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**Master's degree in  
Human Rights and Multi-level Governance**



A CRITICAL ANALYSIS OF THE UNITED  
NATIONS HUMAN RIGHTS MONITORING  
MECHANISMS

THE UNIVERSAL PERIODIC REVIEW'S ROLE IN  
ADVANCING THE OBLIGATIONS AND  
MANDATES OF CEDAW

*Supervisor:* Prof. Paolo De Stefani

*Candidate:* CHARMAINE  
MAGOSVONGWE

*Matriculation No.* 2004943

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Dedicated to my *Heavenly Father* whose *love and grace*  
carried me through my academic journey.

You are the true campus of life!

One thing I desire, and only this I seek, is that I may dwell  
in the house of the Lord all the days of my life,  
to gaze on the beauty of the Lord  
and to pray in his temple.

(Psalms 27:4)





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## **Abstract**

This thesis is based on the research and observations made during my internship at the United Nations Office of the High Commissioner of Human Rights in Geneva from the 13 of July 2022 to the 13<sup>th</sup> of January 2023. I worked at the Universal Periodic Review Branch assisting with the drafting of the 42<sup>nd</sup> pre-session reports, supporting the 41<sup>st</sup> UPR Working Group session and supporting the 51<sup>st</sup> Human Rights Council sessions. Whilst performing my functions and tasks the UPR Branch, I grew interest in the mandates and functions of other human rights monitoring mechanisms, therefore I was granted permission to support and observe the 83<sup>rd</sup> session and 85<sup>th</sup> pre-session of the Committee on the Elimination of all forms of Discrimination Against Women.

This thesis is a pilot study that entails an analysis of the UN human rights monitoring mechanisms and examines how the UPR mechanism advances their mandates. The objective of the research is to analyse the collective synergy of two of the United Nations' main human rights monitoring mechanisms, namely, CEDAW and the Universal Periodic Review mechanism. The purpose of this study is to portray the important role of the UPR mechanism in bringing effect to the mandates of other human rights monitoring mechanisms. The UPR's effectiveness is noteworthy in terms of increasing the visibility of human rights issues occurring around the world at international levels. The UPR process has compelled states under review to consider more seriously recommendations stemming from other monitoring mechanisms which are referred to during the UPR's Working Group sessions. CEDAW is described by some as the international bill of rights for women and its mandate has undeniably been influenced and advanced by the UPR mechanism since its establishment. Although, the UPR mechanism was distinctly created to be different from Treaty bodies, the two mechanisms often overlap. The UPR has a compelling effect because of its political nature created by the peer-to-peer process. Moreover, the UPR's practice of accepting or noting recommendations creates a burden on member states to commit to the recommendations they have accepted and demonstrate in the next review how they have addressed and improved specific human rights violations.

Key words: human rights, Universal Periodic Review, United Nations, women's rights, CEDAW



## Abbreviations

|       |   |  |
|-------|---|--|
| CEDAW | – | Convention of the Eliminations of Discriminations Against Women      |
| CHR   | – | Commission of Human Rights   |
| CSO   | – | Civil Society Organisations  |
| CTMD  | – | Council and Treaty Mechanism Division (Human Right Council division) |
| GA    | – | General Assembly   |
| HRC   | – | Human Rights Council   |
| OHCH  | – | Office of the High Commissioner of Human Rights                      |
| SIDS  | – | Small Island Developing States                                       |
| SUR   | – | State Under Review   |
| UDHR  | – | Universal Declaration of Human Rights                                |
| UN    | – | United Nations   |
| UPR   | – | Universal Periodic Review  |

# **Chapter One**

## 1.1. Introduction

This thesis research is a pilot study that aims to uncover whether the Universal Periodic Review (UPR) mechanism has any influence in advancing the obligations and mandates of the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) by analysing whether or not the recommendations made during UPR sessions were implemented in member states. The objective of this thesis will be achieved by analysing the collective synergy between the UPR mechanism and the CEDAW procedure by assessing whether the UPR process compels member states to consider recommendations made by other monitoring mechanisms more seriously. The UPR has an undeniably compelling effect to member states, and its political influence achieved by the peer-to-peer process yields great results. One of the critical features of the UPR mechanism is the practice of accepting or noting recommendations which creates an onus on member states to commit to the recommendations they have accepted and demonstrate in subsequent reviews how they have addressed and improved specific human rights in their states.

The core purpose of this thesis is to analyse two human rights monitoring mechanisms to see whether their collaboration brings advancement to the protection and implementation of human rights. Human rights are necessary because they are intrinsically woven into all day-to-day activities of humankind, even though they are not prioritised or given the attention they deserve. Human rights are integral to society for various reasons, and some scholars refer to human rights as the backbone of humanity. Whilst it is commendable to note that there has been stark progress in the growth of human rights worldwide since the adoption of the Universal Declaration of Human Rights in 1948, human rights violations continue to take place and are prevalent in most parts of the world. In the last five decades, many efforts by international, regional and national bodies and organisations have been realised, leading to implementation of different measures to address and monitor human rights situations.

The Universal Periodic Review (UPR) is one of the fastest-growing human rights monitoring mechanisms created by the United Nations Human Rights Council (the Council) in 2006. The mechanism was strategically and meticulously created to allow the full participation of all member states to review and offer recommendations to each other in a diplomatic and

politically inclined manner. The significance of the UPR mechanism is that it is a peer-to-peer mechanism that brings together all member states before the same platform to participate in a fair and equal manner and exchange recommendations with each other without the interference of any other third party or UN body. The recommendations made towards a member state are based on reports submitted by the state under review, independent stakeholders, and UN agencies. The UPR is the first and only state-driven monitoring mechanism responsible for supervising and filling in a long-lasting blank in the existing human rights mechanisms and international human rights law, thus partially realising the dream of many human rights lawyers and advocates in this regard.<sup>1</sup>

The United Nations plays a pivotal role in establishing human rights monitoring mechanisms that can urge member states to move towards a common goal of upholding the same level of protection of human rights. The Treaty Bodies and Special Procedures are long-standing mechanisms specialising in specific thematic areas. However, none of these mechanisms address multiple human rights issues simultaneously, like the UPR mechanism. The UN treaty body system could be described as a success story of steady progress. The initial stages of the treaty bodies were modest, as many member states did not favour robust monitoring mechanisms, fearing that their sovereignty would be encroached. Over time, treaty bodies have played an essential role within the broader UN human rights design and have contributed through their respective mandates to the development of UN human rights practices by developing monitoring tools and interpreting their respective treaties.<sup>2</sup> The former UN High Commissioner for Human Rights, Navi Pillay, stated that the UPR is 'a genuinely innovative concept', especially because it was conceived as a peer-headed and cooperative mechanism.<sup>3</sup>

## 1.2. Overview of the research.

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<sup>1</sup> Lijiang Zhu, "International Humanitarian Law in the Universal Periodic Review of the UN Human Rights Council: An Empirical Survey," *Journal of International Humanitarian Legal Studies* 5 (2014): 212.

<sup>2</sup> Lutz Oette, "The UN Human Rights Treaty Bodies: Impact and Future," in *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*, ed. Gordon Brown and Sophie Hardefeldt (London: The Westminster Foundation for Democracy, 2016), 110.

<sup>3</sup> Rhona K. M. Smith, "Equality of Nations Large and Small: Testing the Theory of the Universal Periodic Review in the Asia-Pacific," *Asia-Pacific Journal of Human Rights and the Law* 12, no. 2 (2011): 39.

This research topic aims to unravel whether the UPR mechanism is advancing the obligations and mandates of CEDAW, a treaty body mechanism. It is noticeable that state engagement in Treaty Bodies declined over the years, and the once flourishing UN-based monitoring mechanism was in trouble. The introduction of the UPR brought a new perspective and different approach to human rights monitoring as it was a peer-to-peer-based mechanism that allowed member states to take the lead. The UPR process incorporated other UN monitoring mechanisms such as Treaty bodies and Special procedures to submit their reports, whilst external parties such as civil society organisations (CSOs) made their contributions. These contributions are combined and summarised by the OHCHR and make up the basis of the review. The essence of this research is to examine whether the contributions of Treaty Bodies during the UPR process are advancing the mandates of treaty bodies which were experiencing a decline in terms of the engagement and participation of states.

The United Nations introduced a human rights division in the 1940s at the UN Headquarters in New York. In the 1980s, the division was subsequently moved to Geneva and was called the Centre for Human Rights till the General Assembly established the Office of the High Commissioner of Human Rights (OHCHR) in 1993. The OHCHR oversees the strengthening and harmonising of the UN's human rights monitoring mechanisms. Over the years, the subject of human rights has been at the forefront, especially concerning global peace, security, and development. Gradually, the UN developed various human rights monitoring mechanisms, which all fall under the Human Rights Council and Treaty Mechanism Division (CTMD). These human rights monitoring mechanisms are divided into two: Treaty bodies and Charter bodies. The Treaty Bodies comprise of ten human rights thematic areas and consists of committees of independent experts that monitor the implementation of international human rights treaties. The Charter bodies comprise the Human Rights Council, Special Procedures, and the Universal Periodic Review.

The UPR is a political process, but its recommendations are generally not legally binding. However, the process of accepting recommendations to improve human rights situations at an international level creates obligations, and member states are expected to fulfil them. The UPR recommendations complement the work of the human rights treaty bodies because they cover a broad spectrum of human rights issues, and the UPR procedure predominantly relies on information and reports submitted by other human rights mechanisms, such as Treaty Bodies. Whilst the objective of the UPR is not to duplicate the work of treaty bodies, the process inevitably leads to significant overlapping with other human rights mechanisms. In this

research, there is evidence showing that there is an overlap between the UPR and CEDAW, thus reflecting that the two mechanisms are working in synergy to advance the protection and promotion of human rights.

The CEDAW Convention is one of the leading treaty body mechanisms mentioned during the UPR process, mainly because many member states entered reservations to the treaty. Most of the recommendations related to CEDAW reiterate member states to abandon the reservations they have made to the Convention. According to the General Assembly during the establishment of the Council, the UPR process should 'not duplicate the work of treaty bodies.'<sup>4</sup> However, from the onset of the reviewing process, there were blurry lines between the UPR process complementing and not duplicating other mechanisms.<sup>5</sup> Upon reflecting on the first cycle, the approach between the UPR process and treaty bodies was shifted to make the UPR recommendations focus on treaty ratification and reservations. Consequently, the subsequent UPR cycle resulted in significant ratification of the core human rights instruments.<sup>6</sup> However, Frederick Cowel argues that this correlation is not proof of causation. However, it is noteworthy to take into account that 25 per cent of all recommendations issued in the first cycle were based on international instruments or treaty bodies, which is a significant percentage that shows the vital role of treaty bodies.<sup>7</sup> Therefore, this thesis seeks to analyse whether the contribution of treaty bodies yields any results by examining CEDAW's contribution to the UPR.

### 1.3. Formulation of the research problem/hypothesis.

This research was inspired by my observation of the interaction and synergy between the UN human rights monitoring mechanisms, namely the UPR mechanism and CEDAW, a treaty body mechanism. During my internship at the OHCHR, I mainly supported the UPR branch

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<sup>4</sup> UN General Assembly, *Human Rights Council: resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251, available at: <https://www.refworld.org/docid/4537814814.html> [accessed 8 February 2023].

<sup>5</sup> Frederick Cowell, "Reservations to Human Rights Treaties in Recommendations from the Universal Periodic Review: An Emerging Practice?" *The International Journal of Human Rights* 25, no. 2 (7 February 2021): 278, accessed 11 March 2023.

<sup>6</sup> *Ibid*, 279.

<sup>7</sup> *Ibid*.

and managed to split some time to support the CEDAW Secretariat. By supporting the two mechanisms, I observed that there was an evident and traceable flow of information between the two mechanisms in the form of reports and recommendations. However, it needed to be clarified to what extent the collaboration advanced the protection and implementation of human rights on the ground. The introduction of the UPR mechanism in 2008 brought about a new process within the UN system whereby all human rights mechanisms could interact and collaborate under one mechanism to report the situation of human rights in a particular state. In every UPR cycle, Treaty bodies, along with other UN mechanisms such as Special procedures, are invited to submit their reports on member states. Hence, CEDAW is one of the most active treaty body mechanisms participating in the UPR process because issues concerning women are prevalent in most member states. Women's rights are currently an international matter, as it is a priority to combat the inequalities women faced in the past through the CEDAW Committee, whose duty is to monitor and safeguard women's rights in state parties.

This research is a pilot study on whether the UPR process advances the obligations and mandates of CEDAW. In pursuit of this objective, this research examines the following issues:

- a) Whether the recommendations of CEDAW during the UPR sessions have any positive bearing for improving the rights of women?
- b) Whether state parties accept and implement recommendations made by CEDAW in the compilation report during the UPR process?
- c) Whether the UPR process is contributing to the improvement of the situation of women's rights on the ground?
- d) Are recommendations made by CEDAW in a consistent manner likely to be implemented by a state party better than those that are inconsistent?
- e) Does politics during the UPR process influence member states to comply with the UPR recommendations better than other UN human rights mechanisms?

#### 1.4. The aims and objectives of the study.

The objective of this research is to analyse the extent to which the UPR mechanism advances the mandates of other monitoring mechanisms, with a particular focus on the CEDAW. The aim is to examine the effectiveness of the recommendations made by CEDAW during the UPR

process by analysing specific countries chosen for this study and examining whether the contributions of CEDAW incorporated into the UPR reports from the 1<sup>st</sup> UPR Cycle up to the 4<sup>th</sup> UPR Cycle were accepted and implemented by member states. We need to know whether the reports of treaty bodies during the UPR process have an impact or not. If not, the UPR design needs to be revised in order to achieve better results and have the contributions of treaty bodies considered during the UPR process.

It is undisputed that no other human rights monitoring mechanisms are comparable to the UPR mechanism because it was designed to simultaneously address several human rights concerns. The UPR was intended to address issues raised in the state report, OHCHR reports and other stakeholders such as civil societies, thus encompassing a broad scope of human rights thematic field. The broad nature of the UPR allows it to reiterate issues and recommendations to a state under review which have been made under Treaty Bodies and Special Procedures mechanisms. Moreover, the UPR is based on cooperation and constructive dialogue amongst member states and can bring a significant change in human rights within states better than any other mechanism that any Treaty Body Committee and Secretariat or OHCHR supervises. Therefore, the aim of this research is to examine whether the recommendations made by CEDAW, which are contained in the compilation report, are accepted by states and implemented, consequently advancing the mandate of CEDAW.

### 1.5. Methodology.

The research methodology used for this thesis is a qualitative method because the research incorporates a theoretical and empirical analysis of two of the main UN human rights monitoring mechanisms, namely the UPR and CEDAW. Qualitative research is ideal for relatively small samples of research which have been purposefully selected for research.<sup>8</sup> In this research, four countries, namely South Africa, Poland, India, and Brazil, have been carefully selected for specific reasons. The countries have been selected because, firstly, they belong to the first cohort of countries that were reviewed under the UPR mechanism, and they have successfully concluded all 4 cycles of the Universal Periodic Review at the time of this research. Secondly, they were selected according to geographical distribution, with each

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<sup>8</sup> Karina Kielmann, *Introduction to Qualitative Research* (London: Sage Publications, 2012), 19.

country representing the four major continents in the world. Unfortunately, there were no countries belonging to North America, Antarctica, and Australia were in the first UPR session. Therefore, they were not included as part of the study. Thirdly, they are all signatories to CEDAW. Thus, we can analyse the interaction of CEDAW and the UPR through the recommendations made to them during the UPR process. Lastly, the countries selected for the case study are populous and have significant issues concerning women. Therefore, they are representative of a wider population of countries, and the inferences that this research aims to make can be drawn from them.

There are several advantages of using a qualitative research method, as it allows for flexibility to follow unexpected ideas during the research and explore processes effectively, as suggested by Sonia Ospina. Moreover, qualitative research takes account of sensitivity to contextual factors whilst supporting new ideas and theories to develop empirical studies. Therefore, since this thesis is a pilot study, a lot of flexibility is needed in order to successfully complete the analysis.

The type of sampling in this research is called 'purposeful or purposive random sampling', which aims to represent certain characteristics, and the cases are randomly chosen from that purposely chosen 'universe'.<sup>9</sup> This approach is favoured in research of this nature because it reduces the role and use of large samples and provides a reliable cross-section from smaller samples. Most of all, this type of sampling does not claim that the results are representative of the data from a large population that the purposeful sample was chosen from. This suggests that if the results of this research prove that the UPR process has a positive effect on advancing the mandates of CEDAW, it does not mean that is true for all countries that are signatories to CEDAW, neither does it mean that the UPR process advances the mandates of all UN treaty bodies.

When using such qualitative sampling for research, three tracks can be considered, namely 'Convenience sampling, Judgement sampling and Theoretical sampling.'<sup>10</sup> In this thesis research, Convenience sampling is used because it is the least rigorous of sampling strategies, and selection is based on the most convenient and accessible sample. This method of sampling

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<sup>9</sup> *Ibid*,22.

<sup>10</sup> *Ibid*.



is useful in pilot studies or when trying out a data collection method to see if it works.<sup>11</sup> The drawback of using this kind of sampling is that some scholars shun it as it may result in poor-quality data and a lack of intellectual credibility.

Another research method conducted in this research is direct observation and case analysis. In order for a researcher to draw inferences from documents, there needs to be background information collected through observation. Through critical observation and analysis during my internship at the United Nations, I was able to collect factual information on how the UPR mechanism impacts and advances other human rights monitoring mechanisms by spending six months at the OHCHR supporting the UPR branch and supporting the CEDAW sessions for two weeks.

In the past, scholars such as McMahon et al. measured the effectiveness of the UPR recommendations by analysing both state and stakeholder reports to determine the extent to which the UPR recommendations were implemented to change the human rights status within member states. This research will adopt the same method for determining the role of the UPR in advancing the mandate of CEDAW by analysing UPR recommendations mentioning CEDAW and to what extent they were addressed and implemented in subsequent reviews. Other relevant studies on the UPR accept and use a similar methodology.<sup>12</sup>

The methodology used in this thesis is mainly collected from primary and secondary sources, which are reliable and provide more credible information for the purposes of this thesis research. The main source of information is collected from UN reports, namely UPR Compilation reports, UPR Working Group reports, UPR National reports, and CEDAW concluding observations. To analyse how the UPR advances CEDAW, I went through all the UPR documents for the four countries during the period between 2008 and 2022, which entails four UPR Cycles. I commenced by examining which recommendations had been mentioned in the compilation report by CEDAW. I already had the background information and understanding that different treaty bodies, such as CEDAW, submit their most recent concluding observations to the UPR Branch that summarises them into the UPR compilation

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<sup>11</sup> *Ibid.*

<sup>12</sup> Subhas Gujadhur and Marc Limon, "Towards the Third Cycle of the UPR: Stick or Twist? Lessons Learnt from the First Ten Years of the Universal Periodic Review" (Universal Rights Group, 2016), 35.

report, with priority to essential issues. I randomly selected and extracted specific recommendations contributed by CEDAW in the compilation report of the first cycle and assessed whether recommending countries had read the compilation report and taken the recommendations contained in the compilation report, which CEDAW made for the purposes of recommending them during the Working group sessions. For this first step, I paid particular attention to the language used in the compilation report and compared it to the language used in the recommendations of the Working group sessions. I went on to analyse the Working Group reports and assess whether the state under review accepted the recommendations. Next, I went to review all the Compilation reports, and Working group reports in the subsequent cycles whilst taking note of the actions of the state. An important step of my study was analysing the National report in each cycle to determine whether the state had reported any progress on the accepted recommendations. This process was repeated in all four UPR cycles of each country.

Given the time constraints and breadth of such research, it was impractical to analyse all the recommendations made by CEDAW in every cycle. Therefore, I narrowed the analysis to instructive recommendations related to specific laws or policies. I specifically chose such recommendations because it is easier to track whether they are implemented because they entail specific instruction and lack ambiguity in implementation. They are also implemented on a specific date, and it is easy to measure the time frame for such recommendations to be implemented. I restricted the research to two recommendations per country and traced their path throughout the cycles to determine whether they would be implemented.

## 1.6. Literature review

My thesis research is inclined to the research of Italian human rights researcher and scholar Valentina Carraro, who wrote on the Universal Periodic Review (UPR) and treaty bodies in relation to human rights compliance. In her co-authored article "Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies", published in the *International Journal of Human Rights* in 2019, Carraro evaluated the effectiveness of the UPR and treaty bodies in promoting human rights compliance. Along with her co-authors she argued that both the UPR and Treaty bodies mechanisms have the potential to contribute to better human rights compliance but that their effectiveness depends

on various factors, including the level of engagement from states, civil society and other actors. Carraro drew in on the importance of cooperation and communication among different actors to enhance the effectiveness of the UPR and treaty bodies. In her work she suggests that the contribution of the UPR mechanism to other human rights actors is that it their visibility, transparency, and accountability by providing adequate resources to support their work.

At the inception of the UPR mechanism, several scholars, such as Manfred, criticised and questioned the efficacy process on the basis that it was a mechanism assessed and led by member states instead of independent experts in the field of human rights. However, these research studies were carried out way too early before the UPR process could yield any positive results. It has now been established through various subsequent studies that the UPR mechanism advances human rights, thus implying that the recommendation made by UN treaty bodies has positive reception. Therefore, this thesis aims to establish the correlation between the UPR process and the CEDAW process.

McMahon, an academic scholar, was one of the first academics to undertake an empirical analysis of the UPR mechanism. He analysed the first cycle of the UPR with a particular focus on the quality and quantity of UPR recommendations and responses by all member states. His findings were that the UPR mechanism was a solid mechanism with substantial benefits to the promotion and protection of human rights by member states. He drew on the importance of having a constructive dialogue as well as the significant benefits of attracting high-level state engagement. However, he criticised the lack of specificity in some recommendations, which makes them vague and difficult to implement.

In 2008, Elvira Dominquez Redondo made an analogous study and assessment of the efficacy of the UPR mechanism and drew similar conclusions as those of McMahon in relation to high-level state engagement with the UPR. Furthermore, she made a bold conclusion and assertion that the effectiveness of the UPR mechanism would only be determined by the participation of member states in the UPR process. She refrained from making an assessment of whether the UPR mechanism would improve the human rights situation on the ground because she thought it was too early for her to make it at that point in time.

Rhona Smith, a renowned human rights scholar and academic, undertook several studies of the UPR, primarily covering specific regions. In 2012, Smith made a case study on the Pacific Island and revealed that these states were actively engaged with the interactive dialogue on their reviews during the first UPR cycle. Smith noted that they were receptive to UPR

recommendations. However, she highlighted that their engagement was limited by their inability to participate in the review of other states due to limited funding and technical support.

Another scholar, Bulto, made a general analysis of the UPR in 2015 and concluded that it was more successful because there was total state engagement, and African states particularly favoured this mechanism more because they were more control over the outcome of the UPR process. However, he argued that the engagement by African states lacked genuine commitment as they opposed the participation of civil society organisations who would expose the actual human rights situation in their states.

Damian Etone, an international lawyer, academic and author whose work this thesis mainly relies on, made several research on the UPR mechanism, including 'The impact of the UPR in Africa' and another important study on 'The theoretical challenges to understanding the potential impact of the UPR'. In one article, he highlighted the importance of the UPR as a tool for holding states accountable for their human rights records and argued that the UPR is a valuable process because it is peer-driven, thus making the process more legitimate and effective. In another article, Etone focuses on the importance of civil society engagement in the UPR process. He argues that civil society organisations have a crucial role to play in the UPR, as they can provide valuable information about human rights issues on the ground and that their contributions should be taken seriously by states and other actors. Overall, Damian Etone's writing about the Universal Periodic Review highlights the importance of this process as a tool for promoting and protecting human rights around the world. He emphasises the need for states to take the UPR process seriously and for civil society to be given a greater role in the process.

Two critical scholars who have made important contributions to international law and human rights are Hilary Charlesworth and Emma King. They co-authored "The Universal Periodic Review: Making a Difference?" published in the Human Rights Law Review in 2012 and evaluated the effectiveness of the UPR process in promoting human rights. They argued that while the UPR is an important mechanism for promoting human rights, it is limited by the lack of a strong enforcement mechanism and the potential for political manipulation. They also suggested that civil society engagement is critical to the success of the UPR process, as it provides an important means of holding states accountable for their human rights obligations. They also emphasise the need for greater transparency and accountability in the UPR process,

particularly in relation to the selection of countries for review and the involvement of UN member states.

Several research has been done on the Universal Periodic Review mechanism and how it positively impacts international human rights law. From the onset, scholars and critics wrote about the novel UPR process and noted how it would eventually improve the situation of human rights in member states. Some books were based on the UPR's impact on specific human rights thematises, whilst some studies showed its impact in specific regions such as Africa. One of the historic activities surrounding the UPR occurred right after the first UPR Cycle. Various renowned academics, diplomats and human rights practitioners met for a conference in Australia to assess the impact of the first UPR and later co-authored a book based on the observations, successes and weaknesses of the first UPR cycle. The aim of the research was to portray the functions of the UPR as a regulatory mechanism. Another class of scholars wrote on how the UPR mechanism is a duplication of the already existing UN human rights monitoring mechanisms because its process replicates recommendations that had already been made under the treaty bodies division.

In previous years, studies have been made to measure the success or efficacy of the UPR process by measuring how many recommendations were implemented by member states. Whilst it is positive to see all these different kinds of studies on the UPR, it is interesting to note that there has not been a study on the impact of the UPR on UN treaty body mechanisms. It is important to establish whether the UPR process is yielding any results by the contributions made by Treaty Bodies in the Compilation report. The Compilation report is one of the key tools of the UPR process that encompasses all information made by UN agencies and UN human rights mechanisms. Through the UPR compilation report, UN treaty bodies and special procedures are able to report as well as recommend to member states the most important issues contained in the concluding observations reports. Therefore, this study aims to analyse whether the recommendations passing through the UPR process are advancing the mandates of treaty bodies.

### 1.7. Limitations of the research analysis

There are several limitations to this thesis research. However, the limitations do not impede the aims and objectives of the research. Temporal limitations have narrowed the scope of the research to focus on only one UN treaty body mechanism called the Convention on the

Elimination of Discrimination against Women (CEDAW). The time period for research did not permit to make extensive research of other monitoring mechanisms and their interaction with the UPR mechanism. The time-limit factor affected the research to be limited to specific recommendations made by CEDAW in order to reach a comprehensive conclusion, rather than considering all CEDAW recommendations made during the four cycles. This research will focus on only four case studies comprising four countries determined by equal geographic distributions.

Another limitation of this research analysis is the lack of primary sources or substantial academic or legal literature containing specific studies and comparisons between the UPR and CEDAW. This analysis will therefore rely on limited academic sources, and a substantial portion of this research will be based on the study of the United Nations UPR reports, such as the compilation reports and follow-ups reports made on recommendations mentioning CEDAW. The study will also refer to the CEDAW concluding observation and findings of the countries used in the case study to determine to what extent their recommendations are referred in the UPR process.

#### 1.8. Structure of the thesis

This thesis is divided into four core chapters, consisting of an introduction, an overview of the research, an in-depth analysis of the recommendations, and lastly, a conclusion. Chapter one gives a general introduction of what the thesis research is based on. It also comprises essential information on the thesis research and aims to provide the reader with the background, overview of the topic, objectives and methodologies used in this thesis research. The second chapter presents the main actors of the research, which are the UPR and CEDAW, and elaborates on their roles and functions in promoting and advancing the protection of human rights. Moreover, the chapter analyses the interaction between the UPR and CEDAW and elaborates on the tools that the UPR process has developed to make the mechanism more successful and effective. The chapter entails various subtopics, such as the different types of compliance to human rights mechanisms that need to be applied by mechanisms in order to achieve compliance by member states.

The third chapter is the core of the thesis research. It comprises the methodology, qualitative analysis and findings of the UPR and CEDAW reports. It contains the data collected from all the reports that were analysed in this research. This data is collected from the UN documents encompassing UPR reports, concluding observations of CEDAW, and other relevant. Lastly, Chapter Four encompasses an in-depth analysis of the main thesis questions that reveal the impact of the UPR in advancing the mandates of CEDAW. Furthermore, based on my observation and experience at the United Nations, I made some recommendations on how the UPR and CEDAW could interact more effectively to advance the protection of human rights across the world. Lastly, the chapter will close with a conclusion to wrap up this research paper.

## **Chapter Two**

### 2.1. Introduction

This chapter will introduce the main subjects analysed in this thesis research, namely, the Universal Periodic Review and Committee on the Elimination of all Forms of Discrimination Against Women. Firstly, we will look at the history and background of the UN human rights monitoring mechanisms mentioned above; then, we will discuss their role and functions and how the mechanisms perform their roles to promote human rights. This chapter will also examine how the UPR interacts and collaborates with CEDAW and other UN treaty bodies. Moreover, we make an in-depth analysis approach of compliance with the human rights monitoring mechanism and why the recommendations passed through the UPR process are likely to be accepted by member states, thus making the UPR more successful than other UN human rights mechanisms. This chapter will also examine the different types of compliance in international human rights law, which can be adopted to ensure compliance with human rights obligations. Moreover, this chapter will delve into an interesting debate amongst human rights scholars on whether a World Court of Human Rights should be established to interpret and enforce the laws and obligations of international human rights law. Lastly, this chapter will analyse the tools that have been developed by the UPR mechanism and how they have improved over time to achieve its objectives and the mandates of treaty bodies.

Over the years, we note a declining phenomenon in the rate of state engagement in UN treaty body mechanisms. This decline is evidenced by all treaty bodies reporting bewildering statistics of overdue and delayed submission of reports. It is well-established that obligations and recommendations made by member states by signing treaties or under international law of human rights are not legally binding. Therefore, states are not bound by the commitments or obligations they make under UN treaty bodies or other international bodies. However, customary law of international law obliges states to exercise their obligations and mandates as there are quasi-judicial laws binding. Therefore, the UPR mechanism came with a new and progressive process that involves the peer-peer review of member states that has proved to be successful. Since there was a declining engagement of member states with treaty bodies, this chapter aims to see how and why the UPR is more successful and what practices can be adopted to advance the mandates of treaty bodies through the UPR process.



Damian Etone classified existing scholarship on the UPR mechanism into two schools of thought, namely, the sceptical group and the evolutionary group. The sceptical group believes that the UPR is institutionally weak and needs to be terminated and replaced with an institution that can enforce change and that is not dependent on the goodwill of states, whilst the evolutionary group believes that the UPR is an evolving mechanism that is driven by politicisation, cooperation, regionalism and ritualism. Academic scholars such as Bulto contend that the UPR mechanism is the leading international human rights monitoring mechanism with the greatest engagement by African countries mainly because they have total control of the outcome of the UPR process.

## 2.2. Background of the Universal Periodic Review

The UN HRC is a subsidiary body of the United Nations General Assembly and was established in March 2006 by General Assembly Resolution 60/251, which was voted in favour by 170 states.<sup>13</sup> The Universal Periodic Review (UPR) was established simultaneously under the UN General Assembly resolution 60/251, which stated the purposes of the Council.<sup>14</sup> The main purpose of the UPR was to create a mechanism that would review the human rights of all states on a peer-to-peer basis. The UN General Assembly resolution 60/251 enforced changes to the UN human rights system because it was evident that states had lost faith in the Commission of Human Rights (CHR). The CHR existed for 60 years, and during this period, it successfully drafted the Universal Declaration of Human Rights and was responsible for the various treaties that still stand today. Despite the decorous achievements of the CHR, it became highly criticised for selectivity, politicising its affairs and alleged for having double standards, thus subsequently leading to its demise.<sup>15</sup> In 2006, the CHR was consequently dissolved and replaced with the Human Rights Council, which succeeded in monitoring human rights-related issues of the United Nations. The HRC was established as a subsidiary of the General Assembly, and its main role was to promote human rights universally and make annual reports

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<sup>13</sup> Resolution 60/251 was voted in favour by 170 states, four against, and three abstained.

<sup>14</sup> UN General Assembly, *Human Rights Council: resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251, available at: <https://www.refworld.org/docid/4537814814.html> [accessed 8 February 2023]

<sup>15</sup> Lane, Michael and Damian Etone 'The Human Rights Council: *The Impact of the Universal Periodic Review in Africa* (Routledge, 2021) 4.

to the General Assembly. The Human Rights Council comprised 47 member states elected according to regional distribution. During that period, a lot of reformation and restructuring took place within the organisation, and the new HRC was required to "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States."<sup>16</sup>

The UPR is currently the champion amongst the human rights mechanisms of the HRC, and this is evident by the participation and engagement of states and stakeholders in contributing towards the mandate of the mechanism. The UPR has been positively welcomed by member states resulting in 100 % engagement from all states since its inception. The key elements that make the UPR successful are that it is non-coercive and non-confrontational. Thus, states are more willing to cooperate and collaborate in a mechanism that is fair. Damian Etone noted in his book that the distinctive feature of the UPR compared to other human rights monitoring systems is that it is an all-inclusive mechanism based on 'universality, objectivity and non-selectivity . . . and the elimination of double standards and politicisation'.<sup>17</sup> Since its inception, the UPR has conducted four cycles, with the first cycle starting in 2008-2011, the second cycle 2012-2016, the third cycle in 2017-2022 and lastly, the fourth cycle starting in 2022. During each cycle, every state is reviewed by the UPR Working Group, which consists of 47 members of the Council. However, other UN Member States may also participate in the interactive dialogue or discussions. Every year, the UPR conducts 3 sessions of the UPR Working Group and reviews up to 48 states annually, with 14 states being reviewed in each session every 4.5 years.

From the inception of the UPR, many believed that it would be a revolutionary mechanism that would change the human rights situation occurring in all parts of the world. During the opening of the fourth session of the HRC, the former UN Secretary-General Ban Ki-Moon stated, "By [the] first anniversary in June, the wheels of the Council should be in full motion, including the Universal Periodic Review. This mechanism has great potential to promote and protect human

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<sup>16</sup> UN General Assembly, *Human Rights Council: resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251, available at: <https://www.refworld.org/docid/4537814814.html> [accessed 8 February 2023].

<sup>17</sup> Lane, Michael and Damian Etone 'The Human Rights Council: *The Impact of the Universal Periodic Review in Africa* (Routledge, 2021) 4.

rights in the darkest corners of the world.”<sup>18</sup> According to UPR Info, an NGO that promotes and supports the UPR mechanism, there have been 90938 recommendations since the first cycle.<sup>19</sup> The data showed by UPR Info shows an increase of 70% in the number of recommendations between the first cycle and the third cycle, thus reflecting an increase in member state and stakeholder participation in each cycle.

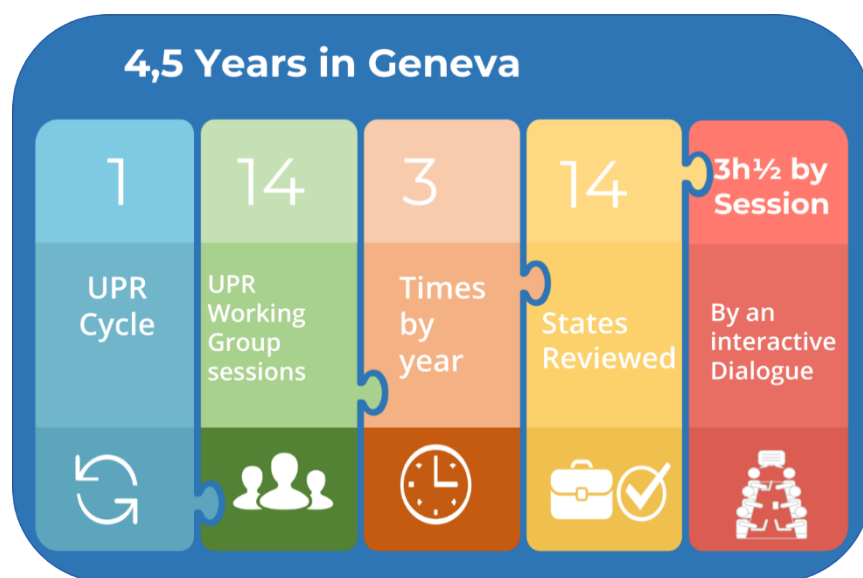


Figure 1.1 Fact sheet of UPR mechanism by UPR Info.<sup>20</sup>

However, some scholars such as Manfred Nowak outrightly questioned the efficacy of the UPR and argued that the UPR ‘suffers from the disadvantage that states’ performance in the field of human rights is assessed by member states rather than by independent experts.<sup>21</sup> This concern can, however, be thwarted by demonstrating the close interaction and cooperation between the UPR and Special Procedures and Treaty Bodies mechanisms by incorporating their expert findings and recommendations in the compilation report. An important feature that the UPR

<sup>18</sup> Ban Ki-moon, "Statement by the Secretary-General to the First Session of the Human Rights Council," United Nations, 19 June 2007, accessed 1 March 2023, <https://www.un.org/sg/en/content/sg/statement/2007-06-19/statement-secretary-general-first-session-human-rights-council>.

<sup>19</sup> "Introduction and Brief History," UPR Info, accessed 11 March 2023, <https://www.upr-info.org/en/upr-process/what-upr/introduction-brief-history>.

<sup>20</sup> *Ibid.*

<sup>21</sup> Damian Etone, "Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance" (unpublished manuscript, 2019), 9.

lacks is the element of holding states accountable for grave human rights violations and failure to implement recommendations. However, the UPR Branch recently developed mid-term reports whereby member states' progress can be assessed, and implementation measures can be put in place with the assistance of the OHCHR. Furthermore, the UPR Voluntary Fund has been a pivotal driving force that provides financial support to member states to implement recommendations.

Damian Etone, an international law academic, referred to the UPR as a soft mechanism as its recommendations are not binding. However, he argues that non-coercive measures can be more effective than the contrary.<sup>22</sup> Perhaps the proposal made by Australia in 1947 to the UN Commission on Human Rights of creating an International Court of Human Rights (ICHR) would be a useful instrument to be used by the UPR to enforce legally binding judgements to states for non-compliance. The idea of a creation of an international court was also supported by Manfred Nowak, who suggested the establishment of a World Court of Human Rights (WCHR), which would act as a counterpart of the United Nations Human Rights Council.<sup>23</sup> He argued that it is high time to create an international institution that would enforce binding decisions and induce state compliance. An in-depth analysis and exploration of this subject will be discussed below in subsection 2.6 thesis.

### 2.2.1. Modus Operandi of the UPR

The UPR works in a unique way to monitor human rights situations compared to other HRC mechanisms. The UPR operates in five phases which will be elaborated below and illustrated by a picture figure in subsequent pages.

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<sup>22</sup> Lane, Michael and Damian Etone 'The Human Rights Council: *The Impact of the Universal Periodic Review in Africa* (Routledge, 2021) 4.

<sup>23</sup> Manfred Nowak and Julia Kozma, 'A WORLD COURT OF HUMAN RIGHTS', (editor: Gerd Oberleitner) 2018.

The first phase of the UPR process is initiated by preparing three reports, namely, the state report.<sup>24</sup>, compilation report<sup>25</sup> and summary report.<sup>26</sup> The State Under Review (SUR) submits a state report which entails a conclusive account of the human rights situation in the country. A good state report should also show what steps have been taken to address the recommendations made in the previous cycle. The UPR Branch at the OHCHR collects information and prepares two reports: compilation and summary reports. The compilation report contains information that UN Agencies have submitted, Special procedures and Treaty bodies concerning the SUR. The summary report will contain information submitted by stakeholders such as National Human Rights Institutions (NHRIs) and National Governmental Organizations (NGOs).

The second phase involves the SUR presenting the national report before the HRC Working Group in a three and a half hours long interactive dialogue sessions in Geneva.<sup>27</sup> The working group is made up of 47 members of the Council, and the review is assisted by a group of three countries that serve as a troika.<sup>28</sup> The troika consists of three countries randomly selected, and they are responsible for questioning the SUR and compiling recommendations with the help of the OHCHR. During the session, the SUR responds to questions posed by the troika and members of the Council. During this process, NGOs and other member states are permitted to make comments or ask questions to the SUR. The most important part of this phase is that the SUR receives recommendations from the reviewing states.

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<sup>24</sup> The member state prepares the state report with contributions from various ministries and state stakeholders. This report should entail an overall summary of the progress and achievements with regard to upholding human rights the state has realised since its last review. The state should also disclose challenges and setbacks in areas it is falling short and set out a plan of implementation. The national report by the state is limited to a maximum of 20 pages.

See Resolution 5/1, UN Doc A/HRC/RES/5/1 paragraph 15.

<sup>25</sup> The compilation report is prepared by the OHCHR within the UPR branch. The compilation report entails an all-inclusive summary of information submitted by UN Agencies, UN Special Procedures mandate holders, and UN Treaty Bodies secretariates. The compilation report is limited to a maximum of 10 pages. See Resolution 5/1, UN Doc A/HRC/RES/5/1 paragraph 15.

<sup>26</sup> Prepared by the OHCHR under the UPR branch, and it comprises an all-inclusive report from various stakeholders such as various NGOs and NHRIs. The compilation report is limited to a maximum of 10 pages.

See Resolution 5/1, UN Doc A/HRC/RES/5/1 paragraph 15.

<sup>27</sup> Lane, Michael and Damian Etone 'The Human Rights Council: *The Impact of the Universal Periodic Review in Africa* (Routledge, 2021) 6.

<sup>28</sup> Resolution 5/1, UN Doc A/HRC/RES/5/1 para 18(d).

The strict time allocation during reviews was criticised for many years because it prevented all interested states from participating in the interactive dialogue. The working group was three hours long, and 1 hour was allocated to the SUR's presentation and two hours for the interactive dialogue. Three minutes were allocated for the Council members and two minutes for observer states, and when the list of speakers was high, two minutes were equally allocated to all the states.<sup>29</sup> Initially, a system of first come, first served basis was applied, resulting in allies of the SUR signing up first, consequently preventing an impartial interactive dialogue that included genuine critique and participation of all member states.<sup>30</sup> For instance, 55 states failed to make their statements during China's first review.<sup>31</sup> The system was revised in the UPR's second cycle allowing all states interested to participate in the interactive dialogue to make statements by dividing the allocated time by the number of states on the list of speakers. However, this system has resulted in another set of challenges, as the time allocation is occasionally too limited for meaningful engagement.<sup>32</sup> For instance, in the second cycle, states were allocated 51 seconds to speak in Cuba's review. Presently, the time allocation has now been extended to three and a half hours. However, time constraint still remains to be a challenge when a lot of states sign up to participate in a review.

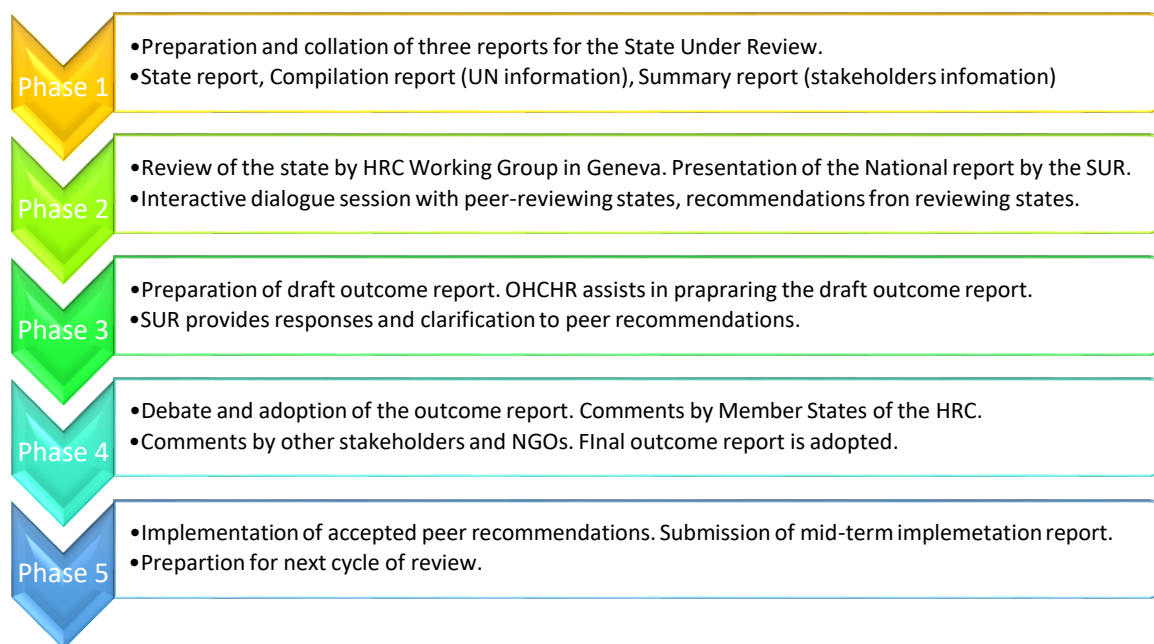
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<sup>29</sup> Kathryn McNeilly, 'The Temporal Ontology of the Human Rights Council's Universal Periodic Review', *Human Rights Law Review* 21, no. 1 (5 February 2021): 4.

<sup>30</sup> *Ibid*, 4.

<sup>31</sup> UN Human Rights Council, Report of the WG on UPR: China, 5 October 2009, A/HRC/11/25 at para 26.

<sup>32</sup> McNeilly, 'The Temporal Ontology of the Human Rights Council's Universal Periodic Review' 4.



*Figure 1.2 Illustration of the 5 phases of the UPR Mechanism.*

The third phase is a summary of the questions and recommendations made by other states and stakeholders, as well as the SUR's comments and responses. The Troika of the Council drafts the review of the Working Group and subsequently leads to the adoption of the draft outcome report by the SUR within two or three days.<sup>33</sup> The SUR responds to the suggested recommendations by either accepting, rejecting or noting the recommendations. The UPR branch prepares an outcome report that contains all information that occurred during the adoption of the outcome process.

The fourth phase of the review entails the final outcome of the report, which is debated and adopted at the plenary session of the Council a few months later.<sup>34</sup> During this process, the outcome report is adopted; however, before adoption, an opportunity to make an opinion and comments on the outcome report is given to the 47 members of the Council, other member states, as well as stakeholders such as NGOs. Finally, the fifth phase of the UPR process is the implementation and follow-up stage of the SUR. During this stage, the SUR is expected to send a mid-term report stating the progress it has made since the adoption of the final report. It is also expected to state what it has implemented and what challenges it is facing in terms of

<sup>33</sup> Resolution 5/1, UN Doc A/HRC/RES/5/1 paras 26–32.

<sup>34</sup> United Nations General Assembly, "Resolution 16/21, para.16 ", accessed 11 March 2023, <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>.

realising the protection of rights. If the SUR is facing financial constraints in actualising certain human rights, it can apply for funding from the UPR Trust Fund that can facilitate and enable states to realise their goals.<sup>35</sup>

A fundamental feature of the UPR process is that member states are encouraged to engage in a sincere and genuine manner in all phases to achieve effective results and to avoid undermining the process. The interactive dialogue (phase two) has been criticised for lack of specificity and use of generic recommendations that do not determine the mode of implementation, which can undermine the effectiveness of the recommendation and the entire UPR process.<sup>36</sup> This has led to the introduction of the terminology SMART recommendations, which was first used and proposed by an organisation called UPR Info. The organisation has prioritised the dissemination of information regarding drafting SMART recommendations to member states and other stakeholders of the UPR process.

#### 2.2.2. The UPR is the 'crown jewel' of the HRC.

The Universal Periodic Review is a highly regarded mechanism within the United Nations and has earned the label of 'crown jewel' by some academics. One of the primary reasons for earning this title is based on the universality of the mechanism. According to Gayatri Patel, the UPR is the first human rights monitoring mechanism to hold all United Nations member states accountable for all their international human rights law obligations under the same uniform procedure as purported by General Assembly resolution A/RES/60/25.<sup>37</sup> The principle of universality is a feature that is not only fundamental to the international human rights system but also important to the United Nations. In fact, the notion that human rights are universal is enshrined in the Universal Declaration of Human Rights (UDHR ).<sup>38</sup> Furthermore, several scholars, such as Maurice Cranston, defined human rights as 'the universal moral rights which

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<sup>35</sup> In 2007, the Human Rights Council founded the Voluntary Fund for Financial and Technical Assistance in the implementation of the UPR according to resolution 6/17 and further strengthened in 2011 by resolution 16/21.

<sup>36</sup> Lane, Michael and Damian Etone 'The Human Rights Council: *The Impact of the Universal Periodic Review in Africa* (Routledge, 2021) 21.

<sup>37</sup> Gayatri Patel, 'How "Universal" Is the United Nations' Universal Periodic Review Process? An Examination of the Discussions Held on Polygamy', *Human Rights Review (Piscataway, N.J.)* 18.

<sup>38</sup> Universal Declaration of Human Rights, GA Res 217 A (III), UN GAOR, 3rd session, 183rd Plenary meeting, UN Doc A/RES/217A (III) (10 December 1948).



all men, everywhere, at all times ought to have,<sup>39</sup> and Richard Wasserston proposed that for any right to qualify as a human right, it must abide by the universal condition.<sup>40</sup> Additionally, Jack Donnelly concisely expounded that since humanity is universal, it is, therefore, reasonable for human rights to be universal as they are democratic, absolute and inalienable.<sup>41</sup> However, cultural relativists have challenged the universality of human rights by arguing that interpretations of what constitutes human rights are relative to different cultural contexts stemming from moral judgement.

The UPR mechanism has earned unparalleled popularity amongst member states resulting in a hundred per cent participation since its conception. What makes the UPR mechanism even more extraordinary is that it attracts high-level state engagement and multiple intra-governmental contributions, thus reflecting the high priority level that states give to the UPR process. This is recently seen by the composition of the delegation of the last review of the countries involved in the case study. For the South African delegation, we note that it was composed of H.E, the Deputy Minister of Justice and Constitutional Development, H.E. Deputy Minister of Co-operative Governance and Traditional Affairs, the Deputy Minister of Basic Education and H.E. the Ambassador, Permanent Representative of South Africa to the United Nations Office at Geneva and Other International Organisations in Switzerland. We note that over the cycles, there has been an increase in the number of state delegations who attend the UPR, as it can be noted that only South Africa's first review was composed of 7 delegates and yet in the fourth review, the number increased to 24 delegates holding high positions in the country. We note that South Africa also relied on the new UPR services that allow states to participate in the UPR process in hybrid.

For the 4<sup>th</sup> UPR review of Brazil, we note that a delegation composed of 35 delegates, ministers, and government representatives was present in Geneva. The delegation was headed by the H.E. Minister of Women, Family and Human Rights, who was accompanied by the Permanent Representative of Brazil to the United Nations Office and other International Organizations in Geneva, the Ministry of Foreign Affairs and the National Secretary for Policies for the Promotion of Racial Equality, Ministry of Women, Family and Human Rights, among others. This can be contrasted to the first UPR review of Brazil, which was composed of 17 delegates.

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<sup>39</sup> Patel, 'How "Universal" Is the United Nations' Universal Periodic Review Process?' 463.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

For the Indian UPR review, there were 25 delegates present for the review, and the delegation was led by H.E., the Solicitor General. He was accompanied by H.E. Vice-Minister of External Affairs, H.E. Ambassador, Permanent Representative of India to the UN and other International Organisations, and the Additional Solicitor General of India, inter alia. This number can be contrasted with the delegation of India in the first cycle, which was composed of 13 delegates.

For the Polish UPR review, we note that the delegation is composed of 37 delegates, with the head of the delegation being the H.E. Undersecretary of State, Ministry of Foreign Affairs, who was accompanied by H.E. Ambassador, Permanent Representative of the Republic of Poland to the United Nations Office at Geneva, and the Director, Department of the United Nations and Human Rights, Ministry of Foreign Affairs, and the Director, Department of Treatment, Ministry of Health, inter alia. We note that in the case of Poland, there has not been a stark increase in the number of delegations compared to other countries, as they had 27 delegates in the first review of Poland.

The UPR mechanism relies on four foundational pillars of international human rights, and that is what makes the process laudable. The basis of the review is:

- (a) The Charter of the United Nations;
- (b) The Universal Declaration of Human Rights;
- (c) Human rights instruments to which a State is party;
- (d) Voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council.<sup>42</sup>

One of the underpinning values of the UPR is that all UN member states will be reviewed in the same manner and by approximately the same criteria, which takes away the bias and selectivity witnessed in the Commission of Human Rights. Even the permanent members of the Council cannot circumvent the UPR process.<sup>43</sup> The Charter of the United Nations states,

"We, the peoples of the United Nations, determine,

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<sup>42</sup> UN General Assembly, "Institution-building of the United Nations Human Rights Council," A/RES/60/251, 3 April 2006, accessed 1 March 2023, <https://undocs.org/A/HRC/RES/5/1>.

<sup>43</sup> Rhona Smith, "To See Themselves as Others See Them": The Five Permanent Members of the Security Council and the Human Rights Council's Universal Periodic Review, *Human Rights Quarterly* 35, no. 1 (February 2013): 1-32, <https://doi.org/10.1353/hrq.2013.0007>.

- a) to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- b) to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained."<sup>44</sup>

This demonstrates that the United Nations organisation has, since its inception, been dedicated to the corporation, inclusion, equality and respect for nations large and small.<sup>45</sup>

### 2.3. Background of the CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (the "CEDAW Convention" or "the CEDAW Committee") entered into force in 1979. The CEDAW Convention is the leading international treaty body responsible for monitoring states' obligations to protect and promote the rights of women's human rights.<sup>46</sup> The Convention's core objective is 'to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms'.<sup>47</sup> There are three obligations central to the realisation of the object and purpose of CEDAW, namely to:

- a) ensure that there is no discrimination against women in laws and that women are protected against discrimination;
- a) improve the de facto position of women; and
- b) address prevailing gender relations and the persistence of gender stereotypes.<sup>48</sup>

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<sup>44</sup> Charter of the United Nations, Preamble, opened for signature 26 June 1945, 59 Stat. 1031, 1 U.N.T.S. 16, accessed 1 March 2023, <https://www.un.org/en/charter-united-nations/>.

<sup>45</sup> Rhona K. M. Smith, "Equality of Nations Large and Small: Testing the Theory of the Universal Periodic Review in the Asia-Pacific," *Asia-Pacific Journal of Human Rights and the Law* 12, no. 2 (2011): 1, <https://doi.org/10.1163/157181511X570733>.

<sup>46</sup> Simone Cusack and Lisa Pusey, 'CEDAW and the Rights to Non-Discrimination and Equality', *Melbourne Journal of International Law* 14, no. 1 (2013): 54. accessed 11 March 2023, [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0008/1709362/6-Cusack-Pusey.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0008/1709362/6-Cusack-Pusey.pdf).

<sup>47</sup> General Recommendation 25, UN Doc A/59/38, annexe I [4].

<sup>48</sup> *Ibid*, 57.

### 2.3.1. Modus Operandi of CEDAW

The CEDAW treaty mechanism is monitored by a group of 23 experts from various professions, such as academia, judges, medical doctors, diplomats, legal professionals, etc.<sup>49</sup> The individual representatives are elected by state parties and serve as independent experts on gender equality for a period of 4 years. The CEDAW Committee meets at least three times a year and reviews eight countries in every session. State parties are reviewed on a rolling basis, and other factors, such as geographic factors and pending reports, are considered. States are encouraged to submit concise and holistic reports using the CEDAW guidelines. The state report should address every article of the Convention and use the concluding observation on the previous report to highlight new developments.<sup>50</sup> The state report should also contain contributions and observations of the NGOs and women's associations.

During the pre-sessional working group, the CEDAW Committee, along with the CEDAW secretariat, draw up a list of issues (LOI) and questions regarding the state party reports to be considered two sessions later. The LOIs normally consist of 20 questions,<sup>51</sup> which are intended to facilitate the preparation of the state parties' constructive dialogue with the Committee. The state parties are required to respond to the LOIs within three months after being issued<sup>52</sup>.

Constructive dialogues follow between the 23 independent experts and the state party at the OHCHR headquarters in Geneva in the form of two public hearings.<sup>53</sup> The state party representative makes his report focusing on the various improvements and drawbacks they have encountered since the last report. The independent experts have an opportunity to ask follow-up questions on each cluster of articles of the convention. In this segment, interventions and contributions by NGOs and women's associations are acceptable.

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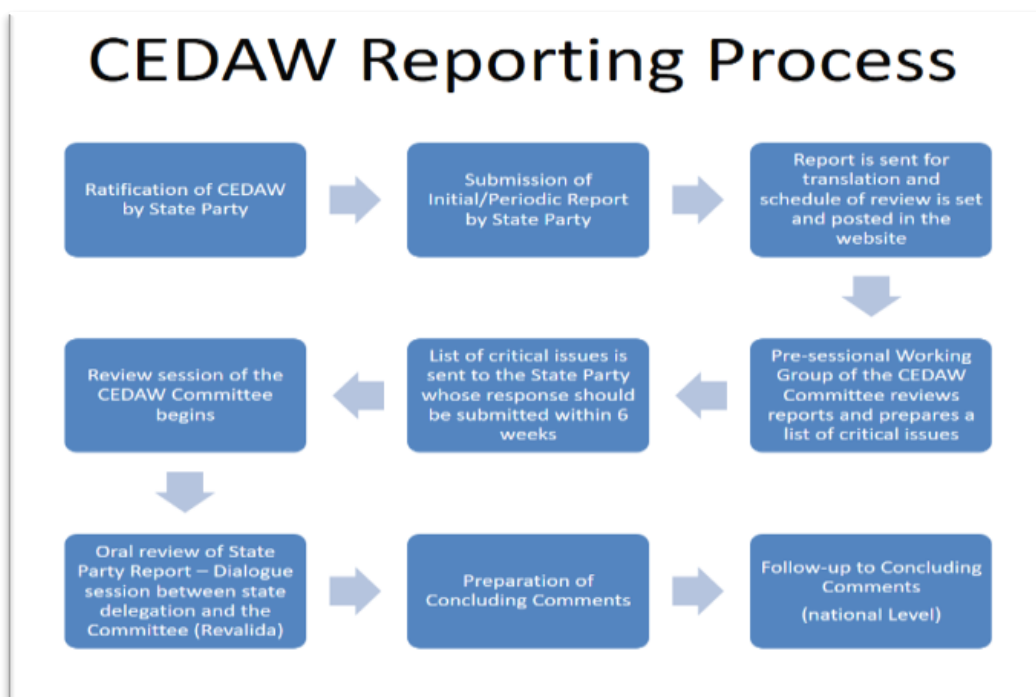
<sup>49</sup> Neil A. Englehart and Melissa K. Miller, "The CEDAW Effect: International Law's Impact on Women's Rights," 24, accessed 5 February 2023, <https://www.tandfonline.com/doi/epdf/10.1080/14754835.2013.824274?needAccess=true&role=button>.

<sup>50</sup> The state report's first report should not exceed 31800 words, and subsequent reports should not exceed 2100 words.

<sup>51</sup> Each question does not exceed 3 issues.

<sup>52</sup> The response should not exceed more than 17,00 words.

<sup>53</sup> The public hearings last three and two hours, respectively.



*Figure 1.3 CEDAW Reporting Procedure.*<sup>54</sup>

The concluding observations follow next, which are held privately between the state party and the CEDAW Committee. One individual expert of the Committee, who is also referred to as the rapporteur, is assigned to each state party and is responsible for preparing the concluding observations containing recommendations with the support of the CEDAW secretariat.<sup>55</sup> When the concluding observations are adopted, they are delivered to the state party for factual comments to be submitted within one working day and, finally, published on the CEDAW website of the OHCHR.

Interestingly the failure to comply with the CEDAW reporting process does not result in any penalties for the member states, and this is a weakness in most treaty bodies' mechanisms. Heyns and Viljoen noted that '...disengaged countries - those that do not submit reports, discuss concluding observations, or allow an environment in which individual complaints can be lodged - can largely escape criticism from the treaty system, which is, after all, based on consent'.<sup>56</sup>

<sup>54</sup> Philippine Commission on Women, "Reporting to CEDAW," accessed 9 February 2023, <https://pcw.gov.ph/reporting-to-cedaw/>.

<sup>55</sup> The concluding observations set out the date of the next report.

<sup>56</sup> Neil A. Englehart and Melissa K. Miller, "The CEDAW Effect: International Law's Impact on Women's Rights," 25, accessed 5 February 2023,

We can note that concluding observations are at the heart of the review process of CEDAW and other treaty bodies, thus providing a baseline for subsequent reports and acting as critical reference points for States Parties' records over time. It is generally known and accepted that concluding observations do not create any legal obligation by employing a binding interpretation. Nonetheless, they have a special status as an authoritative pronouncement by the body mandated to monitor the state party's compliance. Therefore, when the concluding observations of CEDAW or any other treaty body are included in the UPR process, and the state under review accepts the recommendations, the burden on compliance increases because the UPR is a political process, and states are expected to adhere to the commitments and obligations they have accepted.

### 2.3.2. CEDAW as the 'international Bill of Rights for women'.

CEDAW is a multidimensional treaty that stands out among the various human rights treaty bodies. Most human rights treaty bodies encourage member states to respect and promote human rights. However, CEDAW takes it a step further. Englehart and Miller stated that the mandate and obligations of CEDAW are enforced in the public sphere, the private sphere and the minds of individuals.<sup>57</sup> CEDAW's obligations enforce changes in member states at multiple levels, such as at the national level, through legislative frameworks and revision of legal instruments up to the lowest local level that deals with women's affairs. Unlike most treaty bodies with a weak enforcement strategy, CEDAW requires massive socio-political change at various institutions without providing many incentives, resources or sanctions to achieve them.<sup>58</sup>

Initially, when CEDAW was put into effect in 1981, its Committee used to meet for two weeks every year in New York, and its enforcement mechanisms were weak.<sup>59</sup> However, there was a

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<https://www.tandfonline.com/doi/epdf/10.1080/14754835.2013.824274?needAccess=true&role=button>.

<sup>57</sup> Neil A. Englehart and Melissa K. Miller, "The CEDAW Effect: International Law's Impact on Women's Rights," 24, accessed 5 February 2023,

<https://www.tandfonline.com/doi/epdf/10.1080/14754835.2013.824274?needAccess=true&role=button>.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

significant improvement in the mid-1990s due to better administrative support and meeting regularly. Further improvement can be noted after the formation of the OHCHR in Geneva in 2008, and more regular meetings and enforcement strategies were established whilst being monitored by the CEDAW Committee. The CEDAW Committee oversees the review of state reports and monitors the implementation of the obligations in member states. The CEDAW Secretariat under the OHCHR plays a pivotal role in facilitating the self-monitoring process and constructive dialogue between member states and the CEDAW Committee.

The CEDAW process is effective in upholding and enhancing change in women's affairs; however, just like any treaty body, it is plagued by the delay in the submission of reports. According to Heyns and Viljoen, there are reportedly delays in 20 countries as they pertained to six human rights treaties, including CEDAW and reported that there was an average of two-year delay, and none of the twenty countries has fulfilled the obligation of timely submission of all their reports.<sup>60</sup> Consequently, some scholars question how the CEDAW Committee manages to assess the obligations and implementation of CEDAW in all member states with all the delays in reports and backlog.

#### 2.4. How does the UPR mechanism interact and advance the obligations and mandates of UN treaty bodies to enhance compliance?

When Treaty bodies were introduced in the UN system, committees were developed as monitoring mechanisms to assess state compliance by examining state reports. The aim was that reports would create 'constructive dialogue' between state parties and treaty bodies monitored by committees comprised of human rights experts.<sup>61</sup> The purpose of the committees was that when they examined states' reports and made recommendations, they would consequently evolve into quasi-judicial bodies and establish a formalised procedure and precedent to be followed. However, as early as 2002, Viljoen wrote that UN treaty monitoring

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<sup>60</sup> Included in the CEDAW-specific analysis are Australia, Brazil, Canada, Colombia, Czech Republic, Egypt, Estonia, Finland, India, Iran, Jamaica, Japan, Mexico, Philippines, Romania, Russia, Senegal, South Africa, Spain, and Zambia.

<sup>61</sup> James Crawford, 'The UN Human Rights System: A System in Crisis' in Philip Alston and James Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press 2000) 1.

bodies 'had very limited demonstrable impact' within states.<sup>62</sup> His opinion was reiterated by Krommendijk, who conducted a cross-country study of three states, namely Finland, Netherlands and New Zealand, and concluded that UN treaty bodies' use of recommendations and observations had a declining influence on states' domestic human rights practices.<sup>63</sup>

Over the years, some studies have shown that treaties have improved state behaviours. However, some scholars propounded that treaties only result in a negative effect. The development of treaty bodies and other human rights monitoring mechanisms that have enjoyed the participation and support of member states has been praised as an example of "human rights experimentalism". The treaty bodies have thus contributed to the interpretation of international human rights law as well as the protection of human rights, although several weaknesses have been identified along the way. Treaty bodies have undoubtedly become an integral part of the UN human rights system; they, however, face significant challenges to their efficiency, effectiveness and legitimacy.<sup>64</sup> The greatest challenge that human rights bodies, courts and tribunals face is that they cannot force states to follow their recommendations or judgments. Tomuschat intelligently stated that "persuasion is ultimately the only remedy" for human rights bodies.<sup>65</sup>

One of the major weaknesses of UN treaty bodies is that its scope of work is only limited to countries that are state parties to the treaties and is limited to the rights specified in each particular treaty. For this reason, the UPR mechanism is more successful because it is universal and addresses broader obligations listed under the UDHR, thus achieving a wider coverage of human rights and engaging all member states despite their status and reservations to treaties and conventions. The UPR process is driven by four major principles that make it more

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<sup>62</sup> Frans, Viljoen and Lirette Louw, "State Compliance with the Recommendations of the African Commission on Human and Peoples' Rights, 1994-2004," *The American Journal of International Law* 101, no. 1 (2007): 6.

<sup>63</sup> Krommendijk, Jasper. (2014) *The Domestic Impact and Effectiveness of the Process of State Reporting under the UN Rights Treaties in The Netherlands, New Zealand and Finland: Paper Pushing or Policy Prompting* (Cambridge: Intersentia), 36.

<sup>64</sup> Lutz Oette, "The UN Human Rights Treaty Bodies: Impact and Future," in *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*, ed. Gordon Brown and Sophie Hardefeldt (London: The Westminster Foundation for Democracy, 2016), 109.

<sup>65</sup> Gerd Oberleitner, "An Agenda for Strengthening Human Rights Institution," in *International Human Rights Institutions, Tribunals, and Courts*, ed. Gerd Oberleitner (Cham: Springer, 2018), 558.



successful, which are; objectivity, universality, cooperation and eagerness to improve human rights from the grassroots level.

Regarding member state compliance with human rights obligations, Roger Fisher identified two distinct categories: first-order and second-order compliance. First-order compliance refers to state compliance with treaties, and second-order compliance deals with compliance with the decisions and recommendations of human rights monitoring institutions.<sup>66</sup> We note that the human rights laws and obligations emanating from treaties are binding and enforceable on states that are parties to the treaty, whilst recommendations emanating from concluding observations of treaty bodies and recommendations of the UPR are soft laws. This leads us to De Frouville's proposal to create a World Commission of Human Rights with a deep-rooted institutional basis and the authority to develop binding decisions. Many scholars have proposed that the only way to ensure human rights compliance is by establishing a World Court of Human Rights because many UN human rights monitoring mechanisms have not been effective because of their inability to enforce binding decisions that would require state compliance.<sup>67</sup> Some academics could argue that there are several tools to induce human rights compliance, such as economic sanctions, adjudicative, and legalistic approaches, that can be used to force member states to adhere to their international obligations. However, some of these tools have not been effective and caused more harm to the general population in the case of the use of economic sanctions.<sup>68</sup>

## 2.5. What are the types of compliance in international human rights law which one can be best adopted to ensure compliance with human rights obligations?

International human rights institutions must rely on persuasion and appeal to legitimacy or morality, occasionally supported by political and economic incentives or pressure.<sup>69</sup> According

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<sup>66</sup> Roger Fisher, *Improving Compliance with International Law* (Charlottesville: University of Virginia Press, 1981), 28.

<sup>67</sup> Manfred Nowak, "It's Time for a World Court of Human Rights," in *New Challenges for the UN Human Rights Machinery*, ed. M. Cherif Bassiouni and William A. Schabas (Intersentia, 2011), 23.

<sup>68</sup> *Ibid.*

<sup>69</sup> Gerd Oberleitner, "An Agenda for Strengthening Human Rights Institution," in *International Human Rights Institutions, Tribunals, and Courts*, ed. Gerd Oberleitner (Cham: Springer, 2018), 558.

to Damian Etone, 'compliance is a mantra in international law'.<sup>70</sup> Heyns and Viljoen analysed the UN treaty monitoring bodies and concluded that they 'had a very limited demonstrable impact' within member states because of lack of compliance.<sup>71</sup> In 2014, Krommendijk conducted a cross-country study of Finland, The Netherlands, and New Zealand and discovered that the concluding observations and recommendations of the human rights treaty bodies have limited influence on the domestic human rights practices of states.<sup>72</sup> Stone contends that compliance with human rights obligations is dependent on five theories, namely, the coercive compliance-centred theory, the naming and shaming theory, the transnational legal process theory, the five-stage spiral model theory and the acculturation theory.<sup>73</sup> This is not an exhaustive list of compliance theories, but these are the most common theories that apply to state compliance with UPR mechanisms and treaty bodies such as CEDAW.

First, we have the acculturation theory, which is defined as 'those phenomena which result when groups of individuals sharing different cultures come into continuous first-hand contact with subsequent changes in the original culture patterns of either group'.<sup>74</sup> According to Damian Etone, the theory of acculturation proposes that compliance with human rights is best induced by the exercise of coercive power or by binding decisions emanating from human rights monitoring institutions. Moreover, a central assertion about this theory is that power is not merely prohibitive, material and centralised but also productive, cultural and diffuse.<sup>75</sup> According to An Na'im, a leading scholar in the area of cultural relativism, the theory of acculturation is an effective process to achieve compliance because, despite peculiar and diverse cultural characteristics, societies share certain fundamental interests, concerns, qualities, traits and values that can be identified and articulated as the framework for a

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<sup>70</sup> Damian Etone, "Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance" (unpublished manuscript, 2019), 1.

<sup>71</sup> Christof Heyns and Frans Viljoen, "The Impact of the United Nations Human Rights Treaties on the Domestic Level," *Human Rights Quarterly* 23, no. 3 (2001), 535.

<sup>72</sup> M.L. Krommendijk, "The Influence of the UN Human Rights Treaty Bodies on the Domestic Human Rights Practices of States," *Nordic Journal of Human Rights* 32, no. 1 (2014), 22.

<sup>73</sup> Damian Etone, "Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance" (unpublished manuscript, 2019), 8.

<sup>74</sup> *Ibid*, 20.

<sup>75</sup> *Ibid*, 21

"common" culture of universal human rights.<sup>76</sup> We note that states favour this theory, and the UPR process has been a success because of this theory.

Secondly, we have the coercive compliance-centred theory. However, it is not used in the UPR process because it involves using rigid tools such as sanctions and coercive measures such as economic sanctions that are punitive or confrontational to enforce state adherence to specific obligations. We see this theory being used mainly by more powerful states on weaker states. However, this mechanism has proved to undermine human rights as they deteriorate citizens' standards of living. This is seen in many countries such as Zimbabwe and Iran, where the use of sanctions by Western countries has weakened the economy of the states and consequently deprives citizens of access to medicines, access to textbooks for education, and, broadly speaking, a decent living standard.

The third approach of naming and shaming was predominantly used by the UN, and it refers to the public expression of disapproval of a state's non-compliance to its human rights. According to Ulfstein, the "UN Human rights treaty bodies have no coercive power except for naming and shaming".<sup>77</sup> We note that UN treaty bodies, special procedures and human rights experts relied on naming and shaming during the review, which was highly technical and involved in-depth scrutiny of the state. This approach also created a divide between the state and the human rights experts as there was a perception of 'them' versus 'us'. This approach has been condemned especially by African countries because it tends to target the human rights practices of specific states and breeds selectivity and double standards as certain states with fewer human rights violations are never confronted.

The fourth approach is the transnational legal process theory which proposes that compliance is achieved through repeated participation of states in multiple law-creating activities and institutions, which will inevitably lead to the internationalisation or domestication of laws and practices. In the context of human rights law compliance, Harold Koh "contends that compliance to human rights law is ultimately achieved as a result of the repeated process of interaction, interpretation and internationalisation through which international human rights

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<sup>76</sup> Abdullahi Ahmed An-Na'im, 'Problems and Prospects of Universal Cultural Legitimacy for Human Rights in Africa: Cross-Cultural Perspectives (Brookings Institution 1990), 336.

<sup>77</sup> Geir Ulfstein, "Law-Making by Human Rights Treaty Bodies," in *International Law-Making: Essays in Honour of Jan Klabbbers*, edited by Rain Liivoja and Jarna Petman (London: Routledge, 2014), 257.

norms are obeyed".<sup>78</sup> This theory is more likely to work for conventions signed by states under UN treaty bodies, and it would involve the constitutionalising of human rights standards. However, this theory is flawed because it does not explain a defined process of how norms and standards are legitimatised into a state and how social and political norms can be internalised.

The fifth approach is the five-stage spiral model that proposes there are five phases to ensure human rights compliance. The theory states that the power of transnational pressures exerted by national and transnational advocacy networks is the driving force behind the successful compliance of states to human rights norms and standards. The spiral model examines the process that states take to internalise and implement international laws such as conventions, treaties and recommendations. The first phase of the model initiates when there's repression by authoritarian regimes. The second phase begins when civil society organisations and transnational groups exert pressure on a state to recognise human rights. The third phase comes into play when a state feels the pressures, and its behaviours start to change into making bold changes such as signing international treaties. This consequently leads the state into the fourth phase called prescriptive status, meaning the state starts to recognise the validity of human rights norms by creating human rights institutions and domestic law reforms. The fifth phase is induced when the state institutionalises human rights norms into the state laws and institutions.

The fifth approach is the acculturation theory which is defined as 'those phenomena which result when groups of individuals sharing different cultures come into continuous first-hand contact with subsequent changes in the original culture patterns of either group'.<sup>79</sup> According to Damian Etone, the theory of acculturation proposes that compliance with human rights is best induced by the exercise of coercive power or by binding decisions emanating from human rights monitoring institutions. Moreover, a central assertion of this theory is that power is not merely prohibitive, material and centralised but also productive, cultural and diffuse.<sup>80</sup> According to An Na'im, a leading scholar in the area of cultural relativism, the theory of acculturation is an effective process to achieve compliance because, despite peculiar and

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<sup>78</sup> Harold Koh, "On American Exceptionalism and Human Rights," *Harvard Law Review* 104, no. 7 (1990), 1531.

<sup>79</sup> Damian Etone, "Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance" (unpublished manuscript, 2019), 20.

<sup>80</sup> *Ibid*, 21.

diverse cultural characteristics, societies share certain fundamental interests, qualities, and values that can be identified and articulated as the framework for a “common” culture of universal human rights.<sup>81</sup>

Therefore, the theory of acculturation is strongly used by the UPR process as it is highly effective for processes that use monitoring and reporting. The process of acculturation is by far the most efficient theory of compliance when it comes to the UPR mechanism because it accommodates beliefs, cultures and behaviour patterns and allows states to adopt better human rights norms by gradually enforcing changes through cooperation and interactive dialogues. According to the UN Special Rapporteur Surya Subedi, 'there is the need for a more inclusive and cooperative approach, and the UPR mechanism provides such a platform'. He referred to the situation of human rights in Cambodia and concluded that a more constructive approach focusing on cooperation among peers towards improving human rights rather than naming and shaming would help dissipate 'the perception of "us" versus "them" held by states in relation to human rights experts.<sup>82</sup> Damian Etone stated that the UPR provides a platform for states to engage in cross-cultural dialogues, and this can be the first step to harmonising and socialising different cultures through the process of acculturation. A typical example of the efficacy of constructive dialogues is seen with the reception of certain rights which are culturally 'radioactive', such as gay rights by African and Asian states were gradually introduced in a way that was more acceptable and incrementally implemented within the states.<sup>83</sup> The demonisation of culture can be counterproductive and promotes a loss of tolerance and respect for cultural differences, and hinders the global spread and local appropriation of human rights concepts; that is why the UPR offers an open platform for all states to make their assertions and contrast their human rights practices against each other.

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<sup>81</sup> Abdullahi Ahmed An-Na'im, 'Problems and Prospects of Universal Cultural Legitimacy for Human Rights in Africa: Cross-Cultural Perspectives (Brookings Institution 1990) 336.

<sup>82</sup> Damian Etone, "Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance" (unpublished manuscript, 2019), 13.

<sup>83</sup> Damian Etone, "The Impact of the Universal Periodic Review in Africa," in *The Human Rights Council: Critical Concepts in Law*, edited by M. Cherif Bassiouni and William A. Schabas (New York: Routledge, 2020), 11.

## 2.6. Should a World Court of Human Rights be established to interpret and enforce the laws and obligations of international human rights law?

The United Nations human rights treaty bodies have developed monitoring practices from modest beginnings, in particular the examination of State party reports of States parties, individual complaints procedures and enquiries covering a wide range of rights and issues<sup>84</sup> In 2015, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, stated before the International Law Commission that the work of treaty bodies "plays an important role in determining the normative content of human rights."<sup>85</sup> The problem is that this claimed role is difficult to explain, as there is no interpretative power that can enforce the obligations and recommendations. The human rights obligations which member states ought to adhere to are set out in the Charter of the United Nations Universal Declaration of Human Rights and UN Treaties and Conventions. However, member states are reluctant to honour such obligations in the absence of an authoritative interpretative body, court or tribunal with the right to definitively enforce the provisions. The fundamental understanding and ultimate accomplishment of the protection of human rights will be achieved when all member states, human rights bodies, scholars and practitioners follow the process prescribed in the Vienna Convention on the Law of Treaties by searching for the ordinary meaning of the words used in the context of the instrument and in light of its object and purpose.

It is important to note that one of the important pillars of international law is the principle of *bona fide* which implies that it is the duty of states to comply with international law in good faith. This means that the non-binding recommendations and obligations created by other institutions should be respected and implemented. It is often noted that non-binding obligations have several advantages because they allow policy proposals to be made in a manner that caters for constructive dialogue.

During the debate on the formation of the UPR mechanism, the UN Watch made a statement during the HRC stated that:

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<sup>84</sup> Lutz Oette, "The UN Human Rights Treaty Bodies: Impact and Future," in *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*, ed. Gordon Brown and Sophie Hardefeldt (London: The Westminster Foundation for Democracy, 2016), 109.

<sup>85</sup> Zeid Ra'ad Al Hussein, "The Role of Custom in the Progressive Development of International Law," speech before the International Law Commission, United Nations, New York, 27 July, 2015.

“the UN has little need for another toothless mechanism for cooperative dialogue. We call on Council members to fashion a mechanism that will, in a fair manner, apply real scrutiny, to hold governments to account and cite them for violations and abuses”.<sup>86</sup>

The UN Watch went on to state that the UN needed a strong mechanism that could hold states accountable for breaching human rights and that a mechanism based on cooperation and dialogue would not induce compliance. They asserted that the approach of naming and shaming should be adopted. However, studies have shown that states find the approach of 'naming and shaming' too confrontational and curtail any effective advancement and compliance with human rights.

As stated above, one of the underlying and authoritative principles in international human rights law is found in the UDHR Preamble and reminds all UN member states that they have "pledged themselves to achieve ...the promotion of universal respect for and observance of human rights and fundamental freedoms."<sup>87</sup> Therefore, the Preamble recognises "the equal and inalienable rights of all members of the human family", and member states have an inherent obligation to uphold their commitments and pledges.

## 2.7. What tools have been developed by the UPR mechanism, and how have they improved over time to achieve its objectives and the mandates of Treaty Bodies?

The UPR mechanism uses different tools and processes to achieve its objectives. The first chapter gives us insight and understanding of the core documents and reports used in the UPR mechanism. The most important tools of the UPR are the pre-session reports which are at the heart of the UPR mechanism comprising the Compilation report, Summary report and National report. However, there are other tools that the UPR has developed, and existing processes have been refined over time to achieve maximum results during the reviewing process. Below we

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<sup>86</sup> Damian Etone, "Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance" (unpublished manuscript, 2019), 4.

<sup>87</sup> Monika Heupel, "How Do States Perceive Extraterritorial Human Rights Obligations? Insights from the Universal Periodic Review," *Human Rights Quarterly* 40, no. 3 (August 2018): 527.

will have a look at some of the tools that make the UPR distinctive and successful as a monitoring mechanism. I will also discuss some of the improvements that the UPR has introduced to improve its process.

#### 2.7.1. UPR Working Group session Interactive dialogue.

Many scholars argue that the UPR is more successful in engaging member states and getting recommendations accepted because of the cooperative, inclusive and interactive dialogue, which can facilitate a genuine discussion of existing human rights violations in member states. According to Milewicz and Goodin, the interactive dialogue phase, which involves states and, to a limited extent, civil society, effectively induces a cooperative and deliberative culture within the mechanism that encourages states to comply with human rights standards.<sup>88</sup> Although Treaty Bodies, such as CEDAW, do not engage in the interactive dialogue of the UPR, the involvement of civil societies and other stakeholders shed light on most of the human rights issues covered by Treaty Bodies. We also note that the UPR mechanism attracts high-level state engagement as member states tend to send high-level delegations which enable the cooperative dialogue to yield success.

#### 2.7.2. Inclusion of NGOS

One of the unique processes of the UPR is the inclusion of NGOs in the working group session. The inclusion of NGOs as participants in the UPR process was a compromise which included limiting the extent of their participation in the UPR process. During the negotiations for the modalities of the UPR, the African Group contended that NGOs (including NHRIs) are 'critics, not peers' and that their role in the UPR should be limited to participation in the preparation of

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<sup>88</sup> Damian Etone, "Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance" (unpublished manuscript, 2019), 7.



national reports.<sup>89</sup> However, they were overruled by the majority votes as NGOs play a pivotal role in that they are independent and they are able to report on broad and sensitive human rights violations that the state under review omits to mention.

It is remarkable that NGOs are able to make contributions by submitting reports to the OHCHR. NGOs who want their reports to be incorporated into the UPR process are obliged to submit their contributions five months before a state's review. NGOs usually work at the grassroots level and are aware of the issues happening in a state. Therefore, their contribution is important because they are able to fill in the gap on issues that the UN bodies, agencies and national reports have not covered. At first, there was low participation by NGOs in the UPR process, but recently there has been a significant increase in the number of NGOs that submit their reports to the OHCHR and those that make statements during the Working group sessions.

NGO contributions have been so significant that in the extreme cases of Cuba and Venezuela during the first and second UPR cycles, the number of NGO reports received by OHCHR ranges between 300 and 600, and many of these reports were filed by government-sponsored organisations and filled with misleading statements.<sup>90</sup> This is a major downfall in NGO participation because oftentimes, they are state-funded and will provide misleading information. Therefore, the OHCHR prefers to include joint submissions from NGOs or include the reports of reliable NGOs during the compilation of the summary report.

According to Lynch and Schokman, the UPR has attracted a great deal of attention since its commencement in 2008. NGOs are often enthusiastic about participating in the UPR process because it offers a new and high-profile opportunity for NGOs to advocate for the improved protection and promotion of human rights on the ground.<sup>91</sup>

According to the Australian case study by Fiona McGaughey, NGOs are legitimate stakeholders in the UPR, and the UPR has facilitated relationship and network building for

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<sup>89</sup> Damian Etone, "The Impact of the Universal Periodic Review in Africa," in *The Human Rights Council: Critical Concepts in Law*, edited by M. Cherif Bassiouni and William A. Schabas (New York: Routledge, 2020), 18.

<sup>90</sup> Mintao Nie, "IOs' Selective Adoption of NGO Information: Evidence from the Universal Periodic Review," *The Review of International Organizations* (Published online: (2022), 1. DOI: <https://doi.org/10.1007/s11558-022-09455-3>).

<sup>91</sup> Fiona McGaughey, "The Role and Influence of Non-Governmental Organisations in the Universal Periodic Review - International Context and Australian Case Study," *Human Rights Law Review* 17, no. 3 (September 2017): 422.

NGOs. She noted that recommendations made by states in Australia's review had the most correlation with recommendations from the UN report, a source overlooked in previous studies, followed by NGO sources.<sup>92</sup> Therefore, the ability of the UPR to transcend ritualism and to function as an empowering regulatory mechanism depends heavily on effective NGO and civil society engagement in the process.<sup>93</sup>

### 2.7.3. Voluntary funds.

The Universal Periodic Review (UPR) Voluntary Funds are financial mechanisms established by the United Nations (UN) to support the implementation of recommendations made during the UPR process. The UPR Voluntary Funds were established in 2016 to help implement the recommendations made during the UPR process. There are currently three UPR Voluntary Funds:

1. UPR Trust Fund: This fund supports the participation of least developed countries (LDCs) and small island developing states (SIDS) in the UPR process. It provides financial assistance to these states to facilitate their participation in the review process. In 2012 the Pacific islands found that the states that actively engaged in interactive dialogues during the first cycle of the UPR were more receptive to UPR recommendations. However, their engagement was limited by their inability to participate in the review of other states due to financial and technical constraints.<sup>94</sup>
2. UPR Participation Fund: This fund supports the participation of civil society organisations in the UPR process. It provides financial assistance to NGOs, human rights defenders, and other civil society organisations to enable them to engage with the UPR process effectively. According to the OHCHR, Since the Fund became operational in 2008, 112 States, out of 193 States Members of the United Nations have been assisted

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<sup>92</sup> *Ibid*,423.

<sup>93</sup> *Ibid*,424.

<sup>94</sup> Smith, Rhona. "The Pacific Island States: Themes Emerging from the United Nations Human Rights Council's Inaugural Universal Periodic Review." *Melbourne Journal of International Law* 13, no. 1 (2012): 529.

with travel. Out of these 112 States, approximately 39 per cent are LDCs<sup>2</sup>, and 32 per cent are SIDS (Small Island Developing States).<sup>95</sup>

3. UPR Implementation Fund: This fund supports the implementation of the recommendations made during the UPR process. It provides financial assistance to states to support their efforts to implement the recommendations they have received. The UPR Implementation fund focuses on five areas:

- (i) the implementation of key human rights recommendations.
- (ii) to establish or strengthen national mechanisms for implementation, reporting and follow-up,
- (iii) development of recommendations, implementation plans,
- (iv) strengthen the capacity of the United Nations,
- (v) strengthen the role of parliaments.<sup>96</sup>

The UPR Implementation fund has enabled various implementation strategies to be developed. For example, in Costa Rica, the fund is supporting a project that will change policies and give access to justice to four indigenous groups. In Lesotho, the fund is supporting the strengthening of national human rights bodies and promoting inclusion and access to equal opportunities for children left behind, especially marginalised children herding domestic animals in remote areas.<sup>97</sup>

These funds are financed through voluntary contributions from member states, and their use is governed by the HRC. During the 51<sup>st</sup> HRC sessions, the UPR held a side event to celebrate and acknowledge 15 years of the Voluntary fund. The OHCHR reported that since the inception

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<sup>95</sup> United Nations Human Rights Council, "Voluntary Fund for Financial and Technical Assistance in the Implementation of Universal Periodic Review Recommendations: Participation of States in 2022," accessed 14 October 2022,

<https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/fund/2022-10-14/VoluntaryFundParticipation-UPR.pdf>.

<sup>96</sup> United Nations Human Rights Council, "Trust Fund for the Universal Periodic Review: Implementation," accessed 12 March 2023, <https://www.ohchr.org/en/hr-bodies/upr/trust-fund-implementation>.

<sup>97</sup> United Nations Human Rights Council, "Report on the Implementation of Universal Periodic Review Recommendations," 8 August 2022, [https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/2022-08-08/UPR-VF-Implementation\\_full.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/2022-08-08/UPR-VF-Implementation_full.pdf) (accessed 12 March 2023).

of the Voluntary Fund has supported projects in 65 countries in all regions of the world, with a total disbursement of USD 5,793,303 as of 31 December 2020.<sup>98</sup> The UPR Voluntary Funds are an essential part of the UPR process, as they help to ensure that the recommendations made during the review are implemented effectively.<sup>99</sup>

## 2.8. Conclusion

In conclusion, this Chapter introduced the main actors of this thesis research, which are the UPR mechanism and CEDAW. It has shown their roles and functions and how they advance their mandates through the reporting and monitoring procedure. This chapter demonstrated how each of the mechanisms performs to achieve their mandates and obligations. Moreover, it demonstrates how CEDAW interacts with the UPR during the review of a state and how the UPR is an important tool in the advancement of human rights. This chapter has also shown the different types of compliance with human rights and demonstrated why some methods are more successful than others. Furthermore, this chapter discussed the need for the establishment of an international human rights body to enforce the obligations and commitments that member states. Lastly, this chapter showed the different tools that have been established by the UPR and why it ranks first place amongst all the UN-established human rights monitoring mechanisms.

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<sup>98</sup> United Nations Human Rights Council, "Trust Fund for the Universal Periodic Review," accessed 12 March 2023, <https://www.ohchr.org/en/hr-bodies/upr/trust-fund-implementation>.

<sup>99</sup> United Nations Office of the High Commissioner for Human Rights. "UPR Funds." <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRFunds.aspx>. Accessed on 1 March 2023.

## **Chapter Three**

### 3.1. Introduction

This chapter will examine the interaction of the UPR and CEDAW using case studies of four member states chosen for this pilot study, namely, South Africa, Brazil, Poland and India. These member states were specifically chosen because they i) ratified the CEDAW Convention, ii) are populous countries with existing women's rights issues, and iii) each country represents the major four continents, thus satisfying the geographical distribution element. The structure of this chapter is as follows; firstly, I will extensively discuss the methodology used for this pilot study. Then, I will analyse the two recommendations chosen from each member state in the case study and briefly include the findings of the analysis. Lastly, I will close the chapter with an overall conclusion that captures the findings of this study.

It is important to understand that the results or implementation of human rights recommendations are never uniform due to a plethora of reasons. Whilst this thesis research aims to examine whether the UPR process advances the mandates of CEDAW, these results must not be generalised or interpreted to mean that the UPR advances the mandates of all treaty bodies. This study will only focus on the recommendations made by CEDAW during the UPR of the case study countries. However, we must keep in mind that these recommendations cut across various issues affecting women, and some are complex recommendations that take longer to implement. This is why this study has focused on analysing policy-based recommendations that give a specific, measurable, attainable, realistic and time-bound period for the implementation of a recommendation.

This analysis follows the approach taken by Gutner and Thompson, which states that the assessment of an international organisation cannot be achieved by only looking at its ability to reach its ultimate goal, such as improving human rights on the ground. This is because an organisation might be successful in producing all necessary conditions to stimulate compliance, and yet member states might still be breaching international obligations due to a variety of other reasons. Hence, the performance of an organisation is best assessed by studying the "process-based performance," namely, the ability of an organisation to reach smaller-scale

objectives, which might be helpful towards the achievement of the overall goals. Likewise, through the following analysis, this thesis research aims to assess the smaller-scale objectives of CEDAW as a treaty body and analyse whether the UPR advances the mandates and obligations of CEDAW.

### 3.2. Methodology

As previously stated in Chapter One under the subsection on methodology, in order to reach the goal of analysing how the UPR advances CEDAW, I went through all the UPR documents for the four case study countries during the period between 2008 and 2022, which entails four UPR Cycles. I commenced my study by examining which recommendations had been mentioned in the compilation report by CEDAW. I incorporated the background knowledge that I gained during my internship with the OHCHR that different treaty bodies, such as CEDAW and special procedures divisions, submit reports to the UPR Branch to produce a document called the Compilation report. The UPR Branch comprises highly experienced human rights officers with a wealth of knowledge in human rights who act as UPR drafters. These drafters compile the most recent concluding observations and reports from the treaty bodies and special procedure divisions, then summarise them into the UPR compilation report, giving priority to important issues.

The scope of my research is limited to two recommendations contributed by CEDAW during the first UPR review of each country used in this case study in 2008. I assessed whether these two recommendations were mentioned in subsequent UPR cycles in the following reports: Compilation report, Working Group report, and National report. The rationale of analysing all the UPR reports in all the UPR cycles is because each report plays a fundamental role in the universal periodic review framework which I will now demonstrate: (i) if recommendation X is mentioned in the compilation report of the 1<sup>st</sup> UPR cycle, it means that CEDAW submitted concluding observations to the UPR Branch during the preparations of the first review of a member state, and if the same recommendation X is mentioned in the compilation report of any subsequent cycles, it means that CEDAW re-submitted concluding observations of the same recommendation to the UPR Branch with an update of any actions that a member state has taken to implement recommendation X, (ii) if recommendation X is mentioned in the Working Group report of any given cycle it means that other member states recommended recommendations X during the UPR Working Group sessions, (iii) and if recommendation X

is mentioned in the National report it means that the member state under review accepted the recommendation in the previous cycle and is giving an update on the actions it has taken since the last review to address and remedy the human rights issues contained in recommendation X. Therefore, in order to achieve the goal of this research which is to analyse the impact that the UPR has on CEDAW, I had to make a trail from cycle to cycle of the recommendations chosen for this study and analyse whether the UPR is making any impact to address the recommendations emanating from CEDAW through the compilation report.

Throughout my analysis, I meticulously paid attention to the language used in the different documents in order to identify and track down the recommendations I was using for my pilot study. To commence my study, I reviewed the Compilation report and identified which recommendations were made by CEDAW. I achieved this by looking at the language of the recommendations directed to women's rights and women's affairs. I checked the footnote of the recommendations to establish whether CEDAW was referenced and was indeed the source of the recommendation. To double-check, I went to the CEDAW document referenced in the footnote to establish the precise recommendation that CEDAW made during the concluding observations of a member state. The process of double-checking was important because the UPR compilation report is often a summary of the recommendation, and sometimes paraphrasing is exercised by the UPR drafters.

The next step was to analyse the Working Group reports and assess whether the state under review accepted the recommendations. This was achieved by thoroughly reading the Working Group report and identifying how many countries made this specific recommendation to the state under review. I was also interested in seeing whether the state under review accepted the recommendation because if it noted the recommendation, it means it has not accepted to address the human rights issue stated in the recommendation.

Subsequently, I went on to review the National reports of member states. An important step of my study was analysing the national report in each cycle to determine whether the state had reported any progress on the accepted recommendations. This process was repeated in all the UPR cycles of each member state in the case study.



Figure 1.4 UPR Working Group Report

The analysis below takes a very pragmatic approach and assesses one recommendation at a time throughout the four UPR cycles. Each cycle is divided by a subheading and will contain information on whether the recommendation being analysed was mentioned or not in the three UPR reports, which are compilation report, working group report, and national report, respectively. The analysis is backed by tables which provide a visual and simplified representation of whether or not the recommendation was included in the documents mentioned above. The tables are very useful because they give a visual pattern of the different phases that a recommendation goes through during the UPR cycles. When the recommendation being assessed is mentioned in any report, it is marked with a tick symbol, and when the recommendation is not mentioned in the reports, it is marked with a cancel symbol. This tracking method throughout each cycle allowed me to record the small-scale progress that a member state is making to address or implement the recommendation.

### 3.3. South Africa Case Study

South Africa was previously known for hosting some of the worst human rights violations to mankind in the last decades of the twentieth century. In 1998, the OHCHR set up a Regional Office for Southern Africa to provide support and assistance to the SADC region. South Africa signed the CEDAW Convention on the 29th of January 1993 and ratified the Convention on the 15<sup>th</sup> of December 1995. It subsequently ratified the OP-CEDAW a decade later, on the 18<sup>th</sup>



of October 2005.<sup>100</sup> Since the ratification of CEDAW, South Africa submitted three reports, with the first one being submitted in 1998 and the second and third reports subsequently submitted in 2011 and 2021, respectively, with a delay exceeding a decade between them.<sup>101</sup> The delay in submitting reports is a common phenomenon faced with most treaty body mechanisms, and the excessive delay somewhat reflects state parties' attitude and lack of commitment towards the treaty bodies' mechanisms and procedures. South Africa's engagement with the UPR has increasingly grown with each cycle.

### 3.3.1. Recommendation for South Africa to enact the Women Empowerment and Gender Equality Bill in South Africa

#### First Cycle

In South Africa's first UPR cycle in 2008, there were no references or contributions by CEDAW in the compilation report prepared by the OHCHR, even though South Africa had been a state party to the treaty for over a decade. The lack of reference may be due to the fact that South Africa's last review under CEDAW was in 1998, and the documents were too outdated to refer to. Although there were no contributions from CEDAW, the Compilation report contained extensive recommendations and contributions made towards the advancement and protection of women's rights by other treaty bodies, namely, CAT, CERD, and CRC.<sup>102</sup>

In the National report prepared by the state in the first cycle, South Africa highlighted that 'The Presidency has developed the National Policy Framework for Women's Empowerment and Gender Equality (1999)'.<sup>103</sup> The National Policy Framework for Women's Empowerment and Gender Equality was envisaged by CEDAW and drafted in 1999; however, South Africa had not taken further steps in over a decade to pass the Bill.

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<sup>100</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the UN General Assembly on the 6th of October 1999, A/RES/54/4, 2131 UNTS 83.

<sup>101</sup> First report 19th Session 1998. Second report 48<sup>th</sup> Session 2011. Third report 80<sup>th</sup> Session 2021.

<sup>102</sup> Human Rights Council, "Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights: South Africa", (Geneva: United Nations, 2008), A/HRC/WG.6/1/ZAF/2, 9.

<sup>103</sup> Human Rights Council, "South Africa's Country Report to The Human Rights Council's Universal Periodic Review Mechanism", (Geneva: United Nations, 2008), 30.

There were no recommendations made in the Working Group session.

### Second Cycle

In South Africa's second review in 2012, the compilation report prepared by the OHCHR referred to CEDAW extensively,<sup>104</sup> as a direct result of South Africa's review under CEDAW in 2011. In the compilation report, CEDAW's contribution 'called on South Africa to expedite the consultations on the Green Paper towards a Gender Equality Bill in order to submit it for adoption to the Parliament.'<sup>105</sup>

South Africa, in its state report, noted that the Bill had been developed and is at an advanced stage of being translated into law.<sup>106</sup> South Africa reported that it was taking measures to put in place “Women’s Empowerment and Gender Equality Bill for introduction into Parliament, which, among others, defines acts of discrimination against women and provides for enforcement mechanisms for compliance with the core provisions on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)”.<sup>107</sup>

During the Working group sessions, Norway, Malaysia, and Australia recommended South Africa to take early adoption of the Women’s Empowerment and Gender Equality Bill.<sup>108</sup>

### Third Cycle

In the third review of South Africa in 2017, CEDAW did not report on the subject of the Gender Equality Bill. However, the UN country team reported in the compilation report giving an

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<sup>104</sup> The acronym CEDAW appears 37 times in the Compilation report, thus revealing that CEDAW significantly contributed to the Compilation report of South Africa.

<sup>105</sup> Human Rights Council, "Commissioner for Human Rights in accordance with paragraph 5 of the annexe to Human Rights Council resolution 16/21: South Africa", (Geneva: United Nations, 2012), *A/HRC/WG.6/13/ZAF/1*, para.6.

<sup>106</sup> Human Rights Council, “National report submitted in accordance with paragraph 5 of the annexe to Human Rights Council resolution 16/21: South Africa”, (Geneva: United Nations, 2012), *A/HRC/WG.6/13/ZAF/1*, para.10.

<sup>107</sup> *Ibid.*

<sup>108</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: South Africa” (Geneva: United Nations 2012) *A/HRC/21/16*, paras 124.48, 124.59, and 124.64.

update that the Women's Empowerment and Gender Equality Bill had not been enacted following a decision by the Government to review the implementation of existing legislation.<sup>109</sup>

However, in that cycle, the state report during that review did not make any statements regarding the progress and status of the Bill.

In the Working Group session, Zimbabwe, Timor-Leste, Maldives Spain made recommendations towards South Africa to consolidate its ongoing programmes to promote women's empowerment and gender equality.<sup>110</sup>

#### Fourth Cycle

In the fourth cycle of South Africa, the UPR compilation report stated that 'CEDAW expressed concern about the absence of a law specifically prohibiting discrimination against women. It recommended that South Africa adopt a gender equality law and a definition of discrimination against women.'<sup>111</sup>

South Africa went on to state in its state report that, 'In line with its commitment to gender equality, South Africa developed its National Policy Framework for Women's Empowerment and Gender Equality, which has been the guiding beacon for the development and advancement of women and girls in the country.'<sup>112</sup> Furthermore, South Africa noted that 'Considerable progress has been noted in the participation of women in various sectors such as political, public service and the judiciary. After the 2019 elections, 46% of the Members of Parliament in the National Assembly are female, and 50% of the cabinet is female. All the speakers in the national and provincial legislatures are women.'<sup>113</sup>

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<sup>109</sup> Human Rights Council, "Compilation on South Africa Report of the Office of the United Nations High Commissioner for Human Rights: South Africa" (Geneva: United Nations, 2017), *A/HRC/WG.6/27/ZAF/2*, para.51.

<sup>110</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: South Africa" (Geneva: United Nations, 2017), *A/HRC/36/16*, 20.

<sup>111</sup> Human Rights Council, "Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights: South Africa" (Geneva: United Nations, 2022), *A/HRC/WG.6/41/ZAF/2*, para.56.

<sup>112</sup> Human Rights Council, "National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: South Africa" (Geneva: United Nations 2022), *A/HRC/WG.6/41/ZAF/1*, para.73.

<sup>113</sup> *Ibid*, para 74.

In the Working Group session, six member states recommended that South Africa improve and implement effective ways of gender equality.<sup>114</sup>

| Women Empowerment and Gender Equality Bill in South Africa |                 |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |
|--|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|
| UPR 1  |                 |                      | UPR 2              |                 |                      | UPR 3              |                 |                      | UPR 4              |                 |                      |
| Compilation Report   | National Report | Working Group Report | Compilation Report | National Report | Working Group Report | Compilation Report | National Report | Working Group Report | Compilation Report | National Report | Working Group Report |
| x  | ✓               | x                    | ✓                  | ✓               | ✓                    | x                  | x               | ✓                    | ✓                  | ✓               | ✓                    |
| ✓  | Included        |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |
| x  | Not included    |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |

Figure 1.5 – Table for Women Empowerment and Gender Equality Bill in South Africa

### Findings for the Empowerment of Women and Gender Equality Bill

Although the Empowerment of Women and Gender Equality Bill has still not been passed into law, it is clear that the CEDAW's contribution to the compilation report had a compelling effect in making South Africa take some action towards protecting gender equality. South Africa reported that they are working towards passing the Bill, but in the meantime, all gender-related issues and cases were being directed to the Commission for Gender Equality. This example reveals that there is a clear interaction and synergy between the UPR mechanism and the CEDAW mechanism. However, state parties will prioritise issues that are brought up by multiple stakeholders. In this case, CEDAW was the only mechanism advancing the right to gender equality and, as a result, failed to be prioritised. CEDAW should continue bringing up the Bill in its process, and the UPR process, and hopefully, South Africa will give in to the political pressure and act accordingly.

#### 3.3.2. Recommendation for South Africa to enact 'The Prevention and Combating of Trafficking in Persons Act'.

<sup>114</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: South Africa”, (Geneva: United Nations, 2022) A/HRC/52/17, 16 and 17.

For many decades, South Africa remains one of the leading sources and destinations for human trafficking for the purposes of sex work, domestic work and ritual sacrifices. The issue of human trafficking was raised in various treaty body mechanisms and, as expected, resurfaced during the UPR process in South Africa. There was a call by several treaty bodies, including CEDAW urging South Africa to enact the Prevention and Combating of Trafficking in Persons Act as a regulatory measure.

### First Cycle

In South Africa's first UPR cycle in 2008, there were no references or contributions by CEDAW in the compilation report prepared by the OHCHR, even though South Africa had been a state party to the treaty for over a decade. However, a lot of treaty bodies, namely CAT and CERD, expressed great concern about the situation of human trafficking in South Africa, highlighting the lack of effective laws to criminalise it. They recommended South Africa to establish effective laws to combat and criminalise human trafficking. The UNFPA reported that South Africa was a human trafficking hub in southern Africa, whereby traffickers duped women from neighbouring countries by being promised better living conditions and then later held hostage and used for sex and domestic work with no remuneration.<sup>115</sup> Eventually, CEDAW made the same recommendation in subsequent cycles.

There was no mention of the human trafficking act in the National report.

There were no recommendations made on the theme of trafficking in this cycle in the Working Group sessions.

### Second Cycle

In the second cycle, the contributions made by CEDAW in the compilation report 'urge[d] South Africa to expedite the adoption of the Prevention and Combating of Trafficking in

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<sup>115</sup> Human Rights Council, "Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights: South Africa", (Geneva: United Nations, 2008), A/HRC/WG.6/1/ZAF/2, para.10.

Persons Bill and ensure that perpetrators are prosecuted and punished, and victims adequately protected and assisted.’<sup>116</sup>

The state report stated that “Prevention and Combating of Trafficking in Persons Bill: prohibiting illicit trafficking in human beings and human organs”. The Bill, once it becomes an Act of Parliament and is fully operational, will be one of the most comprehensive laws in the fight against human trafficking in South Africa.

In the Working Group sessions, five states, namely, Burkina Faso, Namibia, Paraguay, Thailand and the USA, made recommendations urging South Africa to enact laws against the trafficking of persons.<sup>117</sup>

### Third Cycle

CEDAW did not make a contribution to the Compilation report on the subject, but we notice that in the compilation report of the 3<sup>rd</sup> UPR Cycle, the UNHCR reported that the Prevention and Combating of Trafficking in Persons Act had been enacted in 2013.<sup>118</sup> At this point, we notice that because of the extensive coverage of human trafficking during the UPR process, South Africa gave in to the pressure to establish effective laws to combat human trafficking. Although the positive results of the enactment of the laws were not entirely dependent on the UPR process, we see that the UPR played a pivotal point in raising these issues made by various treaty bodies and UN Agencies concurrently, thus increasing the political pressure for South Africa to take action. It is common practice for state parties to escape treaty obligations by delaying reports or disregarding procedures, but the UPR is an all-encompassing mechanism that highlights and reiterates the obligations of state parties under various treaty mechanisms and human rights monitoring mechanisms.

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<sup>116</sup> Human Rights Council, "Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: South Africa", (Geneva: United Nations, 2012), *A/HRC/WG.6/13/ZAF/1*, para.10.

<sup>117</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: South Africa” (Geneva: United Nations 2012) *A/HRC/21/16*.

<sup>118</sup> Human Rights Council, “Compilation on South Africa Report of the Office of the United Nations High Commissioner for Human Rights: South Africa” (Geneva: United Nations, 2017), *A/HRC/WG.6/27/ZAF/2*, para.32.

In the National report, South Africa reported that it had “passed the Prevention and Combating of Trafficking in Persons Act, 2013.”<sup>119</sup>

In the Working group session, 6 recommendations on human trafficking in South Africa were made, but only 2 were directly instructing South Africa to implement measures through the implementation of the Prevention and Combating of Trafficking in Persons Act.<sup>120</sup>

#### Fourth Cycle

A follow-up on the implementation of the aforementioned Act was made, and the compilation report of the 4<sup>th</sup> cycle contained contributions of CEDAW recommending ‘the Government implement the Prevention and Combating of Trafficking in Persons Act, collect data, provide capacity-building for officials on the Act, and ensure that women victims were protected, and traffickers were prosecuted and punished.’<sup>121</sup>

South Africa's state report stated that it had already started implementing the aforesaid Act in 2019 and launched the Prevention and Combating of Trafficking in Persons National Policy Framework (NPF). Moreover, South Africa reported that it collaborated with 'the Office on Drugs and Crime (UNODC), under the framework of the Global Action against Trafficking in Persons and Smuggling of Migrants (GLO.ACT) launched the NPF on the 25th of April 2019 through multi-stakeholder engagements.’<sup>122</sup>

In the Working Group session, fourteen recommendations on trafficking were made, and 6 of them specifically instructed South Africa to continue its efforts to implement the Prevention

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<sup>119</sup> Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: South Africa" (Geneva: United Nations, 2017), A/HRC/WG.6/27/ZAF/1, para.13.

<sup>120</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: South Africa” (Geneva: United Nations, 2017), A/HRC/36/16, 20, paras.139.124 and 130.126.

<sup>121</sup> Human rights Council, “Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights: South Africa” (Geneva: United Nations, 2022), A/HRC/WG.6/41/ZAF/2, para.24.

<sup>122</sup> Human Rights Council, “Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights: South Africa” (Geneva: United Nations, 2022), A/HRC/WG.6/41/ZAF/1, para.12.

and Combating of Trafficking in Persons Act and ensure that traffickers were prosecuted and punished.<sup>123</sup>

| The Prevention and Combating of Trafficking in Persons Act |                 |                      |                           |                 |                      |                           |                 |                      |                           |                 |                      |
|--|-----------------|----------------------|---------------------------|-----------------|----------------------|---------------------------|-----------------|----------------------|---------------------------|-----------------|----------------------|
| 1 <sup>st</sup> UPR Cycle                                  |                 |                      | 2 <sup>nd</sup> UPR Cycle |                 |                      | 3 <sup>rd</sup> UPR Cycle |                 |                      | 4 <sup>th</sup> UPR Cycle |                 |                      |
| Compilation Report   | National Report | Working Group Report | Compilation Report        | National Report | Working Group Report | Compilation Report        | National Report | Working Group Report | Compilation Report        | National Report | Working Group Report |
| ✓  | x               | x                    | ✓                         | x               | x                    | x                         | x               | x                    | x                         | ✓               | ✓                    |
| ✓  | Included        |                      |                           |                 |                      |                           |                 |                      |                           |                 |                      |
| x  | Not included    |                      |                           |                 |                      |                           |                 |                      |                           |                 |                      |

Figure 1.6 Table for The Prevention and Combating of Trafficking in Persons Act

### Findings for the enactment of the Prevention and Combating of Trafficking in Persons Act

The enactment and implementation of the Prevention and Combating of Trafficking in Persons Act is an excellent example of the UPR's role in advancing the obligations and mandates of treaty bodies and other UN mechanisms. In this case, we see those multiple stakeholders, including, Treaty bodies (CAT and CERD) and UN Agencies (UNHRC and UNFPA), were advancing the same agenda to eliminate and combat human trafficking within the scope of their respective mechanisms. However, when the issues of combating human trafficking were covered jointly in the first 2 cycles of the UPR, South Africa accepted the recommendation and was compelled to take the matter more seriously, resulting in the enactment of the act in 2013 shortly after the review. This also emphasises the positive and compelling effect of multiple stakeholders recommending the same issues during the UPR process. It has been proven that states are likely to accept recommendations made in joint submissions or by multiple stakeholders more than single submissions, and this is evidenced by this example. The following example will show the effect of single submissions.

### 3.4. Poland Case study

<sup>123</sup> Human Right Council, “Report of the Working Group on the Universal Periodic Review: South Africa”, (Geneva: United Nations, 2022), A/HRC/52/17, 15.



The state of Poland signed and became party to the Convention on the Elimination of All Forms of Discrimination against Women on the 29<sup>th</sup> of May 1980 and ratified the Convention in the same year. However, the country has faced criticism for its compliance with the Convention, and the CEDAW Committee raised concerns about a number of issues, including the inadequate protection of women against gender-based violence and the exclusion of women in decision-making positions in both the public and private sectors.

#### 3.4.1. Recommendation for Poland to make amendments to the definition of discrimination against women in domestic laws.

In 2007, the CEDAW Committee considered the fourth, fifth and sixth periodic reports of Poland, which were outstanding. The Committee had already prepared a list of issues and questions, which involved several stark issues relating to women's discrimination, equality and rights in Poland. One of the issues that were emphasised in the Concluding Observations of the CEDAW Committee towards Poland was to amend its domestic laws and include a definition of the discrimination of women in accordance with Article 1 of the Convention.

The Committee urges the State party to include a definition of discrimination against women in accordance with Article 1 of the Convention in the appropriate domestic legislation, such as the proposed law on gender equality.<sup>124</sup>

The Committee called upon Poland to enforce procedures for the effective implementation, monitoring and enforcement of such legislation.

#### UPR First Cycle

During the first UPR cycle of Poland, the compilation report prepared by the OHCHR contained CEDAW's recommendations from the concluding observations stating that "in 2007,

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<sup>124</sup> Committee on the Elimination of Discrimination against Women, "Concluding comments of the Committee on the Elimination of Discrimination against Women: Poland", (Geneva: United Nations, 2007), CEDAW/C/POL/CO/6, para.9.

concerns were expressed by CEDAW at the lack of a definition of discrimination against women in compliance with article 1 of the Convention.”<sup>125</sup>

Poland did not report on any progress in its National report.

There were no recommendations regarding amendments to the discrimination of women in the Working Group report.

#### UPR Second Cycle

In the second UPR Cycle, the compilation report did not contain any recommendation or observations of CEDAW regarding amending the domestic laws' definition of discrimination against women in order to conform with the standards of the Convention.

There was no mention and follow-up by Poland in the National report.

In the Working Group report, there were no member states that made a recommendation directly linked to this subject.

#### UPR Third Cycle

During the third cycle, the compilation report contained a recommendation made by CEDAW to Poland which was comparable but not similar to the one it had made in the first cycle urging Poland to amend its domestic laws so that the definition of discrimination is aligned with the Convention. In this cycle, the recommendation from CEDAW read that "The Committee on the Elimination of Discrimination against Women recommended Poland to review the Act on Equal Treatment to ensure that anti-discrimination legislation contained a definition of discrimination against women explicitly prohibiting sex- and gender-based discrimination."<sup>126</sup> Consequently, during the Working Group sessions, Cyprus and Romania recommended Poland to continue its efforts to put in place improved solutions and legislation aimed at eliminating all forms of discrimination against women.<sup>127</sup>

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<sup>125</sup> Human Rights Council, "Compilation prepared by the office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the annexe to Human Rights Council Resolution 5/1 Brazil" (Geneva: United Nations, 2008), A/HRC/WG.6/1/POL/2, para.8.

<sup>126</sup> Human Rights Council, "Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annexe to Human Rights Council Resolution 16/21: Poland" (Geneva: United Nations, 2012), A/HRC/WG.6/27/POL/2, para.67.

<sup>127</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Poland" (Geneva: United Nations, 2017), A/HRC/36/14, paras.129.138 and 120.139.

## Fourth Cycle

In the fourth cycle, CEDAW did not make any recommendations regarding the revision of the domestic law definition of discrimination. The issue was also not addressed in the national report, and neither were there any recommendations on the working group session.

| Amendments to the definition of discrimination against women in domestic laws |                 |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |
|---|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|
| UPR 1   |                 |                      | UPR 2              |                 |                      | UPR 3              |                 |                      | UPR 4              |                 |                      |
| Compilation Report  | National Report | Working Group Report | Compilation Report | National Report | Working Group Report | Compilation Report | National Report | Working Group Report | Compilation Report | National Report | Working Group Report |
| ✓   | x               | x                    | x                  | x               | x                    | x                  | ✓               | ✓                    | x                  | x               | x                    |
| ✓   | Included        |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |
| x   | Not included    |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |

*Figure 1.7 Table for the recommendation on the amendments of the definition of discrimination of women in domestic laws.*

### Findings for the amendments of the definition of discrimination of women in domestic laws

This case study shows that a recommendation that is brought up in the first cycle only without any follow-up is soon forgotten in a subsequent cycle. There is a close correlation between the treaty body recommendations incorporated into the compilation report and their mention during the review. In this case, CEDAW did not submit any recommendations in the 2<sup>nd</sup> UPR cycle and 4<sup>th</sup> cycle, and the effect is that the recommendations which had been previously made in the first and third cycles did not appear. Furthermore, we note the important role of Treaty body's contributions in the UPR process because they highlight policies and legislative measures that a state is not adhering to, as shown in this case study.

#### 3.4.2. Recommendation for Poland to enact the National Action Plan for Equal Treatment

In the concluding observations of the CEDAW report on Poland in 2007, the Committee encouraged Poland to improve women's representation in public life. The Committee made the following recommendation, "The Committee encourages the State party to take sustained measures to accelerate women's full and equal participation in elected and appointed positions,

including at the municipal and national levels, senior levels of the judiciary, higher level courts and in international representation."<sup>128</sup>

### First UPR Cycle

In the first cycle, the Compilation report stated that CEDAW expressed its concern about the exclusion and deep-rooted prejudice of women from participating in public life. The Compilation report read, "CEDAW and the HR Committee were concerned about continued underrepresentation of women in public and political life and in decision-making positions. CEDAW encouraged Poland to take sustained measures to accelerate women's full and equal participation in elected and appointed positions."<sup>129</sup>

In its National Report, Poland reported that it had made some progress in addressing the issue and noted that the Government had sponsored media campaigns to promote employment and enterprise among women, particularly those over 45, and to stimulate their involvement in public life.<sup>130</sup>

During the Working Group sessions, Slovenia, Austria and Cuba encouraged Poland to use a comprehensive approach to the promotion of gender equality, in particular by adopting a comprehensive law on gender equality as recommended by the CEDAW.<sup>131</sup>

### Second UPR cycle

The Compilation report did not contain any information or recommendations from CEDAW concerning a plan for equal treatment for women in public life.

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<sup>128</sup> Such measures should include the adoption of temporary special measures in accordance with article 4 (1) of the Convention and the Committee's general recommendation 25; the establishment of benchmarks, numerical goals and timetables; the conduct of training programmes on leadership and negotiation skills for current and future women leaders; and regular monitoring of progress made, and results achieved. It further urges the State party to undertake awareness-raising campaigns on the importance of women's participation in public and political life and in decision-making.

<sup>129</sup> Human Rights Council, "Compilation on Poland, Report of the Office of the United Nations High Commissioner for Human Rights", (Geneva: United Nations, 2008), A/HRC/WG.6/1/POL/2, para 10.

<sup>130</sup> Human Rights Council, "National Report Submitted in Accordance with Paragraph 15(A) of the annex to Human Rights Council Resolution 5/1: Poland" (Geneva: United Nations, 2008), A/HRC/WG.6/1/POL/1, para.33.

<sup>131</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Poland" (Geneva: United Nations, 2008), A/HRC/8/30, para.14.

However, the National report contained a follow-up report on the implementation of recommendations 21 and 22, which addressed the representation and participation of women in public and political life. Poland reported that the Parliament passed in 2011 Amendment to the Electoral Law to Municipal Councils and several other domestic laws that introduced the quota system. That meant that the number of women candidates may not be less than 35% of the total number of candidates on the ballots. Consequently, if the quota was not met and the defect was not removed within a specified time, such ballot would not be registered.<sup>132</sup> Furthermore, Poland reported from November 2008 until June 2012, the initiation of a project called "Reconciling Women's and Men's Professional and Family Roles" by improving the lifestyles and working standards of women with children. Moreover, another project called "Social and Economic Participation of Women at Local and Regional levels" was initiated to reduce the discrepancies between men's and women's salaries, equal employment opportunities and encourage women over 50 to get fair conditions of work.<sup>133</sup>

During the Working Group session, Moldova and Norway recommended Poland to persist with the actions undertaken by the Government Plenipotentiary for Equal Treatment.<sup>134</sup>

### Third UPR Cycle

In the Third UPR cycle, the compilation report included some recommendations from CEDAW urging Poland to balance the electoral system. "The Committee on the Elimination of Discrimination against Women encouraged Poland to amend the Electoral Act with a view to placing male and female candidates in alternating positions on electoral lists and to adopt temporary special measures to achieve the equal and full participation of women in political and public life and in decision-making at all levels."<sup>135</sup>

In the National report, Poland noted that "The goals of the National Action Programme for Equal Treatment for 2013–2016 include increased participation of women in decision-making.

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<sup>132</sup> Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Poland", (Geneva: United Nations, 2012), A/HRC/WG.6/13/POL/1, para.94.

<sup>133</sup> *Ibid*, para 87.

<sup>134</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Poland" (Geneva: United Nations, 2012), A/HRC/21/14, para 90.30 and 90.33.

<sup>135</sup> Human Rights Council, "Compilation of the Report of the Office of the United Nations High Commissioner for Human Rights: Poland" (Geneva: United Nations, 2017), A/HRC/WG.6/27/POL/2, para.72.

Key actions completed towards this goal include: support of greater political potential of women (education, mentoring programmes, networking); initiation and execution of a public debate on the benefits of balanced participation of women and men in politics with the participation of politicians and NGO."<sup>136</sup>

During the Working Group sessions, Honduras, Mexico, Pakistan, Botswana and the United Kingdom of Great Britain and Northern Ireland made a recommendation to Poland to continue its efforts and implementation of the National Action Programme for Equal Treatment.<sup>137</sup>

#### Fourth UPR cycle

In the fourth UPR Cycle, CEDAW did not make any recommendation regarding the establishment of the law for equal treatment, but we interestingly noticed another party which is the Working Group on the issue of discrimination against women, making the recommendation. The Working group on the issue of discrimination against women in law and in practice noted that women faced social and cultural barriers preventing them from occupying the most senior-level positions in the political life of the country. It recommended that Poland:

- (a) adopt further effective measures to improve women's political participation, such as the zipper system, and provide training and support to women candidates.
- (b) increase the representation of women at the highest level of the Government and State institutions with a view to achieving gender parity.
- (c) secure an enabling environment for women human rights defenders, who should receive a fair share of public funding and protect them from any intimidation.<sup>138</sup>

In the national report, Poland reported that they had put in place a National Plan for Equal Treatment 2022-2030 that provides for numerous initiatives for the equal treatment of women and men in labour, employment and social security. Moreover, Poland reported that it is currently among the group of European countries with the lowest compensation disparity

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<sup>136</sup> Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Poland", A/HRC/WG.6/27/POL/1, para.62.

<sup>137</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Poland" (Geneva: United Nations, 2017), A/HRC/36/14, 19-21.

<sup>138</sup> Human Rights Council, "Compilation of information by the Office of the United Nations High Commissioner for Human Rights: Poland" (Geneva: United Nations, 2022), A/HRC/WG.6/41/POL/2, para.24.

between women and men. Since 1989 the percentage of women in both houses of Parliament has been increasing, as well as European Parliament and collegial bodies of the local Election Code introduced the principle of a quota of at least 35% for each gender on the candidate lists.<sup>139</sup>

During the Working group sessions, seven countries, including Bulgaria, Lithuania, and Armenia, recommended that Poland continue to pursue gender equality through the effective implementation of the National Action Plan for Equal Treatment 2022–2030.<sup>140</sup>

| National Action Plan for Equal Treatment |                 |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |
|--|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|
| UPR 1                                    |                 |                      | UPR 2              |                 |                      | UPR 3              |                 |                      | UPR 4              |                 |                      |
| Compilation Report                       | National Report | Working Group Report | Compilation Report | National Report | Working Group Report | Compilation Report | National Report | Working Group Report | Compilation Report | National Report | Working Group Report |
| ✓  | ✓               | ✓                    | x                  | ✓               | ✓                    | ✓                  | ✓               | ✓                    | x                  | ✓               | ✓                    |

|   |              |
|---|--------------|
| ✓ | Included     |
| x | Not included |

*Figure 1.8 Table for the Recommendation on the National Action Plan for Equal Treatment*

### Findings for the implementation of the National Action Plan for Equal Treatment 2022–2030

This is a classic example of how the UPR process highlights and advances the mandates of treaty bodies. In this case study, we notice that CEDAW's concluding observations were incorporated in the first UPR cycle urging Poland to increase the participation of women in public life. We see Poland taking action and consistently reporting the progress it has made in each cycle. In the second cycle, we note Poland reporting on the various systems and policies, such as the quota system in its parliamentary legislation. We notice the setting up of the National Action Plan for Equal Treatment between 2011- 2020 and a second phase in 2022-2030. Though all this progress cannot be attributed to the UPR process, it is evident that the recommendations in the four cycles influenced Poland to implement these structures. This case study also demonstrates that member states tend to prioritise sensitive subjects and implement

<sup>139</sup> Human Rights Council, “National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: Poland”, (Geneva: United Nations, 2022), A/HRC/WG.6/41/POL/1, para. 59.

<sup>140</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Poland”, (Geneva: United Nations, 2022), A/HRC/52/15, paras.16-19.

change compared to some recommendations. This case study also demonstrates that change in legislation and policies is usually gradual and not revolutionary or instant.

### 3.5. Brazil Case study

Brazil is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international treaty adopted by the United Nations General Assembly in 1979. The country ratified the treaty in 1984, which means it has committed to taking steps to eliminate discrimination against women and promote gender equality in all areas of life. Over the years, Brazil has made progress in advancing women's rights and reducing gender-based Violence. However, there are still significant challenges that need to be addressed, such as the high rates of femicide, sexual Violence, and inequality in access to education and employment opportunities.

#### 3.5.1. Recommendation for Brazil to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

##### First UPR Cycle

In 2009, Brazil held its first review, and CEDAW recommended Brazil consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).

In the National Report, Brazil did not report on the situation of migrant workers, nor did it report on any possible steps to ratify the aforementioned Convention.

There was no recommendation on this subject in the Working Group report.

##### Second UPR Cycle

In the subsequent UPR cycle of Brazil, CEDAW made the same recommendation as before, urging Brazil to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This recommendation in the Compilation report was reiterated by the ILO Committee, which reported that "despite a series of measures adopted by the Government to combat slave labour, many workers continued to be victims of



inhumane and degrading conditions of work, debt bondage or internal trafficking for the exploitation of their labour."<sup>141</sup>

In the National report made by Brazil, it did not give a response to the recommendation that had been made by CEDAW of ratifying the Convention. However, it reported on its commitment to establishing improved protection for migrants in general.<sup>142</sup>

During the Working Group sessions, Chile and the Philippines recommended Brazil consider ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>143</sup>

### UPR 3<sup>rd</sup> cycle

In the 3<sup>rd</sup> UPR Cycle, CEDAW did not make any recommendations on the subject, but the country team reported in the Compilation report that Brazil had ratified most of the international treaties except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. They noted that the ICRMW was under consideration by the National Congress since 2010.<sup>144</sup>

In the National report, Brazil did not give an update on the progress it had made to ratify the ICRMW.

In the Working Group session, Sierra Leone, Indonesia, Sri Lanka, Togo, Guatemala, EL Salvador and the Philippines made recommendations to Brazil to sign and accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

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<sup>141</sup> Human Rights Council, "Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brazil" (Geneva: United Nations 2012), A/HRC/WG.6/13/BRA/2, para.33.

<sup>142</sup> Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brazil" (Geneva: United Nations, 2012), A/HRC/WG.6/13/BRA/1, para.44.

<sup>143</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Brazil" (Geneva: United Nations), A/HRC/21/11, paras.119.7-119.8.

<sup>144</sup> Human Rights Council, "Compilation Report of the Office of the United Nations High Commissioner for Human Rights: Brazil" (Geneva: United Nations, 2017), A/HRC/WG.6/27/BRA/2, para.70.

## 4<sup>th</sup> UPR Cycle

In the 4<sup>th</sup> UPR Cycle, there were no recommendations towards Brazil to ratify the ICRMW from either the CEDAW or other member states. The state of Brazil made a follow-up report and reported in its national report that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was still being discussed and considered in Congress.<sup>145</sup>

In the Working group session, ten countries, including Egypt, Indonesia, Sri Lanka and Nigeria, made recommendations to Brazil to consolidate its international commitments in the field of human rights, such as the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>146</sup>

| The Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |                 |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |
|---|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|
| UPR 1   |                 |                      | UPR 2              |                 |                      | UPR 3              |                 |                      | UPR 4              |                 |                      |
| Compilation report  | National Report | Working Group Report | Compilation report | National Report | Working Group Report | Compilation report | National report | Working Group Report | Compilation report | National report | Working Group Report |
| ✓   | x               | x                    | ✓                  | ✓               | ✓                    | x                  | x               | ✓                    | x                  | ✓               | ✓                    |

|   |              |
|---|--------------|
| ✓ | Included     |
| x | Not included |

Figure 1.9 Table for the recommendation on the ratification of the ICRMW

### Findings for the ratification of the ICRMW

This case study demonstrates that once a recommendation has been made under the UPR process in the first cycle, it will always resurface in subsequent cycles in either the Working group sessions or the national report. We also note that in this case study, this recommendation gives Brazil a clear instruction to ratify the ICRMW; however, because the ratification was still being discussed in Congress, Brazil omitted to report about it in the first and third cycles. It was only in the second and fourth cycles that Brazil mentioned that the treaty was being

<sup>145</sup> Human Rights Council, “National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: Brazil” (Geneva: United Nations, 2022), A/HRC/WG.6/41/BRA/1, para.15.

<sup>146</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review\* Brazil”, (Geneva: United Nations 2022), A/HRC/52/14, 9-10.

discussed in Parliament. This shows that member states are hesitant to report on issues or recommendations they have not taken any action on.

### 3.5.2. Recommendation to Brazil for the enactment of a National Policy for Fighting Trafficking in Persons

#### 1<sup>st</sup> UPR Cycle

In the first UPR review of Brazil, CEDAW recommended Brazil to immediately take action to implement its National Policy for Fighting Trafficking in Persons and extend the national plan on trafficking in persons to include a gender, race and age dimension.<sup>147</sup>

In the National report prepared by Brazil, the state completely omitted to address the issue of trafficking raised by CEDAW.<sup>148</sup>

In the Working Group, the United Kingdom urged Brazil to take action against those involved with human trafficking and corruption.<sup>149</sup> No recommendations were made for implementing the anti-trafficking policy.

#### Second UPR Cycle

In the 2<sup>nd</sup> UPR Cycle, CEDAW regrettably reported that Brazil has not yet adopted comprehensive anti-trafficking legislation. CEDAW raised grave concerns relating to women and girls and that they were largely susceptible to prostitution and forced labour in certain regions of the country. Consequently, it recommended that Brazil consider adopting a comprehensive law against trafficking in persons, in line with the Palermo Protocol.<sup>150</sup> CEDAW's recommendation was reiterated by the Special Rapporteur on contemporary forms of slavery, who recommended Brazil to fully comply with the Trafficking Protocol by criminalising all forms of trafficking and all those involved in trafficking human beings.<sup>151</sup>

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<sup>147</sup> Human Rights Council, "Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance With Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1: Brazil" (Geneva: United Nations, 2008), A/HRC/WG.6/1/BRA/2, para.5.

<sup>148</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Brazil", (Geneva, United Nations, 2008), A/HRC/8/27, para.3.

<sup>149</sup> *Ibid.*

<sup>150</sup> Human Rights Council, "Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1: Brazil" (Geneva: United Nations, 2008), A/HRC/WG.6/13/BRA/2, para.24.

<sup>151</sup> *Ibid*, para.7.

In the National report, the state of Brazil reported that the Government was preparing to establish independent Ombudsman Unit and Internal Affairs Offices in law enforcement agencies aimed at combating impunity for the crimes of torture, human trafficking and summary executions.<sup>152</sup> Brazil also noted the newly created National Human Rights Council's primary objectives were to combat impunity of grave human rights violations, such as human trafficking and those perpetrated by death squads.<sup>153</sup>

In the Working Group session, Sweden, Switzerland, USA and Iraq recommended Brazil to adopt more comprehensive legislation to combat trafficking in persons.<sup>154</sup>

### 3<sup>rd</sup> UPR Cycle

In the third UPR Cycle, CEDAW did not submit any reports and thus did not make any recommendations. However, the country team noted in the Compilation report that the state had promoted partnerships with local authorities to create service points for women who had been victims of violations such as human trafficking and Violence.<sup>155</sup> The UNHCR reported that 18 out of 27 shelters had been set up to assist victims of trafficking. However, a loophole in the system had been established that showed that refugees and asylum seekers were likely to fall victim to trafficking. The UNHCR noted that there was no referral mechanism between the National Committee for Refugees and the National Committee to Combat Trafficking in Persons.<sup>156</sup>

In the national report, Brazil reported that it had established the II National Plan to Fight Human Trafficking (II PNETP), which monitors and prevents human trafficking and also punishes and

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<sup>152</sup> Human Rights Council, "Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brazil" (Geneva: United Nations), A/HRC/WG.6/13/BRA/1, para.109.

<sup>153</sup> Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brazil" (Geneva: United Nations, 2012), A/HRC/WG.6/13/BRA/1, para.113.

<sup>154</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Brazil" (Geneva: United Nations, 2012) A/HRC/21/11, 21.

<sup>155</sup> Human Rights Council, "Compilation Report of the Office of the United Nations High Commissioner for Human Rights: Brazil" (Geneva: United Nations), A/HRC/WG.6/27/BRA/2, para 70.

<sup>156</sup> *Ibid*, para.91.

brings perpetrators to justice.<sup>157</sup> The state also introduced a new Penal Code for the crime of human trafficking, and the sentence was increased for crimes committed against children , adolescents and elderly people and if the victim is trafficked out of Brazil.<sup>158</sup>

In the Working Group session, the USA and Azerbaijan recommended Brazil to preserve its positive record on combating trafficking and modern slavery by fully implementing activities envisaged in its second National Plan to Fight Human Trafficking.<sup>159</sup>

#### 4<sup>th</sup> UPR Cycle

In the 4<sup>th</sup> UPR session, CEDAW did not make any contributions. However, the country team reported in the Compilation report that Brazil had adopted the third national plan to combat human trafficking in 2018, which aligned with its existing anti-trafficking laws and national policy. However, the country team noted that the legislation did not cover some important elements, such as criminalising child sex trafficking.<sup>160</sup>

In the National report, Brazil noted that it had established a digital system of information on human trafficking in Portuguese, which was under validation and waiting to be shared with the members of the Network to Combat Human Trafficking. Furthermore, the Government improved systems of collecting data related to human trafficking that is useful to policymakers to combat crime.<sup>161</sup>

In the Working group sessions, over eight countries, including Niger, Bahrain, and Ukraine, recommended Brazil to finalise the creation of its integrated anti-trafficking framework and ensure that anti-trafficking legislation provides all necessary assistance to victims.<sup>162</sup>

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<sup>157</sup> Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brazil" (Geneva: United Nations, 2017), A/HRC/WG.6/27/BRA/1, para.67.

<sup>158</sup> *Ibid*, para 68.

<sup>159</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Brazil" (Geneva: United Nations, 2017), A/HRC/36/11, 18.

<sup>160</sup> Human Rights Council, "National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: Brazil" (Geneva: United Nations, 2022), A/HRC/WG.6/41/BRA/2, para.33.

<sup>161</sup> *Ibid*, para.85.

<sup>162</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Brazil" (Geneva: United Nations, 2022), A/HRC/52/14, 17.

| National Policy for Fighting Trafficking in Persons |                 |                     |                    |                 |                     |                    |                 |                     |                    |                 |                     |
|---|-----------------|---------------------|--------------------|-----------------|---------------------|--------------------|-----------------|---------------------|--------------------|-----------------|---------------------|
| UPR 1   |                 |                     | UPR 2              |                 |                     | UPR 3              |                 |                     | UPR 4              |                 |                     |
| Compilation report                                  | National Report | UPR Recommendations | Compilation report | National Report | UPR Recommendations | Compilation report | National report | UPR Recommendations | Compilation report | National report | UPR Recommendations |
| ✓   | x               | x                   | ✓                  | ✓               | ✓                   | x                  | ✓               | ✓                   | x                  | ✓               | ✓                   |

|   |              |
|---|--------------|
| ✓ | Included     |
| x | Not included |

*Figure 1.10 Table for the recommendation of the enactment of a National Policy for Fighting Trafficking in Persons in Brazil*

### Findings for the Enactment of the National Policy for Fighting Trafficking in Persons

This case study demonstrates the goals of the UPR process because we notice a positive change in every cycle. We notice Brazil implementing national plans and setting up institutions in every cycle. In every review, Brazil demonstrated the progress it has made, and all the combined developments over the years, from setting up an ombudsman to setting up a penal code for the trafficking of women, all led to the protection of women. Brazil still has not set up a legal framework to fight trafficking, but the small milestones over the years resulted in the protection of women's rights and will eventually culminate in a solid legal framework that provides maximum protection. These kinds of developments are crucial in developing the systematic protection of rights, especially in developing countries that may struggle to uphold certain rights. This case study reveals that the UPR advances the mandates of CEDAW in a slow but gradual manner.

### 3.6. India Case study

India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international treaty adopted by the United Nations General Assembly in 1979. The country ratified the treaty in 1993, which means it has committed to taking steps to eliminate discrimination against women and promote gender equality in all areas of life. Despite India's commitment to CEDAW, gender-based discrimination and violence

against women remain significant challenges in the country. Some of the key issues include unequal access to education, limited economic opportunities, forced marriages, and high rates of gender-based violence and femicide. In recent years, India has taken some steps towards fulfilling its commitments under CEDAW, such as passing laws to protect women's rights and launching initiatives to promote gender equality. However, there is still a long way to go to ensure that women in India have equal rights and opportunities and are free from discrimination and Violence.

### 3.6.1. Revision of the Penal Code to include a broad definition of rape.

#### First Cycle

In the 1<sup>st</sup> UPR Cycle, CEDAW recommended to India in the Compilation report to widen the definition of rape in the Penal Code to reflect the realities of sexual abuse experienced by women and to criminalise child sexual abuse and other forms of sexual abuse.<sup>163</sup>

In the National Report, India did not report on this subject.

In the Working Group session, no recommendation was made on the subject.

#### Second Cycle

In the 2<sup>nd</sup> UPR Cycle, CEDAW urged India in the Compilation Report to accelerate its efforts to widen the definition of rape in its Penal Code.<sup>164</sup>

India did not report any follow-up information in the National report on the steps it had taken to address the issue raised by CEDAW.

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<sup>163</sup> Human Rights Council, "Compilation prepared by the Office of The High Commissioner For Human Rights, in accordance with paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1 India" Geneva: United Nations, 2008), A/HRC/WG.6/1/IND/2, prar.22.

<sup>164</sup> Human Rights Council, "Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annexe to Human Rights Council resolution 16/21: India", (Geneva: United Nations, 2012), A/HRC/WG.6/13/IND/2, para.3.

In the Working Group session, Canada recommended India enact comprehensive reforms to address sexual violence and all acts of violence against women and to remedy limitations in the definition of rape and the medico-forensic procedures adopted for rape cases.<sup>165</sup>

### 3<sup>rd</sup> UPR Cycle

In the 3<sup>rd</sup> UPR Cycle, CEDAW once again reported in the Compilation report that it was concerned about the narrow definition of the Penal Code that contained an exemption from punishment when rape was committed by a husband to a wife who is over the age of 15.<sup>166</sup>

In the National Report, India did not give any feedback on the progress it had made in implementing the recommendation.

In the Working Group session, seven countries, including Zambia, Iceland and Namibia, recommended India to consider removing the exception relating to marital rape from the definition of rape in section 375 of the Indian Penal Code.<sup>167</sup>

### 4<sup>th</sup> UPR Cycle

In the 4<sup>th</sup> cycle, CEDAW did not make any recommendations towards India in the Compilation report.

Interestingly, in its National report, India made a follow-up report that the Criminal Law Amendment Act had been introduced in 2018 and contained enhanced punishment for rape of girls below 15 years. Additionally, the perpetrator was to give financial support for the victims to seek medical expenses and rehabilitation.<sup>168</sup>

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<sup>165</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: India” (Geneva: United Nations, 2012), A/HRC/21/10, para.138.41.

<sup>166</sup> Human Rights Council, “Compilation on India Report of the Office of the United Nations High Commissioner for Human Rights”, (Geneva: United Nations, 2017), A/HRC/WG.6/27/IND/2, para.61.

<sup>167</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: India” (Geneva: United Nations, 2017), A/HRC/36/10, 14.

<sup>168</sup> Human Rights Council, “National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: India” (Geneva: United Nations, 2022) A/HRC/WG.6/41/IND/1, para.103.



In the Working Group Session, Canada and Belgium recommended India to remove the exception related to marital rape from the definition of rape in section 375 of the Indian Penal Code.<sup>169</sup>

| Revision of the Penal Code to include a broad definition of rape. |                 |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |
|---|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|
| UPR 1   |                 |                      | UPR 2              |                 |                      | UPR 3              |                 |                      | UPR 4              |                 |                      |
| Compilation report  | National Report | Working Group Report | Compilation report | National Report | Working Group Report | Compilation report | National report | Working Group Report | Compilation report | National report | Working Group Report |
| ✓   | x               | x                    | ✓                  | x               | ✓                    | ✓                  | x               | ✓                    | x                  | ✓               | ✓                    |

|   |              |
|---|--------------|
| ✓ | Included     |
| x | Not included |

*Figure 1.11 Table for the recommendation to India to revise the Penal Code to include a broad definition of rape.*

### Findings for the revision of the Penal Code to include a broad definition of rape.

This case study shows the persuasive and political influence of the UPR mechanism. We notice that India received the recommendations to amend its Penal Code for rape in all four cycles. However, it never addressed the issue in the national report until the last review in 2022. We notice that, at first, member states hesitate to accept or act on certain recommendations instantly; however, due to the recurring recommendations in subsequent cycles, the member state finally takes action and addresses the recommendation. This highlights the essence of the UPR process. It highlights areas and subjects that a state considers a low priority, but due to the reviewing process every four years, the member state will be persuaded and forced to look at certain human rights issues to avoid hearing the same recommendation over and over again.

#### 3.6.2. Recommendation to India to prevent violence against women.

<sup>169</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: India” (Geneva: United Nations 2022), A/HRC/52/11, 23.

### First Cycle

In the first review, CEDAW recommended India to develop a coordinated and comprehensive plan to combat all forms of violence against women. The Special Rapporteur of Violence against women had reported incidences of molestation of women and girls from Kashmiri families during searches by police and army forces.

In the National report, India did not make any reports concerning the issue of violence against women.

During the Working Group sessions, there were no recommendations made regarding this subject.

### Second Cycle

CEDAW urged India to accelerate its efforts to enact the proposed legislation on communal violence and ensure that the inaction or responsibility of state officials in communal violence be addressed urgently under this legislation.<sup>170</sup> Furthermore, CEDAW urges India to take immediate, effective and gender-specific measures to sufficiently rehabilitate and compensate women victims of Violence so that they may be able to build their lives.<sup>171</sup>

In the National Report, India conceded that there was indeed a problem of Violence against women and that it was intrinsically linked to the economic dependence on men and lack of support systems. Therefore, the Domestic Violence Act of 2005 was being considered to be passed as civil law, which would define the term 'domestic violence' and enable women to get a protection order against a perpetrator, along with many other reliefs such as maintenance, compensation, residence and custody.<sup>172</sup>

In the Working Group sessions, a handful of countries made recommendations towards India, including Germany recommended that India adopt the Prevention of Communal and Targeted

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<sup>170</sup> Human Rights Council, "Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India", (Geneva: United Nations, 2012), A/HRC/WG.6/13/IND/2, para.39.

<sup>171</sup> *Ibid*, para.40.

<sup>172</sup> Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India" (Geneva: United Nations, 2012), A/HRC/WG.6/13/IND/1, para.83.

Violence Bill, addressing issues such as accountability of civil servants, standards of compensation for victims and elements of command responsibilities.<sup>173</sup>

### 3<sup>rd</sup> UPR Cycle

In the 3<sup>rd</sup> UPR Cycle, CEDAW encouraged India to create one-stop crisis centres to provide women and girls who were victims of Violence and rape with free and immediate access to medical attention, psychological counselling, legal aid, shelter and other services.<sup>174</sup> Furthermore, the Special Rapporteur on Violence against Women reported that the lack of implementation of the Protection of Women from Domestic Violence was a great concern. The Rapporteur noted that in most villages and rural areas, local councils acted as informal judicial officers who often struck a pre-arranged settlement between families when solving cases of violence, thus leaving most women without effective redress.<sup>175</sup>

In the national report, India reported that it will continue with its commitments to eliminate violence and discrimination against women and for the equality and empowerment for women.<sup>176</sup> India reported that the Government of India had put in place various schemes to strengthen the safety and security of women in the country, and it had also made progress in developing one-stop centres to provide single-point access to women affected by Violence and to provide them medical and police assistance, psycho-social support, legal aid and counselling, and temporary shelter. India reported that it was in the process of proposing a National Policy for Women which supports a holistic approach to addressing Violence against women.<sup>177</sup>

In the Working Group session, several states, including China, Kyrgyzstan and Japan, made recommendations to India to combat Violence against women through effective legislation and law enforcement measures.<sup>178</sup>

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<sup>173</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: India” (Geneva, United Nations, 2012), A/HRC/21/10, para.138.48.

<sup>174</sup> Human Rights Council, “Compilation report of the Office of the United Nations High Commissioner for Human Rights: India” (Geneva: United Nations, 2017), A/HRC/WG.6/27/IND/2, para.58.

<sup>175</sup> *Ibid*, para.57.

<sup>176</sup> Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India" (Geneva: United Nations, 2017) A/HRC/WG.6/27/IND/1, para.123.

<sup>177</sup> *Ibid*, para.129.

<sup>178</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review India” (Geneva: United Nations, 2017), A/HRC/36/10, 22.

#### 4<sup>th</sup> UPR Cycle

In the 4<sup>th</sup> UPR Cycle, CEDAW did not make any recommendations. However, the United Nations country team recommended that the Government ensure that adequate resources were available to expedite the adjudication of cases of Violence against women. It also recommended that the Government increase the capacity and effectiveness of the One Stop Centres and further recommended that the Government operationalise the health sector response to gender-based Violence at all levels, including medical and legal care for survivors of sexual Violence, including during crises and disasters.<sup>179</sup>

In the National report, India reported that Various steps have been taken at the operational level to effectively tackle the problem of Violence against women. Pan-India Emergency Response Support System provides for dispatch of field resources to the location of distress. One Stop Centres provide integrated services to women affected by Violence. As of March 2022, there are 708 operational centres that have assisted over 540,000 women.<sup>180</sup>

During the Working Group sessions, more than ten countries, including Cambodia, Sri Lanka and Slovenia, made recommendations to India to make efforts to promote women's rights and to eliminate violence against women and girls through effective legislation and law enforcement measures.<sup>181</sup>

| Violence against women policy |                 |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |
|-------------------------------|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|--------------------|-----------------|----------------------|
| UPR 1                         |                 |                      | UPR 2              |                 |                      | UPR 3              |                 |                      | UPR 4              |                 |                      |
| Compilation Report            | National Report | Working Group Report | Compilation Report | National Report | Working Group Report | Compilation Report | National Report | Working Group Report | Compilation Report | National Report | Working Group Report |
| ✓                             | x               | x                    | ✓                  | x               | ✓                    | ✓                  | ✓               | ✓                    | x                  | ✓               | ✓                    |
| ✓                             | Included        |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |
| x                             | Not included    |                      |                    |                 |                      |                    |                 |                      |                    |                 |                      |

<sup>179</sup> Human Rights Council, “Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights: India” (Geneva, United Nations, 2022), A/HRC/WG.6/41/IND/2, para.87

<sup>180</sup> Human Rights Council, “National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: India”, (Geneva: United Nations, 2022) A/HRC/WG.6/41/IND/1, para.110.

<sup>181</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: India” (Geneva: United Nations, 2022), A/HRC/52/11, 23.

*Figure 1.12 Table on the recommendation to India to develop a policy to prevent violence against women.*

#### Findings for violence against women

This is another classic example of how the UPR process works and how it advances the mandates of various human rights monitoring, including CEDAW gradually. In each cycle, we notice India expressing its commitment to protect women against violence. We see India taking significant steps and making great progress in setting up policies and institutions that can help victims of domestic violence, especially in the third and fourth cycle. We also see that the number of countries that recommended were increasing, thus exerting pressure on India to take some action.

### 3.7. Conclusion

From this analysis, a clear connection can be traced between the UPR recommendations stemming from the CEDAW concluding observations throughout the UPR cycles in the case studies used. It may not be that the UPR directly advances the work of the CEDAW in the sense that the thesis topic suggests because CEDAW does not directly participate during the UPR Working Group sessions or make recommendations directly to member states. However, CEDAW's mandate and objectives are advanced when recommending states incorporate and refer to women and gender issues highlighted by CEDAW in the Compilation report. The UPR then becomes effective for treaty bodies such as CEDAW because it highlights and reiterates issues and recommendations that the treaty body has already raised directly to member states during Treaty Body procedures, but the exceptional feature of the UPR is that a state has to take a position publicly by either accepting or noting the recommendation. This is an interesting political feature of the UPR because a state's position will reflect its attitude on human rights issues, and it could potentially face scrutiny or trigger comments from other member states. In simple terms, the UPR recommendations serve as a tool to monitor progress, address gaps, and encourage states to fulfil their obligations under CEDAW.

We note that states are generally committed to complying with the UPR mechanisms because they dedicate time and resources to drafting reports and attending the UPR Working Group sessions. The fact that states agreed on creating the Universal Periodic Review means that they believed it was in line with their interests and that they acknowledged the legal obligation to

comply with it. The analysis above leads to various findings, which will be discussed in Chapter 4 using the questions of the objectives of this thesis research.

Regarding member states accepting recommendations in the Universal Periodic Review, the analysis above shows that it depends on the subject matter rather than the wording of a recommendation. Member states that refuse to raise the issue of sexual orientation before a human rights body rejects a general mention on the subject, whilst they may be willing to accept specific and action-oriented recommendations on other issues without hesitation.

The UPR also plays the role of checks and balances and keeping member states accountable to their commitments under various treaties and international human rights standards. It is most interesting to note that most countries generally delay submitting their reports to CEDAW, and the delay can get to as long as 10 years, as in the case of South Africa. However, in those 10 years, a member state will go through two UPR cycles and is reminded of the recommendations made by CEDAW. Through the procedures for accountability put in place by the UPR mechanism, a member state should follow up on all issues and through advanced questions, other member states will ask what measures or action plan the member state engaged since its last cycle to address women and gender issues.

The analysis above shows that the UPR mechanism keeps states accountable for their commitments under CEDAW. It is noticeable that states do not regard treaty bodies as high as they used to. Hence there is a growing phenomenon of delayed reports to the CEDAW secretary, which leads to further delay in the review of the country as CEDAW reviews follow the sequence in which member states to submit reports to its Secretariat. Perhaps, member states no longer give high regard to treaty bodies such as CEDAW because states are reviewed by a group of experts along the supervision and coordination of the Secretariat who belong to the UN OHCHR. The UPR, on the other hand, is a peer-to-peer review that occurs every four and a half years, and any faltering or lagging behind of a member state in participation to the UPR is under the scrutiny of all states, both allies and foes. The international peer pressure generated by the UPR process can influence member states to take actions to improve the implementation of CEDAW and fulfil their commitment towards gender equality.

In the UPR mechanism, member states are encouraged to develop and implement National Action Plans (NAPs), and these are often followed up during midterm reports of the UPR. NAPs provide a framework for member states to address specific recommendations by adopting policies, strategies and measures to advance human rights. This is seen in the case

study of South Africa; the state reported that it had developed its National Policy Framework for Women's Empowerment and Gender Equality, which has been the guiding beacon for the development and advancement of women and girls in the country.

## Chapter Four

### 4.1. Introduction

This chapter will further examine the interaction between the UPR and CEDAW, to further understand whether the UPR process is advancing the mandates and obligations of CEDAW, or whether there is no correlation between the submissions of a treaty body and the UPR process. This chapter aims to answer the main thesis questions formulated at the beginning of this research. It incorporates the results of the analysis of chapter three and captures my observations at the United Nations. In this chapter, I will make some recommendations based on my observations during my internship and research of this thesis on how the UPR and CEDAW human rights mechanisms can be improved and leveraged to advance the protection of human rights across the world. The chapter will close with the conclusion that ties everything together.

### 4.2. Whether the recommendations of CEDAW during the UPR process have any positive bearing on improving the rights of women in member states?

According to the analysis above, it is significantly noticeable that the recommendations of CEDAW during the UPR sessions have many positive bearings for improving women's rights in member states. The two mechanisms combined bring legislative development, judicial reform and institutional mechanism and legal precedence, which will be discussed below. In the last two years, member states have been encouraged to make SMART recommendations which are specific, measurable, achievable, relevant and time-bound. Smart recommendations often instruct states to develop and implement National Action Plans to address specific concerns raised during the UPR review, as seen in the case study of South Africa, where the member state developed the National Policy Framework for Women's Empowerment and Gender Equality whilst waiting to put in place the Empowerment of Women and Gender Equality. Another recognisable example is that of Poland, which also developed a National Plan for Equal Treatment 2022-2030 that provides for numerous initiatives for the equal treatment of women and men in labour, employment and social security.

More often than not, policy developments in the form of national action plans often lead to legislative development. CEDAW has a good reputation for being at the forefront of



introducing legislative reforms in member states. States that have signed the CEDAW are compelled to enact laws that promote gender equality and eliminate laws that discriminate against women at all levels of society. These laws brought many changes in member states built on patriarchal laws that eliminated women from participating in social and political life. This can be seen in the case study of Poland, where it received several recommendations from CEDAW urging it to involve women in public and political life. CEDAW encouraged Poland to take sustained measures to accelerate women's full and equal participation in elected and appointed positions, including at the municipal and national levels, senior levels of the judiciary, higher level courts, and international representation.<sup>182</sup> Following the recommendation of CEDAW, which was also made during the UPR mechanism, Poland reported that the Parliament passed in 2011 an Amendment to the Electoral Law to Municipal Councils and several other domestic laws that introduced the quota system. It resulted in the number of women candidates not being less than 35% of the total number of candidates on the ballots. Consequently, if the quota was not met and the defect was not removed within a specified time, such a ballot would not be registered.<sup>183</sup> This is one of the positive examples of how the UPR complements the work of CEDAW to bring about legislative reforms and changes that promote the rights of women.

One of the most influential ways of CEDAW is that it brings about judicial reform in member states. CEDAW is a legal reference point in many court cases across the world, and it takes superiority over national and local laws in member states that have signed and ratified. National courts have increasingly recognised CEDAW as a basis for interpreting domestic laws and addressing gender discrimination. This has contributed to the development of jurisprudence that protects and upholds women's rights, therefore setting legal precedents for future cases.

Another important feature of the UPR process that makes it more successful than other mechanisms is that it gives a comprehensive review of a state's human rights status. It results

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<sup>182</sup> Such measures should include the adoption of temporary special measures in accordance with 4(1) paragraph 1 of the Convention and the Committee's general recommendation 25; the establishment of benchmarks, numerical goals and timetables; the conduct of training programmes on leadership and negotiation skills for current and future women leaders; and regular monitoring of progress made, and results achieved. It further urges the State party to undertake awareness-raising campaigns on the importance of women's participation in public and political life and in decision-making.

<sup>183</sup> Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Poland" (Geneva: United Nations, 2012), A/HRC/WG.6/13/POL/1, para.94.

in states being evaluated on various issues, and when it comes to the recommendations of CEDAW, states tend to be more sensitive to issues regarding women's affairs as it is a popular topic in the international arena because states are taking deliberate steps to promote women equality and reverse the ills of the past. CEDAW has raised global awareness about women's rights and gender equality more than any other mechanism or organisation in the past, and its involvement in the UPR can only further raise awareness, promote dialogue and hold governments accountable for their commitments to women's rights.

#### 4.3. Whether state parties accept and implement recommendations made by CEDAW in the compilation report during the UPR process?

To a large extent, states accept and implement the recommendations made by CEDAW contained in the compilation report. According to the case studies above, the subject matter of recommendations rather than the wording of a recommendation will determine whether a member state will accept it or not. Member states tend to disregard sensitive recommendations that they are not ready to comply with. Regarding women's rights, recommendations concerning cultural and traditional practices that are harmful to women's health and well-being, like female genital mutilation, were not always received well by some member states. In some instances, states with a huge presence of these practices accepted the recommendation as a measure to avoid criticism from other states, however they never adopted or implemented measures to protect women from such harmful practices.

Over the years, it has been proven that what makes a successful review is the ability to review states to deliver practically feasible recommendations.<sup>184</sup> What is of interest here is an assessment of whether recommendations delivered in these mechanisms are feasible and meet the standard of smart recommendations. It is unexpected for human rights mechanisms to provide recommendations with clear guidelines for implementation so that states can take the correct action during implementation.

In order to achieve more policy and legislative changes in member states, the UPR and treaty bodies could reinforce each other's strengths by working more closely together. More so, it is

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<sup>184</sup> Valentina Carraro, Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies, *International Studies Quarterly*, Volume 63, Issue 4, December 2019, 1085.

encouraged for the other member states to systematically consult the treaty bodies before formulating a recommendation. Some states indeed consult treaty bodies and special procedures before drafting recommendations; however, in order to make the process more effective, it would be beneficial to make consultation a structural part of the process. This will result in UPR recommendations being more firmly based on Concluding Observations, thus preserving their political force while, at the same time, providing better guidelines for states.

#### 4.4. Does the influence of politics during the UPR process compel member states to comply with the UPR recommendations better than other UN human rights mechanisms?

Treaty bodies such as CEDAW and the UPR mechanism work towards achieving their ultimate mandates and obligation by delivering recommendations to member states, who are expected to implement those recommendations to improve their human rights performance within their states. In the study of Gutner and Thompson, they emphasised the importance of distinguishing between an organisation's process performance and its outcome performance.<sup>185</sup> They revealed that the outcome performance of an organisation is identified by its ability to solve a specific problem, such as improving a state's human rights records. Conversely, its process performance relates to its ability to reach micro outcomes such as carrying out specific tasks.<sup>186</sup>

The exertion of political pressure during the UPR process makes the mechanism more successful than others because member states fear material and reputational loss. The pressure that can be exerted by peers during peer reviews and public reviews often results in state compliance. Peer reviews are not only seen as sanctions aimed at exposing countries to criticism; however, they can also be viewed as non-confrontational mechanisms where the focus is on stimulating learning and socialising states to the "right" approach in dealing with human rights norms. In order to achieve this goal, the review output should adequately reflect the internal human rights situation in the reviewed state, highlighting all relevant human rights issues and suggesting areas for improvement.

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<sup>185</sup> Gutner, Tamar & Thompson, Alexander. (2010). *The Politics of IO Performance: A Framework. The Review of International Organizations*. 5. 236.

<sup>186</sup> *Ibid.*

#### 4.5. Recommendations

During my internship at the United Nations, I had a first-hand experience of witnessing the functions and procedures of the Council and Treaty Mechanism Division of the Human Rights Council. A lot of work is being done to improve human rights situations worldwide. The Universal Periodic Review Branch was interesting to work in because it gave me an overview of the human rights status of many countries simultaneously. For 6 months, I worked with the UPR drafters who assigned me tasks to draft sections of pre-session reports, namely, the Compilation report and Summary report. Furthermore, I attended and supported the facilitation of the 51<sup>st</sup> Human Rights Council session in September 2022 and the 41<sup>st</sup> Universal Periodic Review Working Group session in November 2022. The proximity and close interaction with these mechanisms gave me a bird's eye view of the strengths and weaknesses of the Human Rights Council. I was able to identify a few areas that could be improved in order to make the mechanisms more effective. My recommendations are as follows:

Recommendation 1: The introduction of lobbying between Treaty Body mechanisms and member states during the UPR process.

The UPR has an important tool and well-established practice called lobbying, which was cleverly incorporated into the design of the mechanism. Lobbying during the UPR process occurs between civil society organisations and member states, and it involves CSOs persuading member states to consider the recommendations they have submitted to the OHCHR and pass them as recommendations to states under review. However, one wonders why the same procedure was not established between UN treaty bodies and member states. Perhaps, if UN treaty bodies could lobby with an ally of a state under review to present its recommendations, their recommendations would likely be considered and implemented by a state under review. However, this suggestion does not imply that the current collaboration of treaty bodies with the UPR process is not working. The system of lobbying has proved to be very effective when used by CSO; therefore, if the same system is applied to Treaty bodies, it would draw more traction and attention to treaty body recommendations. Consequently, this would inevitably improve and advance the mandates of treaty bodies as states are likely to accept the recommendations and implement them.

Currently, the interaction between the Treaty bodies and the UPR is through the compilation report. As explained in the second chapter, the Treaty bodies and UN agents submit their reports and recommendations to a state under review to the UPR branch of the OHCHR. The UPR Branch compiles these contributions into the Compilation report, which should not exceed 5300 words.<sup>187</sup> Due to the word restriction of the document, it may occur that some recommendations made by Treaty bodies are not reflected in the compilation reports, especially on states with many human rights issues. This, however, results in certain recommendations made by the UN treaty bodies not being reflected or made during the working group sessions of the UPR process. Unlike CSO, treaty bodies cannot lobby with states and convince them to recommend the recommendations that they have made in their reports.

This thesis proposes that the UPR process should include lobbying between UN bodies and member states. Based on my observations, there is a gap between the interaction of UN treaty Bodies and member states during the UPR process. Indeed, the UN treaty bodies have direct communication and interaction with member states through the treaty process, but that is only limited to those that are state parties to the treaties. The UPR should therefore be a platform for treaty bodies to advance the recommendations aligned to their mandates whether a state is a state party or not. Furthermore, UN treaty bodies should be able to advance the concluding observations and recommendations they made during the treaty body review by lobbying other member states to take their recommendations and address them to a state under review during the UPR process.

As seen in Chapter One, the UPR process mainly uses three documents, namely, the compilation report, the summary report and the state report. Among the three documents, the recommendations, findings and reports of UN bodies and UN agencies are made in the compilation report. Under the authority of the OHCHR, the UPR Branch reads all the submissions and reports made by UN bodies and summarises them into thematic fields when compiling the compilation report. This process is effective because all the main issues made by UN treaty bodies are reflected in the compilation report without making the document too long. However, a lot of information, details and recommendations are not reflected in the compilation report because of the word limit.<sup>188</sup> Member states are expected to read the

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<sup>187</sup> When there are too many contributions by Treaty Bodies and UN Agencies, the UPR Branch unanimously decides on the most important human rights issues to highlight concerning the state under review.

<sup>188</sup> The compilation report has a word limit of 5300 words.

compilation report when drafting their recommendations to a state under review. But, in my opinion, the compilation report is not a holistic reflection of the UN treaty bodies' recommendations and findings on the state under review. A further step should be taken in the form of lobbying in order for the recommendations of UN Treaty Bodies to be reflected in the UPR process.

Lobbying should be introduced between Treaty bodies and members because lobbying has many benefits, such as providing an opportunity and platform for treaty bodies to be able to explain the human rights situation of a state under review in detail. During the UPR process, recommendations are made, but due to the three and half hour time limit, there is limited time for in-depth details of the human rights situation of a country to be shared with other states. Lobbying will also enable member states to construct smart recommendations that are specific, measurable, achievable, relevant and time-bound because they will have a better understanding of the human rights situation on the ground. For example, the CEDAW Committee can lobby with Country A and explain the human rights of Country B. Country A will recommend to Country B during the UPR working group sessions, and these recommendations are more likely to be smart recommendations.

Recommendation 2: The introduction of the participation of Treaty Bodies during the UPR Working Group sessions.

The UPR mechanism should give the UN Treaty Bodies an opportunity to participate during the UPR Working Group sessions so that they can complement the recommendations they make in the compilation report. The status quo is that NGOs and often UN Agencies are given an opportunity to make a statement during the UPR working group sessions. During the UPR, NGOs are given an opportunity to make a two-minute statement before the adoption of the report of the Working Group, and they carry out informal lobbying outside of the HRC meetings. It is remarkable to note that NGOs' ability to lobby other States is an important skill and one that many NGOs have had to develop<sup>189</sup>

In fact, we note that all parties that contribute to the pre-session reports have an opportunity to make a statement during the Working Group sessions except the UN bodies of the OHCHR. It

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<sup>189</sup> Fiona McGaughey "The Role and Influence of Non-Governmental Organisations in the Universal Periodic Review - International Context and Australian Case Study," *Human Rights Law Review* 17, no. 3 (September 2017): 426.

has been said that the rationale behind that is that the UPR is not a replication of Treaty Bodies reviews. However, the participation of the Treaty bodies during the reviews could be advantageous because the UPR could benefit from expert contributions. This would tie in with Manfred Novak's point that the UPR 'suffers from the disadvantage that states' performance in the field of human rights is assessed by member states rather than by independent experts.<sup>190</sup> The involvement of human rights experts during the UPR working groups could result in more structured recommendations and a possibility for mid-term assessments that may advise appropriate measures to be taken to implement the recommendations.

Recommendation 3: The submission of UPR mid-term reports by member states is to be made compulsory.

As demonstrated in Chapter 2 of this thesis, the UPR mechanism enjoys 100% participation from member states, which means that no state has missed submitting reports to date. This is a positive aspect of the mechanism, and it demonstrates that member states are fully committed to the mechanism, therefore, more tools that encourage compliance and implementation of recommendations ought to be put in place. One of the tools that could be used to improve the implementation of recommendations and keep states accountable is to introduce the compulsory submission of midterm reports. Mid-term reports can be a valuable tool for monitoring and evaluating member states human rights records and can help to ensure that the UPR process is effective in promoting and protecting human rights.

The status quo states that, as a rule of thumb, member states are not obliged to submit mid-term reports, and they have been doing it on a voluntary basis. According to the statistics of the OHCHR, there is a sporadic pattern in the submission of mid-term reports by member states, as demonstrated by the figure below.

| <b>Number of countries that submitted Universal Periodic Review Mid-Term Reports</b> |                           |                           |                           |
|--|---------------------------|---------------------------|---------------------------|
| 1 <sup>st</sup> UPR Cycle  | 2 <sup>nd</sup> UPR Cycle | 3 <sup>rd</sup> UPR Cycle | 4 <sup>th</sup> UPR Cycle |
| 55   | 55                        | 39                        | 87                        |

<sup>190</sup> Damian Etone, "Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance" (unpublished manuscript, 2019).

*Figure 13. Number of countries that submitted Universal Periodic Review Mid-Term Reports.<sup>191</sup>*

We note that in the first UPR cycle and second UPR cycles, 55 member states submitted midterm reports, and that equates to less than 30% of the number of members who participated in the UPR process. In the third UPR cycle, the number went lower, with only 39 member states submitting mid-term reports to the UPR. However, it is interesting to note that the number of member states that submitted their mid-term reports drastically went up in the fourth UPR cycle. As of 10 March 2023, a total of 87 States submitted UPR mid-term reports on a voluntary basis.<sup>192</sup> A commendable good practice can be noted by the United Kingdom of Great Britain and Northern Ireland, which submitted annual updates of its implementation strategies. Submitting mid-term reports compulsory can be useful in the UPR process for several reasons, such as:

- (i) **Assessing progress:** Mid-term reports can provide a snapshot of a country's progress in implementing its human rights commitments. This information can be used to assess whether a country is making progress towards its human rights goals or if it needs to take additional measures.
- (ii) **Identifying challenges:** Mid-term reports can also highlight challenges that a country is facing in implementing its human rights commitments. This information can be used to identify areas where a country needs assistance and support in order to effectively address human rights challenges.
- (iii) **Accountability:** Mid-term reports can help promote accountability by ensuring that countries are held to account for their human rights commitments. The reports can provide a basis for dialogue and discussion between a country and other stakeholders, including civil society organisations and human rights experts.

Recommendation 5: Member states to adopt the SMART recommendations methodology when drafting recommendations.

Studies have shown that SMART recommendations in the UPR process are more effective than recommendations which are badly constructed. In theory, SMART recommendations are

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<sup>191</sup> UPR Implementation of the United Nations Human Rights Office of the High Commissioner," accessed 13 March 2023, <https://www.ohchr.org/en/hr-bodies/upr/upr-implementation>.

<sup>192</sup> UPR Implementation of the United Nations Human Rights Office of the High Commissioner," accessed 13 March 2023, <https://www.ohchr.org/en/hr-bodies/upr/upr-implementation>.



specific, measurable, achievable, relevant and time-bound and should be adopted in the UPR process because they are evidence-based and data-driven, which could ensure that the recommendations put forward are realistic, practical, and effective.

Smart recommendations can also ensure that member states put forward recommendations that are specifically tailored to the specific human rights challenges faced by the state under review. Consequently, this will enhance clarity and precision and can help ensure that the recommendations are more likely to be accepted and implemented by the country's government under review, as they are based on a clear understanding of the context and challenges. Furthermore, smart recommendations can help to ensure that the UPR process is more effective overall by promoting the adoption of evidence-based and data-driven policies and practices that can help to improve human rights protection and promotion. This can contribute to more meaningful and sustainable human rights improvements in the countries under review.

#### 4.6. Conclusion

In conclusion, it has been 17 years since the creation of the Universal Periodic Review and 15 years from the commencement of its first cycle in 2008, and the UPR has been successful in establishing itself as a key mechanism in the international human rights law arena. The effects of the UPR are wide-ranging and include not only stimulating legislative, policy and other action at the national level but also enhancing ratification of human rights treaties and engagement with UN bodies such as the Special Procedures.<sup>193</sup>

It is notoriously difficult to measure the impact of human rights monitoring mechanisms because success and failure can depend on the position and expectations of the observer. As witnessed during the UPR process, states often report certain successes, such as the creation of human rights institutions with a vague scope of details about the objectives and purposes of the institution. Whilst other states vaguely implement recommendations to tick boxes and demonstrate that they have made substantial progress in the human rights situation of their states. However, civil society organisations and other stakeholders often report dissatisfaction with the institutions that a state has created. An inherent structural deficit of a human rights

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<sup>193</sup> Kathryn McNeilly, 'The Temporal Ontology of the Human Rights Council's Universal Periodic Review', *Human Rights Law Review* 21, no. 1 (5 February 2021): 19.

implementation strategies are that states are often satisfied that they have succeeded in advancing human rights by setting up vague institutions that are inoperative. There has been considerable evidence showing that human rights treaty bodies contribute to advancing human rights as they set yardsticks for member states to follow in the pursuit of protecting human rights in their regions.

It is high time for more focus and priority to be given to implementation. The UN human rights monitoring mechanisms, such as the UPR and CEDAW, should put more emphasis on the implementation of human rights recommendations in member states. Whilst there is still room for the law and language of human rights to be refined, the greatest challenge is to realise their potential on the ground. Hunt asserted that we need to understand how to create an enabling environment where human rights flourish and tackle potential pitfalls within that infrastructure that could hinder human rights obligations from being achieved.<sup>194</sup> The expectation imposed on human rights mechanisms for change is often a revolutionary one, but in actual fact, change is more often brought through a slow and incremental pace.

It is important to remember that human rights institutions are constructions, and consequently, their form affects their function and ultimately decides whether their implementation is successful or not. This correlation between form and function matters and should be taken into account when designing human rights institutions. Human rights experts should always consider which human rights design strengthens or weakens its effectiveness. For one, human rights institutions are largely state-owned; it is a state's responsibility to ensure the representation and participation of other stakeholders, such as collaborations with UN human rights mechanisms, UN agencies and civil society organisations.

From the discussion in Chapter 2 on compliance, we note that the status quo dictates that the success of human rights mechanisms depends largely on the ability of the international human rights system to initiate and promote visible change. If the recommendations and findings of human rights monitoring bodies do not lead to tangible progress, confidence and credibility in them are lost, ultimately. This can be seen in the attitude of member states towards UN treaty bodies. However, not all confidence and credibility in treaty body mechanisms has been lost because member states still participate significantly in treaty bodies reviews, although there is

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<sup>194</sup> Gerd Oberleitner, "An Agenda for Strengthening Human Rights Institution," in *International Human Rights Institutions, Tribunals, and Courts*, ed. Gerd Oberleitner (Cham: Springer, 2018) 556.

an apparent decline and lack of enthusiasm in participation. This phenomenon is a consequence and sign the member states loss of confidence in the treaty body mechanism. When human rights mechanisms fail to deliver results, they become recurring rituals that allow states to superficially accept norms and engage in formal legal processes without substantive commitment to human rights. Perhaps the greatest challenge for the international human rights system is to ensure that the recommendations of human rights bodies are implemented.

The UPR is a political process where states engage in an interactive dialogue with an aim to improve human rights situations universally. The UPR was intended to be something greater than a 'report card' that identifies strengths and weaknesses. During the inception of the UPR, the Human Rights Council set a clear objective that the mechanism would result in an improvement of the human rights situation generally through sharing good practices and cooperation with other UN mechanisms such as Treaty bodies and Special Procedures. Most of all, the UPR would provide financial and technical assistance to member states who wished to establish and implement recommendations for the advancement of human rights.<sup>195</sup> This thesis has demonstrated that the UPR indeed advances the objectives and mandates of CEDAW by incorporating the recommendations of CEDAW in one of its key reports. The impact of the UPR to the CEDAW, is not a revolutionary one, instead its gradual and demonstrated in each cycle when members states report the progress they have made to improve women's rights.

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<sup>195</sup> Rhona K. M. Smith, "Equality of Nations Large and Small: Testing the Theory of the Universal Periodic Review in the Asia-Pacific," *Asia-Pacific Journal of Human Rights and the Law* 12, no. 2 (2011): 39.

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## Bibliography

An-Na'im, Abdullahi Ahmed, ed. *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*. University of Pennsylvania Press, 1992. <http://www.jstor.org/stable/j.ctt3fhr99>.

Marenin, Otwin. "Abdullahi Ahmed An-Na Im and Francis M. Deng, Eds. *Human Rights in Africa: Cross-Cultural Perspectives*. Washington, DC: The Brookings Institution, 1990. *The Concept of Human Rights in Africa*. London: CODESRIA Book Series, 1989.

Ban Ki-moon, "Statement by the Secretary-General to the First Session of the Human Rights Council," United Nations, June 19, 2007, accessed March 1, 2023, <https://www.un.org/sg/en/content/sg/statement/2007-06-19/statement-secretary-general-first-session-human-rights-council>.

Christof Heyns and Frans Viljoen, "The Impact of the United Nations Human Rights Treaties on the Domestic Level," *Human Rights Quarterly* 23, no. 3 (2001).

Damian Etone, "The Impact of the Universal Periodic Review in Africa," in *The Human Rights Council: Critical Concepts in Law*, edited by M. Cherif Bassiouni and William A. Schabas (New York: Routledge, 2020).

Damian Etone, "Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance" (unpublished manuscript, 2019).

Fiona McGaughey, "The Role and Influence of Non-Governmental Organisations in the", Frans, Viljoen and Lirette Louw, "State Compliance with the Recommendations of the African Commission on Human and Peoples' Rights, 1994-2004," *The American Journal of International Law* 101, no. 1 (2007).

Frederick Cowell, "Reservations to Human Rights Treaties in Recommendations from the Universal Periodic Review: An Emerging Practice?," *The International Journal of Human Rights* 25, no. 2 (7 February 2021) [March 11, 2023]

Gayatri Patel, 'How "Universal" Is the United Nations' Universal Periodic Review Process? An Examination of the Discussions Held on Polygamy', *Human Rights Review (Piscataway, N.J.)*.

Geir Ulfstein, "Law-Making by Human Rights Treaty Bodies," in *International Law-Making: Essays in Honour of Jan Klabbers*, edited by Rain Liivoja and Jarna Petman (London: Routledge, 2014).

Gerd Oberleitner, "An Agenda for Strengthening Human Rights Institution," in *International Human Rights Institutions, Tribunals, and Courts*, ed. Gerd Oberleitner (Cham: Springer, 2018).

Harold Koh, "On American Exceptionalism and Human Rights," *Harvard Law Review* 104, no. 7 (1990).

Insights from the Universal Periodic Review," *Human Rights Quarterly* 40, no. 3  
James Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press 2000).

James Crawford, 'The UN Human Rights System: A System in Crisis' in Philip Alston and Kielmann, K., Cataldo, F. and Seeley, J. (2012). *Introduction to Qualitative Research Methodology: A Training Manual*, produced with the support of the Department for International Development (DfID), UK, under the Evidence for Action Research Programme Consortium on HIV Treatment and Care (2006-2011).

Krommendijk, Jasper. (2014) *The Domestic Impact and Effectiveness of the Process of State Reporting under the UN Rights Treaties in The Netherlands, New Zealand and Finland: Paper Pushing or Policy Prompting* (Cambridge: Intersentia).

Lane, Michael and Damian Etone 'The Human Rights Council: *The Impact of the Universal Periodic Review in Africa* (Routledge, 2021).

Lutz Oette, "The UN Human Rights Treaty Bodies: Impact and Future," in *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*, ed. Gordon Brown and Sophie Hardefeldt (London: The Westminster Foundation for Democracy, 2016).

M.L. Krommendijk, "The Influence of the UN Human Rights Treaty Bodies on the Domestic Human Rights Practices of States," *Nordic Journal of Human Rights* 32, no. 1 (2014).

Manfred Nowak, "It's Time for a World Court of Human Rights," in *New Challenges for the UN Human Rights Machinery*, ed. M. Cherif Bassiouni and William A. Schabas (Intersentia, 2011).

Mintao Nie, "IOs' Selective Adoption of NGO Information: Evidence from the Universal Periodic Review," *The Review of International Organizations* (Published online: (2022), 1. DOI: <https://doi.org/10.1007/s11558-022-09455-3>).

Monika Heupel, "How Do States Perceive Extraterritorial Human Rights Obligations?"

Neil A. Englehart and Melissa K. Miller, "The CEDAW Effect: International Law's Impact on Women's Rights," 24, accessed February 5, 2023, <https://www.tandfonline.com/doi/epdf/10.1080/14754835.2013.824274?needAccess=true&role=button>.

Neil A. Englehart and Melissa K. Miller, "The CEDAW Effect: International Law's Impact on Women's Rights," 25, accessed February 5, 2023, <https://www.tandfonline.com/doi/epdf/10.1080/14754835.2013.824274?needAccess=true&role=button>.

Rhona K. M. Smith, "Equality of Nations Large and Small: Testing the Theory of the Universal Periodic Review in the Asia-Pacific," *Asia-Pacific Journal of Human Rights and the Law* 12, no. 2 (2011): <https://doi.org/10.1163/157181511x570733>.

Rhona Smith, "To see Themselves as Others see Them": The Five Permanent Members of the Security Council and the Human Rights Council's Universal Periodic Review, *Human Rights Quarterly* 35, no. 1 (February 2013): 1-32, <https://doi.org/10.1353/hrq.2013.0007>.

Simone Cusack and Lisa Pusey, 'CEDAW and the Rights to Non-Discrimination and Equality', *Melbourne Journal of International Law* 14, no. 1 (2013): 54. accessed March 11, 2023, [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0008/1709362/6-Cusack-Pusey.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0008/1709362/6-Cusack-Pusey.pdf).

Smith, Rhona. "The Pacific Island States: Themes Emerging from the United Nations Human Rights Council's Inaugural Universal Periodic Review." *Melbourne Journal of International Law* 13, no. 1 (2012).

Subhas Gujadhur and Marc Limon, "Towards the Third Cycle of the UPR: Stick or Twist? Lessons Learnt from the First Ten Years of the Universal Periodic Review" (Universal Rights Group, 2016), 35.

UN General Assembly, "Institution-building of the United Nations Human Rights Council," A/RES/60/251, April 3, 2006, accessed March 1, 2023, <https://undocs.org/A/HRC/RES/5/1>.

Zeid Ra'ad Al Hussein, "The Role of Custom in the Progressive Development of International Law," speech before the International Law Commission, United Nations, New York, July 27, 2015.

### **United Nations Documents**

Charter of the United Nations, Preamble, opened for signature June 26, 1945, 59 Stat. 1031, 1 U.N.T.S. 16, accessed March 1, 2023, <https://www.un.org/en/charter-united-nations/>.

Committee on the Elimination of Discrimination against Women, "Concluding comments of the Committee on the Elimination of Discrimination against Women: Poland", (Geneva: United Nations, 2007), CEDAW/C/POL/CO/6. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/243/80/PDF/N0724380.pdf?OpenElement>

Human Rights Council, "Report of the Working Group on the Universal Periodic Review: South Africa", (Geneva: United Nations, 2022), A/HRC/52/17 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/611/19/PDF/G2261119.pdf?OpenElement>.

Human Rights Council, "Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: South Africa", (Geneva: United



Nations, 2012), A/HRC/WG.6/13/ZAF/1. <https://documents-ddsny.un.org/doc/UNDOC/GEN/G12/116/29/PDF/G1211629.pdf?OpenElement>.

Human Rights Council, “Compilation of information by the Office of the United Nations High Commissioner for Human Rights: Poland” (Geneva: United Nations, 2022), A/HRC/WG.6/41/POL/2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/468/36/PDF/G2246836.pdf?OpenElement>.

Human Rights Council, “Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights: South Africa”, (Geneva: United Nations, 2008),A/HRC/WG.6/1/ZAF/2.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/124/21/PDF/G0812421.pdf?OpenElement>.

Human rights Council, “Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights: South Africa” (Geneva: United Nations, 2022),A/HRC/WG.6/41/ZAF/2.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/124/21/PDF/G0812421.pdf?OpenElement>.

Human Rights Council, “Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights: India” (Geneva, United Nations, 2022), A/HRC/WG.6/41/IND/2.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/464/18/PDF/G2246418.pdf?OpenElement>.

Human Rights Council, “Compilation of the Report of the Office of the United Nations High Commissioner for Human Rights: Poland” (Geneva: United Nations, 2017), A/HRC/WG.6/27/POL/2.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/040/37/PDF/G1704037.pdf?OpenElement>

Human Rights Council, “Compilation on India Report of the Office of the United Nations High Commissioner for Human Rights”, (Geneva: United Nations, 2017), A/HRC/WG.6/27/IND/2, para.61.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/039/83/PDF/G1703983.pdf?OpenElement>.

Human Rights Council, “Compilation on South Africa Report of the Office of the United Nations High Commissioner for Human Rights: South Africa” (Geneva: United Nations, 2017),A/HRC/WG.6/27/ZAF/2.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/035/70/PDF/G1703570.pdf?OpenElement>.

Human Rights Council, “Compilation prepared by the office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the annex to Human Rights Council Resolution 5/1: Poland” (Geneva: United Nations, 2008), A/HRC/WG.6/1/POL/2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/122/55/PDF/G0812255.pdf?OpenElement>.

Human Rights Council, “Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21: Poland” (Geneva: United Nations, 2012), A/HRC/WG.6/27/POL/2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/040/37/PDF/G1704037.pdf?OpenElement>.

Human Rights Council, “Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brazil” (Geneva: United Nations 2012), A/HRC/WG.6/13/BRA/2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/124/65/PDF/G1212465.pdf?OpenElement>.

Human Rights Council, “Compilation prepared by the Office of The High Commissioner for Human Rights, in accordance with paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1 India” Geneva: United Nations, 2008), A/HRC/WG.6/1/IND/2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/124/65/PDF/G1212465.pdf?OpenElement>.

Human Rights Council, “Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India”, (Geneva: United Nations, 2012), A/HRC/WG.6/13/IND/2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/129/79/PDF/G1212979.pdf?OpenElement>.

Human Rights Council, “Compilation Report of the Office of the United Nations High Commissioner for Human Rights: Brazil” (Geneva: United Nations, 2017), A/HRC/WG.6/27/BRA/2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/129/79/PDF/G1212979.pdf?OpenElement>.

Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: South Africa” (Geneva: United Nations,

2017),A/HRC/WG.6/27/ZAF/1.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/129/79/PDF/G1212979.pdf?OpenElement>.

Human Rights Council, “National Report Submitted in Accordance with Paragraph 15(A) of the annex to Human Rights Council Resolution 5/1: Poland” (Geneva: United Nations, 2008), A/HRC/WG.6/1/POL/1.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/114/18/PDF/G0811418.pdf?OpenElement>.

Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Poland”, (Geneva: United Nations, 2012), A/HRC/WG.6/13/POL/1.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/117/42/PDF/G1211742.pdf?OpenElement>-

Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Poland”, A/HRC/WG.6/27/POL/1.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/041/49/PDF/G1704149.pdf?OpenElement>.

Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brazil” (Geneva: United Nations, 2012), A/HRC/WG.6/13/BRA/1.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/18/PDF/G1211618.pdf?OpenElement>.

Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brazil” (Geneva: United Nations, 2017), A/HRC/WG.6/27/BRA/1.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/046/89/PDF/G1704689.pdf?OpenElement>.

Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India” (Geneva: United Nations, 2017) A/HRC/WG.6/27/IND/1.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/044/56/PDF/G1704456.pdf?OpenElement>.

Human Rights Council, “National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: South Africa” (Geneva: United nations 2022), A/HRC/WG.6/41/ZAF/1.<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/468/07/PDF/G2246807.pdf?OpenElement>.

Human Rights Council, “National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: Poland”, (Geneva: United Nations, 2022), A/HRC/WG.6/41/POL/1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/461/68/PDF/G2246168.pdf?OpenElement>.

Human Rights Council, “National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: Brazil” (Geneva: United Nations, 2022), A/HRC/WG.6/41/BRA/1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/476/12/PDF/G2247612.pdf?OpenElement>.

Human Rights Council, “National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: India” (Geneva: United Nations, 2022) A/HRC/WG.6/41/IND/1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/463/20/PDF/G2246320.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: South Africa” (Geneva: United Nations 2012) A/HRC/21/16. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/151/29/PDF/G1215129.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: South Africa”, (Geneva: United Nations, 2022) A/HRC/52/17. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/611/19/PDF/G2261119.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: South Africa” (Geneva: United Nations, 2017), A/HRC/36/16, 20 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/216/43/PDF/G1721643.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Poland” (Geneva: United Nations, 2017), A/HRC/36/14 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/194/27/PDF/G1719427.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Poland” (Geneva: United Nations, 2008), A/HRC/8/30, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/89/PDF/G0813689.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Poland” (Geneva: United Nations, 2012), A/HRC/21/14. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/150/70/PDF/G1215070.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Poland” (Geneva: United Nations, 2017), A/HRC/36/14. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/194/27/PDF/G1719427.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Poland”, (Geneva: United Nations, 2022), A/HRC/52/15. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/611/66/PDF/G2261166.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Brazil” (Geneva: United Nations, 2012), A/HRC/21/11. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/151/15/PDF/G1215115.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Brazil”, (Geneva: United Nations, 2022), A/HRC/52/14. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/611/60/PDF/G2261160.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Brazil” (Geneva: United Nations, 2017), A/HRC/36/118. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/194/15/PDF/G1719415.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: India” (Geneva: United Nations, 2012), A/HRC/21/10, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/151/08/PDF/G1215108.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: India” (Geneva: United Nations, 2017), A/HRC/36/10, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/193/56/PDF/G1719356.pdf?OpenElement>.

Human Rights Council, “Report of the Working Group on the Universal Periodic Review: India” (Geneva: United Nations 2022), A/HRC/52/11. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/606/71/PDF/G2260671.pdf?OpenElement>.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the UN General Assembly on 6 October 1999, A/RES/54/4.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/774/73/PDF/N9977473.pdf?OpenElement>.

See Resolution 5/1, UN Doc A/HRC/RES/5/1.

[https://ap.ohchr.org/documents/dpage\\_e.aspx?si=a/hrc/res/5/1](https://ap.ohchr.org/documents/dpage_e.aspx?si=a/hrc/res/5/1).

UN General Assembly, *Human Rights Council : resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251, available at: <https://www.refworld.org/docid/4537814814.html> [accessed 8 February 2023].

UN General Assembly, *Human Rights Council: resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251, available at: <https://www.refworld.org/docid/4537814814.html> [accessed 8 February 2023].

UN General Assembly, *Human Rights Council: resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251, available at: <https://www.refworld.org/docid/4537814814.html>

United Nations General Assembly, "Resolution 16/21, paras16 " accessed March 11, 2023, <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>.

Universal Declaration of Human Rights, GA Res 217 A (III), UN GAOR, 3rd session, 183rd Plenary meeting, UN Doc A/RES/217A (III) (10 December 1948). [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_217\(III\).pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_217(III).pdf).

## **Websites**

"Introduction and Brief History," UPR Info, accessed March 11, 2023, <https://www.upr-info.org/en/upr-process/what-upr/introduction-brief-history>.

Philippine Commission on Women, "Reporting to CEDAW," accessed February 9, 2023, <https://pcw.gov.ph/reporting-to-cedaw/>.

United Nations Human Rights Council, "Report on the Implementation of Universal Periodic Review Recommendations," August 8, 2022,

[https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/2022-08-08/UPR-VF-Implementation\\_full.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/2022-08-08/UPR-VF-Implementation_full.pdf) (accessed March 12, 2023).

United Nations Human Rights Council, "Trust Fund for the Universal Periodic Review: Implementation," accessed March 12, 2023, <https://www.ohchr.org/en/hr-bodies/upr/trust-fund-implementation>.

United Nations Human Rights Council, "Trust Fund for the Universal Periodic Review," accessed March 12, 2023, <https://www.ohchr.org/en/hr-bodies/upr/trust-fund-implementation>.

United Nations Human Rights Council, "Voluntary Fund for Financial and Technical Assistance in the Implementation of Universal Periodic Review Recommendations: Participation of States in 2022," accessed October 14, 2022, <https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/fund/2022-10-14/VoluntaryFundParticipation-UPR.pdf>.

United Nations Office of the High Commissioner for Human Rights. "UPR Funds." <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRFunds.aspx>. Accessed on March 1, 2023.

Ban Ki-moon, "Statement by the Secretary-General to the First Session of the Human Rights Council," United Nations, June 19, 2007, accessed March 1, 2023, <https://www.un.org/sg/en/content/sg/statement/2007-06-19/statement-secretary-general-first-session-human-rights-council>.