

## How can NGOs Push for Implementation—and What's Stopping Them?

### A Conversation with NGO Leaders in the Americas, Africa and Europe

How can non-government organisations promote the implementation of human rights judgments and decisions? And why should they devote their scarce resources to doing so? In July 2020, **Anne-Katrin Speck**, a member of the HRLIP research team and now a doctoral researcher at the Human Rights Centre of Ghent University, met online to discuss these questions with **Viviana Krsticevic**, Executive Director of the [Center for Justice and International Law](#) (CEJIL); **Gaye Sowe**, Executive Director of the [Institute for Human Rights and Development in Africa](#) (IHRDA); and **George Stafford**, Director of the [European Implementation Network](#) (EIN). This is an edited transcript of their conversation.

*I am delighted to be joined by the executive directors of three leading human rights NGOs in the Americas, Africa and Europe. The organisations you represent all actively promote the effective implementation of judgments and decisions of the human rights courts and commissions in your respective regions. Let us cut right to the chase. In the face of major challenges impacting human rights work everywhere—a global pandemic, the rise of populism and authoritarianism, and attempts to undermine the rule of law even in supposedly established democracies—does implementation of individual rulings still matter?*

**George:** Absolutely, yes. In Europe, the judgments of the European Court of Human Rights do not just mean justice for one person. They have to involve implementation across the whole society, resolving the underlying human rights issue for everyone. So if a journalist is killed, not only does the family of the victim get compensation and a proper investigation, but also it is expected that the state will adopt reforms to ensure other journalists will not be targeted. That is the level of reform that comes out of proper implementation. If we had perfect implementation of ECtHR judgments, we would have really significant and helpful solutions to all the types of problems that you referred to.

*Is this equally true from an Inter-American perspective?*

**Viviana:** I would say it is even *more* true in the Americas. The European system is arguably less ambitious in terms of resolving structural and systemic problems, which can be explained by the way in which it has developed historically. For example, it is more restrained as regards the reparations it prescribes. I think the Inter-American system has moved in a more promising direction in this respect. The Inter-American Court has only issued around 250 rulings in its 40-year history, but each of those judgments contains carefully crafted reparation orders aimed at engaging different institutional actors domestically in trying to address the underlying issues. The Inter-American Court has changed the history of many countries. Can you say the same of the European system?

**George:** The theory of the European system as it stands today, although it might not have been conceived that way originally, is that it should produce results not only for individuals but also for the rest of society. But you are right, Viviana, that in the judgments themselves, the European Court is reluctant to specify structural remedies, and rarely does so. But when it comes to the implementation phase before the Committee of Ministers, there is still an obligation on states to put forward their own plan to remedy the underlying shortcomings. Let me give you an example of a case won by a Moldovan LGBTI rights group, who were saying that their protests were being unjustifiably and unreasonably banned by the state authorities.

After a long period of implementation (with various bumps in the road), for the last two years running there have been LGBTI rights protests in the capital of Moldova—and that is the result of structural reforms, not only justice for the individuals.

*Gaye, from an African perspective, why should NGOs be concerned about the implementation of individual rulings?*

**Gaye:** It is true that regional courts and commissions can help push for change, maybe especially so in the African human rights system. Africa is unique in the sense that the African Charter allows the Court and Commission to draw from other jurisdictions. This means that nothing prevents me, when litigating a case, from referring to a ground-breaking ruling from the Inter-American or European system. At IHRDA, we rely a lot on the jurisprudence of the Inter-American system, especially when it comes to requesting specific reparations. One example is a [case](#) we brought against Mali, which resulted in a [landmark ruling](#) on women's and children's rights. When the system is that flexible, you can make good use of it to push for change. We see that we are often better off at the regional level, especially bearing in mind how conservative some of the national judiciaries are in our region.

*You all seem to agree that effective implementation of human rights judgments is a cause worth working for, since it can lead to tangible improvements in people's lives. What makes civil society organisations particularly well placed to push for implementation?*

**Gaye:** In most instances, we litigate the cases ourselves, so we understand the issues and context really well. After putting together evidence, presenting a case, arguing it, and winning it, we are better placed than anybody else to push for implementation. Also, there is pressure to be put on governments at the local level. This is something that civil society organisations can work on.

**Viviana:** And they can do so through various means, combining advocacy, mobilisation, press work, creating institutions and alliances, and other advocacy with key actors.

**George:** I agree, and I would say there are three concrete ways in which civil society can make a huge contribution to implementation. The first is setting the agenda for reform: through submissions in the implementation process, civil society actors can say what really needs to be done to resolve the issue...

*... which is especially important in the European system, where the Court rarely specifies remedies, as we heard before.*

**George:** Exactly. A lot of the time governments are very minimalist in the solutions they put forward. NGOs are really key to providing input at that stage because they can say that “this reform is not going to be effective without this additional component, and here is the evidence to show why.”

The second way for civil society to promote implementation is pushing reforms forward. Viviana already alluded to the sheer number of judgments that are produced by the ECtHR. In 2019 alone, the Court found [violations in 790 cases](#). The obligation this puts on states to produce reforms is not matched by many states' commitment or infrastructure. A piece of paper from Strasbourg does not create change on its own. You need people at the local level

to get involved, and NGOs are well placed to do that because they have the information and networks, and they are invested in the result.

The third is preventing early case closure. We frequently see governments submit that they have remedied a problem and that the case should be closed—only for the problems to crop up again. Obviously, it is a disastrous result for the whole strategic litigation process if supervision of implementation is ended before anything really happens. So it is important to have civil society input into the implementation monitoring process to prevent this.

**Viviana:** One more aspect I want to underline is that, in all three systems, civil society organisations play a role in litigating for institutional change. We litigate and do advocacy not only to get results for the victim, but to change the supranational system itself. We help *create* these systems. The Europeans have pushed for more transparency and accountability from the Committee of Ministers, for example. That is important to recognise in our own strategies, because it makes you see the process of compliance and impact in more dynamic ways. It also helps explain the evolution of our respective systems.

*I am keen to get your take on what might be hampering greater civil society involvement in the implementation of human rights judgments.*

**Gaye:** I would mention two obstacles in relation to the African system. The first is a lack of transparency. When a state makes a submission regarding the implementation of a case, an NGO seeking to provide information will not usually be aware of what the state has said. This is why we are suggesting that the Commission and Court organise implementation hearings. The African Committee of Experts on the Rights and Welfare of the Child already does this. Such face-to-face exchanges could help because you get evidence on what that state has - or has not - done.

The second impediment is that, at the African level, we do not have a network like EIN that works exclusively on implementation. IHRDA and a few other NGOs, such as REDRESS, do what they can to make sure rulings from the African Commission and Court lead to real changes on the ground. Implementation also comes up here and there in discussions of the Litigators' Group, a collective of civil society organisations that take cases to the African Commission. So there are some efforts on implementation at the regional level, but they are rather disjointed.

**George:** From a European perspective, too, I would say there are two main barriers. The first is a lack of awareness of how implementation works. But I think the awareness issue is diminishing, partly as a result of the wider recognition by all people involved in litigation that implementation is fundamental. The second issue is funding. We surveyed the organisations of our network and the number one reason they said they were not working more on implementation was that there aren't any funding mechanisms specifically designed for this issue. To my mind, there needs to be more support for implementation advocacy because civil society groups are really keen to work on it.

**Viviana:** To me, the issues of awareness and funding are interlinked. I appreciate that we see more and more academics and NGOs publish [pieces](#) which elucidate that implementation takes time and is an iterative process. They explain the question of feedback loops and how changes in the landscape at the national and international level over time can be a powerful contribution to more structural changes. This understanding of the process must be fostered

among funders, who are often impatient because they do not fully understand that it takes a lot of time and money to implement a case. If they give you money to do something, you can make a contribution in the development of the law, but in order for that to change the patterns and entrenched power dynamics domestically, you need sustained engagement over time. That is sometimes missed in the narrative on compliance and impact. Fatigue is also a big problem, with many cases going on for years.

**George:** I agree with that. And because people can get fatigued, it is so important that NGOs work on cases that they have not litigated themselves, and that they pick up the baton when those who brought the case get fatigued. We see that in the Czech Republic now, where [NGOs are working](#) on a [case](#) concerning ethnic discrimination in schools that they did not originally bring. Some judgments concern really endemic and difficult issues that simply will not get solved in five or ten years. That is why this idea that NGOs should work only on their own cases is problematic.

*If you could speak directly to an NGO wishing to get involved in advocacy for implementation for the first time, what advice would you give them?*

**George:** I would say that you should think about implementation at the national and international level. Those who get involved in implementation are often lawyers who tend to focus on the international monitoring mechanism and ways to influence the supervisory body's assessment. That is obviously a fundamental part of the process, but the work at the national level is key as well. It is here where I would like to see more progress. Implementation must ultimately happen at the national level. So form alliances, have a good strategy to influence those in power, and foster your media relationships to generate good coverage.

**Viviana:** First, make implementation your first consideration. Think about implementation as you are strategizing, choosing issues to take up, and identifying your allies. Second, be mindful that, as things develop, you may need to adapt your strategy. Also, be mindful of the changes in the international and local landscape. That can be make or break in understanding the possibilities and limitations that a case presents and finding points of leverage. Finally, be patient, hopeful, and part of a community. That will sustain you when you're losing hope. It will allow you to go for the long-haul.

**Gaye:** I agree with Viviana that that implementation should be factored into a case from the very beginning. NGOs engaging in strategic litigation at the regional level need to understand that implementation helps instil confidence in the human rights system. When you speak to a person who has had their rights violated, the first question they ask will be: "If I spend years litigating, what will I get out of it at the end of the day?" If you do not have evidence to convince them that after you get a decision there will be implementation, it will be extremely hard to get buy-in from that person. So, it is important to have a plan from the time of inception. This also means you should have realistic expectations as to what you can achieve. I think that those of us who litigate are beginning to realise that it is not always about getting the most progressive decisions if it does not have any meaningful impact on people's daily lives. Of course, we want judgments implemented in a certain way, but depending on the context, some solutions are not realistic or workable. If you are overly ambitious, it will look like you have failed before you even started. So, plan ahead and be realistic.