

To cite: VO Ayeni 'Enhancing the implementation of decisions of the African Court on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights through complementarity and collaborative monitoring' (2025) 25  
*African Human Rights Law Journal* 938-956  
<http://dx.doi.org/10.17159/1996-2096/2025/v25n2a21>

# Enhancing the implementation of decisions of the African Court on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights through complementarity and collaborative monitoring

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**Summary:** *This article investigates potential collaboration between the African Court and the African Commission regarding the implementation of the Court's judgments and decisions. Non-compliance with human rights rulings is a pervasive challenge affecting all human rights bodies. While each institution may adopt its own strategies, a common approach is strongly encouraged, especially given the lack of political oversight from the African Union organs. This research analyses the African Court's practices in monitoring the implementation of its decisions to determine how the Court might benefit from the experiences and resources of the African Commission. Studies suggest that the various human rights*

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*bodies in Africa possess unique strengths in implementation monitoring. By leveraging the strengths of other human rights bodies, especially the African Commission, in tracking the implementation of its rulings, the Court could improve the execution of its judgments. While the Court will certainly benefit from collaborating with other AU and United Nations human rights bodies, the focus of this article is on how the processes of the African Commission may enhance the implementation of the Court's decisions, and vice versa. Employing a doctrinal method, the article conducts a content analysis of the various implementation reports from the Court and reviews other primary and secondary legal sources. In the context of complementarity and collaborative monitoring, the study offers relevant recommendations for enhancing implementation and ensuring compliance with the Court's judgments.*

**Key words:** *implementation; compliance; judgments; enhancing; African Court; African Commission; complementarity; collaborative monitoring*

## 1 Introduction

The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (African Court Protocol) was adopted by the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) in Ouagadougou, Burkina Faso in June 1998. The Protocol finally came into force on 25 January 2004 after achieving the required 15 ratifications.<sup>1</sup> The first set of 11 judges of the Court were inaugurated on 2 July 2006 and the Court has been in operation since then. As of 31 August 2025, the African Court Protocol has been ratified by 34 member states of the African Union (AU).<sup>2</sup> The ratification scorecard indicates that less than 62 per cent of African countries are under the Court's jurisdiction. The situation appears even more concerning when examining individual and non-governmental organisation (NGO) access to the Court; as of December 2025, only seven countries, which is under 15 per cent of African states, allow individuals and NGOs to directly access the Court.<sup>3</sup>

1 F Viljoen *International human rights law in Africa* (2012) 413.

2 Activity Report of the African Court on Human and Peoples' Rights (1 January-31 December 2023) 1.

3 See African Court, 'Declarations', <https://www.african-court.org/wpafc/declarations/> (accessed 9 December 2025).

The primary purpose of the establishment of the African Court on Human and Peoples' Rights (African Court) is to complement the individual communication procedure of the African Commission on Human and Peoples' Rights (African Commission).<sup>4</sup> To initiate the Court's complaint process, article 5 of the African Court Protocol allows three entities to access the Court, namely, the African Commission, a state party to the African Court Protocol (that has filed a complaint with the African Commission, is the subject of a complaint to the Commission, or has a citizen who is a victim of human rights violations), and African intergovernmental organisations.<sup>5</sup>

First of all, interstate communication is a rarity in the African human rights landscape. The African Court received its first interstate application only in 2024,<sup>6</sup> and the African Commission in nearly four decades of its operation has considered only three interstate communications.<sup>7</sup> The limited use of the interstate complaints procedure in Africa is often linked to the prevailing norm of non-interference in the internal affairs of other member states, among other factors.<sup>8</sup> Attempts by the African Commission to submit cases to the African Court have produced mixed results.<sup>9</sup> Thus, the Commission has submitted to the Court only a handful of cases.<sup>10</sup> Consequently, the first three trigger mechanisms outlined in article 5(1) of the African Court Protocol have resulted in only a limited number of cases. The analysis indicates that without the fourth trigger mechanism in article 5(3), which permits individuals and NGOs to bring cases directly to the African Court under article 34(6) of the

4 Viljoen (n 1) 414. See also art 2, 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).

5 Art 5 African Court Protocol.

6 See K van Hout 'Landmark inter-state dispute filed with the African Court on Human and Peoples' Rights' 7 February 2025, <https://ohrh.law.ox.ac.uk/landmark-inter-state-dispute-filed-with-the-african-court-on-human-and-peoples-rights/> (accessed 9 December 2024).

7 F Viljoen 'A procedure likely to remain rare in the African aystem: An introduction to inter-state communications under the African human rights system' 27 April 2021, <https://voelkerrechtsblog.org/a-procedure-likely-to-remain-rare-in-the-african-system/> (accessed 9 December 2025). The African Commission has received only three inter-state communications, namely, *Democratic Republic of the Congo v Burundi, Rwanda and Uganda* (2004) AHRLR 19 (ACHPR 2004); *Sudan v South Sudan* (Communication 422/12); *Djibouti v Eritrea* (Communication 478/14).

8 Viljoen (n 7). While non-interference or brotherly solidarity obviously can be a force for good, it could also potentially hinder progress when applied the wrong way – which is what African leaders have done in relation to pursuing legal actions against other states.

9 VO Ayeni & A von Staden 'Monitoring second-order compliance in the African human rights system' (2022) 6 *African Human Rights Yearbook* 16–17.

10 See *African Commission on Human and Peoples' Rights v Libya* (Provisional Measures) (2011) 1 AfCLR 17; *African Commission on Human and Peoples' Rights v Libya* (Merits) (2016) 1 AfCLR 153; *African Commission on Human and Peoples' Rights v Kenya* (Merits) (2017) 2 AfCLR 9.

Court Protocol, there would likely be very few cases for the African Court to adjudicate.<sup>11</sup> Unfortunately, the right of access granted to individuals and NGOs by virtue of article 34(6) is being threatened in recent years due to contestations and a lack of cooperation from states. Since the coming into force of the African Court Protocol, only 12 states have deposited the article 34(6) declaration allowing individuals and NGOs to submit cases to the African Court.<sup>12</sup> Between 2016 and December 2025, five out of the 12 states rescinded or withdrew their declarations. The cases originating from these five states currently account for more than 85 per cent of all litigations at the Court.<sup>13</sup> These developments could potentially threaten the operational viability of the Court,<sup>14</sup> and jeopardise the effective protection of human rights on the African continent.<sup>15</sup>

Despite initial expectations that the Court's judgments, due to its judicial nature, would prompt immediate compliance from states, early evidence from an analysis of the implementation status of the Court's decisions reveals a disturbing pattern of non-reporting and non-compliance by states. The Court, according to its report, has found violations of the African Charter on Human and Peoples' Rights (African Charter) by 10 state parties in 84 cases. According to the 2024 Status Report on Implementation of Decisions issued by the Court, only one state (Burkina Faso) has fully implemented two of its decisions in these cases.<sup>16</sup>

Given the above background, this article explores how the African Court can improve the implementation of its rulings through complementarity and collaborative monitoring. The argument in the article is premised on the fact that the problem of non-compliance with decisions is not unique to the Court but common to other

11 Art 34(6) of the African Court Protocol stipulates that 'at the time of ratification of this Protocol or any time thereafter, the state shall make a declaration accepting the competence of the Court to receive cases under article 5(3) of this Protocol. The Court shall not receive any petition under article 5(3) involving a state which has not made such a declaration.'

12 African Court 'Declarations', <https://www.african-court.org/wpa/c/declarations/> (accessed 9 December 2025).

13 SH Adjolohoun 'A crisis of design and judicial practice? Curbing state disengagement from the African Court on Human and Peoples' Rights' (2020) 20 *African Human Rights Law Journal* 1.

14 Adjolohoun (n 13) 2.

15 See J Biegon 'Tanzania: Withdrawal of individual rights to African Court will deepen repression', <https://www.amnesty.org/en/latest/news/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/> (accessed 10 September 2025), cited in Adjolohoun (n 13).

16 African Court on Human and Peoples' Rights '2024 Status Report on Implementation of Decisions delivered by the African Court', [https://www.african-court.org/wpa/c/wp-content/uploads/2025/04/Status-of-Implementation-of-Decisions-of-African-Court-Popular-Report-2024\\_11.11.2024.pdf](https://www.african-court.org/wpa/c/wp-content/uploads/2025/04/Status-of-Implementation-of-Decisions-of-African-Court-Popular-Report-2024_11.11.2024.pdf) (accessed 14 September 2025).

human rights bodies in Africa. While each institution may adopt its own strategies, a collective or collaborative approach is proposed.

## 2 Problems necessitating collaboration

It is generally agreed that the African Court is facing a series of difficult situations. However, there is no agreement on whether to call the situation a crisis.<sup>17</sup> Scholars that describe the situation as an existential crisis point to flaws in the Court's institutional design and the Court's practices, some of which exacerbate the existing design problems.<sup>18</sup> The scholars that opposed labelling the situation a 'crisis' believe that the label is not useful in understanding the individual peculiarities and domestic dynamics at play in the various cases of state contestations. The language of crisis may also promote the construction of state behaviour in purely binary terms as either for or against the Court, a categorisation that is not particularly useful for the work of the Court.<sup>19</sup> Human rights bodies have checkered histories, and their relationship with state actors is not always smooth.

Moving away from the debate about description, there is no question that the African Court faces *five major problems* that threaten not so much its existence but its reach and relevance in Africa. The first problem is the failure of more than 20 African Union (AU) member states to ratify African Court Protocol. The natural implication of the lack of universal ratification of the Court Protocol is that the Court's jurisdiction practically does not extend to these states. It could be contended that the 34 member states that have ratified the Court Protocol represent a significant number. The argument would have been valid except for the limitation on individual access to the Court from the ratifying states. The second problem, therefore, is the failure of most of the ratifying states to make the article 34(6) declaration, thereby limiting the practical reach and relevance of the Court. As at December 2025, only 12 states have so far deposited the relevant declaration allowing individual access to the Court, and five of these states have withdrawn their declarations. The third problem is the sudden withdrawal by Rwanda in 2016, Tanzania in 2019, Benin and Côte d'Ivoire in 2020 and Tunisia in 2025 of their article 34(6) declarations. The withdrawal of the article 34(6) declaration limits access to the Court and sets a very dangerous precedent for other states in the future – a precedent of confrontation and contestation

17 MG Nyarko & MA Plagis 'Supporting the mandate of the African Court' (2020) 7, <https://www.chr.up.ac.za/images/publications/ahrpp/ahrpp2/AHRPP2.pdf> (accessed 12 September 2025).

18 Adjolohoun (n 13) 1–40.

19 Nyarko & Plagis (n 17).

instead of dialogue. It undermines the Court's role on the continent,<sup>20</sup> sends wrong signals about the Court, and disincentivises other African states that are yet to make the declaration. It perpetuates an atmosphere of resistance, contestation and non-cooperation with the African Court and international human rights bodies in general.

Drawing from the above, some scholars have observed that the African Court might be facing what they refer to as 'legitimacy deficits'.<sup>21</sup> As credence to the claim, none of the AU's 'big five' countries – Algeria, Egypt, Morocco, Nigeria or South Africa – have engaged with the Court's individual complaint process by submitting the article 34(6) declaration.<sup>22</sup> In addition to the perceived legitimacy deficit, researchers have linked state challenges to the Court to various factors related to institutional design and shortcomings resulting from the Court's practice, including the absence of an appellate system, the framing of the article 34(6) declaration, which serves as a shield for states, and the lack of adequate peer engagement and complementarity between the African Court and the African Commission, among others.<sup>23</sup> Adjolahoun attributed the political backlash and state contestations facing the Court to challenges inherent in the Court's design, as well as the practice of the Court.<sup>24</sup> He suggested both structural changes and adjustments to judicial practice of the Court in order to keep the remaining article 34(6) declarations, make the states that withdrew to return, secure additional ratification of the Court Protocol and restore the weakened political legitimacy of the Court.<sup>25</sup> Other human rights bodies, including the African Commission, the Economic Community of West African States (ECOWAS) Community Court of Justice (ECCJ), and the Southern African Development Community (SADC) Tribunal, have also faced similar periods of backlash.<sup>26</sup>

The fourth problem confronting the Court is the failure of states to file reports on the status of implementation of the decisions of the Court, which is a problem the Court shares with other human rights bodies in Africa. The fifth and the most consequential problem facing the Court is the lack of compliance by member states with its

20 N de Silva & M Plagis 'A court in crisis: African states' increasing resistance to Africa's Human Rights Court' 19 May 2020, <https://opiniojuris.org/2020/05/19/a-court-in-crisis-african-states-increasing-resistance-to-africas-human-rights-court/> (accessed 14 September 2025).

21 Adjolahoun (n 13) 3.

22 As above.

23 See generally Adjolahoun (n 13) 18-31.

24 Adjolahoun (n 13) 39.

25 As above.

26 KJ Alter and others 'Backlash against international courts in West, East and Southern Africa: Causes and consequences' (2016) 27 *European Journal of International Law* 297-298.

judgments and orders. The above analysis seeks to contextualise the demand for implementing the Court's decisions within the socio-political environment in which the Court operates.

Between 2006, when the African Court began its operations, and November 2024, the Court found violations against 10 AU member states in 84 cases. Only two cases have been fully implemented by one AU member state (Burkina Faso), while 82 cases against nine AU member states are pending full implementation.<sup>27</sup> Tanzania has partially complied with some of the Court's orders.<sup>28</sup> Côte d'Ivoire filed a compliance report but the applicants dispute the facts.<sup>29</sup> The Court has alluded to the perceived lack of cooperation by states when it stated: 'One of the major challenges facing the Court at the moment is the perceived lack of cooperation from the member states of the AU, in particular, in relation to the poor level of compliance with the decisions of the Court.'<sup>30</sup>

### 3 Implementation monitoring by the African Court

Article 28 of the African Court Protocol requires the Court to render its judgment within 90 days after completing its deliberations. The Court's judgment is arrived at by a majority of its members and they are not appealable.<sup>31</sup> The Court, however, may review its judgment in light of new evidence.<sup>32</sup> It also has the power to interpret its decision.<sup>33</sup> Once rendered, the judgment is communicated to the parties and transmitted to the AU Commission, the Executive Council and AU member states.<sup>34</sup> It is the responsibility of the Executive Council to monitor the execution of the Court's judgments on behalf of the AU Assembly.<sup>35</sup> Under article 30 of the Protocol, all member states undertake to comply with and guarantee the execution of the Court's judgment in any cases in which they are parties and to do so within the time stipulated by the Court. Article 31 of the Protocol

27 African Court on Human and Peoples' Rights '2024 Status Report on Implementation of Decisions delivered by the African Court', [https://www.african-court.org/wpafc/wp-content/uploads/2025/04/Status-of-Implementation-of-Decisions-of-African-Court-Popular-Report-2024\\_11.11.2024.pdf](https://www.african-court.org/wpafc/wp-content/uploads/2025/04/Status-of-Implementation-of-Decisions-of-African-Court-Popular-Report-2024_11.11.2024.pdf) (accessed 14 September 2025).

28 African Court on Human and Peoples' Rights 2020 Activity Report (2020 Activity Report of the African Court) para 37, <https://www.african-court.org/wpafc/activity-report-of-the-african-court-on-human-and-peoples-rights-1-january-31-december-2020/#> (accessed 8 June 2025).

29 As above.

30 2020 Activity Report of the African Court (n 28) para 37.

31 Art 28(2) African Court Protocol.

32 Art 28(3) African Court Protocol.

33 Art 28(4) African Court Protocol.

34 Arts 29(1) & (2) African Court Protocol.

35 As above.

mandates the Court to specify in its Activity Report cases in which states have not complied with its decisions. The compliance status information is usually annexed to the Court's activity report. The report focuses only on the status of implementation of the Court's judgment, and does not include cases in which the Court found no violation. The cases are grouped by states in alphabetical order.

Rule 81 of the Court's Rules of Procedure 2020 contains the procedure for monitoring compliance with decisions of the Court. In addition, Rule 59(5) enables the Court to invite parties to provide it with information on any issue relating to the implementation of provisional measures issued by the Court.<sup>36</sup> In terms of Rule 81, the first step is for the state concerned to submit to the Court a report of compliance which shall be transmitted to the applicant for comments and observations. The Court may also obtain relevant information from other credible sources in order to assess compliance with its decisions.<sup>37</sup> Where there are disputes concerning the status of implementation, the Court may 'among others' hold a hearing which shall culminate in a finding and possibly a consequential order requiring parties to comply with the decision of the Court.<sup>38</sup> Ayeni and Von Staden have argued that the provisions of Rule 81(3) enable the Court to do much more than hold an implementation hearing, but also to adopt a resolution or embark on promotional visits, among others.<sup>39</sup> Where the decision of the Court has not been complied with, it shall report the non-compliance to the AU Assembly in terms of article 31 of the Court Protocol.<sup>40</sup> Rule 81(5) requires the Court to make all relevant information available to the AU Assembly.

Generally, human rights bodies play a variety of roles and use a wide range of tools in monitoring the implementation of their decisions. These tools range from 'a combination of dialogical processes, soft power diplomacy, sticks-and-carrots tactics as well as naming and shaming operations'.<sup>41</sup> Specific tools used differ from one institution to the other, but generally include implementation hearings, resolutions, state reporting process, missions, judicial or political referrals as well as advocacy or promotional visits.<sup>42</sup> In a study by Ayeni and Von Staden where the authors assessed and

36 Ayeni & Von Staden (n 9) 11.

37 Rules of Procedure of the African Court on Human and Peoples' Rights (2020) Rule 81(2).

38 Rules of Procedure of the African Court on Human and Peoples' Rights (2020) Rule 81(3).

39 Ayeni & Von Staden (n 9) 11.

40 Rules of Procedure of the African Court on Human and Peoples' Rights (2020) Rule 81(4).

41 Ayeni & von Staden (n 9) 14.

42 As above.



compared African human rights bodies' implementation monitoring measures against 17 indicators comprising a total of 34 points,<sup>43</sup> they found that the African Court scores 9 points (representing 27 per cent of the total), while the African Commission scores 13 points (representing 38 per cent) and the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) scores 11 points (representing 32 per cent).<sup>44</sup>

The study by Ayeni and Von Staden highlights the areas where the Court surpassed the African Commission and the African Children's Committee regarding implementation monitoring framework. These include the legal authority of its rulings; the issuance of regular compliance reports that provide updates on the implementation of its decisions; and a limited dissemination of these compliance reports.<sup>45</sup> In instances such as collaborating with civil society organisations (CSOs) for monitoring implementation, having a Special Rapporteur dedicated to tracking the implementation decisions, conducting regular implementation hearings, consistently utilising resolutions to monitor implementation, leveraging the state reporting process for implementation oversight, and showing evidence of the positive effects of monitoring on state actions, both the African Commission and the African Children's Committee surpassed the performance of the African Court.<sup>46</sup>

There is little evidence that the African Court regularly employs resolutions to monitor the implementation of its decisions. Although all AU human rights bodies engage in advocacy visits, missions and various promotional efforts to raise awareness of their work, the African Court does not appear to often utilise this approach for monitoring compliance with its decisions. Additionally, a mechanism available to other AU human rights bodies, the state parties' periodic reporting process, is not as accessible to the African Court since it lacks the authority to receive, assess or review periodic reports from state parties.<sup>47</sup> The state party reporting process under article 62 of the African Charter serves as a crucial tool for monitoring the implementation of both treaty provisions and the decisions made by AU human rights bodies. It allows relevant entities to receive feedback on their decisions, enables states to report on their actions taken toward implementation, and fosters constructive dialogue between both parties to address the challenges of implementation.<sup>48</sup>

43 See Ayeni & Von Staden (n 9) 19.

44 Ayeni & von Staden (n 9) 19-21.

45 Ayeni & Von Staden (n 9) 19-20.

46 As above.

47 Ayeni & von Staden (n 9) 18.

48 As above.

Although states may not consistently update their periodic reports, the mechanism remains highly significant for monitoring implementation.

#### **4 The case for collaborative monitoring**

Numerous studies recognise that the human rights bodies in Africa have varying strengths and weaknesses when it comes to implementation monitoring. The African Court excels compared to other AU human rights bodies in updating and revising its compliance reports. However, it faces significant limitations in other areas due to factors related to its institutional design. The Court experiences considerable limitations in using a variety of implementation monitoring tools, which could improve the implementation of its decisions. Other AU human rights bodies, such as the African Commission and the African Children's Committee, benefit from broader promotional mandates that allow for ongoing interaction and dialogue with state representatives through periodic report reviews, state missions and country visits. These bodies not only have dialogue tools at their disposal but also possess special mechanisms for following up on their decisions, have held implementation hearings in several cases, and engage robustly with CSOs – resources from which the Court could gain valuable insights. Although the African Court might attempt to adopt similar measures, it may not do so to the same degree due to its judicial nature.

Collaborative monitoring has also become essential due to the shortcomings of political oversight in the African human rights system. Ideally, the AU Assembly should oversee the implementation of decisions made by AU organs, including those of human rights bodies. Since 2003, this responsibility has been passed to the Executive Council, which meets more frequently and has more opportunities for debates and deliberations. According to Rule 81(4) of the African Court's Rules of Procedure (2020), the Executive Council is tasked with monitoring the execution of the Court's judgments on behalf of the AU Assembly. However, the Council has yet to take any enforcement actions against states based on the non-compliance report submitted to it by human rights bodies. Additionally, the activity reports presented to the Executive Council are seldom discussed or debated. Ayeni and Von Staden have noted that the potential for effective political monitoring within the AU is quite limited in the foreseeable future, primarily due to a lack of political will among the AU Assembly and the Executive Council

members.<sup>49</sup> Without political enforcement of their decisions, the most effective strategy for monitoring implementation is to synergise and collaborate, share resources, adopt a unified approach, and engage one another and other stakeholders.

A significant obstacle to the implementation of the Court's decisions, as highlighted in its activity reports, is the failure of states to submit implementation reports within the designated time frames or at all. Unlike the African Commission and the African Children's Committee, which have various means to address the issue of inadequate reporting, the Court has very limited options because of its judicial nature. Until the Draft Framework for Reporting and Monitoring Execution of Judgments of the African Court on Human and Peoples' Rights is operationalised,<sup>50</sup> working with other human rights bodies remains an attractive option for the Court. Some countries that neglect to submit implementation reports to the African Court occasionally provide periodic reports under article 62 of the African Charter to the African Commission.<sup>51</sup> The African Commission, among other things, may insist that states incorporate into their article 62 reports information on the implementation of decisions of the Commission and the Court. This is possible because the African Court Protocol arguably is a subsidiary treaty to the African Charter. Also, the failure to submit implementation reports to the Court may signal a deeper issue – namely, that the states failing to report have not made meaningful progress in implementing the Court's rulings. This is where AU policy organs may play a moderating role. Although enforcing the African Court's decisions may be politically challenging for AU policy bodies, they can at the very least ensure that all states meet their reporting requirements to the Court, and also to the African Commission under article 62 of the African Charter. Reporting plays a crucial role in prompting implementation, as states often move toward implementing decisions from international adjudicatory bodies to have something to report. The ability to hold states accountable through naming and shaming is diminished when states neglect to report.

Collaborative monitoring of implementation is an element of complementarity between the African Court and the African Commission. The African Court Protocol, specifically in articles 2, 5, 6, 8 and 29, embraces complementarity as the foundational

49 Ayeni & Von Staden (n 9) 26.

50 See generally S Lungu 'An appraisal of the Draft Framework for Reporting and Monitoring Execution of Judgments of the African Court on Human and Peoples' Rights' (2020) 4 *African Human Rights Yearbook* 144-164.

51 African Commission 'States reporting status', <https://achpr.au.int/en/states-reporting-status> (accessed 7 September 2025).

principle for the Court's interactions with the African Commission.<sup>52</sup> In the context of complementarity, the Commission has the ability to request advisory opinions from the Court, while the Court can consult with the Commission regarding the admissibility of decisions. Additionally, the Commission can submit cases to the Court, and the Court may transfer cases to the Commission, provided the Court has jurisdiction over the case. Complementarity also allows for joint meetings between the Court and the Commission, including joint retreats and joint meetings of bureaus of both institutions.

Complementarity is aimed at enhancing effectiveness and efficiency; promoting interdependence and cooperation; ensuring normative coherence; and managing the incidence of forum shopping.<sup>53</sup> The African Court Protocol promotes complementarity in a variety of ways. For example, the Rules of Procedure of the African Court requires both the Court and the Commission to meet at least once a year, and their bureaus may meet as often as necessary.<sup>54</sup> It has been argued that complementarity between the Court and the Commission is not limited to the protective sphere because of the interconnectedness of protective, promotional and interpretive functions.<sup>55</sup> The African Commission exercises its promotional mandate through advocacy visits, research, conferences, seminars, symposia and advisory opinions, among others. The African Court, like the African Commission, also carries out these promotional activities. The Court and the Commission and other AU human rights bodies are already working together in the areas of research, conferences and judicial dialogue, among others. The African Court usually sends representatives to sessions of the African Commission. The possibility of joint monitoring and follow-up measures to ensure effectiveness of remedies have also been raised previously in the internal policy documents of the two institutions.<sup>56</sup>

In the African Commission's Strategic Framework for 2021-2025, the Commission acknowledges that achieving its article 45 mandates of promotion, protection and interpretation is dependent on enhancing synergy, coherence and complementarity among African human rights bodies.<sup>57</sup> In the Strategic Framework, the indicative

<sup>52</sup> See African Court Protocol art 2.

<sup>53</sup> Pan-African Lawyers Union 'Guide to complementarity within the African human rights system' (2014) 8-9, <https://lawyersofafrica.org/wp-content/uploads/PALU-Guide-to-Complementarity-within-the-African-Human-Rights-System.pdf> (accessed 11 September 2025).

<sup>54</sup> Rules of Procedure of the African Court (2020) Rule 34.

<sup>55</sup> Pan-African Lawyers Union (n 53) 8.

<sup>56</sup> Pan-African Lawyers Union (n 53) 20.

<sup>57</sup> African Commission on Human and Peoples' Rights 'Strategic framework 2021-2025' (December 2020) 12-13, <https://achpr.au.int/sites/default/files/>

activities for promoting complementarity among African human rights bodies include joint planning and joint sessions or retreats, a litigation unit dedicated to transfer and litigate cases before the African Court and implementing the case referral guidelines.<sup>58</sup> In order to formalise the details of its unique relationship, the African Court and the African Commission, on 14 October 2022, in Addis Ababa, Ethiopia, adopted the Complementarity Road Map of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights for 2023-2025. The Road Map highlights cooperation between the two institutions in the areas related to the increased efficiency and effectiveness of procedures, amicable settlement, and the implementation of decisions. The Road Map in paragraphs 13 to 15 outlines, among others, how the Commission and the Court proposed to work together in order to improve compliance with their decisions. The Road Map provides useful guidance on how complementarity between the Court and the Commission should be understood and how it may enhance implementation monitoring.

However, the operationalisation of the complementarity between the Court and the Commission has been hampered by a number of factors, including the perception that referral of cases to the Court is the result of the weakness of the Commission relative to the Court, thus putting some members of the Commission in the uncomfortable position of appearing before the Court as an applicant on behalf of the victim(s).<sup>59</sup> There also is the unending conversation about the Commission's status when appearing before the Court, whether it is that of an ordinary or special applicant. The Commission has recently during its eighty-fifth ordinary session finetuned and adopted its criteria for selecting cases for submission to the Court. Although the complementary relationship between the Court and the Commission is often the focus of discussion, both entities also have complementary relationships with other human rights bodies.<sup>60</sup> The African Commission, for example, adopted a Resolution during its forty-fifth session in 2009 on cooperation between the African Commission and the African Children's Committee.<sup>61</sup> The Committee

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files/2023-01/eng-strategic-plan-2021-2025.pdf (accessed 11 September 2025).

58 African Commission Strategic Framework 2021-2025 (n 57) 4.

59 African Commission Strategic Framework 2021-2025 (n 57) 21.

60 L Asuagbor 'The relationship between the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights' paper delivered at the Continental Sensitisation Seminar on the African Court on Human and Peoples' Rights held from 24 to 26 April 2013, Hotel Monte Febe, Yaounde, Cameroon, cited in Pan-African Lawyers Union (n 53) 38.

61 Resolution on Cooperation Between the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child in Africa ACHPR/Res.144(XXXXV)09, <https://achpr.au.int/en/>

has submitted a request for advisory opinion to the Court on its standing before the African Court.<sup>62</sup> The Court in its opinion found that the Committee, being an AU organ, is competent to request an advisory opinion under article 4 of the Court Protocol, but the Committee is not an 'African intergovernmental organisation' in terms of article 5 of the Court Protocol.<sup>63</sup>

The focus of the ensuing part of the article is how both the Court and the Commission can take advantage of complementarity through the concept of collaborative monitoring to enhanced implementation of their decisions.

## 5 Towards collaborative monitoring

The concept of collaborative monitoring implies the adoption of a joint and cooperative approach towards monitoring of implementation of decisions and the systematic collection of information and data for the purpose of informing the structured assessment of progress. It implies working together for a common purpose to streamline processes, optimise resources and achieve efficiency. For example, rather than having the Court, the African Commission or the African Children's Committee plan separate follow-up missions to the Republic of Kenya to monitor the implementation of various indigenous peoples' decisions (the *Ogiek* case, the *Endorois* case or the *Nubian Children* case), these bodies could conduct a joint follow-up mission. Alternatively, when one body is undertaking a follow-up mission, it could coordinate with the other human rights bodies, engage state representatives on the implementation of their decisions, and share its findings with them. Collaborative monitoring may also be implemented through standardised reporting templates and common reporting guidelines. A few of the areas where collaborative monitoring is desirable for the Court and the Commission are highlighted below.

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adopted-resolutions/144-resolution-cooperation-between-african-commission-human-and-peoples-r (accessed 11 September 2025).

62 Advisory Opinion 2/2013 on the Standing of the African Committee of Experts on the Rights and Welfare of the Child before the African Court on Human and Peoples' Rights, requested by the African Committee of Experts on the Rights and Welfare of the Child, <https://www.african-court.org/cpmt/storage/app/uploads/public/5fd/224/240/5fd224240198d507498993.pdf> (accessed 9 September 2025).

63 As above.

### 5.1 State reporting process

The African Court could collaborate with the African Commission with regard to the state reporting process. Under this arrangement, the African Commission, for example, may ask about the implementation of decisions of the African Court during the process of considering state party reports. As argued by Ayeni and Von Staden, 'obligations arising from judgments of the African Court are a part of states' obligations under the African Charter'.<sup>64</sup> The Commission itself has indicated that one of the consequences of its complementarity with the Court is that the Commission may require states to report on the status of the implementation of all human rights decisions including those rendered by the African Court.<sup>65</sup> Thus, while states are failing or delaying in filing their implementation reports with the Court, the state reporting process could provide an alternate avenue to monitor the status of implementation of the Court's decisions.

### 5.2 Common reporting template

Both the African Court and the African Commission would benefit from a harmonised template for reporting to AU policy organs on the status of implementation of their decisions. A joint approach also allows AU policy organs to view the processes of these institutions as mutually reinforcing rather than merely duplicative. A common template will facilitate comprehension of their reports and also enhance political monitoring by AU policy organs. It will also ensure that whatever progress is made regarding political monitoring of the decisions of one institution is enjoyed also by the other. Similarly, both bodies could develop a common template for member states and other parties to report on implementation. Given the problems of reporting fatigue, which is well acknowledged, member states should not have to face varying reporting standards or requirements from both the Court and the Commission. They could develop a common or standardised template for member states and other parties to report on implementation.

### 5.3 Sharing of information and resources

The creation of a joint implementation database will enhance the national process of implementation, allowing a specific member state to view all the decisions made by different AU human rights bodies

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<sup>64</sup> Ayeni & Von Staden (n 9) 26.

<sup>65</sup> African Commission Strategic Framework 2021-2025 (n 57) 21.

against it in a single location or online database. This approach would improve efficiency and is likely to enhance both monitoring and the eventual implementation of decisions. Each institution will benefit from the progress and strength of the other. For example, member states do not have to check separate websites in order to track the decisions issued against them by the Court, the Commission or the Committee. The institutions may co-host a joint member states' human rights implementation status portal where their decisions and their status of implementation may be accessed from one portal by state parties and other stakeholders. This will reduce costs by facilitating cost sharing, thus enhancing accessibility of decisions of the human rights bodies, especially the Court and the Commission. When a member of the public is viewing a particular member state's obligation, they are not only viewing their obligations as decided by one institution, but they are viewing the state's obligations from both institutions. This holistic approach to human rights implementation monitoring reinforces the principle of complementarity.

#### 5.4 Implementation coordination

There should be coordination among the various units and mechanisms of the Court and the Commission that are responsible for implementation follow-up. For example, the Court and the Commission may undertake a joint follow-up mission. Even individual institution's missions should follow up on the implementation of the other's decisions as much as it is practically possible. There are no separate AU member states for the Court and the Commission. Although one institution may have more or less decisions, the member states are practically the same. There is no reason, for example, to require member states to designate separate focal persons for the Court and another set of focal persons for the Commission. Both institutions may decide to make arrangements with the state parties to ensure that focal persons or focal points designated, for example, for the Court are similarly available for use by the Commission, and vice versa. This arrangement will automatically address the current imbalance in the number of focal persons designated for the Court compared to the Commission.

The African Commission has created several special mechanisms such as special rapporteurs, committees and working groups.<sup>66</sup> These mechanisms have functioned effectively in various areas and work more often with national actors during missions and promotional

<sup>66</sup> African Commission 'Special mechanisms', <https://achpr.au.int/en/special-mechanisms> (accessed 10 September 2025).



visits. These mechanisms may assist with implementation monitoring for the Court's decisions as well as those of the Commission. For example, the African Commission has indicated in its Strategic Framework for 2021-2025 that its special rapporteurs during country visits may engage national authorities 'as to reasons for non-implementation of certain decisions of the African Court and consequently and systematically transmitting that information to the Court'.<sup>67</sup> Such practice is a creative use of complementarity that should be encouraged. It has also been suggested that the African Commission and the African Court could join forces during missions.<sup>68</sup> As stated earlier, this synergy could potentially reduce costs and improve efficiency.

### 5.5 Other joint measures

Both organs could explore the possibility of adopting common instruments to regulate implementation hearing. The Court's competence to conduct implementation hearing is provided for in Rule 81(3) of the Court's Rules of Procedure 2020. It is noteworthy that the Court has held an implementation hearing for the first time in the recent reparation judgment concerning the case of the Ogiek indigenous community in Kenya.<sup>69</sup> In order to overcome the challenge confronting the African Commission, which is the lack of a consistent practice or coherent approach in relation to implementation hearing, it is suggested that both the Court and the Commission should adopt a common practice on implementation hearing to guide stakeholders on when and where to hold an implementation hearing, who should attend such hearing and what the expectations of the parties should be. To provide some contexts, both the Inter-American Court as well as the Inter-American Commission are able to call for implementation hearing.<sup>70</sup> The Inter-American Court on Human Rights holds different kinds of hearings.<sup>71</sup> In private hearings, two or three judges of the Inter-American Court are present with the Inter-American Commission, the victims and their legal counsels as well as the state delegation. Private hearings are used to prepare

67 African Commission Strategic Framework 2021-2025 (n 57) 21.

68 Nyarko & Plagis (n 17).

69 *African Commission on Human and Peoples' Rights v Republic of Kenya* (Reparations) Application 6/2012, Judgment of 23 June 2022, para xvi; see also Ayeni & Von Staden (n 9) 14.

70 C Sandoval, P Leach & R Murray 'Monitoring, cajoling and promoting dialogue: What role for supranational human rights bodies in the implementation of individual decisions?' (2020) 12 *Journal of Human Rights Practice* 81.

71 C Sandoval 'The power of hearings: Unleashing compliance with judgments at the Inter-American Court of Human Rights', [https://www.bristol.ac.uk/media-library/sites/law/hric/2021-documents/2.%20The%20power%20of%20hearings\\_Sandoval%20ENG.pdf](https://www.bristol.ac.uk/media-library/sites/law/hric/2021-documents/2.%20The%20power%20of%20hearings_Sandoval%20ENG.pdf) (accessed 10 September 2025).

implementation plans and clear implementation roadblocks.<sup>72</sup> Public hearings are used where there is a clear indication that the state has failed to comply with the orders of the Court. The Inter-American Court holds joint implementation hearings to monitor similar orders against one or more states.

In its Draft Decision on the 2023 Activity Report, submitted to the Executive Council, the African Court proposed to the Executive Council a joint study involving the AU Commission collaborating with the African Court and other relevant AU organs and institutions on the state of compliance with decisions of AU human rights bodies, including, in particular, the reasons for the low level of compliance, and make concrete recommendations to the Executive Council, on how to enhance member states' compliance with such decisions.<sup>73</sup> This exercise is long overdue. With support from the secretariat of the various human rights bodies, this study will raise the profile of human rights decisions compliance in AU work and could ultimately encourage political action to take the monitoring of implementation more seriously at the level of the policy organs of the AU.

The African Court should also engage in regular judicial dialogue with the African Commission and other human rights bodies on the implementation of their decisions to encourage knowledge and lessons sharing. Collaboration with NGOs and civil society is also significant for implementation, as revealed in various studies on the subject.

## 6 Conclusion

This article explored the possible areas of collaboration between the African Court and the African Commission with regard to implementation monitoring. A basic assumption underlying the analysis in the article is that non-compliance with human rights decisions is a generic problem common to all human rights bodies in Africa. Accordingly, while each body may develop its own unique strategies, a common approach obviously should be encouraged. The article examined the practices of the African Court in implementation monitoring with a view to identifying where the Court may benefit from the practices of the African Commission. Studies have shown that the respective human rights bodies in Africa have differing strengths with respect to implementation monitoring. Exploring how the African Court could potentially benefit from the

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<sup>72</sup> As above.

<sup>73</sup> 2023 African Court, EX.CL/Draft/Dec. (XLIV) 1.

strengths of African Commission in monitoring the implementation of its judgments could enhance the implementation of judgments of the Court.

The article discussed the five problems that undermine the role of the African Court on the continent. It described the status of implementation of some of the decisions of the Court and the efforts of the Court to monitor states' implementation of its decisions. It is the position of the article that complementarity with the African Commission, and perhaps with other human rights bodies, remains a viable pathway out of the Court's implementation challenges. While the Commission certainly has its own implementation challenges, working together would not only improve state compliance with the Court's decisions, but also the decisions of the Commission.

It is suggested that the African Court should liaise with national bar associations of African states to encourage ratification of the African Court Protocol and depositing article 34(6) declarations. Most importantly, the Court must strengthen its complementarity with the African Commission. With the limited number of states that have made the article 34(6) declaration and the recent wave of withdrawals of the declaration by at least five states, referral of cases from the African Commission remains one of, if not the most, viable solutions and perhaps a temporary alternative to individual access via article 34(6) declaration. Through the African Commission's referral of cases, the African Court's protective jurisdiction arguably may be extended to individuals and NGOs in states that are yet to make the article 34(6) declaration. Efforts should be made to ensure that the African Commission's framework for referral of cases to the Court is not limited to fresh cases, but also concluded decisions. By referring to the African Court cases in which states have failed to comply, the African Commission is also monitoring the implementation of its own decisions through complementarity.