

Special Focus: Implementation of decisions of the African Court on Human and Peoples' Rights

Editorial

Background to the Special Focus

This Special Focus is dedicated to the implementation of the decisions of the African Court on Human and Peoples' Rights (African Court). The seven articles included in this Special Focus were developed from papers presented at the Conference on Implementation and Domestic Impact of the Decisions of the African Court on Human and Peoples' Rights, held from 21 to 22 June 2024 in Arusha, Tanzania. The Conference was convened by the Centre for Human Rights, Faculty of Law, University of Pretoria (Centre), in collaboration with the African Court and the Coalition for an Effective African Court on Human and Peoples' Rights.

The Conference was organised against the backdrop of persistent challenges relating to state compliance with and implementation of the African Court's judgments, and formed part of a broader, structured initiative by the Centre to promote implementation and enhance the impact of the jurisprudence of African human rights bodies. It constituted the second in a planned series of annual conferences convened by the Centre on the implementation of the decisions and recommendations of African regional human rights

bodies, following the inaugural conference on the implementation of decisions and recommendations of the African Commission on Human and Peoples' Rights (African Commission) held in Pretoria in 2023. The conference provided a dedicated platform for scholarly and practical engagement among judges of the African Court, scholars, practitioners, state representatives, African Union (AU) human rights bodies, national human rights institutions and civil society actors, on ways of improving compliance with and the domestic execution of the African Court's decisions.

The conference brought together over 80 participants and featured 32 paper presentations offering conceptual, comparative, technical, policy-oriented and case-based analyses of implementation challenges and emerging practices. A distinctive feature of the conference was the active participation of judges of the African Court and members of the Court's registry, who served as designated respondents to the papers presented. This interactive format ensured that the discussions and contributions reflected not only scholarly perspectives, but were also closely attuned to the African Court's institutional context, operational realities and ongoing efforts to strengthen implementation.

Following the conference, presenters were invited to revise their papers in light of the feedback received from judges of the Court, registry officials and other participants. Selected contributions were subsequently subjected to a peer-review process prior to inclusion in this Special Focus. At the time of the conference, the editors of this Special Focus were, respectively, programme manager of the Centre's Litigation and Implementation Unit and a post-doctoral fellow in that Unit.

The implementation crisis of the African Court

This Special Focus brings together contributions that examine the persistent gap between the judgments of the African Court and their domestic implementation. While the African Court has consolidated its jurisprudence over the past decade, the effective implementation of its decisions remains uneven, contested and, in many instances, absent.

Several articles situate this challenge within broader structural and political constraints. Ayeni provides a system-wide account of the African Court's low compliance rates, persistent failures of state reporting, and the shrinking of the African Court's jurisdiction following the withdrawal of article 34(6) declarations. His analysis

underscores that implementation difficulties are not unique to the African Court, but reflect deeper deficiencies in political oversight and follow-up mechanisms within the AU framework. Thomas complements this institutional diagnosis with a country-focused analysis of Tanzania, illustrating how political contestation, electoral sensitivity and constitutional entrenchment combine to produce sustained resistance to African Court judgments. Tanzania emerges across the contributions as a particularly instructive context in which the limits of judicial authority and the strategies of state push-back are laid bare.

Viljoen reframes the implementation crisis by highlighting the tendency to treat compliance as the primary, and often exclusive, measure of effectiveness. He cautions that a compliance-centred approach risks obscuring other ways in which African Court jurisprudence continues to shape legal reasoning, policy debates and institutional practice across the continent.

Complementarity within the African human rights architecture

Mavungu and Murray foreground the importance of institutional complementarity within the African human rights architecture by examining the Pan-African Parliament's Model Law on Implementation. Their contribution identifies the absence of clear domestic legal and administrative frameworks as a critical missing link between African Court judgments and national execution. By highlighting the legislative and parliamentary dimensions of implementation, they demonstrate how harmonisation through model laws can translate supranational decisions into enforceable domestic action across diverse legal systems.

Building on this institutional perspective, Ayeni advances a comprehensive account of complementarity and collaborative monitoring, arguing that implementation cannot be secured through the judicial authority of the African Court alone. He demonstrates that the Court's implementation capacity can be significantly enhanced by systematically leveraging the African Commission's strengths in follow-up, dialogue, state reporting, special mechanisms and engagement with civil society. Together, these contributions emphasise that effective implementation depends on coordinated, mutually reinforcing action across African human rights institutions, rather than isolated judicial enforcement.

African Court judgments as normative guides

The Special Focus highlight that African Court judgments exert influence beyond the parties to individual cases through their interpretive authority. Viljoen provides the conceptual framework for this analysis through the notion of *res interpretata*, arguing that African Court judgments function as interpretive precedents capable of guiding domestic courts, legislators and policy makers in analogous situations. This perspective situates African Court jurisprudence within a process of norm diffusion and embeddedness, offering a pragmatic response to the Court's enforcement constraints.

D'Orsi's comparative analysis of the Ogiek judgment and subsequent Maasai litigation in Tanzania illustrates this dynamic in practice. Although the Maasai case encountered setbacks before the East African Court of Justice, the Ogiek judgment continues to shape legal strategies and advocacy, demonstrating how African Court jurisprudence travels beyond immediate compliance contexts.

Moving beyond compliance: Impact and extra-compliance effects

Another insight emerging from the contributions is that compliance alone provides an incomplete account of the African Court's influence. Uzoma and Baeyens foreground the limitations of a compliance-centred approach by examining measures of satisfaction, particularly public acknowledgment of responsibility and apologies, as forms of reparation capable of generating impact beyond formal execution. Drawing on Inter-American practice, they demonstrate that such symbolic reparations often achieve higher levels of implementation and exert broader societal resonance, contributing to victims' dignity, normative affirmation, and guarantees of non-repetition.

Viljoen complements this impact-oriented approach by conceptualising African Court judgments as interpretive precedents (*res interpretata*), whose authority extends beyond the parties to individual cases and shapes domestic legal reasoning, policy debates, and institutional practice even in the absence of formal compliance.

Thomas advances this argument through her analysis of 'extra-compliance effects', showing how African Court litigation in Tanzania catalysed constitutional debates, policy reforms and further legal challenges, despite the absence of compliance with specific orders. This broader understanding of impact is reinforced through comparative engagement with the Inter-American human rights

system. The study by Herrera and Haeck on precautionary measures in Nicaragua demonstrates how urgent protective measures issued by the Inter-American Commission produced significant symbolic and indirect impact despite near-total state non-compliance. Collectively, these contributions underscore the importance of assessing the African Court's effectiveness through a wider lens that captures indirect, symbolic and normative effects alongside formal implementation.

Strategic litigation, provisional measures, and symbolic authority

Another cluster of contributions examines how African Court-related litigation generates protection, visibility and pressure, even in the absence of enforcement. Herrera and Haeck demonstrate how urgent protective mechanisms preserved life, dignity and documentation for persons deprived of liberty, while simultaneously mobilising international attention. Although rooted in the Inter-American system, the analysis resonates with African practice, where provisional measures issued by the African Court often serve as symbolic shields in contexts of repression. Uzoma and Baeyens's discussion of acknowledgment and apology further demonstrates how symbolic authority may reshape narratives of responsibility and victimhood, even where coercive enforcement is unavailable.

Conclusion

This Special Focus demonstrates that improving the implementation of the decisions of the African Court requires a deliberate shift from isolated, compliance-centred approaches towards systemic, collaborative and impact-oriented strategies. The effectiveness of the African Court's judgments depends not only on state political will, but also on the availability of institutional pathways, remedial clarity, and mechanisms that translate supranational decisions into concrete national action.

The Special Focus underscores the importance of *deepening complementarity between the African Court and the African Commission* in the monitoring and follow-up of judgments. The African Court should more systematically leverage the African Commission's comparative strengths in implementation monitoring, including its use of the state reporting process, special mechanisms, country missions, implementation hearings and sustained engagement with civil society. A collaborative approach, based on shared information,

common reporting templates, joint databases and coordinated follow-up missions, would allow both bodies to overcome institutional limitations and partially compensate for weak political oversight by AU policy organs. Complementarity, in this sense, should extend beyond case referral to encompass joint implementation monitoring, ensuring that follow-up on judgments is coherent, harmonised and mutually reinforcing.

There is also the need for the African Court to systematically adopt focal reparations, particularly public acknowledgment of responsibility and apology, as an explicit and standard remedy in appropriate cases. Especially in matters involving grave violations of human dignity, life, liberty and bodily integrity, such reparations should be understood not as merely symbolic gestures, but as integral components of effective redress. Public acknowledgment and apology can contribute to victims' psychological healing, restoration of dignity and guarantees of non-repetition, while simultaneously strengthening normative affirmation and encouraging broader compliance with the African Court's judgments.

Furthermore, one of the core obstacles to implementation of African Court judgments is not simply a lack of political will, but the absence of clear domestic legal and administrative triggers that give supranational decisions practical effect at the national level. In this regard, the Pan-African Parliament's Model Law on Implementation emerges as a critical 'missing link'. By offering a practical and adaptable legislative framework, the Model Law enables states to confer clear legal status on African Court judgments, designate responsible authorities, and establish coordination, financing and oversight mechanisms. The domestication of legislation inspired by the Model Law would significantly bridge the gap between supranational adjudication and national implementation, ensuring that remedies such as compensation, restitution, judicial review, guarantees of non-repetition and institutional reform are effectively carried out.

Closely related to the above, the Special Focus also points to the importance of embedding African Court jurisprudence in national legal systems. Domestic courts should be encouraged and required to take cognisance of the African Court's case law when interpreting rights under African Union treaties. Beyond judicial uptake, the African Court's general principles should be diffused into legislative and policy-making processes, with judgments serving as persuasive guidance for law reform, governance practices and administrative decision making. Such embedding enhances normative coherence and reinforces the African Court's jurisprudential authority beyond

individual cases. Additionally, the impact of the judgments of the African Court should be assessed at multiple levels, encompassing beneficiary protection, civil society mobilisation, international attention and norm setting, rather than being judged solely by formal compliance.

Finally, the Special Focus highlights the potential of strategic litigation through the African Commission-African Court pathway as a viable route for advancing justice in contexts where direct access to the Court is limited. Anchored in the *Ogiek* precedent, this pathway offers a promising avenue for communities such as the Maasai to pursue justice, land restitution and protection of collective rights under African human rights law.

Taken together, the recommendations emerging from this Special Focus point towards a more *integrated and realistic implementation* agenda for the African Court, an approach that acknowledges enforcement constraints, but actively leverages complementarity, remedial innovation, jurisprudential diffusion and strategic litigation to enhance the Court's impact across the continent.

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Foluso Oluwadare Adegalu and Zainab Monisola Olaitan

(affiliated to the Centre for Human Rights, University of Pretoria, South Africa; and Centre for International and Defence Policy, Queen's University, Kingston, Canada)