Human Rights Law Implementation Project (HRLIP) Key Findings and Narrative Impact

A. Key Findings

Our main research question was: Why and to what extent have these nine States implemented selected decisions of UN treaty monitoring bodies and judgments and decisions of regional courts and commissions?

We had the following sub-questions:

1. What does 'compliance' and 'implementation' mean in international human rights law?
2. How far does the specificity/prescriptiveness of the remedies and/or reasoning in the decisions/judgments affect the degree of compliance?
3. Does the nature of the body issuing the decision/judgment and its perceived reputation impact on compliance?
4. Do the types of violations or how they are framed by the relevant body affect levels of compliance?
5. How do the mechanisms which monitor implementation interact with the domestic systems of compliance? To what extent is a 'compliance coalition' necessary for the implementation of decisions?
6. What formal and informal processes exist in compliance?
7. How do international norms become appropriated and 'internalised' at the domestic level?
8. To what extent do the social and political contentiousness of decisions/judgments influence the degree of compliance?

We aimed to answer these questions through desk-based and empirical research that tracked the extent to which the State authorities had implemented the specific reparations awarded in decisions and judgments from regional and UN treaty bodies in nine States (Belgium, the Czech Republic and Georgia; Canada, Colombia and Guatemala; and Burkina Faso, Cameroon and Zambia). We have obtained evidence, in some instances not found elsewhere, in relation to implementation of specific cases.

Our most significant findings are as follows:

- In all the cases we examined it was not one single factor which was identified as determinative of whether the State implemented or not, rather a range of factors. Implementation

and compliance is therefore context specific and what mechanisms, pressures and actors influence State action depends on the context in that particular moment in time. This has implications for:

- when reparations are determined;
- whether reparations should be considered separately and as a package;
- the need for up to date information for the treaty body or that body determining the reparation;
- the degree of specificity of the reparation.

• Statistics on the level of compliance are not helpful neither are broad-brush conclusions. This also has implications for how implementation and compliance is measured.

• States and parties are looking for and need a dialogue or some engagement post-decision/judgment over how State authorities should implement, whether this dialogue takes place at the national level among other State authorities; or between them and the victim; or between them and the supranational monitoring body.

• States are responding to these decisions. But:

- Their actions are not always visible (and States may not always want them to be visible);
- Depending on the political moment, and other factors, some reparations may be considered to be easier to implement than others. In addition, if the reparations ordered in a particular case are seen as a package then this can impact on whether there is any implementation at all.

• A simplistic consideration of whether the decision or judgment is legally binding or not masks the complexity of the issues:

- The legitimacy and credibility of the treaty body or supranational body that determines the reparations: how meticulous it is in applying its own procedures and deadlines; how much reasoning is provided for the reparations;
- How much visibility the treaty body or supranational monitoring body has at the national and regional levels;
- Whether the implementation of decisions or judgments are seen as being monitored;
- What triggers and mechanisms are put in place at the national level when a supranational decision or judgment is adopted.

• A National Monitoring (and Implementation) and Reporting Framework (NMIRF) can help, certainly in terms of coordination, but we would caution against a simplistic approach here. Rather it is necessary to consider what institutions are available in the State and what mechanisms and procedures are needed to implement specific reparations.

• Specificity of reparations can assist in implementation but more thought is needed about what this specificity means and the degree of specificity needs to be tailored to the particular reparation and particular context. In some instances there was a need for the State to retain or feel that it was retaining control over how it responds to the decision or judgment.

• A case by case approach in determining the reparation and then monitoring their implementation is ideal. This will enable consideration of how the State will react, what is the current political context, is, what to prioritise, etc. This then should dictate:

- How specific the reparations should be;
- What role the supranational body should play subsequently; and
- Whether a dialogue is likely and between whom.

- Implementation and compliance, or lack of, is too easily explained by 'political will' when in fact this masks complex relationships and factors that take place at the national level:

  - The 'State' is not just the executive but also the judiciary and parliament. Yet due to separation of powers, whilst it is the executive which receives notice of the decision or judgment and is presumed to coordinate the response, it should not be able to influence how the judicial or legislative arms of the State react. Consequently, for reparations such as re-trial or amendment of legislation, the power of the executive to implement may be limited.

- There are a range of roles that the treaty body or supranational monitoring body can play post-decision and judgment but these are not always distinguished and considered separately, with a presumption that it should be playing all these roles.

- No particular reparation is more likely to be implemented than any other: it again depends on the particular context.

Our research contributes to scholarship in international relations and international law, in particular the latter. It has contributed to debate on the role of different national actors and regional actors in implementation and influencing the implementation of these decisions and judgments and delivered an in-depth detailed analysis of the procedures and complexities at play at the national level.

B. Narrative Impact

Our project adopted a range of methods to communicate and engage with policy makers and practitioners. These included workshops held in each of the nine countries that were the subject of our study (http://www.bristol.ac.uk/law/hrlip/our-research/). Workshops were held with key stakeholders, including, government, victims, litigants, civil society, parliamentarians, judiciary and others. The participants at each of these workshops were dictated by advice from our in-country consultants and resulted, in some instances, workshops being held in camera and with distinct groups of stakeholders to permit greater communication and interaction. For many of these workshops, where the discussions were not confidential, reports were adopted and made public on our website.

A series of other workshops and events have been held over the course of the grant with treaty bodies, some of which were not envisaged in the original application but due to the interest shown in our research and the wish by these organisations to hear the findings of our research, we were granted a number of additional opportunities. These have had significant impacts in enabling us to influence directly the strategies and approaches of these organisations. This has been particularly the case with our interaction with the African Commission on Human and Peoples' Rights, resulting in our feeding into the amendments to their Rules of Procedure, and to the holding of panels at their public sessions on implementation. Similarly, our interaction with the UN Human Rights Committee enabled us to hold a side meeting with its members on a few occasions during the grant providing us with a privileged position to interact directly with the members and for them to discuss our findings. Our workshops with the Inter-American Commission and collaborative activities with the European Implementation Network and Council of Europe have also resulted in influences on the strategies and work of these organisations in monitoring implementation of decisions by States in those regions.

Policy outputs are still being developed but those completed include the adoption of strategies for civil society organisations litigating at the regional levels (the Institute for Human Rights and

Development in Africa, and the Egyptian Initiative for Personal Rights among others). We have produced handbooks for parliamentarians in Europe, in collaboration with other organisations, and we are in the process of developing a step-by-step- guide for States on examples of good practice from States on the logistics and mechanisms that have been used to implement certain reparations. We are also finalising the publication of case templates for our African cases in particular, as there is nothing of any equivalence that currently exists, which map out each recommendation or reparation and the evidence of State measures that we have acquired. These have been translated and shared with the relevant treaty bodies, victims, governments and other stakeholders. They will then be published on our website.

Throughout the course of the grant the research team have participated in the sessions of the treaty bodies to whom the decisions and judgments related, namely the African Commission, African Court, Inter-American Commission and Court, European Court of Human Rights and UN treaty bodies. We have used these occasions to interact formally, through the submission of presentations, and informally with key individuals, and disseminate our preliminary findings and ideas. These opportunities have also given publicity to our research and resulted in interest being generated from other quarters. Subsequent invitations to other events and to be involved in other projects have emanated from these interactions. Conversely, as our project became more and more known, this enabled us to draw in organisations working in this area, into activities in the countries of our study.

The publications that are the result of this project include (but are not limited to) a Special Issue of the Journal of Human Rights Practice, devoted to the findings of our research and which include Practice Notes from key individuals across treaty bodies, government, parliament, civil society, litigants and victims, who have been involved in our research. In addition, a joint publication with the Open Society Justice Initiative, our partner, identifies key factors from our research as well as develops and expands on the seminal documents produced by the OSJI in 2010 and 2012, for dissemination to a practitioner audience.

Some of our interactions, reports, publications and events have been confidential, to facilitate and ensure open dialogue and engagement. Where appropriate, however, we have used press releases in countries and through our various websites to highlight the work we have been doing. Our website contains lists of our publications and we are now in the process of expanding it to become a resource-hub on implementation. This will include podcasts from key individuals reflecting on their experiences on implementation; bibliographies; links to relevant websites and organisations working in this area; as well as our own tools and publications.

Our Advisory Panel of senior academics and practitioners have provided invaluable advice throughout and they have commented upon our draft publications. Many of them have contributed to the publications themselves through the Special Issue, podcasts and involvement in our events.

Some of these activities have not been without challenges. Because we have been engaging and working with governments and treaty bodies, in particular, the timings for events, for when these bodies have sought our input and for whether our comments are taken on board, have inevitably been subject to their agendas, not ours. In some instances, we have had to ensure sustained engagement, in public and private, over a longer period than we had initially envisaged, in order to eventually see the impact of our research. We have also had to change the slant of our approach in order to tie into the current political climates. For some of our activities its impact is only now being realised.

The reputation of our individual project team members, as well as the institutions themselves, has enabled us to consolidate our relationships with key players in implementation. We have been asked to provide advice to treaty bodies, governments, civil society organisations, litigants and

others, as listed in the publications and engagements section of this submission, and this has enabled our research not only to influence action at the national level in the States that were the subject of this study, but also to others in the regions and beyond. Our interaction with key individuals involved in the litigation of these cases has in some instances resulted in changes on the ground and protection of human rights of specific individuals.