

**MAKING COURTS COUNT:
INTERNATIONAL HUMAN RIGHTS TRIBUNALS AND THE
PROBLEM OF MEASURING COMPLIANCE**

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Overview

State compliance and the subsequent strengthening of human rights protections is both the impetus for international human rights tribunals like the European Court of Human Rights (ECtHR), the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (IACtHR) and their most daunting challenge. Limited enforcement capabilities and rapidly expanding caseloads hamper the tribunals' work. Empirically based composite indicators of states' compliance with the tribunals' rulings can improve the tribunals' ability to facilitate compliance and provide an incentive for member states to comply with the human rights tribunals more readily, thus strengthening human rights practices.

International Human Rights Tribunals and the Problem of Enforcement

International human rights tribunals (IHRTs) are international judicial or quasi-judicial bodies that rule on states' compliance with international human rights law. The most active international human rights tribunals are the ECHR and the IACmHR/IACtHR.

Tribunal	Petitions Received	Admissible / Inadmissible
ECHR	54,000	1,621/24,067
IACHR	1456	51/14

As they seek to directly shape state behavior on important domestic issues, these tribunals face an inherent problem in international law: the intense confrontation between state sovereignty and international human rights norms. Despite their growing caseloads and monitoring responsibilities, the tribunals continue to face a serious deficit in their enforcement capacity, and indeed, many critics continue to suggest that the tribunals are nothing more than paper tigers. This crisis of enforcement is exacerbated by weak measures of compliance with the tribunals' work and compounded by the fact that the tribunals are trying to do more oversight and enforcement with relatively fewer resources.

Why Measure Compliance?

States, the tribunals themselves, activists and academics all have incentives to measure compliance with the tribunals' rulings more effectively. Consider the following:

Incentives for Measuring Compliance	
Tribunals	Demonstrate successes to stakeholders Maximize limited resources Navigate enforcement problems Shore up perceived legitimacy
States	Demonstrate commitment to human rights Earn positive publicity and political capital Through indicators that take capacity into account, be evaluated against a fair rubric, not unrealistic, hypothetical standards
Activists, Academics	Holds states accountable Develop best practices Understand the tribunals using both quantitative and qualitative methodologies.

Current Approaches to Measuring Compliance and Potential Challenges

The European and Inter-American institutions currently use different methods for measuring compliance, a practice that makes cross-national and cross-tribunal research difficult. The Council of Europe uses a system of multiple datasets for non-compliance, compliance with individual measures and compliance with general measures to track compliance with the ECtHR. New annual reports on the execution of the ECtHR's judgments are a welcome addition to this existing data and are available for 2007 and 2008. The Inter-American tribunals use a broad typology of full, partial or pending compliance, and the IACtHR has started to issue compliance reports, but these reports do not cover all of the cases on which the IACtHR has ruled. The strengths of the existing approaches are in the quantity of data collected by the tribunals and the attempts at user-friendliness. Yet, these approaches have a number of shortcomings, most notably ambiguity, disorganization and a failure to take states' capacity into account.

Of course, there are a number of challenges to measuring compliance. The first challenge is determining who is responsible for measuring and monitoring compliance. While in Europe,

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Sources

All of the data presented here is publicly available through the tribunals' annual reports and information documents. See, for example:

Inter-American Commission on Human Rights, 2008. *Annual Report of the Inter-American Commission on Human Rights 2007*, Organization of American States, OEA/Ser.L/V/II.130, Doc. 22, rev. 1; Inter-American Court of Human Rights, 2008. *Annual Report of the Inter-American Court of Human Rights 2007*, Organization of American States; Committee of Ministers, 2009. *Supervision of the Execution of Judgments of the European Court of Human Rights*, Council of Europe; European Court of Human Rights, *Annual Report of the European Court of Human Rights*, Council of Europe; and Council of Europe, 'Facts and Figures for 2009.'

Tribunals' websites,
www.cidh.oas.org;
www.corteidh.or.cr
www.echr.coe.int

Measurement and Human Rights Program

The MHR Program is specifically designed to bring evidence-based policy and programming to the realm of human rights.

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the Committee of Ministers of the Council of Europe is charged with the task of measuring states' compliance records, it is the Court's responsibility to rule on the merits of cases and dictate any necessary measures for just satisfaction. The state is responsible for determining and taking the measures necessary to provide individual victims redress and to prevent the abuses from happening again.

This three-dimensional responsibility for compliance makes monitoring compliance in a coherent way difficult. The Inter-American institutions face the opposite problem. Because the political organs of the Organization of American States have distanced themselves from the IACmHR and IACtHR, the tribunals are left to monitor compliance themselves. Yet, their overworked and under-resourced offices cannot sustain long-term monitoring programs. While these challenges are daunting, at the very least the tribunals must make compliance data public and digestible, as doing so will decrease the burden on them and clarify the role of various actors in facilitating and monitoring compliance. Activists and academics also can have a role in monitoring compliance but are neither equipped nor willing to do so in a systematic way across states, tribunals and time.

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Institution	Measurement System
European Court of Human Rights	Multiple datasets tracking what states have done or have yet to do. Fractures compliance records of individual cases and countries.
Inter-American Commission on Human Rights	Groups into three categories: full, partial or pending compliance. Obscures details of compliance; creates incentive to do as little as possible.
Inter-American Court of Human Rights	Produces compliance reports for some, but not all, cases. Valuable information but no aggregation or accompanying data.

A second challenge to measuring compliance is potential political opposition to transparency. The current complicated and obscure approaches to measuring compliance allow states and the tribunals to hide their failures behind ambiguous typologies or deep within difficult-to-read datasets. While the status quo facilitates this behavior, it also weakens the ability of the tribunals and the states to demonstrate their successes in facilitating compliance and improving human rights. Further, the existing approaches to measuring compliance do not take states' capacity into account, placing

states with fewer institutional and financial resources at a great disadvantage. Rectifying these problems would allow states and the tribunals to highlight their successes—of which there have been a great many—and earn positive publicity, augment their perceived legitimacy and improve relations with donors and other stakeholders.

Composite Indicators for Compliance

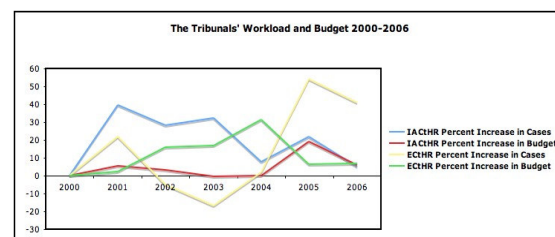
In order to address the problems of the extant measures of compliance, a composite indicator of compliance is in order. By breaking down compliance and identifying the discrete demands that the tribunals place on states, as well as the political, economic and institutional capacities of the member countries, a new indicator can capture the uniqueness of each case, while also providing comparable measures of compliance that travel across place and time. Such measures will facilitate cross-country and cross-tribunal comparisons, help practitioners at the state and tribunal levels generate best practices,

and drastically reduce the amount of lost time and money currently spent on making sense of compliance in the absence of clear, reliable or accessible data.

This new indicator should contain information on four points:

1. case specific compliance for reparations, symbolic measures and accountability;
2. country specific compliance for measures of non-repetition;
3. country capacity to take into account judicial capacity and fiscal health in particular; and
4. stakeholders' values to reflect the level of importance with which they regard compliance with the various mandates.

By combining these four sets of data, the composite indicator proposed here aims to facilitate the monitoring capabilities of the tribunals, and enhance the work of policymakers, activists and academics in strengthening human rights on the domestic and international levels.



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