

Office of the United Nations High Commissioner for Human Rights
Palais des Nations CH-1211 Geneva 10
Email: ohchr-tbs@un.org

WILDERS PLADS 8K
DK-1403 COPENHAGEN K
PHONE +45 3269 8888
CELL +45 9132 5723
SELO@HUMANRIGHTS.DK
HUMANRIGHTS.DK

DOC. NO. 22/00037-3

31 JANUARY 2022

DIHR SUBMISSION TO CALL FOR INPUTS ON QUESTIONNAIRE IN RELATION TO IMPLEMENTATION OF GA RESO 68/268

The Danish Institute for Human Rights (the Institute) welcomes the invitation to provide replies and comments to the questionnaire in relation to General Assembly resolution 68/268 communicated by email of 20 December 2021 by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

The ultimate objective of the Treaty Body review process is ‘to improve the impact of treaty bodies on rights-holders and duty-bearers at the national level by strengthening the functioning of treaty bodies while fully respecting the independence of the latter.’¹ Treaty Bodies cannot ensure implementation alone: this necessitates efficient **actors, processes and frameworks at the national level** able to implement rights, based on both national and international commitments and recommendations, as well as able to monitor implementation and protect and promote rights. The UN captures these elements under the concept of ‘national human rights protection systems’, the enhancement of which has been a principal objective of the UN since 2002.² The 2006 Convention on the Rights of Persons with Disabilities outlined the key elements constitutive of such national systems as: governmental focal points and ideally coordination mechanisms for

¹ UN High Commissioner for Human Rights, Navanethem Pillay, in her statement to the Human Rights Council, 14 September 09.

² UN Secretary General, ‘Strengthening of the United Nations: An Agenda for Further Change’, Report to the fifty-seventh session of the UN General Assembly, UN Doc. A/57/387, 2002, para. 50. See also: UN 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 to the UN General Assembly, UN Doc. A/72/351, 2017, paras. 13-37.

implementation purposes; independent frameworks, including National Human Rights Institutions,³ for monitoring, protection and promotion purposes; and the participation of persons with disabilities in both monitoring and decision-making processes.⁴

The Institute uses the systems approach in its work, and its Research Department spearheads a **research agenda on national human rights systems**,⁵ with a focus on state actors.⁶ While such systems should ideally ensure human rights implementation and protection in and of themselves, interactions and engagement with international oversight bodies and Treaty Bodies are essential for the human rights advancement. As further argued by the Geneva Academy of International Humanitarian Law and Human Rights, national human rights systems constitute the necessary counterparts of Treaty Bodies to ensure implementation of recommendations, and their strengthening should be one objective of the Treaty Bodies review process.⁷

The process initiated in 2014 by General Assembly Resolution 68/268 has offered new avenues to uphold international attention to national actors' capacities to implement human rights standards and follow-up on Treaty Bodies' recommendations. It has done so e.g. through the organisation of discussions on treaty implementation (para. 7) and by requesting the OHCHR to enhance assistance to States parties at the national level by building and developing institutional capacity for reporting (para. 17). The 2020 report of the co-facilitators reiterated the need to pay attention to national actors.⁸ Significant milestones achieved in that regard include the consolidation of Treaty Bodies'

³ The need for independent national actors in charge monitoring was already an obligation of the 2002 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴ For an analysis, see: Sébastien Lorion, '[A Model for National Human Rights Systems? New Governance and the Convention on the Rights of Persons with Disabilities](#)', *Nordic Journal of Human Rights* (2019) 37:3, 234-258.

⁵ See 2019 Special Issue of the *Nordic Journal of Human Rights*, guest edited by three DIHR staff. See in particular: Steven LB Jensen, Stéphanie Lagoutte and Sébastien Lorion, '[The Domestic Institutionalisation of Human Rights: An Introduction](#)', *Nordic Journal of Human Rights* (2019) 37:3, 165-176.

⁶ Stéphanie Lagoutte, '[The Role of State Actors Within the National Human Rights System](#)', *Nordic Journal of Human Rights* (2019) 37:3, 177-194.

⁷ Domenico Zipoli, '[National Human Rights Strategies: The Role of National Humanitarian Systems in the Implementation of International Human Rights Standards](#)' (Geneva Academy 2021).

⁸ Report of the co-facilitators on the process of the consideration of the state of the UN human rights treaty body system, 2020, paras. 57-73.

engagement with National Human Rights Institutions (NHRIs),⁹ and the 2016 publication by the OHCHR of the study and practical guide on National Mechanisms for Reporting and Follow-up (NMRFs).¹⁰

The Institute-led **research projects on national human rights systems** have analysed both UN guidance and legal developments as well as examined states practices. Findings have identified remaining gaps and suggest further actions that could usefully be considered as part of the Treaty Bodies reform process, geared towards the enhancement of rights implementation nationally. Three main findings are worthy of mention here:

1. While the operations of NHRIs and monitoring/protection frameworks are quasi-systematically reviewed in concluding observations of Treaty Bodies, and covered by detailed guidance from UN bodies, **governmental focal points greatly evade Treaty Bodies' oversight**. Our analysis of the CRPD Committee's jurisprudence illustrates the state of play: in its 55 first concluding observations, the Committee addressed focal points in 24 cases, despite the fact that 34 states had failed to report on the appointment of a focal point at all. While NHRIs and participation of rights-holders are reviewed in-depth, as well as unpacked by Committee's guidelines and a General Comment, respectively, Article 33(1) has not been the subject-matter of additional guidance.¹¹

2. Governmental focal points and coordination mechanisms are key to triggering processes of implementation, by ways of inter-institutional coordination and human rights mainstreaming in government, as well as engaging with non-state or independent actors and rights-holders. However, case studies looking at how these work in practice point to a **wide number of external and internal challenges in the way focal points operate, that tend to thwart implementation**. For instance, international reporting tends to become the main activity of such actors, while follow-up becomes secondary. While recommendations implementation plans are increasingly adopted, they tend to become ends in themselves, with implementation of such plans remaining

⁹ For an overview and analysis of the manifold ties between NHRIs and Treaty Bodies, see: Domenico Zipoli, '[NHRI Engagement with UN Human Rights Treaty Bodies: A Goal-based Approach](#)', *Nordic Journal of Human Rights* (2019) 37:3, 259-280.

¹⁰ OHCHR, *National Mechanisms for Reporting and Follow-Up: A practical guide to effective engagement with international human rights mechanisms*, UN Doc. HR/PUB/16/1, 2016.

¹¹ See details in Sébastien Lorion, '[Defining Governmental Human Rights Focal Points: Practice, Guidance and Concept](#)', *The Danish Institute for Human Rights* (2021) 16-23.

challenging. This state of play is not always addressed by international oversight bodies (in particular during the Universal Periodic Review), which often commends the adoption of such plans without assessing their contents nor their actual impact.¹²

3. The **2016 OHCHR Practical Guide on NMRFs** is an essential contribution and fills a gap in international guidance for governmental structures. In line with the OHCHR's mandate, the guide focuses on reporting and follow-up in connexion with international and regional bodies. It **does not cover the full range of implementation responsibilities**, notably in connection to commitments and processes happening nationally (based on constitutions, court decisions, NHRIs recommendations, etc.).¹³ In the same vein, research conducted by the Human Rights Implementation Centre (Bristol University) has shown that essential international follow-up dimensions are also left out from the Practical Guide, such as implementation of decisions taken by Treaty Bodies in connection with individual communications. Although the Practical Guide mentions that implementation of international decisions is part of NMRFs' mandates, no concrete guidance unfolds as to how this can happen, leaving unaddressed considerable challenges observed in practice in terms of victims' access to redress and reparations following a favourable decision by Treaty Bodies.¹⁴

To enhance national implementation dynamics, Treaty Bodies and the UN could consider:

1. Enhancing oversight of governmental human rights focal points and NMRFs:¹⁵ In addition to keep scrutinising NHRIs, Treaty Bodies could enhance their examination of governmental focal points in charge of human rights implementation and follow-up, at the occasion of their reviews of state reports. This can draw on the experience of the CEDAW Committee in reviewing gender equality mechanisms and of the CRPD Committee. As CRPD Article 33(1) constitutes an anchor point in

¹² See the case study of Burkina Faso in: Sébastien Lorion, '[Inside the Human Rights Ministry of Burkina Faso: How professionalised civil servants shape governmental human rights focal points](#)', *Netherlands Quarterly of Human Rights* (2021) 39:2, 95-118.

¹³ See Lorion (n10) 39-52.

¹⁴ See Rachel Murray '[The 'implementation' in 'National Mechanisms for Implementation, Reporting and Follow-up': what about the victims?](#)' in Frans Viljoen, Charles Fombad, Dire Tladi, Ann Skelton and Magnus Killander (eds.), *A Life Interrupted: Essays in honour of the lives and legacies of Christof Heyns* (Pretoria University Law Press 2022).

¹⁵ For definitions of governmental human rights focal points and NMRFs, see: Sébastien Lorion and Stéphanie Lagoutte, '[What are Governmental Human Rights Focal Points?](#)' *Netherlands Quarterly of Human Rights* (2021) 39:2, 80-94.

international human rights law, the CRPD Committee could be a driver to unpack guidance and recommendations for focal points and coordination mechanisms within government.¹⁶ A General Comment on Article 33(1) could be considered, or else a joint document adopted by all Treaty Bodies to support their assessment of governmental focal points. More generally, a tool or set of Principles that can help Treaty Bodies, Special Procedures, but also states themselves, to review the gaps and strengths of national human rights systems at large, has been suggested by e.g. the Geneva Academy. This would have the advantage of looking not only at each national actors' performance in isolation, but also how they interact.¹⁷

2. Updating the 2016 Practical Guide and Study on NMRFs to include implementation: In 2019, the UN Human Rights Council added an 'i' for implementation in NMRFs acronym, now referring to National Mechanisms for *Implementation*, Reporting and Follow-Up.¹⁸ In addition, the OHCHR has conducted regional consultations on NMIRFs end of 2021 and is now preparing a report on states practice to the UN Human Rights Council. This offers a momentum to consider an update of the 2016 Practical Guide with a view to encompass a wider range of national implementation processes. Using empirical evidence generated by research, such an update could usefully consider, *inter alia*: how implementation trickles down to subnational levels;¹⁹ whether NMIRFs can in certain circumstances directly implement activities and not limit themselves to distribute actions to other state

¹⁶ For a discussion of how the experience of the CRPD focal points can serve to inform the development of additional guidance on implementation, and comparison with the NMRFs guide, see Colin Caughey, '[Government human rights focal points: Lessons learned from focal points under the Convention on the Rights of Persons with Disabilities](#)', *Netherlands Quarterly of Human Rights* (2021) 39:2, 119-139.

¹⁷ See Zipoli (n7), 68-69.

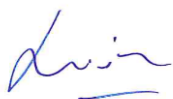
¹⁸ UN Human Rights Council, Promoting international cooperation to support national mechanisms for implementation, reporting and follow-up, UN Doc. A/HRC/42/30, 2019.

¹⁹ For an examination and inspiration on treaty implementation and governmental focal points' operations in federal contexts, see: Matthieu Niederhauser, '[Governmental human rights focal points in federal contexts: The implementation of the Istanbul Convention in Switzerland as a case study](#)', *Netherlands Quarterly of Human Rights* (2021) 39:2, 140-160.

actors;²⁰ the roles and processes that should be put in place for implementing decisions in the context of individual communications.²¹

More **practical tools to support governmental human rights focal points** in fulfilling their mandates and in moving towards implementation and follow-up would be useful. Without being overtly prescriptive nor imposing a ‘one-size-fits-all’ approach, such tools could point to relevant practices elsewhere and suggest ways to overcome implementation challenges. To contribute to this, the Institutes’ Human Rights and Governance Programme intends to produce a Toolkit for Governmental Human Rights Focal Points in 2022.

Yours sincerely,



Sébastien Lorion, PhD

SENIOR ADVISER

HUMAN RIGHTS & GOVERNANCE

²⁰ Sébastien Lorion and Stéphanie Lagoutte, ‘[Implementers or Facilitators of Implementation? Governmental Human Rights Focal Points’ Complex Role in Enhancing Human Rights Compliance at the National Level](#)’, in Rachel Murray and Debbie Long (eds.), *Research Handbook on the Implementation of Human Rights in Practice* (Edward Elgar, forthcoming 2022).

²¹ See Special Issue of the *Journal of Human Rights Practice* (2020, 12:1): [Righting Wrongs: The Dynamics of Implementing International Human Rights Decisions](#) (guest editor: Rachel Murray).