

The Power of Hearings: Unleashing Compliance with Judgments at the Inter-American Court of Human Rights

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Introduction

Low levels of compliance with the recommendations and orders of supranational human rights bodies remains a major challenge for those of us who see international courts as critical protectors of human rights. One key question we face is what role these bodies should play to ensure implementation of their own decisions? While the dynamics of implementation are multi-factored and multi-actored, human rights bodies like the Inter-American Court of Human Rights do more than mere monitoring of orders; rather, they trigger and cajole implementation in different ways ([Sandoval, Leach and Murray, 2020](#)). Of all international human rights courts, the Inter-American Court of Human Rights has proved to be the most innovative in responding to implementation challenges despite its limited resources. While the strength of its approach arguably rests on its ability to use and combine different tools as required, compliance hearings have proven to be particularly important given their ability to promote dialogue with stakeholders and to build better understanding of the barriers that need to be addressed to move implementation forward.

Hearings as a tool to monitor compliance with judgments

The Inter-American Court's practice of holding hearings to monitor compliance with judgments started in 2007. In contrast, such practice is unknown in the European and UN treaty body systems, and has only been used exceptionally in the African system. The Inter-American Court holds different types of hearings: *Private hearings* are conducted informally, with two or three judges present, the Inter-American Commission, the victims and their legal representatives and the state delegation. They last for about two hours and aim to foster dialogue to address implementation roadblocks and promote the preparation of implementation plans/schedules.

Public hearings are used exceptionally and in cases where there is a manifest failure by the state to comply with the Court's orders. All judges are present, wear their gowns, and follow a formal protocol. The court held the first such hearing in 2009 in the case of [Sawhoyamaxa Indigenous Community v. Paraguay](#) precisely to respond to the new deaths of people in the community as a result of the reckless behaviour of the Paraguayan state.

The Court also holds *joint monitoring hearings* where the Court monitors similar orders against the same state in various cases that are pending compliance. This has been done in relation to different measures such as the duty to [investigate, prosecute and punish](#) in the case of Guatemala or [rehabilitation](#) in the case of Colombia. And since 2015 the Court also holds *on-site hearings* where it takes supervision to the country in question, and holds hearings with relevant actors both from the government, victims, and their legal representatives. The first on-site hearing was held in [Honduras and Panama](#) in 2015 (IACtHR, Annual Report, 2015, 61).

There are no explicit criteria establishing when the Court can hold a private or a public hearing despite the fact that they were included as a tool for monitoring compliance when the Court's rules of procedure were revised in 2009 ([Art. 69.3](#)). Any party to the case can request

them, and the Court can convene it, but the ground(s) on which they are granted is not clear. While it is desirable in principle for such criteria to exist, the lack of such criteria has also permitted the Court to respond with flexibility to the challenges its judgments face in different parts of the region.

The Court has used hearings to activate implementation in cases where years have passed without any updated and detailed information reaching the Court or where specific measures were long overdue as in the case of [Awas Tingni Community v. Nicaragua](#), where seven years after the judgment the Court called a private hearing in 2008 to receive complete information on pending measures, including the creation of an effective mechanism to delimit, demarcate and title the property of the indigenous community, to carry out the actual delimitation, demarcation and titling of the lands as well as paying compensation for pecuniary and non-pecuniary damage. (IACtHR, Order of the President, 14 March 2008, 5). This hearing allowed the Court to invite the parties to the case to reach an agreement. The agreement contained clear indication of steps to be taken and timeframes that applied (IACtHR, Order of the Court, 2008, 8). Nicaragua fully complied with the judgment a year later (IACtHR, Order of the Court, 2009, 5). The Court also uses hearings where it sees an opportunity to influence the decisions of a State as happened in the case of [Fermín Ramírez and Raxcaco](#) in 2008 to dissuade Guatemala from allowing the death penalty.

What has proven useful to unleash implementation?

Our research found that hearings can facilitate dialogue between the parties to a case. Up to 2019, hearings have been held in relation to almost all states that have accepted the jurisdiction of the Court, except Haiti. However, the Court has held less hearings in relation to states that are not willing to engage in dialogue, on the basis that those hearings cannot be very effective. For example, the Court has held six hearings in relation to Venezuela's compliance with judgments, five of which happened before Venezuela denounced the American Convention in 2012, and only one in 2016. And just recently, in 2019, the Court called a joint hearing on the cases of the [Girls Yean and Bosico v. Dominican Republic and Expelled Dominicans and Haitians v. Dominican Republic](#), that the state did not attend. Indeed, state failed to provide any information on compliance with the Court's orders for various years and particularly from 2014, when the State announced its intention not to comply with them based on a decision by its Constitutional Tribunal (IACtHR, Resolution of the Court, 2019, 14).

The majority of private hearings have taken place in relation to Peru, Guatemala and Colombia, three states where constructive dialogue has helped to unleash the dynamics of implementation and where strong civil society organisations are present. These combined elements appear to make the best use of the opportunity provided by the Court. The two States with the most public hearings are Peru and Paraguay, each with three and two hearings, respectively. The following appears to have helped to unleash the dynamics of implementation:

- *Hearings could involve key State actors*

Private hearings allow for informal dialogue that can help parties to a case find a way forward. They create an opportunity for key state actors to be involved in the implementation process ([Murray and De Vos](#), 2020). Often, those reporting to the Court on implementation and engaging in the process are staff at the Ministry of Foreign Affairs or at a similar

institution, but not the entities that have to actually implement the order. For example, the Ministry of Health is often not present when implementation of rehabilitation measures is at stake. Including such key actors at hearings and having the opportunity to enter in direct dialogue with them has helped to move things forward. On-site hearings also help to this end, as many state institutions can be present at the hearings without having to incur in travel costs ([Saavedra, 2020](#)).

- ***Hearings allow victims to participate in the monitoring process***

Victims can participate in hearings if they wish. They are more likely to participate if hearings are conducted on on-site ([Saavedra, 2020](#)). Their participation could be crucial to ensure that they remain at the centre of the process, that they are duly informed of what is going on with respect to implementation and that they can share their views on how to move things forward ([Molina, 2020](#)).

- ***Hearings work best when the Court has all relevant information on implementation at hand***

Hearings can also be more effective when the Court has all relevant information about the dynamics of implementation at the domestic level at hand ([Donald, Long and Speck, 2020](#)). States, however, do not always report to the Court on steps taken to implement its orders or, if they do report, the information they provide can be patchy. Hence, it has proven effective for the Court to request certain information from the state before the hearing takes place or to request key information directly from specific state institutions. This happened in the [Molina Theissen v. Guatemala](#) case in 2019, where the Court requested the Prosecutor General to provide information on the implementation of the duty to investigate, prosecute and punish, and to refer to a draft bill that, at the time, aimed to halt investigations in this and other cases. The more prepared the Court is, the better it will be able to promote implementation of its judgments. People we interviewed during our project also shared that hearings have been effective because they have worked as a pressure mechanism on states, reminding them that they must appear before the Court, get things together, and make progress on implementation.

- ***Public hearings can help to prevent that States take backward steps***

Public hearings have played an essential role in preventing states from regressing on the Court's implementation orders. For example, recently in cases such as [Guatemala](#) (March 2019) or [Peru](#) (February 2018), the Court used the hearings, sometimes in connection with precautionary measures, to prevent authorities from taking measures that would halt the investigation, prosecution and punishment of perpetrators of gross human rights violations in various cases decided by the Court. In the case of Guatemala, for example, there was a serious risk that the state would adopt a bill in parliament to halt investigations of serious human rights violations, that would have impacted negatively the orders given by the Court in various cases to duly investigate, prosecute and punish all perpetrators of such atrocities during the armed conflict, including cases like that of *Molina Theissen, Chichupac* and other 12 cases. The Court, prompted by civil society organisations, responded in a timely manner to such challenges by calling a public hearing but also by adopting provisional measures to prevent irreparable harm (IACtHR, Resolution of the Court, March 2019).

- ***Public hearings can activate other actors beyond the parties on the dynamics of implementation***

Public hearings allow other actors -- civil society organisations, international organisations, regional organisations, media, academics -- that could have an impact on the dynamics of implementation to know what is happening with specific measures, and to play a role in the implementation process. These actors can provide information to the Court, for example as *amicus curiae*, or by lobbying the state to comply with the Court's orders. When implementation gets difficult and informal dialogue is not enough, opening the process to other actors can help trigger implementation ([Solano Carboni](#), 2020).

- ***Joint hearings help highlight structural problems and join efforts to monitor implementation of structural measures***

The Court has also joined the same or similar reparation measures ordered in various cases against the same state for the purposes of monitoring compliance. This has happened in particular regarding forms of reparation that aim to tackle structural problems, such as impunity in Guatemala and the need to ensure that the state complies with orders to investigate, prosecute and punish those responsible for gross human rights violations. The Court, besides monitoring the measure in a joint manner, has also held joint hearings and has issued joint resolutions in relation to specific reparation measures across various cases. These measures are in the interest of procedural economy. Given the growing amount of measures that the Court needs to monitor, which by 2019 stood at 1,153 (IACtHR, [Annual Report 2019](#), 61), it is important for the Court to find tools that can allow it to be more effective in triggering compliance. But, more importantly, joint hearings can bring together all relevant actors in different cases that are facing the same challenge, and relevant state institutions, to consider the barriers for implementation. It also allows the Court to gain a more holistic view of the challenges to implementation, and of potential ways to overcome them. Our research found that these hearings give visibility to those structural problems and help to prioritise them.

Conclusions

Inter-American Court hearings to monitor compliance with judgments have helped unleashed the complex dynamics of implementation. Since 2007, when the Court held its first private hearing, it has developed important, creative and original innovations to deal with the complex issues at hand, the latest of which are on-site hearings. Hearings have allowed dialogue, and, in exceptional cases, they have made public the lack of implementation and its adverse consequences. In the years to come, the challenge for the Court is to refine and streamline the way hearings happen -- in relation to their frequency, the place(s) where they take place, the length of time they take, the methodologies they follow, and to better assess the impact they have had and can have on implementation. Another important task is to understand how to enhance the impact of hearings before and after they take place, so that what has been gained through them can be preserved.

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