

Institution: University of Bristol		
Unit of Assessment: 18) Law		
Title of case study: Improving implementation of human rights law by changing the policies and practices of UN and African national and supra-national human rights bodies and State authorities		
Period when the underpinning research was undertaken: 2015-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Rachel Murray	Professor of International Law and Human Rights	08/2003-present
Malcolm Evans	Professor of Public International Law	09/1988-present
Debra Long	Senior Research Fellow	10/2008-present
Period when the claimed impact occurred: 2015-2020		
Is this case study continued from a case study submitted in 2014? N		

1. Summary of the impact

Research conducted by the University of Bristol's Human Rights Implementation Centre has provided the intellectual and empirical impetus for changes to the policies and practices of UN treaty bodies, the African Commission and African Court on Human and Peoples' Rights, state authorities, national human rights institutions, and civil society organisations as they implement human rights law. These changes have resulted in improved:

- **visibility** of decisions and their implementation status;
- **monitoring** of the implementation of judgments, decisions and recommendations;
- **governmental strategies** on human rights law compliance;
- **practitioner working methods** for drafting and filing human rights cases.

2. Underpinning research

Previous research identified an 'implementation crisis' in enforcing rulings of UN and regional human rights bodies, suggesting that even successful litigation may not result in justice for victims 'on the ground'. Research by the University of Bristol's Human Rights Implementation Centre (HRIC), supported by significant ESRC funding [3.3] between 2015 and 2019, analysed over 100 decisions from regional and UN supranational bodies against nine states in Africa, the Americas and Europe, to consider the extent to which States implement rulings, and how that implementation is monitored [3.1]. An innovative process-tracing methodology tracked what happened (at the national level) to decisions after their adoption by supranational bodies. HRIC researchers held side events at UN meetings, attended nine sessions of the African Commission, held seminars in the African States that were the subject of the study (Burkina Faso, Cameroon and Zambia), and conducted over 300 interviews with various actors including government representatives, civil society organisations (CSOs), parliamentarians, the judiciary, victims, and members of UN and regional treaty bodies and courts. This programme of research provides new evidence on what affects the implementation of human rights law, including the emergence of three key factors: a) inter-authority communication and visibility of decisions; b) the role and influence of various human rights actors including victims; and c) litigation strategy.

A. Inter-authority communication and visibility of decisions

HRIC research found that various national bureaucratic and technical processes need to be triggered if the decisions of human rights bodies are to be implemented [3.5]. States may fail to comply, not because of a lack of willingness but, rather, due to a lack of clear processes for implementation or defined lines of responsibility. The research rebutted assumptions that the specificity in decisions is a primary determinate or catalyst for implementation [3.4], [3.6]. It found that other factors, such as the visibility of a given decision, are also crucial in how State

authorities respond. HRIC's research [3.1], [3.3], [3.4] found a sporadic and inconsistent flow of communication between the international and national levels, and among national actors (such as parliaments, national human rights institutions and CSOs). Consequently, those who have a responsibility for implementing a given decision do not always know about it, and information on what measures the State has taken may not be disseminated. This hinders implementation advocates (victims, lawyers and civil society) from taking further action designed to secure full implementation. Furthermore, decisions are mostly addressed to 'the State', but this fails to encapsulate not just the range of different executive bodies that are needed for implementation, but also the legislature and judiciary and the particular challenges they may face. Consequently, HRIC's research demonstrated the need for a more coordinated approach and for practical tools to respond to decisions, such as databases and national processes.

B. Role and influence of various human rights actors

HRIC's research found that the visibility, legitimacy and credibility of the supranational bodies [3.1], [3.2], [3.4], and the lack of clarity surrounding their own role [3.4] are also crucial factors in the implementation of human rights law. While treaty bodies may have a number of procedures at their disposal to monitor implementation of their own decisions, HRIC research found that some, such as holding hearings, may have particular impact, but many are not used fully. The role of the victims themselves can be influential [3.1], [3.4]. Similarly, at the national level, while mechanisms and actors exist, such as national human rights institutions, they are often not employed as often as they could be [3.1], [3.5].

C. Litigation strategy

Litigants and victims often consider implementation only once a decision in their favour has been adopted. Yet, HRIC research found that how requests for remedies are both determined and worded can influence the bureaucratic processes that need to be used in their implementation, the state authorities' response to them and, ultimately, their successful implementation [3.3]-[3.5]. Consequently, one of the HRIC's key findings was the need for litigants to consider implementation at the outset and build this into their strategies.

3. References to the research

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- 3.1 **Murray R, Long D** (2015), *Implementation of the Findings of the African Commission on Human and Peoples' Rights*, Cambridge University Press [Available on request]
 - 3.2 **Evans MD** (2020). The UN and Human Rights. Reform through Review, in *Khaliq U, The Achievements of International Law: Essays in Honour of Robin Churchill*, Hart Publishing [Available on request]
 - 3.3 **Murray R (PI)**, Sandoval C (CI, Essex), Leach P (CI, Middlesex), Viljoen F (CI, Pretoria, South Africa), Open Society Justice Initiative (partner), *Implementation and compliance with human rights law: An exploration of the interplay between the international, regional and national levels*, ESRC [ES/M008819/1](#), 2015-2019, GBP1.4 million
 - 3.4 Sandoval C, Leach P, **Murray R** (2020). Monitoring, cajoling and promoting dialogue – what role for supranational human rights bodies in the implementation of individual decisions?, *Journal of Human Rights Law and Practice (Special Issue)*, **12:1**, pp.71-100, <https://doi.org/10.1093/jhuman/huaa009>
 - 3.5 **Murray R**, de Vos C (2020). Behind the State: domestic mechanisms and procedures for the implementation of human rights treaty body decisions, *Journal of Human Rights Law and Practice (Special Issue)*, **21:1**, pp.22-47, <https://doi.org/10.1093/jhuman/huaa004>
 - 3.6 **Long D** (2020). Compliance with international human rights decisions in Cameroon: mechanisms in place but a lack of transparency, in Grote R, Morales Antoniazzi M, and Paris D, *Research Handbook on Compliance in International Human Rights Law*, Edward Elgar Publishing [Available on request]

4. Details of the impact

The underpinning research detailed above has been used to help bring about improvements to the policies and practices of key UN treaty bodies – the Human Rights Committee, the Committee Against Torture, and the Committee on the Elimination of Discrimination Against Women – the African Commission, African Court, governments and civil society organisations (CSOs).

Improved visibility of decisions and status of implementation within the African system

As a result of HRIC's engagement with the African Commission [3.3], it held a panel during its Session in the Gambia, October 2018, and invited HRIC researchers to regional seminars on implementation of decisions. The Commission's strategy [5.4] and revisions to its new Rules of Procedure (Rules 125(2) and (10)), adopted in June 2020, incorporated two of HRIC's recommendations: first, that the African Commission call on other actors, such as national human rights institutions, to provide it with information on the measures taken by the state to implement the decision and remedy the violations to the victims; second, that the Commission will start to publish information on its website on the status of such implementation. These measures will increase the visibility of the decision and the availability of information on its implementation, ultimately improving the likelihood of implementation.

Improved monitoring of the implementation of judgments, decisions and recommendations of UN and African bodies

The UN Treaty Bodies (including the Subcommittee on Prevention of Torture (SPT), the Committee on the Rights of the Child) are independent bodies that monitor implementation of their respective human rights treaties. HRIC's research [3.2], as well as Evans' ten-year practical experience as Chair of the SPT, resulted in the establishment of a high-level group to develop a common position by Treaty Bodies for the General Assembly's 2020 review of the UN human rights treaty body system. This process was achieved through Danish funding of a Wilton Park Meeting and Outcome Document [5.5] and a key meeting in Copenhagen. The meetings generated the position adopted by the Chairs of Treaty Bodies in June 2019 and which now represents the position of the Treaty Bodies entering into the 2020 Treaty Strengthening process. That the position of the Chairs of the Treaty Bodies, led by Prof Evans, is taken seriously is attested by the UN High Commissioner for Human Rights [5.8]. Much of what they proposed is already being operationalised.

One of the most radical proposals – conducting reviews of human rights reports in regional settings rather than in Geneva – has now been implemented in March 2020 by the UN Committee on the Rights of the Child, meeting for the first time in Samoa. The opening of that session [5.9] makes it clear it is doing so because of the Chairs' position: *'This is an historic and ground-breaking moment for the history of United Nations human rights treaty bodies. For a long time, stakeholders and beneficiaries, including Governments and civil society organizations, have been asking to have meetings of treaty bodies closer to where they live. The Chairs of the treaty bodies in their most recent meeting in June of 2019, identified "review in the region" as one of their priorities for the future of the treaty body system. They agreed "that there are considerable benefits in conducting dialogues with States parties concerning their reports at a regional level". So here we are!'* [5.9]. Research from HRIC staff [3.2], therefore, has had far-reaching impacts not only on the strategic direction of the UN treaty bodies' work but also on their practical operations.

Based on their research [3.1], [3.3], HRIC staff, on the advice of the litigants, were granted leave to submit an *amicus curiae* brief in a Ruling on Reparations pending before the African Court against Kenya (App.No.006/2012, *African Commission on Human and Peoples' Rights v Republic of Kenya*). The amicus related to the implementation of the judgment and has been cited as influential in the litigants' arguments: *'the submissions' focus on the level to which the Court should detail the specifics of the remedy will be crucial to establishing a meaningful ruling which is capable of implementation. In addition, the focus on possible Court monitoring of the steps that the State has taken to execute the judgment will assist with setting a vital precedent*

for state reporting in respect of all future Court reparations rulings' [5.1]. The African Court has since sought further advice from HRIC on how it could hold compliance hearings.

Drawing upon HRIC research [3.1], [3.2], Murray commented on the framework proposed by a legal expert appointed to develop an implementation strategy for the African Court. One of her key recommendations was that the State be explicitly required to identify national focal points to facilitate follow-up communication with the Court. This and other suggestions from HRIC research were incorporated into the strategy, with the expert noting that Murray's comments '*made so much sense that I reworked the draft framework based on them*' [5.3]. The revised strategy, with the incorporated comments, was ultimately adopted by the African Court [5.10]. This will direct how the African Court approaches its role in monitoring implementation and what it will require of States.

Working closely with the Network of African National Human Rights Institutions (NANHRI) and drawing upon HRIC research that underscores the role of other actors [3.1], Murray drafted NANHRI's *Guidelines on the Role of National Human Rights Institutions in Monitoring Implementation of Recommendations of the African Human Rights Bodies*. These were adopted by NANHRI in 2015. As NANHRI attest: '*The Guidelines have also been utilised in NANHRI's support to [National Human Rights Institutions] in targeted countries such as Cote d'Ivoire and Kenya, where follow-up activities on implementation of specific decisions of regional human rights bodies have been conducted. They have also been utilised in regional workshops for exchange of NHRIs experiences in the monitoring of implementation of decisions of regional human rights bodies, which have evolved to the Annual Exchange Forum at the margins of the Ordinary Sessions of the African Commission of Human and Peoples' Rights. In light of this, it is without doubt that the Guidelines have immensely contributed to the improvement of NHRIs' role in monitoring implementation of decisions and recommendations of regional human rights bodies in Africa*' [5.6].

Improved Zambian governmental strategy on international human rights law compliance

One of the key findings from HRIC research was the importance of having domestic mechanisms that coordinate or take responsibility for the implementation of decisions [3.5]. The Zambian government, backed with funding from the Open Society Foundations, notes the crucial role of the HRIC, which led to the government amending its strategy on compliance and establishing a database to facilitate follow-up and improve inter-ministerial coordination. The Solicitor General noted that the HRIC involvement '*has supported ongoing efforts to streamline the national process for the implementation of recommendations. ... In particular, with your continued support, we are in the process of establishing a database for all communications, decisions and recommendations and reports received by the Ministry of Justice from the UN and African human rights bodies*' [5.7].

Improved strategy and practice of leading human rights litigators

Drawing upon the findings of the ESRC-funded project [3.3], Murray developed a strategy for CSOs that litigate before supranational bodies, outlining practical ways that those organisations can encourage implementation. Murray is Vice Chair on the Board of the Institute for Human Rights and Development in Africa (IHRDA), one of the leading litigators in the African system. The Institute used her strategy to craft the reparations in their submissions when they filed the *Kilwa* case (Communication 393/10: *IHRDA, ACIDH and RAID v DRC*) [5.2] relating to the massacre of over 70 people in Kilwa. Victims were granted compensation of over USD2.5 million and the Democratic Republic of Congo (DRC) was called upon to prosecute those responsible, including a mining company complicit in the violations; provide apologies and construct a memorial; give psycho-social support for victims; and rehabilitate the socio-economic infrastructure including the school and hospital. The strategy was the basis for a workshop with local partners and victims in the DRC after the African Commission adopted the decision in 2018 when subsequently working towards its implementation.

The Chief Executive of IHRDA said the Murray strategy '*has since become one of the most important and useful documents for the IHRDA. ...It has made us rethink and refine our work on*

implementation. We now, for example, begin to think about implementation from the time a case is conceptualized, not after a decision is adopted or judgment delivered. We also have used the Strategy to develop roadmaps on implementation of decisions and judgments we have won recently' [5.2].

5. Sources to corroborate the impact

- 5.1 Forest Peoples Programme – Corroborating letter (2020), Senior Counsel (formerly Minority Rights Group)
- 5.2 IHRDA – Corroborating letter (2020), Executive Director
- 5.3 Email exchange (2017-2018) with Senior Legal Consultant, Zimbabwe
- 5.4 General Report of the Regional Seminar on the Implementation of Decisions of the African Commission on Human and Peoples' Rights, Dakar, Senegal, 12-15 August 2017
- 5.5 Wilton Park (28 February-2 March 2017) – Report: *Towards a 21st Century Treaty Body System*, <https://www.wiltonpark.org.uk/wp-content/uploads/WP1574-Report.pdf>
- 5.6 Network of African National Human Rights Institutions – Corroborating letter (2020), Executive Director
- 5.7 Zambian Ministry of Justice – Corroborating letter (2020), Solicitor General
- 5.8 Secretary-General, Report A/74/643 (10 January 2020), Status of the human rights treaty body system, paras 60-62
- 5.9 Committee on the Rights of the Child, 84th extraordinary session (2-6 March 2020), Opening Address, Chief, Groups in Focus Section, Human Rights Council and Treaty Mechanisms Division, Representative of the United Nations Secretary-General
- 5.10 African Court, Draft Framework for Reporting and Monitoring Execution of Judgments and other Decisions of the African Court on Human and Peoples' Rights, EX.CL/1126 (XXXIV), Annex I, para B.4.iii. <https://www.african-court.org/wpafc/activity-report-of-the-african-court-on-human-and-peoples-rights-1-january-31-december-2018/>