Conseil constitutionnel:* Journal Officiel (February 26, 2008)).

386. Alec Stone Sweet, *A Cosmopolitan Legal Order: Constitutional Pluralism and Rights Adjudication in Europe*, Global Constitutionalism 1(1) (2012), 71 (citing *Preventive Detention*, No. 2 BvR 2365/09 (May 4, 2011)).

387. *M. v. Germany*, para 75.

388. Stone Sweet, "A Cosmopolitan Legal Order," 71 (citing *Preventive Detention*, para 89). In turn, in June 2011, the European Court "responded favorably, finding no violation in a related case, *Mork v. Germany* (2011)" on the basis, in part, that the German Federal Constitutional Court "relied on the interpretation ... of the Convention made by this Court in its judgment in the case of *M. v. Germany*." *Id*.

389. Jacqueline Hodgson, "Extending the Right to Legal Advice to Suspects in Police Custody in France" (February 3, 2011), *available at* http://blogs.warwick.ac.uk/jackiehodgson/entry/reforming_the_french/.

390. Hodgson, "Storming the Bastille... or at least the Police Station" (May 2, 2011), *available at* http://blogs.warwick.ac.uk/jackiehodgson/entry/storming_the_bastilleor/.

391. Conseil Constitutionnel, Decision No. 2010-14/22 , *M. Daniel W. et autres* [*Garde a vue*] (July 30, 2010).

392. ECtHR, App. No. 1466/07, *Brusco v. France* (October 14, 2010).

393. Cour de Cassation,*Communique de la Premiere presidence relatif aux arrets 589, 590, 591 et 592 du 15 avril 2000 rendus par l'assemblee pleniere de la Cour de cassation sur la regularite de mesures de garde a vue* (April 15, 2011).

394. *Id*. The court concluded that in order for the rights guaranteed by the convention to be "effective and concrete," the principle of legal certainty and the "need for good administration of justice can not be invoked to deprive a litigant of his right to a fair trial" (unofficial translation).

395. Hodgson, "Storming the Bastille... or at least the Police Station."

396. Emmanuelle Bribosia, Isabelle Rorive, and Amaya Ubeda de Torres, "Supranational Rights Litigation, Implementation and the Domestic Impact of Strasbourg Court Jurisprudence: A Case Study of France," JURISTRAS Case Study Report (June 2008) ("An evolution in judicial attitude towards acceptance of the system has taken place in the last decade, overcoming a strong traditional reluctance to the use of the Convention even from a formal perspective.").

397. Alexei Trochev, Judging Russia: Constitutional Court in Russian Politics 1990–2006 (Cambridge University Press, 2008), 175–176.

398. Interview with Oksana Klymovych, Kyiv National University, July 31, 2012.

399. *See, e.g.,* Committee of Ministers Recommendation (2004)4. One recent example of the role law schools might play in this regard is a cooperation agreement that the American Univeristy Washington College of Law recently signed with Paraguay's Supreme Court, which provides that members of the Supreme Court will attend AUWCL's Program of Advanced Studies on Human Rights and Humanitarian Law and recognize this training as part of the Supreme Court's program of study. *See* Press Release, "Supreme Court of the Republic of Paraguay to Send Judges to Participate in Human Rights Training at American University Washington College of Law" (February 22, 2013).

400. An example of this is the Russian Supreme Court's Plenum Decree No. 5, issued in 2003, in which Russian courts were formally instructed to take into account Strasbourg case law.

401. Press Release, "IACtHR and Supreme Court of Mexico Sign Cooperation Agreement" (October 24, 2011); Interview with Alejandra Nuño, CEJIL, 22 June 2012. Similar cooperation agreements have been signed between the Inter-American Commission and Paraguay and Colombia's Supreme Courts of Justice.

402. Yukyan Lam, *Setting Sound Priorities: Reflections on the Discussion of the Workings of the Inter-American Commission on Human Rights*, Aportes DPLF 16(5) (June 2012), 41.

403. The Kenyan Constitution, ratified in 2010, is one recent example, *see supra* note 353. Similarly, in Mexico, provisions of the Mexican Constitution changed profoundly in 2011, when a series of articles known as the 2011 Human Rights Amendments (HRA) were passed. As one commentator has noted, the HRA "now explicitly states that the Constitution recognizes the human rights enshrined in international treaties and standards and creates an unprecedented window of opportunity for the courts to expand rights, but it also leaves the courts with new questions to solve." *See* Víctor Manuel Collí Ek, *Improving Human Rights in Mexico: Constitutional Reforms, International Standards, and New Requirements for Judges*, Hum. Rts. Brf. 20(1) (2012), 11. The Mexican Supreme Court has ushered in a judicial tidal shift as well by establishing, in 2011, a model of constitutional control and human rights defense that includes all courts throughout the country. Interview with Alejandra Nuño, CEJIL, 22 June 2012 (citing IACtHR, *Radilla-Pacheco v. Mexico*, Series C No. 777/01 (November 23, 2009)). Now all judges, at all levels, have "the ability to declare an act or law unconstitutional and/or not in accordance with the American Convention," rather than the Supreme Court alone. *See* Collí Ek, 12.

404. Paul Mahoney, *A European Judicial Training Institute on Human Rights*, E.H.R.L.R. 2 (2009), 128.

405. *Id*. at 129.

406. Gerald L. Neuman, *Import, Export, and Regional Consent in the Inter-American Court of Human Rights,* Eur. J. Int'l L. 19(1) (2008), 123.

407. Laurence Helfer and Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 Yale L.J. (1997), 277.

408. In some cases, the appointment of former international judges to high-ranking domestic courts has had a significant, salutary effect on compliance. In mid-2012, the former Moldovan judge at the European Court of Human Rights became the president of the Moldovan Supreme Court of Justice; since that time, the court has make considerable progress in applying ECtHR law properly, and is providing guidance to lower courts as well.

409. While a proposal to endow the European Court of Human Rights with advisory jurisdiction remains under discussion, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights each possess advisory and contentious jurisdiction. *See* American Convention on Human Rights, Art. 64(2); Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Art. 4.

410. R. Carver, *Performance and Legitimacy: National Human Rights Institutions* (International Council for Human Rights Policy, 2000), 3.

411. *Report of the Secretary-General on National Institutions for the Promotion and Protection of Human Rights* (E/CN.4/1997/41) (1997).

412. Rachel Murray, The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa (Hart Publishing, 2007), 12.

413. Julie Mertus, Human Rights Matters: Local Politics and National Human Rights Institutions (Stanford University Press, 2009).

414. Vienna Declaration and Programme of Action, World Conference on Human Rights (A/CONF.157/23) (July 12, 1993), para 36.

415. Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights, General Assembly Resolution 48/134 (December 20, 1993) (see Appendix IV). Notably, the principles state that one of the responsibilites of an NHRI is "to cooperate with ... the regional institutions ... that are competent in the areas of the promotion and protection of human rights."

416. Steven Greer, The European Convention on Human Rights: Achievements, Problems and Prospects (Cambridge University Press, 2006), 293. *See* Section D, Paris Principles.

417. Sonia Cardenas, *Emerging Global Actors: The United Nations and National Human Rights Institutions*, Global Governance 9 (2003), 37.

418. Greer, 289.

419. Mertus, 3.

420. Berlin Roundtable, "Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies" paras 6–8, *available at* http://nhri.ohchr.org/EN/Regional/Europe/Documents/Conclusions_Int_RT_rev8dec.pdf.

421. In 2011, the Human Rights Council affirmed its support for the establishment and strengthening of "effective, independent and pluralistic NHRIS"; a 2012 resolution similarly recommends that the U.N. General Assembly consider enabling Paris-Principles compliant institutions to participate at its meetings on the same basis as they do before the council. *See* Human Rights Council Resolution A/HRC/20/L/15, *National Institutions for the Promotion and Protection of Human Rights* (July 5, 2012).

422. Committee of Ministers Resolution 97(11) (30 September 1997).

423. Committee of Ministers Resolution 99(50), *On the Council of Europe Commissioner for Human Rights* (May 7, 1999). Antoine Buyse notes that, recently, "the Commission even referred to NHRIs as 'privileged partners in his human rights dialogue with member states.'" Antoine Buyse, *The Court's Ears and Arms: National Human Rights Instiuttions and the European Court of Human Rights*, in National Human Rights Institutions in Europe: Comparative, European and International Perspectives (Katrien Meuwissen and Jan Wouters, eds., Intersentia, 2012).

424. Committee of Ministers Rules, R. 9(2) and R. 9(3).

425. Philip Leach, *On Reform of the European Court of Human Rights*, EUR. HUM. RTS. L.R. 6 (2009), 732.

426. In spite of these measures, the level of actual involvement between the African Commission and NHRIs has been disappointing, with sporadic attendance and some NHRIs failing to submit

biannual reports on their activities to the commission as required by their affiliated status. *See* University of Bristol Human Rights Implementation Centre and Arts & Humanities Research Council, "Report of a Workshop for East African National Human Rights Institutions on the Implementation of Torture Prevention Standards" (Nairobi, October 18–19, 2010), 3, 10–11, available at http://www.bristol.ac.uk/law/research/centres-themes/hric/hricdocs/reportandrecommendations.pdf.

427. E-mail communication with Rachel Murray, University of Bristol, January 30, 2013.

428. Article 63 of the IACtHR Rules of Procedures permits that the court "may require from *other sources of information* relevant data ... in order to evaluate compliance [with a case]" (emphasis added); however, this remains at the court's discretion. The submission of compliance monitoring reports is otherwise restricted to states and to victims or their legal representatives.

429. See, e.g., Binaifer Nowrojee, Protectors or Pretenders? Government Human Rights Commissions in Africa (Human Rights Watch: 2001), 261–268.

430. See, e.g., Binaifer Nowrojee, Protectors or Pretenders? Government Human Rights Commissions in Africa (Human Rights Watch: 2001), 261–268.

431. Interview with Ibrahima Kane, Open Society Initiative for Eastern Africa, July 24, 2012; Horace Segnonna Adjolohoun, "Visiting the Senegalese Legal System and Legal Research: A Human Rights Perspective" (GlobaLex, March/April 2009).

432. Mertus, 85. Richard Carver, *NHRIs in Central and Eastern Europe*, in Human Rights, State Compliance, and Social Change: Asessing National Human Rights Institutions (Ryan Goodman and Thomas Pegram, eds., Cambridge University Press, 2012), 185.

433. *See* Public Defender of Rights Ombudsman, *at* www.ochrance.cz/en/.

434. Mertus, 98.

435. ECtHR Grand Chamber, App. No. 57325/00, *D.H. and Others v. Czech Republic* (November 13, 2007).

436. "Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of Former Special Schools: Final Report" (July 6, 2012), *available at* http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Survey_Ethnic_Special-schools.pdf.

437. *Id.*, Part 7.

438. Interview with Filip Rameš, Open Society Fund—Prague, August 20, 2012.

439. *See* Council of Europe, Committee of Ministers' Deputies, *Annotated order of Business and Decisions adopted*—Czech Republic, CM/Del/Dec(2012)1144 (June 8, 2012).

440. Interview with Filip Rameš, Open Society Fund—Prague, August 20, 2012.

441. Mertus, 102.

442. Bartenev and Marchenko, 65.

443. Carver, 196.

444. *Id.*

445. Richard Carver, *A New Answer to an Old Question: National Human Rights Institutions and the Domestic of International Law*, Hum. Rts. L. Rev. 10(1) (2010), 12–13.

446. Notably, because "leadership resides in a single member" in most ombudsman institutions, these bodies may be particularly "vulnerable to outside pressure and inconsistent in their performance over time." Carver, 208.

447. Mertus, 133.

448. Greer, 314.

449. U.N. Hum. Rts. Comm., Case No. 1818/2008, *McCallum v. South Africa* (October 25, 2010).

450. Interview with Judith Cohen, South African Human Rights Commission, July 23, 2012.

451. South African Human Rights Commission, "Presentation to the Portfolio Committtee on Correctional Services: Torture in Correctional Centres in South Africa" (November 30, 2011) (on-file).

452. *Stakeholder Hearings on the Prevalence of Torture in Correctional Centres,* November 29, 2011 (Chairperson: Mr. V Smith (ANC), *available at* http://www.pmg.org.za/report/20111130-stakeholder-hearings-prevalence-torture-correctional-centres.

453. *See* Carolyn Raphaely, *Raped Inmate Sues Prison Service*, SATURDAY STAR (March 3, 2012).

454. Interview with Judith Cohen, South African Human Rights Commission, July 23, 2012.

455. U.N. Hum. Rts. Comm., Case No. 386/1989, *Koné v. Senegal* (October 27, 1994).

456. Adjolohoun; *see also* Nowrojee, 265.

457. Interview with Ibrahima Kane, Open Society Initiative for Eastern Africa, July 24, 2012.

458. Koné was still to receive the plot of land as of 2001; as a result, he filed a complaint under CSDH's protection mandate. In its response, the committee requested the state minister in charge of presidential affairs to provide all necessary information on the case. *See* Adjolohoun; *see also Consideration of States Reports Submitted by States Parties*, U.N. Doc. CCPR/C/103/Add/1 (November 22, 1996), para 26 ("It will be recalled that the Human Rights Committee recommended that Mr. Koné be compensated following a long period of detention; this has just been done on the instructions of the President of the Republic.").

459. *See* Concluding Observations of the Human Rights Committee, U.N. Doc. CCPR/C/79/Add.82. (November 19, 1997), para 8 ("In the field of law reform, the Committee notes with appreciation the criminalization of torture in the Penal Code.").

460. Cardenas, 5–6.

461. Interview with Judith Cohen, South African Human Rights Commission, July 23, 2012.

462. *See* Belgrade Principles on the Relationship Between National Human Rights Institutions and Parliaments (February 22–23, 2012), *available at* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-9_en.pdf.

463. Carver, *A New Answer to an Old Question*, 18.

464. Gauri, Staton, and Cullell, 5.

Appendix I
Executive Decrees and Orders

- United States Executive Order 13107 (December 10, 1998)
  Implementation of Human Rights Treaties
- Republic of Mali, Decree No. 09-049/PM-RM DU (February 12, 2009)
- Republic of Cameroon, Arrete No. 081 CAB/PM (April 15, 2011)
- Russia Decree No. 657 (May 20, 2011)
  On the Monitoring of Law Enforcement in the Russian Federation
- Implementation Form of ECtHR Judgments, United Kingdom Ministry of Justice, Human Rights Policy Team

United States Executive Order 13107 (Dec. 10, 1998) Implementation of Human Rights Treaties

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release December 10, 1998

EXECUTIVE ORDER 13107

IMPLEMENTATION OF HUMAN RIGHTS TREATIES

By the authority vested in me as President by the Constitution and the laws of the United States of America, and bearing in mind the obligations of the United States pursuant to the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and other relevant treaties concerned with the protection and promotion of human rights to which the United States is now or may become a party in the future, it is hereby ordered as follows:

Section 1. Implementation of Human Rights Obligations.

(a) It shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.

(b) It shall also be the policy and practice of the Government of the United States to promote respect for international human rights, both in our relationships with all other countries and by working with and strengthening the various international mechanisms for the promotion of human rights, including, inter alia, those of the United Nations, the International Labor Organization, and the Organization of American States.

Sec. 2. Responsibility of Executive Departments and Agencies.

(a) All executive departments and agencies (as defined in 5 U.S.C. 101–105, including boards and commissions, and hereinafter referred to collectively as "agency" or "agencies") shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions so as to respect and implement those obligations fully. The head of each agency shall designate a single contact officer who will be responsible for overall coordination of the implementation of this order. Under this order, all such agencies shall retain their established institutional roles in the implementation, interpretation, and enforcement of Federal law and policy.

(b) The heads of agencies shall have lead responsibility, in coordination with other appropriate agencies, for questions concerning implementation of human rights obligations that fall within their respective operating and program responsibilities and authorities or, to the extent that matters do not fall within the operating and program responsibilities and authorities of any agency, that most closely relate to their general areas of concern.

Sec. 3. Human Rights Inquiries and Complaints. Each agency shall take lead responsibility, in coordination with other appropriate agencies, for responding to inquiries, requests for information, and complaints about violations of human rights obligations that fall within its areas of responsibility or, if the matter does not fall within its areas of responsibility, referring it to the appropriate agency for response.

Sec. 4. Interagency Working Group on Human Rights Treaties.

(a) There is hereby established an Interagency Working Group on Human Rights

Treaties for the purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters.

(b) The designee of the Assistant to the President for National Security Affairs shall chair the Interagency Working Group, which shall consist of appropriate policy and legal representatives at the Assistant Secretary level from the Department of State, the Department of Justice, the Department of Labor, the Department of Defense, the Joint Chiefs of Staff, and other agencies as the chair deems appropriate. The principal members may designate alternates to attend meetings in their stead.

(c) The principal functions of the Interagency Working Group shall include:

(i) coordinating the interagency review of any significant issues concerning the implementation of this order and analysis and recommendations in connection with pursuing the ratification of human rights treaties, as such questions may from time to time arise;

(ii) coordinating the preparation of reports that are to be submitted by the United States in fulfillment of treaty obligations;

(iii) coordinating the responses of the United States Government to complaints against it concerning alleged human rights violations submitted to the United Nations, the Organization of American States, and other international organizations;

(iv) developing effective mechanisms to ensure that legislation proposed by the Administration is reviewed for conformity with international human rights obligations and that these obligations are taken into account in reviewing legislation under consideration by the Congress as well;

(v) developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths, and territories of the United States and, where appropriate, of Native Americans and Federally recognized Indian tribes, including the review of State, Commonwealth, and territorial laws for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms;

(vi) developing plans for public outreach and education concerning the provisions of the ICCPR, CAT, CERD, and other relevant treaties, and human rights-related provisions of domestic law;

(vii) coordinating and directing an annual review of United States reservations, declarations, and understandings to human rights treaties, and matters as to which there have been non-trivial complaints or allegations of inconsistency with or breach of international human rights obligations, in order to determine whether there should be consideration of any modification of relevant reservations, declarations, and understandings to human rights treaties, or United States practices or laws. The results and recommendations of this

review shall be reviewed by the head of each participating agency;

(viii) making such other recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, concerning United States adherence to or implementation of human rights treaties and related matters; and

(ix) coordinating such other significant tasks in connection with human rights treaties or international human rights institutions, including the Inter-American Commission on Human Rights and the Special Rapporteurs and complaints procedures established by the United Nations Human Rights Commission.

(d) The work of the Interagency Working Group shall not supplant the work of other interagency entities, including the President's Committee on the International Labor Organization, that address international human rights issues.

Sec. 5. Cooperation Among Executive Departments and Agencies. All agencies shall cooperate in carrying out the provisions of this order. The Interagency Working Group shall facilitate such cooperative measures.

Sec. 6. Judicial Review, Scope, and Administration.

(a) Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or

instrumentalities, its officers or employees, or any other person.

(b) This order does not supersede Federal statutes and does not impose any justiciable obligations on the executive branch.

(c) The term "treaty obligations" shall mean treaty obligations as approved by the Senate pursuant to Article II, section 2, clause 2 of the United States Constitution.

(d) To the maximum extent practicable and subject to the availability of appropriations, agencies shall carry out the provisions of this order.

WILLIAM J. CLINTON

THE WHITE HOUSE,
December 10, 1998.

PRIME MINISTER'S OFFICE
SECRETARIAT GENERAL
OF THE GOVERNMENT

REPUBLIC OF MALI
One People – One Goal – One Faith

DECREE No. 049 / PM–RM OF 12 FEB 2009

REGARDING THE ESTABLISHMENT, ORGANISATION, AND OPERATING CONDITIONS OF THE INTERMINISTERIAL COMMITTEE SUPPORTING THE PREPARATION OF INITIAL AND PERIODIC REPORTS ON THE IMPLEMENTATION OF INTERNATIONAL CONVENTIONS RATIFIED BY MALI

THE PRIME MINISTER,

Having regard to:

The Constitution

Order No. 00-047 / P–RM of 25 September 2000 on the establishment of the Directorate of Legal Affairs
Decree No. 00-610 / P–RM of 7 December 2000 setting the organisation and the operating conditions of the Directorate of Legal Affairs
Decree No. 08-083 / PM–RM of 15 February 2008 on the organisation of the Prime Minister's Office
Decree No. 07-380 / P-RM of 28 September 2007 regarding the appointment of the Prime Minister
Decree No. 07-383 / P-RM of 3 October 2007, as amended, regarding the appointment of members of the Government

HEREBY DECREES:

CHAPTER I: ESTABLISHMENT AND MISSIONS

Article 1: Under the ægis of the Ministry of Foreign Affairs, an Interministerial Committee is hereby established to support the preparation of initial and periodic reports in the context of implementing International Conventions ratified by Mali.

Article 2: The task of the Committee is to contribute to the preparation of initial and periodic reports in the context of implementing International Conventions ratified by Mali.

To that end, it is tasked with:

- collecting and processing all information that enables the determination of the position of implementation at national level of International Conventions ratified by Mali
- carrying out a periodic examination of reports prepared by the Ministry for Foreign Affairs
- making proposals and recommendations with a view to finalising reports
- monitoring the implementation of recommendations made subsequent to reports presented by Mali.

CHAPTER II: ORGANISATION AND OPERATION

Article 3: The Committee is chaired by the representative of the Ministry of Foreign Affairs.

It is made up of a representative of each ministerial department.

The Committee may co-opt any other person whose contribution the Committee may feel to be of use in accomplishing its mission.

Article 4: The list of names of members of the Committee is determined by order of the Minister of Foreign Affairs.

Article 5: The secretariat of the Committee is provided by the Directorate for Legal Affairs.

Article 6: The Committee meets in ordinary session once every quarter. It can meet in extraordinary session whenever needed, at the request of its Chairperson.

Article 7: The Committee may create Commissions within itself.

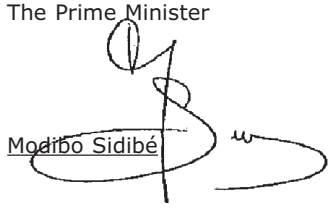
Article 8: The Committee's operating costs are met from the State budget.

CHAPTER III: FINAL PROVISIONS

Article 9: The Minister of Foreign Affairs and International Co-operation and the Minister of Finance are each charged, in matters concerning each Ministry, with the execution of this order, [*word missing in the original:* which] shall be recorded and published in the Government Gazette.

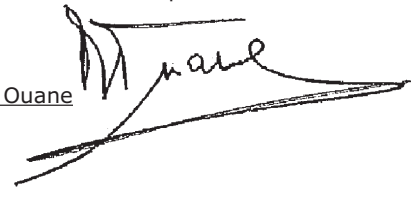
Bamako, 12 FEB 2009

The Prime Minister



Modibo Sidibé

The Minister of Foreign Affairs
and International Co-operation



Moctar Ouane

The Minister of Finance

Aboubakar Traoré

Republic of Cameroon, Arrete No. 081 CAB/PM (April 15, 2011)

REPUBLIC OF CAMEROON PEACE – WORK – FATHERLAND

Order No. 081 / CAB / PM of 15 APR 2011, establishing and organising an Interministerial Committee for monitoring the implementation of recommendations and / or decisions arising from international and regional mechanisms for the Promotion and Protection of Human Rights.

THE PRIME MINISTER and HEAD OF GOVERNMENT

Having regard to:

The Constitution

Decree no. 92 / 089 of 04 May 1992 setting out the attributions of the Prime Minister, amended and added to by decree no. 95 / 145 bis of 04 August 1995

Decree no. 2004 / 320 of 08 December 2004 regarding the organisation of the Government, amended and added to by decree no. 2007 / 268 of 07 September 2007

Decree 2009 / 222 of 30 June 2009 regarding the appointment of a Prime Minister and Head of Government

ORDER

CHAPTER I
GENERAL PROVISIONS [illegible]

Article 1. (1) This order establishes and organises an Interministerial Committee for monitoring the implementation of recommendations and / or decisions from the United Nations Human Rights Committee and the African Commission on Human and Peoples' rights (ACHPR), hereinafter: the "Committee".

[Handwritten:illegible](2) The Committee is also tasked with preparing Cameroon for a move to Universal
Periodic Review, and with evaluating the implementation of recommendations relating thereto.

Article 2. Working beside the Prime Minister and Head of Government, the said Committee monitors and oversees the implementation of recommendations and / or decisions referred to in article 1 above.

In that regard, and in respect of monitoring the implementation of recommendations and / or decisions made by the United National Human Rights Commission and the African Commission on Human and People's Rights (ACHPR), the committee is, tasked, in particular, with:

- making an inventory of the various matters raised before those bodies
- monitoring the implementation of recommendations and / or decisions arising from the various matters decided upon
- proposing follow-up action to recommendations and / or decisions from the aforementioned bodies
- ensuring the effectiveness of the implementation of validated proposals

- lead all lines of thought aimed at reducing or avoiding the State being the subject of condemnation in the context of matters appraise by the aforementioned bodies
- to consider and to pronounce on the internalisation of certain observations and recommendations made by those mechanisms for the promotion and protection of human rights
- create and manage training actions in relation to promoting and protecting human rights.

In respect of moving Cameroon to Universal Periodic Review (UPR) and evaluating the implementation of recommendations relating thereto, the Committee is tasked with:

- making an inventory of recommendations arising from previous sessions, and evaluating their level of implementation
- proposing follow-up action to recommendations made with regard to the State
- propose, for validation by the Prime Minister, appointments of members of the Cameroonian delegation due to take part in the work of the UPR.

CHAPTER II
ORGANISATION AND FUNCTIONING

Article 3. (1) The Committee is made up as follows:
Chairperson: The Secretary General of the Prime Minister's Department, or that person's representative
Members:
- a representative of the Prime Minister's Department
- the Minister of Justice, or her / his representative
- the Minister of Foreign Affairs, or her / his representative
- the Minister for Communication, or her / his representative
- the Minister for the Promotion of Women and Families, or her / his representative
- the Minister for Social Affairs, or her / his representative
- the Minister for Territorial Administration and Decentralisation, or her / his representative
- the Minister for Employment and for Vocational Training, or her / his representative
- the Minister of Defence's Secretary of State for the Gendarmerie, or her / his representative
- the Director General for National Security, or her / his representative
- the Chairperson of the National Commission for Human Rights and for Liberties, or her / his representative.

(2) The Chairperson may call upon any person to take part in the Committee's work, by reason of that person's competences with regard to the points to be examined.

Article 4. (1) The Committee meets as required, upon being called by its Chairperson.

(2) The Chairperson shall send a detailed report to the Prime Minister at the end of each meeting.

Article 5. To carry out its missions, the Committee has a Technical Secretariat placed under the co-ordination of the Public and Institutional Affairs Division of the Prime Minister's Department.

Article 6. The composition of the Technical Secretariat is subject to the decision of the Secretary General of the Prime Minister's Department.

Article 7. (1) The Technical Secretariat is tasked with:
- listing all the recommendations and / or decisions referred to in article 2 above
- submit to the Committee proposals in relation to m
- monitoring communications and / or matters that are known to the bodies referred to in article 1
- ensuring the implementation of validated proposals
- carry out all the actions with which it is tasked by the Committee
- draft Committee minutes, reports, and other documents
- maintain the Committee's archives and documentation.

(2) The Technical Secretariat meets as needed, on convocation by its Co-ordinator.

(3) The Technical Secretariat Co-ordinator can, as needed, constitute working groups in accordance with the Committee's missions.

CHAPTER III
VARIOUS AND FINAL PROVISIONS

Article 8. (1) The posts of Committee Chairperson, member, and Co-ordinator do not carry any remuneration. However, those post holders, as well as persons invited to meetings, may receive an attendance fee and be provided with work facilities needed to carry out their missions.

(2) The attendance fee referred to section (1) above shall be set by the Committee Chairperson.

Article 9. (1) The Committee's operating expenses shall be borne by the budget of the Prime Minister's Department.

(2) The Committee Chairperson is the Expenses Authorising Officer.

Article 10. This ordered shall be recorded, published in accordance with the urgent procedure, then entered in the Government Gazette in French and in English.

Yaoundé, APR 15, 2011

THE PRIME MINISTER and
HEAD OF GOVERNMENT

[Stamp] [Signature]

Philemon Yan

[illegible stamp:]

Russia Decree No. 657 (May 20, 2011)

On the Monitoring of Law Enforcement in the Russian Federation

Decree of the President of the Russian Federation of 20.05.2011 № 657 "On the monitoring of law enforcement in the Russian Federation"

In order to improve the legal system of the Russian Federation decrees:

A. To approve the Regulations on the monitoring of law enforcement in the Russian Federation.

Two. To entrust the Ministry of Justice:

a) monitoring of enforcement in the Russian Federation (hereinafter—monitoring) to implement the decisions of the Constitutional Court and rulings by the European Court of Human Rights, in respect of which need to be taken (publication), modified or abrogated recognition (cancel) the legislative and other normative legal acts of the Russian Federation;

b) The function of coordinating monitoring by the federal executive bodies, and methodological support.

Three. Government of the Russian Federation:

a) approve an annual monitoring plan;

b) report annually to the President of the Russian Federation on the results of monitoring;

c) take into account in terms of its legislative proposals for an activity (volume), modified, or Invalidation (repeal) laws and other normative legal acts of the Russian Federation submitted in connection with the preparation of the report of the President of the Russian Federation on the results of monitoring.

4. Investigative Committee of the Russian Federation, federal executive authorities and organs of state power of subjects of the Russian Federation:

a) report annually to the Ministry of Justice:

proposals to the draft monitoring plan;

reports on the results of monitoring carried out by the said authorities;

b) take measures within their power to address identified shortcomings in the monitoring in the legislative and (or) enforcement.

Five. Recommend:

a) The Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation Supreme Arbitration Court of the Russian Federation, the General Procuracy of the Russian Federation, the Commissioner for Human Rights in the Russian Federation, the Commissioner of the President of the Russian Federation on the Rights of the Child, the Chamber of the Russian Federation,

the Central Election Commission of Russian Federation, Central Bank of Russian Federation, the Public Chamber of Russian Federation, public corporations, foundations and other organizations created by the Russian Federation on the basis of federal law, an annual guide to the Ministry of Justice proposals to the draft plan, monitor and report to the President of the Russian Federation on the results of monitoring;

b) The Supreme Court of the Russian Federation and Supreme Arbitration Court of the Russian Federation to consider the monitoring results in giving explanations on judicial practice.

6. Amend the Regulations of the Ministry of Justice of the Russian Federation, approved by Presidential Decree of October 13, 2004 № 1313 "Issues of the Ministry of Justice of the Russian Federation" (Collection of legislation of the Russian Federation, 2004, № 42, art. 4108, 2006, № 12, art . in 1284; № 19, art. in 2070; № 39, art. 4039, 2007, № 13, art. in 1530; № 20, art. in 2390, 2008, № 10, art. 909; № 29, art. 3473; № 43, Art. 4921, 2010, № 4, p. 368; № 19, art. 2300), modified by adding paragraph 7, item 4.1 to read as follows:

"4.1) takes place in the established field of monitoring of enforcement in the Russian Federation to implement the decisions of the Constitutional Court of the Russian Federation and regulations of the European Court of Human Rights in respect of which need to be taken (publication), modified or abrogated recognition (cancel) the legislative and other normative legal acts of the Russian Federation, as well as functions to coordinate the monitoring of enforcement carried out by federal executive authorities and organs of state power of subjects of the Russian Federation, and methodological support, ".

7. To establish that the function of the monitoring carried out by federal executive bodies within the prescribed limit the number of employees of central offices and employees of territorial bodies of federal executive bodies, as well as within the budget provided by these federal agencies in the federal budget.

Eight. Government of the Russian Federation in the three-month period to adopt the method of monitoring.

President

Russian Federation

Dmitry Medvedev

The Kremlin, Moscow

May 20, 2011
№ 657

APPROVED

Decree of the President

Russian Federation

on May 20, 2011 № 657

Position

the monitoring of law enforcement in the Russian Federation

A. These Regulations establish a procedure for monitoring the enforcement of the Russian Federation (hereinafter - monitoring).

Two. Monitoring provides a comprehensive and planned activities carried out by federal authorities and state bodies of subjects of the Russian Federation within the limits of their authority for the collection, collation, analysis and evaluation to ensure that the information (publication), modified or abrogated recognition (cancellation):

a) legislative and other normative legal acts of the Russian Federation—to implement the decisions of the Constitutional Court and rulings by the European Court of Human Rights;

b) The regulations of the President of the Russian Federation, the Government of the Russian Federation, federal executive authorities, other government agencies, public authorities of the Russian Federation and municipal legislation—in cases stipulated by federal laws;

c) The regulations of the Government of the Russian Federation, federal executive authorities, other government agencies, public authorities of the Russian Federation and municipal legislation—in cases stipulated by acts of the President of the Russian Federation;

d) legal acts of the Russian Federation—in the cases provided for annual messages of the President of the Russian Federation Federal Assembly of Russian Federation, other policy documents, instructions of the President of the Russian Federation and the Government of the Russian Federation, the main activities of the Government of the Russian Federation for the relevant period, and programs of socio-economic development State;

e) regulations of the Russian Federation—in order to implement anti-corruption policies and the elimination of corruption-factors;

f) regulations of the Russian Federation—in order to eliminate conflicts between the regulations of equal legal force.

Three. The main purpose of monitoring is to improve the legal system of the Russian Federation.

4. Monitoring is conducted in accordance with the monitoring plan and in accordance with the method of its implementation.

If there is a mandate of the President of the Russian Federation or the Russian Federation Government monitoring is carried out without changes to the Russian Government approved monitoring plan.

The federal bodies of executive power, bodies of state power of subjects of the Russian Federation and local authorities can monitor on their own initiative.

Five. The draft monitoring plan is developed annually by the Ministry of Justice of the Russian Federation with regard to:

a) Annual Presidential Address to the Federal Assembly of Russian Federation;

b) decisions (sentences) of the Constitutional Court of the Russian Federation, the European Court of Human Rights, the Supreme Court of the Russian Federation Supreme Arbitration Court of the Russian Federation;

c) the proposals of the General Procuracy of the Russian Federation, the Commissioner for Human Rights in the Russian Federation, the Commissioner of the President of the Russian Federation on the Rights of the Child, the Accounts Chamber of the Russian Federation, the Central Election Commission of the Russian Federation, Central Bank of Russian Federation, the Public Chamber of Russian Federation, public corporations, foundations and other organizations created by the Russian Federation on the basis of federal law;

d) the proposals of the Investigative Committee of the Russian Federation, federal executive authorities and organs of state power of subjects of the Russian Federation;

e) National Anti-Corruption Plan and other policy documents, instructions of the President of the Russian Federation and the Government of the Russian Federation;

f) the main activities of the Government of the Russian Federation for the relevant period;

g) the socio-economic development of the state;

h) proposals of civil society and the media.

6. The federal bodies of executive power, other federal government agencies and public authorities of the Russian Federation in the preparation of proposals to the draft plan for monitoring the account, within its competence proposals of civil society and the media about the decision (the publication), modified, or Invalidation (repeal) legislative and other normative legal acts of the Russian Federation, received by the appropriate authority.

7. The bodies of state power of subjects of the Russian Federation in the preparation of proposals to the draft plan proposals take into account the monitoring of the local government.

Eight. Specified in paragraphs "a", "d" and "h" of paragraph 5, paragraphs 6 and 7 of these Regulations to a draft proposal of the monitoring plan submitted to the Ministry of Justice of the Russian Federation each year, until June 1.

9. The draft monitoring plan annually, before August 1, introduced by the Ministry of Justice in the Government of the Russian Federation.

10. The monitoring plan annually, before September 1, approved by the Government of the Russian Federation.

11. The monitoring plan reflects:

a) sector (subsector), or a group of law regulations, and monitoring are planned;

b) the name of the federal bodies of executive power, bodies of state power of subjects of the Russian Federation and local authorities involved in monitoring;

c) The timing of monitoring;

d) other information.

12. The federal bodies of executive power and bodies of state power of subjects of the Russian Federation each year, until June 1, submit to the Ministry of Justice report on the results of monitoring carried out by them in the previous year in accordance with the monitoring plan.

The information obtained from monitoring carried out by federal authorities and state authorities of the Russian Federation on its own initiative, may be submitted by June 1, the Ministry of Justice to deal with these bodies.

Other agencies and organizations may submit to the Ministry of Justice until June 1, proposals for a draft report to the President of the Russian Federation on the results of monitoring.

13. Ministry of Justice of the Russian Federation on the basis of reports of federal executive authorities and organs of state power of subjects of the Russian Federation on the results of monitoring carried out by them in the previous year, and other material received by the Department prepares a draft report of the President of the Russian Federation on the results of the monitoring plan and proposals for legislative activities of the Government of the Russian Federation.

14. The draft report of the President of the Russian Federation on the results of monitoring implementation of the plan summarizes the monitoring during the previous year and made suggestions:

a) the need for (publication), modified or abrogated recognition (cancel) the legislative and other normative legal acts of the Russian Federation;

b) measures to improve the legislative and other normative legal acts of the Russian Federation;

c) measures to improve law enforcement;

d) on measures to enhance the effectiveness of anti-corruption;

e) the public bodies responsible for the development of appropriate legislative and other normative legal acts of the Russian Federation and for the implementation of measures to improve law enforcement and combating corruption.

15. Draft report of the President of the Russian Federation on the results of the monitoring plan and proposals to the legislative activities of the Government of the Russian Federation each year, until August 1, sent in the prescribed manner by the Ministry of Justice of the Russian Federation to the Government for consideration.

The Government of the Russian Federation annually, before September 1, submit to the President of the Russian Federation on the results of monitoring.

16. President of the Russian Federation on the basis of consideration of a report on the results of monitoring can be tasked government agencies and organizations, as well as officials on the development of legislative and other normative legal acts of the Russian Federation and the adoption of other measures to implement the proposals contained in the report.

17. Monitoring report after consideration by the President of the Russian Federation shall be published by the Ministry of Justice in the media, as well as posted on the official website of the President of the Russian Federation, the Russian Government and the Ministry of Justice of the Russian Federation on the Internet.

Implementation Form of ECtHR Judgments, United Kingdom Ministry of Justice, Human Rights Policy Team

Implementation of ECtHR judgments – preliminary information

This section of the form deals with basic information about the case and the team that will be handling implementation. It should be submitted to the human rights team at the Ministry of Justice within four weeks of the judgment being received.

Please send this form to:

Case name:		
Application number[1]**:**		Date of judgment:
Judgment of the: **Chamber** **Grand Chamber** (delete as appropriate)	Lead Department: Minister with policy responsibility:	
Lead departmental lawyer: Email address: Telephone number:		
Lead policy official: Email address: Telephone number:		
Convention articles held to have been violated[2]:		

1 The unique identifying number given to each case by the Registry of the Court. It can usually be found towards the top of the judgment, under the name of the case e.g. *Application no. 3383/06*

2 At the end of the judgment (above any dissenting opinions), the Court will summarise its findings and list any Articles found to have been violated by the respondent Government.

Please list **all** the Articles that have been held to have been violated. It is not necessary to list those where the Court has found no violation or not found it necessary to consider the Article. Please also ensure that you include, where appropriate, if any Articles have been found to have been violated when read in conjunction with Article 14 (the prohibition on discrimination).

Summary of judgment

The summary of the judgment should include the main issues that led to the Court's decision. Departmental legal advisers' clearance should always be obtained on the content of this section.

The summary should include, but may not be limited to:

- A summary of the Court's conclusion and the reasoning that led to it.
- Any factors highlighted by the Court as being particularly relevant to their decision.
- The name and section number of any statutory provisions considered.
- Whether the violation found by the Court was systemic (e.g. a statutory scheme or Government policy as a whole is in breach of the Convention) or simply on the facts of the case (e.g. complications or delay in a particular individual's case meant a violation occurred in those specific circumstances).

If a Chamber judgment, do you intend to seek referral to the Grand Chamber[3]: **Yes/No**

[3] If a judgment has been given by a Chamber of the Court, the Government has three months to request that the case be referred to the Grand Chamber. The Grand Chamber will only accept a request if the case raises a serious question affecting the interpretation or application of the Convention (or the Protocols to the Convention), or a serious issue of general importance

If you are considering requesting referral to the Grand Chamber, it is essential to obtain advice from departmental lawyers (and possibly Counsel), the FCO Legal Adviser and MoJ HRD on this point.

Stakeholders

While judgments from Strasbourg apply to the whole of the UK, devolution means that the Lead Department will not always have the authority to implement an adverse judgment across the UK.

Implementing a judgment often requires the co-operation from and action by other teams or departments across Government. Similarly, judgments also need to be implemented in other jurisdictions if they relate to an area for which responsibility has been devolved.

Other teams across Whitehall: Think critically whether the judgment has implications for any other department(s) and if so contact them as early as possible in the implementation process. MoJ HRD may be able to provide advice if necessary on whom to involve and when.

Devolved jurisdictions 'Devolved jurisdictions' refers to Scotland, Wales and Northern Ireland.

If you believe the judgment may have implications for overseas territories, please contact FCO Legal Advisers for advice, copying in MoJ HRD.

In summary, the basic principles surrounding involving devolved jurisdictions in implementation are as follows:

- Where a judgment relates to a policy area that is NOT a devolved matter, the judgment should be implemented across the whole of the UK by the Lead Department.
- Where devolved matters are concerned, the Lead Administration should make contact with the remaining administrations to establish the following:
  - Agreement on a shared interpretation of the judgment
  - What particular scheme, policy and/or law is in operation in each jurisdiction
  - Whether those regimes are likely to be compliant with the terms of the judgment
  - Agreement to a shared approach to implementation (between those administrations whose current regime is not, or seen as likely not to be, compliant).
- Unless the issue only concerns one administration (i.e. all others are compliant), there has to be co-ordination between all the relevant administrations. The Lead Department will be responsible for this.

It is essential that agreement is reached on a shared view of the judgment and approach to implementing it. If agreement cannot be reached, contact the MoJ HRD immediately for further advice and support. If a judgment contains both devolved and non-devolved matters, contact MoJ Human Rights team for advice.

Appendix II
Implementation Legislation

- Colombia Law No. 288 (July 5, 1996)
- Peru Law No. 27.775 (June 27, 2002)
- Ukraine Law No. 3477-IV (February 23, 2006)
  On the Enforcement of Judgments and the Application of the Case Law of the European Court of Human Rights
- Italy Law No. 12 (January 19, 2006)
  Provisions on the Implementation of the Decisions of the European Court of Human Rights

Unofficial translation by CEJIL; law not available in English

Annex II of the publication "Implementing the decisions of the Inter American System of Human Rights, Contributions for the legislative process", CEJIL, 2009, available at www.cejil.org/en/publicaciones

Colombia

Law
Law Nº 288, July 5th, 1996

Establishes instruments for the payment of damages to victims of human rights violations by virtue of orders of determined international human rights bodies.

The Congress of Colombia

Decrees:

Article 1. The National Government has to pay, accordingly to the fulfillment of the procedures established in the present law, the payment of damages caused by human rights violations that have been declared, or will be declared, in express decisions of international human rights bodies that will be mentioned in this law.

Article 2. For the purposes of the present law conciliations or damages settlements can only be fixed regarding those cases of human rights violations that comply with the following requirements:

That there exists a prior, written and express judgment issued by the Human Rights Committee of the International Pact of Civil and Political Rights or of the Inter-American Human Rights Commission, which concludes in a concrete case that the Colombian State has committed human rights violations and that it establishes that it should indemnify the corresponding damages.

That there exists a prior favorable opinion on the fulfillment of the decision of the international human rights body that has to be issued by a Committee constituted by: the Ministry of the Interior; the Ministry of Foreign Relations; the Ministry of Justice and Law; and the Ministry of National Defense.

Paragraph 1. The Committee will pronounce a favorable opinion on the fulfillment of the judgment of the International Human Rights Body in all the cases that comply with all the factual and legal conditions established in the Political Constitution and in applicable international treaties. For this it must be taken into account, among other elements, the collected evidence and the decisions taken in the judicial, administrative, or internal disciplinary proceedings and in actions taken before the respective international body.

Paragraph 2. When the Committee considers that the conditions established in the prior paragraph are not met, it should communicate this to the National Government so that they can present a legal brief or bring the appropriate appeal, if any, against the judgment in question before the competent international body. In any case, if the applicable international treaty does not contemplate a second instance or if the term to appeal the judgment has expired, the Committee should render favorable opinion on the fulfillment of the judgment of the international body.

Paragraph 3. The Committee has forty-five (45) days, counted from the official notification of the pronouncement of the concerned international body, in order to emit the corresponding opinion.

The mentioned period of time will begin from the date in which the present Law enters into in force, in respect of the pronouncements of the international human rights bodies that have issued prior to said date.

Paragraph 4. There will be place for the procedure established in the present law, even if the actions established in the domestic law had expired, for the effect of obtaining the indemnity of damages for acts of human rights violations, always and when the requirements established in this article are met.

Article 3. If the Committee emits favorable opinion on the fulfillment of the judgment of the international body, the National Government will solicit a settlement hearing before an agent of the Public Ministry attached to the Contentious Administrative Tribunal that would be competent, according with internal law, in order to settle the controversy object to settlement, in a term not to exceed thirty (30) days.

Upon receipt of the request, the agent of the Public Ministry should summon the interested parties so that they can meet before it and present the means of evidence that will be settled to demonstrate their legitimate interest and the amount of the damages.

The agent of the Public Ministry will serve notice of the provided evidence and of the formulated claims by those involved to the National Government and will summon the parties to a settlement hearing.

The Ombudsman will be summoned to the settlement proceedings.

Article 4. The public entity to which the public server responsible for the acts has been linked, will proceed to determine by mutual agreement with the persons that have demonstrated legitimate interest, and based on the means of evidence that are part of the procedure, the amount of the payment of the damages.

The settlement will be about the amount of the compensation. For the valuation of the damages the criteria of current national jurisprudence will be applied.

In any case, only the damages that are duly proven and that have a direct causal link with the facts that are object of the judgment of the international body will be recognized.

Article 5. The settlement established in the present Law can be advanced during the contentious administrative proceeding initiated in order to obtain the payment of damages derived from the same acts that are referred to in the judgment of the international human rights body, even when the opportunity to have settlement in such body has precluded.

Article 6. For the purpose of the payment of damages that will be object of the settlement, the evidence that will be taken into consideration, amongst others, are those that were presented in judicial proceedings; internal administrative or disciplinary and, especially, those valued by the international body to issue the corresponding decision.

Article 7. If an agreement is reached, the parties will sign an act that will be presented to the Public Ministry for his approval. Said act will be immediately sent to the respective Contentious Administrative Tribunal in order for the corresponding appointed Magistrate to decide if the settlement resulted harmful for the State's patrimonial interests, or if it can be nullified. In either of these cases, the Magistrate will dictate a reasoned ruling stating his decision.

Article 8. The document approving the settlement will have the status of a recognized judicial credit and effects of a definitively settled judicial decision and, by thus, will put an end to the entire process that has been initiated against the State by the beneficiaries of the compensation in relation with the facts pertaining to the settlement.

Article 9. In the matters of the settlement procedure not established in the present Law, the Law 23 of 1991 will be applied, and all other legal provisions and regulations that regulate settlements.

Article 10. If a decision is produced that declares a settlement agreement as damaging to the patrimonial interests of the State or invalid, those interested can:

> a) Reformulate before the Magistrate that knew the case the terms of the settlement, in order to facilitate a possible approval; b)if the nullity is not absolute, rectify it and submit the settlement agreement once again to consideration of the Magistrate; y c) turn to the proceedings provided for in the following article.

Article 11. If no agreement is reached after the settlement procedure is concluded, those interested can go before the competent Contentious Administrative Tribunal, to process the liquidation of damages through the incidental procedure, according to what is provided for in articles 135 and the following of the Civil Procedures Code. In the process of said incident, arbitration proceedings can be held.
The decision about the incident of regulation of damages will be adopted by the Tribunal in the terms established in the Contentious Administrative Code and could be appealed accordingly to the procedures established by law.

Article 12. The indemnities that are paid or are made according to this Law, will activate the action of repetition that is established in the second subsection of article 90 of the Political Constitution.

Article 13. The Ministry of Justice will designate the employees of the National Government who can have access to the administrative, disciplinary, and judicial files, including the files before the military criminal jurisdiction, in order to be able to act before the international human rights bodies and, when it is the case, to verify the identity of those who should benefit from the indemnities that concern the present Law, and also the amount of the damages that have to be established.

Article 14. The power given to the National Government by the present Law should be exercised in the form that avoids the phenomenon of double or excessive payment of damages.

Article 15. The National Government will send a copy of all the procedure to the respective international human rights body, for the effects provided in the applicable international instruments.

Article 16. The present Law is in force from the date of its enactment.

The President of the Senate of the Republic,

Julio César Guerra Tulena.

The Secretary General of the honorable Senate of the Republic,

Pedro Pumarejo Vega.

The President of the honorable House of Representatives,

Rodrigo Rivera Salazar.

The Secretary General of the honorable House of Representatives,

Diego Vivas Tafur.

Republic of Colombia – National Government

Published and enforced. In Santa Fe de Bogotá, D.C. July 5, 1996.

Ernesto Samper Pizano

Minister of the Interior, Horacio Serpa Uribe.

Minister of Foreign Relations, Rodrigo Pardo García-Peña.

Minister of Justice and Law, Carlos Eduardo Medellín Becerra.

Peru

Law

Unofficial translation by CEJIL; law not available in English

Annex II of the publication "Implementing the decisions of the Inter American System of Human Rights, Contributions for the legislative process", CEJIL, 2009, available at www.cejil.org/en/publicaciones

Law Nº 27.775 , June 27th, 2002
Regulates the procedure for the execution of judgments emitted by supranational tribunals.

(…)

Article 1. The Purpose of the Law. It is declared of national interest the observance of judgments emitted in proceedings continued against the Peruvian State by International Tribunals set up by Treaties that have been ratified by Peru according to the Political Constitution.

Article 2. Rules on the execution of Supranational Judgments. Judgments emitted by International Tribunals set up according to Treaties that Peru is party to, that contain condemnation of payment of a sum of money in the concept of compensation for damages on behalf of the State or that are merely declarative: are executed in accordance with the following rules of procedure:

a) Competence.

The judgment emitted by the International Tribunal will be transcribed by the Ministry of Foreign Relations to the President of the Supreme Court, who will remit it to the Court in which internal jurisdiction was exhausted, ordering its execution by the Specialized or Mixed Judge that knew about the previous proceeding. In the case that there is no prior internal process, it will be ordered that the competent Specialized or Mixed Judge will know the execution of the resolution.

b) Proceedings for the execution of a resolution that orders the payment of a specific amount of money.

If the judgment contains condemnation of payment of a sum of money, the Judge referred to in subsection a) of this article orders that the Minister of Justice is notified in order to carry out the payment ordered in the judgment, in the period of ten days.

c) *Proceedings for the payment of an undetermined amount of money.*

If the judgment contains a condemnation of payment of a sum of money to be determined, the Specialized or Mixed Judge referred to in subsection a) of this article will serve notice of the request of the executant with the evidential means that he has offered, to the Ministry of Justice within the period of ten days. The representative of the Ministry of Justice can object exclusively about the amount expected, offering evidential means. Once the objection has been formulated or without it, the Judge will order the incorporation of the pertinent evidential means in a conciliatory hearing, all this in a period no longer than 30 days and the Tribunal will pronounce its resolution within the next 15 days. The appeal will be granted with suspensive effect and will be resolved by the appropriate Superior Court in the same time.

d) Process to set *the patrimonial responsibility and the compensation amount, in said case.*
If the judgment contains a declaration that the party has suffered damages different to the violated right or as a consequence of the facts discussed in the international process and the latter has not included such right in order to invoke it before the internal jurisdiction, the party should file an appropriate claim according to the process of abridged procedures provided in Title 11 of the Fifth Section of the Civil Procedures Code.

e) Execution of Provisional Measures
In the cases that the Court grants provisional measures, whether it is regarding matters that are in its knowledge, or rather, at the request of the Inter-American Commission before the Court, they should be complied with immediately, the appropriate Specialized or Mixed Judge should order its execution within the time period of 24 hours of receipt of the communication of the respective decision.

Article 3. Processing of different claims. The claims of the party that are different to the reparations ordered or declared in the contents of the judgment of the International Tribunal are subject to the jurisdiction and the procedural channels established in the Civil Procedures Code.

Article 4. Non pecuniary damages. Within the period of ten days of receipt of the communication of the Supreme Court, the Judge that exhausted the internal Jurisdiction will order the concerned state organs and institutions, whichever they are, the suspension of the situation that gave origin to the referred judgment, indicating the adoption of the necessary measures. In the case that the judgment refers to a judicial resolution, the competent Judge has to adopt the necessary actions in order to restore the situation to the state in which they were before the violation that was declared in the judgment.

Article 5. Right of Repetition. After the personal responsibility of the authority, official, or public employee that gave motive to the international proceedings has been established, the State, represented by the corresponding Attorney General, will initiate judicial procedures in order to obtain the recovery of the damage that has been caused to the State.

Article 6. Communication on the Compliance of Judgments. The Supreme Court of Justice of the Republic will inform, through the Ministry of Foreign Relations to the Inter-American Court of Human Rights, the measures that have been adopted in compliance with the judgment.
The beneficiary will be periodically informed of the measures that are adopted in compliance with the judgment.

Article 7. Budget Planning. The Ministry of Justice will incorporate and maintain in its budgetary documents an item that serves as sufficient funds to exclusively attend to the payment of sums of money in the concept of reparation of damages imposed by the judgments of International Tribunals in procedures related to human rights violations, as well as the payment of sums to be determined in the resolutions of the proceedings that are referred to in the subsection c) and d) of Article 2 of this Law.

If the item is insufficient to attend to its objective, the pertinent provisions of the Urgency Decree Nº 055-2001 will apply, which establishes the proceedings for the payment of sums ordered by judicial mandate in processes against the State.

Article 8. Arbitral Channels. In the cases mentioned in the subhead e) and d) of Article 2, the parties can request that the determination of the amount to be paid; and the patrimonial responsibility and the compensation amount in its case, are processed through an arbitral procedure of optional character, for this purposes the State's General Attorney of the Ministry of Justice has to be duly authorized for it. The arbitral procedure will be ruled by the law on the subject-matter.

Article 9. Revoke legal provisions. All legal provisions that are opposed to the current Law should be revoked.

Communicate to the President of the Republic for its promulgation. In Lima, on the twenty-seventh day of the month of June of two thousand two.

Carlos Ferrero, President of Congress of the Republic.
Henry Pease García, First Vice-President of the Congress of the Republic.
To the Constitutional President of the Republic

AS SUCH:

I declare that it be published and carried out.

Given in the House of Government, in Lima, on the fifth day of the month of July of the year two thousand two.

Alejandro Toledo, Constitutional President of the Republic.
Fernando Olivera Vega, Minister of Justice.

Ukraine Law No. 3477-IV (February 23, 2006)

On the Enforcement of Judgments and the Application of the Case Law of the European Court of Human Rights

The text below is an unofficial translation of the implementation law that was approved by the Ukrainian parliament in 2006. Amendments to the law were passed in 2010; however, an English translation of the 2010 version is not yet available. As a general matter, the amendments were technical, not substantive, in nature. For example, the definitions of "judgment" and "creditor" were amended (Article 1), while a short summary of European Court judgments now has to be published within ten days rather than three, and only in the "official gazette" of the government (Article 4). In addition, notification of a judgment must now be sent within ten (not three) days after the government agent is informed that a judgment has become final (Article 5); a similar change of terms can be found in Articles 7 and 11. Some changes to the legislation also concern the procedure for execution: the amended law now stipulates that the government agent must send out proposals for general measures on a quarterly basis, rather than within one month of a judgment becoming final (Article 14). The amended implementation law (available only in Ukrainian) may be accessed at http://zakon2.rada.gov.ua/laws/show/3477-15.

LAW OF UKRAINE

ON THE ENFORCEMENT OF JUDGMENTS AND THE APPLICATION OF THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

This Law regulates relations emanating from: the State's obligation to enforce judgments of the European Court of Human Rights in cases against Ukraine; the necessity to eliminate reasons of violation by Ukraine of the Convention for the Protection of Human Rights and Fundamental Freedoms and protocols thereto; the need to implement European human rights standards into legal and administrative practice of Ukraine; and the necessity to create conditions to reduce the number of applications before the European Court of Human Rights against Ukraine.

SECTION 1. GENERAL PROVISIONS

Article 1. Definitions

1.1 For the purposes of this Law the following terms shall be used in the following meaning:

the Convention – the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto agreed to be binding by the Verkhovna Rada of Ukraine;

the Court – the European Court of Human Rights;

the Commission – the European Commission of Human Rights;

the Court's case-law – the case-law of the European Court of Human Rights and the European Commission of Human Rights;

Judgment – a) a final judgment of the European Court of Human Rights in a case against Ukraine, declaring a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms; b) a final judgment of the European Court of Human Rights on just satisfaction in cases against Ukraine; c) judgments (decisions) of the European Court of Human Rights on a friendly settlement in cases against Ukraine;

Creditor – a) an applicant (his/her representative or successor) before the European Court of Human Rights in a case against Ukraine in whose favour the Court rendered its judgment or with whom a friendly settlement was effected; b) a person (a group of persons) in whose favour the Court found in its judgment an obligation of Ukraine upon an inter-State case;

Compensation – a) an amount of just satisfaction, defined in the Court's judgment in accordance with Article 41 of the Convention for the Protection of Human Rights and Fundamental Freedoms; b) an amount of payment referred to in the Court's judgment (decision) on a friendly settlement to be paid in favour of Creditor;

Enforcement of judgment – a) payment of compensation to Creditor and taking of additional individual measures; b) taking of general measures;

Representative body – a body in charge of representation of Ukraine before the European Court of Human Rights and of the enforcement of a judgment rendered by the latter;

Original text – an official text compiled in an official language of the Council of Europe of: a) the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto; b) judgments and decisions of the European Court of Human Rights; c) decisions of the European Commission of Human Rights.

Article 2. Enforcement of Judgments

2.1. Judgments are binding and subject to enforcement throughout the whole territory of Ukraine pursuant to Article 46 of the Convention.

2.2. Procedure for the enforcement of Judgments is determined by the present Law, the Law of Ukraine "On Enforcement Proceedings", and other legislative acts subject to peculiarities provided for by the present Law.

Article 3. Financing of expenses for the enforcement of Judgments

3.1. Judgments shall be enforced at the expense of the State Budget of Ukraine.

SECTION 2. ACCESS TO JUDGMENTS

Article 4. Summary of a Judgment

4.1. Representative body within three days from receipt of a notification that a Judgment has become final shall prepare and submit for the publication in the "Government's Currier" [*Uriadovyi Kurier*] and the "Voice of Ukraine" [*Golos Ukrayiny*] newspapers a summary of the Judgment in Ukrainian (hereinafter referred to as "a summary of a Judgment") which shall contain:

a) an official title of the Judgment in original and in Ukrainian translation;

b) number of the application before the Court;

c) the date of the Judgment;

d) brief statement of facts in the case;

e) brief statement of law in the case;

f) translation of the resolving part of the Judgment.

4.2. The newspapers mentioned in Article 4.1. shall publish the summary of the Judgment within seven days from its receipt.

Article 5. Notification of the Judgment

5.1. Representative body shall send the summary and a copy of the authentic text of the Judgment to the Creditor, the Ombudsperson, all state bodies, officials, and other persons directly affected by the Judgment.

Article 6. Translation and publication of the Judgment

6.1. With the aim of taking general measures the State ensures the translation into Ukrainian and the publication of full texts of Judgments in a publication specialized in the Court's case-law and disseminated in the legal community.

6.2. Authenticity of translations of full texts of Judgments shall be certified by the Representative body.

6.3. Representative body shall select on a competitive basis an edition, which will translate and publish the full texts of Judgments, as well as order the necessary quantity of copies of that edition to provide courts, prosecutor's offices and justice, law-enforcement and security services bodies, penitentiaries and other interested agencies with it.

6.4. The state body in charge of courts' material-organizational support shall provide judges with the translation of full texts of Judgments.

SECTION 3. ENFORCEMENT OF JUDGMENTS

Article 7. Enforcement of a Judgment with regard to the payment of compensation

7.1. Representative body within three days from receipt of the Court's notification that a Judgment has become final shall:

a) notify Creditor and explain his/her right to file an application with the State Bailiff's Office on the payment of compensation; the application shall contain the data of the Creditor's bank account for the transfer of funds;

b) send to the State Bailiff's Office the authentic text of the Judgment and the translation of the resolving part thereof. The authenticity of the translation is certified by the Representative body;

The State Bailiff's Office within three days from receipt of documents specified in Article 7.1.(b) shall open enforcement proceedings.

7.2. Failure of the Creditor to submit an application on the payment of compensation shall not halt the enforcement of the Judgment.

Article 8. Payment of a compensation

8.1. Payment of compensation to the Creditor shall be effected within three months from the date when the Judgment has become final.

8.2. In case of failure to pay compensation within the time-limits set forth in Article 4.1. a simple interest shall be payable on the above amount in accordance with the Judgment.

8.3. Within one month after the opening of the enforcement proceedings the State Bailiff's Office shall send the ruling on the opening of the enforcement proceedings and documents specified in Article 7.1.(b) of this Law to the State Treasury of Ukraine.

8.4. The State Treasury of Ukraine within 10 days from the date of receipt of the documents mentioned in Article 8.3. of this Law shall transfer the money from the relevant budgetary program of the State Budget of Ukraine to the bank account specified by the Creditor; in case of absence of the latter money shall be transferred to the deposit account of the State Bailiff's Office.

8.5. The confirmation of the transfer received from the State Treasury of Ukraine is a ground for the State Bailiff's Office to close the enforcement proceedings.

8.6. The State Bailiff's Office within three days shall send to the Representative body the ruling on closure of the enforcement proceedings as well as the confirmation of the transfer of money.

Article 9. Certain aspects of the payment of compensation

9.1. In cases when it is impossible to identify the place of residence (location) of the Creditor—natural person as well as in case of death of the Creditor—natural person or reorganisation/liquidation of the Creditor—legal entity, the amount of compensation shall be transferred to the deposit account of the State Bailiff's Office. The same procedure shall be used in the case specified in Article 7.2 .of this Law.

9.2. The amount of compensation deposited in the account of the State Bailiff's Office shall be transferred to:

a) the Creditor's account after his/her submission of the required application;

b) accounts of heirs of the Creditor—natural person after they have presented duly certified documents entitle them to obtain the heritage;

c) account of successor of the reorganised Creditor—legal entity after it have presented duly certified documents proving the succession;

d) accounts of the founders (participants, shareholders) of the liquidated Creditor—legal entity after the have submitted court decisions confirming their status of founders (participants, shareholders) of the liquidated Creditor—legal entity at the moment of liquidation and determining the share of compensation to be paid to each of the founders (participants, shareholders).

9.3. Information on the availability of funds on the deposit account of the State Bailiff's Office the State Bailiff's Office shall send to the Representative body for the further notification of the Committee of Ministers of the Council of Europe.

9.4. Representative body shall act as the claimant in cases concerning indemnification of losses inflicted on the State Budget of Ukraine as a result of payment of compensation and shall be obliged to lodge such a claim with a court within three months from the moment specified in Article 8.4. of this Law.

Article 10. Additional individual measures

10.1. Additional individual measures shall be taken in addition to the payment of compensation and are aimed at restoring the infringed rights of the Creditor.

10.2. Additional individual measures include:

a) restoring, as far as possible, the previous status which the Creditor has had before his/her Conventional rights were breached (*restitutio in integrum*);

b) measures, except for compensation, envisaged in the Court's judgment (decision) on a friendly settlement.

10.3. The previous status of the Creditor shall be restored, *inter alia*, by means of:

a) repeat consideration of the case by the court, including the reopening of proceedings in the case;

b) repeat consideration of the case by the administrative body.

Article 11. Actions which the Representative body shall take with regard to additional individual measures

11.1. Representative body within three days from receipt of the Court's notification that the Judgment has become final shall:

a) send the Creditor a notification explaining his/her right to initiate proceedings on the review of his/her case and/or to reopen the proceedings in compliance with current legislation;

b) notify the bodies in charge of the execution of additional individual measures specified in the Court's judgment (decision) on a friendly settlement about the contents, manner and terms of these measures' execution. This notification shall be appended with translation of the judgment (decision) on a friendly settlement the authenticity of which is certified by the Representative body.

11.2 Control over the execution of additional individual measures specified in the Court's judgment on a friendly settlement is exercised by the Representative body.

11.3 Representative body – while exercising the control as provided for in Article 11.2. of this Law – shall be entitled to request from the bodies in charge of the execution of additional individual measures specified in the Court's judgment on a friendly settlement information on the course and results of these measures' execution as well as to present a motion to the Prime Minister of Ukraine to secure the execution of additional individual measures.

Article 12. Actions which the bodies in charge of the execution of additional individual measures shall take

12.1. The bodies in charge of the execution of additional individual measures shall:

a) immediately and within the time-limit set forth in the Judgment and/or current legislation execute additional individual measures;

b) provide information about the course and results of additional individual measures' execution upon requests of the Representative body;

c) effectively and without undue delays reply to submissions by the Representative body;

d) inform the Representative body about the completion of additional individual measures' execution.

Article 13. General measures

13.1. General measures shall be taken by the State in order to secure the respect of Convention's provisions the violation of which has been found in Judgment, to eliminate underlying systemic problems which are at the heart of violation found by the Court as well as to eliminate the reasons for submission to the Court of applications against Ukraine caused by the problem which has been already considered by the Court.

13.2. General measures are aimed at eliminating underlying systemic problem indicated in Judgment as well as its origin through:

a) amendments to the current legislation and changes in the practice of its application;

b) changes in administrative practice;

c) legal review of the draft legislation;

d) professional training on the Convention and the Court's case-law of prosecutors, lawyers, law-enforcement bodies' officers, immigration service employees, other persons whose professional activity is connected with law enforcement and restriction of person's liberty;

e) other measures, which shall be determined under the supervision of the Committee of Ministers of the Council of Europe by the respondent State in accordance with Judgment. These measures shall be aimed at eliminating underlying systemic problems, ceasing violations of the Convention caused by these shortcomings and securing the maximum redress for these violations.

Article 14. Actions which the Representative body shall take with regard to general measures

14.1. Representative body within one month from receipt of the Court's notification that Judgment has become final shall prepare and send to the Cabinet of Ministers of Ukraine a motion on general measures (hereinafter referred to as "the Motion").

14.2. The Motion shall contain proposals on settlement of an underlying systemic problem indicated in the Judgment as well as its origin, namely:

a) analysis of circumstances which caused the breach of the Convention;

b) proposals as to the amendments to the current legislation;

c) proposals as to the changes in administrative practice;

d) proposals to be taken into account during the drafting of laws;

e) proposals as to the professional training on the Convention and the Court's case-law of judges, prosecutors, lawyers, law-enforcement officers, immigration service employees, and other persons whose professional activity is connected with law enforcement and restriction person's liberty;

f) proposals as to other general measures aimed at eliminating the underlying systemic problems, ceasing violations of the Convention caused by these shortcomings and securing the maximum redress for these violations.

g) list of central executive bodies in charge of execution of measures proposed in the Motion.

14.3. Representative body, at the same time, shall prepare an analytical review for the Supreme Court of Ukraine which shall include:

a) analysis of circumstances which caused the breach of the Convention;

b) proposals on the bringing of national courts' case-law in line with requirements of the Convention.

14.4. Representative body, at the same time, shall prepare and send to the secretariat of the Verkhovna Rada of Ukraine proposals to be taken into account during the drafting of laws.

Article 15. Actions which the Cabinet of Ministers of Ukraine shall take with regard to general measures

15.1. The Prime Minister of Ukraine, following the Motion provided in Article 14 of this Law, shall determine central executive bodies in charge of the execution of general measures and immediately provide them with relevant instructions.

15.2. The central executive body determined in the Prime Minister's instruction, within the term set in the instruction, shall:

a) ensure, within his/her competence, the adoption of acts to execute general measures and control the enforcement thereof;

b) make a submission to the Cabinet of Ministers of Ukraine on the adopting of new, abolishing or amending active acts of national legislation.

15.3. The Cabinet of Ministers of Ukraine shall:

a) adopt, within its competence, acts to execute general measures;

b) submit to the Verkhovna Rada of Ukraine according to the legislative initiative procedure draft laws proposals on the adopting of new, abolishing or amending of active laws.

15.4. These acts shall be adopted and relevant draft laws shall be submitted by the Cabinet of Ministers of Ukraine to the Verkhovna Rada of Ukraine within three months from the date when the Prime Minister of Ukraine has issued the instruction specified in Article 15.1. of this Law.

Article 16. Responsibility for the non-execution or improper execution of Judgments

16.1 Those officials who are in charge of the execution of Judgments and failed to execute it or did it improperly shall bear administrative, civil, or criminal responsibility as provided for by laws of Ukraine.

SECTION 4. APPLICATION OF THE CONVENTION AND THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS IN UKRAINE

Article 17. Application by courts

17.1. While adjudicating cases courts shall apply the Convention and the case-law of the Court as a source of law.

Article 18. Order reference

18.1. In order to make a reference to the text of the Convention courts shall use the official translation of the Convention into Ukrainian (hereinafter referred to as "the translation").

18.2. In order to make a reference to judgments and decisions of the Court and decisions of the Commission courts shall use translations published in the outlet specified in Article 6 of this Law.

18.3. In case of the absence of the translation of Judgment or decision of the Court or decision of the Commission, courts shall use their original texts.

18.4. If a linguistic discrepancy between the translation and the original text is found, courts shall use the original text.

18.5. If a linguistic discrepancy between the original texts is found and/or if need be to carry out a linguistic interpretation of the original text courts shall use the relevant case-law of the Court.

Article 19. Application in the legislative sphere and administrative practice

19.1. Representative body shall carry out a legal review of all draft laws, as well as by-laws subject to state registration, as to their compliance with the Convention and shall prepare an opinion thereon.

19.2. If the review specified in part 1 of this Article was not carried out or an opinion on the inconsistency of the by-law was issued, its state registration refused.

19.3. Representative body shall provide regular and reasonably periodic examination of current legislation on its consistency with the Convention and the Court's case-law, especially in the spheres relating to the activity of law-enforcement bodies, criminal proceedings, and restriction of liberty.

19.4. Following the examination set forth in Article 19.3. of this Law, the Representative body shall submit proposals to the Cabinet of Ministers of Ukraine on amendments to the current legislation in order to bring it in conformity with requirements of the Convention and the relevant Court's case-law.

19.5. The ministries and departments shall provide within their competence a systematic control over the adherence of administrative practice to the Convention and the Court's case-law.

SECTION 5. FINAL PROVISIONS

1. This Law shall enter into force on the date of its publication.

2. The Cabinet of Ministers of Ukraine shall:

   1) within one month from the entrance into force of this law:
      - bring its acts in line with this Law;
      - ensure that acts of the central executive bodies are brought in line with this Law;

   2) take action and, if necessary, submit proposals to the Verkhovna Rada of Ukraine on the incorporation of questions of the study of the Convention and the Court's case-law in:
      - qualifying requirements for some categories of judges, prosecutors, advocates, and notaries;
      - programmes of initial training and further raising of qualification of judges, prosecutors, advocates, law-enforcement officers, immigration service employees, and other persons whose professional activity is connected with law enforcement and restriction of person's liberty.

   3) annually envisage in a separate budgetary program of the draft State Budget of Ukraine the funds for the enforcement of Judgments of the European Court of Human Rights.

President of Ukraine **V.Yushchenko**

Kyiv, 23 February 2006
No. 3477-IV

Italy Law No. 12 (January 19, 2006)

Provisions on the Implementation of the Decisions of the European Court of Human Rights

Official Gazette n. 15 of 19 January 2006

LAW n. 12 of 19 January 2006

Provisions on the implementation of the decisions of the European Court of Human Rights

The Chamber of Deputies and the Senate of the Republic approved;

THE PRESIDENT OF THE REPUBLIC
promulgates

the following law:

Article 1

1. At Article 5, paragraph 3, of law no. 400 of 23 August 1988, the following shall be added after letter a):

"a-bis) shall promote the fulfilment of the tasks falling under the competence of the Government consequent to the decisions of the European Court of Human Rights given in respect of the Italian State; shall promptly communicate those decisions to the two Houses of Parliament for their exam by the competent parliamentary standing Committee and submit yearly to Parliament a report on the state of implementation of those decisions;".

This law, bearing the seal of State, shall be included in the Official Collection of the Legislation of the Italian Republic [Raccolta ufficiale degli atti normativi della Repubblica italiana]. It shall be the obligation of anyone entitled to do so to comply and obtain compliance with it as a law of the State.

Done at Rome, on 9 January 2006
CIAMPI
Berlusconi, President of the Council of Ministers

Paragraph 3 of Article 5 of law no. 400 of 23 August 1988, as amended by Law n. 12 of 9 January 2006 (Provisions on the implementation of the decisions of the European Court of Human Rights), reads as follows:

"3. The President of the Council of Ministers, either directly or delegating one of his Ministers:

a) [omitted];

"a-bis) shall promote the fulfilment of the tasks falling under the competence of the Government consequent to the decisions of the European Court of Human Rights given in respect of the Italian State; shall promptly communicate those decisions to the two Houses of Parliament for their exam by the competent parliamentary standing Committee and submit yearly to Parliament a report on the state of implementation of those decisions;"

Appendix III
Parliamentary Joint Committees on Human Rights

- Parliament of The United Kingdom of Great Britain, Standing Orders of the House of Commons—Public Business 2002(2) § 152B
- Guidance for Departments on Responding to Court Judgments on Human Rights, HL Paper 85/HC 455
- Parliament of Australia, Human Rights (Parliamentary Scrutiny) Act 2011, No. 186 (December 7, 2011)

Parliament of The United Kingdom of Great Britain
Standing Orders of the House of Commons
Public Business 2002 (2) § 152B

152B.—(1) There shall be a select committee, to consist of six Members, to join with the committee appointed by the Lords as the Joint Committee on Human Rights.

Statutory Instruments (Joint Committee).

(2) The committee shall consider—

(a) matters relating to human rights in the United Kingdom (but excluding consideration of individual cases);

(b) proposals for remedial orders, draft remedial orders and remedial orders made under Section 10 of and laid under Schedule 2 to the Human Rights Act 1998; and

(c) in respect of draft remedial orders and remedial orders, whether the special attention of the House should be drawn to them on any of the grounds specified in Standing Order No. 151 (Statutory Instruments (Joint Committee)).

(3) The committee shall report to the House—

(a) in relation to any document containing proposals laid before the House under paragraph 3 of the said Schedule 2, its recommendation whether a draft order in the same terms as the proposals should be laid before the House; or

(b) in relation to any draft order laid under paragraph 2 of the said Schedule 2, its recommendation whether the draft order should be approved;

and the committee may report to the House on any matter arising from its consideration of the said proposals or draft orders.

(4) The committee shall report to the House in respect of any original order laid under paragraph 4 of the said Schedule 2, its recommendation whether—

(a) the order should be approved in the form in which it was originally laid before Parliament; or

(b) that the order should be replaced by a new order modifying the provisions of the original order; or

(c) that the order should not be approved,

and the committee may report to the House on any matter arising from its consideration of the said order or any replacement order.

(5) The quorum of the committee shall be three, except that for the purposes of taking evidence, the quorum shall be two.

(6) Unless the House otherwise orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

(7) The committee shall have power—

(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time; and

(b) to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.

Guidance for Departments on Responding to Court Judgments on Human Rights, HL Paper 85/HC 455

Guidance for Departments on Responding to Court Judgments on Human Rights

HL Paper 85/HC 455

Annex: Guidance for Departments on Responding to Court Judgments on Human Rights

1. The Government takes seriously its obligation to respond fully and in good time to judgments of the European Court of Human Rights. It is also committed to responding effectively and rapidly to declarations of incompatibility once they are no longer subject to appeal. The Government has agreed to keep the Joint Committee on Human Rights (JCHR) informed of its plans for the implementation of each judgment of the European Court of Human Rights finding a breach of human rights by the UK.[190] The Government has also agreed to keep the JCHR closely informed following a declaration of incompatibility by a UK court.

2. This Guidance is intended to assist Government departments by explaining the Committee's method of scrutinising the Government's response to human rights judgments and by setting out the Committee's expectations in relation to both the timing and content of the information provided by the Government. It seeks to draw together and rationalise previous recommendations made by the Committee, so that a comprehensive account of the Committee's expectations is available in one place.

WHEN DOES THE COMMITTEE'S SCRUTINY OF THE GOVERNMENT RESPONSE TO COURT JUDGMENTS BEGIN?

3. The Committee will begin to consider any compatibility issues raised by judgments of the European Court of Human Rights or declarations of incompatibility even before the judgment or declaration is final. The Committee's scrutiny of the Government's response will include consideration of the likelihood of success of any appeal against a declaration of incompatibility, or of any request for a reference to the Grand Chamber, or subsequent reference. Where the Committee considers that such an appeal, or reference to the Grand Chamber, has little prospect of success, it may make recommendations about the general measures necessary if there is an opportunity to remedy the incompatibility even before the judgment becomes final.[191] However, the Committee only reports in its implementation of judgments reports on the Government's response to judgments which have become final.

4. In the case of judgments of the European Court of Human Rights this is defined by Article 44 of the European Convention itself:

- A judgment of the Grand Chamber is final.[192]

A judgment of a Chamber becomes final:[193]

- when the parties declare that they will not request that the case be referred to the Grand Chamber; or

- three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
- when the request to refer is rejected by the Grand Chamber.

5. In the case of declarations of incompatibility by UK courts, the declaration becomes final when the period for appealing against the judgment has expired and no appeal has been lodged.

WITH WHOM WILL THE COMMITTEE CORRESPOND?

6. The Committee regards the Human Rights Division in the Ministry of Justice as its central point of contact with the Government concerning the implementation of judgments of the European Court of Human Rights and Government responses to declarations of incompatibility.

7. The Committee may also correspond directly with the department or departments responsible for the particular area of law or policy affected by the court judgment.

TIMETABLE FOR IMPLEMENTATION

8. The Committee accepts that a rigid, one-size-fits-all timetable for implementation of European Court of Human Rights judgments, or responding to declarations of incompatibility, is neither realistic nor desirable. The identification of the appropriate remedial measures is likely to involve a process, involving the consultation of relevant stakeholders and, in the case of judgments of the European Court of Human Rights, discussions between national authorities and the Committee of Ministers.

9. However, the remedying of an incompatibility with the Convention should be swift as well as full. The Committee therefore expects the Government's remedial action following Court judgments to follow a target timetable, and will expect the Government to provide reasoned justifications for any departures from that timetable.

WHEN SHOULD THE COMMITTEE BE NOTIFIED OF COURT JUDGMENTS AND WHAT INFORMATION SHOULD BE PROVIDED?

10. The Ministry of Justice, working with the Foreign Office, should notify the Committee of any judgment of the European Court of Human Rights in an application against the UK and of any declaration of incompatibility made by a UK court under s. 4 of the Human Rights Act 1998 as soon as reasonably practicable and in any event within 14 days of the date of the judgment.

11. In the case of declarations of incompatibility, it would be helpful to the Committee if the Ministry of Justice could at the same time provide a copy of the judgment of the court if it is not readily available, and the full text of the declaration in question if it is not set out in full in the judgment.

12. Where the judgment is a judgment of a Chamber of the European Court of Human Rights, the Government should indicate whether it is considering requesting that the case be referred to the Grand Chamber. Where the judgment is a judgment making a declaration of incompatibility, the Government should indicate whether it is considering appealing against the judgment.

13. Where the Government has decided not to request a referral of the case to the Grand Chamber, or to appeal against the making of the declaration of incompatibility, the Ministry of Justice or the relevant Minister should inform the Committee of the reasons for that decision.

14. The letter of notification should identify the lead department and identify the official to be treated as the official with lead responsibility for the matter in the department, along with their contact details.

WHEN SHOULD THE COMMITTEE BE INFORMED OF HOW THE GOVERNMENT PLANS TO RESPOND AND WHAT INFORMATION SHOULD BE PROVIDED?

15. The Committee normally expects the Government to have reached a detailed decision about how to implement a judgment of the European Court of Human Rights, or respond to a declaration of incompatibility, within four months of the date of the judgment. The Ministry of Justice, or the relevant department, should write to the Committee, setting out the Government's detailed plans for responding to the judgment, including the following:

- Whether the Government considers that any general measures are required in order to remedy the incompatibility;
- If the Government does not consider any remedial action necessary, its reasons for this view;
- Whether the Government intends to use the remedial order process to remedy the incompatibility;
- The measures the Government is intending to take to respond to the judgment; and
- An indicative timetable for taking the necessary measures.

16. Where it is still not possible to state what measures will be taken, the letter should set out the steps to be taken to decide what the measures will be (e.g. a proposed consultation) with an indicative timetable for such steps.

17. The Government should keep the Committee updated about any changes or relevant developments in its plans.

18. In the case of judgments of the European Court of Human Rights, the Government should provide the Committee with a copy of its Action Plan provided to the Committee of Ministers at the same time as it is submitted to the Committee of Ministers. The Government should also provide the Committee with copies of all subsequent significant submissions to the Committee of Ministers, at the same time as they are sent to the Committee of Ministers.

19. Final decisions about how to remedy incompatibilities identified in Court judgments should normally be made no later than six months after the date of the final judgment.

20. If the Government is not able to meet the target timetable it should write to the Committee explaining the reasons why it is unable to meet the target. The Committee will scrutinise the reasons given by the Government for not being able to meet the target timetable in a particular case. If the Committee is not satisfied that there is a good reason for the delay in meeting the target timetable, it will report to both Houses that the delay in remedying the incompatibility is unjustifiable.

21. The Committee will continue to monitor progress towards the implementation of judgments on which it has previously reported.

WHEN SHOULD A REMEDIAL ORDER BE USED?

22. The relevant Minister may proceed by way of Remedial Order only if he or she considers that there are "compelling reasons" for doing so.[194] When deciding whether there are compelling reasons for proceeding by way of Remedial Order, the Minister should take into account the impact of the incompatibility on particular individuals and the need to remedy incompatibilities with Convention rights as speedily as possible. The Committee has urged the Government to make greater use of Remedial Orders in appropriate cases in order to remedy incompatibilities more swiftly.

WHEN SHOULD THE URGENT PROCEDURE BE USED?

23. If the Minister decides to proceed by way of Remedial Order, he or she may proceed by the urgent or the non-urgent procedure, taking into account:

- The significance of the rights which are, or might be, affected by the incompatibility;
- The seriousness of the consequences of identifiable individuals or groups from allowing the continuance of an incompatibility with any right;
- The number of people affected;
- The adequacy of compensation arrangements as a way of mitigating the effects of the incompatibility; and
- Alternative ways of mitigating the effect of the incompatibility pending amendment to primary legislation.

24. The decisive factor in deciding whether to adopt the urgent or non-urgent procedure for a Remedial Order should be the current and foreseeable impact of the incompatibility it remedies on anyone who might be affected by it.[195]

WHAT GENERAL INFORMATION ABOUT SYSTEMS FOR IMPLEMENTATION DOES THE COMMITTEE EXPECT?

25. In addition to the information sought above in relation to the general measures necessary to remedy incompatibilities with the Convention, the Committee also expects to be provided with more general information about how the Government's systems for responding fully and swiftly to court judgments concerning human rights are working in practice.

26. Two months before the Minister with responsibility for human rights gives oral evidence to the Committee, it will ask the Government for a memorandum covering:

i) all judgments in leading cases against the UK, or declarations of incompatibility, since the last evidence session;

ii) a summary of the measures taken to implement such judgments, and any other outstanding judgments;

iii) the UK's record on implementation according to the latest available statistics from the Council of Europe;

iv) the progress made towards the implementation of Committee of Ministers' recommendations on national implementation; and

v) the implications of Strasbourg judgments against other States for the UK's legal system.

FULL IMPLEMENTATION

27. When deciding what remedial action is required the Committee expects the Government to demonstrate a commitment to full implementation rather than minimal compliance with court judgments. The Committee therefore expects the remedial action proposed by the Government not only to prevent a repeat of identical violations in the future but also to prevent future violations which are predictable as a result of the judgment in question.[196]

28. The Committee considers that the powers to make remedial orders in the Human Rights Act 1998[197] are wide enough to permit the use of Remedial Orders for this purpose.[198]

WHEN DOES THE COMMITTEE'S SCRUTINY OF THE GOVERNMENT'S RESPONSE TO COURT JUDGMENTS STOP?

29. The Committee's formal monitoring of the Government's response to judgments of the European Court of Human Rights will stop when the Committee of Ministers has made a decision to close its supervision of the case.

30. The Committee's formal monitoring of the Government's response to a declaration of incompatibility will stop when the Committee is satisfied that the incompatibility which is the subject of the declaration has been removed.

31. Where the remedying of the incompatibility requires legislation, the Committee will not regard the incompatibility as having been remedied until the legislation is in force.[199]

CORRESPONDENCE

32. The Committee may write to the Ministry of Justice or the relevant department shortly after the judgment, and before receiving the letter referred to above, if it considers that the need for remedial action is urgent in view of the impact on those affected, or if there are additional specific questions it wishes to ask arising out of the judgment. The Ministry of Justice will be copied in to any correspondence with the Department

FURTHER INFORMATION

33. The Committee may seek further information from the department at any point during its scrutiny of the Government's response. Information may be sought by informal contact at official level. However, anything which may be contentious will be dealt with in a letter from the Chair to the Minister which will be published with the Committee's report.

INVOLVEMENT OF CIVIL SOCIETY

34. The Committee actively seeks the involvement of civil society in its scrutiny of the Government's response to court judgments concerning human rights. It publishes all correspondence with the Government on its website shortly after it has been sent or received. It may from time to time publish a press notice identifying the issues which it is scrutinising and inviting submissions in relation to those issues.[200]

CO-ORDINATION WITH COUNCIL OF EUROPE BODIES

35. The Committee intends to achieve closer co-ordination of its work monitoring the implementation of Strasbourg judgments with the work of Council of Europe bodies on the same subject. The Committee's staff are in close contact with officials at the Department for the Execution of Judgments at the Secretariat of the Committee of Ministers and with officials in the secretariat to the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe.

WHEN WILL THE COMMITTEE REPORT?

36. The Committee aims to report annually.

THE COMMITTEE'S REPORT

37. The Committee will consider both the adequacy and expeditiousness of the Government's response to Court judgments since its last report on the subject and will report thereon to Parliament. The Committee may comment on the Government's justification for any delay in implementation and may itself recommend general measures to remedy the incompatibility if it is not satisfied that the Government's response is adequate.[201] The Committee's report will cover progress made in responding to judgments which are outstanding.

38. The Committee's report will also consider the adequacy of the Government's systems and procedures for responding to Court judgments on human rights and may make recommendations for improving those arrangements, in particular with a view to enhancing Parliament's role.

39. Correspondence with the Department concerned or the Ministry of Justice will normally be published with the Committee's Report.

GOVERNMENT RESPONSE

40. The Committee expects a response to its Report by the Government, in accordance with the normal convention for replying to select committee reports.[202]

ANNUAL DEBATE IN PARLIAMENT

41. The Committee will seek to ensure that there is an annual parliamentary debate on its Report on the Government's Response to Human Rights Judgments and the Government's Response to the Committee's report.

AMENDMENTS TO BILLS TO GIVE EFFECT TO THE COMMITTEE'S RECOMMENDATIONS

42. Where appropriate the Committee may, in its legislative scrutiny work, propose amendments to Bills to give effect to its recommendations in its work on human rights judgments, for example by amending the law to remove an incompatibility.[203]

FOLLOW UP

43. The Committee may follow up its work on implementation of judgments by inquiring into whether the measures adopted to remedy the incompatibility have in practice prevented more violations from arising.

REVIEW

44. The Committee will keep this guidance under review in light of its experience of monitoring the Government's responses to court judgments in practice.

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190 The Government Response (2009), p. 6. Back

191 See e.g. Ninth Report of Session 2009-10, Legislative scrutiny: Crime and Security Bill; Personal Care at Home Bill; Children, Schools and Families Bill, HL 67/HC 402, paras 1.82 - 1.97, recommending amendments to the stop and search provisions in the Crime and Security Bill to give effect to the Chamber judgment in Gillan and Quinton v UK where, in the Committee's view, the prospects of the Government succeeding before the Grand Chamber were remote. Back

192 Article 44(1) ECHR. Back

193 Article 44(2) ECHR. Back

194 Section 10(2) and (3)(b) Human Rights Act 1998. Back

195 Seventh Report of Session 2001-02, Making of Remedial Orders, HL Paper 58/ HC 473 Back

196 See e.g. Sixteenth Report of Session 2005-06, Proposal for a Draft Marriage Act (1949) Remedial Order 2006, HL 154/HC 1022 paras 8-9. Back

197 Section 10(1)(b) and Schedule 2 HRA 1998. Back

198 Twenty Ninth Report of Session 2005-06, The Draft Marriage Act 1949 (Remedial) Order, paras 6 - 10. Back

199 See, for example, the concern expressed above, paras 115-118, about the failure to bring into force the amendment to the Mobile Homes Act which is necessary to remedy the incompatibility identified by the European Court of Human Rights in Connors v UK. Back

200 See e.g. JCHR Press Notice No. 58 of Session 2008-09, Call for Evidence: Implementation of Strasbourg Judgments and Declarations of incompatibility (30 July 2009) http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/declarations_of_incompatibility.cfm Back

201 See for example, the Committee's report on the implementation of the decision in S & Marper v UK, considered above in paras 38 - 55. Back

202 The Committee was very critical of the Government for taking more than a year and a half to respond to its recommendations about the Government's systems for implementing judgments in its 2006-07 monitoring report: see e.g. Third Monitoring Report at paras 8-9. The Committee's Second Report was published in June 2007 and the Government's Response to the "systemic issues" part of the report was published in January 2009. Back

203 See e.g. Scrutiny reports on Employment Bill (Seventeenth Report of Session 2007–08, Legislative Scrutiny, HL 95/HC 501paras 1.1-1.31) (amendment proposed to give effect to Committee's recommendation in relation to ASLEF v UK); Housing and Regeneration Bill (Seventeenth Report of Session 2007-08, Legislative Scrutiny, HL 95/HC 501, paras 2.29-2.37) (earlier amendments proposed to give effect to Committee's recommendation in relation to Connors v UK and new amendments to give effect to recommendation in relation to declaration of incompatibility in Morris v Westminster City Council). Back

Parliament of Australia, Human Rights (Parliamentary Scrutiny) Act 2011, No. 186 (December 7, 2011)

Human Rights (Parliamentary Scrutiny) Act 2011

No. 186, 2011

An Act to establish a Parliamentary Joint Committee on Human Rights, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

ComLaw Authoritative Act C2011A00186

Contents

Human Rights (Parliamentary Scrutiny) Act 2011

No. 186, 2011

An Act to establish a Parliamentary Joint Committee on Human Rights, and for related purposes

[*Assented to 7 December 2011*]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Human Rights (Parliamentary Scrutiny) Act 2011*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	7 December 2011
2. Parts 2, 3 and 4	The later of: (a) 1 January 2011; and (b) the 28th day after this Act receives the Royal Assent.	4 January 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Definitions

(1) In this Act:

human rights means the rights and freedoms recognised or declared by the following international instruments:

(a) the International Convention on the Elimination of all Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40);

(b) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5);

(c) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);

(d) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9);

(e) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984 ([1989] ATS 21);

(f) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4);

(g) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12).

Note: In 2011, the text of an international agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

member means a member of the Committee.

rule-maker has the same meaning as in the *Legislative Instruments Act 2003*.

the Committee means the Parliamentary Joint Committee on Human Rights for the time being constituted under this Act.

(2) In the definition of *human rights* in subsection (1), the reference to the rights and freedoms recognised or declared by an international instrument is to be read as a reference to the rights and freedoms recognised or declared by the instrument as it applies to Australia.

Part 2—Parliamentary Joint Committee on Human Rights

4 Parliamentary Joint Committee on Human Rights

As soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on Human Rights, is to be appointed according to the practice of the Parliament.

5 Membership of the Committee

(1) The Committee is to consist of 10 members:
  (a) 5 members of the Senate appointed by the Senate; and
  (b) 5 members of the House of Representatives appointed by that House.

(2) A member of the Parliament is not eligible for appointment as a member of the Committee if he or she is:
  (a) a Minister; or
  (b) the President of the Senate; or
  (c) the Speaker of the House of Representatives; or
  (d) the Deputy-President and Chair of Committees of the Senate; or
  (e) the Chair of Committees of the House of Representatives.

(3) A member ceases to hold office:
  (a) when the House of Representatives expires by effluxion of time or is dissolved; or
  (b) if he or she becomes the holder of an office specified in any of the paragraphs of subsection (2); or
  (c) if he or she ceases to be a member of the House of the Parliament by which he or she was appointed; or

(d) if he or she resigns his or her office as provided by subsection (4) or (5).

(4) A member appointed by the Senate may resign his or her office by writing signed by him or her and delivered to the President of the Senate.

(5) A member appointed by the House of Representatives may resign his or her office by writing signed by him or her and delivered to the Speaker of that House.

(6) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the Committee appointed by that House.

6 Powers and proceedings of the Committee

All matters relating to the powers and proceedings of the Committee are to be determined by resolution of both Houses of the Parliament.

7 Functions of the Committee

The Committee has the following functions:

(a) to examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;

(b) to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue;

(c) to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.

Part 3—Statements of compatibility

8 Statements of compatibility in relation to Bills

(1) A member of Parliament who proposes to introduce a Bill for an Act into a House of the Parliament must cause a statement of compatibility to be prepared in respect of that Bill.

(2) A member of Parliament who introduces a Bill for an Act into a House of the Parliament, or another member acting on his or her behalf, must cause the statement of compatibility prepared under subsection (1) to be presented to the House.

(3) A statement of compatibility must include an assessment of whether the Bill is compatible with human rights.

(4) A statement of compatibility prepared under subsection (1) is not binding on any court or tribunal.

(5) A failure to comply with this section in relation to a Bill that becomes an Act does not affect the validity, operation or enforcement of the Act or any other provision of a law of the Commonwealth.

9 Statements of compatibility in relation to certain legislative instruments

(1) The rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislative Instruments Act 2003* applies must cause a statement of compatibility to be prepared in respect of that legislative instrument.

Note: The statement of compatibility must be included in the explanatory statement relating to the legislative instrument (see the definition of *explanatory statement* in section 4 of the *Legislative Instruments Act 2003*).

(2) A statement of compatibility must include an assessment of whether the legislative instrument is compatible with human rights.

(3) A statement of compatibility prepared under subsection (1) is not binding on any court or tribunal.

(4) A failure to comply with this section in relation to a legislative instrument does not affect the validity, operation or enforcement of the instrument or any other provision of a law of the Commonwealth.

Part 4—Regulations

10 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted to be prescribed by this Act; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[*Minister's second reading speech made in—*
House of Representatives on 30 September 2010
Senate on 24 November 2010]

Appendix IV
National Human Rights Institutions

- GA Resolution 48/134 (December 20, 1993)—*Principles Relating to the Status of National Institutions* (The Paris Principles)

Principles relating to the Status of National Institutions (The Paris Principles)

Adopted by General Assembly resolution 48/134 of 20 December 1993

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society)
involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Open Society Justice Initiative

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. We foster accountability for international crimes, combat racial discrimination and statelessness, support criminal justice reform, address abuses related to national security and counterterrorism, expand freedom of information and expression, and stem corruption linked to the exploitation of natural resources. Our staff are based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.

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The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens. Working with local communities in more than 100 countries, the Open Society Foundations support justice and human rights, freedom of expression, and access to public health and education.

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Too often, the decisions and recommendations of international legal bodies charged with protecting human rights are ignored by states unable or unwilling to implement them. When the United Nations Committee on the Elimination of Discrimination Against Women ruled against Hungary in the case of *A.S. v. Hungary*, it took more than three years to ensure that the government implemented the committee's decision. The struggle of Ms. A.S. to achieve justice—through a maze of domestic courts, executive ministries, and the Hungarian legislature—highlights the challenges involved in ensuring that states live up to their legal obligations.

From Rights to Remedies explores these challenges by examining how international human rights decisions and recommendations are implemented at the national level. It analyzes the strategies and structures—within the executive branch, legislatures, and domestic courts—that can either promote or thwart implementation. It also looks at the special role that national human rights institutions have to play in the execution process.

By combining analysis with recommendations, model laws, and case studies that span the European, Inter-American, and African systems, as well as the UN treaty bodies, *From Rights to Remedies* offers both a political and legal roadmap to more effective domestic implementation.

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