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The Role of Civil Society Organisations in Realising International Human Rights: A Case Study on the American Civil Liberties Union and Universal Periodic Review

Melisa Oleschuk

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Supervisors:
Dr Alice Storey, Director of Studies
Professor Sarah Cooper, Supervisor

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Abstract

The United Nations' (UN) Universal Periodic Review (UPR) facilitates an interactive dialogue among UN Member States, who peer-review each other's human rights records and issue Recommendations for improvements. These Recommendations aim to ensure the State-under-Review's (SuR) compliance with international human rights (IHR) law, irrespective of signatory status. The UPR process accepts submissions from civil society organisations (CSOs) – referred to as 'stakeholders' – who are well-placed to report on the realities of the human rights situation in the SuR. The information and recommendations provided by CSOs are synthesised into a summary document that informs the review. CSOs, therefore, are seen as occupying a paradoxical role within the process. They are formally excluded from the interactive dialogue, yet their contributions often influence the substance of Member State Recommendations. (McMahon et al., 2013) No existing scholarship explains the strategies that condition CSOs' visibility and uptake.

This research addresses that gap in the scholarship through a case study of the American Civil Liberties Union (ACLU) and its Campaign for Smart Justice, focusing on the United States of America's (US) reviews in 2010, 2015, and 2020. A new socio-legal methodology – the Framework for Rights, Advocacy, Mapping, and Evaluation (FRAME) – is pioneered to systematically map ACLU recommendations against IHR standards and corresponding Member State Recommendations. The resulting dataset permits both vertical and horizontal analysis of how CSO framing interacts with IHR law, the UPR's institutional design, and domestic advocacy.

The findings suggest an interpretive three-pronged model of good practice: (1) identity and expertise, where CSOs manifest Resolution 5/1's "credible and reliable" clause, (2) IHR alignment, which confirms the UPR's legal jurisdiction over an issue, and exposes gaps in the law, and (3) domestic specificity, where a CSO explicitly identifies a domestic actor to be responsible for implementation. Together, they illustrate how strategic framing can reinforce the Boomerang effect (Keck & Sikkink, 1998) of the UPR, enhancing both the CSO impact and the prospects of translating IHR norms into domestic legal reform.

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List of Terms:

ACLU	American Civil Liberties Union
CAT	Convention against Torture
Commission	Commission on Human Rights
Compilation Report	Compilation of UN Information
CSO	Civil Society Organisation
GONGOs	Government-Organised Non-Governmental Organisations
IHR	International Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
Recommendation	Member State Recommendation issued at the UPR
recommendation	Stakeholder recommendation submitted by a CSO
RUDs	Reservations, Understandings, and Declarations
SCOTUS	Supreme Court of the United States
Stakeholder Report	Summary Stakeholder Report

State	Sovereign State (i.e. UN Member States)
state	Federated or sub-national entities
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations' General Assembly
UNHRC	United Nations' Human Rights Council
UPR	Universal Periodic Review
US	United States of America

Part I: Context

This thesis has three aims. First, it examines how civil society organisations (CSOs) can strategically frame their stakeholder recommendations to influence Member State Recommendations at the Universal Periodic Review (UPR). Inspired by Keck and Sikkink's idea of the "boomerang effect," and leveraging the political weight of Member State Recommendations, CSOs can potentially reinforce efforts to translate international human rights (IHR) law into domestic legal change. It uses the American Civil Liberties Union (ACLU) and its Campaign for Smart Justice as a case study to collect and analyse data from the United States' (US) UPRs in 2010, 2015, and 2020, and address what advocacy strategies affect CSO influence on Member State Recommendations.

Second, it introduces and operationalises a novel method – coined the Framework for Rights, Advocacy, Mapping, and Evaluation (FRAME) method – as a structured, analytical approach to evaluating CSO recommendations' impact at the UPR. Finally, after applying this method, it proposes a data driven and theoretically grounded interpretive model of good practice for CSO impact on Member State Recommendations. This model comprises three prongs: (1) CSO identity and expertise, (2) IHR alignment, and (3) domestic realities.

Therefore, this thesis is arranged as follows: chapter one provides the introduction to this thesis. It details the research problem addressed throughout. Chapter two establishes the IHR framework, and the conception of civil society as employed through this thesis. It also details the six civil society theories used in Part II. These are: liberalism, social capital, cosmopolitanism, multiculturalism, effective governance, and backward-forward infiltration. These are applied to CSOs in the context of the UPR for the first time in this thesis. Chapter three introduces the case study of the ACLU, its Campaign for Smart Justice, and the UPR.

Chapter One: Introduction

Every four-and-a-half years, each United Nations (UN) Member State [1] is subject to a comprehensive peer review of its human rights record. This process, known as the Universal Periodic Review (UPR), was established by the UN General Assembly (UNGA) in its 2006 Resolution 60/251,[2] and operationalised by the UN Human Rights Council (UNHRC) in 2007 through UNHRC Resolution 5/1.[3] It was subsequently implemented for the first time in 2008.[4]

1.1. The Universal Periodic Review

The UPR represents a significant reform to the UN. Initiated in 2005 by then UN Secretary-General Kofi Annan, who sought to codify human rights as one of the three pillars of the UN,[5] the UPR marks an unprecedented approach to international human rights (IHR) monitoring.[6] The mechanism was designed to complement existing UN Treaty Bodies' work[7] and strengthen the IHR system through universal coverage and State-led peer review.

A central tenet of the UPR is its universality, which is expressed in two ways. First, its universal reach: all 193 UN Member States undergo the comprehensive peer-review of their human rights

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[1] Throughout this thesis, *State* (capitalised) refers to a sovereign nation, in accordance with international law usage. Conversely, *state* (lowercase) refers to federated or sub-national entities such as the US states. This capitalisation distinction is maintained throughout for clarity, particularly when discussing federalism. A similar convention is adopted in discussing *Recommendations* (capitalised) and *recommendations* (lowercase), where the former refers to official Member State Recommendations received at the UPR, and the latter refers to those made by CSOs during any of their advocacy. Furthermore, owing to the case study and the documents relied upon, this thesis employs both British and American English spelling conventions. These are used interchangeably, without further notation.

[2] G.A. Res. 60/251, ¶ 5(e), U.N. Doc. A/RES/60/251 (Mar. 15, 2006) (Henceforth "UNGA Resolution 60/251").

[3] Human Rights Council Res. 5/1, ¶¶ 1–18, U.N. Doc. A/HRC/RES/5/1 (June 18, 2007) (Henceforth "Resolution 5/1").

[4] Elvira Domínguez-Redondo, *The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session*, 7 CHINESE J. OF INT'L L. 721, 722 (2008); Sangeeta Shah & Sandesh Sivakumaran, *Complementing UN Human Rights Efforts Through Universal Periodic Review*, 16 J. HUM. RTS. PRACTICE 794, 797 (2024).

[5] Together with security and development. Roland Chauville, *The Universal Periodic Review's First Cycle: Successes and Failures*, *in* HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 87, 89 (Hilary Charlesworth & Emma Larking eds., 2014). *See also*, UN Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, 59th Sess., UN Doc. A/59/2005 (21 March 2005), ¶182 (Henceforth "In Larger Freedom").

[6] Jane K. Cowan & Julie Billaud, *Between Learning and Schooling: The Politics of Human Rights Monitoring at the Universal Periodic Review*, 36 THIRD WORLD Q. 1175, 1175–6 (2015); Anze Burger, Igor Kovac & Stasa Tkalec, *(Geo)Politics of Universal Periodic Review: Why States Issue and Accept Human Rights Recommendations?*, 17 FOREIGN POL'Y ANALYSIS orab029 (2021); Kathryn McNeilly, *The Universal Periodic Review as an Evolving Process: Examining the Path of Development*, *in* HUMAN RIGHTS AND THE UN UNIVERSAL PERIODIC REVIEW MECHANISM: A RESEARCH COMPANION 13, 15 (Damian Etone, Amna Nazir, & Alice Storey eds., 2024).

[7] Resolution 60/251, ¶ 5(e).

records, with the Charter-safeguarded requirement of equal treatment and scrutiny, regardless of geopolitical status.[8] Second, its universal scope: the UPR is the first mechanism in which all human rights can be discussed, regardless of ratification status of the relevant instruments.[9] Yet, this universality is not reflected in participation.

1.2. Civil Society Engagement at the UPR

The involvement of civil society organisations (CSOs) in the UPR was a significant concern during the negotiations of the UPR's modalities.[10] A compromise was reached that prohibited CSOs from formally engaging during the interactive dialogue – during which the State-under-Review (SuR) receives its Member State Recommendations – but permitted them to be official stakeholders in the process.[11] Despite initial disappointment, most observers now agree this was for the best for three reasons: it prevented a "hierarchy of recommendations," ensuring the SuR are not intimidated to take the floor for questioning, and it reduced the risk of diplomacy-motivated complacency on behalf of the Recommending States.[12] Instead, stakeholders formally engage with the UPR through written advocacy in the form of stakeholder submissions,[13] which the Office of the High Commissioner for Human Rights (OHCHR) summarise, condensing them into a 10-page "summary stakeholder report."[14] Not all stakeholder submissions are included, however.

As the basis of the review is officially restricted to information contained in three reports – the national report, compilation report, and the stakeholder report – the role of CSOs is inherently mediated. Their voices are filtered through an elusive drafting process,[15] which has been

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[8] U.N. Charter art. 2, ¶ 1.
[9] Chauville, *supra* note 5 at 89.
[10] *Id.* at 103; Allehone M. Abebe, *Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council*, 9 HUM. RTS. L. REV. 1, 2 (2009); Paul G. Lauren, *"To Preserve and Build on Its Achievements and to Redress Its Shortcomings": The Journey from the Commission on Human Rights to the Human Rights Council*, 29 HUM. RTS. Q. 307, 332 (2007).
[11] Chauville, *supra* note 5 at 103.
[12] *Id.*
[13] As well as speaking at the Adoption stage, if they hold ECOSOC status.
[14] Henceforth, the "stakeholder report."
[15] Julie Billaud, *Keepers of the Truth: Producing 'Transparent' Documents for the Universal Periodic Review*, *in* HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 63, 77 (Hilary Charlesworth & Emma Larking eds., 1 ed. 2015);

documented as a largely unregulated system, bound by strict bureaucratic and diplomatic rules.[16] Their contributions are then reframed within the 10-page summary, competing with numerous other submissions for citation, to legitimise their work.[17] This institutional design safeguards State ownership of the process, but simultaneously places limits on CSO participation. This paradox lies at the heart of the UPR. As a mechanism founded on principles of universality and inclusivity, it restricts the direct engagement of the very actors who are typically most responsible for documenting and advancing human rights on the ground.

Research has demonstrated, however, that although the stakeholder input is indirect, it is not inconsequential. McMahon *et al* posits that stakeholder contributions have a tangible, albeit variable impact on Member State Recommendations.[18] Schokman and Lynch explain that effective stakeholder engagement reflexively legitimises UN human rights mechanisms and constructively contributes to States' "understanding of their" IHR obligations.[19] By using all available entry points for engagement, CSOs bring their expertise and knowledge of the human rights situation on the ground which subsequently maximises the effectiveness of the process.[20] Further, through "appropriately framed recommendations to the [SuR]," they are likely to produce an impact.[21] Consequently, if CSO engagement is to be understood within this competitive and highly pressurised environment, the notion of "impact" must be clearly defined.

See also, Elvira Domínguez-Redondo & Rhona Smith, *Searching for Recommendation Alignment Across UN Human Rights Bodies*, *in* HUMAN RIGHTS AND THE UN UNIVERSAL PERIODIC REVIEW MECHANISM: A RESEARCH COMPANION 113, 146 (Damian Etone, Amna Nazir, & Alice Storey eds., 2024); Alice Storey & Mark Eccleston-Turner, *Transparency, Accountability, and Legitimacy Within the UN Universal Periodic Review*, *in* HUMAN RIGHTS AT RISK: GLOBAL GOVERNANCE, AMERICAN POWER, AND THE FUTURE OF DIGNITY 25 (Salvador S.F. Regilme & Irene Hadiprayitno eds., 2022).

[16] Billaud, *supra* note 15.

[17] Chauville, *supra* note 5 at 103.

[18] Edward McMahon et al., *Universal Periodic Review: Do Civil Society Organization–Suggested Recommendations Matter?*, 19 GLOBAL GOVERNANCE 217 (2013).

[19] Ben Schokman & Phil Lynch, *Effective NGO Engagement with the Universal Periodic Review*, *in* HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 126, 126 (Hilary Charlesworth & Emma Larking eds., 2014).

[20] *Id.* at 130.

[21] *Id.* at 135.

1.3. Gaps in the Literature

In this thesis, the term "impact" is narrowly defined as the extent to which CSO advocacy is reflected in relevant Member State Recommendations. No assessment is made of the quality of those Recommendations, nor is causation determined. Instead, it proceeds on the assumption that CSOs come to the UPR with three interlaced motivations: first, to legitimise their advocacy through recognition by the OHCHR and/or Member States; second, to influence the substance of Member State Recommendations in line with their advocacy issues (i.e., the issues they are making recommendations about); and third, to use these Recommendations as tools for domestic advocacy. Equipped with Member State Recommendations, CSOs become better positioned to translate IHR standards into domestic legal reform. In turn, this enhances State compliance with international obligations.

This dynamic reflects Keck and Sikkink's "boomerang effect," whereby CSOs seek domestic leverage through international allies and mechanisms, which in turn redirect pressure back onto the domestic level.[22] In context, the Member State Recommendations function as a vehicle for this effect. International recognition of a CSO's concerns can be re-directed as a legitimising tool for domestic advocacy. The tension between opportunity and constraint defines the research problem of this thesis: CSOs must employ advocacy strategies that maximise this boomerang dynamic, while remaining within the institutional boundaries of the UPR.

To address this, the relationship between stakeholder and Member State recommendations must be explored. Contemporaneously, this has only been mapped once, broadly concluding there is an observable and significant correlation between the two, which in turn contributes to the further legitimisation of the UPR process. [23] However, there is no scholarly work establishing an understanding of this type of correlation, particularly as it pertains to the underlying causes that may facilitate its existence.[24]

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[22] MARGARET KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS 12–3 (1998).
[23] McMahon et al., *supra* note 18.
[24] Here it must also be noted that although this thesis does not have a chapter dedicated to a literature review, the author critically evaluates relevant literature throughout.

This thesis is positioned within this lacuna, making three contributions. One, it examines how CSOs can strategically frame their stakeholder recommendations to potentially influence recommending Member States at the UPR. In doing so, CSOs enhance the potential impact of Member State Recommendation for subsequent domestic advocacy, leveraging the perceived legitimacy of the UPR to translate IHR law into domestic legal reforms. Two, it introduces and operationalises a novel method – the FRAME Method – as a structured, analytical approach to evaluating CSO impact and strategy at the UPR. Three, it proposes a data driven and theoretically grounded, interpretive model of good practice for CSO impact at the UPR. This model is made up of three Prongs: (1) CSO identity and expertise – suggesting CSOs must demonstrate consistency in their identity in its advocacy to the OHCHR in order to manifest Resolution 5/1's credible and reliable provision. (2) Mapping to the IHR legal framework, where CSOs must situate their issues within existing IHR instruments. (3) Domestic realities, where CSOs – by virtue of their domestic advocacy – inform the Member States on the domestic legal and political structures. When all three Prongs are present, the data indicates a higher correlation between ACLU recommendations and Member Recommendations.

1.4. Research Questions and Objectives

This study is guided by the following research questions:

1. In what ways can CSOs strategically frame their stakeholder recommendations to maximise the likelihood of uptake in Member State Recommendations?
2. How does the CSO's identity, expertise, and advocacy strategy influence the visibility and reception of its recommendations within the UPR process?
3. To what extent does alignment with the recognised IHR framework improve the likelihood that CSO priorities are reflected in Member State Recommendations?
4. How does the legal structure of the US condition the design, clarity, and uptake of CSO recommendations within the UPR?

Together, these questions seek to confirm a correlation between CSO and Member State Recommendations but goes further to interrogate the factors that facilitate it. These questions are

addressed through the development and application of the FRAME Method which is further explored in Part II of this thesis, through which the author pilots a case study of the American Civil Liberties Union (ACLU).

1.5. Case Study

To answer these questions, this thesis adopts a case study approach. Therefore, throughout, the discussion is situated within the jurisdictional realities of the United States of America (US). The US provides a particularly rich and complex site for study. As a global superpower, its global personality is often characterised by its ambivalence towards IHR law; often referred to as American Exceptionalism.[25] Furthermore, its federated system further complicates the domestic implementation of international obligations,[26] and it is a State that consistently receives high levels of engagement during its reviews.[27] These features make it a compelling jurisdiction in which to examine how CSOs seek to influence the UPR process.

Within this context, the ACLU is selected as the focal case study. The ACLU is one of the country's most prominent rights-based CSOs, with a century-long history of shaping civil liberties through litigation. A bastion for civil rights, the ACLU is known for its defence of, and contributions to, the Bill of Rights. However, since Cycle 1 in 2010, it has consistently expanded its advocacy into the realm of international law, submitting a report for the US UPR every Cycle. In turn, this confirmed the selection for the purposes of this thesis.

As a defender of the Bill of Rights, the ACLU cannot be solely attached to any single advocacy area; however, due to practical restraints, a campaign needed to be identified to anchor the thematic scope of the research. This materialised into the section of the Campaign for Smart Justice ("the

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[25] Michael Ignatieff, *Introduction: American Exceptionalism and Human Rights*, *in* AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS 1 (2005); Harlod H. Koh, *On American Exceptionalism*, 55 STAN. L. REV. 1479 (2003); Anu Bradford & Eric A. Posner, *Universal Exceptionalism in International Law*, 52 HARV. INT'L L.J. 1 (2011); Martha F. Davis, *Institutionalizing Human Rights in the United States: Advocacy for a National Human Rights Institution*, 23 J. OF HUM. RTS. 134 (2024).
[26] Catherine Powell, *Dialogic Federalism: Constitutional Possibilities for Incorporation of Human Rights Law in the United States*, 150 U. PA. L. REV. 245 (2001); Johanna Kalb, *Dynamic Federalism in Human Rights Treaty Implementation*, 84 TULANE L. REV. 1025 (2010).
[27] Table 1.

Campaign"), which focuses on mass incarceration.[28] Importantly, the domestic reform agenda of the Campaign can be mapped to the IHR framework. Through this, it becomes possible to conduct an in-depth analysis of how one prominent CSO operates within the IHR framework at the UPR, while navigating a federal domestic context.

1.6. Theoretical Frameworks

To map and examine CSO advocacy behaviour, civil society theory is adapted to serve both analytical and interpretive functions. To do this, close reading of the ACLU's institutional history and advocacy materials is conducted, from which, two things are established. First, an era structure of the ACLU's advocacy history emerges. Second, from this era structure, recurring patterns in advocacy can be identified, from which six theoretical strands can be seen:

- Liberalism (classical and contemporary)
- Social capital theory
- Cosmopolitanism
- Multiculturalism
- Effective governance
- Backward-forward infiltration

To source these, a close familiarisation with the ACLU materials, including litigation strategies, public campaigns and international submissions, helped develop an understanding of the organisation's ideological orientation and institutional mandate.

A literature review of civil society theory revealed these six theories most completely capture the ACLU's advocacy. Overwhelmingly, liberalism provides the ideological foundation of the ACLU's rights-based agenda, tracing back to its founding and core mission statement.[29] Similarly, social capital theory, which centres on the trust, networks and citizenship to strengthen democratic governance, captures the organisation's efforts to establish networks across the US, including

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[28] ACLU, *ACLU's Smart Justice Campaign Receives New Major Funding for Criminal Justice Reform*, AMERICAN CIVIL LIBERTIES UNION (Mar. 2022), https://www.aclu.org/press-releases/aclus-smart-justice-campaign-receives-new-major-funding-criminal-justice-reform.

[29] American Civil Liberties Union, *Mission Statement*, AMERICAN CIVIL LIBERTIES UNION (ACLU) MISSION STATEMENT (n.d.), https://www.aclu.org.

resident-driven coalitions and organisational affiliations. Cosmopolitanism stresses global citizenship, where all individuals are members of the same global moral and political community. The ACLU leverages international frameworks like the UPR and Inter-American Court of Human Rights (IACtHR) to spotlight domestic civil rights concerns. Though the author recognises here that the ACLU seldom explicitly frames the concerns as violations of a shared global norms, this research purports that this is done implicitly. Next, multiculturalism focuses on civil society as a space of diverse cultural identities that must be recognised, protected, and integrated within legal and political systems. Since its inception, the ACLU has centred its advocacy on racial, religious, and gender justice, and has since expanded. Controversially for the times, the ACLU has consistently resisted assimilationist or majoritarian legal norms through landmark legal victories and campaigns.[30] Further, effective governance asserts that civil society's principal role is in safeguarding the rule of law, representing the interests of the people in policymaking and securing institutional accountability. The ACLU had evolved beyond its initial focus on litigation to policy advocacy from the 1970s, shifting its focus to lobbying, public education, and working with policymakers to advance civil liberties.[31] Finally, backward-forward infiltration conceptualises civil society as a dynamic actor capable of *infiltrating* State institutions both retrospectively and prospectively.[32] The cyclical dynamic positions CSOs as agile, boundary-crossing agents capable of shaping governance from within and without. In the context of the ACLU, this explains the CSO's ability to oscillate between litigation, policy engagement, and public advocacy. The most prominent example of this behaviour is its Campaign for Smart Justice, which sought to reduce the US prison population by 50% by 2025. The ACLU draws on its embedded policy experience (backward infiltration) and uses data and litigation to inform civil society mobilisation (forward infiltration). Rather than assuming a one-size-fits-all model of civil society, this exercise acknowledges that CSOs are multi-dimensional actors. Building on this, the author inductively

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[30] For example, the ACLU filed an amicus brief supporting the Lovings in *Loving v. Virginia,* 388 U.S. 1 (SCOTUS 1967) which challenged the legal ban on interracial marriage. The ACLU is also leading the fight to end classroom censorship laws that censored education on systemic sexism and racism, obtaining an injunction to block a Florida state from enforcing the education provisions of the "Stop W.O.K.E. Act.", ACLU of Minnesota, *What the Fight Against Classroom Censorship Is Really About*, ACLU OF MINNESOTA (Jul. 28, 2022), https://www.aclu-mn.org/en/news/what-fight-against-classroom-censorship-really-about.. The ACLU also shared a majority victory with the NAACP in the landmark *Brown v. Board of Education,* 347 U.S. 483 (1954) decision that declared segregated schools in violation of the Fourteenth Amendment.

[31] Emily Zackin, *Popular Constitutionalism's Hard When You're Not Very Popular: Why the ACLU Turned to Courts*, 42 L. & SOC'Y REV. 367, 374 (2008); SAMUEL WALKER, IN DEFENCE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU 19 (1990).

[32] Steven Klein & Cheol-Sung Lee, *Towards a Dynamic Theory of Civil Society: The Politics of Forward and Backward Infiltration*, 37 SOCIOLOGICAL THEORY 62 (2019).

develops a novel typology that provides the lens through which CSO engagement at the UPR can be better understood.

1.6. Novel Methodological Approach - The FRAME Matrix

This thesis adopts a socio-legal approach to IHR law, recognising that legal norms operate within political, cultural, and institutional contexts. To analyse CSO engagement with the UPR, this thesis introduces a novel methodological approach: the Framework for Rights, Advocacy, Mapping, and Evaluation (FRAME) Method. This novel, multi-phased approach has been developed specifically for this thesis, but can be replicated for other CSOs, campaigns, and international review mechanisms.

Through this layered structure, the FRAME Method facilitates both vertical and horizontal analysis of CSO submissions to the UPR, revealing how advocacy themes, legal provisions, and institutional responses intersect. Vertically, the method allows for trends within a single dimension to be identified, for example, in thematic areas or legal instruments. Horizontally, it allows for the cross-referencing of stakeholder recommendations against IHR law, campaign themes, and State responses. This approach draws from matrix analysis to map the interplay between CSO advocacy, IHR law, and Recommendations made at international review bodies, offering a triangulated approach for evaluating strategic alignment and potential influence.[33] The FRAME Method is presented in a three-phase process: (1) matrix groundwork, (2) data collection, and (3) analysis.

A three-pronged interpretive model of good practice emerges from the analysis of ACLU recommendations using the FRAME Matrix. Prong One is the *CSO Identity and Expertise*, which finds that consistency in CSO identity – particularly where rooted in liberalism - and leveraging CSO expertise, positively impacts the visibility of CSO recommendations. The second prong is the *IHR Framework*, focuses on the legitimacy of the issue raised within the scope of the UPR, underscoring the importance of alignment to recognised IHR law, including both binding treaties

[33] Edward Groenland, *Employing the Matrix Method as a Tool for the Analysis of Qualitative Research Data in the Business Domain*, SSRN (2014); Pat Bazeley, *Analysing Qualitative Data: More Than "Identifying Themes,"* 2 MALAYSIAN J. OF QUAL. RESEARCH 6 (2009); Susana Verdinelli & Norma I. Scagnoli, *Data Display in Qualitative Research*, 12 INT'L OF QUALITATIVE METHODS 359 (2013).

and soft law instruments. Prong 3, the *Domestic Framework* emphasises jurisdictional clarity, particularly when discussing federated systems like the US, by introducing the concept of 'federalism-conscious' recommendations. Though presented as a three-part model, each component can be operationalised independently, however, the data suggests that the cumulative impact of all three significantly enhances the likelihood of CSO recommendations mapping to actionable Member State Recommendations.

1.7. Structure of the Thesis

This thesis is divided into three parts. Part I conceptualises the notion of CSOs and lays the contextual foundation for understanding how they engage with the UPR. Chapter two introduces the concept of civil society, with a particular focus on its relationship with IHR law. It also introduces the author's original categorisation of six civil society theories and explores the role CSOs play in domestic and international advocacy. With these foundations established, chapter three introduces the case study, detailing the UPR as a mechanism for CSO advocacy, and ACLU as a CSO with an overarching liberal identity, and long-standing domestic presence. In line with the objectives of this research, the ACLU is then framed through its downwards (domestic) and upwards (international) advocacy. This is done through the lens of its established Campaign for Smart Justice and therefore its engagement with the UPR on criminal justice issues. Critically, the chapter situates the ACLU's international work within the broader context of American Exceptionalism and the US' complex relationship with IHR law. This is essential to appreciate the findings detailed in Part III.

Part II exclusively details the author's novel methodological approach, introducing the analytical tool: Framework for Rights, Advocacy, Mapping, and Evaluation (FRAME). Chapter four introduces the three phases of the FRAME Method. Phase one outlines the FRAME *Methodology*, where the groundwork is detailed, including the rationales for analytical choices made in this research, proposed considerations for future iterations and the creation of the Microsoft Excel document that is the FRAME *Matrix*. Phase two details the design and application of the FRAME *Method*, which is the synthesis of data from the stakeholder submissions of the ACLU, including the triangulated coding and mapping across the FRAME Matrix. Phase three presents the analytical

framework used to generate the findings which produce the interpretive model of good practice presented in Part III. This three-prong model is presented in an inward-to-outward sequence, beginning at the internal CSO identity, then its alignment with IHR frameworks, and finally its capacity to navigate domestic legal implementation structures. These are explored in detail in chapters five ("the CSO prong"), six ("the IHR prong"), and seven ("the domestic prong"). Finally, chapter eight concludes by critically reflecting on the thesis' original contributions – the FRAME Method and the Model of Good Practice – considering the limitations of the study and sets out the author's ambitions for future research.

Chapter Two: Conceptualising the IHR Framework and Civil Society

As this thesis discusses IHR law from the context of the US, it first acknowledges the concept of American Exceptionalism.[34] Understanding how civil society operates within this exceptionalist framework is necessary to comprehend the barriers US civil society faces when engaging with the UPR and IHR law. Since 1945, the US has been a prominent figure in advancing human rights globally,[35] however it has simultaneously shown reluctance to adhere to those same international standards at home and in its foreign policies.[36] Ignatieff identifies three components of American Exceptionalism: exemptionalism,[37] double standards[38] and legal isolationism.[39] Based on these observations, the term "American Exceptionalism" refers to the US pursuing international agreements whilst seeking exemptions for itself and its citizens, applies different criteria in evaluating its actions and those of allies versus other nations and maintains unique legal traditions and principles while bypassing comprehensive involvement with global legal norms and standards.[40] An illustration of this dynamic can be found in the divergent approaches of US Administrations.[41]

Though the central focus of this research is the CSO component of international advocacy, an understanding of the US' complex relationship with IHR law is necessary to fully appreciate the terrain the ACLU must navigate to meaningfully influence Recommending States. The theory of

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[34] The concept of American Exceptionalism is in a perpetual struggle with individualism, democratic despotism, and materialism. As Ramrattan and Szenberg highlight, it remains a dynamic notion constantly facing challenges from economic trends, political shifts, war, race dynamics, historical factors, and cultural influences, LALL RAMRATTAN & MICHAEL SZENBERG, AMERICAN EXCEPTIONALISM: ECONOMICS, FINANCE, POLITICAL ECONOMY, AND ECONOMIC LAWS 2 (2019).
[35] Ignatieff, *supra* note 25; Louis Henkin, *The Universal Declaration and the U.S. Constitution*, 31 POLITICAL SCI. & POLITICS 512, 513–4 (1998) (The Universal Declaration for Human Rights is, in fact, indebted to the US Constitution's Bill of Rights and the SCOTUS decisions that interpreted and implemented the document).
[36] Ignatieff, *supra* note 25 at 1; *See also*, John Kane, *American Values or Human Rights? U.S. Foreign Policy and the Fractured Myth of Virtuous Power*, 33 PRESIDENTIAL STUD. Q. 772 (2003); Andrew Moravcsik, *The Paradox of U.S. Human Rights Policy*, *in* AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS 147 (Michael Ignatieff ed., 2005).
[37] Ignatieff, *supra* note 25 at 4. Exemptionalism refers to the practice by which a country, in this case, the United States, engages in international agreements and treaties while seeking exemptions from certain provisions or conditions that might apply to other parties. This often involves negotiating and signing agreements with the intention of safeguarding the interests of the country's citizens or specific practices.
[38] *Id.* at 7–8. Double standard refers to a situation where different criteria, rules, or expectations are applied to different parties or circumstances, resulting in unequal treatment or judgment. In the context of American exceptionalism, it means that the United States employs differing standards when evaluating its own actions or those of its allies, compared to how it judges other countries or adversaries.
[39] *Id.* at 8–11. Legal isolationism refers to the practice of a country, in this context the United States, maintaining a relatively closed and self-referential legal framework, often exhibiting reluctance to incorporate or engage with international legal standards and principles, and preferring to uphold its own legal traditions and values even when they diverge from those of other nations.
[40] Ignatieff, *supra* note 25.
[41] Ignatieff, *supra* note 25 at 5, 12, 14, 18, 22, 24.

American Exceptionalism posits that the US is a global leader in human rights, with unique qualities that empower the State to resist external human rights obligations.[42] Instead, it opts to preserve its individualism and constitutional governance.[43] Moreover, the US operates in a federal legal and political structure, where many subject areas addressed at the UPR are divided between the central and state governments. This duality, combined with the US' resistance to international influence, is reflected in the US' responses to Member State Recommendations. Often, it reframes international scrutiny as a matter of sovereign discretion or constitutional incompatibility, noting that the issues raised are beyond federal control.[44]

IHR law occupies a unique position in the intersections of law, politics, and civil society mobilisation.[45] Emerging during a period of expanding State powers and unprecedented atrocity, it sought to constrain this authority and codify a minimum standard of treatment for humans around the globe.[46] Despite the codification of these standards, their realisation is often dependent on political will, institutional design, and advocacy. As a result of this dual character, it is necessary to clarify how IHR law is understood within this thesis. Therefore, this chapter proceeds in four parts to conceptualise both the IHR framework and civil society within this research. First, it establishes the scope of the IHR framework, including both binding treaties and soft law. Second, it defines civil society and CSOs, outlining key theoretical approaches to their role. Third, it presents the author's original categorisation of these theories, adapted to examine the practical operations of CSOs. Finally, it situates all these concepts in the specific context of the criminal justice system, providing the foundation for the analysis discussed in later chapters.

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[42] *See Id.* at 2.
[43] Ignatieff, *supra* note 25 at 11.
[44] Koh, *supra* note 25 at 1499; Peter J. Spiro, *The New Sovereigntists: American Exceptionalism and Its False Prophets*, 79 THE NEW SOVEREIGNTISTS 9, 9 (2000); Bradford and Posner, *supra* note 25 at 3.
[45] *See e.g.,* BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS (2012) (showing how human rights treaties change outcomes through domestic political mobilisation, litigation, and advocacy. In other words, treaties are legal hooks that activate politics and CSOs); THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE (Thomas Risse, Stephen C. Ropp, & Kathryn Sikkink eds., 2013) (using a "Spiral Model" to explain how IHR norms interact with domestic politics and civil society to socialise States towards compliance); Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORGANIZATION 421 (2000) (discussing how hard and soft law reflects strategic political choices and shapes how actors use norms); Emile M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AJS 1373 (2005) (arguing that treaty commitments manifest into change when domestic and transnational mobilisation convert IHR law into political pressure).
[46] Johannes Morsink, *World War Two and the Universal Declaration*, 15 HUM. RTS. Q. 357 (1993); JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS ORIGINS, DRAFTING, AND INTENT 36–91 (1999).

2.1. International Human Rights Law

IHR law is traditionally conceived to be a system to influence and regulate State behaviour concerning human rights.[47] As a multidisciplinary field, the conception of IHR law is contested.[48] What human rights are, their function, and how they should be enforced in practice is highly debated. Though this thesis does not attempt a comprehensive literature review on human rights, it acknowledges two prominent conceptions as the basis for exploring the evolving role of CSOs within the IHR framework. These are (1) the political, and (2) the moral conceptions.[49] Combined, these capture the normative ideals and political realities of IHR, allowing for analysis of CSO advocacy within mechanisms like the UPR.

Championed by scholars like Beitz and Raz, the political conception situates IHR within an institutional and procedural context, deriving its legitimacy from UN treaties and soft law instruments, against which State conduct is assessed.[50] In this view, IHR law exists to primarily limit State sovereignty and justify external intervention in cases of abuse; making IHR the standard for domestic institutions and therefore a matter of international concern.[51] Moreover, Raz explains that IHR is dependent on a State's particular social and economic structures which mediates which rights are compatible or realistic in each context.[52] The author selects this view as it aligns closely with the practical workings of mechanisms like the UPR, which is the elected monitoring

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[47] *E.g.*, Harriet Moynihan, *The Vital Role of International Law in the Framework for Responsible State Behaviour in Cyberspace*, 6 J. OF CYBER POL'Y 394 (2021); Beth Simmons, *International Law and State Behavior: Commitment and Compliance in International Monetary Affairs*, 94 AM. POLITICAL SCI. REV. 819 (2000); Anne van Aaken & Betül Simsek, *Rewarding in International Law*, 115 AM. J. INT. LAW 195 (2021); Harland G. Cohen & Timothy Meyer, *International Law as Behavior: An Agenda*, *in* INTERNATIONAL LAW AS BEHAVIOR 1 (Harland G. Cohen & Timothy Meyer eds., 2021); Jessica Duggan-Larkin, *Can an Intergovernmental Mechanism Increase the Protection of Human Rights? The Potential of Universal Periodic Review in Relation to the Realisation of Economic, Social and Cultural Rights*, 28 NETHERLANDS Q. OF HUM. RTS. 548 (2010); Bahram Soltani, *Human Rights in International Law, State Responsibilities and Accountability Mechanisms: A Case Study of Iran*, 28 INT'L J. OF HUM. RTS. 883 (2024).

[48] *See E.g.*, THE LEGALIZATION OF HUMAN RIGHTS: MULTIDISCIPLINARY PERSPECTIVES ON HUMAN RIGHTS AND HUMAN RIGHTS LAW (Saladin Meckled-García & Basak Çali eds., 2006); Andre S. Campos, *The Political Conception of Human Rights and Its Rule(s) of Recognition*, 35 CANADIAN J. OF L. & JURISPUDENCE 95 (2022); Outi Korhonen, *Within and Beyond Interdisciplinarity in International Law and Human Rights*, 28 EJIL 625 (2017); Jet Tigchelaar & Brenda Oude Breuil, *No-Bodies Human Rights. An Interdisciplinary Exploration of Bodies in Human Rights*, 20 UTRECHT L. REV. 6 (2024); Julie Fraser, *Challenging State-Centricity and Legalism: Promoting the Role of Social Institutions in the Domestic Implementation of International Human Rights Law*, 23 INT'L J. OF HUM. RTS. 974 (2019).

[49] Soltani, *supra* note 47.

[50] CHARLES R. BEITZ, THE IDEA OF HUMAN RIGHTS (2009); Joseph Raz, *Human Rights without Foundations*, *in* THE PHILOSOPHY OF INTERNATIONAL LAW 321 (Samantha Besson & John Tasioulas eds., 2010).

[51] BEITZ, *supra* note 50 at 128.

[52] JOSEPH RAZ, THE MORALITY OF FREEDOM (1988).

mechanism for this case study. In this process, State behaviour is assessed through international peer review against the full IHR framework, rather than through appeals to moral universals.

By contrast, the moral conception emphasises that human rights are not contingent on legal institutions or political arrangements. Instead, they are rooted in the inherent dignity of the human being.[53] For Tasioulas, for example, human rights are "natural rights" that exist even in the absence of a codified treaty or soft law instruments.[54] Similarly, Schober's argument is that human rights are universal moral entitlements, more impactful and comprehensive than the political approach.[55] From this perspective, the normative foundation of human rights can be said to be more grounded in moral reasoning, at least in part, than the institutional design. It can transcend the formal structures of IHR law, even within pluralistic society or diverse political systems.[56]

Scholars such as Mayr and Donnelly attempt to bridge the gap between these two conceptions, proposing that human rights should serve both as moral entitlements as well as tools to shape international practice.[57] It is against this backdrop that CSOs often operate. Many CSOs must invoke normative claims to legitimise their concerns; simultaneously, by directly engaging with IHR forums, they are made to navigate highly politicised environments. This is particularly pertinent when addressing issues concerning the criminal justice system; a highly regulated sector of the IHR framework. To effectively navigate this space, CSOs rely on both binding treaty obligations and soft law instruments.

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[53] *E.g.*, Peter Schaber, *Human Rights without Foundations*, *in* THE PHILOSOPHY OF HUMAN RIGHTS 61, 68 (Gerhard Ernst & Jan-Christoph Heilinger eds., 2012).
[54] John Tasioulas, *On the Nature of Human Rights*, *in* THE PHILOSOPHY OF HUMAN RIGHTS 17, 18 (Gerhard Ernst & Jan-Christoph Heilinger eds., 2012).
[55] Schaber, *supra* note 53 at 61–4; *See Also*, Simon Hope, *Common Humanity as a Justification for Human Rights Claims*, *in* THE PHILOSOPHY OF HUMAN RIGHTS 211 (Gerhard Ernst & Jan-Christoph Heilinger eds., 2012).
[56] Tasioulas, *supra* note 54 at 20.
[57] Erasmus Mayr, *The Political and Moral Conceptions of Human Rights - A Mixed Account*, *in* THE PHILOSOPHY OF HUMAN RIGHTS 73 (Gerhard Ernst & Jan-Christoph Heilinger eds., 2012) (arguing that human rights have an inherently political role); JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE (2013) (Suggesting that human rights interests should be balanced against other national interests).

2.1.1. Treaties

The legal backbone of the IHR framework is composed of binding treaties, which serve as the primary sources of hard law. Treaties codify rights, impose duties, and establish respective compliance monitoring mechanisms. For the purposes of this thesis' case study – which focuses on a UN mechanism – the scope is limited to the nine core treaties contemporaneously recognised by the UN.[58] The focus is narrowed further to broadly discuss the three instruments that emerged as most pertinent to the issues addressed by the case study, which addresses criminal justice reform.[59] These are: the International Covenant on Civil and Political Rights (ICCPR),[60] the Convention against Torture (CAT),[61] and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[62] These treaties are discussed below, within the context of the US.

2.1.1.1. The ICCPR

The ICCPR was adopted by UNGA on 16 December 1966 and entered into force on 23 March 1976.[63] Together with the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights, it is part of the "International Bill of Human Rights."[64] Unlike single-issue or class-specific treaties – like the CAT or Convention on the Rights of the Child– the ICCPR codifies a broad range of civil and political rights for all people, globally. Substantive guarantees in criminal justice include the right to life (Article 6), freedom from

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[58] International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 2220 U.N.T.S. 3; Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3; International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, 2716 U.N.T.S. 3.
[59] Chapter Three below.
[60] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 ("ICCPR").
[61] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984 1465 U.N.T.S. 85 ("CAT").
[62] International Convention on the Elimination of All Forms of Racial Discrimination art. 1, Dec. 21, 1965, 660 U.N.T.S. 195 ("ICERD").
[63] SARAH JOSEPH & MELISSA CASTAN, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY 156 (2013).
[64] John P. Humphrey, *The International Bill of Rights: Scope and Implementation*, 17 WM. & MARY L. REV. 527 (1976).

unlawful detention (Article 9), the right to humane treatment in detention (Article 10), and equality before the law and fair trial rights (Articles 14-15). As a treaty, it confers legally binding obligations on States that sign and ratify the instrument, representing a core element of the hard law dimension of the IHR framework. As Dutton explains, treaties create binding criminal justice obligations at the domestic level,[65] and similarly, Malby observes that IHR law is increasingly shaping national criminal law requirements;[66] together, they underscore the ICCPR's continued influence.

The US ratified the ICCPR in 1992,[67] yet, its domestic impact is significantly curtailed by the reservations, understandings, and declarations (RUDs) entered at the time of ratification, which reflects a central critique of the IHR treaty system of the limiting power of State sovereignty.[68] In ratifying the ICCPR, the US sought to achieve two objectives. First, it would underscore the US' commitment to the protection of human rights; in turn addressing criticisms that the State is hypocritical in its contributions during discussions reviewing other State human rights practices.[69] Second, it would enable the US to participate in the Human Rights Committee, established in the ICCPR to "monitor compliance," [70] and therefore permitting active involvement in the development and enforcement of human rights globally. [71] Upon the US' ratification, an "unprecedented number"[72] of RUDs were attached to limit the domestic legal effect of the treaty's provisions, subordinating the IHR norms to existing constitutional standards.[73] The US declared that Articles 1 through 27 of the ICCPR are not self-executing, which prevents US citizens from

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[65] Yvonne M. Dutton, *Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms*, 34 U. PA. J. INT'L L. 1 (2012).
[66] Steven Malby, *Beyond Sword and Shield: The UN Human Rights System and Criminal Law* 29 INT'L J. OF HUM. RTS. 916 (2025).
[67] Senate Comm. on Foreign Relations, Report on the International Covenant on Civil and Political Rights, S. Exec. Rep. No. 23, 1 (102d Sess. 1992), reprinted in 31 I.L.M. 645 (1992) (Henceforth "1992 Report of the ICCPR").
[68] JoonBeom Pae, *Sovereignty, Power, and Human Rights Treaties: An Economic Analysis*, 5 N.W.J. OF IN'TL HUM. RTS. 71 (2006).
[69] M. Cherif Bassiouni, *Reflections on the Ratification of the International Covenant on Civil and Political Rights by the United States Senate*, 42 DEPAUL L. REV. 1169 (1993); Kristina Ash, *U.S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence*, 3 14 (2005); David P. Stewart, *United States Ratification of the Covenant on Civil and Political Rights: The Significance of the Reservations, Understandings, and Declarations*, 42 DEPAUL L. REV. 1183 (1993); Nadine Strossen, *United States Ratification of the International Bill of Rights: A Fitting Celebration of the Bicentennial of the U.S. Bill of Rights Essay*, 24 U. TOL. L. REV. 203 (1993).
[70] ICCPR Art. 28.
[71] Ash, *supra* note 69.
[72] William Schabas, *Invalid Reservations to the International Covenant on Civil and Political Rights: Is the United States Still a Party?*, 21 BROOKLYN J. INT'L L. 277, 280 (1995).
[73] Specifically, it attached five reservations, five understandings, four declarations, and one proviso.

directly invoking them in US courts where there is no implementing legislation. A stark example of these includes the reserving the right to impose the death penalty in a manner consistent with the federal Constitution, despite violating ICCPR Article 6's provision protecting the right to life.[74]

Despite its significant involvement in establishing various international instruments and institutions, the US has ratified only three out of the nine core treaties: the ICCPR,[75] the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[76] and, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[77] The US has not accepted any individual complaints procedures for any of these treaties and is the only State in the world to not ratify the Convention on the Rights of the Child (CRC).[78] This practice reflects what scholars term American Exceptionalism, whereby the US advances IHR abroad while simultaneously limiting their domestic application.[79]

Conclusively, this examination of American Exceptionalism has illuminated the intricate legal terrain that US-based CSOs navigate. This perspective sets the stage for understanding the hurdles faced by US civil society in engaging with international human rights law, particularly in the context of the UPR, and justifies the intended objective of this thesis: empowering CSOs to effectively utilise the UPR to strengthen their domestic advocacy.

2.1.1.2. CAT and ICERD

Alongside the ICCPR, the US also ratified the CAT and ICERD in 1994.[80] Both treaties are highly relevant criminal justice reform, particularly with regards to police conduct, racial disparities, and

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[74] For further discussion, *see e.g.*, Alice Storey, *The USA's Engagement with the UN's Human Rights Committee on the Question of Capital Punishment*, 17 INTERCULTURAL HUM. RTS. L. REV. 53 (2022).
[75] In June 1992.
[76] In October 1994.
[77] In October 1994.
[78] *See generally*, Hannah Lichtsinn & Jeffrey Goldhagen, *Why the USA Should Ratify the UN Convention on the Rights of the Child*, 7 BMJ PAEDIATRICS OPEN (2023).
[79] *See generally,* AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS (Michael Ignatieff ed., 1st ed. 2005). The author notes that at the time of writing, this is not the approach the Trump Administration is taking.
[80] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, entered into force June 26, 1987, 1465 U.N.T.S. 85. Ratified by the United States on Oct. 21, 1994, subject to reservations, understandings, and declarations. U.S. Senate Exec. Rept. 101-30 (1990); International Convention on the Elimination of All Forms of Racial Discrimination, adopted Dec. 21, 1965, entered into force Jan. 4, 1969, 660 U.N.T.S. 195. Ratified by the United States on Oct. 21, 1994, subject to reservations, understandings, and declarations. See: U.S. Senate Exec. Rept. 103-29 (1994).

carceral conditions, making them of specific interest in this thesis due to the case study selected. CAT absolutely prohibits torture in all circumstances, reinforcing a non-derogable right that directly intersects with matters such as excessive force, solitary confinement, and prison conditions. ICERD demands State parties to the treaty eliminate racial discrimination in all its forms, which includes law enforcement practices and judicial proceedings. As with the ICCPR, the US ratified these treaties with RUDs that restrict their domestic applicability - in turn demonstrating a consistent reluctance to allow for the supremacy of these provisions over domestic constitutional doctrine.[81]

Despite this, the effects of IHR treaties are found to be conditional on several factors beyond ratification or doctrinal incorporation, among which is domestic political will,[82] the strength of local civil society,[83] and institutional responsiveness.[84] However, treaties alone are not exhaustive of the IHR legal landscape; they are supplemented by a robust soft law framework, which help bolster advocacy even where binding effect is absent.

2.1.2. Soft Law Instruments

Soft law instruments are non-binding norms, principles, rules, and guidelines that still have the potential to influence State behaviour.[85] Though they lack legal enforceability power, they carry considerable interpretive and normative weight.[86] At times, they serve to clarify ambiguous treaty provisions, for example in General Comment No. 35, which defined the term "arbitrary" in ICCPR

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[81] *E.g.*, D.B. Janzen Jr., *First Impressions and Last Resorts: The Plenary Power Doctrine, the Convention Against Torture, and Credibility Determinations in Removal Proceedings*, 67 EMORY L.J. 1235 (2018); Leland H. Kynes, *Letting the CAT out of the Bag: Providing a Civil Right of Action for Torture Committed by U.S. Officials Abroad, An Obligation of the Convention Against Torture?*, 34 GA. J. INT'L & COMP. L. 187 (2005); Margaret Burnetti, *Leveraging the Convention Against Torture: Opportunities for U.S. Migrants Within International Human Rights Frameworks*, 18 DEPAUL J. FOR SOC. JUST. (2025); Hadar Harris, *Race Across Borders: The U.S. and ICERD*, 24 HARV. BLACK LETTER L.J. 61 (2008); Ian M. Kysel & G.A. Sinha, *Executing Racial Justice*, 71 UCLA L. REV. DISC. 2 (2023); See also, Rebecca L. Case, *Not Separate but Not Equal: How Should the United States Address Its International Obligations to Eradicate Racial Discrimination in the Public Education System*, 21 PENN. STATE INT'L REV. 205 (2002).
[82] Hafner-Burton and Tsutsui, *supra* note 45.
[83] Dissa S. Ahdanisa & Steven B. Rothman, *Revisiting International Human Rights Treaties: Comparing Asian and Western Efforts to Improve Human Rights*, 1 SN SOC. SCI. 16 (2020); Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. OF CONFLICT RES. 925, 932, 943 (2005).
[84] Beth Simmons, *Civil Rights in International Law: Compliance with Aspects of the "International Bill of Rights,"* 16 INDIANA J. OF GLOBAL LEGAL STUD. 437 (2009).
[85] Dinah L. Shelton, *Soft Law*, *in* ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW 68 (David Armstrong ed., 2009).
[86] Andrew T. Guzman & Timothy L. Meyer, *International Soft Law*, 2 J. OF LEGAL ANALYSIS 171 (2010).

Article 9, that protects against "arbitrary arrest or detention."[87] Similarly, they also serve to fill gaps in the IHR framework, where a treaty does not exist.[88] As Shelton explains, soft law's role in the development and operationalisation of IHR is growing, particularly as it offers flexibility and adaptability in contrast to the often rigid, negotiated language of binding treaties, sometimes acting as a precursor to formal treaties.[89] Moreover, these instruments may codify pre-existing customary law, crystallise trends towards particular norms, and provide guidance or models for domestic laws without obligations, among other things.[90]

The importance of soft law is particularly pronounced in the criminal justice context. This thesis draws from several such documents, namely the UN Standard Minimum Rules for the Treatment of Prisoners (broadly known as the Nelson Mandela Rules),[91] the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules),[92] and Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111).[93] Between these documents internationally agreed minimum standards for policing, detention, and the treatment of those who have been deprived of their liberty are established.

This thesis maps ACLU recommendations to these non-binding instruments as soft law provides CSOs with advocacy leverage, particularly where hard law is weakened by RUDs, inaccessible, or vague.[94] Though CSOs have been framed as norm entrepreneurs,[95] Urueña and Tamayo-Álvarez challenge this view, arguing it is too narrow.[96] Instead, they reframe civil society's role as framers of the law,[97] using soft law as a site of legal construction.[98] Ultimately, soft law is not a substitute for binding obligations but rather a complementary tool that extends the reach of treaty law and

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[87] Human Rights Comm., General Comment No. 34: Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).
[88] Marion Panizzon, Kathryn Allison & Maja Grundler, *Forms and Functions of Soft Norms and Informal Law-Making in International Migration Law: A Different Frontier*, 6 FRONTIER HUM. DYNAMICS 1 (2024).
[89] Shelton, *supra* note 85 at 71–2.
[90] *Id.* at 71–2.
[91] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175, U.N. Doc. A/RES/70/175 (Dec. 17, 2015).
[92] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33, annex, U.N. Doc. A/RES/40/33 (Nov. 29, 1985).
[93] Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, annex, U.N. Doc. A/RES/45/111 (Dec. 14, 1990).
[94] Rene Urueña & Rafael Tamayo-Álvarez, *Beyond Norm Entrepreneurs: Civil Society and the Framing of the "Legal" Through Soft Law*, *in* RESEARCH HANDBOOK ON SOFT LAW 272 (Mariolina Eliantonio, Emilia Korkea-aho, & Ulrika Mörth eds., 2023).
[95] KECK AND SIKKINK, *supra* note 22 at 108.
[96] Urueña and Tamayo-Álvarez, *supra* note 94 at 278.
[97] *Id.* at 273.
[98] *Id.* at 276.

creates an alternative path for civil society advocacy. Within this perspective, it becomes essential to clarify what is meant by 'civil society' and 'CSO' in the context of this research.

2.2. The Gap Between IHR Law and Realisation

A central challenge in conceptualising IHR law is the persistent gap between its formal codification and its practical realisation. States frequently ratify treaties without genuine commitment, treating them as aspirational rather than enforceable obligations.[99] Moreover, the legal obligations set out in human rights instruments are often vague, inconsistent, and conflict with each other, allowing governments significant leeway to justify virtually any policy decision.[100] Posner identifies a phenomenon he terms "rule naïveté"; the belief that complex domestic political goods can be reduced to universal rules and impartially enforced; IHR law has become a domain dominated by symbolic compliance, hollow reporting, and selective enforcement driven by strategic interests rather than genuine humanitarian concern.[101]

This tension has been the subject of several empirical studies. Hathaway's studies reveal gaps between ratification and compliance,[102] while others, including Goodman and Jinks, underscore the necessity of appreciating IHR law as part of a longer-term normative process that shapes state behaviour and civil society mobilisation.[103] Gaer further demonstrates the crucial role of NGOs in reinforcing treaty body mechanisms, showing how civil society engagement has expanded both the reach and effectiveness of human rights norms at the domestic level.[104] Moreover, Evans' Foucauldian critique of IHR law as a form of power/knowledge does not negate its emancipatory potential; rather, it demands critical reflection to ensure that rights discourse remains open to contestation and pluralistic reinterpretation rather than reinforcing dominant hierarchies.[105] Even critical voices such as Posner, who question the enforceability of IHR obligations, concede that

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[99] ERIC POSNER, THE TWILIGHT OF HUMAN RIGHTS LAW 62–3 (2014).
[100] *Id.* at 17.
[101] *Id.* at 69–77, 104–07.
[102] Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002).
[103] Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 EUROPEAN J. OF INT'L L. 171, 172–4 (2003).
[104] Felice D. Gaer, *Implementing International Human Rights Norms: UN Human Rights Treaty Bodies and NGOs*, 2 J. OF HUM. RTS. 339, 341–6 (2003).
[105] Tony Evans, *International Human Rights Law as Power and Knowledge*, 27 HUM. RTS. Q. 1046, 1047–54 (2005).

international law operates as a political language that structures state behaviour and legitimises demands for reform.[106] In this sense, IHR law, though imperfect, functions as a dynamic normative project: it not only exposes state abuses but provides institutional and discursive tools for resistance, accountability, and the progressive realisation of human dignity.

Recognising this gap highlights why civil society cannot be reduced to passive transmitters of existing legal norms. Instead, CSOs actively shape how rights are interpreted, contested, and advanced within this imperfect but evolving framework. It is therefore necessary to clarify what is meant by "civil society" in this thesis, and to situate CSOs theoretically as agents of normative construction as well as advocacy. A strictly positivist view renders CSOs as mere transmitters of existing legal norms, however, this thesis contends that CSOs contribute to the construction, interpretation, and advancement of human rights norms.[107]

2.4. The Concept of Civil Society

The concept of civil society is central to the academic understanding of how non-State actors engage with and influence the development of international human rights (IHR) norms. Pedraza-Farina suggests that civil society's legitimacy within international law-making and national implementation hinges on theoretical understandings of the notion of civil society.[108] The concept of civil society, however, remains so indeterminate and context-dependent that efforts to define it often prove elusive and inconclusive.[109] This section establishes how the term is used throughout this thesis.

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[106] POSNER, *supra* note 99 at 5–9.
[107] The view that CSOs play an active role in the realisation of human rights on the ground is a commonly held position by scholars across disciplines. *E.g.*, SALLY E. MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (2006) (Merry contends that human rights law must be framed in local terms to be accepted and effective in altering existing social hierarchies. She argues that CSOs are not mere implementers but active agents in shaping the content and relevance of rights).
[108] Laura G. Pedraza-Farina, *Conceptions of Civil Society in International Law-Making and Implementation: A Theoretical Framework*, 34 MICH. J. INT'L L. 605, 608, 611, 616, 641 (2012); See also, Robert C. Post & Nancy L. Rosenblum, *Introduction*, *in* CIVIL SOCIETY AND GOVERNMENT 1 (Robert C. Post & Nancy L. Rosenblum eds., 2002) ("Civil society is so often invoked in so many contexts that it has acquired a strikingly plastic moral and political valence").
[109] MICHAEL EDWARDS, CIVIL SOCIETY 4 (2004).

While the notion of civil society can be traced back to classical political thought in ancient Greece and Rome, its modern conceptualisation has evolved significantly since then.[110] Enlightenment thinkers such as Locke[111] and Rousseau[112] viewed civil society as a domain of rational political association,[113] while later theorists, including Hegel[114] and Gramsci,[115] problematised its relationship with the State and hegemonic power structures. In contemporary scholarship, civil society remains a contested term, frequently invoked in normative discussions around democracy, legitimacy, and rights-based governance.

Various theoretical perspectives have been developed to understand its role and function. Some theorists argue that civil society is essential for the functioning of democracy, as it provides a sphere for the formation of public opinion and civic engagement.[116] Others argue that civil society is a key space for the protection of human rights and the promotion of global governance.[117] Others argue that civil society promotes multiculturalism and the protection of minority rights.[118] Piron

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[110] Gerard A. Hauser, *Civil Society and the Principle of the Public Sphere*, 31 PHIL. & RHETORIC 19 (1998); Maureen Taylor, *Public Relations in the Enactment of Civil Society*, *in* THE SAGE HANDBOOK OF PUBLIC RELATIONS 5, 7 (Robert L. Heath ed., 2010).

[111] JOHN LOCKE, THE SECOND TREATISE OF CIVIL GOVERNMENT 29 (1689) (Civil society is formed when individuals consent to join together under a common government, agreeing to submit their natural powers of enforcement [like punishing wrongdoers] to a public authority).

[112] JEAN-JACQUES ROUSSEAU, DISCOURSE ON POLITICAL ECONOMY AND THE SOCIAL CONTRACT 54–6 (Christopher Betts tran., 2008).

[113] For a comprehensive analysis of Locke and Rousseau's contributions to the concept, *See* JOHN EHRENBERG, CIVIL SOCIETY: THE CRITICAL HISTORY OF AN IDEA (2017).

[114] G.W.F. Hegel, *Philosophy of Right*, *in* HEGEL'S PHILOSOPHY OF RIGHT (Allen Wood ed., H.B. Nisbet tran., 1991) (Hegel distinguishes civil society from the family and the State; he sees it as the realm of needs, market, and ethical life [Sittlichkeit], but also as a source of conflict and inequality that must be reconciled by the State).

[115] ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI (Quintin Hoare & Geoffrey N. Smith eds., 1971) (Gramsci reconfigures civil society as the site where hegemonic power is reproduced through consent, and thus a battleground for counter-hegemonic struggle).

[116] ALEXIS DE TOQUEVILLE, DEMOCRACY IN AMERICA: VOLUMES 1 & 2 (2018); ROBERT D. PUTNAM, MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY (1992); JÜRGEN HABERMAS, THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE (1992). Authors such as Putnam, Habermas, and de Tocqueville argue that civil society is essential for the functioning of democracy as it provides a sphere for the formation of public opinion and civic engagement, they also argue that civil society organizations such as voluntary associations, community groups, and other non-State actors play a crucial role in promoting democratic participation and governance.

[117] DAVID HELD, GLOBAL COVENANT: THE SOCIAL DEMOCRATIC ALTERNATIVE TO THE WASHINGTON CONSENSUS (2004) (argues that civil society is crucial for creating a "global covenant" that can promote human rights and global governance); KECK AND SIKKINK, *supra* note 22 (argue that transnational advocacy networks within civil society have played a significant role in promoting human rights and global governance); THOMAS CAROTHERS, PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE (2006) (argues that civil society organizations are crucial for promoting the rule of law, which is a key aspect of protecting human rights and promoting global governance).

[118] TARIQ MODOOD, MULTICULTURAL POLITICS: RACISM, ETHNICITY AND MUSLIMS IN BRITAIN (2005) (argues that civil society is crucial for promoting multiculturalism and protecting minority rights in multi-ethnic societies); WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS (2000) (argues that civil society is an important sphere

concludes civil society is an inherent contributor to the rule of law, emphasising the importance of civil society working together with governments, engaging with "wider set[s] of social norms and structures" where the "goal is not just to build [S]tate capacity but also to deliver services to citizens."[119] Piron goes on to suggest that the empowerment of civil society is a "means to increase demands for better justice, [and] monitoring for human rights…"[120] Ultimately, however, scholars generally agree that that civil society plays an active role in norm diffusion, rights promotion, and legal mobilisation within international legal frameworks.[121]

There is an underlying consensus that civil society is critical for shaping social and political life and promoting the common good as all theories reference normative theory. Therefore, for the benefit of this thesis, *civil society* refers to the sphere of social and political life that exists outside of the State and the market.[122] It encompasses a wide range of non-State actors and voluntary associations, such as NGOs, community groups, religious organisations, and social movements.[123] These organisations often serve as intermediaries between individuals and the State; shaping social and political life by promoting civic engagement, protecting human rights, and holding government accountable. These are known as civil society organisations (CSOs).

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for the protection of minority rights and the promotion of multiculturalism); DAVID MILLER, ON NATIONALITY (1997) (argues that civil society is an important sphere for the protection of minority rights and the promotion of multiculturalism); YASMEEN ABU-LABAN & CHRISTINA GABRIEL, SELLING DIVERSITY: IMMIGRATION, MULTICULTURALISM, EMPLOYMENT EQUITY AND GLOBALIZATION (2002) (argue that civil society plays a crucial role in the promotion of multiculturalism and the protection of minority rights in a globalized world).

[119] Laure-Hélène Piron, *Time to Learn, Time to Act in Africa*, *in* PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE 275, 275, 276 (Thomas Carothers ed., 2010).

[120] *Id.* at 277.

[121] *See e.g.*, Lawrence C. Moss, *Opportunities for Nongovernmental Organization Advocacy in the Universal Periodic Review Process at the UN Human Rights Council*, 2 J. OF HUM. RTS. PRACTICE 122 (2010); Dianne Otto, *Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society*, 18 HUM. RTS. Q. 107 (2025); CRISTINA BUZASU ET AL., GLOBAL CIVIL SOCIETY IN THE SHADOW OF CORONAVIRUS (2020).

[122] Michael Walzer, *The Civil Society Argument*, *in* DIMENSIONS OF RADICAL DEMOCRACY: PLURALISM, CITIZENSHIP, COMMUNITY 89, 89–90 (Chantal Mouffe ed., 1995); JEAN L COHEN & ANDREW ARATO, CIVIL SOCIETY AND POLITICAL THEORY ix, 84–87 (1994).

[123] BRIAN O'CONNELL, CIVIL SOCIETY: THE UNDERPINNINGS OF AMERICAN DEMOCRACY 10–26 (1999); Jean Cohen, *Interpreting the Notion of Civil Society*, *in* TOWARDS A GLOBAL CIVIL SOCIETY 35 (Michael Walzer ed., 1995); Michael Walzer, *The Concept of Civil Society*, *in* TOWARDS A GLOBAL CIVIL SOCIETY 7 (Michael Walzer ed., 1995).

2.4.1. Civil Society Organisations

CSOs represent the institutionalised dimension of civil society, comprising formal or semi-formal, non-State, and non-profit entities that operate independently of the State and market. While civil society is often conceptualised in broad terms to include informal networks, movements, and associations, CSOs are defined by their structured nature, voluntary participation, and a shared commitment to advancing public interest causes.[124]

These organisations encompass a wide range of actors, including non-governmental organisations (NGOs), advocacy coalitions, professional and faith-based associations, and community-based initiatives. Although their mandates and modalities vary considerably, CSOs typically function to raise awareness, represent marginalised groups, monitor government conduct, and mobilise legal and political action in pursuit of normative goals. While CSOs are often portrayed as natural agents of the common good, their legitimacy is neither automatic nor universally accepted. Egholm, Heyse, and Mourey challenge essentialist assumptions by showing that CSO legitimacy is not an inherent attribute, but a dynamic and contested social construct.[125] They argue that legitimacy emerges not from fixed normative assumptions but from relational, historically situated practices, and thus should be analysed as fluid and context dependent.[126] This insight is especially relevant when evaluating the role of CSOs in IHR advocacy, where legitimacy is tied to not only legal mandates or funding sources but also to questions of representation, accountability, and embeddedness within local and global communities.

In the IHR context, CSOs serve as intermediaries between individuals and multilateral mechanisms, playing an increasingly significant role in norm diffusion, standard setting, and implementation monitoring. The growth of supranational organisations like the UN – which is the focus of this

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[124] This is adopted from the UN definition of civil society. *The UN and Civil Society*, UNITED NATIONS (n.d.), https://www.un.org/en/get-involved/un-and-civil-society.
[125] Liv Egholm, Liesbet Heyse & Damien Mourey, *Civil Society Organizations: The Site of Legitimizing the Common Good—a Literature Review*, 31 VOLUNTAS 1 (2020) (Their literature review identifies three main conceptualisations of legitimacy: as a property [something CSOs possess], a process [negotiated through interaction], and a perception [shaped by stakeholders' beliefs and expectations].
[126] *Id.* at 30.

thesis – has created new arenas where the voices of peoples can be heard.[127] When channelled through CSO participation in international mechanisms, this forms global civil society. Subsequently, through their "soft power,"[128] these CSOs participate in the development of global public policy.

For this thesis, the term "CSO" refers specifically to those organisations that actively engage with the UPR process, either by submitting stakeholder reports, engaging in follow-up advocacy, or contributing to national-level rights realisation through legal or political mobilisation. This targeted definition allows for a clear distinction between broader civil society discourses and the institutional practices of CSOs operating within IHR regimes. (Figure 1)

[127] DAVID HELD, GLOBAL COVENANT: THE SOCIAL DEMOCRATIC ALTERNATIVE TO THE WASHINGTON CONSENSUS (2004); Hans-Jörg Trenz, *European Civil Society: Between Participation, Representation and Discourse*, 28 POL'CY & SOC'Y 35 (2009) (Arguing that civil society should not be viewed merely as an intermediary for participation, distinct from formal political representation. Instead, it plays an integral part in the EU's multi-level representative system, contributing to political representation in both aggregative and integrative ways); But See, Eva G. Heidbreder, *Civil Society Participation in EU Governance*, 7 LIVING REV. EURO. GOV. 5 (2012) (Questioning the extent to which civil society actually participates in policy development, although it finds it is predominantly preoccupied with rendering EU policy-making more democratic); CONSTANZA TABBUSH, CIVIL SOCIETY IN UNITED NATIONS CONFERENCES: A LITERATURE REVIEW (2005) (specifically exploring how civil society has participated in global governance through these forums. These conferences provided civil society with opportunities to shape global policy agendas, and their growing participation enhanced the legitimacy of international organisations).
[128] Their capacity to shape others' interests, attitudes, agendas, and identities – rather than 'hard power' which is coercive capacity. HELD, *supra* note 127 at 10; See Generally, Joseph S. Nye Jr., *Soft Power*, FOREIGN POL'CY 153 (1990).

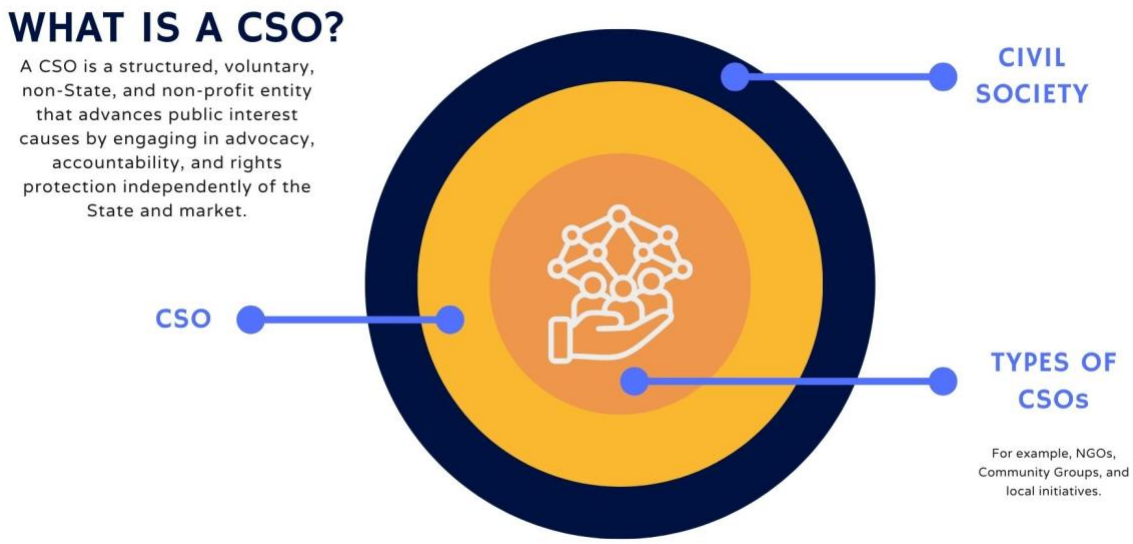

Figure 1: Civil Society and CSOs. This diagram illustrates the relationship between civil society as a broad sphere of social and political life, CSOs as its institutionalised subset, and the diverse forms that CSOs take.

2.5. Theories of Civil Society

Civil society is a distinct part of civilisation, separate from the government or economy,[129] where individuals come together voluntarily to pursue shared interests and values. It is a self-organised and self-motivated space where individuals can freely associate, identify common concerns, and articulate their beliefs and goals[130] through relationships built on mutuality, equality, and balancing individual and public interests.[131] Beyond its domestic functions, civil society plays a pivotal role in global governance by enabling CSOs to voice concerns, scrutinise State compliance, and contribute to the monitoring and implementation of international human rights law.

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[129] COHEN AND ARATO, *supra* note 122.
[130] Post and Rosenblum, *supra* note 108 at 26–47.
[131] ADAM B. SELIGMAN, THE IDEA OF CIVIL SOCIETY (1993); Thomas P. Botchway, *Understanding the Dynamics and Operations of Civil Society in the 21st Century: A Literature Review*, 12 J. OF POLITICS & L. 108 (2019); Johann N. Neem, *Squaring the Circle: The Multiple Purposes of Civil Society in Tocqueville's Democracy in America*, 27 THE TOCQUEVILLE REV. 99 (2006).

The conceptualisation of civil society and its role in norm diffusion and legal mobilisation has been theorised for centuries[132] and across multiple disciplines, including political philosophy,[133] sociology,[134] and law.[135] This has resulted in an expansive and at times fragmented body of literature, with divergent theoretical perspectives emerging regarding its function, scope, and legitimacy in both domestic and international legal spheres. Such theories include classical republicanism,[136] communitarianism,[137] and the network theory.[138] The point of civil society theory is to establish a conceptual and analytical tool to move beyond description, situating CSOs as simultaneously empowered and constrained actors in IHR processes. In the analysis of this thesis, it provides the scaffolding necessary to understand the ACLU's role at the UPR, its sources of legitimacy, and the limits of its influence.

Based on the author's review of the literature, this thesis presents six contemporary theoretical influences, including one relatively lesser-known perspective, on civil society theory. These are: liberalism, social capital, cosmopolitanism, multiculturalism, effective governance, and backwards-forwards infiltration.

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[132] *See e.g.*, SUE KENNY ET AL., CHALLENGING THE THIRD SECTOR: GLOBAL PROSPECTS FOR ACTIVE CITIZENSHIP 36–60 (2016); BRIAN O'CONNELL, CIVIL SOCIETY: THE UNDERPINNINGS OF AMERICAN DEMOCRACY (1999); PUTNAM, *supra* note 116; MICHAEL HOELSCHER, CIVIL SOCIETY: CONCEPTS, CHALLENGES, CONTEXTS (2022); MARVIN B. BECKER, THE EMERGENCE OF CIVIL SOCIETY IN THE EIGHTEENTH CENTURY: A PRIVILEGED MOMENT IN THE HISTORY OF ENGLAND, SCOTLAND, AND FRANCE (1994).
[133] E.g., ROUSSEAU, *supra* note 112; Kenneth Kierans, *The Concept of Ethical Life in Hegel's "Philosophy of Right,"* 13 HIST. OF POLITICAL THOUGHT 417 (1992); Souvik Lal Chakraborty, *Gramsci's Idea of Civil Society*, 3 INT'L J. OF RESEARCH IN HUMANITIES & SOCIAL STUDIES 19 (2016).
[134] JÜRGEN HABERMAS, BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY (William Rehg tran., 1998); COHEN AND ARATO, *supra* note 122; PIERRE BOURDIEU, THE LOGIC OF PRACTICE (Richard Nice tran., 1992).
[135] KECK AND SIKKINK, *supra* note 22; RYAN GOODMAN & DEREK JINKS, SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW (2013); Moss, *supra* note 121.
[136] ADAM FERGUSON, AN ESSAY ON THE HISTORY OF CIVIL SOCIETY (1767) (where civil society is viewed as a community of citizens actively engaged in public affairs, emphasising civic virtue and the common good).
[137] AMITAI ETZIONI, THE SPIRIT OF COMMUNITY: RIGHTS, RESPONSIBILITIES, AND THE COMMUNITARIAN AGENDA (1993) (viewing civil society as essential for nurturing communal values and social cohesion, counterbalancing individualism).
[138] Mario Diani, *The Concept of Social Movement*, 40 THE SOCIOLOGICAL REV. 1 (1992) (This perspective examines how the structure of social networks influences the formation and outcomes of civil society organisations and social movements. It highlights the importance of interpersonal ties and communication channels in mobilising resources and disseminating information).

2.5.1. Liberalism

Liberalism is a prominent perspective in civil society theory, which focuses on the role of non-State actors and voluntary associations in shaping social and political life. Liberal theorists argue that civil society is a crucial sphere for the protection of individual rights and the promotion of democracy.[139] It says that civil society should prioritise the enhancement of individual liberties, such as protecting people's rights to privacy, autonomy, and free speech, by limiting government interference.[140] Civil society, per liberalists, serves as a counterbalance to State power by representing the interests of the people.[141] Liberalism is considered the most inclusive philosophy in defining what constitutes civil society.[142] Associated with pluralism,[143] it values diversity and believes no single group or viewpoint should have complete control. The concept of pluralism has roots in Tocqueville's writings, who saw "voluntary associations" as vital for personal growth, preserving freedoms and expressing grievances to government.[144]

One of the key contributions to liberal civil society theory is the work of political philosopher Habermas.[145] In his earlier work, Habermas believed civil society came in to check power "through rational and critical debate."[146] Over time, he revised this conceptualisation and wove in his most central theory, 'communicative action ' where members of the public, or *the people*, form public opinions and participate in democratic decision-making.[147] He contends that civil society is

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[139] *See E.g.*, Ömer Caha, *The Inevitable Coexistence of Civil Society and Liberalism: The Case of Turkey*, 3 J. OF ECONOMIC & SOCIAL RES. 35 (2001) (discussing the negative impact of the State having sole rule over society and economy and how civil society is only possible where there influence of the State is limited and minimal); CLASSICAL LIBERALISM AND CIVIL SOCIETY (Charles Rowley ed., 1998) (defending the concept of classical liberalism in modern civil society); Contra, Allen W. Wood, *Marx and Justice: The Radical Critique of Liberalism*, 3 L. & PHILOSOPHY 147 (2010) (critiquing the concept of civil society on the basis that it serves to reinforce the power and domination of the capitalist class rather than promoting equality and justice for all).
[140] *See E.g.*, GRZEGORZ EKIERT & JAN KUBIK, REBELLIOUS CIVIL SOCIETY: PROTEST AND DEMOCRATIC CONSOLIDATION IN POLAND 44 (1999).
[141] Terry Nardin, *Private and Public Roles in Civil Society*, *in* TOWARDS A GLOBAL CIVIL SOCIETY 29 (Michael Walzer ed., 2009).
[142] Anika Fiebich, *In Defense of Pluralist Theory*, 198 SYNTHESE 6815 (2021).
[143] A political theory that acknowledges the existence of multiple groups or interests in society, each with the ability to impact public policy and decision-making.
[144] *See* ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICAN 109, 306 (Richard Heffner ed., 1991); William E. Connolly, *The Challenge to Pluralist Theory*, *in* PLURALISM IN POLITICAL ANALYSIS 3, 5 (William E. Connolly ed., 2017).
[145] Simone Chambers, *A Critical Theory of Civil Society*, *in* ALTERNATIVE CONCEPTIONS OF CIVIL SOCIETY 90 (Simone Chambers & Will Kymlicka eds., 2002).
[146] ANDREW EDGER, HABERMAS: THE KEY CONCEPTS XVI, 8, 21–31 (2006).
[147] Mayengbam N. Singh, *Juergen Haberman's Notion of the Public Sphere: A Perspective on the Conceptual Transformations in His Thought*, 73 INDIANA J. OF POLITICAL SCI. 633, 634 (2012).

essential for the functioning of a democratic public sphere,[148] where individuals can engage in open and rational discourse, and form a public opinion that can hold government accountable.[149] Transparency in State policymaking activities is crucial for civil society to effectively utilise democratic processes to check the actions of the State.[150]

Similarly, Taylor, who focuses on the role of civil society in the formation of individual and collective identities, argues that civil society is a crucial sphere for the development of a sense of belonging and shared purpose, which is essential for the functioning of democracy and the protection of individual rights.[151] He contends that a strong civil society is necessary for the formation of a common good, which is essential for the protection of individual rights and the functioning of democracy.[152]

A more abstract and technical approach to defining liberalism, that has formed the basis of a contemporary understanding of liberalism and civil society, can be observed in Rawls 'work, which has been coined "Rawlsian liberalism."[153] At the heart of this is a conception of justice as fairness, derived from a hypothetical "original position" in which rational individuals, ignorant of their own social positions, select principles to govern a just society.[154] Rawls believed that two principles could be agreed upon. First, equal basic liberties for all, such as freedom of expression, religion, and voting rights, among others.[155] Second, the structuring of inequalities to benefit the least advantaged while maintaining fair equality of opportunity.[156] Crucially, Rawls's liberalism positions the right over the good, insisting on State neutrality toward competing moral or religious worldviews to ensure individual autonomy.[157] Applied to civil society, this framework casts CSOs

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[148] *See also*, Pedraza-Farina, *supra* note 108 at 628.
[149] EDGER, *supra* note 146 at 24.
[150] Francesca Bignami, *Theories of Civil Society and Global Administrative Law: The Case of the World Bank and International Development*, *in* RESEARCH HANDBOOK ON GLOBAL ADMINISTRATIVE LAW 325, 328 (Sabino Cassese ed., 2016).
[151] Charles Taylor, *Modes of Civil Society*, 3 PUBLIC CULTURE 95 (1990).
[152] Gail Kligman, *Reclaiming the Public: A Reflection on Creating Civil Society in Romania*, 4 EASTERN EUROPEAN POLITICS & SOCIETIES 393, 420 (1990).
[153] JOHN RAWLS, A THEORY OF JUSTICE: REVISED EDITION (1999).
[154] *Id.* at 10–5. Rawls sought to explore what a truly fair society would look like, but in acknowledgement of the reality that people are inherently born into unfair circumstances, such as poverty or discrimination against protected characteristics, he posed thought experiment that asked, "if you did not know anything about who you'd be in society, what kind of rules would you agree to live by?" This thought experiment is called "the original position" wherein the thinker is behind a veil of ignorance.
[155] *Id.* at 53. "The first Statement of the two principles reads as follows. First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others."
[156] *Id.* "Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all."
[157] *Id.* at 28, 214.

as intermediaries that operate within a pluralistic public sphere, supporting the democratic process without challenging the State's overarching commitment to neutrality and procedural fairness.

However, this liberal conception is often critiqued for rendering civil society instrumental and depoliticised, overlooking the embeddedness of civic actors in historically contingent, morally laden, and power-inflected contexts. At the heart of many of these critiques lies the liberal assumption of a neutral, autonomous self, detached from social roles, traditions, or substantive moral commitments. Sandel's seminal work challenges this foundation by revealing that liberalism rests on a conception of the person as "unencumbered" and prior to any ends or attachments.[158] Against Rawlsian liberalism in particular, Sandel argues that justice cannot be justified independently of conceptions of the good life; rather, rights derive their meaning from the moral worth of the ends they serve, not simply from the procedural neutrality liberalism professes to uphold.[159] In doing so, Sandel exposes the "limits of justice" as a moral ideal in abstraction, revealing that liberalism fails to account for the ways in which identity, community, and ethical life shape moral claims and political legitimacy.[160]

This philosophical critique finds resonance in Heller's stance against liberalism, which he deems both conceptually hollow and politically complicit in the rise of authoritarianism.[161] Heller challenges liberalism's elision of popular sovereignty,[162] accusing it of reducing the State to a legal order stripped of political substance. He identifies this tendency in both Kelsen's positivism, which dissolves sovereignty into normativity,[163] and in the capitalist entrenchment of 'authoritarian liberalism – 'a regime that preserves economic liberalism at the cost of democratic participation.[164] This considered, there is a reluctance to draw general conclusions from Heller's critique of authoritarian liberalism, as his general critique of liberalism is limited to an exceptional period in time, namely Nazi Germany.[165]

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[158] MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE 111 (2. ed., 10. printing ed. 2008).
[159] *Id.* at 94.
[160] *Id.* at 233.
[161] Michael A. Wilkinson, *Hermann Heller's Critique of Liberalism*, JURISPRUDENCE 1, 22 (2024).
[162] *Id.* at 23.
[163] *Id.* at 6.
[164] *Id.* at 15.
[165] *Id.* at 2.

Nonetheless, a similar concern about liberalism's inability to capture the lived realities of political agency emerges in critiques of liberal civil society theory. In Central and Eastern Europe, liberal models have often framed civil society as an instrument for consolidating democracy and market institutions. Pietrzyk-Reeves argues that this static liberal approach misrepresents civil society by reducing it to measurable outputs like NGO density or voter participation.[166] Her discussion identifies the potential flaws in this approach, using Central and Eastern European (CEE) States to illustrate. For example, Russia, a consolidated autocracy, shows more civic participation than Ukraine, a hybrid regime, which has a similar individual participation rate to Poland, a semi-consolidated democracy. This is despite the findings showing that Poland and Ukraine are different with respect to civil and political liberties and the level of political democracy.[167] Therefore, her data suggests there is no obvious relationship between individual civic participation and the level of democracy.[168] Instead, she advocates a dynamic model that recognises civil society's plural, shifting, and deeply contextual character – one shaped by history, political contingencies, and informal practices that often resist liberal norms of institutionalisation or procedural rationality.[169]

Baker deepens this critique by showing how liberalism has "tamed" the once-radical idea of civil society.[170] Where civil society was once envisioned – particularly by 1980s dissidents in Eastern Europe – as a space of autonomous, grassroots democracy and self-management, it has since been recast as a supportive mechanism[171] for liberal-democratic governance.[172] Baker argues that this reconceptualisation amounts to a discursive closure, wherein liberal democracy becomes the only legitimate horizon of political thought.[173] The original potential of civil society as a transformative, even post-Statist project, is effaced in favour of a narrowly institutional and technocratic vision aligned with the status quo.[174]

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[166] Dorota Pietrzyk-Reeves, *Rethinking Theoretical Approaches to Civil Society in Central and Eastern Europe: Toward a Dynamic Approach*, 36 EAST EUROPEAN POLITICS, SOCIETIES & CULTURES 1335, 1338 (2022).
[167] *Id.* at 1343.
[168] *Id.* at 1343. "Interestingly, the citizens in Bosnian and Herzegovina, which is regarded as a highly defective democracy or hybrid regime, appear to be slightly more active than the citizens in Poland or Ukraine."
[169] *Id.* at 1346–49. Pietrzyk-Reeves critiques liberalism's assumption that civil society naturally flourishes under liberal democracy and is best measured through formal participation. The failure to account for the contextual, informal, and contingent nature of civic action reflects a critique of liberalism's abstract and universalising tendencies.
[170] Gideon Baker, *The Taming of the Idea of Civil Society*, 6 DEMOCRATIZATION 1 (1999).
[171] *Id.* at Note 96.
[172] *Id.* at 3.
[173] *Id.* at 17.
[174] *Id.* at 4.

Another critical angle on liberalism challenges the assumption that civil society inherently acts as a counterweight to State power and a vehicle for individual freedom. Larsson draws on Foucault and neo-republicanism to complicate liberal optimism.[175] He argues that the liberal framing of civil society as a remedy to domination fails to account for the ways power is dispersed, normalised, and operationalised within civil society itself. Rather than existing outside the reach of domination, civil society can become a subtle mechanism of governance, particularly in models of co-governance and networked policymaking.[176] Thus, CSOs may inadvertently perpetuate arbitrary power and mask responsibility behind decentralised structures.[177] Larsson therefore rejects the liberal association of freedom with mere non-interference, instead aligning with neo-republican notions of freedom as non-domination.[178] From this perspective, strengthening civil society does not guarantee emancipation unless actors are protected from unaccountable and arbitrary influence; whether from the State, market, or civil actors themselves.[179] His critique invites a reassessment of how civil society operates within IHR frameworks, where assumptions of neutrality and benevolence may obscure deeper structural inequalities and diffuse forms of control.

Further critiques of liberal civil society theory highlight its failure to account for the normative, political, and moral dimensions of civic life. Etzioni argues that liberalism's procedural emphasis and commitment to moral neutrality render civil society analytically thin and normatively hollow.[180] In his tripartite distinction between civil society, the good society, and the prescriptive State, Etzioni critiques the liberal conception for avoiding substantive value judgments, thereby treating all associations as equally legitimate regardless of their social consequences.[181] He contrasts this with a communitarian vision of the good society, which foregrounds shared moral commitments, informal norms, and social responsibility as essential components of a flourishing civic sphere.[182] Roberts develops a parallel argument through a critical race lens, exposing how contemporary civil society discourses obscure systemic racial injustice and uphold exclusionary

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[175] Oscar L. Larsson, *Why More Civil Society Will Not Lead to Less Domination: Dealing with Present Day State Phobia through Michel Foucault and Neo-Republicanism*, 14 J. OF POLITICAL POWER 258, 265 (2021).
[176] This has since been built upon to establish a relatively new conceptualisation, backward-forward infiltration, which is discussed below in section 2.5.6.
[177] Larsson, *supra* note 175 at 265–6.
[178] *Id.* at 268.
[179] *Id.* at 259.
[180] Amitai Etzioni, *Law in Civil Society, Good Society, and the Prescriptive State*, 75 CHICAGO-KENT L. REV. 355, 360 (2000).
[181] *Id.* at 358.
[182] *Id.* at 361.

norms.[183] She argues that these discourses invoke civil society to promote traditionalist family values[184] and personal responsibility while displacing attention from the structural conditions that produce inequality.[185] Both scholars, from different angles, expose how the liberal ideal of a normatively neutral civil society can serve to depoliticise civic engagement, reproduce dominant power structures, and marginalise communities that fail to conform to an idealised moral vision.

In sum, liberalism continues to offer an influential framework for conceptualising civil society – valuing individual autonomy, pluralism, and democratic procedure – but its limitations have become increasingly apparent. Critics argue that by abstracting individuals from their social and historical contexts, liberalism reduces civil society to a neutral intermediary or support system for democratic governance, rather than a site of political contestation and transformation. The critiques advanced by Sandel, Heller, Pietrzyk-Reeves, and Baker illustrate a shared concern: that liberalism's emphasis on proceduralism, neutrality, and formal equality too often flattens the richness and complexity of civic life. These interventions reveal how civil society is not merely a tool for securing rights or enhancing governance, but a dynamic, historically embedded space, deeply shaped by power, identity, and collective struggle. While liberalism provides essential insights into the protective and participatory functions of civil society, it must be approached critically and complemented by alternative frameworks that more fully engage with its political, ethical, and transformative dimensions.

The author observes liberalism, in this context, as not simply in a normative attachment to rights, but in how CSOs advocate for individual freedoms, frame their claims in terms of civil liberties, and participate in public discourse without fear of repression. Rather than assuming civil society embodies liberalism, the thesis examines how CSOs invoke liberal values to build legitimacy or contest state action.

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[183] Dorothy E. Roberts, *The Moral Exclusivity of the New Civil Society*, 75 CHI.-KENT. L. REV. 555, 356 (2000).
[184] *Id.* at 566.
[185] *Id.* at 602.

2.5.2. Social Capital Theory

Social capital theory examines how trust, networks, and norms of reciprocity generate resources that shape collective action and political life. Social capital theorists argue that the networks, norms, and trust that exist within civil society are key sources of social capital and play a crucial role in promoting democratic participation and governance.

Under this way of thinking, civil society serves as a barrier against tyranny by educating individuals in the skills and virtues needed for good citizenship. According to scholars, *good citizenship* is typically understood as a combination of civic knowledge, ethical responsibility, and active participation in public life. It encompasses not only personal integrity and respect for the rule of law, but also a commitment to democratic values such as justice, equality, and the common good.[186] Good citizens are expected to contribute to the well-being of their communities through informed engagement, critical reflection, and meaningful involvement in civic and political processes. This includes voting, volunteering, advocacy, and participation in public discourse. Scholars such as Westheimer and Kahne emphasise that good citizenship can be expressed through varying degrees of responsibility, participation, and justice-orientation, reflecting different understandings of the role individuals play in sustaining democratic societies.[187]

When self-interest and narrow identities take precedence, liberty is threatened.[188] This can result in a range of disruptions within a community, from civil war to inadequate governance and the absence of necessities like clean water and public healthcare. To prevent these outcomes, civil society should promote cooperation, reciprocity, and trust, all of which are crucial for collective endeavours such as public discourse and responsible leadership, which are foundational to good government and democracy.[189] This theory of civil society, rooted in the republican tradition of political democracy,[190] is more selective, only recognising associations with an active membership

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[186]Joel Westheimer & Joseph Kahne, *What Kind of Citizen? The Politics of Educating for Democracy*, 41 AMERICAN EDUCATIONAL RESEARCH J. 237 (2004); Will Kymlicka & Wayne Norman, *Return of the Citizens: A Survey of Recent Work o Citizenship Theory*, 104 ETHICS 352 (1994).
[187] Westheimer and Kahne, *supra* note 186.
[188] ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000).
[189] Bignami, *supra* note 150 at 328.
[190] Generally, this compares and evaluates alternative ideas of justice, legitimacy, and the common good as they apply to the institutions and conduct of domestic and global life. *See e.g.*, Philip Pettit, *Two Republican Traditions*, *in* REPUBLICAN DEMOCRACY: LIBERTY, LAW AND POLITICS 169 (Andreas Niederberger & Philipp Schink eds., 2013).

base that participate in social and civic activities.[191] However, it explicitly excludes two categories of organisations. One, market-based actors such as corporations, partnerships, profit-driven entities, and lobbying groups. Their main focus is profit-making and advancing the interests of specific economic actors, rather than fostering the reciprocity and cooperation needed to build social capital.[192] Two, specialised organisations focused on political advocacy that lack a rank-and-file membership and the ability to mobilise a large number of individuals, meaning they have little daily connection to the individuals and interests they represent.[193]

One of the key contributors to social capital theory is the work of political scientist Robert Putnam. In his seminal book *Making Democracy Work*, Putnam, following the work of Coleman,[194] defines social capital as features of social organisation, such as networks, norms, and trust, that facilitate coordination and cooperation for mutual benefit.[195] He argues that social capital is essential for the functioning of democratic societies, and that civil society organisations, such as voluntary associations and community groups, are key sources of social capital.[196] Putnam contends that high levels of social capital, as measured by civic engagement and trust, are associated with better governance and more effective public institutions.[197]

Coleman[198] defines social capital as "a set of norms that facilitate coordination and cooperation among individuals."[199] Coleman supports the notion that social capital is essential for the functioning of social systems, and that CSOs are key sites for the formation and deployment of social capital, particularly regarding the next generation.[200]

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[191] PUTNAM, *supra* note 116; PUTNAM, *supra* note 188.
[192] Bignami, *supra* note 150 at 329.
[193] *Id.* at 329 FN11.
[194] James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. OF SOCIOLOGY S95 (1988); James S. Coleman, *Social Capital, Human Capital, and Investment in Youth*, *in* YOUTH UNEMPLOYMENT AND SOCIETY 34 (A.C. Peterson & J.T. Mortimer eds., 1994).
[195] Julia Häuberer, *Introducing the Civic Perspective on Social Capital – Robert D. Putnam's Concepts of Social Capital*, *in* SOCIAL CAPITAL THEORY 53, 53 (2011).
[196] *Id.*
[197] *Id.* at 9, 146.
[198] It must be noted that the majority of Colemans' work focuses on the investment of social capital in youth. *E.g.*, Coleman, *supra* note 194.
[199] JAMES S. COLEMAN, FOUNDATIONS OF SOCIAL THEORY 302 (1990).
[200] Coleman, *supra* note 194 at S118.

Social capital theory has been critiqued for idealising civil society as inherently democratic, underplaying internal exclusions and power asymmetries, and lacking empirical precision. Bourdieu, for example, argues that social capital is a form of economic and cultural capital that is accumulated through social networks.[201] He contends that social capital is a key factor in social inequality,[202] as individuals with more social capital have greater access to resources and opportunities. He argues that social capital can be used to mobilise political power, and that CSOs are key sites of the accumulation and deployment of social capital.[203] From this perspective, CSOs are not merely sources of cohesion but also sites of accumulation and exclusion, where elite actors may consolidate influence under the guise of participatory virtue. This more critical stance reflects broader critiques of social capital theory, which caution against its often-idealised portrayal of civil society. Scholars such as Edwards and Foley[204] and Portes[205] note that not all associations serve democratic ends, and that some can entrench parochialism, racism or authoritarian values.

Furthermore, postcolonial scholars further interrogate the assumed neutrality of civil society and the unequal distribution of social capital. Chatterjee criticises the Western liberal bias of the theory, proposing instead the concept of political society to describe the informal, negotiated forms of collective life that exist in many postcolonial contexts.[206] These critiques highlight the risk of exporting normative assumptions about what "counts" as legitimate civil society, thereby marginalising non-Western, non-institutionalised forms of association. This critique is particularly salient when evaluating the normative assumptions embedded in IHR advocacy, where CSOs may wield social capital in ways that reproduce rather than challenge structural inequalities.

Social capital is interpreted through the organisational capacity of CSOs to generate networks, mobilise trust, and foster collaboration among actors. Here, the focus shifts from social cohesion at the community level to how CSOs serve as hubs of relational capital, often empowering individuals by providing civic infrastructure and facilitating participatory spaces.

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[201] BOURDIEU, *supra* note 134 at 21.
[202] PIERRE BOURDIEU & LOIC J.D. WACQUANT, AN INVITATION TO REFLEXIVE SOCIOLOGY 119 (1992).
[203] BOURDIEU, *supra* note 134.
[204] Michael W. Foley & Bob Edwards, *Is It Time to Disinvest in Social Capital?*, 19 J. PUB. POL. 141 (1999).
[205] Alejandro Portes, *Downsides of Social Capital*, 111 PNAS (2014).
[206] THE POLITICS OF THE GOVERNED: REFLECTIONS ON POPULAR POLITICS IN MOST OF THE WORLD 66 (Partha Chatterjee ed., 2004).

2.5.3. Cosmopolitanism

Cosmopolitanism is the first perspective in civil society theory to consider civil society in the frame of an increasingly globalised world.[207] With 1945 marking the greatest shift towards a global community,[208] some scholars have debated the need for global citizenship.[209] At its core, it refers to the idea that individuals have rights, responsibilities, and identities that extend beyond the boundaries of their State borders, thus connecting them to a wider global community. In turn, cosmopolitanism examines the role of non-State actors and voluntary associations in shaping social and political life on the international platform. Cosmopolitan theorists argue that civil society is a crucial sphere for promoting global citizenship and the protection of human rights.[210]

Cosmopolitanism is a concept that emphasises the mobilisation of individuals across national borders to address global issues and promote social justice. It is viewed as the foundation of an emerging global civil society,[211] which is considered necessary to counteract the negative effects of global capitalism and the lack of international democracy.[212] The globalisation of the market has led to widespread social injustice, which the international community has failed to adequately address, making the development of a global civil society increasingly important.[213] In this context, civil society is defined as social relationships separate from the State and it is their ability to mobilise people transnationally that makes them important. Global civil society is seen as synonymous with a global people, and associations are how these people can be organised. This

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[207] The term 'globalisation' here refers to the increased significance of the international legal realm in the area of human rights, in addition to the increase in exchange of knowledge, trade and capital around the world. Jerome J. Shestack, *Globalization of Human Rights Law*, 21 FORDHAM INT'L L.J. 558 (1997).
[208] *Id.*
[209] Global citizenship has been defined as "a moral and ethical disposition which can guide the understanding of individuals or groups of local and global contexts, and their relative responsibilities within different communities." HANS SCHATTLE, THE PRACTICES OF GLOBAL CITIZENSHIP (2007).
[210] *See also*, Robert Fine, *Cosmopolitanism and Human Rights: Radicalism in a Global Age*, 40 METAPHILOSOPHY 8 (2009) (discussing the criticism of cosmopolitanism).
[211] Bignami, *supra* note 150 at 330.
[212] *Id.*
[213] *Id.*; B.K. Woodward, *Global Civil Society and International Law in Global Governance: Some Contemporary Issues*, 8 INT'L COMMUNITY L. REV. 247 (2006).

makes global civil society a substitute for political parties in traditional democracies, as it provides a means for people to come together and create an integrated, cosmopolitan public sphere.[214]

Kantian cosmopolitanism features heavily in discussions of cosmopolitanism. This philosophical perspective centres around the idea of global citizenship and universal human dignity,[215] drawing its roots from the works of Immanuel Kant, who argued that moral and ethical considerations should extend beyond national borders.[216] In the context of civil society, Kantian cosmopolitanism asserts that individuals have moral obligations not only to their own society, but to all of humanity.[217] According to Kant, individuals have a duty to promote peace and justice on a global scale, rather than simply serving their own self-interests. This idea is rooted in his concept of the "cosmopolitan law," which holds that all human beings have a right to universal hospitality and should treat each other as equals, regardless of nationality or cultural background.[218] In the modern world, where globalisation has led to increased interdependence among nations and greater interconnectedness between different societies, the relevance of Kantian cosmopolitanism has become increasingly apparent. As CSOs have gained more influence on the international stage, it has become increasingly important to consider the role that civil society can play in promoting cosmopolitan ideals.[219] For example, the UPR is the first IHR mechanism that seeks to empower non-State actors in the international area.

Beyond Kant, Held argues that civil society is an essential sphere for the development of global governance, and that civil society organisations, such as NGOs and transnational social movements, are key actors in promoting global citizenship.[220] He contends that civil society is essential for the formation of a global public sphere,[221] where individuals can engage in open and rational discourse, and form a public opinion that can hold global governance institutions

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[214] Bignami, *supra* note 150 at 331.
[215] GARRETT WALLACE BROWN, GROUNDING COSMOPOLITANISM: FROM KANT TO THE IDEA OF A COSMOPOLITAN CONSTITUTION 31–2 (2009).
[216] *Id.*
[217] DAVID HELD & GARRETT BROWN, THE COSMOPOLITANISM READER 45 (2010); Contra, Pauline Kleingeld, *Kant's Cosmopolitan Law: World Citizenship for a Global Order*, 2 KANTIAN REV. 71 (1998) (arguing that Kant's vision of cosmopolitanism and global citizenship neglects the way the international realm functions).
[218] HELD AND BROWN, *supra* note 217 at 45.
[219] LORENA C. SANAHUJA, TOWARD KANTIAN COSMOPOLITANISM (2017) (taking an interdisciplinary perspective to show how cosmopolitanism can be situated in modern law).
[220] DAVID HELD, COSMOPOLITANISM: IDEALS AND REALITIES (2010).
[221] *Id.* at 34–5.

accountable.[222] Similarly, Beck[223] argues that civil society is central for the development of a cosmopolitan perspective.[224] Beck contends that CSOs, such as transnational social movements like Amnesty International, are key actors in promoting a cosmopolitan perspective, which is defined as a sense of shared responsibility for the well-being of the global community.[225] He argues that cosmopolitanism is essential for addressing global problems such as climate change,[226] and that civil society is a crucial sphere for promoting a sense of shared responsibility for the well-being of the global community.[227]Archibugi also argues that civil society is a key space for the development of global citizenship.[228] He contends that CSOs promote a global civil society, which here, is defined as a domain of collective action that transcends national borders.[229] He argues that global civil society is essential for addressing global problems such as poverty and human rights violations.[230]

However, the viability of global citizenship is debated, with scholars often concluding that it is not possible to be a *citizen of the world,*[231] and the definition of global citizenship being contested issue itself.[232] In discussing the subject, Brown explores the value of global civil society, for instance, arguing that rather than focusing on reforming civil society in the international realm, focus should be on reforming the tools available to civil society, legitimising their advocacy internationally and addressing deficiencies and inequalities among civil societies from different

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[222] *Id.* at 221.
[223] Ulrich Beck, *We Do Not Live in an Age of Cosmopolitanism but in an Age of Cosmopolitization: The 'Global Other' Is in Our Midst*, 18 NLM 169 (2014).
[224] ULRICH BECK, COSMOPOLITAN VISION (2006).
[225] Ulrich Beck, *Critical Theory of World Risk Society: A Cosmopolitan Vision*, 16 CONSTELLATIONS 3, 19 (2009).
[226] *Id.* at 12, 16.
[227] *Id.*
[228] Daniele Archibugi, *Principles of Cosmopolitan Democracy*, *in* RE-IMAGINING POLITICAL COMMUNITY: STUDIES IN COSMOPOLITAN DEMOCRACY 198 (Daniele Archibugi, David Held, & Martin Köhler eds., 1998); See also, COSMOPOLITAN DEMOCRACY: AN AGENDA FOR A NEW WORLD ORDER (Daniele Archibugi & David Held eds., 1995).
[229] HELD AND BROWN, *supra* note 217 at 333, 433.
[230] Daniele Archibugi, *Immanuel Kant Cosmopolitan Law and Peace*, 1 EUROPEAN J. OF INT'L RELATIONS 429 (1995); Daniele Archibugi et al., *Global Democracy: A Symposium on a New Political Hope*, 32 NEW POLITICAL SCI. 83, 90 (2010) (noting it is not necessary for civil society to be involved in every aspect of political life, but concentrate on relevant issues in human rights).
[231] *E.g.*, Chris Brown, *Cosmopolitanism, World Citizenship and Global Civil Society*, 3 CRITICAL REV. OF INT'L SOCIAL & POLITICAL PHILOSOPHY 7 (2000) (arguing that global citizenship may be unlikely but a global civil society is more plausible); Matt B. Smith & Katy Jenkins, *Disconnections and Exclusions: Professionalization, Cosmopolitanism and (Global?) Civil Society*, 11 GLOBAL NETWORKS 160 (2011); Kenneth Anderson, *Accountability as Legitimacy Global Governance, Global Civil Society and the United Nations*, 36 BROOK J. INT'L 841 (2011) (critiquing the legitimacy of a global civil society).
[232] *See e.g.*, Cohen, *supra* note 123.

nations who operate in varying degrees of democracy.[233] This is a potentially more effective approach to tackling pressing human rights issues and meeting the objectives of cosmopolitanism.

Taken together, cosmopolitanism is operationalised through the transnational character of many CSOs. Rather than treating global civil society as an abstract ideal, the thesis investigates how CSOs use IHR norms, engage with global institutions like the UN, and collaborate across borders to shape human rights discourse and accountability processes.

2.5.4. Multiculturalism

Multiculturalism is a prominent perspective in civil society theory, which argues that civil society is a crucial space for promoting cultural diversity and the protection of minority rights. The central aim of multiculturalism is to actively include diverse cultures and minority groups with varying interests into the civic and political life of society, ensuring recognition, participation, and protection of minority rights.[234] It is closely linked to the concepts of pluralism,[235] communitarianism,[236] and democracy,[237] placing emphasis on interdependence, social cohesion, and mutual responsibility. Multiculturalism challenges the notion that individuals are autonomous and self-sufficient, recognising that they are shaped and dependent on the communities in which they reside.[238] In this view, the needs of society must be balanced against the needs of individuals who cannot be given complete freedom to pursue their self-interest.[239] Multiculturalism encourages groups to engage in social activities and self-governance, with a focus on addressing issues of discrimination and inequality.[240] Multiculturalists often advocate for the allocation of

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[233] Brown, *supra* note 231 at 24.
[234] Bignami, *supra* note 150 at 329; Ayelet Shachar, *On Citizenship and Multicultural Vulnerability*, 28 POLITICAL THEORY 64, 65–6 (2000); WILL KYMLICKA, POLITICS IN THE VERNACULAR: NATIONALISM, MULTICULTURALISM AND CITIZENSHIP (2001).
[235] William E. Connolly, *Pluralism, Multiculturalism and the Nation-State: Rethinking the Connections*, 1 J. OF POLITICAL IDEOLOGIES 54 (1996) (focusing on the globalisation of the economy and the connection between cosmopolitanism, pluralism and multiculturalism).
[236] Will Kymlicka, *Community and Multiculturalism*, *in* A COMPANION TO CONTEMPORARY POLITICAL PHILOSOPHY 463 (Robert E. Goodin, Philip Pettit, & Thomas Pogge eds., 2017) (exploring the need to consider communitarianism in addressing the issues multiculturalism is addressing).
[237] Anand R. Marri, *Multicultural Democracy: Toward a Better Democracy*, 14 INTERCULTURAL EDUCATION 263 (2010) (exploring multiculturalist democracies as a means to promote better citizenship).
[238] Bignami, *supra* note 150 at 329.
[239] Percy B. Lehning, *Towards a Multicultural Civil Society: The Role of Social Capital and Democratic Citizenship*, 33 GOVERNMENT & OPPOSITION 221 (1998); Bignami, *supra* note 150 at 330.
[240] Bignami, *supra* note 150 at 330.

legal responsibilities and public funds to CSOs to help distribute social services.[241] They believe that efforts should be made to create a more equitable and just system of institutions, working towards a society free of discrimination and inequality.[242] In the context of this thesis, a multicultural approach helps civil society translate universal human rights into local contexts, ensuring that advocacy is culturally sensitive and inclusive rather than one-size-fits-all.

Kymlicka argues that civil society is essential for the protection of minority rights, and that CSOs, such as ethnic associations and community groups, are key actors in promoting cultural diversity.[243] He contends that civil society plays a significant role in the formation of a multicultural public sphere, where individuals from different cultural backgrounds can engage in open and rational discourse, and form a public opinion that can hold the government accountable, but that theorists demand too much from voluntary associations, such as minority groups or churches.[244] Multicultural approaches in established CSOs with the ability to mobilise large numbers of people and an organised membership base are more likely to be effective in promoting and protecting multicultural identities and communities.[245] Kymlicka emphasises that multiculturalism requires educating citizens in civic responsibility and fostering participation across all communities, so that policies reflect inclusivity and justice. In this way, he argues that multiculturalism can be reconciled with liberalism, but only if liberalism is broadened to embrace cultural recognition.[246]

In the same vein, Parekh argues that CSOs, such as ethnic and religious associations, are key actors in promoting a multicultural perspective,[247] emphasising the dangers of ignoring diversity.[248] He argues that multiculturalism is essential for addressing issues of social integration and cultural rights, and that civil society is a crucial sphere for promoting a sense of respect for cultural

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[241] *See E.g.*, Oliver Schmidtke, *The Civil Society Dynamic of Including and Empowering Refugees in Canada's Urban Centres*, 6 SOCIAL INCLUSION 147 (2018); Eduardo J. Gómez, *Civil Society in Global Health Policymaking: A Critical Review*, 14 GLOBALIZATION & HEALTH 1 (2018).
[242] *Note*, some scholars propose that multiculturalist authors fail to factor in the concept of "fragmented civil societies" in proposing models of incorporation for multicultural approaches, *see e.g.*, Jeffrey C. Alexander, *Theorizing the. "Modes of Incorporations": Assimilation, Hyphenation, and Multiculturalism as Varieties of Civil Participation*, 19 SOCIOLOGICAL THEORY 237, 238–40 (2001).
[243] KYMLICKA, *supra* note 234 at 302–3.
[244] *Id.* Arguing that people join such groups not to learn civic virtues but to enjoy certain goods or honour personal values.
[245] *Id.*
[246] *Id.*
[247] BHIKHU PAREKH, RETHINKING MULTICULTURALISM: CULTURAL DIVERSITY AND POLITICAL THEORY (2002).
[248] *Id.* at 200–203.

diversity. Controversially[249] he also criticises other multiculturalist scholars for adopting a Eurocentric interpretation of normative theory regarding religion and the State.[250]

Considering this thesis, multiculturalism is often treated as a sociological or political idea, however, it has significant implications for how civil society is understood, and how CSOs operate within spheres of IHR. At its core, the theory refers to the recognition, accommodation, and protection of cultural, religious, linguistic, and ethnic diversity within a political community. In liberal democracies, multiculturalism challenges the idea of a neutral public sphere by insisting that diverse identities are not only tolerated but must be meaningfully included in the processes that shape law and policy.

Koroma argues that international law must evolve beyond its Eurocentric foundations by adopting a trans-civilizational perspective;[251] one that includes multiple cultural and legal traditions in shaping legal norms and institutions.[252] He highlights the limitations of international legal interpretation, where Western perspectives often dominate both jurisprudence and the definition of customary law.[253] Similarly, Thirlway notes that while multiculturalism is not an explicit legal principle in international law, its values increasingly surface through regional practices and the evolution of treaty interpretation, though they must always remain compatible with universal human rights.[254] He also raises concerns about potential conflicts between cultural practices and rights-based legal norms, emphasising the need for balance.

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[249] For criticisms on Parekh's book, *see e.g.*, Dorota Kolodziejczyk, *Bhikhu Parekh (2000) Rethinking Multiculturalism: Cultural Diversity and Political Theory*, CULTURE MACHINE (n.d.), https://culturemachine.net/reviews/parekh-rethinking-multiculturalism-kolodziejczyk (who criticises Parekh's view of cultures as "static units, internally homogeneous and sedate" and his argument that multiculturalism is superior even to liberalism. Moreover, Parekh fails to consider the complexities of cultural identities, particularly in migrants, and has little real-world application beyond theory).
[250] PAREKH, *supra* note 247 at 295–8; See also, Tariq Modood, *Their Liberalism and Our Multiculturalism?*, 3 BRITISH J. OF POLITICS & INT'L RELATIONS 245 (2001).
[251] Abdul G. Koroma, *International Law and Multiculturalism*, *in* MULTICULTURALISM AND INTERNATIONAL LAW: ESSAYS IN HONOUR OF EDWARD MCWHINNEY 79, 89–93 (Edward McWhinney, Jacques-Yvan Morin, & Sienho Yee eds., 2009); See also, Sunita Singh, *Multicultural and Civil Society*, 76 INDIAN J. OF POLITICAL SCIENCE 771 (2015).
[252] Koroma, *supra* note 251 at 79–80, 89–93.
[253] *Id.* at 83–5.
[254] Hugh Thirlway, *Reflections on Multiculturalism and International Law*, *in* MULTICULTURALISM AND INTERNATIONAL LAW: ESSAYS IN HONOUR OF EDWARD MCWHINNEY 95, 101–04 (Edward McWhinney, Jacques-Yvan Morin, & Sienho Yee eds., 2009).

Van Aggelen traces the shifting perception of multiculturalism at the UN since 1945. He notes that the UN has moved from an initial emphasis on anti-discrimination to a more dialogical, inclusive, and culturally pluralist orientation, particularly since the 1990s.[255] Initiatives such as UNESCO's *Declaration on Cultural Diversity* and the *Alliance of Civilizations* show an institutional effort to foster intercultural respect and civil society dialogue, even as challenges persist in reconciling diverse cultural values with universal human rights standards.[256]

Looking at Xanthaki's work, IHR law, although not explicitly referencing multiculturalism, implicitly endorses its key tenets.[257] Through a close reading of instruments and UN treaty body interpretations, she reveals that international standards increasingly support the formal recognition of cultural groups in the public sphere, the right to cultural identity, and the development of pluralistic human rights frameworks that accommodate difference without eroding universality.[258] Xanthaki argues that multiculturalism necessitates not only the coexistence of diverse groups but also institutionalised interaction and the recognition of minorities as equal contributors to national identity.[259] This resonates with civil society's role as a participatory arena, suggesting that a genuinely inclusive civil society must go beyond procedural neutrality and actively foster intercultural dialogue and equitable representation. Her critique of State "neutrality" further exposes how liberal frameworks, by failing to address asymmetrical power relations, may reinforce the dominance of majority cultures under the guise of universality.[260] In this way, multiculturalism expands our understanding of civil society, insisting on a model that engages with cultural pluralism as a substantive, not descriptive, commitment.

This considered, the author applies multiculturalism to CSOs not as a descriptor of a pluralist society, but as a lens to analyse how CSOs promote diversity, advocate against systemic discrimination, and centre inclusive frameworks in their engagement with IHR. This includes

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[255] Johannes van Aggelen, *The Shift in the Perception of Multiculturalism at the United Nations since 1945.*, *in* MULTICULTURALISM AND INTERNATIONAL LAW: ESSAYS IN HONOUR OF EDWARD MCWHINNEY 169, 169 (Edward McWhinney, Jacques-Yvan Morin, & Sienho Yee eds., 2009).
[256] *Id.* at 179–82.
[257] Alexandra Xanthaki, *Multiculturalism and International Law: Discussing Universal Standards*, 32 HUM. RTS. Q. 21, 22 (2010).
[258] *Id.* at 26–8. For instance, UNESCO declarations affirm cultural diversity as an "ethical imperative" central to peace and human dignity (*Id.* at 27), while the Framework Convention for the Protection of National Minorities emphasises that dialogue and interaction with minorities strengthen rather than threaten democratic life (*Id.* at 28).
[259] *Id.* at 28.
[260] *Id.* at 32.

attention to how CSOs foreground equity over formal equality, recognising the cultural, social, and historical contexts of their constituencies.

2.5.5. Effective Governance

Effective governance theorists argue that civil society is about promoting good governance and holding the government accountable. The literature in public policy and governance places a focus on the effectiveness of the organisations and policies of the State, and the contribution that can be made by CSOs rather than just the relationship between the individual and society, as is the focus of other theories.[261]

The dominant problem in public policy literature is the deficiency of traditional "command-and-control" administration.[262] CSOs are seen as a solution to this problem for three main reasons. First, the problems faced by governments often require specialist knowledge which can be possessed by CSOs. Second, CSOs and other NGOs supporting policies improves the chances of compliance and cooperation, leading to better policies being made by governments.[263] Third, in some cases, governments delegate policy making to CSOs for the above two reasons.[264] As with the theories above, this one calls for transparency and openness on behalf of the legislature and civil society, and for the delineation of areas such as service provisions, technical standard setting, and development aid distribution in which policy tasks are more effectively handled by non-State actors.[265] Tilly argues that civil society helps foster collective action, which is essential for holding government accountable.[266] Tilly contends that CSOs, such as social movements and interest

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[261] Bignami, *supra* note 150 at 332.
[262] *Id.* Command-and-control administration refers to a centralised regulatory style where authorities dictate detailed rules and enforce compliance through monitoring and sanctions, leaving little room for flexibility or local adaptation.
[263] Anthony E. Etuvoata, *Towards Improved Compliance with Human Rights Decisions in the African Human Rights System: Enhancing the Role of Civil Society*, 21 HUM. RTS. REV. 415 (2020); Thomas Carothers & William Brandt, *Civil Society*, 117 FOREIGN POL'CY 18, 24 (1999).
[264] *See e.g.*, Richard B. Stewart, *Administrative Law in the Twenty-First Century*, 78 N.Y.U.L. REV. 437 (2003); Gráinne de Búrca, Robert O. Keohane & Charles Sabel, *New Modes of Pluralist Global Governance*, 45 N.Y.U.J. OF INT'L L. & POLITICS 723, 739–85 (2013).
[265] Schmidtke, *supra* note 241; Allan Rosenbaum, *Cooperative Service Delivery: The Dynamics of Public Sector-Private Sector-Civil Society Collaboration*, 72 INT'L REV. OF ADMINISTRATIVE SCIENCES (2016); Bignami, *supra* note 150 at 332.
[266] Charles Tilly, *Models and Realities of Popular Collective Action*, 52 SOCIAL MOVEMENTS 717 (1985); Sidney Tarrow, *The Contributions of Charles Tilly to the Social Sciences*, 47 AM. SOCIOLOGICAL ASSOCIATION 513 (2018).

groups, are key actors in promoting collective action, which can be used to demand policy change and hold the government accountable.[267]

Focusing on global governance, Martens argues that CSOs enhance accountability in global governance by improving transparency, participatory decision-making, and critical oversight. At the UN, for instance, CSOs have bolstered accountability by increasing public awareness of UN processes, offering input during policy formulation, and scrutinising implementation, often flagging failures and recommending corrections.[268] Yet this contribution remains conditional on the willingness of States and intergovernmental institutions to engage meaningfully, with formal access not always translating into genuine influence – particularly for grassroots or under-resourced groups.[269] Scholte expands this argument by situating civil society as key to improving the accountability of transnational governance structures.[270] He cautions, however, that while CSOs can address some of the democratic deficits in global governance, their own internal legitimacy, representativeness and capacity must also be examined.[271] Effective governance, in this sense, requires not only engagement but structural responsiveness from both State and global institutions. Roy, however, challenges the assumption that greater civil society activity automatically translates into improved governance outcomes.[272]

In this thesis, effective governance is interpreted through the practices of CSOs in enhancing institutional accountability – not simply advocating for good governance but participating in it. This includes the CSO' role in monitoring State action, calling for transparency in UN or governmental processes, and contributing expertise in service provision or standard setting.

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[267] Tilly, *supra* note 266.
[268] Kerstin Martens, *Civil Society and Accountability of the United Nations*, *in* BUILDING GLOBAL DEMOCRACY?: CIVIL SOCIETY AND ACCOUNTABLE GLOBAL GOVERNANCE 42, 45–7 (Jan Aart Scholte ed., 2011).
[269] *Id.* at 54–6.
[270] Jan Aart Scholte, *Global Governance, Accountability and Civil Society*, *in* BUILDING GLOBAL DEMOCRACY?: CIVIL SOCIETY AND ACCOUNTABLE GLOBAL GOVERNANCE 8, 15 (Jan Aart Scholte ed., 2011).
[271] *Id.* at 28–30.
[272] Indrajit Roy, *Civil Society and Good Governance: (Re-) Conceptualizing the Interface*, 36 WORLD DEVELOPMENT 677, 678 (2008).

2.5.6. Backward-Forward Infiltration

The backward-forward infiltration theory is a lesser-known perspective in civil society theory, which examines the relationship between civil society and the State.[273] It suggests that State actors attempt to infiltrate and control CSOs to advance their own agenda, while civil society actors also attempt to infiltrate and influence the State to promote their own agenda.[274] Whilst this theory is most prominently discussed in the context of States which are generally perceived as less democratic, where governments have an interest in imposing their own agenda on CSOs while also attempting to control and suppress them, thus maintaining control,[275] there is little scholarship exploring the dynamic model in the context of less hostile States, such as the US, where civil society is the underpinning of the nation's democracy.[276]

Klein and Lee propose an approach that considers the intersection between civil society, the State and the economy.[277] They argue that civil society is neither a fixed nor static concept, but rather a dynamic and evolving sphere of society, shaped by the interplay between numerous forces.[278] Klein and Lee describe a two-way dynamic between civil society and the economy, presented by the author in (Figure 2). Through *forward* infiltration, civil society actors engage with legislative processes; often by mobilising voter influence; to shape policies that affect other societal spheres.[279] In contrast, the economy exercises *backward* infiltration by influencing the internal values, goals, and operational practices of CSOs, often through funding dependencies, market logic, or managerial norms.[280]

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[273] Klein and Lee, *supra* note 32.
[274] *Id.*
[275] *See e.g.*, JAMES SCOTT, SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED (1999).
[276] O'CONNELL, *supra* note 132.
[277] Klein and Lee, *supra* note 32 at 75.
[278] *Id.* at 63.
[279] *Id.* at 68.
[280] *Id.* at 75.

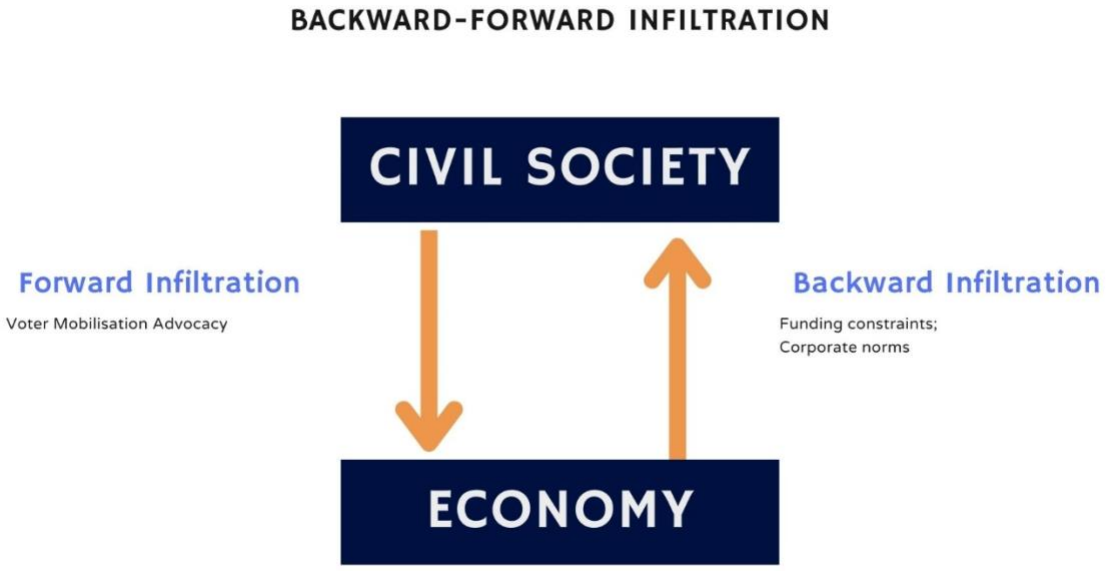

Figure 2: Backward-Forward Infiltration Between Civil Society and the Economy.

In other words, CSOs shape their actions in response to the context, or economy, in which they are operating. Ultimately, Klein and Lee conclude that a healthy society is one that strikes a balance between the two, in a productive and constructive manner.

This dynamic theory is the first to consider the interconnectedness and interdependence between civil society, the government and the economy.[281] To illustrate, the legislature may pass policies that impact the operations of a business which in turn impact the wellbeing of citizens; simultaneously, civil society has the ability to influence the decisions of the State through practices like advocacy and economic pressures, or lobbying efforts, which can include the utilisation of the economy. There are several real-world examples that illustrate this dynamic. For example, between 1948 and 1994, South Africa operated under an apartheid regime, that enforced racial segregation and discrimination, drawing condemnation from civil society globally. Civil society actors, both domestic and international, exerted forward pressure on States and businesses through coordinated

[281] *Id.*; *See also*, Pat Devine, *Economy, State and Civil Society*, 20 ECON. & SOC'Y 205 (1991); Agnes Kövér, *The Relationship Between Government and Civil Society in the Era of COVID-19*, 12 NONPROFIT POLICY FORUM 1 (2021).

divestment campaigns, boycotts, and sanctions advocacy,[282] demonstrating the use of economic channels to influence state behaviour. Meanwhile, the apartheid economy shaped the priorities of resistance movements themselves, with labour unions and community-based organisations often emerging in direct response to material inequalities.[283] This dual dynamic illustrates how both civil society and the economy can be co-constitutive in shaping governance outcomes.

Nonetheless, it is not uncommon for scholars to express concern about the encroachment of civil society. For example, Habermas, argues that State actors often attempt to co-opt civil society organisations and groups to advance their own agenda, while also attempting to control and suppress them.[284] Habermas contends that this process of infiltration and control can be detrimental to the functioning of democracy and the protection of human rights.

Backward-Forward Infiltration is therefore used to observe how CSOs interact both with the State and the market. Forward infiltration captures CSOs' influence on policy through lobbying and voter mobilisation, while backward infiltration examines how economic dependencies, such as donor agendas or neoliberal metrics, shape CSO goals and strategies.

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[282] Megan Hanna, *BDS Movement: Lessons from the South Africa Boycott*, ALJAZEERA, Feb. 23, 2016, https://www.aljazeera.com/features/2016/2/23/bds-movement-lessons-from-the-south-africa-boycott; Chris McGreal, *Boycotts and Sanctions Helped Rid South Africa of Apartheid – Is Israel next in Line?*, THE GUARDIAN, May 23, 2021, https://www.theguardian.com/world/2021/may/23/israel-apartheid-boycotts-sanctions-south-africa.
[283] Anton D. Lowenberg, *Why South Africa's Apartheid Economy Failed*, XV CONTEMPORARY ECONOMIC POL'CY 62 (1997).
[284] JÜRGEN HABERMAS, THE THEORY OF COMMUNICATIVE ACTIONS (1984).

Chapter Three: Case Study

This chapter introduces the case study at the centre of this thesis: the ACLU, its Smart Justice Campaign, and its engagement with the UPR process. The case study approach enables a focused and contextually grounded analysis of how a prominent CSO navigates the intersections of domestic advocacy and IHR monitoring. It illuminates the strategic choices, framing techniques, and institutional constraints that shape the translation of local concerns into IHR discourse.

The rationale for selecting a case study lies in its capacity to examine complex interaction within a real-world context, particularly where the boundaries between the phenomenon and its environment are not clearly delineated. Flyvbjerg offers a strong defence of the case study as a rigorous and context-rich research method, explaining that case studies are particularly well-suited to generating nuances, practice-informed insights, which can be especially relevant to complex and normative fields such as human rights and advocacy.[285] The ACLU's longstanding involvement in both domestic reform and international advocacy, particularly through its engagement with the UPR, offers a rich empirical foundation for examining the mechanisms by which CSOs can influence IHR recommendations. Essentially, through this approach, this thesis can yield generalisable theoretical insights, particularly as the case study is both strategic and critical.[286]

While this thesis offers a single case study, the analytical framework and methodological design are intended to be replicable, conditional to the inclusion of a CSO, a campaign and an IHR mechanism. The insights generated through this study may be applied to other CSOs operating within the US and international legal and political environments. In this sense, the approach adopted here offers a template for future research seeking to interrogate the role of CSOs in bridging domestic human rights practice with IHR processes.

Section 3.1. provides a general overview of the UPR, followed by section 3.2. which presents an in-depth discussion of components of the process most relevant to this thesis, establishing the

[285] Bent Flyvbjerg, *Five Misunderstandings About Case-Study Research*, 12 QUALITATIVE INQUIRY 219, 219, 237–241 (2006).
[286] *Id.* at 229. Flyvbjerg argues just this point, defining a “critical case” as having "strategic importance in relation to the general problem” and concluding that such cases allow for generalisable deductions.

necessary context for Chapters 5 – 7 which describe the thesis' model of good practice. Section 3.3. details the ACLU as the selected CSO for the case study, and finally section 3.7. introduces its Smart Justice Campaign.

3.1. Case Study Element One: The Universal Periodic Review (UPR)

In 2006, the UN underwent substantial reforms to its internal structure to recalibrate the institutional architecture of IHR oversight.[287] In response to fundamental weaknesses and criticism levelled against it,[288] the UNGA adopted Resolution 60/251 which dissolved the UN Commission on Human Rights ("the Commission"),[289] establishing the UNHRC in its place.[290] In addition to this reform, the Resolution formally conceptualised the UPR.[291] Its objectives centred on ensuring universal and equal scrutiny of all Member States, within a cooperative environment.[292]

Designed to complement the work of other UN bodies,[293] the UPR is a State-led, peer review process through which the human rights record of all 193 UN Member States is assessed through a regular cycle, irrespective of geopolitical power or regional affiliation. [294] The operational modalities of the UPR were officially laid out in Resolution 5/1.[295]

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[287] Cowan and Billaud, *supra* note 6 at 1175–6; Burger, Kovac, and Tkalec, *supra* note 6; McNeilly, *supra* note 6 at 15.
[288] Nazila Ghanea, *From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways?*, 55 INT'L & COMPARATIVE L. Q. 695, 703 (2006); See also, Philip Alston, *Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council*, SSRN JOURNAL (2006), http://www.ssrn.com/abstract=907471; ROSA FREEDMAN, THE UNITED NATIONS HUMAN RIGHTS COUNCIL: A CRITIQUE AND EARLY ASSESSMENT (2013).
[289] Resolution 60/251, ¶1.
[290] *Id.*
[291] Resolution 60/251 ¶5(e).
[292] *Id.*
[293] *Id.*
[294] *Id. See Also*, Cowan and Billaud, *supra* note 6; Burger, Kovac, and Tkalec, *supra* note 6; Kazuo Fukuda, *Human Rights Council's Universal Periodic Review as a Forum of Fighting for Borderline Recommendations? Lessons Learned from the Ground*, 20 NW. J. HUM. RTS. 63 (2022); Valentina Carraro, *Strengthening the Human Rights Council and the Treaty Body System**, *in* REINVIGORATING THE UNITED NATIONS 114 (Markus Kornprobst & Sławomir Redo eds., 2024); Duggan-Larkin, *supra* note 47.
[295] Resolution 5/1, annex 1 ¶¶ 1-36.

3.1.1. Modalities of the UPR

The UPR was conceptualised for the UNHRC to conduct a *universal periodic review* of Member States' human rights records, based on "objective and reliable information"[296] in a way that ensures "universality of coverage and equal treatment with respect to all States."[297] Accordingly, the mechanism is designed to operate in a "cooperative" manner "based on an interactive dialogue...with consideration given to [the SuR's] capacity building needs."[298] These principles were subsequently translated into the formal review procedures in UNHRC Resolution 5/1 in June 2007.

In 2011, the UNHRC adopted Resolution 16/21 as part of a mandated five-year review of the UNHRC's work and functioning.[299] Within this broader assessment, the UPR emerged as a key innovation, and its modalities were finalised based on experiences from Cycle One. Most notably, there was an emphasis on implementation and clear communications of positions,[300] the introduction of voluntary mid-term reporting,[301] the affirmation of NHRI participation[302] and, the adjusted periodicity.[303]

Based on this legal architecture, each of the 193 UN Member States undergo a UPR every four-and-a-half years. The schedule considers 42 States per year, during three sessions of the UNHRC's Working Group on the UPR, which is composed of 47 UNHRC members.[304] The interactive dialogue takes place in Geneva, chaired by the UNHRC President, before the Working Group, and

[296] Resolution 60/251 ¶5(e).
[297] Resolution 60/251 para 5(e).
[298] Resolution 60/251 para 5(e).
[299] UN Human Rights Council, Review of the Work and Functioning of the Human Rights Council, Res. 16/21, U.N. Doc. A/HRC/RES/16/21 (Apr. 12, 2011). [Resolution 16/21].
[300] Resolution 16/21 ¶¶ 15-16.
[301] Resolution 16/21 ¶. 18.
[302] Resolution 16/21 ¶. 9.
[303] Resolution 16/21 ¶ 3. *See also*, Adrienne Komanovics, *Human Rights Council and the Universal Periodic Review: Is It More than a Public Relations Exercise*, 150 STUDIA LURIDICA AUCTORITATE UNIVERSATATIS PECS PUBLICATA 119, 145 (2012).
[304] Meaning 14 States are reviewed per session.

remaining Member and Observer States that wish to take part in the dialogue. The cycle of review broadly unfolds in four stages: preparation, review, adoption, and implementation. (Figure 3)

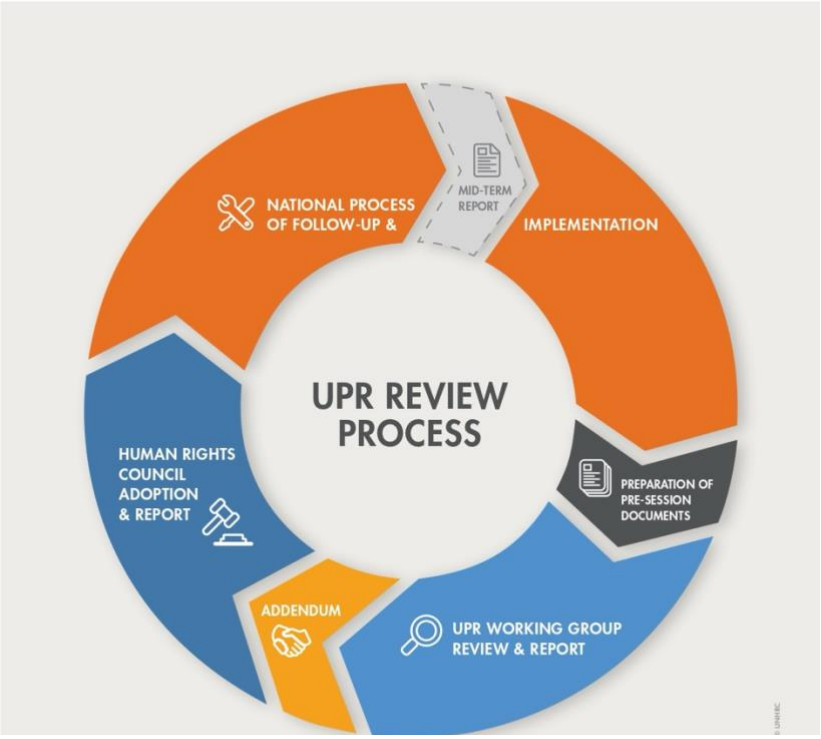

Figure 3: Cycle diagram illustrating the stages of the review process, beginning with pre-session preparation and concluding with follow-up on implementation. Source: OHCHR

3.1.1.1. Stage One: Preparation

The process begins with the compilation of the three documents that form the evidentiary basis of the review. Beginning up to 12 months before the review, the SuR will prepare its national report. This report provides the government's account of its human rights situation. Within this 20-page document, the SuR also details its policies, legal framework, progress made since its last UPR and the status of implementation of supported Recommendations.[305] The UNHRC Resolution and OHCHR guidance advises this to be done through domestic consultation[306] with ministries, CSOs, National Human Rights Institutions (NHRIs), and other stakeholders. Despite this, there is no

[305] Komanovics, *supra* note 303 at 123.
[306] *Id.*

formal obligation to include their inputs, with some States even attempting to limit stakeholder involvement at this plenary stage.[307]

Next, the compilation report is prepared and summarised by the OHCHR. This document compiles and synthesises information from UN sources such as reports and official documents from Treaty Bodies, Special Procedures, and UN Agencies.[308] Consequently, this report is dependent on the SuR's engagement with UN bodies as well as its treaty ratification status, [309] which can limit the scope of UN reports, and is occasionally acknowledged in the submission[310] including the Cycle One compilation report for the US.[311] Stakeholders do not directly contribute to this document, but their earlier engagement with these mechanism often feeds into its contents.[312]

Finally, the summary of stakeholder information is also prepared and summarised by the OHCHR 6-8 months before the UPR session. In compliance with Resolution 5/1's provisions,[313] this information must be "credible" and "reliable" – a measure for which has yet to be formally established. Chapter five returns to this issue and advances a proposal for addressing this gap. As suggested by the name, this report synthesises information submitted by stakeholders, including non-governmental organisations (NGOs), CSOs, NHRIs, and academic and research institutes. As both documents are compiled by the same drafters, there is a degree of coherence and credibility between them,[314] which reinforces the perceived credibility of the SR, and, more broadly, the legitimacy of the UPR documentation. [315] That said, studies assessing the impact of CSO recommendations on official Member State Recommendations reflect an underlying critique of

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[307] Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms in Domestic Practices: Introduction*, *in* POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 1, 1, 18 (Thomas Risse, Stephen C. Ropp, & Kathryn Sikkink eds., 1999); KECK AND SIKKINK, *supra* note 22 at 12–3.
[308] Billaud, *supra* note 15.
[309] Kazuo Fukuda, *Unpacking the Enigma of Reporting Under the Universal Periodic Review: The Case of Three Southeast Asian Countries*, *in* HUMAN RIGHTS AND THE UN UNIVERSAL PERIODIC REVIEW MECHANISM: A RESEARCH COMPANION 248, 260 (Damian Etone, Amna Nazir, & Alice Storey eds., 2024).
[310] *Id.*, note 59, for examples.
[311] A/HRC/WG.6/9/USA/2 Cover Page. "Since this report only compiles information contained in official United Nations documents, lack of information or focus on specific issues may be due to non-ratification of a treaty and/or to a low level of interaction or cooperation with international human rights mechanisms."
[312] Sangeeta Shah & Sandesh Sivakumaran, *The Use of International Human Rights Law in the Universal Periodic Review*, 21 HUMAN RIGHTS LAW REVIEW 264, 280 (2021); See also, Hinako Takata, *Dissecting Stakeholder Participation in UN Human Rights Treaty Body Activities with Normative and Empirical Approaches: A Comparison of NGO and NHRI Participation*, 25 GERMAN L. REV. 237 (2024).
[313] Resolution 5/1, Annex, ¶15(c).
[314] Billaud, *supra* note 15 at 81.
[315] *Id.* at 77.

this summarisation process – specifically concerns regarding its transparency and the criteria guiding inclusion.[316] This is discussed in greater depth below.[317]

In addition to these written documents, approximately one month prior to the Working Group session, informal meetings – facilitated by UPR Info[318] – known as "Pre-sessions" are held. Introduced in 2012 in response to the limited participation of CSOs,[319] the objective of these sessions is to provide CSOs with a Geneva-based platform to directly engage Recommending States. Furthermore, these sessions can inform permanent missions on first-hand information on the human rights situation on the ground. Ultimately, it seeks to ensure Recommendations made during the UPR accurately reflect the reality of the SuR.[320] However, as this is not a recorded event, this thesis does not assess its impact.

In line with Resolution 5/1,[321] a *Troika*, three randomly selected Member States,[322] helps manage the process for fairness and support.[323] The troika's mandate is to facilitate the review, cluster questions submitted in advance to the SuR and draft the Outcome Report along with the OHCHR – which functions as the UPR Secretariat – and the SuR.[324] This report compiles the contents of the interactive discussion, records issues raised during the dialogue, and lists recommendations made by other States, indicating which ones the SuR supports.[325]

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[316] McMahon et al., *supra* note 18 at 1; ALICE STOREY & MELISA OLESCHUK, EMPOWERING CIVIL SOCIETY ORGANISATIONS AT THE UPR: STRENGTHENING IMPLEMENTATION OF RECOMMENDATIONS FROM THE UN'S UNIVERSAL PERIODIC REVIEW 55 (2024).
[317] Section 3.2.
[318] A Geneva-based CSO aiming to promote human rights through the UPR. It is the first CSO fully dedicated to the mechanism. UPR Info, *Vision and Mission*, UPR INFO (n.d.), https://upr-info.org/en/about-us/vision-and-mission.
[319] UPR Info, *Pre-Sessions*, UPR INFO (n.d.), https://upr-info.org/en/presessions.
[320] *Id.*
[321] Resolution 5/1, Annex 1, ¶18.
[322] Fukuda, *supra* note 294. Troika members are selected through a random drawing.
[323] Adrienne Kmanovics, *Human Rights Council and the Universal Periodic Review: Is It More than a Public Relations Exercise*, 150 STUDIA IURIDICA AUCTORITATE UNIVERSITATIS PECS PUBLICATA 119 (2012). Each SuR is assigned a different Troika.
[324] The Outcome Report is factual and based on the proceedings.
[325] Thus committing to implement. States are unable to reject Recommendations; they can only support or note them.

3.1.1.2. Stage Two: Review

Subsequently, the review takes place over the course of a 3.5-hour session. The SuR can present its report and respond to advance question during the opening 70 minutes. The non-confrontational, interactive dialogue then takes place for 140 minutes. During this time, Member States – represented by their diplomatic delegates – evaluate the performance of the SuR in all its human rights obligations. It is at this stage that Member State Recommendations are made.[326]

Importantly, as stated in the introduction to this thesis, stakeholders are not permitted to participate directly in this dialogue. As McMahon *et al* posits that stakeholder contributions have a tangible, albeit variable impact on Member State Recommendations.[327] Therefore, their influence at this stage can only be exercised through prior advocacy: for example, through CSO briefings, stakeholder submissions, or targeted engagement during the Pre-sessions. In this way, CSOs have the potential to influence the agenda, shaping the content of questions and Recommendations. However, as a highly politicised process, the UPR has fostered politically motivated recommendations that seek to advance Member State interests. This occasionally renders issues raised by CSOs subordinate to State interests.[328]

Overall, stage two is the most visible aspect of the UPR; where States peer review each other in a controlled yet politically charged dialogue. The culmination of this stage is in the drafting of the Outcome Report, which officially documents the dialogue and Recommendations made.

3.1.1.3. Stage Three: Adoption

The Outcome Report is the official product of the UPR. Drafted by the Troika with the support of the OHCHR and in consultation with the SuR, it summarises the review, notes the issues raised, and records all Member State Recommendations.[329] The position of the SuR on each

[326] Valentina Carraro, *The United Nations Treaty Bodies and Universal Periodic Review: Advancing Human Rights by Preventing Politicization?*, 39 HUMAN RIGHTS QUARTERLY 943, 944 (2017).
[327] McMahon et al., *supra* note 18.
[328] Jane K. Cowan & Julie Billaud, *Between Learning and Schooling: The Politics of Human Rights Monitoring at the Universal Periodic Review*, 36 THIRD WORLD QUARTERLY 1175 (2015).
[329] Hilary Charlesworth & Emma Larking, *Introduction: The Regulatory Power of the Universal Periodic Review*, *in* HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 1, 5 (Hilary Charlesworth & Emma Larking eds., 2014).

Recommendation is also marked. The report is then adopted in two stages, first the Working Group adoption, which takes place within a few days of the dialogue, and at the plenary session at the UNHRC. The second stage takes place around three or four months later to allow time for all States and stakeholders to comment. At this stage, the role of stakeholders is narrow but visible during the plenary session where ECOSOC-accredited stakeholders are permitted to deliver oral statements, where they can highlight concerns and challenge the SuR's narrative.

3.1.1.4. Stage Four: Implementation

The cycle ends with a period during which the SuR must implement the Recommendations it supported. This considered, there is evidence to suggest that 19% of noted Recommendations triggered action.[330] Unlike Treaty Body Recommendations, which stem from legally binding obligations, Member State Recommendations received during the UPR carry political rather than legal weight.[331]

Although not scrutinised in this thesis, it is worth noting that implementation is measured in three ways. The first is self-reporting, where the SuR provides updates in the next UPR's national report. Second is voluntary mid-term reports. This gives Member States the opportunity to provide the UNHRC with an update on the progress of implementation [332]Third is, independent monitoring by stakeholders. Like mid-term reporting, stakeholders can submit shadow reports or mid-term assessments that monitor government action on supported Recommendations, identify compliance gaps, and mobilise findings to influence domestic reform.[333]

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[330] UPR INFO, BEYOND PROMISES: THE IMPACT OF THE UPR ON THE GROUND 34–6 (2014).
[331] Carraro, *supra* note 326 at 944; For more in depth discussion on the legal status of Treaty Body Recommendations, see e.g., Martin O'Flaherty, *The Concluding Observations of United Nations Human Rights Treaty Bodies*, 6 HUM. RTS. L. REV. 27 (2006); UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY (2012).
[332] This was introduced in Resolution 16/21, Annex ¶18(c).
[333] Michael Lane, *The Universal Periodic Review: A Catalyst for Domestic Mobilisation*, 40 NORDIC JOURNAL OF HUMAN RIGHTS 507, 520 (2022).

A noteworthy characteristic of the UPR is its unparalleled engagement rate: almost every Member State engages with the mechanism, where presently, there are outstanding issues with Myanmar, Nicaragua, and the US. The inaugural session of the UPR, convening in April 2008, saw Bahrain as the first State to undergo review,[334] this set a new precedent for IHR oversight. For the first time, every Member State, regardless of size, influence, or political alignment, was subject to the same scrutiny mechanism. This, therefore, established what has become a defining feature of the UPR – its capacity to establish a level playing field among States about human rights accountability,[335] and its periodicity.

3.1.2. Periodicity and Engagement with the UPR

As of 2025, the UPR has undergone three complete cycles and is part way through Cycle 4. Cycle 1 started in April 2008 and ended in October 2011, Cycle 2 spanned from May 2012 to November 2016, and Cycle 3 from May 2017 to November 2021. Cycle 4 began in November 2022 and is scheduled to conclude in January or February 2027.

Although engagement with the mechanism is voluntary, to date, the UPR has enjoyed almost 100% State engagement.[336] It must be stressed that this statistic is a measure of Member States attending their UPRs and contributing to those of their peers, not their compliance with supported Recommendations or IHR obligations. With this considered, postponement is reserved for exceptional circumstances only. As of 2025, only Haiti and Ukraine[337] have had their reviews postponed. In 2010, Haiti suffered an earthquake, to which the UNHRC permitted a deferral of the review during Cycle 1.[338] Haiti subsequently took part in its first review in 2011.[339] In Ukraine's

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[334] Chauville, *supra* note 5 at 88. *See also*, Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Bahrain*, U.N. Doc. A/HRC/8/19 (May 22, 2008).
[335] *See generally*, *E.g.*, Karolina M. Milewicz & Robert E. Goodin, *Deliberative Capacity Building through International Organizations: The Case of the Universal Periodic Review of Human Rights*, 48 BRIT. J. POLIT. SCI. 513 (2018); Abebe, *supra* note 10; Kazuo Fukuda, *Human Rights Council's Universal Periodic Review as a Forum of Fighting for Borderline Recommendations? Lessons Learned from the Ground*, 20 NW. J. HUM. RTS. 63 (2022); Judith Bueno de Mesquita, *The Universal Periodic Review: A Valuable New Procedure for the Right to Health?*, 21 HEALTH & HUM. RTS. J. 263 (2019).
[336] Lane, *supra* note 333 at 509; Fukuda, *supra* note 335 at 118.
[337] Nicaragua has also had a postponement of the Outcome Report.
[338] The Support of the HRC to the Recovery Process in Haiti After the Earthquake of January 12, 2010: A Human Rights Approach, ¶ 10, U.N. Doc. A/HRC/S-13/L.1 (Jan. 27, 2010).
[339] Working Group on the Universal Periodic Review: Haiti, U.N. Doc. A/HRC/19/19 (Oct. 17, 2011).

case, the UNHRC agreed on 8 July 2022 to postpone its review until the end of the Fourth Cycle, citing the "current exceptional circumstances" in the country and following a formal request from Ukraine.[340] But these instances have been beyond the control of the SuR. In January 2013, Israel boycotted its second UPR review scheduled for that month, following a decision to sever ties with the UNHRC in 2012.[341] However, following institutional and peer pressure, the State underwent its review in October 2013.[342]

Evidently, the UPR provides an opportunity for ongoing communication between States and stakeholders at every stage of the process. As underscored by Lane, the cyclical nature of the mechanism makes it particularly advantageous for domestic CSOs, who can consequently "plan and allocate...often-limited resources efficiently."[343] McNeilly suggests that this format makes the process predictable,[344] and Moss proposes that this allows for CSOs to "engage in a continuous four-year cycle of advocacy built around the UPR."[345] This cyclical consistency cannot be found in other IHR review mechanisms, making the UPR a particularly useful tool for CSOs.[346] Beyond the general overview of universality and predictability, certain States illustrate the stakes of UPR engagement particularly well. The US is one such State.

3.1.2.1. The US and the UPR

The US' position on the UPR has thus far appeared relatively paradoxical. On one hand, the US has consistently engaged with the mechanism across the three completed Cycles; submitting to the review, responding to Recommendations, and reviewing other States. However, on the other hand,

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[340] *Universal Periodic Review Working Group to Examine Human Rights Records of 13 States at Its Forty-Second Session from 23 January to 3 February 2023*, UNOHCHR (Jan. 18, 2023), https://www.ohchr.org/en/press-releases/2023/01/universal-periodic-review-working-group-examine-human-rights-records-13.
[341] Michal Navoth, *Israel's Relationship with the UN Human Rights Council: Is There Hope for Change?*, JERUSALEM CENTER FOR SECURITY AND FOREIGN AFFAIRS, Apr. 6, 2014, https://jcpa.org/article/israels-relationship-un-human-rights-council/.
[342] Pilar Elizalde, *A Horizontal Pathway to Impact? An Assessment of the Universal Periodic Review*, *in* CONTESTING HUMAN RIGHTS: NORMS, INSTITUTIONS AND PRACTICE 83, 91–2 (Alison Brysk & Michael Stohl eds., 2019); Navoth, *supra* note 341.
[343] Lane, *supra* note 333 at 520.
[344] Kathryn McNeilly, *The Temporal Ontology of the Human Rights Council's Universal Periodic Review*, 21 HUMAN RIGHTS LAW REVIEW 1, 9 (2021); Lane, *supra* note 333 at 520.
[345] Moss, *supra* note 121 at 148.
[346] Lane, *supra* note 333 at 520.

the US has also approached the UPR with some degree of scepticism. This scepticism crystallised in the Trump Administration's withdrawal from the UNHRC[347] has now extended to the UPR itself.

Announced by Juliette de Rivero, Chief of the UPR Branch at the OHCHR, on 28 August 2025, the US withdrew its engagement from its scheduled UPR in Cycle 4.[348] This comes after the current Trump Administration expressed an ideological opposition to multilateralism and UN bodies.[349] The matter of the US' withdrawal from the UPR is currently under consideration by the Bureau of the UNHRC;[350] if upheld, it would be unprecedented, making the US the first State to not participate in its own review.

This happens despite the Trump Administration's prior involvement in two phases of the UPR process across two different UPR Cycles. During Cycle 2 in 2015, the Obama Administration submitted the national report, then the Trump Administration, which came into office in January 2017, issued the official responses to Member State Recommendations from that review. During Cycle 3, the Trump Administration submitted the national report in August 2020, and the Biden Administration responded to the Member State Recommendations in March 2021.

Crucially, the US' participation in these Cycles was not marginal, rather it was highly visible. In its 2020 Cycle 3 review, for example, the US received 347 Member State Recommendations; the highest number issued to a SuR in the Cycle. This is followed by China (346), Australia (344), Cuba (339), the Islamic Republic of Iran (329), and the Russian Federation (309, though a further

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[347] The White House, *Withdrawing the United States from and Ending Funding to Certain United Nations Organizations and Reviewing United States Support to All International Organizations*, THE WHITE HOUSE: PRESIDENTIAL ACTIONS (Feb. 4, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/withdrawing-the-united-states-from-and-ending-funding-to-certain-united-nations-organizations-and-reviewing-united-states-support-to-all-international-organizations/.; Deepa Shivaram, *Trump Withdraws the U.S. from the United Nations Human Rights Council*, NPR, Feb. 4, 2025, https://www.npr.org/2025/02/03/nx-s1-5285696/trump-un-human-rights-council-withdrawal; Farnaz Fassihi, *Trump Signs Executive Order Calling for Review of U.S. Funding and Ties to U.N.*, N.Y. TIMES, Feb. 4, 2025, https://www.nytimes.com/2025/02/04/us/politics/trump-united-nations-unrwa.html.

[348] UPR Info, *The UPR: With or Without USA*, UPR INFO (Aug. 28, 2025), https://upr-info.org/en/news/upr-or-without-usa; *Human Rights First Decries U.S. Boycott of UN Universal Periodic Review for Further Damaging U.S. Credibility and International Human Rights Norms*, HUMAN RIGHTS FIRST (Aug. 28, 2025), https://humanrightsfirst.org/library/human-rights-first-decries-u-s-boycott-of-un-universal-periodic-review-for-further-damaging-u-s-credibility-and-international-human-rights-norms.

[349] The Trump Administration has openly criticised the UN, viewing it as a politically biased institution that infringes on US sovereignty. Additionally, the US withdrew from the UNHRC in 2018 under the Trump Administration and is "reevaluating its commitment" to the UN body in 2025. The White House, *supra* note 347.

[350] UPR Info, *supra* note 348.

8 Recommendations were not considered by the State on the basis it determined them invalid or inappropriate). (Table 1)

State-under-Review	UPR Cycle 3 Year (2017-2022)	Number of Member State Recommendations received from a total of 43,229
US	2020	347
China	2018	346
Australia	2021	344
Cuba	2018	339
Islamic Republic of Iran	2019	329
Russian Federation	2018	309 (+ 8 not considered)

Table 1: Some of the States receiving the highest number of Member State Recommendations during UPR Cycle 3 (2017–2022), drawn from a total of 43,229 Recommendations. States were sourced from UPR Info Recommendations Database, Accessed July 2025. The figures were then drawn from the Report of the Working Group for each State.

It is evident from these figures that the international community has an interest in the US' human rights practices. By contrast, Monaco, San Marino, and Andorra received 116, 118, and 126 Recommendations in total, respectively.[351] The disparity in Recommendations reflects a common concern regarding the UPR's engagement; while some States are subject to elevated levels of attention, others receive comparatively limited scrutiny. This imbalance could signal the political nature of the review.[352] That said, as Cox observes, the UPR does identify violators of human rights, regardless,[353] therefore the mechanism continues to be a valuable platform.[354] Moreover, the tension proposed by this is stark: the US, as a State consistently attracting the greatest number

[351] These counts were taken from UPR Info's Platform, https://upr-info-database.uwazi.io, document pages for each State's Cycle 3 Working Group report, where the database lists the number of "Related Recommendations."
[352] *See e.g.*, Eric Cox, *State Human Rights Performance and Recommendations under the UPR*, 9 ALL AZIMUTH 5 (2020); Su Hyen Bae, *Power, Politicization, and Network Positions: Explaining State Participation in the UPR*, 16 KOREAN J. OF INT'L STUD. 335 (2018); Rochelle Terman & Joshua Byun, *Punishment and Politicization in the International Human Rights Regime*, 116 AM. POL. SCI. REV. 385 (2022).
[353] Cox, *supra* note 352 at 20.
[354] Though this subject is beyond the scope of this thesis.

of Recommendations, be it politically charged or otherwise, is the first to attempt to withdraw from the process.

This juxtaposition underscores the critical nature of this thesis' central focus on CSO influence at the UPR, particularly in the context of CSOs operating in the US. In their review of the US' Cycle 1 review, de la Vega and Yamasaki conclude that while the UPR is not the sole driver of change in the country, it serves as a critical mechanism for promoting human rights reform and fostering international dialogue.[355] If the US' withdrawal is legitimised, its UPR will no longer function with the active participation of the SuR; therefore, it heightens the role of CSOs in ensuring domestic human rights concerns are projected into the international arena. This is with the view that these contributions will translate into diplomatic pressures through Member State Recommendations. [356] Considering the US' withdrawal from the process, the Executive Director of UPR Info, Mona M'Bikay, has stressed the importance of the voice of civil society, urging domestic actors to "continue their advocacy with Congress, the Senate, and local authorities to...uphold national commitments."[357] M'Bikay continues on to "urge constructive engagement between national authorities and civil society, fostering dialogue and cooperation."[358]

While this call for engagement is important, CSOs' advocacy should not be confined to the domestic space. In practice, the UPR has served as an important forum for transnational advocacy that often returns to the State in the form of diplomatic pressure, as captured by Keck and Sikkink's boomerang effect.[359] At the UPR, the principal vehicle through which this can be achieved is the stakeholder report. The following section examines how this report is compiled, and the implications of this process for CSO influence, moving discussion from descriptive to analytical.

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[355] Constance de la Vega & Cassandra Yamasaki, *The Effects of the Universal Periodic Review on Human Rights Practices in the United States*, *in* HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 213, 234 (Hilary Charlesworth & Emma Larking eds., 2014).
[356] KECK AND SIKKINK, *supra* note 22 at 12–3.
[357] UPR Info, *supra* note 348.
[358] *Id.*
[359] KECK AND SIKKINK, *supra* note 22 at 12–3.

3.2. The Role and Impact of Stakeholders

Despite a general recognition of and admiration for civil society contributions to the international system, the negotiations that preceded the establishment of the UPR saw deep divisions about the precise scope of CSO involvement.[360] Some States desired a wholly State-drive mechanism that left no opportunity for civil society engagement beyond attendance as observers.[361] Conversely, other States, including members of the European Union (EU) and some GRULAC States, advocated for an interactive dialogue that actively engaged civil society actors.[362] Ultimately, a compromise was reached, granting non-State bodies limited participation opportunities through stakeholder submissions, lobbying, and making "general comments" during the adoption of the outcome report.[363] Notably, non-State bodies were not given direct representation or the opportunity to take the floor during the interactive dialogue,[364] yet the UNHRC underscored that the UPR aims to "[e]nsure the participation of all relevant stakeholders, including [NGOs] and [NHRIs]."[365] This history is linked to the lack of transparency in the OHCHR's process for compiling the stakeholder report.

3.1.2.2. Constructing Neutrality: Power and Procedure in the Stakeholder Report

It is well documented that the OHCHR has provided stakeholders with clear guidelines on how to structure submissions, including clear word limits, and criteria.[366] However, it does not share details on the methodology employed when transforming the submissions into the official stakeholder report.[367] At present, only one publication, by McMahon, exists that provides a detailed record of the process. According to Billaud's account from her time at the Field Operations

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[360] Laura K. Landolt, *Externalizing Human Rights: From Commission to Council, the Universal Periodic Review and Egypt*, 14 HUM. RTS. REV. 107, 117 (2013).
[361] Lane, *supra* note 333 at 509.
[362] *Id.*; Landolt, *supra* note 360 at 117.
[363] Though this is often perceived as being too late to influence the final report; serving more as an opportunity to engage the media and raise awareness on issues not sufficiently addressed during the interactive dialogue. Schokman and Lynch, *supra* note 19 at 132.
[364] Lane, *supra* note 333 at 509.
[365] Resolution 5/1, annex 1, ¶ 3(m).
[366] *Basic Facts About the UPR*, UN HUMAN RIGHTS COUNCIL (n.d.), https://www.ohchr.org/en/hr-bodies/upr/basic-facts.
[367] *Id.* Billaud, *supra* note 15 at 77; See also, Domínguez-Redondo and Smith, *supra* note 15 at 146; Storey and Eccleston-Turner, *supra* note 15.

and Technical Cooperation Division (FOTCD) of the OHCHR, the UPR can be described as a "truth-telling mechanism in the Foucauldian sense."[368] In brief, Foucault contended that power operates not through force, but rather through procedure, language, and systems.[369] As it applies to the OHCHR document drafting process, the "truths" included in the stakeholder report are not neutral, instead, they are shaped by institutional constraints and political sensitivities.[370] Billaud underscores the importance of the drafting process following strict rules in the interest of neutrality, and non-politicisation.[371]

Billaud's ethnographic analysis characterises the OHCHR's compilation process as a "black box," where stakeholders can see the inputs – their submissions – and the outputs – the 10-page stakeholder summary, but the internal procedures and decisions at the OHCHR that shape the output are excluded.[372] Although published in 2014, part way through Cycle 2, Billaud's descriptions of the process are the most detailed available and can be summarised in five stages: (1) collection of submissions, (2) classification and filtering, (3) strategic thematic grouping, (4) drafting, and (5) consolidation. Cumulatively, these craft a seemingly neutral and apolitical summary document made through subjective, strategic, and often improvised decisions. Her critique highlights the gap between how CSOs engage with the UPR and how their inputs are processed before reaching Member States.[373]What we do know is that Resolution 5/1 requires "credible and reliable" information:

"*Additional, credible and reliable information provided by other relevant stakeholders to the universal periodic review which should also be taken into consideration by the Council in the review. The Office of the High Commissioner for Human Rights will prepare a summary of such information which shall not exceed 10 pages.*"[374]

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[368] Billaud, *supra* note 15 at 72–3.
[369] MICHEL FOUCAULT, FEARLESS SPEECH (Joseph Pearson ed., 2001).
[370] Billaud, *supra* note 15 at 79–80.
[371] *Id.* at 65, 77.
[372] *Id.* at 77.
[373] Billaud, *supra* note 15.
[374] Resolution 5/1, ¶ 15(c).

3.1.2.3. The 10-Page Limit

Both the compilation and stakeholder report are restricted to 10-pages, a fundamental structural constraint within the process. While often defended as a necessary administrative feature, this limit has been deemed a "significant challenge,"[375] particularly to CSOs from the Global South. For example, Bueno de Mesquita suggests that the strict page limit biases the process as it limits the scope of human rights issues included in the final document.[376] Based on the assumption that Member State Recommendations reflect the issues raised in the stakeholder report, this limit reduces the likelihood of certain issues being raised during the interactive dialogue,[377] distorting what domestic CSOs see as most pressing in the country.[378] Cofelice and de Perini found that the summarised nature of the UPR is "rarely thorough and comprehensive."[379] Ultimately, this is seen as undermining the UPR's core principles of transparency, stakeholder inclusivity and cooperation.[380]

Nevertheless, the 10-page limit for the stakeholder report has been recognised as necessary. Ingrained into the foundational design of the UPR, the limit exists in the interest of efficiency; limiting the burden for both the SuR and the UNHRC.[381] The restriction ensures workloads and resources are not overly strained as the volume of information that needs to be processed is vast;[382] particularly as the OHCHR often relies on interns for selection and classification.[383] More formally, the limit acts to ensure formal equality. As the UPR operates on the core principle of universality of coverage and equal treatment of all States,[384] the "scrupulously policed"[385] limits on speaking

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[375] Basile Moreau et al., *Reflective Report: Contribution to UPR Process by McGill's Legal Clinic on Academic Freedom*, MCGILL (Sep. 19, 2022), https://www.mcgill.ca/humanrights/article/reflective-report-contribution-upr-process-mcgills-legal-clinic-academic-freedom.
[376] Bueno de Mesquita, *supra* note 335 at 272.
[377] *Id.* at 273.
[378] Michael Lane, *Navigating Devolution at the UPR*, *in* HUMAN RIGHTS AND THE UN UNIVERSAL PERIODIC REVIEW MECHANISM: A RESEARCH COMPANION 277, 293 (Damian Etone, Amna Nazir, & Alice Storey eds., 2024).
[379] Pietro de Perini & Andrea Cofelice, *The Third Universal Periodic Review of Italy between Recurring Trends and New Challenges*, 4 PEACE HUMAN RIGHTS GOVERNANCE 249, 253 (2020).
[380] Lane, *supra* note 378 at 293.
[381] Resolution 5/1, Annex 1, ¶¶ 3(h)-(j). *See also*, Kmanovics, *supra* note 323 at 122.
[382] Jane K. Cowan & Julie Billaud, *The 'Public' Character of the Universal Periodic Review*, *in* PALACES OF HOPE: THE ANTHROPOLOGY OF GLOBAL ORGANIZAITONS 106, 114 (Ronald Niezen & Maria Sapignoli eds., 2017).
[383] *Id.* at 113–4.
[384] Resolution 5/1, Annex 1, ¶¶ 3(a)-(c).
[385] Billaud, *supra* note 15; Jane K. Cowan, *The Universal Periodic Review as a Public Audit Ritual: An Anthropological Perspective on Emerging Practices in the Global Governance of Human Rights*, *in* HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 42 (Hilary Charlesworth & Emma Larking eds., 2015).

time and document length secure this principle and act as the primary means of guaranteeing equality.[386]

Overall, the page limit introduces a significant barrier in CSO inclusion, particularly for SuRs that receive large numbers of stakeholder submissions. It is within the drafting and summarisation process that this barrier is most apparent, where decisions about how content is selected, grouped, and framed remain opaque.

3.1.2.4. The Bureaucracy of the Stakeholder Report

Submissions are initially received by the OHCHR, where two secretaries are responsible for manually recording basic details about each submission.[387] This includes the name of the submitting organisation, its contact email address, and whether the submission is individual or joint. These details along with the files are then relayed to the drafters.[388] Once granted access, drafters thematically classify each submission, quoting them "as a group" in different sections of the report.[389] With strict time pressures, Billaud describes this process as having a somewhat flattening effect on the rich narratives embedded in the original submissions.[390] Moreover, drafters will categorise the stakeholders based on type, for example, distinguishing between ECOSOC-accredited organisations and those without this status.[391]

Drafters are prohibited from paraphrasing any information contained in the submission, instead, they must rely on the "best and most effective quotes" to represent the issues raised. They subsequently must prepare footnotes to attribute each quote to its original source.[392] Often this process includes the task of alphabetising submissions, identifying recurring themes, and compiling quote inventories. Governed by unpublished internal rules, submissions that are written in a non-official UN language, contain "second-hand information," submitted after the deadline,

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[386] Billaud, *supra* note 15.
[387] *Id.* at 76.
[388] The process is highly compartmentalised to avoid authorship, which has led to instances where stakeholder submissions never reached the drafters, despite the NGO in question having received a certificate of reception. Billaud (2014) p.76.
[389] Billaud, *supra* note 15 at 68.
[390] *Id.* at 68.
[391] *Id.*
[392] *Id.*

contain offensive language, written by political parties, Members of Parliaments, or ghost authors are automatically excluded.[393] These rules, however, are constantly negotiated and re-interpreted by drafters.[394] Billaud's account shows that drafters are not passive rule implementers; in turn – considering Moss' suggested correlation between citation in the SR and uptake during the review – this complicates the process of attempting to define guidance on enhancing the likelihood of citation.

Drafters also help shape the stakeholder report other ways too. For example, they may pre-emptively manage politically sensitive content to avoid State pushback. Billaud recounts how LGBTQ+ issues are placed under "right to privacy" rather than "non-discrimination"; similarly, women's rights in marriage are framed as family related rights instead of equality issues.[395] This strategic reframing does not appear to be dictated by explicit institutional orders, but rather by the drafters' readings of the political climate of the SuR, which may be shaped by institutional socialisation, personal experience, and risk aversion.

Another instance of drafter autonomy and discretion is illustrated in one drafter's successful argument for the inclusion of a contribution from a coalition of NGOs. According to the account, the NGOs collaborated with two political parties banned in the SuR. Billaud describes this as a "small victory" for preserving valuable information following a lengthy deliberation and negotiation with the NGOs to remove direct references to the political parties.[396]

Another example saw drafters include an organisation's contribution despite objections from the SuR (China), who registered the group as a "terrorist organisation in the country."[397] Moreover, the Committee Against Torture had rejected the contribution when it was presented to them in a shadow report. Nonetheless, the drafters prepared "a convincing justification"[398] and demonstrated they had consulted with their field office to confirm the legality of the organisation's activities. They also compounded the legitimacy of the issues concerns using information from other

[393] *Id.* at 70. Offensive language includes direct accusations of government officials. Billaud also notes that concerns about abusive language already existed among bureaucrats at the League of Nations. *Id.* at Billaud note 9.
[394] *Id.* at 70.
[395] *Id.* at 77.
[396] *Id.* at 70.
[397] *Id.* at 71.
[398] *Id.* at 72.

stakeholder submissions.[399] Eventually, the Committee Against Torture changed its position and also decided to include the group's shadow report. This example is significant for three reasons. First, it proves the Secretariat's independence. Second, it demonstrates its capacity to trigger action in other divisions of the UNHRC. Third, it confirms that in drafting the stakeholder report, a meticulous record of rationales for inclusion or exclusion[400] must be kept, confirming selectivity. Nonetheless, it still does not provide any indication of the criteria employed beyond the impact of an issue raised being corroborated by other stakeholders.

It is suggested that drafters perceive themselves as "keepers of the truth" and are imbued with a "sense of moral agency," which is occasionally shaped by their personal experiences and backgrounds.[401] For example, a drafter of Palestinian origin was concerned with the issue of nationality through marriage. During a meeting with a Country Consultative Group (CCG) that sought to establish complementarity between the CR and the SR – the drafter personally requested that the paragraph in the compilation report included a reference to "special measures" taken that accounted for political principles applied to Palestinians.[402] This illustrates the subtle activism with diplomatic boundaries that drafters may exercise in compiling the stakeholder report - furthering the uncertainty of the process for CSOs.

Once thematic grouping and quote selection is completed, the drafting stage begins. The content is formatted according to rigid OHCHR and UN stylistic guidelines including depersonalised and formulaic phrasing. From Billaud's account, it is noteworthy that drafters are unable to include historical, economic, or political contexts in the reports, even if these backgrounds are critical to understanding the issue.[403] This heightened degree of homogeneity for all Member States contributes to the illusion of neutrality, at the cost of diluting the complex human rights concerns and presenting them in a manageable, bureaucratic way.[404] This restriction reflects the procedural commitments to neutrality as mandated by Resolutions 60/251 and 5/1. However, under Resolution 5/1 paragraph 3(l), which calls for the review to "take into account the level of

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[399] *Id.*
[400] *See also*, STOREY AND OLESCHUK, *supra* note 316 at 55.
[401] Billaud, *supra* note 15 at 73.
[402] *Id.* at 80. He made this request to the Country Consultative Group (CCG), which is the final stage in the drafting process where content is reviewed and approved.
[403] *Id.* at 75.
[404] *Id.* at 76.

development and specificities of countries" a normative tension may emerge. The UPR was designed to be context-sensitive and capacity-aware, yet the standardised format of the stakeholder report inhibits the meaningful incorporation of such background. As a result, the process could risk producing assessments that are procedurally neutral, but substantively incomplete, undermining the commitments enshrined in the Resolution.[405]

As a final stage in the compilation process, roughly ten weeks before the interactive dialogue takes place, a Country Consultative Group (CCG) convenes to review and finalise the stakeholder report. This group comprises representatives from various OHCHR divisions such as thematic experts, geographic desk officers, and focal point drafters.[406] It is at this point that coherence is established between the compilation and stakeholder reports. It is also here that the stakeholder report is edited to strike an appropriate balance between civil and political rights, and economic, social, and cultural rights.

Central to this bureaucratic process is the OHCHR's objective to ensure the report cannot be credited to a single author, thereby upholding the principles of neutrality and objectivity. Apart from the core prohibition on paraphrasing, the drafting process involves an inter-divisional methodology, mobilising the knowledge and expertise of civil servants from four different OHCHR divisions: the Research and Right to Development Division (RRDD), the Human Rights Treaties Division (HRTD), the FOTCD, and the UNHRC and Special Procedures Division.[407] This approach is explicitly designed to avoid any personalisation of the document and prevent its association with any single author. This strategy seeks to protect anonymity, prevent intimidation,[408] guarantee objectivity, and enhance the bureaucratic legitimacy of the product. Reflecting this, the cover pages of summaries during Cycle 1 include a statement clarifying that it "does not contain any opinions, views or suggestions on the part of the [OHCHR], nor any judgement or determination in relation to specific claims."[409] This declaration disassociates the

[405] Though this is not explicitly discussed in the literature, it is implicitly recognised in works such as Cofelice & de Perini, who note that the UPR is "rarely thorough and comprehensive," and de Mesquita who asserts these conditions limit the issue scope of the review documents.
[406] Billaud, *supra* note 15 at 78.
[407] *Id.* at 67.
[408] *Id.* at 71. Billaud explains that it was not rare for drafters to experience intimidation from States as a result of their inclusion of contributions coming from stakeholders critical of their governments.
[409] *Id.* at 75.

report's contents from the OHCHR's own views, reinforcing its role as a compiler rather than an author and shapes how the report is received.

This institutional strategy of depersonalised authorship and procedural objectivity forms a part of the broader architecture that underpins the UPR's legitimacy and contributes to its universal participation. Essentially, by obscuring the individual or institutional authorship of the stakeholder report, and therefore maintaining the "Black box," the document remains a neutral information basis for a State-led, peer-review process, which States are more willing to engage with than a mechanism perceived as directly criticising them through an independent expert voice.[410] Furthermore, it avoids provoking defensive responses from States.[411]

Though it is beyond the scope of this thesis to analyse matters of implementation, it is worth noting that efforts to prevent defensive responses and strategies is not always successful and have not always neutralised political sensitivities. Instances of defensive positioning can still be observed in State responses to the stakeholder summary. Examples include State interference with the compilation process,[412] and authoritarian States attempting to use government-organised NGOs (GONGOs) to "monopolize NGO speaking slots" and further specific state agendas and discrediting or limiting the contributions of independent NGOs.[413] There are also examples of States refuting the accuracy of information provided in both compiled reports, and despite all precautions for the contrary, perceive the OHCHR drafters as having selection bias.[414]

General defensive rhetorics can be observed in responses to Member State Recommendations too. For example, when presented with such Recommendations that are often informed by the stakeholder report, SuRs have been observed to adopt a "subdued and defensive demure,"

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[410] Milewicz and Goodin, *supra* note 335 at 528; Damian Etone, *Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance*, 18 JOURNAL OF HUMAN RIGHTS 36, 43 (2019); Elvira Domínguez-Redondo, *The Universal Periodic Review - Is There Life Beyond Naming and Shaming in Human Rights Implementation?*, 2012 N.Z.L. REV. 673, 694 (2012).
[411] Junxiang Mao, *From Country-Specific Review to Universal Periodic Review: A Fairer International Human Rights Mechanism*, 20 J. HUM. RTS. 441, 443 (2021); Etone, *supra* note 410 at 44.
[412] States have accused the OHCHR of accepting contributions from CSOs they [the State] deems "illegitimate" in some way. *See* Cowan and Billaud, *supra* note 382 at 114.
[413]Landolt, *supra* note 360 at 118. Some authoritarian States even "pressure and intimidate" OHCHR staff responsible for determining NGO speaking slots to allow GONGO access.
[414] McNeilly, *supra* note 344 at 12.

sometimes opting to issue no further comment or focus on existing domestic actions.[415] Authoritarian States are particularly observed to use the UPR to "defend, downplay, and deny their human rights violations."[416] This is normally done through a "yes, but" rhetorical strategy where States express concern for IHR law, whilst defending violations.[417] States have also manipulated the process by encouraging allies or "friendly States" to make supportive statements focusing on areas of progress or recommending the continuation of measures already undertaken.[418] This praise takes away from short time limits which in turn reduces opportunity for valid constructive criticism.[419] Regarding communications of the SuR's positions on Recommendations, States may note them by invoking "State Sovereignty" or claiming them to be inaccurate or factually incorrect.[420] This reflects a long-standing tension between sovereignty and IHR monitoring mechanisms.[421] Some States, such as the Russian Federation, have also refused to consider Recommendations they deem to be "factually inaccurate" or those they conclude "do not comply with the basis of the review stipulated by" UNHRC Resolutions 5/1 and 16/21.[422]

Together, these factors highlight the importance of transparency and procedural fairness in the stakeholder report drafting process. As will be discussed further in Part Three of this thesis, a careful balance must be struck between transparency of the process and flexibility. Too much rigidity and formalisation deprive the drafters of opportunities to leverage their agency to ensure the voices of CSOs are included in the stakeholder report. But without clear guidance on what increases the likelihood of inclusion beyond arbitrary luck risks diminishing the contributions of CSOs in the process. A model is proposed in Chapter 6 that theorises on what features increase the visibility of CSOs recommendations, respecting the bureaucratic hurdles and scope of the UPR,

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[415] Gayatri Patel, *How 'Universal' Is the United Nations' Universal Periodic Review Process? An Examination of the Discussions Held on Polygamy*, 18 HUM RIGHTS REV 459, 473 (2017).
[416] Noam Schimmel, *The Un Human Rights Council's Universal Periodic Review As A Rhetorical Battlefield Of Nations: Useful Tool Or Futile Performance?*, 186 WORLD AFFAIRS 10, 12 (2023).
[417] *Id.* at 14-5.
[418] Kmanovics, *supra* note 303 at 142.
[419] Frederick Cowell, *Understanding the Legal Status of Universal Periodic Review Recommendations*, 7 CILJ 164, 6 (2018).
[420] Kmanovics, *supra* note 303 at 142.
[421] Elvira Domínguez-Redondo & Edward R. McMahon, *More Honey Than Vinegar: Peer Review As a Middle Ground between Universalism and National Sovereignty*, 51 CANADIAN YEARBOOK OF INTERNATIONAL LAW/ANNUAIRE CANADIEN DE DROIT INTERNATIONAL 61, 86 (2014).
[422] A/HRC/39/13, ¶ 148.

by first demonstrating a correlation between citation in the stakeholder report and mapping to a Member State Recommendation.

3.1.3. The Basis of the Review – Law

Fundamentally, the UPR is structured around the national, compilation, and stakeholder reports, which are intended to provide objective and reliable information and a reliable data set on the human rights records of each UN Member State.[423] However, these serve as the informational basis for the review. The legal framework that determines the scope of the UPR provides the normative standards against which States' human rights records are assessed.[424]

The formal remit of the UPR, as set out in Resolution 5/1, must be comprehensive to promote the "universality, interdependence, indivisibility and interrelatedness of all human rights." [425] Therefore, the legal basis of the review includes: the UN Charter,[426] UDHR,[427] human rights instruments to which the SuR is party,[428] voluntary pledges and commitments made by the SuR,[429] and international humanitarian law.[430] Each of these sources contributes to the normative scope of the UPR in different ways, but for the purposes of this thesis, only the first three will be elaborated on in this section.

The UN Charter is broad and programmatic, but rarely referenced in Member State Recommendations. [431] It affirms the responsibility of States to uphold human dignity and fundamental freedoms, underpinning the IHR framework which informs the UPR. Similarly, the

[423] Domínguez Redondo, *supra* note 410.
[424] *See generally*, Shah & Sivakumaran, *supra* note 312.
[425] Resolution 5/1 Annex 1, ¶ 3(a).
[426] Resolution 5/1 Annex 1, ¶ 1(a).
[427] Resolution 5/1 Annex 1, ¶ 3(b).
[428] Resolution 5/1 Annex 1, ¶ 3(c).
[429] Resolution 5/1 Annex 1, ¶ 3(d).
[430] The UNHRC wished to emphasise the complementary and mutually interrelated nature of IHR and international humanitarian law. Resolution 5/1, annex 1, ¶ 2.
[431] Shah & Sivakumaran, *supra* note 312 at 275.

UDHR was included to ensure universal coverage of fundamental rights, irrespective of a State's treaty signatory or ratification status.[432]

An important conceptual tension that must be discussed is the use of treaties at the UPR. The UPR was designed to complement rather than duplicate the work of other UN bodies such as the Treaty Bodies. However, despite drawing heavily from the same legal instruments, the UPR achieves complementarity in several ways. First, the UPR has evolved into a mechanism with universal normative reach. Despite Resolution 5/1 formally requiring SuRs to be parties of the treaties raised during the review, the inclusion of the UDHR permits reviewing States to assess human rights records against a broader range of internationally accepted human rights standards than just treaty obligations .[433] As Kälin explains, States "accept review in light of rights that they may not have bound themselves to by ratifying particular treaties"[434] when engaging with the UPR. While theories on State motivations to engage are beyond the scope of this discussion, they can be broadly understood as rooted in reputational management, peer accountability, and strategic value of maintaining visibility within multilateral human rights forums.

3.1.3.1. Practical Expansion - Soft Law

Building on this evolving interpretation of the UPR's legal scope, empirical analysis of 57,685 Member State Recommendations from Cycles 1 and 2 demonstrates that Member States themselves often expand the normative foundations of the UPR beyond those formally outlined in Resolution 5/1. Seeking to clarify what Member States consider to be the "human rights obligations and commitments" that further inform the review,[435] Shah and Sivakumaran found that Member States exceed the formal bases of the UPR.[436] This expansion includes soft law instruments; such as declarations, principles, and regionally adopted standards, and hard law; such as international criminal law, international refugee law, among other legal instruments.[437] This makes the UPR

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[432] Fukuda *supra* note 294 at 71.
[433] Shah & Sivakumaran *supra* note 312 at 276.
[434] Walter Kälin, *Ritual and Ritualism at the Universal Periodic Review: A Preliminary Appraisal*, *in* HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 25, 34 (Hilary Charlesworth & Emma Larking eds., 2014).
[435] Shah & Sivakumaran, *supra* note 312 at 266.
[436] *Id.* at 273.
[437] Shah & Sivakumaran, *supra* note 312 at 289; McNeilly, *supra* note 6 at 26.

universalist in its reach, a unique characteristic among all international monitoring mechanisms. For example, in contrast to the UPR, IHR Treaties enjoy widespread ratification, however this is not universal.[438] Consequently, Treaty Body oversight extends only to State parties of each treaty.[439]

The literature suggests that the UPR can function as a forum for *de lege ferenda*, meaning it may guide future law making.[440] While the official mandate of the UPR focuses on existing obligations, commitments, and standards, its practice demonstrates States' openness to discuss emerging norms, including those rooted in soft law or aspirational human rights principles.[441] This normative pluralism fosters a shared space for the exchange of legal practices, social values, and policy commitments, which aligns with the UPR's "hybrid politico-legal nature."[442]

Notably, however, this expansive interpretive practice rarely extends to customary international law. Although binding, customary international law is almost entirely absent from Member State Recommendations.[443] It is theorised that this silence may stem from States' familiarity with referring to codified texts rather than unwritten legal norms.[444] This suggests that visibility and textual clarity have greater political palatability in peer-review settings, despite customary international law acting as a formal source of international law.[445] With this scope in mind, it is necessary to briefly discuss the legitimacy and impact of Member State Recommendations themselves.

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[438] For example, the US has not ratified the CRC.
[439] Judith Bueno De Mesquita, The Universal Periodic Review: A Valuable New Procedure for the Right to Health? 21 Health Hum. Rts. 263, 266 (2019); Michael Lane & Frederick Cowell, *Using Universal Periodic Review Recommendations in UK Courts*, 29 Judicial Rev. 119, 136 (2024).
[440] Nadia Bernaz, *Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism, in* NEW INSTITUTIONS FOR HUMAN RIGHTS PROTECTIONS 75-92, 83-84 (Kevin Boyle ed., 2009).
[441] *Id.*
[442] Shah & Sivakumaran, *supra* note 312 at 300.
[443] Shah & Sivakumaran, *supra* note 312 at 286; ALAN BOYLE & CHRISTINE CHINKIN, THE MAKING OF INTERNATIONAL LAW 210–11 (2007).
[444] *Id.*
[445] Bernaz, *supra* note 440 at 85.

3.1.4. Member State Recommendations

Unlike Treaty Body Recommendations, which derive their authority from legally binding treaties to which the SuR is a party, Recommendations issued at the UPR are not legally binding. [446] They are products of peer review and therefore carry political, rather than legal weight.

Recommendations issued at the UPR are often seen as political rather than legally binding. States have the option to support or note each Recommendations, and although States are unable to formally reject any Member State Recommendations, "noting" generally implies a *de facto* rejection and no commitment to implement.[447] Despite this, there have been instances where noted Recommendations were implemented.[448] This considered, the legitimacy and impact of Member State Recommendations are subject to various interpretations and have been extensively debated. Once more, it is beyond the scope of this thesis to explore implementation of Recommendations in detail, however a surface understanding of the potential of these Recommendations supports assumptions made during data analysis, namely the motivations of CSOs to influence Member States.

3.1.4.1. The Legitimacy of Member State Recommendations

The legitimacy of Member State Recommendations is multifaceted and draws from its universal, peer-driven, and public nature which fosters a sense of accountability and reinforces IHR norms. As outlined above, Recommendations generated during the UPR are not designed to be binding, but they are – perhaps more importantly – made by other Member States. As a mechanism that achieves near full participation from all UN Member States across all cycles, the UPR's global reach underpins legitimacy. This is further bolstered by the inclusion of stakeholders, and the high correlation between their inputs and Member State Recommendations.[449] However, it is the peer-

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[446] Frederick Cowell, *Understanding the Legal Status of Universal Periodic Review Recommendations*, 7 CAMBRIDGE INT'L. L.J. 164, 1 (2018); Michael Lane, *The Universal Periodic Review: A Catalyst for Domestic Mobilisation*, 40 NORDIC JOURNAL OF HUMAN RIGHTS 507, 511 (2022).
[447] Fukuda *supra* note 294 at 67, FN19.
[448] Valentina Carraro, *Strengthening the Human Rights Council and the Treaty Body System, in* REINVIGORATING THE UNITED NATIONS 114-130, 118 (Markus Kornprobst & Sławomir Redo eds., 2024).
[449] McMahon et al., *supra* note 18; *See contra*, Alice Storey, *The United Nations' Universal Periodic Review and Female Genital Mutilation in Somalia: The Value of Civil Society Recommendations*, 25 AFRICAN HUM. RTS. L. J. 301 (2025).

review nature of the UPR that is often deemed as crucial to the process, as States are more inclined to implement Recommendations originating from their peers.[450] Carraro argues that the UPR's political nature is paradoxically its strength, as Recommendations gain legitimacy and exert pressures because they are grounded in interests to maintain good diplomatic relations and project positive international fronts.[451]

Furthermore, SuRs must publicly announce their positions on Recommendations received.[452] This public commitment generates peer pressure for the SuRs to take accountability and seriously commit to implementation.[453] As Fukuda explains, Elster's notion of the "civilizing force of hypocrisy" suggests that States are more likely to adhere to their commitments, even if rhetorical at first, when made public.[454] It also empowers CSOs to hold States accountable.[455]

From a legal perspective, Member State Recommendations reinforce IHR obligations. Content analysis of the Recommendations reveals Member States often use legal verbs such as "abolish," "amend," "accede," "implement," "enforce," or "ratify" indicating a clear expectation of legal action.[456] In supporting Recommendations, SuRs implicitly agree to be evaluated on its implementation in subsequent cycles, creating an expectation of adherence, even if not a formal legal obligation. They also serve as evidence of State practice, or *opinio juris*[457] contributing to the crystallisation of customary international law over time. This means the process itself, by generating consistent State behaviour or statements can influence the development of international law.

Despite this praise, there are several challenges to the legitimacy of Member State Recommendations. Here, the author elects to discuss those that would have an adverse impact on

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[450] Carraro *supra* note 448 at 120-21.
[451] Valentina Carraro, *Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies*, 63 INT'L STUDIES Q., 1079, 1090-91 (2019); *Id.* at 120.
[452] Fukuda *supra* note 294 at 83.
[453] Frederick Cowell, *What is the UPR? Thinking About the UPR as a Source of International Law, in* HUMAN RIGHTS AND THE UN UNIVERSAL PERIODIC REVIEW MECHANISM: A RESEARCH COMPANION 62-83, 82-3 (Damian Etone, Amna Nazir, & Alice Storey eds., 2024).
[454] Fukuda *supra* note 294 at 83.
[455] Alex Conte, *Reflections and Challenges: Entering into the Second Cycle of the Universal Periodic Review Mechanism*, 9 N.Z. Y.B. INT'L L. 187, 197 (2011).
[456] Edward McMahon, 'Action Category' (UPR Info, October 2014), https://upr-info.org/sites/default/files/general-document/2022-05/Database_Action_Category.pdf (accessed 15 July 2025); Cowell, *supra* note 419, at 4.
[457] A State's belief that a practice is legally obligatory.

CSOs seeking to utilise the mechanism to mobilise domestic law reform, and therefore this is not a comprehensive review of the available literature. The greatest challenge that threatens the legitimacy of Recommendations is the lack of binding force. Dominguez-Redondo points to the early scepticism that preceded Cycle 1, for example, where the mechanism's "cooperative, non-confrontational approach...disappointed many who equated...[it] with "softness.""[458] Etone also acknowledges critics who branded the UPR "another toothless mechanism."[459] However, the public act of acceptance described above generates social and political pressures that make it difficult for the SuR to ignore the Recommendation.[460]

3.1.4.2. The Impact of Member State Recommendations

The UPR's mandate is to improve human rights "on the ground,"[461] and although scholars acknowledge the inherent challenges to establish a direct and exclusive causal link between the process and specific human rights improvements,[462] evidence of tangible positive impacts have been recorded. Foremost are high participation and sustained engagement, which Fukuda suggests is indicative of the mechanism being "more than a mere diplomatic forum with little intent for substantive change."[463] This unprecedented level of engagement provides a unique forum of continuous dialogue on human rights issues. Further, its periodicity ensures regular scrutiny and follow-up takes place,[464] and stakeholders are increasingly empowered to engage with the mechanism with every new publication.

The UPR also sees a high acceptance rate of Recommendations.[465] Whilst the rate of implementation of Recommendations presents a mixed picture marked by both encouraging statistics and inherent challenges in measurement, studies indicate the SuRs generally take

[458] Dominguez-Redondo, *supra* note 410 at 679.
[459] Etone, *supra* note 410 at 38. *See also*, Lane *supra* note 333 at 509.
[460] Carraro *supra* note 451 at 1083-85.
[461] Resolution 5/1, Annex 1, ¶ 4(a).
[462] Fukuda, *supra* note 294 at 66; de la Vega and Yamasaki, *supra* note 355 at 214.
[463] Fukuda *supra* note 294 at 76.
[464] Carraro *supra* note 448 at 118.
[465] Fukuda *supra* note 294 at 77.

Member State Recommendations seriously.[466] There is also an increasing trend towards more specific, action-orientated Recommendations, which enhances their utility and measurability,[467] with an additional focus on "borderline recommendations" which requires an "extra push" for SuRs to accept and implement.[468]

Regarding tangible successes in Member States, notable examples include Namibia and Fiji. In Namibia, Member State Recommendations contributed to the prohibition of sterilisation of women living with HIV/AIDS without their informed consent.[469] In the case of Fiji, the UPR is described as providing a crucial "impetus" for the government to demonstrate a "trajectory towards human rights development" following the 2006 military coup.[470] Notably, during Cycle 1, the State also committed to ratify all core IHR treaties within 10 years - a goal it has achieved in 2020, though issues remain around domestication and reporting.[471] While the UPR cannot be exclusively credited with this achievement, it took place at a crucial time in Fiji's democratic transition between 2013 and 2014; without it, McGaughey *et al* speculate that it would have taken more time, or not happened at all.[472]

More broadly, the UPR can be credited for the increase in the ratification of international and regional human rights instruments,[473] the establishment of independent National Human Right Institutions (NHRIs), the development or improvement of National Mechanisms for Implementation, Reports and Follow-up (NMIRFs) and the introduction of National Human Rights Action/Implementation Plans.[474] Ultimately, the UPR has normative value with the necessary influence to engender domestic reforms. It serves as a platform for continuous improvements that

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[466] Fukuda *supra* note 294 at 77. Broadly, one study by UPR Info found that by October 2012, 40% of Recommendations were either partially or fully implemented. UPR Info Universal Periodic Review: On the Road to Implementation (Geneva, October 2012); *See also* Dominguez-Redondo, *supra* note 410 at 701.
[467] Gianni Magazzeni, *The Universal Periodic Review and National Protection Systems*, *in* A GLOBAL HANDBOOK ON NATIONAL HUMAN RIGHTS PROTECTION SYSTEMS 19, 24 (Bertrand G. Ramcharan & Gianni Magazzeni eds., 2023).
[468] *See*, Fukuda *supra* note 294.
[469] Amna Nazir, Alice Storey & Jon Yorke*, The Universal Periodic Review as Utopia, in* HUMAN RIGHTS AND THE UN UNIVERSAL PERIODIC REVIEW MECHANISM: A RESEARCH COMPANION 35–61, 49-51 (Damian Etone, Amna Nazir, & Alice Storey eds., 2024).
[470] Fiona McGaughey et al*, The Significance of the UPR, in* HUMAN RIGHTS AND THE UN UNIVERSAL PERIODIC REVIEW MECHANISM: A RESEARCH COMPANION 215–247, 237 (Damian Etone, Amna Nazir, & Alice Storey eds., 2024).
[471] *Id.* at 239.
[472] *Id.* at 243.
[473] Elvira Dominguez-Redondo & Rhona Smith, *Searching for Recommendation Alignment Across UN Human Rights Bodies, in* HUMAN RIGHTS AND THE UN UNIVERSAL PERIODIC REVIEW MECHANISM: A RESEARCH COMPANION 113–146, 116 (Damian Etone, Amna Nazir, & Alice Storey eds., 2024).
[474] Magazzeni *supra* note 467 at 24.

have the potential to lead to concrete changes on the ground - and thus a great useful space for CSO engagement.

Thus far, this chapter has discussed the UPR mechanism as a forum of human rights oversight. While Member State Recommendations are not legally binding, they can exert normative and political influence on the SuR. For CSOs, this influence is only meaningful if their concerns are reflected therein.[475] Provided that CSOs are excluded from the formal dialogue, their strategic challenge is the use of the limited entry points available to shape the content of the Recommendations. Therefore, this thesis focuses on the relationship between CSO engagement and Member State Recommendations. This is the analytical space in which the ACLU case study is situated.

3.3. Case Study Element Two: ACLU – Concept

To date, there is little scholarship studying the history and operations of the ACLU. The most notable and holistic publication being Walker's 1990 publication,[476] the existing scholarship that exclusively focuses on the ACLU examines the CSO's influence on American liberalism. Often these involve the exploration of the ACLU's internal dynamics and external challenges[477] or questioning the boundaries of the ACLU's liberal philosophy.[478] This thesis contributes to this scarce body of literature, exploring the ACLU's evolution as a CSO, with particular attention to the interplay between its organisational identity, advocacy strategies at the UPR, and its impact on the US criminal justice system.

The ACLU has undergone a complex evolution in its organisational identity from its early radical roots to the more institutionalised and professionalised liberal identity it now occupies. Since its inception in 1915, the ACLU has evolved into the self-proclaimed defender of the Bill of Rights;[479] playing a key role in landmark litigation that has defined and expanded civil liberties in the US.

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[475] KECK AND SIKKINK, *supra* note 22 at 12–3.
[476] SAMUEL WALKER, IN DEFENCE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU (1990).
[477] JUDY KUTULAS, THE AMERICAN CIVIL LIBERTIES UNION & THE MAKING OF MODERN LIBERALISM, 1930-1960 (2006).
[478] WILLIAM A. DONOHUE & AARON B. WILDAVSKY, THE POLITICS OF THE AMERICAN CIVIL LIBERTIES UNION (1985).
[479] American Civil Liberties Union, ACLU History: The ACLU and the Bill of Rights, ACLU, https://www.aclu.org/aclu-history-the-aclu-and-the-bill-of-rights?utm_source; *see also*, WALKER, *supra* note 476 at 3.

For example, *Powell v. Alabama*[480] marked a foundational moment, as the SCOTUS held that defendants in capital cases must be afforded the right to counsel under the *Due Process Clause* of the Fourteenth Amendment.[481] This early intervention laid the groundwork for subsequent expansions of procedural safeguards, notably through *Gideon v. Wainwright*,[482] which established the right to state-appointed counsel for indigent defendants, and *Miranda v. Arizona*,[483] which required that suspects be informed of their rights upon arrest. The ACLU has also consistently challenged the arbitrariness and discriminatory application of the death penalty, contributing to the Court's decision in *Furman v. Georgia*[484] to temporarily halt capital punishment nationwide. Later cases such as *Atkins v. Virginia*[485] and *Glossip v. Gross*[486] further reflect the ACLU's enduring commitment to opposing cruel and unusual punishment and ensuring procedural fairness in capital cases. Through its advocacy, the ACLU has sought not only to reinforce constitutional guarantees but also to highlight and combat systemic inequities within the criminal justice system. In a letter providing the ACLU's comments on potential SCOTUS reform in 2021, to co-chairs Bob Bauer and Cristina Rodriguez,[487] David Cole[488] remarked that the ACLU appears "more often in the Supreme Court than any other [CSO]."[489]

The ACLU's litigation achievements have become emblematic of its influence, yet an understanding of its institutional development is critical to appreciating its evolving role as a CSO.

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[480] 287 U.S. 45 (1932).
[481] U.S. Const. amend. XIV, § 1.
[482] 372 U.S. 335 (1963).
[483] 384 U.S. 436 (1966).
[484] 408 U.S. 238 (1972).
[485] 536 U.S. 304 (2002).
[486] 576 U.S. 863 (2015).
[487] Bob Bauer and Cristina Rodríguez were the co-chairs of the *Presidential Commission on the Supreme Court of the United States* (the "Supreme Court Commission") established by former President Biden to investigate the idea of reforming the SCOTUS, formally disbanded in December 2021. The White House, President Biden to Sign Executive Order Creating the Presidential Commission on the Supreme Court of the United States, <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/04/09/president-biden-to-sign-executive-order-creating-the-presidential-commission-on-the-supreme-court-of-the-united-states/>.
[488] David D. Cole is a former national director for the ACLU, managing over 200 ACLU staff attorneys as well as overseeing the ACLU's SCOTUS docket. He also provided leadership to 400 more legal staff who worked in ACLU affiliate offices in all 50 states, Puerto Rico and Washington DC. He was a litigator in several landmark SCOTUS cases, such as Masterpiece Cakeshop v. Colorado Civil rights Commission, 584 U.S. 617 (2018) (where the ACLU represented a same-sex couple refused service by a bakery they sought to celebrate their wedding) and Bostock v. Clayton County, 590 U.S. 644 (2020) (establishing employment discrimination on the basis of sexual orientation and gender identity is prohibited by Title VII); American Civil Liberties Union, Biography of David Cole, ACLU, <https://www.aclu.org/bio/david-cole>.
[489] American Civil Liberties Union, Letter to the Presidential Commission on the Supreme Court of the United States (July 2024), <https://assets.aclu.org/live/uploads/2024/07/ACLU-SCOTUS-Reform-Commission-Letter.pdf>.

Its historical trajectory reveals how its operations and identity have changed; shaped by shifting political, social and legal contexts. The following provide an account of this.

Following the US 'expansion of its military in 1915, CSO groups began to emerge.[490] One such organisation was the American Union Against Militarism (AUAM).[491] Led by Roger Baldwin, this CSO sought to limit the impact of militarism but as the US joined the First World War, it shifted its focus to protecting draft-age conscientious objectors,[492] with little success. Consequently, Roger Baldwin turned his focus to civil liberties, dissolving the AUAM in 1918.[493]

In 1917, Baldwin launched the National Civil Liberties Bureau ("the Bureau") which focused on the First Amendment's free speech provision.[494] Prompted by Baldwin's year-long incarceration as a conscientious objector, the Bureau formed a division dedicated to assisting individuals facing the same charges.[495] Though there was little guidance on how legal practitioners should handle such cases, the Bureau's attorneys were processing approximately 125 conscientious objectors per week.[496] This also meant the organisation and its clients were victims of vigilante and mob violence, including police brutality and unjust war-time prosecutions that carried lengthy sentences.[497] In late 1918, Baldwin believed the Bureau to be ineffective and sought to establish a militant and active organisation that better reflected his proactive beliefs of civil liberties. Subsequently, Baldwin proposed fundamental reforms to the Bureau; changing its focus from litigation to direct action and public education, rebranding it under a new moniker,[498] the American Civil Liberties Union, which was accepted on 19 January 1920.[499] Nowadays, the

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[490] Robert C. Cottrell, *Roger Nash Baldwin, the National Civil Liberties Bureau, and Military Intelligence During World War I*, 60 THE HISTORIAN 87, 89–90 (1997); C. ROLAND MARCHAND, THE AMERICAN PEACE MOVEMENT AND SOCIAL REFORM, 1889-1918 10–11 (1972).
[491] Cottrell, *supra* note 490 at 89.
[492] *Id.* at 90–91.
[493] *Id.*
[494] U.S. CONST. Amend. I.
[495] *Roger N. Baldwin – Biography,* HUM. RTS. FIRST, (n.d.), https://www.humanrightsfirst.org/baldwin-award/roger-n-baldwin-biography; *Roger Baldwin, 97, is dead: Crusader for Civil Rights Founded the A.C.L.U.*, N.Y. TIMES (Aug. 17, 1981), https://www.nytimes.com/1981/08/27/obituaries/roger-baldwin-97-is-dead-crusader-for-civil-rights-founded-the.html.
[496] WALKER, *supra* note 472 at 22-24; FRANCES EARLY, A WORLD WITHOUT WAR: HOW US FEMINISTS AND PACIFISTS RESISTED WORLD WAR I, 3, 23 (1997).
[497] NATIONAL CIVIL LIBERTIES BUREAU, WAR-TIME PROSECUTIONS AND MOB VIOLENCE: INVOLVING THE RIGHTS OF FREE SPEECH, FREE PRESS AND PEACEFUL ASSEMBLAGE, 5 (1919); CHRISTOPHER CAPOZZOLA, UNCLE SAM WANTS YOU: WORLD WAR I AND THE MAKING OF THE MODERN AMERICAN CITIZEN, 218-19 (2008).
[498] WALKER, *supra* note 472 at 20, 47; Roger Baldwin, *Suggestions for Reorganization of the National Civil Liberties Bureau* (1920), Directing Committee Minutes, vol. 120, ACLU Papers.
[499] *Id.*

ACLU is organised as a national body headquartered in New York City, comprising a centralised national office and a network of semi-autonomous state-level affiliates. Each affiliate operates independently within its jurisdiction while coordinating with the national office on litigation strategies, advocacy priorities, and policy initiatives, thereby allowing the ACLU to maintain both a unified national presence and a capacity for tailored local engagement.

The ACLU mission statement can be summarised into three core values. First, the protection of "American values." The ACLU is known to describe itself as the US' "most conservative organization", conserving the nation's "original civil values" enumerated in the Constitution and its Bill of Rights. On its website, the ACLU explicitly states its purpose as defending the rights of every "man, woman and child" in this country.[500] There is a long history evidencing this conduct. Since its inception, for example, the ACLU famously recognised the inextricable link between women's rights and the civil liberties agenda.[501] With six of the eleven founders being women, leadership roles have frequently been occupied by women since the very beginning.[502] Since 1922, the ACLU has worked tirelessly to advance the rights of women; advocating for sex education, fighting sex-based discriminatory laws, and defending reproductive freedoms among other issues.[503] Perhaps most famous in this mission was the high-profile involvement of late SCOTUS Justice, Ruth Bader Ginsburg, who founded and directed the ACLU Women's Rights Project from 1972 to 1980. Under her directorship, the ACLU participated in over 300 sex discrimination cases by 1974. Between 1969 and 1980, 66 percent of sex-based discrimination cases decided by the SCOTUS were sponsored by the ACLU.[504] When asked why she chose the ACLU, Justice Ginsburg stated that adding legitimacy to the issues and pragmatism aside, the ACLU saw an "integral interconnection between civil liberties and civil rights including women's rights."[505] She commented that she wanted to "be a part of the general human rights agenda."[506]

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[500] The ACLU, *Guardians of Freedom*, <https://www.aclu.org/guardians-freedom.>
[501] Nadine Strossen, *The American Civil Liberties Union and Women's Rights*, 66 N.Y.U.L. REV. 1940, 1941 (1991).
[502] *See Id.* at 1942-43.
[503] *Id.* at 1946-47.
[504] *Id.* at 1951; WALKER, *supra* note 472 at 305.
[505] Strossen *supra* note 501 at 1950.
[506] 2 ACLU Women's Rights Report 5 (1980).

Similarly, the ACLU launched a Children's Rights Project in 1973, which later merged with the Juvenile Rights project in 1979. This project predominantly focused on children in the welfare system, prisons and mental institutions.[507] The ACLU has also been vocal about the US' failure to ratify the International Convention on the Rights of the Child and has made explicit links between this branch of its work and its advocacy for the Campaign for Smart Justice, particularly in relation to life sentences being handed down to juvenile offenders, without the possibility of parole,[508] which was a particular point of contention for co-founder and former social worker Baldwin.[509]

Second, the ACLU is "not anti-anything." It functions solely on principle, seeking to stop the government from infringing or limiting the civil liberties of individuals in the US. In other words, the ACLU does not have a narrow focus, meaning it welcomes cases that reflect the evolving demands and sensitivities of a changing society. For example, as the internet and technology continue to develop, the ACLU works hard to combat the emergence of an Orwellian government.[510] Tackling surveillance technology and government sanctioned invasions of privacy,[511] the ACLU is currently[512] arguing that police adoption of facial recognition technology can intersect dangerously with prosecutorial misconduct to risk grave injustices.[513] The ACLU's broad scope sees it champion in all aspects of "American life," so much so, that ACLU historian, Samuel Walker, proposed that the organisation "shaped contemporary values" in the US.[514] From a legal standpoint, the ACLU holds the US federal, state and local governments to the highest standard and degree of accountability, and consequently has been a titan in establishing

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[507] American Civil Liberties Union, ACLU History: Child Welfare Institutions, ACLU, <https://www.aclu.org/other/aclu-history-child-welfare-institutions>.
[508] American Civil Liberties Union, 20 Years of Neglecting Children's Rights, ACLU (June 26, 2024), <https://www.aclu.org/blog/smart-justice/mass-incarceration/20-years-neglecting-childrens-rights>.
[509] PAUL H. STUART, ROGER NASH BALDWIN (2013); *see also* COTTRELL, *supra* note 490, at 33-4.
[510] American Civil Liberties Union, Privacy & Technology, ACLU, <https://www.aclu.org/issues/privacy-technology>. *See also*, American Civil Liberties Union, Stopping Face Recognition Surveillance, ACLU, <https://www.aclu.org/news/topic/stopping-face-recognition-surveillance/>.
[511] *See E.g.*, American Civil Liberties Union v. National Security Agency, 493 F.3d 644 (6th Cir. 2007).
[512] American Civil Liberties Union, Three Key Problems With the Government's Use of a Flawed Facial Recognition Service, ACLU (Aug. 14, 2023), <https://www.aclu.org/news/privacy-technology/three-key-problems-with-the-governments-use-of-a-flawed-facial-recognition-service>. *See E.g.*, Mutnick v. Clearview AI, Inc. WL 4676667 (2020).
[513] American Civil Liberties Union, Florida Using Facial Recognition to Convict People, Even Without a Conviction, ACLU (Nov. 14, 2023), <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/florida-using-facial-recognition-convict-people>; American Civil Liberties Union, ACLU v. Clearview AI: Complaint (May 28, 2020), <https://www.aclu.org/sites/default/files/field_document/2020.05.28_aclu-clearview_complaint_file_stamped.pdf>.
[514] WALKER, *supra* note 472.

constitutional rules, particularly around criminal justice. Third, the ACLU purports not to discriminate. In its mission statement, the ACLU writes:

> "*We're there for you. Rich or poor, straight or gay, black or white or brown, urban or rural, pious or atheist, American-born or foreign-born, able-bodied or living with a disability. Every person in this country should have the same basic rights*."[515]

A reflection of its diverse founders, the ACLU has rarely refrained from representing individuals, often resulting in it being harshly criticised. Often, it ventures into unknown territory as the sole progressive advocate, successively launching research-driven initiatives and thanklessly protecting and ameliorating the nation.[516]

This history of credibility, plagued by repeated and ongoing tests of principles, won the ACLU a highly esteemed reputation by public officials. For example, in 2005 a student was suspended indefinitely for posting a picture of his principal smoking on school premises on his personal website and commenting on the principal's law breaking. He contacted the ACLU who promptly called school administrators. Initially, the high school offered conditional reinstatement, however after further deliberation with the Rhode Island chapter of the ACLU, the school reinstated the student unconditionally, on the basis that his actions fell within his First Amendment rights.[517] The ACLU's influence is not limited to local bodies, however. In a study on the influence of *Amicus* briefs on Supreme Court Justices, the ACLU was second only to the Solicitor General when respondents (the justices 'law clerks) were asked "*Are briefs of any particular groups always considered more carefully than others?*"[518] Furthermore, the report showed that even ideologically opposed justices [to the ACLU] such as Justices Antonin Scalia and Clarence Thomas, will give ACLU briefs closer attention than others out of respect for the organisation.[519]

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[515] American Civil Liberties Union, Guardians of Freedom, ACLU, <https://www.aclu.org/guardians-freedom>.
[516] WALKER, *supra* note 472.
[517] American Civil Liberties Union, Under Threat, ACLU Lawsuit: Providence School Readmits Student Suspended for Photographing, ACLU (Mar. 12, 2024), <https://www.aclu.org/press-releases/under-threat-aclu-lawsuit-providence-school-readmits-student-suspended-photographing>.
[518] Kelly J. Lynch, *Best Friends – Supreme Court Law Clerks on Effective Amicus Curiae Briefs*, 20 J.L. POL. 33, 51 (2004).
[519] *Id.* at 49-50.

This background considered, this thesis proposes a tripartite periodisation of the CSO's development. While existing scholarship tends to treat the ACLU's historical evolution as a continuous narrative, this framework identifies three distinct eras, each characterised by specific shifts in the organisation's ideological orientation, strategic priorities, and relationship to the IHR framework.

3.2.1. Era One – Explicit Rejection of IHR

Era One, spanning from 1920 to 1939, is characterised by an explicit rejection of IHR with the ACLU's focus being on securing civil liberties within the domestic constitutional framework. Operating in an environment where fundamental rights were not yet enforceable against the states, the ACLU's advocacy during this period centred on selective First and Sixth Amendment protections, nascent racial justice efforts, and police reform, while leadership explicitly declined to incorporate international legal standards into its agenda.

The US Bill of Rights consists of the first 10 Amendments to the US Constitution.[520] In *Barron v. Baltimore*[521] the SCOTUS held that the Bill of Rights applied only to the federal government – thus excluding state governments.[522] In July 1868, the Fourteenth Amendment[523] was ratified by the necessary 28 of the 37 States and thus was incorporated into the US Constitution.[524] Evidence shows that the framers of the amendment, namely John A. Bingham, intended the Amendment to "nationalize" the Bill of Rights, accordingly enforcing it against the states.[525] Yet, for many years, SCOTUS rulings left the Bill of Rights in obscurity, for example in *Palko v. Connecticut*,[526] the Court stated that there were some rights, such as freedom of speech and expression that were "fundamental" and therefore were absorbed by the Fourteenth Amendment thus enforceable

[520] 1 ANNALS OF CONG. 440 (1789); William J. Brennan Jr., *The Bill of Rights and the States*, 36 N.Y.U.L. REV. 761, 763 (1961).
[521] 32 U.S. (7 Pet.) 243 (1833).
[522] Barron v. Baltimore, 32 U.S. (7 Pet.) 243 (1833).
[523] U.S. CONST. amend. XIV, §1.
[524] H.R.J. Res.127, 39th Cong. (1866).
[525] Charles Fairman, Does the Fourteenth Amendment Incorporate the Bill of Rights? The Original Understanding, 2 STANFORD L. REV. 5, 136 (1949); Erving E. Beauregard, *John A. Bingham and the Fourteenth Amendment*, 50 THE HISTORIAN 67, 75 (1987); Richard L. Aynes, *On Misreading John Bingham and the Fourteenth Amendment,* 103 YALE L. J. 57, 59 (1993); But *see* MICHAEL J. PERRY, WE THE PEOPLE: THE FOURTEENTH AMENDMENT AND THE SUPREME COURT 21-3 (1999).
[526] 302 U.S. 319 (1937).

against the states. But some rights enumerated in the Fifth Amendment, for example immunity from double jeopardy, were not fundamental and therefore could only apply against the federal government.[527] As a consequence of this legal obstacle, the ACLU saw few court victories between 1920 and 1925.[528] However, in *Gitlow v. New York*,[529] the ACLU won at the SCOTUS, paving the way for the gradual incorporation of portions of the Bill of Rights; thus making it enforceable against state governments. In turn, the decision in *Gitlow* was an historic legal victory, leading to *Powell v. Alabama*[530] - the first of the three infamous *Scottsboro Cases*.[531]

In tandem with these trials, Baldwin once more argued to amend the ACLU's scope,[532] including a proposal that the ACLU begin addressing international civil liberties issues.[533] To Baldwin, this meant the ACLU should oppose any US military control of weaker nations, and a more general campaign of protest against repression in other countries "where American interests are involved."[534] His vision reflected an early understanding of civil liberties as a transnational concern; however, at this stage, the Executive Committee resisted broadening the ACLU's remit beyond domestic advocacy.[535] According to Walker's examination of early ACLU meeting minutes, this specific point was contentious. He situates these debates within the broader ideological struggles of the ACLU, explaining that it historically prioritised domestic constitutional rights, and was continuously reluctant to intervene in foreign issues, even when they involved clear human rights violations.[536]

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[527] Palko v. Connecticut, 302 U.S. 319, 324-5 (1937).
[528] WALKER, *supra* note 472 at 92.
[529] Gitlow v. New York, 268 U.S. 652 (1925).
[530] 287 U.S. 45 (1932).
[531] The "Scottsboro cases" refer to a series of trials beginning in 1931 in which nine African American teenagers, known as the Scottsboro Boys, were falsely accused of raping two white women aboard a train in Alabama. The cases became emblematic of racial injustice in the American legal system, leading to two landmark Supreme Court decisions: *Powell v. Alabama*, 287 U.S. 45 (1932), establishing the right to effective counsel in capital cases, and *Patterson v. Alabama*, 294 U.S. 600 (1935), addressing racial discrimination in jury selection.
[532] Including aiding in the emerging civil rights movement, campaigning on behalf of Native Americans, a strengthened defense of aliens (*sic*) in naturalisation and deporation proceedings, opposition to compulsory military training in schools, a broader fight against censorship in books, movies and other media, and a vigorous campaign against police brutality. WALKER, *supra* note 472 at 86.
[533] WALKER, *supra* note 472 at 86.
[534] WALKER, *supra* note 472 at 86.
[535] WALKER, *supra* note 472 at 87.
[536] WALKER, *supra* note 472 at 180.

Thus, Era One established the foundational trajectory of the ACLU as a CSO primarily concerned with domestic constitutional rights. The organisation's strategic focus on selective incorporation litigation and racial justice advocacy reflected both the legal limitations of the time and the prevailing internal consensus to avoid engagement with IHR frameworks. Baldwin's early internationalist ambitions were sidelined by an institutional culture wary of diluting its core mission. This period consequently entrenched a conception of civil liberties advocacy that was deeply nationalistic, legalistic, and constitutionally oriented - a legacy that would continue to shape the ACLU's identity and constrain its international engagement well into the mid-twentieth century.

3.2.2. Era Two – Implicit Compliance

The second era, spanning from 1940 to 2003, is characterised by the ACLU showing implicit support for IHR principles through its domestic constitutional advocacy, whilst continuing to reject engaging explicitly with IHR legal frameworks. During this period, the ACLU achieved landmark victories that profoundly reshaped the US criminal justice system, establishing procedural safeguards that parallel core IHR norms. Nevertheless, these advances were firmly rooted in constitutional doctrine, reflecting a broader pattern of American exceptionalism wherein domestic constitutionalism was presumed sufficient for the protection of fundamental rights. This era therefore represents a paradoxical engagement with IHR: affirming their substance through domestic litigation, while rejecting their formal frameworks.

Although Baldwin shunned the ACLU's legal formalism, believing it would offer little protection to the marginalised populations the ACLU sought to defend, [537] he had the organisation pragmatically adopt litigation as a principal strategy, establishing parameters within which it could

[537] WALKER, *supra* note 472 at 33; BERNARD FLEXNER & ROGER BALDWIN, JUVENILE COURTS AND PROBATION (1916); Emily Zackin, *The Early ACLU and the Decision to Litigate*, 67 PRINCETON U. LIBRARY CHRONICLE 526, 533 (2006).

operate.[538] Formed during a period of social unrest, in which there was police brutality,[539] state sanctioned crackdowns on political protesters, anti-war activists and critics[540] and a disregard for due process,[541] the organisation quickly rose to infamy as the nation's forefront defender of civil liberties,[542] catering to all residents of the US indiscriminately. This made the ACLU infamously divisive, with its controversial practice of indiscrimination - meaning it operated on the basis of principle as opposed to protecting and promoting any agenda - had repeatedly resulted in periods where its activities could be deemed paradoxical. This principled approach is perhaps most vividly illustrated by its defence of highly controversial groups during the late twentieth century.

In 1978, a neo-Nazi group wished to hold a march along the main street in the Chicago suburb of Skokie, home to many Holocaust survivors.[543] The ACLU defended the group's right to free speech and assembly under the First Amendment. In his argument, Jewish ACLU attorney, David Goldberg, drew parallels between the immediate case and those of the Civil Rights era, when officials tried to stop civil rights marches citing similar laws.[544] The ACLU won the case, representing the neo-Nazi group, emphasising that it did not share their views but had the imperative of defending the principles enshrined in the First Amendment.[545] Similarly, the Ohio

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[538] Zackin, *supra* note 538 at 534.
[539] ROBERT J. GOLDSTEIN, POLITICAL REPRESSION IN MODERN AMERICA: FROM 1870 TO 1976, 98-102 (2001) (which discusses the widespread police violence against labour activists, migrants, and African Americans during the 1910s and 1920s); PAUL L. MURPHY, WORLD WAR I AND THE ORIGINS OF CIVIL LIBERTIES IN THE UNITED STATES 162-5 (1979) (detailing how wartime policing practices continued into the postwar period, including arbitrary arrests and violent dispersal of political gatherings); SAMUEL WALKER, POPULAR JUSTICE: A HISTORY OF AMERICAN CRIMINAL JUSTICE 165-8 (1980) (documenting the entrenchment of aggressive police tactics and lack of accountability mechanisms in the early 20th century).
[540] CHRISTOPHER CAPOZZOLA, UNCLE SAM WANTS YOU: WORLD WAR I AND THE MAKING OF THE MODERN AMERICAN CITIZEN 189-93 (2008) (Highlighting the US government's use of loyalty leagues, aggressive policing, and mass surveillance against anti-war protesters); NANCY K. BRISTOW, MAKING MEN MORAL: SOCIAL ENGINEERING DURING THE GREAT WAR 142-47 (1996) (examining crackdowns on dissent during and immediately after WW1, particularly targeting socialist and pacifist groups); Robert C. Cottrell, *Roger Nash Baldwin, the National Civil Liberties Bureau, and Military Intelligence during World War I*, 60 The Historian 87, 91-4 (1997) (detailing how Baldwin and the early ACLU were closely monitored, harassed, and marginalised for defending war critics).
[541] MURPHY, supra note 539 at 140-44 (exploring government practices that denied basic legal protections to dissenters, including mass detentions without trial); WALKER supra note 472 at 33-39 (describing cases where individuals were arrested or prosecuted with little regard for First or Fifth Amendment protections); WILLIAM PRESTON JR., ALIENS AND DISSENTERS: FEDERAL SUPPRESSION OF RADICALS, 1903-1933, 205-10 (1963) (discussing the Palmer Raids, in which thousands of immigrants and political radicals were arrested without warrants or proper hearings).
[542] *Reimagining the Role of Police,* ACLU (Jun. 5, 2020), https://www.aclu.org/news/criminal-law-reform/reimagining-the-role-of-police/.
[543] National Socialist Party of America v. Village of Skokie, 432 U.S. 43 (1977).
[544] David Goldberger, The Skokie Case: How I Came to Represent the Free Speech Rights of Nazis, ACLU (Mar. 20, 2020), https://www.aclu.org/issues/free-speech/rights-protesters/skokie-case-how-i-came-represent-free-speech-rights-nazis.
[545] Irving L. Horowitz & Victoria C. Bramson, *Skokie, The ACLU and the Endurance of Democratic Theory*, 43 DEMOCRATIC THEORY 327 (1979); Opinion, Michelle Goldberg, The Left Needs the A.C.L.U. to Keep Defending Awful Speech, N.Y.TIMES (Jun. 7, 2021), <https://www.nytimes.com/2021/06/07/opinion/aclu-free-speech.html>.

chapter of the ACLU represented Clarence Brandenburg, a leader of the Ku Klux Klan,[546] in *Brandenburg v. Ohio*.[547] In that case, Brandenburg allowed for a reporter to record a rally in which he delivered a speech that accused the US government of "suppressing the Caucasian race" [*sic*] and announced a planned march on Congress later that year with discussion of potential "vengeance" against people of colour and the Jewish. He was convicted under the Ohio Criminal Syndicalism Statute which criminalised advocating for "crime, sabotage, violence or unlawful methods of terrorism" in effort to achieve a political goal. The SCOTUS held the Ohio statute in violation of the First Amendment as it failed to distinguish advocacy that led to imminent lawless action and free speech.[548] The ACLU famously defended its choice to represent controversial organisations such as the Ku Klux Klan and neo-Nazis by explaining:

"[i]t is easy to defend freedom of speech when the message is something many people find at least reasonable. But the defense of freedom of speech is most critical when the message is one most people find repulsive"[549]

While the defence of free speech during this period demonstrated the ACLU's unwavering commitment to constitutional principles, an equally significant and ultimately more transformative dimension of its work lay in the field of criminal justice reform. Building upon earlier efforts to secure procedural safeguards for criminal defendants, the ACLU engaged in a series of landmark cases that profoundly reshaped the constitutional landscape of criminal procedure. Through strategic litigation and public advocacy, the organisation contributed to the gradual recognition and enforcement of rights that parallel core protections under IHR law, albeit once again articulated exclusively through domestic constitutional frameworks.[550]

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[546] Despite its ongoing affiliation with the National Association for the Advancement of Colored People; American Civil Liberties Union, Racial Justice and Civil Liberties: An Inseparable History at the ACLU, ACLU (Apr. 5, 2024), <https://www.aclu.org/news/civil-liberties/racial-justice-and-civil-liberties-an-inseparable-history-at-the-aclu/>.
[547] 395 U.S. 444 (1969).
[548] Brandenburg v. Ohio, 395 U.S. 444, 449 (1969).
[549] American Civil Liberties Union, ACLU Statement Defending Free Speech for Unpopular Organizations, ACLU (Mar. 5, 2025), <https://www.aclu.org/press-releases/aclu-statement-defending-free-speech-unpopular-organizations?redirect=free-speech/aclu-statement-defending-free-speech-unpopular-organizations>.
[550] Interestingly, the ACLU was criticised for its expansion of the civil liberties of criminal defendants. But the political tensions that plagued the decade proved to have profound effects on the future of civil liberties in the US.

This era was also marked by a broader philosophical shift in the understanding of civil liberties within the US. As Vermeule observes, post-New Deal civil liberties, particularly in the criminal justice system, were increasingly subject to pragmatic cost-benefit analysis rather than grounded in inherent principles of human dignity or universal rights.[551] This development further illustrates the ACLU's engagement with rights as constitutional entitlements to be balanced and negotiated, rather than as inviolable norms rooted in IHR law. Against this backdrop, the judiciary itself began to exhibit a more nuanced approach to civil liberties. Although the ACLU initially struggled to achieve significant judicial victories, a critical turning point emerged in 1937 with the SCOTUS' decision in *De Jonge v. Oregon*.[552] This case laid the groundwork for Justice Stone's influential Footnote Four in *United States v. Carolene Products Co.*,[553] which articulated the principle that heightened judicial scrutiny was warranted where legislation threatened fundamental rights or disadvantaged discrete and insular minorities.[554] This judicial evolution towards heightened protection of fundamental rights was soon tested in the realm of criminal procedure, particularly in relation to the right to counsel for indigent defendants.

In 1942, the ACLU submitted an amicus curiae brief in support of Betts,[555] arguing that the right to appoint counsel for indigent defendants should be recognised as a fundamental constitutional protection under the Fourteenth Amendment's Due Process Clause.[556] In *Betts v. Brady,*[557] the SCOTUS established a right to counsel, however, this was limited: states were not obliged to provide counsel for indigent defendants except for special circumstances where the defendant is incapable of defending themselves, due to issues such as illiteracy, granting the power to appoint counsel to the courts.[558] Here, the Supreme Court asked whether the right to counsel was so fundamental that they should impose an obligation on the states,[559] but demonstrated a hesitance

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[551] ADRIAN VERMEULE, THE SYSTEM OF THE CONSTITUTION ch. 7 (2011). Vermeule argues that civil liberties in the criminal justice system should be viewed through "New Deal lenses," suggesting that such liberties must justify themselves through a cost-benefit analysis rather than relying solely on principles of human rights and dignity.
[552] 299 U.S. 353 (1937). The ACLU submitted an amicus curiae brief. They actively supported De Jonge's right to peaceful assembly, aligning it with their early free speech and assembly work.
[553] 304 U.S. 144 (1938). The ACLU did not participate formally. This was a general commerce clause case. However, the famous Footnote Four had huge future implications for civil liberties litigation, including ACLU strategies.
[554] 304 U.S. 144, n.4 (1938).
[555] American Civil Liberties Union, Brief of Amicus Curiae in Support of Petitioner, Betts v. Brady, 316 U.S. 455 (1942).
[556] U.S. CONST. amend. XIV, § 1.
[557] 316 U.S. 455 (1942).
[558] Betts v. Brady, 316 U.S. 455, 471 (1942).
[559] 316 U.S. 455, 465 (1942).

to impose any such obligation..[560] Although *Powell* established the exception to be that of capital cases, this judgement was famously overturned in *Gideon v. Wainwright*[561] which mandated that the states establish institutional mechanisms that provided legal representation for indigent defendants. The ACLU's advocacy for the right to counsel in *Betts* - and later its decisive success in *Gideon* - closely aligned with emerging IHR standards, particularly Article 14(3)(d) of the ICCPR,[562] which recognises the right of an accused to have legal assistance assigned where interests of justice so require. However, the ACLU's litigation strategy remained firmly rooted in domestic constitutional discourse, focusing on the Fourteenth Amendment's Due Process Clause[563] rather than invoking IHR law. It must be acknowledged that at the time of these cases, it is only possible to retrospectively align the ACLU's arguments to the ICCPR as it had not yet been adopted; accordingly, the treaty was neither binding on the US, nor available to the ACLU. Nonetheless, the ACLU's briefs anticipated protections that would later be codified in IHR law.

This above reflects the broader pattern of this era: the ACLU substantively advanced principles that would later be codified in IHR instruments, but it did so exclusively through an American constitutional lens, thereby reinforcing the tradition of constitutional exceptionalism that characterised its mid-twentieth century evolution. By contrast, by 1963's *Gideon*, the UDHR was in existence, and the US had supported it. Although the UDHR is not legally binding, the US' support affirmed a political commitment to the principles it enshrined. The ACLU's advocacy for fair trial guarantees during this trial, while framed solely within the American constitutional tradition, substantively aligned with the standards articulated in Articles 10 and 11 of the UDHR.

[560] 316 U.S. 455, 471-72 (1942).
[561] 372 U.S. 335 (1963). The ACLU submitted an amicus curiae brief supporting Gideon's claim to state-appointed counsel.
[562] International Covenant on Civil and Political Rights art. 14(3)(d), Dec. 16, 1966, 999 U.N.T.S. 171.
[563] U.S. CONST. amend. XIV, § 1.

The ACLU's exposure of police misconduct in 1959, *Secret Detention Report*, [564] and subsequent influence on the landmark decisions in *Escobedo v. Illinois,*[565] and *Miranda v. Arizona*,[566] further illustrates the CSO's substantive alignment with emerging IHR principles. In *Escobedo*, the ACLU represented the petitioner, who was convicted of murder on evidence that was predominantly sourced from his police interrogation. Whilst lower courts observed this case through the lens of the Fifth Amendment, the Supreme Court considered the Sixth Amendment, and ultimately chose to extend the right to counsel provision to protect individuals under police interrogation.[567] Walker theorises that the ACLU-Illinois report influenced this decision.[568] In its judgement in *Escobedo*, the SCOTUS discussed the issue of self-incrimination and the absence of forewarning by police officials.[569] This issue was further developed in *Miranda,*[570] where the SCOTUS formally required that individuals held in police custody be informed of their rights to silence and to counsel. Although the Court did not explicitly cite the ACLU's prior reports, the broader body of ACLU advocacy and documentation of police misconduct helped shape the doctrinal context that culminated in the establishment of Miranda warnings.[571] Without this ACLU driven decision, there is no doubt among legal scholars of the grave impacts we would see on the criminal justice system.[572]

The protections established in *Escobedo* and *Miranda* closely reflect rights later codified under IHR law, notably the prohibition against arbitrary detention and the guarantees of fair trial enshrined in Articles 5, 9, 10, and 11 of the UDHR,[573] and Articles 7 and 14 of the ICCPR.[574] The right to be informed of one's rights upon arrest, the right to legal counsel, and the protection against

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[564] Which exposed abusive police practices where suspects were illegally detained for over 17 hours, isolated from their legal representatives and beaten in effort to coerce confessions. Copies of this report were disseminated across the nation, sparking outrage. Eventually, the Supreme Court requested a copy. ACLU History: Fighting Police Misconduct, ACLU, https://www.aclu.org/other/aclu-history-fighting-police-misconduct.
[565] 378 U.S. 478 (1964).
[566] 384 U.S. 436 (1966) (later extended to juvenile defendants in *Re Gault*, 387 U.S. 1 (1967) which was also a case handled by the ACLU).
[567] *Id.* at 486-87, 490-92.
[568] WALKER supra note 472 at 237. He does not say it determinatively (because the Court never formally cited the report in the judgment), but he acknowledges that it likely shaped the context and awareness around police interrogation abuses.
[569] 378 U.S. 478, 490-1 (1964).
[570] 384 U.S. 436 (1966).
[571] American Civil Liberties Union, ACLU History: Right to Remain Silent, ACLU, <https://www.aclu.org/other/aclu-history-right-remain-silent#:~:text=in%20his%20opinion.-,Miranda%20v.,their%20right%20to%20an%20attorney>.
[572] Sergio De La Pava, *One Will be Provided For You, in* FIGHT OF THE CENTURY: WRITERS REFLECT ON 100 YEARS OF LANDMARK ACLU CASES 82 (Michael Chabon & Ayelet Waldman eds., 2020).
[573] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948) arts. 5, 9, 10, 11.
[574] International Covenant on Civil and Political Rights arts. 7, 14(3)(b), (d), (g), Dec. 16, 1966, 999 U.N.T.S. 171

self-incrimination are now recognised as fundamental elements of due process under international law.[575] Nevertheless, the ACLU's litigation strategy throughout this period remained firmly rooted in the domestic constitutional framework, relying on the Fifth and Sixth Amendments[576] rather than invoking or aligning explicitly with IHR provisions.[577] This further exemplifies the broader pattern characterising the ACLU's mid-twentieth-century advocacy: while substantively advancing protections parallel to IHR standards, it did so through an exclusively American constitutional lens, reinforcing a tradition of constitutional exceptionalism.[578]

3.1.3. Era Three – Explicit Engagement with IHR

While the ACLU's mid-twentieth-century advocacy reflected a consistent pattern of constitutional exceptionalism, the turn of the twenty-first century witnessed a subtle yet significant evolution, as the organisation began to engage more deliberately with IHR frameworks in its domestic and international advocacy strategies. Era Three spans 2003 to 2024 and is characterised by explicit citation of IHR provisions in the ACLU's advocacy strategy, as well as growing engagement with international mechanisms.

In Lawrence v. Texas[579] the petitioner challenged the constitutionality of Texas' sodomy law which criminalised private, consensual sexual conduct between two persons of the same sex.[580] The SCOTUS struck down the Texas statute, recognising that such conduct is protected under the liberty guaranteed by the Fourteenth Amendment's Due Process Clause. The ACLU, through its LGBTQ+ advocacy arm (now a part of the *LGBTQ Rights Project*) submitted an amicus curiae brief, focusing on privacy rights under the Due Process Clause and the constitutional protection

[575] ICCPR, Article 14(3)(b), (d), (g) - Explicitly guarantees the rights to prepare a defence, have legal counsel, and not to self-incriminate; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) (An authoritative interpretation that stresses informing accused persons of their rights and the right to counsel as essential to a fair trial); Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948) arts. 9–11 (Establishes prohibition against arbitrary detention and fair trial guarantees, including rights of defence).
[576] WALKER supra note 472 at 230-39.
[577] KUTULAS, *supra* note 477.
[578] AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS (Michael Ignatieff ed., 1st ed. 2005).
[579] 539 U.S. 558 (2003).
[580] Texas Penal Code § 21.06 (sodomy law).

of private, consensual adult sexual intimacy.[581] In this brief, the ACLU did not directly cite IHR instruments, continuing its pattern of strictly grounding its advocacy in US constitutional law and domestic precedents such as *Griswold v. Connecticut*,[582] *Roe v. Wade*[583] and *Planned Parenthood v. Casey*.[584] In *Lawrence*, however, Justice Anthony Kennedy, in the majority opinion and on his own initiative, cited international law sources.[585] More specifically, Kennedy cited *Dudgeon v. United Kingdom*,[586] a 1981 ruling of the European Court of Human Rights to show a global consensus against criminalising consensual homosexual conduct.[587] He framed this as part of evolving standards of decency and liberty, but not a basis of binding authority. As such the opinion remained within a US constitutional framework, but demonstrated an openness to learn from the international framework.[588]

This judicial shift catalysed broader changes within the ACLU. In 2004, the ACLU convened a major conference at the Carter Center to explore how best to incorporate a human rights strategy into its work.[589] Here, lawyers, community activists, scholars, judges and grassroots organisers from the United States, Britain and South Africa delivered workshops and presentations to legal practitioners, policymakers, and advocates from 30 states. Each session centred around the incorporation of IHR into everyday litigation whilst also increasing public awareness of human

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[581] Brief for the American Civil Liberties Union et al. as Amici Curiae Supporting Petitioners, Lawrence v. Texas, 539 U.S. 558 (2003) (No. 02-102) (arguing that the Texas sodomy statute violated the Due Process Clause by infringing upon fundamental privacy rights).
[582] 381 U.S. 479 (1965) (Recognised a constitutional right to marital privacy (based on "penumbras" of various Bill of Rights amendments).
[583] Roe v. Wade, 410 U.S. 113 (1973) (Recognised a constitutional right to choose to have an abortion, based on privacy rights under the Due Process Clause).
[584] Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992) (Reaffirmed Roe's core holding but changed the standard of review, introducing the "undue burden" test)). Although *Roe v. Wade* and *Planned Parenthood v. Casey* were foundational cases in the development of substantive due process rights relating to privacy, both decisions were ultimately overturned in *Dobbs v. Jackson Women's Health Org.,* 597 U.S. (2022).
[585] *See*, Harold Hongju Koh, International Law as Part of Our Law, 98 AM. J. INT'L L. 43, 44-5 (2004) & Melissa A. Waters, Creeping Monism: The Judicial Trend Toward Interpretive Incorporation of Human Rights Treaties, 107 COLUM. L. REV. 628, 641–42 (2007) (discussing the Supreme Court's independent invocation of international and comparative law sources in Lawrence without prompting by the parties).
[586] (1981) 4 EHRR 149.
[587] He wrote: "To the extent Bowers relied on values we share with a wider civilization, it should be noted that the reasoning and holding in Bowers have been rejected elsewhere." (*Lawrence v. Texas*, 539 U.S. 558, 576–77 (2003)).
[588] Laurence H. Tribe, *Lawrence v. Texas: The "Fundamental Right" That Dare Not Speak Its Name*, 117 HARV. L. REV. 1893 (2004); Matthew R. Mills, *Friends in the Bedroom: Amicus Curiae Brief at the United States Supreme Court and their Influence in the Lawrence v. Texas Sodomy Case*, Chancellor's Honors Program Projects (2004); Martin A. Schwartz, *Lawrence v. Texas: The Decision and its Implications for the Future*, 20 TOURO L. REV. 221 (2004).
[589] ACLU CONVENES FIRST NATIONAL CONFERENCE ON THE USE OF INTERNATIONAL HUMAN RIGHTS LAW IN THE U.S. JUSTICE SYSTEM, ACLU, (Oct. 8, 2003), https://www.aclu.org/press-releases/aclu-convenes-first-national-conference-use-international-human-rights-law-us-justice.

rights issues at home.[590] In turn, this materialised into the ACLU *Human Rights Project*, leading the CSO's mission to integrate the IHR framework into its advocacy and to use IHR law and accountability mechanisms, documentation, and strategic litigation to engender change in the US.[591] On this, ACLU Executive Director, Anthony D. Romero explained:

> "Our goal is no less than to forge a new era of social justice where the principles of the United Nation's Universal Declaration of Human Rights are recognized and enforced in the United States…"[592]

Moreover, in response to a request to rationalise the use of IHR law provisions in domestic advocacy, conference organiser and associate legal director of the ACLU, Ann Besson, explained that these provisions were beginning to "emerge as a tool for victims of discrimination" in the US, as evidenced from grassroots groups through to the Supreme Court.[593]

Following its institutional shift toward human rights engagement in 2004, the ACLU increasingly incorporated explicit references to IHR instruments such as the ICCPR and CAT in its litigation strategies, as exemplified by its amicus curiae submissions in *Boumediene v. Bush*,[594] *Hamdan v. Rumsfeld*[595] and *Flores-Villar v. United States*.[596] Although not all such efforts succeeded, this era marked a clear departure from the ACLU's earlier practice of exclusive reliance on domestic

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[590] *Id.*
[591] ACLU Convenes First National Conference on the Use of International Human Rights Law in the U.S. Justice System, ACLU, (Oct. 8, 2003), https://www.aclu.org/press-releases/aclu-convenes-first-national-conference-use-international-human-rights-law-us-justice.
[592] ACLU Joins Landmark International Human Rights Cases Before the U.S. Supreme Court, ACLU (Mar. 29, 2004), https://www.aclu.org/press-releases/aclu-joins-landmark-international-human-rights-cases-us-supreme-court; Citing Growing Abuses, ACLU Intensifies International Human Rights Advocacy in the United States, (Dec. 6, 2004), https://www.aclu.org/press-releases/aclu-joins-landmark-international-human-rights-cases-us-supreme-court.
[593] Alvin J. Bronstein & Jenni Gainsborough, *Using International Human Rights Laws and Standards for U.S. Prison Reform* 24 PACE L. REV. 811 (2004); ACLU Convenes First National Conference on the Use of International Human Rights Law in the U.S. Justice System, ACLU, (Oct. 8, 2003), https://www.aclu.org/press-releases/aclu-convenes-first-national-conference-use-international-human-rights-law-us-justice.
[594] 553 U.S. 723 (2008) (the ACLU argued that the denial of habeas corpus protections to Guantánamo detainees violated not only the Suspension Clause of the US Constitution but also fundamental guarantees under IHR law, citing the ICCPR's protections against arbitrary detention).
[595] 548 U.S. 557 (2006) (the ACLU supported challenges to military commissions by referencing international fair trial standards and prohibitions against torture and cruel, inhuman, or degrading treatment under CAT).
[596] 564 U.S. 210 (2011) (the ACLU sought to challenge discriminatory citizenship laws by drawing upon principles articulated in CEDAW and other international equality frameworks, signalling a willingness to use IHR norms to advocate for domestic constitutional change).

constitutional provisions, evidencing an intentional integration of IHR standards into its advocacy repertoire.

3.4. Identity (Liberalism)

Judy Kutulas documents how, between 1930 and 1960, the ACLU transitioned from a "group of passionate individualists" into a "professional civil liberties organisation," aligning increasingly with mainstream liberalism in order to sustain influence amidst the political and social shifts of the New Deal, World War II, and the early Cold War.[597] Kutulas identifies a deliberate accommodation between radical ideals and the pragmatic demands of operating within an expanding liberal legal and political framework.[598] William Donohue similarly critiques the ACLU for its steady embrace of contemporary liberalism, arguing that despite its claims of non-partisanship, the organisation consistently pursued an egalitarian, statist agenda reflective of modern liberal values.[599] However, as Walker's review of Donohue's work highlights, this portrayal risks oversimplification; the ACLU's relationship with liberalism has often been characterised by dissent and critical engagement, particularly during pivotal moments such as its opposition to wartime repression and its ambivalence towards the New Deal's expansion of state authority.[600] Walker emphasises that the ACLU's history reflects a persistent tension between the defence of individual rights against government overreach and the broader liberal project of expanding state intervention.[601] Furthermore, the internal dynamics of the ACLU's governance evolved significantly, as the shift from a centralised to a more democratic policymaking process; notably through the introduction of the Biennial Conference in 1954; illustrated the organisation's efforts to reconcile grassroots participation with national strategic coherence.[602] These historical insights are essential for understanding the ACLU's contemporary role as a civil society actor: simultaneously embedded within, yet critically distinct from, the broader currents of American liberalism.

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[597] KUTULAS, *supra* note 477 at 2, 12, 114.
[598] *Id.* at 85-87, 124.
[599] DONOHUE, *supra* note 478 at 4-5, 13, 87.
[600] Samuel Walker, Rethinking the History of the American Civil Liberties Union, 72 VA. L. REV. 552, 550-52 (1986).
[601] *Id.* at 552.
[602] *Id.* at 554.

3.5. Domestic Advocacy

The ACLU's identity as a domestic civil liberties organisation was historically rooted in its early interventions in criminal justice and racial justice reform. From its collaboration with the Wickersham Commission in the 1930s[603] to its coalition-building with organisations such as the NAACP,[604] the ACLU sought to expose abuses and expand constitutional protections within the US. These early efforts laid the groundwork for the ACLU's later strategic campaigns, most notably for this thesis: the Campaign for Smart Justice, which exemplifies how domestic reform advocacy now forms a critical component of civil society efforts to realise human rights through targeted, systemic change, even though the ACLU's limited use of explicit IHR frameworks in these efforts represents a significant missed opportunity to strengthen the normative framing of criminal justice reform within a global rights discourse. This section traces the evolution of the ACLU's domestic advocacy, setting the stage for a discussion of its modern campaign-based methodologies.

In 1931, the ACLU published its infamous "Lawlessness in Law Enforcement" report.[605] On this report, Walker explains that the ACLU played a pivotal role in creating a national debate on the issue of police misconduct. In 1929, President Herbert Hoover enlisted the help of ACLU attorneys Walter Pollak, Zechariah Chafee and Carl Stern, following a successful lobbying effort from Baldwin, to work with the newly established Wickersham Commission who were tasked with conducting the first federal study of American criminal justice. This meant the commission had ready access to the ACLU files.[606] The *Lawlessness in Law Enforcement* report was the product of this investigation, and its findings exposed the horrors being inflicted by police enforcement all over the country. Many individuals facing criminal charges were subjected to acts of torture and other cruel and inhuman treatment. Famously, the report noted the brazen statement from the Buffalo police commissioner who revealed that he would violate the Constitution and viewed the expansion of civil liberties within the criminal justice system as a means to turn the Constitution

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[603] WALKER supra note 472 at 116-20.
[604] KUTULAS, *supra* note 477 at 87-90.
[605] John B. Waite, *Report on Lawlessness in Law Enforcement: Comment*, 30 MICH. L. REV. 54 (1931).
[606] WALKER supra note 472 at 87.

into a "refuge for the criminal."[607] The report also made recommendations to ameliorate the situation, which was largely modelled on the framework drafted by the ACLU. Although progress on this issue was slow, and continues well into the 21st century, this pivotal moment strengthened the power available to reform-minded police chiefs.[608]

The final defining feature of this decade would centre around the pursuit of racial justice. The ACLU showed passionate support for the movement, and actively protested race-based discriminatory policies, for example, top ACLU attorneys refused to join the American Bar Association on the basis that it did not admit black lawyers.[609] Although there were no significant victories in this era, the ACLU's coalition with the NAACP at this early stage, started the journey that would bring about the infamous case of *Brown v. Board of Education*[610] which effectively engendered the abolition of the "separate but equal" segregation of schools.

3.6. Mass Incarceration

According to the United Nations Department of Economic and Social Affairs, the world's population is 'projected to reach 8 billion' by November 2022.[611] Per the US Census Bureau, as of January 1, 2022, the US population stands at an estimated 332,403,650 – a 0.29% increase since the 2020 US census.[612] It is estimated that the global incarcerated population is over 11.5 million, with prisons in 121 countries operating above official capacity.[613] From this population, almost 2 million[614] incarcerated individuals are imprisoned in the US, a 500% increase since 1970.[615] From

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[607] Nat'l Comm'n on Law Observance & Enforcement, Report on Lawlessness in Law Enforcement, Rep. No. 11 (Wash., D.C.: Gov't Printing Off. 1931); *Id*. at 88.
[608] WALKER supra note 472 at 88; *But see*, Waite, *supra* note 605.
[609] WALKER supra note 472 at 89.
[610] Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).
[611] UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, POPULATION DIVISION, *World Population Prospects 2022: Summary of Results*, (2022), UN DESA/POP/2022/TR/NO. 3, at 3.
[612] US Census Bureau, *U.S. Population Estimated at 332,403,650 on Jan. 1, 2022*, CENSUS.GOV (Dec. 30, 2021), https://www.census.gov/library/stories/2021/12/happy-new-year-2022.html.
[613] GLOBAL PRISON REFORM INTERNATIONAL, *Global Prison Trends 2022*, (2022), https://www.penalreform.org/global-prison-trends-2022/imprisonment-and-overcrowding/.
[614] WENDY SAWYER & PETER WAGNER, *Mass Incarceration: The Whole Pie 2022*, (2022), https://www.prisonpolicy.org/reports/pie2022.html.
[615] The Sentencing Project, *Criminal Justice Facts*, THE SENTENCING PROJECT (n.d.), https://www.sentencingproject.org/criminal-justice-facts/ (last visited Jul 1, 2022).

these figures, the US makes up 4.2% of the global population, and yet accounts for "more than 20% of the world's prison population."[616]

The US penal system has received considerable scholarly attention, producing 'diverging opinions on both its reform and abolition.'[617] Mass incarceration in the US is an ever-growing concern among scholars,[618] activists,[619] and legal practitioners.[620] Though the era of mass incarceration started in the 1970s, it is the progeny of the US' turbulent history with race, crime, and punishment. The 13th Amendment to the US Constitution formally abolished slavery and involuntary servitude, with the notable exception that such practices were permitted "as a punishment for crime whereof the party shall have been duly convicted." [621] This exception created a constitutional loophole that allowed coerced labour and systemic exploitation to persist within the context of incarceration. Following the end of Reconstruction, systems such as the Jim Crow laws institutionalised racial segregation and economic subjugation, ensuring the continued marginalisation of African Americans. [622] The Jim Crow system of racial segregation was formally undermined by the Supreme Court's decision in *Brown v. Board of Education*[623] and legislatively dismantled by the Civil Rights Act of 1964[624] and the Voting Rights Act of 1965.[625]

After her time as director of the *Racial Justice Project* for the ACLU in Northern California, criminal law scholar, Michelle Alexander, 'reluctantly' concluded that the criminal justice system was not simply 'infected with racial bias,' but rather a 'stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim

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[616] ACLU, *Mass Incarceration*, AMERICAN CIVIL LIBERTIES UNION (n.d.), https://www.aclu.org/issues/smart-justice/mass-incarceration (last visited Jul 1, 2022).
[617] Beatrice M. Festa, Netflix and the American Prison Film: Depictions of Incarceration and the New Prison Narrative in Ava DuVernay's 13th, 28 HUNGARIAN J. OF ENGLISH & AMERICAN STUD. 221, 223 (2022).
[618] *See e.g.,* Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010); JAMES FORMAN JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA (2017).
[619] *See E.g.*, ACLU, Smart Justice Campaign, https://www.aclu.org/issues/smart-justice; Movement for Black Lives, End the War on Black People, https://m4bl.org/policy-platforms/end-the-war-on-black-people/.
[620] *See E.g.*, Boston Univ. Sch. of Pub. Health, Addressing the Horrors of Mass Incarceration (Nov. 8, 2022), https://www.bu.edu/sph/news/articles/2022/addressing-the-horrors-of-mass-incarceration/; Notre Dame Law Sch., Expert on Prisoners' Rights Talks About Mass Incarceration (Mar. 18, 2021), https://law.nd.edu/news-events/news/expert-on-prisoners-rights-talks-about-mass-incarceration/; Scott L. Cummings & Deborah L. Rhode, *Policing, Mass Imprisonment, and the Failure of American Lawyers*, 128 HARV. L. REV. FORUM 1 (2015).
[621] U.S. CONST. amend. XIII.
[622] C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW (1955).
[623] 347 U.S. 483 (1954).
[624] Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).
[625] Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. §§ 10301–10508).

Crow.'[626] It is even argued that mass incarceration rivals, and occasionally surpasses, Jim Crow, rendering the system a 'racialized system of social control' condemning millions of Black people to a 'hidden underworld of legalized discrimination and permanent social exclusion'[627] upon their release from prison in the twenty-first century.[628] This disproportionate impact of mass incarceration on communities of colour, particularly Black communities[629], has been labelled *The New Jim Crow*.[630] Civil rights scholar, James Forman Jr., challenges this assertion, arguing the Jim Crow analogy "oversimplifies the origins of mass incarceration."[631] Though both scholars are right to flag their respective ideas and concerns, their accounts create a false impression that mass incarceration is either the product of a formulaic political pattern intended to legitimise white prejudice into law or completely unrelated to the political climate of the country. The oversimplification of a complex reality hinders positive legal reform action. As Walker demonstrates in his article, mass incarceration is likely the unanticipated consequence of progressivism – where political actors 'acted out of a genuine interest in helping the dispossessed.'[632] Understanding these unintended consequences is important to understand how racial disparity has emerged within the US criminal justice system, because of mass incarceration.[633]

While the historical and scholarly debates surrounding the origins and dynamics of mass incarceration are significant and contested, an in-depth exploration of these issues falls beyond the scope of this thesis. Accordingly, the following discussion will focus specifically on the

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[626] Michelle Alexander, *The New Jim Crow*, 9 OHIO ST. J. CRIM. L. 7, 8 (2011); MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010).
[627] ALEXANDER, *supra* note 626 at 13.
[628] Anders Walker, *The New Jim Crow - Recovering the Progressive Origins of Mass Incarceration*, 41 HASTINGS CONST. L. Q. 845, 845 (2014). These were coined 'collateral consequences' within the Campaign for Smart Justice.
[629] It should be noted here that the term '*African American'* and '*Black'* are 'not always interchangeable' but have been and can be used as such. I have elected to use the term Black on the basis that it is largely viewed as a 'universal term' that acknowledges the 'global nature of blackness.' *See*, Talia Buford, Not All Black People Are African American: What Is the Difference?, CBS News (Apr. 27, 2023), https://www.cbsnews.com/news/not-all-black-people-are-african-american-what-is-the-difference/; *see generally,* Kenneth L. Ghee, *The Psychological Importance of Self Definition and Labeling: Black Versus African American*, 17 J. OF BLACK PSYCHOLOGY 75 (1990); Charles Agyemang, Raj Bhopal & Marc Bruijnzeels, *Negro, Black, Black African, African Caribbean, African American or what? Labelling African origin populations in the health arena in the 21st century*, 59 J. EPIDEMIOL. COMMUNITY HEALTH 1014 (2005); *see contra* Ben L. Martin, *From Negro to Black to African American: The Power of Names and Naming*, 106 POLITICAL SCI. Q. 83 (1991).
[630] This phraseology is even present in the ACLU's Campaign for Smart Justice, where they cite Michelle Alexander's book in their blueprints, for example, the Utah Blueprint. American Civil Liberties Union, *Blueprint for Smart Justice: Utah*, (2018). **p.16**
[631] James Forman, Racial Critiques of Mass Incarceration: Beyond the New Jim Crow, 87 N.Y.U.L. REV. 21 (2012). **p.23**
[632] Walker, *supra* note 17; ANDERS WALKER, THE GHOST OF JIM CROW: HOW SOUTHERN MODERATES USED BROWN V. BOARD OF EDUCATION TO STALL CIVIL RIGHTS (2009).
[633] WALKER supra note 472.

development of US domestic criminal justice policies during the late twentieth century, particularly the *War on Crime* and the *War on Drugs*, as key drivers of the systemic issues addressed by the ACLU's contemporary advocacy efforts.

The Civil Rights Act was passed in 1964, dismantling key pillars of the Jim Crow system by prohibiting racial segregation in public accommodations, banning employment discrimination, and ensuring equal access to federally funded programs. As a comprehensive federal statute, it represented a major legal victory for the civil rights movement and laid the groundwork for the modern understanding of equality under US law.[634] Following its passage, public debate shifted from segregation to crime,[635] but it was not until then Vice-President Richard Nixon linked the civil disobedience doctrine of Dr Martin Luther King Jr to rising crime rates that crime was associated with the Black community.[636] This correlation triggered the 'Southern Strategy '- a Republican Party electoral strategy that appealed to racism against Black people, thus increasing political support among racist white voters.[637] This strategy saw present-day 'red states', such as Texas, abandon their consistent history as proponents of the Democratic party.[638] By 1970, the US prison population stood at approximately 300,000, laying the demographic foundations for what would later become known as the era of mass incarceration.[639]

By 1980, Ronald Reagan evolved Nixon's '*tough on crime*' strategy by officially declaring a proverbial '*war on drugs.*'[640] Upon successful campaigning, Reagan increased federal funding for local law enforcement; some academics suggest this decision specifically targeted Black and other racial minority communities.[641] During the Reagan Administration, in 1986, the Anti-Drug Abuse Act established mandatory minimums for specific quantities of cocaine. Congress also established tougher sentences for crack cocaine as opposed to powder cocaine cases – this meant that the

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[634] Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).
[635] ALEXANDER, *supra* note 626 at 50-1, 68-71.
[636] *Id.* at 51.
[637] Lisa G. Bedolla & Kerry L. Haynie, *The Obama Coalition and the Future of American Politics*, 1 POLITICS, GROUPS & IDENTITIES 128 (2013).
[638] Presidential voting history by state, BALLOTPEDIA, https://ballotpedia.org/Presidential_voting_history_by_state. See generally Kevin Phillips, *The Emerging Republican Majority* (1969); ALEXANDER, *supra* note 626.
[639] JUSTICE POL'Y INST., *The Punishing Decade: Prison and Jail Estimates at the Millenium*, (2000), http://www.justicepolicy.org/image/upload/00-05_rep_punishingdecade_ac/pdf.
[640] ALEXANDER, *supra* note 626 at 62.
[641] *See e.g.*, *Id.* at 62-3.

distribution of five grams of crack cocaine carried the same sentence as 500 grams of powder cocaine.[642] According to a 2006 report by the ACLU:

"because of its relative low cost, crack cocaine is more accessible for poor Americans, many of whom are African Americans. Conversely, powder cocaine is much more expensive and tends to be used by more affluent white Americans."[643]

A pattern then emerged among presidential candidates, as George H.W. Bush repeated this strategy in 1988, going further to evoke racial fears against Black people by using the image of Willie Horton – a Black man, serving a life sentence for first degree murder, armed robbery, rape and assault.[644] Such tactics contributed to the development of mandatory minimums and three-strike laws at state and Federal levels.[645] Mandatory minimums are sentences dictated by the legislature, which courts must deliver irrespective of any unique or mitigating circumstances surrounding the offence or the offender. Equally harsh, three strike laws are a sentencing structure that edict significantly harsher punishments for repeat offenders, often mandating life without parole for the third violation of felonies. By the end of the decade, the prison population had nearly tripled since the 1960s, standing at approximately 1.15million.[646] This was due to hyper criminalisation, people spending lengthier sentences behind bars and an increased use of pre-trial detention. After years of being berated as weak on crime, the Democrats opted to join the Republican strategy regarding criminal policymaking, spending much of the next two decades vying with each other on who was 'tougher on crime.'[647] This ongoing rivalry continued until 2008, where newly elected democratic president, Barack Obama, changed the tone of the 'crime debate.'[648] According to the Bureau of

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[642] DEBORAH J. VAGINS & JESSELYN MCCURDY, *Cracks in the System: 20 Years of the Unjust Federal Crack Cocaine Law*, (2006), <https://www.aclu.org/other/cracks-system-20-years-unjust-federal-crack-cocaine-law> at 4.
[643] *Id.*
[644] Doug Criss, *This is the 30-year-old Willie Horton Ad Everybody is Talking About Today*, CNN, November 6, 2018, https://www.cnn.com/2018/11/01/politics/willie-horton-ad-1988-explainer-trnd/index.html.
[645] Perry, *supra* note 525 at 237.
[646] Arit John, *A Timeline of the Rise and Fall of "Tough on Crime" Drug Sentencing*, THE ATLANTIC (2014), https://www.theatlantic.com/politics/archive/2014/04/a-timeline-of-the-rise-and-fall-of-tough-on-crime-drug-sentencing/360983/.
[647] Udi Ofer, *How the 1994 Crime Bill Fed the Mass Incarceration Crisis*, AMERICAN CIVIL LIBERTIES UNION (2019), https://www.aclu.org/blog/smart-justice/mass-incarceration/how-1994-crime-bill-fed-mass-incarceration-crisis; Perry, *supra* note 525 at 238.
[648] Perry *supra* note 525 at 238, FN76.

Justice Statistics, the prison population stood at approximately 1,610,446 prisoners at the end of 2008.[649]

With the history and 'interconnectedness of race, politics, and criminality in the US – particularly at the state level'[650] – it is not possible to discuss mass incarceration without considering the issue of race. The harshening of criminal policies at all levels were not necessarily passed with the intent of discriminating across racial lines, but literature studying the subject suggest there is a connection between the demise of Jim Crow and its 'replacement with a more subtle form of discrimination.'[651] The issue of mass incarceration is an issue of civil rights and by extension a human rights matter.[652]

3.7. Case Study Element Three: The ACLU's Campaign for Smart Justice

While mass incarceration had long been entrenched in American criminal policy, the early twenty-first century saw the first significant federal efforts to reverse its course. 2013 marked a shift in priorities, prompted by then Attorney General Eric Holder at the American Bar Association's House of Delegates meeting, where he launched the Federal Smart of Crime Initiative. This encouraged "federal prosecutors to focus on the most serious cases that implicate clear, substantial federal interests."[653] Holder told US attorneys to "develop specific, locally tailored guidelines – consistent with [the US'] national priorities – for determining when federal charges should be filed and when they should not."[654] In a memorandum circulated across the US to his 94 attorneys' offices,[655] prosecutors would be instructed not to write specific quantities of drugs when drafting indictments for drug defendants whose conduct did not involve: violence, the use of a weapon,

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[649] DEPARTMENT OF JUSTICE, *Prisoners in 2008*, (2008), https://bjs.ojp.gov/content/pub/pdf/p08.pdf.
[650] Perry *supra* note 525 at 229, 238.
[651] *Id.*
[652] *Id.* at 228.
[653] Derek Gilna, Despite AG's Policy Change, OIG Reviews "Smart on Crime" Initiative, PRISON LEGAL NEWS, March 2018, at 28.
[654] Terry Carter, *Sweeping reversal of the War on Drugs announced by Atty General Holder*, ABA JOURNAL, August 12, 2013, https://www.abajournal.com/news/article/sweeping_reversal_of_the_war_on_drugs_announced_by_atty_general_holder.
[655] Sari Horwitz, *Holder seeks to avert mandatory minimum sentences for some low-level drug offenders*, WASHINGTON POST, August 12, 2013, https://www.washingtonpost.com/world/national-security/holder-seeks-to-avert-mandatory-minimum-sentences-for-some-low-level-drug-offenders/2013/08/11/343850c2-012c-11e3-96a8-d3b921c0924a_story.html.

sale to minors, significant affiliations or a material criminal history.[656] Whilst the quantity of drugs will still factor into the prosecution, there is more flexibility to bypass mandatory minimums.

Parallel to this, former President Obama urged Congress to pass legislation that would give federal judges greater discretion with the sentencing of some drug offenders.[657] Additionally, the economic burden of over-incarceration was a running theme throughout Holder's speech, deeming reform to make "plain economic sense."[658] At Holder's direction, the Justice Department launched a comprehensive review of the federal criminal justice system, seeking to identify reforms that would ensure federal laws are enforced more equitably and efficiently. The review identified five goals: (1) "ensure finite resources are devoted to the most important law enforcement priorities," (2) "promote fairer enforcement of the laws and alleviate disparate impacts of the criminal justice system," (3) "ensure just punishments for low-level, nonviolent convictions," (4) "bolster prevention and re-entry efforts to deter crime and reduce recidivism," and (5) "strengthen protections for vulnerable populations."[659]

The initiative eradicated 'draconian' mandatory minimum sentences for low-level, non-violent drug offences, revised the criteria for early release of prisoners, provided guidance on recidivist enhancements, launched alternatives to incarceration, and directed law enforcement to work with other departments to address vulnerable members of the community such as female victims of domestic violence.[660] The principle motivating the effort is historically successful across the ideological divide – for example, *Right on Crime* formed a 'conservative case for reform.'[661] Holder recognised the successes of changes in state and federal sentencing laws that saw three consecutive years of decreasing prison populations.[662] In a commentary, the ACLU celebrated Holder's actions and publicised the ACLU's influences over Holder's speech. It was revealed that

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[656] Charlie Savage, *Justice Dept. Seeks to Curtail Stiff Drug Sentences*, THE NEW YORK TIMES, August 12, 2013, https://www.nytimes.com/2013/08/12/us/justice-dept-seeks-to-curtail-stiff-drug-sentences.html.
[657] Carter, *supra* note 654.
[658] *Id.*
[659] Department of Justice Archives, *The Attorney General's Smart on Crime Initiative*, (2014), https://www.justice.gov/archives/ag/attorney-generals-smart-crime-initiative.
[660] *Id.*
[661] *See* Marc A. Levin & Vikrant P. Reddy, *Right on Crime: The Conservative Case for Reform*, 23 FED. SENT'G REP. 235 (2011) (discussing the emergence of bipartisan support for sentencing reform, including conservative rationales based on cost-effectiveness and public safety).
[662] Erica Goode, *U.S. Prison Populations Decline, Reflecting New Approach to Crime*, THE NEW YORK TIMES, July 26, 2013, https://www.nytimes.com/2013/07/26/us/us-prison-populations-decline-reflecting-new-approach-to-crime.html.

the ACLU was 'deeply engaged in policy discussions with the Obama Administration, and Democrats and Republicans in Congress.'[663] Moreover, many of the reforms proposed by Holder were ACLU recommendations.[664]

The Smarter Sentencing Act was a bill in the Senate focused on limiting federal resources and amending the federal criminal code to abolish mandatory minimums. Introduced in July 2013, one month ahead of Holder's address, by Senator Richard Durbin, the bill died in committee. It was later re-introduced in February 2015 and then again in October 2017 by Senator Mike Lee, dying in committee on both occasions. In March 2021, Senator Dick Durbin re-introduced the bill under the bill number S.1013. To date, the latest action shows the bill was read twice and referred to the Committee on the Judiciary. It has yet to pass through both houses and the President.[665]

In a 2015 address to the NAACP, then President Obama stated that the criminal justice system is not 'as smart as it should be. It's not keeping the people as safe as it should be. It is not as fair as it should be…'[666] Subsequently, in a 2016 effort to build on the administration's efforts for reform, the White House launched a separate public-private initiative that sought to encourage the use of data to reduce mass incarceration. This was known as the Data-Driven Justice Initiative.[667] Through this initiative, sixty-seven city, county and state governments[668] worked to 'adopt data-driven strategies aimed at divert low-level offenders with mental illness out of the criminal justice system' subsequently connecting them to health and social services.[669] It also sought to equip law enforcement and first responders with protocols for 'de-escalating crisis situations,' and reform pre-trial incarceration practices. This was an attempt to redirect low-risk offenders, preventing unnecessary pre-trial detention, determined by an individual's ability to afford bail.[670] Private-

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[663] Laura W. Murphy & Vanita Gupta, *How to Process Eric Holder's Major Criminal Law Reform Speech*, AMERICAN CIVIL LIBERTIES UNION (2013), https://www.aclu.org/blog/smart-justice/sentencing-reform/how-process-eric-holders-major-criminal-law-reform-speech.
[664] *Id.*
[665] S.1013 - 117th Congress (2021-2022): Smarter Sentencing Act of 2021, (2021), http://www.congress.gov/.
[666] Lynn Overmann, *Launching the Data-Driven Justice Initiative: Disrupting the Cycle of Incarceration*, MEDIUM (2016), https://medium.com/@ObamaWhiteHouse/launching-the-data-driven-justice-initiative-disrupting-the-cycle-of-incarceration-e222448a64cf.
[667] White House Launches Data-Driven Justice Initiative, CANDID (2016), https://philanthropynewsdigest.org/news/white-house-launches-data-driven-justice-initiative; Overmann, *supra* note 666.
[668] Office of the Press Secretary, *FACT SHEET: Launching the Data-Driven Justice Initiative: Disrupting the Cycle of Incarceration*, WHITEHOUSE.GOV (2016), https://obamawhitehouse.archives.gov/the-press-office/2016/06/30/fact-sheet-launching-data-driven-justice-initiative-disrupting-cycle.
[669] *Id.*
[670] *Id.*

sector support for the initiative, provided by various partners and foundations,[671] focused on data diversion, and coordinated research sought to identify opportunities for early intervention and assess program effectiveness.[672] In 2016, the Justice Department announced a direct correlation between initiative and a reduction in federal drug prosecutions, which consequently led to a reduction in the federal inmate population.[673]

These efforts were rescinded in 2017 under the order of the Trump Administration's Attorney General Jeff Sessions, who undermined the central objective of Holder's prosecutorial focus, writing that "prosecutors should charge and pursue the most serious, readily provable offense", deeming mandatory minimum sentences necessary.[674] Moreover, he issued a memo that urged prosecutors to file "the most serious, readily provable" charges, particularly those that carry the most substantial punishment – this included mandatory minimums.[675] In a footnote, the memo explicitly mentions Holder's directive and rescinded it, 'effective immediately.'[676] This saw the reversal of the positive progress made, which suggests that any 'smart' initiatives in criminal justice reform need to be legally supported – not a weapon yielded during political debate or ideological changes in government.

More recently, the Brennan Center [677] published a policy solution aimed at the Biden Administration and Congress urging them to reform the federal criminal justice system by making it less punitive and more equitable.[678] Moreover, other initiatives tackling Smart Justice issues from alternative angles emerged, campaigning for varying issues in attempt to reduce drivers of mass incarceration. For example, the Michelson Smart Justice Initiative was established, which

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[671] *Id.*
[672] White House Launches Data-Driven Justice Initiative, *supra* note 667.
[673] Ed Chung, *Smart on Crime: An Alternative to the Tough vs. Soft Debate*, CENTER FOR AMERICAN PROGRESS (2017), https://www.americanprogress.org/article/smart-crime-alternative-tough-vs-soft-debate/; Department of Justice, *New Smart on Crime Data Reveals Federal Prosecutors Are Focused on More Significant Drug Cases and Fewer Mandatory Minimums for Drug Defendants*, (2016), https://www.justice.gov/opa/pr/new-smart-crime-data-reveals-federal-prosecutors-are-focused-more-significant-drug-cases-and.
[674] Gilna, *supra* note 653.
[675] Rebecca R. Ruiz, *Attorney General Orders Tougher Sentences, Rolling Back Obama Policy*, THE N.Y. TIMES, May 12, 2017, https://www.nytimes.com/2017/05/12/us/politics/attorney-general-jeff-sessions-drug-offenses-penalties.html.
[676] Memo by Sessions to U.S. Attorneys on Charges and Sentencing, THE NEW YORK TIMES, May 12, 2017, https://www.nytimes.com/interactive/2017/05/12/us/document-Sessions-Charging-Memo.html.
[677] The Brennan Center for Justice, affiliated with New York University School of Law, is a nonpartisan law and policy institute dedicated to upholding democracy, advancing criminal justice reform, and protecting civil rights and liberties. *See* Brennan Ctr. for Justice, About Us, https://www.brennancenter.org/about.
[678] RAM SUBRAMANIAN ET AL., *A Federal Agenda for Criminal Justice Reform*, (2020), https://www.brennancenter.org/our-work/policy-solutions/federal-agenda-criminal-justice-reform.

sought to promote 'Justice in Education' by ameliorating the unemployment rate post incarceration, improving access to higher education in prisons, supporting formerly incarcerated students, and seeking to particularly assist members of Black and other racial minorities in the criminal justice system.[679] Nonetheless, these efforts at tackling mass incarceration through smart justice initiatives through broad *one-size-fits-all* approaches adopted by the federal government failed to engender any meaningful reform. This is likely due to the complications introduced by the US' federal system; wherein criminal justice is largely a state issue.

To address this obstacle, the ACLU's *Campaign for Smart Justice* (hereafter the Campaign) took a different approach; ensuring its reform proposals were highly targeted, data driven, and specific. The Campaign was initiated in 2010, likely catalysed by the Obama Administration's own attempts at smart justice.[680] The Campaign, unlike the ACLU's other projects that sought to make an impact by capitalising on the litigious nature of the ACLU, appears to be a first attempt at direct policy reform advocacy.

In 2014, the ACLU softly launched its Campaign which sought to advance legislative reforms to usher in a new era of justice.[681] Its immediate objectives being to (1) halve the US prison population by the year 2025 and (2) end racial disparity in the criminal justice system. The Campaign was launched by the national ACLU, appointing Udi Ofer, the Deputy National Political Director of the ACLU, and Director of the ACLU's Justice Division, as chairman of the *Campaign for Smart Justice*. His division leads the ACLU's "political, legislative, and electoral advocacy on criminal justice reform, policing, drug law reform and ending the death penalty"[682] which proposes the justification for choosing a non-litigious path for the campaign.

To advance its objectives, the ACLU partnered with Urban Institute researchers in 2015. The Urban Institute is a 'non-profit research organisation that provides data and evidence to help

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[679] Smart Justice, MICHELSON 20MM FOUNDATION, https://20mm.org/focus-areas/smart-justice/.
[680] Susan N. Herman, *Getting There: On Strategies for Implementing Criminal Justice Reform*, 23 BERKELEY J. CRIM. L. 1, 3 (2018).
[681] American Civil Liberties Union, *Press Release: ACLU's Smart Justice Campaign Receives New Major Funding for Criminal Justice Reform*, ACLU (Mar. 1, 2022), https://www.aclu.org/press-releases/aclus-smart-justice-campaign-receives-new-major-funding-criminal-justice-reform.
[682] Udi Ofer, AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/bio/udi-ofer.

advance upward mobility and equity,'[683] launched by President Lyndon B. Johnson in 1968 who wanted to provide "power through knowledge."[684] A key value for the organisation is that of integrity which ensures that their "expert" researchers are "free from outside influence" and their conclusions are "rooted in evidence."[685] It was commissioned by the ACLU to conduct a two-year research project that would analyse what types of changes were necessary to halve the prison population and reduce racial disparity in individual states as well as at a federal level. The Urban Institute identified the unique primary drivers of incarceration within each state and evaluated the 'impact of reducing prison admissions and length of stay on state prison populations, state budgets and the racial disparity of those imprisoned.' [686] It also studied the incarceration rate on characteristics such as gender, race, age, ability, and mental health. Subsequently, in 2018, the Urban Institute developed an open access customisable 'forecasting tool' that helps the user explore how policy changes could affect state prison populations, and compare them to their predictions for 2025, which is considered the baseline.[687]

The data highlighted that the US' overuse of incarceration is unsustainable, costing taxpayers billions of dollars while doing little to prevent crime. The ACLU used this data to formulate comprehensive and individualised proposals published in a 'Blueprint' format that presents the Urban Institute's findings, the ACLU's proposed policy changes, justifications for these proposals and the potential impacts of their implementation.[688] On 5 September 2018, the ACLU formally launched the state-by-state Blueprints, publishing 24 state reports initially, with each of these seemingly being attached to states the ACLU deemed a priority based on factors such as incarcerated population size, receptiveness of the state and state legislative session timelines. The blueprints were the "first-ever analysis of their kind."[689] To date, all 50 states and the District of

[683] About the Urban Institute, URBAN INSTITUTE, https://www.urban.org/about.
[684] Our Story, URBAN INSTITUTE, https://www.urban.org/about/our-story.
[685] About the Urban Institute, *supra* note 683.
[686] Campaign for Smart Justice, Nationwide Blueprint (2019), at 4.
[687] Prison Population Forecaster, http://urbn.is/ppf.
[688] 50 State Blueprint: ACLU's Plan to End Mass Incarceration, https://50stateblueprint.aclu.org.
[689] ACLU Launches State-by-State Blueprints with Roadmaps for Cutting Incarceration by 50 Percent, AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/press-releases/aclu-launches-state-state-blueprints-roadmaps-cutting-incarceration-50-percent.

Columbia have received a blueprint as well as a nationwide roadmap; 2019 marking the end of the roll-out of these documents.[690]

The ACLU's 50-State Blueprints are structured as a series of individual state-specific reports designed to offer tailored strategies for reducing prison populations and advancing criminal justice reform. Each blueprint outlines the current incarceration trends and racial disparities within the state's criminal justice system, then identifies practical, evidence-based reforms that could significantly reduce the prison population over a five-year period. The structure typically includes a demographic snapshot, a summary of key drivers of incarceration (such as sentencing laws or parole practices), and a set of targeted policy recommendations. The Blueprints are designed to serve as strategic advocacy tools, enabling civil society actors, policymakers, and communities to push for systemic reforms that align with the broader goals of the ACLU's Campaign for Smart Justice.[691]

The Campaign tackles systemic injustices across the US criminal justice system through six primary areas of reform. First, the Campaign advocates for bail reform, seeking to dismantle the for-profit cash bail system and replace it with non-discriminatory, evidence-based practices that prevent the pretrial detention of individuals solely due to their inability to pay. Second, it addresses mass incarceration by confronting the racial disparities, fiscal burdens, and excessive reliance on imprisonment that have characterised the punitive era following the War on Drugs, while also challenging the influence of private prisons. Third, the Campaign targets parole and release systems, promoting fairer parole practices, expanded clemency opportunities, and the early release of elderly or low-risk prisoners, thereby emphasising dignity and rehabilitation over prolonged confinement. Four, it calls for prosecutorial reform by seeking to limit unchecked prosecutorial discretion, reduce misconduct, and increase transparency and accountability within charging and plea-bargaining practices. Five, the Campaign focuses on re-entry support, advocating for the removal of collateral consequences that inhibit access to employment, housing, education, and

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[690] In March 2022, the Just Trust for Action announced that the ACLU's Campaign for Smart Justice will be a part of its inaugural grants supporting criminal justice reform, where they committed $36.3 million to organisations that are working in the criminal justice field. In their statement thanking the trust, Ofer noted an additional objective to the Campaign which is to "create the political will that is necessary for bold reforms." ACLU, *ACLU's Smart Justice Campaign Receives New Major Funding for Criminal Justice Reform*, AMERICAN CIVIL LIBERTIES UNION (2022), https://www.aclu.org/press-releases/aclus-smart-justice-campaign-receives-new-major-funding-criminal-justice-reform.

[691] ACLU, *Blueprint for Smart Justice*, https://50stateblueprint.aclu.org/.

civic participation for formerly incarcerated individuals, with the aim of reducing recidivism and facilitating successful reintegration into society. Six, it pursues sentencing reform by campaigning to end extreme sentencing practices, abolish mandatory minimums, promote alternatives to incarceration, and reframe the legal response to drug offences as a public health issue rather than a criminal one. Across these issue areas, the Campaign integrates domestic constitutional principles with a growing reliance on IHR norms, reinforcing the ACLU's broader mission to realise justice, equality, and the protection of fundamental rights within the US criminal justice system. (Annex 1; Figure 4; Figure 5)

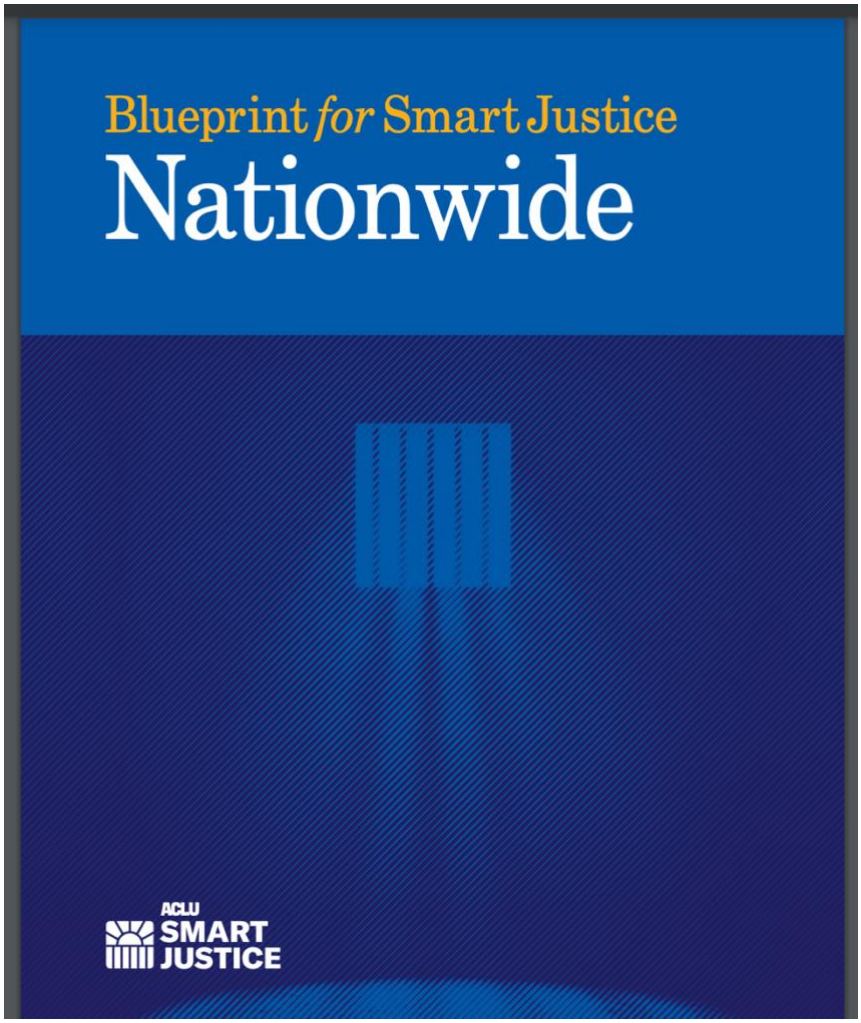

Figure 4: Front Cover of the Nationwide Blueprint (Annex 1).

accountable and support those who were harmed — can be particularly promising. When they are rigorous and well-implemented, these processes have not only been demonstrated to reduce recidivism for defendants,[151] they have also been shown to decrease symptoms of posttraumatic stress in victims of crime.[152] Judges must have all options at their disposal besides imprisonment. By a 3-to-1 margin, crime survivors prefer holding people accountable using alternatives to prison, such as rehabilitation, mental health treatment, drug treatment, or community service.[153] To ensure courts use these alternatives, legislatures should pass laws that require nonincarceration for misdemeanors and presume nonincarceration for felonies.

- **Shrink community supervision:** Extended periods of supervision with unnecessarily burdensome conditions can interfere with a person's ability to successfully reenter society, increasing the risk of reincarceration, often for minor or technical violations of a person's terms of parole or probation. With rapper Meek Mill's reincarceration in 2017 for popping a wheelie while under community supervision,[154] national attention is now focused on supervision's undue burdens, fueling recent calls for reform.

  State and local governments must reduce the burdens of community supervision. Courts should encourage judges to consider when probation is appropriately applied, mandating that it should be applied only as an alternative to prison and not applied to people who should not remain in the criminal legal system. Legislatures should reduce initial probation lengths in criminal codes, capping them at three years, and establish opportunities for early discharge, such as an earned compliance credit program and automatic early discharge based on compliance and risk. Moreover, legislatures should eliminate blanket probation and parole conditions, requiring any conditions to have an articulable nexus to a risk or need of that particular individual, and end wealth-based probation and parole practices that allow extended terms due to nonpayment of fines, fees, restitution, or other court costs. Additionally, federal probation offices should measure the success of their officers by successful reentry and lowered recidivism rates. Congress should pass legislation that financially encourages states to use similar metrics.

- **Reduce probation and parole revocations:** Too often, people revoked from supervision go to prison for technical violations, not for committing new offenses. Missing curfew or lack of employment could result in incarceration. Racial disparities are stark in revocation decision-making. Legislatures should enact policies that prevent community supervision from directly driving people into jails and prisons, such as banning the use of supervision revocations and short-term incarceration for violations that do not involve a new offense, requiring a system of graduated sanctions with incentives for compliance and swift responses to violations in lieu of incarceration, and establishing community supervision oversight bodies to review decisions to revoke supervision. Federally, Congress should oppose any bills that expand arrest authority and other police powers for federal probation officers, and should pass laws to prohibit imprisonment for technical violations of probation and supervised release, including failure to pay fines and fees.

- **End the War on Drugs:** Nearly 50 years ago, President Richard Nixon declared a "War on Drugs" — a campaign that has cost roughly $1 trillion, has produced little to no effect on the supply of or demand for drugs in the United States, and has contributed to making America the world's largest incarcerator.[155] The War on Drugs has sent millions of people to prison, seriously eroded civil liberties and civil rights, limited those branded with criminal records from gaining employment and housing, and cost taxpayers billions of dollars a year. Voters strongly believe the War on Drugs isn't working — in fact, a 2018 Rasmussen Reports national

Figure 5: Example page from the Nationwide Blueprint (Annex 1).

The ACLU is an organisation that historically devoted itself to applying civil rights law domestically, originally explicitly rejecting reliance on IHR provisions to confer additional standards or precedents. However, since 2003 the organisation has turned more frequently to IHR law during its advocacy and campaigns. It is not uncommon to locate references to treaty provisions in their legal work.[692] In fact, following their successful International Human Rights Task Force, the ACLU founded its Human Rights Program (HRP) which is dedicated to 'holding the United States accountable to international human rights laws and standards as well as the rights guaranteed by the US Constitution,' [693] and 'integrate a human rights framework' into its advocacy. [694] The ACLU does this by using international legal provisions, engaging with international accountability mechanisms – such as the UPR – human rights documentation and strategic litigation. The ACLU's commitment to effect impact policy change in the US and seek remedies to victims of human rights violations saw them extend beyond the Human Rights Council, litigating before the International Criminal Court (ICC), [695] petitioning the Inter-American commission on Human Rights (IACHR)[696] and, acting as a prominent member of the International Network of Civil Liberties Organizations (INCLO).[697] They have collaborated extensively with transnational and foreign CSOs around the globe to further "justice at home and aboard,"[698] finally adopting Baldwin's vision for the CSO.

Despite this globalised attitude and openness to embrace international standards of civil liberties, the ACLU's Campaign for Smart Justice does not explicitly reference IHR provisions, notwithstanding the extensive treaties that exist specifically aimed at guarding the rights of those accused, charged and/or convicted of crimes.

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[692] *See e.g.*, RICHARD ASHBY WILSON, HUMAN RIGHTS IN THE 'WAR ON TERROR' 328-9 (2005).
[693] Human Rights, AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/issues/human-rights.
[694] About the ACLU's Human Rights Program, AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/other/about-aclus-human-rights-program.
[695] ACLU Submission to ICC Office of the Prosecutor (2017) — tied to Situation in Afghanistan, ICC-02/17; ACLU, Accountability for Torture Project Documentation (2017–2019).
[696] Hearing before IACHR, Human Rights Situation of Migrant and Refugee Children and Families in the United States (Oct. 2014); Hearing before IACHR, Criminal Justice and Race in the United States (Oct. 23, 2015); ACLU, Testimony before the Inter-American Commission Regarding Human Rights at Guantánamo Bay (2008).
[697] Int'l Network of Civil Liberties Orgs., *Take Back the Streets: Repression and Criminalization of Protest Around the World* (2013), https://www.cels.org.ar/common/documentos/INCLOSocialProtest-English.pdf.
[698] *Id.*

However, the ACLU does recognise the issue of mass incarceration and the passing of the Smarter Sentencing Act as a human rights issue. This is evidenced by the HRP's 2013 fact sheet on the status of human rights in the US where it discusses the state and consequences of the criminal justice system as well as the issue of smart sentencing. Despite this, –it fails to expressly mention the ACLU's own Campaign.[699]This was not the unique occasion wherein a branch of the ACLU recognises the connection between ending mass incarceration and international human rights.[700] In 2015, the UN Human Rights Council formally adopted a pioneering UN report on mass incarceration. In the report, the UN High Commissioner for Human Rights brought the root causes of overincarceration and prison overcrowding to the forefront of global attention. The resolution, known as the Nelson Mandela Rules,[701] expressed concern about the "negative impact of over-incarceration and over-crowding on the enjoyment of human rights."[702] Though the US government failed to contribute to the report, the ACLU played an active role in bringing this issue to the attention of the Human Rights Council, collaborating with other groups. These actions were carried out during the Obama era Smart on Crime Initiative, which fuelled the advocates' work and provided a fertile environment for the UN to issue recommendations on how member states could reduce the incarcerated population, through a human rights lens and accountability for obligations and commitments.[703]

The report outlined a human rights-based approach for criminal justice reform, mainly placing human dignity at the forefront of the effort. Some recommendations made demonstrate an overlap with recommendations found in the Blueprints, for example the utilisation of alternatives to detention with a focus on rehabilitation, avoiding the incarceration of children and vulnerable members of society.[704] In an online commentary, ACLU human rights researcher for the ACLU Human Rights Program, Jennifer Turner, calls for the report to be used as a blueprint for the U.S., which suggests that the Human Rights Project recognises the relationship between international human rights obligations and criminal justice reform. Moreover, she recognises the value in

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[699] ACLU, *What You Should Know About the U.S. and Human Rights*, (2013), https://www.aclu.org/sites/default/files/assets/121013-humanrightsfacts.pdf.
[700] Jennifer Turner, *The Fight Against Mass Incarceration Goes Global*, AMERICAN CIVIL LIBERTIES UNION (2015), https://www.aclu.org/blog/smart-justice/fight-against-mass-incarceration-goes-global.
[701] A/Res/70/175.
[702] *Id.*
[703] *Id.*
[704] *Id.*

integrating international human rights approaches in seeking criminal justice reform, acknowledging that investing in better options and preserving human dignity, we will see meaningful change.

In sum, Part I of this thesis established the conceptual and contextual foundations necessary for this thesis. It clarified the contours of IHR law, introduced the theoretical frameworks through which CSO advocacy is analysed, and situated the ACLU within the institutional design of the UPR and the domestic realities of the US. This literature review highlighted a gap: while scholars acknowledge that CSOs do contribute to the UPR, and have an impact on Member State Recommendations, there is little explanation of the strategies that condition whether and how their recommendations resonate with Member States. The research questions set out above in Section 1.4., therefore capture the central problem this thesis seeks to address: the factors that determine the visibility, uptake, and influence of CSO advocacy at the UPR? Part II details the research design established for this purpose, introducing the FRAME Method as the novel analytical tool through which these questions are operationalised and explored in detail.

PART II: RESEARCH DESIGN

Part I introduced the context and research questions that shape this thesis. Part II describes the novel research design employed herein. Inspired by Ritchie and Spencer's Framework Analysis, this thesis introduces the author's original approach to investigating the impact of CSO advocacy on Member State Recommendations. Acronymised to FRAME, this approach advances the Ritchie and Spencer method by embedding safeguards, rigorous groundwork, and organising a large data pool into an automated Excel-based matrix. Divided into three phases, chapter four describes the necessary groundwork, data collection, and tailored analysis employed to operationalise the method. Illustrated using the author's original iteration, the chapter also describes how the approach can be replicated in the future for other CSOs, campaigns, and review mechanisms.

- Attached to this thesis are five appendices and one annex, each designed to support and complement the analysis presented in the main chapters.
- Appendix 1 presents the completed FRAME Matrix, fully coded and analysed for this thesis.
- Appendix 2 provides a blank FRAME Matrix template, included to demonstrate the replicability of the method for other CSOs, campaigns, or international review mechanisms.
- Appendix 3 contains the initial draft of a report prepared by the author for the ACLU, outlining the preliminary Model of Good Practice introduced in Part III. Designed as a practical tool for distribution to the ACLU and its state affiliates, it aims to operationalise the model, though it remains in draft form pending future revision.
- Appendix 4 sets out the Excel formulae used in the FRAME Matrix, to ensure transparency and replicability in the analytical process.
- Appendix 5 provides a simplified table of the ACLU recommendations and corresponding Member State Recommendations, along with their numbering system as used throughout the thesis. This is intended to facilitate navigation of the main text and figures.
- Annex 1 reproduces the ACLU's National Blueprint from its Campaign for Smart Justice, providing the original context from which the recommendations analysed in this study were drawn.

Chapter Four: Methodological Approach

To analyse CSO engagement within the UPR, this thesis introduces a novel research approach: the Framework for Rights, Advocacy, Mapping, and Evaluation (FRAME) method. This chapter details the three phases that comprise the method, namely: (1) matrix groundwork, (2) mapping to Member State Recommendations, and (3) tailored analysis. Together, these phases form a structured toolkit that encapsulates the conceptual underpinnings of this approach and provide a replicable, step-by-step guide through the dataset.

This chapter makes extensive use of tables, figures, and screenshots from appendices to illustrate the data and analysis. Tables and figures within the main text are numbered sequentially and are directly cross-referenced in the discussion. Hyperlinked references to tables and figures throughout facilitate navigation. Appendices provide supplementary materials, including the full FRAME Matrix, coding formulae, and a simplified table of recommendations. Together, these ensure that the reader can follow both the detailed dataset and the interpretive analysis presented in this chapter.

4.1. Situating the FRAME Method

Introduced by Ritchie and Spencer, the "Framework Method" was specifically created for applied policy research.[705] It was designed to make qualitative data analysis systematic, transparent, and accessible to others, particularly policymakers.[706] Their approach is composed of five interconnected stages: (1) familiarisation, (2) identification of a thematic framework, (3) indexing, (4) charting, and (5) mapping and interpretation.[707] As Klingberg et al explain, this method provides a structured approach to qualitative data analysis that stems from large data sources,[708] combined with its dynamic capabilities and ability for within- and between-case analysis.[709] Critiques of this approach caution that its structured nature has the potential to constrain flexibility

[705] Jane Ritchie & Liz Spencer, Qualitative Data Analysis for Applied Policy Research, *in The Qualitative Researcher's Companion* 305-29 (A. Michael Huberman & Matthew B. Miles, eds., 2002).
[706] *Id.* at 329.
[707] *Id.* at 310-12.
[708] Sonja Klingberg, Renée E. Stalmeijer & Lara Varpio, *Using framework analysis methods for qualitative research: AMEE Guide No. 164*, 46 MED. TEACH. 603 (2024).
[709] Ritchie & Spencer, *supra* note 705 at 310.

or lead to overly rigid application in the absence of researcher reflexivity.[710] Criticising the reliance on pre-defined frameworks as a challenge to deep data engagement, Sale and Carlin advocate for novel approaches to framework analysis, "making an effort to unite strands" for interesting results.[711] Building on this foundation, the FRAME method explicitly adapts the strengths of Framework Analysis, while responding to its criticisms. It mitigates the weaknesses through innovations like cross-tabulated mapping, conditional coding, and explicit reflexive spaces. In turn, this retains the original systematic and transparent qualities but reconfigures them for the analysis of CSO engagement in supranational forums. These innovations reshape the approach into a tailored methodology specific for the objectives of this thesis and adaptable for future research.

In acknowledgement of these adaptations, the acronym 'FRAME' is chosen to capture the five components needed to employ the novel method:

(1) F*ramework* represents the matrix from which the interpretive model of good practice, as tailored to the specific case study.

(2) *Rights* refers to the set of provisions used to draw out thematic focus areas; in this case, the IHR law framework, composed of hard and soft law, which enshrines the rights concerned in discussions of the criminal justice system.

(3) *Advocacy* represents all aspects of the CSO's engagement, including the theoretically grounded strategies employed, stakeholder submissions, and domestic campaign.

(4) *Mapping* refers to the core functionality of the FRAME matrix, which codes, categorises, and cross-references the data for analysis.

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[710] *See e.g.*, Loraine Busetto, Wolfgang Wick & Christoph Gumbinger, *How to Use and Assess Qualitative Research Methods*, 2 NEUROL. RES. PRACT. 14 (2020) (underscoring the importance of reflexivity). *See also*, Drishti Yadav, *Criteria for Good Qualitative Research: A Comprehensive Review,* 31 ASIA-PACIFIC EDUCATION RESEARCH 679 (2021) (arguing that qualitative methods require context-sensitive application).

[711] Joanna E.M. Sale & Leslie Carlin, *The Reliance on Conceptual Frameworks in Qualitative Research – A Way Forward*, 25 BMC MED. RES. METHODOLOGY 36 (2025).

(5) E*valuation* refers to the tailored analysis process, which draws out an interpretive model of good practice, tailored to the CSO studied, aimed at enhancing the visibility of its advocacy.

For terminological clarity, this thesis employs the following distinctions throughout: the FRAME *method* is the official name of the overall approach. The FRAME *methodology* is best aligned with Phase One, which establishes the conceptual and theoretical matrix groundwork that justifies the later mapping and analysis. The FRAME *Matrix* is the operational output: an Excel-based analytical tool used to organise, code, cross-reference, and analyse the data collected. Furthermore, a distinction is drawn between the data pool and the dataset. The data pool is the complete range of raw materials that are relevant to the study. In this case, it refers to the IHR provisions, domestic Campaign content, and theoretical frameworks. The dataset is derived, rather than gathered, as a subset of this pool because of the mapping process. It consists of stakeholder recommendations cross-referenced against the data pool and Member State Recommendations.

4.1.1. The FRAME Matrix

In designing the FRAME method, the author elected to use a matrix-based approach as it enables a comparison of different variables; in this case themes, theoretical concepts, legal provisions, and recommendations; by assigning them unique identifiers that can be tracked and analysed in parallel. Moreover, it enables both vertical and horizontal analysis of CSO advocacy. Vertical analysis examines trends and variations within a single category, such as advocacy themes, legal provisions, or theoretical frameworks. Horizontal analysis traces relationships across categories, such as how a single stakeholder recommendation aligns with domestic priorities, IHR provisions, and Member State Recommendations. This dual-layered structure reveals both the internal coherence of each category, but also the intersections that may signal strategic opportunities for influence at the UPR.

This approach draws on established literature in qualitative research methodology, which underscores the value of matrices in managing and interpreting complex qualitative data. As Groenland writes, the 'Matrix Method' enhances rigour and traceability by enabling researchers to

systematically cross-tabulate theoretical insights and empirical content.[712] Similarly, Verdinelli and Scagnoli demonstrate how matrices can be used to display relationships between codes and categories, increasing both transparency and analytical depth.[713] Bazeley also emphasises that structured data tools such as matrices move qualitative analysis beyond only theme identification, enabling more nuanced and layered interpretation.[714] In line with these observations, the FRAME Matrix is designed to map the interplay between CSO advocacy, IHR law, and Recommendations made at international review bodies, offering a triangulated approach for evaluating strategic alignment and potential influence.

To operationalise the FRAME method, a structured Microsoft Excel spreadsheet was developed by the author. While a blank copy is attached to this thesis for future iterations (Appendix 2), this chapter details the necessary components to construct the document. Each step is illustrated by the author's own fully populated spreadsheet, which serves as the inaugural implementation of the method and provides a working model for how the matrix operates in practice. Although developed within the context of the UPR, the FRAME Matrix is intended to be adaptable across other international or regional human rights review mechanisms that issue recommendations to States and allow for stakeholder engagement. This considered, the FRAME method unfolds in three interconnected phases, described below.

4.2. Phase One: Matrix Groundwork

Phase One sets out the parameters, coding logic, interpretive framework, and the excel-based matrix. This phase is defined by seven foundational steps, summarised in Table 2. Combined, these will result in the data pool.

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[712] Edward Groenland, *Employing the Matrix Method as a Tool for the Analysis of Qualitative Research Data in the Business Domain,* 21 INT'L J. OF BUSINESS & GLOBALISATION 119 (2014).
[713] Susana Verdinelli & Norma I. Scagnoli, *Data Display in Qualitative Research*, 12 INT'L J. OF QUALITATIVE METHODS 359 (2013).
[714] Pat Bazeley, Analysing Qualitative Data: More Than 'Identifying Themes', 2 MALAYSIAN J. QUAL. RES. 6 (2009).

Section	Step	Description	Matrix Tab(s)
4.2.1.	(1) Select CSO and Campaign	Identify a suitable CSO and campaign based on eligibility criteria.	-
4.2.2.	(2) Code Campaign Themes	Break the campaign issues into themes and sub-indicators.	Dashboard
4.2.3.	(3) Code Theoretical Frameworks	Identify civil society theories and generate code indicators.	Dashboard
4.2.4.	(4) Extract Domestic recommendations	Log and code domestic campaign recommendations.	Blueprints*
4.2.5.	(5) Extract IHR Provisions	Identify and log applicable IHR provisions.	Key Provisions
4.2.6.	(6) Extract data from review mechanism documents	Extract citations from Summary Report and Member State Recommendations from previous cycles.	Summary Stakeholder Report** Cycle X/Y/Z Recommendations
4.2.7.	(7) Set up infrastructure tabs and finalise *Dashboard*	Set up infrastructure tabs (*Dataset, Statistics,* and *Notes*) and finalise formulae for dynamic automation, cross-referencing, and traceability.	Dataset Statistics Notes Dashboard

Table 2: Summary of FRAME Matrix Phase 1 Steps (Matrix Groundwork).

** It is possible to rename this tab to reflect the nomenclature used by the CSO. Alternatively, the default name "Campaign" is used in the blank matrix provided.*

***Similarly, the "Summary Stakeholder Report" tab may be renamed to align with the terminology of the selected review mechanism; the default name is retained in the template.*

4.2.1. Step One: Selecting the CSO and Campaign

This step involves selecting a suitable CSO and identifying the campaign to be examined. Selection is guided by the following criteria: (1) alignment with the prescribed definition of a CSO as

outlined in Chapter 2,[715] (2) prior submission to at least one UPR cycle, (3) focusing on the chosen country of examination, and (4) a demonstrated capacity to operate or mobilise within the selected State. Selection of the campaign is guided by whether its objectives engage rights enshrined within the IHR framework.[716]

The ACLU satisfies these requirements. As outlined in Chapter 3, it is an independent, non-governmental, non-profit entity that represents the interests of citizens and residents of the US, particularly concerned with the protection of civil liberties enshrined in the US Constitution. It has also contributed to all three completed UPR cycles to date, beginning with its 2010 submission which focused on issues such as access to justice, and the lack of effective remedies for human rights violations.[717] In 2015, the ACLU continued its engagement by submitting a joint stakeholder report with its state affiliates, highlighting ongoing human rights concerns in the US, including racial disparities in the criminal justice system, and the treatment of migrants.[718] Its 2020 submission focused on the racial disparities in sentencing practices.[719] Although beyond the scope of this thesis, in April 2025, the ACLU submitted a stakeholder report for Cycle Four,[720] which centred on the safeguarding of migrants in light of executive actions under the Trump Administration.[721]

Further, the ACLU is relatively under-studied despite its noteworthy history and impact on domestic law and criminal justice.[722] Much of the existing scholarly publications on the ACLU employ historical, narrative, or doctrinal methods, often treating the CSO solely as a domestic actor shaping American constitutionalism. For example, Walker, the most prominent historian on the ACLU, explores the organisation's development, internal conflicts, and external advocacy over time.[723] Similarly, legal scholars Weinrib[724] and Cole[725] explore the ACLU as a CSO that shapes

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[715] That is to say that is a non-governmental, non-profit entity that operates independently of the State and represents the interests, values, and/or cause of civil society.
[716] As defined in Chapter 2.1. Meaning inclusive of both hard and soft law, with the UN legal system.
[717] ACLU Stakeholder Report 2010.
[718] ACLU Stakeholder Report 2015.
[719] ACLU Stakeholder Report 2020.
[720] American Civil Liberties Union, ACLU UPR 2025 Submission (2025), https://www.aclu.org/documents/aclu-upr-2025.
[721] Nina Totenberg & Christina Gatti, Supreme Court Backs Trump in Controversial Deportation Case, NPR, (Apr. 7, 2025), https://www.npr.org/2025/04/07/nx-s1-5345601/supreme-court-alien-enemies-act.
[722] Chapter 3.
[723] WALKER supra note 472.
[724] LAURA WEINRIB, THE TAMING OF FREE SPEECH: AMERICA'S CIVIL LIBERTIES COMPROMISE (2016).
[725] DAVID COLE, ENGINES OF LIBERTY: THE POWER OF CITIZEN ACTIVISTS TO MAKE CONSTITUTIONAL LAW (2016).

constitutional norms; with an emphasis on the study of the ACLU's role in shaping the First Amendment.[726] Sociological and political scientists critically examine the ACLU's litigation strategies,[727] consequential professionalisation,[728] and the broader legal battles that fuel constitutional theory.[729] While not directly writing on the ACLU, Rana has also written on constitutionalism and democratic legitimacy,[730] which provides a critical frame for evaluating the ACLU's role in reinforcing liberal legalism. Sharp discusses the limits of legalist advocacy by CSOs, which indirectly critiques models like the ACLU's, which is useful in critical NGO literature.[731] This thesis diverges from these approaches by situating the ACLU within a supranational process, interrogating how a domestic legal actor navigates the UPR.

Turning to the campaign selection, the ACLU's Campaign for Smart Justice[732] serves as a particularly compelling case study due to its distinctive organisational completeness. It is well-structured and has comprehensive materials in the form of Blueprints.[733] These documents serve as an optimal source to investigate the ACLU's domestic priorities and advocacy strategy as it clearly outlines recommendations to federal and state governments on reducing the domestic incarcerated population. The first campaign of its kind within the ACLU's extensive history, it appears to signify a departure from the ACLU's traditional litigation-based approaches and pioneers an explicit effort towards political lobbying. Unlike litigation tools, the Blueprints are inherently political documents, crafted to influence decision-makers and public discourse rather than sway judges in court. For example, instead of citing case law and thus adhering to the rigid, technical language targeted at courts, the Blueprints cite human impact, moral imperatives, or policy failures. They set priorities, assign responsibility to governing actors, and translate legal and normative concerns into actionable policy demands. In this way, the Blueprints closely resemble stakeholder submissions to the UPR process, bridging the space between advocacy and governance. It integrates data analysis, and targeted advocacy, moving the ACLU's work beyond

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[726] NADINE STROSSEN, HATE: WHY WE SHOULD RESIST IT WITH FREE SPEECH, NOT CENSORSHIP (2018); MARJORIE HEINS, PRIESTS OF OUR DEMOCRACY: THE SUPREME COURT, ACADEMIC FREEDOM, AND THE ANTI-COMMUNIST PURGE (2013); MARJORIE HEINS, NOT IN FRONT OF THE CHILDREN: "INDECENCY," CENSORSHIP, AND THE INNOCENCE OF YOUTH (2007).
[727] Thomas Hilbink, Constructing Cause Lawyering: Professionalism, Politics, & Social Change in 1960s America, (2006).
[728] AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM (2010).
[729] Dustin N. Sharp, *Emancipating Human Rights: A Pragmatic Approach*, 16 HARV. HUM. RTS. J. 1 (2013).
[730] RANA *supra* note 728
[731] Sharp, *supra* note 729.
[732] Detailed in Chapter 3.5.
[733] Detailed further in Chapter 3.3.1.2.

reactive litigation and towards proactive agenda-setting. In turn, this positions the Campaign as not merely a response to systemic injustice, but a sustained, targeted, and strategic movement with identifiable goals and recommendations.

Furthermore, the Campaign is deliberately chosen for the absence of explicit reference to the IHR framework. This absence is not a substantive flaw in the Campaign, but rather it raises a critical methodological question on how domestic advocacy – grounded in constitutional and political language for domestic resonance – can be translated into international advocacy at the UPR. Though this thesis does not suggest a causal link between stakeholder submissions and the Member State Recommendations that follow, the FRAME method allows for the exploration of alignment between Campaign themes and IHR provisions. In turn, this allows for evaluation on whether such alignment renders the advocacy more legible within the UPR. This is based on the assumption that issues that gain international recognition enjoy an enhanced layer of legitimacy of the domestic advocacy.

In sum, this selection as the case study offers an opportunity to explore the intricate dynamics of CSO engagement with the UPR mechanism, in the context of US federalism. Accordingly, the selection of the ACLU and the Campaign both satisfy the prescribed criteria of the FRAME method, offering a rich, underexplored context to examine CSO strategy in navigating supranational review mechanisms.

4.2.2. Step Two: Thematic Coding of the Campaign and Dashboard Setup (Part I)

The next step involves disaggregating the Campaign into thematically organised components and establishing the first tab on the spreadsheet, the *Dashboard*. (Figure 6 and Figure 7) Following a close reading of the Campaign Blueprints, six thematic areas of advocacy are identified: bail reform, mass incarceration, parole and release, prosecutorial reform, re-entry, and sentencing reform. Each thematic area is assigned a unique alphabetical code (A-F) to enable consistent reference throughout. (

Table 3)

Code	Thematic Issue
A	Bail Reform
B	Mass Incarceration
C	Parole and Release
D	Prosecutorial Reform
E	Re-entry
F	Sentencing Reform

Table 3: A summary of the alphabetical codes and each corresponding thematic issue, as used in this thesis.

In this case study, the themes were explicitly identified within the ACLU's Campaign materials, providing a clear set of priorities for coding. This clarity enables direct extraction and letter assignment. However, for further iterations of this method, where campaign priorities are not explicitly stated, thematic identification must be done inductively, drawing from thematic analysis methods.[734] This involves a close reading of campaign materials, including press releases,[735] reports,[736] and advocacy briefs.[737] Once completed, thematic clustering based on recurring issues, goals, or language are strong indicators of the broad objectives of any campaign. Other key indicators include the frequency of legal or policy terms, identification of target populations or institutions, and explicit calls for reform, potentially formatted as recommendations. Where ambiguity remains, it may become necessary to triangulate across the CSO's outputs, including

[734] Virginia Braun & Victoria Clarke, *Using thematic analysis in psychology*, 3 QUAL. RES. IN PSYCHOLOGY 77 (2006).
[735] *E.g.,* American Civil Liberties Union, ACLU's Smart Justice Campaign Receives New Major Funding for Criminal Justice Reform (Mar. 1, 2022), https://www.aclu.org/press-releases/aclus-smart-justice-campaign-receives-new-major-funding-criminal-justice-reform.
[736] *E.g.,* Human Rights Campaign, Welcoming Schools Annual Report FY25, Human Rights Campaign, https://reports.hrc.org/welcoming-schools-annual-report-fy25.
[737] *E.g.,* Edmund Rice England & Wales, Social Justice Action Plan for 2024-25, Edmund Rice England & Wales, https://www.edmundriceengland.org/social-justice-action-plan-for-2024-5/.

their social media communications, litigation efforts, or advocacy targets. This may also be used to confirm identification. The objective of this step is to have individual overarching themes with minimal conceptual or practical overlap where possible. This ensures clarity and consistency during the coding and subsequent mapping across the FRAME Matrix. Overlapping themes risk undermining the traceability and accuracy of the dataset. The literature stresses the importance of themes drawn from this process being internally coherent, externally distinctive, and clearly defined.[738] As Nowell *et al* underscore, this is essential to maintain the rigour and trustworthiness of thematic analysis, safeguarding the analytical precision and reducing the interpretive value of the FRAME method.[739]

Next, each theme must be operationalised into a series of indicators that serve as the analytic basis of the FRAME Matrix; these should capture the characteristics of each category and must be drawn from campaign materials. For example, when discussing the issue of *prosecutorial reform*, the Campaign often references issues relating to *transparency* at various stages of criminal proceedings.[740] This enhances the granularity of the coding of CSO recommendations, heightening mapping potential, as this specific and structured approach enables the analysis to draw connections across the dataset. This moves the research beyond surface-level description and towards integrated, comparative insight.

Each indicator is then assigned a numerical code (e.g., 1, 2, 3). When combined with the alphabetical code, it becomes possible to cross-reference broader themes with their component parts (e.g. D7 represents prosecutorial reform, and more precisely concerns issues of transparency) (Figure 6). To prevent implications of linear sequences, hierarchy, or potentially false assumptions of continuity, each time a new thematic area is introduced, the numerical sequencing of indicators must be restarted from 1, irrespective of how many indicators signal any particular theme. For example, A1, A2, A3; then B1, B2, B3, Figure 7 details the complete coding system used in this thesis.

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[738] Lorelli S. Nowell et al, *Thematic analysis: Striving to meet the trustworthiness criteria*, 16 INT'L J. OF QUAL. METHODS (2017).
[739] *Id.*
[740] Chapter 3.

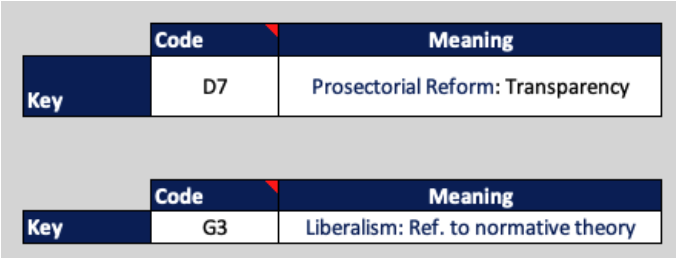


Figure 6: FRAME Matrix Coding System (Examples). The Letters represent the broader category, with the numerical value representing the indicator.

Campaign for Smart Justice Issues (Codes)				
Issue		No.	Criteria	Frequency
A	Bail Reform	1	Abolition of cash bail	2
		2	Alternatives to cash bail	2
		3	Transparency in bail assignment	2
		4	Pre-trial detention	7
		5	Affordability of bail	1
B	Mass Incarceration	1	Incarceration rate	11
		2	Racial disparities	8
		3	Overuse of imprisonment	0
		4	Mention of Mass Incarceration	0
		5	Fiscal cost of mass incarceration	1
		6	Private prisons	0
		7	Laws referring to substances, debt, and low-level crimes	8
		8	Judicial discretion	2
		9	Police power	9
		10	Juvenile justice and/or detention	0
		11	Police in schools	2
		12	Poverty / wealth-based decision making	6
		13	Diversion programs	3
C	Parole and Release	1	Clemency and pardons	3
		2	Elderly prisoners and/or compassionate release	2
		3	Parole	4
		4	Release	5
D	Prosecutorial Reform	1	Prosecutorial power	11
		2	Choice to charge	3
		3	Data	1
		4	Bipartisan reform for prosecutors	0
		5	Voter education	0
		6	Abuse of power	2
		7	Transparency	5
		8	Prosecutorial Biases	3
		9	Restorative Justice	4
		10	Fair trial	8
E	Re-entry	1	Rehabilitation programs	7
		2	Re-entry programs	2
		3	Collateral consequences	5
		4	Recidivism	6
		5	Citizenship (e.g., housing, employment, healthcare, etc.)	13
		6	Supervision and probation	6
F	Sentencing Reform	1	Alternatives to incarceration	7
		2	Debtors' prisons	0
		3	War on Drugs	6
		4	Sentencing enhancements	3
		5	Tough on crime policies (e.g., mandatory minimums, Truth in Sentencing Laws.)	2
		6	Life without parole and life sentencing	1
		7	Three-strikes/Habitual offender laws	0
		8	Sentence Length	3
		9	Prison Overcrowding and prison conditions	2
		10	Capital Punishment	1

Figure 7: Campaign for Smart Justice Themes and Indicators Code Generator for the FRAME Method.

With the initial set of thematic codes established, the next step is to place them within the FRAME matrix by constructing the Excel document. On Tab 1, labelled *Dashboard* (Figure 8 and Figure 9), a table organising thematic issues and corresponding indicators is formatted so that each row contains four components, summarised in

Table 4.

Theme Label	Theme Name	Indicator Label	Indicator Definition
A	Bail Reform	2	Alternatives to cash bail

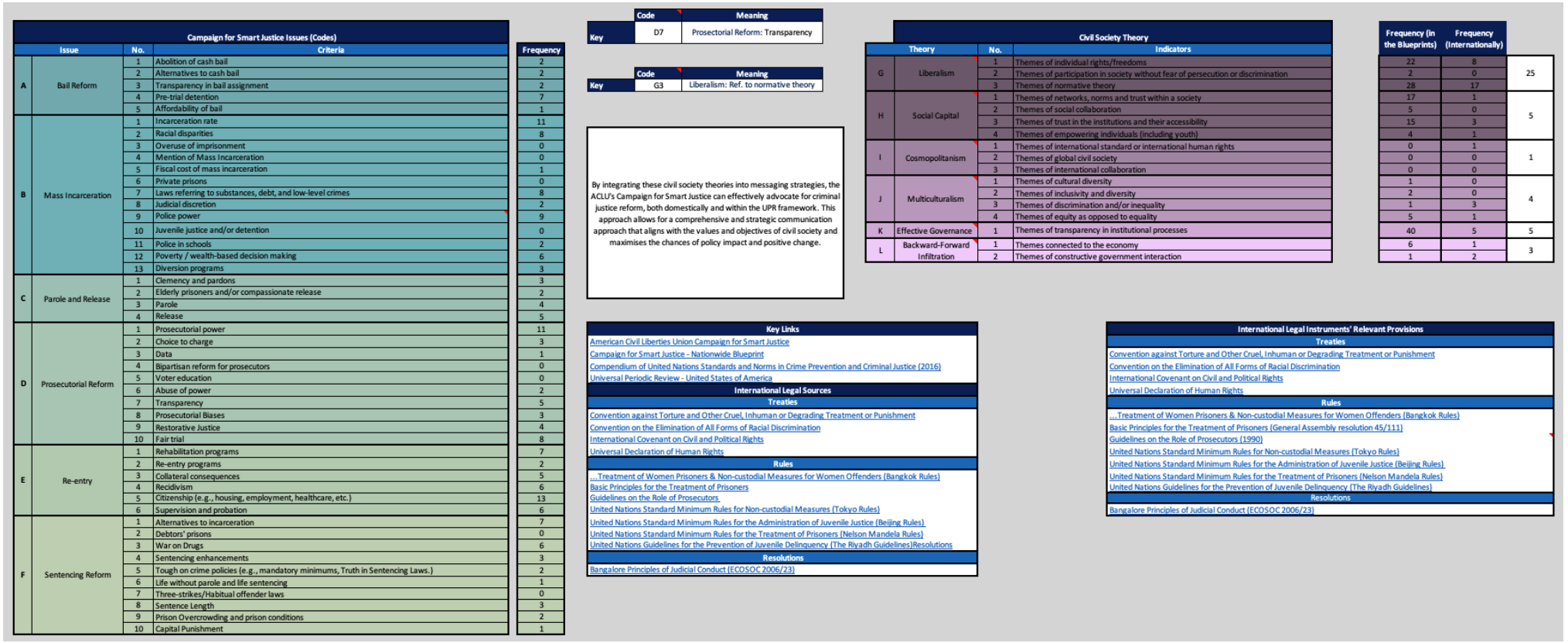
Table 4: Example of Dashboard Coding Structure for Campaign issues.

The FRAME matrix can serve both qualitative and quantitative purposes. It is structured to allow the frequency and emphasis of each issue to be tracked and visualised, however, at this stage, the *Dashboard* is only partially complete. The frequency is used to log the final number of coded Blueprint recommendations per indicator. This can only be completed once the *Dataset* tab is established and populated – see chapter 4.2.7.

Figure 8: The Tabs of the FRAME Matrix.

Tab Name	**Purpose**	**Key Features/Contents**
Dashboard	Navigation and reference point for codes	Contains codes, frequency columns, key navigation links across the file.
Statistics	Overview of tracked quantitative data	Frequencies of themes, frameworks, number of Member State Recommendations, acceptance percentages.
Dataset	Core matrix used for mapping and analysis	The output of the FRAME Matrix.
Summary Stakeholder Report	Documents ACLU citations in official UPR documentation	Extracted citations of ACLU from OHCHR-prepared Summary Stakeholder Reports.
Blueprints	Captures the ACLU's domestic advocacy outputs	Nationwide Blueprint recommendations (coded).
Key Provisions	Reference tab for the IHR framework	List of IHR provisions used in the mapping process.
UPR Recommendation Tabs	Houses Member State Recommendations from all relevant cycles	Compilation of all Member State Recommendations thematically linked to campaign issues, including State responses. Organised by cycles.
(Optional) Notes	Informal reflections, coding decisions, or clarifications	Used for working notes and ongoing decision tracking.

Table 5: This table summarises the function and content of each tab within the FRAME Matrix, a multi-sheet Excel file used to support the coding, mapping, and evaluation processes underpinning the thesis methodology.



Campaign for Smart Justice Issues (Codes)				
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		2	Alternatives to cash bail	2
		3	Transparency in bail assignment	2
		4	Pre-trial detention	7
		5	Affordability of bail	1
B	Mass Incarceration	1	Incarceration rate	11
		2	Racial disparities	8
		3	Overuse of imprisonment	0
		4	Mention of Mass Incarceration	0
		5	Fiscal cost of mass incarceration	1
		6	Private prisons	0
		7	Laws referring to substances, debt, and low-level crimes	8
		8	Judicial discretion	2
		9	Police power	9
		10	Juvenile justice and/or detention	0
		11	Police in schools	2
		12	Poverty / wealth-based decision making	6
		13	Diversion programs	3
C	Parole and Release	1	Clemency and pardons	3
		2	Elderly prisoners and/or compassionate release	2
		3	Parole	4
		4	Release	5
D	Prosecutorial Reform	1	Prosecutorial power	11
		2	Choice to charge	3
		3	Data	1
		4	Bipartisan reform for prosecutors	0
		5	Voter education	0
		6	Abuse of power	2
		7	Transparency	5
		8	Prosecutorial Biases	3
		9	Restorative Justice	4
		10	Fair trial	8
E	Re-entry	1	Rehabilitation programs	7
		2	Re-entry programs	2
		3	Collateral consequences	5
		4	Recidivism	6
		5	Citizenship (e.g., housing, employment, healthcare, etc.)	13
		6	Supervision and probation	6
F	Sentencing Reform	1	Alternatives to incarceration	7
		2	Debtors' prisons	0
		3	War on Drugs	6
		4	Sentencing enhancements	3
		5	Tough on crime policies (e.g., mandatory minimums, Truth in Sentencing Laws.)	2
		6	Life without parole and life sentencing	1
		7	Three-strikes/Habitual offender laws	0
		8	Sentence Length	3
		9	Prison Overcrowding and prison conditions	2
		10	Capital Punishment	1

	Code	Meaning
Key	D7	Prosectorial Reform: Transparency

	Code	Meaning
Key	G3	Liberalism: Ref. to normative theory

By integrating these civil society theories into messaging strategies, the ACLU's Campaign for Smart Justice can effectively advocate for criminal justice reform, both domestically and within the UPR framework. This approach allows for a comprehensive and strategic communication approach that aligns with the values and objectives of civil society and maximises the chances of policy impact and positive change.

Civil Society Theory				Frequency (In the Blueprints)	Frequency (Internationally)	
Theory		No.	Indicators			
G	Liberalism	1	Themes of individual rights/freedoms	22	8	25
		2	Themes of participation in society without fear of persecution or discrimination	2	0	
		3	Themes of normative theory	28	17	
H	Social Capital	1	Themes of networks, norms and trust within a society	17	1	5
		2	Themes of social collaboration	5	0	
		3	Themes of trust in the institutions and their accessibility	15	3	
		4	Themes of empowering individuals (including youth)	4	1	
I	Cosmopolitanism	1	Themes of international standard or international human rights	0	1	1
		2	Themes of global civil society	0	0	
		3	Themes of international collaboration	0	0	
J	Multiculturalism	1	Themes of cultural diversity	1	0	4
		2	Themes of inclusivity and diversity	2	0	
		3	Themes of discrimination and/or inequality	1	3	
		4	Themes of equity as opposed to equality	5	1	
K	Effective Governance	1	Themes of transparency in institutional processes	40	5	5
L	Backward-Forward Infiltration	1	Themes connected to the economy	6	1	3
		2	Themes of constructive government interaction	1	2	

Key Links
American Civil Liberties Union Campaign for Smart Justice
Campaign for Smart Justice - Nationwide Blueprint
Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice (2016)
Universal Periodic Review - United States of America
International Legal Sources
Treaties
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Convention on the Elimination of All Forms of Racial Discrimination
International Covenant on Civil and Political Rights
Universal Declaration of Human Rights
Rules
...Treatment of Women Prisoners & Non-custodial Measures for Women Offenders (Bangkok Rules)
Basic Principles for the Treatment of Prisoners
Guidelines on the Role of Prosecutors
United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)
United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)
United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)Resolutions
Resolutions
Bangalore Principles of Judicial Conduct (ECOSOC 2006/23)

International Legal Instruments' Relevant Provisions
Treaties
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Convention on the Elimination of All Forms of Racial Discrimination
International Covenant on Civil and Political Rights
Universal Declaration of Human Rights
Rules
...Treatment of Women Prisoners & Non-custodial Measures for Women Offenders (Bangkok Rules)
Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111)
Guidelines on the Role of Prosecutors (1990)
United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)
United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)
United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)
Resolutions
Bangalore Principles of Judicial Conduct (ECOSOC 2006/23)

Figure 9: The FRAME Matrix Dashboard.

4.2.3. Step Three: Identification and Coding of CSO Theories, Dashboard Setup (Part II)

Once the thematic structure of the FRAME matrix is established, it is necessary to integrate CSO theory, as defined in chapter 2.5. above, in a similar format. These theoretical frameworks are essential to understand how a CSO may frame its stakeholder recommendations, justify its priorities, and situate its interventions within broader narratives on human rights discourse. They are broadly used in political science,[741] international relations,[742] and law[743] to explain the normative value of civil society in democracies, its role in global governance, and its legitimacy or accountability. No existing study, to date, applies civil society theory in a sustained, empirical way to analyse how a specific CSO frames and positions its recommendations within the UPR process. This thesis, therefore, leverages theory not only to conceptualise the role of CSOs but to evaluate their strategic decision-making and output in a supranational, legally pluralistic, and political environment. Some studies have thematically examined CSO engagement with the UPR, but they focus on engagement trends, not theoretical application.[744] They do not dissect how civil society theory can explain the structure, content, or normative framing of a CSOs' recommendations.

Likewise, CSO theory is used to describe what CSOs do, but not to critique or evaluate the internal strategy or external advocacy product of a particular CSO within a structured international process. This thesis is innovative because it uses this theory as an analytical tool, not just as background context; connecting it to real CSO institutional identity, expertise, and strategic positioning, tied to empirical outputs (i.e., ACLU recommendations), demonstrating how theory may explain actual behaviour in a specific institutional setting (i.e., the UPR).

The selection of appropriate theoretical frameworks is neither arbitrary nor driven by abstract preference. They emerge through the literature review and close investigation of the CSO's

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[741] E.g., COHEN & ARATO, *supra* note 122.
[742] E.g., KECK & SIKKINK, *supra* note 22.
[743] E.g., Martine Beijerman, *Conceptual Confusions in Debating the Role of NGOs for the Democratic Legitimacy of International Law, in* NGOS IN INTERNATIONAL LAW: EFFICIENCY IN FLEXIBILITY? 48 (Pierre-Marie Dupuy & Luisa Veirucci eds., 2008) (critiquing assumptions about CSOs inherently promoting legitimacy); HUGO SLIM, NGO ACCOUNTABILITY: POLITICS, PRINCIPLES AND INNOVATIONS (2002).
[744] E.g., Ben Schokman & Phil Lynch, *Effective NGO Engagement with the Universal Periodic Review, in* HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 126-146 (Hilary Charlesworth & Emma Larking, eds., 2015); McMahon, *supra* note 18.; Ctr. for Econ. & Soc. Rts., The Universal Periodic Review: A Skewed Agenda? (2016), https://www.cesr.org/sites/default/files/downloads/CESR_ScPo_UPR_FINAL.pdf?utm.

institutional history and advocacy practice. In this case, engagement with the literature on the ACLU and its Campaign outputs, six theoretical strands consistently resonated with the organisation's identity, values and strategic behaviour: (1) liberalism, (2) social capital, (3) cosmopolitanism, (4) multiculturalism, (5) effective governance and, (6) backward-forward infiltration. The author notes that the selected six theories explored in this thesis are conceptually broad and widely applicable, capturing both normative and strategic dimensions of CSO behaviour across legal, political, and advocacy contexts. Nonetheless, other theories may be more appropriate for future iterations, depending on the CSO's profile a focus. Other theories, such as deliberative democracy,[745] resource mobilisation,[746] constructivism,[747] intersectionality,[748] Marxism,[749] and contemporary theory,[750] may be better positioned to explain advocacy paradigms.[751] However, where literature is limited, or a CSO's theoretical orientation is ambiguous, the six strands used here can serve as a default selection. They should not be pre-emptively excluded but instead should be critically tested for alignment with observable CSO practices and outputs.

To empirically integrate civil society theory into the analysis, each theoretical strand must be incorporated into the FRAME matrix as a separate coding system. Similarly to the Campaign issues, this process involves identifying the theory, assigning a unique alphabetical code (e.g. G - L)[752], and pairing with numerical indicators to denote specific theoretical features or themes. (Figure 10) These can be identified using the following three step process: (1) identifying the key theoretical texts, (2) extracting core functions or values of the theory and, (3) translating these into codable indicators. On tab 1 (Appendix 1), labelled *Dashboard* a table organising thematic issues and corresponding indicators is formatted so that each row contains four components, summarised in Table 6:[753]

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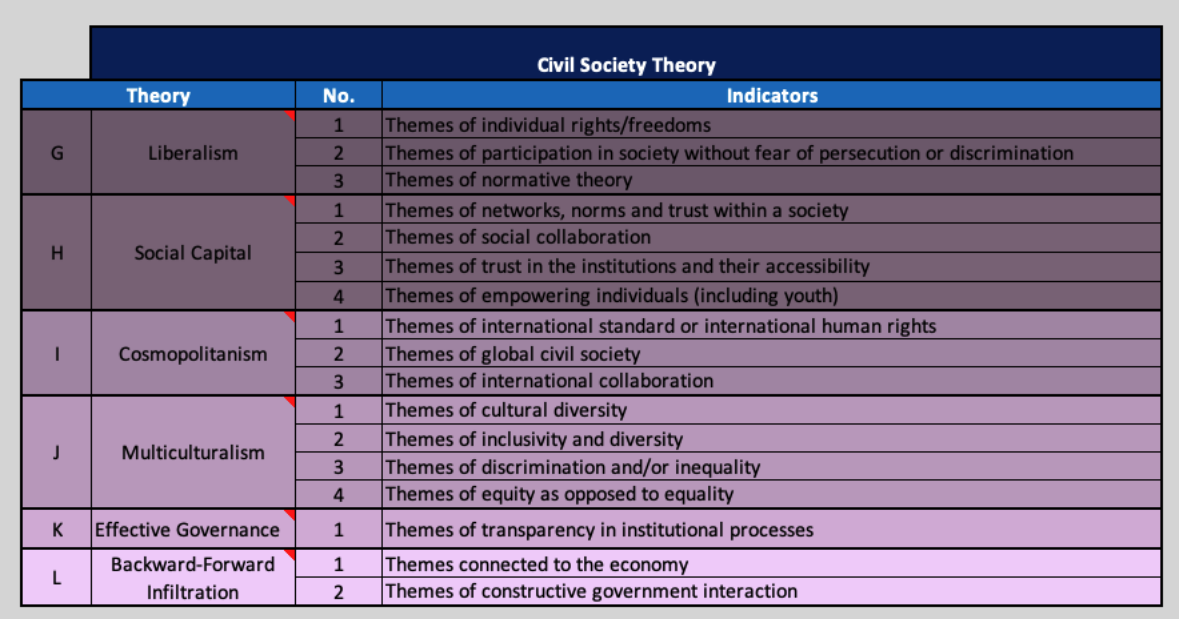
[745] JOHN S. DRYZEK, DELIBERATIVE DEMOCRACY AND BEYOND: LIBERALS, CRITICS, CONTESTATIONS (2002).
[746] Bob Edwards & John D. McCarthy, *Resources and Social Movement Mobilizations, in* THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS 116-152 (David A. Snow, Sarah A. Soule & Hanspeter Kriesi eds., 2004).
[747] Thomas Risse, *"Let's Argue!": Communicative Action in World Politics* 54 INT'L ORGANIZATIONS 1 (2000).
[748] Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color* 43 STANFORD L. REV. 1241 (1991).
[749] ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS (1971).
[750] KECK & SIKKINK, *supra* note 22.
[751] This is a non-exhaustive list.
[752] Alphabetically continued from the Campaign issues system for simplicity. This also stops the risk of overlap that would lead to confusion.
[753] *See also,* Figure 10: Civil Society Theories Code Generator and Frequency Tracker, located on the Dashboard.

Theme Label	Theme Name	Indicator Label	Indicator Definition
G	Liberalism	1	Themes of individual rights/freedoms

Table 6: Example of Dashboard Coding Structure for CSO Theories.



Civil Society Theory			
Theory		No.	Indicators
G	Liberalism	1	Themes of individual rights/freedoms
		2	Themes of participation in society without fear of persecution or discrimination
		3	Themes of normative theory
H	Social Capital	1	Themes of networks, norms and trust within a society
		2	Themes of social collaboration
		3	Themes of trust in the institutions and their accessibility
		4	Themes of empowering individuals (including youth)
I	Cosmopolitanism	1	Themes of international standard or international human rights
		2	Themes of global civil society
		3	Themes of international collaboration
J	Multiculturalism	1	Themes of cultural diversity
		2	Themes of inclusivity and diversity
		3	Themes of discrimination and/or inequality
		4	Themes of equity as opposed to equality
K	Effective Governance	1	Themes of transparency in institutional processes
L	Backward-Forward Infiltration	1	Themes connected to the economy
		2	Themes of constructive government interaction

Figure 10: Civil Society Theories Code Generator and Frequency Tracker, located on the Dashboard.

When identifying the key theoretical texts, the central objective is to establish a definition of the civil society theory, particularly its position on civil society's relationship with the State, public, or international system. Next, when extracting core functions or values, it is necessary to consider what the theory purports civil society's function is for citizens. To move from abstract theory to application, these tenets of civil society theory must be translated into observable, codable indicators. This translation involves identifying how each theory conceptualises the behaviour of civil society,[754] followed by careful rephrasing in terms that can be applied directly to the actions, language, or strategies of a specific CSO. In doing so, these theories no longer apply solely at the

[754] In addition to its function.

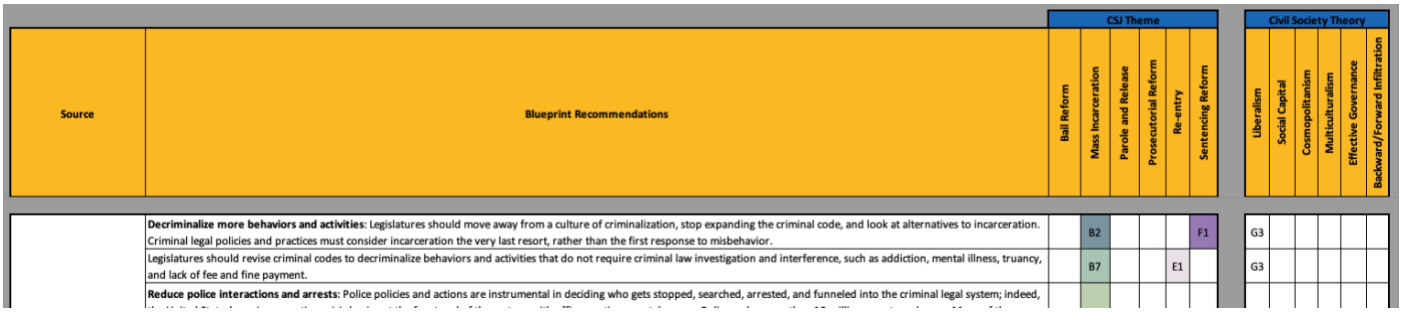
macro-level of *civil society* but can be operationalised to evaluate how a CSO embodies, reflects, or deviates from these normative expectations through its advocacy.

4.2.4. Step Four: Extracting Domestic Campaign Recommendations

Continuing with the examination of domestic advocacy, all recommendations made in the Nationwide Blueprint (Annex 1) were extracted. A new tab is opened which will house all data extracted from the domestic campaign materials. Here, this tab is *Blueprints*. (Figure 11) This tab lists each domestic recommendation verbatim, its source, and allows for each one to be mapped to a corresponding Campaign theme and CSO theory. (Figure 7 and Figure 10) Table 7 illustrates the structure of this tab, showing the headings. The "source" records the origin of the recommendation, the ACLU's nationwide blueprint in this case. "Campaign recommendation" logs the verbatim text of each recommendation. "Campaign theme" provides the corresponding campaign issue area, as established in Section 4.2.2., and finally, "CSO theory" applies the coding system developed in Section 4.2.3. The number of issues and CSO theories accommodated is dependent on the selected campaign; here it is six themes and six theories.

Source	**Campaign Recommendation**	**Campaign Theme**							**CSO Theory**					
		1	2	3	4	5	6		1	2	3	4	5	6

Table 7: Simplified Blueprints Tab Layout.



Source	Blueprint Recommendations	CSJ Theme: Bail Reform	Mass Incarceration	Parole and Release	Prosecutorial Reform	Re-entry	Sentencing Reform	Civil Society Theory: Liberalism	Social Capital	Cosmopolitanism	Multiculturalism	Effective Governance	Backward/Forward Infiltration
	Decriminalize more behaviors and activities: Legislatures should move away from a culture of criminalization, stop expanding the criminal code, and look at alternatives to incarceration. Criminal legal policies and practices must consider incarceration the very last resort, rather than the first response to misbehavior.		B2				F1	G3					
	Legislatures should revise criminal codes to decriminalize behaviors and activities that do not require criminal law investigation and interference, such as addiction, mental illness, truancy, and lack of fee and fine payment.		B7			E1		G3					
	Reduce police interactions and arrests: Police policies and actions are instrumental in deciding who gets stopped, searched, arrested, and funneled into the criminal legal system; indeed,												

Figure 11: Blueprint Tab Layout – Mapping Domestic Recommendations to Thematic and Theoretical Coding.

Due to the documentary completeness of the Campaign, the domestic recommendations were clearly detailed in the Blueprint,[755] making this the only source used by the author to establish a comprehensive data pool of the ACLU's campaign objectives. A total of 78 domestic recommendations were extracted from this source; where a recommendation included multiple directives, it was broken down into sub-recommendations for coding consistency.[756]

For future iterations, where such a record is unavailable, domestic recommendations can be sourced similarly to the approach described in section 4.2.2. It is, however, recognised that not all campaign materials will clearly label recommendations; some may be embedded within broader narrative or advocacy text. It is therefore necessary to systematically extract recommendations using a consistent set of interpretive cues. Using the author's data pool as a model, the following criteria is established. For the purposes of the FRAME method, any sentence or clause that combines prescriptive language[757] with an identifiable addressee[758] – be it explicit or implicit – can be logged as a recommendation.

Logging is complete once each domestic recommendation is mapped to at least one corresponding Campaign theme and CSO theory. For example, the ACLU Campaign recommendation to:

"Decriminalize more behaviors and activities: Legislatures should move away from a culture of criminalization, stop expanding the criminal code, and look at alternatives to incarceration.

[755] Campaign for Smart Justice, Nationwide Blueprint pp.18-29.
[756] See Chapter 4.2.2. for details on thematic coding.
[757] For example, "should," "must," "ought to," "need to," "require".
[758] For example, "legislature," "Department of Justice," "US Attorney".

Criminal legal policies and practices must consider incarceration the very last resort, rather than the first response to misbehavior."[759]

was mapped to two Campaign issues: mass incarceration (B2 – "Racial Disparities") and sentencing reform (F – "Alternatives to Incarceration") and one CSO theory: liberalism (G3 – "Themes of normative theory"). Domestic recommendations may be coded to more than one theme or theory where overlap is present; this is an indicator of the multidimensional nature of CSO advocacy. Using this approach ensure the domestic campaign is analysed in a consistent and transparent manner within the FRAME Method.

4.2.5. Step Five: Identification and Extraction of the IHR Framework, Key Provisions Tab

Next is the extraction of the IHR law provisions. As described above, this includes relevant binding and non-binding instruments recognised by the UN. To do this, a comprehensive exploration of the IHR provisions that hold the greatest relevance to the chosen CSO's campaign is conducted. Instantly, the author first consulted the UN Office on Drugs and Crime (UNODC) *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, which contains the instruments in criminal justice adopted by the international community over the past 60 years.[760] In contexts where such a compilation is unavailable or inapplicable, an appropriate starting point would be the nine core IHR treaties. While binding on ratifying States, these instruments are central to the IHR framework and are frequently invoked in global accountability and compliance monitoring mechanisms, such as the UPR, regardless of ratification status. From here, the selection can be expanded to include non-binding instruments such as UN declarations, guidelines, rules, and principles,[761] which collectively contribute to the broader architecture of the

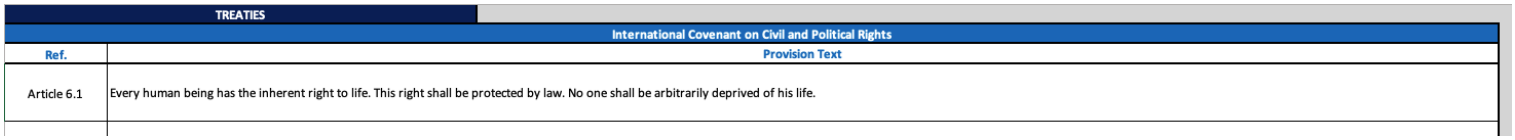
[759] FRAME Matrix, Blueprints Tab, 5C.
[760] U.N. Office on Drugs and Crime, Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice (2016), https://www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html.
[761] While non-binding, UN instruments such as the *Standard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules), the *Tokyo Rules* on non-custodial measures, and the *Bangkok Rules* on women offenders are considered authoritative soft law. These instruments form part of the normative infrastructure of international criminal justice and are widely cited by Treaty Bodies, Special Procedures, and States in the UPR process. Although they do not constitute binding obligations in themselves, they are frequently used to interpret binding treaty provisions and to assess state compliance with broader human rights standards. *See* Penal Reform International, *The Nelson Mandela Rules: Short Guide* (2016); and UNODC, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* (2021).

IHR framework. This process is guided by thematic relevance to the CSO's advocacy focus; in this instance, the overarching theme is the criminal justice system.[762] Provisions are selected wholly, including any duplicates across instruments. On the FRAME matrix, a second tab is established and titled *Key Provisions*, (Figure 12) which groups the IHR instruments by type: binding treaties, rules, and resolutions. For each provision, a reference, the text and themes should be recorded:

	Instrument's Name (E.g., ICCPR)		
	Reference	**Provision Text**	**Indicators/Themes**
Example	Article 6.1	Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.	Inherent right: Life Protected by law No arbitrary deprivation

Table 8: Example of IHR Provision Logging on the FRAME Matrix.

To ensure consistency throughout phases two and three, each provision is thematically broken down into indicators. These indicators, as before, should capture the author's informed interpretation of the provision, which should summarise the remits of its contents.



TREATIES	
International Covenant on Civil and Political Rights	
Ref.	Provision Text
Article 6.1	Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Figure 12: Screenshot of Key Provisions Tab on the FRAME Matrix Excel Spreadsheet.

The decision to use the IHR framework largely centres on its jurisdictional relevance to the UPR, universality, and consensus among the international community. As discussed above, the UPR is mandated to periodically review the human rights records of all UN Member States.[763] The basis

[762] Provisions were selected irrespective of explicit reference within the Campaign.
[763] Chapter 2.4.

of the review includes binding treaties and non-binding instruments, among other international provisions.[764] Furthermore, these instruments provide clear guidance on human rights standards, which are useful when formulating advocacy strategies. They define the human right and provide guidance on how they should be protected and promoted. As a product of international consensus building processes among States, the IHR framework reflects a broad range of perspectives and represents a shared understanding of human rights norms and standards.[765]

All selected instruments are stored on the *Dashboard* tab, each hyperlinked to the corresponding first cell on the *Key Provisions* tab, allowing for direct navigation between the interface and the provisions. (Figure 13)

Figure 13: List of all the IHR Instruments selected for the Study, stored on the Dashboard Tab. They are, Hyperlinked to the Relevant Cells in the Key Provisions Tab for Direct Navigation Within the FRAME Matrix.

4.2.6. Step Six: Extracting from the UPR Documents

Continuing with data extraction from international sources, the penultimate step concerns the UPR documentation. This step incorporates international records into the data pool, against which the

[764] Chapter 2.4.2.
[765] This is even acknowledged by the ACLU when it celebrated the UN Crime Commission's approval of the Mandela Rules – which they, along with other members of civil society, worked towards. https://www.aclu.org/news/prisoners-rights/victory-un-crime-commission-approves-mandela-rules.

ACLU's stakeholder recommendations will later be mapped. Therefore, this step extracts two elements: (1) references to the CSO and its issues within the summary report, and (2) all thematically relevant Member State Recommendations across UPR cycles under review. By the end of this step, the FRAME matrix will contain at least three new tabs: one *Summary Stakeholder Report* tab and one *Recommendations* tab per cycle. (Figure 8)

On the *Summary Stakeholder Report* tab, a four-column table is established. The first column records the UPR Cycle, and the second column notes the paragraph number of the summary report where the reference appears. The third column provides the direct quote; in-text, or footnote; and the final column provides a space to note themes included in the paragraph. All themes are noted, even if not directly relevant to the Campaign, to reveal clustering patterns of the UN synthesis process. (Figure 14) The purpose of this tab is to capture how the CSO's advocacy is presented in official UN records. A close reading of the summary reports from Cycles 1, 2, and 3 reveal 19 instances where the ACLU, either through an individual or joint submission, is cited discussing issues thematically linked to the Campaign.[766]

Cycle	Paragraph	Quote	Themes
1	30	American Civil Liberties Union (ACLU) noted that indigent capital defendants are systematically denied access to justice, as they are often appointed attorneys who are overworked and lacking critical resources, and the lack of adequate counsel in post-conviction proceedings leaves them with little resources. 43AI indicated the US capital justice punishment is marked by arbitrariness, discrimination and error. AI noted that people with serious mental illness continue to be subjected to the death penalty, despite the 2002 US Supreme Court ruling that people with "mental retardation" be exempt from the death penalty. AI also referred to the harsh conditions on death rows in many states.44 USHRN recommended adopting a moratorium on executions and on the imposition of new death sentences.45 Advocates for Human Rights (AHR) recommended abolishing the death penalty and commuting all sentences to a life imprisonment term.4	Inadequate legal representation Capital punishement Mental illness conditions on death row
		ICJ urged the Human Rights Council to request to the US information on:	

Figure 14: A Screenshot of the top of the Summary Stakeholder Report Tab.

To complete the UN component of the data pool, the next step is the extraction of thematically relevant Member State Recommendations across Cycles 1, 2, and 3. These are recorded in the dedicated *Recommendations* tab for each Cycle, which provide a structured record of the formal

[766] 2 from Cycle 1; 10 from Cycle 2; and 7 from Cycle 3.

outputs of the review. For consistency, extractions are sourced from Section II of the Report of the Working Group and the corresponding Addendum from each Cycle, which together provide the Recommendations issued to the US and its official responses. Although the OHCHR thematically compiles these Recommendations in matrices, they are not employed here as they were introduced only in Cycle 2 onwards. Though not an issue of validity, the decision not to rely on these ensures methodological consistency.

The guiding criteria during the selection process is informed by the Campaign. First by using key terms generated by the Campaign; for example, "bail" and "LWOP"; and using the find function to identify recommendations. Once completed, a close reading is conducted to extract thematically pertinent Recommendations that are not flagged explicitly under the key terms. For example, Cycle 2 Recommendation: "*Abolish life imprisonment without the possibility of parole for non-violent offenses*"[767] which is partially supported by the US.[768] In this example, the Recommendation was flagged using the search term "parole." By contrast, the Cycle 1 Recommendation: "*Ensure the right to habeas corpus in all cases of detention;*"[769] which was also partially supported by the US;[770] is not flagged during the search term filtration process. Instead, it is extracted manually following a complete read of the Report of the Working Group.

Together, the UN components complete the data pool. Neither are coded against the system developed in Section 4.2.2., however, as it is designed to analyse the frequency of thematic issues in CSO advocacy, as opposed to in Member State Recommendations. The final procedural step of Phase One establishes the automations of the FRAME matrix.

4.2.7. Step Seven: Set up Infrastructure Tabs, Dashboard (Part III)

Having completed the data pool, the final step in Phase One configures the FRAME matrix for data collection by establishing the *Dataset*, *Statistics*, and *Notes* tabs, and finalising the formulae to improve efficiency. The *Dataset* tab forms the core working space of the FRAME matrix and is

[767] Cycle 2 – Para.176.235.
[768] A/HRC/30/12/Add.1 - Para. 9.
[769] Cycle 1 – Para.92.186.
[770] A/HRC/16/11/Add1. Para. 8.

designed to reflect the analytical process.[771] Structured in five sections, each row captures a single ACLU recommendation and allows the analysis to move horizontally across all five dimensions.

The first section records the stakeholder recommendations submitted by the ACLU, which anchor the data collection process. It is comprised of six columns: cycle number, document source, reference, recommendation, Campaign issue, and CSO theory. (Figure 15) It is designed to preserve the verbatim text while coding them against Campaign themes and CSO theories. To improve efficiency, a dropdown menu is included in the *Cycle* column.[772] All formulae used to automate cross-referencing are detailed in Appendix 4 to this thesis.

UPR Stakeholder (Upward Advocacy)					
Cycle	Document	Ref.	Recommendation	CSJ Issue	CSO Theory
1 (2010)	ACLU Stakeholder Submission	11	Habeas review in death penalty cases: Congress should amend the habeas-related provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) so that federal courts are more accessible to prisoners asserting claims of constitutional violations.	D10	G3 H3

Figure 15: Screenshot from FRAME Matrix Showing the Headings of Part One of the Dataset Tab: Upwards Advocacy.

The second column maps each recommendation, where possible, to the IHR framework. A dropdown menu is included here to simplify data entry by pulling instrument names directly from the *Dashboard* list without requiring manual re-entry.[773] It includes three columns which track the name of the IHR instrument, the reference defined in section 4.2.5. to direct provisions and its exact text. (Figure 16) This exercise serves as the foundation for proposing CSO recommendations firmly grounded in established international standards and authoritative laws, bilaterally legitimising both the CSO action and the international law.

[771] See section 4.4.
[772] Appendix 4.
[773] Appendix 4.

International Human Rights Law		
IHR Instrument	**Ref.**	**Provision Text**
International Covenant on Civil and Political Rights	Article 14.3.d	In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:... To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.
		"In the determination of any criminal charge against him, everyone shall be entitled to the following

Figure 16: Screenshot from the FRAME Matrix Showing the Headings of Part Two of the Dataset Tab: IHR Law.

The third section addresses the domestic, or downward, ACLU advocacy by recording any mappings of the stakeholder recommendations to those made in the Campaign Blueprint. This is done through four columns, which document: whether a mapping can be made, the exact quote from the Blueprint, where relevant, and the corresponding codes for both Campaign issues and CSO theories. (Figure 17) No limit is imposed on the number of codes applied to minimise any assumptions, allowing for the material to be coded organically within the established scaffold. The issue codes primarily serve to confirm the thematic relevance of the stakeholder recommendation to the case study, while the CSO theory enables the identification of potential shifts in advocacy strategy. This duality serves to identify the possibility that the ACLU raised Blueprint concerns during the drafting phase of its stakeholder submission and whether its strategic orientation shifts in the process.

Blueprint (Downward Advocacy)			
Is there a similar recommendation?	Recommendation Text	Issue Code	CSO Theory
No			
Yes - partially	Strengthen indigent defense: Well-trained and sufficiently resourced defense counsel is critical not just for respecting constitutional rights, but for preventing unjust and unnecessary incarceration. Yet, public defense systems nationwide fail both defendants and the attorneys tasked with representing them. Defending attorneys' crushing caseloads, a dearth of investigatory and expert resources, and lack of sufficient time to meet with clients, review discovery, and engage in significant motion practice have combined to threaten — and sometimes eviscerate — the Sixth Amendment right to counsel to which all defendants are entitled. Indigent defense reform would have a widespread impact. According to a recent BJS indigent defense survey of 28 states, public defenders and appointed indigent defense counsel represented nearly 80 percent of criminal cases in 2013.	B12 D10	G3 H3 H4 K1 L1

Figure 17: Screenshot from the FRAME Matrix Showing the Headings of Part Three of the Dataset Tab: Downward Advocacy.

The fourth section draws from the UPR component of the data pool by documenting where stakeholder recommendations can be plausibly mapped onto Member State Recommendations. Five data points are logged: the OHCHR reference number assigned to the Recommendation, the verbatim text, a Campaign theme code to confirm thematic relevance, whether the ACLU was cited in the Summary Report on the issue concerned, and the SuR's formal response. (Figure 18) A dropdown menu is included for efficiency, and to record the US 'formal position, with further details captured where it provides an elaboration.[774] This process does not assert causation, but instead records plausible correlations, made with the assumption that the ACLU, and other CSOs, aim to influence the Member State Recommendations. Though the US 'response bears little direct weight in the forthcoming analysis; particularly as this thesis focuses on recognition of CSO advocacy rather than domestic implementation; it is retained as a data point. This ensures that the broader political dynamics shaping UPR outcomes remain visible; a characteristic explored further in Chapter Seven.

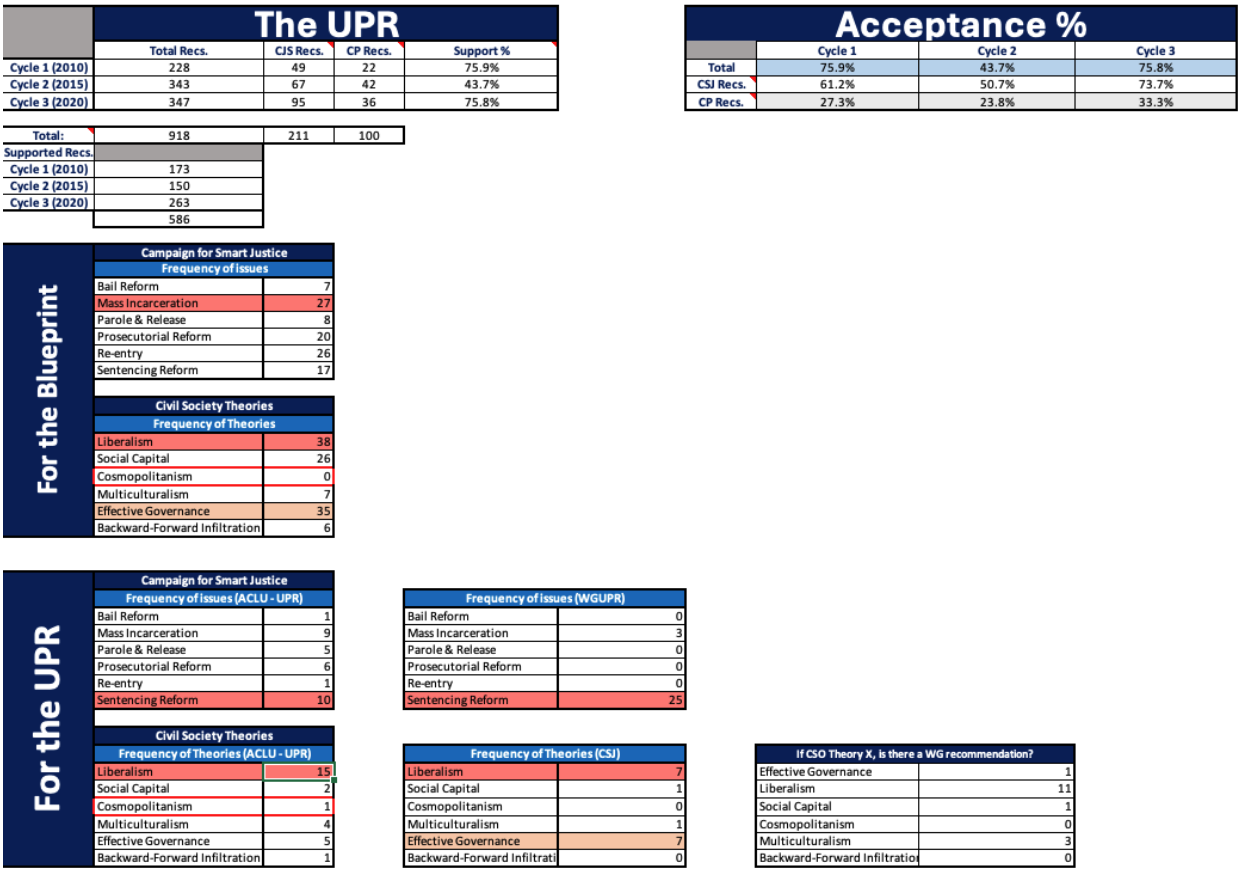
[774] Appendix 4.

UPR Working Group				
Ref.	Recommendation	CSJ Issue	Citation in SR	Response
92.186	Ensure the right to habeas corpus in all cases of detention (Austria)	D10	Para.30 A/HRC/WG.6/9/USA/3/Rev.	Supported

Figure 18: Screenshot from the FRAME Matrix, Showing the Headings of Part Four of the Dataset Tab: The UPR Working Group.

The final section serves as a research log to support the transparency and reflexivity of the research. It comprises two columns: one to capture the overarching topic of a row, and another to record reflections during analysis. This space permits the systematic capture of initial impressions, questions, or lines of inquiry that may inform later analysis, without influencing the coding or mapping process itself. With this, the *Dataset* tab is complete and ready for population in Phase Two.

The next step turns to the *Statistics* tab, which consolidates outputs for quantitative tracking. These are automated through formulae detailed in Appendix 4 but documented here for transparency as the figures are later referenced in Part III of this thesis. The quantitative functions serve to provide insight into the contents of the data pool and distinguish it from the dataset by providing a consistent framework that can later inform a comparative analysis. (Figure 19)



The UPR	Total Recs.	CJS Recs.	CP Recs.	Support %
Cycle 1 (2010)	228	49	22	75.9%
Cycle 2 (2015)	343	67	42	43.7%
Cycle 3 (2020)	347	95	36	75.8%
Total:	918	211	100	
Supported Recs.				
Cycle 1 (2010)	173			
Cycle 2 (2015)	150			
Cycle 3 (2020)	263			
	586			

Acceptance %	Cycle 1	Cycle 2	Cycle 3
Total	75.9%	43.7%	75.8%
CSJ Recs.	61.2%	50.7%	73.7%
CP Recs.	27.3%	23.8%	33.3%

For the Blueprint

Campaign for Smart Justice	Frequency of issues
Bail Reform	7
Mass Incarceration	27
Parole & Release	8
Prosecutorial Reform	20
Re-entry	26
Sentencing Reform	17

Civil Society Theories	Frequency of Theories
Liberalism	38
Social Capital	26
Cosmopolitanism	0
Multiculturalism	7
Effective Governance	35
Backward-Forward Infiltration	6

For the UPR

Campaign for Smart Justice	Frequency of issues (ACLU - UPR)
Bail Reform	1
Mass Incarceration	9
Parole & Release	5
Prosecutorial Reform	6
Re-entry	1
Sentencing Reform	10

Civil Society Theories	Frequency of Theories (ACLU - UPR)
Liberalism	15
Social Capital	2
Cosmopolitanism	1
Multiculturalism	4
Effective Governance	5
Backward-Forward Infiltration	1

Frequency of issues (WGUPR)	
Bail Reform	0
Mass Incarceration	3
Parole & Release	0
Prosecutorial Reform	0
Re-entry	0
Sentencing Reform	25

Frequency of Theories (CSJ)	
Liberalism	7
Social Capital	1
Cosmopolitanism	0
Multiculturalism	1
Effective Governance	7
Backward-Forward Infiltrati	0

If CSO Theory X, is there a WG recommendation?	
Effective Governance	1
Liberalism	11
Social Capital	1
Cosmopolitanism	0
Multiculturalism	3
Backward-Forward Infiltratio	0

Figure 19: The Statistics Tab on the FRAME Matrix.

Beginning with the statistical insights into the UPR more broadly, the FRAME Matrix records the total number of Member State Recommendations issued to the US across Cycles 1-3. The data is disaggregated by Campaign-relevant issues, filtering the total extracted Recommendations into thematic groups. As a further subset, the frequency of Recommendations addressing capital punishment is documented. While abolition is a Campaign issue, it receives less emphasis in the ACLU's Blueprints; this separate recording ensures this thesis recognises its prominence at the UPR, particularly in the context of the US, without overstating its centrality in the domestic Campaign. The table also captures the US 'responses to Recommendations, recording the number and percentage marked as "Supported." This is divided by Cycle and by Campaign issue, including a capital punishment subset. (Figure 20) In turn, a longitudinal comparison of support rates can take place, which provides context for assessing how far Campaign-related issues were supported by the US across all review Cycles. This is not to provide evidence for implementation, but rather

a record of receptivity, which adds an additional layer of legitimacy to the issues raised by the ACLU.

Acceptance %			
	Cycle 1	Cycle 2	Cycle 3
Total	75.9%	43.7%	75.8%
CSJ Recs.	61.2%	50.7%	73.7%
CP Recs.	27.3%	23.8%	33.3%

Figure 20: Acceptance Percentages of Member State Recommendations, Arranged by Cycle, Thematic Relevance and Capital Punishment Specific.

Turning to the domestic elements of the data pool, the Matrix tracks the frequency of Campaign issues appearing in the Blueprints, broadly. This quantifies the issues most emphasised by the ACLU in its domestic advocacy. Simultaneously, the FRAME Matrix records the frequency of civil society theories coded across these Blueprint recommendations, offering an insight into the theoretical orientation underpinning the ACLU's domestic strategy. These numbers are drawn from the coding exercise from the *Blueprint* tab, and are solely indicative of representational focus, rather than judgements of significance. This concludes the quantitative insights into the data pool. (Figure 21)

For the Blueprint

Campaign for Smart Justice	
Frequency of issues	
Bail Reform	7
Mass Incarceration	27
Parole & Release	8
Prosecutorial Reform	20
Re-entry	26
Sentencing Reform	17

Civil Society Theories	
Frequency of Theories	
Liberalism	38
Social Capital	26
Cosmopolitanism	0
Multiculturalism	7
Effective Governance	35
Backward-Forward Infiltration	6

Figure 21: Table Tracking Frequencies of Issues and Theories within the Blueprints.

To bridge the domestic and international dimensions of the dataset, the *Statistics* tab is configured to track code frequencies across the sections. The first two tables track the frequencies of issues and theories coded in the ACLU stakeholder recommendations. (Figure 22) This allows for direct comparisons with the corresponding codes assigned in the Blueprint, presenting any continuity or divergence between domestic and international outputs in numerical form.

For the UPR

Campaign for Smart Justice	
Frequency of issues (ACLU - UPR)	
Bail Reform	1
Mass Incarceration	9
Parole & Release	5
Prosecutorial Reform	6
Re-entry	1
Sentencing Reform	10

Civil Society Theories	
Frequency of Theories (ACLU - UPR)	
Liberalism	15
Social Capital	2
Cosmopolitanism	1
Multiculturalism	4
Effective Governance	5
Backward-Forward Infiltration	1

Figure 22: Tables Tracking the Frequencies of Codes in ACLU Stakeholder recommendations.

The next table records the frequency of Campaign issues within the Member State Recommendations (Figure 23). By providing this measure, the ACLU's priorities are directly positioned against the broader Recommendations, presenting which themes surface within international discourse.

Frequency of issues (WGUPR)	
Bail Reform	0
Mass Incarceration	3
Parole & Release	0
Prosecutorial Reform	0
Re-entry	0
Sentencing Reform	25

Figure 23: Table Tracking the Frequencies of Campaign Issues Present in Member State Recommendations.

The penultimate table disaggregates the subset of Blueprint recommendations that were mapped to stakeholder recommendations. This isolates the subset of theories that translate into the ACLU's international advocacy, offering an insight into its strategic adaptation. Finally, the tab measures correlations between theoretical coding and citations of the ACLU in the summary reports. From this, reasonable inferences can be drawn as to which theoretical framings appear most legible to UN synthesis processes. (Figure 24) However, citation frequency is treated as a proxy for visibility rather than endorsement. Together, these statistical insights offer descriptive clarity on the data pool and establish the groundwork for identifying patterns in Phase Three. The last tab of the FRAME Matrix is a supplementary *Notes* tab that is maintained throughout the process, including the data collection, to log reflections and rationales. This supports transparency without interfering with the coding process.

If CSO Theory X, is there a WG recommendation?	
Effective Governance	1
Liberalism	11
Social Capital	1
Cosmopolitanism	0
Multiculturalism	3
Backward-Forward Infiltration	0

Figure 24: The Final Table on the Statistics Tab, Showing Correlations Between CSO Theories and successful mapping to at least one Member State Recommendation.

In addition to the statistical outputs collated in the *Statistics* tab, certain quantitative data are tracked directly on the *Dashboard*. Here, the count tracks the frequencies of the specific indicators for each thematic and theoretical code in real time. This design choice reflects efficiency and accuracy; the tab already houses the indicators for both the Campaign themes and CSO theories (Figure 9), duplicating these elsewhere would introduce unnecessary complexity. For the

Campaign issues, only the Blueprint is considered by the formula.[775] However, for the CSO theories, both the Blueprint and stakeholder submissions are considered. (Figure 25)

Frequency (in the Blueprints)	Frequency (Internationally)	
22	8	25
2	0	
28	17	
17	1	5
5	0	
15	3	
4	1	
0	1	1
0	0	
0	0	
1	0	4
2	0	
1	3	
5	1	
40	5	5
6	1	3
1	2	

Figure 25: Frequency Table for CSO Theory Indicators Across the Blueprint and the ACLU Stakeholder Submission.

In sum, Phase One establishes the methodological foundation of the FRAME Matrix by defining the codes, constructing the tabs, and embedding the automations. Together, these steps transform the data sources into a coherent data pool, structured for methodological rigour, reproducibility, and scalability. With this infrastructure in place, Phase Two, which populates the dataset and operationalises the coding system, takes places.

4.3. Phase Two: Mapping/Data Collection

Phase two applies the mapping process to systematically populate the Matrix through organisation and coding of relevant data. The first step involves a review of all stakeholder submissions made

[775] Appendix 4.

to the US across the three complete UPR Cycles, isolating those authored by the ACLU. This includes reports submitted by the nationwide office, those prepared by its state affiliates, and those submitted in joint effort with other stakeholders. Once identified, only reports that addressed thematically pertinent issues are retained for data collection. In this thesis, four such submissions are identified: three from the nationwide branch[776] and one from a state affiliate in collaboration with a higher education institution.[777]

The FRAME Matrix anchors the data collection in the stakeholder recommendations. The purpose of this anchoring is to observe how the CSO frames itself and identify advocacy strategies that may be evidenced in its work. Therefore, all recommendations connected to Campaign themes are extracted from the ACLU stakeholder submissions, excluding the rest, even if they touch on important human rights issues. It is noteworthy that the Campaign is not explicitly referenced or acknowledged across these submissions. The timing is significant in relation to the US 'Cycle 3 review, which took place in November 2020, as the Campaign Blueprints emerged shortly before any submission deadlines.[778] Once the relevant submissions are identified, the coding process begins.

4.3.1. Framework-Based Coding

The coding of the stakeholder recommendations proceeds in a framework-based approach; designed to maintain consistency with the coding logic established in Phase One. Each ACLU recommendation is logged directly onto the *Dataset* tab and subsequently cross-referenced against the established systems.

First, thematically pertinent ACLU recommendations within the identified stakeholder submissions are chronologically extracted according to the Cycle number. This maintains a clear chronology to advocacy, which may reveal an evolution in advocacy style.[779] The relevant details are recorded, and only those that correspond to one or more of the Campaign themes are retained

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[776] Submission Citations.
[777] JS27 - ACLU Michigan & City University of NY - 'Youth Criminally Tried and Incarcerated as Adults" CYCLE 2.
[778] Chapter 3.1.5.
[779] *See* Chapter 5.

for analysis. To establish this connection, the indicators established in Section 4.2.2. are used and recorded. Crucially, no new themes or indicators are introduced, and no links are forced; this ensures only Campaign-relevant advocacy is captured in the dataset. Each retained ACLU recommendation is then coded against the CSO theory indicators developed in Section 4.2.3., allowing for insight into the ACLU's theoretical advocacy orientation in international contexts to be observed.

In practice, these mappings are the only mandatory sections; further mapping proceeds in three conditional steps. The ACLU recommendations are only mapped to the IHR framework, the Campaign Blueprint, and/or the UPR outputs where a reasonable and defensible correlation can be identified. This is to safeguard the integrity of the FRAME Matrix, avoiding forced or artificial connections. Where no mapping can be made, a note is made in the appropriate cell.

The same recommendations are subsequently examined in relation to the IHR provisions identified in section 4.2.5. This cross-references each recommendation to determine whether it can be situated within existing IHR standards. (Figure 16) Next, they are compared to the Campaign Blueprint; copying the relevant cells from the *Blueprint* tab where overlap occurs. (Figure 17) This overlap may be thematic, as is the case for the ACLU recommendations from Cycles 1 and 2, or textually similar, as in those from Cycle 3. Finally, the retained ACLU recommendations are cross-referenced with the extracted Member State Recommendations. Thematically relevant Recommendations are recorded with their OHCHR reference numbers (e.g. 176.275), thematic code, and the US' response. Citations in the Summary Report are also noted where they address the same issue. (Figure 18) Phase Two is summarised in Figure 26.

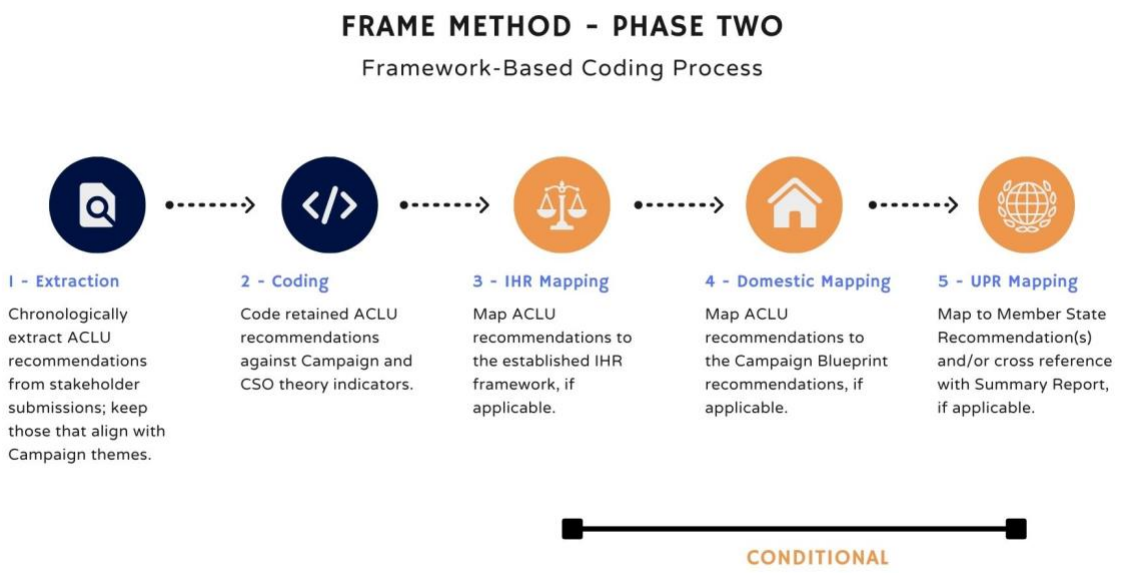

Figure 26: Phase Two Flowchart Summary.

Together, this framework-based approach remains faithful to the system established in Phase One. The result is a dataset which captures the ACLU's international advocacy at the UPR, mapped to identify any intersections with its Campaign priorities; in the absence of explicit citation; theoretical advocacy orientations, and IHR law. The final phase of the FRAME method draws out an interpretive model of good practice grounded in this dataset, which seeks to potentially heighten the visibility of stakeholder recommendations at the UPR.

4.4. Phase Three: Analysis

Phase Three undertakes a tailored analysis to draw out an interpretive model of good practice. Here, the dataset is interrogated to identify patterns, correlations, and strategic insights. Like the method more broadly, this analytical strategy is grounded in the principles of Framework

Analysis;[780] which emphasises comparisons across cases. However, the central analytical unit in the FRAME method is the "complete row" – an ACLU recommendation that can be mapped across all five sections of the *Dataset* tab: linking it to IHR law, the ACLU's domestic advocacy, and the UPR outputs.

These complete rows illustrate a hypothetical trajectory of CSO advocacy at the UPR, but do not demonstrate causation or direct influence. Instead, they detect patterns that may indicate heightened visibility or recognition of the issues raised. This operates on the assumption that CSOs like the ACLU engage with the UPR in part to legitimise and amplify their causes in the international arena. International recognition, whether through citation in the summary stakeholder report, or alignment with Member State Recommendations, may be mobilised as an additional layer of legitimacy in pushing for domestic reforms. This would consequently contribute to bringing the SuR into closer alignment with its IHR obligations.

In sum, this chapter has presented the FRAME Method and operationalised it into an Excel-based matrix. Phase One established the necessary codes, tabs, and automations that converts a variety of resources into a coherent data pool. Phase Two established the dataset, focusing on ACLU stakeholder recommendations and conditionally mapping them against the IHR framework, Campaign Blueprint, and UPR outputs. Phase Three subsequently applied framework analysis logic to identify "complete rows" and other recurring patterns across the FRAME matrix. The next chapter presents the quantitative patterns produced by the automations and then details the three-pronged model of good practice identified by the analysis.

[780] Jane Ritchie & Liz Spencer, Qualitative Data Analysis for Applied Policy Research, *in* THE QUALITATIVE RESEARCHER'S COMPANION 305-29 (A. Michael Huberman & Matthew B. Miles, eds., 2002).

Part III: Findings and Discussion

Part II of this thesis presented the FRAME Method as a novel approach to interrogate the impact of CSO advocacy at the UPR through written stakeholder submissions. Part III now shifts to discuss the analysis of the data gathered by the author. The output from this analysis is an interconnected, three-pronged model of good practice for CSO impact at the UPR. Although tailored to the ACLU, these findings bear broader value to the practices of other CSOs, particularly those operating within federal domestic contexts.

Chapter five discusses Prong One, which concludes that CSOs must demonstrate ideological consistency and leverage their expertise to manifest Resolution 5/1's "credible and reliable" requirement. Chapter six introduces Prong Two, which confirms the importance of IHR in CSO advocacy at the UPR, through new data, it confirms that the UPR is more receptive to issues within the IHR framework, which falls within its legal jurisdiction. Furthermore, it introduces a novel insight into the role of CSOs in the development of IHR law as they can identify gaps in the IHR framework. Chapter seven details Prong Three, which explores the impact of the federal domestic structure of the US on international CSO advocacy. In recognising the value of CSOs 'domestic knowledge, the author proposes an extension to existing topologies, introducing the original concept of *federalism-conscious* recommendations. Chapter eight concludes the thesis, answers the research questions and acknowledges the strengths and limitations, and future avenues of this research.

Chapter Five: Prong One – CSO Identity and Expertise

This chapter details Prong One of the three-pronged interpretive model of good practice (Figure 27) (henceforth, "the model"), this chapter focuses on the role of CSO identity and expertise in enhancing visibility of CSO recommendations at the UPR. It opens by providing the statistical descriptions that form the foundations of Prong One, before introducing its conception, presenting the supporting data, and critically discussing the findings. As established in chapter four, the dataset is anchored in the ACLU recommendations,[781] and it is against this empirical backdrop that the model is tested. Accordingly, the discussion begins with a statistical overview of the FRAME matrix data.

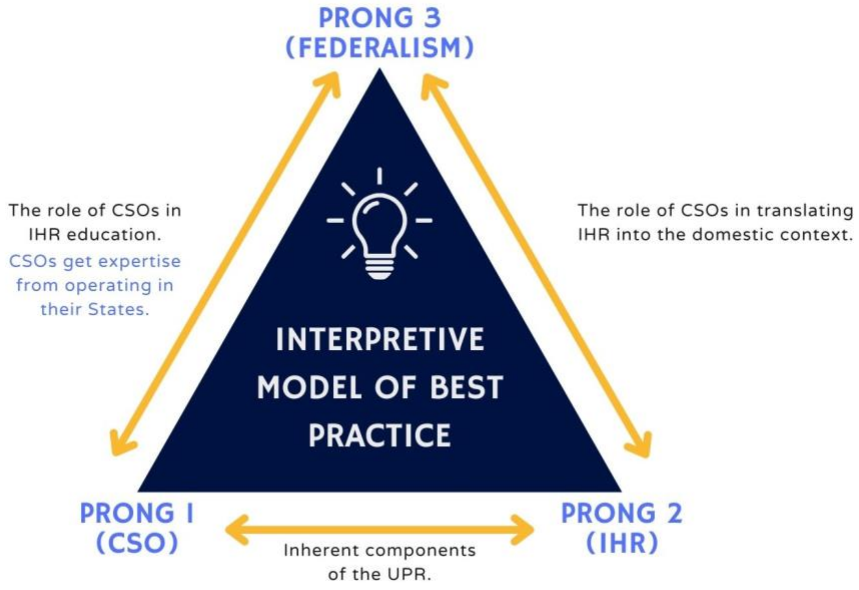

Figure 27: The three-pronged interpretive model of good practice developed in this thesis.

[781] Extracted from four ACLU stakeholder submissions to the UPR across Cycles 1-3. Section 4.3.

5.1. Statistical Overview of the Data

In accordance with section 4.2.6., 25 ACLU recommendations were retained for analysis, sourced from four submissions spanning Cycles 1–3.[782] From the data pool, 31 unique Member State Recommendations were mapped to ACLU recommendations; though there was one duplicate which appears twice in the mapping process due to overlapping themes.[783] The distribution of these recommendations is detailed in Table 9. Within this dataset, five complete rows emerged, representing instances where the ACLU recommendations could be mapped across all the relevant dimensions of the FRAME matrix.[784] Alongside these, several incomplete rows were visible which, although not fully mapped, nevertheless demonstrate a noteworthy alignment with UPR outputs; whether in Member State Recommendations or the summary stakeholder reports. To contextualise the model, an understanding of the macro-level data is necessary.

Cycle Number	Number of ACLU recommendations Retained	Number of Member State Recommendations Retained
1 (2010)	3	1 Unique
2 (2015)	12	6 Unique
3 (2020)	10	25 (24 unique, 1 duplicate)
Total	**25**	**31 Unique (32 listed)**
Number of Complete Rows		5

Table 9: A Summary of the ACLU and Member State Recommendations Captured in the Dataset.

[782] Section 4.2.6.
[783] Recommendation 26.200 (Immediately introduce a moratorium on the federal death penalty and cease sentencing juvenile offenders to life without parole (Ireland)).
[784] Meaning the ACLU recommendation successfully mapped to at least one: IHR provision, Blueprint recommendation, and Member State Recommendation.

Across its first three UPRs, the US received a total of 918 Member State Recommendations, of which 211 (~23%) addressed criminal justice issues, distinct from the 100 that specifically addressed capital punishment. (Figure 28) It can be observed that despite fluctuations in acceptance rates, when separated from capital punishment which remained consistently low (27.3%, 23.8%, and 33.3%), Campaign issues enjoyed high support rates (61.2%, 50.7%, and 73.7% across each Cycle, chronologically, see Figure 20). These numbers evidence that Campaign-related issues repeatedly surface at the UPR, and that the US has demonstrated a relatively receptive stance towards them across review Cycles.

The UPR				
	Total Recs.	CJS Recs.	CP Recs.	Support %
Cycle 1 (2010)	228	49	22	75.9%
Cycle 2 (2015)	343	67	42	43.7%
Cycle 3 (2020)	347	95	36	75.8%

Total:	918	211	100
Supported Recs.			
Cycle 1 (2010)	173		
Cycle 2 (2015)	150		
Cycle 3 (2020)	263		
	586		

Figure 28: Table Showing the Descriptive Statistics of the Total Number of Recommendations to the US.

However, these statistics provide a macro-level indication of the relative prominence and receptivity of Campaign-related issues at the UPR; they neither isolate the ACLU's impact nor how its domestic priorities translate in its international advocacy. To explore the ACLU's strategic orientation, attention is first drawn to the Campaign Blueprint, and more precisely, the prominence of each of the six thematic areas. Assessing the 78 Blueprint recommendations, the greatest emphasis is placed on mass incarceration (27 recommendations) and re-entry (26 recommendations), followed by prosecutorial reform (20 recommendations), sentencing reform (17 recommendations), parole and release (8 recommendations), and finally bail reform (7 recommendations). (See Figure 21)

To gauge the advocacy orientation of the ACLU, these recommendations were then coded against the six CSO theories. As no limit was placed on the number of indicators that can be applied per data point, 112 codes were made across the 78 recommendations. This reflects the multidimensional ways CSOs like the ACLU advocate. The results confirm that the ACLU most heavily draws from liberalism (38 recommendations, or ~34%) in its domestic advocacy.[785] However, it also shows that it draws considerably from effective governance (35 recommendations, or ~31%) and social capital (26 recommendations, or ~23%). By contrast, cosmopolitanism is entirely absent in the Blueprint (0 recommendations), and the remaining multiculturalism (7 recommendations, or ~6%) and backward-forward infiltration (6 recommendations, or ~5%) are marginal. (Figure 21) Table 10 summarises these figures.

Group	Category	Count	Total (n)	Percentage (rounded)
Campaign Issue	Bail (A)	7	78	~9%
	Mass Incarceration (B)	27		~35%
	Parole and Release (C)	26		~33%
	Prosecutorial Reform (D)	20		~26%
	Re-entry (E)	17		~22%
	Sentencing Reform (F)	8		~10%
CSO Theory	Liberalism (G)	38	112	~34%
	Social Capital (H)	26		~23%
	Cosmopolitanism (I)	0		~0%
	Multiculturalism (J)	7		~6%
	Effective Governance (K)	35		~31%
	Backwards-Forwards Infiltration (L)	6		~5%

Table 10: Coding Frequencies of Campaign Issues (n=78) and CSO Theories (n=112) from the ACLU Campaign Blueprint. Percentages are calculated relative to the total number of coded instances within each category.

[785] These percentages are calculated based on the total number of codes applied (n = 112), rather than the total number of recommendations (n = 78). This is to reflect the choice to allow for multiple codes per recommendation, recognising that individual recommendations often reflect more than one theoretical orientation. Accordingly, percentages represent the relative distribution of codes across theories, rather than the proportion of recommendations exclusively coded to a single theory.

Comparatively, at the UPR, the ACLU's thematic spread differed. While the Blueprint placed a significant emphasis on mass incarceration and re-entry, the ACLU distributed its focus more evenly across the issues through its stakeholder submissions. Once more, multiple codes were permitted per recommendation. Accordingly, the 25 ACLU recommendations generated 41 thematic codes, as some recommendations could be mapped to more than one issue. Once completed, sentencing reform and prosecutorial reform emerged as dominant within the ACLU's UPR advocacy, together making up over 70% of the issue codes. Themes prominent in the Blueprint, such as mass incarceration and re-entry, received less emphasis, if any. (Table 11) As these figures are calculated to reflect the proportionate differences of the Blueprints and stakeholder submissions, this redistribution suggests a strategic recalibration as opposed to an abandonment of priorities. Rather than mirroring its domestic weightings, the ACLU may have tailored its advocacy to the UPR's supranational context, opting to recalibrate its advocacy priorities for international visibility.

	Cycle 1	Cycle 2	Cycle 3	% of total
Bail (A)	0	0	0	-
Mass Incarceration (B)	0	6	2	~20%
Parole and Release (C)	0	0	4	~10%
Prosecutorial Reform (D)	2	8	2	~30%
Re-entry (E)	0	0	0	-
Sentencing Reform (F)	1	9	7	~40%
Total Thematic Codes for Stakeholder Recommendations	41			

Table 11: Distribution of Campaign Issues in ACLU Stakeholder recommendations (n = 41 codes).

To explore this, an observation of the theoretical dimensions becomes necessary, as it reveals the CSO's advocacy orientation. 43 theory codes were applied to the ACLU stakeholder submissions, revealing liberalism as a consistently dominant strand at ~58%. (Table 12) This underscores the ACLU's enduring emphasis on rights-based advocacy. Nevertheless, there were persistent traces of social capital (~12%) and effective governance (~12%), which demonstrates the ACLU employs layered strategic framing. As the dataset spans the ACLU's consistent engagement across

the first three UPR Cycles, the chronological increase in liberal mapping suggests a deliberate sharpening in the ACLU's international advocacy identity, which could reflect a growing familiarity with the process. (Table 12) However, it is noteworthy that cosmopolitanism remains virtually absent (~2%); despite engaging in an international forum, and adopting cosmopolitan strategies, the ACLU remains faithful to its domestic identity.[786]

	Cycle 1	Cycle 2	Cycle 3	% of Total
Liberalism (G)	2	14	9	~58%
Social Capital (H)	3	1	1	~12%
Cosmopolitanism (I)	0	0	1	~2%
Multiculturalism (J)	0	3	1	~9%
Effective Governance (K)	0	2	3	~12%
Backwards-Forwards Infiltration (L)	2	1	0	7%
Total Theory Codes for Stakeholder Recommendations		43		

Table 12: Distribution of CSO Theories in ACLU Stakeholder recommendations (n = 43 codes).

Considering this trend, it should be noted that Cycle 2 figures are drawn from two stakeholder submissions. Therefore, to reinforce this observation, Table 13 shows the distribution of liberal codes across the stakeholder submissions. In Cycle 1, two of the three recommendations extracted from the national ACLU submissions received a G-code to signal a mapping to liberalism. By Cycle 2, this proportionally increased, with five out of seven national ACLU recommendations receiving at least one G-code. This trend continues into Cycle 3, where seven from the ten mapped to liberalism. These figures confirm that liberalism is consistently and increasingly present in the ACLU's advocacy, forming the dominant strand of its international strategy, and reinforcing the CSO's identity as a liberal actor.

[786] Chapter 3.3.

Cycle	Stakeholder Report	G-Codes (Liberalism)	Number of G-Coded Recs.	Total No. of Recs.	% of total recommendations with G-codes
1 (2010)	National ACLU	2	2	3	66.7%
2 (2015)	National ACLU	7	5	7	71.4%
2 (2015)	ACLU Michigan	7	5	5	100.0%
3 (2020)	National ACLU	9	7	10	70.0%

Table 13: Distribution of Liberalism Codes in ACLU Stakeholder Recommendations across UPR Cycles.

Figure 29 plots these results for the national ACLU submissions only, comparing the total number of recommendations with those coded to liberalism. The graph demonstrates a clear proportional consistency across the three Cycles, with most recommendations framed in liberal terms. Excel calculates a 99.9% correlation between the two variables, though the author treats this with caution given the limitation of sample size.[787] Nevertheless, considering the data in the specific context of this thesis, the increase in liberal codes may simply reflect the overall increase in the number of recommendations extracted. However, an alternative interpretation suggests the ACLU increasingly leaned into its established expertise and historic theoretical orientation as its engagement with the UPR progressed. While causation cannot be inferred, the sharpening of advocacy identity across successive Cycles reflects a strategic consolidation of advocacy identity; a trend that further crystalises when reflecting on how this intersects with Member State uptake.

[787] Discussed in Chapter 8.2.

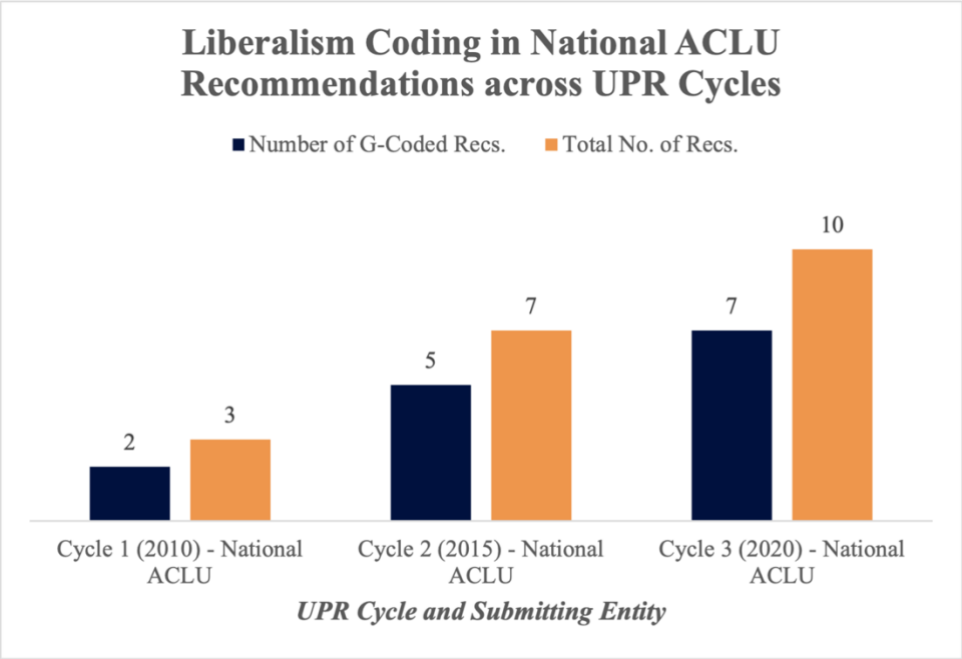

Figure 29: Liberalism coding in National ACLU stakeholder recommendations across UPR Cycles.

Considering these mappings in relation to Member State Recommendations provides further insights into how the ACLU's theoretical orientation; which underpins its advocacy; resonates at the UPR. Figure 24 tracks a simple binary: for each ACLU recommendation coded to a particular CSO theory, it recorded whether that same recommendation subsequently mapped against at least one Member State Recommendation. Rather than raw frequency of individual codes, the resulting figures illustrate instances where a particular theoretical framing coincided with a Member State Recommendation. As summarised in Table 14, the international community appears to respond positively to liberalism (69%). While this trend does not suggest a direct causal link between liberal framing and uptake, it does indicate that liberalism is more directly legible at the UPR.

	Count	% of Total (n=16)
Liberalism (G)	11	69%
Social Capital (H)	3	19%
Cosmopolitanism (I)	1	6%
Multiculturalism (J)	1	6%
Effective Governance (K)	0	-
Backwards-Forwards Infiltration (L)	0	-

Table 14: Distribution of CSO theoretical framings from ACLU recommendations that mapped onto UPR Working Group Recommendations. Percentages are calculated out of the 16 instances where ACLU codes aligned with WG outputs.

Taken together, these statistical observations point to two consistent strands: the ACLU's reliance on liberal framing; its identity; and its sustained focus on criminal justice; its expertise. When considered against the modalities of the UPR,[788] these strands resonate with Resolution 5/1's emphasis on "credible and reliable"[789] information forming the basis of the review. Therefore, the following section develops this insight into the first prong of the Model, which discusses how CSOs manifest Resolution 5/1 through the two strands, thereby enhancing their visibility at the UPR.

5.2. Prong One Concept

Prong One builds directly on the statistical patterns discussed in the section above, considering them against the procedural design of the UPR itself. Two institutional features are pivotal here: CSOs are formally excluded from the interactive dialogue, yet their submissions are synthesised

[788] Section 3.1.2.
[789] Resolution 5/1, paragraph: 15(c).

in the OHCHR's summary stakeholder report[790] and presented to the Recommending States ahead of the review. As McMahon shows, the summary report often informs Member State Recommendations,[791] yet the selection criteria for inclusion is vague.[792]

Drafters can exercise reasoned judgement on which issues merit inclusion, however, they are bound by strict deadlines and must navigate several bureaucratic and diplomatic filters.[793] This dynamic, therefore, explains why they are bound by Resolution 5/1, which directs that only "credible and reliable" information should form the basis of the dialogue.[794] The interaction of these two conditions – the editorial filtering and a credibility mandate – creates a strategic entry point for CSOs.

In this thesis, credibility and reliability are understood as qualities that CSOs can demonstrate. They are performed through the two dimensions that consistently surfaced in the dataset: (1) identity and (2) expertise. Identity is rooted in the institutional history and value of the CSO, which emerges through an examination of CSO theory – and in this case study, centres on a liberal rights-based orientation of the ACLU. Expertise is built through a CSO's sustained domestic engagement – here, it is the ACLU's historic work in the realm of criminal justice and its experience navigating the federal structure of the US. Prong One proposes that when these dimensions are legible to OHCHR drafters and the Member States, CSO inputs are more readily translatable into the summary report, and at times, into uptake at the UPR. In short, identity and expertise operationalise Resolution 5/1's mandate within the mechanics of the process.

The ACLU is obviously not representative of all CSOs, but its case study serves as illustrative for Prong One. The aim is conceptual as much as empirical, focussing on how CSOs can align

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[790] Resolution 5/1, Annex, ¶15(c).
[791] McMahon, *supra* note 18; Dajana Čelebić, *Universal Periodic Review (UPR) Handbook for Civil Society Organisations in Bosnia and Herzegovina* (2021); Consider also, Paul Chaney, *India at the Crossroads? Civil Society, Human Rights and Religious Freedom: Critical Analysis of CSOs' Third Cycle Universal Periodic Review Discourse 2012–2017*, 24 THE INT'L J. OF HUM. RTS. 531 (2020) (confirming evidence that CSOs contribute to the discourse, critique the government's selective implementation, and highlight gaps in rights enforcement.); Lane, *supra* note 333 (The UPR is not just an international mechanism but serves as a domestic catalyst for human rights improvements through sustained CSO engagement.); THE UNIVERSAL PERIODIC REVIEW OF SOUTHEAST ASIA (James Gomez & Robin Ramcharan eds., 2018) (CSOs increase accountability and pressure governments to adopt UPR recommendations, even in states that traditionally resist external influence).
[792] Section 3.1.2.4.
[793] Billaud *supra* note 15.
[794] Resolution 5/1, Annex, ¶15.

themselves with these procedural mandates by leveraging recognisable identity and demonstrable expertise. The next section examines the dataset to evidence these dynamics in practice.

5.3. Data Analysis

The statistical overview discussed thus far has established that identity and expertise constitute two dimensions through which CSOs can operationalise Resolution 5/1. This section traces their impact on the UPR's documentary record. As the entry point for CSOs, the Summary Report is evaluated for patterns of citation and subsequent mapping to Member State Recommendations. In doing so, the analysis considers whether ACLU recommendations that reflect a liberal identity and criminal justice expertise were more likely to surface in these outputs.

5.3.1. Citation in the Stakeholder Report

The dataset demonstrates a positive correlation between citation in the US' stakeholder report and the likelihood of an ACLU recommendation being mapped to a Member State Recommendation, though causation cannot be inferred. Summarised in Table 16, of the 25 ACLU recommendations 28% (7/25) were both cited by the stakeholder report and mapped to a Member State Recommendation. In three of these cases, the same ACLU recommendation was mapped to more than one Member State Recommendation. A further 16% (4/25) were cited but not mapped. Three of these concerned state-level issues, explicitly addressed to state authorities, and one called for data collection on youth in adult criminal proceedings. This pattern suggests that while such issues were deemed significant enough by the OHCHR drafters to appear in the summary report, they did not translate into Member State Recommendations, per the FRAME Method. As will be elaborated in Chapter Seven, this may be explained by the UPR's structural constraint under the UN Charter: it is bound to address all SuRs as a unitary actor and cannot direct Recommendations to sub-national authorities. From this perspective, Prong Three offers a potential explanation – where state-specific issues surface in stakeholder reports, but fail to materialise in Recommendations, the limitation may lie less in their perceived credibility and more in the UPR's formal communication parameters. This observation therefore reinforces the interdependence of

the three prongs, previewing how jurisdictional complexity further mediates CSO visibility at the UPR. Yet, for the purposes of Prong One, the attention is on the performance of credibility through identity and expertise, even if structural constraints limit their potential uptake. From this perspective, the distinction between the prongs clarifies that citation functions as a crucial gateway, providing novel evidence of the summary report's role as a conduit for CSO impact.[795] This builds on Moss' emphasis on the strategic value of CSO issues entering OHCHR-compiled materials, [796] by showing that citation increases, but does not guarantee, the likelihood of mapping to a Member State Recommendation, which depends on further layers of institutional filtering.[797]

The rarity of instances where mapping occurs without citation reinforces this point: only 8% (2/25) of ACLU recommendations were mapped absent citation. Consider ACLU recommendation 1 below.[798] This recommendation, which lacks an IHR basis (Prong Two), was successfully mapped to Member State Recommendation 176.275 from Nigeria. (Figure 30) The similarity in wording, coupled with an absence of citation in the stakeholder report, supports the possibility of impact from parallel sessions on UPR outcomes. As Pre-sessions are not formally recorded, the extent of such informal interactions cannot be assessed within the scope of this thesis. However, observing the consistency in CSO theory may provide a partial explanation for this alignment. The ACLU displays consistent liberal framing and articulates a feasible domestic implementation pathway (Prong Three). Moreover, this recommendation emerged in Cycle 2, at the outset of the ACLU's newly launched Campaign in 2014.[799] The Campaign represented a coordinated, national, multi-year effort to reduce US prison population, consolidating the ACLU's criminal justice reform advocacy into a branded initiative. The timing suggests that the visibility of this recommendation may have benefitted from the ACLU's strengthened domestic identity and clearer articulation of reform priorities under the Campaign framework. From this perspective, these qualities appear to increase the perceived credibility of the ACLU, combined with Prong Three, this could have compensated for the absence of explicit IHR anchoring (Prong Two), thereby enhancing legibility

[795] McMahon et al., *supra* note 18; See also, Chauville, *supra* note 5.
[796] Moss, *supra* note 121.
[797] *See* Chapter Seven.
[798] Throughout the analysis chapters, ACLU recommendations are consistently numbered (e.g., "ACLU Recommendation 1" always refers to the same recommendation). For clarity, however, each recommendation is displayed in simplified form within details tailored to the discussion at hand. A comprehensive cross-reference of all recommendations and their numbering is provided in Appendix 5.
[799] American Civil Liberties Union, *supra* note 681.

to Member States at the UPR. That said, the relatively small percentage of such cases underscores that while parallel pathways exist, such as the UPR Pre-sessions, [800] the summary report remains the primary channel through which CSO inputs gain visibility at the UPR.

ACLU recommendation	Crack and powder cocaine are two forms of the same drug, and Congress should eliminate any disparity in the amount of either necessary to prompt mandatory minimum sentences.
CSO Theory (Upwards)	G3
Domestic Advocacy	Partial Match to the Blueprint
CSO Theory (Downwards)	G1, G3
UPR Recommendation(s)	176.275 (Nigeria)
Summary Report Citation	-

Figure 30: ACLU recommendation 1 (Prong 1).

The remaining 48% (12/25) achieved neither citation nor mapping. On closer examination, this group reveals two notable patterns. (Table 15) First, two-thirds of these recommendations (8/12, ~67%) were mapped to at least one IHR provision, demonstrating that a lack of citation does not necessarily indicate an absence of substantive alignment with the IHR framework, which is discussed further in Chapter Six. When broken down further by jurisdictional category, per Prong Three, four were federal-orientated (two mapped to IHR, and two did not), two were aimed solely at the states (both mapped to IHR), and six were unclearly aimed (four mapped to IHR, and two did not). This distribution supports the interpretation that other factors influence CSO visibility, in addition to citation in the summary report, which the author explores further in Chapter Seven. An alternative interpretation, as Chauville notes, is procedural rather than substantive. The greater the

[800] UPR Info, *supra* note 319.

number of stakeholder submissions a country receives, the less the OHCHR can include from each CSO.[801] Across its first three UPRs, the US received 333 stakeholder submissions, meaning that institutional filtering and page limits alone may have crowded out otherwise credible contributions.

Prong 3 Category	IHR Mapped (Yes)	IHR Mapped (No)	Total	% of Total
Federal	2	2	4	33%
state	2	0	2	17%
Unclear	4	2	6	50%
Total	8 (67%)	4 (33%)	12	

Table 15: IHR Mapping by Prong 3 Category (Recommendations Neither Cited nor Mapped, n = 12).

Category	Count	% of Total (n=25)
Cited and Mapped	7	28%
Cited but not Mapped	4	16%
Mapped but not Cited	2	8%
Neither Cited nor Mapped	12	48%

Table 16: Citation and Mapping of ACLU Recommendations in the UPR.

From the perspective of Prong One, these figures reinforce that visibility is not merely a matter of substance but of performance. Even where recommendations are legally robust and consistent with IHR law (Prong Two), domestic CSOs risk being overshadowed by larger international

[801] Chauville, *supra* note 5 at 105.

organisations under the institutional filtering process at the OHCHR. The OHCHR operates under severe time and resource constraints when condensing the submissions into the stakeholder report; a challenge amplified when States like the US receive hundreds of submissions per Cycle.[802] In such a crowded field, larger CSOs with established international profiles, such as Amnesty International (AI) and Human Rights Watch (HRW), often dominate citations,[803] which Baird suggests may distort what is heard in Geneva.[804] As the drafters are bound by the expectation of credibility, the time constraints under which they operate means fact-checking is selective, discretionary, and internal.[805] They preserve the appearance of neutrality by combining bureaucratic filters with case-by-case investigations. This explains why even when recommendations mapped to IHR provisions (Prong 2), some were excluded from the stakeholder report. In short, institutional bandwidth, in addition to legal robustness, dictate the degree of visibility.

5.3.2. Liberalism – A Predictable Identity

Against this line of reasoning, the dataset highlights the importance of a CSO projecting a predictable identity as an essential component to visibility within UPR documents. While OHCHR drafters are not explicitly assessing CSO inputs through theoretical lenses, consistency in framing nevertheless performs credibility by signalling stability and coherence, as well as expertise. From the data, the ACLU's repeated reliance on liberal framing across Cycles not only aligns with its institutional history but also provides a legible advocacy identity to international actors working under time pressure. Expertise is not only a question of subject-matter competence, but the ability to convey that expertise in a consistent and recognisable form, making it predictable. This predictability may reduce the institutional burden on drafters and Member States, making the input more easily filtered into UPR outputs.

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[802] The US received 103 submissions in Cycle 1, 91 in Cycle 2, and 139 in Cycle 3.
[803] Natalie Baird, *The Role of International Non-Governmental Organisations in the Universal Periodic Review of Pacific Island States: Can "Doing Good' Be Done Better?*, 16 MELB. J. INT'L L. 550, 565 (2015).
[804] *Id.* at 558.
[805] Billaud *supra* 15 at 70-2.

To explore this further, the dataset was reviewed for patterns of theoretical consistency between the ACLU's domestic advocacy and its UPR submissions. (Table 17) Of the 25 ACLU recommendations, 80% (20/25) adhered to liberal framing.[806] This was in line with the CSO's historic liberal identity. Within this group, 30% (6/20) were cited in the stakeholder report, suggesting that liberal framing may support the ACLU's visibility, but it does not guarantee it. Finally, 40% (10/25) of ACLU recommendations showed a theoretical framework shift between domestic and international advocacy; meaning there was a difference between the coding of the Blueprint and that of the UPR submission. From these figures, two key interpretations can be made. First, liberalism provides a stable foundation for the ACLU's advocacy identity. However, variations in framing signal recalibration in the international context.

Category	Count	% of the Total (n=25)
Liberalism-framed ACLU recommendations	20	80%
Cited (in the stakeholder report) Liberalism-framed ACLU Recommendations	6	30% of liberalism-framed recommendations
ACLU recommendations with CSO Framework Shifts	10	40%

Table 17: Patterns of Citation and Framework Shifts Illustrating the Role of Predictable Identity in Prong One (n = 25).

On the latter, the numerical data points to an important observation: this recalibration is directional. As established, all the figures within this discussion are calculated taking into consideration the proportional differences of the Blueprint and the stakeholder submissions. Nonetheless, the Blueprint coding displays a more plural theoretical profile, where liberalism accounts for 34% of codes, with significant traces of effective governances (31%) and social capital (23%).[807] By comparison, the UPR submissions demonstrate a sharper alignment with liberalism, which

[806] This figure is calculated on the binary of at least one G-code, even where they coded for other theories. This is also in line with the broad definition of "liberalism," capturing any recommendation where liberal advocacy is present.
[807] Table 10.

accounted for 58%.[808] This trend is reinforced in Figure 29. Ultimately, while variation exists between the domestic and international framings, the overall trajectory is towards a more predictable and recognisable identity. ACLU recommendations 1–5 can be used to illustrate these observations substantively. They can be divided into two groups: evidence of consistency, and evidence of recalibration.

5.3.2.1. Evidence of Consistency

Beginning with ACLU recommendation 1, Figure 30, which was coded as liberal both domestically and internationally, suggests that predictability in identity may substitute for citation in Member State uptake; though such cases are rare (8%).[809] As suggested above, this could also be credited to parallel advocacy. Next, ACLU recommendation two, Figure 31, which called for the abolition of life without parole sentences for juveniles, can be considered the archetypal case of the predictable identity effect as it exemplifies how a consistent liberal framing may enhance visibility. This recommendation is consistently liberal across both the Blueprint and the stakeholder submission (coded G1/G3 in both). It is also cited in both the stakeholder report[810] and mapped to two Member State Recommendations.[811] Though the author recognises here that the visibility of this recommendation can be owed to the salience of the issue of juvenile LWOP, where the US' continued use of this sentencing makes it an outlier in the international space,[812] as much as the ACLU's consistency. Still, the predictability of liberal framing can be suggested to have enhanced its legibility.

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[808] Table 12.
[809] *See* Table 16.
[810] A/HRC/WG.6/22/USA/3, ¶51.
[811] Recommendations 176.510 (Fiji) and 176.234 (Austria).
[812] EMILY J. HANSON & JOANNA R. LAMPE, JUVENILE LIFE WITHOUT PAROLE: IN BRIEF 2 (2022); J.Z. Bennett et al., *In the Wake of Miller and Montgomery: A National View of People Sentenced to Juvenile Life Without Parole*, 93 J. OF CRIMINAL STUD. 1, 2 (2024); Robert Johnson & Margaret E. Leigey, *The Life-Course of Juvenile Lifers: Understanding Maturation and Development as Miller and Its Progeny Guide Juvenile Life Sentence Release Decisions*, 3 J. OF CRIMINAL JUSTICE & L. 29, 16 (2020).

ACLU recommendation	Abolish the sentence of life without parole for offenses committed by children under 18 years of age. Enable child offenders currently serving life without parole to have their cases reviewed by a court for reassessment and resentencing, to restore parole eligibility and for a possible reduction of sentence.
CSO Theory (Upwards)	G1, G3
Domestic Advocacy	Partial Match to the Blueprint
CSO Theory (Downwards)	G1, G3
UPR Recommendation(s)	176.510 (Fiji) 176.234 (Austria)
Summary Report Citation	para.51 A/HRC/WG.6/22/USA/3

Figure 31: ACLU recommendation 2 (Prong 1).

Recommendation 3, Figure 32, was coded as liberal domestically and internationally, albeit with traces of social capital and effective governance. This recommendation was not mapped to a citation in the stakeholder report; however, it was mapped to Recommendation 176.235 from Benin. Here, although the recommendation was not "visible" due to the lack of citation, it was still mapped at the Recommendation level. Considering the discussion so far, the liberal framing may have made the ACLU recommendation legible.

ACLU recommendation	Abolish the sentence of life without parole for nonviolent offenses. Congress and state legislatures should eliminate all existing laws that either mandate or allow for a sentence of LWOP for a nonviolent offense. Such laws should be repealed for nonviolent offenses, regardless of whether LWOP operates as a function of a three-strikes law, habitual offender law, or other sentencing enhancement. Make elimination of nonviolent LWOP sentences retroactive and require resentencing for all people currently serving LWOP for nonviolent offenses.
CSO Theory (Upwards)	G1, G3
Domestic Advocacy	Partial
CSO Theory (Downwards)	G1, G3, H1, H2, K1
UPR Recommendation(s)	176.235 (Benin)
Summary Report Citation	-

Figure 32: ACLU recommendation 3 (Prong 1).

5.3.2.2. Evidence of Recalibration

Turning to the second group, ACLU recommendation 4, Figure 33, illustrates a shift from an effective governance approach at the domestic level, to a purely liberal framing at the UPR level. This recommendation, although neither cited nor mapped, reinforces that predictability alone cannot guarantee uptake. It is noteworthy that, unlike juvenile justice, there is no IHR framework on elderly rights making it a thematic novelty,[813] which likely limited the visibility of this recommendation despite a recalibration into liberalism.

[813] This is discussed further in Chapter Six.

ACLU recommendation	Congress should pass federal legislation and the federal Bureau of Prisons should enact policies that allow people to file for elderly release after age 50 directly with the courts.
CSO Theory (Upwards)	G3
Domestic Advocacy	Partial
CSO Theory (Downwards)	K1
UPR Recommendation(s)	-
Summary Report Citation	-

Figure 33: ACLU recommendation 4 (Prong 1).

Finally, ACLU recommendation 5, Figure 34, illustrates the limitations of recalibration. Domestically, it coded to three theories: liberalism, social capital, and effective governance. Internationally, the recalibration simplified into liberalism alone. Once more, the ACLU demonstrated a shift towards predictability, however it achieved neither a citation, nor mapping. This could be because its thematic focus on juvenile imprisonment overlapped significantly with other CSO submissions. Alternatively, the OHCHR may have filtered this selectively. The strong presence of child-related issues in the US' Member State Recommendations suggests that there may be "competition" for space in the stakeholder report, which may have crowded out the ACLU's contribution.[814]

[814] For example, according to the Matrix prepared by the OHCHR documenting the Recommendations made to the US, and organised thematically, there were around 20 Recommendations that related to the rights of the child, though these largely focused on the ratification of the CRC.

ACLU recommendation	Enact legislation to ensure that imprisonment is used only as a last resort when sentencing all juvenile offenders, and provide comprehensive services to criminal system-involved youth.
CSO Theory (Upwards)	G3
Domestic Advocacy	Yes
CSO Theory (Downwards)	G3, H3, K1
UPR Recommendation(s)	-
Summary Report Citation	-

Figure 34: ACLU recommendation 5 (Prong 1).

Ultimately, these exemplify both the potential and limitations of consistency and recalibration. Consistent liberal framing seems to more likely coincide with citation and mapping, whereas recalibration *into* liberalism did not consistently benefit the visibility of a recommendation. These extracts of the dataset also illustrate the ACLU's international advocacy evolved into a liberal identity as the Cycles passed. However, with the mixed visibility outcomes, predictability of framing can be surmised to be important but not sufficient as a standalone condition for enhancing the potential for impact. To place these findings in context, the following section considers them against the existing scholarship on CSO influence, credibility, and the privileging of liberalism in IHR processes.

5.3.3. Domain Expertise – A Missed Opportunity

So far, the data has presented a high degree of theoretical consistency. By Cycle 3, all but one ACLU recommendation mapped to the IHR framework, and only three of the ten recommendations extracted from this Cycle did not map to liberalism. This predictability, per the

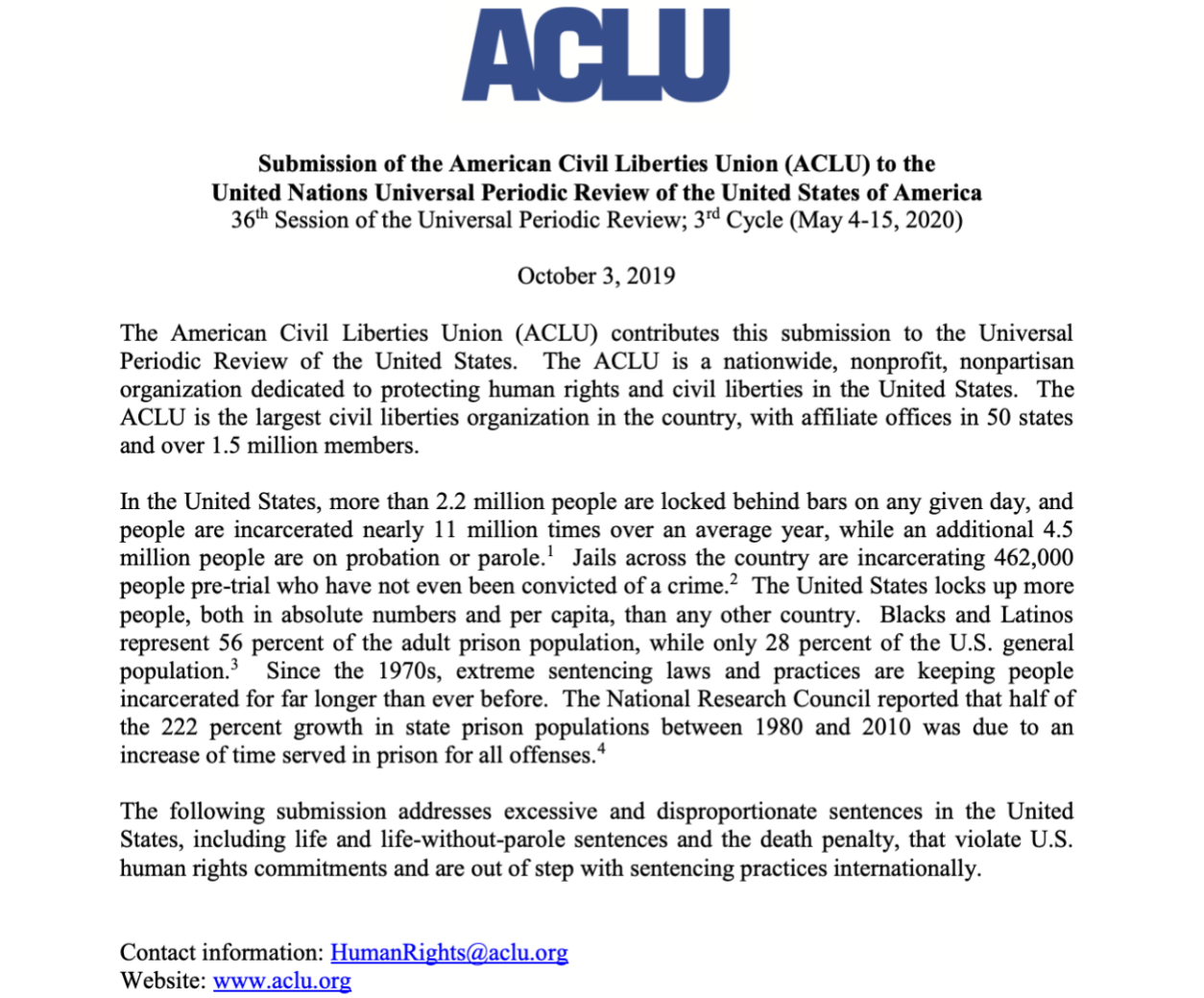
discussion above, strengthened the ACLU's advocacy identity at the UPR. However, Prong 1 consists of two dimensions: identity and expertise. The latter requires more than predictable framing and is best demonstrated simply by foregrounding institutional authority. Stakeholder submissions often include dedicated preambles that provide the necessary information contextualising the submitting CSO's focus area of advocacy.

In the case of the ACLU, this opportunity was only marginally realised. Considering the data from Cycle 3 in isolation due to its alignment with Campaign timelines, the ACLU introduces itself as:

"The ACLU is a nationwide, nonprofit, nonpartisan organization dedicated to protecting human rights and civil liberties in the United States. The ACLU is the largest civil liberties organization in the country, with affiliate offices in 50 states and over 1.5 million members."[815]

However, considering its explicitly detailed thematic focus on mass incarceration and capital punishment,[816] the ACLU makes no reference to its Campaign, which was launched the year before, in 2018. This omission is significant. The dataset clearly demonstrates a close and sustained alignment between the recommendations, the IHR framework, and the ACLU's liberal identity – more so than in previous Cycles. Considering that three out of the five 'full rows' are found in Cycle 3, there is an evident alignment between the Campaign and the UPR. Yet the absence of an explicit reference to the Campaign in the submission may have weakened the visibility of the ACLU's expertise to an international audience. Without this, the ACLU presented itself as a broadly *credible* CSO rather than a leading US expert on criminal justice reform.[817] In doing so, it partially performed expertise but did not capitalise on its authority; which was reinforced by the data-driven Campaign; meaning it did not fully demonstrate the *reliable* mandate.

[815] ACLU Stakeholder Submission to the US Cycle 3 UPR, submitted October 3, 2019.
[816] Figure 35.
[817] See Section 3.2. above.



Submission of the American Civil Liberties Union (ACLU) to the United Nations Universal Periodic Review of the United States of America
36th Session of the Universal Periodic Review; 3rd Cycle (May 4-15, 2020)

October 3, 2019

The American Civil Liberties Union (ACLU) contributes this submission to the Universal Periodic Review of the United States. The ACLU is a nationwide, nonprofit, nonpartisan organization dedicated to protecting human rights and civil liberties in the United States. The ACLU is the largest civil liberties organization in the country, with affiliate offices in 50 states and over 1.5 million members.

In the United States, more than 2.2 million people are locked behind bars on any given day, and people are incarcerated nearly 11 million times over an average year, while an additional 4.5 million people are on probation or parole.[1] Jails across the country are incarcerating 462,000 people pre-trial who have not even been convicted of a crime.[2] The United States locks up more people, both in absolute numbers and per capita, than any other country. Blacks and Latinos represent 56 percent of the adult prison population, while only 28 percent of the U.S. general population.[3] Since the 1970s, extreme sentencing laws and practices are keeping people incarcerated for far longer than ever before. The National Research Council reported that half of the 222 percent growth in state prison populations between 1980 and 2010 was due to an increase of time served in prison for all offenses.[4]

The following submission addresses excessive and disproportionate sentences in the United States, including life and life-without-parole sentences and the death penalty, that violate U.S. human rights commitments and are out of step with sentencing practices internationally.

Contact information: HumanRights@aclu.org
Website: www.aclu.org

Figure 35: Front Cover of ACLU Stakeholder Submission to US Cycle 3 UPR, submitted October 2019.

Ultimately, the dataset does not provide direct evidence that the absence of explicit reference to the Campaign undermined the ACLU's visibility. Nonetheless, it is significant that its Cycle 3 submission was so closely aligned with the IHR framework, liberal framing, and the Campaign materials. This suggests a missed opportunity; by not invoking the Campaign, the ACLU may have limited the extent to which it can be recognised as a domestic authority on criminal justice. This reinforces that expertise, like identity, is not automatic but must be actively performed to meet the Resolution 5/1's emphasis on credible and reliable contributions.

5.4. Observations of the Dataset

Before detailing the broader implications of these findings, an important acknowledgement must be made. While Prong Two addresses the role of IHR alignment in detail, some observations here necessitate an overlap across both prongs. Driven by the dataset, this reflects the roles of these two Prongs as inherent components of the UPR.[818] Moreover, it suggests that liberal framing often coincides with IHR alignment, which are mutually reinforcing and therefore may shape visibility at the UPR. This is likely a manifestation of Resolution 5/1, which not only calls for credible and reliable evidence,[819] but also explicitly lists the legal basis of the review as the IHR framework.[820] Here it materialised that Prongs One and Two operate together. Visibility at the UPR is enhanced when CSO recommendations perform a consistent, legible identity, that is grounded in the IHR framework. Accordingly, where discussion addresses IHR anchoring, it is briefly noted here, with richer discussion reserved for Chapter Six.

5.4.1. Observation One: Paragraph 15(c): Performing Expertise as a Barrier to Access

Prong One centres on two dimensions: identity and expertise. A consistent theoretical identity acts as a marker of legitimacy, bringing the CSO advocacy in line with the Resolution mandate. Expertise, in turn, is typically understood as the technical knowledge and detailed reporting that CSOs contribute to international processes.[821] It is evident that this requirement ensures quality, yet it also functions as a filter, privileging professionalised CSOs[822] and potentially excluding grassroot voices that may lack the resources necessary to meet these expectations.[823]

Existing literature has demonstrated how this expectation shapes human rights advocacy,[824] particularly where legitimacy is equated with legalism and technocratic reporting, including this

[818] Figure 27.
[819] Resolution 5/1, ¶15(c).
[820] Resolution 5/1, ¶1. See also, Chapter 3.1.3.
[821] J Sebastián Rodríguez-Alarcón & Valentina Montoya-Robledo, *The Unrestrained Corporatization and Professionalization of the Human Rights Field*, 2 INTER GENTES (2019).
[822] *Id.*
[823] Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 CLINICAL L. REV. 255, 256 (2014).
[824] Rodríguez-Alarcón and Montoya-Robledo, *supra* note 821.

thesis which supports the case study selections on the basis of legitimacy.[825] There seems to be an expectation that CSOs function as expert witnesses rather than political actors with influence, which reinforces the UPR's function as a monitoring mechanism rather than a transformative one.[826] As Power describes, the UPR Secretariat engages in "rituals of verification,"[827] meaning it selects and curates the stakeholder report with the overarching objective of projecting neutrality; relying heavily on institutional familiarity and reputational trust. This results in a bureaucratic procedure that seems to be designed to convey legitimacy rather than conduct substantive fact-checking.[828]

Similarly, Freedman and Gordon point to the hierarchies of access within the UN human rights system, which advantages longstanding, well-resourced CSOs.[829] The ECOSOC accreditation system reinforces a structural bias that privileges these CSOs. Although the author recognises the rationale behind the application process to ascertain this accreditation, [830] it still favours longstanding CSOs with institutional recognition. Moss highlights the organisations with ECOSOC accreditation have an evident structural advantage in influencing review processes as only they can submit written and oral statements directly.[831]

The data presented in this chapter contributes evidence of how Paragraph 15(c) of Resolution 5/1 operates as filter but also a performance requirement, which essentially mirrors this established system to accreditation. Expertise must be legible in ways that reduces institutional burdens on the OHCHR drafters. In the data, the ACLU consistently relies on liberal framing, and where it is consistently framing its upwards and downwards advocacy in this way, it signals both a predictable identity and expertise. Even so, not all recommendations translated into visibility at the UPR,

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[825] Section 4.2.5.
[826] Martine Beijerman, *Conceptual Confusions in Debating the Role of NGOs for the Democratic Legitimacy of International Law*, 9 TRANSNATIONAL L. THEORY 147, 370 (2016).
[827] MICHAEL POWER, THE AUDIT SOCIETY: RITUALS OF VERIFICATION 100 (1997); Michael Power, *Evaluating the Audit Explosion*, 25 LAW & POLICY 185, 199 (2003); *See also*, Adam Crawford, *Societal Impact as 'Rituals of Verification' and The Co-Production of Knowledge*, 60 BRIT. J. CRIMINOL. 493, 493 (2020).
[828] POWER, *supra* note 827.
[829] Rosa Freedman & Samuel Gordon, *Civil Society and the UN Human Rights System*, *in* THE PROTECTION ROLES OF HUMAN RIGHTS NGOS: ESSAYS IN HONOUR OF ADRIEN-CLAUDE ZOLLER 132, 137 (Bertrand Ramcharan et al. eds., 2022), https://brill.com/view/title/62410.
[830] U.N. Econ. & Soc. Council, Res. 1996/31, U.N. Doc. E/RES/1996/31 (July 25, 1996).
[831] Moss, *supra* note 121 at 127.

supporting the argument that expertise is not a guarantee of visibility, but rather a minimum threshold.

5.4.2. Observation Two: Liberalism-bias in IHR Mechanisms

A structural critique that emerges from the discussion above is the apparent liberalism-bias reflected in the IHR system that appears to extend to the UPR. First, it is necessary to firmly establish liberalism as a core tenet of IHR. To do this, this thesis employs Moravcsik's reformulation of liberal theory, which posits that civil society is "analytically prior,"[832] meaning it constitutes the societal demands that States must translate into policy.[833] In this bottom-up approach, CSOs are not peripheral but essential in defining State preferences and subsequent international outcomes. This lens underpins most of the normative justification for CSO participation in IHR mechanisms like the UPR as they are viewed as intermediaries between the State and the person,[834] "norm entrepreneurs" that influence legal frameworks,[835] and agents of accountability that ensure transparency and oversight in decision-making.[836]

On this, although not the first to coin the term,[837] Sunstein uses "norm entrepreneur" to discuss CSO action exclusively at the national level,[838] explaining that their role is to "exploit widespread dissatisfaction" and thus moving society towards a new norm "by (a) signalling their own commitment to change, (b) creating coalitions, (c) making defiance of the norms seem or be less costly, and (d) making compliance with the new norms seem or be more beneficial."[839] He suggests that this norm entrepreneurship helps explain why domestic political movements, such as the collapse of the apartheid regime in South Africa and the Communist regime in the Soviet Union, could occur so rapidly and peacefully.[840] In 1998, Koh extended Sunstein's ideas into the

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[832] Andrew Moravcsik, *Taking Preferences Seriously: A Liberal Theory of International Politics*, 51 INT'L ORG. 513, 517 (1997).
[833] *Id.* at 525.
[834] COHEN AND ARATO, *supra* note 122; Dakoda Trithara, *Agents of Platform Governance: Analyzing U.S. Civil Society's Role in Contesting Online Content Moderation*, 48 TELECOMMUNICATIONS POLICY 1, 2 (2024).
[835] Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903 (1996); Harlod H. Koh, *The 1998 Frankel Lecture: Bringing International Law Home*, 35 HOUS. L. REV. 623 (1998).
[836] Erla Thrandardottir, *NGO LEGITIMACY: FOUR MODELS*, 51 REPRESENTATION 107, 108 (2015).
[837] David E. Pozen, *We Are All Entrepreneurs Now*, 43 WAKE FOREST L. REV. 283, 307 (2008).
[838] Sunstein, *supra* note 835 at 909.
[839] *Id.* at 929.
[840] *Id.* at 912,929–30.

international sphere, coining the term "transnational norm entrepreneurs."[841] His idea saw CSOs as catalysts for the domestic incorporation of IHR law.[842] However, he observed that the scope of their ambitions required the CSOs to cultivate "governmental norm sponsors,"[843] among other members of the international space,[844] whose influence can subsequently be leveraged.[845] This is the assumption that sustains the UPR's design.

Koh's contribution has since been developed even further,[846] but one stands out as particularly pertinent to this discussion. First articulated by Keck and Sikkink, the "boomerang effect" describes a characteristic pattern of CSO engagement in international arenas.[847] When domestic channels of advocacy are blocked or ineffective, CSOs can turn to the international community; raising concerns that align with IHR norms; who can subsequently exert diplomatic pressures on the target State – ultimately "echoing back" the demands in the domestic arena.[848] In principle, the UPR appears an ideal space for the boomerang effect. It provides a structured space for domestic CSOs to raise concerns to the OHCHR and relies on the Recommending States to echo those concerns back to the SuR.

Moreover, the liberal foundation of IHR advocacy is reflected in the historical institutionalisation of legal formalism as the dominant mode of engagement, where human rights regimes rely less on coercive enforcement, and more on mechanisms of persuasion and reputational incentives to secure compliance with IHR standards.[849] In such a system, affinity towards procedural accountability reinforces the paradigm in which legalism becomes a principal tool for human rights advocacy.[850] This can be rooted to the genealogy of human rights,[851] which traces back to the

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[841] Koh, *supra* note 835 at 646–55.
[842] Harold H. Koh, *International Law as Part of Our Law*, 98 AM. J. INT'L. LAW 43, 646–55 (2025).
[843] Koh, *supra* note 835 at 648–9.
[844] Pozen, *supra* note 837 at 307.
[845] Koh, *supra* note 842 at 648–9.
[846] *E.g.*, ERIC A. POSNER, LAW AND SOCIAL NORMS 29–32 (2000); Robert C. Ellickson, *The Market for Social Norms*, 3 AM. L. & ECON. REV. 1, 10–17 (2001); Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 887, 910 (1998); KECK AND SIKKINK, *supra* note 22.
[847] KECK AND SIKKINK, *supra* note 22 at 12–3.
[848] *Id.* at 13.
[849] Moravcsik, *supra* note 36 at 245.
[850] *Id.*
[851] Tobias Berger, *Human Rights beyond the Liberal Script: A Morphological Approach*, 67 INTERNATIONAL STUDIES QUARTERLY sqad042 (2023).

period of enlightenment liberalism,[852] and emphasises the protection of individual liberties,[853] the rule of law,[854] and representative democracy.[855] Although liberalism is not a monolithic ideology,[856] the dominant strands visible in human rights discourse repeatedly prioritises civil and political rights over socio-economic ones.[857] This legalistic turn is criticised for diminishing the broader political project; rather than offering a framework for radical political transformation, human rights have increasingly been instrumentalised as a mechanism for incremental legal reform, focusing on monitoring, reporting, and compliance rather than systemic change.[858]

As a mechanism operating within the UN framework, the UPR has inevitably inherited the liberal biases of the system. Beyond the emphasis on State accountability through periodic reporting, the dataset, through an assessment of UPR reactions to CSO engagement, suggests this legalisation of liberalism continues to impact the visibility of certain issues. Focusing solely on theoretical mappings, the dataset challenges the notion that the IHR framework functions within a paradigm of liberalism as described by Moravcsik, Sunstein, Koh, Keck and Sikkink. This thesis suggests that there is a bias that privileges liberal framings over alternative theoretical perspectives, supporting the observations of Gassama.[859] As detailed in Table 17, liberalism was the most visible framework within the dataset. Moreover, 69% of ACLU recommendations mapped to Member State Recommendations were framed in liberal terms.[860] This inherently complicates advocacy

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[852] Robert D. Sloane, *Outrelativizing Relativism: A Liberal Defense of the Universality of International Human Right*, 34 VANDERBILT L. REV. 527, 241 (2001).
[853] *Id.* at 240.
[854] Samuel Moyn, *Human Rights and the Crisis of Liberalism*, *in* HUMAN RIGHTS FUTURES 261, 278 (Stephen Hopgood, Jack Snyder, & Leslie Vinjamuri eds., 1 ed. 2017), https://www.cambridge.org/core/product/identifier/9781108147767%23CN-bp-11/type/book_part.
[855] *Id.* at 261; Sloane, *supra* note 852 at 540.
[856] Berger, *supra* note 851.
[857] *Id.* at 5; Moyn, *supra* note 854 at 282; See also, Adam B. Seligman & David W. Montgomery, *The Tragedy of Human Rights: Liberalism and the Loss of Belonging*, 56 SOCT'Y. 203 (2019) (Who argues that the emphasis on abstract individual rights erodes communal belonging and cultural identity).
[858] David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARVARD HUM. RTS. J. 101, 14 (2017); See also, Samuel Moyn, *A Powerless Companion: Human Rights in the Age of Neoliberalism*, 77 L. & CONTEMPORARY PROBLEMS 147 (2015); Wendy Brown, *The Most We Can Hope For...": Human Rights and the Politics of Fatalism*, 103 S. ATLANTIC Q. 451 (2004); Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201 (2001).
[859] Ibrahim J Gassama, *A World Made of Violence and Misery: Human Rights as a Failed Project of Liberal Internationalism*, 37 BROOK. J. INT'L L. (2012) (Who argues that the UDHR was shaped as a liberal internationalist project, prioritising civil and political rights while sidelining economic and social justice); See also, Kennedy, *supra* note 858 at 101–06 (Who critiques human rights advocacy for "legalising" political struggles, depoliticising systemic inequalities by reducing them to procedural legal remedies); B. Golder, *Beyond Redemption? Problematising the Critique of Human Rights in Contemporary International Legal Thought*, 2 LONDON REV. OF INT'L L. 77, 77–87 (2014) (Who discusses "critical redemption," where critiques of human rights ultimately reinforce rather than dismantle the framework).
[860] Table 14.

routes for CSOs that operate under diverging frameworks, making it more difficult for their contributions to gain traction. Ultimately, this implies that the UPR mechanism may not fully recognise the diversity in stakeholder spheres, which falls in line with the broader critiques discussed.

From this perspective, the empirical findings of this chapter resonate with the critiques of liberal internationalism. The privileging of liberal framing at the UPR mirrors the wider tendency of IHR mechanisms to equate credibility with legal formalism and procedural justice. At the same time, the case study presented here shows that expertise and consistency in identity can mediate these structural constraints, with reinforces that liberalism functions more as an entry point, rather than a guarantee to visibility. Rather than contesting the liberal foundations of the mechanism, CSOs that strategically align with them are more likely to be recognised. In turn, this raises critical questions about whose voices are amplified and whose remain marginalised.[861]

In closing, these findings highlight that visibility at the UPR is mediated in three ways: the performance of identity and expertise, and by structural filters within the UPR such as liberalism bias. This underscores the importance of the next prong, which examines the impact of legal formalism on the UPR.

[861] Though Kennedy cautions against liberal hegemony in human rights discourse: "*the legalisation of human rights has made it difficult to critique the ideological commitments embedded within them."* Kennedy, *supra* note 858 at 79.

Chapter Six: Prong Two – IHR Alignment

This chapter continues the analytical findings by examining Prong Two of the model. (Figure 27) This Prong centres on IHR as it operates within the UPR, and considers how CSOs engage with, adapt to, and can shape international law. Through a binary analysis of the dataset, Prong Two posits that CSO recommendations are most effective when aligned with the IHR framework. This chapter begins by presenting an overview of the dataset from the perspective of the adopted binary system, before illustrating the concept of Prong Two through the case study dataset. Finally, the chapter turns to discuss the critical analysis of the dataset to reveal its implications on the dynamic between IHR law and CSO advocacy at the UPR.

6.1. Binary Categorisation

The mapping process of ACLU recommendations to IHR provisions was applied on an issue basis;[862] each ACLU recommendation was read, the central issue identified, and then mapped against the IHR framework to determine any thematic overlap.[863] This was detailed in Phase Two of the FRAME method.[864] The IHR framework consisted of both binding treaties and non-binding soft law instruments, and the US' signatory status was disregarded at this stage – meaning all relevant instruments were considered.[865] This broad approach reflects findings that the UPR process applies a broad and pragmatic understanding of IHR law. Resolution 5/1 sets the legal basis of the review, meaning the human rights standards against which Member States are assessed include: the UN Charter, UDHR, treaties, and voluntary commitments.[866] However, as explored in sections 2.1. and 3.1.3.1., in practice, the Recommending States extend beyond this, often relying on soft law instruments, Treaty Body outputs, and in some cases, judgements from international courts, for example.[867] In turn, this reflects a rejection of rigid distinctions between hard and soft law, in favour of a practical approach aimed at tangible outcomes. A distinction is also maintained

[862] Refer to Table 9 for a summary of the ACLU recommendations captured in the dataset.
[863] As prescribed in the FRAME method. Section 4.3.1. above.
[864] Section 4.3.
[865] Section 4.2.5.
[866] Resolution 5/1, Annex 1, ¶1.
[867] Shah & Sivakumaran, *supra* note 312 at 273.

throughout this chapter between "IHR framework" – which refers to the broader body of IHR standards, and "IHR provision" – which denotes specific standards against which recommendations were mapped. Once Phase Two was completed, the full dataset was analysed.[868] With regards to IHR mappings specifically, a binary categorisation emerged, which is summarised in Table 18 and organised by UPR Cycles. Table 19 subsequently processes these categorisations to present the percentage of ACLU recommendations that mapped to at least one Member State Recommendation.

Accordingly, throughout Chapter Six, analysis of ACLU recommendations is anchored around this binary categorisation. The two categories are: (1) recommendations that map to the IHR framework, and (2) those that do not. Category one tallies all ACLU recommendations that were successfully mapped to at least one IHR provision. Initially, no distinction was made between hard and soft law, though section 6.1.2. discusses the data in the context of these two types of legal instruments. Category two encompasses ACLU recommendations that do not map to any IHR provisions. These are often grounded in domestic legal standards or draw upon principles not formally recognised under the IHR framework. ACLU recommendations in this category reflect the unique legal and political context of the US, which emphasises domestic sovereignty and sceptical approach to IHR law.[869] While such recommendations address pressing domestic issues, the absence of alignment to recognised IHR standards potentially moderates their visibility at the UPR by diminishing their relevance to the UPR process.

6.1.1. Overview of the Dataset

Across the three Cycles, 18 ACLU recommendations were categorised into the first category and seven into the second. Processing these recommendations using a simple *yes* or *no* criteria – meaning each recommendation was, initially, only tallied if it mapped to at least one Member State Recommendation – revealed that eight (or 44.4%) of recommendations resonated at the UPR.[870]

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[868] As described in Section 4.4. above.
[869] See discussions on American Exceptionalism in Chapter X. In brief, there are three manifestations of American Exceptionalism: (1) exemptionalism, (2) double standards, and (3) legal isolationism. For these, there are four explanations: (1) realism, (2) cultural, (3) institutional, and (4) political. *See generally*, Ignatieff, *supra* note 25.
[870] It is reemphasised here that this does not imply causation.

This left 10 (55.6%) of IHR-mapped ACLU recommendations without correspondence. By contrast, non-IHR-mapped recommendations saw a starker disparity, with only two (28.6%) mapping to corresponding Member State Recommendations, where five (71.4%) did not. Table 18 provides insight into the relationship between alignment with the IHR framework and resonance within the UPR mechanism, based on this dataset. Although the dataset is small and represents only a fraction of US stakeholder submissions across three Cycles, the pattern is nonetheless clear: mapping to the IHR framework can enhance visibility. As individual CSOs cannot (rightly) monopolise influence over Member State Recommendations, these figures are not determinative. Nonetheless, they do illustrate how strategic framing may impact resonance rates, likely by enhancing the perceived legitimacy of the recommendation. This finding confirms existing observations that IHR provisions provide the basis upon which State compliance is evaluated at the UPR.[871]

	ACLU recommendations that map to the IHR Framework	**ACLU recommendations that do not map to the IHR Framework**
Cycle 1	2	1
Cycle 2	7	5
Cycle 3	9	1
Total	18	7

Table 18: ACLU recommendations by UPR Cycle and IHR Alignment.

[871] Shah and Sivakumaran, *supra* note 867 at 804–6.

Category	Number with Corresponding Member State Recommendation	Number Without Corresponding Member State Recommendation
IHR-Mapped ACLU recommendations (n=18)	8 (44.4%)	10 (55.6%)
Non-IHR-Mapped ACLU recommendations (n=7)	2 (28.6%)	5 (71.4%)

Table 19: Correspondence of ACLU recommendations with Member State Recommendations, by IHR Alignment.

Building on the figures in Table 19, Table 20 shows this shift coincides with a notable increase in resonance, capturing the scale of the uptake. From the eight IHR-mapped recommendations, there was a disproportionate number of corresponding Member State Recommendations (30) than those not mapped (2). Read together, these tables highlight a pattern of overlap between alignment to the IHR framework and subsequent visibility at the UPR, suggesting that mapping to the framework not only enhances resonance but also extends the depth of uptake by Member States. This indicates that CSOs that do not align their recommendations with the IHR framework are at a disadvantage if they wish to highlight their issues in an international forum. This is likely because of the legal boundaries imposed by Resolution 5/1, which formally establishes the UPR's evaluative framework.[872] Combined with Member State practice,[873] the legal basis of the review is firmly situated within the IHR framework, deviation from this in stakeholder submissions is rarely successful.

To further critique the UPR's lack of true normative universality, this highlights the challenges faced by CSOs whose core concerns are not presently recognised by IHR law, whether in binding treaties or soft law instruments. Often, as illustrated by ACLU recommendation 4 (Figure 40), these recommendations address specific domestic priorities – which are often either pre-normative

[872] Resolution 5/1, Annex 1, ¶1.
[873] Shah and Sivakumaran, *supra* note 867 at 273.

or incipient – that are not presently recognised in IHR law.[874] While these issues may be pressing at the national level, the UPR's evaluative framework – by design – privileges subjects already codified within the IHR system. This exposes a limitation to the mechanism: issues outside the recognised framework remain peripheral,[875] unless CSOs strategically reframe them in terms that resonate with existing standards.[876] This underscores the central claim in Prong Two that alignment of stakeholder recommendations with the IHR framework functions as an opportunity for CSOs to demonstrate their concerns are within the remit of the UPR.

Category	Total Corresponding Member State Recommendations
IHR-Mapped ACLU recommendations (n=8)	30
Non-Mapped ACLU recommendations (n=2)	2

Table 20: Total Number of Member State Recommendations Mapped to ACLU recommendations.

[874] *See E.g.*, Israel Doron & Itai Apter, *The Debate Around the Need for an International Convention on the Rights of Older Persons*, 50 THE GERONTOLOGIST 586 (2010) (on the rights of the elderly); Rachel Morrison-Dayan, *Protecting the Right to Social Participation of Older Persons in Long-Term Care under Article 19 of the United Nations Convention on the Rights of Persons with Disabilities*, 23 HUM. RTS. L. REV. ngad004 (2023) (reframing an existing human rights provision to demonstrate how current frameworks are insufficient to protect the elderly); (on digital inequality as a human rights violation) Bukola Faturoti, *Internet Access as a Human Right and the Justiciability Question in the Post-COVID-19 World*, 15 EJLT (BILETA SPECIAL ISSUE) (2024); Dominic McGoldrick, *Developments in the Right to Be Forgotten*, 13 HUM. RTS. L. REV. 761 (2013) (discussing privacy as an emerging right with global implications).

[875] Although these examples are not evidence of causation, they present potential instances to consider in the context of this observation. *E.g.,* In a submission to Kazakhstan's Cycle 4 review, AccessNow recommended the government "Refrain from shutting down the internet and blocking social media and make a state pledge to refrain from imposing any unlawful restrictions on internet access and telecommunication in the future;" among other recommendations relating to internet freedom. These could not be mapped to any Member State Recommendations to Kazakhstan. However, recommendations regarding the use of the internet that were framed under the broader rubric of freedom of expression – explicitly grounded in ICCPR provisions – did generate corresponding Recommendations (140.100, 140.109, 140.110, 140.111), all of which directly cite freedom of expression. This was established through a keyword search using the "find" function, scanning for direct overlaps in wording with the term "internet."

[876] *E.g.,* in their submission to Kenya's Cycle 4 review, JS46, which exclusively focused on the rights of older persons and social protection, made a single recommendation: "The Government should guarantee the rights of Older Persons to access health insurance and services that meet their specific needs." A cursory mapping to Recommendation 54.123 "Increase national efforts to promote public health, especially the health of women, children and the elderly (Bahrain);" can be observed. Here, the CSOs seem to have framed their recommendation in terms of access to health. Considering the Member State Recommendation taking a broader approach and mentioning other vulnerable groups too, it potentially exposes a gap in the IHR framework.

6.1.2. Treaty versus Non-Treaty Mapping

The tension described in section 6.1.1. implies a structural paradox: the UPR's mandate is to "improve human rights on the ground,"[877]grounded in principles of universality and dialogue yet it is constrained to consider issues presently recognised within the IHR framework – which may not be an accurate measure of some domestic realities. The extent of this privileging is further illustrated by the differential resonance between treaty-based and non-treaty-based recommendations.

Considering the values in Table 18, 18 ACLU recommendations were tallied as IHR-mapped. Disaggregated, a further categorisation emerges: 12 recommendations were mapped to treaty provisions, and six were mapped to soft-law instruments, namely non-binding rules.[878] Five (41.7%) treaty-mapped ACLU recommendations were subsequently attached to a corresponding Member State Recommendation, which is contrasted against the two (33.3%) from the non-treaty-mapped group. (Table 21)

	Number with Corresponding Member State Recommendations	**Number without Corresponding Member State Recommendations**	**Total**	**% with Correspondence**
Treaty-mapped ACLU recommendations (n=12)	5	7	12	41.7%
Non-treaty-mapped ACLU recommendations (n=6)	2	4	6	33.3%

Table 21: Treaty versus Non-Treaty Alignment of IHR-Mapped ACLU recommendations and their Correspondence with Member State Recommendations.

[877] Resolution 5/1, Annex ¶ 4(a): "The objectives of the review are: (a) The improvement of the human rights situation on the ground."
[878] As previously detailed, these categorisations were conducted on an interpretive basis, rather than through explicit citations to these instruments.

The disparity emerging from the dataset demonstrates the dominant role of treaties within the UPR evaluative framework; State compliance with IHR standards is more significantly evaluated against binding legal obligations than customary or non-binding soft law.[879] This is illustrated in Table 22, which disaggregates ACLU recommendations from the dataset by type of IHR mapping (treaty, soft law, both, or none) and by whether the mapping corresponded to at least one Member State Recommendation. The figures show that treaty-based ACLU recommendations resonated more consistently (28.6%-33.3%), whilst exclusively soft-law-mapped recommendations were far less likely to correspond to Member State Recommendations (0%). Interestingly, the soft-law only category of recommendation with a higher uptake (66.7%) involved multiple mappings, suggesting that reinforcement across non-binding instruments may compensate for the absence of binding force. In contrast, recommendations without any alignment corresponded at 33.3%, which continues to support the position that advocacy outside the IHR framework remains at a strategic disadvantage.

	Total	**With Corresponding Member State Recommendation**	**Without Corresponding Member State Recommendation**
Treaty only (single provision)	7	2 (28.6%)	5
Treaty only (multiple provisions)	3	1 (33.3%)	2
Soft law only (single provision)	3	0	3
Soft law only (multiple provisions)	3	2 (66.7%)	1
Both Treaty & Soft Law	3	1 (33.3%)	2
No IHR Mapping	6	2 (33.3%)	4
Total	25	8 (32%)	17 (68%)

Table 22: Resonance of ACLU recommendations by Type of IHR Mapping.

[879] *See generally*, Shah and Sivakumaran, *supra* note 867.

These patterns confirm Shah and Sivakumaran's findings on the UPR's pragmatic approach to the use of the IHR framework during the review.[880] In this vein, the data further reinforces Ratner's observations on the utility of soft law instruments, credited to their flexibility and non-binding nature.[881] Considering the arguments put forward by Weil, who dismisses soft law as a "pathological phenomenon"[882] that weakens the international normative system,[883] the dataset affirms the concern when these provisions are deployed in isolation. However, the figures demonstrate the potential of normative pluralism; when ACLU recommendations are mapped to multiple soft law provisions, there is a greater uptake (66.7%), a possible indicator of breadth or legitimacy. Contrary to Weil's position, this suggests soft law could function as a vehicle through which CSOs can bridge normative gaps. For example, General Comments or UN Declarations, both examples of soft law instruments, provide interpretative tools that clarify treaty obligations or expand their application to evolving contexts.[884] Furthermore, it is documented that drafters of the stakeholder report also position CSO issues within the broader framework, with the aim of making them more palatable to the SuR.[885] Taken together, soft law can be the avenue through which CSOs do the same. Likewise, Billaud points to an orientation to "preserve a 'technical' language, pointing to specific conventions and treaties,"[886] confirming that such mapping is noted by the various drafters of the stakeholder report.

Overall, these patterns illustrate the broader complexity of IHR advocacy. While treaties provide formal, binding obligations, non-treaty norms offer the adaptability needed to raise emerging human rights challenges and expand the scope of CSO advocacy.[887] Therefore, the data shows both the promise and limitations of soft law within the UPR framework, suggesting that normative pluralism, contrary to Weil's critique, provides for a means through which CSOs can more effectively navigate the UPR's evaluative framework.

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[880] *Id.* at 270.
[881] Steven R. Ratner, *Introduction to the Symposium on Soft and Hard Law on Business and Human Rights*, 114 AJIL UNBOUND 163, 164 (2020).
[882] Prosper Weil, *Towards Relative Normativity in International Law?*, 77 AM. J. INT. LAW 413, 416–7 (1983).
[883] *Id.* at 414–5.
[884] Max Lesch & Nina Reiners, *Informal Human Rights Law-Making: How Treaty Bodies Use 'General Comments' to Develop International Law*, 12 GLOB. CON. 378 (2023).
[885] Billaud, *supra* note 805 at 77.
[886] *Id.* at 79.
[887] Elina Steinerte & Vincent Ploton, *Treaty Bodies and Special Procedures: Can They Work Better Together?*, 15 J. HUM. RTS. PRACTICE 784, 787 (2023).

6.1.3. The ACLU's Evolution on IHR Strategy

Table 18 also demonstrates another trend in ACLU recommendations; across the three Cycles, there is an increase in the number of IHR-mapped recommendations, based exclusively on those extracted for the dataset. This could further evidence the ACLU's maturing understanding of the UPR process, discussed in section 5.1. . However, close reading of the ACLU submissions indicates a potential shift in ACLU strategy over the three Cycles. Summarised in Table 23, the ACLU's stakeholder submissions illustrate a potential evolution in its international advocacy. Beginning in Cycle 1, the ACLU submitted a 19-page document, which contained 10 recommendations in total, across five themes. The document also read in a litigatory style, in line with the CSO's typical domestic strategy. By Cycle 2, the ACLU submitted another 19-page document, this time covering four broad themes and making 31 recommendations. This submission was categorised as a "joint," submission although the ACLU was the only organisation on the file. This may indicate a response to how other stakeholders presented their submissions in the previous Cycle, though this remains speculative, particularly given Chauville's observation that many CSOs were unaware of the availability of other submissions on the OHCHR website at the time.[888] By Cycle 3, the ACLU reverted to a single-author categorisation, which was significantly shorter, at only eight pages, and focused exclusively on Campaign issues albeit not expressly. The timing and content appear to have been influenced by the Campaign, which was launched the year prior,[889] which may be indicative of a closer integration between domestic advocacy Campaigns and IHR engagement. This narrowing of scope potentially illustrates a deliberate strategic shift by the ACLU, moving from breadth to depth in its IHR advocacy.

[888] Chauville, *supra* note 5 at 105.
[889] Section 3.6.

Cycle	Submission	Pgs.	Total Recs. in Submission	Recs. Extracted for Dataset	Thematic Scope of Submission
1	ACLU (National)	19	10	3	5
2	ACLU (National)	19	31	7	4
2	ACLU (Michigan – Joint)	8	5	5	1
3	ACLU (National)	8	10	10	1

Table 23: ACLU Submission by Cycle - Total & Extracted recommendations, and Thematic Scope.

In closing, this section presented a statistical discussion of the dataset, demonstrating that alignment with the IHR framework is not a neutral exercise. Instead, the figures indicate it is potentially a strategic act of translation. The data also shows the strategic value of utilising the full expanse of the IHR framework, notably soft law instruments, which do seemingly resonate with Member States at the UPR. Considering the ACLU's evolving approach, and its consistent reliance on the IHR framework, this is a way to connect domestic priorities to international norms. However, it is specifically through soft law's expansion that the IHR framework grew to address issues previously deemed purely domestic concerns – such as criminal justice reform.[890]

Nonetheless, it is also important to note that the mapping process was interpretive rather than citation based. The author identified substantive overlap with the IHR framework, even where they were not explicitly invoked. Whilst this may reflect the exercise carried out by drafters and Member States, Section 6.3 serves the purpose of extracting examples from the dataset to more firmly establish the concept of Prong Two.

[890] Ely Aaronson & Gregory C. Shaffer, *Defining Crimes in a Global Age: Criminalization as a Transnational Legal Process*, 46 L. & SOCIAL INQUIRY 455 (2021); Gary LaFree, *Progress and Obstacles in the Internationalization of Criminology*, 1 INT'L CRIMINOLOGY 58 (2021).

6.2. Prong Two Concept

As detailed in section 6.1., the data indicates that ACLU recommendations aligned with the IHR framework exhibit a higher correlation with UPR Recommendations (44.4%) compared to those that are not (28.6%). (Table 19) This trend suggests a strategic advantage of situating CSO recommendations within the IHR framework, which may be seen to enhance their perceived legitimacy, as defined in Chapter 5, or alternatively confirming the jurisdiction of the UPR. This considered, explicit reference to the IHR framework is not always required for CSO recommendations to align with international norms, but issues must be framed so they can be readily mapped onto treaty or non-treaty provisions to resonate within the UPR.

Within this overall trend, ACLU recommendations aligned with treaties showed a higher correlation with Member State Recommendations (41.7%) than those based on non-treaty instruments (33.3%). (Table 21) Although the difference is modest, it highlights that non-treaty provisions remain important advocacy tools, especially in addressing treaty gaps or emerging human rights issues. The data also reveals how both the UPR and CSO advocacy can expose blind spots in the IHR framework. This interplay underscores the flexibility of the UPR in accommodating diverse normative sources, enabling CSOs to draw on both treaty and non-treaty mechanisms to pursue systemic reform.

By including the full IHR framework – both treaty and soft law instrument provisions were considered – Prong Two emphasises the importance of strategic alignment with IHR law. Such alignment confirms the jurisdiction of the UPR over an issue raised, which consequently amplifies the visibility and resonance of a CSO recommendation. The following section uses the dataset to demonstrate the prong.

6.3. Data Analysis

To best utilise the dataset points extracted in this chapter, the ACLU recommendations arranged into the binary categories are presented in four sub-groups: (1) recommendations that mapped to the IHR framework and at least one Member State Recommendation; (2) recommendations that mapped to the IHR framework, but no Member State Recommendations; (3) recommendations

that mapped to neither the IHR framework nor Recommendations, and; (4) recommendations that did not map to the IHR framework, but did map to a Member State Recommendation.

Unlike the analysis in Chapters Five and Seven, the following section draws from the ACLU's Campaign for Smart Justice due to the thematic overlap. In the absence of IHR citations within the domestic Blueprint, the following sections establish the interconnectedness of the Campaign objectives – more specifically its thematic focuses – and IHR law. Prong Two demonstrates the strategic value of situating stakeholder recommendations within this legal framework to maximise resonance at the UPR. By contrast, the Campaign seeks to advance parallel reforms, without explicitly drawing from the IHR framework. This contrast underscores the simultaneous synergy and a missed opportunity in the ACLU's dual strategy; ultimately showing how Prong Two could inform future ACLU advocacy that bridges domestic reform agendas with the leverage accrued at the UPR.

6.3.1. Group 1: ACLU recommendations that Mapped to the IHR Framework and at least one Member State Recommendation

ACLU recommendations placed into group 1 mapped to at least one IHR provision and Member State Recommendation. In total, eight (44.4%) of the 18 ACLU recommendations tallied in Table 18 meet these criteria. (Table 19) Therefore, these recommendations best illustrate the central claim in Prong Two: alignment with the IHR framework legitimises the issue raised in the CSO recommendations and signals to Member States at the UPR that they come under the jurisdiction of the mechanism.

Consider ACLU recommendation 6 (Figure 36) which focuses on improving access to federal habeas corpus review by addressing the restrictive provisions of the Antiterrorism and Effective Death Penalty Act 1996 (AEDPA). According to Dow and Freedman, the AEDPA has curtailed the scope of federal habeas corpus review in capital cases, imposing strict time limits and other procedural hurdles that have reduced the number of federal reviews of meritorious claims of

constitutional violations.[891] This shifts habeas litigation from a safeguard against wrongful executions to a process that prioritises efficiency and finality over justice. Considering the irreversibility of capital punishment, AEDPA contravenes numerous IHR provisions, such as Articles 6 (right to life) and 14 (fair trial rights) of the ICCPR, which would render the US non-compliant with its international obligations.[892] In line with the scholarly critiques, the ACLU raised the issue at the UPR. The interpretive mapping process aligned this recommendation with ICCPR Article 14(3)(d), which enshrines the right to habeas corpus, and in turn, this mapped to a Recommendation made by Austria (92.186). This more broadly called for the US to ensure access to habeas corpus "in all cases of detention." The provisions of the AEDPA have been characterised as a "radical departure from historical norms," and ambiguously defined, which further complicates prisoners' ability to prove their claims.[893] These criticisms are of particular concern in capital trials, where errors are irreversible.[894] The AEDPA has also been said to have been enacted hastily, and within a politically charged climate[895] which consequently created a "procedural labyrinth."[896] For example, under §§ 2244(d) and 2254(d) of the AEDPA, a one-year statute of limitation[897] and "unreasonable application" standards which negatively impacted potentially meritorious claims.[898] The literature demonstrated several instances where AEDPA provisions led to injustices including delays and denials of relief for individuals with strong claims or innocence or constitutional violations.[899]

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[891] David R. Dow & Eric M Freedman, *The Effects of AEDPA on Justice*, *in* THE FUTURE OF AMERICA'S DEATH PENALTY: AN AGENDA FOR THE NEXT GENERATION OF CAPITAL PUNISHMENT RESEARCH 261, 266 (2009); *See*, John H. Blume, *AEDPA: The Hype and the Bite*, 91 CORNELL L. REV. 259 (2006); Judith L. Ritter, *The Voice of Reason—Why Recent Judicial Interpretations of the Antiterrorism and Effective Death Penalty Act's Restrictions on Habeas Corpus Are Wrong*, 37 SEATTLE U.L. REV. 55 (2013) for further details of the domestic provisions.
[892] Although not directly discussing the ICCPR, Hoppe explores how the US provision clashes with international obligations. Carsten Hoppe, *Implementation of LaGrand and Avena in Germany and the United States: Exploring a Transatlantic Divide in Search of a Uniform Interpretation of Consular Rights*, 18 EUROPEAN J. OF INT'L L. 317 (2007).
[893] Dow and Freedman, *supra* note 891 at 352–4.
[894] *Id.* at 355–8.
[895] Brandon L. Garrett & Kaitlin Philips, *AEDPA Repeal*, 107 CORNELL L. REV. 1739, 1742 (2022).
[896] *Id.* at 1761.
[897] *Id.* at 1757.
[898] *Id.* at 1759.
[899] *Id.* at 1752–64.

As habeas corpus is a fundamental safeguard against both arbitrary detention and procedural injustice, it is recognised as a cornerstone of civil and political rights across the UN IHR and broader regional international legal frameworks.[900] Bettelli's analysis of *Boumediene v. Bush* stresses this point, demonstrating how SCOTUS implicitly situated habeas within the IHR framework, including the ICCPR.[901] Although subsequent federal cases have not consistently respected this integration, the ruling affirmed that habeas corpus amounted to a non-derogable right, central to IHR law.[902]

ACLU recommendation	Habeas review in death penalty cases: Congress should amend the habeas-related provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) so that federal courts are more accessible to prisoners asserting claims of constitutional violations.
IHR Mapping	ICCPR - Article 14.3.d
UPR Recommendation	92.186 - Ensure the right to habeas corpus in all cases of detention (Austria)
Response	Supported

Figure 36: ACLU recommendation 6 (Prong 2).

In the context of ACLU recommendation 6 (Figure 36), this mapping may be indicative of advocacy beyond domestic legalism. Although submitted in Cycle 1, and thus preceding the official launch of the Campaign, its dual coding for both prosecutorial reform (D10) and sentencing

[900] *E.g.,* ICCPR Art. 9(4); CRC Art. 37(d); International Convention for the Protection of All Persons from Enforced Disappearance art. 17(2)(f), Dec. 20, 2006, 2716 U.N.T.S. 3.; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment princ. 32(1), G.A. Res. 43/173, annex (Dec. 9, 1988); Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Person) ¶¶ 41–46, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014); American Convention on Human Rights art. 7(6) (right to habeas corpus/recourse to a judge), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Inter-American Court of Human Rights, Advisory Opinion OC-8/87, Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) & 7(6) ACHR) (Jan. 30, 1987); American Declaration of the Rights and Duties of Man art. XXV (explicit "habeas corpus"), O.A.S. Res. XXX, Ninth Int'l Conference of American States (Bogotá, 1948); Convention for the Protection of Human Rights and Fundamental Freedoms art. 5(4), Nov. 4, 1950, 213 U.N.T.S. 221; African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa princ. M (4)– (5) (explicit right to take proceedings; "right to habeas corpus, amparo or similar procedures") (2003).

[901] Paola Bettelli, *The Contours of Habeas Corpus After Boumediene v. Bush in the Context of International Law*, 28 N.Y. INT'L L. REV. 1, 9 (2015).

[902] *Id.* at 6–19.

reform (F10) resonate with the Campaign's later priorities. It is noteworthy that the ACLU does not explicitly invoke the ICCPR in its recommendation but does explicitly cite Article 9 of the ICCPR in section I of its submission in Cycle 1, albeit as an endnote.[903] More precisely, it frames the subject of "facing criminal charges or [having been] deprived of liberty" as well as the pursuit of litigation "concerning civil rights or human rights violations" squarely within the provisions of the ICCPR.[904] As the ACLU situates its advocacy within this IHR framework context, the author's interpretive mapping to the ICCPR is confirmed. Moreover, it suggests that the ACLU scaffolded its recommendation using IHR provisions in a strategic effort to legitimise its contribution.

An interesting result emerges when observing ACLU recommendation 7, which adopts a broader approach to advocacy related to capital punishment. In this recommendation, shown in Figure 37, the ACLU calls for a national moratorium on the death penalty, its eventual abolition at the federal level, and an examination of racial disparities in death sentencing. This firmly mapped to Articles 6(1) and 6(5) of the ICCPR, which enshrine the right to life and the progressive abolition of capital punishment. However, this recommendation subsequently corresponded with 22 Member State Recommendations – all of which were noted by the US, reflecting its continuous resistance to international pressures on this issue.[905] Kamatali observed that although the death penalty was raised in every Cycle, stakeholders focused such recommendations during Cycles 1 and 2 on its arbitrariness, discrimination and its application to individuals with mental illness. However, in Cycle 3, the most persistent concerns relating to the death penalty pertained to its arbitrariness across the federated states, and additional influencing factors such as race and socioeconomic status.[906] The latter observation is visible in the ACLU's recommendation. This trend was also reflected in the Member States' Recommendations, where during Cycles 1 and 2 they focused on the application of the death penalty, pointing out racial disparities within its application and raising instances of inhumane treatment during executions.[907] Considering these trends, it is evident that capital punishment is a serious concern for stakeholders, the UN, and Member States alike. This makes the ACLU's mappings here privileged on two fronts: first, it concerns a treaty provision

[903] ACLU Stakeholder Submission to the Universal Periodic Review of the United States of America (2010).
[904] *Id.* at 2.
[905] Jean-Marie Kamatali, *The State of Human Rights in the United States of America: Lessons Learned from the Last Three Universal Periodic Reviews*, 33 TUL. J. INT'L & COMP. L. 515, 544 (2025).
[906] *Id.* at 544, Though Kamatali also notes the compilation report presents a similar trend. *Id.* at 544–5.
[907] Kamatali, *supra* note 905 at 545.

within the ICCPR, which is regarded as a part of the International Bill of Rights.[908] Second, it concerns an issue that is highly scrutinised in international spheres.

ACLU recommendation	The federal government should impose a national moratorium on the use of the death penalty and Congress should pass legislation abolishing the federal death penalty. Meanwhile, the federal government should study the racial disparities in the imposition of death sentences.	
IHR Mapping	ICCPR Article 6.1 & 6.5	
UPR Recommendation	Recommendation 26.179 Recommendation 26.180 Recommendation 26.184 Recommendation 26.185 Recommendation 26.186 Recommendation 26.187 Recommendation 26.188 Recommendation 26.190 Recommendation 26.191 Recommendation 26.192	Recommendation 26.194 Recommendation 26.195 Recommendation 26.196 Recommendation 26.197 Recommendation 26.198 Recommendation 26.200 Recommendation 26.202 Recommendation 26.203 Recommendation 26.205
Response	All Noted	

Figure 37: ACLU recommendation 7 (Prong 2).

On the first front, issues contained within the International Bill of Rights are more likely to be addressed during the UPR due to several inherent aspects of the mechanism and its complementary relationship with other human rights mechanisms. As Carraro observes, the provisions within the ICCPR provide the UPR with a foundation for addressing systemic human rights violations, including the discriminatory application of the death penalty.[909] Furthermore, although not discussing the UPR, Storey's analysis of US engagement with the Human Rights Committee ("the Committee") demonstrates how CSOs strategically frame their advocacy on capital punishment

[908] The international Bill of Rights is composed from three of the core IHR treaties, these are: the UDHR, the ICCPR, and the ICESCR. These are selected as they represent the foundational codification of universal human rights in the UN era, they cover the two broad categories of rights (civil and political as well as economic, social and cultural), and the ICCPR and ICESCR are legally binding on signatory States. See generally, Humphrey, *supra* note 64; *See also,* Sam McFarland & Ruben I. Zamora, *Human Rights Developments from the Universal Declaration to the Present*, *in* THE CAMBRIDGE HANDBOOK OF PSYCHOLOGY AND HUMAN RIGHTS 25, 29 (2020).

[909] Carraro, A Double-Edged Sword: The Effects of Politicization on the Authority of the UN Universal Periodic Review and Treaty Bodies (2017) (maastricht university), https://cris.maastrichtuniversity.nl/portal/en/publications/a-doubleedged-sword(549be48d-022e-4daa-940b-f4c52a86fe17).html.

through the ICCPR, drawing on authority from the treaty to strengthen their claims.[910] The ACLU, for example, submitted evidence to the Committee's 2014 review, highlighting examples of state executions of individuals with intellectual disabilities – in contravention of domestic legal precedent.[911] Despite the domestic anchor, the ACLU situated its evidence within the ICCPR framework, demonstrating a deliberate attempt to hold the US accountable to its IHR obligations. Nonetheless, the US' exceptional approach to international scrutiny is again observed by Storey, noting that the issue was not included in the review, beyond the ACLU's own filing.[912] Together, this illustrates the potential limitations of treaty alignment: hard law provides the normative authority, but impact depends on State receptivity.

This dynamic is paralleled within this dataset: treaty-based advocacy can heighten the visibility of CSO recommendations, but resistance from the SuR may continue to blunt the effectiveness of these efforts. Crucially, however, Prong Two does not assert that mapping translates to implementation nor immediate impact in the domestic setting. It also does not suggest that a SuR's response is intrinsically linked to the value of a Recommendation – in reality, McMahon and Ascherio observe that even noted Recommendations have served as markers of international scrutiny, enabling CSOs to continue benefitting from their pressures.[913] Rather, this thesis positions resonance at the UPR as a tool for CSOs to harness the impact of the boomerang effect to reinforce their domestic advocacy. In line with Carraro's conclusions, the effectiveness of Member State Recommendations stems from their political nature; both in the peer and public pressure they generate.[914] Therefore, Prong Two is merely part of a wider proposed strategy to bridge the gap between IHR standards and domestic practice.

On the second front, across the first three Cycles of the UPR, Member States made 3,973 Recommendations relating to the death penalty, which is particularly high when compared to other human rights issues.[915] There is also an observable increase in the number of Recommendations

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[910] Storey, *supra* note 74 at 68.
[911] *Id.* at 80.
[912] *Id.*
[913] Edward McMahon & Marta Ascherio, *A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council*, 18 GG 231, 240–3 (2012).
[914] Carraro, *supra* note 909 at 199. This pressure is heightened because the Recommendations are issued bilaterally.
[915] Amy Bergquist, *From Advocacy to Abolition: How the Universal Periodic Review Can Shape the Trajectory of the Abolition of the Death Penalty*, 53 CAL. W. INT'L L.J. 415, 426 (2023) Freedom of the press received 2,176 Recommendations, and sexual orientation and gender identity (SOGI) rights received 2,658 Recommendations.

related to the death penalty as the Cycles took place. This is a notable statistic considering only a minority of Member States retain it either in law or practice.[916] Furthermore, the number of retentionist States reduced over the three Cycles and by the beginning of Cycle 2,[917] many Member States adopted the practice of limiting themselves to two Recommendations per intervention.[918] Nevertheless, this trend is also observable within the dataset, where a single ACLU recommendation resonated with 22 Member State Recommendations.

Both ACLU recommendations 6 and 7 present examples that underscore the importance of treaty-framing. Although neither explicitly invokes IHR provisions, their substantive focus on the right to life and procedural safeguards during criminal proceedings placed them within the scope of the IHR framework. Yet, reliance on treaty-based advocacy alone is occasionally insufficient as the formal hard law presently recognised does not capture the full depth of human rights issues raised by stakeholders at the UPR.

ACLU recommendation 8 (Figure 38) calls for the abolition of mandatory life without parole sentences and limits on life sentences to 20 years. It was mapped to provisions within the Riyadh Guidelines and Beijing Rules – both soft law instruments, with no binding effect. Subsequently, it was also mapped to two Member State Recommendations (26.200 and 26.246), which challenges the traditional assumption that positions treaties as the only effective instruments for IHR advocacy.

[916] *Id.* at 426.
[917] *Countries That Have Abolished the Death Penalty Since 1976*, DEATH PENALTY INFO. CTR., https://deathpenaltyinfo.org/policy-issues/policy/international/countries-that-have-abolished-the-death-penalty-since-1976 (last visited Sep. 15, 2025).
[918] Bergquist, *supra* note 915 at 426.

ACLU recommendation	Congress and state legislatures should pass legislation that limits life sentences to 20 years, ends mandatory life in prison without parole sentences, implements the second look process outlined above, and eliminates juvenile life without parole sentences by allowing people convicted as children to petition for resentencing in the original sentencing court.
IHR Mapping	Riyadh Guidelines - 46 Beijing Rules - 17.1 & 19.1
UPR Recommendation	26.200 - Immediately introduce a moratorium on the federal death penalty and cease sentencing juvenile offenders to life without parole (Ireland) 26.246 - Adopt relevant national legislation that will ban issuing life without parole sentences for juveniles (Croatia)
Response	Noted

Figure 38: ACLU recommendation 8 (Prong 2).

In paragraphs 17.1 and 19.1 of the Beijing Rules, the international community established an IHR norm that prioritises the rehabilitation and reintegration of juvenile offenders. Similarly, in paragraph 46 of the Riyadh Guidelines, there is an emphasis on the importance of proportionality and individualised consideration in sentencing. Both non-binding instruments are widely recognised as authoritative normative frameworks that complement treaty standards that prohibit cruel and inhuman punishment.[919] Moreover, it has been proposed that these soft law instruments provide CSOs critical tools for engaging with international monitoring mechanisms, particularly in the absence of binding obligations.[920] Having explored the establishment of the Mandela Rules, Peirce argues that these provisions represent a balance between normative human rights principles and practical operational considerations. In turn, this instrument provides a robust framework that ought to be considered in domestic legal and policy discussions.[921]

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[919] Connie de la Vega, *Using International Human Rights Standards to Effect Criminal Justice Reform in the United States*, 41 HUM. RTS. 13 (2015).
[920] Lesch and Reiners, *supra* note 884.
[921] Jennifer Peirce, *Making the Mandela Rules: Evidence, Expertise, and Politics in the Development of Soft Law International Prison Standards*, 43 QUEEN'S L.J. 263, 263, 292, 294 (2018).

The international rejection of juvenile LWOP is near-universal, with the US standing as a stark outlier in its continued use of this practice. Agyepong highlights that the global consensus views juvenile LWOP as a violation of evolving standards of decency and a rejection of the rehabilitative principles central to IHR law.[922] This global condemnation underscores the potential for Recommendation 8 to align with broader international norms, even as the US resists these principles domestically. The prohibition of juvenile LWOP is increasingly regarded as a *jus cogens* norm.[923] This status reflects the weight of international opinion against the practice and strengthens the normative basis for framing Recommendation 8 within the UPR process. Moreover, this alignment reinforces the UPR's jurisdiction to scrutinise juvenile justice practices as part of broader systemic concerns.

This finding challenges the prevailing argument in existing literature that treaties represent the most effective framework for influencing UPR Recommendations. While treaties undoubtedly carry greater legal weight, the data suggests that non-treaty provisions can complement treaty-based advocacy by offering additional normative frameworks that resonate with the UPR's emphasis on universal principles. As Connie de la Vega argues, non-treaty provisions such as the Beijing Rules and Riyadh Guidelines provide a vital framework for addressing systemic sentencing issues in a way that resonates with international norms.[924] Although non-binding, these instruments have been influential in shaping global standards for juvenile justice and offer a compelling basis for challenging entrenched practices such as juvenile LWOP. Additionally, advocacy efforts within the US, such as those challenging the discriminatory application of juvenile LWOP, have drawn on these standards to highlight systemic inequities.[925]

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[922] Tera Agyepong, *Children Left Behind Bars: Sullivan, Graham, and Juvenile Life without Parole Sentences*, 9 NW. J. INT'L HUM. RTS. 83, 22–6 (2010).
[923] *Id.*
[924] de la Vega, *supra* note 919 at 14.
[925] Andrea Templeton, *Lost Potential: International Treaty Obligations and Juvenile Life without Parole in Edmonds v. State of Mississippi*, 26 L. & INEQUALITY 233, 217–220 (2008).

6.3.2. Group 2: ACLU recommendations that Mapped to the IHR Framework and Did Not Map to Member State Recommendations

The second sub-group of ACLU recommendations comprises those that align with the IHR framework but failed to generate corresponding Member State Recommendations. This group illustrates the complexities of the UPR process and raises questions about why certain human rights issues, despite their alignment with international norms, do not translate into resonating at the UPR. Again, 44.4% of ACLU recommendations that mapped to the IHR framework generated corresponding Member State Recommendations, only 28.6% of recommendations that did not map to the IHR framework achieved the same outcome. However, within the group of recommendations that mapped to the IHR framework, nearly 56% still failed to resonate at the UPR. This suggests that while alignment with the IHR framework is an important factor, it is not determinative, and additional variables influence the UPR's prioritisation and engagement. Such findings underline the interconnectedness of the three Prongs: visibility at the UPR (Prong One), normative alignment (Prong Two), and domestic legal and political context (Prong Three) are mutually reinforcing, and only when considered together can the full dynamics of CSO engagement be understood.

Further analysis reveals patterns in the ACLU's advocacy over time that may help explain these disparities. As shown in Table 18, recommendations that mapped to the IHR framework were more evenly distributed across all three UPR cycles, with nine recommendations in Cycle 3 alone. By contrast, recommendations that did not map to the IHR framework were fewer and concentrated primarily in the earlier cycles. This reflects the ACLU's evolution in advocacy strategy, moving from implicit engagement with international norms towards explicit alignment with the IHR framework in later cycles. Such a shift demonstrates increasing strategic sophistication, as the organisation may have recognised the advantages of situating its advocacy within recognised international standards or simply gained more experience in this form of advocacy. Despite this progress, not all IHR-mapped recommendations resonated at the UPR: for instance, recommendation 4 (Figure 40) and recommendation 9 (Figure 39) failed to generate corresponding Member State Recommendations. These exceptions highlight that alignment, while significant, is not always sufficient, raising questions about thematic framing, issue prioritisation within the UPR, and the limits of international receptivity.

Recommendation 9 (Figure 39) advocates for measures to ensure that youth in conflict with the law are not subjected to adult criminal procedures that fail to account for their age, cognitive development, and the rehabilitative principle. This recommendation maps to ICCPR Article 14(5), which guarantees the right of review for criminal convictions, aligning with broader human rights principles that emphasise rehabilitation for juvenile offenders.

ACLU recommendation	Adopt measures to ensure that all youth in conflict with the law are not subjected to adult criminal procedures that fail to take into account their age and cognitive development and the desirability of promoting rehabilitation.
IHR Mapping	ICCPR Article 14.5
UPR Recommendation	-
Response	-

Figure 39: ACLU recommendation 9 (Prong 2).

Despite its alignment with the ICCPR, ACLU recommendation 9 did not result in a corresponding Member State Recommendation. This outcome challenges the assumption that thematic alignment with IHR norms is sufficient to generate international advocacy outcomes. Instead, it highlights the interconnectedness of Prong Two (alignment with the IHR framework) and Prong Three (the domestic structure). While ACLU recommendation 9 successfully engages international norms, its failure to resonate at the UPR may reflect broader challenges in translating systemic reforms into actionable advocacy within the constraints of the UPR process. While the alignment with ICCPR Article 14(5) establishes a normative basis for the recommendation, its effectiveness also depends on how it engages with the domestic structures and actors capable of implementing the proposed reforms. In this case, the broad framing of the recommendation – advocating for reforms across juvenile justice systems that vary widely across US states – may have made it less actionable

within the UPR framework, where recommendations must account for the complexities of federal systems like that of the US. As noted in the broader analysis of Prong Three (Chapter 7), the domestic structure plays a crucial role in determining the feasibility of reforms. This confirms Shah's and Sivakumaran's observation that Member State Recommendations often focus on issues that are not only normatively aligned with international standards but also have identifiable domestic pathways for implementation.[926]

Further, the UPR's engagement with ACLU recommendation 9 may be situated within the broader context of the US' outlier status as the only UN Member State that has not ratified the Convention on the Rights of the Child (CRC).[927] Although the CRC did not form a part of the IHR framework considered in this thesis, it is nonetheless worthy of acknowledgement in this instance. The lack of ratification underscores the US' resistance to IHR norms concerning juvenile justice and its broader reluctance to adopt a child rights-based approach. Agyepong notes that these practices reflect deep-seated cultural and political resistance to rehabilitative approaches, particularly in cases involving serious offences.[928] Additionally, MehChu's analysis of the US' failure to ratify the CRC highlights this non-compliance as a significant impediment to aligning domestic policies with global standards.[929] Similarly, Schirmer argues that the US' non-ratification reflects concerns over federalism and parental rights, which have been amplified by conservative political factions resistant to perceived international interference in domestic affairs.[930]

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[926] Shah and Sivakumaran, *supra* note 867 at 173–75.

[927] Hannah Lichtsinn & Jeffrey Goldhagen, *Why the USA Should Ratify the UN Convention on the Rights of the Child*, 7 BMJ PAEDIATRICS OPEN (2023); Ndjuoh MehChu, *No Child Left Behind? An Interest-Convergence Roadmap to the U.S. Ratification of the Convention on the Rights of the Child*, 76 N.Y.U. ANNUAL SURVEY OF AM. L. 1 (2021); See, Kenzie R Winton, *Policy Implications and Recommendations Concerning the United States' Non-Ratification of International Human Rights Treaties*, 16 PEPPERDINE POL'Y REV. 1, 12–13 (2024) for a detailed analysis of the US's federalism and sovereignty concerns as barriers to ratifying the CRC. Winton critiques the exaggerated perception of these concerns, highlighting the built-in safeguards within the CRC that respect national sovereignty while still promoting child rights.

[928] Agyepong, *supra* note 922 at 22–26; *See also*, Cynthia L. Schirmer, *Punishing Children as Adults: On Meeting International Standards and U.S. Ratification of the U.N. Convention on the Rights of the Child*, 16 MICH. ST. J. INT'L L. 715, 45–46 (2008) for a critique of the US's punitive juvenile justice system, which fails to consider the developmental immaturity of adolescents. Schirmer argues that the CRC's emphasis on rehabilitation offers a more effective and humane framework for addressing youth offenders.

[929] MehChu, *supra* note 927 at 29; *See also*, Schirmer, *supra* note 928 (explaining opposition to ratification on federalism grounds as "limiting [states'] jurisdiction over children").

[930] Schirmer, *supra* note 41 at 194, 196; Kenzie R Winton, *Policy Implications and Recommendations Concerning the United States' Non-Ratification of International Human Rights Treaties*, 16 PEPPERDINE POL'Y REV. 1, 6–7 (2024) (Both authors emphasise

The US' non-ratification of the CRC and its entrenched punitive approach to juvenile justice exemplify the limitations of IHR mechanisms like the UPR when engaging with systemic reforms. ACLU recommendation 9 highlights the interplay between Prong Two and Prong Three of this analysis, demonstrating that thematic alignment with international norms (Prong Two) alone may not suffice to resonate with Member State recommendations if the domestic framework (Prong Three) lacks the political or jurisdictional capacity for implementation. As Carraro notes, the effectiveness of the UPR relies not only on the normative validity of recommendations but also on their feasibility within the domestic political context.[931] These dynamics underscore the importance of a holistic approach to CSO advocacy that integrates both international and domestic considerations.

6.3.3. Group 3: ACLU recommendations that Neither Mapped to the IHR Framework and Nor Member State Recommendations

Textual analysis of ACLU recommendations that failed to align with either the IHR framework or resonate with Member State Recommendations reveals a strong thematic focus on issues unique to the US' legal and political landscape or generally overlooked in the IHR framework. These recommendations often address very specific domestic legal provisions, operational guidelines, or statutory reforms that lack international resonance. This specificity seemingly renders them incompatible with the broader UPR framework, which is designed to accommodate general human rights principles applicable across diverse national contexts.

For example, ACLU recommendation 4 (Figure 40) calls for geriatric compassionate release. This ACLU recommendation reflects an urgent need to address the growing population of elderly

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that the US' non-ratification of the CRC isolates it within the international community and undermines its ability to align domestic policies with global norms); Scholarly discussions reinforce that US juvenile justice practices, including subjecting minors to adult criminal procedures and harsh sentencing, are widely condemned by the international community. *See Also*, Agyepong, *supra* note 35 at 1–3. Agyepong's critical evaluation of juvenile LWOP sentences underscores this condemnation, noting the practice's inconsistency with evolving standards of decency and its rejection by virtually all other nations (p. 5). While Recommendation 7 does not explicitly address LWOP, its broader emphasis on adopting rehabilitative approaches for youth aligns with these critiques and exposes the US' systemic resistance to reform.

[931] Valentina Carraro, *Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies*, 63 INT'L STUDIES Q. 1079 (2019).

individuals incarcerated in the United States. As highlighted by Maschi et al,[932] the US faces significant challenges in managing the approximately 200,000 adults aged 55 and above currently behind bars.[933] Many of these individuals present complex health, social service, and legal needs that the prison system is ill-equipped to address.[934] While some domestic jurisdictions allow for compassionate or geriatric release, eligibility criteria and implementation mechanisms vary significantly, often prioritising medical incapacitation over age as a sole criterion.[935]

What is striking, however, is the absence of any explicit IHR provision that directly enshrines geriatric compassionate release. Unlike issues such as juvenile sentencing or the death penalty, which are clearly grounded in treaty provisions, the rights of elderly prisoners are dispersed across general protections against inhuman treatment and the right to health, but without specific normative anchoring. This reveals a blind spot within the IHR framework: despite the demographic realities of mass incarceration and ageing prison populations, the framework has yet to recognise ageing itself as a human rights concern requiring tailored protections.

In this sense, the ACLU recommendation does more than simply call for reform in US prisons – it exposes a lacuna in IHR law. By framing geriatric compassionate release as a matter of human rights, the ACLU effectively anticipates the development of future norms, signalling that issues of ageing and dignity in detention should be incorporated into international standards. This finding underscores an observation on Prong Two; CSOs can strategically leverage the UPR to align advocacy with existing norms, but they can also highlight areas where the international framework is incomplete, pushing the boundaries of how IHR are interpreted.

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[932] Tina Maschi et al., *Aging in Prison and Correction Policy in Global Perspectives*, OXFORD RESEARCH ENCYCLOPEDIA OF CRIMINOLOGY, 168, https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-648.
[933] *Id.*
[934] *Id.*
[935] *Id.* at 171.

ACLU recommendation	Congress should pass federal legislation and the federal Bureau of Prisons should enact policies that allow people to file for elderly release after age 50 directly with the courts.
IHR Mapping	-
UPR Recommendation	-
Response	-

Figure 40: ACLU recommendation 4 (Prong 2).

The absence of an explicit international standard addressing geriatric release reveals an oversight within IHR law, even if it has been most visible in the US due to its exceptionally high rates of incarceration.[936] Maschi, et al identify aging prisoners as a population disproportionately affected by the cumulative effects of 'tough-on-crime' policies, including longer sentences and limited opportunities for release; with the US being a particularly noteworthy case study.[937] They note that correctional systems are struggling to manage the complex needs of older prisoners;[938] particularly as these individuals' health often declines at an accelerated rate due to the stresses of incarceration.[939] While IHR principles advocate for the dignity and humane treatment of all individuals, they do not directly address the nuanced challenges posed by aging prison populations.[940] As such, recommendation 4 demonstrates the tension between domestic reform

[936] This is a common claim among scholars discussing the issue. See E.g., Maschi et al., *supra* note 932; Renagh O'Leary, *Compassionate Release and Decarceration in the States*, 107 IOWA L. REV. 621 (2022); Bryant Green, *As the Pendulum Swings: The Reformation of Compassionate Release to Accommodate Changing Perceptions of Corrections*, 46 U. TOL. L. REV. 123 (2014); See Also, Tina Maschi, Deborah Viola & Fei Sun, *The High Cost of the International Aging Prisoner Crisis: Well-Being as the Common Denominator for Action*, 53 THE GERONTOLOGIST 543 (2013).
[937] Maschi et al., *supra* note 932 at 543–4.
[938] *Id.* at 544.
[939] *Id.*
[940] *Id.* at 171.

priorities and the limited scope of international frameworks. While the US context of mass incarceration makes this issue particularly visible, the absence of explicit international standards on geriatric release suggests that this is not merely a US-specific concern, but rather a broader oversight within IHR law.[941] As Maschi et al argue, the aging prisoner crisis requires a holistic, integrated, human rights-based response that addresses prevention, intervention, and reintegration for incarcerated older adults.[942]

Another noteworthy example is ACLU recommendation 10 (Figure 41), which highlights the limitations imposed by the Prison Litigation Reform Act (PLRA), particularly the "physical injury" requirement under 42 U.S.C. § 1997e(e), which restricts prisoners from seeking damages for mental or emotional harm without a demonstrable physical injury.[943] The recommendation calls for repealing these restrictions and enacting the Prison Abuse Remedies Act (PARA) to restore the ability of prisoners to challenge unconstitutional conditions and actions.

[941] This is particularly concerning when assessing the contemporary trends in birth rates and life expectancy; *see e.g.*, Nicholas Eberstadt, *The Age of Depopulation*, 103 Foreign Aff. 42 (2024); Ayush Vatal, *Navigating the Demographic Shift – A Comparative Analysis of India and Japan's Aging Populations* 7 Int'l J. of Research in Engineering, Science & Management 149 (2024); *See Also*, Mitra Toossi, *Labor Force Projections to 2024: The Labor Force is Growing but Slowly* 138 Monthly Lab. Rev. 1 (2015).
[942] Maschi et al., *supra* note 932 at 553.
[943] 42 U.S.C. § 1997e(e) (2022).

ACLU recommendation	Prisoners' right to remedy: Congress should act immediately to ensure the Prison Abuse Remedies Act of 2009, H.R. 4335 (PARA) becomes law, and the Obama Administration should support its passage, to reinstate the ability of prisoners to challenge conditions of confinement that violate their rights by repealing the "physical injury" requirement of the Prison Litigation Reform Act (PLRA); exempting juveniles under age 18 from the burdens created by the PLRA; and amending the "exhaustion requirement."
IHR Mapping	-
UPR Recommendation	-
Response	-

Figure 41: ACLU recommendation 10 (Prong 2).

The PLRA's physical injury requirement has been critiqued for barring potentially meritorious claims that address significant rights violations. Winslow underscores that Congress justified the PLRA by framing prisoner lawsuits as frivolous and burdensome on the judiciary.[944] However, evidence suggests that this characterisation was overstated. Judicial tools, such as 28 U.S.C. § 1915(d) and Rule 12(b)(6) of the Federal Rules of Civil Procedure, already existed to dismiss frivolous lawsuits prior to the PLRA.[945] This provision has had significant practical consequences. As noted in Winslow's analysis, prisoners subjected to severe emotional or psychological harm – including sexual harassment, deprivation of medical care, or solitary confinement – have been denied compensatory damages due to the lack of a "physical injury."[946]Cases like *Zehner v. Trigg*[947] demonstrate how this requirement can render constitutional protections illusory when violations result primarily in mental anguish rather than tangible physical harm.[948] Detmold highlights the ambiguity surrounding the definition of "physical injury" under the PLRA, resulting

[944] Jennifer Winslow, *The Prison Litigation Reform Act's Physical Injury Requirement Bars Meritorious Lawsuits: Was It Meant To?*, 49 UCLA L. REV. 1655, 1657 (2002).
[945] *Id.* at 1663.
[946] *Id.* at 1675–76.
[947] Zehner v. Trigg, 133 F.3d 459, 463 (7th Cir., 1997).
[948] *Id.*; Winslow, *supra* note 944 at 1676.

in inconsistent judicial interpretations and the dismissal of claims that may involve minor or long-term harm.[949] The lack of legislative guidance has created a circuit split, with some US courts adopting a "more-than-de-minimis" standard, while others interpret the requirement more narrowly.[950] This inconsistency disproportionately affects prisoners, leaving them without recourse even in cases involving clear violations of constitutional rights. For example, claims involving delayed medical care or exposure to hazardous conditions like asbestos have been dismissed due to an inability to meet the physical injury threshold.[951]

This restrictive framework has broader implications for the human rights of incarcerated individuals. By limiting access to judicial remedies, the physical injury requirement has contributed to a decline in accountability within prison systems. Detmold warns that this legal barrier may discourage prisoners from reporting abuse, thereby perpetuating systemic neglect and harm.[952] Furthermore, the PLRA's failure to consider the physical manifestations of psychological trauma undermines broader human rights principles, such as the right to dignity and humane treatment.[953] Therefore, the recommendation to repeal the PLRA's physical injury requirement aligns with these principles but presents challenges within the UPR framework. While the PLRA embodies issues of access to justice, its domestic specificity makes it difficult to frame in terms of universal human rights provisions. The UPR framework, per McMahon and Ascherio, is designed to address broad human rights principles and[954] Member State Recommendations often reflect the universalist versus cultural relativist divide among states.[955]

Universalists argue that human rights are inherent, and universally applicable, transcending cultural, social and political contexts.[956] This perspective advocates for consistent global

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[949] Hilary Detmold, *'Tis Enough, 'Twill Serve: Defining Physical Injury under the Prison Litigation Reform Act*, 46 SUFFOLK U.L. REV. 1111, 1112 (2013).
[950] *Id.* at 1113.
[951] *Id.* at 1124–25.
[952] *Id.* at 1121.
[953] Articles 1 & 5 Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948); Article 10(1) International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 Article 16 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85; Rules 1, 24 & 25 G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (Dec. 17, 2015); Rule 12, G.A. Res. 65/229, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (Dec. 21, 2010).
[954] Edward McMahon & Marta Ascherio, *A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council*, 18 GG 231, 242 (2012).
[955] *Id.*
[956] *Id.* at 232.

standards and rejects any relativisation of rights based on local traditions or value.[957] Within the UPR framework, universalist States – often aligned with the Western European and Others Group (WEOG) – tend to issue SMART Recommendations, classified as "category 5,"[958] which call for concrete measures aligned with international norms.[959] Conversely, cultural relativists contend that the interpretation and implementation of human rights must respect cultural, historical and societal contexts, reflecting the diversity of traditions and legal systems worldwide.[960] This perspective prioritises state sovereignty and voluntary commitments, calling for a context-sensitive approach to compliance.[961] According to Gaer, within the UPR this translates to "capacity-building-focused" Member State Recommendations, emphasising dialogue, cooperation, and gradual improvements over prescriptive reforms.[962] These are often aligned with States from the Global South, including African and Asian blocs, who tend to adopt this relativist approach, seeking to balance human rights advocacy with respect for local contexts.[963]

Gaer emphasises how this tension manifests in debates over the scope of the UPR. Universalists argue for reviews that encompass all human rights obligations, including those under non-ratified treaties and international declarations, while cultural relativists advocate for a narrower focus limited to ratified instruments and voluntary pledges.[964] This debate complicates the UPR's ability to serve as a truly universal mechanism, particularly when addressing granular, domestic-specific issues such as that raised by ACLU recommendation 10.[965] Carraro adds nuance to this observation by highlighting the complementary roles of the UPR and treaty bodies in promoting compliance. While the UPR's public and bilateral nature generates peer pressure, the Compilation Report and treaty bodies offer detailed, expert-driven guidance that helps states internalise human rights

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[957] *Id.*
[958] "Recommendation of specific action (Example of verbs: conduct, develop, eliminate, establish, investigate, undertake as well as legal verbs: abolish, accede, adopt, amend. implement, enforce, ratify)." <https://upr-info.org/sites/default/files/general-document/2022-05/Database_Action_Category.pdf>.
[959] McMahon and Ascherio, *supra* note 954 at 241.
[960] Rosa Freedman, *New Mechanisms of the UN Human Rights Council*, 29 NETHERLANDS QUARTERLY OF HUMAN RIGHTS 289, 292 (2011).
[961] *Id.* at 292.
[962] F. D. Gaer, *A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System*, 7 HUM. RTS. L. REV. 109, 117 (2007).
[963] McMahon and Ascherio, *supra* note 954 at 242. It should be noted, this divide is not merely theoretical, but shapes the outcomes and reception of the UPR process. As McMahon and Ascherio observe, universalist States actively engage in the UPR, issuing robust Recommendations that reflect their commitments to universal norms, meanwhile, relativist States focus on fostering cooperation and mutual understanding, often resisting critical assessments. *Id.*
[964] Gaer, *supra* note 962 at 123.
[965] Winslow, *supra* note 944 at 1676. (linking US-specific issues to challenges in international framing).

norms.[966] Together, these mechanisms embody the interplay between universalist and relativist approaches, demonstrating how diverse strategies can converge to advance human rights.

This divergence highlights a recurring challenge for CSO advocacy in translating granular domestic issues into the broader language of IHR. As Maschi, Viola, and Sun argue in the context of aging prisoners, meaningful reform often requires integrating domestic-specific concerns into a universal human rights narrative.[967] Here, the ACLU advocates to address a uniquely US-specific issue, aiming to restore prisoners' ability to challenge unconstitutional conditions of confinement.

From a universalist perspective, Recommendation 10 aligns with fundamental principles of access to remedies and accountability, which are central to IHR standards. Universalist States within the UPR appear to be more likely to support robust recommendations addressing systemic barriers to justice, which would frame the repeal of the PLRA's physical injury requirement as essential for upholding the dignity and rights of incarcerated individuals.[968] Conversely, cultural relativist States may view the PLRA as a matter of domestic jurisdiction, focusing instead on capacity-building and voluntary commitments. As noted in the literature, this approach results in resistance to recommendations perceived as infringing on State sovereignty.[969] Carraro suggests that combining the UPR's peer-pressure mechanisms with Treaty Body expertise can enhance the effectiveness of recommendations addressing granular systemic issues.[970] One of the key suggestions made to do this is universal framing. Positioning the PLRA's repeal as a broader matter of access to justice and non-discrimination, could align ACLU recommendation 10 with universal principles, increasing its resonance among the Member States.[971] This thesis suggests this can be done by employing the three-pronged model advanced herein. However, Gaer suggests that incorporating findings from Treaty Bodies would be a better way of providing technical guidance and strengthen the legitimacy of CSO recommendations within the UPR framework.[972]

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[966] Carraro, *supra* note 931 at 1084–85.
[967] Maschi, Viola, and Sun, *supra* note 936 at 552–53.
[968] McMahon and Ascherio, *supra* note 954 at 241.
[969] Gaer, *supra* note 962 at 117.
[970] Carraro, *supra* note 931 at 1085.
[971] *Id.* at 1086.
[972] Gaer, *supra* note 962 at 131.

Notwithstanding this discourse, the specificity of Recommendation 10 underscores its failed alignment with the IHR framework. Unlike broader issues of prison conditions or systemic discrimination, which are well-established in instruments like the ICCPR and CAT, the PLRA's physical injury requirement is an inherently domestic concern. Its detailed legal provisions, rooted in US federal law, make it less accessible within the UPR's generalist approach.

6.3.4. Group 4: ACLU recommendations that Did not Map to the IHR Framework but Did Map to Member State Recommendations

This subsection addresses the singular ACLU recommendation that lacked explicit alignment with the IHR framework yet found resonance within the UPR process through corresponding Member State Recommendations. This reflects the capacity of the UPR mechanism to address issues that, while grounded in domestic advocacy priorities, align implicitly with IHR principles. These recommendations underscore the flexibility of the UPR framework in accommodating diverse human rights concerns, even in the absence of formal treaty-based or customary international law mapping. By bridging domestic priorities with broader normative principles, this group highlights the potential of the UPR to identify and address critical gaps within the IHR framework. It also demonstrates how the ACLU's domestic-focused advocacy can contribute to global human rights dialogue when framed in ways that resonate with the UPR's inclusive and pragmatic approach. This challenges rigid conceptions of human rights advocacy by emphasising the importance of outcome-oriented framing over strict adherence to formal international legal provisions.

ACLU recommendation 1 (Figure 42) focuses on addressing sentencing disparities in the US' criminal justice system, specifically targeting the inequity between crack and powder cocaine offences.[973] The recommendation highlights that crack and powder cocaine are chemically the same substance, yet their sentencing thresholds differ significantly under federal law. This disparity has historically led to disproportionately harsh sentences for crack cocaine offences, which have predominantly affected marginalised communities, particularly Black Americans.[974]

[973] That article that provides the science data proving their match.
[974] See chapter 3.6. discussing the history of mass incarceration in the US.

ACLU recommendation	Crack and powder cocaine are two forms of the same drug, and Congress should eliminate any disparity in the amount of either necessary to prompt mandatory minimum sentences.
IHR Mapping	-
UPR Recommendation	176.275 - Accelerate the process of passing a legislation to reform the mandatory minimum sentences begun with the Smart on Crime initiative (Nigeria)
Response	Supported

Figure 42: ACLU recommendation 1 (Prong 2).

While there is no formal documentation or publication of the processes that offer CSOs the opportunity to lobby recommendation States, Recommendation 176.275 may offer circumstantial evidence of lobbying efforts by the ACLU. UPR Info provides several opportunities for CSOs to lobby recommending States in order to influence them to potentially give favourable UPR Recommendations. These pre-sessions, held prior to the formal UPR review, and hosted by UPR Info, serve as a platform for CSOs to present their findings and priorities directly to State delegations. By framing their issues in terms that resonate with international stakeholders, CSOs can advocate for the inclusion of their concerns in the recommendations States ultimately issue. In the case of Recommendation 176.275, it is plausible that the ACLU leveraged this opportunity to highlight the systemic inequities perpetuated by mandatory minimum sentencing laws, aligning the issue with the broader international advocacy narrative on criminal justice reform. However, due to the lack of publicly available records detailing the negotiations and informal discussions between States and CSOs, this remains speculative. The absence of a transparent and standardised

process for documenting these lobbying efforts within the UPR framework leaves the precise influence of CSOs, including the ACLU, open to interpretation.

What makes this notable is that mandatory minimum sentencing is not explicitly covered by existing IHR provisions, yet it still generated uptake at the UPR. This anomaly demonstrates both the flexibility of the UPR framework to respond to issues framed outside of a strict treaty-based scope and the capacity of CSOs to shape international attention by strategically packaging domestic concerns. It also reveals the role of State interests: the political salience of criminal justice reform, especially under the Obama Administration when the issue was prominent in both domestic and international media, may have amplified the visibility of ACLU advocacy.[975]

This example therefore illustrates several dynamics central to the thesis. First, it highlights gaps in the IHR framework: significant issues of criminal justice, such as mandatory minimums, remain underdeveloped in international law but can nonetheless be raised at the UPR. Second, it shows how resonance is not determined solely by legal alignment (Prong Two), but also by the political priorities of recommending States and the contextual framing of issues. Finally, it points to the interconnectedness of the three prongs: the ACLU's expertise and advocacy identity (Prong One), its engagement with international norms (Prong Two), and the domestic federal context in which these sentencing laws operate (Prong Three) together shaped the trajectory of this recommendation.

6.4. Thematic Breakdown of ACLU recommendations that did not Map to Corresponding Member State Recommendations

While previous sections have examined the alignment of ACLU recommendations with IHR standards and their correlation with UPR Recommendations, this section shifts focus to the ACLU recommendations from the dataset that did not result in corresponding Member State Recommendations. An analysis of this subset reveals insights into the limitations and challenges of translating domestic human rights advocacy into the international framework of the UPR. From

[975] Inimai Chettiar & Abigail Finkleman, *If you blinked, you missed when Obama made criminal justice reform history*, (Jan. 13, 2016), THE GUARDIAN, <https://www.theguardian.com/commentisfree/2016/jan/13/obama-made-history-state-of-the-union-criminal-justice-reform>.

this, seven thematic issues emerged, providing a lens through which to explore recurring challenges in framing domestic concerns within IHR norms.

Issue of ACLU recommendation that failed to map to Member State Recs.	Number of ACLU recommendations
Sentencing reform	3
Prosecutorial reform	3
Arrests & immigration	1
Compliance with domestic law	1
Bail reform	1
Parole and release	2
Re-entry	1

While the lack of corresponding Member State Recommendations may sometimes stem from challenges in translating domestic issues into the language of IHR law, other factors also play a role. In some cases, recommendations are only loosely mappable to existing IHR provisions, revealing potential gaps in the broader IHR framework. These gaps suggest that the framework may not adequately address evolving or context-specific concerns, such as sentencing reform in the US legal system. Furthermore, some recommendations are tailored so specifically to the domestic legal and political context that their adoption by the UPR would require the mechanism to overstep its remit. As Carraro highlights, the UPR's effectiveness stems largely from its ability to generate peer and public pressure through bilateral recommendations.[976] However, the process

[976] Valentina Carraro, *Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies*, 63 INT'L STUD. Q. 1079 (2019).

tends to prioritise issues that enjoy broad international consensus, often sidelining domestic reforms lacking global relevance or failing to map cleanly to universal norms.[977]

Sentencing reform, for instance, represents one of the most prevalent thematic areas among the non-corresponding recommendations, with three thematic hits. The ACLU's focus on addressing inequities in sentencing practices speaks directly to systemic issues within the US legal system,[978] yet these concerns are not always easily translatable into the language of IHR law. For example, ACLU recommendation 11 (Figure 43).

ACLU recommendation	Congress should pass federal legislation to create a "Second Look" process that allows anyone who has served 10 years or more to apply for resentencing before a decision- making body.
IHR Mapping	ICCPR Articles 14.5 & 15.1
UPR Recommendation	-
Response	-

Figure 43: ACLU recommendation 11 (Prong 2).

This recommendation calls for Congress to enact federal legislation establishing a "Second Look" process, allowing individuals who have served ten years or more to apply for resentencing before a decision-making body. The recommendation is designed to address disproportionate sentencing, offering a mechanism for reassessment under outdated or overly punitive sentencing regimes. ACLU recommendation 11 maps to Articles 14(5) and 15(1) of the ICCPR. Article 14(5) guarantees the right to have convictions or sentences reviewed by a higher tribunal,[979] reflecting the core rationale of the "Second Look" process. Similarly, Article 15(1) ensures that offenders

[977] *Id.*
[978] Discussed in Chapter 3.6.
[979] International Covenant on Civil and Political Rights art. 14(5), Dec. 16, 1966, 999 U.N.T.S. 171.

benefit from lighter penalties introduced through changes in the law, reinforcing the recommendation's intent to align sentencing practices with evolving justice standards.[980] However, while this alignment with the ICCPR provisions is substantive, it remains interpretive rather than explicit, as neither article mandates the establishment of periodic review mechanisms like the proposed "Second Look" process. Despite its alignment with the IHR framework, ACLU recommendation 11 failed to map to a corresponding Member State Recommendation. This outcome reflects several barriers that hinder the uptake of such recommendations.

First, the specificity of the recommendation,[981] with its focus on federal legislative reform, limits its applicability within the UPR's remit which respects State sovereignty. Second, while the recommendation aligns with IHR norms, it could have been framed more explicitly within broader narratives, such as linking the proposal to the principle of rehabilitation or the prohibition of cruel, inhuman, or degrading treatment under ICCPR Article 7. Third, the phrasing of "Second Look" does not always translate internationally. Fourth, the UPR process itself often prioritises issues with broader international consensus, potentially sidelining domestic reforms that lack widespread global relevance.

The case of ACLU Recommendation 11 highlights the complexity of translating innovative, context-specific domestic reforms into recommendations that resonate within the UPR mechanism. It demonstrates that substantive alignment with the IHR framework, while crucial, does not guarantee visibility or uptake within the UPR process. Cowell observes that the UPR's ability to address treaty-specific obligations, such as impermissible reservations, has grown due to its emphasis on clearly defined international norms.[982] However, this focus on treaties and the alignment of recommendations with their provisions may further deprioritise domestic reforms like sentencing practices, which lack the same explicit international legal foundations.

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[980] International Covenant on Civil and Political Rights art. 15(1), Dec. 16, 1966, 999 U.N.T.S. 171.
[981] Which is elaborated on in Prong 2.
[982] Frederick Cowell, *Reservations to Human Rights Treaties in Recommendations from the Universal Periodic Review: An Emerging Practice?*, 25 INT'L J. HUM. RTS. 274 (2021).

Another example can be observed in ACLU recommendation 5 (Figure 44) from Cycle 2, which calls for the enactment of legislation to ensure that imprisonment is used only as a last resort when sentencing all juvenile offenders.

ACLU recommendation	Enact legislation to ensure that imprisonment is used only as a last resort when sentencing all juvenile offenders, and provide comprehensive services to criminal system-involved youth.
IHR Mapping	Riyadh Guidelines Paras. 6 & 46. Beijing Rules para. 19.1
UPR Recommendation	-
Response	-

Figure 44: ACLU recommendation 5 (Prong 2).

This recommendation aligns with two key international instruments: the Riyadh Guidelines and the Beijing Rules. Paragraph 6 of the Riyadh Guidelines advocates for avoiding the institutionalisation of youth wherever possible, emphasising alternative measures focused on rehabilitation and reintegration.[983] Paragraph 46 calls for the development of community-based services to support youth at risk or in conflict with the law.[984] Similarly, Paragraph 19(1) of the Beijing Rules underscores that the placement of a juvenile in an institution should always be a last

[983] United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), G.A. Res. 45/112, Para. 6, U.N. Doc. A/RES/45/112 (Dec. 14, 1990).
[984] Riyadh Guidelines, para. 46.

resort and for the minimum necessary period.[985] These instruments provide clear normative guidance that complements the goals of ACLU recommendation 5.

However, once more, despite its alignment with international norms, ACLU recommendation 5 failed to map to a corresponding Member State Recommendation. One potential factor behind this outcome is the reliance on soft law instruments, such as the Riyadh Guidelines and Beijing Rules, which lack the binding authority of treaty-based provisions. As Cowell has noted, the UPR process tends to prioritise treaty-based obligations, as these carry greater normative weight.[986] The non-binding nature of the instruments cited in the recommendation may have limited its influence within the UPR framework.

6.5. Observations on the Dataset

The preceding section presented extracts from the dataset that demonstrate the positive correlation between mapping to the IHR framework and resonance at the UPR. The following section provides a critical analysis of what the data reveals about CSO-IHR dynamics within the mechanism, drawing two central observations. The first affirms the significance of IHR, particularly treaties, alignment in CSO advocacy, establishing the IHR framework as a base component of the UPR. The second considers CSOs as norm entrepreneurs, considering that they do not just operate within existing norms, but they can help to create, interpret, and extend them.

6.5.1. Observation One: IHR Framework as a Base Component

The first observation drawn from the analysis of the dataset firmly establishes the centrality of the IHR framework to the UPR's evaluative process, thus confirming that Prong Two – similar to Prong One – can be viewed as a base component of the UPR process. When observing trends across the FRAME matrix, alignment with recognised IHR standards emerged as a clear factor

[985] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), G.A. Res. 40/33, Para. 19.1, U.N. Doc. A/RES/40/33 (Nov. 29, 1985).
[986] Cowell, *supra* note 982 at 284.

influencing whether CSO recommendations resonated with Member States.[987] The most evidenced pattern that emerged related to the significance of treaty-based alignment. (Table 21) As discussed above, ACLU recommendations that mapped to treaty-based IHR provisions were more likely to be subsequently mapped to a corresponding Member State Recommendation. This confirms discussions in existing scholarship, which highlight the privileging of treaty obligations at the UPR.[988] As the analysis detailed existing understanding of the significance of treaty-alignment at the UPR, the following discussion considers possible explanations for this trend and the potential implications it has for CSO advocacy.

Existing literature confirms Member States' tendency to draw from existing treaties when formulating their Recommendations. However, no literature has considered how this impacts the uptake of CSO recommendations. To date, research has been limited to SMART recommendations as a pathway to uptake. This thesis proposes an alternative route in the form of IHR-based CSO recommendations. The data, which pioneers the mapping of CSO recommendations against both Member State Recommendations and IHR provisions, illustrates that the relationship between Recommendations and IHR provisions is reflected both ways. This means that when considering the factors that inform the content of a Member State Recommendation, it is not only IHR law[989] and politics[990] that play a role, but also the way in which CSOs frame their recommendations, which extends McMahon's[991] findings that these contributions broadly have an observable impact. Figure 45 illustrates this dynamic by situating CSO input alongside already recognised influences of IHR law and politics. Per its mandate, the UPR is designed to ensure that stakeholder submissions, through the stakeholder report, inform the review. McMahon et al found that this can be observed in practice; that CSO recommendations do influence those made at the UPR by the Member States.[992] The data presented here suggests that this influence is conditional; specifically when CSOs frame their recommendations within the language of the IHR framework, which situates their advocacy within it, they increase the likelihood of uptake. In turn, this enhances the

[987] Though this is without inferring causation.
[988] Cowell, *supra* note 982 at 284.
[989] Domínguez-Redondo, *supra* note 4 at 725–6; Shah and Sivakumaran, *supra* note 312.
[990] Haeun Jang & Byungwon Woo, *Who Gets Picked on and Why? The Politics of North Korea's Human Rights Recommendations in the Universal Periodic Review*, 26 JAPANESE J. OF POL. SCI. 19 (2025); Bae, *supra* note 352; Abebe, *supra* note 10.
[991] McMahon et al., *supra* note 18.
[992] *Id.*

chances their issues are reflected in Member State Recommendations, amplifying their resonance at the UPR. On Figure 45, the light blue (faint) box highlights this contribution, representing the added layer this thesis brings.

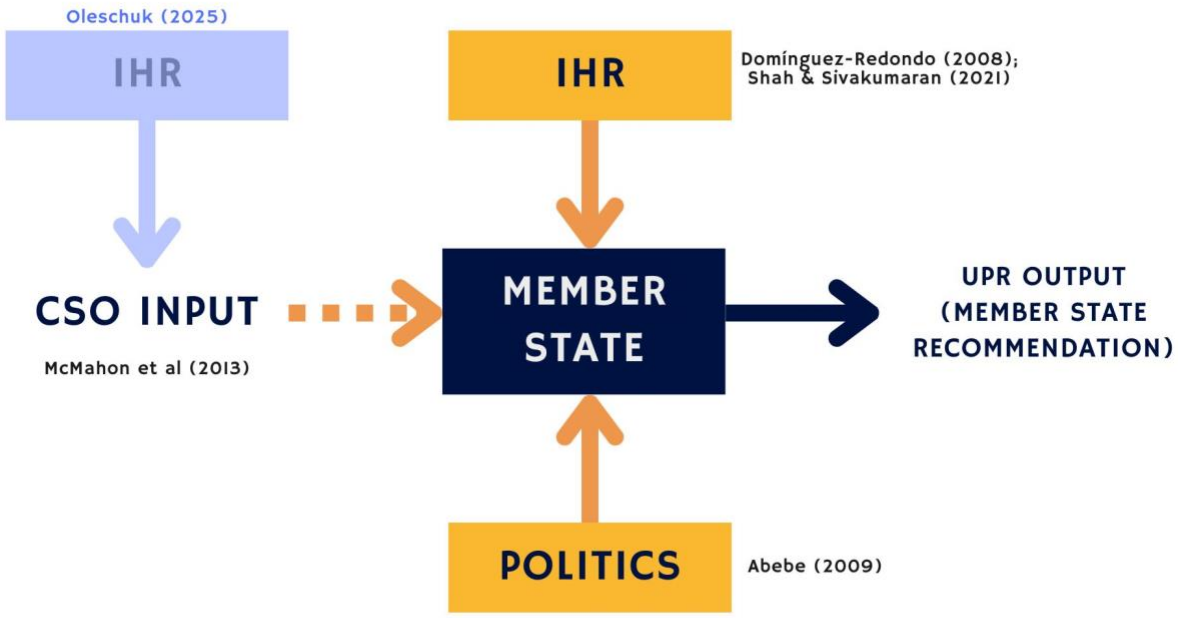

Figure 45: Factors shaping UPR Recommendations. The diagram reflects the established understanding that Member State Recommendations are informed by IHR law and political considerations, while also incorporating civil society input through stakeholder submissions. The contribution of this thesis (faint IHR box) demonstrates that CSO influence is conditional, with resonance at the UPR strengthened when CSOs frame their recommendations through IHR norms.

Furthermore, this suggests that this approach to CSO advocacy at the UPR legitimises stakeholder issues in a way that a purely domestic way cannot. As established, the UPR process is mandated to assess SuRs' human rights records against a set body of IHR norms. Although Member States have demonstrably extended this to include soft law instruments, they rarely directly engage with specific domestic legal provisions. Considering this from a strictly legal perspective, most Recommendations are vague or broad in nature, which is commonly cited as a design challenge of

the mechanism. [993] More immediate to this discussion, these Recommendations are overwhelmingly framed in IHR law terms, largely ignoring regional instruments and focusing on UN-based instruments.[994] Although there are some instances of direct engagement with domestic provisions,[995] these pin-cites are comparatively rare. This confirms the legal jurisdiction of the UPR to be the IHR framework, as recognised by the UN. Therefore, when CSOs frame their recommendations accordingly, they establish the jurisdiction of the UPR over the cited issue.

Using this approach can legitimise CSO issues in a way purely domestic advocacy cannot. In framing their recommendations within the UPR's IHR-law anchored design, CSOs can reframe local claims as matters of international legal obligation. This would be a way IHR treaties confer external legitimacy to these issues so that, when picked up by Member States, there is additional political leverage that CSOs can use domestically. In essence, this is a way for CSOs to "borrow" from the UPR's international legal pedigree and bring to the forefront their domestic campaigns.[996]

However, the strength of this strategy depends on the integrity of the treaty framework itself. It has been established that legitimacy is granted by the IHR framework, mostly through the treaties, but State behaviour introduces tensions that should be considered. As discussed in Chapter Two, when ratifying treaties, some States have attached RUDs which severely restrict the domestic application of its provisions. Turning to Goodman's discussion on invalid reservations, this undermines the coherence and authority of these binding instruments; yet States often use them to strategically appear bound by a treaty, whilst avoiding the obligations it confers.[997] This weakens their role as tools to hold these States accountable.

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[993] *See,* Michael Lane & Frederick Cowell, *Using Universal Periodic Review Recommendations in UK Courts*, 29 JUDICIAL REV. 119, 135 (2024); Bueno de Mesquita, *supra* note 335; Sean Molloy, *The Universal Periodic Review and Peace Agreement Implementation: Conceptualising Connections, Challenges, and Ways Forward*, 12 LONDON REVIEW OF INTERNATIONAL LAW 95, 116 (2024).
[994] Shah and Sivakumaran, *supra* note 867 at 267.
[995] Chauville, *supra* note 5 at 98 (providing the example of "modify Article 32 of the criminal code" as an example of one such pin-cite).
[996] KECK & SIKKINK, *supra* note 22 (The "Boomerang Effect").
[997] Ryan Goodman, *Human Rights Treaties, Invalid Reservations, and State Consent*, 96 AM. J. INT'L. LAW 531, 533 (2002).

Consider the US' own ratification of the ICCPR. As described in section 2.1.1.1. above, the US attached several RUDs to its ratification of the ICCPR,[998] illustrating its exemptionalist attitude towards adherence to IHR norms.[999] This can be most obviously demonstrated in the US' retention of the death penalty, despite its obligations under the ICCPR to work towards abolition.[1000] Ignatieff's work serves to show how the US' selective engagement with international treaties is a reflection of its broader resistance to international norms, often grounded in domestic political concerns and federalist structures.[1001] A further example can be found in the US' resistance to ratifying the CRC, which it signed in 1995. The US has historically employed a "cautious and deliberate approach when it seeks to ratify a treaty."[1002] In failing to ratify the CRC, two common objections are cited, (1) that national and state sovereignty would be endangered, and (2) parental authority would be undermined.[1003] Moreover, each federated state would be responsible for developing and executing its own legislation, and thus can attach their own reservations, which cumulatively shows the tension that exists between domestic politics and IHR obligations.[1004]

This creates obstacles for CSOs seeking to deploy IHR provisions in their domestic advocacy, which is where the UPR serves as a strategic platform. When issuing Recommendations, the Member States neither weigh the SuR's RUDs or event signatory status, nor do they tailor outputs to the caveats attached by individual states in federated systems. For example, the US continuously received Recommendations calling for the abolition of the death penalty, despite its reservation

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[998] David Kaye, *State Execution of the International Covenant on Civil and Political Rights*, 3 U.C. IRVINE L. REV. 95, 100–02 (2013) (examining the implementation of the ICCPR in domestic legal systems and exploring the challenges of ensuring state compliance with its provisions); For further discussion, see also, David Sloss, *Non-Self-Executing Treaties: Exposing a Constitutional Fallacy*, 36 U.C. DAVIS L. REV. 1 (2002) (critiquing the doctrine of non-self-executing treaties and arguing that it is rooted in a misunderstanding of constitutional principles, thereby undermining the effectiveness of international law); Kristen D.A. Carpenter, *The International Covenant on Civil and Political Rights: A Toothless Tiger?*, 26 N.C.J. INT'L L. & COM. REG. 1 (2000) (analysing the ICCPR's limited enforceability and questioning its effectiveness as a mechanism for promoting global human rights standards); Carlos Manuel Vázquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT. LAW 695 (1995) (outlining and evaluating four interpretive doctrines used to determine whether treaties are self-executing in U.S. law and highlighting their implications for treaty enforcement); John Quigley, *The Rule of Non-Inquiry and Human Rights Treaties*, 45 CATH. U. L. REV. 1213 (1996) (critiquing the rule of non-inquiry in the context of human rights treaties and arguing that it obstructs the enforcement of international human rights obligations).

[999] Goodman, *supra* note 997 at 534.

[1000] Ignatieff, *supra* note 25.

[1001] *Id.* at 3–4.

[1002] Jenni Gainborough & Elisabeth Lean, *Convention on the Rights of the Child and Juvenile Justice*, 7 THE LINK, 2008, at 1.

[1003] *Id.* at 1–2. Although the US did ratify the CRC's two optional protocols in 2002, recognising that certain children require special protections by virtue of their extreme vulnerabilities. Nonetheless, this does not protect children involved with the US criminal justice system. *Id.* at 2.

[1004] Winton, *supra* note 927 (examining the US's failure to ratify key treaties like the CRC and its implications for human rights advocacy).

attached to Article 6 of the ICCPR, where it reserves the right to carry out the penalty on any person – except pregnant women – duly convicted in line with Constitutional constraints.[1005]

Instead, Member States articulate Recommendations through shared vocabulary found in the IHR instruments, namely the treaties. In turn, this makes "language" central to IHR advocacy. As demonstrated in the statistical outputs of this chapter's analysis, CSO recommendations that frame issues in IHR terms, even implicitly, saw greater uptake by the Member States. In effect, they should speak the UPR's "dialect," to strengthen the legitimacy of their claims and ensure that domestic political resistance is less determinative on whether their contribution is picked up internationally.

Consider ACLU recommendation 10 (Figure 41) which focuses on federal legislative reform, emphasising domestic mechanisms such as the PARA and amendments to the PLRA. Despite aligning with Campaign priorities (sentencing reform), and objectively addressing critical human rights concerns, the language employed is deeply rooted in US legislative and administrative frameworks. Although the FRAME method, by design, employs a broad interpretive approach to identify conceptual overlaps with the IHR framework, ACLU recommendation 10 does not employ any legal terminology that could have signalled these connections to Member States. By quoting very specific provisions, thus rooting its recommendation in US legislative frameworks, it lacks any interpretive cues that could have facilitated its uptake by the OHCHR drafters and the Member States.

Contrast this to ACLU recommendation 6 (Figure 36), which like recommendation 10 comes from Cycle 1 and is rooted in domestic law. However, in the case of recommendation 6, the language employed lends it to broader resonance as the focus is presented in terms that direct towards universal rights, like access to justice and habeas corpus. Moreover, it positions it within US constitutional guarantees, which by application of the FRAME method, aligns itself more readily

[1005] Senate Comm. on Foreign Relations, Report on the International Covenant on Civil and Political Rights, S. Exec. Rep. No. 23, 1 (102d Sess. 1992), reprinted in 31 I.L.M. 645 (1992), ¶I(2): "(2) That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age."

with IHR provisions. To reinforce this, Bettelli[1006] and Farrell's[1007] assessments demonstrate how advocacy framing can translate habeas corpus and access to justice concerns into universal concerns, thus bridging normative gaps between IHR law and domestic reform. This is only reinforced when considering Hughs and Fletcher's discussions on the broader role of treaties in creating shared legal vocabularies that facilitate engagement across domestic and international systems.[1008]

The contrast between both recommendations highlights the importance of the "*lingua franca* of universal norms and commitments" which are created through treaty processes per Fletcher,[1009] or the "burgeoning treaty system" per Hughes. Put simply, by codifying rights into binding obligations – ergo treaties – the international community generates a shared vocabulary that facilitates the dialogue between international and domestic actors in general. Treaties advance a common human rights framework, despite domestic acceptance posing challenges. Furthermore, Fletcher emphasises that CSOs actively participate in "standard-setting" therefore, they often contribute to the creation and interpretation of these norms.[1010] This is discussed further in section 6.5.2.

6.5.2. Observation Two: CSOs as Norm Entrepreneurs

As observation one detailed, treaty alignment provides for the strongest baseline for uptake at the UPR. However, this does not mean that CSOs should confine themselves to a narrow set of provisions. Indeed, where treaties are silent or weakened by RUDs, CSOs can draw on alternative sources of international law to position their recommendations or expose blind spots in the IHR framework. This is the basis of observation two, which considers the role of CSOs in norm

[1006] Bettelli, *supra* note 901 at 20 (critiquing post-Boumediene jurisprudence for narrowing the scope of habeas corpus jurisdiction in conflict with international law).
[1007] Brian Farrell, *The Right to Habeas Corpus in the Inter-American Human Rights System*, 33 SUFFLOK TRANSNAT'L L. REV. 197, 198, 214 (2010).
[1008] Edel Hughes, *The International Human-Rights Law Framework as a Tool for Promoting Peace and Preventing Conflict: Progress and Challenges*, 22 IRISH STUDIES IN INT'L AFFAIRS 25, 28 (2011); Laurel E Fletcher, *Power and the International Human Rights Imaginary: A Critique of Practice*, 14 J. OF HUM. RTS. PRACTICE 749, 753 (2022).
[1009] Fletcher, *supra* note 1008 at 761–2.
[1010] *Id.* at 761.

entrepreneurship through the deployment of soft and customary international law to extend, interpret, and pluralise the legal vocabulary available within the UPR framework.

Although the data confirms that treaty-aligned CSO recommendations had the greatest alignment with Member State Recommendations, it is not without its limitations. As Kaye explains, the enforceability of treaties is largely dependent on domestic political will.[1011] In the US, the adverse effects of federalism and Constitutional constraints that limit the impact of treaty obligations on human rights compliance is only exacerbated by its selective engagement with these treaties.[1012] To address these challenges, the data suggests that soft law can function as an alternatively pathway to extend the reach of treaties, giving CSOs a complementary strategy where treaty provisions are too narrow or politically unpalatable.

Abbott and Snidal emphasise that the non-binding nature of soft law instruments, makes them powerful tools to navigate political resistance; in turn, this would foster gradual compliance by encouraging dialogue and promoting a shared understanding of State obligations. [1013] Moreover, Lesch and Reiners observe that soft law instruments have a growing influence that help shape IHR norms through interpretative guidance that fills gaps left by treaty law.[1014] Goodman and Jinks propose soft law mechanisms facilitate acculturation and assist States in gradually internalising IHR norms, without coercion.[1015] These observations suggests that soft law can be used a means to either fill gaps in the IHR system, or reframe issues in ways that are more palatable to the SuR, provided they continue to be anchored in treaty provisions. On the latter, the flexibility and non-binding nature of soft law can be seen as non-intimidating too. In the context of the US, such framing could provide a diplomatic route that does not invoke politically contentious gaps, such as its non-ratification of the CRC.

[1011] Kaye, *supra* note 998 at 116.
[1012] *Id.* at 110–16.
[1013] Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT. ORG. 421 (2000); See contra, Kenneth Roth, *The Charade of US Ratification of International Human Rights Treaties*, 1 CHI. J. OF INT'L L. 347 (2000).
[1014] Lesch and Reiners, *supra* note 884 (discussing the role of General Comments and other soft law instruments in interpreting and expanding treaty obligations, providing actionable guidance for states and CSOs).
[1015] RYAN GOODMAN & DEREK JINKS, SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW 43–5 (2013).

However, combining these observations with previous discussion on the language of IHR law, an important data point must be flagged. Consider the language of ACLU recommendation 5, (Figure 44) which complicates this thesis' proposal. This recommendation employs language almost identical to that found in the Beijing Rules and Riyadh Guidelines; namely, imprisonment as "a last resort"[1016] which directly maps to Beijing Rule 19.1. Yet, it did not map onto any Member State Recommendations. This can be considered through two perspectives.

First, it affirms the existence of a treaty versus soft law hierarchy. Although the ACLU's recommendation mirrors, almost exactly, the language of a soft law instrument, the lack of binding force may have influenced Member State uptake. In turn, this suggests the proposed "shared vocabulary" approach is most viable when recommendations mapped to pluralised soft law provisions or anchored back to the treaty system that performs better than when recommendations rooted into solely singular soft law provisions. (Table 22)

Second, it could be a consequence of "formulaic Recommendations." Consider ACLU recommendation 8 (Figure 38), which also maps to Beijing Rule 19.1, as well as Rule 17.1 and Riyadh Guideline 46. Whilst this could be seen in line with the proposed layering of soft law provisions, it can also be an example of Member States leaning towards generic *headline* Recommendations, or what-could-be crudely labelled lazy Recommendations. These are widely repeated, formulaic, and easier to make. McMahon's scale for Recommendations should be considered here.[1017] There are five categories of Recommendations:

- Category 1 involves "generic appeals to the international community to provide assistance." These are generally considered formulaic and deflect responsibility.[1018]
- Category 2 emphasise continuity in actions and/or policies, they are often described as "hortatory and congratulatory in nature."[1019]

[1016] United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), G.A. RES. 40/33, annex, ¶ 19.1, U.N. Doc. A/RES/40/33 (Nov. 29, 1985) which reads: "The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period."
[1017] McMahon et al., *supra* note 18 at 14–5.
[1018] *Id.* at 27.
[1019] *Id.*

- Category 3 Recommendations use action verbs to consider change.

- Category 4 can often prove to be "low hanging fruit" as they contain a general element, although they represent a significant portion of action-orientated Recommendations, their "generality...facilitates governments' acceptance of them."[1020] This is due to the considerable flexibility provided to define how the SuR fulfills the Recommendation.

- Category 5 are specific action Recommendations. They represent the "greatest potential cost to the SuR"[1021] with action verbs more in line with international language.

From these, it is clear that Member State Recommendations can be deemed to be formulaic and sweeping, or "lazy." Returning to ACLU recommendation 8 (Figure 38), both Croatia and Ireland issued Recommendations that would be classified into Category 5 however, their formulation reveals ways in which Member States dilute or reframe CSO specificity. Take Recommendation 26.246 (Croatia): "Adopt relevant national legislation that will ban issuing life without parole sentences for juveniles." This Recommendation is most closely tracked to the ACLU's demands for specific legislative reforms, which were condensed into a single, generalised legislative call. By contrast, Recommendation 26.200 (Ireland): "Immediately introduce a moratorium on the federal death penalty and cease sentencing juvenile offenders to life without parole" demonstrates a clear sweeping formulation that grouped juvenile life without parole with the federal death penalty. While specific, it could be considered politically performative. It also demonstrates an attempt at using the SMART approach.[1022]

Although Ireland's Recommendation uses a clear action verb ("introduce"), a measurable element ("moratorium" and "cease sentencing"), and a time-bound dimension ("immediately"), it falls short on achievability. It is politically implausible and structurally difficult given the US' federalist structure. This is a demonstrable limitation of the SMART criteria when applied to complex

[1020] *Id.* at 15.
[1021] *Id.*
[1022] Specific, Measurable, Achievable, Relevant, and Time-bound, a formula introduced by UPR Info in 2015, that has since grown in popularity, with consistent calls for "SMART" Recommendations. A GUIDE FOR RECOMMENDING STATES AT THE UPR (2015), https://upr-info.org/sites/default/files/documents/2015-09/upr_info_guide_for_recommending_states_2015.pdf.

domestic systems. A solution to this particular issue is provided below in Chapter Seven's discussion of Prong Three.

These examples highlight a dual challenge CSOs face at the UPR, particularly when advocating issues not formally codified in treaty law. Due to Member States' tendency towards formulaic or performative Recommendations, it is inevitable that they will sometimes dilute the specificity of CSO recommendations. This can also be done for diplomatic reasons. On the other hand, reliance on soft law alone – even when mirroring vocabulary – risks invisibility. Therefore, it is within this space that CSOs assume the role of norm entrepreneurs. To explore this, it is necessary to consider a negative mapping that emerged in the data.

In Cycle 3, the ACLU made recommendation 4 (Figure 40) which, for the purposes of this thesis, is considered to pertain to the rights of the elderly. This is also considering the ACLU frames this around the notion of "elderly release" from prison. This engagement can be considered an example of norm entrepreneurship, which was first discussed in Prong One – underscoring the interconnectedness of the prongs.[1023] To extend the conversation, in the context of Prong Two, ACLU recommendation 4 does not map to either hard or soft law. This is indicative of the role of CSOs in identifying blind spots within the IHR framework.

Presently, there is neither a treaty nor soft law instrument dedicated to the elderly, either generally or in the context of criminal justice. A thematic report by the OHCHR found that the current IHR framework provides "fragmented and inconsistent coverage" of human rights of older persons, despite normative developments at the regional level.[1024] Furthermore, an independent expert report concludes that the existing framework renders incarcerated older persons "invisible"[1025] and their human rights "unaddressed,"[1026] calling for a comprehensive legally binding instrument dedicated to this demographic.[1027]

[1023] See above.
[1024] U.N. High Comm'r for Human Rights, Report on the Human Rights of Older Persons, ¶ 55, U.N. Doc. A/HRC/49/70 (Jan. 28, 2022).
[1025] Indep. Expert on the Enjoyment of All Human Rights by Older Persons, Report on Older Persons Deprived of Liberty, ¶ 84, U.N. Doc. A/HRC/51/27 (July 18, 2022) ("Indep. Expert Report 2022").
[1026] *Id.*
[1027] Indep. Expert Report 2022, at ¶ 87(a).

CSOs' role in norm entrepreneurship has deep historical roots, dating as far back as 1775,[1028] though not becoming international until the mid-19th century.[1029] Since then, they have been influencing the development of key international treaties, and developing the language of international law – they even influenced the language on human rights in the UN Charter.[1030] Their role was formalised and intensified under the UN system with the introduction of Article 71 of UN Charter, which established NGO consultative status.[1031] Considering their numerous modern roles, their ability to internalise IHR norms into their domestic systems, engage in ongoing policy development processes, appraising State compliance, and litigation, to name a few,[1032] reflect their deeply ingrained position in the IHR system.

In closing Chapter Six the data and discussion presented affirms that CSOs' role under Prong Two is twofold. First, it is generally beneficial to situate CSO advocacy within the binding framework of IHR law. Second, where the framework is insufficient or silent, CSOs should innovate through norm entrepreneurship to expand and refine it, adhering to their legacy of their roles. In this view, Prong Two mirrors Prong One as a foundational component of the UPR mechanism. The next chapter turns to Prong Three, which explores how the dynamics of the UPR interact with the domestic federal structure of the US, questioning the subject of specificity, jurisdiction at the domestic level, and political feasibility.

[1028] Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 MICH. J. INT'L L. 183, 191 (1997).
[1029] *Id.* at 192; See also, Harlod H. Koh, *The 1994 Roscoe Pound Lecture: Transnational Legal Process*, 75 NEB. L. REV. 181 (1996); Clara Burbano Herrera & Yves Haeck, *The Historical and Present-Day Role of Non-Governmental Organisations Before the Inter-American Human Rights System in Documenting Serious Human Rights Violations and Protecting Human Rights and the Rule of Law Through Ensuring Accountability*, 17 UTRECHT L. REV. 8 (2021); Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AM. J. INT. L. 348 (2006); Mariana Olaizola Rosenblat, *The Role of Transnational Civil Society in Shaping International Values, Policies, and Law*, 23 CHI. J. INT'L L. 144 (2022).
[1030] Charnovitz, *supra* note 1028 at 214–5, 249.
[1031] *Id.* at 267.
[1032] *Id.* at 271–8.

Chapter Seven: Prong Three – Domestic Legal and Political Realities

This final analysis chapter concludes the analytical findings by detailing Prong Three of the model. (Figure 27) This prong explores the impact of the relevant domestic structure on how CSO recommendations are framed and received by the Recommending Member States. In this case study, the US has a federal structure: with a central, federal government (composed of three branches: the Executive,[1033] the Legislative,[1034] and the Judiciary[1035]) and 50 federated states. Each state has its own branches of government, including a Governor, a legislature, and a state Supreme Court. From the analysis of the dataset, two themes emerge in this context: jurisdiction and specificity.

Before evaluating the dataset, it is important to define the term "jurisdiction" in the context of this chapter. It is defined differently in Chapter Seven than in Chapter Six when used in relation to the UPR. In Chapter Six, "jurisdiction" referred to the legal parameters within which the Member States could conduct the review. In other words, the IHR standards against which a SuR is assessed. However, in Chapter Seven it refers to the communication limitations imposed by the UN Charter's equality clause,[1036] which mandates that all States are treated equally. Within the UPR framework, this places a restriction on Member State communications with SuRs. In practice, Member States are prohibited from tailoring their communication or Recommendations to address federated States in a bespoke or differentiated manner that acknowledges sub-national competencies or jurisdictional divides. Instead, the Member States must treat each State uniformly, meaning they must direct Recommendations to the SuR as a unit, regardless of whether the human rights issues fall under national, state, or local jurisdiction. However, there is evidence of a more nuanced approach occasionally emerging where Member State Recommendations sometimes reference internal divisions, yet it remains a Recommendation to the SuR as the central State.[1037] In the domestic context, jurisdiction refers to the domestic legal entity with the power to implement

[1033] The President and their Administration.
[1034] Congress, which is composed of the House of Representatives and the Senate.
[1035] SCOTUS.
[1036] U.N. Charter art. 2, ¶ 1; *See also*, UNGA Resolution 60/251 ¶ 5(3).
[1037] For example, Recommendation 92.65 made by Egypt during Cycle 1, which says, "Review its laws at the Federal and State levels with a view to bringing them in line with its international human rights obligations." The federal government remains the central subject of the Recommendation, even if state laws are referenced.

change. As this case study positions the US as the SuR, this refers to the two-tiered government structure composed of a national government and federated states.

This considered, the extracted 25 ACLU recommendations were categorised by the author in four distinct groups, distinguished by the jurisdiction named within.

- **Group 1** includes ACLU recommendations that explicitly identify the federal government as the primary authority responsible for implementation. These are identified in the recommendations by explicit reference to Congress, "the federal government," the President or the Administration, and "the US."
- **Group 2** includes recommendations that explicitly address the federal *and* state governments, often calling for a coordinated effort between the levels. The markers for this group are an explicit use of "Congress and state legislatures," and "the President and state Governors."
- **Group 3** contains ACLU recommendations that explicitly and exclusively reference state-level authorities. These were identified by the mention of "states" without reference to the federal level.
- **Group 4** categorises recommendations that do not specify any authority mentioned in Groups 1-3 or specify bodies of the federal government, for example, the Department of Justice. Such recommendations do not fall into Group 1 as executive agencies have limited, delegated powers, and do not constitute "the federal government" in the sense of holding lawmaking or policy authority.

These categories emerged inductively through close reading of the recommendations. Recurring features provided the basis for establishing the prongs; in this case, patterns in jurisdictional focus established Prong Three. Table 24 summarises the distribution of the extracted ACLU recommendations across jurisdictional groups, organised by UPR Cycle. Group 1 (federal only) is the largest and most consistent category, with eight recommendations (32%) spread relatively evenly across all three Cycles. Group 4 (neither/unclear) is the second largest, with seven recommendations (28%), which are entirely concentrated in Cycle 2. Group 2 (federal and state) accounts for six recommendations (24%); though initially limited, it becomes more prominent in

later Cycles. Finally, Group 3 (state only) is the smallest category, with four recommendations (16%), appearing only in Cycles 1 and 3. These figures demonstrate the ACLU's evolving approach to framing authority at the UPR.

	Group 1 (Federal only)	Group 2 (Federal & state)	Group 3 (states only)	Group 4 (neither/ unclear)	Total
Cycle 1	2	0	1	0	3
Cycle 2	3	2	0	7	12
Cycle 3	3	4	3	0	10
Total	8	6	4	7	**25**

Table 24: Distribution of ACLU recommendations by jurisdictional group and UPR cycle (n = 25).

The distribution of resonance with Member State Recommendations across jurisdictional groups shows the differences in the extent to which ACLU recommendations gained visibility at the UPR. Table 25 contains the number and percentage of ACLU recommendations in each group that resonated with at least one Member State Recommendation. In total, nine ACLU recommendations from the dataset resonated with the Member States. Group 2 (federal and state) stands out with five from six recommendations (83.3%) resonating, making it the most successful category. By contrast, Group 3 (state only) had no recommendations map to Member State Recommendations. This reflects the structural limitations binding Member States by virtue of the UN Charter, which makes state governments "less susceptible than the federal government to international pressure."[1038] It is noteworthy that the resonance levels of Group 1 (federal) and Group 4 (neither/unclear) accounted for two recommendation mappings each (25% and 28.6% respectively).

[1038] de la Vega and Yamasaki, *supra* note 355 at 223.

	Number of ACLU recommendations with at least one MS resonance	% of ACLU recommendations resonating
Group 1 (Federal Only)	2	(n=8) 25%
Group 2 (Federal & state)	5	(n=6) 83.3%
Group 3 (state Only)	0	0%
Group 4 (Neither/Unclear)	2	(n=7) 28.6%
Total	**9**	**36%**

Table 25: Number and percentage of ACLU recommendations with at least one mapping to a UPR Member State Recommendation, by jurisdictional group.

The figures in Table 25 point to two observable dynamics in the dataset. First, ACLU recommendations that explicitly address both federal and state level authorities were consistently effective, suggesting that explicit recognition of the duality of the domestic governance of the US positively impacts resonance. Second, ACLU recommendations that targeted the sub-national states only did not gain traction. Groups 1 and 4 exist within these two extremes, with some degree of success. When observed in its entirety, the patterns suggest a correlation exists between the jurisdictional framing of CSO recommendations and their resonance with Member States.

It is this correlation that underpins the conceptualisation of Prong Three, which is developed in the following section. To demonstrate the jurisdiction component of the Model, it will be discussed through the analysis of ACLU recommendations in section 7.2., which will provide examples of recommendations within each jurisdictional group. Finally, section 7.3. provides a discussion of observations drawn from the dataset, positioning the findings within existing scholarly discourse on the relationship between federalism and IHR advocacy. This discussion will challenge the prevailing notion that federalism is an inherent barrier to human rights advocacy. It proposes an extension to Belser's typology of international Recommendations to the US in two ways: first by applying it to CSO recommendations, and second, by introducing the novel concept of federalism-conscious recommendations. Finally, the chapter explores the element of specificity in recommendations. This discussion suggests the clarity and precision of recommendations are

shaped by the jurisdictional context in which they are situated. A CSO recommendation targeting federal authorities alone, for example, may require less granularity, as federal institutions typically have a broad mandate over national policies. However, when recommendations span both federal and state levels, greater specificity is required.

7.1. Prong Three Concept: Domestic Realities

Prong Three considers the role of federalism in shaping how CSOs frame their recommendations, and how these framings impact resonance at the UPR. Analysis of this case study suggests that CSO recommendations made to the US that demonstrated jurisdictional clarity – whether federal, state, or both – play a role in whether they gain traction with Member States. Building on this, Prong Three considers federalism as a domestic legal and political reality that CSOs should navigate when advocating in the international arena.

By explicitly naming the responsible domestic actor, CSOs demonstrate they are attuned to the domestic political arrangement. In turn, this ensures CSO recommendations are sensitive to the reality on the ground. Furthermore, the data suggests that the ACLU may have calibrated the detail and therefore the feasibility of their recommendations, once jurisdiction is established. For example, recommendations aimed solely at the federal level of government often require less detail – this is likely due to the broad mandates the federal government holds over national policies. By contrast, recommendations that span both the federal and state levels engender a greater need for specificity to ensure clarity on the feasibility across jurisdictions is established. Thus, the findings also suggest that jurisdictional clarity in CSO recommendations influences the required specificity. Ultimately, this approach is reflective of the nuanced nature of IHR advocacy within federal systems.

This nuance is illustrated in UPR Info's 2021 report on good practice within the context of federated Member States, which underscored the importance of dialogue, cooperation, and communication between the federal and state levels of governments.[1039] These are essential for

[1039] UPR INFO, GOOD PRACTICES FROM FEDERAL STATES IN THE UPR PROCESS 1, 5 (2021).

constructive engagement in the implementation of Member State Recommendations, but the report illustrates the challenges posed by federalism within the UPR. UPR Info observes that while Member State Recommendations must be addressed "to the country as a whole," in federal systems this does not reflect the domestic realities of human rights application.[1040] There may be issues that fall under the exclusive jurisdiction of one level while others within shared competences.[1041] This complicates the implementation process.

These systemic challenges have prompted calls for the direct involvement of sub-national governments in the UPR process.[1042] Advocates arguing for this reform justify it on the basis that several human rights concerns happen at the sub-national level; proposing that the inclusion of these state governments would enhance the feasibility of Member State Recommendations.[1043] This aligns with the dataset, which shows that Campaign themes such as bail reform and re-entry are largely subject to state-level legislation. Although the ACLU opted not to raise these issues at the UPR,[1044] the data has demonstrated that recommendations confined to state authorities fail to gain traction with Member States.[1045] Nonetheless, these proposals reinforce the central point of this prong; jurisdictional clarity is important. Yet, they also remain aspirational. The UPR is designed to not overburden the Member States and detract the UNHRC from its duties.[1046] Introducing sub-national entities, and local actors would likely place more strain on the limited resources available to the OHCHR in facilitating the review. Instead, this thesis suggests that CSOs can help bridge this gap by guiding Member States by deploying their expertise in the domestic legal landscape.

In the context of UPR Info's report, a particular value is assigned to CSOs and academia, whose granular knowledge of domestic jurisdictions proves useful in the allocation of responsibility. Civil society is described as "instrumental" to the compilation and relaying of information and the subsequent monitoring of implementation.[1047] Academia was credited for its complementary role

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[1040] *Id.* at 8.
[1041] *Id.*
[1042] LUDOVICA CHIUSSI CURZI, KAMELIA KEMILEVA & DOMENICO ZIPOLI, ACADEMY BRIEFING NO.25: LOCALIZING MULTILATERALISM: THE ROLE OF LOCAL AND REGIONAL GOVERNMENTS IN ADVANCING HUMAN RIGHTS AND THE SDGS (2025).
[1043] *Id.* at 13.
[1044] Table 11 above.
[1045] Table 25 above.
[1046] Resolution 5/1. Annex 1, ¶¶ 3(h)-(j).
[1047] UPR INFO, *supra* note 1043 at 25.

whereby implementation opportunities are analysed and proportionally allocated to the appropriate levels.[1048] Taken together, these insights stress the role of CSOs in the engagement of federated States at the UPR.

However, the good practice proposed by UPR Info occur after Recommendations have been issued.[1049] While these serve as valuable guidelines to address federalism post hoc, clarity from the outset may strengthen and further streamline the role of CSOs in this process. Against this context, this thesis proposes that CSOs – through Prong Three – can enhance the feasibility and educate Member States on domestic realities, beyond the human rights conditions, which in turn could result in jurisdictionally sensitive Recommendations. To reiterate what was said earlier in this thesis, this model operates on the assumption that CSOs wish to influence Member State Recommendations within the boomerang effect described by Keck and Sikkink.[1050]

The acknowledgements of these jurisdictional boundaries can serve to legitimise CSOs' recommendations at the UPR through demonstrable knowledge of the domestic context. (Figure 27) For the Member States, this legitimacy can be leveraged to ensure their own Recommendations remain aligned with IHR standards and the domestic realities – the latter of which is a core tenet of the UPR mechanism.[1051] The UPR is expected to take into consideration the "development and specificities"[1052] of the SuR, which in the context of the US could be taken to mean the federal system sharing competencies between national and sub-national governments, though no scholars have discussed this interpretation. It should, however, be noted that the federal structure of the US has been interpreted as a "factor of complexity," [1053] which should also be considered by Member States.

[1048] *Id.* at 25.
[1049] For example, by clustering and disseminating Recommendations "as per competencies," or the establishment of action plans that allocate responsibilities to the relevant actors.
[1050] KECK AND SIKKINK, *supra* note 22 at 12–3.
[1051] Resolution 5/1, Annex 1, ¶ 3(l): "The universal periodic review should...Without prejudice to the obligations contained in the elements provided for in the basis of review, take into account the level of development and specificities of countries."
[1052] UN Resolution.
[1053] ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE, UNIVERSAL PERIODIC REVIEW: IMPLEMENTATION PLAN OF RECOMMENDATIONS AND PLEDGES 79 (2013).

Finally, when considered against the understanding of the UPR as an incremental lawmaking mechanism, namely in contributing to the interpretation of IHR provisions[1054] to establish IHR standards in practical settings through repetitive cycles and dialogue, jurisdictional clarity can be viewed as essential. By recognising and working within these jurisdictional nuances, CSOs support the Member States by demonstrating knowledge of the domestic context, which would contribute to a fortified understanding at the international level.[1055] Consequently, through CSO mobilisation,[1056] this could expand the influence and impact of the UPR by establishing a pathway of indirect communication with sub-national entities.

Prong Three proposes that federalism is a structural reality that influences the resonance of CSO recommendations at the UPR. Jurisdictional clarity in CSO recommendations can contribute to informing Member States, as CSOs would leverage their expertise as entities that operate within the domestic setting. This would position CSOs as instruments to bridge the disconnect between the UPR and de-centralised governments.

7.2. Data Examples

The following sections illustrate the above discussion through the ACLU recommendations that informed these proposals. Each jurisdictional group is discussed in turn.

7.2.1. Group 1 – Federal Only

Group 1 recommendations are composed of ACLU recommendations that explicitly name federal authorities alone. Eight recommendations were categorised into this group,[1057] of which two mapped to at least one Member State Recommendation.[1058] Textual analysis of these recommendations suggests these alignments primarily occur when the ACLU focuses on broad,

[1054] Cowell, *supra* note 419 at 7.
[1055] See discussion of ACLU recommendations below.
[1056] Lane, *supra* note 333.
[1057] Table 24.
[1058] Table 25.

universally accepted IHR norms,[1059] however the central objective of this analysis is to consider the influence of federalism on these mappings. Therefore, three recommendations will be considered.

Beginning with ACLU recommendation 6 (Figure 46), which explicitly calls on "Congress" to amend the habeas-related provisions of the AEDPA. This recommendation mapped to Member State Recommendation 92.186 from Austria, broadly calling on the US to "ensure the right to habeas corpus in all cases of detention." This is a clear demonstration of the ACLU's federal-level advocacy.

Source	p.11
ACLU recommendation	Congress should amend the habeas-related provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) so that federal courts are more accessible to prisoners asserting claims of constitutional violations.
UPR Recommendation	92.186 - Ensure the right to habeas corpus in all cases of detention (Austria)
Response	Supported

Figure 46: ACLU recommendation 6 (Prong 3).

This recommendation can be contrasted with ACLU recommendation 10 (Figure 47), which similarly addressed specific legislative provisions, but in this instance, the ACLU calls on Congress to pass a domestic statute. Unlike recommendation 6, this recommendation does not align with the broader principles upheld by the UPR. More specifically, it seeks legislative reform to challenge conditions of confinement that infringe on the rights of prisoners but cites exact barriers from within the original provision. This recommendation did not gain any traction at the UPR – the reason for which is discussed in section 6.3.3. above.

[1059] See Chapter 6.

Source	p.11
ACLU recommendation	Congress should act immediately to ensure the Prison Abuse Remedies Act of 2009, H.R. 4335 (PARA) becomes law, and the Obama Administration should support its passage, to reinstate the ability of prisoners to challenge conditions of confinement that violate their rights by repealing the "physical injury" requirement of the Prison Litigation Reform Act (PLRA); exempting juveniles under age 18 from the burdens created by the PLRA; and amending the "exhaustion requirement."
UPR Recommendation	-
Response	-

Figure 47: ACLU recommendation 10 (Prong 3).

Lastly, consider ACLU recommendation 7 (Figure 48) which calls on the "federal government" to impose a national moratorium on the use of the death penalty and urges "Congress" to pass legislation to abolish the federal death penalty altogether. Furthermore, it suggests that the federal government should examine racial disparities in the imposition of death sentences, acknowledging persistent issues of racial bias within the criminal justice system. This recommendation aligns with multiple Member State Recommendations, including Recommendation 26.179 and others through to 26.205, indicating a broad international consensus on the need for the US to address concerns related to the death penalty.

Although this recommendation did resonate with Member States, when considered against the ACLU recommendation that immediately follows in the stakeholder submission ("*State governments and courts should abolish the death penalty, joining the 21 U.S. states that have already done so*.") which did not resonate with any Member State Recommendations, it is reasonable to assume jurisdiction is a substantive consideration. However, the distinction between recommendation 7 and the successive ACLU recommendation, indicates the Member States may recognise the jurisdictional divide in death penalty laws.

Source	p.7 (ACLU Stakeholder Submission)
ACLU recommendation	The federal government should impose a national moratorium on the use of the death penalty and Congress should pass legislation abolishing the federal death penalty. Meanwhile, the federal government should study the racial disparities in the imposition of death sentences.
UPR Recommendation	Recommendation 26.179 Recommendation 26.180 Recommendation 26.184 Recommendation 26.185 Recommendation 26.186 Recommendation 26.187 Recommendation 26.188 Recommendation 26.190 Recommendation 26.191 Recommendation 26.192 Recommendation 26.194 Recommendation 26.195 Recommendation 26.196 Recommendation 26.197 Recommendation 26.198 Recommendation 26.200 Recommendation 26.202 Recommendation 26.203 Recommendation 26.205
Response	All noted

Figure 48: ACLU recommendation 7 (Prong 3).

By only engaging with federal-level recommendations on the matter, the Member States neglect to address the reality that most executions in the US occur at the state level.[1060] However, the strong alignment of ACLU recommendation 7 is indicative of Member States being more readily capable of engaging the issue at the federal level rather than navigating the intricacies of the domestic structure. This considered, it is noteworthy that several Recommendations explicitly specify the federal level only. Yet, nine Recommendations explicitly extend the reach to include explicit reference to abolition in the states, with several more vaguely implying this. This reinforces the idea that the Member States have a familiarity with the specific details of capital punishment in the US. In other words, they are acutely aware, at least, of the necessity for intergovernmental coordination to address state-level jurisdictions. This naturally turns attention to Group 2 recommendations.

[1060] *Executions Overview: Executions by State and Year*, DEATH PENALTY INFO. CTR., https://deathpenaltyinfo.org/executions/executions-overview/executions-by-state-and-year (last visited Sep. 17, 2025).

7.2.2. Group 2 – Federal and state

ACLU recommendations categorised into Group 2 explicitly direct actions at both federal and state levels. It can, therefore, be assumed that they reflect the ACLU's understanding of the dynamics of the legal structure in the US. These recommendations would require reform across different levels of government. As summarised above, Group 2 recommendations enjoyed the greatest alignment with Member State Recommendations. Of the six recommendations within this group[1061] five resonated with at least one Member State Recommendation, meaning an 83.3% resonance.[1062] This suggests that CSOs in the US should consider employing a strategy that targets the layered governance when addressing system issues such as criminal justice reform.

Take ACLU recommendation 3 for example, (Figure 49) which calls for the abolition of life without parole sentences for nonviolent offences. Moreover, it urges "Congress and state legislatures" to eliminate laws that mandate or allow LWOP for nonviolent crimes, while also proposing retroactive resentencing for those currently serving such sentences. This recommendation aligns with UPR Recommendation 176.235 from Benin, which advocates for the abolition of life imprisonment without parole for nonviolent offenses. The alignment between ACLU recommendation 3 and Member State Recommendation 176.235 underscores the shared international concern over excessive sentencing for nonviolent offenses. By targeting both Congress and state legislatures to abolish LWOP for nonviolent offenses, the ACLU reflects a broader human rights principle against disproportionate sentencing.[1063] The correlation with the Member State Recommendation suggests that addressing sentencing reform at both federal and state levels resonates with international standards, signalling that such practices are not only out of step domestically but also viewed as inconsistent with global human rights norms. This alignment shows that by framing recommendations within this dual federal-state structure, the

[1061] Table 24.
[1062] Table 25.
[1063] ICCPR Article 9 and Nelson Mandela Rules, Rule 5. See also, Marta Nelson, Samuel Feineh & Maris Mapolski, A New Paradigm for Sentencing in the United States, The Vera Institute of Justice (February 2023) (highlighting a growing recognition of the harms caused by excessively punitive sentences. The authors argue for rehabilitative approaches to replace severe, disproportionate penalties). See contra, James M. Byrne, April Pattavina & Faye S. Taxman, International Trends in Prison Upsizing and Downsizing: In Search of Evidence of a Global Rehabilitation Revolution 10 Int'l J. of Evidence-based Research, Policy and Practice 420 (2015).

ACLU can amplify its message and support for internationally accepted standards, particularly when they address issues of fairness and proportionality in sentencing.

Source	p.6 (JS43)
ACLU recommendation	Abolish the sentence of life without parole for nonviolent offenses. Congress and state legislatures should eliminate all existing laws that either mandate or allow for a sentence of LWOP for a nonviolent offense. Such laws should be repealed for nonviolent offenses, regardless of whether LWOP operates as a function of a three-strikes law, habitual offender law, or other sentencing enhancement. Make elimination of nonviolent LWOP sentences retroactive and require resentencing for all people currently serving LWOP for nonviolent offenses.
UPR Recommendation	176.235 – Abolish life imprisonment without the possibility of parole for non-violent offenses (Benin)
Response	Supported/noted

Figure 49: ACLU recommendation 3 (Prong 3).

Similarly, ACLU recommendation 13 (Figure 50) exemplifies Group 2's dual approach by advocating for a revision of the Department of Justice's (DOJ) guidance on racial profiling. It urges federal action to eliminate exemptions related to border security and national integrity, while also recommending that state and local law enforcement adopt these revised standards. This multi-level advocacy aligns with Member State Recommendation 176.121 from Kazakhstan, which calls on the US to take measures to eliminate racial discrimination, including racial profiling in law enforcement. By addressing both federal and state jurisdictions, the ACLU strengthens the recommendation's applicability and responsiveness to local law enforcement practices while ensuring alignment with national standards. The inclusion of both federal and state entities in this recommendation reflects the reality that while federal policy can set standards, effective implementation depends on state and local law enforcement. This connection reinforces the ACLU's approach, as it acknowledges the layered nature of law enforcement in the US, which

aligns with the UPR's aim to foster accountability and equity in all levels of governance, thus bridging domestic structures with international anti-discrimination standards.

Source	p.8 (JS43)
ACLU recommendation	Revise the Department of Justice's Guidance Regarding the Use of Race to: (1) prohibit profiling based on religion or national origin or sex (including gender identity and expression),or sexual orientation; (2) end exceptions for border integrity and national security; (3) apply the Guidance to state and local law enforcement who work in partnership with the federal government or receive federal funding; (4) explicitly state that the ban on racial profiling applies to data collection, intelligence activities, assessments and predicated investigations; and (5) make the Guidance enforceable. Revise the Department of Homeland Security's April 2013 memorandum to component heads regarding its commitment to non-discriminatory law enforcement and screening activities, which incorporates the Justice Department's Guidance by reference, accordingly.
UPR Recommendation	176.121 - Take further measures to eliminate racial discrimination in all of its forms and manifestations, in particular, by prohibiting the practice of race profiling in law enforcement, as recommended by the United Nations treaty bodies (Kazakhstan)
Response	Supported

Figure 50: ACLU recommendation 13.

ACLU recommendation 8 (Figure 51) further underscores the necessity of dual-level engagement. It proposes that Congress and state legislatures pass laws to limit life sentences, eliminate mandatory life without parole, and allow juveniles to petition for resentencing. This recommendation aligns with Member State Recommendation 26.246 from Croatia, which calls for a legislative ban on life sentences without parole for juveniles, underscoring the ACLU's advocacy for sentencing reform that encompasses federal legislative action and state implementation. This dual approach addresses systemic sentencing issues that affect juveniles and adults alike, supporting progressive reforms across varying legal jurisdictions. By addressing both Congress and state legislatures, the ACLU recognises the need for consistent legislative standards across the US to prevent harsh sentencing practices for minors. The Member States' Recommendations

highlight the international stance that life without parole for juveniles is incompatible with human rights principles, reinforcing the ACLU's stance. This dual-jurisdictional approach not only strengthens compliance with international norms but also demonstrates the importance of coordinated reforms in achieving substantive changes. This alignment suggests that by addressing systemic issues at both federal and state levels, the ACLU's advocacy can resonate more deeply with global expectations on juvenile justice reform.

Source	p.6 (ACLU Stakeholder Submission)
ACLU recommendation	Congress and state legislatures should pass legislation that limits life sentences to 20 years, ends mandatory life in prison without parole sentences, implements the second look process outlined above, and eliminates juvenile life without parole sentences by allowing people convicted as children to petition for resentencing in the original sentencing court.
UPR Recommendation	26.200 – Immediately introduce a moratorium on the federal death penalty and cease sentencing juvenile offenders to life without parole (Ireland) 26.246 – Adopt relevant national legislation that will ban issuing life without parole sentences for juveniles (Croatia)
Response	Noted

Figure 51: ACLU recommendation 8 (Prong 3).

Lastly, ACLU recommendation 14 (Figure 52) calls for Congress and state legislatures to implement broad sentencing reforms, including the elimination of mandatory minimum sentences and three-strikes laws, with retroactive application to allow relief for those already serving harsh sentences. This recommendation aligns with Member State Recommendation 26.242 from Portugal, which advocates for reducing mandatory minimum sentences to alleviate prison overcrowding. By targeting both federal and state authorities, the ACLU acknowledges the interconnected nature of criminal justice policies, where both levels of government play essential roles in enacting sustainable reforms. The alignment between ACLU recommendation 7 and

Member State Recommendation 26.242 is notable because both focus on reducing punitive sentencing practices to address prison overcrowding. By urging both Congress and state legislatures to reform mandatory minimums and three-strikes laws, the ACLU aligns with the UPR's broader goal of creating more humane and effective criminal justice policies. The federal-state framework of this recommendation strengthens its relevance, as it acknowledges the shared responsibility between federal and state governments in alleviating systemic issues such as overcrowding. This connection illustrates how multi-level advocacy not only addresses practical constraints in the US system but also supports international calls for less punitive and more rehabilitative sentencing. This correlation underscores that addressing prison reform through both levels of government enhances the recommendation's ability to influence structural change and demonstrates the ACLU's strategic alignment with IHR principles.

Source	p.6 (ACLU Stakeholder Submission)
ACLU recommendation	Congress and state legislatures should enact comprehensive sentencing reform legislation, including federal legislation that eliminates mandatory minimums for drug crimes and other reforms of mandatory minimum and three-strikes laws. These reforms should apply retroactively, so those already serving harsh sentences may seek relief.
UPR Recommendation	26.242 - Take further action to prevent overcrowding of jails and prisons, especially during the current pandemic; eliminating or reducing mandatory minimum sentences would be crucial to this effect (Portugal)
Response	Supported

Figure 52: ACLU recommendation 14 (Prong 3).

Together, these Group 2 recommendations illustrate the importance of a dual-jurisdictional approach in addressing complex human rights issues within the US federal system. The 100% correlation rate between these recommendations and relevant Member State Recommendations demonstrates that engaging both federal and state entities enhances the relevance and potential

impact of CSO advocacy within the UPR framework. This approach provides a model for addressing structural issues that transcend single levels of government, reinforcing the necessity of cross-jurisdictional collaboration in human rights advocacy.

7.2.3. Group 3 – state only

ACLU recommendations categorised in Group 3 specifically address actions at the state level, targeting issues that fall solely within state jurisdiction. These recommendations are phrased in such a way to change state legislation, policies, or practices without directly involving federal authorities. Despite the targeted nature of these recommendations, there are no corresponding Member State recommendation directly addressing state-specific actions. Out of four recommendations in this Group, none could be mapped to Member State recommendations and therefore the discussion will move on to Group 4. This affirms that state-only recommendations cannot work at the UPR.

7.2.4. Group 4 – Neither/Unclear Jurisdiction

Recommendations in Group 4, which do not clearly name a jurisdiction at either the federal or state level, demonstrate a lower correlation with Member State Recommendations, as only28.6% of these recommendations were successfully mapped to UPR outputs. This suggests that the strategy of not specifying clear jurisdiction might be less effective in influencing Member State Recommendations. Consider ACLU recommendation 15, which calls for the creation of incentives and penalties to ensure state compliance with the PREA and the enforcement of its audit requirements. There was no corresponding Member State Recommendation in this instance. This recommendation’s general call for "meaningful incentives and penalties" without specifying whether the responsibility lies with federal or state authorities could contribute to its lack of traction within the UPR framework.

Source	p.5 (JS27)
ACLU recommendation	Create meaningful incentives and penalties to ensure that states comply with the Prison Rape Elimination Act and enforce PREA's audit requirements.
UPR Recommendation	-
Response	-

Figure 53: ACLU recommendation 15 (Prong 3).

ACLU recommendation 9 calls for measures to ensure that youth in conflict with the law are not subjected to adult criminal procedures, advocating for practices that consider age and cognitive development to promote rehabilitation. However, the recommendation's lack of clarity around whether these measures should be enacted at the federal level or left to individual states may contribute to its limited resonance within the UPR. Juvenile justice practices vary significantly across states, and without a clear directive on who should implement these reforms, the recommendation may appear too vague for international scrutiny. In the context of the UPR, where national commitments are paramount, the ambiguity surrounding the responsible authority, in other words, jurisdiction, diminishes the recommendation's potential to align with UPR objectives and scope.

Source	p.5 (JS27)
ACLU recommendation	Adopt measures to ensure that all youth in conflict with the law are not subjected to adult criminal procedures that fail to take into account their age and cognitive development and the desirability of promoting rehabilitation.
UPR Recommendation	-
Response	-

Figure 54: ACLU Recommendation (Prong 3)

Finally consider ACLU recommendation 16, urging the separation of juveniles from adults throughout the criminal justice process, which lacks jurisdictional specificity. This recommendation addresses a complex area of juvenile justice, where policies are predominantly shaped by state legislation in the US. By failing to identify whether federal standardisation is desired or if individual states are expected to enact these changes, the recommendation lacks a clear accountability mechanism. This may have hindered its alignment with Member State Recommendations, as the UPR generally seeks actionable commitments that are implementable at the national level, though this is largely guided by its Charter restrictions. Without an explicit indication of the jurisdiction responsible, the recommendation risks being perceived as too open-ended within the UPR framework.

Source	p.5 (JS27)
ACLU recommendation	Ensure that juveniles are not transferred to adult courts, are separated from adults during pretrial detention and after sentencing, and are not held in adult jails or prisons.
UPR Recommendation	-
Response	-

Figure 55: ACLU recommendation 16 (Prong 3).

These examples highlight the challenges that arise when recommendations do not specify clear authorities for implementation. In a federal system like the US, reforms that lack jurisdictional clarity can be difficult for international mechanisms like the UPR to engage with, as they prefer actionable recommendations with clear, accountable pathways. The ambiguity in Group 4 recommendations suggests that specificity in terms of jurisdictional responsibility could enhance their alignment with UPR priorities, potentially increasing their influence within the international human rights framework. The following section presents insights from the dataset through the grouped structure discussed thus far.

7.3. Observations of the Dataset

The following section introduces the novel concept of *federalism-conscious recommendations*, an extension of Belser's existing typology of international Recommendations, made to federated States. However, in order to appreciate the necessity of such a tailored approach, an understanding

of the scholarly landscape surrounding the relationship between federalism and human rights is necessary.

7.3.1. Federalism and Human Rights

The tension between federalism and the domestic implementation of IHR standards is well-documented.[1064] For example, in his exploration of the relationship between federalism and rights in the US and German Constitutional traditions, Kleinlein argues that the federal structure and individual rights should be studied in their interaction with each other.[1065] As its proponent, Kleinlein argues that federalism enhances protections for human rights as it decentralises power and subsequently strengthens the State's capacity to address rights.[1066] This perspective comes from Federalist No. 51, where US federalism is described to function as a "double security" for people's rights.[1067] Kleinlein describes four arguments as to why this is true.[1068] First, this political structure allows citizens to exercise their will through relocation to different federated jurisdictions where their rights are better protected.[1069] Second, federal structures reinforce checks and balances, which limits governmental power at both levels reducing the risk of either infringing on individual liberties.[1070] Third, competition between the federal and state-level governments for citizen loyalty incentivises each level to safeguard rights.[1071] Fourth, federalism provides more points of access to political process thus engendering stronger domestic participation.[1072] In turn, this fosters stronger protections for individual rights, as elected by the voting populus.

[1064] E.g., Solomon Ebobrah & Felix Eboibi, *Federalism and the Challenge of Applying International Human Rights Law Against Child Marriage in Africa*, 61 J. OF AFRICAN L. 333 (2017); Catherine Powell, *Dialogic Federalism: Constitutional Possibilities for Incorporation of Human Rights Law in the United States Social Movements and Law Reform*, 150 U. PA. L. REV. 245 (2001).
[1065] Thomas Kleinlein, *Federalisms, Rights, and Autonomies: The United States, Germany, and the EU*, 15 INT' J. CONST. L. 1157, 1163 (2017).
[1066] *Id.* at 1160–1; *See also*, Eva M. Belser, *Why the Affection of Federalism for Human Rights Is Unrequited and How the Relationship Could Be Improved*, *in* THE PRINCIPLE OF EQUALITY IN DIVERSE STATES: RECONCILING AUTONOMY WITH EQUAL RIGHTS AND OPPORTUNITIES 62 (Eva M. Belser et al. eds., 2021).
[1067] The Federalist No. 51 (James Madison).
[1068] Kleinlein, *supra* note 1065 at 1160–1.
[1069] *Id.* at 1160.
[1070] *Id.* at 1160–1.
[1071] *Id.* at 1161.
[1072] *Id.*

Adjacent to this, Kalb explores the tension between IHR treaties and the US' federalist system, arguing that the sub-national states should play a more active role in treaty implementation. [1073] Focusing on the Vienna Convention on Consular Relations,[1074] Kalb highlights the challenges of compliance within the US legal framework as rooted in federalism.[1075] However, she proposes a model of dynamic federalism – where the federal government establishes a baseline of minimum standards, and the sub-national states assume the primary responsibility for treaty implementation.[1076] This approach, Kalb suggests, is productive, and "even necessary if the [US] is to meet its existing international obligations."[1077]

Within the thematic confines of this thesis, Roth examines the legal implications of the ICCPR and its limited application within the US.[1078] By attaching the RUDs to its ratification, the US constrained its obligations under the provisions of the treaty with the aim of preventing any extension of federal authority over rights typically reserved to the states.[1079] This is in relation to the fifth Understanding [from the RUDs] – known as the "federalism understanding" – which obscurely says that the obligations conveyed by the ICCPR with be implemented by "measures appropriate to the Federal system."[1080] Although the SCOTUS decision in *Missouri v. Holland*[1081] – establishing treaty power as an exception to the doctrine of enumerated powers – shows "federalism Understanding" blocks Congressional efforts to leverage the treaty in the name of expanding federal powers in rights matters.[1082] This strongly reinforces the US' resistance to the full domestic integration of IHR law. The cumulative effect of these limitations is that IHR obligations remain blocked at the domestic level, a dynamic that triggers the boomerang effect described by Keck and Sikkink.[1083]

[1073] Kalb, *supra* note 26.
[1074] Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261.
[1075] Kalb, *supra* note 26 at 1036.
[1076] *Id.* at 1057.
[1077] *Id.* at 1029.
[1078] Brad Roth, *Understanding the "Understanding": Federalism Constraints on Human Rights Implementation*, 47 WAYNE L. REV. 891 (2001).
[1079] *Id.* at 894, 899.
[1080] *Id.* at 894.
[1081] 252 U.S. 416 (1920).
[1082] Roth, *supra* note 1078 at 898.
[1083] KECK AND SIKKINK, *supra* note 22 at 12.

These systemic barriers to compliance have fuelled a broader debate on the compatibility of federalism and IHR law. As will be demonstrated, much of the prevailing literature and stakeholder commentary at the UPR positions federalism as an obstacle to consistent implementation, with a strong emphasis on the necessity of coordination between both levels of government. For example, the Centre of Excellence on the Canadian Federation (CECF) conducted a 2023 study on the implementation gap in Canada, finding federalism the most significant barrier to the effective implementation of IHR obligations. This barrier often results in "ambiguity, turf guarding, buck passing and finger pointing."[1084] This is also raised by CSOs, including to the UPR. For example, US-based CSO network US Human Rights Network (USHRN) submitted to the First Cycle that the adoption of RUDs significantly undermined the effectiveness of the few treaties ratified by the US,[1085] writing that federalism is a "barrier to effective implementation at the state and local level."[1086] The issue is raised once more in a 2020 submission to the Third Cycle, this time centred on the criminal justice system.[1087] The Obama Administration, in 2010, also recognised the need for strong partnerships among federal, state and local governments in addressing human rights concerns raised at the UPR.[1088]

Following the 2010 UPR of the US, Columbia Law School Human Rights Institute for the International Association of Official Human Rights Agencies produced a "toolkit" for state and local authorities. This document extracted the Member State Recommendations received by the US, summarised the IHR standards and suggests concrete ways the states can implement the Recommendations locally.[1089] Later in 2015, during the Second Cycle, they submitted a report on the lack of federal support for human rights implementation at the state and local levels, despite

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[1084] ALEX NEVE, CLOSING THE IMPLEMENTATION GAP: FEDERALISM AND RESPECT FOR INTERNATIONAL HUMAN RIGHTS IN CANADA (2023); Consider also, Storey, *supra* note 74 at 67 (whilst not explicitly concluding federalism as an obstacle to UPR Recommendation implementation, Storey illustrates how the US is persistent in its stance on the death penalty, often justifying its position by prioritising the US Constitution over international law) .

[1085] U.S. Human Rights Network Submission to the Ninth Session of the UPR Working Group of the Human Rights Council (2010) at ¶ 3.

[1086] *Id.*

[1087] International Human Rights Committee of the International Law Association, American Branch Submission to the 36th Session of the UPR Working Group of the Human Rights Council (2020) at ¶ 45.

[1088] Harold Hongju Koh, Legal Adviser, U.S. Dep't of State, Response of the United States to Recommendations of the United Nations Human Rights Council (Nov. 9, 2010), https://2009-2017.state.gov/s/l/releases/remarks/150677.htm ("We believe the best human rights implementation combines overlapping enforcement by all branches of the federal government working together with state and local partners.").

[1089] https://hri.law.columbia.edu/sites/default/files/publications/UPR%2520Toolkit_0.pdf - Columbia Law School Human Rights Institute for the International Association of Official Human Rights pg.8.

the US government's repeated affirmation of the crucial role of state and local governments in achieving this goal.[1090]

This thesis, however, departs from the prevailing view that federalism poses a significant barrier to the implementation of IHR standards. Instead, it assumes that federalism is not inherently incompatible with IHR law. Of course, the universality of human rights cannot be discarded, but greater focus on the flexibility and contextual adaptation within federated systems can strengthen rather than weaken their universal application.

Neve's[1091] study on the implementation of Member State Recommendations in Canada, a federated State, suggests that federalism can foster innovation in the protection and enhancement of rights at the local level. Although it can create challenges when attempting to uphold a uniform standard across different regions. Neve's assertion is that the Member States may issue valuable Recommendations, but the impact on the ground is often inconsistent as state legislatures are under no obligation to act on these recommendations unless there is significant legal or political pressure.[1092] Neve posits the division of powers as causing ambiguity over which legal authority is responsible for implementing IHR standards.[1093] Moreover, Canada's dualist approach to international law [1094] removes legal requirements from sub-national legislatures to act on Recommendations from international bodies, which is exacerbated by the variable positions on IHR obligations across the state governments.[1095]

Much like Canada, the US adopts a dualist approach to international law, which further complicates the domestic implementation of Member State Recommendations within its federal structure. Under this approach, international treaties and obligations are non-self-executing,

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[1090] Federal Outreach and Mechanisms to Ensure Human Rights Implementation and the Federal, State and Local Levels Submission to the United Nations Universal Periodic Review of The United States of America Second Cycle, (May 2015), https://hri.law.columbia.edu/sites/default/files/publications/state_and_local_upr_report.pdf ¶¶ 1-5. The argument put forth is that although certain measures have been implemented to enhance coordination efforts to some extent; these actions are deemed inadequate and underscore the necessity, for federal direction and support alongside a more thorough strategy to guarantee adherence, to global human rights agreements effectively. Furthermore, at the end of the report delineates suggestions for the US government to rectify the deficiencies and reinforce its dedication to upholding human rights across various tiers.
[1091] Neve, *supra* note 1084.
[1092] *Id.*
[1093] *Id.* at 19-21.
[1094] Which mirrors the US' approach through the RUDs attached and ratification requirements.
[1095] Neve, *Supra* note 25, at 19-20.

meaning they do not automatically carry legal force within domestic law without legislative action.[1096] Consequently, there is no binding requirement for US state legislatures to act on recommendations from IHR bodies, as these obligations do not become enforceable at the state level unless explicitly incorporated into federal law. Though Ku et al explain why, given US federalism, the states often become the de factor implementers.[1097] This situation creates an implementation gap like that observed in Canada, where the variability in commitment to IHR standards across sub-national governments exacerbates inconsistencies in human rights protections.[1098] In the US, subnational entities are under no legal obligation to comply with international standards, leading to divergent applications of human rights principles across states. As Roth notes, federalism often serves as a structural barrier to the uniform implementation of IHR standards across all states, by restricting federal oversight and mandating reliance on state action – in turn, complicating efforts to achieve nationwide compliance.[1099]

McGuinness further emphasises that federalism grants subnational authorities considerable discretion in determining whether and how to align with federal or international standards, contributing to significant variation in human rights protections.[1100] Consider also Sloss' work which highlights the federal government's inability to compel states to comply with IHR obligations further reinforces this implementation gap between the two levels. Sloss similarly highlights the limitations of the US federal structure, arguing that it restricts the federal government's ability to compel state compliance with IHR obligations, thereby reinforcing an implementation gap between federal commitments and state-level actions.[1101]

Cumulatively, the preceding discussion demonstrates the prevailing pessimistic view of IHR implementations within the US. Considering most human rights concerns are happening at the state level, without a coordinated strategy or national framework for implementation, there are considerable challenges to achieving a consistent, on-the-ground impact across all jurisdictions

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[1096] Carlos M. Vázquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT. L. 695 (1995); Medellín v. Texas, 552 U.S. 491 (SCOTUS 2008).
[1097] Charlotte Ku et al., *Even Some International Law Is Local: Implementation of Treaties Through Subnational Mechanisms*, 60 VA. J. INT'L L. 101 (2019).
[1098] *Id.* at 139.
[1099] Roth, *supra* note 1078 at 905.
[1100] Margaret E. McGuinness, *Three Narratives of Medellin v. Texas*, 31 SUFFOLK TRANSNAT'L L. REV. 227 (2008).
[1101] David Sloss, *Treaty Enforcement in Domestic Courts: A Comparative Analysis*, *in* THE ROLE OF DOMESTIC COURTS IN TREATY ENFORCEMENT: A COMPARATIVE STUDY 1, 50 (David Sloss ed., 2010).

within a federated State. These challenges do, however, echo discourse on cultural relativism, where an emphasis is placed on the significance of context or sovereignty – these ideas often forming "shields" for resisting universally recognised IHR obligations.

As a preamble for the forthcoming discussion on cultural relativism, the author is not aware of scholarly engagement with the theoretical idea as an analytic analogy for US federalism in the context of IHR implementation. As demonstrated above, prior work examines the effects of federalism on the US' treaty compliance. The following discussion will connect this to the discourse on cultural relativism, acknowledging the direct invocation of sub-national autonomy as functionally comparable to cultural relativists' claims that legitimise divergence from universal norms.

It must be prefaced that domestic culture should not be protected at the cost of human rights.[1102] Mutua, for example, discusses four schools of thought – abolitionists, constitutionalists, cultural agnostics, and political strategists – to recognise the importance of considering cross-cultural perspectives[1103] but cautions against States using cultural sovereignty as a shield to justify harmful practices.[1104] Similarly, Dallmayr's philosophical scrutiny of human rights – through the lenses of cultural relativism versus universalism – does not endorse the former in absolute terms, but finds that an understanding of local culture requires more sensitivity and nuance.[1105] This thesis proposes that this position on cultural relativism parallels the discourse on federalism and human rights.

[1102] For favourable discussion, *see*: Damian Etone, *African States: Themes Emerging from the Human Rights Council's Universal Periodic Review*, 62 AFRICAN HUM. RTS. L. J. 1 (2018); J.Y. Asomah, *Cultural Rights Versus Human Rights: A Critical Analysis of the Trokosi Practice in Ghana and the Role of Civil Society*, 15 AFRICAN HUM. RTS. L. J. 1 (2015); MAKAU MUTUA, THE IDEOLOGY OF HUMAN RIGHTS, IN INTERNATIONAL LAW OF HUMAN RIGHTS (2017); See contra, Fadhila Rasha, *The Correlation between Cultural Relativism and the Universality of Human Rights: An Analysis Based on Diverse International Views and Standpoints*, 3 KDU L.J. 1 (2023); Yanik Weingand, *Scholars, States, and Human Rights: A Comparison of Third World Approaches to International Law with Diverging State-Actors' Stances in the UN Human Rights Council*, 122 GLOBAL EUROPE–BASEL PAPERS ON EUROPE IN A GLOBAL PERSPECTIVE 47 (2022); Roger Lloret Blackburn, *Cultural Relativism in the Universal Periodic Review of the Human Rights Council*, SSRN JOURNAL (2011), http://www.ssrn.com/abstract=2033134.
[1103] Makau Mutua, *The Ideology of Human Rights*, 36 VA. J. INT'L L. 589 (1996).
[1104] *Id.* at 655.
[1105] Fred Dallmayr, *"Asian Values" and Global Human Rights*, 52 PHILOSOPHY EAST & WEST 173, 183 (2002).

Where cultural sovereignty is cited to justify local practices that may contravene IHR norms,[1106] here it is proposed that federalism can similarly be wielded by States to circumvent their human rights obligations. This is most demonstrable in the US' invocation of federalism as in its ratification of the ICCPR, where it placed a federalism Understanding.[1107] Although both cultural and federal sovereignty can offer important contextual considerations, they must not become barriers to human rights progress.

On the compatibility of federalism and the IHR framework, Shelton's analysis suggests that coexistence is possible but requires careful navigation of the division of power and potential conflicts between federal and state laws.[1108] Binder goes further to "prescribe" a better coordination of human rights standards at the different levels of governance as a "therapy" for the crisis facing IHR law.[1109] Nonetheless, successfully engaging this multi-level system is subject to the strength and consistency of intergovernmental collaboration between them.[1110]

To applying this discussion within the UPR context, the mechanism's mandate is to enhance human rights protections on the ground; thus, IHR standards often serve as the aspirational goals,

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[1106] Yash Ghai, *Human Rights and Asian Values*, 40 J. OF THE INDIAN L. INSTITUTE 67, 68 (1998); Anne F. Bayefsky, *Cultural Sovereignty, Relativism, and International Human Rights: New Excuses for Old Strategies*, 9 RATIO JURIS 42, 47 (1996).
[1107] *See*, for analyses of Senate records on the matter, Stewart, *supra* note 69; David Sloss, *The Domestication of International Human Rights: Non-Self-Executing Declarations and Human Rights Treaties*, 24 YALE J. INT'L L. 129 (1999).
[1108] Dinah Shelton, *International Law in Domestic Systems*, *in* GENERAL REPORTS OF THE XVIIITH CONGRESS OF THE INTERNATIONAL ACADEMY OF COMPARATIVE LAW/RAPPORTS GÉNÉRAUX DU XVIIIÈME CONGRÈS DE L'ACADÉMIE INTERNATIONALE DE DROIT COMPARÉ 509 (Karen B. Brown & David V. Snyder eds., 2012) (Shelton observes that federal systems grapple with three principal issues concerning IHR law: division of power over foreign affairs, federalising local matters through treaties, and variation in rights protection among sub-national entities); Dinah Shelton, *Challenging History: The Role of International Law in the U.S. Legal System*, 40 DENV. J. INT'L L. & POL'Y 1 (2011) (explores the historical development and contemporary challenges faced by international law within the US legal system). See also, Dinah L. Shelton, International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion (Introduction) GW Law School Public Law and Legal Theory Paper No. 2013-61 (2011) (focuses on the evolving relationship between international law and domestic legal systems and explores the three main mechanisms through which international law influences domestic law: incorporation, transformation, and persuasion).
[1109] Christina Binder, *International and Regional Human Rights Law in Crisis?*, *in* LABOUR MIGRATION IN THE EUROPEAN UNION: CURRENT CHALLENGES AND WAYS FORWARD 107, 126–31 (2023).
[1110] Stéphanie Paquin, *Federalism and Multi-Level Governance in Foreign Affairs: A Comparison of Canada and Belgium*, *in* FOREIGN POLICY OF CONSTITUENTS UNITS AT THE BEGINNING OF THE CENTURY 161 (Ferran Requejo ed., 2010); Paul Fawcett & David Marsh, *Rethinking Federalism: Network Governance, Multi-Level Governance and Australian Politics*, *in* MULTI-LEVEL GOVERNANCE: CONCEPTUAL CHALLENGES AND CASE STUDIES FROM AUSTRALIA 57 (Katherine A. Daniell & Adrian Kay eds., 2017); Eva M. Belser, *Why the Affection of Federalism for Human Rights Is Unrequited and How the Relationship Could Be Improved*, *in* THE PRINCIPLE OF EQUALITY IN DIVERSE STATES: RECONCILING AUTONOMY WITH EQUAL RIGHTS AND OPPORTUNITIES 62, 64–7 (Eva M. Belser et al. eds., 2021); Davia Cox Downey & William M. Myers, *Federalism, Intergovernmental Relationships, and Emergency Response: A Comparison of Australia and the United States*, 50 AM. REV. OF PUB. ADMIN. 526 (2020) (Compares intergovernmental responses to emergencies in the U.S. and Australia, illustrating how collaboration issues can affect federal governance, especially in human rights and public safety); See also, Erin Ryan, *Negotiating Federalism*, 52 B.C.L. REV. 1 (2011); Timothy Conlan & Paul Posner, *American Federalism in an Era of Partisan Polarization: The Intergovernmental Paradox of Obama's "New Nationalism,"* 46 PUBLIUS 3 (2016); James W. Ely Jr., *The Political Science of Federalism*, 7 ANN. REV. L. & SOC. SCI. 103 (2011).

rather than strict benchmarks for uniformity across all States. At least in the short term. In this view, the following observation from the dataset challenges the idea that uniformity is the only measure of successful IHR implementation. Moreover, it challenges the assumption that federalism is inherently incompatible with domestic human rights advancements. Instead, it considers how federal structures offer diverse pathways to fulfil IHR obligations, acknowledging that regional variations may still contribute meaningfully to the overarching human rights agenda. This allows for a nuanced view of how federal systems may accommodate human rights standards differently, concluding that federalism can coexist with effective human rights protections, even if implementation appears different across states. This could reinforce the UPR's incremental improvement philosophy as opposed to radical reforms. It is here where the role of civil society emerges. With the understanding that progress must reflect domestic realities, CSOs play the role of intermediaries; translating IHR standards – or Member State Recommendations – into tailored, feasible action plans at both federal and state level.[1111]

7.3.2. Federalism-Conscious Advocacy – Author's Extension of Belser

The US Constitution establishes a clear division of powers between the federal and state governments. Whilst the federal government has authority over national issues, many powers – particularly those related to policing, criminal justice, and civil rights – are reserved to the states under the 10th Amendment.[1112] These areas, often shaped by local legislative frameworks, necessitate tailored approaches that federal-level interventions alone cannot resolve.[1113]

[1111] Risa E. Kaufman, *"by Some Other Means": Considering the Executive's Role in Fostering Subnational Human Rights Compliance*, 33 CARDOZO L. REV. 1971, 152 (2012).
[1112] U.S. CONST. AMEND. X.
[1113] For example, there are many publications discussing the limitations of federal power in addressing local issues. E.g., Daniel L. Fay & Luciana Polischuk, *Diffusion of Complex Governance Arrangements: State Approaches to Addressing Intimate Partner Violence*, 82 PUBLIC ADMIN. REV. 420 (2021) (examines how state-level governance arrangements can better address intimate partner violence through approaches that are not achievable by federal interventions alone); R.E. Barkow, *Federalism and Criminal Law: What the Feds Can Learn from the States*, 109 MICH. L. REV. 519 (2011) (discusses the relationship between federal and state criminal laws, suggesting that federal approaches can benefit from adopting local practices that address specific community needs); Richard Danzig, *Toward the Creation of a Complementary, Decentralized System of Criminal Justice*, 26 STAN. L. REV. 1 (1974) (discusses how a decentralised criminal justice system can complement federal interventions, emphasising the need for local legislation tailored to specific regional issues); J. Brancale, T.G. Blomberg & S. Siennick, *Building Collaborative Evidence-Based Frameworks for Criminal Justice Policy*, 32 CRIM. JUSTICE POL'Y REV. 795 (2021) (This paper focuses on developing collaborative, evidence-based frameworks that incorporate local insights to enhance the effectiveness of criminal justice policies).

With domestic governments acting as the primary guarantors of rights, CSOs often invoke IHR in their advocacy, adopting a rights-based approach.[1114] Reiterating Keck and Sikkink's explanation, when communication channels between the State and CSOs are "blocked," the boomerang pattern emerges – where domestic actors seek international allies to place pressures on their governments.[1115] Moreover, considering that IHR law generally takes a *pro homine* – or broadest protection – approach,[1116] meanings rights enshrined in treaties are often interpreted more widely than those defined in domestic instruments.[1117] These RUDs, therefore, constitute a blockage to access the rights conferred in the treaty, in accordance with Keck and Sikkink's boomerang model. Yet, from the literature, it is also clear the US requires a strong partnership among both levels of government for effective human rights protection. It is precisely here that CSOs can play a bridging role, translating international standards into feasible recommendations across federal and state jurisdictions.[1118]

This bridging role, however, is complicated by the way the IHR community – composed of State peers – tend to frame their Recommendations. As Belser discusses, many international Recommendations either ignore, downplay, or openly criticise federal structures; this observation led to the development of three terms that provide a useful critique of how IHR bodies engage with – to varying degrees of success – federal systems through Recommendations. [1119] These are: "federalism-blind," "federalism-adverse," and "federalism-hostile" Recommendations.

[1114] KECK AND SIKKINK, *supra* note 22 at 12.
[1115] *Id.*
[1116] Yota Negishi, *The Pro Homine Principle's Role in Regulating the Relationship between Conventionality Control and Constitutionality Control*, 28 EUROPEAN J. OF INT'L L. 457 (2017).
[1117] Jack Goldsmith, *International Human Rights Law & the United States Double Standard*, 1 GREEN BAG 365, 370 (1998); See generally, Jack Goldsmith, *The Unexceptional U.S. Human Rights RUDs*, 3 U. ST. THOMAS L.J. 311 (2005).
[1118] See e.g., Kaufman, *supra* note 1111 (on the role of the federal government in fostering subnational human rights treaty compliance); Risa E. Kaufman & JoAnn Kamuf Ward, *The Local Turn in U.S. Human Rights: Introduction to the Special Symposium Issue*, 49 COLUM. HUM. RTS. L. REV. 1 (2017) (on state and local governments having long played an important role in bringing the US into compliance with its international human rights commitment); JACKIE SMITH, SOCIAL MOVEMENTS AND HUMAN RIGHTS, IN HUMAN RIGHTS: POLITICS AND PRACTICE (M. Goodhart ed., 2021); See also, Huyen Pham, *The Constitutional Right Not to Cooperate? Local Sovereignty and the Federal Immigration Power*, 74 U. CIN. L. REV. 1373 (2006) (exploring the dynamics between federal and local governments, particularly in immigration enforcement, illustrating how local governments' decisions to cooperate or resist federal mandates impact the implementation of human rights policies, underscoring the importance of intergovernmental cooperation).
[1119] Belser, *supra* note 1066 at 64–70. This reinforces the arguments other scholars have made about Member States lacking the necessary understanding of different domestic legal and political structures. *See e.g.*, Lane, *supra* note 378 at 291–2 (who discusses the devolved governance structure of the UK, highlighting how regional voices are often excluded from the process, and Recommending states may lack expertise in the internal political structures).

Belser characterises federalism-blind Recommendations by their disregard for the federal structure of a State, with a simultaneous emphasis on IHR obligations and uniform implementation across all regions, regardless of the internal division of power.[1120] These Recommendations assume that the federal government has full responsibility for compliance, even when certain competences lie with sub-national governments, thus disregarding the complexities of federal structures.

Comparatively, federalism-adverse Recommendations are characterised by Belser as those that recognise federalism as a challenge for implementation and often suggest harmonising actions at the federal level.[1121]These Recommendations push for federal interventions, encouraging national action plans or frameworks that could address discrepancies among different regions in the State.[1122] However, Belser highlights how they can be problematic as they sometimes imply that federal authorities should overstep Constitutional boundaries to ensure compliance.[1123]

Lastly, federalism-hostile Recommendations are characterised by their view of federalism as a significant obstacle to IHR implementation, actively criticising sub-national autonomy.[1124] These Recommendations often call for the abolition of difference between the regions by proposing unified national laws or policies which aim to eliminate varied human rights standards within a State.

It is important to note that Belser's classifications were not within the context of the UPR, but rather the Treaty Bodies, and they were not applied to recommendations submitted by CSOs, but rather Treaty Body Recommendations. However, this thesis confirms these categories are applicable to CSO recommendations, made within the UPR process, as well as Member State Recommendations. Therefore, this is an extension of Belser's categories into the UPR process and CSO advocacy. However, a crucial element of this extension is the author's addition of one more category – *federalism-conscious* advocacy and recommendations – which recognises the dual responsibilities of federal and state actors in federated systems.

[1120] Belser, *supra* note 1066 at 65–7.
[1121] *Id.* at 67–9.
[1122] *Id.* at 69.
[1123] *Id.* at 69–70.
[1124] *Id.* at 69–70.

This novel category is characterised by patterns observed in Group 2 recommendations of this dataset. These recommendations expressly acknowledge both the federal and state-level governments, recognising the shared responsibilities that exist in these dynamics. As discussed above, this genre of recommendation offers an opportunity for CSOs to educate Member States on the domestic realities of the political and legal system, potentially improving the feasibility of recommendations. It is developed exclusively from observations of the dataset, examining the success rates of ACLU recommendation mappings to Member State Recommendations. In other words, it emerges from empirical evidence of when and how CSO recommendations gained traction within the UPR.

The label "federalism-conscious" was deliberately chosen to contrast Belser's categories, which critique international recommendations for disregarding or mischaracterising the domestic realities of federated States. Instead, the novel term denotes an affirmative awareness of these realities. It also draws from insights drawn from Prongs 1 and 2. In Chapter Five, discussion underscored the UPR's structural restriction, which constrains Member States to communicate exclusively to other States as singular units. However, it suggested that CSOs can leverage their expertise – as established through their domestic operations navigating the domestic structures – to educate the international community. Simultaneously, in Chapter Six, Prong Two demonstrated that recommendations resonated most strongly when grounded in IHR standards. Federalism-conscious advocacy operates at the intersection of these two points: retaining normative alignment with IHR law, while explicitly acknowledging the domestic jurisdictional complexities. This approach demonstrates a potential strategy for CSOs working in federated States to shape international monitoring discourse and contribute to the generation of Recommendations that are actionable in federated contexts. In turn, it offers CSOs operating in federated States a strategy to frame recommendations that are both intelligible within the UPR's universalist framework and practicable within their domestic structures. The following discussion uses the dataset to further illustrate federalism-consciousness in CSO advocacy, through the group structure introduced earlier in this chapter.

7.3.2.1. Group 1: Federalism-Blind ACLU recommendations

In examining Group One recommendations from the dataset, a recurring challenge within the UPR process can be observed: the tendency to overlook the federal-state dynamics that shape effective human rights implementation in the US. This group of ACLU recommendations often directs attention solely to federal authorities, suggesting that national legislative action will suffice to address issues that also require state-level collaboration. For instance, ACLU recommendation 1 (Figure 56) calls on Congress to eliminate any disparity in the amount of crack or powder cocaine to trigger mandatory minimum sentences. This was mapped to Member State Recommendation 176.275 which called for legislation to reform the mandatory minimum sentences triggered by the Smart on Crime Initiative.[1125]

Source	p.7 (JS43)
ACLU recommendation	Crack and powder cocaine are two forms of the same drug, and Congress should eliminate any disparity in the amount of either necessary to prompt mandatory minimum sentences.
UPR Recommendation	176.275 – Accelerate the process of passing a legislation to reform the mandatory minimum sentences begun with the Smart on Crime initiative (Nigeria)
Response	Supported

Figure 56: ACLU recommendation 1 (Prong 3).

By targeting Congress, the ACLU recognises that this reform requires national legislative action, particularly given the history of mass incarceration as discussed in Section 3.5. Moreover, in 1986,

[1125] Discussed in Section 3.6.

Congress passed the Anti-Drug Abuses Act which created a 100:1 crack-powder quantity ratio. In 2010, the Fair Sentencing Act reduced this to 18:1 and eliminated the five-year mandatory minimum sentence for possession. In 2018, the First Step Act made these changes retroactive.[1126] Many states copied the federal approach – some imposing harsher restrictions, discrepancies, and penalties.[1127] However, despite the federal government's reforms, disparities remain entrenched at the state level, where sentencing practices are neither uniform nor bound to federal amendments. This disjuncture illustrates why federal action alone cannot guarantee nationwide reform. The failure to address the role of state governments reflects a gap in the ACLU's strategy, one that mirrors Belser's critique of IHR mechanisms being federalism-blind. By focusing solely on federal entities, the ACLU's recommendation 1 assumes that Congressional action will be sufficient to eliminate sentencing disparities nationwide, overlooking the reality that many states will also need to adapt their policies to achieve comprehensive reform.

As Lane [1128] discusses, devolved governance structures complicate the straightforward implementation of human rights recommendations due to the intricate balance of power between national and subnational authorities. Through stakeholder recommendations, CSOs are uniquely positioned to educate the international community on these dynamics, offering a model for how Member States can better tailor their Recommendations to account for federal structures.[1129]

It is also noteworthy that this ACLU recommendation resonated with a Member State Recommendation, with a strong correlation between the two. The Member State's emphasis on mandatory minimum sentencing and the Smart on Crime initiative closely aligns with the ACLU's call for the elimination of sentencing disparities between crack and powder cocaine; an issue intrinsically tied to systemic inequities within the US criminal justice framework. However, the critical question is the extent to which this alignment can translate into meaningful, on-the-ground

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[1126] *Cocaine: Crack and Powder Sentencing Disparities*, CONGRESS.GOV (Sep. 11, 2021), https://www.congress.gov/crs-product/IF11965; *See also*, Aamra Ahmad, *After 35 Years, Congress Should Finally End the Sentencing Disparity Between Crack and Powder Cocaine*, AMERICAN CIVIL LIBERTIES UNION (Dec. 20, 2021), https://www.aclu.org/news/criminal-law-reform/after-35-years-congress-should-finally-end-the-sentencing-disparity-between-crack-and-powder-cocaine; DEBORAH J. VAGINS & JESSELYN MCCURDY, CRACKS IN THE SYSTEM: 20 YEARS OF THE UNJUST FEDERAL CRACK COCAINE LAW (2006), https://www.aclu.org/other/cracks-system-20-years-unjust-federal-crack-cocaine-law.

[1127] Kara Gotsch, *"After" the War on Drugs: The Fair Sentencing Act and the Unfinished Drug Policy Reform Agenda*, AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY, Dec. 2011.

[1128] Lane, *supra* note 378.

[1129] *Id.*

impact. While the correlation between the recommendations is clear, this example underscores a broader critique that the UPR process often lacks the capacity to catalyse substantive human rights advancements.[1130] Frequently, Member State Recommendations risk becoming surface-level or 'tick-box' exercises, framed as progress yet lacking the depth required for transformative change, particularly in federated systems like that of the US. Ghoshray highlights the limitations in the US, where federal and state systems often complicate the deep implementation of justice reforms.[1131] They explore how the process often remains at the surface level, emphasising incremental rather than transformative change.[1132] Without an approach that explicitly involves both federal and state actors, federalism-blind Recommendations may ultimately reinforce existing criticisms that the UPR's mechanisms are more symbolic than impactful. Effective human rights advocacy within federated States necessitates recommendations that engage with structural constraints in the domestic political and legal framework.

This thesis suggests that this can be actioned through federalism-conscious advocacy, which provides a strategic avenue for CSOs to enhance the effectiveness of their submissions by recognising the need for collaborative federal and state action. This not only bridges the disconnect between federal structures and IHR Recommendations but also ensures that the advocacy work of CSOs remains grounded in domestic political realities, ultimately strengthening their influence within the UPR process.

7.3.2.2. Group 2: Federalism-Conscious ACLU recommendations

As established in Chapter Three, the UPR aims to address human rights concerns within a framework that respects State sovereignty while promoting universal principles, in accordance

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[1130] *See e.g.*, Baird, *supra* note 803. Baird criticises the distorting impact international NGOs have meaningful UPR outcomes, discussed further below.
[1131] Saby Ghoshray, *An Equilibrium-Centric Interpetation of Restorative Justice and Examining Its Implementation Difficulties in America*, 35 CAMPBELL L. REV. 287 (2014).
[1132] *Id.* at 308.

with the UN Charter,[1133] at the same time as addressing issues within its jurisdiction.[1134] In practice, this translates to the Member States making Recommendations that are designed to promote the universal application of human rights standards, while acknowledging the sovereignty of each State to determine how to implement those recommendations. This principle highlights a core challenge in US-focused, UPR-centred human rights advocacy. The UPR can only communicate with national authorities. This is problematic because, as established above, many human rights issues, including criminal justice, fall under the jurisdiction of state and local governments. Scholars including Nazir, Storey, and Yorke have critiqued the way federal states sometimes misapply the concept of sovereignty to uphold national laws that violate IHR standards.[1135] They argue that the consensual and participatory nature of the UPR process allows both States and CSOs to challenge these sovereignty claims, exposing how they might be wielded as tools for maintaining harmful policies, such as capital punishment.[1136] This reflects a cosmopolitan approach within the UPR, wherein the sovereignty argument is gradually eroded as States use the platform to pressure each other into reforming national laws that contravene human rights norms.[1137] In this context, this dataset pioneers the suggestion that CSOs are critical players in bridging the federal-state gap within the UPR discourse.

Taking this into consideration, it is necessary to acknowledge that no Member State Recommendations in the dataset are directed to the states. Only certain ACLU recommendations were directed exclusively to state governments. The model proposed in this thesis is not designed to apply to Member State; therefore, whilst Member States have the capacity to engage in

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[1133] UN Charter Article 2(1) ("The Organization is based on the principle of the sovereign equality of all its Members.") and Article 2(7) ("Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.").
[1134] As established and discussed in Prong 2, Chapter 6 above.
[1135] Amna Nazir, Alice Storey & Jon Yorke, *The Universal Periodic Review as Utopia*, *in* HUMAN RIGHTS AND THE UN UNIVERSAL PERIODIC REVIEW MECHANISM: A RESEARCH COMPANION 35, 46–7 (Damian Etone, Amna Nazir, & Alice Storey eds., 2024).
[1136] *Id.* at 47; *See also*, Patel, *supra* note 415 (who examines how cultural relativism plays a role in states' arguments, particularly when it comes to women's rights, arguing that while the UPR aims to promote universal human rights, the process can be influenced by cultural relativist arguments, potentially undermining the effectiveness of IHR norms. Latent content analysis finds that the extent to which universal human rights are promoted during the UPR depends on the specific states involved and the human rights issues being discussed. They find that some states use cultural relativist arguments to justify practices that violate women's rights, while others advocate for a more moderate approach that considers cultural context while still upholding human rights standards); Consider also, AZZAM FATEH, ARAB STATES AND UN HUMAN RIGHTS MECHANISMS (2013) (who finds that broader recommendations from States with similar cultures were more digestible for Arab States).
[1137] Nazir, Storey, and Yorke, *supra* note 1135 at 37.

federalism-conscious advocacy, the three-pronged approach is only applicable to CSOs. For example, consider ACLU recommendation 8 (Figure 51), which was categorised into Group 2 – federalism-conscious. It was mapped to two corresponding Member State Recommendations. Observing the semantic differences, and once more restating that correlation does not imply causation, it is visible that the Member States' Recommendations would not be considered to be federalism-conscious. Where the ACLU explicitly names both levels of government, the Member States direct their Recommendations to the federal level only. Therefore, this is to underscore the applicability of this model of good practice.

Yet, in ACLU recommendation 8, the CSO's approach demonstrates a federalism-conscious strategy. Recognising that both federal and state authorities play distinct but interconnected roles in criminal justice policy, this recommendation calls on Congress and state legislatures alike to adopt comprehensive reforms. This recommendation demonstrates a clear understanding of the jurisdictional complexities in the US federal system. By directing the recommendation at both federal and state lawmakers, the ACLU acknowledges that meaningful reform requires a collaborative approach across multiple levels of government. This is especially pertinent in the context of juvenile sentencing and life without parole, areas where states exercise considerable autonomy in setting policy. This recommendation avoids the pitfalls of a federalism-blind approach, which might assume that federal action alone could affect nationwide change, and instead advocates for a coordinated legislative effort that respects the division of powers within the US. However, at this juncture, it is necessary to consider the impact of the UPR's institutional limitations.

7.3.2.3. The UPR's Institutional Limitations

It is proposed in this thesis, that the ACLU's federalism-conscious approach can be used to inform the international community of the diversity in governance systems,[1138] which reinforces the

[1138] IMPLEMENTING RECOMMENDATIONS FROM THE UNIVERSAL PERIODIC REVIEW: A TOOLKIT FOR STATE AND LOCAL HUMAN RIGHTS AND HUMAN RELATIONS COMMISSIONS 5 (2011). Columbia Law School Human Rights Institute for the International Association of Official Human Rights Agencies found that the "recommendations resulting from the UPR are in many instances remarkably similar to recommendations that were made by U.S. civil society groups."

nuance necessary for effective human rights reform. Group 2 recommendations aim to impact both levels of government by acknowledging that reforms require collaboration between them. However, as established throughout, the UPR process does not review the individual federated states and local governments, but rather the federal government and its human rights records at the national level. Therefore, the individual states are free from both the scrutiny and targeted Recommendations of the Member States. Lane explains that a similar dynamic can be observed in systems with devolved governance, such as the UK, where regional voices are often excluded from international processes.[1139] In such cases, Member States at the UPR may not fully grasp the complexities of internal political structures like devolution and federalism, leading to Recommendations that overlook the distribution of powers between the central government and devolved administrations. This is relevant to the US context, where the division of responsibilities between the federal government and the states plays a crucial role in human rights implementation. It raises the question of whether the Recommending States at the UPR are fully aware that many human rights issues in the US are not addressed solely at the federal level. This is, again, highlighting the bridging role CSOs can play.

As mentioned in the previous section, federalism-conscious advocacy does not translate to Member State Recommendations themselves. Group 2 recommendations exemplify federalism-conscious advocacy, but Member States continue to direct their Recommendations almost exclusively at the SuR as a unitary entity. Although beyond the scope of this thesis, an interesting avenue of enquiry would consider the correlation between Member States' domestic systems and the categorisations applied to their Recommendations – considering that Belser's assessment concludes that federalism-blind Recommendations are the most common types from international monitoring bodies. Whilst they are found to remind federal States that their human rights obligations remain despite the internal division of power, these are largely innocuous.

In response to such Recommendations, the US government frequently defers to its political and constitutional structures when addressing human rights concerns at the UPR.[1140] For instance, during the UPR process, the US administration has, at times, responded to Recommendations by

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[1139] Lane *supra* note 333.
[1140] Sarah H Paoletti, *Using the Universal Periodic Review to Advance Human Rights: What Happens in Geneva Must Not Stay in Geneva*, 45 CLEARINGHOUSE REV. 268, 271 (2011).

indicating that certain issues fall outside the scope of the federal executive branch, asserting that these matters are instead for state governments to address.[1141] The US government, as a SuR who also acts as a Recommending State to other UPRs, is aware of the UPR's institutional limitation – this can be interpreted as another example of American Exceptionalism. This approach highlights the US government's stance that it only accepts IHR standards that align with its existing domestic legal framework.

Consider ACLU recommendation 14 (Figure 52) as an example, while the corresponding Member State Recommendation stresses the need to reduce prison overcrowding, particularly amid the Covid-19 pandemic, it does not account for the dual authority structure that governs sentencing reform. Considered by the Biden Administration in 2021, US' response reflects the limited reach of the federal government. In its response to this Recommendation, it explains that the US "share[s] the ideals in [this recommendation] and support[s] [it] subject to the limitations set forth in para. 2."[1142] Paragraph 2 reads:

> "*Some recommendations ask us to achieve an ideal, e.g., end discrimination or police brutality, and others request action not entirely within the power of our Federal Executive Branch, e.g., adopt legislation, ratify treaties, or act at the state level. We support or support in part these recommendations when we share their ideals, are making serious efforts to achieve their goals, and intend to continue doing so. Nonetheless, we recognize, realistically, that the United States may never completely accomplish what is described in these recommendations 'literal terms."*[1143]

This response encapsulates a recurring theme in the US' approach to its IHR obligations. The statement conveys the US' selective acceptance of Recommendations, emphasising a commitment to shared ideals while also clarifying the constraints imposed by its domestic legal framework. By acknowledging that some recommendations are "not entirely within the power of [the] Federal Executive Branch," US administration signals its recognition of federalism as a limitation on its ability to implement certain human rights reforms. This response is relevant to the current analysis because it highlights how the US leverages its federal structure as a buffer against international

[1141] For Example, Report of the Working Group on the Universal Periodic Review: United States of America, Addendum (2021) (A/HRC/46/15/Add.1) ¶ 2.
[1142] *Id.* ¶ 10.
[1143] *Id.*

Recommendations that would require state-level action or legislative changes outside executive authority.

Hence, as ACLU Recommendation 14 shows, an awareness of the jurisdictional division required for effective sentencing reform, it contrasts with the Member State Recommendation which, though supportive in principle, lacks the jurisdictional specificity needed to prompt actionable reform across multiple governance levels in the US. Through its recommendation, therefore, the ACLU demonstrates how CSOs can inform the international community on the complexities of federal systems, advocating for human rights reforms that are not just universally applicable but also locally actionable. By integrating the US' Paragraph 2 response into the analysis, we see a clear distinction between the UPR's aspirational Recommendations and the ACLU's federalism-conscious advocacy. While the former often operates on a universalist model that presumes national-level action, the latter embodies a strategic alignment with the complexities of domestic governance structures, enhancing the potential for human rights reforms that are not only endorsed internationally but also feasible within the US constitutional framework.

7.3.2.4. Group 3: State-Focused Advocacy

As already established, the UPR is bound by the UN Charter; it cannot adjust its approach directly to accommodate federal States differently. One way to overcome this obstacle lies in the empowerment of CSOs at the international forum. Fraser argues that the current approach to implementing IHR law is too focused on legalistic measures, and the State as the primary actor. They advocate for a broader understanding of implementation that includes social institutions as key players in the domestic realisation of rights.[1144] A similar recommendation was made by Storey and Oleschuk in their study of the role of CSOs in the domestic implementation of Member State Recommendations, which called for increased coordination between the States and domestic

[1144] Fraser, *supra* note 48.

civil society.[1145] Equally, Asomah emphasises the role of civil society in mediating conflicts between human rights and culture.[1146]

Barkow discusses the allocation of criminal law enforcement power between federal and state governments in the US.[1147] They argue that the federal government's increased involvement in local crime enforcement stems partly from its desire to impose its own sentencing policies, which often diverge from those of state and local authorities. This federal intervention is sometimes viewed as an attempt to override state preferences, where states generally favour leaving criminal law enforcement to local authorities who are more familiar with community needs and resources. Their work suggests that this tension reflects deeper disagreements over sentencing policy, as federal involvement can disrupt state efforts to administer justice according to local values. For instance, federal sentencing guidelines may emphasise harsher penalties, which could conflict with state initiatives aimed at rehabilitation and reform. Fraser finds that state guidelines demonstrate a better balance in sentencing authority, are simpler, and avoid overly harsh punishments, in contrast to what they see as the federal system's flaws.[1148]

This complexity underscores the need for federalism-conscious advocacy, especially in areas like criminal justice reform, where both federal and state governments have jurisdiction but often diverge in policy objectives. This further develops Belser's argument that state governments, with their closer proximity to local issues and communities, are often better positioned than the federal government to address human rights concerns.[1149] A good example of this can be seen in California's direct rebuke to the Trump Administration's withdrawal from the Paris Agreement, which concerns climate change.[1150] This example shows Belser's position in action: states, by

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[1145] STOREY AND OLESCHUK, *supra* note 316.
[1146] Joseph Y. Asomah, *Cultural Rights versus Human Rights: A Critical Analysis of the Trokosi Practice in Ghana and the Role of Civil Society*, 15 AFRICAN HUM. RTS. L.J. 129 (2015) (discusses the Trokosi system in Ghana through the lens of universal human rights and cultural relativism. The author argues that while respecting cultural differences is important, upholding cultural practices should not come at the expense of individuals' rights and freedoms).
[1147] Barkow, *supra* note 1113.
[1148] Richard Fraser, *State Sentencing Guidelines: Diversity, Consensus, and Unresolved Policy Issues*, 105 COLUM. L. REV. 1190 (2005); Richard Fraser, *Sentencing Guidelines in Minnesota, Other States, and the Federal Courts: A Twenty-Year Retrospective*, 12 FED. SENT'G REP. 69 (1999); *See also*, Ben Trachtenberg, *State Sentencing Policy and New Prison Admissions*, 38 U. MICH. J.L. REFORM 479 (2005) (This examines state sentencing policies and their impact on prison admissions, highlighting conflicts between state policies focused on reducing incarceration and federal guidelines that emphasise longer sentences).
[1149] Belser, *supra* note 1110.
[1150] Vanguard Staff, *California Reaffirms Commitment to Paris Climate Agreement*, VANGUARD NEWS GROUP, May 28, 2025, https://davisvanguard.org/2025/05/senate-resolution-36-climate-leadership.

virtue of their understanding of specific local contexts, can craft policies and practices that are more responsive to the unique needs of their populations. State-level actors may possess a more nuanced grasp of the cultural, economic, and social dynamics at play, allowing them to implement reforms that align more closely with the values and realities of local communities. Belser's perspective challenges the assumption that federal oversight is inherently superior for safeguarding human rights, positing that decentralised governance allows for a tailored approach that can lead to innovative solutions. Considering this discourse and position, CSOs like the ACLU, which have direct ties to those impacted by these policies on the ground, hold significant value in informing recommendations that can further human rights in a meaningful way.

Group 3 of the dataset (ACLU recommendations that address the states only) suggests that the ACLU indirectly appreciates its position and recognises that there are deficiencies in federal mechanisms, namely in standardising protections across the states. For example, in ACLU recommendation 19 (Figure 57) the ACLU emphasises the need for adequately funded state defender organisations that are independent of the judiciary and have the resources to provide quality representation, particularly for indigent capital defendants. This recommendation acknowledges that states must independently ensure the right to a fair trial, as reflected in Article 14(3) of the ICCPR, and implies that federal oversight may not sufficiently address the nuances of local judicial practices.

Source	p.11
ACLU recommendation	Create and adequately fund state defender organizations that are independent of the judiciary and that have sufficient resources to provide quality representation to indigent capital defendants at the trial, appeal and post-conviction levels. Require states to ensure that capital defense lawyers have adequate time, compensation and resources for their work.
UPR Recommendation	-
Response	-

Figure 57: ACLU recommendation 19 (Prong 3).

ACLU Recommendation 19 exemplifies how federated states can act as "laboratories of democracy" in advancing human rights protections through innovative, state-specific solutions.[1151] By recommending that states adopt or expand presumptive parole models, such as South Dakota's approach, the ACLU implicitly acknowledges that state governments possess unique capacities to address complex criminal justice issues in ways that federal mandates alone may not achieve. This model places the burden on parole boards to justify continued incarceration, promoting a fairer and more transparent approach to parole decisions. Such decentralised innovation aligns with US Supreme Court Justice Louis Brandeis' vision, in which he celebrated the ability of a single state to "try novel social and economic experiments without risk to the rest of the country."[1152] This perspective, grounded in the notion that states can act as experimental arenas, underscores the

[1151] *See* New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.").
[1152] *Id.*

ACLU's approach in encouraging state-led parole reforms to promote human rights advancements tailored to local needs and conditions.

This approach also aligns with Powell's concept of dialogic federalism, which underscores the value of collaborative engagement between federal and state authorities in realising human rights norms.[1153] Powell argues that this dynamic fosters effective and context-sensitive implementations of IHR standards, as states can experiment with policies adapted to local needs and conditions. The Columbia Law School Human Rights Institute similarly emphasises the importance of federal-state coordination in human rights realisation.[1154] According to the Institute, while federal oversight provides a framework for national standards, it is state-level implementation that ensures policies are responsive to community-specific issues and challenges.[1155]

While federalism-conscious advocacy aligns well with the US domestic structure by recognising the division of powers between federal and state governments, it requires careful framing to be effective within the UPR's jurisdictional limitations. The UPR, as an international mechanism, primarily engages with national governments, meaning that recommendations focused solely on state-level actions may fail to resonate. For CSOs, this limitation underscores the importance of addressing both federal and state jurisdictions in their UPR submissions to ensure that recommendations are actionable and relevant within the UPR's scope.

To enhance the impact of their federalism-conscious advocacy, CSOs could adopt a dual approach. First, they might frame recommendations that encourage federal initiatives supporting state-level compliance. By promoting federal measures that indirectly incentivise state actions, CSOs can stay within the UPR's mandate while still addressing critical state-level issues. This approach allows the UPR to endorse recommendations that respect the UN Charter's limitations on intervening directly in subnational matters but still promotes the alignment of state practices with human rights standards.

[1153] Powell, *supra* note 1064 at 253–4 (discussing the potential for collaborative engagement between federal and state authorities in implementing human rights norms).
[1154] Human Rights Institute & International Association of Official Human Rights Agencies (IAOHRA), *Federal Outreach and Mechanisms to Ensure Human Rights Implementation and the Federal, State and Local Levels*, 5–6 (2015).
[1155] *Id.*

Second, CSOs could explicitly address both federal and state levels in their recommendations, thereby informing the UPR about the distinct jurisdictional responsibilities associated with each issue. By clearly delineating the roles of federal and state governments, this approach prevents misunderstandings about jurisdictional authority while helping Member States make recommendations that reflect the US federal structure. In this way, CSOs can capitalise on state-level innovation and localised human rights protections, acknowledging that federal framing is essential to ensure these efforts align with the UPR's national-level discourse and mandate.

7.3.2.5. Group 4: Unspecified Authority

Group 4 analysis highlights the challenges the UPR faces where CSO recommendations lack clear authorities. Given the UPR's mission, CSO recommendations that do not specify whether federal or state actors should take responsibility create ambiguity for recommending States. This lack of clarity, the author suggests, may make the UPR and the OHCHR hesitant to endorse certain recommendations, particularly since they must avoid potential conflicts with the UN Charter's constraints on addressing subnational governments directly. The absence of publicised oral advocacy opportunities further limits the ability to clarify jurisdictional intent, making explicit specification of authority essential.

Group 4 ACLU Recommendations 20 (Figure 58) and 5 (Figure 59) can further illustrate this point. Recommendation 20, which advocates for ending the "287(g) and Secure Communities programs," acknowledges the need to address federal immigration policies that impact local communities. This recommendation reflects Resnik's idea of "federalism all the way down,"[1156] which posits that subnational governments can play a significant role in implementing human rights by tailoring policies to local conditions. Similarly, Ryan's theory of negotiated federalism underscores the importance of collaboration between federal and state authorities to navigate overlapping jurisdictions and shared responsibilities effectively.[1157] While these are federal immigration policies that operate through local law enforcement partnerships, the ACLU frames the

[1156] Judith Resnik, *Law as Affiliation: "Foreign" Law, Democratic Federalism, and the Sovereigntism of the Nation-State*, 6 INT'L J. OF CONST. L. 33, 38 (2008).
[1157] Ryan, *supra* note 1110 at 6–8.

recommendation without specifying whether responsibility lies with federal, state, or local authorities. This lack of precision leaves room for interpretation, which may weaken its traction in the UPR process. Both Resnik and Ryan's perspectives illustrate the very dynamics left unarticulated in Group 4 recommendations. In this sense, the theories not only underscore the potential value of jurisdictionally explicit recommendations but also expose the limitations of recommendations that remain silent on which actors should take responsibility.

Source	p.8 (JS43)
ACLU recommendation	End the 287(g) program, including all jail partnerships and task force agreements. End the Secure Communities program. Collect and make public data regarding the race, national origin, and religion of individuals stopped, apprehended, or detained pursuant to the 287(g) and Secure Communities programs. Halt the government's use of immigration detainers in their current form; do not issue detainers except upon a judicial finding of probable cause; and restrict detainers to individuals convicted of a serious crime.
UPR Recommendation	Recommendation 176.252 – Halt the detention of immigrant families and children, seek alternatives to detention and end use of detention for reason of deterrence (Sweden)
Response	Supported/Noted

Figure 58: ACLU recommendation 20 (Prong 3).

Similarly, ACLU recommendation 5 (Figure 59) on juvenile justice advocates for legislation limiting imprisonment to a last resort but does not clarify whether such reforms should be enacted by Congress, state legislatures, or both. Davis's research on local governments in human rights advocacy highlights how municipalities and states can act as key players in promoting IHR standards, especially when federal engagement is limited.[1158] This aligns with the ACLU's advocacy for state-level initiatives in juvenile justice, where local agencies can address the specific

[1158] MARTHA F. DAVIS, LOCAL HUMAN RIGHTS LAW: THE U.S. EXPERIENCE, IN BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 71–2 (Cynthia Soohoo, Catherine Albisa, & Martha F. Davis eds., 2009).

needs of youth within their communities, supporting the broader goal of human rights protections without compromising local context.

Source	p.5 (JS27)
ACLU recommendation	Enact legislation to ensure that imprisonment is used only as a last resort when sentencing all juvenile offenders, and provide comprehensive services to criminal system-involved youth.
UPR Recommendation	-
Response	-

Figure 59: ACLU recommendation 5 (Prong 3).

An interesting observation here is that ACLU Recommendations 5 and 20 highlight a significant distinction in their alignment with the UPR's operational framework, specifically regarding the importance of clear jurisdictional targeting. Recommendation 20, which calls for the termination of federal programs like 287(g) and Secure Communities that involve local law enforcement in immigration enforcement, aligns with Member State Recommendation 176.252 from Sweden, which advocates for ending detention practices for immigrants and seeking alternatives. This alignment indicates that Recommendation 20's federal-level focus was likely more accessible for UPR endorsement, as it aligns with the UPR's preference for national-level changes that indirectly impact state actions. By focusing on a federal program, this recommendation operates within a clear jurisdictional scope that the UPR can more readily address, aligning with the trends seen in Group 1, where federal-focused recommendations show higher compatibility with UPR aims.

Noticeably, the state-focused aspects of the ACLU recommendation failed to gain traction with Sweden, though the similar wording between the two recommendations presents a case for strong correlation.

In contrast, Recommendation 5 lacks a corresponding Member State Recommendation. This absence underscores a key observation from Group 4: that CSO recommendations without clear federal or dual-level targeting are less likely to align with UPR recommendations. Despite ACLU recommendation 20 not specifying explicitly the relevant authority, there is a clear assumption that can be drawn from the "government" in line with the issue of immigration. Conversely, in ACLU recommendation 5, no clear assumptions can be drawn, despite the issue being of critical normative value and a pressing issue raised to the US at the UPR. The UPR's jurisdictional limitations prevent it from directly addressing state-only actions, and when a recommendation solely involves state-level authorities without federal engagement or fails to specify the authority who can action a Recommendation, it risks being perceived as outside the UPR's mandate. This scenario illustrates Group 4's finding that recommendations lacking explicit effectors – whether at the federal or combined federal and state levels – struggle to gain traction within the UPR framework. Without clear federal involvement, the recommendation may not be seen as practical or actionable on the international stage, thereby reducing its potential impact within the UPR process.

7.3.2.6. Proposed Prescriptive Argument

These findings point to a broader reality in federated systems: the challenge of achieving uniform human rights standards across diverse jurisdictions. Given the complexities of federalism, particularly in a system as vast and varied as the US, incremental victories emerge as a more practical approach than uniform standards imposed at the federal level. Here, there is existing discourse that, whilst not directly addressing the issue of federalism at the UPR, tackles the limitations of the UPR to navigate exceptionalism and hostility towards radical human rights reforms. McMahon and Johnson argue that incremental advocacy through the UPR can serve as a

powerful tool for building momentum towards long-term human rights reform.[1159] The "spider web" analogy is central to their discussion, illustrating how states can become entangled in a network of international norms.[1160] As States engage in the UPR process, they establish precedents for examining their human rights records, creating an environment where they are compelled to demonstrate compliance with global standards. This "spider web" effect is particularly relevant in today's international context, where States increasingly seek to portray themselves as respectful of human rights. As a result, even those who might initially resist reform can find themselves bound by the international rules and norms they have agreed to uphold. Moreover, the UPR's emphasis on continuous improvement[1161] aligns with the principles of gradualism, as it encourages steady progress over sweeping reforms. Although the UPR lacks coercive mechanisms, its voluntary nature means that governments agree to expose their internal practices to international scrutiny. Over time, this exposure can lead to incremental shifts as states seek to enhance their reputations and address the concerns raised by other nations.

This also supports the position held by Baird,[1162] who discusses the distorting effects of international NGOs and how they can negatively impact SuRs where the image of the domestic situation reflects the 'theoretical 'position as opposed to their domestic practices.[1163] Baird illustrates this with an example where international NGOs' advocacy around the death penalty at the UPR led a State, which previously did not actively use the death penalty, to officially retain it in response to the pressure. By focusing on federalism-conscious advocacy, the ACLU allows for state-level reforms to gain traction within local contexts, eventually contributing to a larger, cumulative impact. Incremental changes across various states could inform future federal policies. This possibility can be seen in the Supreme Court case *Atkins v. Virginia* which ruled that executing individuals with intellectual disabilities violated the Eighth Amendment's prohibition on "cruel and unusual punishments."[1164] The decision was based, in part, on a national consensus against such executions, as evidenced by the laws of numerous states that prohibited the

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[1159] EDWARD R. MCMAHON & ELISSA JOHNSON, EVOLUTION NOT REVOLUTION: THE FIRST TWO CYCLES OF THE UN HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW MECHANISM (2016); See also, Luka Glušac, *Universal Periodic Review and Policy Change: The Case of National Human Rights Institutions*, 14 J. OF HUM. RTS. PRACTICE 285 (2022).
[1160] MCMAHON AND JOHNSON, *supra* note 1159 at 4.
[1161] *Id.* at 5.
[1162] Baird, *supra* note 803.
[1163] *Id.* at 27.
[1164] U.S. CONST. AMEND. VIII.

practice.[1165] The Court also considered the growing international view against such executions, recognising the evolving standards of decency reflected in both domestic and international contexts. Similarly, in *Roper v. Simmons*,[1166] the Court struck down the death penalty for juvenile offenders, again citing international perspectives as indicative of a shifting moral consensus against juvenile executions.[1167] These cases illustrate how, even within a federal system resistant to international influence, incremental changes at state levels, reflecting broader IHR norms, can inform national legal standards. By incorporating this approach, CSOs 'federalism-conscious advocacy aligns with these judicial precedents, suggesting that progressive state-level reforms may eventually contribute to national policy shifts that align with global human rights values.

Therefore, the dataset lays the foundations for two considerations, incremental advocacy and dynamic federalism. Combined with federalism-conscious CSO recommendations, dynamic federalism provides a blueprint for how state-led human rights initiatives can gradually shape federal policy. By adopting incremental approaches, states can introduce reforms aligned with IHR standards, even in the absence of federal action. For instance, local governments adopting presumptive parole systems create pressure that might eventually prompt broader federal reforms. This bottom-up pressure not only facilitates dialogue between state and federal levels but also demonstrates to international bodies like the UPR that federalism conscious advocacy can contribute to compliance with global norms. Moreover, for federalism-conscious advocacy to be effective and workable within the UPR mechanism, it must address both federal and state authorities. A recommendation that exclusively targets state governments fails to account for the collaborative and often complementary roles of federal and state actors in the US, where the federal government frequently plays a role in setting standards or incentivising state action. The correlation between Group 2 federalism-conscious ACLU recommendations and Member State Recommendations reveals the potential of such advocacy to shape UPR outcomes. This correlation, however, challenges the utility of SMART criteria in the UPR framework, which may not sufficiently account for the specific jurisdictional challenges inherent in federal systems.

[1165] Baird, *supra* note 806 at 27.
[1166] 543 U.S. 551 (2005).
[1167] 543 U.S. 551, 575–78 (2005) (noting the global consensus against the juvenile death penalty as supportive of evolving standards in the US).

7.3.3. Specificity

Federalism-conscious advocacy within the UPR framework is not merely about targeting either the federal or state level; rather, it requires a nuanced approach that recognises the importance of identifying the specific authority responsible for implementing a recommendation. As outlined above, the dataset demonstrates (1) the importance of establishing the target authority; whether federal or both federal and state; and, (2) how addressing the target authority aids in framing the CSO recommendation in a way that the UPR can better grasp what is needed on the ground to fulfil its mandate without overstepping its Charter imposed jurisdictional boundaries. In this context, a federalism-conscious approach should be specific enough to provide clear direction on jurisdictional responsibility but also broad enough to fit within the UPR's remit.

The incremental approach also plays a significant role here. By recognising that US states vary in their political willingness to protect human rights, CSOs can take advantage of state-led initiatives that offer higher standards of protection and then use these state-level victories to build momentum for broader reforms. This approach is particularly pertinent in areas where state jurisdictions may already exceed federal standards, allowing CSOs to leverage localised human rights advancements to create a cumulative national impact over time.[1168]

Based upon the dataset, this section outlines how specificity of CSO and Member State Recommendations must be nuanced. It examines how the dataset guides which approach CSOs should adopt, determining the level of specificity as dependent on whether the CSO recommendation falls within the definition of Group 1 (federal only), meaning the specificity should remain broad to cover nationwide implications or within Group 2 (federalism-conscious, including both federal and state actors) which enables a deeper level of specificity. By carefully framing their recommendations to fit within these parameters, CSOs can more effectively navigate

[1168] There are several examples worldwide that demonstrate how CSOs adopt an incremental strategy, leveraging localised success in state-led human rights protections to influence broader, national-level changes over times, supporting the argument that this approach can ultimately drive substantial systemic reform. E.g., Jonathan Fox, Rachel S. Robinson & Naomi Hossain, Building State-Society Synergy Through Sandwich Strategies, Accountability Res. 1 (2022); Jonathan A. Fox, Scaling Accountability Through Vertically Integrated Civil Society Policy Monitoring and Advocacy, American U. Resources 1 (2016); https://www.researchgate.net/publication/265184722_Acts_of_Faith_Civil_Society_and_the_Policy_Process_in_Ghana_and_two_Indian_States_DRAFT#fullTextFileContent.

the complexities of federalism in promoting human rights at both the national and international levels.

7.3.3.1. SMART Recommendations

The SMART criteria – an acronym for Specific, Measurable, Achievable, Relevant, and Time-bound – has become the standard framework for formulating recommendations within international human rights advocacy, particularly in mechanisms like the UPR. Promoted widely by organisations such as UPR Info[1169] and the OHCHR,[1170] the SMART model serves as a guideline to enhance the clarity, feasibility, and impact of recommendations made by States and CSOs.

According to UPR Info, adopting SMART principles is crucial for ensuring that recommendations are actionable and can produce tangible improvements on the ground, particularly in complex, multi-jurisdictional contexts like federated states.[1171] The OHCHR's best practice guidance similarly emphasises the importance of SMART criteria, arguing that they are essential for maintaining the accountability of states and creating benchmarks that can be systematically monitored.[1172] By aligning recommendations with SMART criteria, advocates aim to increase the likelihood of effective implementation, setting clear parameters that facilitate state compliance and international oversight. Scholars have also adopted a positive position on the use of the SMART criteria for UPR Recommendations. For example, Tufano emphasises the importance of recommendations' specificity, numerosity, and government response to enhance effectiveness within the UPR framework.[1173] Tufano aligns with the OHCHR and UPR Info's endorsement of

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[1169] *E.g.,* UPR Info, Guide on the Universal Periodic Review: A Process for All 54 (2014); Atkins v. Virginia, 536 U.S. 304 (2002).; https://upr-info.org/en/news/making-your-recommendations-count; https://upr-info.org/sites/default/files/documents/2015-09/upr_info_guide_for_recommending_states_2015.pdf.
[1170] Encouraging CSOs and Recommending States alike to adopt SMART recommendations, https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/sessions/2022-10-24/UPR-4th-cycle-civil-society-guide.pdf.
[1171] UPR Info., Making your Recommendations Count (Aug. 24, 2022), <https://upr-info.org/en/news/making-your-recommendations-count>.
[1172] United Nations Office of the High Commissioner for Human Rights, Best Practices for Stakeholder Engagement in the UPR Process 18 (2016).
[1173] Sarah Tufano, *The Holy Trinity of the United Nations Universal Periodic Review: How to Make an Effective Recommendation Regarding Women's Rights*, 21 U. OF PA. J.L. & SOCIAL CHANGE 186 (2018).

the SMART criteria, stressing that clear, achievable recommendations significantly impact a state's responsiveness and accountability in implementing UPR recommendations.[1174]

Burger et al observe that the acceptance rate of UPR Recommendations depends on a variety of factors. One key element is the way Member States formulate their recommendations, which can significantly influence the SuR's willingness to accept them.[1175] The level of specificity, the degree to which recommendations challenge particular human rights practices, and the tone (whether it is critical or deferential) can shape the SuR's perception of the process as politically motivated or externally constrained.[1176] Azzam explains that States perceived as more conservative on human rights, notably Arab States, do not behave markedly different from the rest of the global community. Though the UPR Recommendations generated by these States remain quite broad, 57% of the specific Recommendations from non-Arab States were rejected, suggesting that some States are more comfortable with generalised UPR Recommendations.[1177] The argument and evidence supporting the value of SMART Recommendations is compelling, yet the dataset from this thesis challenges the suggestion that Member States should always make specific recommendations, finding that a nuanced approach is required.

Turning to the UPR context, according to the UPR Info database,[1178] at the date of writing, the US has received 482 Category 5 Recommendations and therefore considered to be specific.[1179] Out of 1025 total Member State Recommendations across Three Cycles, this makes 47% of Recommendations to the US specific. Yet only 186 of these are supported, with the remaining 296

[1174] *Id*. at 209.
[1175] Anze Burger, Igor Kovac & Stasa Tkalec, (*Geo)Politics of Universal Periodic Review: Why States Issue and Accept Human Rights Recommendations?,* 17 FOREIGN POLICY ANALYSIS 1 (2021) (Some states may use the UPR to promote their foreign policy objectives, favour allies, or criticise adversaries, which can undermine the UPR's perceived neutrality and effectiveness. This dynamic shows that geopolitical factors significantly shape the recommendations made during UPR sessions).
[1176] However, it is not solely the stringency of the recommended actions that affects acceptance. The acceptance of a recommendation may also depend on the specific human rights issue being addressed, highlighting that some issues may inherently carry a higher or lower likelihood of being accepted, as indicated by issue-specific factors controlled for in certain analyses. Anze Burger, Igor Kovac & Stasa Tkalec, (*Geo)Politics of Universal Periodic Review: Why States Issue and Accept Human Rights Recommendations?,* 17 FOREIGN POLICY ANALYSIS 1, 18 (2021); Azzam 2013, https://scholarworks.aub.edu.lb/bitstream/handle/10938/21233/20130710ifi_RAPP_rr_Arab_States_and_UN_Human_Rights_Mechanisms.pdf?sequence=1&isAllowed=y, at 27.
[1177]https://scholarworks.aub.edu.lb/bitstream/handle/10938/21233/20130710ifi_RAPP_rr_Arab_States_and_UN_Human_Rights_Mechanisms.pdf?sequence=1&isAllowed=y.
[1178] A searchable online database that extracts UPR Recommendations across the Three Cycles as well as voluntary pledges and uniquely grades them according to a five-rank system set up in collaboration with Professor Edward R. McMahon. https://upr-info-database.uwazi.io/en/page/bdcsi0m0n8f. The coding was done by McMahon with the support of UPR Info blindly. https://upr-info.org/sites/default/files/general-document/2022-05/Database_Action_Category.pdf.
[1179] Meaning they contain a specific action, as identified by specific verbs.

being noted. When drawing out specific criminal justice recommendations that were noted by the US on the grounds of federalism,[1180] the discrepancy remains evident.

For example, Recommendations concerning life sentences for juveniles, such as Recommendations 176.51,[1181] 176.234[1182] and 176.235[1183] were supported in part, where the US explains that "[t]he Administration supports federal legislation to eliminate life-without-parole sentences for juveniles in the federal criminal justice system."[1184] This shows how even though the federal government, led in September 2015 by the Obama Administration, were open to implement the necessary reforms, it would not be able to directly influence state laws. According to the Campaign for the Fair Sentencing of Youth, as of 2023, 28 states have prohibited juvenile life without parole, five permit the practice but have no youth serving such sentences, and 22 states permit and practice the sentence.[1185] Without Constitutional reform, or a Supreme Court interpretation of existing provisions in-line with the prohibition of the practice, the issue will remain in the jurisdiction of the states.

Additionally, there is a noticeable gap in the literature exploring the SMART criteria as applicable to CSOs and the impact this could have on Member State Recommendations generated at the UPR. The dataset provides a starting point to begin exploring this context. When ACLU recommendations are directed at both federal and state authorities, they can afford to be more specific, as suggested by the evidence. However, when targeting only the federal government, a more general approach should be adopted as federalism constrains the federal government's ability to directly implement reform on several human rights issues that are legislated at the state level.[1186] Criminal justice is one such issue, where SCOTUS decisions have outlined the legal boundaries between state and federal authority in the US. These are best illustrated through the cases of New

[1180] Using the Addendum documents to confirm.
[1181] "Pass legislation domestically to prohibit the passing of life imprisonment without the possibility of parole on offenders who were children at the time of offending, and ratify without any further delay the Convention on the Rights of the Child (Fiji)."
[1182] "End the use of life imprisonment without parole for offenders under the age of 18 at the age of crime, regardless of the nature of that crime (Austria)."
[1183] "Abolish life imprisonment without the possibility of parole for nonviolent offenses (Benin)."
[1184] A/HRC/30/12/Add.1 para. 9.
[1185] https://cfsy.org/media-resources/states-that-ban-juvenile-life-without-parole/.
[1186]For an explanation of the federal and state systems of government in the US, *see* Penny J. White, *Legal, Political, and Ethical Hurdles to Applying International Human Rights Law in the State Courts of the United States (and Arguments for Scaling Them)*, 71 U. CIN. L. REV. 937, 938-49 (2003).

York v. United States (1992) and Printz v. United States (1997) which highlight the principle of anti-commandeering.[1187] Below, ACLU recommendations are used to illustrate this observation.

As a first example, ACLU recommendation 8 (Figure 51) mapped to two Member State Recommendations: 26.200 which calls for a moratorium on the federal death penalty and an end to JLWOP arguably adheres to the SMART criteria,[1188] and Recommendation 26.246 which advocates for similar reforms to JLWOP policies, specifying federal-level action.[1189] In ACLU recommendation 8, the federalism-conscious approach enhances the specificity of the recommendation by clearly directing reform efforts at both federal and state authorities. This dual-level targeting allows the ACLU to be more precise and actionable in its advocacy. Rather than making a general call for criminal justice reform, the recommendation strategically calls for Congress and state legislatures to pass legislation addressing life sentences, mandatory minimums, and three-strikes laws. This approach reflects a nuanced understanding of the US 'federal structure, with each level of government responsible for distinct aspects of sentencing policy. An important observation for CSO advocacy, particularly within the context of the UPR, is that federalism-conscious recommendations allow organisations to enhance specificity by distinguishing responsibilities at both the federal and state levels. In aligning with the SMART criteria, this approach helps CSOs like the ACLU to be more precise and structured in their requests. By urging federal authorities to address national standards while calling on state governments to implement reforms within their jurisdictions, CSOs can tailor their recommendations to fit the operational realities of each level. This dual level targeting not only respects jurisdictional boundaries but also makes the recommendations more feasible and actionable. Ultimately, by aligning their advocacy strategies with federal and state authorities 'specific roles, CSOs can create pathways for practical implementation that increase the potential impact of their recommendations.

ACLU recommendation 6 (Figure 46) exemplifies an effective balance of specificity for federal-level advocacy, directing its focus on Congress to amend the habeas-related provisions of the

[1187] Which limits the federal government's ability to compel state or local governments to enforce federal regulations.
[1188] UPR Info, The Butterfly Effect: Spreading Good Practices of UPR Implementation, 2016, upr-info.org/sites/default/files/documents/2016-11/upr_info_the_butterfly_effect_2016.pdf, p. 8.
[1189] 26.246 - Adopt relevant national legislation that will ban issuing life without parole sentences for juveniles (Croatia).

AEDPA 1996. By identifying Congress as the responsible authority, the recommendation is clearly situated within the federal legislative framework, ensuring that accountability and implementation fall under appropriate jurisdiction. The specificity in recommending an amendment to habeas-related provisions within a particular act provides a concrete, actionable path while still allowing flexibility in how Congress might approach this legislative change. The corresponding UPR recommendation, "Ensure the right to habeas corpus in all cases of detention," reflects a broader human rights standard, aligned with the ACLU's aim to enhance federal court accessibility for prisoners asserting constitutional violations. This broader framing allows for international resonance within the UPR framework, without prescribing an exact method for implementation.

By contrast, ACLU recommendation 10 (Figure 47) is notably more detailed and multi-faceted, calling on Congress to pass the PARA 2009, H.R. 4335, and urging the Obama Administration's support for its enactment. This recommendation seeks to empower prisoners to challenge abusive conditions by eliminating several restrictive elements in the PLRA, including the "physical injury" requirement, the "exhaustion requirement," and by exempting juveniles from these burdens. The recommendation's specificity extends to identifying the exact bill (PARA) and detailing the specific provisions in the PLRA that require amendment. This high level of detail provides Congress with a well-defined legislative path but may limit flexibility, as it prescribes a particular course of action that leaves little room for alternative approaches. From these examples, we see that ACLU Recommendation 6 balances specificity and adaptability, making it more universally applicable and potentially more palatable within the UPR's jurisdiction, where general human rights principles often land more effectively. ACLU Recommendation 10, however, with its focus on precise legislative changes, highlights specific reform within the US prison system, providing a comprehensive but more rigid roadmap for federal action.

The differences between these examples underscore an important debate within the discourse on SMART recommendations in the UPR context and reveals critical perspectives on its applicability and adaptability. In their work, Rana recommends that States are encouraged to make SMART recommendations,[1190] or to oblige SuRs to provide reasons for their non-acceptance of UPR

[1190] Sameer Rana, *Review or Rhetoric? An Analysis of the United Nations Human Rights Council's Universal Periodic Review*, (2015). Independent Study Project (ISP) Collection. 2239.

Recommendations, arguing that imprecise recommendations are detrimental to the effectiveness of the UPR, as they hinder the process of monitoring implementation and following up on progress.[1191]

On the contrary, Etone's analysis highlights a nuanced challenge within the UPR's recommendation framework. While highly specific recommendations are often seen as more actionable, their effectiveness may be compromised if they do not align with the developmental stage and unique needs of the SuR.[1192] This potential misalignment raises questions about the appropriateness of imposing rigid criteria on diverse states within the UPR process. Rathgeber adds to this discussion, noting that diplomatic limitations may prevent states from issuing highly specific recommendations, which can lead them to favour more general recommendations.[1193] However, even general recommendations can still incorporate human rights language effectively, allowing for constructive monitoring within the UPR jurisdiction without overstepping diplomatic boundaries.[1194] Together, these perspectives suggest a complex balancing act within the UPR process, where specificity must be weighed against feasibility and diplomatic sensitivities. Kadribašić introduces an alternative model for UPR monitoring that moves away from strict SMART criteria, emphasising civil society engagement[1195] and promoting sustained, non-time-bound commitments.[1196] This approach aligns with White's discussion of Southeast Asia's UPR context, where collaborative frameworks with local stakeholders are suggested over rigid benchmarks, highlighting a shift towards flexibility that respects local contexts.[1197] White's research underscores the significance of nuanced language and varying levels of specificity in recommendations, noting that approximately 74 percent of UPR recommendations were accepted across cycles.[1198] UPR Info's mid-term assessments demonstrate that 48 percent of these

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[1191] *Id.* at 35.
[1192] Damian Etone, *The effectiveness of South Africa's engagement with the universal periodic review (UPR): potential for ritualism?* 33 SOUTH AFRICAN J. ON HUM. RTS. 1, 15 (2017).
[1193] Theodor Rathgeber, *Universal Periodic Review on Southeast Asia Norm Building in Transition: A Hermeneutic Approach, in* THE UNIVERSAL PERIODIC REVIEW OF SOUTHEAST ASIA: CIVIL SOCIETY PERSPECTIVES 37 – 74 (James Gomez & Robin Ramcharan eds., 2018).
[1194] *Id.* at 40.
[1195] https://soc.ba/site/wp-content/uploads/2021/02/HRP-web-eng-UPP.pdf.
[1196] *Id.* at 7.
[1197] Michael J.V. White, *Addressing Human Rights Protection Gaps: Can the Universal Periodic Review Process Live Up to Its Promise? in* THE UNIVERSAL PERIODIC REVIEW OF SOUTHEAST ASIA: CIVIL SOCIETY PERSPECTIVES (James Gomez & Robin Ramcharan eds., 2018).
[1198] *Id.* at 30.

recommendations initiated action within two and a half years,[1199] yet White argues for ongoing refinement to evaluate the language of recommendations and their acceptance, as assessing compliance remains challenging.[1200]

This thesis contends that future CSO recommendations, particularly those addressing the unique legal and political structure of the US, would benefit from incorporating federalism-consciousness. McMahon et al's research indicates that recommending states often draw upon CSO submissions to shape their recommendations,[1201] and a federalism-conscious framework could support domestic implementation. By aligning with US federalism, CSOs may increase the likelihood of recommendations being accepted and acted upon. Finally, McMahon's analysis reinforces the importance of crafting recommendations that align with the receiving state's capacity and legal context, enhancing the practicality and impact of recommendations.[1202] Through these critical perspectives, it becomes evident that while SMART criteria offer structure, flexibility and contextual sensitivity remain essential for the UPR to fulfil its promise as an evolving human rights mechanism. SMART recommendations, while suitable for unitary states or centralised systems, often fall short in federal systems where multi-level governance complicates the uniform application of human rights.

[1199] UPR Info. 2016. Database, at: https://www.upr-info.org/database/.
[1200] White, *Supra* note 1186 at 30.
[1201] McMahon et al *supra* note 23.
[1202] Edward R. McMahon, The Universal Periodic Review: A Work in Progress: An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council (2012), at 24.

Chapter Eight: Conclusion

8.1. Key Findings of the Thesis

Through the development and application of the novel Framework for Rights, Advocacy, Mapping, and Evaluation, or FRAME, Method to the 2010, 2015, and 2020 US UPR Cycles; focusing on the ACLU stakeholder submissions; this thesis advances three key original contributions. First, it contributes methodologically, as it introduces the FRAME Matrix, which is a structured mapping and evaluation tool that triangulates CSO identity, IHR alignment, and domestic advocacy. The FRAME Matrix enables systematic analysis of stakeholder recommendations by mapping them across campaign materials, IHR instruments, and corresponding Member State Recommendations. Though it does not seek to establish causation, the FRAME Matrix allows for informed identification of connections and patterns. The prescribed form of analysis offers a replicable approach to evaluate CSO engagement with international review mechanisms and produce a tailored interpretive model of good practice.

Second, this thesis contributes theoretically, by advancing the conceptual understanding of civil society engagement at the UPR in two distinct contributions. (1) It introduces a three-pronged interpretive model grounded in civil society theory, IHR law alignment, and the domestic framework for implementation. Drawing from and synthesising six theoretical traditions; liberalism, social capital, cosmopolitanism, multiculturalism, effective governance, and backward-forward infiltration; the author is the first to categorise and apply these to CSOs. This thesis offers a novel lens to assess how CSOs operate as both normative and strategic actors within international review mechanisms like the UPR. (2) The thesis introduces the concept of *federalism-conscious* advocacy, building on Belser's typology of federalism-blind, federalism-hostile, and federalism-adverse recommendations. Federalism-conscious recommendations explicitly acknowledge the dual-level legal system and offers a potential strategy for transnational engagement that allows CSOs to contribute to bridging IHR standards and domestic implementation responsibilities.

Third, this thesis delivers a practical output in the form of a tailored UPR engagement guide for the ACLU, designed to synthesise the academic findings into policy-focused, actionable

recommendations.[1203] The guide condenses the insights derived from the FRAME Matrix, offering the three-pronged model of good practice as structured advice on how the ACLU may enhance the visibility of its stakeholder recommendations. It is the author's objective that the guide be used to support the ACLU in refining its future stakeholder submissions, with the aim of enhancing its impact. More broadly, the guide offers a model for other CSOs operating within federal systems, acting as a practical tool. Further details on dissemination and next steps are detailed below in section 8.3. With these contributions summarised, the following sections consolidate the thesis beginning with an overview of the FRAME Method, followed by dedicated sections demonstrating how each research question (RQ) was answered.

8.1.1. The FRAME Method

Phase One involves the deductive development of codes based on familiarisation with the ACLU's nationwide Campaign Blueprint and the establishment of the FRAME Matrix. Predefined Campaign themes were extracted from the Blueprint and any accompanying public-facing documentation. The purpose of this stage is to identify core themes of concern. Once extracted, deductive coding is used to formalise a closed list of code as markers of each theme. This step is crucial as no inductive codes were introduced after the data collection process begins, ensuring consistency across the dataset. Subsequently, a similar coding schema was established for the six CSO theories identified in the literature review. These were broken down into indicators for consistency and applied to the ACLU's advocacy practice to assess strategic orientation, institutional identity, and engagement style.

Phase Two operationalises the FRAME Method by populating the FRAME Matrix with data drawn from the ACLU UPR stakeholder submissions and the Stakeholder Report. The objective is to carry out a systematic mapping and cross-referencing of the ACLU stakeholder recommendations to IHR, domestic Campaign advocacy, theoretical frameworks, and Member State

[1203] Annex 1.

Recommendations. This should enable comparative and intersectional analysis across multiple dimensions. This phase can be summarised into four steps.

First, all publicly available ACLU stakeholder submissions to the UPR were gathered for Cycles 1 (2010), 2 (2015), and 3 (2020). This included standalone submissions, where the ACLU submitted as a standalone actor, and joint reports in which the ACLU was either a name contributor or submitted in collaboration with its state-focused affiliates. Each submission should then be reviewed, line-by-line, extracting individual recommendations made. An essential component of this phase is a clear inclusion criterion, whereby only stakeholder recommendations that substantively aligned with one or more Campaign themes were admitted into the FRAME Matrix. Those outside of this scope were excluded. This ensured analysis only addressed the selected Campaign, not the ACLU's broader international advocacy.

Then these recommendations were coded deductively, using the multi-layered schema for the Campaign theme and CSO theory. From this point, the remainder columns should only be filled in where possible; it is essential not to force mappings using obscure rationales. Each stakeholder recommendation was evaluated for alignment with: IHR provisions, corresponding Campaign recommendation, relevant Member State Recommendations, and Stakeholder Report references. Where all three layers of mapping - campaign theme, IHR provision, and Member State Recommendations - were successfully aligned, the stakeholder recommendation was marked as "complete." This represents instances of full triangulation and form the basis for the later tailored analysis in Phase Three.

Phase Three completes the FRAME method, by analysing the populated dataset to identify patterns, evaluate alignment, and develop an interpretive model of CSO engagement with the UPR. Each stakeholder recommendation functions as an analytical anchor, with all corresponding codes mapped horizontally across the FRAME matrix. As the UPR is designed as a non-attributive, State-led process, it masks causal links between stakeholder inputs and Member State Recommendations by design. Therefore, the analysis focuses on identifying both explicit and implicit forms of correlation, without claiming causation.

Explicit alignments refer to instances where the substance of ACLU stakeholder recommendations appear to be reflected in a Member State Recommendation or cited in the Stakeholder Report. By

contrast, the implicit alignments are instances of structural or thematic alignment, including similarities in normative framing; for example, liberal rights-based approaches; legal reference points, or jurisdictional awareness. These form the majority of the recommendations analysed. They allow for a deeper understanding of the compatibility between CSO advocacy, and UPR outputs, even where no direct connection can be empirically verified. From this analysis, a three-pronged Model of good practice was developed.

8.1.2. RQ1: In what ways can CSOs strategically frame their stakeholder recommendations to maximise the likelihood of uptake in Member State Recommendations?

RQ1 served as the central question of this thesis, with the subsequent three research questions unpacking its component parts. This thesis finds that strategic framing is decisive in determining whether CSO recommendations are taken up at the UPR. The analysis of the dataset led to the development of an interpretive Model of Good Practice, composed of three interconnected prongs: (1) identity and expertise, (2) alignment with IHR standards, and (3) recognition of domestic legal and political realities. Each of these dimensions is examined in detail in RQs 2–4 below, collectively shaping the final answer to RQ1.

8.1.3. RQ2: How does the CSO's identity, expertise, and advocacy strategy influence the visibility and reception of its recommendations within the UPR process?

RQ2 was addressed in Chapter Five, examining Prong One of the model of good practice. The findings confirmed that CSO recommendations' visibility was improved when CSOs "performed" identity and expertise.[1204] Statistical analysis of 25 ACLU recommendations across Cycles 1–3 illustrated that liberal framing became increasingly dominant, with 80% of recommendations mapping to this theory. Moreover, 69% of those mapped onto Member State Recommendations mapped to liberalism.

[1204] Section 5.1.

Prong One was conceptualised as the performance of identity – through liberal framing – and expertise – through recognition as an authority on the subject area – suggesting this is how CSOs can meet Resolution 5/1's mandate for credible and reliable information.[1205] Analysis of the dataset revealed that while consistent liberal framing seemingly enhanced credibility, citation and uptake were not guaranteed.[1206] Similarly, recalibration into liberalism did not ensure visibility either. Taken together, this suggests that Prong One on its own was insufficient to enhance the visibility of CSO recommendations at the UPR. Moreover, the ACLU's failure to foreground its Campaign in Cycle 3 was identified as a missed opportunity to perform expertise, despite consistent thematic alignment.[1207]

Ultimately, analysis illustrated a structural liberalism-bias within the UPR that seemingly privileges legally formalist framings of CSO recommendations, complicating advocacy for CSOs outside of this paradigm.[1208] Prong One therefore shows that identity and expertise are essential entry points to visibility, but remain mediated by institutional filters, such as the drafter's need to present information diplomatically.

8.1.4. RQ3: To what extent does alignment with the recognised IHR framework improve the likelihood that CSO priorities are reflected in Member State Recommendations?

RQ3 was addressed in Chapter Six, which evaluated Prong Two of the Model by examining the extent to which ACLU stakeholder recommendations aligned with the IHR framework. Statistical analysis revealed a stronger correlation between IHR-aligned recommendations and the issuance of Member State Recommendations, with 44.4% of IHR-aligned recommendations mapping, compared to 28.6% of those without alignment. Treaty-based recommendations carried particular weight, though non-treaty instruments such as soft law and customary international law also proved valuable in addressing normative gaps, especially in areas like juvenile justice.

[1205] Section 5.2.
[1206] Section 5.3.1. and 5.3.2.
[1207] Section 5.3.3.
[1208] Section 5.4.

The analysis identified four sub-groups of recommendations: (1) those aligning with both the IHR framework and Member State Recommendations, (2) those aligning with IHR but not UPR Recommendations, (3) those mapping to neither, and (4) those mapping to UPR Recommendations without IHR grounding. This illustrated that while alignment with international norms enhanced resonance within the UPR, success was not guaranteed, particularly where recommendations were too narrowly tailored to the US context.

This considered, a further finding of the chapter is observed in the negatives from the dataset. Where ACLU recommendations failed to map to the IHR framework, the author noted that it was often due to a lacuna in the legal instruments. Through analysis, the role of CSOs as norm entrepreneurs was affirmed: CSOs, through their advocacy, can help to identify gaps in the law, and interpret or extend existing provisions.

The chapter concluded that while IHR alignment is a critical foundation for visibility at the UPR, CSOs must also anticipate thematic trends, diversify advocacy beyond dominant issues, and frame domestic reforms in a manner legible to both international and domestic audiences. Furthermore, it showed how CSOs contribute both to the uptake of existing norms (through framing) and to the evolution of IHR law (through norm entrepreneurship).

8.1.5. RQ4: How does the legal structure of the US condition the design, clarity, and uptake of CSO recommendations within the UPR?

RQ4 was answered in Chapter Seven, which detailed the third and final prong developed through the FRAME Matrix: the domestic realities. This explored the domestic dimension of CSO engagement with the UPR, focusing on how the domestic legal and political structures may affect the uptake of CSO recommendations or issuance of Member State Recommendations. Using the ACLU as a case study that operates exclusively within the US, the chapter situated the analysis within its federal system. [1209] The US' constitutional framework devolves many key areas of law and policy, including criminal justice, to the states.[1210] In contrast, the UPR is shaped by the UN

[1209] Section 3.3.1. Discussing the ACLU's domestic advocacy.
[1210] Section 3.3.2.3. Discussing the US' relationship with IHR, detailing its misalignment with the domestic legal structure.

Charter's principle of sovereign equality, which limits the mechanism to addressing States as unitary actors.[1211] This structural misalignment raises challenges for CSOs seeking to translate IHR provisions into domestic legal practice through Member State Recommendations. By evaluating the ACLU's stakeholder recommendations, the chapter provided a potential insight into how the CSO navigates this jurisdictional complexity within a multilateral system constrained by formal limitations.[1212]

The data suggested that recommendations that clearly identified the responsible domestic actor appeared more likely to be reflected in Member State Recommendations. The analysis categorised ACLU recommendations into four categories, depending on the level of the domestic government actor explicitly named within the recommendation: (1) federal only, (2) both federal and state authorities, (3) state only, and (4) ambiguous.[1213] Group 2 recommendations, which named both levels of authority, exhibited a perfect mapping rate, with all ACLU recommendations successfully mapping to at least one Member State Recommendation. By contrast, Group 3 recommendations, which exclusively targeted state authorities, did not map to any. This finding highlights the jurisdictional limits of the UPR and the need for CSOs to anticipate these constraints in their advocacy.

From this, the chapter argued that while federalism is often characterised in the scholarly discourse as a structural impediment to the domestic implementation of IHR,[1214] it should instead be navigated strategically. Drawing from and extending Belser's typology of international recommendations, this chapter introduced the concept of *federalism-conscious* recommendations - those that explicitly acknowledge the domestic legal and political structure, engaging both federal and state levels where appropriate. Group 2 recommendations exemplify this approach. Rather than viewing or suggesting the UPR's State-centric structure as incompatible with federated systems, federalism-conscious recommendations position CSOs as conduits of IHR. CSO recommendations would bridge the structural gap between the IHR framework and the domestic institutions responsible for implementation by acting as a signalling device for recommending

[1211] UN Charter Article 2(1).
[1212] Section 7.
[1213] Section 7.2.
[1214] Section 3.3.1. Discussing Federalism and Human Rights.

Member States. The author suggested that by clearly identifying the appropriate domestic authority, federalism-conscious CSO recommendations can inform recommending Member States on the US' domestic architecture. For example, several extracted Member State Recommendations were federalism-conscious when making recommendations on capital punishment, potentially reflecting a prior familiarity with the domestic legal context on the subject. This was not the case for issues like prison conditions and racial profiling, where there is potentially less understanding of sub-national entities.[1215]

The analysis also challenges the rigid application of the SMART criteria to stakeholder recommendations. It affirms that specificity is a crucial component of effective advocacy, however, it proposes that its utility is contingent on context, calling for calibrated specificity.[1216] Burger et al observed that the formulation of Member State Recommendations may have "significant or even decisive impact on the SuR's willingness" to support them. [1217] Additionally, it is suggested that the higher the degree of specificity may, paradoxically, lower the probability of acceptance.[1218] The data from this thesis concurred with this view. ACLU recommendations that were overly rigid or narrowly tailored to the US context, such as citing specific domestic provisions, exceeded the jurisdictional scope of the UPR and failed to map. By comparison, where recommendations struck a balance by being specific enough to be actionable, but simultaneously general enough to allow for flexible reframing within the UPR purview, were more likely to map. This suggested that calibrated specificity offers a pragmatic tool to heighten the general visibility of CSOs.[1219]

In summary, this chapter detailed the third prong of the interpretive three-prong model of good practice. This analysis contributed to a growing body of literature that calls for more grounded, context-sensitive models of human rights advocacy, proposing that CSOs operating in federal States must go beyond rights-based claims. Instead, they should frame those claims in acknowledgment of the domestic legal jurisdiction and political reality, whilst also respecting the IHR mechanism's limitations.

[1215] Section 7.3.1. and Chapter 7.3.2.
[1216] Section 7.3.3.
[1217] Burger et al, at 18 (2021).
[1218] *Id.*
[1219] Section 7.3.3.

8.2. Limitations of the Research

This thesis offers a detailed and multi-faceted analysis of the ACLU's stakeholder recommendations to the UPR across the first three cycles of the US, through the lens of criminal justice reform in line with its Campaign for Smart Justice. However, some limitations should be acknowledged, which are outlined below, addressing both critical points of this research: the novel methodology and the interpretive model of good practice that resulted from its application.

First, the FRAME Matrix involved compiling an expansive data pool across multiple tabs.[1220] However, the final analysis focused solely on a small number of ACLU stakeholder recommendations extracted from four submissions across three UPR cycles.[1221] Although this narrow focus allowed for detailed, triangulated analysis, it does limit the generalisability of the findings. Furthermore, this research exclusively analysed ACLU recommendations contained in its submissions to the UPR. Therefore, this method does not capture the influence of any advocacy that may have taken place beyond the written record, such as direct communications with embassies in-country, diplomatic missions to Geneva, or UPR Info facilitated pre-sessions events.

Next, the scope of the thematic analysis was limited to criminal justice, although it is richly covered within the IHR framework, and highly prioritised by the ACLU. Third, when implementing the FRAME methodology, careful selection of a CSO campaign is necessary. In this case study, the Campaign for Smart Justice is particularly complete in its documentation, which provided for a rich data pool which is unlikely to be matched by small CSOs. Consequently, this may limit the replicability of the model in States with underdeveloped or less institutionalised civil society spaces. Consequently, the FRAME Methodology may require adaptation to remain effective in different advocacy context – guidance for which is provided by the author in section 4.2.

[1220] Section 4.2.
[1221] Section 4.2.

8.3. Future Research

This thesis introduced two significant novel contributions: (1) the FRAME method and (2) the three-pronged model of good practice. From these, it has created several future avenues for research. In the first instance, the author will be expanding on her research by stress-testing the FRAME Matrix in the context of other CSOs of varying notoriety and campaigns from the Global South.

Next, this thesis focused exclusively on the US, which was raised as a significant limitation to the generalisability of both outputs from this thesis. Therefore, further research is needed to explore issue further and conduct a comparative study to investigate high-profile reviews and its impact on CSOs. This research should compare the experiences of CSOs who engage with both high-profile and low-profile reviews, seeking to explore whether there is an impact on how stakeholder contributions are received. This could be done in collaboration with other UPR scholars. Such work would help determine whether CSOs operating in less prominent States are better positioned to influence Member State Recommendations through more direct advocacy.

This thesis also produces a practical output in the form of a report to the ACLU, the author intends to distribute a finalised version, with the ambition of establishing communications with the CSO's stakeholder report drafting team. Optimally, the ACLU would permit the author to contribute, on a voluntary basis, to its submission to Cycle Five of the US UPR.

As the UPR continues into Cycle Four, there is a growing body of research dedicated to enhancing its effectiveness and impact on the ground - an undeniably important task. But what has emerged from this thesis is the importance of complementing this by equal attention to the earlier stages of the review process, particularly to the empowerment of CSOs. It is essential for the UPR to support those most impacted by human rights violations on the ground in order to have any meaningful impact. Further research into strengthening the influence of CSOs whilst respecting the mechanism's success as a State-led process is essential to contribute to the fulfilment of the UPR's mandate.

Appendix 1 – FRAME Matrix (Completed)

Appendix 2 – FRAME Matrix (Template)

Appendix 3 – ACLU Report

Appendix 4 – Excel Formulae

Appendix 5 – Simplified Recommendations

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