Implementing Human Rights Decisions: Reflections, Successes, and New Directions

Introduction to the Series
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When the Open Society Justice Initiative (OSJI) published *From Judgment to Justice: Implementing International and Regional Human Rights Decisions* just over 10 years ago, it was ground-breaking in drawing attention both to what happens after a decision is issued by a supranational human rights body and whether states actually comply with those orders. Before then, attention to how human rights decisions were implemented remained largely an academic pursuit, one that was still in its infancy. And while many litigators, advocates, and victims were aware of the failure (or refusal) by states to comply in the context of their own individual cases, at the time broader, more comprehensive data on the nature of the problem was still hard to come by. Systematic inquiries into why, how, and when states *do* comply with human rights decisions was similarly limited.

By diagnosing an "implementation crisis" in the three regional human rights systems – African, American, and European – as well as in the UN Treaty Body system, OSJI's report helped galvanise attention to these questions, recognizing that non-compliance not only fails to vindicate the rights of those who suffered harm, but threatens the global human rights regime itself. As the report made clear:

> The implementation of its judgments is the central measure of a court's efficacy. Without it, the situation of those who should be helped by the court's ruling does not improve. Even the best and most profound jurisprudence may be deemed ineffective if not implemented, and the very legitimacy of the court itself may fall into question.

Now, as implementation has gained greater prominence over the last decade, other competing forces have also amassed that threaten the very core of human rights.

These 'human rights battlegrounds' range from the targeting of marginalised and vulnerable groups, to climate change, to the huge expansion of technologies that shape our daily lives even as they pose significant threats to fundamental rights. The rise and spread of 'exclusionary forms of populism,' as Gerald Neuman notes, has likewise threatened the international human rights system, with attendant forms of backlash aimed at a broad array of international courts and commissions ranging from the European Court of Human Rights (ECtHR) to the Inter-American Commission on Human Rights, to the International Criminal Court. Most recently, Covid-19's discriminatory impacts has exacerbated inequalities and resulted in a number of emergency measures that either test – or plainly do not respect – the rule of law. The global economic impact of the pandemic has also accelerated a critical financial crisis that supranational bodies and others who fund human rights work have long encountered.

In the face of these challenges it may be fair, then, to ask whether implementation still matters. Some might ask, is a judgment itself not victory enough? Does it make sense to insist on implementing what are often politically unpopular decisions in the midst of those other human rights battlegrounds? And is litigation the best means of securing redress?

In our view, implementation does still matter. It matters for the victims. Leaving aside the obligation of state authorities in international law to 'right a wrong,' without implementation the most the victims of human rights violations will achieve is confirmation of the harm they suffered. For many, a decision or judgment from a supranational body alone is insufficient to address the consequences of those violations. Moreover, implementation of a particular decision or judgment rarely benefits only the individuals to whom it specifically relates. Often, they identify systemic problems in that state -- discrimination, historic exclusion, poverty. Implementing these decisions can lead to, for example, amendments to legislation and policies, training of state officials, creating new institutions of state, and ultimately contribute to strengthening the rule of law.

Insisting on implementation has also had salutary effects on how to improve the process of implementation. States have, for instance, also increasingly focused on developing domestic structures and/or better coordination in order to facilitate their human rights reporting and implementation obligations. Taking heed of recommendations made by the UN High Commissioner for Human Rights in her 2012 report, many states have created or strengthened National Mechanisms for Reporting and Follow-up to coordinate their responses to – and dialogues with – the UN and other regional bodies. Systems for monitoring state implementation – from the European Court's Department for the Execution of Judgments to the Inter-American Court's compliance hearings – have also expanded and become increasingly sophisticated. Processes aimed at measuring or in some cases 'grading' implementation have likewise been developed by some of the UN treaty bodies, and as Philip Leach observes in his contribution to this series, an "evolving and pragmatic remedial" approach by the ECtHR has "ratcheted up" pressure on states. All of which indicates the seriousness with which this once invisible part of the human rights system is now taken.

Furthermore, that "the state" is more than just the executive branch – that implementation also involves engaging an independent judiciary and legislative bodies – has been increasingly recognized. In the words of *From Rights to Remedies*, "As implementation processes become more institutionalized, pathways begin to develop and the prospect for compliance with decisions—and human rights norms more generally—improves." National human rights institutions have likewise acknowledged that they, too, have a role to play, as have civil society organizations, many of whom continue to advocate nationally and internationally for change as a result of human rights decisions. New organizations, such as Remedy Australia and the European Implementation Network, have been created in the past decade whose sole focus is on advocating for implementation, while litigators now better understand the importance of the post-decision phase for their work. As Susie Talbot explains in her closing post of the series, NGOs are increasingly incorporating implementation into their planning and pre-decision process, often enabling the remedies that are subsequently requested to be more specific and tailored to victims' wants and needs.

This collection of ten contributions will be released on a rolling basis. Each piece seeks to explore an aspect of growth and change in the field of implementation advocacy over the past ten years. It takes both the anniversary of *From Judgment to Justice's* publication as well as the closure of a multi-year research project, the Human Rights Law Implementation Project (HRLIP), as the occasion to reflect on these developments -- at the level of regional and UN systems, in the context of particular states and cases, and through broader thematic reflections on the state of the field. A collaboration amongst the universities of Bristol, Essex,

Middlesex, Pretoria and the Justice Initiative, the HRLIP was an Economic and Social Research Council-funded inquiry that examined the factors which impact on the implementation of select decisions by nine states across Europe (Belgium, Georgia, Czech Republic), Africa (Burkina Faso, Cameroon, Zambia), and the Americas (Canada, Columbia, Guatemala). The capstone series also complements a special 2020 issue of the *Journal of Human Rights Practice* dedicated to HRLIP's key findings, while also reflecting on concrete examples of implementation drawn from the Justice Initiative's experiences working with partners in countries ranging from Cote d'Ivoire to Kazakhstan.

Bringing together scholars and practitioners both – with all contributions available in English, French, and Spanish – it is our hope that that this series is an opportunity to look both back and ahead at the field of human rights implementation, and for it to reach as wide an audience as possible. At a time when the human rights systems' very existence, independence and value is once again questioned, the opportunity to reflect on achievements (even partial ones) helps illustrate that regional and international courts, commissions, and treaty bodies can make a difference. Taking stock and considering new directions can also help fulfil the enduring promise that the decisions of these bodies be realized in practice—transformed from judgements on paper to justice for individuals and communities.

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