



The Domestic Institutionalisation of Human Rights: An Introduction

Steven LB Jensen, Stéphanie Lagoutte & Sébastien Lorion

To cite this article: Steven LB Jensen, Stéphanie Lagoutte & Sébastien Lorion (2019) The Domestic Institutionalisation of Human Rights: An Introduction, Nordic Journal of Human Rights, 37:3, 165-176, DOI: [10.1080/18918131.2019.1682235](https://doi.org/10.1080/18918131.2019.1682235)

To link to this article: <https://doi.org/10.1080/18918131.2019.1682235>



Published online: 18 Dec 2019.



Submit your article to this journal [↗](#)



Article views: 2796



View related articles [↗](#)



View Crossmark data [↗](#)



Citing articles: 1 View citing articles [↗](#)

EDITORIAL



The Domestic Institutionalisation of Human Rights: An Introduction

Steven LB Jensen^a, Stéphanie Lagoutte^a and Sébastien Lorion^b

^aThe Danish Institute for Human Rights; ^bThe Danish Institute for Human Rights; Centre for International Law, Conflict and Crisis, Faculty of Law, University of Copenhagen

ABSTRACT

This article aims to explore recent developments in the ‘domestic institutionalisation’ of human rights. We argue that the trend towards ‘domestic institutionalisation’ has inspired renewed attention to the importance of national-level institutions within the international human rights regime, including revisiting the roles of state actors. These developments represent a response to bridging the implementation gap between human rights commitments and reality. The article captures a number of the constitutive elements and key points of debate that merit the focus on ‘domestic institutionalisation’ of human rights. As a substantive introduction to a Special Issue, the article also purports to further develop a research agenda focused on building strong and sustainable state institutions that protect and promote human rights and contribute to social change. More practically, this research agenda can also inform the strategic priorities of international organisations and international donors working with human rights implementation and capacity development of state actors in context.

KEYWORDS

human rights; national human rights systems; domestic institutionalisation; state actors; governance; national human rights institutions

This Special Issue takes as its starting point one central claim, namely that the international community is witnessing converging trends towards a domestic institutionalisation of human rights. These trends are emerging at a complex time when contestations over the legitimacy of human rights and its international regime for promotion and protection have become increasingly widespread. Well aware that the primacy of domestic human rights implementation has always been at the core of human rights protection and promotion, we argue that new dynamics of ‘domestic institutionalisation’ of human rights have been under way and represent a response to bridging the implementation gap between commitments and reality. This new form of response has implications on a worldwide scale and deserves critical exploration.

The common feature behind the trends is that they have invited a renewed attention to the importance of national-level institutions within the international human rights regime, including revisiting the roles of state actors. This in turn points us towards looking afresh at the concept of the national human rights system.¹ The contributions in this Special Issue

analyse some of the practical and normative ways that this has played out. Different cases explore the revived emphasis on domestic institutionalisation of human rights and how it has been put into practice.

The trends reflect a greater interest in the institutional landscape for human rights promotion and protection and the inner workings of institutions and administrations. These trends involve developments across several spheres.

Firstly, human rights courts and bodies have sought to strengthen both the practicality and the acceptability of their decisions by resorting to the proceduralisation of rights. They enunciated ‘positive rights’, looking at state actors’ obligations of conduct as much as the expression of normative standards.²

Secondly, dedicated national human rights institutions spread around the world after the adoption and promotion of the seminal Principles relating to the Status of National Institutions (the Paris Principles) in 1991,³ and through these institutions consolidating their own status through transnational networking at both the regional and the global level.⁴

Thirdly, international organisations and UN Treaty Bodies developed soft law and guidance aimed at supporting human rights mainstreaming and action by state actors. One example is General Comment no 5 of the Committee on the Rights of the Child from 2003 which proposed a comprehensive set of steps for states to operationalise the Convention with a prime focus on the range of ‘administrative and other measures’ to be adopted: from national planning and coordination to inspection, data collection and child-sensitive budgeting.⁵ One year later, the Human Rights Committee in its General Comment 31 (2004) on the nature of the states’ legal obligations under the Covenant recalls that all branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State Party.⁶

Fourthly, international human rights law itself followed suit, by starting to prescribe the structures and processes that states should set up domestically in order to implement treaties. The 2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 2006 Convention on the Rights of Persons with Disabilities initiated this approach. Before this, human rights treaties tended to only include international monitoring mechanisms.

Fifthly, as a broader trend, a ‘new development paradigm’⁷ focused on institutional arrangements and participatory processes gained political traction. Development agencies also directed more resolute attention to fragile states and post-conflict state-building

²See Kasey L McCall-Smith, ‘Human Rights Treaty Bodies, Proceduralization and the Development of Human Rights Jus Commune’ (European Society of International Law [ESIL] Annual Conference, Oslo, 2015); Janneke Gerards and Eva Brems (eds), *Procedural Review in European Fundamental Rights Cases* (Cambridge University Press 2017).

³See Gauthier de Beco and Rachel Murray, *Commentary on the Paris Principles on National Human Rights Institutions* (Cambridge University Press 2015).

⁴Global Alliance of National Human Rights Institutions (GANHRI) <<https://nhri.ohchr.org/EN/Pages/default.aspx>> accessed 31 October 2019.

⁵Committee on the Rights of the Child, General Comment no 5: General measures of implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, paras 6 and 9), 2003 UN Doc CRC/GC/2003/5.

⁶Human Rights Committee, General Comment no 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add. 13, para 4.

⁷Joseph E Stiglitz, ‘Towards a New Paradigm for Development: Strategies, Policies, and Processes’ (Prebisch Lecture, United Nations Conference on Trade and Development, Geneva, 19 October 1998).

efforts. Finally, within the world of scholarship, academics re-cast compliance theories and applied new lenses focusing on socialisation and localisation which highlighted states' capabilities as a compliance factor.⁸

The general motivation underpinning these efforts has been to enhance states' institutional effectiveness while the processes have involved prescribing institutional design and behaviours that would trigger change in line with domestic and international human rights commitments.

The Dynamics of Domestic Institutionalisation

This Special Issue explores the concept and dynamics related to 'domestic institutionalisation' of human rights. We recognise that the concept of 'institutionalisation' is ambivalent and that its definition is disputed. In the human rights field, it has been used extensively by International Relations scholars to describe the processes through which norms emerge and become reflected in international law with treaty ratification being a driving factor for institutionalisation. Seen from this perspective 'international institutionalisation' entails the possibility for cascading internalisation processes to national levels.⁹ However, with the international community moving from an '... era of declaration ... to an era of implementation' from the 1990s and forward,¹⁰ the gap between normative institutionalisation and implementation has been increasingly emphasised by practitioners and scholars.¹¹

This led to new forms of institutionalisation emerging, and this time focusing more firmly on the domestic level. The 1993 Vienna World Conference on Human Rights marked a turning point for this process as it – among several other developments – represented an institutional shift taken by the international human rights regime that began to prescribe for states more specific organisational structures and processes in the domestic setting. The World Conference called for the establishment of National Human Rights Institutions (NHRIs) and the adoption of National Human Rights Action Plans (NHRAPs).

While NHRAPs initially did not catch on and were only momentarily and limitedly promoted by OHCHR,¹² a renewal of interest might be under way. It is observed at the state practice level: 114 NHRAPs have now been adopted around the world, including 76 over the last 10 years;¹³ as well as at the international level, with NHRAPs reappearing more strongly as a 'key element at the national level' in policy statements, e.g. by the UN

⁸See Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights through International Law* (Oxford University Press 2013); Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights from Commitment to Compliance* (Cambridge University Press 2013).

⁹Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52(4) *International Organization* 887–917; John G Ruggie, *Constructing the World Polity: Essays on International Institutionalisation* (Routledge 1998).

¹⁰Secretary-General's Address to the UN Commission on Human Rights, Geneva, 7 April 2005.

¹¹Alexander Betts and Phil Orchard, 'Introduction: The Normative Institutionalization-Implementation Gap' in Alexander Betts and Phil Orchard (eds), *Implementation and World Politics: How International Norms Change Practice* (Oxford University Press 2014) 1–26.

¹²See OHCHR, *Handbook on National Human Rights Plans of Action*. Professional Training Series No 10, UN Office of the High Commissioner for Human Rights, 2002, UN Doc HR/P/PT/10.

¹³Covering 71 countries until January 2019: Sébastien Lorion and David Johnson, *National Human Rights Action Plans: State Practice, Guidance and Conceptual Evolutions* (The Danish Institute for Human Rights, forthcoming 2019).

Secretary-General, since 2017.¹⁴ Human rights action planning at the national level remains a largely under-researched field.¹⁵ At the sectoral level, human rights planning has proliferated exponentially in just over a decade, covering a plethora of fields, on women, peace and security, business and human rights, disability, human rights education, etc. A nascent scholarship on those experiences has emerged in recent years.¹⁶

At the same time, the number of NHRIs has surged and has gained much attention in both research and practice.¹⁷ NHRIs are themselves multiform, yet their core features received recognition by the UN General Assembly when it adopted the Paris Principles in December 1993. NHRIs and the Paris Principles have since then captured much of the discourse on human rights institutions as well as the attention regarding national institutional spaces for human rights promotion amongst domestic state actors. A growing body of research has been looking into the mandate, role and effectiveness of NHRIs in domestic contexts¹⁸ as well as the NHRIs as intermediaries between the international and domestic level of human rights protection to change behaviours of states.¹⁹ The literature increasingly emphasises how a plurality of NHRIs co-exist within the same domestic system, with thematic and sub-national institutions adding to comprehensive national institutions and only one recognised as a Paris Principles complaint. This raises questions over rationalisation, ideal numbers of institutions and complex monitoring frameworks, for instance operationalisation of OPCAT and CRPD's institutional prescriptions.²⁰ The common denominator of those institutions is the *sui generis* position that they hold within national systems, being a state institution, yet independent from other actors. A major factor of impact of NHRIs is their ability to navigate this unique place and be able to leverage their embeddedness within the administration while retaining the necessary independence.²¹

NHRI literature has the advantage of providing a strong domestic institutional anchoring, but it is not this Special Issue's ambition to repeat existing literature. Rather, we underline that the 'domestic institutionalisation' of human rights entails much wider and more complex processes – and a wider variety of actors – than the establishment

¹⁴UN Secretary-General, 'Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity' Report of the Secretary-General to the UN General Assembly, 2017, UN Doc A/72/351, paras 24–27.

¹⁵For one exception, see Azadeh Chalabi, *National Human Rights Action Planning* (Oxford University Press 2018).

¹⁶For two examples in different fields, see Claire Methven O'Brien, Amol Mehra, Sara Blackwell and Cathrine Bloch Poulsen-Hansen, 'National Action Plans: Current Status and Future Prospects for a New Business and Human Rights Governance Tool' (2016) 1(1) *Business and Human Rights Journal* 117; Aisling Swaine 'Globalising Women, Peace and Security: Trends in National Action Plans' in Sahla Aroussi, *Rethinking National Action Plans on Women, Peace and Security* (IOS Press 2017) 7–27.

¹⁷Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press 2012).

¹⁸For a comprehensive and recent overview, see Steven LB Jensen: *Lessons from Research on National Human Rights Institutions* (The Danish Institute for Human Rights 2018).

¹⁹Thomas Pegram, 'Global Human Rights Governance and Orchestration: National Human Rights Institutions as Intermediaries' (2015) 21(3) *European Journal of International Relations* 595.

²⁰See Richard Carver, 'One NHRI or Many? How Many Institutions Does It Take To Protect Human Rights? Lessons from the European Experience' (2011) 3(1) *Journal of Human Rights Practice* 1; Rachel Murray, 'National Preventive Mechanisms under the Optional Protocol to the Torture Convention: One Size Does Not Fit All' (2008) 26(4) *Netherlands Quarterly of Human Rights* 485. Linda C Reif, 'Ombudsman Institutions and Article 33 (2) of the United Nations Convention on the Rights of Persons with Disabilities' (2014) 65 *University of New Brunswick Law Journal* 213; Andrew Wolman, 'Sub-national Human Rights Institutions: A Definition and Typology' (2017) 18(1) *Human Rights Review* 87.

²¹See Katrien Meuwissen, 'NHRIs and the State: New and Independent Actors in the Multi-Layered Human Rights System?' (2015) 15(3) *Human Rights Law Review* 441; Anne Smith, 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?' (2006) 28 *Human Rights Quarterly* 904.

and functioning of NHRIs. There is indeed more to be said about the institutional landscape of domestic human rights protection and promotion, as well as its dynamics. Besides NHRIs, other actors hold a dedicated human rights mandate, such as governmental focal points within the central administration, organised either as standing units or as inter-ministerial structures, or parliamentary human rights committees. Other institutions with broader mandates also play a role in human rights protection and promotion, such as courts, ministries, law enforcement, state controller agencies or the administration of the state at the central and local levels. Today, 11 countries in the world have a standing ministry dedicated to human rights,²² and another 20 countries have a ministerial human rights portfolio added onto another ministry, typically to ministries of justice.²³ The domestic institutionalisation of human rights concerns all these public actors as it seeks to establish them, strengthen their mandates and roles and reinforce interactions between them.

The use of ‘institutions’ to designate actors has been further questioned by social scientists. While ‘institutions’ generally refer to organisations (NHRIs, ministries, etc.), a set of scholars, in particular anthropologists, use it to refer to the ‘... systems of established and prevalent social rules that structure social interaction’.²⁴ Two definitions therefore arise, that we label ‘institutions-as-organisations’ and the second ‘institutions-as-norms’, with the understanding that norms mostly refer to commonly held social beliefs, which may or may not be reflected in legal standards. We posit that both definitions fit the trends observed in the operationalisation of international human rights law. One could argue that institutions-as-norms are equally targeted by human rights treaties. Academics have demonstrated how human rights are localised and vernacularised not only by state actors, but also by and within local non-state actors.²⁵ International human rights law is also increasingly focusing on people’s role in upholding rights, beyond states’ responsibilities to comply. NHRIs, at the crossroads between international norms and domestic realities, and as a space between the government and rights-holders, can play a special role ensuring that all actors within the human rights system, state and non-state alike, transform themselves to integrate and live up to human rights standards.²⁶

The 2006 Convention on the Rights of Persons with Disabilities epitomises this approach, and strikingly taps into both definitions of ‘institutions’. Various provisions, in particular Article 33, prescribe how States Parties should structure themselves organisationally. Yet the Convention on the Rights of Persons with Disabilities also aims at transforming society as a whole, in order to shift views on disability – from medical

²²Six are only devoted to human rights (Democratic Republic of Congo, Equatorial Guinea, Morocco, Pakistan, Togo and Yemen) and five adding a closely aligned portfolio, such as ‘minority rights’ (Bosnia and Herzegovina, Burkina Faso, Haiti, Montenegro and Tunisia).

²³Data as of 1 June 2019, compiled by Sébastien Lorion as part of his PhD research on ‘The Institutional Turn of International Human Rights Law and its Reception by State Administrations in Developing Countries’ (PhD diss., University of Copenhagen, forthcoming in 2020).

²⁴Hans-Otto Sano and Tomas Max Martin, ‘Inside the Organization: Methods of Researching Human Rights and Organizational Dynamics’ in Bård A Andreassen, Hans-Otto Sano and Siobhán McInerney-Lankford (eds), *Research Methods in Human Rights: A Handbook* (Edward Elgar 2017) 254. See also Geoffrey M Hodgson, ‘What Are Institutions?’ (2006) 40 (1) *Journal of Economic Issues* 1.

²⁵Mark Goodale and Sally Engle Merry, *The Practice of Human Rights: Tracking Law between the Global and the Local* (Cambridge University Press 2007); Koen de Feyter and others (eds), *The Local Relevance of Human Rights* (Cambridge University Press 2010).

²⁶See Emilie M Hafner-Burton, *Making Human Rights a Reality* (Princeton University Press 2013) ch 10.

and charity-based approaches to a social and human rights-based model.²⁷ As Gauthier de Beco and Alexander Hoefmans have noted this entails a ‘... shift from a pure individual rights-based treaty to a convention with a mission for society as a whole’.²⁸ The recommended organisational features of the state, emphasising co-production and co-implementation of standards and policies by both state actors and rights-holders, are therefore a means to an end. Institutions-as-organisations become both agents and structures in changing institutions-as-norms.

A related and additional challenge that has triggered a redefinition of institutions-as-organisations is the recognition of the impact and responsibility of businesses – including transnational private companies, with respect to human rights. A recent milestone in this reflection is the 2011 adoption of the UN ‘Guiding Principles on Business and Human Rights’.²⁹ It simultaneously confirms the importance of domestic institutions, yet questions their ability to ensure rights enjoyment in their current form. This movement calls on domestic institutions to reflect upon their embeddedness in wider and complex networks of actors, and resorts to the theories of governance for ideological inspiration. This may constitute a disruptive challenge according to which institutionalisation still relies on domestic state actors, yet their nature and mandates have been transformed. In particular, executive actors are increasingly tasked with the management of participatory processes and enforcement of decisions taken through such processes, when structures are not fully hybridised.³⁰

This approach therefore embraces the indeterminacy of the notion of institutionalisation as a stimulating point of departure. While focusing mainly on institutions as public organisations, in particular state actors, it postulates that this terminology fits well the international human rights field and its ongoing ambition to reorient and transform both organisations and social norms.

More specifically, we zoom in on domestic institutional solutions developed by international law and machineries, which is an ongoing agenda not yet fully crystallised. As such, our focus is on *institutionalisation* – and not the wider question of implementation *per se*. Whether organisations or mindsets are the target, institutionalisation can be defined as a *process* in which a set of norms become an integral and *sustainable* part of a *system*. It relies on the change processes, which lead to altered yet standardised and routinised practices and beliefs.³¹ Institutionalisation is marked by the ideas of movement and formalisation: its apparition and definition rely on both action and theorisation.

There is an emerging interest in human rights institutionalisation, both advocated by, and integrated into, international and national bureaucracies. Much has already been written specifically on the human rights-based approach to development. How human

²⁷Gerard Quinn, ‘Resisting the “Temptation of Elegance”: Can the Convention on the Rights of Persons with Disabilities Socialise States to Right Behaviour?’ in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives* (Martinus Nijhoff 2009).

²⁸Gauthier de Beco and Alexander Hoefmans, ‘National Structures for the Implementation and Monitoring of the UN Convention on the Rights of Persons with Disabilities’ in Gauthier de Beco (ed), *Article 33 of the UN Convention on the Rights of Persons with Disabilities: National Structures for the Implementation and Monitoring of the Convention* (Brill 2014) 15.

²⁹Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, UN Doc A/HRC/17/31 (21 March 2011).

³⁰See Béatrice Hibou, *The Bureaucratization of the World in the Neoliberal Era: An International and Comparative Perspective* (Palgrave-McMillan 2015).

³¹Adapted from Andre Zida and others, ‘The Factors Affecting the Institutionalisation of Two Policy Units in Burkina Faso’s Health System: A Case Study’ (2017) 15(62) *Health Research Policy and Systems* 2.

rights institutionalisation has been simultaneously integrated within and transported by development actors, as well as received locally, was explored in a 2014 Special Issue of the *Nordic Journal of Human Rights* on 'Human rights-based change and institutionalisation of economic and social rights'.³² Furthermore, a nascent body of scholarship studies specific examples of institutionalisation processes.³³ Yet little analysis has been devoted to the conceptual dimension that accompanies these processes as a justification and guidance for action. This Special Issue tries to address what we have identified as a gap in current human rights scholarship.

Revisiting the Systems Approach

In order to address this gap, we have decided to revisit the concept of the National Human Rights System. In 2002, UN Secretary-General Kofi Annan put to the fore an agenda re-focused on the international protection machinery towards National Human Rights Systems (NHRS). As a central strategy of the UN's *Agenda for Further Change*, Kofi Annan foresaw that '[t]he emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, should be a principal objective of the [United Nations] Organization'.³⁴ Various actors have made attempts to engage with model-thinking, using a systemic approach to human rights protection and promotion.³⁵ For them 'National Human Rights Systems' is a way of exploring, conceptualising and actively promoting the deep transformation taking place towards a domestic institutionalisation of human rights. It brings together the commonalities of a sweeping yet scattered number of interventions by various actors.

A few examples can be given to illustrate how the concept of 'national system' appears when needed, in support of various forms of engagements of international actors.

- (1) At the level of political analysis, the EU released in 2009 a Manual for its Embassies on 'Strengthening the National Human Rights Protection System', in which it described the necessary features of a system and encouraged EU missions to explicitly embrace the concept as a heuristic concept on which to assess political position and cooperation practices.³⁶
- (2) At a more programmatic level, systemic models become a reference point to justify the selection of areas of engagement, for instance for UN mechanisms. In 2017, the UN Secretary-General's report on 'Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity' highlighted the strengthening

³²*Nordic Journal of Human Rights* (2014) 32(4) Special Issue: Human Rights-based Change and the Institutionalisation of Economic and Social Rights.

³³This literature is sparse but growing. For example, see Elif M Babü, *Bureaucratic Intimacies: Translating Human Rights in Turkey* (Stanford University Press 2017); Assaf Meydani, *The Anatomy of Human Rights in Israel: Constitutional Rhetoric and State Practice* (Cambridge University Press 2014).

³⁴Kofi Annan, 'Strengthening of the United Nations: An Agenda for Further Change', Report of the Secretary-General, UN Doc A/57/387, 9 September 2002, para 50.

³⁵For instance, the UNICEF talks about national child rights protection systems, the Council of Europe about systematic approach to human rights, and the EU Fundamental Rights Agency encourages a 'joined-up approach' to human rights implementation.

³⁶*Manual for Embassies of the EU Member States: Strengthening the National Human Rights Protection System* (Human Rights Division of the Ministry of Foreign Affairs of the Netherlands, Czech Presidency of the European Union, 2009).

of the national protection system as a main objective for UN cooperation with states. For António Guterres, it is imperative that this ‘... cooperative approach centres on elements at the national level that will make international cooperation ... as well as national efforts ... more effective’, defining these key elements as being national mechanisms for reporting and follow up; national human rights action plans; recommendation implementation plans; NHRIs and Parliament.³⁷

- (3) At the operational level, cooperation agencies facing country-specific contexts and challenges regularly attempt to ‘reconceptualise’ their action by direct reference to ‘system’ models. External experts are usually called in for this purpose. In Croatia in 2010, UNDP commissioned experts to make suggestions to ‘... rationali[se] the Croatian human rights protection system’ notably to overcome the perceived fragmentation of NHRIs in the country.³⁸ Similarly, the United Kingdom commissioned a study to inform its support to the OHCHR Nepal office in 2010, and notably to reorient its interventions to better support local actors and overcome conflicts with the National Human Rights Commission. A conceptual model for functional human rights systems was developed by the experts to justify the respective positions of those actors and select areas of interventions.³⁹

The emergence, use and features of the concept of ‘National Human Rights Systems’ are a necessary beginning for this discussion. The first contribution to the Special Issue acts as a companion to this introduction in this regard. For now, it suffices to indicate that the way in which the systems approach has been called in and reflected in policy and guidance issued by international and regional actors makes apparent a certain number of properties of this concept. It is compliance-oriented and favours proactive dynamics of implementation within the principled boundaries of international norms, rather than rely on sanction and coercion. It recognises that respect for human rights relies on multiple actors, with coordination of, and interactions between those actors being a key to social transformation. The concept further places particular onus on state actors and public institutions and pays attention to their capacities either to deliver on rights or organise the necessary processes and partnerships, including those with private actors. It also includes a purposeful dimension: the systems approach is called in as a concept for action, a heuristic tool that serves to orient action. What this concept does not do is to prescribe a specific model. The concept of NHRS is performative and accommodates various ways to translate the systems approach into organisational blueprints.

While one could say that all countries have a national system, the National Human Rights System as a concept appears in order to guide or legitimise interventions by international and regional organisations or for bilateral cooperation agencies involved in human rights promotion. The latter point introduces an element of intentionality, as to why international organs such as UN Treaty Bodies or agencies, or the EU have unfolded this approach. On the one hand, they suggest guidance for system development to

³⁷UN Secretary-General (n 14) paras 13–37.

³⁸Richard Carver, Srđan Dvornik and Denis Redzepagic, ‘Rationalization of the Croatian Human Rights Protection System. Report of Expert Team’, February 2010 <https://ombudsman.hr/images/514_UNDP_rationalization_expert_group_final_report_2010.pdf> accessed 19 June 2019.

³⁹Liam Mahony, Roger Nash, and Indu Taladhar, ‘Evaluation of the work of OHCHR in Nepal’, prepared for the Embassy of the United Kingdom in Nepal, 2010 <www.fieldviewsolutions.org/fv-publications/Evaluation_of_the_work_of_OHCHR_in_Nepal.pdf> accessed 19 June 2019.

strengthen the effectiveness of the domestic human rights set-up in and of itself. For instance, the OHCHR-promoted 'Belgrade Principles' aim at suggesting ideas for reinforcing the interactions between Parliaments and NHRIs at the domestic level.⁴⁰ On the other hand, international organs may also seek to strengthen domestic actors or domestic processes for the purpose of better implementing international law or guidance stemming from the UN processes such as the Universal Periodic Review. In recent years, the OHCHR and Geneva-based NGOs such as the Universal Rights Group have emphasised the National Mechanisms for Follow-up and Reporting, in which the domestic structures are approached as transmission belts of international machineries.⁴¹

The two approaches might overlap in terms of objectives and key features, such as the importance of routinised and systemic approaches. It is furthermore important to acknowledge the embeddedness of domestic actors in international contexts and machineries. However, it is crucial to discern the intention behind international guidance, sometimes revealed by the way the concept is called on in a specific time and context.

Even when underpinned by an intention to improve compliance, the focus on domestic institutions might not have the intended effect and its actual implications at the domestic level raises a major concern. Does domestic institutionalisation, in the same way as proceduralisation of rights by courts, risk shifting the focus from substantial issues and violations towards the fulfilling of more formal requirements?⁴² This reflects a shared concern amongst the contributors to this Special Issue. They do not solely aim at describing domestic institutionalisation strategies and how actors have fleshed out the 'National Human Rights System'. They also discuss their potential implications for further compliance to human rights commitments, and at times outline ways to enhance or measure these effects.

Our Contribution to an Emerging Research Agenda

The authors' contributions to this volume explore the domestic institutionalisation of human rights, taking as a point of departure the purposeful UN attempt to frame this phenomenon under the concept of National Human Rights System. They present various models and cases, which highlight the specific forms of institutions being promoted, their intended interactions at the domestic level, and how these institutions are leveraged and strengthened by international bodies, while in turn becoming more relevant and sustainable interlocutors of the ongoing dialogue between the international and the domestic level of human rights protection and promotion. Taking into account the limited space in a Special Issue, the articles necessarily cover a selection of cases, focusing on certain types of actors, yet always with a view of outlining how a research agenda on domestic institutionalisation of human rights is relevant to explain ongoing trends. The

⁴⁰Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments, Belgrade, Serbia, 22–23 February 2013.

⁴¹OHCHR, 'National Mechanisms for Reporting and Follow-up. A Practical Guide to Effective State Engagement with International Human Rights Mechanisms' (United Nations 2016). See also 'Glon Human Rights Dialogue 2016: Human Rights Implementation, Compliance and the Prevention of Violations: Turning International Norms into Local Reality', 2016 <www.universal-rights.org/urg-policy-reports/glon-human-rights-dialogue-2016/> accessed 21 December 2018.

⁴²For one staunch rebuke of the effects of proceduralisation, taking the example of the South African Supreme Court's jurisprudence on economic, social and cultural rights, see Marius Pieterse, 'Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited' (2007) 29 *Human Rights Quarterly* 796.

first article spells out the conceptual underpinnings of this research agenda, and the contributions aim at responding to each other to map the research field. This helps revealing the need for additional research, which we discuss at the end of this section.

Much literature has been devoted to studying specific actors of the NHRS – e.g. courts or parliaments. In recent years a corpus of literature has emerged with a specific focus on National Human Rights Institutions.⁴³ Yet, unpacking the meaning of what constitutes a *system*, notably the interactions amongst its constitutive elements, has been mostly addressed by norm entrepreneurs and practitioners at the international and regional levels, for instance by the UN treaty bodies and regional organisations, through fostering policy approaches such as National Human Rights Action Plans or in human rights capacity development programmes. In the first contribution to this Special Issue, Stéphanie Lagoutte reflects on the added value of focusing on a systemic approach to domestic human rights protection and promotion. The purpose of her article is to revisit the role of state actors within the national human rights system, and, thereby, shed light on the coordination of state actors at the domestic level, their interplay with non-state actors and their interactions with international human rights mechanisms. The article wants to embrace both the vertical dimension of domestic institutionalisation and the horizontal dimension inherent to the concept of NHRS.

Concentrating on one actor, Kirsten Roberts Lyer investigates the role and potential of parliaments within the national and international human rights systems in improving the implementation of international human rights standards. In particular, Roberts Lyer discusses the policy developments spearheaded by the OHCHR. In June 2018, the OHCHR proposed a new set of ‘... draft principles on parliaments and human rights’.⁴⁴ Not least, the draft principles would recommend states ensure that their legislative bodies would feature human rights-dedicated parliamentary committees. Using recent examples, the article discusses direct parliamentary engagement at the international level, and critically assesses the OHCHR initiative, including the potential for new (soft) standards for parliamentary human rights mechanisms. The author also discusses the risks inherent in parliamentary engagement on human rights, argues for necessary safeguards, and makes proposals for further research and institutional initiatives to solidify the role of parliaments as effective national human rights actors.

The contribution of Claire Methven O’Brien and Jolyon Ford interrogates the concept of a coherent national protection ‘system’ from the standpoint of the multi-layered and multi-actor governance constellation embodied by the field of business and human rights. It further examines how the business and human rights field, despite its intrinsically transnational character, remains premised on and contributes to the continuing evolution of national-level protection systems and the domestic institutionalisation of human rights.

Sébastien Lorion continues the discussion on the governance approach to national human rights systems design. Taking the CRPD as an epitomising moment in the institutional turn of international human rights law, Lorion assesses norm entrepreneurs’ attempts to extrapolate the CRPD to build a new governance-inspired model for

⁴³Jensen (n 18). Rare studies analyse the interactions between two types of state actors within national systems. For one example, see Luka Glušac, ‘Assessing the Relationship between Parliament and Ombudsman: Evidence from Serbia (2007–2016)’ (2019) 23(4) *The International Journal of Human Rights* 531.

⁴⁴OHCHR, ‘Contribution of parliaments to the work of the Human Rights Council and its universal periodic review’ 17 May 2018, UN Doc A/HRC/38/25.

human rights implementation. At the centre of this exercise lies CRPD Article 33 on 'National Implementation and Monitoring', which foresees that States Parties should establish or appoint focal points, coordination mechanisms and independent monitoring bodies. It draws on conceptual work on norms diffusion to decrypt the mechanisms through which new governance principles spill over into human rights law, and to anticipate some of the pitfalls that a new governance systems approach might entail. In particular, this model may lead to minimising the role of courts and litigation, and potentially challenge the meaning of rights and responsibility.

Domenico Zipoli turns towards the intentions and effectiveness of international and national processes. His article discusses a milestone in organising a strategic partnership between the Treaty Bodies and the NHRIs, through the 2017 adoption of a Common approach to engagement with national human rights institutions,⁴⁵ which complements guidance issued for NHRIs by various Treaty Bodies. As a second step, Zipoli investigates how to measure the effectiveness of those interactions, through an adaptation of a Goal-Based Approach.

A consistent feature in the research literature on NHRIs has been a focus on the spatial dimension in domestic human rights protection. Sonia Cardenas has explained how NHRIs have '... created a social space for public deliberation over wrongdoing'.⁴⁶ Julie Mertus has argued that '... a distinctive aspect of NHRIs is the space in which they manoeuvre: an imagined space somewhere between the state and civil society'.⁴⁷ David Meyer has written that NHRIs are '... a component in the structure of political opportunities human rights activists face'.⁴⁸ The framings here speak to larger issues around spatial, structural and even systemic features in national human rights protection.

Finally, the central issue of the article by Tomer Broude and Natan Milikowsky is the risks and opportunities concerning the establishment of NHRIs in contested political spaces for human rights. The authors discuss whether or not to establish an NHRI in Israel given the already existing institutional mechanisms and the political context in the country. They present, as a case study, the deliberative process that has been ongoing to support this discussion in Israel. The article also reflects on the role already played by several state actors in the NHRS of Israel, the discussion of whether several functions of an NHRI are already covered, and, if establishing an NHRI is not politically feasible, discusses how to reinforce the human rights mandate of already existing and relevant actors.

As stated above, this is but only a selection of cases that informs a research agenda focused on the domestic institutionalisation of human rights. This Special Issue is a stepping stone towards the consolidation of a research agenda focused on decrypting the international community's ambition to build strong and sustainable state institutions that protect and promote human rights and contribute to social change. Complementary research is already under way by some of the authors, for instance on inner dynamics of institutions such as human rights ministries and inter-ministerial structures, based

⁴⁵OHCHR, *Common approach to engagement with national human rights institutions*, HRI/MC/2017/3 (9 June 2017).

⁴⁶Sonia Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights* (University of Pennsylvania Press 2014) 317.

⁴⁷Julie A Mertus, *Human rights matters: Local politics and national human rights institutions* (Stanford University Press 2009) 3.

⁴⁸David S Meyer, 'National Human Rights Institutions, Opportunities and Activism', in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press 2012) 325.

on the agenda's foundational recognition that institutions are not monolithic or unchanging, and driven by sometimes contradictory imperatives. Countervailing tendencies to domestic institutionalisation, or regional dynamics that determine its diffusion, fall amongst additional questions to be addressed.⁴⁹

More practically, we also would like the findings emanating from this research agenda to inform the strategic priorities of international organisations and international donors working with human rights implementation and capacity development of state actors in context. This is an agenda that the Danish Institute for Human Rights – with which we the three editors of the Special Issue are affiliated – has been applying in its international project work. We certainly believe it is important to also move beyond the NHRI focus to explore further the systemic elements of human rights protection. Moreover, we wish to question and open a debate on the deliberate attempt by international protection machineries to situate domestic public actors at the core of new compliance strategies, about the concept of national human rights systems carried by these visions, and the models of interactions with international and regional systems that they carry.

Acknowledgements

We would like to thank the *Nordic Journal of Human Rights* for inviting us as co-editors for this Special Issue. The idea for this Special Issue stems from our organisation of two panels, on 'International Protection Mechanisms and National Human Rights Systems: Mutual Influences and Institutional Implications' and 'Assessing the Performance of National Human Rights Institutions: Effectiveness, Context and Leadership', at the Association of Human Rights Institutes (AHRI) Conference held in Edinburgh on 6–8 September 2018. We are grateful to Tom Pegram, Bruce Adamson and Cora Lacatus who participated in those panels and made valuable comments on early draft of several articles presented in this Special Issue. We extend our thanks to Benjamin Gregg, and Tomas Max Martin, as well as colleagues from the Research Department of the Danish Institute for Human Rights for sharing with us their insightful views on this introduction and to Heidi Betts for her suggestions on how to improve the text in earlier drafts of this introduction. Thank you as well to the anonymous peer reviewers for a well-appreciated feedback. Last but not least, our heartfelt thanks to all the authors of this Special Issue for embarking with us on this exploration of the domestic institutionalisation of human rights.

⁴⁹The first article of this volume further elaborates on needs and areas for future research.