# Concept Note: Introduction to the ND Reparations Design and Compliance Lab

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The Notre Dame Reparations Design and Compliance Lab (NDRL) at the University of Notre Dame combines legal and data analysis to understand, predict, and assist compliance with the reparative decisions and orders of international courts, tribunals, and other adjudicative bodies, ultimately in order to help reconceptualize reparative design within international adjudication. NDRL is supported by the Kellogg Institute for International Studies and by the Klau Center for Civil and Human Rights at the Keough School for Global Affairs.

This Concept Note introduces the motivation for the Reparations Lab; the basic principles guiding its empirical work and legal analysis; the potential contributions and lines of inquiry and investigation facilitated by these principles, and the goals for our May 25 online preliminary discussion.

## A. Motivation for NDRL

The purpose of Notre Dame's Reparations Design and Compliance Lab is to conduct legal and data analysis to help improve the design of reparative measures, by first examining the nature of compliance by a State or international organization with the orders and recommendations of international courts, tribunals, and adjudication bodies (henceforth called **tribunals** for simplicity).

We examine reparative orders from the standpoint of international legal responsibility, such as reparative orders directed towards States (such as those issued by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights), as well as reparative orders or decisions addressed to international organizations (such as those issued by the World Bank Inspection Panel to the management of the World Bank Group in relation to Bank-funded development projects). We acknowledge that such international legal responsibility can also be

incurred under international law by private parties (such as in disputes involving business and human rights, including climate change-related mitigation and adaptation, as seen in international arbitration or transnational litigation). For the present scope of the Lab's internal work, we focus on an example of State responsibility (through the jurisprudence of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights) and of international organization responsibility (through the decisions and reports of the World Bank Inspection Panel). Using both lenses, we aim to elicit insights into the nature of reparative orders that have been issued by tribunals and its nexus with the legal responsibility incurred by States or international organizations. We further seek to examine the conditions that could affect how, when, and to what extent States or international organizations comply with tribunals' reparative orders and decisions.

For greater generality, in this concept note we refer to the **target** organization of reparation measures to identify the actor in charge of complying with the measure. We refer to **beneficiaries** as a general category for victims and other requesters benefiting from compliance.

### B. Two Principles that Underpin NDRL's Approach

We articulate two general principles to guide the Lab's empirical approach to compliance: specificity and temporality. These principles are flexible enough to allow for a wide range of data analyses within a common framework.

**Specificity**. Compliance takes place at different levels and to different degrees. We pursue specificity in the definition compliance because granular information provides greater analytic precision. For example, although we typically compare levels of compliance across different targets or for different types of cases, compliance occurs at a lower level of analysis. The Inter-American Court of Human Rights monitors compliance with specific reparation measures ordered in each ruling. The Inter-American Commission on Human Rights issues multiple recommendations in its merits reports; targets (States) comply with some recommendations but not others. The World Bank Inspection Panel assesses compliance with specific operational policies covered by each request. In addition, compliance occurs in different degrees. In its supervision resolutions, the Inter-American Court of Human Rights distinguishes partial and full compliance. In its annual report, the Inter-American Commission identifies partial compliance,

substantial partial compliance, and total compliance. The World Bank Inspection Panel's internal procedures reflect varying findings on the nature of Bank compliance with policies.

We propose to operationalize specificity in two ways. First, whenever possible we will collect information on compliance at the level of specific policies, orders, or recommendations (henceforth called **measures***,* for generality) issued by the tribunal. This will allow us to establish, for example, if a State has complied with a particular measure recommended by the Inter-American Commission on Human Rights, but not with a second measure recommended in the same merits report. Disaggregated information can always be aggregated at higher levels of analysis to determine, for instance, the overall level of compliance in the case, or by the particular target (State). Second, whenever possible we will collect information on specific degrees of compliance, dating the level of compliance achieved at each stage. This will allow us to model compliance as a process, documenting progress towards full compliance with reparative measures.

**Temporality**. Time is a relevant dimension of compliance. Delays in fulfilling reparative orders affect substantive legal outcomes; they matter for the beneficiaries, as well as for the tribunal's institutional legitimacy and reliable exercise of its adjudicative function. Two instances of compliance may carry different implications depending on the timing of the event. To treat a case in which the target complied after several months as the same with a case in which the target complied after several years, for instance, would draw a false equivalence between two very different patterns of behavior.

In addition, time is relevant to understand the *causes* of compliance. Contextual variables that influence the target's behavior fluctuate over time. For instance, government or regime changes affect the likelihood that leaders will acknowledge responsibility in past human rights violations. Because of this reason, we must analyze changes in compliance over time, rather than conceptualizing rates of compliance as a static attribute of certain targets or certain types of reparative measures.

We propose to operationalize the temporal analysis of compliance in two steps. First, we will gather data to pinpoint not only *whether* targets complied, but also *when* they complied with a given measure. Second, we will structure data files in discrete-time units (yearly). This

procedure records an observation for *every year* until the target complies with a measure (or until the present, otherwise).

To understand the foundations of this approach, imagine a hypothetical tribunal that orders a target to comply with two reparative measures. A decade later, the tribunal documents that the target complied with the first order within two years, but has not complied with the second order to date. A conventional "snapshot" of the situation would suggest that the rate of compliance is 50% (the target complied with one of two measures). In contrast, the discrete-time estimate captures the *yearly* rate of compliance, penalizing the target for the long delay in the second measure. The yearly rate of compliance for the first measure is 1/2 (one event after two years), but the yearly rate for the second reparative measure is 0/10. Overall, the yearly probability of compliance for this target is 1/12—that is, the target produced one act of compliance every twelve reparation-years.

### C. Potential Contributions and Lines of Inquiry

Combined, these two principles allow for a wide range of empirical analyses, including the use of duration models. Duration models allow us to estimate how characteristics of cases, targets, the changing environment, and the design of reparative measures affect the probability of compliance. They also allow us to express the estimated likelihood of compliance in two equivalent metrics: as the probability of compliance per year, or as the expected time to compliance. The annual probability is a more intuitive metric to display how expected compliance evolves over time (for example, before and after a supervision hearing), while expected time to compliance is a more intuitive metric to display how compliance varies across groups (for example, across different types of reparative measures).[1]

Although the extension of this concept note prevents us from discussing detailed methodological issues, we offer a brief overview of potential lines of research emerging from this approach.

- Estimation of the probability of compliance on a yearly basis allows us to explore the **life cycle** of reparative measures. For example, the probability of compliance with reparations ordered by the Inter-American Court of Human Rights increases consistently in the first three years following a ruling; then declines progressively. This suggests that

there is a window of opportunity to promote compliance. The life cycle of reparative orders is likely to vary across tribunals.

- We can also assess the effectiveness of **supervision strategies**. Are some mechanisms of supervision (e.g., public vs. private hearings) more likely to promote compliance? Is there an optimal timing to engage targets in oversight activities? Is it better to engage some actors within the target organization than others? Would tribunals see a higher rate of compliance if they mandatorily require parties to a dispute to periodically report on the state of compliance with reparative orders and decisions?

- Because **external conditions** affect the capacity (and willingness) of targets to comply, an understanding of how a changing environment affects compliance may be crucial to identify windows of opportunity. Are governments more responsive at the beginning of their terms or towards the end of their terms? Is public opinion relevant to shape compliance? Media coverage? Electoral cycles? Do international tribunals that treat systematic monitoring and oversight of compliance as within their adjudicative function contribute to systemic State/non-State compliance?

- The ultimate goal of NDRL is to help tribunals improve the **design of reparative measures**. A vast literature has shown that the content of reparative orders affects the probability of compliance—e.g., states comply with monetary reparations at a higher rate than with non-monetary reparations.[2] However, many questions require additional research. Does a precise instruction increase the likelihood of compliance, or is more general language better able to grant targets the flexibility they need to comply? Are deadlines effective? Can tribunals fine-tune orders to engage specific agents within target organizations? Would reparative orders that are specifically customized to redressing the nature of the injury or harm to victims result in better compliance and justice, instead of the usual confines of categories of restitution, compensation, satisfaction, and non-repetition under the general law of international responsibility?

### D. Rationale for the Workshop

Our brief online workshop will start an initial discussion on three aspects for our future collaboration:

1. Discuss some of the challenges experienced by international courts, tribunals, and other adjudicative bodies in their efforts to design reparative measures, and thereafter to determine and oversee compliance with those reparative measures. Determine to what extent data analysis can help them address questions of relevance for their work.

2. Identify extensions to the general approach discussed in this concept note, as required to understand different tribunals. Discuss how scholars can develop and apply this common framework to study additional courts and adjudicative bodies.

3. Draft and discuss collaboration agenda, including the possibility of additional workshops, student involvement, and edited volumes.

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[1] Duration models are also known as survival models or event-history models. For a recent example of the use of discrete-time duration models in the analysis of compliance, see Francesca Parente, "Fix for the Future, Not for the Past: Democratic Accountability and Non-Compliance with International Law" (Unpublished manuscript, Los Angeles, UCLA, 2019). For a detailed discussion of the advantages of discrete-time duration models in this field, see Aníbal Pérez Liñán, Luis Schenoni, and Kelly Morrison, “Time and Compliance with International Rulings: The Case of the Inter-American Court of Human Rights.” Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2019-17

[2] For instance, Damián González-Salzberg, “The Effectiveness of the Inter-American Human Rights System: A Study of the American States' Compliance with the Judgments of the Inter-American Court of Human Rights.” *International Law: Revista Colombiana de Derecho Internacional* 15:115-142 (2010); Fernando, Basch, Leonardo Filippini, Ana Laya, Mariano Nino, Felicitas Rossi and Barbara Schreiber, “The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to its Functioning and Compliance with Its Decisions.” *Sur* 7(12):9–35 (2011).