PhD thesis

The institutional turn of international human rights law and its reception by state administrations in developing countries

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Summary

The thesis explores the institutional turn of international human rights law and its reception by state administrations in developing countries. The remarkable propagation of institutional innovations across states since the 1990s has led to the emergence of public "human rights administrations", which constitute a complex and disputed, yet important, field for academic enquiry. International law too has been transformed, going beyond the expression of norms and the imposition of boundaries onto states' activities. It now increasingly prescribes institutional prerequisites necessary to enhance state capacities to operationalise human rights commitments.

The overarching objective of this research is to present a critical reflection on the significance of the institutional turn of international human rights law. To do this, I examine and answer three research questions:

(1) What is the contribution of law to the prescription of national institutional features?
(2) How do these prescriptions connect with wider institutional models and redefine strategies for the advancement of human rights?
(3) What are the effects of these prescriptions on public administrations in developing countries?

Part I defines the field of enquiry and the conditions of its investigation. The research relies on a two-fold postulate. First, this evolution cannot be understood in isolation from the wider normative disputes over ideal models for public administrations, with *new governance* currently serving as a dominant ideology. Second, these institutional arrangements must be understood within the context of their diffusion and practice, in particular how they transform, and are transformed by, national public administrations. Accordingly, the research takes a distinctly socio-legal approach.

Parts II, III and IV each investigate one research question.

Part II analyses the legal foundations of the United Nations' models for 'national human rights systems', with a focus on the institutional techniques and actors held to enhance coordination in such systems. It focuses on national human rights action plans, national coordination mechanisms and focal points within government, and national human rights institutions. The analysis demonstrates how these institutional models, save for the steady reinforcement of the legal corpus on NHRIs, constantly undergo renewals. There is a tendency to create new models alongside failing ones, as well as to develop guidance for each institutional arrangement as a self-contained corpus of prescriptions. The resulting legal fragmentation is an irony, given that each of the institutional arrangement aims at enhancing connectivity within national human rights systems. A central parameter at the core of institutional prescriptions relates to the trust placed in certain institutional processes and the assumption that they carry with them benefits – for instance the belief that participatory processes lead to consensus. Such beliefs are grounded on two foundations: the institutional and personnel

experience of rolling out these models in practice, and the confidence in specific *theories* of public administration, with new governance acting as a dominant ideology.

Part III seeks to qualify the nature of the institutional turn of international human rights law,. taking the 2006 Convention on the Rights of Persons with Disabilities as a legal case-study epitomising the codification of institutional prescriptions in one single framework. It demonstrates how neo-Weberian principles permeate the Convention in powerful yet non-linear ways, and the resolute attempt by norm entrepreneurs to extrapolate a model for national human rights systems, valid beyond the Convention, that privileges institutional and process-oriented techniques inspired from new governance. This tendency is thwarted by a maximalist interpretation of the principle of independence of monitoring frameworks and by a lop-sided jurisprudence of the CRPD Committee. Drawing on the concept of "neoliberal bureaucratisation", if show how even those inconsistencies lead to further neo-Weberian bureaucratisation of the human rights field. Part III identifies potential pitfalls and dangers that (uncritically) pursuing this road may entail – for instance the risk that institutional processes might become an end in and of themselves, as well as the radical redefinition of the role of norms, courts and litigation this entails. It alerts that international human rights law may become a powerful conveyor, yet at the same time a victim, of new governance principles.

Part IV empirically explores the reception of such models by those they seek to influence, to assess whether the models' intended effects, or on the contrary the potential dangers identified in Part III, materialise in practice. Focusing on two case-studies, Burkina Faso and Nepal, the findings confirm that the focus on institutional reforms leads to processes taking priority over rights enjoyment, without necessarily creating the new forms of democracy and shared law-making that international model designers, and in particular advocates of new governance approach to human rights, foresee. The findings show how pitfalls of institutional paths, for reasons that are in part specific to developing contexts, may be exacerbated by endogenous factors leading to congested institutional landscapes rather than coordination. In addition, cycles of institutional reinforcement and mandate revisions may be utilised by actors to escape responsibility, supported by public servants through various dynamics. Lastly, international donors tend to condone those practices. Analysing the role that law plays within these process, Part IV points to the need to reinstate attention to political will and normative authority, notably through justiciability and legal avenues.

Finally, in **Part V**, based on the earlier analyses, the thesis draws conclusions as regards the general question of the significance of the institutional turn of international human rights law. The thesis confirms that international human rights law is at a crossroad. It has sought to lay bare some core ambiguities of the new governance-inspired institutional track. It shows that while, in itself, this approach challenges traditional approaches to human rights in ways that are under-estimated, the biggest challenge lies in the fact that such reforms participate to create complex *bureaucratic spaces* that rarely correspond to original planned *systems*, as the ways they are transported and received greatly complicates their impact. The thesis is a contribution to better understanding the pitfalls and potentially perverse effects that such transformations entail, notably for the future of international human rights law. In doing so, it has shown the need to reintegrate legal obligations and justiciability as indispensable corollaries of administration action. The thesis outlines the new path that could be taken, and points towards outstanding questions and areas of research, on which a future research agenda could be built.