



**CONFERENCE ON THE IMPLEMENTATION AND IMPACT OF
DECISIONS OF THE AFRICAN COURT ON HUMAN AND PEOPLES'
RIGHTS**

THE DAR ES SALAAM COMMUNIQUÉ

**3 NOVEMBER 2021
DAR ES SALAAM, TANZANIA**

Adopted by delegates to the International Conference on the Implementation and Impact of the decisions of the African Court on Human and Peoples' Court: Challenges and Prospects, held from 1 to 3 November, Dar es Salaam, United Republic of Tanzania,

I. Organization and objectives

1. The African Court on Human and Peoples' Rights (the Court) organised an International Conference on the Implementation and Impact of Decisions of the Court: Challenges and Prospects from 1 to 3 November 2021, in Dar es Salaam, United Republic of Tanzania. The Conference was conducted in a hybrid format with some participants joining virtually while the majority attended in person.
2. The main objective of the Conference was to analyse the manner in which the Court's decisions are received and implemented domestically across the African continent and to assess the level of impact they have generated on the African human rights landscape.
3. The Conference was attended by more than 200 delegates, representing 44 African Union (AU) Member States, AU Organs, Regional and Sub-regional Human Rights Courts, National Judiciaries and Legislatures, National Human Rights Institutions, Bar Associations and Law Societies, the academia, the media and civil society .
4. Proceedings of the Conference were conducted in Arabic, English, French and Portuguese, with simultaneous interpretation, to facilitate communication and active participation during the discussions.

II. Opening ceremony

5. The Conference was officially opened by Hon. Haroun Ali Suleiman, Minister of State-President Office, Constitution, Legal, Establishment and Good Governance, representing HE Hussein Mwinyi, the President of the Revolutionary Government of Zanzibar. In his opening remarks, Hon. Suleiman noted that the African Court is a court for Africans and it is the duty of Africans to ensure its success and safeguard it against failure. He observed that one way of doing this is by implementing its decisions.
6. The President of the Court, Hon. Lady Justice Imani D Aboud and the Chief of Staff, Ministry of Justice of the Republic of Benin also spoke at the Opening ceremony
7. From various statements made during the opening ceremony, there emerged a converging observation that the very low level of implementation of decisions of the Court contradicts the AU Member States' commitment when establishing the African Court, that is, to ensure an effective judicial human rights protection system for the benefit of their people. The statements also stressed the need to consider the implementation crisis facing the Court alongside the challenges the Court faces in its daily operations. The speakers invited the delegates to constructively engage in the discussions to seek solutions to address the specific challenges facing the African human rights system and which may include reform proposals to improve the effectiveness of the Court

III. Subjects and topics covered during the Conference

8. After the opening ceremony, the following topics were discussed over the three (3) days of the Conference through presentations, panel and plenary discussions:
 - i. General overview on the implementation of decisions of the African Court on Human and Peoples' Rights;
 - ii. A study on implementation of Court decisions;
 - iii. Experience sharing on implementation of international courts and tribunals' decisions from: European Court of Human Rights, ECOWAS Court of Justice, African Commission on Human and People's Rights and African Committee of Experts on the Rights and Welfare of the Child;
 - iv. Best practices, lessons learnt and challenges on implementation of decisions of the African Court in the domestic systems of the Respondent States from the Republics of: Ghana, Kenya, Tunisia, Burkina Faso, Rwanda, Benin, United Republic of Tanzania and from civil society representatives;
 - v. Panel discussions on implementation of decisions of the African Court from representatives of: Tanzania, Benin, Rwanda, and civil society ;
 - vi. Impact of decisions of the African Court in domestic systems: Best practices, lessons and challenges, from: Benin, Tanzania and African Court Coalition;
 - vii. Impact of decisions of the African Court: Regional perspectives from the African Court, academia and civil society;
 - viii. Impact of decisions of regional courts: comparative perspective from: European Court of Human Rights and ECOWAS Court of Justice;
 - ix. The role of AU Policy organs in monitoring the implementation of decisions of the Court;
 - x. The role of the African Court in ensuring implementation of its decisions from representatives from: the AUC Chairperson, STC Justice and Legal Affairs, AU Office of the Legal Counsel and civil society;
 - xi. The Conference wound up with adoption of a Communique on the conclusions and recommendations for improving the implementation and enhancing the impact of the Court's decisions

IV. Conclusions and Recommendations from the Conference

A. On the Implementation of Decisions of the African Court

9. The delegates noted that for the African Court to have any positive impact on the lives of African citizens it is essential that its decisions are complied with. In this regard, they took note that at the year 2020, the level of full compliance with the Court's judgments stood at only 7%. In 18% of the Applications there was partial compliance with the Court's judgments and in 75% of the Applications there was non-compliance with the Court's judgments. Furthermore, there has been 10% compliance with the Court's rulings on provisional measures.
10. The delegates emphasised that systemic non-compliance or partial compliance with the Court's decisions erodes the confidence of African peoples in the commitments and human rights credentials of the State Parties to the Protocol in particular and Member States of the AU as a whole. It also undermines the credibility in the effectiveness and added value of the African Court to the human rights system.

The delegates therefore:

11. Call upon States to ensure immediate and effective implementation of decisions rendered by the African Court to ensure compliance with the African Charter on Human and Peoples' Rights and of all other human rights instruments they have ratified.
12. Strongly encourage cooperation between a wide range of human rights stakeholders, including public officials, members of parliament, judges, prosecutors, national human rights institutions, civil society, academia, bar associations and law society members, and the media to ensure full, effective and prompt compliance with the Court's decisions.
13. Welcome initiatives of States to increase their capacity to effectively execute the Court's decisions, including through cooperation with other African Governance Architecture platform members to offer technical assistance where necessary.
14. Recommend the adoption of a holistic approach to assessing compliance with the Court's decisions, taking into account the different changes in the overall governance framework in the States concerned.
15. Encourage the Court to disseminate its decisions widely.
16. Urge the Court to liaise with the Executive Council of the AU for engagement with national authorities on the implementation of its decisions.
17. Remind the Court to clearly determine its role in deciding the specificity of its decisions and the extent to which it will interact with other actors to ensure implementation of its decisions.

18. Recommend that the Court should engage in further sensitisation to dispel myths about its role including the allegation that it exists to usurp the jurisdiction of national Courts.

B. On the Best practices, Lessons Learnt and Challenges on Implementation of Decisions of the African Court

19. Reflecting on the best practices, lessons learnt and challenges on implementation of decisions of the African Court, the delegates discussed experiences from the executive, the judiciary, the legislature, and civil society.
20. With respect to the executive, the delegates listened to experiences from Kenya and Tunisia which shared best practices and lessons on a wide range of areas including the involvement of victims or applicants in the implementation process and the adoption of victim sensitive legislation and policies. They also identified several challenges impeding implementation processes, including the historical and socially complex nature of some of the issues adjudicated on; competing international law obligations; contradictory domestic legislation and judicial decisions which are complicated obstacles to overcome; and contradictions in successive decisions of the Court in the same case.
21. Regarding the judiciary, delegates acknowledged that the domestic political context is material to the implementation of the Court's decisions and that the more contextualised decisions of regional courts are, the more likely they are to be accepted within domestic judicial systems. Challenges were also identified such as the difficulty for national judiciaries to comprehend decisions of the African Court which do not factor in principles such as subsidiarity, contextualisation of universal values, and the African perspective of giving preference to non-judicial means of settling disputes.
22. Concerning the legislature, the delegates noted that engaging with the Ministry in charge of foreign affairs could help in hastening implementation of decisions of the Court. Challenges identified include the tendency to consider international decisions, such as those of the African Court, as foreign decisions which require further domestic processes before they can be implemented.
23. The delegates also discussed implementation experiences from the perspective of civil society. Challenges identified involved erosion of the Court's legitimacy due to a consistent trend of non-compliance with its decisions.

The delegates therefore recommend:

24. A more strategic dissemination of the work of the Court within Member States.
25. Development of a more effective mechanism of tracking and monitoring implementation of decisions.
26. Review of the Protocol to consider repealing Article 34(6) on the Declaration to enhance access to the Court by individuals and NGOs.

27. A greater recourse to amicable settlement procedures and interpretation of the Charter within the African spirit of conciliation, among others.
28. States should be encouraged to adopt laws that reinforce or give effect to constitutional provisions on human rights as well as international human rights institutions. Such laws should expressly recognise the role of international institutions with mandate to enforce human rights commitments.
29. Avenues must be created that encourage dialogue between the African Court and Member States to lessen misunderstanding about the work of the Court.
30. The enactment of national legislation specifying the procedure on execution of the Court's judgments to facilitate implementation.
31. Designing more active roles for the judiciary and legislature in monitoring the implementation of decisions.
32. Engaging in efforts from all stakeholders including civil society to dialogue with States with a view to reinstating the Declarations.

On what can be done to facilitate implementation of decisions of the Court?

33. Delegates acknowledged that the Court's mandate to protect human rights was under threat due to the lack of implementation of its decisions. It was also acknowledged that the poor enforcement rate of decisions of the Court is a sad reality but that the African Court should not simply import practices from the European and Inter-American Courts of Human Rights as the operating contexts are different.
34. It was also acknowledged that there was a lack of awareness of the decisions of the African Court by national judges.

The delegates, therefore, recommend that:

35. Civil society organizations should collaborate with States to overcome challenges of implementation.
36. There should be continuous dialogue with national judges on the work of the Court and tailored trainings should be organized for judicial officers on the nature of the Court's judgments, their implementation procedures and the role of the judiciary in ensuring full compliance with the Court's decisions.
37. Capacity building should be organized for lawyers concerning the Court's judgments, the procedures of their implementation and the role of lawyers in these processes.
38. There should be a dialogue between the African Court and AU Member States to redefine their obligations and the vision of the AU for the African Court.

39. The instruments of the African Court, that is, the Protocol and the Rules of Court should be reviewed and amended to eliminate loopholes affecting implementation.
40. Sub-registries of the African Court should be established in Member States.
41. Outreach programs for universities, lawmakers and policy organs should be developed.
42. Decisions of the Court should be easily accessible and widely disseminated in an easy to read, easy to understand format.

C. On the Impact of decisions of the African Court in domestic systems

Member States

43. The delegates noted that, as a continental court, the effectiveness of the African Court cannot be assessed without reference to the impact of its decisions in the domestic systems. This impact could be reflected in a change of domestic laws, administrative measures and practices or in their interpretation and application in judicial decisions of domestic judiciaries. In this regard, the delegates also noted that the Court's landmark judgments relating to freedom of expression, electoral laws and legal assistance have triggered legislative reform and provided inspiration to judges in some Member States of the AU in interpreting and applying domestic laws.
44. The delegates observed, however, that impact should not be taken as a constant notion but rather a question of development over time. Importantly, they remarked that the impact of the decisions of the African Court is dependent on various factors including the economic, social and political context of Member States and the strength of the media and civil society.
45. Furthermore, the delegates emphasised that the impact of the decisions of the African Court at domestic level is influenced by the accessibility, clarity and timeliness of its decisions.
46. The delegates noted that the impact of the decisions of African Court in domestic systems is promising. Nonetheless, they expressed concern that the African Court's impact has yet to reach the desired level since there is still a significant gap between the human rights standards articulated by the Court and those enjoyed by citizens across Africa.
47. The delegates also raised concerns in relation to the trend adopted by States to deny individuals and NGOs direct access to the Court by withdrawing the Declaration under Article 34 (6) of the Protocol.

The delegates therefore:

48. Call upon Governments to respect, protect and promote the human rights of their citizens; and pending the possible repeal of Article 34 (6) of the Protocol, to ratify

the Protocol establishing the Court and deposit the Article 34(6) Declaration; to actively participate in the Court's proceedings; to fully implement the Court's decisions; to make the decisions accessible to national judiciaries, civil society and other human rights stakeholders in their jurisdiction, including by translating the decisions into local languages; to ensure compatibility between their administrative practices and the Court's jurisprudence; and to facilitate sensitisation visits about the Court's work and decisions.

49. Call on Parliaments to undertake necessary legislative processes so as to accept the Court's jurisdiction; to enact legislation to implement the Court's decisions; to verify the compatibility of draft legislation with relevant human rights instruments and the Court's jurisprudence; to hold governments accountable for their obligations in relation to African human rights law.
50. Encourage national human rights institutions to make relevant submissions as *amicus curiae*; to help follow up on the implementation of the Court's decisions; to disseminate information about the Court's jurisprudence; to ensure harmonisation between national human rights strategies and the work of the Court.
51. Invite Bar associations, law societies, law schools and other national human rights defenders to train lawyers and exchange information on developments in African human rights law, undertake research and knowledge-enhancing and capacity-building training including the jurisprudential developments of the Court, the African Commission and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC).
52. Welcome civil society organisations to submit applications and defend human rights victims before the Court; to make relevant submissions as *amicus curiae*; to advocate for the ratification of the Court's Protocol and the deposit of the Article 34(6) Declaration; to monitor and report on the implementation of the Court's decisions; and monitor human rights trends more generally.
53. Appeal to the Media (print, radio, TV and social) to provide the general public with accurate, objective, timely and unbiased information about the functioning and impact of the African Court and other relevant continental human rights developments that may concern citizens or groups of citizens; to publicize the decisions of the Court; and report on their implementation.

On National and Regional Courts

54. The delegates also discussed the judicial dialogue between the African Court and other African International Courts (incl. ECOWAS Court of Justice, EAC Court of Justice, COMESA Court of Justice) and National Courts and affirmed that such cross-judicial engagement is essential for the establishment of a continental rule of law.
55. The delegates acknowledged that national courts are among the first-line defenders against human rights violations, subject to the complementary jurisdiction of the African Court and other relevant international courts and tribunals, in accordance with the principle of subsidiarity.

The delegates therefore:

56. Urge the national and international courts in Africa to continue fostering mutual exchanges of knowledge, experiences and best practices through the biennial continental judicial dialogues and other mechanisms.
57. Reaffirm the importance of the African international courts to stay abreast of relevant jurisprudential developments in respective national jurisdictions that may affect the interpretation and application of African human rights law.
58. Strongly encourage the African international courts to provide national courts with more information on the most recent developments in the field of African and international human rights law, so that they can take this international jurisprudence into account when resolving human rights related disputes at the national level.

D. On the Role of AU organs in Monitoring the Implementation of Decisions of the Court

59. The delegates discussed the role of the different AU policy organs, including the Assembly, the Executive Council and the Permanent Representative Committee (PRC), as well as the PRC Sub-Committee on Democracy, Governance and Human Rights in monitoring the implementation of the decisions of the African Court. One of the key challenges identified by the delegates included the wide-spread nature of non-implementation of decisions by AU organs in general. The delegates also discussed how the problem of non-implementation of decisions, not only affects the African Court, but all AU organs and that these institutional challenges needs to be addressed holistically.

The delegates therefore:

60. Urge AU decision makers to pay closer attention to the extent that the decisions they take are realistically implementable.
61. Call upon States to establish national mechanisms to follow up on the implementation of AU decisions, which should be composed in a multi-sectoral manner across various departments, ministries and stakeholders.
62. Call upon the AU Commission to work more closely with the African Court to navigate AU policy decision-making processes and ensure diligent follow-up of the African Court decisions by the AU Commission and the AU policy organs.
63. Welcome AU policy organs to pursue the double track of persuasion of AU Member States to comply with the decisions they collectively made through awareness building as well as through coercion and the imposition of targeted sanctions on States that systematically fail to comply with AU decisions.
64. Encourage the Executive Council to consider establishing a sub-committee in parallel with the PRC Sub-Committee on Democracy, Governance and Human

Rights with sufficient time and resources at their disposal to adequately monitor the different AU organs' programs, activities and decisions in the field of democracy, governance and human rights.

65. Strongly encourage the PRC Sub-Committee on Democracy, Governance and Human Rights to create greater synergies with the relevant AU organs active in the domain of democratic governance and human rights through closer engagement, including regular briefings and reporting on the state of human rights and democracy on the continent to then identify concrete and actionable measures to address serious democratic deficits and rule of law concerns.
66. Welcome national human rights institutions to help states comply with their international obligations by providing relevant assistance and creating awareness about the African Court by providing pertinent information on their website about the African Court's decisions on their websites.

E. On the Role of the African Court in ensuring implementation of its decisions

The delegates also noted the important role of the African Court itself to ensure adequate implementation and impact of its decisions.

The delegates therefore:

67. Call on the Court to ensure clarity of its decisions whereby the judgment unequivocally states which human rights treaty articles were violated and what measures need to be taken to remedy the violation.
68. Encourage the Court to provide context-sensitive yet strict timelines for compliance with its judgments, subject to financial sanctions.
69. Encourage the African Court to utilize the opportunity provided by the AU Institutional Reform to make the African Human Rights System more efficient and effective.
70. Welcome the creation of a system for the African Court to be aware in real-time of developments concerning the implementation of its decisions.
71. Encourage the African Court to collaborate with the Peace and Security Council to ensure a better mutual understanding of the impact of effective human rights protection on peace and security on the continent.

V. On Implementation of the Conclusions and Recommendations of the Conference

The delegates:

72. Invite the Chairperson of the AU, the Chairperson of the AU Commission and the President of the Court to transmit this Communiqué to all AU Member States, AU Organs and Regional Economic Communities, and to call upon them to further disseminate the present Communiqué to national human rights stakeholders, including but not limited to parliaments, judicial bodies, national human rights institutions, civil society organisations/NGOs, academia, bar associations and the media.
73. Call upon all above mentioned human rights stakeholders to ensure the full implementation of the recommendations made in this Communiqué.
74. Welcomes the current and future Chairpersons of the AU, Chairpersons of the AU Commission and Presidents of the Court to follow-up on the implementation of this Communiqué.
75. Invite the African Court to organise similar stakeholder conferences in the formats it deems appropriate.

Adopted at Dar es Salaam, United Republic of Tanzania on the Third Day of November in the Year Two Thousand and Twenty-One in Arabic, English, French and Portuguese, all versions being authoritative.