

# Compliance with Human Rights Tribunals: An Assessment

Written by Courtney Hillebrecht

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COURTNEY HILLEBRECHT, NOV 25 2013

When the Council of Europe created the European Court of Human Rights (ECtHR) in the aftermath of World War II, few had any inkling that the ECtHR would go on to become one of the most important actors in the global human rights regime (Goldhaber 2009). Similarly, the early days of the Inter-American Commission on Human Rights (IACmHR) and the Inter-American Court of Human Rights (IACtHR) did little to inspire much confidence in those bodies as strong protectors of human rights in the Americas (Farer 1997). Today, these human rights tribunals represent some of the most innovative and groundbreaking human rights institutions within the dense network of the international human rights regime.

That said, both the European and Inter-American human rights systems continue to face the fundamental challenge of encouraging states' compliance with their rulings. That is, while the tribunals have achieved a great deal of success in hearing cases and handing down rulings, the way these tribunals have a concrete impact on human rights policies and practices is through states' compliance with their rulings. The increased caseloads of the ECtHR and IACtHR are certainly markers of their success, but getting cases to an international tribunal is the beginning of the story, not the end. And indeed, it is what comes after an adverse judgment is handed down that really matters: compliance.

Before turning to why states comply—or not—with the European and Inter-American human rights tribunals, a little background is important. The European and Inter-American systems share a number of similarities in design and process. Both systems allow individual petitioning, meaning that individual constituents can lodge complaints against their governments at these regional courts. Of course, individuals must exhaust all domestic remedies before pursuing justice at the regional level. When domestic proceedings fail to provide a swift or fair response, petitioners can turn to the regional systems. In the European system, cases go directly to the ECtHR, although recent reforms have attempted to streamline the number of cases heard by the European Court (Council of Europe 2004). In the Inter-American system, individual petitions go first to the Inter-American Commission on Human Rights. If the cases cannot be solved through friendly settlements or contentious hearings, the Commission hands the cases up to the Inter-American Court, which proceeds to evaluate the admissibility and merits of the case. While states can—and occasionally do—lodge complaints against each other at the European and Inter-American human rights tribunals, such complaints are rare, and the vast majority of the tribunals' work originates in individual petitions. The fact that individuals can seek higher recourse for human rights abuses at these tribunals has (partially) reshaped the relationship between the individual and the state when it comes to human rights protections.

The number of individual petitions the tribunals receive each year has grown exponentially in the last 15 years. For example, over the past few years, the European Court of Human Rights regularly receives over 40,000 petitions alleging human rights abuse in its member states each year (European Court of Human Rights 2012). The exponential growth of the tribunals over the past two decades poses new challenges to states' sovereignty, as once states join these tribunals, they cannot control either the timing or the content of the cases (Moravscik 2000).

When the European or Inter-American Courts of Human Rights hand down adverse judgments against states, those states are expected to take a number of actions to remedy the abuses the state committed. I group these actions into

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five categories. First, states are expected to pay financial reparations, or just satisfaction, to the victims for pecuniary and non-pecuniary damages. Second, states should undertake a set of symbolic measures, meaning that they should apologize to victims, publicize the rulings, and publicly address their wrongdoing. Third, states have an obligation to re-try domestic cases related to the regional tribunals' jurisdiction and hold perpetrators accountable. Fourth, and most critically, states must undertake general measures, or measures of non-repetition. These measures entail changes in human rights policies and practices that would prevent the same type of abuse from recurring. Finally, the fifth category of actions states are expected to take following an adverse judgment are individual measures, which vary from case to case and pertain to the individual victims' circumstance. These measures can range from reinstating a victim to her government job or to providing a free education to a victim's next of kin (Hawkins and Jacoby 2010; Hillebrecht 2009). It should be no surprise that states are much more likely to comply with financial reparations and symbolic measures than they are to comply with measures of non-repetition or to orders holding perpetrators accountable for their crimes. Yet, it is precisely these measures that allow the tribunals to have the most salient effect on states' human rights protections.

It is important to remember that the regional human rights tribunals have no functional enforcement capacity. While the European Court of Human Rights can now re-try cases that have not been complied with, they cannot *actually* enforce a particular ruling. Similarly, while the Inter-American Court can oversee and monitor compliance, it cannot force a state to comply with its judgments. Instead, domestic actors fill this enforcement gap. Indeed, compliance with the tribunals' rulings hinges on two main, domestic factors: robust domestic institutions and political incentives. I will discuss each in turn.

When the European and Inter-American Courts hand down adverse rulings against states, they generally deal directly with the executive, as it tends to be officials from states' foreign ministries that staff the offices in Strasbourg and San José, where the tribunals sit. Recall, however, the wide range of obligations expected of states following an adverse judgment. No executive can single-handedly comply with the rulings, and instead, the most successful cases of compliance require compliance coalitions comprised of executives, legislators and judiciaries (Cardenas 2007; Hillebrecht 2012b; Huneeus 2011). While executives can start the process of compliance, legislators are instrumental in formulating new policies and practices, while judiciaries can strike down old laws and hold perpetrators accountable. Civil society organizations and media outlets can further pressure governments to comply with the tribunals' rulings and to make states' compliance obligations public information (Hillebrecht 2012a).

Having these institutions in place is necessary but insufficient for compliance. That is, compliance also needs to benefit domestic actors in order for them to undertake the politically and financially costly process of complying with the tribunals' rulings. In the course of my research on compliance with the European and Inter-American Courts of Human Rights in Argentina, Brazil, Colombia, Italy, Portugal, Russia and the United Kingdom, I identified three types of incentives governments have for compliance (Hillebrecht 2014). First, as in the case of Colombia, for example, governments sometimes engage in compliance in order to signal a commitment to human rights. Governments can use compliance with (parts of) a tribunal's ruling in order to show domestic and international audiences alike that they are committed to human rights. Second, governments, as in the case of Argentina and Portugal, can use the tribunals' rulings to buttress domestic policy reform and mobilize domestic actors for the cause (Simmons 2009). Third, and finally, countries like the U.K. sometimes engage in what I call "begrudging compliance," meaning that they comply with the tribunals' rulings in order to uphold longstanding commitments to human rights and the rule of law and to set a positive example for international partners.

What does all of this suggest for improving compliance? First, my research suggests that while efforts at streamlining the process of getting cases to the tribunals is important and perhaps necessary, it cannot and should not detract attention from the compliance process. Indeed, the fact that the European Court of Human Rights has so many repeat or clone cases is not indicative of problems in getting cases to the Court but instead is indicative of a lack of compliance. If states were complying with the Court's rulings, particularly on matters of non-repetition, the tide of cases to the ECtHR should ebb. Second, and relatedly, states need more technical and political assistance with compliance. While the tribunals can provide some of the technical assistance, for example, helping countries formulate anti-impunity laws and policies, other actors need to provide some political incentives for compliance. For example, donor countries can start tying aid to compliance with the European and Inter-American Courts, or EU

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membership could be contingent on states' compliance with the ECtHR. These political incentives can take many shapes and forms, but they need to be clear and the message needs to be consistent: compliance with the human rights tribunals has tangible rewards. Third, and finally, my research suggests that the best way to improve compliance rates is to involve domestic stakeholders. Domestic capacity building can have a positive effect on compliance. Admittedly, these recommendations are not easily implemented. Yet, they come with clear rewards, namely, remedy for victims and new policies and practices that will safeguard human rights in the future.

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