

OPEN SOCIETY JUSTICE INITIATIVE

From  
Rights to  
Remedies

Structures and Strategies for  
Implementing International  
Human Rights Decisions

**EXECUTIVE SUMMARY**



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# Executive Summary

The Open Society Justice Initiative's 2010 report, *From Judgment to Justice: Implementing International and Regional Human Rights Decisions*, concluded that an “implementation crisis” afflicts the regional and international legal bodies charged with protecting human rights. While the hope that individuals might obtain redress at the international level when their national systems fail them fuels these procedures, they are imperiled by the risk that their decisions will be ignored by states unwilling (or unable) to implement them. The report also revealed that few states have effective structures to ensure the swift execution of judgments—or to prevent the recurrence of human rights violations. *From Rights to Remedies* advances these findings to address a crucial issue: the structures and processes by which states execute international decisions, and strategies advocates can harness to that end.

Domestic structures play a vital role in implementation: they can penetrate the internal workings of administrative institutions and serve as functioning channels for compliance. As implementation processes become more institutionalized, pathways begin to develop and the prospect for compliance with decisions—and human rights norms more generally—improves. This approach is consistent with scholarship that emphasizes a managerial theory of compliance, focusing not only on the will of state actors to implement international rules and decisions (which remains crucial), but also on the ability and capacity of states to effectively manage that process. These systems play an important normative role as well: they can help build a political culture more receptive to international human rights and supranational authority.

Three overarching conclusions inform this report's findings. First, many states that have accepted the jurisdiction of international human rights courts and treaty bodies have not sufficiently developed the domestic infrastructure needed to ensure the implementation of judicial recommendations and decisions. As this report details, some states have sought to develop novel approaches to the execution of judgments, including high level inter-ministerial committees and working groups, standing parliamentary committees, enabling legislation, and direct enforcement through national court systems. Such approaches, however, remain the exception. Instead, implementation is largely an *ad hoc* process driven by mid-level bureaucrats who lack the political standing to make implementation a priority. Moreover, disorganization, duplicated efforts, and delay too often characterize decisions implicating multiple agencies because executive ministries frequently lack established frameworks for communication and cooperation.

Second, political will remains the most important factor for the successful implementation of human rights judgments. A state can have sophisticated domestic enforcement structures at its disposal but, without a genuine commitment by key political actors to reform, their promise will remain illusory. Nor does the mere existence of implementation structures imply

that a state's commitment to implementation is genuine. While some of the practices and processes detailed in this report represent good faith efforts by states to take their human rights commitments seriously, other structures remain—by design or neglect—poorly resourced, badly staffed, and politically feeble. As a result, mechanisms can risk creating the illusion of compliance.

Third, implementation involves disparate state actors who operate in different institutional settings and often have different or competing political interests. At the same time, domestic political arrangements or disagreements cannot be used as an excuse for non-compliance. A crucial recommendation of this report is thus to better structure the multiple points at which implementation occurs and to build stronger synergy amongst national authorities engaged in the execution of judgments. This report therefore looks at implementation as a process that implicates multiple political institutions—courts, legislatures, executives and, here, national human rights institutions (NHRIs). The report examines these four institutions in turn.

## Executive Branch

The executive branch typically manages the implementation of international decisions; however, a wide range of government sectors often shares responsibility, posing significant coordination and coherency challenges. The state's formal interlocutor before international courts and treaty bodies (often referred to as the office of the government agent, or OGA) plays a critical role in this regard. In many cases, government agents play a dual role as advocates for the state in judicial proceedings and, later, as focal points and/or coordinators of implementation when an adverse judgment is issued. Agents must possess the appropriate level of political standing and clout if they are to carry out this function. The agent and the policy/lead team responsible for implementation must communicate effectively as well.

Beyond the individual role of the agent, executive ministries—particularly those of justice and foreign affairs (also referred to as the ministry of the exterior)—must coordinate. States need to consider the sorts of ministerial arrangements that best facilitate implementation. In many cases, the government agent has an office located in foreign affairs ministries, which can be poorly suited to the task of coordinating the implementation process, particularly when international decisions substantively engage the jurisdiction and competencies of other ministries, e.g., justice, finance, or the interior.

Effective ministerial arrangements also depend on leadership and coordination. To that end, some states have issued executive decrees establishing frameworks for implementation, which can assist in clarifying the roles and duties of different state actors. The growing practice of convening inter-ministerial committees and working groups to ensure better coordination amongst ministries is an important development in this regard. A standing inter-ministerial committee can strengthen coordination and minimize the risk of miscommunication and dupli-

cated efforts; it could likewise serve as the natural interlocutor with other political branches, including legislative actors, national courts, and national human rights institutions.

**Key recommendations:**

- **Coordination.** Create a coordinated procedure at the executive level to facilitate the implementation of judgments. In particular, a coordinating body—either located within a particularly ministry or as a standing, inter-ministerial committee—should serve as a standing forum for coordinating implementation. This body should have a high position within the government, with clear communication channels to the policy team(s) responsible for implementation.
- **Liaison officers.** Liaison officers should operate within every executive ministry that contributes to the implementation of judgments. Ministries should ensure that these liaison officers hold a high rank and can ensure coordination for implementation across all areas of the agency’s responsibilities.
- **Effective communication.** Tools to facilitate communication—implementation forms, action plans, and circular letters—can better ensure that judgments receive the proper level of attention. Regular translation of judgments (or summaries of judgments) into the national language of states is also crucial.
- **Budget measures.** Ministries should incorporate a line item in their annual budgets for the payment of international human rights judgments as well as friendly settlements; alternately, states should adopt (through legislation) a standing fund for the payment of reparations.
- **Court oversight.** Where member states have substantially failed to implement judgments, international courts and treaty bodies should continue to use their authority to encourage the development of domestic implementation mechanisms.

## Legislatures/Parliaments

While advocates have historically overlooked legislators and parliamentarians as implementers, data suggests active parliamentary involvement correlates with greater compliance with human rights obligations and decisions. In particular, parliamentary involvement can play a preventive role by creating domestic legislation compatible with a state’s treaty obligations. Parliamentary involvement can also add political weight and bring greater accountability to the implementation process.

Parliamentary actors can contribute to implementation by enacting legislation that establishes a national framework and procedure to execute human rights judgments. Domestic

legislation can enumerate the authority and duties of respective state actors, as well as establish deadlines to help ensure that implementation proceeds in a timely manner. Parliamentary human rights committees can also hold executive actors and agencies to account in the implementation process, monitor a state's overall compliance record, and facilitate legislative amendments to ensure that state practice conforms to international human rights standards. Such committees can also serve as natural forums for advocates to raise concerns about implementation.

Systematized dialogue between parliamentary actors and executive agents responsible for implementation (either at a policy or coordinating level) will enhance parliamentary engagement. Where reporting mechanisms are absent, parliamentarians should avail themselves of other domestic procedures, including posing questions to relevant executive level actors.

**Key recommendations:**

- *A clarified role.* Pass national legislation that establishes the role, responsibilities, and procedures of government actors throughout the implementation process.
- *Designated responsibility.* Establish a standing human rights committee or similar legislative body whose mandate includes the implementation and regular monitoring of international decisions and recommendations. These committees should have the authority to exercise subpoena power, call witnesses, and issue recommendations.
- *Parliamentary authority.* Parliamentary bodies should be empowered to introduce legislative proposals/amendments to enforce compliance with international human rights decisions. Parliamentary committees should likewise have within their remit the ability to scrutinize government bills for their compatibility with human rights standards, taking into account the relevant jurisprudence of international courts and treaty bodies.
- *Reporting procedures.* Regular reporting procedures should keep legislative actors informed of adverse decisions rendered by international courts and treaty bodies, and of the measures taken to comply with them.
- *A stronger role for international parliamentary bodies.* National parliamentarians who also participate in international/regional parliamentary bodies should use their dual status to encourage the development of implementation structures at the domestic level.
- *Budget measures.* A state's annual budget should include provisions for the payment of damages ordered by international courts and treaty bodies, just as ministries' annual budget should have this provision.

# National Courts and Judges

Like the executive and legislative branches, domestic courts are state organs: they can ensure consistency between a state's laws and its international obligations, and can ensure that international human rights treaties (and the decisions that interpret them) are given domestic effect. Yet despite the potential of courts and judges to serve as forums for vertical enforcement, a variety of factors—ranging from institutional constraints to restrictive interpretative canons—serve to limit the role that courts play in this process.

States can maximize domestic judicial forums through judicial monitoring units and other oversight mechanisms, i.e., administrative units that monitor implementation of judicial decisions. Domestic court systems can also assure that there is an ordered process for disseminating the jurisprudence of regional human rights courts and treaty bodies; this would help to ensure that judges throughout the national legal system are aware of the relevant law and how to apply it.

More directly, states should use complementary domestic litigation as a strategic arm to buttress and/or enforce international judgments. While compliance with national court judgments, as with international court judgments, depends on state institutions for enforcement, domestic courts are entrenched within a state's national legal order and address their decisions to a particular institution or agency, making national court judgments important avenues to compel action. Courts that issue progressive decisions on the enforceability of international human rights judgments also play an essential role in facilitating compliance at the national level, and in providing interpretive authority for a state's duty to implement. To that end, greater regional dialogue and awareness between international and national judicial systems is crucial.

## Key recommendations:

- **Implementation programs.** National judicial systems should develop programs to monitor the implementation of both domestic and international judgments. A high level contact point should also exist within the national judicial system in order to facilitate communication with implementation coordinators at the executive level.
- **Clarified status.** Domestic judiciaries should seek to clarify the application of international decisions and, where necessary, the status of international law within a state's national legal framework. Where legislation could better clarify these questions, domestic courts should encourage legislative actors to provide such clarification.
- **Stronger judicial awareness.** Judicial awareness of international conventions and their case law should be strengthened. Domestic judicial authorities must have access to summaries of international judgments, while law school and continuing legal education curricula should incorporate international convention standards and relevant jurisprudence.

- **Cooperation agreements.** Cooperation agreements between international courts and domestic judicial bodies—particularly constitutional courts and supreme courts—can help foster judicial dialogue between international and domestic courts. International courts and human rights bodies must also cultivate their relationships with national judiciaries and bridge gaps between the international and domestic sphere.
- **Strategic litigation.** Human rights litigators and advocates should pursue strategic litigation at the domestic level—particularly, where possible, through constitutional challenges—in order to build domestic judicial pressure for the implementation of international judgments. This approach can also help integrate international treaty norms into the practice of national courts.

## National Human Rights Institutions

In light of their grounding in a country’s domestic law, NHRIs are in a unique position to help facilitate the implementation of international human rights judgments; indeed, they are themselves emblematic of how governments embed international human rights norms in domestic structures. Although states must implement the decisions of human rights courts and treaty bodies, national institutions can serve as implementation facilitators—assisting in the process of developing remedial legislation and monitoring the execution of judgments on the ground. Ombudsmen offices can draw attention to deficient implementation, if they are independent and have high quality staff. National institutions and ombudsmen can also bring unique pressure to bear in linking the implementation of judgments to compliance with human rights norms more generally.

### Key recommendations:

- **Formal mandate.** NHRIs should satisfy the minimum criteria set forth in the Paris Principles. Their formal mandate should include the authority to monitor the implementation of international human rights decisions and recommendations, and to audit executive agencies for compliance.
- **Communication with human rights systems and institutions.** The international/regional human rights systems and domestic human rights institutions should have strong, formalized mechanisms for communication. Human rights courts and treaty bodies should adopt clear guidelines for NHRIs’ roles in litigation and post-litigation.
- **Communication with state actors.** NHRIs must ensure that they communicate effectively with other state actors on matters relating to implementation. Where inter-ministerial

implementation committees exist, NHRIs should be standing members; likewise, there should be a national framework for cooperation between NHRIs and parliaments.

- ***Broad competencies.*** NHRIs should have broad competencies to initiate legislation and propose remedial measures ordered by international courts and treaty bodies.
- ***Contextualization.*** NHRIs should seek ways to link the implementation of international decisions with a state's broader human rights obligations.