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## **Patchwork compliance: political dialogues about contested human rights**

Benneker, V.L.

### **Citation**

Benneker, V. L. (2021, July 1). *Patchwork compliance: political dialogues about contested human rights*. Retrieved from <https://hdl.handle.net/1887/3192803>

Version: Publisher's Version

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**Note:** To cite this publication please use the final published version (if applicable).

Cover Page



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**Author:** Benneker, V.L.

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**Issue Date:** 2021-07-01



## **Discussion and implications**

## 7.1 Introduction

This project proposed a new model to explain patchworks of compliance: the political dialogue model. It demonstrated that state decision-makers can rely on political dialogues to make decisions on compliance possible that were considered impossible before. In those dialogues, bits and pieces of human rights norms are discussed, accepted, rejected, diluted to fit mismatching norms, or traded for other, sometimes unrelated, laws and policies. Consequently, the political dialogue as a theoretical model allows us to analyse why and how decision-makers mediate between and work with different sets of mismatching norms, how that process can either lead to an accepted move towards compliance or to a backlash effect, and how that results in varying patchworks of compliance.

This chapter compares the two dialogue processes of the CEDAW and the ICCPR in Jordan. It draws lessons and adjusts the political dialogue as a theoretical model accordingly. It updates the model to include the backlash effects that were found in the empirical chapters. It also expands the consensus-creating strategies to include the selection of the platform in which the dialogue takes place, as the empirical evidence indicates this plays an important role in shaping the space to create consensus. It also makes suggestions for further research on political dialogue as a theoretical model.

This chapter also discusses the possibility of using political dialogue as an approach for practitioners who seek to increase compliance with contested human rights. It argues that, when there are mismatches between human rights and other communities' norms, a political dialogue as intervention can support small, but broadly accepted, increases in compliance, and prevent backlash effects against human rights.

## 7.2 Updating the political dialogue model

The first quantitative probe, presented in Chapter 3, focused on the theorized cause and outcome of the political dialogue model; normative mismatches and compliance with CEDAW Article 7 and ICCPR Article 18. It found a relation between the two for both treaties. This added to the plausibility of a relation between the cause and outcome of the political dialogue model.

In addition, the chapter suggested that an important scope condition of the political dialogue model, international vulnerability, could play a different role in that relation for each of the treaties. For the CEDAW, the relation between the presence of communities adhering to norms that are a mismatch with CEDAW Article 7 and compliance was mediated by

international vulnerability. To be more specific, the influence of normative mismatches on levels of compliance was weaker for states with great international vulnerability. Or, put differently, states that are dependent on the US or EU for economic resources were more likely to have higher levels of compliance with CEDAW Article 7, even if their domestic communities adhered to norms that are a mismatch with that article. Vice versa, in states that did not have that vulnerability, the influence of normative mismatches on compliance was stronger. Such states had lower levels of compliance, which seemed to be more in line with their domestic communities' norms.

This was not the case for the ICCPR. On the contrary, international vulnerability seemed to decrease, rather than increase, the likelihood of compliance with Article 18 on religious freedom. That is to say, states that are dependent on the US or EU for economic resources were less likely to comply with ICCPR Article 18. That is the exact opposite of the role of international vulnerability for the CEDAW. These findings demonstrated the need for a qualitative study to, first, investigate whether the relation between the theorized cause and outcome was indeed mediated by political dialogues, but also, second, in which way that theorized political dialogue was different for the two treaties.

The following qualitative chapters zoomed in on the processes for each treaty in Jordan. For both treaties, the evidence added to the plausibility of the political dialogue model, as such dialogues were found and influenced levels of compliance. Yet, the chapters also highlighted notable differences between the dialogues. Whereas in the case of the CEDAW, the dialogue was aimed at increasing compliance, for the ICCPR it was mostly used to maintain the normative status quo on religious freedom for some groups, and to decrease it for others, for example, by bringing some Islamic religious practices entirely under state control. The following paragraphs will reflect further on these divergent findings, and shed more light on how differences in the nature of the scope conditions and the presence of communities whose norms mismatch with human rights can explain this difference.

First of all, comparing the dialogues for the two treaties suggests that international vulnerability and human rights monitoring are in themselves not always sufficient to understand motivations for states to comply with human rights norms. Instead, these conditions should be analysed together with specific demands made by leading states from within an international community, which in the case of this project were the US. While the US demands were to a significant extent aligned with the CEDAW and the CEDAW monitoring bodies, that was not the case for the ICCPR. The US demanded protection of religious freedom for some communities, repression of extremist religious groups, and a clear choice for the US side in the 'War on Terror', instead of full compliance with Article 18. Though this still led to the need to create consensus, as especially the latter two demands

were strongly contested, it did change the aim of the dialogue. In the case of the ICCPR, the aim was, alongside safeguarding religious freedom for some, decreasing religious freedom for others. The importance of individual states' demands in the international community, in addition to the influence of UN monitoring bodies, is in line with arguments made by recent studies that suggest states are particularly concerned about avoiding punishment by the leading partners of the international community they are most vulnerable to.<sup>608</sup>

Another main difference between the dialogues of the two treaties is the context in which they took place. Women's rights norms were discussed within political committees, while religious freedom norms were discussed within a distinctly religious and Islamic context. In principle, even though both dialogues are bound to normative constraints which limit the range of possible outcomes, political committees take place fully within the state's mandate. That is different for a religious context. In the latter, the Amman Message eventually needed to be approved by Islamic scholars and committees in order for it to lead to a change in Islamic law, most of which were beyond direct state control. Consequently, the range of possible outcomes was further limited. This means that the context, or platform, that is chosen in which the dialogue takes place, and therefore the type of legislative change that can be sought, strongly influences the outcome of a dialogue. Moreover, as the type of platform has such a strong effect, this also suggests that it could also be used as a deliberate consensus-creating strategy.

In addition, the choice for the platform also determines which communities have the most influence in shaping decision-makers' space to create consensus. As Jordan First and the National Agenda were political committees which worked fully within the mandate of the state, the traditional veto-communities were the most influential. In both committees, the space to create consensus and to increase compliance was limited the most by the tribes. The Amman Message dialogue, on the other hand, was most strongly influenced by domestic and Arab-Islamic religious groups and communities, such as (Jihadi-)Salafists and the different Islamic schools of legislation. The tribes did not seem to have had the same kind of veto power within this religious context as they had had in the political context.

These findings on the importance of selecting the platform for the dialogue, can be used to further expand the table as presented in Chapter 2. When vulnerability to other communities is low, and the related norms are not highly specified, the selection of the platform may be strategically used to increase compliance. However, when vulnerability is high and the related norms are very highly specified, decision-makers have very limited to no freedom to choose the platform for the dialogue themselves. In addition, there is a sequence to these strategies; the choice for the platform precedes and strongly influences which participants can be selected. It is only after those two steps that the remaining strategies be used.

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608 Terman & Voeten, 2017

Table 7: Space to create consensus with available strategies - expanded

Vulnerability to other communities		
	Low	High
Norm specificity	Low (A) Considerable space to use different strategies to create consensus on compliance. Possible strategies include:  (1) Platform selection (2) Participant selection (3) Topic selection (4) Persuasion (5) Reverberation (6) Side payments	(B) Moderate space to use different strategies to create consensus on compliance. Possible strategies include:  (4) Persuasion (5) Reverberation (6) Side payments  (1-3) determined by preferences of other communities.
	High (C) Moderate space to use different strategies to create consensus on compliance. Possible strategy:  (2) Participation selection  (1, 3-6) restricted and determined by highly specified norms.	(D) Very limited space to use different strategies to create consensus on compliance.  (1-6) restricted and determined by other communities and highly specified norms.

Furthermore, these findings can be used to further adjust the pathway that was presented in Chapter 2; the first strategy, platform selection, fits in Part 1 of the pathway, in which the dialogue is initiated. This also means that the path-shaping conditions already have an influence in Part 1, rather than only Part 2. These changes are visible in the updated pathway, as displayed in Table 8 on the next page.

Finally, the backlash effect was not theorized as part of the expectations in the pathway in Chapter 2. Nonetheless, it proved a crucial element and outcome of political dialogues in the case studies on the CEDAW and ICCPR dialogues in Jordan. Comparing the two chapters sheds more light on the conditions under which backlash effects develop, and when these effects force state leaders to go back on their decision. Consequently, the role of the backlash effect in political dialogues can be further theorized for each step of the pathway.

At the very start of the pathway (cause), a backlash effect can develop when decision-makers increase compliance without starting a dialogue first. Once a dialogue is initiated (part 1), communities can mobilize outside of the dialogue if they are left out of the dialogue and they feel the process somehow violates their own norms. Also, the participants in the dialogue can start to resist the dialogue and its outcome when they feel their norms are being violated during attempts to create consensus (part 2) or when decision-makers are not able to create consensus and still decide to move towards compliance (part 3). Finally, decision-makers can succeed in creating consensus, but still choose a compliance option that falls outside of the consensus (outcome), which will also lead to resistance

Table 8: The pathway of the political dialogue, including backlash effects

	Cause	Part 1	Part 2	Part 3	Outcome
Theory	Presence of normative mismatch	Decision-makers start political dialogue	Decision-makers identify options for/create consensus	Decision-makers succeed in creating consensus	Patchwork compliance: Decision-makers move towards limited increase in range or degree of compliance
Operationalization	Presence of communities adhering to norms that lead to opposing behavioral outcomes as compared to human rights norms	Decision-makers call for a committee to discuss legislative or policy reform	Decision-makers use consensus-creating strategies: -participant selection -topic selection -persuasion -reverberation -side payments	Participants accept options previously not known or considered unacceptable	Decision-makers implement new legislation or policies in line with the human rights treaty
		Consensus-creating strategy: -platform selection			
	Scope conditions	Path-shaping conditions			
	(i) Vulnerability to international human rights community (ii) Human rights monitoring	(i) Vulnerability to communities adhering to norms that are a mismatch with human rights (ii) Other communities' norm specificity			
	Backlash effect can occur when				
	Decision-makers move towards compliance without starting a dialogue at all	Concerned communities do not feel sufficiently represented in dialogue and/or Participants feel their norms are being violated or not accounted for in the use of the consensus-creating strategies	Decision-makers move towards compliance without succeeding in creating consensus	Decision-makers choose compliance option outside of the created consensus	

and a backlash effect against the decision. Subsequently, the pathway as proposed in the theoretical chapter of this project (Chapter 2), can be further extended by including these moments at which a backlash effect can develop.

### 7.3 Future research on the political dialogue model

The political dialogue model is developed to help understand the decision-making process on compliance. The current project is by no means a complete and conclusive study on political dialogue or compliance. Some interesting paths were beyond the scope of this research, and the results of the project also uncovered new areas and topics that should be investigated further.

Quantitative research can test further the propositions on the extent to which mismatching norms affect compliance, and the role of the scope conditions in that relation. Particular attention should be paid to the influence of the presence of international communities advocating norms that are a mismatch with human rights, by developing new indicators that measure these communities' shared norms, their monitoring systems, and states' vulnerabilities to these other international communities. These new variables can be included in a quantitative model that factors in time, as that allows for a better understanding of the influence of different sets of norms on human rights compliance as scope conditions and norms change over the years. In addition, these larger datasets will allow for the testing of the central relation while controlling for other factors that influence compliance, and for testing three-way-interaction effects. Especially testing whether the influence of domestic norms is mediated by international vulnerability and domestic vulnerability or vulnerability to second international communities in such a three-way interaction effect will shed further important light on the workings of the scope conditions.

Future qualitative research should focus on, first and foremost, testing the political dialogue model in different contexts. It was developed to understand human rights decision-making beyond the single case of Jordan. Even though the quantitative analysis has indicated that there is a relation between domestic norms, compliance with monitored human rights and international vulnerability in more countries over the world, the political dialogue model itself has only been investigated in one country. It should be tested on other typical cases, especially in other world regions. In particular, such studies could further analyse the role of other international communities in the political dialogue.

Furthermore, studying the political dialogue model from a comparative approach, in which two typical cases with very different domestic regimes are selected, is very useful in order

to better understand the role of the path-shaping conditions and the space decision-makers have to create consensus in dialogues. These studies could also zoom in on the strategies to create consensus, and uncover more of the different methods used by decision-makers. Finally, such a comparative approach with two typical cases would also be an effective method to further investigate this project's findings on the role of backlash effects in political dialogues. In particular the conditions under which these effects develop, as well as the conditions under which they can force leaders to change their decisions, are highly relevant and timely topics for future research.

In addition to studying typical cases, future studies should also focus on outliers; countries that have similar levels on normative mismatches and that are internationally vulnerable, but that either exceed or fall behind on the expected level of compliance with international human rights norms. Such studies would be especially useful to specify the conditions under which state leaders use consensus-creating strategies (if at all) in favor of or against compliance.

Finally, both quantitative and qualitative studies in future should focus on more different types of human rights norms. The findings of this project clearly indicate that the goal of political dialogues is different for the CEDAW and the ICCPR. While for the CEDAW an increase in compliance became possible, for the ICCPR maintenance of a part of the normative status quo was the highest attainable goal. It is possible that this difference can be explained by the characteristics of communities and their norms, but also by the nature of the international norms. Future studies should therefore seek to test the framework on many different human rights norms, including the treaties that are ratified almost universally, such as the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as treaties that are less accepted internationally, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).

## **7.4 Political dialogue as an approach for practitioners**

This project has proposed political dialogue as a theoretical model to understand the decision-making processes on contested human rights. Building on those insights, the following paragraphs develop political dialogue as an approach for practitioners to increase compliance with contested human rights.

This is not without controversy. Many approaches to human rights advocacy aim for full compliance, or work on the assumption that human rights are at least considered

legitimate by the communities they are supposed to protect. Alternatively, the political dialogue approach accepts that full compliance cannot be achieved, as consensus needs to be found between the different communities with norms that mismatch with human rights. Nonetheless, such an approach is timely and necessary. First and foremost, because the international human rights community is of decreasing strength and has a decreasing willingness to enforce and advocate human rights norms. In turn, communities adhering to norms that are a mismatch with human rights, at both the domestic and the international level, are becoming more vocal, and have gained prominence and political influence. This means that it is more relevant than ever to understand compliance with human rights as a highly contested political decision-making process involving communities that can reject human rights as the legitimate framework for their protection.

Political dialogue as an approach to advance compliance can be of particular interest to human rights advocacy organizations and NGOs working on political dialogue, as well as state decision-makers who want to advance human rights as part of their foreign and domestic policy agenda. For these practitioners, using political dialogue as an approach could prove to be a fruitful way forward in an increasingly human rights-hostile world, and helps them to prevent creating backlash effects against human rights.

Human rights advocacy organizations can expand their advocacy toolbox with the political dialogue approach. While in some cases their more traditional strategies, such as naming-and-shaming, might be the most useful instrument to force states to comply, in others, a more careful political dialogue approach might provide better results when it comes to ensuring human rights protections in policy and legislation. First of all, the current global developments mean that many of the traditional strategies, and in particular naming-and-shaming, will no longer be effective under certain circumstances. This strategy relies on the assumption that states are actually shamed when their human rights practices are exposed to the general public or to other (allied) states. However, when this state is most vulnerable to a different community with norms that are a mismatch human rights, such shaming might as well have the opposite effect and become a badge of honor.

Understanding human rights compliance as the outcome of political dialogues instead, thus means a change of advocacy strategy under the right scope conditions. As the ethical or moral 'rightness' of human rights is no longer accepted at face value, the focus might need to be laid on seeking the topics on which consensus is possible. This does mean giving up the idea of reaching full compliance, but it would significantly lower chances of even more harmful backlash effects, and might make (small) moves towards human rights still possible in an increasingly human rights-hostile world.

For human rights organizations, it would also mean building coalitions that were previously unthinkable, but that have now become necessary. One way is the building of coalitions – or at least making a start on communication – between human rights movements and those (parts of) conservative groups with which some common ground can be found. Such coalitions can then effectively influence and shape the political dialogues on compliance by setting the agenda, and showing the way forward. One recent example from Jordan are the CEDAW-oriented elites and the women's currents in the conservative and Islamist movements. These different groups are often seen as having opposing goals, and as being representatives of normatively mismatching communities. However, the very recent victory in Jordan on changing Article 308,<sup>609</sup> which allowed sexual assault perpetrators to marry their victims, demonstrates that improvements in women's lives are still possible when coalitions are built across the traditional divides, and representatives of normatively mismatching communities are willing to push for change on a shared grievance, whether or not it is labelled as a UN human right.

For NGOs working on political dialogue, the political dialogue as approach that is proposed here provides a useful opportunity to understand better, first, the conditions under which dialogue on contested political reform and human rights becomes possible. For such organizations, it is valuable to increase the understanding of the political circumstances of the countries they work in, and in particular the conditions under which significant steps towards reform and compliance can be made – and when not. This will enable much more efficient programming, as it provides a realistic view of when there are opportunities to instigate a dialogue over contested norms, but also when such attempts might be in vain.

Furthermore, the political dialogue approach proposed here can increase the effectiveness of their programmes by highlighting the conditions that determine what is possible to be discussed within these dialogues. Vulnerability to all the different domestic and international communities, their demands and their norms' specificity, plays a major role in shaping the space in which contested norms, including those on political and human rights reforms, can be discussed and negotiated over. Carefully analysing these conditions also helps to avoid creating a backlash effect against the topics under discussion.

Finally, this approach can also support more strategic programming, as it provides an overview of the relative strength of specific communities at each potential dialogue table. This also means that deliberate and strategic choices can be made to support marginalized domestic groups to gain more strength and increase decision-makers' vulnerability to them. In this way, NGOs specialized in facilitating political dialogues could support these communities or even help create their place at the table.

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609 Rana Hussein, "In historic vote, House abolishes controversial Article 308" *Jordan Times*, August 1, 2017. <http://jordantimes.com/news/local/historic-vote-house-abolishes-controversial-article-308> Last accessed 13 May 2021

For state decision-makers who want to advocate human rights in their domestic and foreign policy and practices, the approach can also be useful. If anything, this project is a demonstration of their influence. The evidence collected here indicates that in all instances when the international community or strategic allies stepped up their monitoring of women's rights or religious freedom, there was a significant change in behavior visible with the Jordanian decision-makers. It made a political dialogue on these human rights possible and led to improved human rights outcomes; the increase in women's political participation, and the continued protection of religious freedom for some religious groups in a context in which these were significantly threatened.

At the same time, the findings of this project should also be alarming to many of these decision-makers. While their pressure does create incentives for compliance, it can also result in the exact opposite. The backlash effects we have seen occurring in Jordan were to a large extent attributable to international pressure, and have had serious consequences for citizens' dismissal of human rights as a legitimate framework ensuring their protection.

This warning should also be taken to heart by those decision-makers that are genuinely interested in implementing human rights in their own domestic contexts. While it is emphasized that outside pressure to comply might help in getting the process started and setting up a political dialogue, this pressure can also backfire in the long run and result in the full rejection of those rights. Instead, using the political dialogue approach to further human rights can increase compliance, while avoiding backlash effects. It advocates analysing the conditions under which the dialogue takes place, and a subsequent careful use of the different consensus-creating strategies that make an increase in compliance acceptable to the communities involved. This could prove to be the most sustainable method of improving human rights protection in the years to come.