What happens when soft law hardens? National human rights institutions and the international human rights system

Katerina Linos and Thomas Pegram[1].

Introduction

Human rights treaties articulate ambitious international standards, but in many parts of the world, domestic practices lag far behind. To bridge the gulf between international law and domestic practice, the United Nations started promoting a novel idea in the early 1990s: National Human Rights Institutions (NHRIs), independent national agencies that protect and promote human rights.[2] Initially, UN promotion efforts only involved non-binding recommendations. The 1991 Paris Principles, endorsed by the Vienna World Conference on Human Rights and the United Nations General Assembly in 1993,[3] recommended that all countries adopt NHRIs and endow them with specific powers to enhance their independence and efficacy.[4] In the early 2000s, these soft, non-binding international instruments began to harden, and obligations to set up NHRIs or similar monitoring mechanisms began to be included in important treaties, most notably in the Optional Protocol to the Convention Against Torture (OPCAT).[5] These international efforts have triggered a norm cascade on a global scale, with NHRIs spreading very rapidly across diverse political systems, from twenty NHRIs before 1990 to almost 120 NHRIs in 2012.[6] Why have governments around the world decided to commit major institutional resources to the protection of human rights? And what have binding and non-binding international instruments contributed to the diffusion and design of these new national agencies?

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[2] The NHRI has been (loosely) defined as "a body which is established by a Government under the constitution, or by law or decree, the functions of which are specifically designed in terms of the promotion and protection of human rights." See UN (1995: 4).

[3] Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, adopted by the UN Human Rights Commission, Res. 1992/54, 3 March 1992 and the UN General Assembly, Res. 48/134, 20 December 1993.

[4] See Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/24 (1993), 25 June 1993, Part I, para. 36.

[5] For a detailed analysis of this development see Carver 2010. The Convention on the Rights of Persons with Disabilities (CPRD) also directs State parties to give due regard to the Paris Principles when designating national monitoring mechanisms. The OPCAT was adopted in 2002 and entered into force in 2006. The CRPD was adopted in 2006 and entered into force in 2008. See OPCAT, Article 18(4); CRPD Article 33(2).

[6] For this and subsequent analyses, this chapter draws a new, original dataset on national human rights institutions with information compiled by Ryan Goodman, Derek Jinks and the authors. The dataset includes national institutions that have not been formally accredited "NHRIs" at the UN but nevertheless structurally resemble the institutional form envisaged by the Paris Principles. We base these numbers on our own more comprehensive dataset of NHRIs, but several scholars have noted the rapid diffusion of NHRIs and highlighted the possible role of international organizations in this cascade (e.g. Cardenas 2003; Koo and Ramirez 2009; Pegram 2010).

The proliferation of national human rights institutions poses a puzzle for prominent international relations and law theories. This is because traditional mechanisms that explain why states follow international agreements in other fields, mechanisms such as reciprocity and retaliation, do not work well in the human rights field. Simply put, states have no incentives to violate their own citizens' rights in response to other states' rights violations (Guzman 2008). Instead, in the human rights field, scholarship that emphasizes learning, socialization, status maximization, and norm diffusion offers a more plausible starting point (Risse et al. 1999; Goodman & Jinks 2004; Simmons 2008, 2009; Linos 2011, 2013; Ginsburg 2012). That said, much further work is needed to explain why international norms are effective in some circumstances but not others, and how international agreements should be designed.

Our contribution to the literature on how human rights agreements work is twofold. First, we study a critical dependent variable that has not yet been examined. To date, studies of the influence of human rights agreements focus on citizens' enjoyment of fundamental rights, such as freedom from discrimination, persecution, and torture, freedom of speech and religion, and access to education and healthcare (Simmons 2009; Hafner-Burton and Tsutsui 2005, 2007; Hathaway 2002). However, these studies come to conflicting conclusions about basic questions, such as whether the overall influence of international agreements is positive or negative. These conflicting patterns likely result because many steps separate international instruments from human rights practices on the ground. For example, a negative correlation between international commitments and human rights practices on the ground could indicate that governments start persecuting their citizens after ratifying human rights treaties. However, this negative pattern could also appear if, following ratification, governments set up national agencies that monitor human rights violations more closely, and thus observe and report more human rights violations. Our study focuses on this central intervening variable: the adoption and design of national administrative structures to monitor and improve human rights performance. We find that international agreements prompt countries to introduce and strengthen these national institutions.

Second, studying the diffusion of national human rights institutions also allows us to specify with greater clarity the institutional structures and conditions under which international norms become influential. To do so, we connect to the literature on legalization and the design of effective international instruments (Abbott et al. 2000; Raustiala 2005; Goodman & Jinks 2004; Guzman 2008). This literature suggests that the effectiveness of international agreements does not depend primarily on whether states have legal obligations to comply with particular agreements, as international lawyers traditionally believed. Instead, it posits that two additional dimensions of international agreements are critical components of their effectiveness. In addition to obligation, the precision of international agreements matters: whether they unambiguously specify the content of the commitment, or whether they offer rules that are vague (Abbott et al. 2000).[7] Additionally, delegation matters. Delegation refers to whether a third party, independent of the participating states, is entrusted with monitoring and enforcement functions. For example, committees that monitor parties' performance, or independent tribunals that adjudicate disputes, are among the forms of delegation international agreements might have. Our study supports these theoretical claims and adds important empirical support and nuance to a literature that, to date, has been largely theoretical.

[7] While prominent international law theorists have long argued that precision is critical in triggering compliance, other international relations scholars have contested the impact of precision on state conduct. Compare, for example, Franck (1990) and Chayes and Chayes (1993), with Downs et al. (1996).

More specifically, we show that whether an international agreement is legally binding is not the sole determinant of its influence. We find that a non-binding international instrument, the Paris Principles, led dozens of countries around the world to adopt NHRIs. These national institutions were at least as strong as earlier NHRIs, and were, in fact, stronger on key dimensions that the Paris Principles emphasized and precisely defined. In contrast, we find that the OPCAT, a binding international agreement that includes an obligation for states to establish NHRIs or similar monitoring bodies, did not speed up the pace at which NHRIs were adopted. That said the OPCAT likely contributed to ensuring that NHRIs maintained and strengthened important institutional design features in the face of domestic turbulence.

The key mechanism that accounts for this influence is a novel monitoring structure, whose central component is a transgovernmental network composed of accredited NHRIs. Several actors and agencies are dedicated to the ongoing monitoring of NHRIs, including NGOs and civil society actors, as well as regional bodies. Central among these is the autonomous but UN-affiliated International Coordinating Committee of NHRIs (ICC) and its Sub-Committee on Accreditation (SCA). The ICC is a transgovernmental network of NHRIs – not a body composed of UN member state delegations. The ICC has positioned itself as the gatekeeper of the Principles, within, but independent of, UN structures. This network gives letter grades to individual NHRIs. In turn, A-status NHRIs are afforded access to the UN system, such as participation rights in the newly formed Human Rights Council (HRC) and the Universal Periodic Review of state practices undertaken by the Council. This has given NHRIs unprecedented opportunities to inform the decision-making process of the body. In addition, this network has gradually tightened the standards that NHRIs are called on to meet.

In short, core monitoring activities within the international human rights regime have been delegated to a third party, which is not controlled by states. We illustrate that this organizationally dense transgovernmental network of NHRI officials has played an important role in strengthening compliance with a non-binding instrument – the Paris Principles – with significant effects on state behavior. Our findings also add further empirical evidence to the growing human rights literature that questions the priority international relations scholars and international lawyers have traditionally placed on unitary state actors.[8] Multiplying institutional opportunities for NHRI access within the UN system reflects growing recognition of their role in the transmission of international human rights standards and their implementation at the local level.[9]

To summarize, our argument has four parts. First, we argue that the Paris Principles sped up the adoption of NHRIs. Second, we argue that the Paris Principles influenced the design of National Human Rights Institutions. Third, we argue that in countries that have ratified OPCAT, NHRI structures are being maintained and strengthened, whereas in countries that have not ratified OPCAT, these patterns are less strong. Finally we argue that a system of independent peer review and monitoring, along with incentives offered by the UN Human Rights Council, is critical to explaining the proliferation and strengthening of NHRIs worldwide.

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[8] For discussion of transgovernmental networks see Chayes & Chayes 1996; Finnemore & Sikkink 1998; Frank 2000; Slaughter 2004; Hurrell 2007 and Hafner-Burton et al. 2009.

[9] The UN Secretary General Ban Ki-moon has stated: "[NHRIs] have a crucial role to play in the effective implementation of international human rights standards at the national level by...translating international human rights norms in a way that reflects national contexts and specificities." See Report of the SG, UN Doc. A/64/320, 24 August 2009.

To document our claims, this chapter draws on an original dataset with information on national institutions globally, compiled by Ryan Goodman, Derek Jinks, Katerina Linos and Tom Pegram.[10] The analysis is further based on an extensive body of fieldwork and interview data with over 30 interviews conducted with NHRI practitioners, international law experts, NGO actors and UN officials. In addition, we draw on the experience of directly observing the work of the Sub-Committee on Accreditation, having been granted Observer Status at the session held in Geneva between 26 and 30 March 2012.

The chapter begins with a discussion of the origins of the Paris Principles and the role of NHRI entrepreneurs and peer networks in promoting NHRIs through these non-binding standards, as well as the monitoring of NHRI compliance. We analyze the effects of the Paris Principles on the adoption of NHRIs at both the global and regional level. This is followed by an examination of the formal integration of NHRIs into the procedural rules of the Human Rights Council. The subsequent section details the evolution of NHRIs in treaty law with a focus on the treaty body system, culminating in their inclusion within the OPCAT. The section then turns to evaluating the initial effects of OPCAT on NHRIs globally, and, in particular, in Latin America. The chapter ends by elaborating upon some of the implications of this study for NHRI research and the domestic consequences of international human rights standards.

The Paris Principles and the global adoption of NHRIs

The Paris Principles constitute a concrete – if imperfect – template for NHRI design, with guidelines governing the independence, jurisdiction, mandate and composition of NHRIs. NHRIs themselves, as opposed to UN member states, developed these standards, and this is reflected in the Principles setting a high bar on some important dimensions. This section documents a sharp increase in the adoption of NHRIs following the Paris Principles, and subsequent sections examine the influence of the Paris Principles on the design of NHRIs.[11]

Before the 1990s, only twenty NHRIs existed worldwide, and international attention to these bodies was limited and intermittent. The Paris Principles emerged out of a workshop on national institutions organized at the request of the UN Commission on Human Rights in 1991.[12] Although the Paris meeting was organized by a UN agency and attended by a few government representatives, there were few expectations for a concrete outcome document outside a small circle of NHRI practitioners.[13] Indeed, as Chris Sidoti, former Australian Human Rights Commissioner, recalls, "everyone was surprised that the Paris Principles came out of the [Paris] meeting."[14] The Principles that emerged from this meeting were the result of intensive deliberations among NHRIs themselves, not among UN Member State delegations. The actual drafting of the Paris Principles was conducted by a working group of four NHRI representatives chaired by the Secretary-General of the French Commission.

Two years later, a fortuitous development along a parallel track propelled the Paris Principles decisively onto the UN agenda, namely, their inclusion in the Vienna World Conference

[10] David Zionts offered significant research assistance in the compilation of this dataset.
[11] UN Doc. A/CONF.157/24 (1993), Part I, para. 36.
[12] See CHR Res. 1990/73, 7 March 1990, para. 3.
[13] See list of participants is included in E/CN.4/1992/43/Add.1.
[14] Email from Chris Sidoti, former Australian Human Rights Commissioner (1995-2000), to Thomas Pegram, Research Fellow, New York University School of Law (18 Jan. 2011 17:24 EST) (on file with author).

Declaration in July 1993, following intensive lobbying by NHRI entrepreneurs and a few sympathetic government delegations. Observers credit this development as a crucial turning point, opening the way to their endorsement at the General Assembly, which swiftly followed in December 1993.[15] Importantly, the General Assembly resolution included the Paris Principles verbatim with no modification in an annex to the resolution. Instead, the General Assembly recommendation reflected negotiations conducted among NHRIs in Paris in 1991.

The fact that the Paris Principles were not designed by UN member states, and indeed their emergence surprised even persons intimately involved in NHRI circles, is important both for human rights advocates, and for scholars interested in measuring their influence. International lawyers have argued that international law has great influence, as "almost all nations observe almost all principles of international law and almost all of their obligations almost all the time" (Henkin 1968: 47). However, because states have significant control over the content and timing of international agreements, and the decision to join particular treaties and organizations, it is hard to interpret such correlations (Downs 1996). UN member state involvement in the negotiation of international agreements can sometimes lead to weak international standards that call on states to take on small reforms they might have undertaken regardless. In contrast, as we outline below, the Paris Principles are surprisingly ambitious in several respects.

Prior to the 1991 meeting in Paris, "there were virtually no limitations on the definition of a national human rights institution" (Lindsnaes and Lindholt 2001: 8). This is reflected in broad design variance among a very loosely defined group of national institutions that included classical and "hybrid" ombudsmen, human rights and anti-discrimination commissions, and government advisory or consultative bodies. Significant debate occurred in the 1991 Paris workshop over what form NHRIs should take. The resulting Principles reflect division over the design of NHRIs as well as political compromise among the competing institutional models present at the meeting. In 1991 there were two principal, if loosely defined, NHRI archetypes: the commission model and the ombudsman model. The human rights commission is generally understood to have an express human rights mandate, is composed of multiple representatives with human rights expertise, including civil society representatives, and has a mandate that *may* encompass an advisory, research, educational, or an investigative function. In contrast to the Commission model, the classical ombudsman model involves a single appointee, selected by the legislature and empowered to investigate (and prosecute if necessary) grievances of the citizenry against the public bureaucracy pertaining to legality and administrative fairness. "Hybrid" ombudsmen are ombudsmen offices that have a core human rights promotion and protection function beyond the more classical oversight of public administration. In addition, especially in Europe, there existed a host of monitoring and regulatory agencies dedicated to the protection of specific groups, such as children, and to equality and non-discrimination.[16]

The Principles that emerged in Paris follow the commission model more closely than the ombudsman model, and provide basic guidelines governing the independence, jurisdiction, mandate and composition of NHRIs. In particular, they direct institutional designers to build in structural guarantees of independence, such as constitutional or legislative entrenchment, as well specify a range of functions which NHRIs should be able to perform. However, reflecting contestation in Paris among competing models, the final document is both

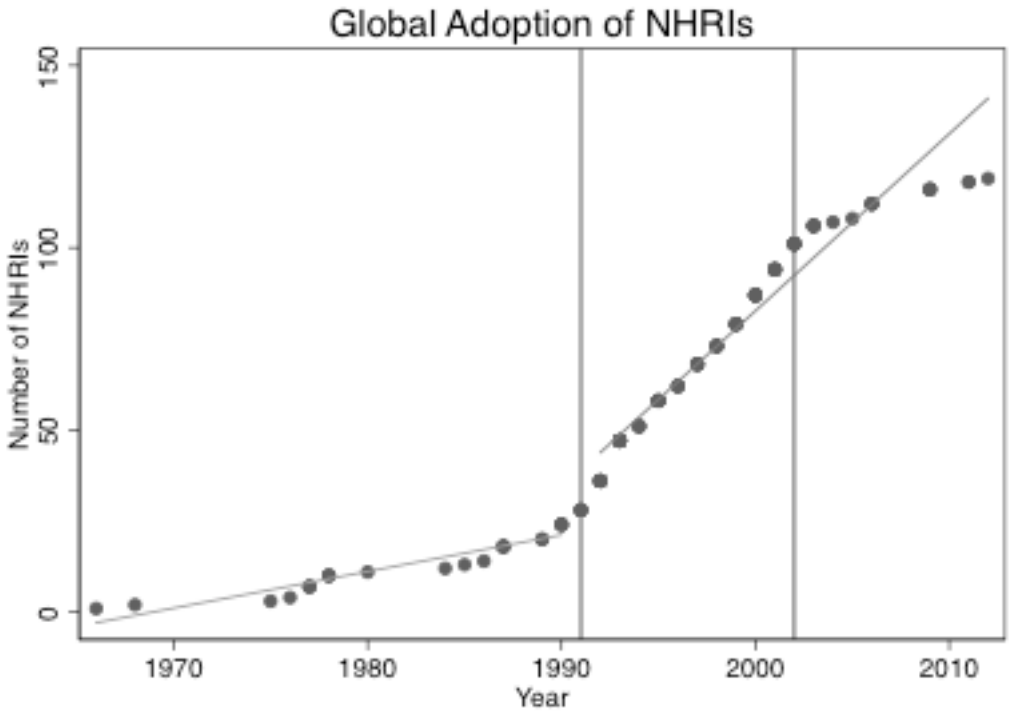
[15] 'National institutions for the promotion and protection of human rights,' UN Doc. GA Res. 48/134, 20 December 1993

[16] For a discussion of different NHRIs see Reif (2012).

ambitious in some respects and peculiarly lacking in other respects. For instance, some design features commonly associated with ombudsmen, such as complaint-handling and access powers, are left as optional or not mentioned at all. We take on the question of the influence of the Paris Principles on NHRI design in a subsequent section.

We first document that the Paris Principles likely contributed to the rapid spread of NHRIs globally. Figure 1 plots the cumulative adoption of NHRIs around the world. The first vertical line marks 1991, the year in which the Paris Principles were developed. We see a sharp increase in the rate at which NHRIs were adopted following UN endorsement of the Paris Principles. This pattern is suggestive of the influence of the international human rights community on the adoption of national reforms in many countries. Qualitative evidence suggests that the change in the pace of adoption is not a mere coincidence, and that the Principles quickly became an important reference point for domestic debate on the adoption of national institutions. In just the one year of 1997, the Special Advisor on National Institutions to the UN High Commissioner for Human Rights received requests for assistance and advice from multiple stakeholders in at least 39 different countries where NHRI establishment was under consideration. Assistance took the form of advising on governmental draft decrees and legislation, as well as in-country missions to hold discussions and workshops with government officials and civil society actors on achieving compliance with international standards, principally the Paris Principles.[17]

Figure 1: Global Adoption of NHRIs



[17] "Requests for assistance and summary of current activities of the special adviser on national institutions, regional arrangements and preventive strategies," 19 September 1997. Document provided by Brian Burdekin, former Special Adviser on National Institutions to the UN High Commissioner for Human Rights (1995-2003). On file with author.

The second vertical line marks 2002, the year in which the Optional Protocol to the Convention Against Torture (OPCAT) was adopted and opened for signature.[18] We do not observe an increase in the pace of adoptions after OPCAT. This likely reflects the fact that the majority of states that could easily adopt an NHRI had already done so by this stage. Indeed, there is still strong resistance to the adoption of an NHRI in several countries; prominent among these are China, Brazil, and the US. That said, we are still seeing many countries eagerly adopting NHRIs in the 2010s; this process is now occurring at the outer boundaries of Europe and among Arab countries.[19]

While the pace of NHRI adoption did not pick up after OPCAT, qualitative data indicates that the OPCAT has had an impact on at least two fronts. First, it likely contributed to the adoption of NHRIs in some countries that had resisted these institutions. National debates on the adoption of NHRIs in several latecomers to the NHRI club, including Chile, Scotland and Uruguay, included prominent references to the Principles.[20] For example, in Chile, politicians and civil society advocates frequently referenced the Principles as an important reason for the establishment of the National Institute of Human Rights in 2009.[21] Second, and possibly more consequentially, OPCAT has given added impetus to the gatekeepers of the Principles in their efforts to encourage the strengthening of existing NHRI structures, a point we develop below.

The Paris Principles and Regional Diffusion Effects

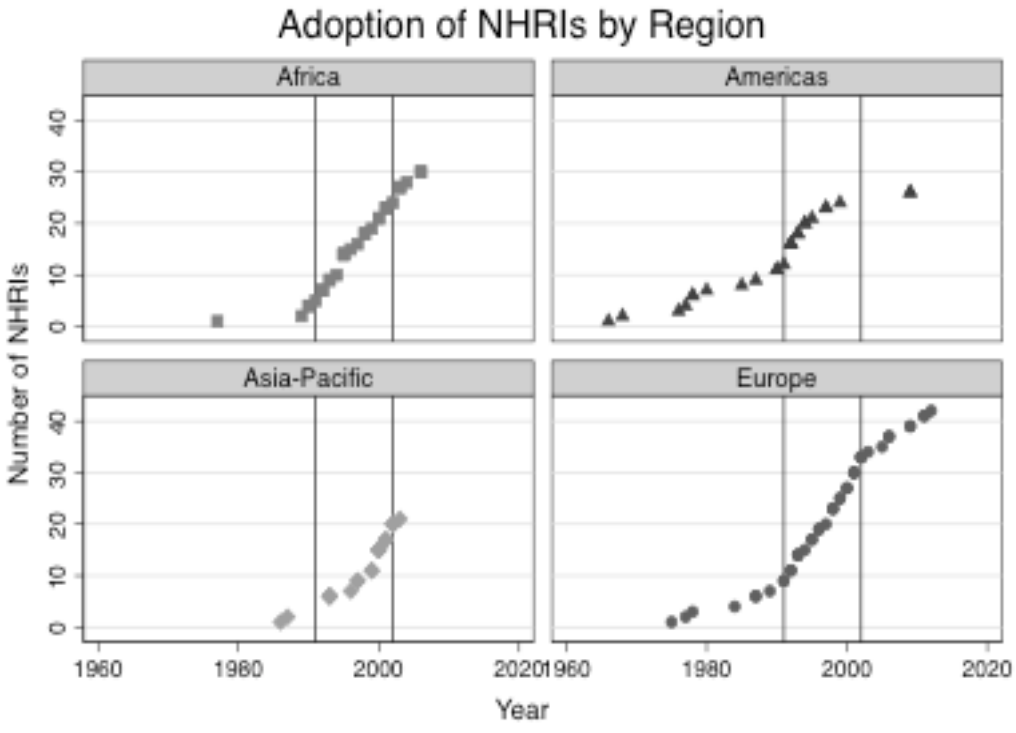
Several authors have drawn attention to the need to study regional variation in the adoption and structure of NHRIs (e.g. Kjaerum 2003: 7). Indeed, the diffusion effects we see are not uniform across the globe; we find significant variation across regions. Before the Paris conference of 1991, NHRIs were prominent in two parts of the world: Europe and Latin America. National human rights commissions found in Europe before Paris Principles were generally established as consultative councils to government. Most of them had an advisory or promotional human rights mandate, as opposed to the investigative faculties and the ability to receive complaints required to perform a protective function.[22] In contrast, by 1991, the prominent model in Latin America was the "hybrid" or human rights ombudsman, which has at its core a human rights protection mandate, robust investigative powers, and the ability to receive complaints.[23] These regional templates likely shaped both the patterns of adoption of NHRIs, and, more importantly, the design of NHRIs, a point to which we turn in the next section.

[18] As of October 2012 the OPCAT has 86 signatories with 64 Member States having ratified the optional protocol.
[19] Recently established offices include Afghanistan, Egypt, Iraq, Mongolia, Qatar, Jordan, Kyrgyzstan, Tajikistan and Kazakhstan.
[20] All three institutions were established in the period 2008 to 2010 and have been formally designated as national preventive mechanisms or part of a multi-institutional NPM under the OPCAT. See Sub-Committee on Prevention of Torture, "Compilation of information on NPMs based on State Parties submissions to the SPT," available at: http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm (accessed 28 September 2012).
[21] See "Historia de Ley, No. 20.405 Del Instituto Nacional de Derechos Humanos," Chilean National Congress Library.
[22] The prototype of this model can be found in France (created in 1948) and has been emulated in Francophone Africa. Europe also displays a varied mix of other institutional forms, including classical ombudsmen and specialized equality and anti-discrimination bodies.
[23] Human rights ombudsmen can be traced to Portugal (created in 1975), Spain (1978), Guatemala (1985), and Poland (1987). See Reif (2000: 5-13).

In Europe and in the Americas, where a regional template existed before Paris, we see the traditional S-shaped curve that characterizes the diffusion of many innovations. More specifically, Figure 2 shows how NHRI adoption has varied by region and over time. As with Figure 1, we plot cumulative adoption of NHRIs over time by region, and mark the date of the Paris meeting (1991), and the date of the adoption of OPCAT (2002) with vertical lines.

We see a very different pattern in Africa and the Asia-Pacific region, regions in which NHRIs were rare before Paris, but where many NHRIs were adopted very rapidly following the promulgation of the Paris Principles in 1991. This pattern is less suggestive of country-to-country diffusion, and more suggestive of a common shock, such as pressure from international organizations and regional bodies. Indeed, qualitative studies suggest that regional networks have been critical in promoting the adoption of NHRIs and reinforcing the content of the Paris Principles in the Asia-Pacific (Byrne et al. 2009). The Asia-Pacific Forum (APF), created in 1996, is a sophisticated NHRI regional peer network. Significantly, up until 2009,[24] it operated its own autonomous accreditation process, assessing the compliance of prospective NHRI members with the Paris Principles. This additional tier of monitoring is thought to have put significant pressure on states in the Asia-Pacific region to adopt NHRIs and ensure that NHRIs conform to the Paris Principles (Fitzpatrick and Renshaw 2012).

Figure 2: Cumulative NHRI adoptions by Continent



The influence of the Paris Principles on NHRI design

[24] At the 2009 Annual Meeting of the APF, it was decided to suspend its own accreditation process and accept the SCA/ICC accreditation as it was by then satisfied that the SCA/ICC accreditation process had become sufficiently rigorous.

The Paris Principles have not only contributed to the worldwide adoption of NHRIs; they have also influenced the design of national institutions. While the Paris Principles constituted an important and influential template for the design of NHRIs, on design features which the Paris Principles offered only weak guidance, regional templates were used to fill the gaps.

As described above, the Paris Principles specify key functions of NHRIs. They were designed by NHRI practitioners themselves in 1991, and subsequently endorsed by the UN General Assembly as non-binding standards through a 1993 recommendation. Several commentators have noted the "somewhat paradoxical" nature of a standard that "lays down a maximum programme that is met by hardly any national institution in the world" and yet, in turn, does not even "take it as given that a national institution will deal with individual complaints" and other features considered minimum requirements for any NHRI (ICHRP 2000: 2). That is, the Paris Principles strongly recommend some features that many commentators do not consider essential for NHRIs, while weakly recommending features these commentators do consider fundamental.

On examination it becomes apparent that those strongly recommended features in the Paris Principles' closely resemble the consultative human rights commission predominant in Europe, rather than the Latin American human rights ombudsman model. This is because of the significant role of the French National Consultative Commission on Human Rights in the drafting of the Principles. In contrast, the Latin American ombudsman offices were not a vocal presence at the Paris meeting. Advocates for the consultative commission model therefore succeeded in diluting or removing important quasi-judicial design clauses in Paris, such as mandatory complaint-handling powers, mostly because delegates from other types of national institutions with such faculties, including some human rights commissions such as the Australian national office, "were in a minority" at the workshop (Burdekin 2007: 23). The somewhat idiosyncratic nature of the Paris Principles may be problematic from a human rights standpoint. However, it is an advantage for researchers, as it makes it easier to observe the Principles' distinctive signature on subsequently adopted NHRIs.

To examine the domestic influence of the Principles, we compare institutions adopted before and after the Paris Principles were endorsed in the Vienna World Conference Declaration, and subsequently, by the General Assembly. As Table 1 demonstrates, NHRIs adopted after Paris were no weaker than those established before 1993. If late adopters were merely trying to placate the international community without incurring the costs associated with major reform of their domestic human rights framework, we would expect to see a different pattern. We would expect the global push in favor of NHRIs to lead countries to adopt NHRIs in name alone. We would expect to see many post-Paris NHRIs with weak institutional structures, decoupled from any functional ability to monitor and prevent abuses (Goodman & Jinks 2004). However, a feature-by-feature analysis shows us that, in general, NHRIs adopted before Paris had similar institutional design features as NHRIs adopted after Paris.

In fact, we find that countries that adopted NHRIs after Paris were significantly more likely to adopt those design principles clearly specified and strongly recommended in the Paris Principles as essential to NHRI formal design. Some of these strong recommendations appear idiosyncratic, and were quite rare prior to the Paris Principles. This makes it more likely that their diffusion is due to the Paris Principles.

Table 1: Prevalence of Institutional Design Features Before and After Paris

	Fraction of NHRIs before Paris (std. error)	Fraction of NHRIs after Paris (std. error)
Strongly Recommended Features		
Explicit Rights Mandate	0.89	0.96
	(0.05)	(0.02)
Established by Constitution or Legislation	0.81	0.75
	(0.07)	(0.05)
Power to Investigate	0.92	0.92
	(0.05)	(0.03)
Civil Society Representation	**0.25**	**0.43**
	(0.07)	(0.06)
Harmonize IHRL	**0.58**	**0.86**
	(0.08)	(0.04)
Education and Promotion	**0.56**	**0.86**
	(0.08)	(0.04)
Advise on Legislation	**0.61**	**0.79**
	(0.08)	(0.05)
Engage with IOs	**0.31**	**0.55**
	(0.08)	(0.06)
Weakly Recommended Features		
No Government Representation	0.53	0.60
	(0.08)	(0.06)
Not Designated by Executive	0.53	0.46
	(0.08)	(0.06)
Term Limits of 5+ years	0.73	0.60
	(0.07)	(0.06)
Possibility of Reappointment	0.69	0.71
	(0.08)	(0.05)
Can Receive Individuals' Complaints	0.92	0.87
	(0.05)	(0.04)
Enforcement Powers	0.11	0.10
	(0.05)	(0.04)
Can Refer Complaints to Prosecutors/Courts	0.75	0.75
	(0.07)	(0.05)
Can Compel Evidence/Testimony	0.58	0.53
	(0.08)	(0.06)
Annual Report	*0.81*	*0.60*
	(0.07)	(0.06)
Features Not Mentioned		
Immunity	0.53	0.53
	(0.08)	(0.08)
No Dismissal without Cause	0.48	0.42
	(0.08)	(0.06)
Amicus Curiae Powers	**0**	**0.21**
	(0)	(0.05)
Power to Oversee Security Facilities	0.75	0.71
	(0.07)	(0.05)
Single Head	*0.58*	*0.35*
	(0.08)	(0.06)

Notes: We use 1993 as a cutoff, which places 36 NHRIs in the before category, and 72 in the after category

Specifically, the Paris Principles strongly recommended that all institutions have the following eight functions. First, the Paris Principles called for an explicit and broad rights promotion and protection mandate to ensure the institution can act on any violation of human rights brought to its attention. Related to this point, the Principles also strongly recommend that an NHRI have the ability to "freely consider any questions falling within its mandate," that is, the ability to act without instruction from higher authority. An NHRI should be established either through constitutional reform or legislative enactment, because if they are established by executive decree, they may not be sufficiently independent. To further shore up guarantees of independence, according to the Principles, the composition of the NHRI must include civil society representation. In terms of functions, the Principles strongly recommend that NHRIs have an international human rights law mandate as a means to reinforce implementation of international instruments at the domestic level. Complementary to this function, the Principles also instruct designers to ensure NHRIs are vested with an education and promotion mandate, as well as the ability to advise on legislation and make recommendations. Finally, an NHRI should be given an express mandate to engage with international organizations and specifically the monitoring apparatus of the UN human rights machinery.

In addition, the Principles weakly recommended nine design features specified in broad or vague terms or listed as optional. Weak recommendations include the principle of no government representation. Government representation was permitted in the final text, with the caveat that, if appointed, representatives of the executive branch should not have voting rights. Similarly, designation of NHRI members by the executive was not explicitly proscribed, even though such appointments were vaguely discouraged through language about pluralist representation. Safeguards of independence such as long, fixed terms for NHRI commissioners and the possibility of their reappointment are vaguely specified. There was no specification of how long NHRI commissioner terms should be, and the possibility of reappointment was referred to as an optional feature. Weak recommendations are particularly notable in relation to investigation functions. The power to receive complaints is left optional, as is the possibility of NHRIs issuing binding decisions or referring cases to prosecutors and courts. Although powers to compel testimony and evidence production are specified indirectly, the recommendation is limited to those NHRIs established with an investigative function. The Principles also recommend that the NHRI issue reports to Parliament. However, the Principles do not issue guidance on their frequency or content. Annual reports to Parliament are a principal means of promoting human rights discourse at the national level as well as evaluating the performance of the NHRI itself.

The Paris Principles were silent on other important issues, such as immunity from prosecution in the carrying out of official duties, an instrument intended to ensure the independence of appointed NHRI leaders. There is no prohibition on dismissal without cause, even though the independence of NHRIs is placed in jeopardy if a member can be easily dismissed before his or her term expires. An emphasis on pluralist representation has led some observers to narrowly interpret the Principles as excluding single-member institution, chiefly ombudsmen offices that were not well-represented in Paris. However, the ICC Sub-Committee on Accreditation has nuanced this position, highlighting "different ways in which pluralism may be achieved."[25] Finally, in terms of powers, the Principles are silent on

[25] Sub-Committee on Accreditation of the International Coordinating Committee for National Institutions, "General Observations," Geneva, June 2009.

whether an NHRI should have the power to provide the courts with amicus curiae briefs, an important addition to an NHRI's legal toolkit. The power to access all places of deprivation of liberty, detention and custody without prior authorization is also absent from the final text. In the context of the Optional Protocol to Convention Against Torture (OPCAT), this design omission has raised concerns over the suitability of NHRIs as national preventive mechanisms.

In Table 1 above, NHRIs established starting in 1993 are compared to NHRIs established earlier. Each cell represents the fraction of NHRIs with a particular design feature, with standard errors in parentheses. For example, the first row tells us that 89 percent of NHRIs established before Paris had an explicit rights mandate, a figure that increased to 96 percent after Paris, a difference that is not statistically significant. Bold and italic fonts are used to highlight statistically significant differences; bold is used to indicate a statistically significant increase in the prevalence of a design feature after Paris, and italics are used to indicate a statistically significant decrease. This table underscores that, on a number of important design features, post-Paris institutions were at least as strong, if not stronger, than institutions designed earlier.

This table also suggests that the Paris Principles were particularly influential on design features where they included strong recommendations. In contrast, we see no statistically significant shifts on issues where the Paris Principles only made weak recommendations. It is possible that states may have wished to follow the Paris Principles, but significant ambiguities in the text led NHRI designers looking elsewhere for instructions. Where the Paris Principles were vague or silent, regional models likely filled the gaps. For instance, it is notable that all Asia-Pacific NHRIs can receive individual complaints, even though this is only weakly recommended in the Paris Principles. Qualitative data suggests that a dominant regional model and peer influence in the region turned this weakly recommended feature of the Paris Principles into a standard and expected feature of those national institutions established in the Asia-Pacific. Notably, the Australian model likely provided an important standard to be observed above and beyond the baseline offered by the Paris Principle. According to Brian Burdekin, the former President of the Australian Human Rights Commission, it is no coincidence that an "incidentals" clause in the founding legislation of Australian Human Rights commission is emulated in seven other NHRIs in the Asia-Pacific region.[26] NHRI Statutes in Australia, India, Sri Lanka, Thailand, Malaysia, Nepal, and the Republic of Korea all have an "incidentals" clause, a section of their legislation which follows the enumeration of their specific powers and functions with a provision to the effect that the Commission can "do anything incidental or conducive to the performance of any of the preceding functions" (Burdekin 2007: 30). Carver (2010: 31) also credits the Asia-Pacific Forum with "ensuring a consistency of approach and the primacy of international law among NHRIs."

The "gatekeepers" of the Paris Principles

Why did the Paris Principles become so influential, given that they only constituted a non-binding document? An important system of peer monitoring constitutes the missing puzzle piece. The legalization literature emphasizes that when parties to an international agreement delegate monitoring to a third-party, such as a Court, this can enhance compliance with the

[26] Brian Burdekin, former Special Adviser on National Institutions to the UN High Commissioner for Human Rights (1995-2003), interview with Thomas Pegram, (30 March 2012 10:00 GMT).

agreement by producing credible information (Abbott et al. 2000; Guzman 2008). Raustiala (2005: 585) helpfully distinguishes between weak monitoring, in which parties "may self-report, but those reports are not analyzed or are only analyzed collectively" and strong monitoring "in which a central body issues a specific determination about a specific party." The peer-review mechanism for NHRIs described below falls into this last strong monitoring category, as it offers individual assessments and even letter grades to particular NHRIs. Theories of socialization and shaming, as well as information and learning also predict that such peer-review monitoring mechanisms can be effective (Goodman & Jinks 2004; Linos 2011).

In addition to providing individualized assessments of NHRIs, the peer-review accreditation system for NHRIs fills important gaps in the interpretation of the Paris Principles, and has over time, ratcheted up these standards. In so doing, the NHRI accreditation mechanism resembles what Karen Alter and Larry Helfer (2010: 566) call an "activist court" – namely, a body that can "identify new legal obligations" that "narrow state discretion."

NHRIs are reviewed by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The ICC is an international body made up of NHRIs deemed in compliance with the Paris Principles.[27] From its inception, the ICC membership was concerned that they should be the gatekeepers to ensure "the currency [of the Paris Principles] was not devalued."[28] The ICC also represents NHRIs within the UN system, and has achieved formal status within UN structures, although it is not a UN body.[29] The work of the ICC is currently facilitated by the Office of the High Commissioner for Human Rights (OHCHR) secretariat through its National Institutions and Regional Mechanisms Section. In particular, the OHCHR supports the work of the ICC in monitoring NHRI compliance with the Paris Principles through a process of peer-review undertaken by its Sub-Committee on Accreditation.

It is the ICC Sub-Committee on Accreditation (SCA) that accredits NHRIs; this is a peer-review system, not a system of review led by UN Member States.[30] NHRIs can receive A, B, or C status in this accreditation process. NHRIs granted 'A status' accreditation by the ICC SCA are deemed to be in "full compliance with the Paris Principles" and have full participation rights within the HRC. B status signifies "partial compliance," and C status "non-compliance." The SCA is composed of one ICC NHRI accredited 'A Status' for each of the four regional groups appointed for a term of three years.[31] In addition, the OHCHR is a permanent observer to the Committee and acts as Secretariat to the ICC and SCA. The SCA convenes twice a year and reviews multiple applications for accreditation or reaccreditation.[32]

[27] Initially, an informal grouping of NHRIs formed in Vienna; in 2008 the ICC was incorporated under Swiss law as an association. It has a bureau of 16 voting members drawn equally from the regions of Africa, the Americas, Europe, and Asia Pacific.

[28] Chris Sidoti, former Australian Human Rights Commissioner (1995-2000), interview with Thomas Pegram, (26 July 2012 11:00 GMT). Sidoti goes on, "we recognized that it was in the interests of our own credibility and status in our own country to ensure that international standards were being met. But there was also the realization that if we didn't accredit somebody else eventually would..."

[29] See, for example, the following CHR resolutions: UN Doc. E/CN.4/RES/2004/75; E/CN.4/RES/2003/76; E/CN.4/RES/2000/76. For GA resolutions, see A/RES/54/176, 15 February 2000; A/RES/58/175, 10 March 2004.

[30] The ICC decided in 1998 to establish an accreditation system and the SCA met for the first time in April 2000 at the Fifth International Workshop for National Institutions for the Promotion and Protection of Human Rights held in Rabat, Morocco.

[31] Currently, this includes the representatives of Canada, France, Qatar and Togo.

[32] In 2006, it was decided that all NHRIs would be subject to reaccreditation every five years.

Recommendations for accrediting applicants either A, B, or C status are forwarded to the ICC Bureau for their approval.[33]

Whether this accreditation system is sufficiently strict is up for debate. Brodie (2011) argues that the historical trajectory of the ICC and its accreditation process is one of movement away from a "very inclusive membership" at the outset to a membership model which "regulates and excludes." The accreditation system was strengthened in 2004, and efforts were made in the intervening years "to give it teeth."[34] Nevertheless, critics are still concerned that the ICC accreditation process based on peer review is inherently flawed (Rosenblum 2012). Data on patterns of accreditation over time can shed some light on this debate.

Table 2: Total Accreditation and Status of NHRIs 2004-2012[35]

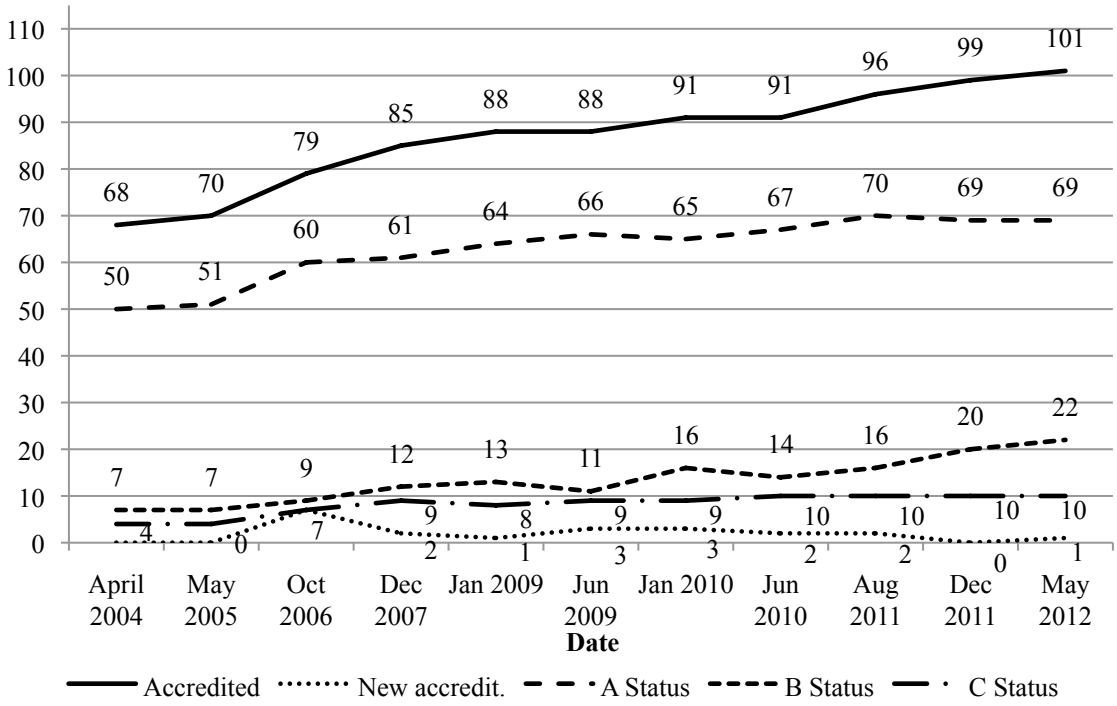


Table 2 maps the accreditation of NHRIs by the SCA over time. It indicates that A status accreditation as a percentage of the total declined slightly from 74 percent in 2004 to 68 percent in 2012. Correspondingly, B and C status accreditations together, as a percentage of the total, go up from 26 percent in 2004 to 32 percent in 2012. As such, although in absolute terms, the number of A status NHRIs is increasing and the SCA has generally leaned towards ruling an NHRI to be in "full compliance" with the Paris Principles, they are declining as a percentage of all accredited NHRIs as the overall population of accredited institutions grows.

As Table 2 indicates, the majority of NHRIs have retained A status, even if the percentage of B and C status institutions has grown modestly. Downgrading the status or suspending an existing ICC member remains the exception. For example, downgrading has occurred in the cases of Honduras (in 2010) and Sri Lanka (2007). In both instances, the integrity of the

[33] At its session in March 2012, the SCA reaccredited NHRIs from Rwanda, Malawi, Bolivia, Philippines, Peru, Indonesia, and Colombia. It also accredited a number of new applications from Mali, Kyrgyzstan, Tajikistan and Kazakhstan.
[34] Gianni Magazenni
[35] Data from Reports of the SCA 2004 to 2012. Table includes accredited and reaccredited NHRIs.

NHRI was compromised by highly volatile contexts. Similarly, few NHRIs have had their ICC membership suspended. This happened in the case of Fiji (2007), Niger (2010) and the Swedish Equal Opportunities Commission (2010). In the latter two cases, suspension reflected the dissolution of the institution. In the case of Fiji, it was a response to the manifest failure of the NHRI to retain its independence in the context of a coup d'état.

Instead, the SCA has relied on the more subtle mechanism of special reviews.[36] Essentially, the SCA has used the threat of downgrade to prompt action on the part of NHRIs and government.[37] Currently, a number of NHRIs face special review related to their compliance with the Paris Principles.[38] A number of other NHRIs have received recommendations for downgrade to B status, unless continued compliance can be established within one year.[39] As such, contemporary developments indicate the direction of travel, if not as yet, the full effects, of the SCA monitoring system.

Do NHRIs respond to threats of special reviews and downgrades? Sarugaser-Hug (unpublished: 9) claims that, from 1999 to 2011, 15 ICC-accredited NHRIs have "clearly implemented or acted upon the SCA's recommendations."[40] However, this is likely a conservative estimate based on the formal SCA reports, and may undercount instances of more informal influence.

As the section below clarifies, SCA accreditation is important because it grants NHRIs access to the UN human rights system. Only national institutions that "comply fully" with the Paris Principles are granted "A status" and thereby receive full voting rights within the ICC and participation rights before the HRC.[41] The high degree of access given to NHRIs contrasts markedly with NGOs, for which access is contingent upon the approval of the UN Economic and Social Council (ECOSOC).

The core function of the ICC is to monitor the compliance of NHRIs with the Paris Principles. The empirical data above shows, the Paris Principles provided an important baseline for NHRI design during the promotional boom years of the 1990s. However, the ICC/SCA has also acknowledged deficiencies in the text and, cognizant of both the risks of obsolescence and capture if the Principles are subject to a process of renegotiation, has

[36] The Special Review procedure is contained in Article 16.1 of the ICC Rules of Procedure: "Where the circumstances of any NHRI change in any way which may affect its compliance with the Paris Principles, that NHRI shall notify the Chairperson of those changes and the Chairperson shall place the matter before the Sub-Committee on Accreditation for review of that NHRI's accreditation status."

[37] See Brodie 2011; Fitzpatrick and Renshaw 2012; Sarugaser-Hug (unpublished) for in-depth discussion of the variable impact of such action by the SCA.

[38] The following NHRIs are currently under special review: Colombia (to be reviewed in 2014), India (2013), Indonesia (2014), Morocco (2012), and Tanzania (2013).

[39] This is case for Nepal (recommendation issued in 2011), Norway (2011), Rwanda (2012), and Senegal (2011).

[40] These include, by region, Africa: Mauritania, Nigeria and Morocco; Americas: Canada and Ecuador; Asia-Pacific: Australia, Jordan, Malaysia, Nepal, New Zealand and Qatar; Europe: Bosnia and Herzegovina, Great Britain, Greece, and Luxembourg.

[41] As the ICC puts it: ""A" status institutions demonstrate compliance with the Paris Principles. They can participate fully in the international and regional work and meetings of national institutions, as voting members, and they can hold office in the Bureau of the International Coordinating Committee or any sub-committee the Bureau establishes. They are also able to participate in sessions of the Human Rights Council and take the floor under any agenda item, submit documentation and take up separate seating." See http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx

sought to informally strengthen the precision of the Paris Principles through their own interpretative directives.[42]

The SCA is making principles contained in the Paris Principles more precise. An important step in this regard is the development of the General Observations (GOs) as interpretative tools of the Paris Principles intended to instruct institutions, persuade domestic governments, and guide the SCA in its determinations on accreditation.[43] The Sub-Committee began the practice of issuing GOs in 2006 and during its two sessions in 2007, subsequently adopted by the ICC plenary.[44]

A review of the content of the General Observations demonstrates the extent to which they seek to refine the Paris Principles and clarify what before was left open to interpretation. This is particularly apparent in relation to independence. Indicative of the priority accorded to safeguards of independence by the SCA and the possible inadequacies of the Principles in this regard, the majority of the substantive General Observations issued in 2006 and 2007 address guarantees of independence and pluralism.[45] For instance on the question of constitutional/legislative mandate, GO 1.1 states plainly "an NHRI must be established in a constitutional or legal text. Creation by an instrument of the Executive is not adequate."[46] For another example, on the question of adequate funding for NHRIs, GO 2.6 details a series of minimum provisions that are required to meet this obligation.[47]

It is also possible to trace the GOs to specific recommendations on individual applications dealt with by the SCA in recent years. Restrictions on jurisdiction, delays in complaint handling and NHRI inaction on violations have all featured in recent decisions.[48] The SCA has emphasized the importance of maintaining compliance with the Paris Principles when assuming additional responsibilities under the OPCAT.[49] Finally, the issue of performance has been a perennial concern.[50]

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[42] For example, the OHCHR and ICC recently adopted the "Belgrade Principles" clarifying the Paris Principles clause stipulating that NHRIs will establish "effective cooperation" with parliament. See Annex to Report of the Secretary General to the Human Rights Council, UN Doc. A/HRC/20/9, 1 May 2012.

[43] Rules of Procedure for the ICC Sub-Committee on Accreditation, Article 6.3.

[44] See Report and Recommendations of the Sub-Committee on Accreditation, ICC 18th Session, Santa Cruz, 27 October 2006.

[45] See Report and Recommendations of the Sub-Committee on Accreditation, ICC 18th Session, Geneva, 26-30 March 2009, Annex II.

[46] It is a far cry from the first meeting of the SCA in 2000 where the issue of Presidential establishment was the subject of vigorous disagreement. At the time, executive establishment was begrudgingly accepted, with the caveat that it should be established that the decree was part of the constitutional legislative power of the President and not just a regulatory or arbitrary act.

[47] These include, importantly, "financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control."

[48] For instance, the SCA has noted that civil society and the Special Rapporteur on the situation of human rights defenders have alleged that the Indian Commission's "complaint handling functions suffer from extended delays" and that the Commission "does not address human rights violations that have occurred." Accreditation of India, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 23-27 May 2011, p. 14; Also see Accreditation of Kazakhstan, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 26-30 March 2012, p. 7.

[49] See accreditation of Azerbaijan, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 11-15 October 2010, p. 7; also accreditation of the Maldives, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 1 April 2010, p. 5.

[50] See accreditation of Honduras, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 11-15 October 2010, p. 9; Also accreditation of the Great Britain, Report and Recommendations of the Sub-Committee on Accreditation, 11-15 October 2010, p. 8.

The SCA has drawn parallels between its function and that of a treaty body. Indeed, the issuing of General Comments as interpretative tools for implementation of international standards is directly comparable to the Concluding Observations issues by UN treaty body committees. Senior officials within the OHCHR echo this point and suggest that the significant changes we are witnessing in accreditation, especially a new phenomena of downgrades, is a product of this reframing of the role of the SCA and a desire to give the Paris Principles the gravitas, if not the status, of an international treaty.

Access to the international human rights machinery

Compliance with the Paris Principles is of growing significance for NHRIs and their stakeholders, bringing with it enhanced access to the human rights machinery of the UN. Compliance with the Paris Principles by Member States now carries with it significant rewards. "A status" accreditation by the SCA grants a country's NHRI formal speaking rights within the UN Human Rights Council (HRC).[51] In particular, NHRIs have multiple opportunities to participate in the Universal Periodic Review (UPR) procedure.[52] It also confers a seal of legitimacy that is gaining recognition in other UN forums such as the Treaty Body system[53] and the Special Procedures.[54] Member States are frequently called upon to establish NHRIs and ensure existing structures are maintained or strengthened in accordance with the Paris Principles.[55]

For instance, the reform of the French Commission in 2007 to affirm the broad mandate and independence of the office is attributed by observers to the threat of a downgrade to B status by the ICC. Among other initiatives, this possible outcome of the periodic review was communicated personally to the French Foreign and Justice Ministers by the then UN High Commissioner for Human Rights Louise Arbour. It was made clear to the French government that, if they did not retain an A status NHRI, it was very unlikely that they would be elected to the Human Rights Council.

If NHRIs are now a fixture of UN human rights structures, this has not always been the case. The 1993 Vienna World Conference was the first time national institutions had been granted formal, if *ad hoc*, status within a UN forum. Prior to 1993, national institution representatives had been restricted to engaging with the UN on behalf of their national governments, which placed their independence in doubt.[56] Unlike Member States or INGOs and NGOs,[57] NHRIs were not formally recognized within the UN system as a distinct class of organization. It was not until 2005 that the Commission on Human Rights in its final

[51] NHRIs with A status accreditation have full participation rights within the HRC. See Resolution 5/1, 2006.
[52] The UPR is a human rights mechanism operating under the auspices of the HRC. It was created on 15 March 2006 by the UN General Assembly through resolution 60/251. It is a State-driven process, which provides the State with the opportunity to affirm the positive actions taken to improve the human rights situation in their countries. See UN UPR website: http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx.
[53] The human rights treaty bodies are committees of independent experts entrusted with monitoring implementation of international human rights treaties.
[54] Special procedures are the mechanisms (either individual experts or working groups) established by the HRC to address either specific country situations or thematic issues.
[55] 782 recommendations made by States in the first cycle of the UPR referred to NHRIs. Statistics from UPR info: http://www.upr-info.org/
[56] The Chief Canadian Human Rights Commissioner, Maxwell Yalden, recalls that in the in 1970s it was not uncommon for his predecessor to chair the Canadian delegation to the Commission on Human Rights. Maxwell Yalden, former Chief Commissioner of the Canadian Human Rights Commission (1987-1996), interview with Thomas Pegram, (26 April 2012 14:00 GMT).
[57] NGOs and INGOs are accredited by the Economic and Social Council's Committee on NGOs.

resolution prior to reformation as the new Human Rights Council welcomed "the participation of [NHRIs] in the work of the Commission and its subsidiary bodies" and proposed that NHRIs accredited by the SCA be permitted to speak under "all items of the Commission's agenda."[58]

The ICC, NHRI entrepreneurs, and friendly government delegations succeeded in inserting the unimplemented CHR resolution into the Rules of Procedure of the new Human Rights Council. In its resolution establishing the HRC, the General Assembly duly endorsed NHRI participation in Council proceedings. 'A status' NHRIs, along with the ICC itself and regional bodies of NHRIs, would now be afforded the right to make oral statements under all items of the Council's agenda. Particularly significant is the role of A status NHRIs within the UPR process. Under Resolution 5/1, Rule 7(b), described by one NHRI practitioner as "our big bang moment," national institutions are embedded in the actual procedures of the Council with multiple opportunities to influence recommendations in the outcome document of the UPR.[59] Although recommendations by the UPR are non-binding, and some require only minimal changes in state behavior, on average, states accepted 71 percent of recommendations in the UPR first cycle.[60]

Enhanced access and influence for NHRIs has continued to accelerate since this breakthrough. In response to identified shortcomings with Resolution 5/1,[61] NHRI participation was further enhanced in the 2011 Human Rights Council Review, including explicit status among stakeholders, the right to intervene *immediately* following the State delegation during the adoption of the outcome of the review and after the State party during the interactive dialogue – following the country mission report by a special procedure.[62] NHRIs can now inform the agenda of the Council significantly through active participation during the adoption of the UPR country report. Remarkably, with the 2011 review, NHRIs have now surpassed NGOs in their participation rights within Council proceedings.

In sum, formal developments within the UN apex human rights political body has opened up new arenas of action for A status NHRIs within the UN human rights system. The second cycle of the UPR, which commenced in 2012, is an opportunity for NHRIs to deepen engagement and experiment with these new modalities of participation.[63] Practitioners acknowledge that the expansion of NHRI "human rights diplomacy" within the politicized realm of the HRC presents opportunities and risks, the independence and quality of their contributions will be closely scrutinized (Roberts 2011). It is apparent that NHRIs have maintained a core support group among Member States, the UN bureaucracy and Geneva-based NGOs, evidenced in the first HRC NHRI-specific resolution issued in 2011, supportive General Assembly resolutions, and Secretary-General Reports on an almost annual basis.[64]

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[58] Resolution 2005/74, para 11(a).

[59] NHRIs were able to comment on the draft report before its adoption, organise parallel events and comment on any state and report under review.

[60] Statistics from UPR info: http://www.upr-info.org/

[61] Shortcomings included the fact that NHRIs were not referred to specifically, but rather grouped under the rubric "relevant stakeholders." Also, NHRIs were permitted to attend the interactive dialogue but were effectively silenced during proceedings.

[62] HRC, UN Doc. A/HRC/RES/16/21, 12 April 2011

[63] For instance, resolution 16/21 encourages videoconferencing in order to enhance access and participation for stakeholders. NHRIs have already taken advantage of this resource during the nineteenth session of the HRC in March 2012.

[64] Recent examples include: Report of the Secretary-General, 'National Institutions for the Promotion and Protection of Human Rights,' UN Doc. No.: A/HRC/20/9, 1 May 2012; United Nations General Assembly, 'The

Indicative of a growing profile in intergovernmental fora, the General Assembly has invited NHRIs to make submissions to the ongoing intergovernmental process on strengthening the human rights treaty body system (in a process that has been marred by the exclusion of non-state actors).[65] Most notably, in a resolution issued in June 2012, the HRC took the radical step of recommending to the General Assembly that it now consider granting Paris Principles-compliant NHRI participation rights before the GA itself.[66] This would constitute unprecedented access for a non-Member State within the body-politic of the UN.

NHRIs and the international human rights treaty system

As the previous section documents, there was no rule within UN structures permitting the participation of NHRIs prior to 2005. NHRIs were able to eventually leverage access through the status accorded to the Paris Principles in the General Assembly but also through repeated endorsement subsequent to 1993. Almost immediately after being adopted by the General Assembly in resolution 48/134 of 1993, titled "National institutions for the promotion and protection of human rights," the Principles were picked up in other resolutions on national institutions and have acquired international status as the basis upon which the international system engages with NHRIs. Outside the HRC and GA, endorsement by reference of the Principles is most evident in the work of the UN Treaty Bodies, which supervise states' compliance with their obligations under binding international human rights treaties.[67]

Notwithstanding the important role of the treaty bodies in holding states to account, the weakness of the monitoring system is a recurring theme – especially a lack of connective tissue to the domestic level. Unsurprisingly, NHRIs have been recognized as a possible "missing link." According to Sidoti (2012: 116), NHRIs have engaged far more with these committees than with other parts of the international human rights system.[68] In turn, the treaty bodies have increasingly acknowledged the role of NHRIs in treaty implementation and pressed States to establish national institutions in accordance with the Paris Principles. For many NHRIs, however, engagement with the international system has traditionally neither been specified in their founding laws, nor featured as a priority among a sea of competing local demands. This is now changing. Many NHRIs have begun to submit

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role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights,' UNGA Res. no.: A/RES/65/207, 28 March 2011; Report of the Secretary-General, 'National Institutions for the Promotion and Protection of Human Rights,' UN Doc. No.: A/HRC/13/44, 15 January 2010; United Nations General Assembly, 'The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights,' UNGA Res. no.: A/RES/63/169, 20 March 2009 United Nations General Assembly, 'National institutions for the promotion and protection of human rights,' UN GA Res. no.: A/RES/63/172, 20 March 2009.

[65] See International Service for Human Rights, "General Assembly extends intergovernmental process on treaty body strengthening," 18 September 2012.

[66] See HRC, UN Doc. A/HRC/20/L.15, 29 June 2012, especially para. 16.

[67] There are currently ten treaty bodies comprised of committees of independent human rights experts. The treaty bodies provide a legal focal point for human rights distinct to the more politicized arena of the Human Rights Council. Although treaty bodies cannot impose binding obligations, their consultative interpretations are widely regarded as authoritative. For a detailed analysis of obligations arising from treaty body interpretations see Mechlem 2009.

[68] The Principles explicitly direct that NHRIs will "encourage ratification" and "ensure implementation" of international human rights instruments as well as "cooperate with the United Nations."

information to various committees in the form of "shadow reports" parallel to the official document forwarded by the State party to the treaty (Müller and Seidensticker 2007).[69]

Four treaty bodies have explicitly referred to the role of Paris Principles-compliant national institutions in their General Comments,[70] three of which were General Comments on national institutions.[71] The first General Comment on national institutions was issued by the Committee on the Elimination of Racism and Discrimination (CERD) in 1993, in which States were directed to establish "national commissions or other appropriate bodies, taking into account, *mutatis mutandis*, the principles relating to the status of national institutions."[72] Subsequent General Comments have reaffirmed the content and status of the Paris Principles, as well as clarified the modalities of NHRI engagement with the treaty committees.[73] Reference to the establishment and strengthening of national institutions is now standard practice among treaty bodies, with 356 recommendations issued from 2000 to 2007 referring to NHRIs and implementation of treaty obligations.[74] Notably, committees frequently go beyond affirmation of the Principles to address issues of NHRI performance and organizational integrity.[75]

Possibly the most important development in the evolution of the legal standing of the Paris Principles is their role in the monitoring of two major treaties.[76] A new generation of international human rights treaty has incorporated an innovative two-level monitoring system, in addition to the classical, international monitoring conducted by the treaty body. The two key treaties here are the Optional Protocol to the Convention Against Torture (CAT) and the Convention on the Rights of Persons with Disabilities (CRPD).[77] Both instruments oblige State Parties to establish independent monitors at the national level.[78] This is a radical departure from earlier human rights compliance arrangements, going far beyond treaty body recommendations to establish a national institution that, in itself, is not binding on the State

[69] It is interesting to note that NHRIs use both their governmental status, and also tools traditionally employed by non-governmental organizations, such as shadow reports. They can thus be understood as hybrid institutions. We thank Laurel Fletcher for this helpful observation.

[70] A core function of the treaty committees is the legal interpretation of treaties and the development of jurisprudence through their General Comments and country-specific Concluding Observations developed to guide State practice.

[71] The CEDAW has referred to NHRIs in the context of a broader General Recommendation on "Effective National Machinery and Publicity". See CEDAW, "General Recommendation VI, 1988."

[72] Committee on the Elimination of Racial Discrimination, "General Recommendation XVII" 1993

[73] See Committee on Economic, Social and Cultural Rights, "General Comment 10," 1998; Committee on the Rights of the Child, "General Comment 2," 2002.

[74] Statistics from Brodie (2011: 152). 151 of these recommendations have been issued by the CRC with the HRCttee trailing with 30 and the CAT with 31 recommendations.

[75] The HRCttee recently directed the Armenian government to "create the conditions necessary to ensure that the Ombudsman's Office which serves as the National Human Rights Institution fully and independently performs its mandate, in line with the Paris Principles." HRCttee, Armenia: Concluding Observations adopted by the HRCttee, UN Doc: CCPR/C/RM/CO/2, 9-27July 2012, Section C, para 5. See also Conclusions and Recommendations of the Committee against Torture: Indonesia, UN Doc. CAT/C/XXVII/Concl.3, 22 November 2001, para. 10(b).

[76] For an excellent analysis of this development see Carver 2010.

[77] The OPCAT was adopted in 2002 and entered into force in 2006. The CRPD was adopted in 2006 and entered into force in 2008.

[78] The precision of this varies however, with the OPCAT provision on its "national preventive mechanism" (NPM) providing significantly greater guidance than that contained in the CRPD, which refers generally to "focal points" and "coordinated mechanisms."

party. In addition both instruments envisage a potential role for NHRIs as the designated national monitoring body and instruct States to give due regard to the Paris Principles.[79]

The monitoring framework was one of the most challenging areas of negotiation of the CPRD (Kayness & French 2008: 19). Eventually, an individual complaint and inquiry procedure was placed in an Optional Protocol separate to the CRPD.[80] The CRPD also directs attention to NHRIs as possible implementation and monitoring agents of its provisions. As of October 2012, the CRPD has 154 signatories and 122 parties to the treaty and, significantly, Article 33 calls for the designation of "one or more focal points" taking into account "the principles relating to the status and functioning of national institutions."[81] Survey data collected by the Canadian Human Rights Commission in late 2011 shows that States with A status NHRIs are almost 25 percent more likely to have signed and ratified the CRPD. In addition, NHRIs have been the default national mechanism for state parties to the CRPD (80 percent of total designated national structures).[82] Where NHRIs have not been designated (principally in European jurisdictions), State Parties have been requested by the Convention Committee to explain how the non-accredited entities comply with the Paris Principles.[83]

The positive effects of OPCAT on NHRI structures

The OPCAT represents an ambitious (and intrusive) addition to the Convention Against Torture, mandating an international system of inspection and coordination among bodies operating at all levels, from the international to regional and domestic. It further requires State Parties to designate a National Preventive Mechanisms or "NPM" within one year of ratification of the Protocol.[84] The core function of the NPM in this two-level monitoring arrangement is to follow-up on recommendations by the CAT and institute a system of regular visits to places of detention. An additional novelty of the OPCAT is the establishment of a Subcommittee on Prevention of Torture (SPT), which serves to coordinate activity at the international and domestic level.[85] The SPT has a mandate to visit all places of detention in State Parties as well as provide advice and assistance to States and NPMs. Although national institutions are not regarded as automatic National Preventive Mechanisms (NPM) under the OPCAT,[86] their evident aptitude for the role is evident in the number of NHRIs that have been designated since the treaty came into force. As of September 2012, of the 38 designated NPMs, 22 are NHRIs and this number is likely to climb.[87]

Table 3: Changes in NHRI scores by OPCAT ratification

[79] OPCAT, Article 18(4); CRPD Article 33(2).
[80] Reflecting the reticence of member states to accept the jurisdiction of the Committee on the Rights of Person with Disability there are substantially less parties (73) and signatories (91) to the Optional Protocol than to the CRPD.
[81] CRPD Article 33.
[82] See Canadian Human Rights Commission, Survey of National Human Rights Institutions on Article 33(2) of the Convention on the Rights of Persons with Disabilities, August 2011, p. 7.
[83] Ibid, p. 9.
[84] OPCAT, Article 17 and 24.
[85] The SPT is comprised of 25 independent experts, including lawyers, doctors and inspection experts.
[86] Indeed, experts caution against making such an assumption. On the one hand, many States have not established an NHRI may seek to fulfill its commitment through the creation of an alternative structure. On the other hand, not all NHRIs are willing or able to effectively undertake such a role.
[87] See See Sub-Committee on Prevention of Torture, "Compilation of information on NPMs based on State Parties submissions to the SPT," available at: http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm (accessed 28 September 2012).

	Not Party to OPCAT	Party to OPCAT
Positive Change	30%	41%
Stable A Status	35%	41%
Stable Not-A Status	12%	6%
Negative Change	23%	12%
N	43	32

OPCAT may not have sped up the pace at which NHRIs have been adopted, but evidence suggests that it likely contributed to ensuring that NHRIs maintained and strengthened important institutional design features. Table 3 suggests that countries that have ratified OPCAT strengthened their NHRIs more than other countries.[88] Among countries that became parties to OPCAT, 41 percent had NHRIs whose accreditation scores (A, A(R), B and C) improved since their first review by the SCA, while another 41 percent were given A status at the time of their first review, and maintained this status. The data shows, these figures are lower for NHRIs in countries that have not become parties to the OPCAT. Of most concern are changes for the worse. Twelve percent of NHRIs in countries that have ratified OPCAT experienced a negative change in their accreditation scores, and the proportion was even higher for countries that had not ratified OPCAT: 23 percent. Additional analyses (not shown) suggest that this pattern, in which NHRIs in OPCAT parties have become stronger over time as compared to NHRIs in countries that are not parties to OPCAT, holds across regions, income groups, and regime types, although the number of countries in these sub-comparisons is quite small.

How might we interpret this data? One line of reasoning would suggest that OPCAT membership has led countries to strengthen their NHRIs. Another interpretation is that countries eager to reduce torture joined OPCAT and strengthened their NHRIs at approximately the same time, in the mid and late 2000s. As Downs et al. (1996) have highlighted, distinguishing between these two interpretations is hard for any analysis correlating treaty ratification to human rights outcomes, because countries are not randomly assigned to treaties, but choose which treaties to ratify. For our purposes however, either interpretation is helpful. That is, even if OPCAT was the cause of strengthened NHRIs, it is important to know that countries that choose to ratify OPCAT are taking these obligations seriously, and strengthening or maintaining their already strong NHRIs.

Moreover, qualitative data, drawn from Latin America, gives us reason to believe that OPCAT has, in fact, led countries to strengthen their NHRIs and focus greater energy on preventing torture, both for countries that have become partners to the Protocol and for other states.[89] Fourteen out of seventeen states in Latin America have ratified OPCAT.[90] In Costa Rica, the designated NHRI has created a dedicated NPM Unit tasked with advancing torture

[88] The analysis in Table 3 includes all NHRIs that have undergone at least two periodic reviews by the SCA, because this allows us to measure change over time. More specifically, of the 75 NHRIs included in this analysis, 32 operated in states that had ratified OPCAT, and 43 operated in states that had not.

[89] For an extended analysis of the torture prevention role of NHRIs in Latin America see Engstrom and Pegram (unpublished).

[90] Of these fourteen countries, five have designated their A status NHRI as NPMs (Costa Rica, Ecuador, Mexico, Nicaragua and Uruguay); six have an A status NHRI and are in the process of designation (Argentina, Bolivia, Guatemala, Panama, Paraguay and Peru); two are pending designation, but do not have an accredited NHRI (Brazil and Chile); and three states have not ratified OPCAT (Colombia, El Salvador and Venezuela).

prevention across all areas of protection and promotion.[91] According to the annual reports, the Defensoría/NPM Unit has conducted 173 visits of places of deprivation of liberty between 2009 and 2011.[92] It has also conducted investigations into pandemics within the prison population, as well as deadly confrontations between inmates and prison staff (DHR 2011). To take another example, the newly created Chilean National Institute for Human Rights (INDH), although not formally designated as the NPM under OPCAT, has robustly denounced and investigated alleged crimes of torture (INDH 2011). Civil society actors have saluted the work of the INDH in monitoring places of detention in a context of widespread social protest and alleged police brutality (CET-Chile 2011: 163). A legislative project to create a Chilean NPM has been approved in Congress following ratification of the OPCAT in 2008, however it has faced fierce resistance in the Senate.[93] In response, the INDH has collaborated with the OHCHR regional office to organise events on implementation of the NPM.[94]

In Peru, the NHRI has a long track record of effective action on human rights protection and promotion (Pegram 2008). Since its activation in 1996, the office has conducted periodic visits to places of detention, issued special reports on prison conditions, and undertaken investigations into alleged crimes of torture and other cruel, inhuman and degrading treatment. It has also begun to issue systematic data on complaints of torture received (Defensoría del Pueblo 2011). Peru ratified OPCAT in 2006 but, as of September 2012, it is yet to designate an NPM. The NHRI has conducted a sustained lobbying campaign around OPCAT and the failure of government to honor its commitments. Notably, civil society actors have also strongly endorsed the Peruvian NHRI as the appropriate body to assume the NPM function.[95] Even in OPCAT non-ratifier countries such as El Salvador, the NHRI has been active on torture prevention and conducted a sustained campaign on ratification of the OPCAT.[96] The El Salvadorian government voluntarily committed to signing the OPCAT during its UPR in March 2011, following coordinated action on the part of NGOs and the NHRI.[97] However, the government has reneged on this commitment. The NHRI has denounced this in the El Salvadorian media as "a denial of the right to international justice."[98]

Of course, it is important to acknowledge that NHRIs may potentially serve to undermine as well as strengthen domestic human rights frameworks. Notably, the Honduran NHRI was accused during the military coup of 2009 of failing to provide assistance to victims of military aggression.[99] The NHRI has subsequently been downgraded to B status by the SCA

[91] See Costa Rica Defensoría de los Habitantes, Directive No. 60001 MNP, DHR Doc. No. 006-09, 6 November 2009.
[92] See Annual Reports of the Mecanismo Nacional de Prevención of the Defensoría de los Habitantes: http://www.dhr.go.cr/mnp.html
[93] See Parlamentario.com, "Reclaman aprobar la creación del Mecanismo Nacional de Prevención contra la Tortura," 31 August 2012.
[94] La Opinión, "INDH impulsa jornada para avanzar en la implementación del "Mecanismo Nacional de Prevención de la Tortura," 29 May 2012.
[95] See Mecanismo Nacional de Prevención – MNP en Peru (Propuesta). Available at: http://www.apt.ch/npm/americas/Peru1.pdf (accessed 13 September 2012)
[96] See Special Report of Procurador para la Defensa de los Derechos Humanos, presented to CAT, 16 October 2009. Available at: http://www.pddh.gob.sv/menudocs/menures/viewdownload/5-informes-especiales/31-informe-del-procurador-al-comite-contra-la-tortura-de-la-onu
[97] *Diario Co Latino*, "El Salvador suscribirá Convención Internacional contra la Tortura," 10 February 2010.
[98] *La Prensa*, "PNC otra vez la más denunciada en Derechos Humanos," 20 December 2011.
[99] Further study to trace how the situation has evolved is necessary. However, the Honduran Commissioner endorsed the interim coup government and also allegedly failed to provide assistance to victims of military aggression. See COFADEH (2009: 10).

and an alternative structure designated as the NPM under OPCAT. The Mexican NHRI has also previously been accused of insufficient action in response to allegations of torture and passivity in the face of official resistance (Human Rights Watch 2008). The office was designated as the NPM by the Mexican government in 2007. Evidence suggests that the activity of the National Commission (CNDH) on torture has increased significantly since designation.[100] Nevertheless, civil society actors continue to express concern over the "transparency and interdisciplinary" of the NPM and "above all, a lack of concrete results" (Boucher 2012: 18-9). Scrutiny of its performance is likely to intensify in light of government obligations under OPCAT. Notably, seven of the seventeen visits conducted by the Sub-Committee on Prevention of Torture since 2007 under its monitoring and advisory mandate have been to the Latin American region.[101]

Conclusions: The Performance and Legitimacy of NHRIs Going Forward

The NHRI project has travelled far in the twenty years since the Paris Principles were first adopted. We have shown that this non-binding instrument became a reference point and helped facilitate the global cascade of NHRI adoption during the 1990s. Furthermore, not only did the emergence of the Paris Principles likely speed up the adoption of NHRIs in the initial "promotional phase," but they also served as a template for NHRI design. Here we find that NHRIs adopted following the Principles tend to be at least as strong on important structural dimensions as NHRIs adopted earlier on. In fact, post-Paris NHRIs were significantly more likely to include design principles strongly recommended in the Paris Principles. In turn, we have highlighted variation in diffusion effects across regions and the ability of regional transnational networks and exemplar NHRI models to reinforce and surpass minimum international standards.

We have also explored how the rapid global diffusion of NHRIs has been driven by three principal institutional mechanisms: transgovernmental peer networks involved in the monitoring and elaboration of non-binding standards; inclusion of NHRIs within the procedures of the apex political human rights body of the UN system; and the integration of NHRIs into the core mechanisms of certain treaty compliance arrangements. On this last point, we note that while OPCAT did not speed up the adoption of NHRIs globally, it likely led states that had ratified this instrument to maintain and strengthen their NHRIs. Our analysis thus suggests that future research into human rights institutions should take seriously both the significant international treaties as well as the suite of factors that arise from norm entrepreneurship, particularly the density of those very norm entrepreneurs and their dedicated networks.

NHRIs originally proliferated in response to the "compliance gap" between human rights ideals and political reality in many domestic jurisdictions. As the NHRI project enters its third decade, strong structures are being maintained among those NHRIs newly adopted, often in countries with poor human rights records. In turn, increasingly rigorous monitoring and periodic review of NHRI compliance with international standards has served to maintain and even strengthen existing structures. In this, our research highlights the significance of non-Member State actors within the international human rights regime as autonomous

[100] For instance, in 2006 the CNDH registered just six cases of torture and issued one recommendation on the issue. Between 2007 and 2012 the Commission has registered 251 cases of torture and the national level and issued 56 recommendations. See CNDH Annual Report 2000 to 2011: http://www.cndh.org.mx/node/120

[101] See SPT visits, Optional Protocol to the Convention against Torture (OPCAT) Subcommittee on Prevention of Torture: http://www2.ohchr.org/english/bodies/cat/opcat/spt_visits.htm

entrepreneurs working within and outside domestic state and supranational bureaucratic structures to advance their interests.

As NHRIs take center stage as a possible "missing link" in the transnational human rights regime, increasing attention will be paid to how they actually work, and crucially, when and why they matter. The high stakes of the OPCAT in particular has led stakeholders to look anew at the standards against which NHRIs are judged to be legitimate and effective human rights compliance constituents.[102] The future credibility of the NHRI project likely hinges on the ability of the SCA and OHCHR to enhance the transparency and precision of the accreditation process and ensure "A status" is a meaningful reflection of both design and practice in the promotion and protection of human rights. International agreements have had the positive effect of introducing and even strengthening national institutions dedicated to monitoring and protecting human rights. The challenge now confronting advocates of these new administrative structures is to ensure they are actually enabled to secure improvement of human rights practices on the ground.

Bibliography

Abbott, Kenneth W., Keohane, Robert O., Moravcsik, Andrew, Slaughter, Anne-Marie and Snidal, Duncan, "The Concept of Legalization," *International Organization* 54 (2000), 401-419

Abbott, Kenneth W & Duncan Snidal, "Hard and Soft Law in International Governance," *International Organization* 54 (2000), 421-56.

Alter, Karen J. & Laurence R. Helfer, "Nature or Nurture? Judicial Law Making in the European Court of Justice and the Andean Tribunal of Justice," *International Organization* 64 (2010), 563-592.

Andrew Byrnes, Andrea Durbach and Catherine Renshaw, "Joining the club: the Asia Pacific Forum of National Human Rights Institutions, the Paris Principles, and the advancement of human rights protection in the region," *Australian Journal of Human Rights* 14 (2009), 63-98.

Boucher, Anne, *En nombre de la "guerra contra la delincuencia:" un estudio del fenómeno de la tortura en Mexico* (ACAT-France in collaboration with CCTI, el Centro Prodh, el Frayba y Código DH, June 2012.

Brodie, Meg, "Progressing Norm Socialisation: Why Member Matters. The Impact of the Accreditation Process of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights," *Nordic Journal of International Law* 80 (2011), 143-192

Burdekin, Brian, with Jason Naum, *National Human Rights Institutions in the Asia-Pacific Region* (The Netherlands: Martinus Nijhoff Publishers, 2007)

Cardenas, Sonia, "Emerging Global Actors: The United Nations and National Human Rights Institutions," *Global Governance* 23 (2003), 23-42

Carver, Richard, "A new answer to an old question: national human rights institutions and the domestication of international law," *Human Rights Law Review* 10 (2010), 1-32

[102] As Murray (2007: 17) highlights, NHRI designation under the OPCAT may be problematic, given "the national institution itself is part of the state apparatus being evaluated under the Optional Protocol commitments that it has assumed."

CET-Chile, *¡NO A LA TORTURA! a nadie en ningún lugar y en nombre de nada, Informe de Derechos Humanos 2011*, Santiago: Comisión Ética Contra la Tortura, June 2011)

Chayes Abram, and Antonia Handler Chayes, "On Compliance," *International Organization* 47 (1993), 175-205

COFADEH (Comité de Familiares de Detenidos Desaparecidos en Honduras), *Informe Preliminar: Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras* (COFADEH: Tegucigalpa), 2009.

Dai, Xinyuan, *International Institutions and National Policies* (Cambridge: Cambridge University Press, 2007.

Defensoría del Pueblo, *El Estado frente a las víctimas de la violencia. ¿Hacia dónde vamos en políticas de reparación y justicia?* Defensorial Report No. 128 (Lima: DP, 2007), 197.

Defensoría del Pueblo, *Informe Anual 2011* (Lima: DP, 2012).

DHR, "Report: Inspección de Ámbito E del Centro de Atención Institucional (CAI) La Reforma," Doc. No. MNP-024-2011, San José: Defensoria de los Habitantes, 25 May 2011.

Downs, George, David M. Rocke and Peter N. Barsoom, "Is the Good News about Compliance Good News about Cooperation?" *International Organization* 50 (1996), 379-406

Engstrom, Par and Thomas Pegram, "Bridging the Gap: National Human Rights Institutions and Torture Prevention in Latin America," unpublished working paper:

Finnemore, Martha & Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization*, 52 (1998), 887-917.

Fitzpatrick, K. And Catherine Renshaw, "National Human Rights Institutions in the Asia Pacific Region," in Goodman, Ryan and Thomas Pegram (eds.), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (New York: Cambridge University Press, 2012), 150-180.

Franck, Thomas M., *The Power of Legitimacy Among Nations* (Oxford: Oxford University Press, 1990)

GIHR, *National Human Rights Institutions: An Introduction* (Berlin: German Institute for Human Rights, 2010).

Ginsburg, T. (ed.) *Comparative Constitutional Design* (Cambridge: Cambridge University Press, 2012).

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

Goodman, Ryan and Derek Jinks, "How to Influence States: Socialization and International Human Rights Law," *Duke Law Journal* 54 (2004), 621-703

Guzman, A. T., *How International Law Works* (Oxford: Oxford University Press, 2008).

Guzman, Andrew T. and Timothy L. Meyer, "International Soft Law" *Journal of Legal Analysis* (2011). http://works.bepress.com/timothy_meyer/5

Hafner-Burton, Emilie and Kiyoteru Tsutsui, "Human Rights in a Globalizing World: The Paradox of Empty Promises," American Journal of Sociology 110 (2005), 1373-1411.

Hafner-Burton, Emilie and Kiyoteru Tsutsui, Justice Lost! The Failure of International Human Rights Law To Matter Where Needed Most Journal of Peace Research 44 (2007), 407-425.

Hafner-Burton, Emilie & Ron, James, "Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes," *World Politics*, 61 (2009), 360-401.

Hathaway, Oona, "Do Human Rights Treaties Make a Difference?" *Yale Law Journal* 111 (2002), 1935-2042.

Henkin, Louis, *How Nations Behave: Law and Foreign Policy* (New York: Frederick A. Praeger, 1968).

Human Rights Watch, "La Comisión Nacional de los Derechos Humanos de Mexico: Una evaluación critica," *Human Rights Watch/Americas*, vol. 20, no. 1, February 2008.

Hurrell, A. *On Global Order: Power, Values and the Constitution of International Society* (Oxford, Oxford University Press, 2007).

ICHRP, *Performance and Legitimacy: National Human Rights Institutions* (Versoix: International Council on Human Rights Policy, 2000).

ICHRP, *Assessing the Effectiveness of National Human Rights Institutions* (Geneva: International Council on Human Rights, 2005).

INDH, *Informe Sobre Programa de Seguimiento y Registro de Abusos Policiales, del Instituto Nacional de Derechos Humanos*, Unidad Jurídica Judicial (Santiago: Instituto Nacional de los Derechos Humanos), 2011.

Kayness, Rosemary & Phillip French, "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities," *Human Rights Law Review* 8 (2007), 1-34.

Kjaerum, Morten, *National Human Rights Institutions: Implementing Human Rights* (Copenhagen: Danish Institute for Human Rights, 2003).

Koo, Jeong-Woo and Francisco O. Ramirez, "National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institutions, 1966-2004," *Social Forces* 87 (2009), 1321-1354.

Landman, T. *Issues and Methods in Comparative Politics* (London: Routledge, 2008).

Lindsnaes, Birgit and Lone Lindhold, "National Human Rights Institutions – Standard Setting and Achievements," in Birgit Lindsnaes, Lone Lindhold, and Kristine Yigen (eds.), *National Human Rights Institutions: Articles and Working Papers* (Copenhagen: The Danish Institute for Human Rights, 2000), pp. 1-48.

Linos, Katerina, "Diffusion through Democracy," *American Journal of Political Science* 55 (2011), 678-695.

Linos, Katerina. *Democratic Foundations of Policy Diffusion: How Health, Family and Employment Laws Spread Around the World* (Oxford: Oxford University Press, 2013).

Mechlem, Kerstin, "Treaty Bodies and the Interpretation of Human Rights," Vanderbilt Journal of Transnational Law 42 (2009), 907-945.

Müller, A. And F. Seidensticker, *The Role of National Human Rights Institutions in the United Nations Treaty Body Process* (Berlin: German Institute for Human Rights, 2007).

Murray, R., *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Oxford: Hart Publishing, 2007).

Pegram, Thomas, "Accountability in Hostile Times; the Case of the Peruvian Human Rights Ombudsman 1996-2001," *Journal of Latin American Studies* 40 (2008) 51-82

Pegram, Thomas, "Diffusion across political systems: the global spread of national human rights institutions," *Human Rights Quarterly* 32 (2010), 729-760

Pegram, Thomas, "National Human Rights Institutions in Latin America: Politics and Institutionalization," in Goodman, Ryan and Thomas Pegram (eds.), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (New York: Cambridge University Press, 2012), 210-240.

Pohjolainen, Anna-Elina, *The Evolution of National Human Rights Institutions: The Role of the United Nations* (Copenhagen: Danish Institute for Human Rights, 2006).

Raustiala, Kal, F*orm and Substance in International Agreements*, *American Journal of International Law* 99 (July 2005).

Reif, Linda, *The Ombudsman, Good Governance and the International Human Rights System* (Leiden: Martinus Nijhoff Publishers, 2004)

Reif, Linda, "The Shifting Boundaries of NHRI Definition in the International System," in Goodman, Ryan and Thomas Pegram (eds.), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (New York: Cambridge University Press, 2012), 52-73.

Risse, T., S. C. Ropp and K. Sikkink, The Power of Human Rights: International Norms and Domestic Change (Cambridge: Cambridge University Press, 1999).

Roberts, Kirsten, "National Human Rights Institutions as Diplomacy Actors" in Michael O'Flaherty et al., *Human Rights Diplomacy: Contemporary Perspectives* (Leiden: Brill Martinus Nijhoff, 2011), 223-249

Sarugaser-Hug, Sulini, "How a Peer-Review Mechanism Can Influence the Implementation of International Human Rights Standards: Why the Work of the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Matters" (publication details forthcoming).

Sidoti, Chris, "National Human Rights Institutions and the International Human Rights System," in Ryan Goodman and Thomas Pegram (eds.), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press, 2012), 91-123.

Simmons, B., F. Dobin and G. Garnett, *The Global Diffusion of Markets and Democracy* (Cambridge: Cambridge University Press, 2008).

Simmons, B. *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009).

Slaughter, A.-M. *A New World Order* (Princeton, N.J., Princeton University Press, 2004).

United Nations, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (New York: UN, 1995)