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Strengthening reparation measures in the African human rights system: Lessons from the Inter-American Court of Human Rights on state acknowledgment of responsibility and public apology to victims

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Summary: *This article examines the importance of the state's acknowledgment of responsibility and public apology as a measure of just satisfaction for victims of human rights violations. From a comparative perspective, the article examines the use of this satisfaction measure in the Inter-American and African human rights systems and*

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the arguments in favour of its adoption by the African Court on Human and Peoples' Rights. Drawing on the jurisprudence of the Inter-American Court of Human Rights, the study assesses how the focal reparations have been framed and identifies factors that contribute to higher levels of implementation and compliance with the overall judgments. The article then considers the feasibility of introducing the reparations to the African Court's list of remedies. The study contributes to ongoing debates on reparations by highlighting how the scope and nature of remedies influence state compliance with decisions of supranational human rights mechanisms.

Key words: *acknowledgment; African human rights system; apology; Inter-American Court of Human Rights; reparation measures; responsibility*

1 Introduction

Under international law, states are bound by their treaty obligations.[1] More specifically, human rights treaties create obligations on states to respect, to protect and to fulfil human rights.[2] As part of their positive obligation to protect human rights, states have the responsibility to ensure that rights holders have access to an effective remedy if their rights are violated.[3] The right to an effective remedy implies that victims of human rights violations have proper access to justice, adequate, effective and prompt reparations for harm suffered, and access to relevant information concerning the violation and reparations mechanisms.[4]

1 United Nations Vienna Convention on the Law of Treaties Treaty Series vol 1155, May 1969 331.Article 12; II Lukashuk 'The principle *pacta sunt servanda* and the nature of obligations under international law' (1989) 83 *American Journal of International Law* 513-518.

2 W Kalin & J Kunzli *The law of international human rights protection* (2009) 96-97.

3 See art 8 of the Universal Declaration of Human Rights; art 2 of the International Covenant on Civil and Political Rights; art 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; art 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and art 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV); art 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977; arts 68 and 75 of the Rome Statute of the International Criminal Court; art 7 of the African Charter on Human and Peoples' Rights; art 25 of the American Convention on Human Rights and UN GA Res. 40/34 (adopted 29 November 1985), Annex, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power'. See also I/A Court HR, *Case of Velásquez Rodríguez v Honduras* Merits, Judgment of 29 July 1988 Series C No 4 para 134.

4 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res. 60/147, UN Doc. A/RES/60/147 (2005).

To supplement domestic redress mechanisms for human rights violations, states have voluntarily granted jurisdiction – through treaties and other legal instruments – to regional and international judicial and quasi-judicial mechanisms to consider human rights complaints. These redress mechanisms in the international and regional human rights systems play a crucial role in ensuring that states uphold their human rights obligations, especially where domestic mechanisms fail or cannot address the alleged violations to the satisfaction of the rights holders.[5] By establishing these mechanisms and accepting their jurisdiction, states indicate their willingness to abide by the decisions or recommendations of these mechanisms.

The legal instruments establishing these international and regional human rights mechanisms are empowered to order or recommend reparations when a finding is made that the state has violated a victim's or survivor's rights. In general, reparations may be in the form of restitution, rehabilitation, compensation, satisfaction and/or guarantees of non-repetition.[6] Restitution measures seek to restore the victim to the situation before the violation took place,[7] while rehabilitation measures aim to provide support for the victim's full recovery, and could consist, for example, in medical care or legal and social services, among others.[8] Compensation refers to financial payments made to victims for any economically assessable damage resulting from the human rights violation,[9] including physical or mental harm, moral damage, medical expenses, loss of earnings and loss of educational opportunities.[10] Satisfaction measures[11] seek to address the moral and reputational damage suffered by the victim, while guarantees for non-repetition[12] aim to prevent the continuation or repetition of the violation.

This wide range of reparations is essential for the effectiveness of the accountability framework of human rights treaties. Reparations

5 LJ Laplante 'Bringing effective remedies home: The Inter-American human rights system, reparations, and the duty of prevention' (2004) 22 *Netherlands Quarterly of Human Rights* 352.
6 Basic Principles and Guidelines (n 4).
7 Basic Principles and Guidelines (n 4) para 19.
8 Basic Principles and Guidelines (n 4) para 21.
9 Basic Principles and Guidelines (n 4) para 20.
10 As above. See also Committee Against Torture General Comment 3 (2012) on the implementation of art 14 by state parties, CAT/C/GC/3 (19 November 2012) para 10.
11 Basic Principles and Guidelines (n 4) para 22. Satisfaction includes the right to the truth under the African Commission General Comment 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (art 5) (2017) para 1.
12 Basic Principles and Guidelines (n 4) para 23.

operate to sustain the interplay between the positive obligation of states as duty bearers to respect and protect human rights and the negative obligation not to interfere with the full enjoyment of the rights. States have the responsibility to take measures to prevent violations proactively and, in the event that violations materialise, to promptly investigate these and hold the perpetrators accountable. In addition, state responsibility extends to providing effective remedies after the responsibility for the violations is established.

In this context, reparations consisting of satisfaction measures are particularly important. They serve to acknowledge the violation, help repair the victim's dignity and reputation, and contribute to the non-repetition of similar violations. Satisfaction measures consider the multifaceted impact of human rights violations on the primary victim, family members and the extended community of the victim(s) or survivors. Moreover, in furtherance of states' positive obligations to protect and fulfil human rights, measures of satisfaction provide states with an opportunity to address a wider audience that may be facing similar violations but may not have been successful to obtain redress through the domestic or international justice mechanism.

In many ways, reparations begin with a measure of satisfaction as a judgment or opinion in favour of victims of human rights violations is considered in itself as a measure of satisfaction.[13] However, the Inter-American Court of Human Rights has long determined that a court decision alone is insufficient to redress human rights violations.[14]

13 See I/A Court HR *Case of Myrna Mack Chang v Guatemala* Merits, Reparations and Costs, Judgment of 25 November 2003. Series C 101 para 260; *Case of the 19 Merchants v Colombia* Merits, Reparations and Costs, Judgment of 5 July 2004 Series C 109 para 247; I/A Court HR *Case of the Gómez Paquiyauri Brothers v Peru* Merits, Reparations and Costs, Judgment of 8 July 2004 Series C 110 para 215. The European Court has also stated in a number of cases that the finding of a violation constitutes just satisfaction, especially when deciding not to grant monetary awards. See, eg, ECHR *Case Of Neshkov & Others v Bulgaria* Applications 62531/19 and 15 others, Judgment of 23 October 2025, or *MI v Switzerland* Application 56390/21, Judgment of 12 November 2024. The African Court has also agreed that judgments are themselves measures of satisfaction. See, eg, *Mtikila v Tanzania* Application 11/2011, African Court on Human and Peoples' Rights, Ruling on Reparations, para 27 13 June 2014 and *Zongo v Burkina Faso* Application 13/2011, African Court on Human and Peoples' Rights, Judgment on Reparations para 20 5 June 2015.

14 See I/A Court HR *Case of Myrna Mack Chang v Guatemala* Merits, Reparations and Costs, Judgment of 25 November 2003 Series C 101 para 260; I/A Court HR *Case of Maritza Urrutia v Guatemala* Merits, Reparations and Costs, Judgment of 27 November 2003 Series C 103 para 166; I/A Court HR *Case of Bulacio v Argentina* Merits, Reparations and Costs, Judgment of 18 September 2003 Series C 100 para 96; I/A Court HR *Case of Molina Theissen v Guatemala* Reparations and Costs, Judgment of 3 July 2004 Series C 108 para 66; I/A Court HR *Case of the 19 Merchants v Colombia* Merits, Reparations and Costs, Judgment of 5 July 2004 Series C 109 para 247; I/A Court HR *Case of the Gómez Paquiyauri Brothers v Peru* Merits, Reparations and Costs, Judgment of 8 July 2004 Series C 110 para 215.

In addition, while other forms of reparations advance the remedial steps following a favourable judgment, the courts and other human rights mechanisms have developed other measures of satisfaction that unpack the decisions for the benefit of the victim and even society more broadly.

Public acknowledgment of state responsibility and apology (focal reparations or focal remedies) for human rights violations is a measure of satisfaction ordered or recommended by human rights mechanisms. Typically, it goes alongside other satisfaction measures, such as the publication of the judgment or decision, and the establishment of memorials or monuments. Commentators agree that the acknowledgment of responsibility and public apologies are measures of satisfaction in the context of reparations for victims of human rights and humanitarian law violations.[15] In *Institute for Human Rights and Development in Africa v Democratic Republic of Congo* the African Commission on Human and Peoples' Rights (African Commission) found that this remedy 'aids in the psychological healing of victims and their families … promote social justice and … foster changed behaviors or conduct'.[16] It also found that it has the additional effect of helping to restore the victim's reputation.[17]

While there is a history of ordering satisfaction measures in most human rights systems, the specific measure of public acknowledgment of responsibility and an apology to victims is a more prevalent feature of the Inter-American human rights system, particularly that of the Inter-American Court of Human Rights (Inter-American Court). At the African Court on Human and Peoples' Rights (African Court) the focal reparations have yet to be ordered – even when requested, the African Court[18] has declined to accede to the

15 D Shelton 'Remedies and reparation' in P Gilabert & M Walker (eds) *Global justice, state duties: The extraterritorial scope of economic, social, and cultural rights in international law* (2012) 378: 'The obligations of cessation and reparation do not depend upon a complaint being brought by an injured State. In all instances, the duty to perform the obligation breached remains; the mere fact of a violation does not terminate a treaty nor discontinue any obligation imposed by general international law.'

16 *Institute for Human Rights and Development in Africa v Democratic Republic of Congo* Communication 393/10 para 151, African Commission on Human and Peoples' Rights, https://caselaw.ihrda.org/entity/u51cz7v4z2m?page=1&file=161373087489 68a4a351z2us.pdf (accessed 30 November 2025).

17 As above.

18 African Court on Human and Peoples' Rights *African Commission on Human and Peoples' Rights v Republic of Kenya* (Reparations) Application 6/2012, African Court on Human and Peoples' Rights, Judgment, 23 June 2022 para 129, https://www.african-court.org/cpmt/storage/app/uploads/public/62b/aba/fd8/62babafd8d467689318212.pdf (accessed 30 November 2025); *Ligue Ivoirienne des Droits de l'Homme (LIDHO) & Others v Republic of Côte d'Ivoire* (Merits & Reparations) Application 41/2016, African Court on Human and Peoples' Rights, Judgment, 5 September 2023 para 265 xii,

request of the rights holders. However, the African Commission has ordered the focal reparations in 10 cases.[19]

In the Americas and Africa, there is a crisis of non-implementation of decisions and recommendations of human rights mechanisms.[20] The problem is not unique to the regional human rights systems. Even the African Union (AU) has complained about the poor implementation of decisions by member states.[21] Scholars and commentators have identified the lack of political will and the absence of enforcement mechanisms as the reasons for the low implementation of decisions in both regions.[22]

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https://www.african-court.org/cpmt/storage/app/uploads/public/64f/ebd/f77/64febdf77f811512395983.pdf (accessed 30 November 2025).

19 *Mohammed Abderrahim El Sharkawi (represented by EIPR & OSJI) v Republic of Egypt* Communication 396/11 African Commission on Human and Peoples' Rights, https://achpr.au.int/en/decisions-communications/mohammed-abderrahim-el-sharkawi-represented-eipr-osji-republic-egypt-39611 (accessed 30 November 2025); *Ibrahim Almaz Deng & 6 Others (IHRDA) v Republic of the Sudan* Communication 470/14, African Commission on Human and Peoples' Rights, https://achpr.au.int/en/decisions-communications/ibrahim-almaz-deng-sudan-institute-human-rights-development (accessed 30 November 2025); *Minority Rights Group International & Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park) v Democratic Republic of Congo* Communication 588/15, African Commission on Human and Peoples' Rights, https://achpr.au.int/en/decisions-communications/58815-minority-rights-group-v-v-democratic-republic-congo-drc (accessed 30 November 2025); *IHRDA & Others v Republic of Burundi* Communication 636/16, African Commission on Human and Peoples' Rights, https://achpr.au.int/index.php/en/decisions-communications/communication-63616-ihrda-burundi (accessed 30 November 2025); *Family of the late Jean-Claude Ndimumahoro v Republic of Burundi* Communication 474/14, African Commission on Human and Peoples' Rights, https://achpr.au.int/fr/decisions-communications/communication-47414 (accessed 30 November 2025); *Acleo Kalinga (represented by Rhys Davies & Ben Keith International Human Rights Advisors) v Republic of Uganda* Communication 376/09, African Commission on Human and Peoples' Rights, https://achpr.au.int/en/decisions-communications/communication-37609-acleo-kalinga-v-uganda (accessed 30 November 2025); *X (represented by Lawyers for Justice in Libya & REDRESS) v State of Libya* Communication 582/15, African Commission on Human and Peoples' Rights, https://achpr.au.int/en/decisions-communications/communication-58215 (accessed 30 November 2025); *Meriam Yahia Ibrahim & 3 Others v Republic of the Sudan* Communication 471/14, African Commission on Human and Peoples' Rights, https://achpr.au.int/en/decisions-communications/communication-47114 (accessed 30 November 2025); *Jose Alidor Kabambi Beya Ushiye & Others v Democratic Republic of Congo* Communication 408/11 African Commission on Human and Peoples' Rights (text obtained on 30 November 2025).

20 R Murray and others 'Monitoring implementation of the decisions and judgments of the African Commission and Court on Human and Peoples' Rights' (2017) 1 *African Human Rights Yearbook* 150-166; African Court on Human and Peoples' Rights *Comparative study on the law and practice of reparations for human rights violations* (2020), https://www.african-court.org/wpafc/wp-content/uploads/2020/11/Comparative-Study-on-the-Law-and-Practice-of-Reparations-for-Human-Rights-Violations.pdf (accessed 30 November 2025).

21 African Union Commission Chairperson's address on 17 February 2024, https://au.int/en/pressreleases/20240217/speech-he-moussa-faki-mahamat-chairperson-african-union-commission-thirty (accessed 30 November 2025).

22 Cf VO Ayeni 'Implementation of the decisions and judgments of African regional human rights tribunals: Reflections on the barriers to state compliance and the lessons learnt' (2022) *African Human Rights Yearbook* 130-147; IIL Ruiz *Entre el acatamiento y la resistencia: desafíos en la implementación de sentencias del*

Despite the challenges in implementing the Inter-American Court's decisions, the reparation of public acknowledgment of responsibility and apology to the victims has a relatively high implementation rate compared to other forms of reparation.[23] From a comparative perspective, this article assesses the use of the focal reparations in the Inter-American and African human rights systems highlighting the trends and approaches of the mechanisms in ordering the remedies. Further, the study assesses the feasibility of including the focal reparations to the remedies ordered by the African Court drawing from the jurisprudence of the African Commission and the Inter-American Court. By analysing the impact of public acknowledgment of responsibility in specific cases in the Americas, this article intends to identify factors that facilitate its high implementation. The article seeks to contribute to the understanding of the impact of the scope and nature of reparations on compliance with decisions of supranational human rights mechanisms.

2 Public acknowledgment of responsibility and apology to the victims as a measure of satisfaction

A central element of reparations is the public acknowledgment of responsibility and the offering of apologies to victims, with a particular emphasis on recognising the facts and accepting responsibility for human rights violations. The Articles of State Responsibility of the International Law Commission (ILC) replaces the word 'public' with 'formal' in its rendering of the focal reparations and expands the scope to include 'expressions of regret'. The United Nations (UN) Basic Principles and Guidelines on the Rights to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law[24] (UN Basic Principles) describes public apology as including 'acknowledgment of the facts and acceptance of responsibility'.[25] The African Commission's General Comment 4 on the Right to Redress for Victims of Torture or other Cruel, Inhuman, or Degrading Punishment or Treatment presents public apologies as a measure

Sistema Interamericano de Derechos Humanos Revista Justicias (2025), https://revistajusticias.uotavalo.edu.ec/index.php/revista/article/view/108/204 (accessed 30 November 2025); L Burgorgue-Larsen, Á Paúl & N Udombana *Regional human rights mechanisms and courts under pressure. Proceedings of the ASIL Annual Meeting* (2025) 118, 325-333.

23 DA Gonzalez-Salzberg 'Do states comply with the compulsory judgments of the Inter-American Court of Human Rights? An empirical study of the compliance with 330 measures of reparation' (2014) 13 *Revista do Instituto Brasileiro de Direitos Humanos* 1-27.

24 Basic Principles and Guidelines (n 4).

25 Basic Principles and Guidelines (n 4) para 22(e).

that includes the 'acknowledgment of the facts and acceptance of responsibility'.[26]

The UN Special Rapporteur on Truth, Justice and Reparation, Fabian Salvioli, proposed what he described as a 'more fulsome definition of public apology for past human rights violations'[27] after 'having reviewed a wide variety of apologies as well as extensive academic and policy resources'.[28] His definition identified at least four elements of a public apology. These include an acknowledgment of a wrongful act or omission by the individual apologising; a truthful admission of individual, organisational or collective responsibility; a public statement of remorse or regret related to the wrongful act or omission; and a guarantee of the non-recurrence of the wrongful act. Apologies must have a forward-facing and backward-looking component to present a clear record of the violations. Next, apologies should include a public statement of remorse or regret related to the wrongful act or omission. They must be delivered with due respect, dignity and sensitivity to the victims,[29] implying that the apologies should be made publicly, not just to the victims or survivors.[30] State representatives[31] who make the apology must prepare and deliver it after consultation and consideration of the interests and impact of the victims and survivors. In fact, it is good practice to ensure survivors' participation in determining the words used and the setting in which the state delivers the apology. Finally, a public apology should guarantee the non-recurrence of the wrongful act.

3 Public acknowledgment of responsibility and apologies in international and regional litigation

The understanding of the focal reparations has also been drawn from the decisions of international and regional judicial mechanisms in

26 African Commission General Comment 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (art 5) para 44, https://africanlii.org/akn/aa-au/doc/general-comment/achpr/2017-03/general-comment-no-4-the-right-to-redress-for-victims-of-torture-and-other-cruel-inhuman-or-degrading-punishment-or-treatment/eng@2017-03-04 (accessed 30 November 2025).

27 Office of the High Commissioner for Human Rights Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence. Apologies for gross human-rights violations and serious violations of international humanitarian law (UNGA Doc. A/74/147). United Nations para 3.

28 As above.

29 As above.

30 As above.

31 Preferably high-ranking government officials.

both human rights and international criminal law cases. There are many examples of apologies made during the trials of individuals charged with serious violations of international humanitarian law before the International Criminal Court (ICC) and the Tribunals for the former Yugoslavia[32] and Rwanda.[33] The apology of the President of Sierra Leone to women who suffered sexual assault during the decade-long armed conflict in the country is a good example of a transitional apology.[34] Most of these transitional apologies were made to mitigate punishment after having been found guilty of the crimes. In other instances, including before the Extraordinary Chambers in the courts of Cambodia and the ICC, perpetrators made genuine apologies during trials, and the Court ordered that the apology be compiled and published[35] and translated.[36]

3.1 Focal reparations in the Inter-American Court's jurisprudence

The Inter-American Court has the most prolific jurisprudence on the focal reparations among all regional human rights mechanisms.[37] However, the Inter-American Court, which started functioning in 1979, did not always order the focal reparations to victims as remedies for human rights violations. Following its first decision on the landmark case of *Velásquez Rodriguez v Honduras*, the Court had generally limited its reparations to the payment of compensation for pecuniary and non-pecuniary damages; the investigations of the facts that generated the violations in the specific case, as well as the identification and punishment of those responsible; legislative reforms and sometimes, depending on the specifics of the case, an educational scholarship or psychosocial support, or other similar measures of rehabilitation.

32 International Criminal Tribunal for the former Yugoslavia *Darko Mrđa*, https://www.icty.org/en/content/darko-mr%C4%91a (accessed 30 November 2025).
33 Justice Info: ICTR/RWAMAKUBA – APOLOGY PROVIDED BUT FINANCIAL COMPENSATION DENIED FOR NOW, https://www.justiceinfo.net/en/18506-en-en-080207-ictrrwamakuba-apology-provided-but-financial-compensation-denied-for-now92729272.html (accessed 30 November 2025).
34 International Centre for Transitional Justice *Apologies for past abuses: A global perspective* (2015), https://www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf (accessed 30 November 2025).
35 *Co-Prosecutors v Kaing Guek Eav alias Duch* Appeal Judgment (Supreme Court Chamber, ECCC, 3 February 2012) F28.1 EN. Compilation of statements of apology made by Kaing Guek Eav alias Duch during the proceedings, https://www.cambodiatribunal.org/sites/default/files/documents/F28.1_EN.PDF (Archive page as of 30 November 2025).
36 UNESCO Ahmad Al Mahdi: 'This was the first and last wrongful act I will ever commit' (19 October 2017), https://www.unesco.org/en/articles/ahmad-al-mahdi-was-first-and-last-wrongful-act-i-will-ever-commit (accessed 30 November 2025).
37 Office of the High Commissioner for Human Rights (n 27).

In fact, it was not until 2001, in *Barrios Altos v Peru*, that the Court ordered the state to include in the resolution ordering the publication of the agreement (on reparations) 'a public expression of apology to the victims for the grave damages caused' and ratification of willingness not to allow this type of events to reoccur.[38] The Inter-American Court repeated a similar order in *Cantoral Benavides v Peru*, where the Court ordered the state to 'make a public apology to admit its responsibility in this case and to prevent a recurrence of events such as those that occurred in the present case'.[39]

At the outset, the Court articulated the requirement of acknowledgment of responsibility and/or a public apology in very general terms, allowing the state concerned to comply simply through a written submission. For example, in *Cantoral Benavides*, the Court simply stated that the state had to 'make a public apology acknowledging its responsibility in this case, to prevent a repetition of these events',[40] but without specifying the terms or conditions under which such a declaration would be deemed to satisfy the requirement. This practice changed in *Bámaca Velásquez v Guatemala*, where the Court ordered the state to carry out a public act of recognition of responsibility.[41] Since then, it has ordered this as part of the larger set of remedies for the victims, especially in cases referring to violations of the right to life, personal integrity and personal liberty.[42]

Over the years, the Inter-American Court added more detailed qualifications to the public act of recognition, including the requirement that the public act be done in the presence of the victims' family members and with the participation of the 'highest authorities of the state';[43] that the act be done in the official language but also the native languages of the affected communities;[44] to previously consult the details of the public ceremony with the victims and/or

38 I/A Court HR *Case of Barrios Altos v Peru* Reparations and Costs, Judgment of 30 November 2001 Series C 87 para 44(e).
39 I/A Court HR *Case of Cantoral Benavides v Peru* Reparations and Costs, Judgment of 3 December 2001 Series C 88 para 81.
40 *Cantoral Benavides* (n 39) operative para 7.
41 I/A Court HR *Case of Bámaca Velásquez v Guatemala* Reparations and Costs, Judgment of 22 February 2002 Series C 91, operative para 3.
42 In the *Castañeda Gutman v Mexico* case, the Court clarified that the measure of acknowledgment of responsibility was usually, although not exclusively, ordered to repair violations to the rights to life, personal integrity and liberty. See I/A Court HR *Case of Castañeda Gutman v Mexico* Judgment of 6 August 2008 Series C 184 para 239.
43 I/A Court HR *Case of the 19 Merchants v Colombia* Merits, Reparations and Costs, Judgment of 5 July 2004 Series C 109 para 274.
44 I/A Court HR *Case of the Yakye Axa Indigenous Community v Paraguay* Merits, Reparations and Costs, Judgment of 17 June 2005 Series C 125 para 226.

family members;[45] and provide the means to ensure the participation in the ceremony of the victims and/or family members.[46]

In a particularly detailed order in *Plan de Sanchez Massacre v Guatemala*, a case on the massacre of an indigenous village during the armed conflict in Guatemala, the Court ordered the focal reparations despite a previous expression of regret by state representatives during the public hearing of the case. The decision noted that, for the state action to be 'fully effective as reparation to the victims and serve as a guarantee of non-repetition', the state had to 'organise a public act acknowledging its responsibility for the events that occurred in this case' and that the act should be carried out in the village of Plan de Sánchez, where the massacre occurred, in the presence of high-ranking state authorities and, in particular, in the presence of the members of the Plan de Sánchez community and the other victims in this case.[47] Further, the Court instructed the state to publicly honour the memory of those executed, most of them members of the Mayan indigenous people of the Achí linguistic community, and to do so 'taking into account the traditions and customs of the members of the affected communities'.[48]

So that it also serves as a measure of non-repetition, the Inter-American Court has ordered states to broadly disseminate the public act of recognition of responsibility and apology to the victims. In the landmark case on gender-based violence, *Cottonfield v Mexico*,[49] the Court ordered the state to transmit the public ceremony through radio and television, both at the local and federal levels.[50]

45 I/A Court HR *Case of Kawas Fernández v Honduras* Merits, Reparations and Costs, Judgment of 3 April 2009 Series C 196 para 202.

46 I/A Court HR *Case of the Plan de Sánchez Massacre v Guatemala* Reparations, Judgment of 19 November 2004 Series C 116 para 100.

47 I/A Court HR *Case of the Plan de Sánchez Massacre v Guatemala* Reparations, Judgment of 19 November 2004 Series C 116 paras 100-101. In this sense, see also I/A Court HR *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v Panama* Preliminary Objections, Merits, Reparations and Costs, Judgment of 14 October 2014 Series C 284 para 219.

48 I/A Court HR *Case of the Plan de Sánchez Massacre v Guatemala* Reparations, Judgment of 19 November 2004 Series C 116 paras 100-101. In this sense, see also I/A Court HR *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v Panama* Preliminary Objections, Merits, Reparations and Costs, Judgment of 14 October 2014 Series C 284 para 219.

49 I/A Court HR *Case of González & Others ('Cotton Field') v Mexico* Preliminary Objection, Merits, Reparations and Costs, Judgment of 16 November 2009 Series C 205.

50 *González* (n 49) para 469. See this more recently in *Corte IDH. Caso de los Empleados de la Fábrica de Fuegos de Santo Antônio de Jesus y sus familiares v Brasil* Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 15 de julio de 2020. Serie C 407 para 281.

As can be observed from the case law cited above, the Inter-American Court has not only embraced the importance of state acknowledgment as a form of redress for victims of human rights violations, but it has issued further guidance to ensure that the apology is not treated as a mere box-ticking exercise, thereby avoiding the re-victimisation of those to whom the state owes an apology. On the contrary, the insistence upon prior coordination of the details with the victims or their families and the incorporation of cultural sensitivities demonstrate that the Court clearly recognises both the healing potential of a state's acknowledgment and the risks that arise when it is carried out improperly.

The question then arises as to how this particular measure has fared compared to others, and how helpful it has been in prompting overall compliance with the judgments of the Inter-American Court of Human Rights.

While a thorough and systematic analysis of the compliance with the more than 350 judgments the Court has issued since it started ordering the acknowledgment of responsibility would be the subject of a doctoral thesis, an element is clear: Political will has been and remains a determinant factor. Whether prompted by a change in government and an accompanying desire to demonstrate stronger commitment to international human rights (such recent examples can be found in Colombia,[51] Guatemala[52] and Honduras,[53] among others) or by the particular circumstances of a case, political will has tended to ebb and flow across the region in waves.

An illustrative example of the first scenario – change in government – is the acknowledgment of international responsibility in the case

51 Cf Inter-American Commission on Human Rights Report 272/23, Case 14.808 – Friendly Settlement, Diego Felipe Becerra Lizarazo and Family, Colombia (30 November 2023), https://www.oas.org/en/iachr/decisions/2023/CO%20SA%2014.808%20ENG_FINAL%20WEB.pdf (accessed 30 November 2025). The official press release about the public apology can be found here (in Spanish): Agencia Nacional de Defensa Jurídica del Estado (nd) Histórico. El Estado colombiano pidió perdón a la familia de Diego Felipe Becerra, tras 12 años de lucha, https://www.defensajuridica.gov.co/saladeprensa/noticias/Paginas/310823.aspx (accessed 1 December 2025). Another example is the case of slain journalist Guillermo Cano. As part of a compliance agreement, the state recognised its responsibility in a public act on 9 February 2024. See official press release (in Spanish), https://www.minjusticia.gov.co/Sala-de-prensa/Paginas/Estado-colombiano-reconocio-su-responsabilidad-en-el-asesinato-del-director-de-El-Espectador,-Guillermo-Cano-Isaza.aspx (accessed 30 November 2025).

52 The state of Guatemala acknowledged its responsibility and apologised to the victims in the cases of *Velásquez Paiz & Others* and *Veliz Franco & Others* on 6 March and 26 March 2024, respectively. I/A Court HR, *Case of Véliz Franco & Others v Guatemala* Preliminary Objections, Merits, Reparations and Costs, Judgment of 19 May 2014 Series C 277.

53 I/A Court HR *Case of Vicky Hernández & Others v Honduras* Merits, Reparations and Costs, Judgment of 26 March 2021 Series C 422.

of *Velásquez Paiz & Others v Guatemala*. This case referred to the femicide (gender-based murder) of a 19 year-old law student, Claudina Velásquez Paiz, in 2005 which was adjudicated by the Inter-American Court in 2015. In its judgment, the Court held Guatemala responsible for failing to prevent the violation of the young woman's life and physical integrity, particularly in light of the broader context of violence against women prevailing in the country at the time of her murder. As a result, the tribunal ordered the state to implement a series of measures, including the effective investigation of the facts of the case, payment of compensation to the victim's family, a public act of recognition of responsibility, and a series of structural non-repetition measures.[54] While the state complied with the payment of compensation within a year and established an Amber alert with the victim's name within three years of the judgment, two subsequent administrations refused to comply with an order requiring acknowledgment of responsibility. The representatives heard directly from the state's human rights agency that the President 'refused to take the blame for something that had happened during a previous government'.[55] Both governments had a low reputation in human rights matters. In stark contrast, when a new President of Guatemala was elected in 2023 on an anti-corruption and pro-human rights platform, one of his public commitments was to do right by the victims of human rights violations. Bernardo Arevalo was sworn in as President of Guatemala on 14 January 2024. On 8 March 2024, less than two months later, he personally acknowledged responsibility for the violations committed in the Claudina Velásquez Paiz case and apologised to her family in a public ceremony in Guatemala City.[56] Less than a month later, President Arevalo acknowledged responsibility[57] for the violations arising from the femicide of Maria Isabel Véliz Franco in 2001.[58]

Similarly, in the case of *Vicky Hernandez v Honduras*,[59] the first case decided by the Inter-American Court on violence against transgender women, the newly established government of President Xiomara

54 I/A Court HR *Case of Velásquez Paiz & Others v Guatemala* Preliminary Objections, Merits, Reparations and Costs, Judgment of 19 November 2015 Series C 307.

55 The President in question was Jimmy Morales (in power between 2016 and 2020). His refusal to acknowledge responsibility was communicated to one of the co-authors of this paper in her capacity as co-counsel for the victims.

56 RFK Human Rights, https://rfkhumanrights.org/our-voices/nearly-20-years-after-murder-of-claudina-isabel-velasquez-paiz-guatemalan-government-to-publicly-acknowledge-responsibility-march-8/ (accessed 30 November 2025).

57 *Washington Post*, https://www.washingtonpost.com/dc-md-va/2024/04/01/guatemala-president-apology-murdered-teen/ (accessed 30 November 2025).

58 I/A Court HR *Case of Véliz Franco & Others v Guatemala* Preliminary Objections, Merits, Reparations and Costs, Judgment of 19 May 2014 Series C 277.

59 I/A Court HR *Case of Vicky Hernández & Others v Honduras* Merits, Reparations and Costs, Judgment of 26 March 2021 Series C 422.

Castro acknowledged its international responsibility and issued a public apology to the victim's mother at a ceremony held within a year of the notification of the judgment.[60] The family received the compensation payment ordered by the Court shortly after, and preparations for some of the structural reforms ordered as non-repetition measures started at President Castro's instance following the public ceremony.

3.2 Focal reparations in the African Commission's jurisprudence

Similar to the practice in the Inter-American system, the African Commission has ordered the focal reparations as part of the measures of just satisfaction in a variety of cases. While the sample size of decisions is significantly smaller compared to the Inter-American Court's, the African Commission has shown through its jurisprudence that the focal remedies are essential for redressing violations of human rights.[61] The African Commission's decision in Communication 393/10 issued in 2016 was the first use of the focal remedies. Drawing from academic writings,[62] the African Commission introduced the focal reparations in a case that challenged the violation of the rights of the Kilwa peoples in the respondent state. In this case, the African Commission ordered the focal reparations to redress the collective rights of the Kilwa people, such as the right to property and the people's right to development.

However, the decision equally demanded apologies for the individual rights violated by the respondent state in the case. In its decision in *Institute for Human Rights and Development in Africa & Others v Republic of Burundi*, the African Commission underscored the importance of the focal remedies for not just redressing violations of the negative obligations of states as duty bearers, but also upholding the positive obligations of the state to promote and respect human

60 'Honduras formally acknowledges responsibility for 2009 murder of trans activist Vicky Hernandez' *PR Newswire* 10 May 2022, https://www.prnewswire.com/news-releases/honduras-formally-acknowledges-responsibility-for-2009-murder-of-trans-activist-vicky-hernandez-301543924.html (accessed 30 November 2025).

61 In *IHRDA & Others v Republic of Burundi* Communication 636/16, https://achpr.au.int/index.php/en/decisions-communications/communication-63616-ihrda-burundi (accessed on 30 November 2025), the African Commission directed the state to 'issue a public apology to all victims, including those not mentioned in this communication, but who have also suffered the consequences of these event'.

62 *Institute for Human Rights and Development in Africa v Democratic Republic of Congo* Communication 393/10 para 151, African Commission on Human and Peoples' Rights, https://caselaw.ihrda.org/entity/u51cz7v4z2m?page=1&file=16137308748968a4a351z2us.pdf (accessed 30 November 2025).

rights. It noted that the focal remedies acknowledge 'not only of its civil liability for the actions of its agents, but also of its failure to fulfill its general obligation to protect its citizens'.[63]

The African Commission's jurisprudence supports the appropriateness of ordering the focal reparations in cases of serious violations that gravely damage human dignity and bodily integrity. In 80 per cent of the decisions where the African Commission ordered focal reparations, there was a violation of one or more of the rights to life, dignity, prohibition against torture, personal liberty, and protection from arbitrary arrest and fair trial. For example, in the case of *Family of the late Jean-Claude Ndimumahoro v Burundi*, the African Commission underscored the propriety of ordering the focal remedies to redress the grave violations long-term 'detention, torture, decapitation of the victim, and burial of the headless body in the street'.[64]

Similar to the Inter-American system, the use of the focal remedies by the African Commission evolved from mere recommendation to the respondent states to prescriptive direction on how the remedies should be implemented. In fact, the decision in Communication 393/10 highlighted the African Commission's desire for respondent states to thoughtfully implement the focal reparations, including through the 'choice of means and individuals involved in its implementation'.[65] Subsequent decisions provided guidance on how states may implement the focal remedies. In its decision in Communication 588/15, the African Commission identified specific acts that the respondent state should acknowledge and apologise for – these included 'the abuse by park rangers resulting in loss of life, the deaths resulting from eviction, and the inhumane and degrading living conditions to which the Batwa community has been subjected'.[66] Further, the decision included a six-month timeline

63 *IHRDA & Others v Republic of Burundi* Communication 636/16, African Commission on Human and Peoples' Rights para. 145, https://achpr.au.int/index.php/en/decisions-communications/communication-63616-ihrda-burundi (accessed 30 November 2025).

64 Communication 474/14 African Commission on Human and Peoples' Rights, https://achpr.au.int/fr/decisions-communications/communication-47414 (accessed 30 November 2025).

65 *Institute for Human Rights and Development in Africa v Democratic Republic of Congo* Communication 393/10 para 151, African Commission on Human and Peoples' Rights, https://caselaw.ihrda.org/entity/u51cz7v4z2m?page=1&file=16137308748968a4a351z2us.pdf (accessed 30 November 2025).

66 *Minority Rights Group International & Environnement Ressources Naturelles et Dévelopement (on behalf of the Batwa of Kahuzi-Biega National Park) v Democratic Republic of Congo* Communication 588/15, African Commission on Human and Peoples' Rights, https://achpr.au.int/en/decisions-communications/58815-minority-rights-group-v-v-democratic-republic-congo-drc (accessed 30 November 2025).

within which focal reparation should be implemented and required a public ceremony in the presence of senior officials of the respondent states, in the language that the Batwa people understand and for the ceremony to be widely published.[67]

Furthermore, the African Commission jurisprudence supports the inherent nature of the focal reparations to state accountability for human rights violations. In at least two cases,[68] the Commission ordered the reparations without a prior request from the complainant, which is similar to the practice in the Inter-American system.

4 Feasibility of introducing and implementing public apology and state acknowledgment of responsibility

Academic literature on the African Court has not provided reasons for the omission of the focal reparations from the remedies ordered by the African Court. However, it agrees that the jurisprudence on these remedies is sparse in international and regional judicial mechanisms, except in the case of the Inter-American Court. The practice and experience of the Inter-American Court, as well as the jurisprudence of the African Commission, provide a basis for an assessment of the feasibility of introducing the remedy at the African Court.

4.1 Feasibility analysis through a four-factor framework

We established a four-factor framework to assess the feasibility of introducing the focal reparations to the set of remedies ordered by the African Court. The framework includes normative foundation, procedural and practice receptivity, precedential authority or foundation, and functionality and political context. These factors are not exhaustive but provide a minimum basis for a feasibility assessment.

We conduct the feasibility framework through a comparative approach. By analysing the system and structure within which the Inter-American Court uses the focal reparations, and comparing it

67 *Minority Rights Group International & Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park) v Democratic Republic of Congo* Communication 588/15, African Commission on Human and Peoples' Rights, https://achpr.au.int/en/decisions-communications/58815-minority-rights-group-v-v-democratic-republic-congo-drc (accessed 30 November 2025).

68 The complainants did not request the focal reparations in Communication 588/15 & Communication 636/16.

with the African Court's system and structure, we identify similarities and differences. In essence, we test the feasibility of introducing the remedy into the African Court's reparations by noting correlations. This means that where there are similarities between the Inter-American Court and the African Court on any of the four factors enumerated above, we consider a positive correlation supporting the feasibility of introducing the focal reparations. Conversely, where there are militating factors in the Inter-American Court and similar underpinnings on the African side, we consider it a negative correlation. Where there is no correlation, we assess the factors based on the prevailing practice of the African Court without referencing the Inter-American Court.

Despite the similarities between the Inter-American Court and the African Court, they operate in unique cultural, historical and political contexts. In addition, the context changes in both systems due to socio-political and other factors. Therefore, the benchmark for this analysis may have looked radically different a decade ago and may also change in the next five years. Therefore, while a positive correlation between the two systems across the four factors may suggest the feasibility of introducing the focal remedies, it might not guarantee a similar outcome in terms of implementation.

4.2 Normative foundation

Here, we determine whether a normative basis exists for introducing and implementing the focal reparations. Taking into account the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), the African Charter on Human and Peoples' Rights (African Charter), and the breadth of soft law instruments that unpack the African Charter, the first step aims to determine whether there is scope for the introduction of the remedy. In addition, this step considers whether there are any normative factors militating against introducing and implementing the reparation of acknowledgment of responsibility and public apology.

The Inter-American Court orders reparations for violations of human rights based on its jurisdiction under the American Convention of Human Rights (American Convention). Together with the American Declaration on the Rights and Duties of Man and other human rights instruments adopted by the Organisation of American States (OAS), the American Convention imposes on state parties the obligation to promote and protect human rights. The American Convention provides for the right to remedies for human

rights violations. Specifically, it provides that when the Court finds a violation of the right protected under the Convention, the Court shall 'rule, if appropriate, that the consequence of the measure of situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party'.[69] While the Convention only explicitly mentions compensation as a form of reparation, the Court has incrementally adopted a broader definition of reparations in line with international law and normative developments.[70]

The African Court operates under a similar normative framework. The African Court Protocol empowers the Court to 'make appropriate orders to remedy the violation, including the payment of fair compensation and reparations'.[71] Like the provisions of the American Convention, the African Court Protocol and the African Charter do not explicitly mention the other possible forms of reparation. Moreover, soft law instruments and other authoritative documents that unpack the provisions of the African Charter and treaties binding on African states include public apologies as a measure of satisfaction for human rights violations. For instance, the African Commission's General Comment 4 on article 5 of the African Charter mentions state recognition of its responsibility and public apologies, including the acknowledgment of the facts and acceptance of responsibility as measures of satisfaction.[72] Likewise, General Comment 31 on the nature of the general legal obligations imposed on state parties to the International Covenant on Civil and Political Rights (ICCPR) provides that under the Covenant, reparations include 'the public

69 American Convention on Human Rights, 1969 (OAS), https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf (accessed 30 November 2025).

70 Comments found in the legislative history of the art 63 reparation provision of the American Convention, indicate that the drafters purposefully made the provision expansive in order to enhance the protection of human rights; S Liskofksy 'Report on the Convention on Human Rights adopted by Inter-American Specialised Conference on Human Rights', reprinted in T Burgenthal & RE Norris (eds) *Human rights: The Inter-American system* Booklet 15, Oceana, Dobbs Ferry,1982 and Supp 1993 87 and 88. Similarly, the *travaux préparatoires* of the International Covenant on Civil and Political Rights, which also guards individuals from abuse by the state, recognised that 'proper enforcement' depends on guarantees that individuals possess a legal remedy granted by national authorities that would be enforced by the competent authorities (UN GAOR, 10th session, Annex, Agenda Item 28 15, UN Doc. A/2929 (1955)).

71 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights OAU Doc OAU/LEG/EXP/AFCHPR/PROT (III) (1998) art 27, https://www.african-court.org/wpafc/wp-content/uploads/2020/10/2-PROTOCOL-TO-THE-AFRICAN-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS-ON-THE-ESTABLISHMENT-OF-AN-AFRICAN-COURT-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf (accessed 30 November 2025).

72 African Commission General Comment 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (art 5) (2017) para 44.

apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations'.[73]

The analysis of the normative foundations of both regional human rights systems suggests a positive correlation for the feasibility of introducing the focal remedies on the African side. Given the marked similarities underlying both systems, there are no limiting factors from a normative standpoint. The consideration of international human rights law sources and standards as substantive sources of law in both systems supports the conclusion of a positive correlation.

4.3 Procedural and practice receptivity

The second factor is receptivity to procedure and practice. This second step builds on the first one by considering whether the African Court's procedure and practice support the introduction and implementation of the focal reparations. Moreover, it considers whether procedural constraints may militate against the introduction of these reparations. In particular, this stage compares the procedure for considering cases in the African and Inter-American systems to identify similarities and differences that may support the strengthening of the focal reparations in the African Court. It also considers how each system deals with drafting and monitoring decisions.

Building on the positive correlation of the normative foundation for introducing the focal reparations, the second step seeks to determine whether the African Court's procedure and practice will be receptive to the focal reparations; specifically, whether procedural hurdles limit the feasibility of introducing the remedy to the list of reparations ordered by the African Court. As part of that analysis, this second step assesses whether the African Court's procedure and practice, from commencement through the post-decision or follow-up stages, permit the introduction of the remedy.

Only state parties to the American Convention on Human Rights and the Inter-American Commission on Human Rights (IACHR) can bring cases before the Inter-American Court.[74] The IACHR receives

73 Human Rights Committee General Comment 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13.

74 Art 61.1 of the American Convention on Human Rights. However, as established in art 61.2, it still implies going through the procedure before the Inter-American Commission on Human Rights before the Inter-American Court can adjudicate the case. See on this IA Court Resolution 13/83 – Matter of Viviana Gallardo et al - Costa Rica 30 June 1983.

petitions from individuals, groups of persons or organisations alleging human rights violations by OAS member states,[75] and declares them admissible if they meet the requirements set forth in the American Convention[76] or Rules of Procedure.[77] After the petition is determined on the merits and the IACHR finds that the state responsible for the violation of rights recognised in the Inter-American treaties, it adopts a merits report and makes recommendations to the respondent state.[78] If the IACHR does not verify substantial compliance with its recommendations in a given period of time, and the respondent state has accepted the Inter-American Court's competence, it may refer the case to the Court.[79] After the Court is seized of the case, it hears the parties and enters judgment.

To commence the case processing at the Inter-American Court's stage, the Court's Rules of Procedure provide that the IACHR file its merits report on the case, including the reparations recommended by the Commission to the state.[80] The victims or their representatives are also required to include the reparations sought in their initial brief before the Court.[81] After considering the evidence before it, the Court must equally include a reparations section in its judgment if it finds the state liable for the alleged violations.[82]

The decisions of the Inter-American Court set out the full range of reparations that the state is required to implement. Usually, it provides a timeline for the states to submit a compliance report on the implementation of the judgment, and follows up on a periodic manner.[83] The Court also requests that victims or their representatives

75 American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978), art 44. See also Statute of the Inter-American Commission on Human Rights (approved through Resolution 447 adopted by the OAS General Assembly during its 9th period of sessions, held in La Paz, Bolivia, in October 1979), arts 19 and 20, which conforms the basis for considering individual communications regarding OAS member states that have not ratified the American Convention.

76 Art 46 American Convention.

77 Inter-American Commission Rules of Procedure (approved by the Commission at its 137th regular period of sessions, held from 28 October to 13 November 2009, and modified on 2 September 2011 and during the 147th regular period of sessions, held from 8 to 22 March 2013, for entry into force on 1 August 2013) art 28.

78 Art 50 American Convention.

79 Art 45 American Convention.

80 Inter-American Court of Human Rights, Rules of Procedure (approved 24 November 2009, in force 1 January 2010) art 35.

81 Inter-American Court of Human Rights, Rules of Procedure (approved 24 November 2009, in force 1 January 2010) art 40.

82 The Inter-American Court used to issue a separate decision on reparations, but started consolidating its decision on the merits with the decision on reparations in 2001.

83 Inter-American Court of Human Rights Rules of Procedure (approved 24 November 2009, in force 1 January 2010) art 69.1. To see the status of compliance of the remedies ordered by the Court in its judgments, see (only

and the IACHR submit observations on the state's compliance with the reparations ordered in the judgment.[84] Finally, the Court may also convene, and on occasion has convened, compliance hearings,[85] and since 2015, it has exceptionally conducted *in situ* visits to monitor compliance with judgments.[86]

The procedure and practice of the African Court are largely similar to those of the Inter-American Court regarding the life cycle of cases. One major difference is individual access and the standing of the African Commission in bringing cases before the African Court. While the African Court Protocol and Rules of Procedure permit direct individual access to the Court, as opposed to the Inter-American process, such access is limited to cases against state parties that have explicitly accepted the Court's jurisdiction to entertain individual communications. However, the African Commission may bring cases before the African Court, including against states that have not explicitly accepted the Court's jurisdiction. Even though it would appear that there is more access to the African Court than to the Inter-American Court, less than 20 per cent of African states have accepted the Court's competence to receive individual complaints, and the African Commission has brought fewer than three cases against states without the individual complaints declaration.

The procedural stages of cases and the approach to reparations before both regional courts are similar. Decisions of the African Court on reparations may be issued together with the merits decision or separately. In some cases, the reparations decision includes timelines for implementation and the requirement for the state to report on compliance with the decisions. The Court also reports to the AU the level of compliance with different cases. Unlike the Inter-American Court, there is no taxonomy of compliance levels in the African Court's reports on compliance with decisions.

Despite differences in their procedures and practices, these differences do not militate against adding the focal remedies. In fact, given that the African Court's procedure and practice tend to allow for greater access and do not employ the classification of the level of compliance, the feasibility of introducing focal reparations is greater in contexts of higher access, whereas in cases of lower access, implementing the remedy may unpredictably affect compliance

in Spanish): https://www.corteidh.or.cr/casos_en_supervision_por_pais.cfm?lang=en (accessed 30 November 2025).

84 Rules of Procedure (n 83) art 69.1.

85 Rules of Procedure (n 83) art 69.3.

86 See https://www.corteidh.or.cr/supervision_de_cumplimiento_visitas.cfm?lang=en (accessed 30 November 2025).

levels, either positively or negatively. Therefore, there is a positive correlation in support of the introduction of the remedy of public acknowledgment of responsibility and apology.

4.4 Precedential foundation/authority

The next factor is precedential foundation/authority. This factor assesses whether there is precedent in the African Court's jurisprudence for adopting or relying on the decisions of the Inter-American Court. In addition, it checks for precedent of the use of the focal reparations in the African system.

There clearly is a rich history of ordering and implementing the focal remedies by the Inter-American system. In *Barrios Altos v Peru*, where the Inter-American Court ordered the focal remedies for the first time, the Court permitted the victims or their next of kin and the respondent state, in coordination with the Commission, to determine the reparations by mutual agreement, which reserved the power to review and approve the agreement.[87] In addition to the prevailing understanding of reparations at the time and clear provisions of soft law instruments, the mutual agreement by the parties to the case occupies a prime place in the history of the introduction of the focal remedies.

On the African side, while the African Court has yet to order the focal remedies, the African Commission set the precedent for their use. In Communication 393/10, the Commission ordered the Democratic Republic of the Congo (DRC) to acknowledge responsibility and apologise to the population of Kilwa for massive human rights violations, including summary executions. The Commission noted the essential role of the remedy in healing victims and for the promotion of social justice.[88] The African Court has incorporated the interpretation of the African Charter by the African Commission into its jurisprudence on a number of issues.[89] This provides precedent for the incorporation of the public acknowledgment of responsibility and apologies as remedies for human rights violations.

87 I/A Court HR *Case of Barrios Altos v Peru* Reparations and Costs, Judgment of 30 November 2001 Series C 87 para 44(e).

88 *Institute for Human Rights and Development in Africa v Democratic Republic of Congo* Communication 393/10 para 151, African Commission on Human and Peoples' Rights, https://caselaw.ihrda.org/entity/u51cz7v4z2m?page=1&file=16137308748968a4a351z2us.pdf (accessed 30 November 2025).

89 The Court relied on the decisions of other human rights courts and bodies in establishing this precedent, such as the African Commission (*Southern African Human Rights NGO Network v Tanzania*, 2010 para 51), https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3760.013.3760/law-mpeipro-e3760 (accessed 30 November 2025).

The Inter-American Court is another source of persuasive precedent for the African Court. The African Court has a long history of referencing the jurisprudence of its Inter-American counterpart in its decisions.[90] In its first reparations decision, the African Court showed a willingness to interpret the provisions of its Protocol on reparations in a progressive manner. Despite the absence of a request for measures of satisfaction, the Court included a section on satisfaction in its reparations decision and ordered the state to publish the summary of the judgment in English and Kiswahili in the official gazette and 'one national newspaper with widespread circulation'. The Court also ordered the state to publish the entire judgment on a government website and make it available for a period of one year.[91] In this judgment, the African Court referenced the Inter-American Court's case of *Neira Alegría & Others v Peru*, 'Article 27 of the [its] Protocol and the inherent powers of the Court',[92] as its basis for ordering satisfaction measures.

Together with the precedent and practice of engaging its inherent jurisdiction to broadly interpret the provision of the Protocol on reparations, and its comfort with drawing inspiration from the Inter-American Court,[93] there arguably is strong precedential authority for the African Court to include the focal remedies.

4.5 Desirability and political context

The fourth factor is the desirability and political context check. Here, we assess whether victims and litigants who use the Court desire

90 In *Chacha v Tanzania* paras 119-21 it cited I/A Court HR *Case of Hilaire, Constantine and Benjamin & Others v Trinidad and Tobago* Merits, Reparations and Costs, Judgment of 21 June 2002 Series C 94 paras 119-121, https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3760.013.3760/law-mpeipro-e3760 (accessed 30 November 2025).

91 *Mtikila v Tanzania* Application 11/2011, African Court on Human and Peoples' Rights, Ruling on Reparations para 27 (13 June 2014) 45, https://www.african-court.org/cpmt/storage/app/uploads/public/633/6da/eee/6336daeeec3af545381306.pdf (accessed 30 November 2025).

92 *Mtikila v Tanzania* Application 11/2011, African Court on Human and Peoples' Rights, Ruling on Reparations, para 27 (13 June 2014) 44, https://www.african-court.org/cpmt/storage/app/uploads/public/633/6da/eee/6336daeeec3af545381306.pdf (accessed 30 November 2025).

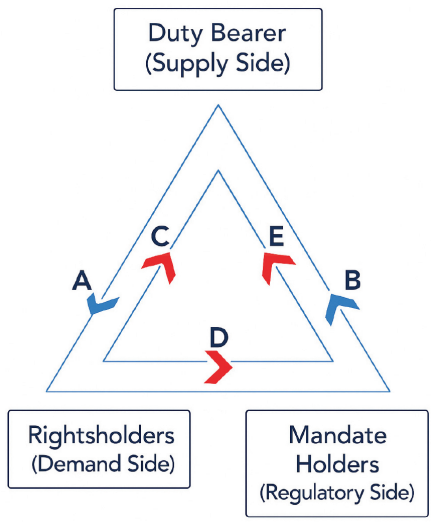
93 The Court equally referenced the following cases in the *Mtikila v Tanzania* reparations decision: I/A Court HR *Case of Garrido and Baigorria v Argentina* Reparations and Costs, Judgment of 27 August 1998 Series C 39 para 79; I/A Court HR *Case of Chaparro Álvarez and Lapo Íñiguez v Ecuador* Preliminary Objections, Merits, Reparations and Costs, Judgment of 21 November 2007 Series C 170 para 277; I/A Court HR *Case of the 'Street Children' (Villagrán Morales & Others) v Guatemala* Reparations and Costs, Judgment of 26 May 2001 Series C 77 para 84; I/A Court HR *Case of Bámaca Velásquez v Guatemala* Reparations and Costs, Judgment of 22 February 2002 Series C 91 para 43, and I/A Court HR *Case of García Cruz and Sánchez Silvestre v Mexico* Merits, Reparations and Costs, Judgment of 26 November 2013 Series C 273 para 212.

these focal reparations. It also analyses the impact that this will have on the current levels of decision implementation in Africa. In addition, it interrogates the response to the introduction of the remedy by the Court given the political context in Africa in relation to the role of regional accountability mechanisms.

The final factor examines the feasibility of introducing the focal reparations, based on the political context within which the African Court operates, the interests of the Court's users in introducing the remedy, and the Court's willingness to order it.

To analyse this, we developed the reparations triangle, which connects all stakeholders in requesting, ordering and implementing reparations under international human rights law. At the top of the triangle are the states, and at the base are the human rights mechanisms on the one side, and the victims or survivors and their communities, non-governmental organisations (NGOs) and others that are not part of the government on the other side. States as duty bearers with obligations to provide effective remedies for victims of human rights violations represent the supply side of the tripartite relationship. The victims and survivor groups represent the demand side, while the human rights mechanisms are the mandate or regulatory side.

As depicted by the triangle, reparations should ordinarily flow from the state to the victim or survivor (relationship A), in which case there might be no need to engage the supranational human rights mechanisms. This follows from states' obligations under human rights law to respect, protect and promote human rights. When violations occur, the rights holders first engage the state (relationship C), which has the obligation to ensure access to justice, a fair hearing of the complaint, and to provide effective remedies. When reparations do not flow from the state toward the victims or survivors, they resort to the supranational mechanisms (relationship D). Where a violation is found, the mechanisms order reparations to the state in favour of the



rights holders (relationship E) and, in most cases, the mechanisms continue to put pressure on states to strengthen domestic justice institutions (relationship B). Where a decision has been issued against the state, the mechanism engages for the implementation of the decision. In a sense, states' obligations, especially regarding the duty to guarantee access to justice, extend to their involvement in the creation, operation and functionality of human rights mechanisms. By signing and ratifying the human rights treaties and protocols establishing these mechanisms, the state arguably expands the scope of its citizens' access to justice in fulfilment of its obligations. However, in both the African and Inter-American contexts, some states, though parties to the treaties and protocols establishing the regional mechanisms, refuse to accept the mechanisms' jurisdiction to consider individual complaints for human rights violations against the state. Similarly, such restrictions renege on the treaty obligations and limit the rights of citizens to access to justice.

As part of their mandate, regional mechanisms monitor the human rights situation in each state and work to promote and defend the human rights of citizens. When violations occur, they put pressure on states to fulfil their obligations to citizens. On their side of the triangle, human rights mechanisms push the state to ensure that reparations flow to victims and survivors, while also protecting other rights holders who may not have been directly affected in the instant case from suffering similar violations in the future. When human rights mechanisms consider cases and find that a state is liable for human rights violations, they order the state to implement measures to start the flow of reparations to the victims. The rights holders are at the demand side of the triangle. Through individual and collective engagements, they hold states accountable to their human rights obligations. They also engage with regional mechanisms to ensure they fulfil their mandate to pressure states to comply with their obligations.

Therefore, the desirability and political context checks will support the introduction of the focal remedies if they reveal that rightsholders demand the focal remedies, the human rights mechanisms are willing to order them, and states are willing to implement them.

4.5.1 Analysing the tripartite relationship in the Inter-American human rights system

The tripartite relationship among the demand, supply and mandate sides of the reparations triangle is not without serious challenges in the Inter-American system. The high levels of attacks against human

rights defenders,[94] the widespread use of arbitrary detention, violent crackdown on protests, among other issues, make the situation of human rights in the Americas extremely serious.[95] States in the region continue to struggle in fulfilling their treaty obligations. Of the 34 OAS states, only 24 have ratified the American Convention[96] and, among these, only 21 accepted the jurisdiction of the Inter-American Court to hear cases on human rights violations against them.[97] Additionally, only the IACHR refers cases to the Court, and individuals cannot directly access the Inter-American Court. Despite the challenges, rights holders continue to demand the focal remedies, and the inter-American Court continues to order the states to apologise for rights violations. In addition, some states have shown a willingness to implement the reparations.

4.6 Analysing the tripartite relationship in the African system

The situation of human rights and democracy in Africa is concerning. The rise of unconstitutional changes of government, closed civic space, attacks on opposition figures, and state capture of state institutions, including the judiciary, limits access to justice domestically. In this context, the role of the African Court is limited, as only 12 states have deposited the article 34(6) declaration permitting the Court to entertain individual complaints against them.[98] Of those 12 states, to date five have withdrawn the declaration. In addition, the complementarity between the African Commission and the African Court has yet to be fully operationalised, with the result that rights holders do not yet view the African Commission as a means to gain access to the Court. However, there is evidence that rights holders have requested the focal reparations before the African Court.[99] Since

94 Inter-American Commission on Human Rights 14 June 2024 *IACHR: 2023 Ends with High Rates of Violence Against Human Rights Defenders in the Americas.* Organization of American States, https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2024/045.asp (accessed 30 November 2025).

95 Amnesty International *Facts and figures: Human rights in the Americas in 2022-23* 28 March 2023, https://www.amnesty.org/en/latest/news/2023/03/facts-figures-human-rights-americas-2022-23/ (accessed 30 November 2025).

96 Including Venezuela which, according to the OAS General Secretariat's Office of Legal Affairs, deposited in 2019 a valid 're-ratification' instrument.

97 List of ratifications and accessions: American Convention on Human Rights, 22 November 1969, https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf (accessed 30 November 2025).

98 List of art 34(6) ceclarations: African Court on Human and Peoples Rights, https://www.african-court.org/wpafc/declarations/ (accessed 30 November 2025).

99 African Court on Human and Peoples' Rights *African Commission on Human and Peoples' Rights v Republic of Kenya* (Reparations) Application 6/2012, African Court on Human and Peoples' Rights, Judgment, 23 June 2022 para 129, https://www.african-court.org/cpmt/storage/app/uploads/public/62b/aba/fd8/62babafd8d467689318212.pdf (accessed 30 November 2025). Also, in *Ligue Ivoirienne des Droits de l'Homme (LIDHO) & Others v Republic of*

the African Court has yet to order the focal remedies, there has not been an opportunity to test the willingness of states to implement the focal remedies in compliance with this Courts' orders.

5 Conclusion and recommendations

The findings from this article suggest the feasibility of the African Court's introduction of the focal reparations to the victim(s) of human rights violations. However, the impact of the focal reparations on overall compliance with the Court's decisions warrants empirical investigation. The feasibility determination is based primarily on similarities between the Inter-American Court and the African Court in their normative standards, jurisprudential evolution and procedures, as well as on judges of both tribunals' inclination to adopt a progressive interpretation of the provision in treaties on the right to remedies.

The most important consideration in introducing the focal reparations in the African Court's orders is their multifaceted impact on survivors and victims' communities. A wealth of multidisciplinary literature has found that the focal reparations facilitate physiological healing and closure for victims and survivors. This is the central purpose of the right to remedies. Clearly, *restitutio ad integrum* may be impossible in most cases of human rights violations. However, the established impact of this remedy goes far when combined with the measures the Court presently orders.

Moreover, the norm-affirming potential of the focal reparations for human rights violations justifies their inclusion in the African Court's practice. The concerning state of human rights and democracy on the continent today requires more proactive, strategic responses. Every decision of the African Court and other human rights mechanisms presents an opportunity for states to signal their intention to stop the trend of violations and the decline of human rights protections. This will foster peace, security, economic advancement and development.

To achieve the inclusion of the focal reparations, all stakeholders in the reparations' triangle have a role to play. States, as duty bearers in relation to the right to an effective remedy, must provide the requisite environment that enables the Court to apply all necessary measures

Côte d'Ivoire (Merits & Reparations) Application 41/2016, African Court on Human and Peoples' Rights, Judgment, 5 September 2023 para 265 xii, https://www.african-court.org/cpmt/storage/app/uploads/public/64f/ebd/f77/64febdf77f811512395983.pdf (accessed 30 November 2025).

for redressing human rights violations. This begins with taking their treaty obligations seriously and supporting the mechanisms established to interpret and monitor the implementation of the treaties. Individual states or groups of states could use the existing platforms, including the peer-review mechanism, to advance the implementation of the African Court's decisions.

Relatedly, more states must make the article 34(6) declaration to grant the African Court jurisdiction over individual communications from their citizens. In that connection, states should ratify the Malabo Protocol on the African Court on Justice and Human Rights[100] and, at the same time, make a declaration under article 9(3) on individual communications.[101] As identified in the Inter-American Court's experience, political will is critical to implementing the remedy of public acknowledgment of responsibility and apologies. Similar interest by state parties is necessary for the introduction of the remedy.

Litigants and other stakeholders on the demand side have an even greater role to play. If the African Court introduced many remedies without the express request of the victim or applicants in the case, it is plausible that the Court will seriously consider an express request for the focal remedies. Litigants must push for the introduction of the remedy by increasing the frequency of requests for the remedy in all appropriate cases. Litigants may also engage the advisory competence of the African Court to request a determination by the African Court of the status of the focus reparations under African and international human rights law.[102] Pressure from the demand side will increase the likelihood of the African Court introducing the remedy.

In engagements with the Court, academic institutions and NGOs should advocate introducing the focal reparations, highlighting the experience of the Inter-American system. Where feasible, civil society organisations that engage with the Court could develop programming that engenders peer exchange between the African

100 African Union (nd) Protocol – Amendments to the Protocol to the Statute of the African Court on Human and Peoples' Rights, https://au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-and-human-rights (accessed 30 November 2025).

101 Just as art 34(6) of the African Court Protocol requires a state to make a special declaration allowing individuals and NGOs with observer status to bring cases directly before the Court, art 9(3) of the Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights maintains this opt-in system. Accordingly, individual access to the new Court remains conditional upon a state's voluntary declaration accepting the Court's competence over individual communications.

102 African Court on Human and Peoples' Rights (nd) *Jurisdiction,* https://www.african-court.org/wpafc/jurisdiction/ (accessed 30 November 2025).

and Inter-American Courts on issues of mutual interest, including reparations. Such fora provide an opportunity for cross-pollination of ideas and good practices, including the focal reparations.

Finally, the African Court is critical as the mandate holder in the tripartite relationship. The Court's antecedents suggest that it has progressively interpreted article 9 of the African Charter in line with international human rights law standards. The Court has also incorporated authoritative interpretations of human rights treaties from soft law documents into its jurisprudence. Moreover, the African Commission has in the past ordered the focal reparations. It is the logical next step for the Court to include this remedy in its list of reparations.