RESEARCH BRIEF

BEYOND THE 2020 TREATY BODY REVIEW: THE ROLE OF NATIONAL HUMAN RIGHTS SYSTEMS

KEY MESSAGES

- The proliferation of United Nations (UN) and regional human rights mechanisms has led states to face tighter reporting schedules and a growing number of recommendations. In addition, UN and regional human rights systems often overlap in scope, whilst not prescribing strict measures of implementation. This means that all domestic actors (governmental actors, independent state actors, and non-state actors) have multiple roles to play.

- In light of the Treaty Body Review 2020 and related calls for increased stakeholder connectivity, it is important to understand whether the current international human rights system may benefit from improved coordination and leveraging of synergies at the national level. It is for this reason that closer scrutiny should be dedicated to the strengths and weaknesses currently affecting different National Human Rights Systems (NHRSs).

- Each NHRS consists of a unique set of interacting actors, forming official and unofficial synergies that serve the purpose of integrating and monitoring human rights domestically. Out of these interactions stem different national monitoring and implementation **strategies** specific to each NHRS. By comparing existing national strategies within distinct NHRSs, it is possible to detect best practices that are most effective in both the monitoring and implementation of UN human rights recommendations.

INTRODUCTION AND OBJECTIVES

The international human rights system has been expanding at a considerable pace in the last three decades, with the resulting abundance of laws, actors, and procedures posing new challenges to the system's overall effectiveness. Such proliferation of United Nations (UN) and regional human rights mechanisms demands a systemic study of their national dynamics and effects, as States struggle to keep up with their reporting obligations and the implementation of a growing number of recommendations. The latest data from the treaty body system shows the extent of this challenge, with only 19 percent of States upholding their reporting obligations.[1] In addition, UN and regional human rights systems often overlap in scope, whilst not prescribing strict measures of implementation. This means that all domestic actors (governmental actors, independent state actors, and non-state actors) have multiple roles to play. To counter these challenges, it is important to understand whether the current international human rights system may benefit by improving the coordination and leveraging of synergies at the national level.

As the Treaty Body Review 2020 draws towards its conclusion, it is time to focus on the domestic level and assess the role of national monitoring and implementation strategies. Firmly grounded on Sustainable Development Goal 16[2], the underlying assumption of this shift entails the following: without a receptive domestic human rights infrastructure, UN and regional level initiatives risk facing structural and procedural complications that might undermine a more inter-connected system of human rights monitoring. As the growing number of recommendations are absorbed at domestic level, UN and regional outputs need to be in-sync with national input and attention needs to be focused on the particular value added by each part of this process.

A research project just started at the Geneva Academy will contribute to better and more coordinated monitoring of recommendations from both UN treaty bodies, Human Rights Council and regional mechanisms at national level,

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thus enhancing human rights implementation efforts. It will be doing so by unpacking the black box of inter-institutional cooperation, in order to facilitate a more comprehensive understanding of the strengths and weaknesses currently affecting different National Human Rights Systems (NHRSs). Each NHRS consists of a unique set of interacting actors, forming official and unofficial synergies that serve the purpose of integrating and monitoring human rights domestically. Some NHRS components pertain to the state (e.g. National Mechanisms for Reporting and Follow-up - NMRFs), some pertain to the state yet stand independent from it (e.g. National Human Rights Institutions - NHRIs), whilst others are purely non-state (e.g. Civil Society Forums). Crucially, there is no standardized NHRS formulation and its components are affected by contextual variations in each country. Depending on the quality of its NHRS, the state will be varyingly equipped to respond to its international human rights commitments.

Contrasting the potentially infinite variations, it is useful to provide a classification of national monitoring and implementation strategies by collecting evidence from specific NHRS studies. This, in turn, may allow the detection of best practices that are most effective in both the monitoring and implementation of UN human rights recommendations. A systematic analysis of the specific institutions, norms and procedures that make the 'transmission belt' between the international and domestic spheres will lead to policy recommendations aimed at increased levels of human rights compliance by States. Therefore, attention needs to be focused on the particular value added by each integrating aspect of existing NHRSs, providing solutions to enhance their performance in light of current reform processes.

THE NATIONAL HUMAN RIGHTS SYSTEM MATRIX

In broader terms, this approach 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.[3] Leading scholars in this field argue that

'a systems approach to the role of state actors in human

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1 Report of the Secretary-General, Status of the Human Rights Treaty Body System, A/74/643, 10 January 2020.

2 SDG 16.6: Develop effective, accountable and transparent institutions at all levels.

3 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) 165 – 176.

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 on its interaction with supra national human rights mechanisms (vertical dimension)'.[4]

By adopting this understanding and adapting its novel analytical framework to explain domestic human rights dynamics, it is possible to devise the following NHRS matrix (see infographic below).

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 actors, independent state actors and non-state actors.

GOVERNMENTAL STATE ACTORS

Governmental state actors consist, first of all, in ministerial bodies, including both politically nominated
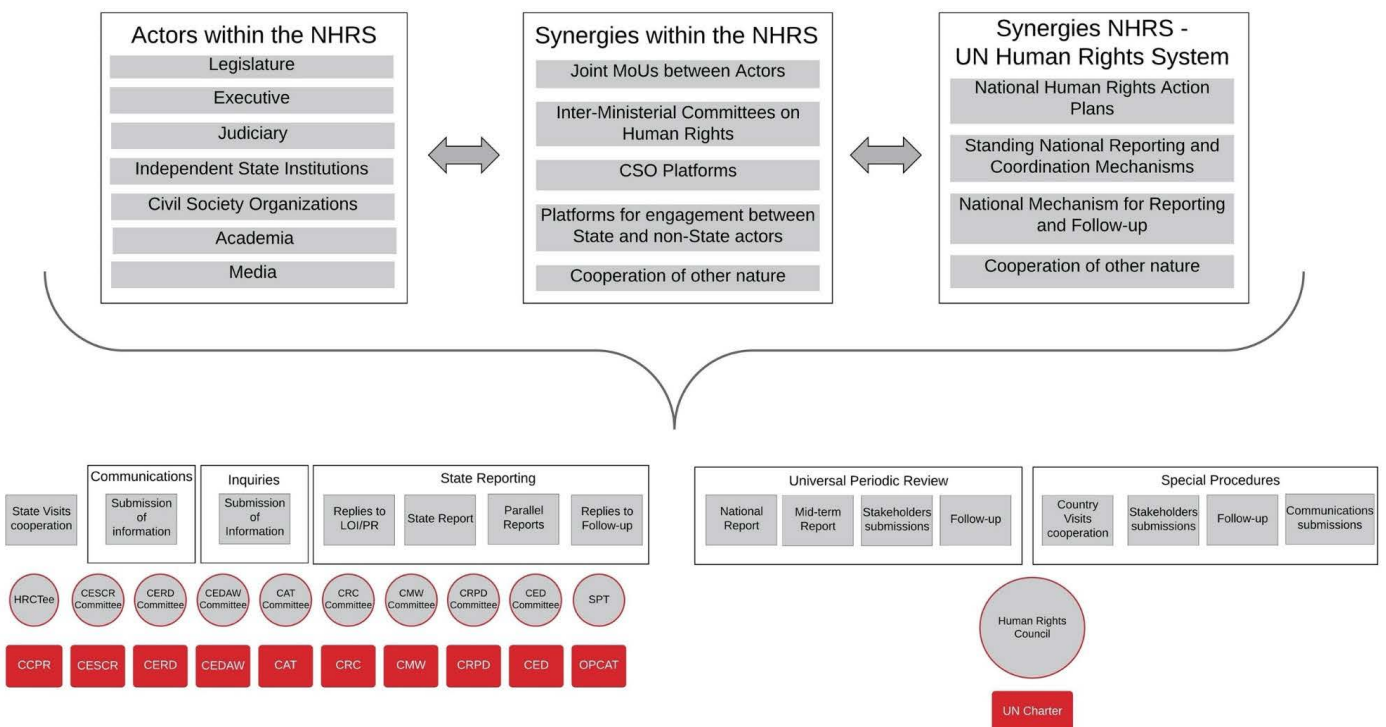
officials and career bureaucrats acting under their ministries of belonging. Within each ministry, internal human rights focal points and related structures can also be envisaged as well as inter-ministerial coordination bodies for an organic streamlining of governmental human rights action. Secondly, 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.

INDEPENDENT STATE ACTORS

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 (for example, the constitutional or the supreme court structure). Secondly, parliament, as inter-parliamentary committees are often established with a thematic, human rights focus. Such committees are useful for streamlining parliamentary efforts which 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. Fourthly,

4 S. Lagoutte, 'The Role of State Actors Within the National Human Rights System' 37 *Nordic Journal of Human Rights* 3 (2019) 179. For earlier discussions on the importance of systemic studies on 'National Human Rights Protection Systems' see also B. G. Ramcharan, 'National Responsibility to Protect Human Rights' 39 *Hong Kong Law Journal* 2 (2009); M. Robinson, 'From Rhetoric to Reality: Making Human Rights Work' 1 *European Human Rights Law Review* (2003); and UNGA, Report of the Secretary-General, Strengthening of the United Nations: An Agenda for Further Change, UN Doc. A/57/387, 9 September 2002.

The National Human Rights System Matrix

NHRIs are par excellence state actors mandated to promote and protect human rights independently from the government of the day. NHRIs play an important role in promoting and protecting human rights and fundamental freedoms, strengthening participation, in particular of civil society organizations, and promoting the rule of law and developing and enhancing public awareness of those rights and freedoms.

NON-STATE ACTORS

Lastly, non-state actors are a crucial component in the architecture of the NHRS and among the main beneficiaries of a strong system. In a context of shrinking space for civil society worldwide, a strong NHRS creates and maintains an enabling environment for civil society, through the establishment of platforms of engagement between civil society and the wider state apparatus.

SYNERGIES AMONG ACTORS

If the nature and number of actors pertaining to a NHRS are very much dependent on contextual factors of each country, synergies among actors multiply the possibilities of available formats. These synergies can be both horizontal (through cooperation among actors within the NHRS, at central and local levels) or vertical (between NHRS actors and the UN Human Rights system). *Horizontal synergies* may include national coordination structures, processes and dialogues, joint MoUs between two state actors or include 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 system, through strengthened national ownership of reporting and follow-up. Usually of a formal nature, vertical synergies are set to systematize and rationalize the engagement with international and regional human rights mechanisms, including the preparation of reports, and coordinates follow-up, thereby ensuring national coherence. Examples of vertical synergies include National Human Rights Action Plans, Standing National Reporting and Coordination Mechanisms and the more recent introduction of National Mechanisms for Reporting and Follow-up.

The NHRS matrix provides an innovative method

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to effectively analyze the process of implementation and compliance by the state, which can in turn assist in determining the effectiveness of any follow-up and monitoring mechanism employed by both UN and national human rights bodies. 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 is, however, that a NHRS might be a prerequisite for increased effectiveness, in that 'when all actors, frameworks and procedures are in place at domestic level, the state will be in a better position to comply with all its human rights obligations'.[5] This project wishes to approach this assumption with evidence from specific country studies and understand the impact that different national monitoring and implementation strategies have on human rights compliance. It is first of all important to ask ourselves whether existing strategies are effective in facilitating human rights implementation. For instance, are there safeguards in place for an independent and impartial monitoring of UN human rights recommendations? If so, which safeguards are better placed to ensure independent human rights monitoring and which ones seem to fall prey of State capture? Why is an effective interaction between the UN human rights mechanisms and domestic actors important to achieve recommendations which are well founded and can serve to improve human rights? What processes need to be in place domestically to avoid a *dialogue de sourds*, echo chambers, or simply self-serving exercises from the different stakeholders?

A FOCUS ON NATIONAL STRATEGIES IN LIGHT OF THE TREATY BODY REVIEW 2020

A focus on national strategies for human rights monitoring and implementation is of timely relevance as the Treaty Body Review 2020 process comes to a close. Initiated by UN General Assembly Resolution 68/268[6], the 2020 Review seeks to overcome the currently overburdened and overlapping nature of reporting requirements, with more coordinated and harmonized cycles of state reviews

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5 Ibid. 184.

6 GA Resolution 68/268, 'Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System', 9 April 2014, available at ‹www.ohchr.org/Documents/HRBodies/TB/HRTD/A-RES-68-268_E.pdf›.

and stakeholder participation procedures. [7] At the same time, the 2020 Review addresses the need for closer cooperation between treaty-based, charter-based and regional human rights mechanisms. These challenges are not new. Since the late 1980s the former UN Human Rights Centre and the current OHCHR have launched several initiatives to address the system's constant expansion and ensuring challenges. [8] The most recent initiative, the Treaty Body Strengthening Process (2009–2014),[9] created a momentum that led to the adoption of GA Res 68/268. 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.'[10] Learning from past attempts at reform, the process rested firmly 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*'.[11] The growing relevance of domestic actors to treaty body reform initiatives has often been reiterated in official statements and the Strengthening Process was embedded in the understanding that the treaty body system is inherently multi-stakeholder. Thus over 20 consultations allowed for the active participation of diverse categories of domestic stakeholders.[12] In 2014, former High Commissioner for Human Rights Navy Pillay further connected 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 human rights

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performance on the ground'.[13] In much more direct terms than during past reform processes, the Treaty Body Strengthening Process spelt out that in order to increase its effectiveness and impact, the treaty body system needed to strengthen its cooperation with key national actors. Due to this stronger focus on domestic implementation, GA Res. 68/268 encouraged the committees to harmonize their working methods as a step toward a more consistent and predictable relationship with domestic counterparts. In essence, GA Res. 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 toward a stronger, more effective UN human rights system.

CONCLUSION AND EXPECTED CONTRIBUTIONS

UN-level initiatives cannot be assessed without giving due consideration to its domestic institutional counterparts. The UN human rights system's report-and-review process trickles into domestic politics, as reflected in growing trends of domestic institutionalization. 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'.[14] This research project, dedicated to addressing national institutional synergies, attempts to address this very issue. Three main contributions can be expected at this point. Firstly, the strengths and weaknesses that will stem from each NHRS under analysis can inform other countries' initiatives of domestic human rights institutionalization. Secondly, highlighted best practices may assist further efforts towards increased connectivity amongst domestic actors and UN human rights mechanisms. Lastly, a stronger focus on the national human rights 'infrastructure' may also be useful to inform the preparations of upcoming Treaty Body and Human Rights Council review processes.

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7 For detailed analysis by different scholars on current challenges of the UN human rights system, see Academic Platform on Treaty Body Review 2020 available at ‹https://www.geneva-academy.ch/tb-review-2020›.

8 For more information see reports by Independent Expert Philip Alston (1988–1996); The UN Secretary-General's proposal of a single report (2002 – 2006) and the UN High Commissioner for Human Rights Arbour's proposal of a unified standing treaty body (2006).

9 The Treaty Body Strengthening Process, initiated by the Report of the High Commissioner 'Strengthening the UN Human Rights Treaty Body System', UN Doc. A/66/860, June 2012, resulted in GA Res 68/268 (2009–2014).

10 UN High Commissioner for Human Rights Navanethem Pillay, in her statement to the Human Rights Council on 14 September 2009.

11 I. Salama, 'Strengthening the UN human rights Treaty Body System: prospects of a work in progress' (2016) 5.

12 All documents related to the treaty body strengthening consultations are available at ‹www.ohchr.org/EN/HR Bodies/HRTD/Pages/TBStrengthening.aspx›.

13 Report of the High Commissioner, 'Strengthening the UN Human Rights Treaty Body System', supra fn 9.

14 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.

THE GENEVA ACADEMY

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

This project aims to gain a more comprehensive understanding of the strengths and weaknesses affecting different National Human Rights Systems (NHRSs). As such, this project trails the impact of international human rights recommendations by focusing on national monitoring and implementation strategies.