AFRICAN HUMAN RIGHTS LAW JOURNAL

To cite: PM Clément & R Murray 'The Pan-African Parliament's Model Law on Implementation: A missing link for domestic implementation of the judgments of the African Court on Human and Peoples' Rights' (2025) 25 *African Human Rights Law Journal* 1045-1062
http://dx.doi.org/10.17159/1996-2096/2025/v25n2a25

The Pan-African Parliament's Model Law on Implementation: A missing link for domestic implementation of the judgments of the African Court on Human and Peoples' Rights

*Phebe Mavungu Clément**
Legal Counsel, Pan-African Parliament, Midrand, South Africa
https://orcid.org/0009-0009-7373-5300

*Rachel Murray***
Professor and Director, Bonavero Institute of Human Rights, Mansfield College, University of Oxford, United Kingdom
https://orcid.org/0000-0003-4077-9381

Summary: *One of the central challenges in the implementation of any reparations awarded or recommended by supranational bodies such as the African Court on Human and Peoples' Rights lies in identifying what initiates the national-level administrative processes that must follow. Failure to implement is often attributed to a lack of 'political will', but this conceals the intricate network of factors, relationships and actors affecting the domestic implementation of international judgments.*

* LLM (Pretoria) Licence en Droit (Public International Law and International Relations) (Kinshasa); phemac2002@yahoo.fr. This article is based on a presentation made by the author at the Conference on the Implementation of Decisions of the African Court on Human and Peoples' Rights organised by the Centre for Human Rights, University of Pretoria, on 21 and 22 June 2024 in Arusha, Tanzania.

** LLB (Leicester) LLM (Bristol) PhD (West of England, Bristol); rachel.murray@law.ox.ac.uk

Decisions from judicial and quasi-judicial organs of the African Union, such as the African Court, often have an unclear status when they reach the domestic level. They may not be considered 'foreign judgments' and, therefore, able to be enforced by domestic courts, nor are they 'self-executing'. In some states there is 'enabling legislation' which provides national courts with the ability to enforce decisions of supranational bodies, clarifies the process for their implementation or ensures the decisions are seen as self-executing. Model laws have been adopted by the Pan-African Parliament to offer practical, legislative guidance and solutions for national legislatures and state authorities. This article suggests that the Pan-African Parliament's draft Model Law on Implementation of Decisions of the African Human Rights Bodies (Model Law on Implementation) constitutes a missing link for implementation of the African Court. It offers a toolbox of clauses for states to use at the domestic level in order to bridge the gap between the supranational decisions and their national implementation in a practical way, offering a product that can be adapted by states to suit their national context.

Key words: *African Court on Human and Peoples' Rights; model law; implementation; Pan-African Parliament; missing link*

1 Introduction

In seeking to ensure that victims of violations receive the remedy necessary to redress the harm they have suffered, whether that be compensation, restitution, rehabilitation, satisfaction or guarantees of non-repetition,[1] various initiatives have been created at the national and international levels to address the 'implementation gap' between what a supranational body orders and the state response.[2]

Yet, despite this, supranational courts, including the African Court on Human and Peoples' Rights (African Court), still report a poor rate of compliance by states with their judgments.[3] Leaving aside the challenges of measuring state implementation, and whether statistics

1 UN 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, para 3; D Shelton 'Reparations in human rights law' in R Murray and D Long (eds) *Research handbook on implementation of human rights in practice* (2022) 36.

2 R Murray & D Long *Implementation of the findings of the African Commission on Human and Peoples' Rights* (2015) 1; Open Society Justice Initiative 'From judgment to justice: Implementing international and regional human rights decisions' Open Society Justice Initiative, New York 2010 1.

3 Eg, in 2023, the African Court noted that less than 10% of its decisions had been implemented; Activity Report of the African Court on Human and Peoples' Rights (AfCHPR) 1 January – 31 December 2023 EX.CL/1492(XLIV).

can capture its true extent,[4] the reasons why state authorities fail to implement supranational bodies' decisions are complex.[5] These include key implementing actors being unaware of their existence;[6] a lack of understanding of precisely what actions are required by the state authorities;[7] and no or inadequate infrastructure or systems to identify those responsible for implementation and who will coordinate state action at the domestic level.[8]

Research has shown that implementation of supranational bodies' decisions is rarely automatic.[9] Processes are required for the

4 A Donald, D Long & A-K Speck 'Identifying and assessing the implementation of human rights decisions' (2021) 12 *Journal of Human Rights Practice* 125; T Landman & K Schwarz 'Human rights indicators and implementation' in Murray & Long (n 1) 310.

5 C Hillebrecht *Domestic politics and international human rights tribunals: The problem of compliance* (2014); D Anagnostou & A Mungiu-Pippidi 'Domestic implementation of human rights judgments in Europe: Legal infrastructure and government effectiveness matter' (2014) 25 *European Journal of International Law* 205; Open Society Justice Initiative (OSJI) (n 2); Open Society Justice Initiative (OSJI) *Strategic litigation impacts. Insights from global experience* (2018); F Viljoen and L Louw 'State compliance with the recommendations of the African Commission on Human and Peoples' Rights, 1994-2004' (2007) 1010 *American Journal of International Law* 1-34; A Huneeus 'Human rights between jurisprudence and social science' (2015) 28 *Leiden Journal of International Law* 255; A Huneeus 'Compliance with international court judgments and decisions' in KJ Alter, C Romano & Y Shany (eds) *Oxford handbook of international adjudication* (2013) 437.

6 See, eg, with respect to parliament, P-Y le Borgn 'A parliamentary perspective on the implementation of the judgments of the European Court of Human Rights' (2020) 12 *Journal of Human Rights Practice* 199.

7 See, eg, African Commission on Human and Peoples' Rights Report of the Second Regional Seminar on the Implementation of Decisions of the African Commission on Human and Peoples' Rights, 4-6 September 2018, Zanzibar, Tanzania para I(b); R Murray & C de Vos 'Behind the state: Domestic mechanisms and procedures for the implementation of human rights judgments and decisions' (2020) 12 *Journal of Human Rights Practice* 22; A Huneeus 'Courts resisting courts: Lessons from the Inter-American Court's struggle to enforce human rights' (2011) 44 *Cornell International Law Journal* 493.

8 Open Society Justice Initiative (OSJI) *From rights to remedies: Structures and strategies for implementing international human rights decisions*(2013); VA Schorm 'It takes a village to implement a judgment: Creating a forum for multi-stakeholder involvement in the Czech Republic' (2020) 12 *Journal of Human Rights Practice* 193; S Lorion *Defining governmental human rights focal points: Practice, guidance and concept* (2021), https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Lorion%20Defining%20GHRFPs%20-%20DIHR%202021%20Final.pdf (accessed 30 November 2025); S Lorion & S Lagoutte 'What are governmental human rights focal points' (2021) 39 *Netherlands Quarterly of Human Rights* 80; S Lorion & S Lagoutte 'Implementers or facilitators of implementation? Governmental human rights focal points' complex role in enhancing human rights compliance at the national level' in Murray & Long (n 1) 119; M Limon 'The global human rights "implementation agenda" and the genesis of NMIRFs' in Murray & Long (n 1) 187; AM Maués and others 'Judicial dialogue between national courts and the Inter-American Court of Human Rights: A comparative study of Argentina, Brazil, Colombia and Mexico' (2021) 21 *Human Rights Law Review* 108; S Lagoutte 'The role of state actors within the national human rights system' (2019) 37 *Nordic Journal of Human Rights* 177.

9 Eg E Abi-Mershed 'The Inter-American Commission on Human Rights and implementation of recommendations in individual cases' (2019) 12 *Journal of Human Rights Practice* 171; J Krommendijk 'Domestic gatekeepers or international enforcers? National courts' engagement with decisions of international human rights courts and treaty bodies' in Murray & Long (n 1) 163.

implementation of remedies, whether this is to pay compensation,[10] open an investigation, conduct a retrial or prosecute individuals,[11] adopt legislation,[12] train officials or undertake other action to prevent further violations from occurring.

Although the legal status in international law of decisions from quasi-judicial bodies, such as the African Commission on Human and Peoples' Rights (African Commission), the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) and the UN Human Rights Committee, is contested,[13] in the case of judgments of supranational courts the position is much clearer. Thus, article 30 of 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) requires that the state, in cases to which it is party, 'undertakes to comply' with the judgments of the Court.[14]

However, while there are various tools to try and address the legal status of the treaty provisions at the national level, including that the treaties are self-executing,[15] have direct effect,[16] through legislative

10 V Fikfak 'Compliance and compensation. Money as a currency of human rights' in Murray & Long (n 1) 98; V Fikfak 'Changing state behaviour: Damages before the European Court of Human Rights' (2018) 29 *European Journal of International Law* 1091.

11 Huneeus (n 7); Krommendijk (n 9). See Recommendation R (2000) 2 of the Committee of Ministers to member states on the re-examination or re-opening of certain cases at the domestic level following judgments of the European Court of Human Rights (adopted by the Committee of Ministers on 19 January 2000 at the 694th meeting of the Ministers' Deputies).

12 Murray & De Vos (n 7) ; K Roberts Lyer 'Parliaments as human rights actors: The potential for international principles on parliamentary human rights committees' (2019) 37 *Nordic Journal of Human Rights* 195; A Donald & P Leach *Parliaments and the European Court of Human Rights* (2016); Le Borgn (n 6); M Hunt, H Hooper & P Yowell *Parliaments and human rights. Redressing the democratic deficit* (2015); A Donald 'Parliaments as compliance partners in the European Convention on Human Rights system' in M Saul, A Follesdal & G Ulfstein *The international human rights judiciary and national parliaments, Europe and beyond (*2017) 75; M Hunt & B Chang 'The role of parliaments in implementing decisions and recommendations from supranational human rights bodies' in Murray & Long (n 1) 140; Open Society Justice Initiative (OSJI) (n 8).

13 R van Alebeek & A Nollkaemper 'The legal status of decisions by human rights treaty bodies in national law' in H Keller & G Ulfstein (eds) *UN human rights treaty bodies: Law and Legitimacy* (2012) 356.

14 See also art 68 American Convention on Human Rights; art 46 European Convention on Human Rights.

15 AO Enabulele & E Okojie 'Myths and realities in "self-executing treaties"' (2016) 10 *Mizan Law Review* 1-37; JJ Paust 'Self-executing treaties' (1988) 82 *American Journal of International Law* 760-783; JM Henckaerts 'Self-executing treaties and the impact of international law on national legal systems: A research guide' (1998) 26 *International Journal of Legal Information* 56-159; EM Ngolele 'The content of the doctrine of self-execution and its limited effect in South African law' (2006) 31 *South African Yearbook of International Law* 141; PM Venetis 'Making human rights treaty law actionable in the United States: The case for universal implementing legislation' (2011) 63 *Alabama Law Review* 97.

16 A Nollkaemper 'The duality of direct effect of international law' (2014) 25 *European Journal of International Law* 105.

and constitutional provisions, or incorporation of the treaty provisions through a domestic law, the position is less clear with respect to the domestic legal status of decisions or judgments from treaty bodies and international courts and whether states have an obligation to ensure their domestic legal effect. This has significant implications for how various state authorities respond to a decision or judgment: Implementation 'requires by definition a legal basis in national law'.[17]

Hence, one of the central challenges in the implementation of any reparations awarded or recommended by supranational bodies such as the African Court on Human and Peoples' Rights lies in identifying what initiates the national-level administrative processes that must follow. Non-implementation is frequently ascribed to a lack of 'political will', yet this explanation conceals the intricate network of underlying factors, relationships and actors affecting the domestic implementation of international judgments. Decisions from judicial or quasi-judicial organs of the African Union (AU) such as the African Court often have an unclear status when they reach the domestic level. They may not be considered 'foreign judgments' and, therefore, able to be enforced by domestic courts, nor are they 'self-executing'.

A solution to this is 'enabling legislation', adopted in a number of countries, which, in various forms, aims to give legal effect to the supranational body's decision or judgment. This article considers why a Model Law on Implementation, led by the Pan-African Parliament (PAP), could assist states in the adoption of such and facilitate implementation of African Court judgments. The Model Law on Implementation could provide a toolbox of clauses that states can utilise in domestic laws to provide this bureaucratic and legal trigger to give legal status to judgments from the African Court and other supranational bodies.

2 Reasons why enabling legislation is needed

Article 30 of the African Court Protocol obliges states to 'undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution'. This provision, according to the African Court, 'explicitly imposes an obligation on states to comply with its judgments. In

17 Van Alebeek & Nollkaemper (n 13).

fact, it considers that this obligation constitutes the condition *sine qua non* of any international litigation.'[18]

Going a step further, however, does article 1 of the African Charter on Human and Peoples' Rights (African Charter), read in conjunction with article 30 of the African Court Protocol, impose on states 'an obligation to provide for the legal effect of [the Court's judgments] within their national legal orders'?[19] Without this clarity, if the decision of the African Court conflicts with the binding national law or domestic court judgments, state authorities and, in particular, national courts, are placed in a difficult position.[20]

Could foreign judgments laws offer a solution? These laws provide for the judgments adopted by the courts of one jurisdiction to be enforced by the courts of another. However, such laws do not necessarily define 'foreign judgments' to be those adopted by international courts.[21] Thus, as Oppong argues, 'statutory regimes for enforcing foreign judgments have not been extended to international judgments. Accordingly, international judgments can only, if at all, be enforced using the common law regime.'[22]

Consequently, 'legislation that gives national courts jurisdiction to enforce international judgments and which can deal with other issues that attend the exercise of such jurisdiction is particularly important

18 *Suy Bi Gohore Emile & Others v Côte d'Ivoire* (Judgment) (2020) 4 AfCLR 406, 58 & 60. See also *Reverend Christopher R Mtikila v Tanzania* (Reparations) (2014) 1 AfCLR 72, 42. See with respect to whether there is a legal obligation to provide a remedy 'as a follow-up to the decision' on states party to the ICCPR, K Fox Principi *Implementation of decisions under treaty body complaints procedures – Do states comply? How do they do it?* (2017) 13, https://hr.un.org/sites/hr.un.org/files/editors/u4492/Implementation%20of%20decisions%20under%20treaty%20body%20complaints%20procedures%20-%20Do%20states%20comply%20-%202015%20Sabbatical%20-%20Kate%20Fox.pdf (accessed 30 November 2025).

19 Van Alebeek & Nollkaemper (n 13) 391.

20 Van Alebeek & Nollkaemper (n 13) 377-378. In relation to the receipt of Views of the UN Human Rights Committee in Zambia, eg, 'where the proposed remedy is at variance with the domestic legal order, this has been impossible to implement. For example, a number of cases challenged the death penalty and findings were made against Zambia. Considering that these sentences were brought by domestic courts and exhausted all appeal options, it means in those specific cases that the decisions of the courts cannot be reversed, despite the finding of the HRCttee. In such cases, the only option is through a moratorium or pardon by the President;' O'B Kaaba 'The impact of the United Nations human rights treaties on the domestic level in Zambia' in C Heyns, F Viljoen & R Murray (eds) *The impact of the United Nations human rights treaties on the domestic level: Twenty years on* (2024) 1273, 1286.

21 RF Oppong *Private international law in Commonwealth Africa* (2013) 313, citing Kenya's Civil Procedure Act 1924, where a foreign judgment is 'judgment of a foreign court', a foreign court being 'a court situated outside Kenya which has no authority in Kenya'; Civil Procedure Act 1924 sec 1.

22 Oppong (n 21).

and necessary'.[23] This 'enabling legislation' can 'empower, or oblige, state organs to grant effect to the decisions of treaty bodies on individual complaints'.[24] Advocated by some treaty bodies,[25] there is evidence that this legislation has had success in increasing the implementation of supranational bodies' decisions.[26]

Enabling legislation exists in a number of jurisdictions and can take different forms,[27] and we propose the consideration of these in the formulation of the Model Law on Implementation, as will be seen below. For instance, it has been reported that Act 6889 of 1981 of Costa Rica provides that judgments of the Inter-American Court of Human Rights will have the same legal effect as domestic court judgments.[28] In addition, the Supreme Court of Zambia found that courts can 'consider and take into account provisions of international instruments and decided cases in other courts. Zambian courts are

23 As above. See also, with respect to judgments of the European Court of Human Rights, Recommendation R (2000) 2 of the Committee of Ministers (n 11), Explanatory Memorandum 3: 'Although the Convention contains no provision imposing an obligation on Contracting Parties to provide in their national law for the re-examination or reopening of proceedings, the existence of such possibilities have, in special circumstances, proven to be important, and indeed in some cases the only, means to achieve *restitutio in integrum*. An increasing number of States have adopted special legislation providing for the possibility of such re-examination or reopening. In other States this possibility has been developed by the courts and national authorities under existing law.'

24 Van Alebeek & Nollkaemper (n 13) 362.

25 Eg, Human Rights Committee General Comment 33: Obligations of state parties under the Optional Protocol to the International Covenant on Civil and Political Rights, UN Doc. CCPR/C/GC/ 33, 5 November 2008 para 20.

26 See in relation to Colombia, comparing the implementation of two Views of the UN Human Rights Committee adopted before and after enabling domestic legislation: *Bautista de Arellana v Colombia* Communication 563/1993, 27 October 1995, UN Doc. CCPR/C/55/D/199, and *Arhuaco v Colombia* Communication 612/1995, 14 March 1996, UN Doc. CCPR/C/56/D/612/1995, discussed in Van Alebeek & Nollkaemper (n 13) 364.

27 Eg Burundi, Loi 1/07 Regissant la Cour Supreme, Republique du Burundi Cabinet du President (25 February 2005) art 43(5); see OSJI (n 8) 81; Steering Committee for Human Rights (CDDH) 'Guide to good practice on the implementation of Recommendation (2008) 2 of the Committee of Ministers on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights (as adopted by the CDDH at its 87th meeting, 6-9 June 2017), 13 July 2017, CDDH (2017) R87 Addendum I, https://rm.coe.int/guide-to-good-practice-on-the-implementation-of-recommendation-2008-2-/16809d3ac3 (accessed 30 November 2025); Department for the Execution of Judgments of the European Court of Human Rights, Roundtable on effective national co-ordination for the execution of ECHR judgments, 8 March 2022, https://www.coe.int/en/web/execution/-/roundtable-on-effective-national-co-ordination-for-the-execution-of-echr-judgments (accessed 30 November 2025); E Lambert-Abdelgawad 'The execution of judgments of the ECtHR' (2002) *Human Rights Files 19*; Recommendation R (2000) 2 of the Committee of Ministers (n 11). Writing in 2017 with respect to enabling legislation implementing UN Human Rights Committee Views, Fox Principi notes six types of national mechanisms; Fox Principi (n 18) 20.

28 European Commission for Democracy Through Law (Venice Commission) Report on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts, adopted by the Venice Commission at its 100th plenary session (Rome, 10-11 October 2014) para 35.

not operating in isolation and any decision made by other courts on any aspect of the law is worth considering'.[29]

Legislation may also provide for a procedure for the re-opening, revision or review of proceedings on the basis of the finding of a violation by an international body.[30] This may be possible, for example, by considering that the decision or judgment of the international body is 'new evidence' or 'new facts',[31] or through procedures such as judicial review, and as an exception to the principle of *res judicata*.[32] In Spain, for example, where there has

29 *Kingaipe & Another v Attorney- General* 2009/ hl / 86, cited in Kaaba (n 20) 1280. See also Czech Republic Act on Providing Cooperation for the Purposes of Proceedings before Certain International Courts and Other International Supervisory Bodies, 2011, 186/2011, art 87 para 1 Lit.i, cited in Fox Principi (n 18) 84-85. See use of *tutela* in Colombia as a mechanism, R Uprimny, S Ruano & GM García 'The impact of the United Nations human rights treaties on the domestic level in Colombia' in Heyns and others (n 20) 227, 258.

30 See eg sec 391(2) of the Norwegian Criminal Procedure Act 25 of 1981, as amended on 15 June 2001; Law 63; and Code of Criminal Procedure of Hungary, para 146, for decisions from 'a human rights body established by an international treaty'; see Van Alebeek & Nollkaemper (n 13) 366-370. See also European Commission for Democracy Through Law (Venice Commission) (n 28) para 33; Fox Principi (n 18). See Van Alebeek & Nollkaemper (n 13) 371, with respect to Peru's response to UN Human Rights Committee Views in *Polay Campos v Peru* Communication 577/1994, 6 November 1997, UN Doc. CCPR/C/61/D/577/1994, use of the extraordinary appeal measure of revision, Code of Criminal Procedure, art 361; Committee on Legal Affairs and Human Rights, Report on the Execution of Judgments of the ECtHR, Doc 8808 para.77: '[I]f this is not already the case, they should ensure that their legislation provides for the revision of a trial following a judgment of the Court, as the French government did following the judgment in the Hakkar case. This is in conformity with Recommendation No R (2000) 2 of the Committee of Ministers.'

31 Eg Portugal, Code of Criminal Procedure, art 449, UN Human Rights Committee, Dialogue, July 2012, CCPR/C/SR. 2936; see Fox Principi (n 18) 26, 27.

32 Eg Hungary, Act XIX of 1998 on Criminal Proceedings, amended by law 150 (CL) 2011, came into force on 1 January 2012 ch XVII: 'Section 416(1) A Judicial review may take place to the benefit of the defendant in the following cases as well: (g) 230 a body for the protection of human rights, created by way of international treaty established that the conduct of the procedure or the final decision of the court has violated a provision of the international treaty promulgated by law, provided that the Republic of Hungary has submitted herself to the jurisdiction of the international body for the protection of human rights. (3) A judicial review under article (1) point (g) can take place also if the body for the protection of human rights created by way of international treaty established that the conduct of the procedure constituted such a violation of the provision of the international treaty, which according to this law cannot be remedied by judicial review, only by appeal', cited in Fox Principi (n 18) 90-91; Code of Criminal Procedure of Lithuania, arts 456 & 457: Art 456 of the Code reads as follows: 'Criminal cases, examined by the courts of the Republic of Lithuania, can be reopened when the United Nations Human Rights Committee recognizes that the decision to convict a person is taken in violation of the International Covenant on Civil and Political Rights and its Additional Protocols, or the European Court of Human Rights finds that conviction of a person contradicts the Convention for the Protection of Human Rights and Fundamental Freedoms or Protocols thereto, if the nature and seriousness of a violation raise doubts regarding the conviction of a person and the continuation of a violation can be remedied only by the reopening of proceedings.' According to art 457 of the Code, 'an application for the reopening of criminal proceedings before the Supreme Court can be lodged by a person in respect of whom violations of the Convention have been committed, also by the successor of his rights or legal representative.' See also Department for the Execution of Judgments of the

been a judgment of the European Court of Human Rights and a national case needs to be re-opened and proceedings have been initiated in the Supreme Court, the competent government agent can intervene on the execution of the judgment.[33]

In addition, other legislation creates mechanisms by which compensation ordered by a supranational body can be paid. These include a process to claim the compensation through a national dispute settlement body,[34] as a public law complaint and therefore paid through a particular court,[35] or from a national body.[36] Colombia's Law 288/96 provides for a process to respond to findings of violations by the United Nations (UN) Human Rights Committee's Views or decisions of the Inter-American Commission on Human Rights and which have ordered compensation to be paid as a remedy. An inter-ministerial committee will consider this international decision as well as other evidence and can 'pronounce a favourable opinion on the fulfilment of the judgment of the international human rights Body in all cases that meet the factual and legal conditions provided in the Constitution and the applicable international treaties'. If found in favour of the victim, then a settlement process will take place.[37]

Other types of enabling legislation create mechanisms. States have been encouraged to establish 'national mechanisms for implementation reporting and follow-up' (NMIRF), principally to coordinate responses to state reporting, but which may expand their remit to follow-up on decisions from supranational bodies.[38] Numerous examples of these mechanisms now exist across the continent.[39] Other mechanisms include politico-administrative

European Court of Human Rights Reopening Of Domestic Judicial Proceedings Following The European Court's Judgments, October 2022, https://rm.coe.int/tfs-reopening-en/1680a8a486 (accessed 30 November 2025).

33 'Spain: Recent good practices in the field of execution of the European Court's judgments', 22 March 2024, https://www.coe.int/en/web/execution/-/spain-recent-good-practices-in-the-field-of-execution-of-the-european-court-s-judgments-1 (accessed 30 November 2025).

34 Eg Greece, Introductory Law to the Civil Code, arts 104 and 105; Fox Principi (n 18) 33.

35 Eg Finland; Fox Principi (n 18) 35.

36 Eg Austria, through its Austrian Ombudsman Board, Austrian Constitution, ch VIII, art 148(a), Fox Principi (n 18) 34.

37 Art 2(1), 4-15. See also Van Alebeek and Nollkaemper (n 13) 364-365; Murray & de Vos (n 7).

38 See African Commission on Human and Peoples' Rights (n 7) para 20(b); OHCHR 'National Mechanisms for Reporting and Follow-up. A Practical Guide to Effective State Engagement with International Human Rights Mechanisms' HR/PUB/16/1 (2016); OHCHR 'National Mechanisms for Reporting and Follow-up. A Study of State Engagement with International Human Rights Mechanisms' HR/PUB/16/1/Add.1 (2016).

39 OHCHR 'Regional consultations on experiences and good practices relating to the establishment and development of national mechanisms for implementation, reporting and follow-up. Report of the Office of the United Nations High Commissioner for Human Rights' A/HRC/50/64, 4 May 2022; OHCHR 'The

processes (driven by the Ministry of Foreign Affairs or the Ministry of Justice which will interact with the victim or beneficiary, and report back to the relevant international body),[40] or National Sectoral Committees, which the AU Commission has encouraged as a means to facilitate coordination of state action for ratification of AU treaties, which should arguably include the domestic implementation of decisions of human rights bodies established under those treaties. Friendly settlement mechanisms are other possibilities,[41] as are judicial mechanisms, namely, those that are led by and enforced through the justice system, where the international decision to be implemented is given domestic status and then executed in the same way as any judicial decision.[42] It is hoped that enabling legislation will advance implementation and consequently enhance the promotion of human and peoples' rights. Ultimately, state compliance with their obligations under the African Charter and other human rights instruments will then be improved.

3 Role of the Pan-African Parliament in the formulation of model laws

The establishment of the PAP among the AU organs signalled a historical milestone and perhaps the most important development in the strengthening of the AU institutional architecture. It laid solid grounds for democratic governance and oversight within the AU system and provided a formal 'platform for the peoples of Africa to get involved in discussions and decision-making on issues affecting the continent'.[43]

status of National Mechanisms for Reporting and Follow-up in Southern Africa. Practices, Challenges and Recommendations for Effective Functioning' (2021); R Murray 'Assistance to the ACHPR in the implementation of its decisions: The role of national mechanisms for implementation, reporting and follow-up (NMIRF)' paper to Centre for Human Rights Conference on the Implementation and Domestic Impact of the decisions of the African Commission on Human and Peoples' Rights, Pretoria, 13-15 September 2023.

40 Eg Sweden, CCPR/C/SWE/7; and Denmark, CCPR/C/SR.3268.

41 See Argentina, art 44 of Law 6757 which regulates extrajudicial agreements.

42 See the Italian Law 12 of 19 January 2006 (also called the Azzolini Law) creating a legislative basis for a special procedure for judicial supervision of the implementation of judgments by the government and Parliament. See Peruvian Law 27.775 of 27 June 2002 regulating the procedure for the execution of judgments issued by supranational tribunals.

43 The purpose of the establishment of the PAP is set out in art 17 of the AU Constitutive Act. See also African Union Commission & New Zealand Ministry of Foreign Affairs and Trade *African Union handbook* (2016) 86.

3.1 Unpacking the mandate of the Pan-African Parliament

The PAP was established as a quasi-legislative organ of the AU under article 17 of the Constitutive Act, with a clear mandate to 'ensure the full participation of African peoples in the development and economic integration of the continent'.[44] Article 11 of the Sirte Protocol defines the content and scope of this mandate with a set of powers and functions, by providing that the PAP 'shall be vested with legislative powers to be defined by the Assembly. However, during the first term of its existence, they shall exercise advisory and consultative powers only', with a set of functions. It is worth indicating that advisory and consultative powers are two faces of the same coin: While its advisory power enables the PAP to direct and express opinions and views to the AU, its organs, regional economic communities (RECs) and member states, its consultative power requires that the views channelled must emanate from and be responsive to the aspirations of the peoples of Africa, which the PAP is established to represent.[45] The PAP advisory and consultative powers are exercised through performance of a range of functions provided for in article 11 of the Sirte Protocol, which are quasi-legislative, budgetary, oversight and representational functions.

3.2 Formulation of model laws within the PAP's advisory and consultative powers

In the exercise of its functions, especially the review of issues related to the observance of human rights, the consolidation of democratic institutions and the culture of democracy, as well as the promotion of good governance and the rule of law, the PAP parliamentary activities culminate in a parliamentary decision, which usually takes the form of a resolution,[46] a recommendation,[47] a declaration[48] or a model law or harmonisation instrument.

A harmonisation instrument is developed as a practical, legislative guideline or model legislation designed for use or adaptation by

44 Art 17 Constitutive Act of the AU.
45 See art 11 (1) of the Sirte Protocol.
46 A resolution is normally submitted as an Annex to the PAP Activity Report, and to the Policy Organs where it has financial implications. The Pan-African Parliament adopts an average of eight resolutions per session.
47 A recommendation is normally submitted to the entity to which it is directed, as the case may be. The Pan-African Parliament adopts an average of ten resolutions per session.
48 A declaration is an opinion expressed on an issue that does not directly fall under the territorial competence of the PAP, but is relevant to its *ratione materiae* competence. When issued, a declaration is merely disseminated in the media and other networks.

the member states, through initiatives from the national or regional parliaments as well as individual parliamentarians. Harmonisation instruments include model laws, model agreements, parliamentary guidelines and harmonised legislation.

The PAP power to make harmonisation instruments such as model laws is grounded in articles 11(3) and (7) of the PAP Sirte Protocol. While it is true that article 8(1) of the PAP Malabo Protocol (not yet in force) is lauded for vesting PAP with a clearly defined mandate to make model laws, the PAP Sirte Protocol, under articles 11(3) and (7), already empowers the PAP to harmonise laws of the member states which is provided for in the Sirte Protocol. Since its establishment, the PAP has been able to finalise ten model instruments,[49] and is in the process of developing eight other draft model laws, [50] which speak to the AU policy priorities and promote domestication of AU treaties. While some other AU organs and institutions develop model laws, the PAP remains the most suited in that respect, owing to its parliamentary institutional vocation, its quasi-legislative nature, and its legitimacy as the AU legislative organ mandated to represent and mainstream the aspirations of African peoples in the AU legal and policy frameworks.

4 A Model Law on implementation of decisions of African human rights bodies

There are various model laws in Africa, including those on human rights matters, such as a Model Law on Access to Information,[51] an African Model Law on Disability in Africa,[52] and the Model Law on Policing in Africa.[53] These have been proven to be effective tools in encouraging the adoption of laws by some state legislators.[54] In

49 See the AU Model Law on Medical Products Regulation; the AU Model Law on the Protection of Cultural Heritage; the Model Law on Policing in Africa; the Model Law on Disability in Africa; the Model Double Taxation Agreement; the Model Law on Food and Nutrition Security; the Model Law on Cooperatives in Africa; the Model Law on Gender Parity in Africa; the Model Law on Sustainable Soil Management; and the Model Law on Labour Migration.

50 Model Law on Climate Change in Africa; Model Law on the Right to Nationality and the Eradication of Statelessness in Africa; Model Law on Factoring in Africa; Model Law on Drug Abuse, and Model Law on Implementation of Decisions of Human Rights Bodies.

51 Adopted by the African Commission on Human and Peoples' Rights, Model Law on Access to Information 2013, https://achpr.au.int/en/node/873 (accessed 30 November 2025).

52 African Model Law on Disability, https://pap.au.int/sites/default/files/files/2023-08/papen-theafricanmodellawondisability.pdf (accessed 30 November 2025).

53 Pan-African Parliament Model Police Law for Africa, https://apcof.org/wp-content/uploads/pap-model-police-law-for-africa.pdf (accessed 30 November 2025).

54 F Adeleke 'The impact of the Model Law on Access to Information for Africa' in O Shyllon (ed) *The Model Law on Access to Information for Africa and other*

2024 two further model laws were adopted by PAP, on Food and Nutrition Security, and on Cooperatives in Africa, and three other model laws – on gender equality and equity in Africa, on sustainable soil management in Africa and on labour migration in Africa – were finalised in 2025. These evidence that such documents are gaining momentum and legitimacy from the AU and its member states, which more and more embrace such initiatives by the PAP.[55]

Over the last few years, the PAP has adopted a strategy consisting in encouraging its members to champion model laws in their respective countries, by either advocating the line ministers to use or exploit them in their legislative proposals, or even to simply convert them into private members bills, or even to utilise them as an *aide-memoire* while participating in national parliamentary debates in matters concerning or incidental to the subject matter of a PAP model law. A practical illustration is the feedback received from PAP members of the delegation of Mauritius, whereby they successfully pushed for the enactment of the Mauritian Protection and Promotion of the Rights of Persons with Disabilities Act,[56] in which they mainstreamed the standards outlined in the 2019 PAP Law on Disability in Africa. It is anticipated that the same strategy will be recommended to and emulated by all PAP members, who will be directed to take concrete steps to trigger the enactment in their respective countries of a legislation informed by PAP model law standards, including those under the Model Law on Implementation.

Model laws can offer practical guidance and solutions for national legislatures and state authorities.[57] They can 'set a standard', and act as a benchmark against which to measure national law.[58] While they

regional instruments: Soft law and human rights in Africa (2018) 14, noting that legislation on access to information passed in a number of African states shortly after the adoption of the Model Law by the African Commission in 2013.

55 See Executive Council Decision EX/CL/1577(XLVI) para 7, in which the Executive Council 'encourages member states to domesticate the Model Law on Cooperatives in Africa and the Model Law on Food and Nutrition Security in Africa into their national legislative frameworks; and further encourages the PAP to continue its work on the formulation of other Model Laws on various thematic areas in collaboration with other AU Organs and the relevant STCs of the AU'.

56 Act 1 of 2024.

57 A Shyllon 'The Model Law on Access to Information for Africa and other regional instruments: Soft law and human rights in Africa' in Shyllon (n 54) 4; 235 Pan-African Parliament Model Police Law for Africa 7, https://apcof.org/wp-content/uploads/pap-model-police-law-for-africa.pdf (accessed 30 November 2025); United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (OSRSGSVC) *Model legislative provisions and guidance on investigation and prosecution of conflict-related sexual violence* (2021).

58 M Adeola 'The African Union Model Law on Internally Displaced Persons: A critique' in Shyllon (n 54) 235; HD Gabriel 'The use of soft law in the creation of legal norms in international commercial law: How successful has it been' (2019) 40 *Michigan Journal of International Law* 413, 415; International Service

can be a 'base line', they can also go further,[59] providing 'leadership'[60] and a 'model for current best thinking',[61] by incorporating examples of best practice. For the African legal systems, they offer a regional standard, 'home-grown',[62] and tailored to the specifics of the continent.

As seen above, there are different types of enabling legislation which, for instance, can embrace only certain supranational bodies,[63] or certain remedies,[64] and relevant provisions can be scattered across different laws and codes. A model law could include all these different elements offering a comprehensive and holistic approach. In addition, the very process of PAP adopting a model law, as well as the final product, can serve as a useful advocacy tool,[65] raising awareness on the processes for and importance of implementation of decisions and judgments of supranational bodies.[66]

It is interesting to consider how extensively the model law serves as a tool for harmonising the implementation of African Court judgments – or indeed the decisions of other African bodies – across the continent.[67] A model law, on the one hand, could be argued to be intended to be 'adopted as drafted'.[68] On the other hand, however, and this is the proposed approach here, it could 'strategically accommodate policy differences',[69] through suggesting, for example, options that could be utilised depending upon the state. The drafting of this Model Law incorporates the wording of legislative clauses found in domestic jurisdictions from within Africa as well as across the globe. It, thus is an attempt to provide examples

for Human Rights *Model Law for the Recognition and Protection of Human Rights Defenders* (2016).

59 International Service for Human Rights (n 58) 1-3.

60 R Johnson 'The Model Law on HIV in Southern Africa: Third World Approaches to International Law insights into a human rights-based approach' (2009) 9 *African Human Rights Law Journal* 149.

61 D Gabriel (n 58) 431.

62 U Ukaigwe 'The Model Law on Access to Information for Africa and the Struggle for the Review and Passage of the Ghanaian Right to Information Bill of 2013' in Shyllon (n 54) 99.

63 Eg Norway sec 391(2) Norwegian Criminal Procedure Act 25 of 1981, as amended on 15 June 2001, Law 63, but only in relation to the View of the UN Human Rights Committee.

64 Eg compensation, Colombia, Law 288/96.

65 International Service for Human Rights (n 58).

66 M Whisner 'There oughta be a law – a model law' University of Washington School of Law Legal Studies Research Paper 2014-18 (2014) 106 *Law Library Journal* 125.

67 MP Ferreira-Snyman & GM Ferreira 'The harmonisation of laws within the African Union and the viability of legal pluralism as an alternative' (2010) 73 *Journal for Contemporary Roman-Dutch Law* 608.

68 Gabriel (n 58) 420.

69 Johnson (n 60) 139-140.

of good practice in one document from which states can draw as required.

5 Outline of a Model Law on Implementation of the judgments of the African Court

Presenting at a conference on the Implementation and Domestic Impact of Judgments of the African Court on Human and Peoples' Rights, in Arusha in June 2024,[70] our proposal for a model law was subsequently adopted, as part of a wider package of activities by which PAP could monitor the implementation of the African Court's rulings. In a resolution adopted at the third ordinary session of the Sixth Parliament, the PAP requested its Committee on Justice and Human Rights 'to explore the potential gaps in national legislations in relation to the framework of implementation emanating from African human rights bodies and to propose a model legal instrument to guide harmonised domestic implementation of decisions of African human rights bodies'.[71] A policy legal framework for the model law was elaborated and considered by the Justice and Human Rights Committee in November 2024 and aimed to define the scope of the model law. On 6 November 2025, the Plenary of the PAP adopted on first reading the draft model law, which will now be disseminated for consultations.

As noted above, there are various examples of legislative clauses that attempt to give legal effect to specific remedies within specific jurisdictions. Yet, there is no single document that brings these together. This proposed model law attempts to do just that: provide a toolbox of clauses that states can use and adapt for their own jurisdictions.

Some AU member states have enacted laws that guide the process of treaty making, ratification, domestication and related matters.[72] Implementation of decisions made by treaty bodies is not yet a subject of legislative enactment. As a result, the absence of legislative guidance results in decisions of human rights bodies such as the African Court lacking the necessary domestic legal status as is the case for foreign judgments, which are given domestic enforcement

70 Organised by the Centre for Human Rights at the University of Pretoria, the African Court on Human and Peoples' Rights and the African Court Coalition.

71 PAP Resolution on Challenges to Effective Implementation of Decisions of the African Union Governance and Human Rights Bodies, PAP.6/PLN/CJHR/RES/04/JUN.24 para 3.

72 See, eg, the Kenyan Treaty Making and Ratification Act 45 of 2012; the Zambian Ratification of International Agreements 34 of 2016; the Ugandan Ratification of Treaties Act of 13 March 1998.

status.[73] Hence the need to propose a national legislation, including its main components, which may be relevant for a legislation on implementation of human rights decisions.

While acknowledging the specificities of various national legislations, some critical elements remain indispensable in any legislation aimed at facilitating the implementation of decisions of the African Court, to promote a degree of uniformity or harmony in the way in which human rights decisions are implemented across the continent. As set out in the November 2024 Policy and Legal Framework for the Model Law, and in the draft adopted in November 2025, those critical elements include the following:

5.1 Guiding principles

The model law will spell out some key principles underpinning the execution of decisions of the African Court, which could include good faith in performance of treaty obligations; recognition and giving effect to rights; accountability; the right to a remedy; non-discrimination and respect for human dignity; and the primacy of African human rights treaties.

5.2 Scope of application

The model law will govern issues related to the full process and cycle of implementation of a decision of an African human rights body, including the African Court. The scope could include decisions on provisional measures, merits and remedies adopted by these bodies.

5.3 Implementation mechanisms

Contained in the model law are provisions on mechanisms to facilitate the implementation of judgments of the African Court and decisions of the other African human rights bodies. These include the establishment and designation of a national coordinating committee, indications of who is the competent national authority responsible for implementation (for instance, the Ministry of Justice or Attorney-General), and how decisions are notified and communicated to the relevant state authorities.

73 See, eg, the South African Enforcement of Foreign Civil Judgments Act 32 of 1988.

Processes for registering African Court decisions in domestic courts are also included in the model law.

There are clauses to assist in determining the financing of implementation of decisions, such as the budget line from which the costs will flow. The model law also makes provision for the role of Parliament in the effective implementation of human rights decisions. As the cornerstone of the national human rights protection,[74] Parliament plays a crucial role by adopting human rights-sensitive laws, by supporting the ratification of human rights treaties, by approving national budgets that promote human rights and by holding governments to account. The model law defines modalities of parliamentary scrutiny over the executive on the implementation of decisions of the African Court and other human rights bodies.

5.4 Implementation of specific types of remedies

The model law also includes clauses to address specific types of remedies. This include the award of compensation, where the amount is determined by the African Court or other African human rights body, and where no quantum is specified, and the processes by which victims can obtain payments. It also contains provisions on remedies involving the judiciary, such as re-opening, review or revision of domestic court proceedings, as well as release from detention, remedies that sometimes cause particular challenges for state authorities. Finally, how to address guarantees of non-repetition such as through setting out who is responsible for coordination of activities and the creation of an action plan, are also included in the model law.

6 Challenges and way forward

The proposed model law may only be one tool in the implementation armory. Yet, it is one that crucially bridges the gap between the supranational and national in a practical way, offering a product that can be adapted by states to suit their national context. Drafters of model laws are well versed in managing the differences between various legal systems, common and civil law, and adopting 'plain language that could be easily and quickly adapted to the needs of different states'.[75]

74 Inter-Parliamentary Union *Parliaments and human rights – A self-assessment toolkit* (2023) 22.

75 JL del Prado & M Maffai 'United Nations Working Group on the use of mercenaries as means of violating human rights and impending the exercise of the rights of

One critical consideration is whether such a model law should, in addition to judgments of the African Court, also cover decisions from quasi-judicial bodies, namely, the African Commission, the African Children's Committee and UN treaty bodies. It may be more challenging to negotiate a model enabling legislation where the binding nature of a supranational decision is debatable.[76] It is possible, however, to build consensus around admitting that a decision of a human rights treaty body is embedded in the state obligation to give effect to rights. This could offer a strong basis for allowing the domestic legal system to enforce decisions from any human rights body,[77] doing so in a consistent way.

The degree of harmonisation may need to be balanced with sensibilities and specificities of legal systems of the African countries.[78] This could arise from the emphasis on making the drafting and current consultation process for the model law inclusive and collaborative, 'informed by national practice',[79] and involving not only the PAP and African human rights bodies, but also representatives of governments, parliament, the judiciary, national human rights institutions and civil society.[80]

Despite these challenges, the proposed Model Law on Implementation being developed under the auspices of the PAP as the legislative body of the AU is well placed to address the frequently overlooked gaps in implementation and to provide state authorities with solutions to the administrative, legal and practical obstacles they face when implementing decisions of the African Court and other human rights bodies.

people to self-determination: Model law for the regulation of private military and security companies' (2009) 26 *Wisconsin International Law Journal* 1080.

76 Van Alebeek & Nollkaemper (n 13).

77 As above.

78 Johnson (n 60) 140; Gabriel (n 58) 420.

79 OSRSGSVC (n 57) 8.

80 Johnson (n 60) 141.