

The Tensions that Exist in the Creation of National Mechanisms for (Implementation) Reporting and Follow-Up (NMRF/ NMIRF) to Better Comply with State Reporting to United Nations Treaty Bodies

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This Article studies the rise of new domestic human rights institutions called National Mechanisms for Reporting and Follow-Up (NMRFs) or National Mechanisms for Implementation, Reporting and Follow-Up (NMIRFs). More than fifty of these institutions have been created over the last few years because they are seen to be critical to a state meeting its reporting obligations to various international, regional, and sometimes even sub-regional oversight bodies. This is especially true in regard to the nine United Nations treaty bodies that states are obliged to report to. This article evaluates what these national mechanisms are, why they have become so important, and how they can help to successfully promote human rights in the countries in which they work.

This Article touches on the inherent tensions in the creation of these bodies domestically. While states want to create these institutions in ways that assist their processes, they are concerned that without control of them that the potential outcome of the state reporting process might see the country as being viewed negatively. Thus, states want to control the narrative about human rights in their country, but at the same time need to comply with state reporting processes and the desire of international organizations to increase human rights promotion and protection in countries around the world.

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I. INTRODUCTION

Human rights reporting by states to international and regional institutions has been taking place for more than half a century.¹ Despite this, there is still debate about the extent to which the core treaty body² processes,³ as well as other oversight practices, positively affect domestic human rights systems.⁴ This is becoming an area of greater research.⁵

The United Nations (UN) treaty body process has been criticized⁶ for some time now on a range of fronts,⁷ especially by states that see the process as burdensome, costly, and time-consuming.⁸ Therefore, 2020 saw the beginning of a process in the UN⁹ to reform these treaty bodies by supposedly strengthening, rationalizing, and streamlining them.¹⁰ However, an important question is whether it is mainly the international processes or the domestic processes that are in need of reform. The UN review process made a variety of proposals to improve the oversight mechanisms in September 2020.¹¹ However, the domestic aspects of state

1. John Morijn, *Reforming United Nations Human Rights Treaty Monitoring Reform*, 58 NETH. INT'L. L. REV. 295, 299 (2011).

2. On the system, see SUZANNE EGAN, *THE UN HUMAN RIGHTS TREATY SYSTEM: LAW AND PROCEDURE* 10 (2011).

3. *The Core International Human Rights Instruments and Their Monitoring Bodies*, OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/coreinstruments.aspx> (last visited Sept. 25, 2020).

4. See Daniel Hill, *Estimating the Effects of Human Rights Treaties on State Behavior*, 72 J. POL. 1161, 1165 (2010).

5. Cosette D. Creamer & Beth A. Simmons, *The Dynamic Impact of Periodic Review on Women's Rights*, 81 LAW & CONTEMP. PROBS. 31, 31 (2018); see also Cosette D. Creamer & Beth A. Simmons, *The Proof Is in the Process: Self-Reporting Under International Human Rights Treaties*, 114 AM. J. INT'L L. 1, 1 (2020).

6. See SURYA P. SUBEDI, *THE EFFECTIVENESS OF THE UN HUMAN RIGHTS SYSTEM: REFORM AND THE JUDICIALISATION OF HUMAN RIGHTS* 89 (2017).

7. See e.g., Valentina Carraro, *Electing the Experts: Expertise and Independence in the UN Human Rights Treaty Bodies*, 25 EUR. J. INT'L REL. 826, 828 (2019).

8. See Suzanne Egan, *Strengthening the United Nations Human Rights Treaty Body System*, 13 HUM. RTS. L. REV. 209, 210-12 (2013).

9. Suzanne Egan, *Transforming the UN Human Rights Treaty System: A Realistic Appraisal*, 42 HUM. RTS. Q. 762, 762-63 (2020).

10. Aslan Abashidze & Aleksandra Koneva, *The Process of Strengthening the Human Rights Treaty Body System: The Road Towards Effectiveness or Inefficiency?*, 66 NETH. INT'L L. REV. 357, 371 (2019).

11. U.N. GAOR, *REPORT OF THE CO-FACILITATORS ON THE PROCESS OF THE CONSIDERATION OF THE STATE OF THE UN HUMAN RIGHTS TREATY BODY SYSTEM: NOTE BY THE PRESIDENT OF THE GENERAL ASSEMBLY* (2020).

reporting were not seen as a critical component of the reform process.¹² Until now, too much emphasis has been placed on what occurs at the external site of the state reporting and too little emphasis on what happens in the state before it gets to the external bodies. If the national process worked better, there would be less need for the external process to be so detailed, so time-intensive, and so costly.¹³

In this context, an area of increasing academic study is how the state reporting process is being conducted at the national level.¹⁴ While much attention has been focused on the external dimension of state human rights reporting, very little has been devoted to national processes. Additionally, most of the research that has focused on domestic processes has focused on the issues concerning the methodology of states reporting to human rights treaty bodies outside their states.¹⁵ In other words, most of that attention has been focused on the processes at the oversight bodies.¹⁶ There has not been much attention given to the domestic aspects of the state reporting process, i.e. what happens in states to prepare for the external reporting process and how the recommendations emanating from treaty bodies (TBs) and others are then dealt with in the state. Minimal research attention has been dedicated to how domestic human rights reporting systems work, how they deal with recommendations, and how they implement them. While there has been some attention to difficulties that some countries have had at the national level in reporting,¹⁷ there has been little focus on what the strengths and weaknesses of these processes are, what some of the best practices are, and how these institutions can be

12. Jeremy Sarkin, *The 2020 United Nations Human Rights Treaty Body Review Process: Prioritising Resources, Independence and the Domestic State Reporting Process Over Rationalising and Streamlining Treaty Bodies*, INT'L. J. HUM. RTS. 19 (Oct. 9, 2020), <https://doi.org/10.1080/13642987.2020.1822337> [hereinafter *Prioritising Resources*].

13. Jeremy Sarkin, *The Need to Reform the Political Role of the African Union (AU) in Promoting Democracy and Human Rights in Domestic States: Making States More Accountable and Less Able to Avoid Scrutiny at the United Nations and at the AU, Using Swaziland to Spotlight the Issues*, 26 AFR. J. INT'L. COMP. L. 84, 85 (2018).

14. See Jeremy Sarkin, *The Role of National Human Rights Mechanisms for Reporting and Follow-Up (NMRF): Understanding These New Global Domestic Processes Using the Cases of Georgia and Portugal As A Focus*, 113 TEISE 168, 169-70 (2019) [hereinafter *Cases of Georgia and Portugal*].

15. See Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT RESOL. 925, 937 (2005).

16. On the politics of these institutions, see Allehone M. Abebe, *Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council*, 9 HUM. RTS. L. REV. 1, 5 (2009).

17. See e.g., Zewdu Mengesha Bashahider, *Ethiopia's Human Rights Report to Universal Periodic Review (UPR): A Critical Overview of its Preparation*, 6 COGENT SOC. SCI. no 1735087, at 8 (2020).

reinforced to increase the human rights protections that states must provide because of their human rights obligations. This is the case even though state reporting obligations have been increasing in recent times with increased treaty ratifications, the adoption of more treaties, and the establishment of new processes, such as Universal Periodic Review (UPR) to ensure state compliance with human rights obligations.¹⁸

To accommodate increasing reporting requirements, states have been establishing specific domestic state reporting institutions to deal with these processes in far better ways than before.¹⁹ These mechanisms are multiplying rapidly in number and becoming more familiar in states all around the world.²⁰ More than fifty reporting institutions have been created over the last few years. Yet, they have received very little examination. As noted above, almost no academic articles have been devoted to their study, although they are occasionally mentioned in passing.²¹ Their importance to the state reporting process externally, as well as internally, has also not really been studied, especially in light of the UN's focus on adjusting its state reporting processes to streamline or rationalize them.

Thus, there is a need for greater focus on these national institutions because of their critical role in a state's system of human rights compliance. They are part of a system that ensures states are subject to human rights oversight, and therefore, better answerable to international and regional²² institutions' reporting requirements. These national mechanisms are being given greater roles in reporting to external processes and in ensuring

18. See DAMIAN ETONE, *THE HUMAN RIGHTS COUNCIL: THE IMPACT OF THE UNIVERSAL PERIODIC REVIEW IN AFRICA* 1, 2 (2020).

19. See generally Benjamin Mason Meier, et al., *Monitoring and Review to Assess Human Rights Implementation*, in *FOUNDATIONS OF GLOBAL HEALTH & HUMAN RIGHTS*, 155-76, (Lawrence O. Gostin et al. eds., 2020) (discussing the creation of institutions).

20. See Heli Niemi, *National Implementation of Findings by United Nations Human Rights Treaty Bodies: A Comparative Study*, INSTITUTE FOR HUMAN RIGHTS, ÅBO AKADEMI UNIVERSITY (Dec. 2003), <https://www.abo.fi/wp-content/uploads/2018/03/2003-Niemi-National-implementation-of-findings-by-UN-HR-treaty-bodies.pdf>; see also Meier, *supra* note 19, at 161.

21. See e.g., *Foreign Ministry Holds First Meeting on St. Kitts and Nevis*, ST. KITTs & NEVIS OBSERVER (Jan. 18, 2018), <http://www.thestkittsnevisobserver.com/regional-intl-news/foreign-ministry-holds-first-meeting-human-rights-st-kitts-nevis/> [<https://perma.cc/3K88-U24Y>] (discussing when the institution met initially in St. Kitts and Nevis).

22. On the African system see Jeremy Sarkin, *The African Commission on Human and Peoples' Rights and the Future African Court of Justice and Human Rights: Comparative Lessons from the European Court of Human Rights*, 18 S. AFR. J. INT'L AFF. 281, 284 (2011) (discussing the African system); see also Jeremy Sarkin, *Reforming the Role of the African Commission on Human and Peoples' Rights in Advancing Democratic Principles and Human Rights in African Countries: An Examination Using the Lens of Swaziland/ eSwatini*, 34 S. AFR. PUB. L., no. 2, 2019, at 1.

compliance with the conclusions from oversight bodies.²³ Their role, at times, is also to be involved in any follow-up that occurs from that review and even sometimes to be involved in implementing the oversight body's recommendations.

An important issue is whether these national mechanisms are *involved* in these processes or whether they are *responsible* for them. The view on whether they are simply involved or if they are responsible for these processes determines whether these institutions have a minimal or key role in the state reporting process. This is because their roles differ in each of the options (responsible or involved), with some of these institutions having greater or lesser roles in the process. This is an issue of utmost importance, as some of these mechanisms are created but yet have little role and little ability to play the roles that their names suggest.

Because of the UN treaty system review process, and because so many states are now creating national institutions, this is an important time to develop a framework for examining such institutions. It is also important because globally, there are significant issues impacting human rights²⁴ protections in many states as well.²⁵ In this regard, there has been degradation²⁶ in the human rights situations globally.²⁷ This is the case in many countries around the world; there have been an increasing number of abuses in the recent past.²⁸ The various human rights indexes reflect a negative human rights situation globally. For one, the COVID-19 pandemic is revealing some states' use of draconian means to control the spread of the virus.²⁹ Meanwhile, in other countries, there have been few democratic discussions and consultations on what measures to put in place to deal with the pandemic.³⁰ This weakens the democratic process.³¹ In

23. See Sarkin, *Cases of Georgia And Portugal*, *supra* note 14.

24. STEPHEN HOPGOOD, *THE ENDTIMES OF HUMAN RIGHTS* 13-14 (2013).

25. Kathryn McNeilly, *Are Rights Out of Time? International Human Rights Law, Temporality, and Radical Social Change*, 28 *SOC. & LEGAL STUD.* 817, 818 (2019).

26. See Ingrid Wuerth, *International Law in the Post-Human Rights Era*, 96 *TEX. L. REV.* 279, 292 (2017); see also Ian Seiderman, *The UN High Commissioner for Human Rights in the Age of Global Backlash*, 37 *NETH. Q. HUM. RTS.* 5, 5-13 (2019).

27. WHY HUMAN RIGHTS STILL MATTER IN CONTEMPORARY GLOBAL AFFAIRS 9 (Mahmood Monshipouri ed., 2020).

28. ERIC A. POSNER, *THE TWILIGHT OF HUMAN RIGHTS LAW* 26-27 (2014).

29. Audrey Lebret, *COVID-19 Pandemic and Derogation to Human Rights*, 7 *J. L. & BIOSCIENCES* 1, 2 (2020).

30. On these issues see Jeremy K. Ward et al., *France's Citizen Consultation on Vaccination and the Challenges of Participatory Democracy in Health*, 220 *SOC. SCI. & MED.* 73, 74 (2019).

31. See Rahul Mukherji, *Covid vs. Democracy: India's Illiberal Remedy*, 31 *J. DEMOCRACY* 91, 91 (2020).

other places, the police have used authoritarian methods to enforce regulations.³² Many states have taken approaches that have had negative effects on human rights³³ such as free movement, privacy, association, and others.³⁴ While many of these approaches can be understood as necessary to fight the pandemic, they nevertheless reduce rights, often without sufficient processes to ensure that the least draconian steps are taken.³⁵ Although there may have been an urgency to take some steps initially, there could have been more efforts made thereafter to take a participatory approach to dealing with the health crisis.³⁶

The real problem over the long term may be the increasingly negative effects on a range of freedoms that human rights enshrine. Some states may keep some of those regulations that have been put in place to fight the virus. The threat is that the erosion of human rights protection that has been occurring over the last decade or so may be a continuing trend,³⁷ now accelerated by the pandemic. The inclination by states to negate human rights gains needs to be arrested and reversed with greater scrutiny to ensure that human rights protections are applied by states.³⁸

Thus, there ought to be an enhanced review of state human rights compliance by oversight bodies like treaty bodies, not less robust processes.³⁹ Domestic state reporting mechanisms can, in this context, play larger roles in ensuring improved reporting processes and enhanced methods to ensure that the recommendations from oversight institutions are taken up in better and more comprehensive ways than in the past. Thus, while there is a focus on treaty body reform in the UN review, there also ought to be a focus on how the domestic reporting and follow-up process can better assist treaty bodies in their work. Thus, there ought to be more

32. Joseph J. Amon & Margaret Wurth, *A Virtual Roundtable on COVID-19 and Human Rights With Human Rights Watch Researchers*, 22 HEALTH & HUM. RTS. J. 399, 406-07 (2020).

33. Alessandra Spadaro, *COVID-19: Testing the Limits of Human Rights*, 11 EUR. J. RISK REG. 317, 319 (2020).

34. David Patterson & Dineke Zeegers Paget, *COVID-19 and Human Rights—Why Should the Public Health Community be Concerned?*, 30 EUR. J. PUB. HEALTH 852, 853 (2020).

35. See Lisa Forman & Jillian Clare Kohler, *Global Health and Human Rights in the Time of COVID-19: Response, Restrictions, and Legitimacy*, 19 J. HUM. RTS. 547 (2020).

36. See, e.g., Sudhir K. Khandelwal, *Debating the Process, Impact, and Handling of Social and Health Determinants of the COVID-19 Pandemic*, 36 INDIAN J. SOC. PSYCHIATRY S64, S65 (2020).

37. Jeremy Sarkin, *Refocusing Transitional Justice to Focus Not Only on the Past, But Also to Concentrate on Ongoing Conflicts and Enduring Human Rights Crises*, 7 J. INT'L. HUMANITARIAN LEGAL STUD. 294, 295-97 (2016).

38. See generally Sarkin, *Cases of Georgia and Portugal*, *supra* note 14.

39. See generally FÉILIM Ó HADHMAILL & GERARD MCCANN, *INTERNATIONAL HUMAN RIGHTS, SOCIAL POLICY AND GLOBAL WELFARE: CRITICAL PERSPECTIVES* (2020).

scrutiny by oversight bodies of domestic state reporting institutions to determine the best practices for state reporting, as well as to deal with follow-up and particularly, the realization of recommendations emanating from international, regional, sub-regional⁴⁰ and other oversight bodies. Thus, as these national organizations become more established all over the world, how they operate and the lessons to be learnt from them needs review,⁴¹ as does the interface between state and external entities.

This Article therefore studies the rise of these new domestic human rights institutions. They have come to the fore because they are seen to be critical to a state's meeting its international human rights and other obligations.⁴² For this reason, the Article analyses why these institutions have become so important in the context of increased state reporting. It evaluates what these national mechanisms are and how they can be made more successful in promoting human rights in their countries.⁴³

This is important as, while there has been much attention paid to how treaty bodies themselves work and how states interact with those bodies, less attention has been devoted to how states deal with those issues at home. Thus, for state compliance processes to achieve better results, more attention has to be focused on how the international process is affected by the local process. It is also necessary to review, in much more detail, how the local process takes up and applies the recommendations from the external review process.

This Article, therefore, promotes an understanding of the necessity of these institutions. At the same time, it considers the types of resistance to them, which are often rooted in the political role they play.⁴⁴ Often the government wants to be seen to be transparent and accountable, but at times it feels constrained from making these institutions as effective as possible by giving them very wide mandates. There are fears about the role that they might play in an area that the state sees as one that might

40. See generally Jeremy Sarkin, *A Critique of the Decision of the African Commission on Human and Peoples' Rights Permitting the Demolition of the SADC Tribunal: Politics Versus Economics and Human Rights*, 24 AFR. J. INT'L COMP. L. 215 (2016).

41. See generally Valentina Carraro, *Promoting Compliance With Human Rights: The Performance of the UN Universal Periodic Review and Treaty Bodies*, 63 INT'L STUD. Q. 1079, 1090-91 (2019).

42. On the duty of the state to protect rights see Bertrand G. Ramcharan, *The National Responsibility to Protect Human Rights*, 39 H.K. L. J., 361, 362 (2009).

43. The more common term is NMRF but NMIRF has been used of late to emphasize the implementation role of these institutions. The issue of names and functions is taken up below.

44. On the role of politics in the establishment of domestic institutions see Ryan M. Welch, *Domestic Politics and the Power to Punish: The Case of National Human Rights Institution*, 36 CONFLICT MGMT. & PEACE SCI. 385, 388 (2017).

show the country in a negative light. However, it does depend on how the institution is configured and what role it plays, as the greater its role, the more some states may see these institutions as being ones that need to be constrained. Thus, a key focus of this Article is the extent to which there is tension between states controlling the narrative about human rights in their country and the need to comply with international organizations' aspiration to increase human rights promotion and protection around the world.⁴⁵ Therefore, a state's charter and treaty obligations are at times in conflict with what it wants to do. These national mechanisms are in place to help states meet their international obligations. However, because these domestic institutions are usually internal governmental structures, the state has control of the process of implementing recommendations made to the state and reporting back to the international institution that made those recommendations.⁴⁶

II. STATE HUMAN RIGHTS FOCAL POINTS

State human rights focal points take different forms⁴⁷ in different countries.⁴⁸ They are meant to enable the state to address human rights matters.⁴⁹ Some are mandated by an individual country's constitution (for example policing oversight mechanisms) or by a particular treaty (such as the Convention on the Rights for Persons with Disabilities),⁵⁰ some are created as a national human rights institution (NHRI),⁵¹ such as a commission on human rights, an ombudsman, or a range of similar institutions;⁵² some are ministries of human rights; and some are

45. On the tensions in state institutional creation, and their wanting to extend and yet retain control, see SONIA CARDENAS, CHAINS OF JUSTICE: THE GLOBAL RISE OF STATE INSTITUTIONS FOR HUMAN RIGHTS, 2 (2014).

46. Morijin, *supra* note 1, at 299.

47. See e.g., Samantha Capicotto & Rob Scharf, *National Mechanisms for the Prevention of Atrocity Crimes*, 11 GENOCIDE STUD. & PREVENTION: INT'L. J. 5, 14-15 (2018); see also Ashley L. Greene & Ashad Sentongo, *Assessing National Mechanisms for Atrocity Prevention in Africa's Great Lakes Region*, 14 J. PEACEBUILDING & DEV. 193, 194-204 (2019).

48. See Rachel Murray & Christian De Vos, *Behind the State: Domestic Mechanisms and Procedures for the Implementation of Human Rights Judgments and Decisions*, 12 J. HUM. RTS. PRAC. 22 (2020).

49. Wade M. Cole, *Mind the Gap: State Capacity and the Implementation of Human Rights Treaties*, 69 INT'L. ORG. 405, 434 (2015).

50. See Luigino Manca, *Article 33 [National Implementation and Monitoring]*, in THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: A COMMENTARY 591, 594-95 (2017).

51. Domenico Zipoli, *NHRI Engagement with UN Human Rights Treaty Bodies: A Goal-Based Approach*, 37 NORDIC J. HUM. RTS. 259, 259-61 (2019).

52. Tom Pegram, *Global Human Rights Governance and Orchestration: National Human Rights Institutions as Intermediaries*, 21 EUR. J. INT'L REL. 595, 604 (2015); see also Katerina

committees on human rights in a country's parliament.⁵³ Thus, they can be established as part of the constitutional apparatus of the country,⁵⁴ through legislation, as a result of a National Action Plan,⁵⁵ because they are mandated by a treaty, or in a range of other ways.⁵⁶

Each of these institutions works, in reality, in different ways depending on their country context.⁵⁷ Some are single-person processes and some have a number of officeholders. Some have almost no staff, while some have hundreds of personnel. Some are permanent bodies, some part-time, and some ad hoc, as needed. Some are within the executive—some, on occasion, in the legislature.⁵⁸

Problematically, some of the processes are more independent than others.⁵⁹ Specific institutions, depending on how they are established, are indeed more or less independent. Some institutions are specifically designed to be independent of the state, such as NHRIs,⁶⁰ which are meant to conform to the independence principles set out in the Paris Principles.⁶¹

Linos & Tom Pegrām, *What Works in Human Rights Institutions?*, 111 AM. J. INT'L L. 628, 636 (2017).

53. See generally Andrew Wolman, *Sub-National Human Rights Institutions and the Domestication of International Human Rights Norms*, 33 NETH. Q. HUM. RTS., 224, 228 (2015).

54. See EMILY M. HAFNER-BURTON, *MAKING HUMAN RIGHTS A REALITY* 165 (2013).

55. On these, see AZADEH CHALABI, *NATIONAL HUMAN RIGHTS ACTION PLANNING* 186 (2018); see also Yao Xu, *Three Categories of International Comments on National Human Rights Action Plans and Their Implications—An Analysis Based on UPR Reports*, 19 J. HUM. RTS. 376, 376-77 (2020).

56. Tom Pegrām, *Governing Relationships: The New Architecture in Global Human Rights Governance*, 43 MILLENNIUM 618, 631 (2015).

57. Several comparative analyses are available in *THE LOCAL RELEVANCE OF HUMAN RIGHTS* (Koen De Feyter et al., eds., 2011).

58. Kirsten Roberts Lyer, *Parliaments as Human Rights Actors: The Potential for International Principles on Parliamentary Human Rights Committees*, 37 NORDIC J. HUM. RTS. 195, 198 (2019).

59. See generally Sara Imanian & Nigel Patrick Thomas, *Understanding the Impact of Independent Human Rights Institutions for Children: A European Study*, 27 INT'L J. CHILD. RTS. 339 (2019).

60. See GAUTHEIR DE BECO & RACHEL MURRAY, *A COMMENTARY ON THE PARIS PRINCIPLES ON NATIONAL HUMAN RIGHTS INSTITUTIONS* vii (2014); see generally Linda C. Reif, *Ombuds Institutions: Methods for Protection and Promotion of International and Domestic Human Rights Law*, in *OMBUDS INSTITUTIONS, GOOD GOVERNANCE AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM* 221-284 (2020).

61. G.A. Res. 48/134, *Principles Relating to the Status of National Institutions* (The Paris Principles) (Dec. 20, 1993); see also Jeremy Sarkin & Ram Kumar Bandari, *Why Political Appointments to Truth Commissions Cause Difficulties for these Institutions: Using the Crisis in the Transitional Justice Process in Nepal to Understand How Matters of Legitimacy and Credibility Undermine Such Commissions*, 12 J. HUM. RTS. PRAC. 444, 452 (2020).

NHRIs are graded to indicate the extent to which they meet the requirements of independence.⁶²

Whatever the independence status of these institutions, their roles can be narrow or wide depending on the mandates given to them. They can have limited or wide powers. They can also be given remedial powers, such as the powers given to ombudsmen or similar offices in some countries to order states to remedy defects that the office has detected.⁶³ However, the way appointments are made, the powers and functions of such focal points, and the resources allocated to them—particularly if they are independent processes—are all to some extent reflective of the democratic status of the state in question.⁶⁴ This is important as who is appointed, and what their backgrounds is, is critical if these bodies are to play roles that enhance human rights in that society.⁶⁵ On the functioning of these bodies, the most democratic states⁶⁶ give greater mandates and increased oversight powers to such bodies.⁶⁷ However, a domestic reporting institution will be best placed to effectively carry out its mandate if it has an all-embracing mandate that is contained in a law or regulation that contains its ability to get information and to work with government departments and other state entities.⁶⁸

However, if these institutions are really to be effective in the reporting process, then they ought to have wide mandates and powers. Thus, reporting ought not to be seen as a simplistic one-dimensional process.⁶⁹ It ought to be multifaceted and dynamic. It ought to be layered so that there are many aspects to it with many diverse role players such as

62. See Emma Palmer, *The Effectiveness of National Human Rights Institutions' Relationships with Civil Society: The Commission on Human Rights in the Philippines*, 25 AUSTL. J. HUM. RTS. 299, 304 (2019).

63. CARDENAS, *supra* note 45, at 9.

64. See generally Todd Landman, *Economic Development and Democracy: The View From Latin America*, 47 POL. STUD. 607, 607-626 (1999) (discussing power and mandates).

65. On the need to have more women involved and for gender issues to be infused into processes generally, see Jeremy Sarkin, *How to Better Infuse Gender Into the Human Rights Council's Universal Periodic Review Process*, 2 JINDAL GLOBAL L. REV. 172, 182-83 (2010).

66. On the link between the issues see generally Jana Von Stein, *Making Promises, Keeping Promises: Democracy, Ratification and Compliance in International Human Rights Law*, 46 BRIT. J. POL. SCI. 655, 660-61 (2016).

67. On powers and mandates, see CAROLINE A. HARTZELL & MATTHEW HODDIE, *POWER SHARING AND DEMOCRACY IN POST-CIVIL WAR STATES: THE ART OF THE POSSIBLE* 85-86 (2020).

68. See generally Sarkin, *Cases of Georgia And Portugal*, *supra* note 14.

69. Sarkin, *Prioritising Resources*, *supra* note 12, at 9.

Parliaments⁷⁰ and those involved in electoral oversight⁷¹ and internal and external methods to it.⁷² However, while this has rarely occurred,⁷³ there is growing discussion on the need to involve diverse sectors.⁷⁴ States have generally kept these processes closed, and rarely are they in the public eye.⁷⁵ Rarely do these processes garner much public attention either when a state does report or when the state is taking up the recommendations made to it. This is changing in some places where, with the rise of NMIRFs, there is a greater openness of the process.⁷⁶

However, a tension exists, some would say a healthy democratic tension, as states want critical input to the state reporting process but recognize that some of that will be negative, and thus the question is how to manage such processes.⁷⁷ Thus, management of the process is crucial for the state, but the more it manages it (some would say stage manage it), the more negative feedback might be created on what the state does and how it is operating in that society.⁷⁸ Thus, these processes need to be more than administrative processes but contain practices that understand and creatively deal with actors whose role it is to be critical and to make adverse findings so as to improve the situation as far as the issues with which the state reporting is dealing. These issues therefore are of enormous importance and severely impact how NMIRFs are established, who is appointed to them, and how they function. In the past states

70. Lyer, *supra* note 58, at 214.

71. See Avery Davis-Roberts & David J. Carroll, *International Election Observer Recommendations and UN Human Rights Mechanisms: Toward a More Robust System of Global Accountability on Democracy and Human Rights*, 35 NORDIC J. HUM. RTS. 311, 312 (2017).

72. See Jody Kollapen, *Not Only the Business of the State, but Also a Business of All: State Reporting in South African and Popular Participation*, 15 L. DEMOCRACY & DEV. 514, 520 (2011).

73. See generally Sarkin, *Cases of Georgia and Portugal*, *supra* note 14.

74. On the need to involve the health sector in UPR and the connection to NMIRFs, see Judith Bueno De Mesquita, *The Universal Periodic Review: A Valuable New Procedure for the Right to Health?*, 21 HEALTH HUM. RTS., 263, 264 (2019).

75. Sarkin, *Prioritising Resources*, *supra* note 12, at 14.

76. On the importance of openness in the process of state reporting, see Evelyne Schmid, *Socio-Economic and Cultural Rights and Wrongs After Armed Conflicts: Using the State Reporting Procedure before the United Nations Committee on Economic, Social and Cultural Rights More Effectively*, 31 NETH. Q. HUM. RTS. 241, 245 (2013).

77. On the issue of public perception in the context of state human rights issues, see generally Dona-Gene Barton et al., *A Neglected Nexus: Human Rights and Public Perceptions*, 16 J. HUM. RTS. 293, 293-303 (2017).

78. On the need to manage human rights processes in general, see generally NATIONAL HUMAN RIGHTS INSTITUTIONS: PATHWAYS FOR SMALL PACIFIC STATES, NZ HUM. RTS. COMM'N (2007).

generally have wanted to keep the reporting processes opaque⁷⁹ and not involve those outside government in any meaningful part of these processes.⁸⁰ The future methodology of how NMIRFs are created and their design⁸¹ will be one that states will not want to, generally speaking, be open and transparent unless they see the benefits of doing so. While some governments will see these processes as beneficially promoting democratic participation,⁸² they will nevertheless be somewhat wary of what these processes deliver and the effects of making such processes completely open.⁸³ The less democratic governments will create such institutions but will attempt to keep their work as internal as possible within government to limit the potential fallout from these processes.⁸⁴

It is particularly important to note that these various processes are set up for diverse reasons. For example, state reporting processes are not always joined to actually be useful⁸⁵ from the standpoint of how to get maximum benefit from the state reporting process.⁸⁶ Some states create human rights and national reporting institutions for rhetorical reasons to make themselves look good.⁸⁷ They create them both in order to seem committed internationally, as well as to indicate the state's commitment to improving human rights compliance to its domestic audience. In such situations, these bodies are not given wide mandates, many powers, or the

79. This has generally been true of many such processes at domestic level. On the lack of transparency in the choices made by states for appointment to treaty bodies and the political wrangling between states, *see generally* Carraro, *supra* note 7.

80. Creamer & Simmons, *supra* note 5, at 35, 45-47.

81. On the importance of domestic institutional design, *see generally* Welch, *supra* note 44.

82. *See* Cosette Creamer & Beth A. Simmons, *Transparency at Home: How Well Do Governments Share Human Rights Information with Citizens?* in *TRANSPARENCY IN INTERNATIONAL LAW* 239-67 (Andrea Bianchi & Anne Peters eds., 2013).

83. *See* Sabina Schnell & Suyeon Jo, *Which Countries Have More Open Governments? Assessing Structural Determinants of Openness*, 49 *AM. REV. PUB. ADMIN.* 944, 948 (2019).

84. Lawrence J. LeBlanc, et al., *Compliance with the Reporting Requirements of Human Rights Conventions*, 14 *INT'L. J. HUM. RTS.* 789, 803-04 (discussing authoritarian states compliance); *see also* Redeemer Krah & Gerard Mertens, *Democracy and Financial Transparency of Local Governments in Sub-Saharan Africa*, *MEDITARI ACCT. RES.* 681, 684-85 (2020) (discussing the link between transparency and democratization).

85. On why states ratify treaties, *see* Oona A. Hathaway, *Why Do Countries Commit to Human Rights Treaties?*, 51 *J. CONFLICT RESOL.* 588, 590-92; *see also* Richard A. Nielsen & Beth A. Simmons, *Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime?*, 59 *INT'L STUD. Q.* 197, 197 (2015).

86. On how states receive more aid after ratifications *see e.g.*, Arvind Magesan, *Human Rights Treaty Ratification of Aid Receiving Countries*, 45 *WORLD DEV.* 175, 175 (2013) (example on how states receive more aid after ratification).

87. On human rights institutions, *see* GERD OBERLEITNER, *GLOBAL HUMAN RIGHTS INSTITUTIONS* 9 (2007).

resources to carry out their work. This is because often the state does not want to lose control of these processes, especially if NGO personnel are part of the process.⁸⁸ Thus, the way these mechanisms are created, their membership, their powers, their mandate, and the resources given to them in staffing and funding are revealing about the extent to which governments want these processes to achieve the best results for human rights compliance.

III. NMRFS/NMIRFS AS STATE HUMAN RIGHTS FOCAL POINTS

This Article focuses on one type of state human rights focal point, the National Mechanisms for Reporting and Follow-Up (NMRFs), more recently called National Mechanisms for Implementation, Reporting and Follow-Up (NMIRF). In fact, these types of mechanisms have been given an array of different names, such as Standing National Reporting and Coordination Mechanisms (SNRCMs),⁸⁹ National Mechanisms for Implementation, Reporting and Follow-Up (NMIRFs),⁹⁰ and Inter-Ministerial Committees or Mechanisms on Human Rights (IMCMHRs).⁹¹ Another name for a slightly different structure is a National Implementation Mechanism (NIM). A NIM is being suggested in the Draft Optional Protocol to The Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises.⁹² This optional Protocol would accompany an envisaged international business and human rights treaty.⁹³ While such a mechanism focuses on implementation, it could be

88. See generally Sarkin, *Cases of Georgia and Portugal*, *supra* note 14.

89. NAVANETHEM PILLAY, U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, STRENGTHENING THE UNITED NATIONS HUMAN RIGHTS TREATY BODY SYSTEM: A REPORT BY THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS 85 (2012).

90. MARC LIMON & MARIANA MONTOYA, CLUSTERING AND THE INTEGRATED IMPLEMENTATION OF RECOMMENDATIONS: THE KEY TO UNLOCKING THE COMPLEMENTARY POWER OF THE UN’S COMPLIANCE MECHANISMS 39 (Universal Rts. Group, 2019).

91. In Kenya for example it is called the National Committee on International and Regional Human Rights Obligations. See U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS (OHCHR), NATIONAL MECHANISMS FOR REPORTING AND FOLLOW-UP: A PRACTICAL GUIDE TO STATE ENGAGEMENT WITH INTERNATIONAL HUMAN RIGHTS MECHANISMS, U.N. Doc HR/PUB/16/1 (2016).

92. U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS (OHCHR), ADOPTED BY THE UN OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES (OEIGWG) <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/ZeroDraftOPLegally.pdf>.

93. See Linda C. Reif, *The UN Guiding Principles on Business and Human Rights and Networked Governance: Improving the Role of Human Rights Ombudsman Institutions as National Remedies*, 17 HUM. RTS. L. REV. 603, 608-09 (2017).

closely related to a NMRF/ NMIRF, and therefore, states might incorporate elements of both types of processes into one institution. Jägers however sees NIMs being located within a NHRI because of the reference in the draft optional Protocol to the Paris Principles.⁹⁴ However, implementation is not really what NHRIs do. Regardless, Governments, states and others use different and distinctive names for these institutions to some extent to emphasize and reflect their understanding of what these mechanisms are and the role they are (or ought to be) playing. Thus, some emphasize their standing nature, while others underscore their coordination role.⁹⁵

The name used quite extensively until now has been National Mechanisms for Reporting and Follow-Up (NMRFs). However, the Human Rights Council adopted a resolution on these national mechanisms on September 27, 2019, resolution HRC 42/30 entitled “Promoting international cooperation to support national mechanisms for implementation, reporting and follow-up,” thus referring to these processes as NMIRFs.⁹⁶ Additionally, in 2020, the *Pacific Principles of Practice—A Guide to Help States Establish Effective NMIRFs* were adopted,⁹⁷ with the term NMIRF also being used here. This was done to place emphasis not only on reporting and follow-up, but also on implementation.⁹⁸ The same is true for the Member States that make up now what is known as the Group of Friends of National Mechanisms on Implementation, Reporting and Follow-Up; previously, the name did not include the word “implementation.”⁹⁹ Therefore, the implementation role of these mechanisms is receiving more and more attention and they are seen internationally as no longer simply being bodies that report and do

94. Nicola Jägers, *National Human Rights Institutions: The Missing Link in Business and Human Rights Governance?*, 14 ICL J. 289, 311 (2020).

95. See generally Sarkin, *Cases of Georgia and Portugal*, *supra* note 14.

96. Human Rights Council Res. 42/30, U.N. Doc. A/HRC/42/30 (Sept. 27, 2019).

97. PACIFIC COMMUNITY, REGIONAL RIGHTS RESOURCES TEAM, *PACIFIC PRINCIPLES OF PRACTICE*, (2020), https://rrrt.spc.int/sites/default/files/resources/202007/Pacific%20Principles%20of%20Practice_0.pdf. They were adopted by Fiji, Federated States of Micronesia, Kiribati, Republic of Marshall Islands, Palau, Papua New Guinea, Samoa and Vanuatu. *Id.*

98. Ellis Paterson, *The Emergence and Coming of Age of National Mechanisms for Implementation, Reporting and Follow-up*, BINGHAM CTR. FOR THE RULE OF L. (Mar. 27, 2019), <https://binghamcentre.biicl.org/comments/27/the-emergence-and-coming-of-age-of-national-mechanisms-for-implementation-reporting-and-follow-up?cookieset=1&ts=1618534977> [<https://perma.cc/2A2K-7SP7>].

99. Statement of Portugal on Behalf of the Group of Friends of National Mechanisms on Implementation, Reporting and Follow-up, 42nd Reg. Sess. Human Rights Council, Gen. Debate Item 5 (Sept. 19, 2019).

follow-up, but as having wider roles. Thus, it does seem to be preferable to call them NMIRFs.

Regardless of what they are now being called and whether they have wider functions beyond reporting and following up, the focus internationally on creating such bodies is now only coming to the fore. Before the process was ad hoc, with the UN providing some technical assistance.¹⁰⁰ Thus, concerning the launch event of the Pacific Principles, held in July 2020, it was noted that:

the event was extraordinary—or rather, it marked an extraordinary, even historic, moment for the universal human rights system: the launch of the world’s first intergovernmental principles designed to guide States in the effective implementation of their international human rights obligations. In many ways it is shocking that it has taken the international community over 70 years to take this step.¹⁰¹

Thus, these types of mechanisms have, until now, been insufficiently focused on by states, by the international community, and within academia.¹⁰² They are very under-discussed and under-researched. There is, for example, no mention of them in a book on state reporting published in 2014.¹⁰³ There are some civil society articles on them in the literature of that sector,¹⁰⁴ but very little academic study of them.¹⁰⁵ Even within the UN, these bodies have only recently become a focus of attention.¹⁰⁶ The 2012 report of the High Commissioner, entitled *Strengthening the United*

100. U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS (OHCHR), HUMAN RIGHTS INDICATORS: A GUIDE TO MEASUREMENT AND IMPLEMENTATION, U.N. Doc. HR/PUB/12/5 (2012).

101. Marc Limon, *Introducing ‘The Pacific Principles of Practice’ for Effective National Implementation*, UNIVERSAL RTS. GRP. (July 7, 2020), available at <http://www.universal-rights.org/blog/introducing-the-pacific-principles-of-practice-for-effective-national-implementation/>.

102. On the possible effects of treaty processes, see BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 114-15 (2009).

103. JASPER KROMMENDIJK, THE DOMESTIC IMPACT AND EFFECTIVENESS OF THE PROCESS OF STATE REPORTING UNDER UN HUMAN RIGHTS TREATIES IN THE NETHERLANDS, NEW ZEALAND AND FINLAND: PAPER-PUSHING OR POLICY PROMPTING? (Intersentia, 2014).

104. See Paterson, *supra* note 98. <https://binghamcentre.biiicl.org/comments/27/the-emergence-and-coming-of-age-of-national-mechanisms-for-implementation-reporting-and-follow-up> (last visited Sept. 1, 2019).

105. For some mention of them, see Jan Lhotský, Human Rights Treaty Body Review 2020: Towards an Integrated Treaty Body System 27-30 (European Inter-University Center for Human Rights and Democratisation, 2017)(Ph.D. dissertation, University of Graz); Vincent Ploton, *Le rôle et le potentiel des mécanismes nationaux d’élaboration des rapports et de suivi dans la protection des défenseur-es des droits humains: étude comparative du cas de la Tunisie*, 68 REVISTA DE LA FACULTAD DE DERECHO DE MÉXICO 595, 597-604 (2018).

106. Alain Zysset, *Charles Beitz’ Idea of Human Rights and the Limits of Law*, CRITICAL REV. INT’L SOC. & POL. PHIL. 14 (Dec. 13, 2020), <https://doi.org/10.1080/13698230.2020.1859224> (stating that the UN is now actively encouraging them around the world).

Nations Human Rights Treaty Body System: A Report by the United Nations High Commissioner for Human Rights, was one of the first to make a call for such mechanisms.¹⁰⁷

The importance of NMRFs/NMIRFs, and the crucial roles they can play, has been recognized for some time now.¹⁰⁸ While previously the UN concentrated on issues such as human rights markers and benchmarks¹⁰⁹ to advance state reporting processes, now it recognizes that more attention must be given to the local reporting process directly.¹¹⁰ Thus, more recently the UN has been focusing much more on the national dimension of the external oversight processes.¹¹¹ They have been devoting much attention to states to get them to set up specific reporting mechanisms and to reform their reporting practices.¹¹² This has been occurring alongside the longer-term project of reforming UN treaty body processes.¹¹³ There does therefore seem to be an implicit understanding that the two processes—at the UN and in the specific state—are critical to each other.¹¹⁴ Consequently, there is a greater realization that treaty bodies can be more effective if the local state reporting process functions well.¹¹⁵ Thus, the better the local process works in the initial reporting to the oversight process, the better information and more helpful the information provided is to the treaty body even before the external process begins its work. The better the quality of the information received, the more analytical it is of key problems and the less it simply tries to paint a picture that all is well and that the state is focused on all its challenges, the more helpful the report will be to the treaty body.

These national mechanisms are increasing in stature and importance. This is seen, for example, in a 2019 statement by the Group of Friends of

107. NAVANETHEM PILLAY, *supra* note 89.

108. U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS (OHCHR), *supra* note 91.

109. U.N. Office of the High Comm'r for Human Rights (OHCHR), *supra* note 100; see further Gauthier De Beco, *Human Rights Indicators for Assessing State Compliance with International Human Rights*, 77 NORDIC J. INT'L. L. 23, 46-48 (2008).

110. U.N. Office of the High Comm'r for Human Rights (OHCHR), *International Cooperation & National Human Rights Follow-Up Systems and Processes* (2017), available at <https://www.ohchr.org/Documents/HRBodies/HRCouncil/Panel/LeafletAccessibleFormat.pdf>.

111. NAVANETHEM PILLAY, *supra* note 89.

112. Report on Indicators For Promoting and Monitoring the Implementation of Human Rights, U.N. Doc HRI/MC/2008/3 (June 6, 2008), available at https://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3_en.pdf.

113. Lingliang Zeng, *Implementation Mechanism of the UN Core Human Rights Treaties: Current Situation, Issues and Enhancement*, in CONTEMPORARY INTERNATIONAL LAW AND CHINA'S PEACEFUL DEVELOPMENT 213 (2021).

114. Egan, *supra* note 9, at 762-63.

115. Sarkin, *Prioritising Resources*, *supra* note 12, at 19.

National Mechanisms on Implementation, Reporting and Follow-Up.¹¹⁶ The twenty-eight Member States that comprise that body noted that they welcomed the

growing recognition of the importance of NMIRF's [sic] as a crucial human rights instrument, including as a catalyser of the prevention of human rights violations. Indeed, NMIRFs are increasingly called upon to support human rights implementation efforts and, more generally, at integrating human rights recommendations into the Sustainable Development Goals. Additionally, we are very pleased to note that just under half of the candidates to the HRC that have published pledges and commitments, have a commitment to establish or strengthen NMIRFs and strengthen national coordination for implementation.¹¹⁷

IV. THE GOALS OF STATE REPORTING

A critical component of the international human rights system is that states accede to human rights treaties that they then have to comply with.¹¹⁸ To determine that states are compliant, they need to report to international, regional, and sometimes sub-regional mechanisms, in the UN and elsewhere, at regular intervals for there to be oversight of their compliance and for recommendations to be made to ensure that they better comply with their obligations under that specific treaty.¹¹⁹ States have a number of oversight processes¹²⁰ that they need to undergo. These exist, depending on which treaties or institutions the state is a member of, at international, regional,¹²¹ and sometimes sub-regional levels. The relevant oversight bodies expect a variety of information—on economic, social, security, diplomatic, and many other issues—to be provided to them on an ongoing basis.

Most states have seen an increase in the number of processes they have to report over time.¹²² This is because they have joined more

116. *Statement of Portugal*, *supra* note 99.

117. *Id.*

118. Adam S. Chilton & Eric Posner, *The Influence of History on States' Compliance with Human Rights Obligations*, 56 VA. J. OF INT'L L. 212, 217-27 (2017).

119. Paul Hunt, *Configuring the UN Human Rights System in the "Era of Implementation": Mainland and Archipelago*, 39 HUM. RTS. Q. 489, 495-97 (2017).

120. Jana Von Stein, *Exploring the Universe of UN Human Rights Agreements*, 62 J. CONFLICT RESOL. 871, 890 (2018).

121. Some regional processes have treaties that permit adoption by other states. See e.g., Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Aug. 1, 2014, C.E.T.S. 210.

122. Jana Von Stein, *Exploring the Universe of UN Human Rights Agreements*, 62 J. CONFLICT RESOL. 871, 883 (2018).

institutions and have signed onto more treaties.¹²³ As a result, more extensive information¹²⁴ has to be collected and handed over to the oversight bodies by states, which has made the process more complicated for them over time.

While reporting has become more demanding because of the number of reports that are due, the oversight processes have, by contrast, generally become more streamlined over time. There have, however, been an increased number of recommendations in some processes,¹²⁵ such as UPR,¹²⁶ but states can make choices about what they accept¹²⁷ at UPR and what they reject.¹²⁸ Despite this, and because compliance levels are not what they ought to be,¹²⁹ more is expected from states for them to meet their compliance obligations.¹³⁰

However, these processes are not new; all states have been through them many times and thus have extensive experience with them. That should mean that more rigorous and sophisticated reports may be expected of them. However, this does not always occur, as capacity issues remain for some states.¹³¹

For that reason, the domestic reporting process needs to be better capacitated to assist states with these tasks.¹³² At the same time, it needs to

123. Meier, *supra* note 19.

124. See Benjamin Mason Meier et al., *Accountability for the Human Right to Health Through Treaty Monitoring: Human Rights Treaty Bodies and the Influence of Concluding Observations*, 13 GLOBAL PUB. HEALTH 1558, 1558-76 (2017) [hereinafter *Influence of Concluding Observations*].

125. On the outcomes of these processes, see Zhang Xuelian, *On the "Concluding Observations" of the United Nations Human Rights Treaty Bodies*, 18 J. HUM. RTS. 351, 353-54 (2019).

126. Frederick Cowell, *Understanding the Legal Status of Universal Periodic Review Recommendations*, 7 CAMBRIDGE INT'L L.J. 164, 164-84 (2018); Eric Cox, *State Human Rights Performance and Recommendations under the Universal Periodic Review*, 9 ALL AZIMUTH 5, 6-9 (2020).

127. Machiko Kanetake, *U.N. Human Rights Treaty Monitoring Bodies Before Domestic Courts*, 67 INT'L & COMP. L. Q. 201, 207 (2018).

128. Valentina Carraro, *The United Nations Treaty Bodies and Universal Periodic Review: Advancing Human Rights by Preventing Politicization?*, 39 HUM. RTS. Q. 943, 944 (2017).

129. Vera Shikelman, *Geography, Politics and Culture in the United Nations Human Rights Committee*, 28 EUR. J. INT'L L. 845, 847-48 (2017); Andreas J. Ullmann & Andreas von Staden, *Challenges and Pitfalls in Research on Compliance With the 'Views' of UN Human Rights Treaty Bodies: A Reply to Vera Shikelman*, 31 EUR. J. INT'L L. 693, 695-96 (2020).

130. For the effect on health issues See Meier et al., *Influence of Concluding Observations*, *supra* note 124, at 1558-59.

131. Wade M. Cole, *Mind the Gap: State Capacity and the Implementation of Human Rights Treaties*, 69 INT'L ORG. 405, 414-15 (2015).

132. On the importance of domestic processes in general, see generally Welch, *supra* note 44.

be better recognized that, if the domestic state reporting process is not able to deliver effective reporting to the oversight bodies and then not able to take up the recommendations and implement them, the treaty bodies cannot be effective in their work.¹³³ Thus, the domestic aspect of state reporting is fundamental to the desired goals of the treaty system, as well as of other oversight processes, being reached.

There are, however, many problems in the quest to ensure adequate state compliance with the outcomes and conclusions of such oversight processes,¹³⁴ and much effort has been devoted to improve compliance.¹³⁵ However, there have been many ways that states have embarked on the process to deal with recommendations.¹³⁶ Improving state reports¹³⁷ and the dialogue between states and treaty bodies has been one area of attention.¹³⁸ Nonetheless, too little energy has been directed at improving how information flows to and from the external oversight body and the state undergoing the review.¹³⁹ If the information flow were improved, a better process and better outcome would result. Thus, it is critical to also review the internal reporting, follow-up, and implementation processes in states to make sure that, firstly, the reporting process works optimally, and that, secondly, recommendations are received and taken up in the best possible ways.¹⁴⁰ It is also necessary to see how implementation occurred, and then how the results of that process get sent back to the institution that made the recommendations for its review of whether or not the state complied with the recommendations.¹⁴¹

133. On the critical need for a domestic implementation system, *see generally* Murray & De Vos, *supra* note 48.

134. U.N. ECOSOC, 11th Sess., 945th plen. mtg. at 12, UN Doc E/RES/624B (XXII) (Aug. 1, 1956).

135. Egan, *supra* note 8, at 209-43.

136. Michael O'Flaherty & Pei-Lun Tsai, *Periodic Reporting: The Backbone of the UN Treaty Body, Review Procedures*, in NEW CHALLENGES FOR THE U.N. HUMAN RIGHTS MACHINERY: WHAT FUTURE FOR THE UN TREATY BODY SYSTEM AND THE HUMAN RIGHTS COUNCIL PROCEDURES 49-53 (M. Cherif Bassiouni & William A. Schabas eds., 2011).

137. U.N. Secretary-General, *Harmonized Guidelines on Reporting under the International Human Rights Treaties, Including Guidelines on a Common Core Document and Treaty-Specific Documents*, U.N. Doc. HRI/MC/2006/3 (May 10, 2006) [hereinafter *Harmonized Guidelines*]; U.N. Secretary-General, *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, U.N. Doc. HRI/GEN/2/Rev.4 (June 3, 2009) [hereinafter *Compilation of Guidelines*].

138. Beata Faracik, 'Constructive Dialogue' As a Cornerstone of the Human Rights Treaty Bodies Supervision, 38 BRACKTON L.J. 39, 39-40, 53 (2006).

139. On the challenges of getting information *see* SUBEDI, *supra* note 6, at 89.

140. Sarkin, *Prioritising Resources*, *supra* note 12, at 11-12.

141. *See* James R. Hollyer et al., *Democracy and Transparency*, 73 J. POL. 1191, 1202 (2011); *see e.g.*, Ayelet Levin, *The Reporting Cycle to the United Nations Human Rights Treaty*

V. THE ROLE OF A NMRF/NMIRF IN THE STATE REPORTING PROCESS

Governmental processes to ensure state human compliance with its external obligations have become more common in recent times.¹⁴² It is recognized that a more organized process across state departments or ministries is needed to ensure an inclusive and acceptable approach to human rights issues across the administration.¹⁴³ This would have a multitude of benefits, including that all processes to design or reform the laws and policies in a state should incorporate a strong human rights dimension.¹⁴⁴ Therefore, states “should see the process of preparing their reports for the treaty bodies not only as an aspect of the fulfilment of their international obligations, but also as an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation.”¹⁴⁵

As a result of this coordinated and institutionalized approach to human rights reporting, all issues that are being worked on, within all ministries, get a human rights contribution to the issue being considered.¹⁴⁶ This structured approach is then centrally assessed, and a synchronized approach is taken on what is to be done, how it is to be done, who does what, and when it is to be performed.¹⁴⁷ The result of this more managed approach should result in a process that sees all state bodies get input and provide responses on such matters. Thus, a coordinating mechanism ensures a structured and coherent approach to these processes.

A national mechanism for reporting and follow-up practically organizes and simplifies how state reports are prepared and ensures that what they contain has the approval of all players, thereby promoting consultation.¹⁴⁸ This is crucial as a lack of consultation in the preparation of state reports is often a criticism directed at states during review

Bodies: Creating a Dialogue between the State and Civil Society—The Israeli Case Study, 48 GEO. WASH. INT'L L. REV. 315, 355-58 (2016).

142. U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS (OHCHR), *supra* note 91.

143. Marc Limon & Mariana Montoya, *supra* note 90.

144. See Sarkin, *Cases of Georgia and Portugal*, *supra* note 14, at 168-69.

145. Harmonized Guidelines, *supra* note 137; Compilation of Guidelines, *supra* note 137.

146. Sarkin, *Cases of Georgia and Portugal*, *supra* note 14, at 168-69.

147. On methods, see VINCENT PLOTON, THE DEVELOPMENT OF GRADING SYSTEMS ON THE IMPLEMENTATION OF UN TREATY BODY RECOMMENDATIONS AND THE POTENTIAL FOR REPLICATION TO OTHER UN HUMAN RIGHTS BODIES, 9-11 (Geneva Acad. of Int'l Humanitarian L. and Hum. Rights Acad. Platform Project, 2017).

148. See Meier, *supra* note 19.

processes, such as UPR or others.¹⁴⁹ A national coordinating mechanism can help to allay this if membership of the body is wide, or meaningful input is obtained from a variety of role-players in the country.

However, the roles of these mechanisms are not merely about producing state reports for supervisory bodies. Their role is also about ensuring that the recommendations and outcomes of the oversight processes are taken up, discussed, and implemented.¹⁵⁰ For all these reasons, domestic standing state reporting processes have become more and more common. This is crucial as a coordinated government response can only be helpful to ensure that human rights issues are adequately part of the development of state policy and the legal framework. All government structures are involved and can make contributions to achieve positive reforms and achieve an improvement of the human rights situation.¹⁵¹

Thus, a national mechanism should practically systematize and organize the reporting process to outside human rights bodies.¹⁵² It should be responsible for such reports, consult on the content of such reports, and do the necessary research to obtain the best type of information to inform the report.¹⁵³ All these aspects are crucial to deliver the best outcome for both the state and the oversight body.¹⁵⁴ The better the approach adopted and the quality of the report, the better the oversight body can engage with the state and the report it delivered. An issue of key significance that is insufficiently researched is the need for and requirements of a consultation process within state reporting.¹⁵⁵ How can a state reporting on human rights not itself be democratic and participatory? That would violate the very norms that the reporting process is trying to achieve. However, in the past, a lack of consultation was often a criticism of state reports.¹⁵⁶ Thus,

149. See, for example, the criticism directed at South Africa's consultation process: Damian Etone, "The Effectiveness of South Africa's Engagement with the Universal Periodic Review (UPR): Potential For Ritualism?" 33 S. AFR. J. ON HUM. RTS. 258, 260-61, 264 (2017).

150. On the enhancement of these bodies to ensure their greater performance in this regard, see Abashidze & Koneva, *supra* note 10, at 357.

151. Zipoli, *supra* note 51.

152. Sarkin, *Prioritising Resources*, *supra* note 12, at 17.

153. *Id.*

154. On why these aspects are crucial, see Walter Kälin, *Examination of State Reports*, 16, 37-39, in UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY (Helen Keller & Geir Ulfstein eds., 2012).

155. On the inadequacies often of such consultations, see Jared Genser, *The Future of the UN Human Rights System*, 7 HORIZONS: J. INT'L REL. & SUSTAINABLE DEV. 176, 185 (2016).

156. On the needs of an adequate consultation process, see Hans Morten Haugen, *The Right to Veto or Emphasising Adequate Decision-Making Processes? Clarifying the Scope of the Free, Prior and Informed Consent (FPIC) Requirement*, 34 NETH. Q. HUM. RTS. 250, 256-57 (2016).

an institutionalized process, with high levels of public and civil society engagement, should be one of the positive results. Such engagements will also ensure a greater focus domestically on the reporting processes as a whole with greater scrutiny and accountability for the state about what it says at the reporting activity and how it responds to what emerges from the process.

The role of NMRIFs should not merely be about taking recommendations that emerge from state reports, making sure they are implemented, and then providing information back to the mechanisms that made the recommendations. Their role has to be about dealing with state reports and their delivery to oversight mechanisms from the beginning of the process. Thus, they need to have a role on a specific report much more than a year before the report is due. They should engage with the issues, they ought to consult, they must get expert input, they need to discuss the issues with a range of other actors, and conduct research. They also ought to be responsible for the drafting of the report and then consulting and getting feedback on a draft of the report before it is finalized. This can be a very difficult role to play, as they are a government institution responsible for a report which may cast the government in a negative light at least in part, and the criticism that is received may be something that government wants to avoid, sometimes at all costs.¹⁵⁷

VI. THE FUNCTIONING OF A NMRF/NMIRF IN THE STATE REPORTING PROCESS

NMIRFs are not independent NHRIs,¹⁵⁸ as foreseen in the Paris Principles.¹⁵⁹ Depending on the model that the state adopts for reporting and follow-up, a national mechanism can be (but is not always) an internal governmental structure that is created and operationalized.¹⁶⁰ There is still a need for this to be transparent.¹⁶¹ Whatever steps a government takes regarding state reporting and follow-up should be scrutinized.¹⁶² There can

157. On some of the lengths states go to be seen in a positive light, despite at times atrocious human rights records, see Sarkin, *Cases of Georgia and Portugal*, *supra* note 14, at 84; Jeremy Sarkin, *Why the Role of the African Commission on Human and Peoples' Rights in Advancing Democratic Principles and Human Rights in African Countries Needs to be Reformed: An Examination Using the Lens of Swaziland/eSwatini* 32 S. Afr. Pub. L. no. 2, 2019, at 18-20.

158. Meg Brodie, *Uncomfortable Truths: Protecting the Independence of National Human Rights Institutions to Inquire*, 38 U. NSW L.J. 1215, 1217 (2015).

159. G.A. Res. 48/134, *supra* note 61.

160. Sarkin, *Cases of Georgia and Portugal*, *supra* note 14, at 168-89.

161. On transparency by states, see CREAMER & SIMMONS, *supra* note 82.

162. On the need for transparency at all levels and the lack thereof in some processes, see Julie Billaud, *Keepers of the Truth: Producing "Transparent" Documents for the Universal*

be various ways for this to occur, but one could be through parliamentary oversight.

However, while NMIRFs are not independent of government, they ought to be at least somewhat transparent. Their work ought to be done openly, on a widely consultative basis, and be at least somewhat inclusive.¹⁶³ This is because, while they are based in government and are part of the executive, since their work is about governance and human rights, their processes ought to be participatory and not only the preserve of government.¹⁶⁴

As far as their structure and roles are concerned, these institutions are not monolithic in different states. They come in different forms. Some are completely in the executive, and others have people and even institutions from outside government, on them.¹⁶⁵ How they are created and what they do is reflective of the democratic culture in that particular state.¹⁶⁶ Thus, a key issue is about when and how the state creates them.¹⁶⁷ At times, there is a genuine desire to improve state reporting, while on occasion states create them because it is thought that they will reflect positively on the country.¹⁶⁸ A real concern for states in the state reporting process is that they come off looking relatively positive in relation to their human rights situation.¹⁶⁹ Hence, an overarching concern is that these domestic institutions are still under the control of the state so as to ensure that the reporting process is done in a way that does not make the country look bad.¹⁷⁰ This is because states take a calculated risk when ratifying treaties

Periodic Review, in HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 63, 71-73, 77 (Hilary Charlesworth & Emma Larkings eds., 2015).

163. See CREAMER & SIMMONS, *supra* note 82.

164. On issues concerning participation see Cosette D. Creamer & Beth A. Simmons, *Ratification, Reporting, and Rights: Quality of Participation in the Convention Against Torture*, 37 HUM. RTS. Q. 579, 589 (2015).

165. Sarkin, *Cases of Georgia and Portugal*, *supra* note 14, at 169-89.

166. On institutional design, see further Florian Kiesow Cortez & Jerf Gutmann, *Domestic Institutions and the Ratification of International Agreements in a Panel of Democracies*, 28 CONST. POL. ECON. 142, 150 (2017).

167. See further Corina Lacatus, *Explaining Institutional Strength: The Case of National Human Rights Institutions in Europe and its Neighbourhood*, 26 J. EUR. PUB. POL. 1657, 1658 (2019).

168. On states willingness to be compliant see Carraro, *supra* note 41.

169. On some steps states are taking to achieve positive outcomes see Damian Etone, *African States: Themes Emerging From the Human Rights Council's Universal Periodic Review*, 62(2) J. AFR. L., 201, 223 (2018).

170. On issues of standing and prestige of states, see Jennifer L. Erickson, *Saving Face, Looking Good, and Building International Reputation in East and West*, in POWER IN A COMPLEX GLOBAL SYSTEM (Bruce Jentleson & Louis Pauly eds., 2014).

that they will not have a negative reputational effect for them.¹⁷¹ As Hathaway has stated: “Simply put, states join treaties . . . in no small part to make themselves look good.”¹⁷² Another theory of treaty ratification is that states do so for domestic political consumption.¹⁷³ Therefore, many states do not want such processes to have a negative light shone on them, especially domestically. This is important when viewed through the lens that “the rituals of human rights reporting and review have deep political implications and are riven with complex power relations.”¹⁷⁴

Despite these fears, or because of them, some national mechanisms have civil society representation on them.¹⁷⁵ Some even have international organizations on them.¹⁷⁶ Further, some national mechanisms also have, in addition to their reporting and follow-up function, more general functions, such as broad consultative and advisory roles concerning human rights.¹⁷⁷ It depends on how the state sets them up and what roles they have. Certainly, having a role to advise the state directly allows the process to benefit from more ideas and greater legitimacy.¹⁷⁸ However, civil society is usually excluded from these processes.¹⁷⁹ If civil society has a role or is regularly consulted, then the state is seen to have greater political will to deal with its human rights challenges.¹⁸⁰ Nevertheless, part of the motivation for having other actors on these types of institutions is that they ought not to be only the preserve of government.¹⁸¹ Further, some of them do not only focus on reporting and follow-up, but also have other human rights roles.¹⁸² Some play an umbrella role concerning human rights issues

171. HEATHER SMITH-CANNOY, *INSINCERE COMMITMENTS: HUMAN RIGHTS TREATIES, ABUSIVE STATES, AND CITIZEN ACTIVISM* 46-48 (2012).

172. Oona Hathaway, *The Promise and Limits of the International Law of Torture* 117, 122 in *TORTURE: A COLLECTION* (Sanford Levinson & Alan M. Dershowitz eds., 2004).

173. Andrew Moravcsik, *The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe*, 52 *INT'L ORG.* 217, 219-20 (2000).

174. Jolyon Ford & Claire Methven O'Brien, *Empty Rituals or Workable Models? Towards a Business and Human Rights Treaty*, 40 *UNIV. NEW SOUTH WALES L.J.* 1223, 1242 (2017).

175. See generally Sarkin, *Cases of Georgia and Portugal*, *supra* note 14.

176. *Id.*

177. See U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS (OHCHR), *supra* note 91.

178. On issues of institutional legitimacy, see Dane Imerman, *Contested Legitimacy and Institutional Change: Unpacking the Dynamics of Institutional Legitimacy*, 20 *INT'L STUD. REV.* 74, 77-78, 81 (2018); see also John D. Ciorciari & Stephen D. Krasner, *Contracting Out, Legitimacy, and State Building*, 12 *J. INTERVENTION & STATEBUILDING* 484, 485-87 (2018).

179. On some of the issues, see Levin, *supra* note 141.

180. See states and political will, see SIMMONS, *supra* note 102, at 38-39.

181. See generally Sarkin, *Cases of Georgia and Portugal*, *supra* note 14.

182. See U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS (OHCHR), *supra* note 91.

for the states.¹⁸³ In other words, their role is not only about state reporting. Thus, within government, they can at times have an array of tasks.

However, national mechanisms are usually simply there to coordinate, report, and follow up on external state oversight processes.¹⁸⁴ When they play that role, they are mechanisms that are information conduits.¹⁸⁵ These institutions deliver and obtain information both from and to a variety of external oversight institutions that their state has reporting obligations to.¹⁸⁶ These responsibilities usually derive from a treaty ratification¹⁸⁷ or are a consequence of the membership of an organization, such as UPR,¹⁸⁸ which all state participants of the UN must endure simply because they have accepted to be members of the UN.

Thus, an appropriate institution with sufficiently skilled and experienced people to research and write state reports, and then to ensure that what emerges from the reporting process is implemented as far as possible, are hallmarks of institutions that show a state's real commitment to outcomes and the protection of human rights in their societies.¹⁸⁹ Without such an institution, the reality of state reporting is rather a limited desire to achieve the best results and that the effort made is simply about complying with the needs of the process rather than what can be gained from it.¹⁹⁰ Thus, an enduring well-funded institution reflects a state's concrete commitment to human rights improvement in their country. As has been noted: "*The reporting process constitutes an essential element in the continuing commitment of a State to respect, protect and fulfil the rights set out in the treaties to which it is party.*"¹⁹¹

183. For example, Costa Rica has created an inter-institutional commission on human rights which examines all human rights matters. See Inter-American Court of Human Rights, <https://www.corteidh.or.cr/index.cfm?lang=en> (last visited Apr. 18, 2021).

184. See U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS (OHCHR), *supra* note 91.

185. On the information needs and flows in the system see ANNE BAYEFESKY, *THE UN HUMAN RIGHTS TREATY SYSTEM: UNIVERSALITY AT THE CROSSROADS* 83-84 (2001).

186. See Jeremy Sarkin, *The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect*, 53 J. AFR. L. 1, 21-24 (2009).

187. Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373, 1381 (2005).

188. See Jane K. Cowan, *The Universal Periodic Review as a Public Audit Ritual*, 42, 50, in *HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM* (Hilary Charlesworth & Emma Larkings eds., 2015).

189. On the issues about why skilled and experienced people are needed in the human rights state reporting system, however with a focus on members of treaty bodies, but with no less applicability in the domestic context, see Carraro, *supra* note 7.

190. On the need for such processes see U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS (OHCHR), *supra* note 91.

191. Compilation of Guidelines, *supra* note 137.

A permanent mechanism with coherently demarcated roles and responsibilities to allow it to effectively communicate and collaborate with other state bodies is essential.¹⁹² This will also be crucial for it to respond to whatever emerges from the reporting process and discuss what and how to embark on implementation of recommendations.¹⁹³ The fact that the NMIRF institution is part of the state apparatus means that it should be able to work more seamlessly than would be the case if it were an external body.¹⁹⁴ Thus, while it might have external actors on it, depending on how it is composed, it is still an intra-governmental structure, and thus owned and managed by government.¹⁹⁵ If it is composed of people from the highest levels of government, the better coordination and implementation role it can play.¹⁹⁶ This gives the institution more authority and status to carry out its mandate and accomplish the best results.¹⁹⁷ The fact that such a body operates continuously as well allows it to appoint and maintain a dedicated and experienced staff who will likely develop greater expertise and understand both the internal and external processes far better.¹⁹⁸ This will allow the staff to interact more often and more easily with role players domestically but also externally.¹⁹⁹ This will allow the process to develop more smoothly and assistance to be received more often.²⁰⁰ As has been noted: “*quality reporting requires an institutional capacity that can provide factual knowledge of, expertise in, and familiarity with the treaty*

192. On the need for permanent national human rights institutions in general, see U.N. DEVELOPMENT PROGRAMME (UNDP) & U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS (OHCHR), UNDP-OHCHR TOOLKIT FOR COLLABORATION WITH NATIONAL HUMAN RIGHTS INSTITUTIONS 172.

193. Many states are adopting permanent NMRFs for these reasons. See U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS (OHCHR), *supra* note 91.

194. On the benefits of collaborative working, see Clare Rigg & Noreen O’Mahony, *Frustrations in Collaborative Working: Insights From Institutional Theory*, 15 PUB. MGMT. REV. 83, 102-03 (2013).

195. U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS (OHCHR), *supra* note 91.

196. On the need for good coordination in government, see Adrian Webb, *Coordination: A Problem in Public Sector Management*, 19 POL’Y & POL., 229, 229-42 (1991).

197. On these processes and what makes them work better in general, see CHRISTOPHER HOOD & MARTIN LODGE, *THE POLITICS OF PUBLIC SERVICE BARGAINS: REWARD, COMPETENCY, LOYALTY-AND BLAME* 13 (2006).

198. On issues of institutional longevity and its impacts, see Maureen M. Donaghy, *Participation Meets Politics: Political Shifts and the Longevity of Participatory Governance Institutions*, 53 PS: POL. SCI. & POL. 6, 6-7 (2020).

199. See generally XUN WU ET AL., *BLENDING SKILL AND RESOURCES ACROSS MULTIPLE LEVELS OF ACTIVITY: COMPETENCES, CAPABILITIES AND THE POLICY CAPACITIES OF GOVERNMENT*, 165 (2015), <https://www.ippapublicpolicy.org/file/paper/1432788077.pdf>.

200. On ways to improve such processes generally, see generally B. GUY PETERS ET AL., *DESIGNING FOR POLICY EFFECTIVENESS: DEFINING AND UNDERSTANDING A CONCEPT* (2018).

regime and the reporting process."²⁰¹ Thus, such a mechanism reflects a state's desire to take human rights matters and their implementation seriously.

VII. CONCLUSION

National state reporting mechanisms have become imperatives around the world to direct a state's reporting and deal with recommendations that emanate from any human rights reporting processes that the state goes through. An ongoing structured approach through a permanent institution should put an end to uncoordinated processes that do not deliver competent state reports and do not ensure that recommendations from such processes are properly considered. Such a practice develops the necessary plans and required skills, with institutionalized memory, so as to effectively deliver a better approach to deal with a state's reporting and implementation obligations.

The rapid creation of such bodies around the world is an important development, as issues concerning state reporting at both the international and domestic levels are being focused on at present, because of the 2020 UN review of the treaty bodies to determine whether they needed to be reformed. At the same time, there has been an ever-increasing focus over the last few years on national state reporting mechanisms. These two developments really have yet to intersect, but they need to. For this reason alone, academic research and attention to these issues is crucial. There is a need to determine lessons to be learnt and best practices implemented.

There is also a need to focus on state reporting from the standpoint that there are so many human rights problems in the world that need more attention and more oversight of state practice. Without a doubt, states need to do more to ensure their compliance with the obligations they have assumed in different ways. In this regard, processes to ensure state oversight must be focused on in many more ways, as well as receiving more resources, expertise, and capacity.

As this Article shows, there are tensions and ambiguities in how such institutions are established and what their roles are. At present, there are many models and options for states to pursue depending on what type of state reporting it wants to establish. Therefore, there is no clarity on what state reporting at the national level ought to be composed of, and whether national mechanisms set up to carry out reporting and follow-up also ought to implement the recommendations given to the state by the

201. See Creamer & Simmons, *supra* note 164, at 589.

oversight body. A key question is also whether national mechanisms actually do the work concerning state reporting, whether they oversee the work, or whether their role is purely to monitor the process. Obviously, what is being sought to make the process far better is a mechanism which is hands on and has a larger role in the process than simply having some form of oversight. The extent to which such mechanisms have wide mandates and wide functions is of course dependent on how democratic the state is, how the process is set up, who serves on the mechanism, and whether the government believes it is in their interest to make the process more democratic.

These are crucial issues, as having a dedicated process to deal with the intricacies of state reporting supposedly reflects a state's commitment to the process and shows that it deems it important and useful in terms of meeting its human rights obligations. The creation and roles of these mechanisms should reflect a desire not to treat the process simply as obligatory, but rather to view it as useful in a state's quest to advance its human rights condition and to do what it can to make the necessary adjustments to its laws and practice. However, an institution might be there simply for rhetorical purposes if not given a sufficient mandate, powers, and capacity to do its work.