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NATIONAL HUMAN RIGHTS STRATEGIES

THE ROLE OF NATIONAL HUMAN RIGHTS SYSTEMS IN THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS STANDARDS

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1. INTRODUCTION

The international human rights system has been expanding at a considerable pace over the last three decades, in relation to new human rights treaties, Human Rights Council (HRC) mechanisms as well as domestic bodies established to monitor states' commitment to promoting and protecting human rights. Such growth has increased human rights monitoring capacity worldwide whilst causing the system's complexity to challenge its effectiveness.

A main concern is the *overburdening* of the international human rights system, as the treaty bodies (TBs), HRC and states' monitoring and reporting structures have struggled to keep up with their workload.[1] Increasing demand has not been matched by a corresponding increase in *resources*, in terms of numbers and levels of expertise of dedicated staff.[2] *Poor horizontal coordination* among TBs and between TBs and HRC procedures has increased the risk of substantive overlap and contradiction in ensuing international human rights recommendations.[3] The lack of *systemic coherence*, with each TB adopting its own working methods and rules of procedures, has raised unnecessary barriers to *stakeholder accessibility* to the system, which adds to the problem of *low visibility* compared to other international human rights mechanisms.[4]

The COVID-19 pandemic, with the resulting reliance on digital technology to keep the monitoring apparatus functioning, has exacerbated these challenges, affecting the accessibility of the system and the availability of dedicated resources.[5] All these factors contribute to fueling the 'ineffectiveness critique' of the international

1   Office of the United Nations High Commissioner for Human Rights (OHCHR), *United Nations Human Rights Appeal 2020*, https://www.ohchr.org/Documents/Publications/AnnualAppeal2020.pdf (last accessed 16 January 2021).

2   'The funding and resourcing of the treaty bodies have not kept up with the fast growth in the number of ratifications, and the system now risks collapse'. N. Pillay, 'The International Human Rights Treaty System: Impact at the Domestic and International Levels', 21 *Human Rights Brief* 1 (2014) 32–34.

3   I. Salama, 'Strengthening the UN Human Rights Treaty Body System: Prospects of a Work in Progress', 2016, www.geneva-academy.ch/joomlatools-files/docman-files/Ibrahim%20Salama%20-%20Strenghtening%20the%20UN%20human%20rights%20TBs.pdf (last accessed 16 January 2021).

4   C. Callejon, K. Kemileva, F. Kirchmeier and D. Zipoli, *Optimizing the UN Treaty Body System: Academic Platform Report on the 2020 Review*, Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy), May 2018, www.geneva-academy.ch/joomlatools-files/docman-files/Optimizing%20UN%20Treaty%20Bodies.pdf (last accessed 16 January 2021). Currently, there are 562 treaty body (TB) reports overdue worldwide and 87% of UN Member States have at least one report overdue, which is exactly the same level of state compliance as 5 years ago. See 'Late and Non-Reporting States', UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/LateReporting.aspx (last accessed 16 January 2021).

5   UN General Assembly (UNGA), Report of the Co-Facilitators on the Process of the Consideration of the State of the UN Human Rights Treaty Body System, 14 September 2020, https://www.ohchr.org/Documents/HRBodies/TB/HRTD/HRTB_Summary_Report.pdf (last accessed 21 January 2021).

human rights system.[6] The burden of work is bound to increase as more states ratify more treaties and the work and procedures of TBs become better known.

Through this process of increasing legal and policy-related interconnectedness, global regulation has become ever more pluralist, with the inclusion of governmental human rights focal points, national mechanisms for reporting and follow-up (NMRFs), parliamentary committees on human rights, national human rights institutions (NHRIs), international and domestic civil society organizations, transnational corporations and other state and non-state entities entering into agreements and shaping international law with their growing involvement. Such institutional expansion and interrelatedness in today's international human rights system need to be assessed, rationalized and ultimately systemized. This necessity stems from the increasing requirements states are subject to, related to implementing treaty obligations, reporting to international and regional human rights systems and following up on the multitude of recommendations or decisions emanating from various human rights mechanisms. Effective implementation is consequently a growing challenge, even for the most willing and resourced state apparatus.

To counter these challenges, it is important to ask ourselves whether the current international human rights system can benefit from improved coordination and leveraging synergies at the domestic level. Indeed, it is now recognized that the international human rights system's 'report-and-review process seeps into domestic politics',[7] as reflected in growing domestic institutionalization trends. Without a doubt, Geneva-based human rights mechanisms are shaping the global discussion on human rights, but the reality check for their success is to be found elsewhere. After all, 'what is discussed in Geneva does not stay in Geneva. It spills over into domestic debates, adding fuel to mobilization and prompting demands for implementation.'[8] This briefing, dedicated to addressing institutional cooperation initiatives at the domestic level, attempts to address the felt need to look beyond Geneva, in order to make Geneva-based human rights mechanisms more efficient, especially at a time when such mechanisms are battling with budget cuts, staff shortages and the accessibility/connectivity problems linked to the COVID-19 pandemic. If there was ever a need to bolster the importance of the national and subnational levels in human rights monitoring and implementation, 2020 has provided a stark reminder of just that.

In order to define what a national human rights system (NHRS) is, this briefing shifts attention from a dualist orientation toward international law and national law to a focus on how legal norms are developed, conveyed and settled *transnationally*, integrating both bottom-up and top-down mechanisms for human rights monitoring and implementation. Investigating NHRSs and the extent to which

6   J. Crawford, 'The UN Human Rights Treaty System: A System in Crisis?', in P. Alston and J. Crawford (eds), *The Future of UN Human Rights Treaty Monitoring*, Cambridge University Press, 2000, pp 1, 3; S. Moyn, *The Last Utopia: Human Rights in History*, Harvard University Press, 2012; E. A. Posner, *The Twilight of International Human Rights Law*, Oxford University Press, 2014.

7   C. D. Creamer and B. A. Simmons, 'The Proof is in the Process: Self-Reporting Under International Human Rights Treaties', 114 *American Journal of International Law* 1 (2020) 1.

8   Ibid.

they may facilitate human rights implementation requires identifying each integrating institution's mandate and the institutional interactions devoted to human rights implementation. Aside from the formal institutional framework regulating the possible avenues for cooperation among NHRS actors and international human rights mechanisms, a variety of informal logics of influence exist, such as reputational effects, persuasion and socialization,[9] that lead to compliance with international human rights law despite the absence of authoritative interpretation and enforcement. Compliance understood simply as norm-adherence is too narrow a filter, and does not account for the wide range of effects that contemporary institutional synergies trigger in the transmission between the international and domestic levels of human rights protection. Established human rights norms are more complex:

> [T]hey may 'guide' behavior, they may 'inspire' behavior, they may 'rationalize' or 'justify' behavior, they may express 'mutual expectations' about behavior, or they may be ignored. But they do not effect *cause* in the sense that a bullet through the heart causes death ... The impact of norms within international regimes is not a passive process, which can be ascertained analogously to that of Newtonian laws governing the collision of two bodies. Communicative dynamics may tell us far more about how robust a regime is than overt behavior alone.[10]

This briefing, designed to assess available strategies for human rights monitoring and implementation at the national level, firstly situates domestic stakeholder engagement with the international human rights system within recent policy developments, most notably the TB Review 2020 process. This introductory section is followed by an analysis of what is generally understood as an NHRS framework, including those contextual factors that shape its effectiveness and the different actors, interactions and frameworks that represent its building blocks. In order to provide concrete examples of interactive effects among NHRS actors that may facilitate human rights implementation on the ground, this paper then presents a number of recent human rights monitoring and implementation initiatives as best practices from three specific NHRSs (the Kingdom of Morocco, Mongolia and Costa Rica) as well as two digital human rights tracking tools available for both state and non-state actors (SIMORE PLUS and IMPACT OSS). These best practices are presented according to three key dimensions that shape the ability of NHRSs to function effectively: engagement/coordination capacity, information management capacity and participatory capacity. The final section offers concluding remarks on the value of a systemic approach to human rights implementation efforts, proposing specific policy recommendations towards more consolidated NHRSs.

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9   R. Goodman and T. Pegram (eds), *Human Rights, State Compliance and Social Change: Assessing National Human Rights Institutions*, Cambridge University Press, 2012; R. Goodman and D. Jinks, *Socializing States: Promoting Human Rights Through International Law*, Oxford University Press, 2013; G. W. Downs and M. Jones. 'Reputation, Compliance, and International Law', 31 *The Journal of Legal Studies* S1 (2002).

10   J. G. Ruggie, 'Epistemology, Ontology and the Study of International Regimes', in J. G. Ruggie, *Constructing the World Polity: Essays on International Institutionalisation*, Routledge, 1998, pp 97–98. Original emphasis.

A. THE TREATY BODY REVIEW 2020 PROCESS AND CALLS FOR STRENGTHENED DOMESTIC STAKEHOLDER ENGAGEMENT

Since the late 1980s the former United Nations Centre for Human Rights and the current Office of the UN High Commissioner for Human Rights (OHCHR) have launched several initiatives to address the TB system's constant expansion and ensuing challenges.[11] Among the most recent initiatives, the Treaty Body Strengthening Process (2009–2014) (Strengthening Process),[12] created a momentum that led to the adoption of General Assembly Resolution 68/268, Strengthening and Enhancing the Effective Functioning of the Treaty Body System.[13] The ultimate objective of the process was 'to improve the impact of treaty bodies on rights-holders and duty-bearers at the national level by strengthening the functioning of treaty bodies while fully respecting the independence of the latter'.[14] Learning from past attempts at reform, the process rested on two tenets: 'a bottom-up approach to ensure the buy-in *of all stakeholders*' and 'incremental progress to achieve sustainable change through a transparent process that genuinely involves *all relevant stakeholders*'.[15] The growing relevance of domestic actors to TB reform initiatives was often reiterated in official statements and the Strengthening Process was embedded in the understanding that the TB system is inherently multi-stakeholder.[16] Thus, over 20 consultations on how to further strengthen the TB system allowed for the active participation of diverse categories of stakeholders.[17]

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11   P. Alston, Final Report on Enhancing the Long-Term Effectiveness of the UN Human Rights Treaty System", UN doc E/CN.4/1997/74, 27 March 1997; P. Alston, Interim Report on Study on Enhancing the Long-Term Effectiveness of the United Nations Human Rights Treaty Régime, UN doc A/CONF.157/pc/62/Add.11/Rev.1, 22 April 1993; P. Alston, Initial Report on Enhancing the Long-Term Effectiveness of the UN Human Rights Treaty System, UN doc A/44/668, 8 November 1989. For further information see The Alston Proposals (1988–1996), https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#Alston (last accessed 16 January 2021); UNGA, Strengthening of the United Nations: An Agenda for Further Change, Report of the Secretary-General, UN doc A/57/387, 9 September 2002; Proposal for The Single Report (2002–2006), https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#SingleReport (last accessed 16 January 2021); UN International Human Rights Instruments, Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, Report by the Secretariat, UN doc HRI/MC/2006/2, 22 March 2006; Proposal for a Unified Standing Treaty Body (2006), https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#proposals (last accessed 16 January 2021).

12   Treaty Body Strengthening Process (2009–2014), https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#treaty (last accessed 16 January 2021), initiated by the Report of the United Nations High Commissioner for Human Rights on the Strengthening of the Human Rights Treaty Bodies Pursuant to Assembly Resolution 66/254, UN Doc A/66/860, 26 June 2012, and resulting in UNGA Res 68/268, Strengthening and enhancing the effective functioning of the human rights treaty body system, A/RES/68/268, 9 April 2014.

13   UNGA Res 68/268, supra fn 12.

14   UN High Commissioner for Human Rights, Navanethem Pillay, in her statement to the Human Rights Council (HRC), 14 September 2009.

15   Salama, 'Strengthening the UN Human Rights Treaty Body System', supra fn 3, p 5. Emphasis added.

16   For a list of the most recent statements on TB strengthening, see https://www.ohchr.org/EN/HRBodies/HRTD/Pages/3rdBiennialReportbySG.aspx

17   All documents related to the treaty body strengthening consultations are available at https://www.ohchr.org/en/hrbodies/hrtd/pages/tbstrengthening.aspx.

In 2014, the then High Commissioner for Human Rights, Navanethem (Navi) Pillay, further underlined the importance of connecting the international human rights monitoring system to its domestic counterparts: 'even with a strengthened treaty body system, treaty implementation will only be as effective as the network of actors prepared to work together for the improvement of human [sic] rights performance on the ground'.[18] In much more direct terms than past reform processes, the Strengthening Process spelt out that in order to increase its effectiveness and impact, the TB system needed to bolster its cooperation with key national actors. Due to this stronger focus on domestic implementation, Resolution 68/268 encouraged the TBs to harmonize their working methods as a step toward a more consistent and predictable relationship with domestic counterparts.[19] However, due to the ad hoc and independent nature of the system, each committee enjoys exclusive competence to determine its working methods and rules of procedure. These are not only privileges but also requirements to ensure the objectivity and impartiality of TB members in fulfilling their quasi-judicial functions. Given that the TB system is currently composed of 10 committees which collectively have 172 members, it is unsurprising that harmonization throughout the system remains a challenge.

Notwithstanding these difficulties, Resolution 68/268 (and the Strengthening Process leading to it) constitutes the most recent unanimous political recognition by the community of states of the essential role that domestic actors have regarding a stronger, more effective TB system. Resolution 68/268 established a six-year implementation process, the Treaty Body Review Process 2020, or so-called 2020 Review. Notably, two aspects of GA Res. 68/268 ensure accountability in its implementation: two biennial reports of the secretary-general on the state of the TB system and the commitment expressed by states in the resolution to review the TB system in 2020 and consider further action following the 2020 Review. Overall, by July 2020, 55 states had submitted their response to the latest OHCHR request for input.[20] Each submission presents its own peculiar considerations regarding a variety of proposals towards further action to strengthen and enhance the effective functioning of the human rights TB system. Throughout the vast majority of state submissions to the 2020 Review, notable attention has been dedicated to the improvement of the TB system's accessibility for national stakeholders, including specific reference to NHRIs.[21] In the latest rounds of state submissions, states often refer to the fact that 'the TB system as it stands today does not allow for an effective domestic stakeholder engagement'.[22] This has been a recurring theme of the

review process, and its solution has been found to require 'more accurate and harmonized provision of information and working methods, as well as an increased predictability of the system'.[23]

In the final 2020 Report on the Process of the Consideration of the State of the UN Human Rights Treaty Body System, the co-facilitators renewed the call for aligned models of interaction between treaty bodies and domestic actors as a reform that would be 'beneficial for all stakeholders'.[24] The co-facilitators report has since been presented to the General Assembly. However, in its latest biannual resolution on the treaty body system adopted on 30 October 2020[25], the Third Committee of the General Assembly 'takes note' of the co-facilitators report but falls short of welcoming it, or recommending any action towards the implementation of the recommendations it makes.

18   Pillay, 'The International Human Rights Treaty System', supra fn 2, 34.

19   '[T]o strengthen and enhance the effective functioning of the treaty body system, particularly in the area of the simplified reporting procedure, constructive dialogue, concluding observations, and the consultation process in the elaboration of general comments'. UNGA Resolution 68/268, supra fn 12.

20   Geneva Human Rights Platform (GHRP), An Overview of Positions Towards the 2020 Treaty Body Review by States, 2020. On file with the author.

21   GHRP, An Overview of Positions Towards the 2020 Treaty Body Review, supra fn 20.

22   European Union General Approach to the UN Human Rights Treaty Body System Strengthening and Enhancing Process, submission to the 2020 Review of the UN Human Rights Treaty Bodies System, May 2020, https://www.ohchr.org/EN/HRBodies/HRTD/Pages/Co-Facilitation-Process.aspx.

23   Geneva Human Rights Platform, An Overview of Positions Towards the 2020 Treaty Body Review, supra fn 20.

24   UNGA, Report of the Co-Facilitators, supra fn 5, Para 49.

25   UNGA Res. 75/174, Human rights treaty body system, A/RES/75/174, 30 October 2020.

2. THE NATIONAL HUMAN RIGHTS SYSTEMS FRAMEWORK

This section introduces the concept of the NHRS, which serves as a useful framework to simplify analyses of the various national human rights protection systems worldwide.

The notion of a system refers to a collection of components with a common purpose and underscores the fact that 'human rights promotion and protection entail continuous interactions between a complex whole of actors and processes'.[26] The notion of a *national* system underlines 'that human rights are implemented locally through a state's ability to meet its human rights duties and rights-holders' ability to claim their rights'.[27] With these elements in mind, a functioning NHRS is *a system where the state guarantees human rights protection to everyone.* Such guarantees of human rights protection are ensured when 'all actors of the NHRS – i.e. governmental state actors, independent state actors and non-state actors – respect and promote human rights and when the state effectively respects, protects and fulfils its human rights obligations'.[28]

Every NHRS consists of different sets of actors, each with its own designated mandate to monitor and/or implement international human rights recommendations. In one of the most recent and detailed analyses on the matter, Stéphanie Lagoutte identifies three main NHRS components: actors, interactions and frameworks.[29] The analysis below will dissect this trichotomy, with the understanding that 'most of these frameworks, actors and interactions are state driven, some of them are both state driven and independent, such as the work of courts or NHRIs, and others are driven by civil society'.[30] Critically, there is no standardized NHRS formulation and its components are affected by contextual variations in each country of reference. A useful common denominator to contrast the potentially infinite NHRS variations, however, is that when actors, interactions and frameworks are purposefully set up to integrate and monitor human rights in-country, the state will be better equipped to abide by its international human rights commitments. Of course, this is not to say that all these NHRS conditions are necessary, nor that they are sufficient for compliance purposes. Nonetheless, from a probabilistic perspective, these conditions arguably increase the chances of better human rights implementation.

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26 The Danish Institute for Human Rights, *National Human Rights Systems and State Human Rights Infrastructure*, HRS Concept Note, 2016, p 3.

27 Ibid.

28 Ibid, p 2.

29 S. Lagoutte 'The Role of State Actors Within the National Human Rights System' 37 *Nordic Journal of Human Rights* 3 (2019).

30 Ibid, 183.

In sum, it is through such understanding that it is possible to assess whether the necessary preconditions are in place for effective human rights implementation. This section unpacks domestic inter-institutional dynamics by identifying how different NHRSs may ultimately shape the monitoring and implementation of human rights standards. To this end, it is first useful to introduce a broad categorization of relevant contextual factors that may influence the work of both domestic and international mechanisms for human rights monitoring and implementation. Secondly, it is important to dig deeper into the definition of an NHRS, including an analysis of how NHRS establishment is tied to certain obligations under UN human rights treaties as well as an overview of the actors, interactions and frameworks that make an NHRS. With all these elements in mind, this section concludes with some reflections on the value of 'NHRS thinking' in the formulation of strategies for the most effective implementation of international human rights standards.

A. CONTEXTUAL FACTORS SHAPING THE EFFECTIVENESS OF NATIONAL HUMAN RIGHTS SYSTEMS

A first useful step towards assessing the effectiveness of different NHRSs is to consider the range of contextual factors that influence the receptiveness to international human rights recommendations of different domestic actors.[31] We can summarize such factors in three broad categories: the institution-specific context, the constituencies context and the political context at both global, regional and local levels.

Institution-specific contextual factors relate to the mandates, structures and processes specific to each domestic actor involved in human rights monitoring and implementation.[32] Depending on their structure and process, institution-specific contextual factors may impact the ways in which audiences relate to the different actors and, ultimately, the way in which international human rights recommendations are monitored and implemented. This requires a bottom-up approach that looks into the specific, practical work of each domestic actor, in order to understand how it can feed back into international human rights monitoring, relying on an institution-specific understanding and microanalysis of institutional structures and processes.

Aside from institution-specific contexts, different constellations of constituencies can assist or impede the manner in which international human rights recommendations are ultimately implemented. In order to analyse this specific set of factors, it is important to regard 'the state' as contextually skewed and focus on the relative advantages of different forms of state institutions in different contexts. The state, in this sense, is emergent: 'it emerges from the interaction of legal subjects and of

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31 K. J. Alter, L. R. Helfer and M. R. Madsen, 'How Context Shapes the Authority of International Courts', 79 *Law and Contemporary Problems* (2016).

32 Examples include formal mandate, internal structure, priorities, resources and relevant domestic procedures, etc.

different institutions …The "state" is not imposed from on high, either by governors or by legal theories. It emerges from real-world interaction.'[33] It is thus useful to disaggregate its various constituent parts, including sub-state (government officials, national courts, administrative agencies, etc.) and non-state (civil society, the media, etc.) constituencies. The multifaceted and context-dependent nature of the state, inclusive of a variety of state and non-state actors, suggests that there are multiple pathways for human rights implementation.

Monitoring and implementation efforts may also see their success bolstered or hindered by specific political contexts. From a geopolitical perspective, 'trends and practices produce global frameworks of power and ideas, which in turn influence and enable actions in international institutions and in regional and national settings'.[34] Such influences can, of course, strengthen or weaken recommendations from international monitoring bodies. This is especially true in the human rights field, as UN human rights conventions may reflect externally supported rights that local audiences do not necessarily share.[35] The disjuncture between externally and internally held ideals may be bridged by domestic actors themselves vernacularizing international human rights recommendations to accommodate internal audiences. Another way to 'mediate the pathologies created by disjunctures between global and local interests'[36] is through so-called regionalism.[37] Finally, and perhaps most significantly, shifts in domestic politics may have a strong impact on the level of authority international human rights recommendations hold vis-à-vis the executive or indeed the public at large. As officials at the helm of government change, so does the extent to which international human rights recommendations are considered an authoritative voice in the country. Domestic actors in countries where different political parties often succeed one another may fluctuate between having little to no authority and rapidly expanding authority. The same applies to international human rights recommendations, as more 'globalist' governments may regard them as extensively authoritative while more 'localist' governments may see recommendations from Geneva as imposing on their sovereignty.

B. THE ACTORS, INTERACTIONS AND FRAMEWORKS OF NATIONAL HUMAN RIGHTS SYSTEMS

The tripartite responsibility to respect, protect and fulfil human rights stands as one of the precepts of the contemporary transnational human rights legal order.

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33 V. Nourse and G. Shaffer, 'Varieties of New Legal Realism: Can a New World Order Prompt a New Legal Theory', 95 Cornell Law Review 1 (2009) 110

34 Alter et al, 'How Context Shapes the Authority of International Courts', supra fn 31, 26.

35 For example, see state responses to questionnaire on implementation of UnGA Res 68/268, Third Biennial report by the Secretary General, 2019, www.ohchr.org/EN/HRBodies/HRTD/Pages/3rdBiennialReportbySG.aspx (last accessed 16 January 2021).

36 Alter et al, 'How Context Shapes the Authority of International Courts', supra fn 31, 27.

37 Andrew Moravcsik, for example, attributes the success of the European Court of Human Rights to the social and political interest of member states in protecting liberal democracy in the context of the Cold War. A. Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe', 54 International Organization 2 (2000) 220.

Without an adequate and receptive domestic human rights dimension, this responsibility risks facing a priori structural and procedural complications before any substantive deliberations on the matter. According to Bertrand Ramcharan, such responsibilities are the founding pillars of 'one of the most strategic concepts for the universal realisation of human rights', that is, a functioning and effective NHRS.[38]

By adopting the Millennium Declaration, UN Member States agreed to strengthen their domestic capacity to implement the principles and practices of human rights.[39] As the then UN Secretary-General, Kofi Annan, put it in his 2002 Strengthening of the United Nations report: 'Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principal objective of the Organization.'[40]

Soon thereafter, Mary Robinson, former UN High Commissioner for Human Rights, also noted in this regard:

> We still do not put adequate emphasis on helping … to build … national protection systems for human rights … This means the courts, the legislature, as well as national human rights institutions or human rights commissions. It also means the educational system and human rights education programmes. It includes space for civil society, human rights defenders and support for their relationship with the formal system of promotion and protection of human rights.[41]

In broader terms, such an understanding joins a prospering academic field focused on the role of national human rights actors and procedures, a trend recently branded as the domestic institutionalization of human rights.[42] According to Lagoutte,

> a systems approach to the role of state actors in human rights protection and promotion allows us to capture the political and institutional complexity of domestic human rights implementation. Such an approach values coordination of the state human rights action (horizontal dimension) and its interaction with supra national human rights mechanisms (vertical dimension).[43]

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38 B. G. Ramcharan, 'National Responsibility to Protect Human Rights' 39 Hong Kong Law Journal 2 (2009) 1.

39 UNGA Res A/RES/55/2 (2000), 18 September 200, §§25 and 26.

40 UNGA, Strengthening of the United Nations, supra fn 11, §50.

41 M. Robinson, 'From Rhetoric to Reality: Making Human Rights Work' 1 European Human Rights Law Review (2003) 6–7.

42 S. L. B. Jensen, S. Lagoutte and S. Lorion, 'The Domestic Institutionalisation of Human Rights: An Introduction' 37 Nordic Journal of Human Rights 3 (2019).

43 Lagoutte, 'The Role of State Actors Within the National Human Rights System', supra fn 29,179. For earlier discussions on the importance of systemic studies on national human rights protection systems, see Ramcharan, 'National Responsibility to Protect Human Rights', supra fn 38 (n. 17); Robinson, 'From Rhetoric to Reality', supra fn 41; UNGA, Strengthening of the United Nations, supra fn 11.

ACTORS WITHIN THE NHRS

- Legislature
- Executive
- Judiciary
- Independent State Institutions
- Civil Society Organizations
- Academia
- Media

SYNERGIES WITHIN THE NHRS

- Joint MoUs between Actors
- Inter-Ministerial Committees on Human Rights
- CSO Platforms
- Platforms for Engagement Between State and Non-State actors
- Other Types of Cooperation

SYNERGIES NHRS - UN HUMAN RIGHTS SYSTEM

- National Human Rights Action Plans
- Standing National Reporting and Coordination Mechanisms
- National Mechanism for Reporting and Follow-up
- Other Types of Cooperation

COMMUNICATIONS — Submission of Information

INQUIRIES — Submission of Information

STATE REPORTING
- Replies to LoI/PR
- Parallel Reports
- State Report
- Replies to Follow-up

UNIVERSAL PERIODIC REVIEW
- National Report
- Stakeholders' Submissions
- Mid-Term Report
- Follow-up

SPECIAL PROCEDURES
- State Visits Cooperation
- Country Visits Cooperation
- Follow-up
- Stakeholders Submissions
- Communications Submissions

| HRCttee | CESCR Committee | CERD Committee | CEDAW Committee | CAT Committee | CRC Committee | CMW Committee | CRPD Committee | CED Committee | SPT |
| CCPR | CESCR | CERD | CEDAW | CAT | CRC | CMW | CRPD | CED | OPCAT |

Human Rights Council — UN CHARTER

Figure 1. The National Human Rights System Matrix

By adopting this understanding and adapting its novel analytical framework to explain domestic human rights dynamics, it is possible to devise a matrix that exemplifies the different components that shape an NHRS. Figure 1 represents such a matrix in more detail. Every NHRS consists of different sets of actors, each with its own designated mandate to monitor and/or implement UN human rights recommendations. A strong NHRS prescribes formal and informal interactions among its actors as well as frameworks that connect the domestic and international efforts of human rights monitoring. Thus, the NHRS fosters synergetic action throughout the human rights transnational legal order (TLO). These synergies can be both horizontal (through cooperation among actors within the NHRS, at central and local levels) and vertical (between NHRS actors and the UN human rights system).

As exemplified in Figure 1, every NHRS consists of different sets of actors, each with its own designated mandate to monitor and/or implement UN human rights recommendations. We can distinguish three generally applicable categories of NHRS actors, namely governmental state actors, independent state actors and non-state actors.

Governmental state actors consist, first of all, of ministerial bodies, including both politically nominated officials and career bureaucrats acting under their designated ministries. Within each ministry, internal human rights focal points and related structures can also be envisaged as well as inter-ministerial coordination bodies for an organic streamlining of governmental human rights action. Second, governmental state actors include law enforcement and security bodies, such as the armed forces, police and detention services. On both counts, the decentralization of public authority and the general organization of the state will affect the relevance of local government and administration, which are nonetheless to be considered as potential governmental state actors involved in human rights implementation.

Turning to independent state actors, four target bodies can be distinguished. Firstly, the judicial power, consisting of the entire court system of the country in question. Here too, context plays a major role, with notable distinctions between, for example, a constitutional or supreme court structure. Once again, an NHRS requires an independent court system mandated to monitor the conformity of legislation with both the constitution and the fundamental rights enshrined therein, as well as with the state's international human rights obligations. Secondly, the parliament, although some reservations may apply when considering the actual independence of members of parliament in dealing with human rights monitoring outside of party politics. Within each parliament, depending once again on the characteristics of individual systems (for example, single or double chamber), inter-parliamentary committees are often established with thematic focuses. Such committees are useful for streamlining parliamentary efforts that require technical and/or contextual knowledge, as is the case with human rights. Thirdly, ombudsman bodies are also part of the independent state actor category, and are sometimes recognized as NHRIs. The recent endorsement by the Council of Europe's Committee of Ministers of the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles) reiterates the state's duty 'to support and protect the Ombudsman Institution and refrain from any action un-

dermining its independence'.[44] Although not explicitly linked to the international human rights system, ombudsman institutions not recognized as NHRIs may also have a part in human rights implementation.[45]

Central to the current analysis, NHRIs are par excellence state actors mandated to promote and protect human rights independently of the government of the day. As stated by the General Assembly, NHRIs play an important role in 'promoting and protecting human rights and fundamental freedoms, strengthening participation, in particular of civil society organizations, promoting the rule of law and developing and contributing to the prevention of human rights violations and abuses'.[46] There are major variations within this category, with the Paris Principles Relating to the Status of National Human Rights Institutions (the Paris Principles) specifying that 'the national institution shall have an infrastructure which is suited to the smooth conduct of its activities',[47] essentially allowing the state to decide on its composition. NHRI structural models are indeed varied. The Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions summarizes these diverse models as 'commissions; ombudsman institutes; hybrid institutions; consultative and advisory bodies; research institutes and centres; civil rights protectors; public defenders; and parliamentary advocates'.[48] Whatever the configuration, the key elements are a broad human rights mandate and independence from government, in compliance with the Paris Principles.

In addition, non-state actors are a crucial component in the architecture of the NHRS and among the main beneficiaries of a strong system. In relation to this, OHCHR outlines five elements that optimize civil society's transformative potential:

- A robust legal framework compliant with international standards and a strong national human rights protection system that safeguards public freedoms and effective access to justice

- A political environment conducive to civil society work

- Access to information

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44 European Commission for Democracy Through Law (the Venice Commission), Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles), CDL-AD(2019)005, 3 May 2019, §1.

45 Ibid, §§12–13.

46 UNGA Res 74/156, 23 January 2020, p 2.

47 The Paris Principles Relating to the Status of National Human Rights Institutions (the Paris Principles), Composition and Guarantees of Independence and Pluralism, §2, https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx (last accessed 16 January 2021).

48 Global Alliance of National Human Rights Institutions (GANHRI), General Observations of the Sub-Committee on Accreditation (SCA), Para 7, https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf (last accessed 16 January 2021). For a more complete discussion of the different model types, the SCA refers to OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series no 4, 2010, pp 15–19.

- Avenues for participation by civil society in policy development and decision-making processes

- Long-term support and resources for civil society [49]

In a context of shrinking space for civil society worldwide, it is important that each NHRS creates and maintains an enabling environment for civil society. Furthermore, 'international human rights law places an obligation on States to respect rights and freedoms that are indispensable for civil society to develop and operate'.[50] Serving as a basis for civil society organization (CSO) activity are the rights to freedom of opinion and expression, and peaceful assembly and association, the right to participate in public affairs and the principle of non-discrimination.[51] OHCHR has gone as far as defining CSO engagement as a threshold issue: 'if space exists for civil society to engage, there is a greater likelihood that all rights will be better protected'.[52] States thus have an obligation to facilitate CSOs in their advocacy campaigns, through monitoring and reporting activities, awareness raising and education, and research.

In any NHRS, all the actors involved are connected through their participation in interactions characterized by distinct levels of formalization. In turn, such interactions are nested within wider frameworks, stemming from treaties, soft law and policies, legislation and regulations. If the nature and numbers of actors pertaining to an NHRS are very much dependent on contextual factors within each country, interactions among actors multiply the possibilities of available formats. As previously mentioned, these synergies can be both horizontal and vertical.[53] Horizontal synergies may include national coordination structures, processes and dialogues, joint memoranda of understanding (MoUs) between two state actors or more elaborate frameworks among several state actors. It is often the case that non-state actors are invited to these (in)formal platforms, either as integrating participants with decisional powers or as simple observers of the process. Vertical synergies may enable regular interaction between NHRS actors and the UN human rights

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49 HRC, Practical Recommendations for the Creation and Maintenance of a Safe and Enabling Environment for Civil Society, Based on Good Practices and Lessons Learned, Report of the United Nations High Commissioner for Human Rights, UN doc A/HRC/32/20, 11 April 2016, §4.

50 Ibid §5.

51 These rights are guaranteed by Arts 19, 21, 22 and 25, International Covenant on Civil and Political Rights; Arts 8 and 15, International Covenant on Economic, Social and Cultural Rights (ICESCR); Art 3, Convention on the Elimination of All Forms of Discrimination against Women; Art 5, International Convention on the Elimination of All Forms of Racial Discrimination; Arts 13 and 15, Convention on the Rights of the Child; Arts 21, 29 and 30, Convention on the Rights of Persons with Disabilities (CRPD); Art 24, International Convention for the Protection of All Persons from Enforced Disappearance; Art 26, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

52 HRC, Practical Recommendations for the Creation and Maintenance of a Safe and Enabling Environment for Civil Society, supra fn 49, §11.

53 The establishment of formal interactions and frameworks has surged since the 1990s. One recent example stems from the TB system, as Art 33, CRPD imposes a three-legged 'framework' by distributing roles and responsibilities to focal points in ministries and the administration in charge of implementing the convention's provisions, Paris Principles-compliant agencies, as well as civil society.

system through strengthened national ownership of reporting and follow-up. Usually of a formal nature, vertical synergies systematize and rationalize the engagement with international and regional human rights mechanisms, including the preparation of reports, and coordinate follow-up initiatives, thereby ensuring national coherence.

What follows are three examples of formalized NHRS interactions that have shaped recent efforts toward a 'domestic institutionalization of human rights', namely national human rights action plans, standing national reporting and coordination mechanisms and national mechanisms for reporting and follow-up. Common to all three is the reliance on iterative, two-way processes of dialogue between the (sub-)national and international levels. These interlinkages are essential for the effectiveness of the overall human rights TLO, inasmuch as an integrated and complex network of transnational human rights mechanisms requires a solid NHRS to meet its demands in terms of data collection, monitoring, and follow-up.

1. NATIONAL HUMAN RIGHTS ACTION PLANS

An early expression of the need for a methodical approach to developing and supporting NHRSs comes from the 1993 World Conference on Human Rights in Vienna, which recommended that 'each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights'.[54] In proposing national human rights action plans (NHRAPs), the conference took the view that a comprehensive structured approach to human rights planning would facilitate the achievement of positive outcomes. A cornerstone of this approach is the understanding 'that each country starts from its own political, cultural, historical and legal circumstances' and that 'lasting improvements in human rights ultimately depend on the government and people of a particular country deciding to take concrete action to bring about positive change'.[55] NHRAPs essentially place human rights improvements in the context of public policy, so that governments and communities can endorse human rights improvements as practical goals, devise programmes to ensure the achievement of these goals, engage all relevant sectors of government and society and allocate sufficient resources.

The obligation to adopt a detailed plan of action dates back to the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), applying specifically to the right to education under Article 14.[56] However, an analysis of the

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reports and recommendations of the Committee on Economic, Social and Cultural Rights (CESCR) shows that this understanding has also been applied to other rights under the Covenant.[57] The CESCR formalized this interpretation in its General Comment No. 1:

> While the Covenant makes this obligation explicit only in article 14 in cases where 'compulsory primary education, free of charge' has not yet been secured for all, a comparable obligation 'to work out and adopt a detailed plan of action for the progressive implementation' of each of the rights contained in the Covenant could arguably be implied by the obligation in article 2, paragraph 1 'to take steps … by all appropriate means'.[58]

The Committee, in General Comment No. 1, not only establishes a clear obligation for the states parties to adopt an NHRAP to implement all the rights contained in the ICESCR but also provides a conceptual basis for this obligation which applies readily to other UN human rights committees.[59]

There are different types of NHRAP, broadly divided in two distinct categories: comprehensive and rights-specific. As the name suggests, states adopt comprehensive NHRAPs to implement their obligations under all ratified international human rights instruments. On the other hand, rights-specific NHRAPs focus either on the implementation of a specific convention or a specific theme.[60] Both offer distinct advantages and it is up to each state to consider the most appropriate setup for its own national context. The adoption of a comprehensive NHRAP avoids the need to develop multiple NHRAPs, a potentially unwieldy process which risks further fragmenting an already complex endeavour. Moreover, a comprehensive NHRAP allows for resource optimization and can accommodate the interrelatedness of human rights. However, adopting rights-specific NHRAPs may allow more effective and transparent implementation, with the understanding that each convention is unique and deserves specificity. Separate plans, with more specific targets, may also be easier to be monitor and evaluate.

No matter what type of NHRAP is adopted, it is important to highlight the importance that this form of domestic human rights institutionalization has for a functioning NHRS.

2. STANDING NATIONAL REPORTING AND COORDINATION MECHANISMS

As previously mentioned, the recent TB Strengthening Process has contributed to a shift toward increasing domestic-level efforts to implement human rights. In her

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54 Vienna Declaration and Programme of Action, Para 71.

55 OHCHR, Handbook on National Human Rights Plans of Actions, Professional Training Series no 10, p 8, https://www.ohchr.org/Documents/Issues/Education/Training/HandbookNationalHR.pdf (last accessed 16 January 2021).

56 Art 14, ICESCR: 'Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.'

57 A. Chalabi, 'The Nature and Scope of States' Obligation to Adopt a National Human Rights Action Plan', 18 *The International Journal of Human Rights* 4–5 (2014) 392.

58 Committee on Economic, Social and Cultural Rights, General Comment No. 1: Reporting by States Parties, UN doc E/1989/22, 27 July 1981, §4.

59 Chalabi, 'The Nature and Scope of States' Obligation to Adopt a National Human Rights Action Plan', supra fn 57.

60 E.g. national action plans on women, peace and security and business and human rights.

2014 report, Navi Pillay advocated the establishment of a standing national reporting and coordination mechanism (SNRCM) in each state, aimed at 'reinforcing the capacity of States to continuously engage with and benefit from the United Nations human rights system, towards a more effective implementation of their human rights obligations'.[61] This 'would serve as the core reference body in relation to human rights protection at the country level, particularly with regard to the treaty bodies'.[62] Notably, although the focus of this at the UN is on the TB level, the importance of national involvement in follow-up is still pertinent in the context of the broader implementation crisis affecting the international human rights system.[63]

The SNRCM is the first sign of NHRS operationalization by OHCHR. Variance among possible SNRCMs mirrors what has already been said of the NHRS – that many variations are possible as to the composition of national drafting mechanisms: 'As recommended by most treaty bodies, the SNRCM should receive inputs from all stakeholders … In recent years, more States parties have begun to include representatives of stakeholders outside the Government, not only as contributors of information but as full members of drafting committees'.[64]

No matter what form it takes, an SNRCM analyses and clusters recommendations from all human rights mechanisms, thematically and/or operationally, identifies relevant actors involved in the implementation of the recommendations and guides them throughout the process. Governments should ensure the permanent involvement of all branches of state, NHRIs, civil society and academia. Others who can offer valuable information and perspectives should also be included. The Pillay report also touches on the second element of a functioning NHRS – relevant interactions among actors. To this end, it recommends that states parties mandate the SNRCM to establish and execute the modalities for systematic engagement with national stakeholders, including NHRIs, CSOs and academia.[65]

The Pillay report is a clear indication that a functioning NHRS is at the root of reform proposals toward a stronger human rights TB system, and a possible solution to the overarching human rights implementation crisis. However, the resulting Resolution 68/268 does not quite reflect this.[66] The closest mention of the NHRS concept is a rather feeble recognition that 'some States parties consider that they would benefit from improved coordination of reporting at the national level'.[67]

61 Report of the United Nations High Commissioner for Human Rights, supra fn 12, §4.5.4.

62 Ibid.

63 R. Murray and D. Long, *The Implementation of the Findings of the African Commission on Human and Peoples' Rights*, Cambridge University Press, 2015, p 24.

64 Report of the United Nations High Commissioner for Human Rights, supra fn 12, §4.5.6.

65 Ibid.

66 UNGA Res 68/268, supra fn 12, §17(b).

67 Ibid, §20.

3. NATIONAL MECHANISMS FOR REPORTING AND FOLLOW-UP

Despite the apparently cursory attention in Resolution 68/268 to the need for states to approach reporting at a systematic level, several important developments did arise out of the TB Strengthening Process. The key novelty was its development of the SNRCM concept into what has been redefined as a national mechanism for reporting and follow-up (NMRF). In 2016, OHCHR published a practical guide[68] and accompanying study[69] on effective state engagement with international human rights mechanisms through NMRFs. According to OHCHR, an NMRF is

> a national public mechanism or structure that is mandated to coordinate and prepare reports to and engage with international and regional human rights mechanisms (including treaty bodies, the universal periodic review and special procedures), and to coordinate and track national follow-up and implementation of the treaty obligations and the recommendations emanating from these mechanisms.[70]

From an NHRS perspective, it is important to stress that an NMRF establishes a national coordination structure among ministries, specialized state bodies, parliament and the judiciary, as well as in consultation with the NHRI and civil society. As a government mechanism or structure, it derives its mandate from the state's obligations and commitments to implement and report on treaty obligations and recommendations from human rights mechanisms.

The introduction of an NMRF may have a substantial impact on the effectiveness of the NHRS as a whole, and on specific interactions between domestic human rights actors. Firstly, it establishes a national coordination structure, thereby creating national ownership of reporting and follow-up and regular interaction within ministries now engaging seriously in reporting and follow-up. Secondly, it systematizes and rationalizes the engagement with international and regional human rights mechanisms, including the preparation of reports, and coordinates follow-up, thereby ensuring national coherence. Thirdly, it allows for structured and formalized contacts with parliament, the judiciary, NHRIs and civil society, thereby mainstreaming human rights at the national level, strengthening public discourse on human rights and improving transparency and accountability. This includes establishing strategic national partnerships, including with NHRIs and civil society, thus ensuring a more participatory, inclusive and accountable human rights-based governance.[71]

68 OHCHR, *National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement With International Human Rights Mechanisms*, 2016, www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf (last accessed 16 January 2021).

69 OHCHR, *National Mechanisms for Reporting and Follow-up: A Study of State Engagement With International Human Rights Mechanisms*, 2016, www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_Study.pdf (last accessed 16 January 2021).

70 OHCHR, *National Mechanisms for Reporting and Follow-up: A Practical Guide*, supra fn 68, p 2.

71 Ibid, pp 4–5.

The latest OHCHR Management Plan (2018–2021) provides further evidence of a heightened attention to the role of domestic human rights actors. During this period, OHCHR has been supporting existing NMRFs to enhance implementation of recommendations of all international human rights mechanisms.[72] In doing so, it has specifically reached out to domestic human rights actors 'to build networks for cross-learning, develop a one-stop online platform for engagement with the mechanisms, and exploit up-to-date communications to facilitate two-way exchange of information during mechanisms' hearings'.[73] In order to enable the broadest audience to have access to the UN human rights mechanisms, OHCHR has continued to upgrade its existing online repository of recommendations, the Universal Human Rights Index.[74] In a new development, OHCHR is developing the National Human Rights Recommendations Tracking Database, 'an electronic tool that aims at facilitating the recording, tracking and reporting on the implementation of human rights recommendations emanating from international, regional and national human rights mechanisms at the national level'.[75] When these initiatives are added to the 'increased interest in a number of countries towards establishing a NMRF',[76] the domestic institutionalization trend is clear.

4. THE ADDED VALUE OF 'NHRS THINKING'

In sum, all actors within an NHRS can benefit from institutionalized interactions and frameworks, such as comprehensive/rights-specific NHRAPs, SNRCMs and NMRFs. Various national contexts may also adopt mixed approaches, with other sources of coordination that are either non-human rights specific (e.g. parliamentary committees, national auditing institutions, etc.) or locally developed practices (e.g. dedicated human rights ministries, inter-ministerial committees, etc.). The NHRS thinking directs attention to the role of these mechanisms and the importance of building their capacity.[77] As a corollary to this, all processes require cooperation initiatives, through regular dialogue and consultation. Strengthening interactions and coordination among governmental actors, NHRIs and non-state actors enables equal and meaningful participation of all stakeholders in all relevant processes as well as enhancing accountability through monitoring and independent oversight. An effective and sustainable set of interactions and frameworks within an NHRS is beneficial from both top-down and bottom-up perspectives. On the one hand, it allows the contextualizing of international human rights standards at the domestic level, thus supporting promotion and protection on the ground. On the other hand, it enables domestic human rights actors to participate

meaningfully in the iterative cycles of monitoring that stem from international human rights mechanisms. Thus, 'a state with a well-functioning NHRS will have the capacity to fulfil its obligation to participate in international cooperation on human rights and to shape and develop the human rights agenda'.[78] The clear and systematized approach typical of 'NHRS thinking' helps to ensure comprehensiveness when assessing the different strategies adopted toward domestic human rights implementation.

Having outlined the general underpinnings and value of adopting an NHRS approach, it is now necessary to situate the discussion within existing best practices from different national contexts. The following sections seek to provide a reality check from recent strategies for human rights monitoring and implementation, according to three key capacities that shape the ability of NHRSs to function effectively: engagement/coordination, information management and participation.

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72   Ibid.

73   Ibid, p 19.

74   OHCHR, Universal Human Rights Index, https://uhri.ohchr.org/en (last accessed 16 January 2021).

75   UNGA, Status of the Human Rights Treaty Body System, Report of the Secretary-General, UN doc A/73/309, 6 August 2018, Annex X.

76   UNGA, Status of the Human Rights Treaty Body System, Report of the Secretary-General, UN doc A/73/309, 6 August 2018,, §29

77   The Danish Institute for Human Rights, *National Human Rights Systems and State Human Rights Infrastructure*, supra fn 26, p 7.

78   Ibid.

3. THE ENGAGEMENT AND COORDINATION CAPACITIES OF NATIONAL HUMAN RIGHTS SYSTEMS

Every NHRS consists of different sets of actors (governmental bodies, independent state institutions, CSOs, etc.), each with its own designated mandate to monitor and/or implement international and regional human rights recommendations.

This section focuses on the capacity of different domestic actors to mutually engage with each other and liaise with international human rights bodies in the context of reporting and facilitation of visits by special procedure mandate holders or other international expert bodies. More specifically, it discusses the capacity of different domestic actors to coordinate and jointly facilitate the preparation of state and other reports to international and regional human rights mechanisms, as well as responses to communications and follow-up questions and recommendations/decisions received from such mechanisms.

A. THE INTERMINISTERIAL DELEGATION FOR HUMAN RIGHTS OF THE KINGDOM OF MOROCCO

With the adoption of a new constitution in 2011, the Kingdom of Morocco enacted important reforms to its governance mechanisms for the protection and promotion of human rights, with the intention of developing a coherent, coordinated, modern and effective NHRS. The suite of reforms included the creation of the Interministerial Delegation for Human Rights (DIDH), a national structure for the coordination of different national human rights actors, the consolidation of the human rights approach in terms of public policies and the promotion of the interaction of the Kingdom with international and regional human rights systems. DIDH is a government structure created by Decree no 2-11-150 of 11 April 2011, in response to recommendations from Morocco's National Council for Human Rights (CNDH) as well as sustained demands from civil society. In its early stages, DIDH was attached to the Head of Government, before its attachment to the Ministry of Human Rights and Relations with the Parliament. Its main role is to develop and implement government policy on human rights in coordination with the parties concerned, and to ensure compliance with Morocco's international human rights commitments. More specifically, DIDH has several roles vis-à-vis the different national and international human rights actors.

a. Developing and Implementing an Integrated Government Policy on Human Rights

Through its expertise in the field of human rights, DIDH seeks to ensure the development and monitoring of the implementation of government human rights policy in coordination with all stakeholders. It plays a catalytic and advocacy role in order to boost action at the national and territorial level, strengthen capacities and establish the dynamics necessary to ensure the complementarity and coherence of the efforts deployed. The participatory approach and close coordination adopted by DIDH vis-à-vis the government departments and national institutions concerned help to promote the integration of human rights into public policies. It promotes the dissemination of the culture of human rights and constitutes a means of contributing to the development of regulations and national strategies, plans and programmes in accordance with the principles of human rights and the international commitments of the Kingdom of Morocco.

b. Developing Partnerships With Civil Society

The role of civil society in the protection and promotion of human rights is essential, and is one of the main pillars of any human rights policy. In recognition of this role, the 2011 Constitution devotes considerable space to civil society in terms of participation in the development of public policies and programmes. DIDH contributes to making these new functions concrete by strengthening dialogue, partnerships and associations with CSOs in its various projects and action programmes. Partnerships are established in order to support civil society actors, strengthen their capacities and facilitate their interaction with the international human rights system, as well as promote their role in documentation, monitoring and reporting on human rights issues.

c. Strengthening Interaction and Cooperation With International and Regional Human Rights Actors

DIDH seeks to ensure respect for the international human rights commitments of the Kingdom of Morocco and to strengthen its contribution in this field at the international and regional levels. In this regard, DIDH works to strengthen interaction with UN and regional human rights systems as well as with international NGOs. It also takes care to promote any cooperation aimed at the protection and promotion of human rights at the regional and international levels.

1. VERTICAL SYNERGIES

a. Interaction with the Universal Periodic Review Process

The preparation and examination of Morocco's national report under the Universal Periodic Review (UPR) as well as the follow-up to the resulting recommendations are carried out by DIDH. This has put in place a national approach to the preparation of the various reports to be submitted to the UN human rights mechanisms, based on the inclusion, participation and ownership of the various stake-

holders. To this end, a practical guide detailing this approach has been available to the actors involved in the preparation of national reports.[79]

Regarding the UPR participation process, it should be noted that the preparation of the national report starts one year before the interactive dialogue, in accordance with the approach adopted, of which the following five main phases allow the inclusion of and debate among different national and regional actors.

Phase 1: Preparation of the First Draft Report (Six Months)

This phase consists of consultation, at the national level, with government departments, national institutions and parliament to collect data and information which are subsequently processed, as well as to clarify the role of these actors in the process of preparing the report and the interactive dialogue with the UPR Working Group. A methodological scoping note is prepared and validated. This highlights the salient points to be highlighted in the national report as well as the overall timetable for its preparation.

Phase 2: Regional Consultations (Three Months)

On the basis of the first draft of the national report, consultations are organized with the territorial actors, in particular CSOs, universities, local elected officials and the media concerning the recommendations raised and the answers provided in the draft report. The regional dimension and local specificities are widely debated, the aim being to enrich the national report and mobilize local actors to participate in the next stages of the process.

The national report under the second cycle of the UPR annexes opinions and proposals resulting from these consultations. The international NGO UPR Info has cited this initiative as good practice.[80]

Phase 3: Consolidation of Consultation With Parliament (One Month)

This phase consists of the presentation of the advanced draft of the national report to parliament for discussion, with the added aim of involving it more in the future stages of the UPR process, given its crucial role in legislation and regulation, monitoring and evaluation of different government policies and programmes. It should be noted that the second cycle of the UPR includes the participation of parliamentarians in the interactive dialogue with the UPR Working Group.

Phase 4: Preparation for Interactive Dialogue (Two Months)

During this phase, the national delegation participating in the interactive dialogue

79 Interministerial Delegation for Human Rights (DIDH), Guide sur la Préparation des Rapports Nationaux et le Dialogue avec les Organes Conventionnels des Droits de l'Homme, September 2016, https://didh.gov.ma/sites/default/files/2016-11/GUIDE% 20Reporting_sept.2016.pdf(last accessed 16 January 2021)

80 UPR Info, Identifying Best Practices: An Analysis of National Reports, 2015, https://www.upr-info.org/sites/default/files/general-document/pdf/upr_info_identifying_best_practices_in_national_reports_2015.pdf (last accessed 16 January 2021), pp 7, 15, 21.

with the UPR Working Group mobilizes to prepare. DIDH takes care to collect the various questions that may be raised during this dialogue, and special attention is paid to the issues presented in parallel reports as well as in the compilation of OHCHR. Adequate responses are provided by the national delegation. Likewise, responses to written questions sent by states on the eve of the interactive dialogue are prepared in a concerted manner. DIDH organizes interactive dialogue simulation sessions for members of the national delegation, who familiarize themselves with the conditions of the interactive dialogue and prepare themselves appropriately.

Phase 5: Monitoring the Results of the Interactive Dialogue and Preparing the Recommendations' Implementation Plan (One month)

Immediately after the UPR Working Group report is adopted, DIDH mobilizes the parties concerned, in particular government departments, to prepare a follow-up plan for the implementation of the recommendations. The latter are thus categorized according to nine main axes, each containing sub-axes. The parties responsible for carrying out the plan are designated by DIDH in order to proceed with the implementation of the recommendations. To facilitate this process, a methodological guide for the implementation of UN recommendations is made available to all these parties.[81] DIDH organizes meetings for sharing and debate with civil society in order to strengthen its role in the implementation of recommendations and advocacy around the issues they raise.

b. National Ownership of the UPR Mechanism

Through its expertise, DIDH also strives to facilitate the participation of the different national human rights actors involved in the UPR process. National know-how and competence have been developed within DIDH through a core of officials mastering the workings of this mechanism and its operating methods. This is aimed at ensuring constant exchange and sharing of experience, essential to maintaining and developing interaction with this mechanism and guaranteeing the follow-up of its orientations and new decisions.

In this regard, three types of action have been carried out:

- Capacity building for stakeholders through the organization of study days, training workshops and seminars[82]

81 DIDH, Mise en œuvre des recommandations onusiennes: Guide méthodologique, September 2017, https://didh.gov.ma/sites/default/files/2017-09/GUIDE%2017-24%20le%20site00.pdf (last accessed 16 January 2021).

82 Examples of such initiatives include: training by UPR Info for officials in government departments, national institutions and parliament involved in preparing the national report under the 3rdUPR cycle in December 2015;the international seminar on 'Monitoring the Implementation of UPR Recommendations and Strategic Planning in the Area of Human Rights: Comparative Experiences and Good Practices', on 3 and 4 December 2013, organized within the framework of the preparation of the mid-term report, submitted in May 2014;the study day on 21 May 2016 for the benefit of parliamentarians, with the participation of experts from the OHCHR Regional Office in Lebanon and the UN Development Programme, on the role of parliaments in human rights mechanisms, in particular the UPR;and the study day organized for the benefit of media professionals on 26 November 2016 on their role in consolidating Morocco's international commitments on human rights.

- The production of methodological tools to support stakeholders in the implementation and follow-up of UPR recommendations, and also to enable their active involvement in all phases of interaction with this mechanism[83]

- Participation and initiatives at the regional and international levels to involve the actors concerned[84]

2. HORIZONTAL SYNERGIES

a. The National Action Plan for Democracy and Human Rights[85]

Morocco's adoption of the National Action Plan for Democracy and Human Rights (PANDDH) in December 2017 is part of its interaction with the recommendations and the Vienna Declaration and Programme of Action adopted by the 1993 World Conference on Human Rights as a strategic framework for human rights policies.

The PANDDH is one of the fruits of collective and participatory action carried out by governmental, parliamentary, judicial and university institutions, as well as by the NHRI, political parties, unions and civil society. It draws its references from the 2011 Constitution, international human rights commitments, the conclusions and recommendations of the Equity and Reconciliation Authority and the fiftieth anniversary report on human development in Morocco. It also capitalizes on all the national achievements in terms of reporting, sector strategies and programmes related to human rights issues, and takes into account the orientations of the government programme (2017–2021). Indeed, the Kingdom's fundamental international human rights commitments include the Universal Declaration of Human Rights, human rights treaties and related protocols ratified by the country in accordance with its Constitution and conventional practice in this area, as well as the fundamental conventions of international humanitarian law and the International Labour Organization (ILO). The concluding observations and recommendations resulting from Morocco's interaction with the TBs, the UPR mechanism and the special procedures of the HRC are also taken into consideration.

The PANDDH (2018–2021) aims to consolidate the process of political reforms, institutionalize the protection and promotion of human rights and encourage initiatives contributing to the emergence of a participatory democracy. It is made up

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83   See fns 79, 81

84   E.g., a seminar hosted in Rabat on 29–30 September 2014 on 'Translating International Commitments in the Area of Human Rights in National Realities: The Contribution of Parliaments to the Work of the UN Human Rights Council'. This seminar for African parliaments was organized jointly by the Parliament of the Kingdom of Morocco and the Inter-Parliamentary Union, in partnership with DIDH and the National Council for Human Rights (CNDH) and in collaboration with OHCHR. The seminar resulted in the Rabat Declaration, calling for greater involvement of parliaments in the UPR mechanism.

85   Plan d'action national en matière de democratie et les droits de l'homme 2018–21, December 2017, https://didh.gov.ma/fr/publications/plan-daction-national-en-matiere-de-democratie-et-des-droits-de-lhomme-2018-2021/ (last accessed 16 January 2021).

of four main axes,[86] each of which comprises several sub-axes, making it possible to define the objectives to be achieved over time and the actors concerned. Three types of measures are presented: legislative and institutional, awareness-raising and communication and those relating to capacity building.

b. The Implementation of the PANDDH

In order to guarantee an effective implementation of the PANDDH, executing the implementation recommendations that it presents, DIDH has drawn up an implementation plan following a participatory approach based mainly on the holding of preparatory meetings with various government departments, parliament, the judiciary and national institutions, as well as consultative meetings with NGOs.

This executive plan constitutes a contractual framework which makes it possible to mobilize and involve the actors concerned with the implementation, within a framework of complementarity, coordination and convergence, taking into account the respective roles and functions of each party. It also constitutes a procedural document translating the measures of the PANDDH into activities that can be implemented, identifying those responsible for the implementation and partners, and planning the implementation, the expected results of the programmed activities and the measurement indicators to facilitate monitoring and evaluation.

At the central level, the parties concerned with the monitoring of the implementation of the PANDDH operate according to a participatory approach to keep pace with the various actors through:

- Coordination and monitoring of the implementation of PANDDH measures between the different actors

- Building the capacity of the various stakeholders by providing them with mechanisms allowing for better execution of the PANDDH

- The creation of a dynamic to achieve convergence and complementarity between various interventions aimed at integrating the human rights approach into programmes and public policies.

At the local level, in order to promote the culture of human rights, disseminate its values and integrate its principles and mechanisms into local public policies, as well as into economic, social, cultural and development programmes and activities, DIDH works according to a participatory approach in order to support local actors in the implementation of PANDDH measures, through:

- Building the capacity of local actors and enabling them to put in place mechanisms to better execute the plan

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86   Axis I: Democracy and Governance; Axis II: Economic, Social, Cultural and Environmental Rights; Axis III: Protection and Promotion of Categorical Rights; Axis IV: Legal and Institutional Framework.

- The creation of a dynamic at the local level through mobilization and awareness programmes on the PANDDH; the promotion of a culture of human rights and the dissemination of its values

- Strengthening the role of universities at the regional level in the field of research; building the capacity and monitoring the pace of local actors in the implementation of the PANDDH

In accordance with the tenth recommendation of the PANDDH on the pursuit of societal dialogue on controversial issues relating to the abolition of the death penalty, the ratification of the Rome Statute of the International Criminal Court, ILO Convention on freedom of association and the protection of the right to organize, DIDH has taken measures to create a national dynamic to enrich public debate on these questions. It helps to frame the initiatives of civil society associations in this regard, and include important institutions such as universities, research centres and think tanks in order to broaden and deepen the dialogue.

B. THE NATIONAL HUMAN RIGHTS COUNCIL OF THE KINGDOM OF MOROCCO

The Conseil national des droits de l'Homme (CNDH) is a constitutionally mandated and independent NHRI functioning in compliance with the Paris Principles. It has been accredited with A status since 1999 and discharges the mandate of protection and promotion of human rights. More particularly, the CNDH also examines the harmonization of laws and regulations in force through international human rights instruments, ratified by Morocco. The CNDH has 12 regional human rights commissions working throughout Morocco, which have the same prerogatives as the CNDH, but at the regional level. It was designated in 2006 to follow up on the implementation of the recommendations made by the Equity and Reconciliation Commission, Morocco's truth committee, and is a member of various national bodies in Morocco, including the High Council of the Judicial Power, the National Press Council, the National Commission for the Coordination of Measures to Combat and Prevent Trafficking in Persons and the Commission on the Right of Access to Information. The CNDH also runs a training institute, established in 2015, to build the capacities of various stakeholders, mainly civil society and law enforcement officials. A new law (Law 76.15) reforming the CNDH was adopted by parliament in February 2018. This significantly broadens the protective mandate of the CNDH, entrusting it with the functions of three mechanisms provided for by the international human rights instruments: the national prevention mechanism against torture, the national redress mechanism for child victims of human rights violations and the national mechanism for the protection of the rights of persons with disabilities. In addition to its president and secretary general, the CNDH is composed of the chairpersons of its regional human rights commissions and 27 members representing different sections of society.

1. VERTICAL SYNERGIES

The 2019–2021 strategy of the CNDH outlines how it continues to strengthen its interaction with the HRC, the UPR, special procedures and TBs through the submission of reports and written or oral statements. It has systematically presented parallel reports to the international human rights system. For example, it submitted two reports in connection with the Universal Periodic Review in 2012 and 2017 as well as five reports to TBs that reviewed Morocco, namely the Committee against Torture (CAT) (2011), the Committee on the Rights of the Child (CRC) (2014), the CESCR (2015), the Human Rights Committee (HRCttee) (2016) and the Committee on the Rights of Persons with Disabilities (CRPD) (2017). The CNDH is currently preparing reports to the Committee on Migrant Workers (CMW), the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Elimination of Racial Discrimination (CERD).

Key recommendations issued by TBs, monitored and advocated by the CNDH and implemented by the government, include:

- The recommendation to establish a national preventive mechanism in line with the Optional Protocol to the Convention against Torture, a child redress mechanism in line with General Comment No. 2 of the Convention on the Rights of the Child and a mechanism for the rights of persons with disabilities in line with Article 33 of the Convention on the Rights of Persons with Disabilities

- The recommendation to draft a law on combating violence against women. A law was adopted in 2018 and the CNDH memorandum was elaborated[87]

- The recommendation to elaborate a law against trafficking in human beings[88]

Other recommendations have not been implemented so far and the CNDH is still advocating their implementation. These include, but are not limited to:

- A recommendation to finalize the ratification process relating to the First Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

- A recommendation to abolish the death penalty in law and in practice and bring the penal legislation into compliance with international human rights instruments[89]

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87 CNDH, *La lutte contre la violence à l'égard des femmes: Avis du CNDH sur le projet de loi no 103-13*, 2016, https://www.cndh.org.ma/sites/default/files/avis_violence_a_legard_des_femmes_francais.pdf (last accessed 16 January 2021).

88 CNDH, *La lutte contre la traite des personnes: Avis du CNDH sur le projet de loi no 27-14*, 2016, https://www.cndh.org.ma/sites/default/files/10-_cndh_-_traite_fr_-_.pdf (last accessed 16 January 2021).

89 CNDH, *Projet de loi no 10.16: modifiant et complétant le Code penal*, Mémorandum, 2019, https://www.cndh.org.ma/sites/default/files/cndh_-_memo_code_penal_vf_5mai.pdf (last accessed 16 January 2021).

• A recommendation to address the standing invitation to special procedures mandate holders

During the COVID-19 pandemic, the CNDH has used the recommendations included in the guidance notes, advice, statements and press releases of TBs as tools to monitor human rights compliance during this period of crisis. The CNDH and its regional commissions held working meetings with special procedures mandate holders when they visited Morocco.

2. HORIZONTAL SYNERGIES

The CNDH maintains cooperation and coordination with national stakeholders to advance the human rights agenda in Morocco. In this regard, it signed, in December 2014, two MoUs with both houses of parliament. These memoranda, based on the Belgrade Principles on the Relationship Between National Human Rights Institutions and Parliaments adopted in February 2012, are being updated. They aim, among other things, to mobilize the advice of the CNDH concerning human rights mainstreaming in legislations and compliance with international human rights instruments. They also seek to elaborate a joint strategy to follow up the recommendations made by international and regional mechanisms.

In this regard, the CNDH has issued several reports, advisory opinions or memoranda to parliament or the government regarding the compliance of Moroccan legislative, institutional and policy frameworks with international human rights standards. The most recent examples include its 2019 annual report.[90] This contains a detailed analysis of the overall situation of human rights throughout Morocco as well as recommendations, based on international human rights instruments and the national Constitution, with a view to advancing the human rights agenda at the legal, institutional, policy and practice levels. The annual report incorporates, in a systematic and cross-cutting manner, the recommendations addressed to Morocco by international human rights mechanisms.

With a view to contributing to the dialogue on the new development model, in August 2020 the CNDH submitted to the Development Model Committee a memorandum entitled Effectiveness of Rights and Freedoms in Morocco: for a New Social Contract.[91] The memorandum provides the perspective of the CNDH, aimed at making the realization of rights and freedoms a basic entry point to guarantee the right to development. This memorandum was a result of 12 regional consultations held in various regions of Morocco, including three consultations held in October and November 2019 by the three regional commissions. They brought together civil society, local authorities and stakeholders from businesses, the media and academia. These bottom-up consultations aimed to engage with citizens and

90   CNDH, *Annual Report on the Status of Human Rights in Morocco in 2019: The Effectiveness of Human Rights Within an Emerging Paradigm of Freedoms* (in Arabic), March 2020, https://www.cndh.org.ma/sites/default/files/rapport_annuel.pdf (last accessed 16 January 2021).

91   CNDH, Effectiveness of Rights and Freedoms in Morocco: for a New Social Contract (in Arabic), August 2020, https://www.cndh.ma/sites/default/files/mdhkr_lmjls-_lnmwdhj_ltnmwy_ljdyd_2.pdf (last accessed 16 January 2021).

stakeholders with a view to developing the CNDH perspective regarding a human rights-based development model. The memorandum responds to several recommendations on economic and social rights as well as the right to development by the CESCR and included in the UPR as well as the report of the Special Rapporteur on the right to food, who visited Morocco in 2015.

In July 2020, the CNDH submitted to parliament its recommendations and observations regarding draft Law no 72.18 related to the system for targeting beneficiaries of social support programmes and the establishment of the National Records Agency.[92] This memorandum revolves around 12 recommendations setting out that this system should be in line with international human rights standards, particularly economic and social rights, including the right to development, as recommended in the UPR report and by the CESCR.

On 11 December 2019, the House of Councillors co-organized with the CNDH a seminar on the 'Contribution of the Parliament to Following Up the Implementation of UPR Recommendations'. The event was an opportunity to strengthen consultation on how to take actions aimed at implementing UPR recommendations. It was facilitated by the CNDH and Ministry in charge of Human Rights and attended by members and staff of parliament.

Concerning the UPR recommendations falling under a promotional mandate of the CNDH, i.e. training and capacity building, the CNDH, through its Driss Benzekri National Institute for Human Rights Training, has organized several training sessions for various stakeholders, including civil society and law enforcement officers, on the different human rights themes which were the subject of UPR recommendations. These include, but are not limited to, the prevention of torture, the fight against discrimination and the rights of the child and persons with disabilities.

C. THE NATIONAL HUMAN RIGHTS COMMISSION OF MONGOLIA

The National Human Rights Commission of Mongolia (NHRCM) was established under the Law on the National Human Rights Commission of Mongolia, adopted by the State Great Hural (parliament) on 7 December 2000. The Paris Principles-compliant Commission commenced operations on 1 February 2001 and its main functions are to review and process complaints about violations of human rights and freedoms; advise, with recommendations and proposals, on the compliance of national legislative acts and administrative decisions with key human rights principles; make suggestions for effective implementation of international human rights covenants and assist the government in preparing its treaty reports; increase public awareness on laws and international treaties related to human rights; promote human rights education and encourage agreement to and ratifi-

92   CNDH, 'The National Council Presents to Parliament's Two Chambers Its Recommendations and Observations on Draft Law no 72.18' (in Arabic), July 2020, https://www.cndh.org.ma/ar/actualites/lmjls-lwtny-yqdm-llbrlmn-bgrftyh-twsyth-wmlhzth-bshn-mshrw-lqnwn-rqm-7218 (last accessed 16 January 2021).

cation of international human rights treaties. On 23 January 2020, the parliament considered a final review of the revised draft Law on the National Human Rights Commission of Mongolia and adopted it during its autumn plenary session. This newly enacted law reflects new progressive provisions covering issues such as increasing the number of commissioners from three to five; ensuring a transparent and open appointment procedure for commissioners; establishing a national preventive mechanism (NPM) within the Commission and appointing a commissioner to be in charge of the NPM, and ensuring the implementation of recommendations made by the Commission and improving accountability mechanisms for those officials held responsible for not fulfilling those recommendations.

1. VERTICAL SYNERGIES

a. Monitoring the Implementation of UN Human Rights Mechanisms' Recommendations

Although Mongolia is a party to 17 out of 18 international human rights treaties,[93] timely reporting, the quality of national reports and follow-up implementation of recommendations have to some degree been problematic. This is mainly due to the lack of effective coordination and communication among the relevant ministries and government agencies; the lack of carefully calibrated methodologies and information provided by the officers responsible for preparing reports as well as their lack of knowledge about human rights; the flimsy and inconsistent translation of UN recommendations and the lack of inclusion of human rights experts when preparing to submit national reports.

Thus, in its *Report on Human Rights and Freedoms in Mongolia 2007*, the Commission raised the matter of the Government of Mongolia failing to submit its national reports by the deadline and noted that the effective implementation of international human rights treaties and recommendations is essential for any country.[94] This concern triggered the government to submit its third and fourth national reports to the CRC and fifth national report to the HRCttee. Since 2007, the government has made improvements in preparing national reports on the implementation of international human rights treaties by soliciting the opinion of the NHRCM. No less importantly, the government took an important step forward in 2009 by adopting the Regulation on Preparation of National Reports on Implementation of International Treaties, which made clarifications regarding the authorities responsible for preparing the national report in due time and provided for CSO participation through consultative meetings. However, a one-off action or report is not adequate to ensure ongoing smooth and timely reporting by the Government.

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93   OHCHR, Status of Ratification Interactive Dashboard, https://indicators.ohchr.org/ (last accessed 16 January 2021).

94   The National Human Rights Commission of Mongolia (NHRCM), *Report on Human Rights and Freedoms in Mongolia 2007*, pp 35–37 https://en.nhrcm.gov.mn/news/status-report-human-rights-and-freedoms/ (last accessed 16 January 2021).

The NHRCM needs to cooperate consistently with government organizations, CSOs and international organizations in order to encourage the ratification of international treaties and follow up on the implementation of the UN recommendations. It especially needs to remind government organizations about their obligations to the international community as constant staff reshuffling is precipitated by every parliamentary election. Besides, the Commission is concerned that the implementation of recommendations has not been effectively addressed by the government.

Mongolia's human rights record was examined by the HRC's UPR Working Group for the first time in November 2010. As an outcome of the review, the Government of Mongolia accepted 126 recommendations out of 129 provided by the HRC in 2011 and adopted its plan of action to implement them from 2011–2014.

To advocate increased focus on follow-up, the NHRCM organized its fifth meeting with CSOs, in collaboration with the Parliamentary Sub-Committee on Human Rights, with a focus on implementation of UPR recommendations in December 2012. In the course of the meeting, representatives from government organizations, including the Minister of Foreign Affairs and Minister of Justice and Home Affairs gave an update on the implementation progress of the UPR recommendations. The Government of Mongolia acknowledged the challenges and setbacks in advancing the implementation such as government restructuring, inaccurate updates by the relevant government bodies and lack of inter-ministerial coordination. CSOs expressed their views on how each stakeholder can participate in the implementation process and their willingness to provide input and consultation for the national reports.

Hence, the NHRCM decided to cover the implementation status of the recommendations provided by CAT, the HRCttee and the HRC's UPR – compiling the recommendations according to human rights themes – in its *12th Report on Human Rights and Freedoms in Mongolia*. In doing so, it incorporated inputs from relevant ministries and agencies on the implementation process to update parliament. It provided a recommendation to '[c]reate a mechanism for the Cabinet to hear and discuss on annual [sic] basis the implementation of recommendations given by the UN human rights bodies.'[95]

As a result, the Parliamentary Standing Committee on Legal Affairs issued Resolution no 13 on 3 July 2013 on certain measures to be taken in connection with the consideration of the NHRCM's 12th report. For example, it assigned the government to create a mechanism for the cabinet to hear and discuss the implementation of recommendations by the UN human rights bodies and to report to the relevant authorities on an annual basis. Subsequently, a joint resolution by the Minister of Foreign Affairs and Minister of Justice, along with its action plan to be implemented from 2013–2014, was adopted on 8 October 2013 for the purpose of preparing and submitting the national reports to the international human rights instruments to which Mongolia is a party and improving the quality

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95   NHRCM, *12th Report on Human Rights and Freedoms in Mongolia*, p 106, 2013, http://en.nhrcm.gov.mn/news/status-report-human-rights-and-freedoms/ (last accessed 16 January 2021).

of the implementation of the recommendations of the UN TBs and UPR. The joint resolution along with its action plan was submitted to all ministries who were given an order to take action on compliance with respect to their areas of responsibility.[96]

The Ministry of Foreign Affairs, Ministry of Justice, NHRCM, the Ministry of Population Development and Social Welfare, UN Development Programme (UNDP) and Open Society Forum Mongolia (OSF) co-organized a forum on how to submit the reports on the implementation of Mongolian international human rights instruments to the UN TBs and ILO. On this occasion, they also exchanged information and discussed the issue of submitting to the UN, as part of the UPR process, Mongolia's mid-term report in 2013. As a result of the forum, a working group for the preparation of the mid-term report on the implementation of the HRC's UPR recommendations was established by Prime Ministerial Decree no 185 dated 30 November 2013.

2. HORIZONTAL SYNERGIES

a. The National Inquiry on Torture

Ever since the establishment of the NHRCM in 2001, the prevention of torture has been a priority for the Commission. It has regularly launched inquiries into pre-trial detention centres, correctional facilities, military barracks, nursing homes and any institutions where people could be deprived of their liberty and are at risk of torture. For example, it has received a large number of complaints relating to alleged acts of torture by law enforcement officials, including inquirers and investigators, during criminal investigation proceedings in Mongolia to elicit confession. This resulted from a lack of awareness and knowledge among law enforcement officials about the international human rights instruments to which Mongolia is a signatory, including the Convention against Torture and OPCAT.

It had become apparent that the legal prohibition of torture, cruel, inhuman or degrading treatment alone does not ensure full enjoyment of the right to the security. Although such human rights violations are prohibited and punishable by law, evidence on systemic torture, cruel, inhuman and degrading treatment in the police system, especially during pre-trial investigations, comes from a variety of sources, including complaints from ordinary citizens, media reports and publicized cases.[97]

Thus, in order to monitor the implementation of legislations prohibiting torture, cruel, inhuman and other degrading treatment, in 2005 the NHRCM conducted a year-long public inquiry – Combating Torture – for the first time at the national level covering Ulaanbaatar and nine provinces, with the support of UNDP. The scope of the inquiry included a review of the relevant national legislation, procedures and regulations as preventive mechanisms against torture, cruel, inhuman

96   NHRCM, *13th Status Report on Human Rights and Freedoms in Mongolia*, 2014, http://en.nhrcm.gov. mn/news/status-report-human-rights-and-freedoms/ (last accessed 16 January 2021).

97   NHRCM, *Report on Human Rights and Freedoms in Mongolia 2006*, http://en.nhrcm.gov.mn/news/ status-report-human-rights-and-freedoms/ (last accessed 16 January 2021).

and other degrading treatment, and dialogues with the judiciary, defence attorneys, prosecutors, police officers, citizens and NGO activists. Specifically, the NHRCM organized meetings with around 600 law enforcement officers, conducted surveys among 1,400 detainees, held interviews with 100 individuals, received complaints and collected testimonies and case studies on alleged torture cases and conducted monitoring visits to pre-trial detention centres and correctional facilities.[98]

At the same time, the NHRCM proposed that the then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, visit Mongolia and participate in its public inquiry. The Special Rapporteur accepted the proposal and undertook his fact-finding mission to Mongolia from 6– 9 June 2005 at the government's invitation.[99] Based on the national public inquiry, the Commission included findings and recommendations related to torture issues in the Mongolian detention system for the first time in its 2007 Report on Human Rights and Freedoms in Mongolia. The report was submitted to parliament, which discussed it for two days and issued Resolution no 45 in 2006 relating to prevention of torture. As a result of the NHRCM's continuous advocacy efforts against torture and consistent recommendations along with the referral to the Special Rapporteur and CAT's recommendations on torture issues, in its annual status report the frequency of torture cases has gradually fallen and conditions in detention centres have improved to some extent. For example, a project to build a new pre-trial detention centre (no 461) was launched in 2007. The old pre-trial detention centre, located in northeast Ulaanbaatar, used to be overcrowded, poorly ventilated and heated, with inadequate toilet facilities and water supply, and the spread of infectious diseases was common. The construction of the new building was completed in April 2011 in line with international standards. Also, CCTV cameras were installed in its interrogation rooms and cells, which became a significant step in preventing torture and false charges.

Between 2010 and 2013 the Commission signed an MoU on Fighting against Torture with the Independent Authority against Corruption, the Special Investigations Unit at the State General Prosecutor's Office of Mongolia, the General Police Department and the General Agency for Court Decision Enforcement. As a result, inquiries and training activities on torture have been conducted on a regular basis. Moreover, the understanding and perception of torture among law enforcement officers has been gradually changing as the issue is incorporated in the training curricula of these organizations. In addition, the government also adopted a number of bills and revised its legislation in areas relevant to the Convention against Torture. For example, the Criminal Code was revised to provide a definition of torture, abolish the death penalty, criminalize domestic violence, prohibit discrimination on various grounds and outlaw hate crimes and hate speech, while the Code of Criminal Procedure was revised to explicitly prohibit torture and statements obtained under duress as evidence in judicial proceedings.

98   Ibid.

99   UN, 'Special Rapporteur on Torture Ends Visit to Mongolia', 13 June 2005, https://www.un.org/press/ en/2005/hr4856.doc.htm (last accessed 16 January 2021).

From 2001 until 2020, the NHRCM produced a total of 19 annual status reports, 13 of which cover the issue of torture in Mongolia. It submits its status reports along with its findings and recommendations to parliament within the first quarter of every year. It recommends that the government takes necessary actions to ensure the right to be free from torture of its people and fulfil its commitment before the international community by implementing the recommendations provided by the UN human rights mechanisms. These reports are discussed by parliament, specifically by the Parliamentary Standing Committee on Legal Affairs and/or the plenary session of parliament.

b. Reaching Out to Remote Local Communities to Advocate the Implementation of UPR Recommendations

With a view to advancing the implementation of the HRC's recommendations, the NHRCM and OSF co-organized a discussion meeting among rural communities with the assistance of NHRCM provincial officers from 1 to 10 February 2018 to assess the implementation progress in each of the 21 provinces of Mongolia. The NHRCM provincial officers chose one issue from the given recommendations which was a priority in their respective provincial areas and involved local government and NGOs in the discussion. The issues mainly focused on the rights of persons and children with disabilities, equal education, child rights and the worst forms of child labour, domestic violence and victim protection and the quality and accessibility of health services.

Three different actors including the government, NHRIs and civil society, namely the Ministry of Foreign Affairs and Ministry of Justice and Home Affairs, NHRCM and Human Rights NGO Forum, with financial support from the OSF and UPR Info, organized four regional consultations in Khovd, Umnugovi, Tuv and Khentii provinces between March and April 2018 to jointly evaluate the implementation of the second-cycle UPR recommendations at the rural level.

The main purpose of this activity was to see whether provincial government bodies, civil society and local communities were aware of the UPR at all and what the implementation progress at the grassroots level was. However, the rural participants had no or little understanding of the UPR and its main purpose. Hence, the organizers explained the importance of having a broad national consultation to achieve the effective implementation of UPR recommendations by reaching out to at least those four provinces representing the four regions of Mongolia from then on. As it is not effective and inclusive to organize such discussions only in Ulaanbaatar, relevant stakeholders should also identify the situation of human rights in rural areas and reflect the voices of rural communities and local government bodies in the national reports.

During the regional consultation meetings, the NHRCM presented its role as an independent human rights body in the various stages of the UPR and its shadow reports sent to the HRC. At the same time, the Ministry for Foreign Affairs introduced the UPR process and the Ministry of Justice and Home Affairs informed the participants about government measures undertaken to implement UPR rec-

ommendations. The Human Rights NGO Forum introduced its draft mid-term report.[100] Following the main consultation, sub-sessions on specific group rights were organized among the participants to identify human rights issues at the local level. The UPR stakeholders encouraged the communities and CSOs to push their respective rural governing bodies and relevant authorities to pay attention to their local human rights issues and to input into the national reports.

As a result of these activities, the participants learned how to effectively utilize this mechanism, and the Chief Commissioner of the NHRCM sent a recommendation letter to each provincial governor to address their respective human rights issues based on the meeting minutes taken by NHRCM provincial officers in February as well as on the findings of those regional consultation meetings.

As a lesson learnt from the first cycle of the UPR, the government established an inter-ministerial working group for monitoring the implementation of the government action plan for the second cycle of UPR recommendations, and this working group consists of all ministries, agencies and provincial administrations. It also invites NGOs and the NHRCM to its meetings.

D. THE IMPORTANCE OF ENGAGEMENT AND COORDINATION TOWARD EFFICIENT AND EFFECTIVE HUMAN RIGHTS IMPLEMENTATION

As already mentioned, the state has a duty to take steps toward effective implementation of conventional provisions. In a well-functioning NHRS, state and non-state actors play a central role in systematically engaging with international human rights mechanisms throughout each reporting process entered into. Just as important is the capacity of NHRSs to facilitate efficient coordination among governmental actors, relevant independent state actors as well as with CSOs. It is through this facilitating role that the state fulfils its duty to take steps, securing a pluralist and transparent approach to the duty.

A solid NHRS also functions as a counterbalance to one of the main problems of the current international human rights system – the extent of overlapping recommendations coming from different monitoring bodies. States are often subject to similar obligations under multiple human rights treaties, and a solid NHRS, through its streamlining potential, can solve the often stated overburdening of the state apparatus vis-à-vis its international commitments.[101] The establishment of a systematic multi-institutional network, involving both state and non-state actors, responds to the current nature of the UN and regional human rights monitoring

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100   For more details, see, UPR Info, 'Consultations Evaluate Implementation in Mongolia', 29 May 2018, https://www.upr-info.org/en/news/consultations-evaluate-implementation-in-mongolia (last accessed 16 January 2021).

101   See Geneva Academy Academic Platform on Treaty Body Review 2020, Draft List of Submissions, www.geneva-academy.ch/tb-review-2020/selected-contributions (last accessed 16 January 2021).

framework as a regime complex. A siloed institutional response at the domestic level fails to focus on the fact that every human rights treaty is part of a highly interconnected web of treaties dealing with the same or similar subject matters. Through these overlapping treaty connections, the enforcement of one individual human rights treaty has the potential to impact, and be impacted by, the enforcement of other human rights treaties.[102] As such, engagement and coordination at the national level are paramount for both an effective and efficient implementation of international human rights standards.

4. THE INFORMATION MANAGEMENT CAPACITY OF NATIONAL HUMAN RIGHTS SYSTEMS

One aim of a functioning NHRS is to coordinate national date collection on the monitoring and implementation of recommendations from the international human rights system.

This aim stems from the increasing burden states are subject to, related to the implementation and follow-up of a growing number of recommendations from the UN TBs, UPR and special procedures, as well achieving progress on the Sustainable Development Goals (SDGs). The exact nature of the reporting burden differs from country to country, with hundreds of human rights recommendations and obligations often overlapping in nature, to varying degrees. This challenge is often exacerbated by competing demands and priorities, such as SDG reporting, for example, and the regular receipt of further recommendations at the conclusion of each TB review, UPR or special procedure visit. From the outset, this makes tracking implementation and data collection an onerous task that needs to compete for attention with other national priorities. Consequently, data collection often occurs only once a periodic report is due or overdue.

During any given reporting cycle period, if data is not regularly collected it is unlikely that full data sets will be available when required. It may not even be straightforward to identify who the data owners are or how to contact them. Staff turnover also contributes to the reporting burden. Having knowledge of data sources and reporting deadlines and requirements (submission process, formatting standards, word limits, etc.) across the various TBs is not easy due to the lack of a standardized approach. It is not uncommon to find that a state is unaware of when its reports are due, how a report should be submitted, as well as the required format and length. If reporting becomes too difficult whilst competing with other priorities, states revert to an ad hoc approach, which often means recommendations do not see the light of day until the next report is due. If the number and complexity of a set of recommendations received by a state is unmanageable, then comprehensive and coordinated implementation (and therefore effective data collection and reporting) is almost an impossibility. As a result, ministries work in siloes and rarely engage with other implementing actors[103] in a systematic and regular manner. In turn, this leads to implementation gaps and/or duplication of work and inconsistent messaging.

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102   P. Quinn Saunders, 'The Integrated Enforcement of Human Rights', 45 *New York University Journal of International Law & Politics* 1 (2012) 105.

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103   '[I]ncluding, but not limited to … statutory bodies, parliamentarians, the judiciary, civil society, national human rights institutions, traditional and religious leaders/groups, national statistics offices and the private sector'. Art 3.1, The Pacific Principles of Practice of National Mechanisms for Implementation, Reporting and Follow-Up (the Pacific Principles), https://www.universal-rights.org/wp-content/uploads/2020/07/Pacific-Practice-Principles-final.pdf (last accessed 16 January 2021).

The implementation challenges can be summarised as follows:

1. Government ministries (and other implementing actors) working in siloes with no coordinated approach

2. Implementation gaps

3. Duplication of activities

4. Inconsistent messaging

5. Low levels of engagement with the international human rights system at the domestic level

To counter these challenges, it is important to consider whether the current international human rights system may benefit from effective measures of data collection and digital tracking tools. This section addresses this question in light of available information management initiatives developed by different stakeholders. Such initiatives include: 1) tracking and thematically clustering recommendations and decisions by the international and regional human rights mechanisms; 2) linking specific recommendations to the SDGs; 3) identifying responsible government ministries and/or agencies for implementation; 4) developing follow-up plans, including timelines with all relevant domestic actors, to facilitate a coordinated monitoring of implementation; and 5) managing information regarding the implementation of treaty provisions and recommendations.

The aim of this section is to dig deeper into the functioning of two available human rights digital tracking platforms, SIMORE Plus and IMPACT OSS. Paraguay's application of SIMORE Plus[104] and Samoa's application of IMPACT OSS – SADATA[105] – will be presented as case studies. The section will conclude by considering the broader context of tracking tools, the emerging supply/demand deficit and other challenges relating to the use of such software.   There is growing interest in such digital human rights tracking tools and this discussion explores why they came into being and their functionality, in order to inform future thinking at the national and global levels about the utility of digitalization for a more systemic approach to human rights monitoring and implementation.

A. SIMORE PLUS

In order to comply with its international human rights obligations, Paraguay's joint initiative between its Ministry of Foreign Affairs and its Ministry of Justice, has developed a system for monitoring the human rights recommendations issued to the country. First established in 2014, SIMORE (Sistema de Monitoreo de Recomendaciones en Derechos Humanos) is a follow-up system which organizes international recommendations made to states by the international system for the promotion and protection of human rights in the scope of the UN and the Orga-

104   See https://www.mre.gov.py/simoreplus/ (last accessed 16 January 2021).

105   See https://sadata-production.firebaseapp.com/ (last accessed 16 January 2021).

nization of American States (OAS). During the creation of this mechanism, joint efforts between institutions of the Judicial Branch, Executive Branch, Legislative Branch, Ministry of Public Defense, Public Ministry and the Office of the Ombudsman were fostered in order to avoid distractions and/or duplications, with the purpose of guaranteeing the effective implementation of the recommendations and generating information for the preparation of national human rights reports, including a mid-term report for the UPR. Nevertheless, after SIMORE was operative, the need for a more interactive platform was identified, as some CSOs claimed that SIMORE was merely a descriptive platform, and that they could contribute better with the government if they were able to engage more interactively. Therefore, OHCHR, with UNDP in Paraguay, offered technical assistance to enhance SIMORE, updating it to a new version: SIMORE Plus, which had the same functions as the previous version, but with improvements in technology and accessibility and two new features: linkage between international human rights recommendations and the SDGs, and an interactive platform for CSOs: OSC-Plus. SIMORE Plus was launched in 2017, substituting the prior version from 2014.[106]

In brief, the system facilitates access to official information from the state regarding the implementation of the recommendations. It also enhances the institutional capacity for drafting international reports, national policies and plans. SIMORE operates on the basis of a network of approximately 150 focal points distributed among 80 institutions, which are in charge of following the international human rights recommendations assigned to their institutions. These focal points are responsible for uploading the activities of their respective institutions aimed at
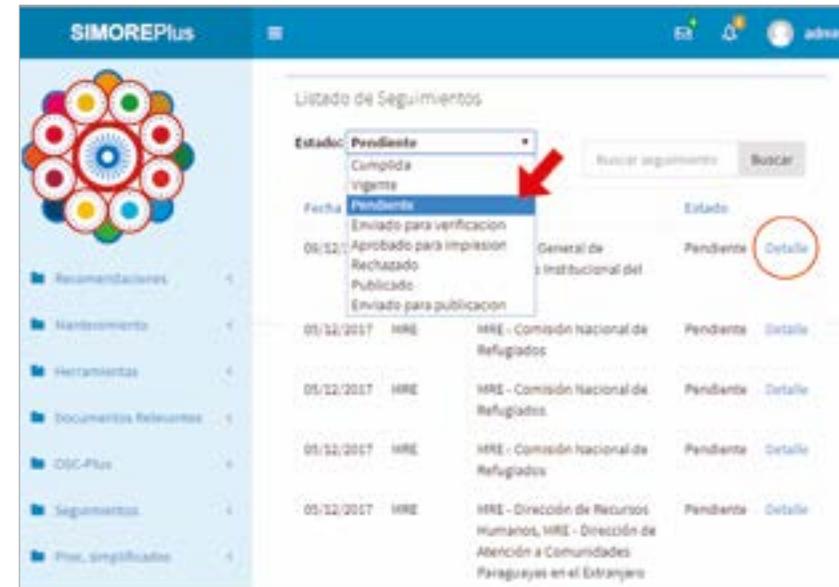
Figure 2. A SIMORE Plus follow-up tracking list (Ministry of Foreign Affairs of Paraguay)

106   See Ministerio de Relaciones Exteriores and Ministerio de Justicia, 'Sobre el SIMORE Plus', https://www.mre.gov.py/SimorePlus/Home/Page?idTipo=1 (last accessed 16 January 2021).

implementing the recommendations that come under their remit. This flow of information allows for continuous reporting with up-to-date official information, which can be used for drafting reports to the UN and Inter-American systems. Likewise, this system makes it easy for civil society to source information regarding implementation of the recommendations, as well as to elaborate its alternative reports.

1. MANDATE, STRUCTURE AND FUNCTIONING

The main legal instrument that establishes the mandate for SIMORE is Presidential Decree no 4368, dated 9 November 2015. This decree not only reaffirmed the main objectives of SIMORE, but also appointed the Ministry of Foreign Affairs and the Ministry of Justice as 'managers' of SIMORE, enabling them to draft and lead the SIMORE annual plans and implement (and review) the SIMORE regulations. The Decree made it mandatory for governmental institutions and entities to designate institutional 'focal points', at the request of the SIMORE management. These focal points are in charge of reporting on the international human rights recommendations assigned to them within the deadlines established by the management. Last, but not least, this Decree also explicitly authorized the Ministry of Foreign Affairs to provide technical cooperation to other states and organizations that may request technical assistance in developing and implementing similar platforms. This started the SIMORE Paraguay Technical Cooperation Programme, which has developed into a trend of expansion of national mechanisms for reporting and follow-up on international human rights recommendations throughout Latin America. Decree 4368/15 was established during the period of the first version of SIMORE, but it is still in force for its updated version, SIMORE Plus.

The institutional structure is established by SIMORE's own Rules of Procedure. SIMORE Plus is led by the SIMORE Management, a position held by the human rights departments of the Ministry of Foreign Affairs and the Ministry of Justice. This co-management accounts for the roles that these offices have: the Human Rights Department of the Ministry of Foreign Affairs is in charge of reporting to TBs and the UPR, as well as coordinating country visits to Paraguay with mandate holders of the UN HRC; the Human Rights Department of the Ministry of Justice executes the main governmental domestic authority in the field of human rights, and also, this office holds the coordination of The Executive Branch Network for Human Rights, which is the main inter-institutional mechanism for engaging with coordinated national policies in the field of human rights.

The main actors in the SIMORE Plus structure are its focal points. The SIMORE Plus focal points are governmental officers who work in human rights-related offices, with the role of reporting on the implementation of their respective assigned recommendations. All recommendations in SIMORE Plus are assigned to one or several institutions, so multiple reports of implementation measures can be uploaded for a single recommendation. According to the information provided on the main SIMORE Plus webpage, there are 80 institutions that have assigned focal points.

The focal points come from the three branches of the government, as well as from other national institutions (such as the Ombudsman or the Public Ministry).

This has several advantages:

- Focal points from the Executive Branch: the vast majority of focal points report from a large number of institutions, contributing to maintaining a multi-sectoral response to the implementation of international human rights recommendations. Also, this contributes to better communication on the development of public policies and efforts, which could result in avoiding multiple and/or overlapping activities.

- Focal points from the Legislative Branch: these focal points play a key role in the implementation of recommendations, particularly as over 33 percent[107] of the recommendations received by Paraguay are focused on legislation harmonization with international human rights standards, the ratification of key international human rights law instruments and allocation of resources to state institutions and policies related to human rights. As can be seen in SIMORE Plus, the Legislative Branch has established two offices for reporting, one in each chamber.

- Focal points from the Judiciary Branch: access to justice is a main issue with regards to human rights recommendations received by Paraguay. In this regard, a significant number of recommendations address access to justice, fair trial and other related rights. This can be seen when entering several search criteria in the search engine available on the website.

- Focal points in the NHRI: the role of NHRIs, by their own nature, should include the general monitoring of the state's compliance with international human rights obligations, which would inevitably include the implementation of the received recommendations. Nevertheless, there are also recommendations addressed to NHRIs, aimed at their compliance with international human rights standards in their own role as state actors. For example, there are at least 26 recommendations[108] from different TBs and mechanisms for the Ombudsman to comply with the Paris Principles. There are several implementation reports in this regard.

2. ASSIGNING RECOMMENDATIONS AND THE REPORTING PROCESS

Recommendations are given to states cyclically, as a part of a permanent follow-up on compliance made by TBs and the UPR. In other ways, other mechanisms, such as the special rapporteurs of the HRC, address recommendations occasionally, based on their country visits and following their experience in the field. In either case, as soon as the Paraguayan state is given new human rights recommendations, the SIMORE Plus focal points are assembled in order to work on assigning each and every recommendation to the relevant institutions.

107   The number after applying the proper search criteria in the SIMORE Plus search engine.

108   The number after applying the proper search criteria in the SIMORE Plus search engine.

In this regard, the focal points meet at 'thematic tables', working sessions in which all recommendations are self-assigned by each participating focal point to its own institution. In case an institutional focal point is absent for this self-assignment, the thematic table members assign the respective recommendation to the competent (absent) institution. An advantage of this methodology is that the institutional focal points are better aware of the institutional efforts, policies, programmes and activities that could be useful for complying with the recommendations, as well as good practices to report in this regard. Moreover, a voluntary-based appointment also contributes to motivating focal points to using SIMORE Plus. All focal points are invited to participate in all seven thematic tables.

- Rights of women

- Rights of children and adolescents

- Rights of persons deprived of their liberty

- Rights of indigenous peoples, afro descendants and migrants

- Rights of older persons and persons with disabilities

- Poverty

- Institutional strengthening and LGBTI rights

Each thematic table is assembled according to the mechanism that issues the recommendations. For example, if the CRC makes recommendations, the rights of children and adolescents thematic table will meet. If on the same occasion a significant number of recommendations are addressed to other relevant thematic tables, these will also be called for working sessions. During these sessions, these recommendations are also linked to other criteria offered by the SIMORE Plus search engine, such as with specific 'Rights', 'Mechanism' and 'SDGs'.

After the working session has concluded, all the recommendations assigned to every pertinent institution are collected in a technical report that is delivered to the IT office at the Ministry of Foreign Affairs (which hosts the server where SIMORE Plus is installed) to be uploaded with the proper link. Once uploaded, every recommendation is published on the SIMORE Plus website, linked to all the search criteria, including the institution(s) responsible for its implementation. Once this information is published online, the reporting process begins.

All information published on the SIMORE Plus website is considered official. Information regarding implementation reports on international human rights recommendations must, therefore, be validated by institutional authorities.

As described above, the main actors responsible for reporting are the institutional focal points, who provide details, in 700 characters, about the action taken by their institutions to implement the recommendations assigned to them. The information provided in these forms must be verified by the Management (either the Ministry of Justice or the Ministry of Foreign Affairs), so it complies with important criteria such as: effectively addressing the objectives of the recommendation; re-

flecting a human rights approach in the vocabulary; clear information; and information that can be accounted for. After this assessment, the reports uploaded by the SIMORE Plus focal points can be made public on the website.
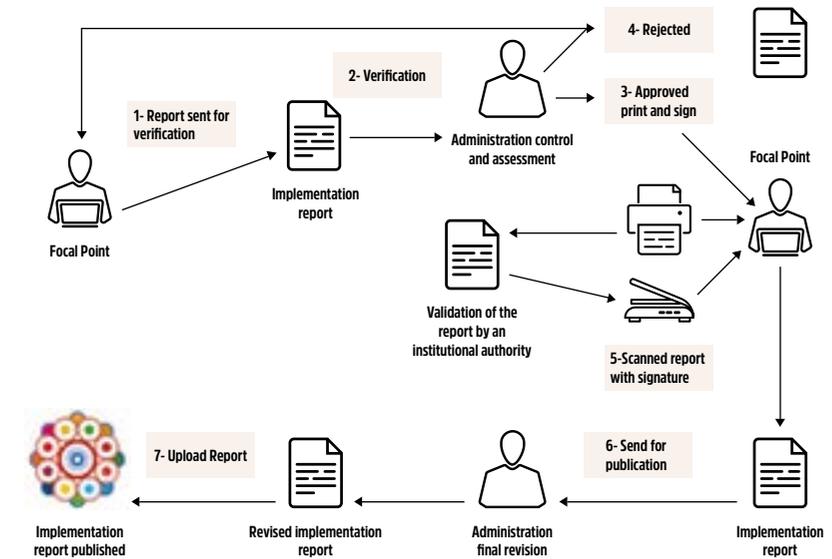

Figure 3. The SIMORE Plus Reporting Process (Ministry of Foreign Affairs of Paraguay)

3. THE DOMESTIC AND INTERNATIONAL IMPACT OF SIMORE

SIMORE Plus has played a key role in facilitating the drafting of reports to TBs and the UPR, as the relevant information to be included in these are published on the website, in a process that starts as soon as the recommendations are assigned to the focal points. Therefore, for each next reporting cycle, the information regarding the implementation of recommendations should already be available on the system. The regular meetings of the thematic tables and the ongoing collective training sessions on the use of SIMORE Plus functions for focal points, provide for closer personal contact and enhancing networking and facilitating. As an indirect result of this interaction, focal points tend to share their work and information. Such contact can be also key to expanding awareness of the public policies, programmes and efforts of different actors and promoting better coordination among them.

The most valuable domestic impact is the availability of such important information to the population, who are the main subjects of human rights. As SIMORE Plus publishes all of the human rights recommendations that Paraguay has received, as well as information on their implementation, it is a very important resource for holding the Paraguayan state accountable.

As members of the HRC in 2015–2017, Paraguay and Brazil co-sponsored Resolutions 30/25 and 36/29, through which the promotion of international cooperation

to support national human rights follow-up systems and processes was adopted by consensus. In this regard, Paraguay has sought to promote international cooperation for the implementation of national follow-up systems and processes for international human rights recommendations as well as supporting the work of OHCHR. The successful outcome of the seminars given to countries around the world (South America, the Caribbean, Africa, Central Asia and the Pacific) as well as its own experience, motivated Paraguay to develop a cooperation programme, aimed at providing technical assistance and sharing experiences and best practices, for the development of national follow-up systems for international human rights recommendations, based on the SIMORE Paraguay initiative.

The SIMORE Paraguay Technical Cooperation Programme aims to support the development of national monitoring systems for international human rights recommendations. The Programme has been implemented by the Ministry of Foreign Affairs of Paraguay since 2015 and was extended to Chile, the Dominican Republic, Guatemala, Honduras, Uruguay, Argentina, Costa Rica and the Inter-American Commission on Human Rights (IACHR). These countries have based their own systems for monitoring international human rights recommendations on Paraguay's SIMORE. Experts at the Human Rights Department and Information Technology Services of the Ministry of Foreign Affairs have successfully provided training and technical assistance for the implementation and operation of the systems in the abovementioned countries. Sharing the experience of the SIMORE Paraguay Programme with these countries represents a successful example of South-South cooperation aimed at contributing to the fulfilment of international human rights obligations and commitments voluntarily accepted by states.

An example of the results of the implementation of the SIMORE Paraguay Technical Cooperation Programme is its application by the IACHR. The result of this cooperation led to the creation of the Inter-American SIMORE.[109] This system shares most of the common features of SIMORE Plus, but the main difference is that the Inter-American SIMORE aims to follow up on the implementation of the human rights recommendations delivered by the IACHR in the Americas. In other words, it has made it possible for the IACHR to receive information on compliance from the OAS Member States. In this particular case, the focal points that report to the Inter-American SIMORE are officials from governments,[110] not from specific institutions as is the case with SIMORE Plus. The Inter-American SIMORE does not link the human rights recommendations to the SDGs. Considering this regional example, we can affirm that there has not only been an impact in the trend of implementation of recommendation follow-up systems, but it also has led to innovation in this regard.

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109   See Organization of American States (OAS) and Inter-American Commission on Human Rights (IACHR), 'About Inter-American SIMORE', https://www.oas.org/ext/en/human-rights/simore/About-SIMORE (last accessed 16 January 2021).

110   OAS and IACHR, Inter-American System for Monitoring Recommendations: General Terms and Conditions of Use, pp 3-4. https://www.oas.org/ext/Portals/25/SIMORE_General_Terms_and_Conditions_of_Use.pdf?ver=2020-06-04-115230-010 (last accessed 16 January 2021).

B. IMPACT OSS

IMPACT OSS (Integrated Management and Planning of Actions Open Source Software)[111] is an open source human rights tracking tool that is freely available to interested states. Its functions seek to address reporting challenges, harness the synergy between human rights and the SDGs and transform capacity for implementation. Having evolved from combining the development efforts for SADATA, Samoa's Database for its NMRF, and New Zealand's National Plan of Action[112] managed by the New Zealand Human Rights Commission, IMPACT OSS is maintained by the Impact Open Source Software Trust.[113] It is a software created to assist states with coordinating and monitoring the implementation of human rights recommendations and the SDGs, and communicating implementation progress to the public. Although primarily designed to help NMRFs and NHRIs, it can also be used by civil society actors who wish to hold governments accountable.

1. TRACKING IMPLEMENTATION THROUGH REPORTING CYCLES USING IMPACT OSS

The design of IMPACT OSS was motivated by a desire to turn the ad hoc reporting situation on its head and enable states to achieve best practice by facilitating effective implementation and addressing the reporting burden through its functionality. IMPACT OSS is a tool for making a complex system easier to manage. Its functions are designed to reflect the reporting and implementation cycle, addressing challenges and barriers to building a national implementation plan.
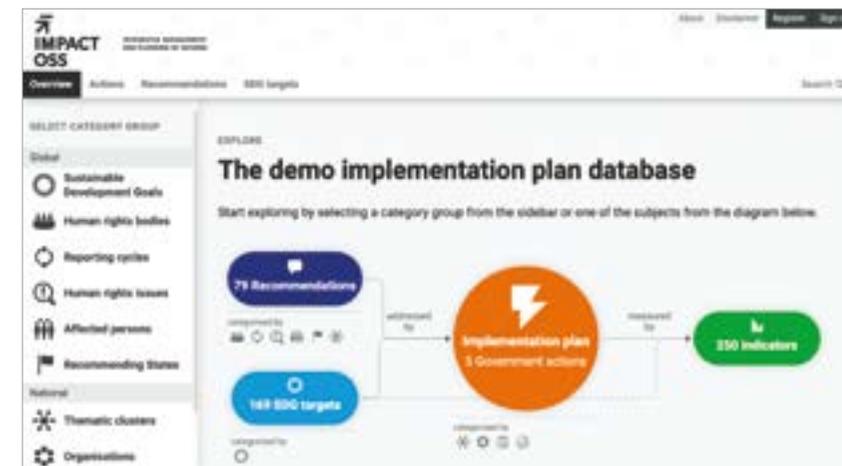
Figure 4. The IMPACT OSS demo site landing page

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111   See Impact Open Source Software Trust, 'About Impact OSS', https://impactoss.org/impactoss/ (last accessed 16 January 2021).

112   See The New Zealand National plan of Action, https://npa.hrc.co.nz/ (last accessed 16 January 2021).

113   See Impact Open Source Software Trust, 'The Impact Open Source Software Trust', https://impactoss.org/trust/

IMPACT OSS acts as a database of received recommendations that can be filtered by keyword, convention, affected persons and more. This then enables greater stakeholder engagement with the international human rights framework and the implementation of recommendations. Without an easy-to-use national database, too many implementing actors simply do not know where to go to find and explore this information, which precludes any chance of engagement. IMPACT OSS seeks to address this fundamental barrier at the outset.
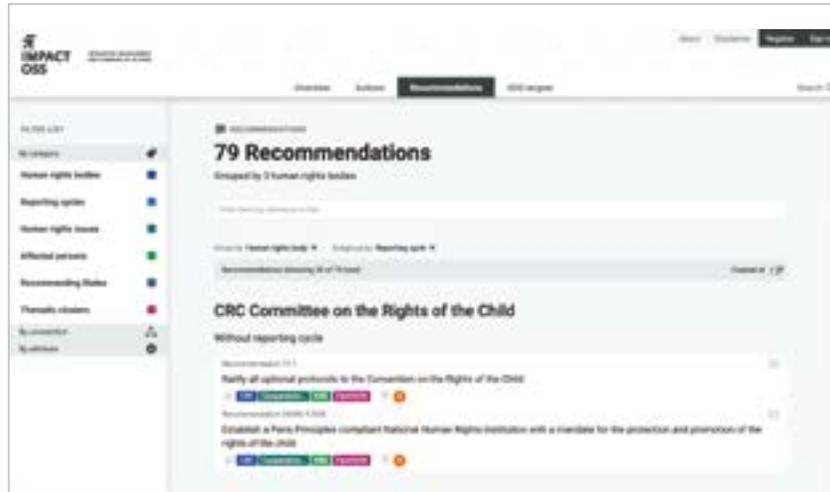

Figure 5. A screenshot of the recommendations tab of the IMPACT OSS demo site

Once a set of recommendations has been added to a national version of IMPACT OSS, the administrator[114] is able to cluster and organise recommendations to make them more manageable by mapping overlap. This process can be semi-automated using the IMPACT OSS filtering system to cluster recommendations thus streamlining data collection. For example, if a state has received six recommendations to establish an NHRI across its UPR and most recent CEDAW and CRC reviews, any data uploaded will be tracked against each recommendation, eliminating duplication. IMPACT OSS also strikes a balance between automation and the need for human inputs and consequently the clustering system can accommodate directly and partially overlapping recommendations, and distinct recommendations.

Once all recommendations have been clustered, the administrator can then add implementing actions. States currently using IMPACT OSS have taken a staged approach to this task. First, actions planned and budgeted for within exisiting national, sector and ministerial plans are entered. Second, using another feature of

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114   Different user roles are enabled by IMPACT OSS. 'Administrators' have access to the full range of functionality and can add/edit all recommendations and content, as well as create other users and manage page content. 'Managers' are responsible for data collection. They are able to upload data and approve uploads made by 'Contributors', who may be NGOs, national human rights institutions or any other implementing entity. This tiered system of users enables a collaborative approach across ministries and with external stakeholder engagement. User types can be adapted to suit any particular country context.

IMPACT OSS, implementation gaps are identified[115] and additional implementing activities to address these gaps are entered. Without tools such as IMPACT OSS, conducting a comprehensive gap analysis of recommendation implementation would be a substantial task. IMPACT OSS can carry out this task in seconds and the scope of the analysis can be defined by the user – a state's entire human rights obligations, by convention, affected persons, ministry or more. Alongside the actions that are uploaded, a state enters indicators and timeframes for implementation. IMPACT OSS therefore becomes a comprehensive data source that can be easily explored using the filtering system. This serves a wide variety of purposes including reviewing implementation progress, policy/programme research, development partner engagement or holding government to account.
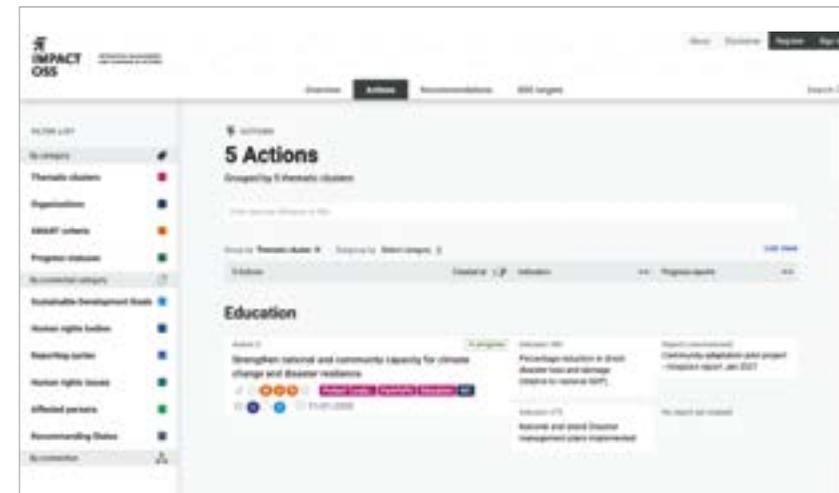
Figure 6. A section of the IMPACT OSS demonstration site action plan

This ongoing data collection, review and addition of actions to address emerging gaps continues throughout the implementation period until the state receives a new set of recommendations. These are then uploaded and clustered into pre-existing or newly added groups, additional actions are added where required and the process continues. When a report is due, the NMRF, or reporting committee, simply filters the implementation plan by treaty or UPR and has all the recommendations and data at its fingertips, leaving it with only the report narrative to be written.

2. OTHER IMPLEMENTING ACTORS AND IMPACT OSS

IMPACT OSS is primarily designed as a tool for an NMRF or government as the body responsible for the coordination, tracking and implementation of human rights recommendations, obligations and development goals. However, the flexibility of IMPACT OSS means it can also be hosted by other entities, particularly

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115   This is achieved by filtering the database to see only recommendations that don't have any associated actions, and can be achieved in two clicks.

other implementing actors, if such a tool is not already being used by the NMRF or government. These include, but are not limited to, NHRIs, ombudsman offices, NGO coalitions and regional human rights bodies. IMPACT OSS can be adapted to meet the needs of these actors. It can remain a tracking tool for human rights, national development plans and the SDGs (or any combination thereof), or it can be modified to track other frameworks, goals and commitments.

There are a number of ways in which IMPACT OSS can be used by these actors. The first, referred to above, is contributing their own data to the national database. This has multiple benefits – enabling greater collaboration and coordination with government and other implementing actors, fostering stronger partnerships, avoiding duplication of actions and strengthening the tool as a source of information for policy making, research, etc.

This use of IMPACT OSS – as a source of data – speaks to its second utility for other implementing actors. They can use the tool as a means of identifying and analysing government priorities, actions, human rights recommendations and implementation gaps. Actors can thus align their work programmes to be complementary, which in turn may attract funding and help establish partnerships. The overall result is a more holistic implementation of recommendations and obligations and stronger relationships with government. Furthermore, the data can be used for the broader aims of implementing actors. For instance, the private sector may use it to explore national human rights obligations and commitments to ensure compliance. Alternatively, parliamentarians or the judiciary might use it to research the latest situation and planned government activities on specific topics.

A fundamental role of civil society and NHRIs is to hold government to account. This can be difficult when recommendations, obligations, targets and progress are not easily accessible. IMPACT OSS changes this and by its very nature is a tool that enables and encourages transparency and accountability. Through IMPACT OSS, any actor can assess current performance in relation to obligations and commitments and identify gaps or missing data, thus transforming its capacity to hold duty-bearers to account instantly.

Four other demographic groups are worth mentioning as having a stake in IMPACT OSS, although they are not necessarily classified as implementing actors. These are donors, development partners, TB committees and special procedures, all of whom have an interest in the national situation in relation to implementation progress of national plans, the SDGs and human rights, as well as an interest in planned future activities. For donors and development partners this can be an asset in identifying priority areas for investment or tracking progress in areas of interest. For TB committees and special procedures, having a live record of implementation instantly accessible and open to explore prior to a review or visit is invaluable. IMPACT OSS makes all of this possible.

3. SADATA – A CASE STUDY OF IMPACT OSS FUNCTIONALITY AND OUTCOMES

In its version of IMPACT OSS – SADATA – Samoa claims to have one of the most comprehensive tracking tools in the world. Through this platform, the government tracks 920 human rights recommendations and obligations, 691 of which have been published.[116] These derive predominantly from the international human rights mechanisms – the UPR, TB and special procedure recommendations. However, Samoa has also chosen to include recommendations made by its NHRI and its Law Reform Commission as well as the substantive articles of the core conventions to which it is party. Furthermore, it is currently in the process of expanding the database to track its national development plan and the SDGs. SADATA will then map the overlap between the respective frameworks to minimize duplication and coordinate and track the implementation of all three frameworks.

Whilst it is still relatively early days for SADATA, the tool has already begun to demonstrate its potential for building national capacity for implementation of human rights and development goals. Early successes include:

- Creating reporting efficiencies: SADATA used the IMPACT functionality to create 11 clusters for the 691 public recommendations. The Samoan NMRF then added 56 actions taken directly from sector- and ministry-level plans. These actions partially or wholly address 470 recommendations and obligations, succinctly demonstrating the value of clustering to identify overlap, create reporting/data collection efficiency and eliminate duplication.

- Gap Analysis: a Gap analysis was undertaken on SADATA, which highlighted the recommendations that do not yet have associated implementing actions. This analysis was almost instantaneous and was used to produce a report to the NMRF members who were then required to propose additional activities to fill the identified implementation gaps.

- Civil society and private sector mobilisation and coordination: the establishment of SADATA has mobilised and enhanced coordination among implementing actors, particularly between government, civil society and the private sector. Interest in the innovative software as a new entry point has contributed to the sustained engagement of civil society, the private sector and others with the establishment of the NMRF, development of the implementation plan and data collection.

- Submission of overdue reports: SADATA has been a catalyst for the submission of overdue reports due to its ability to effectively plan, coordinate and track. The NMRF committed to bringing Samoa up to date with its reporting obligations in order to enjoy the full benefits of having SADATA and adopting a coordinated and proactive imple-

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116 IMPACT OSS allows a user/state to work on draft recommendations, actions and indicators prior to their publication.

mentation approach. Consequently, following the establishment of the NMRF and installation of IMPACT OSS, Samoa submitted its overdue CRC and CEDAW reports.

- NMRF impetus: in a similar manner, SADATA helped to establish an awareness of the newly established NMRF and fuel the momentum on which its early successes have been built. Despite scarce human resources and competing priorities, in the initial years after establishment the NMRF met on an almost quarterly basis, the work enabled by SADATA (e.g. gap analysis) being a driving force of the commitment to meet.

4. THE ROLE OF IMPACT OSS AT THE INTERNATIONAL LEVEL

It is not only at the national level that IMPACT OSS is generating interest and acting as a driver of change, reflecting a deep-seated urgency worldwide to address the reporting burden and give meaningful effect to the implementation agenda. This has manifested itself in several notable ways:

- Global interest in IMPACT OSS: over the past three years there have been a steady and considerable number of inquiries from parties interested in installing IMPACT OSS at the national level, and there are currently a number of cabinet submissions in the later stages of approval which will see this happen. Whilst interest has mainly been from governments/NMRFs, there have also been a number of discussions with NHRIs, CSO umbrella organizations, ombudsman offices and charitable foundations for whom IMPACT OSS would also be useful, as described above.

- The Pacific Principles of Practice and HRC Resolution A/HRC/42/L.3: the Pacific Principles of Practice of National Mechanisms for Implementation, Reporting and Follow-Up (the Pacific Principles)[117] are an outcome of the Nadi Dialogue at which the Impact OSS Trust presented to Pacific states on the value of technology, alongside representatives of SIMORE Plus and OHCHR. Consequently, the Pacific Principles include Article 3.4, which encourages the use of technology to achieve the outcomes facilitated by IMPACT OSS's functionality. The narrative to support Article 3.4 reads: 'Plans can be effectively developed and tracked through the use of technology designed for these purposes including, but not limited to, the National Recommendations Tracking Database, IMPACT OSS and SIMORE.'[118] The Nadi Dialogue and the Pacific Principles contributed to a growing global momentum for the establishment of NMRFs and use of technologies such as IMPACT OSS. HRC Resolution A/HRC/42/L.3 was passed in this context and commits OHCHR to five further dialogues where the Pacific Principles will be a basis of discussions and potentially form

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117   The Pacific Principles, supra fn 103.

118   Art 3 narrative, Ibid.

the basis for a set of global NMRF guiding principles (whilst recognising that 'no one size fits all' when it comes to NMRFS and technology such as IMPACT OSS).

- IMPACT OSS as a carrot for NMRF establishment: IMPACT OSS, and associated technologies, have also demonstrated their value as an incentive for NMRF establishment. This can happen in two ways. The first is where states see this technology as an enabler of effective implementation when used as a tool by an NMRF. Where this entity does not exist, the opportunity of utilizing such technology can generate the political will to establish effective NMRFs. The second is a strategic approach by NHRIs to utilize technology like IMPACT OSS to publicly monitor government performance on implementation, with the goal of incentivizing government ownership in the longer term in order to have greater control over the process as the primary duty-bearer.

C. FUTURE CHALLENGES FOR HUMAN RIGHTS DIGITAL TRACKING TOOLS

The development of software like SIMORE and IMPACT OSS is potentially a significant step forward for the realization of human rights at the national level and progress towards the SDGs and other development goals. Proof of their importance lies in the recent efforts by OHCHR to develop its own digital tracking tool, the National Recommendations Tracking Database (NRTD).[119] The NRTD is an online database, developed from the good practices in Paraguay, Samoa and Uganda, which can be customized to enhance specific states' reporting and data collection capacity and facilitate the implementation of the recommendations deriving from the UPR, special procedures and the TBs. It facilitates the clustering of different recommendations, the assignment of responsibilities to relevant ministries or other bodies, the monitoring of activities and the allocation of relevant budgets. In addition, it can also record national efforts vis-à-vis the SDGs and the status of human rights implementation in real time

Regardless of such important developments, it is still too soon, with little empirical evidence, to assess the true practical value of such digital tracking tools. Further, there are some immediate challenges to overcome. Tracking tools are often seen as a panacea for the reporting burden – a state can install such a tool and, when a report is due, press a button and the job is done. This is, of course, not the case and it is dangerous to seriously entertain such thoughts. There should always be a level of individual and collective human input to the process of clustering, tracking and reporting. Over-automation would only serve to impede implementation in a different manner to that of the reporting burden. This must be guarded against in the process of developing such software with equal veracity.

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119   OHCHR, National Recommendations Tracking Database, https://nrtd.ohchr.org/login (last accessed 16 January 2021).

The lack of empirical evidence regarding practical value means there is still an emerging understanding of the best way to refine and evolve the tools which currently exist. Countries such as Paraguay and Samoa deserve recognition for blazing a trail, particularly for the comprehensive approach they have adopted and willingness to increase state accountability and transparency in the process. Lessons are there to be learned but there are also other initiatives in the pipeline which could fragment the conversation around NMRFs and associated technologies: SDG tools, policy tools, closed source human rights tracking tools, all of which are well meaning and have utility. However, there would be great advantage in states not being overwhelmed by many competing tools. Having a small number of open source software options would enable states to benefit from the considerable advantages of shared ownership and development and economies of scale. This is not to advocate the prevention of competition; it would simply mean that emerging technologies consider their added value as a separate initiative versus investing resources in existing tools.

A challenge in this regard is the existing capacity of the three most popular tracking tools – SIMORE Plus, IMPACT OSS and the NRTD – to meet global demand. Support to existing users has shown the process of embedding to be long and relatively intensive. It requires a significant behavioural shift across ministries and other implementing agencies. It cannot happen overnight and is unlikely to happen within a year. A timeframe of 2–3 years is more realistic and even this is dependent on a certain level of political will to sustain the process. To be able to provide this level of support to the number of states who are showing an interest, there needs to be greater investment by development partners and others in SIMORE Plus, IMPACT OSS and the NRTD and an avoidance of a potentially looming supply/demand deficit. Currently, there is serious interest in these tools but not yet the critical mass of acceptance required that would result in the investments needed. The global interest in such software and the maturity of tools such as SIMORE Plus, IMPACT OSS and the NRTD indicate that it is only a matter of time before these are the rule rather than the exception at the national level. Bearing in mind the potential this has for transforming the implementation of human rights and the development agenda, this is an exciting prospect.

5. THE PARTICIPATORY CAPACITY OF NATIONAL HUMAN RIGHTS SYSTEMS

Participation is one of the key procedural facets of a functioning NHRS. This principle entails that in all phases of monitoring and implementation of international human rights recommendations, from preparation to evaluation, participation as a multi-level multi-agent endeavour, should be active, free and meaningful.

This section will focus on the capacity of NHRSs to foster and lead or provide a platform for consultations among national actors (e.g. NMRFs, parliament, NHRIs and CSOs), with a view to strengthening the transparency, ownership and accountability of monitoring and implementation processes. Regular consultations among different stakeholders may allow for open discussions on draft reports. This in turn can facilitate a more accurate provision of information on measures taken to address the issues identified by international and regional human rights mechanisms. Coordination among different state and non-state actors in the implementation phase may increase the chances of meaningful legal and policy reforms and, in turn, reflect the real needs for structural and procedural change. Finally, effective engagement among all relevant domestic stakeholders may also address the necessary steps for adequate resource allocation towards the implementation of specific recommendations issued by the different international human rights mechanisms.

A. THE INTER-INSTITUTIONAL COMMISSION FOR THE MONITORING AND IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS OF COSTA RICA AND ITS PERMANENT BODY OF CONSULTATION OF CIVIL SOCIETY ORGANIZATIONS

The Inter-Institutional Commission for the Monitoring and Implementation of International Human Rights Obligations of Costa Rica (CIIDDHH), was instituted by Executive Decree no 36776RE on 9 August 2011 as Costa Rica's permanent advisory body of the Executive Branch, attached to the Ministry of Foreign Affairs and Worship. Its mandate is to coordinate the implementation at the national level of international human rights obligations among 33 public institutions and ministries as well as to coordinate the actions carried out at the international level in the field of human rights. Its main functions include:

1. Compilation, analysis and monitoring of the recommendations formulated by international and regional organizations in the field of human rights as well as establishing strategies for their implementation.

2. Promotion of cooperation between the state and civil society to strengthen the promotion of and respect for human rights.

3. Coordination and design of implementation policies, plans and measures to meet international human rights obligations in the country and design management and evaluation mechanisms that allow the periodic and systematic identification of progress and obstacles in their implementation.

4. Contribution to the consolidation of institutional mechanisms for the protection of human rights, as well as promoting their public dissemination.

Aside from establishing the CIIDDHH, the 2011 Executive Decree established a Permanent Body of Consultation of Civil Society Organizations (EPC), with the objective of allowing the participation of civil society in the processes of discussion, elaboration of policies, plans and measures of the Commission as well as of reports on monitoring and implementation of international human rights obligations. This means that CSO representatives are able to attend and participate in the Commission's ordinary sessions, which take place every two months, thus constituting a permanent check on and contribution to the state's strategies for monitoring and implementation of international human rights recommendations. In turn, the failure to address certain recommendations may be also challenged by EPC representatives during the Commission's sessions. Through the EPC, it is also possible for civil society to participate in the development of roadmaps for implementation, including the identification of responsible public institutions for the follow-up of each recommendation. The presence of civil society during CIIDDHH meetings represents a guarantee of an effective application of institutional processes and is useful for an independent analysis of information and indicators relevant to the implementation of international human rights recommendations. Furthermore, a permanent and interactive dialogue between the CIIDDHH Secretariat and the EPC is essential for informing state authorities of the realities and needs of rural and disadvantaged communities throughout each reporting cycle.

1. FROM RECOMMENDATIONS TO PUBLIC POLICY

Recommendations from international human rights mechanisms may face several problems in implementation, due to public policy failures or misinterpretation by public officials. The possibility for CSO representatives to actively participate in CIIDDHH sessions, through the EPC, widens the list of actors involved in monitoring how recommendations are turned into actual public policy.

Such a process first of all requires an evaluation of whether issued recommendations conform to existing public policies, plans and measures by Costa Rica's Ministry of National Planning and Economic Policy in conjunction with other relevant ministries and public institutions. If that is the case, the next step is to verify whether the recommendation is fully complied with or whether there is a need for amendments for more effective compliance.

Otherwise, the implementation of new public policies in accordance with international recommendations usually starts with the development of relevant indicators, through the work of the National Institute of Statistics and Census (INEC).

Such indicators enable the measurement of the social, financial and institutional impact of implementation measures through statistical analysis. They are then quantified and their budgetary implications are passed to the offices of the Central Bank of Costa Rica to estimate correct projections of the recommendations' effective sustainability. Upon this first approval, the public policy is adopted either by executive decree or by discussion in the Legislative Assembly. In the latter case, the participation of civil society representatives is crucial during the discussion of new public policies, which usually takes place through parliamentary sub-committee meetings before being discussed in plenary. CSOs play a crucial role in positively influencing the approval of any such proposed bills, through lobbying practices in favour of or against specific proposals, a process which may take between 3 to 10 years.

Throughout this process, CSOs are able to offer ministerial officials, statisticians, policy officers and lawmakers useful reminders of their international human rights obligations, including specific recommendations issued by international and regional human rights mechanisms, as well as relevant best practices from other national contexts.

2. WORKING IN COALITIONS

Aside from the welcome introduction of the EPC, Costa Rican civil society has a rich history of working in coalitions. For CSOs, to work jointly allows action on common positions, strategies and priorities that focuses efforts, promotes tasks, generates reliable data and technical information and enables better support to victims of systematic violations. Coalitions enable CSOs to have a more solid voice and maintain momentum in challenging possible gaps in local human rights policy and jurisprudence.

One best practice in this regard stems from Costa Rica's latest UPR cycle (2019). A large coalition of CSO organizations submitted its Alternative CSO Report to OHCHR.[120] Within three weeks of submission, a strategy was drawn up that involved 'cocktail nights' with embassies and consulates of those states forming part of the relevant troika, with whom a summary of the report with priority points and demands in Spanish and English was presented in order to influence recommendations to the Costa Rican state. According to CSO representatives, although the Ministry of Foreign Affairs and Worship expected less than 45 recommendations, a total of 215 were issued to Costa Rica, thus representing an achievement for the coalition.

120   Joint Submission to the UPR Examination of Costa Rica, 3rd cycle (May 2019), Asociación Ciudadana Acceder (Costa Rica); Asociación de Desarrollo Sostenible LGTBIQ Costa Rica – ADS (Costa Rica); Asociación Esperanza Viva (Costa Rica); Asociación MANU (Costa Rica); Centro de Investigación y Promoción para América Central de Derechos Humanos – CIPAC (Costa Rica); Asociación Gerontológica Costarricense – AGECO (Costa Rica); Familias Homoparentales (Costa Rica); Frente por los Derechos Igualitarios – FDI (Costa Rica); Iglesia Luterana Costarricense (Costa Rica); Peras del Olmo (Costa Rica); Instituto Humanista de Cooperación con Países en Desarrollo HIVOS (Costa Rica); Movimiento Diversidad Abelardo Araya (Costa Rica); Asociación Demográfica Costarricense (Costa Rica); ICW Costa Rica (Costa Rica); Colectivo Trans-Parencias (Costa Rica); Colectiva Transcendientes (Costa Rica); Síwo Alär Hombres Trans Costa Rica (Costa Rica); Iniciativas por los Derechos Sexuales (Argentina).

B. THE NETWORK OF THE INDEPENDENT COMMISSION OF HUMAN RIGHTS IN NORTH AFRICA

The Network of the Independent Commission of Human Rights in North Africa (CIDH) is a non-governmental organization based in Morocco which leads a wider network of NGOs in North Africa. Its focus is on protecting and promoting human rights at the national and regional levels through the establishment of partnerships with a wide network of national and international NGOS such as the African Centre for Democracy and Human Rights Studies, Defend Defenders, the International Court of Justice, the CSO Partnership for Development Effectiveness and the International Service for Human Rights. Nationally, the CIDH also launched in 2018 a partnership with the Moroccan NHRI, the CNDH, which aims to train human rights activists and NGOs in advocacy and elaborating human rights reports.

With the aim of following up international human rights recommendations in Morocco and strengthening its partnership with different national and regional mechanisms, the CIDH has adopted the following strategies to pressure or encourage different national institutions towards positive interactions with the international human rights system.

1. AWARENESS RAISING

Along with international, regional and national human rights mechanisms, NGOs play a crucial role in the implementation of human rights findings and recommendations, especially through effective interaction among different national human rights actors and intelligent planning. To this end, the CIDH gives great importance to awareness raising. One best practice in this regard was the CIDH's participation in a seminar on best practices for tracking the implementation of UPR recommendations, organized by DIDH in February 2018 as a side event at the 24th session of the International Book and Publishing Fair, and marked by the participation of international NGOs, such as UPR Info. In this context, the CIDH focused on the challenges that Morocco faces when responding to UPR recommendations and the complicated process of ratifying and signing conventions and protocols due to the slow legislative process in Morocco. As another example of successful awareness-raising initiatives, the CIDH is now launching a visual campaign on freedom of assembly and association with the aim of expressing its concern over the situation of freedom of assembly and maximizing the impact of recommendations expressed by different human rights mechanisms.

2. WORKING IN COALITIONS

The CIDH is participating, with three other NGOs, in the preparation of the Joint Report of Civil Society for the UPR on Morocco. Before the UPR examination, scheduled for May 2022, the CIDH, in coalition, has already met with five embassies to pressure Morocco to implement recommendations and fulfil its obligations towards migrants. If the circumstances are suitable, the CIDH is programming possible meetings with 16 other diplomatic missions to raise awareness of concerns about freedom of expression and issues related to migration in Morocco.

Working in coalition enables a push towards relevant recommendations related to common concerns. It also facilitates follow-up and active engagement with the government on their implementation, adopting an advocacy strategy based on naming without shaming. Working in coalition combines efforts to maximize the effects of NGO activity and enhance public visibility and engagement to defend journalists and other victims of violations of the freedom of expression.

3. SEIZING ADEQUATE MOMENTS

The UPR and country visits of special rapporteurs are the right moments to seize in order to increase pressure and concentrate efforts to make the government and national human right mechanisms react positively to human rights recommendations.

The last UPR examination of Morocco took place in May 2017. This was an important date for the CIDH to direct attention towards the human rights situation in Morocco. It organized a press conference after three different high-level seminars that were attended by parliament members, high-ranking national security officials and the general director of prisons. These were suitable occasions to advocate objectives and issues like freedom of expression and the right to peaceful assembly.

CIDH representatives also met Juan Méndez, the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, during his country visit to Morocco in 2012. This was a great opportunity to uncover some of the challenges that delay implementation of recommendations on torture in Morocco and to submit to the Special Rapporteur CIDH's brief report on the conditions of prisons in the region. A few months after the visit, the administration started building two new and modern detention facilities in two different cities. Moreover, human rights associations were able to visit prison and detention facilities. In 2019, Morocco established a national mechanism on the prevention of torture.

4. PROVIDING EXPERTISE AND CAPACITY BUILDING

Joining support or study groups enables associations to build a network of relationships, which helps them monitor the implementation of recommendations and gives them a voice that is heard by national institutions. Although Morocco has not ratified the African Charter on Human and Peoples' Rights, the CIDH managed to engage positively with the African human rights system. As a result, the CIDH was nominated as a member of a support group on freedom of association and assembly in 2018. This group consists of nine well-regarded associations and centres. Acting under the mandate of the Special Rapporteur on Human Right Defenders in Africa, Rémy Lumbo Ngoy, the CIDH's main objective has been to elaborate guidelines on freedom of association and assembly. In addition, the CIDH has organized many training sessions to help NGOs and individual activists develop relevant competences to improve their performance based on ideal practices in monitoring and elaborating reports, and most importantly to achieve effective interaction and engagement with national and international human rights mechanisms.

C. THE MONGOLIAN HUMAN RIGHTS NGO FORUM

The Mongolian Human Rights NGO Forum (HRF) combines over 50 NGOs working in the human rights field, and is a voluntary network. It was established in 2010 in line with Mongolia's review under the first UPR cycle. The HRF has sent three joint submissions for the first, second and third UPR cycles. Its medium is through monthly meetings among all NGO representatives involved.

The HRF has become an internationally recognized network. For example, UPR Info, an international NGO based in Geneva, has released briefs on the engagement of countries with UPR implementation. Good practices of the HRF in UPR engagement are highlighted in some of these briefs.[121] In addition, the HRF shared its experience with NGO networks working in the Kingdom of Thailand. Moreover, a factsheet[122] published by the Forum containing summaries of its submissions to the HRC has been used by over 10 countries for their UPR implementation advocacy.

No less importantly, the HRF also actively engages with the other UN human rights mechanisms. For example, it sent its shadow reports to the HRCttee (2011, 2015), the CESCR (2015), CAT (2010) and CERD (2019) and conducted face-to-face meetings with some of the committee members. Its concerns about certain human rights issues were reflected in these committees' outcome documents. The HRF has gained credibility by working with UN special rapporteurs and working groups on human rights issues. They include meeting and cooperating with the HRF on their agenda during their fact-finding missions in Mongolia.

As a result of many years of continuous efforts, the HRF's consultation process with the state authorities has reached an unprecedented level. For example, it has started to consult with state bodies not only about the UPR mechanism, but about reporting for other UN TBs. In 2020, the HRF also provided input for and comments on the government reports to be sent to the CESCR and CAT.

One illustration that the HRF is being recognized at both national and international levels is that its members are regularly inducted into the National Coordinating Council to implement the UPR recommendations, and the working group for drafting the National Action Plan for Business and Human Rights. Moreover, the Parliamentary Standing Committee on Legal Affairs officially included a member from the HRF in a working group responsible for the nomination and selection process of the commissioners of the NHRCM. Some international organizations

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121   UPR Info, *The Butterfly Effect: Spreading Good Practices of UPR Implementation*, 2016, https://www.upr-info.org/sites/default/files/general-document/pdf/2016_the_butterfly_effect.pdf (last accessed 16 January 2021); *UPR Mid-term reporting: Optimising Sustainable Implementation. Good Practices for UPR Stakeholders*, 2018, https://www.upr-info.org/sites/default/files/general-document/pdf/upr_midterm_report_web_v1_high.pdf (last accessed 16 January 2021). *The Civil Society Compendium: A Comprehensive Guide for Civil Society Organizations Engaging in the UPR*, 2017, https://www.upr-info.org/sites/default/files/general-document/pdf/upr_info_cso_compendium_en.pdf (last accessed 16 January 2021).

122   The Mongolian Human Rights Forum, *Information on the Status of Human Rights Submitted to the United Nations Human Rights Council*, 2020, http://www.forum.mn/res_mat/2020/Informationonthestatusofhumanrights%20submittedtotheUNHRcounsil.pdf (last accessed 16 January 2021).

have also acknowledged the HRF's functions and have started to invite HRF members to participate in their decision making. For example, a member of the HRF started to work for the National Coordinating Council of the Global Fund in 2018.

So far, the HRF has provided joint inputs and comments to over 30 laws and regulations and has submitted around 100 requests, recommendations and surveys to parliament, the Cabinet and agencies in relation to human rights abuses and the prevention of potential human rights violations. In addition, it takes an active role in assessing the impacts of international projects and programmes and provides comments to the draft plans of such projects. It also aspires to be proactive in any emerging situations. For example, it submitted comments to the draft bill on preventing, combatting and mitigating COVID-19 and the amendment to the Disaster Prevention Law. As a result, its indicators for restricting human rights were clearly contemplated in those laws.

D. PARTICIPATION AS A BROADER CONCEPT THAN CONSULTATION AND INFORMATION-SHARING

All stakeholders, including governmental actors, independent state actors and CSOs, should have an opportunity to willingly, knowingly and effectively become involved in the decision-making process in order to reflect their needs and interests. Participation is much more than informing or consulting the people concerned in the monitoring and implementation of specific international human rights recommendations. It should be based on the active engagement of all relevant domestic actors, thus enhancing empowerment of both rights- holders to claim their rights and duty-bearers to meet their obligations. Unlike informing and consulting where government defines the issues, sets the questions, manages the process top-down and takes feedback selectively, in meaningful participation, NHRIs, CSOs, the public and other stakeholders have an opportunity to get genuinely involved in the process of decision making throughout planning. Meaningful participation at the national level is all the more relevant due to the barriers (e.g. of knowledge, capacity, budget, etc.) that certain domestic actors may face in directly contributing to the monitoring cycles of international human rights mechanisms.

6. CONCLUSIONS AND RECOMMENDATIONS

A functioning NHRS is characterized by the coexistence of actors, interactions and frameworks, including more or less formalized processes that link all actors of the system together.

The international human rights system does not prescribe strict measures of implementation to be adopted by states: all actors – governmental, independent and non-state actors – have a role to play. A systems-thinking approach enables this broadness to be reduced to a collection of components organized around a common purpose. This common purpose, which in the present case is the implementation of ratified UN human rights treaties, holds the system together.[123]

The NHRS concept posits that the coordination of human rights implementation makes a crucial contribution to, inter alia:

- Better management of human rights initiatives and the increased ability to prioritize strategically and create synergies

- The systematic and explicit integration of accountability, non-discrimination and transparency as guiding principles for action

- Avoiding duplication of mandates

- Reducing the risk of isolating human rights in one dedicated body or having blind spots in human rights implementation

- More democratically regulated institutional mandates and thereby the enhancement of accountability and the rule of law[124]

It should be clear that the NHRS concept is not a fix-all solution to the compliance gap. Resources, political will and the overall capacity of each state will all continue to affect human rights implementation efforts. What is crucial in this respect, however, is that an NHRS is a prerequisite for impact, in that 'when all actors, framework and procedures are in place at the domestic level, the state will be in a better position to comply with all its human rights obligations'.[125]

The conceptualization of an NHRS may be considered as substantially tied to obligations stemming from the UN human rights treaty system itself. More specifically, ensuring the operation of an NHRS may be implied by the obligation of each state party to take steps/measures to ensure the realization of the rights enshrined

123 See A. Chalabi, 'Law as a System of Rights: A Critical Perspective,' 15 *Human Rights Review* 2 (2014) 120.

124 The Danish Institute for Human Rights, *National Human Rights Systems and State Human Rights Infrastructure*, supra fn 26, p 7.

125 Lagoutte, 'The Role of State Actors Within the National Human Rights System', supra fn 29,184.

in each treaty. This idea is not novel. In fact, by conducting a textual analysis of all the human rights conventions, general comments, reports and concluding observations, recent literature has found that 'under the nine core human rights conventions … states parties have the obligation to adopt a plan of action for implementing all the rights embodied in the conventions'.[126] By considering NHRAPs as one example of possible NHRS interactions, one could easily apply this finding to the NHRS concept itself.

Regardless of whether one agrees with this conclusion or not, to apply a systemic approach to human rights implementation efforts is, at least, methodologically useful. Understanding why states implement and comply with international human rights recommendations is a complex endeavour – particularly given their non-binding nature –resting on disparate logics of influence such as persuasion and socialization.[127] Understanding why states implement and comply with such recommendations based on the interaction between different NHRS actors is even more challenging, as the variables in potential influences rise drastically. Instead of taking a narrow approach and looking only at state or UN activity, the NHRS concept helps us analyse the 'use' of international human rights recommendations by all relevant domestic actors and see how that can influence states' actions and behaviours through formal or informal interactions. In other words, '*use* is therefore part of implementation …. Although implementation focuses on the State, to comprehend the bigger picture one needs also to look at the use of findings not only by States but by a wider range of actors.[128]

By considering how different strategies are used within the NHRS, 'we can identify factors that can assist in determining the mechanisms for implementation of those recommendations as well as what might then be the most appropriate tools of follow-up and monitoring of that implementation by other actors'.[129] The NHRS framework may help in identifying more detailed information on the process of implementation and compliance by the state, which can in turn assist in determining the effectiveness of any follow-up and monitoring mechanisms employed by both the wider array of domestic institutional partners and international human rights monitoring bodies. In doing this, we can also analyse the role of the various actors that make up the domestic 'compliance coalition' within each NHRS.

As mentioned at the outset of this report, the past decade has witnessed the increased involvement of national human rights actors in accessing the international human rights system and, in turn, monitoring the implementation of recommendations stemming from the UN human rights bodies. It is therefore timely to

126 Chalabi, 'The Nature and Scope of States' Obligation to Adopt a National Human Rights Action Plan', supra fn 57, 405.

127 See e.g., H. H. Koh, 'Transnational Legal Process' 75 *Nebraska Law Review* (1996); J. T. Checkel, (ed) *International Institutions and Socialization in Europe*, Cambridge University Press, 2007; M. Perloff, *The Dynamics of Persuasion: Communication and Attitudes in the 21st Century*, 2nd edn, Lawrence Erlbaum Associates, 2003.

128 Murray and Long, *The Implementation of the Findings of the African Commission on Human and Peoples' Rights*, supra fn 63, p 43.

129 Ibid.

explore the potential for more consolidated national human rights systems aimed at rationalizing the monitoring, implementation and follow-up of recommendations emanating from the UN human rights system. Within such understanding, it is important to map all relevant actors and determine obstacles as well as good practices that can guide the process towards a consolidated NHRS. Such a mapping exercise represents a useful first step in order to reduce the workload of national actors and duplication in reporting to the UN human rights bodies through a common monitoring methodology.

Two main initiatives are worth highlighting as further possible steps in this direction.

Firstly, it may be useful to start thinking of a process that leads to a standardized set of *principles for effective NHRSs*. This would require developing a series of guidelines towards more consolidated NHRSs, taking stock of different stakeholders' roles in implementation, monitoring and follow-up of international human rights recommendations. A number of principles are currently available, which relate either to the overall functioning of specific national institutions or to the modalities of engagement between specific institutions. Notable examples include, inter alia:

- The Paris Principles Relating to the Status of National Human Rights Institutions;

- The General Observations of the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions;

- The Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments;

- The Kandy Program of Action - Cooperation Between National Institutions and Non-Governmental Organisations and the Kandy-Plus Program of Action;

- The Pacific Principles of Practice of National Mechanisms for Implementation, Reporting and Follow-Up.

Also useful for this sort of exercise are the various TB-specific papers or statements on their engagement with different national human rights actors (NHRIs, parliament, CSOs, etc.). OHCHR guidelines on domestic stakeholder engagement would also be a useful set of instruments to draw inspiration from.

In light of the above list, the idea is to start thinking of a series of overarching principles that are relevant for the effective functioning of all NHRSs. This process would firstly require the identification of the different roles that specific national human rights actors play in the broader national system. On this basis, it will then be possible to determine a number of guiding principles, including specific sections on broad characteristics such as *institutional design, effective interactions among national human rights actors, meaningful participation of all relevant stakeholders, transparency and accountability in the decision-making process, availability of resources*, as well as *accessibility and digitalization.*

Secondly, introducing a generally applicable monitoring matrix,[130] with a view to consolidating each national actor's efforts in monitoring the implementation of recommendations from the wider UN human rights system, would be of value. Some of this work is already taking place through tracking tools and databases developed by different governmental state actors, NHRIs and CSOs to systematize the implementation of UPR recommendations. Such tools reinforce efforts towards the implementation of recommendations from both the TBs and special procedures mandate holders. If the foundation that has now been established by the UPR can be fully utilized (through the creation of multi-stakeholder consultative mechanisms, NHRAPs and different monitoring tools), this will lead to a more coherent and coordinated UN human rights system. In addition, such a consolidated approach may help establish more efficient NHRSs that will significantly reduce the reporting burden on all domestic stakeholders.

In conclusion, it is undeniable that Geneva-based human rights mechanisms are shaping the global discussion on human rights standard-setting and monitoring processes. However, the reality check occurs when domestic human rights actors actively engage both with international human rights mechanisms as well as with each other in order to best monitor and implement human rights standards on the ground. If we are to better integrate international human rights law and policy in the day-to-day workings of realities on the ground, an answer could be found by looking at the connectivity between the international and national human rights systems. This, in turn, requires a more thorough and systematic understanding of domestic institutionalization processes worldwide.

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130   Adapted from Annex F, 'Monitoring Matrix for Treaty Body Concluding Observations', in M. Kothari, *The Universal Periodic Review (UPR) Mid-Term reporting process: Lessons for the UN Treaty Bodies*, Research Brief, Geneva Academy, November 2019, https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Universal%20Periodic%20Review%20.pdf (last accessed 16 January 2021).

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