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DEFINING  
GOVERNMENTAL  
HUMAN RIGHTS  
FOCAL POINTS:

PRACTICE, GUIDANCE  
AND CONCEPT

SÉBASTIEN LORION

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**DEFINING GOVERNMENTAL HUMAN RIGHTS FOCAL POINTS:  
PRACTICE, GUIDANCE AND CONCEPT**

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# EXECUTIVE SUMMARY

This study looks at **governmental human rights focal points** (GHRFPs), understood as states' administrative structures mandated to provide the human rights response of the executive power and ensure human rights implementation at the national level through expertise-building, mainstreaming and coordination. GHRFPs are considered by international human actors—including the Danish Institute for Human Rights—to be **a key element of national human rights systems**, alongside National Human Rights Institutions (NHRIs).

**GHRFPs have spread across countries in various shapes**—from human rights ministries to interministerial delegations—and with various mandates—either comprehensive or thematic. GHRFPs have not been apprehended as a single phenomenon, neither in academic investigations nor in international or regional guidance. International **guidance for GHRFPs is fragmented**, with human rights actors recommending different formulas over time—from national coordination committees to National Mechanisms for Implementation, Reporting and Follow-up. The absence of a generic referential set of standards cutting across GHRFPs' diversity may explain this disjointed approach and limited research identifying GHRFPs as a field of inquiry.

This study lays the ground for the comprehension of GHRFPs as a singular phenomenon and type of actor and for the critical review of their significance for human rights law and practice. To do so, the study **documents state practices**—providing original meta-data on, for example, human rights ministries and suggesting a typology of GHRFP embodiments. It **compiles and analyses the relevant guidance**, taking into account their interpretation by relevant human rights bodies.

Based on this analysis, the study **infers six core attributes** associated with GHRFPs:

- (1) GHRFPs shall be government-based arrangements,
- (2) GHRFPs shall have an explicit human rights mandate,
- (3) GHRFPs shall make other actors work and not directly implement policies,
- (4) GHRFPs shall accumulate and 'translate' specialised knowledge on rights,
- (5) GHRFPs shall be permanent structures,
- (6) GHRFPs shall have professional staff and rational administrative routines.

These attributes define GHRFPs as a concept, which serves to **delineate and structure a field of academic investigation**. Just as the *Paris Principles* provided a structuring reference for the study of NHRIs, the GHRFPs' attributes can serve as yardsticks to assess and compare actual GHRFPs, which in practice may fare better on one attribute than on another. The study concludes with methodological options to consolidate a research agenda on GHRFPs adopting the proposed conceptual approach.

# ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ESCWA	Economic and Social Commission for Western Asia
GANHRI	Global Alliance of National Human Rights Institutions
GHRFP	Governmental Human Rights Focal Point
HRC	Human Rights Council (United Nations)
ICRC	International Committee of the Red Cross
NCP	National Contact Point (for Responsible Business Conduct)
NGO	Non-Governmental Organisation
NHRAP	National Human Rights Action Plan
NHRI	National Human Rights Institution
NMIRF	National Mechanism for Implementation, Reporting and Follow-up
NMRF	National Mechanism for Reporting and Follow-up
NWMs	National Women's Machineries
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
R2P	Responsibility to Protect
RIP	Recommendations Implementation Plans
SDGs	Sustainable Developments Goals
UN	United Nations
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme
UNGP	UN Guiding Principles for on Business and Human Rights
UPR	Universal Periodic Review

# INTRODUCTION

## **GHRFPS IN THE 'DOMESTIC INSTITUTIONALISATION' OF HUMAN RIGHTS**

The remarkable propagation of institutional human rights innovations across states in the 1990s was marked by the emergence of several types of state actors.<sup>1</sup> The surge in national human rights institutions (NHRIs) has captured much of the attention, leading scholars to argue that 'NHRIs signal[ed] the entry of the modern-bureaucratic state into the domestic human rights arena—institutionalizing practices designed to regulate human rights locally.'<sup>2</sup> The identification of NHRIs as a specific type of actor, defined by its independence, may be explained by the endorsement of a dedicated set of standards by the Vienna World Conference on Human Rights<sup>3</sup> and by the United Nations General Assembly in 1993.<sup>4</sup> Indeed, the *Paris Principles* carved a common concept superseding actual variations between NHRIs. They helped to promote NHRIs' diffusion across states<sup>5</sup> but also structured a field of inquiry on NHRIs.<sup>6</sup>

Besides NHRIs, other types of human rights state actors anchored in the government or executive branch have propagated. Like NHRIs, these are diverse in terms of institutional design, composition, mandates and functions. They are established as coordination mechanisms, units, ministries, inter-ministerial delegations, national committees, taskforces, etc. Their scope may be thematic or comprehensively cover all human rights. It is possible that the heterogeneity of these practices has obscured the fact that they participate in broadly similar phenomena and may have rendered the documentation and study of this phenomenon elusive. Yet the hypothesis made by actors such as the Danish Institute for Human Rights is that, just as for NHRIs, these types of structures share common core features, cutting through their diversity, and can be referred to under the umbrella concept of 'governmental human rights focal points' (GHRFPs). One such common feature is the coordination role that GHRFPs shall play, in order to ensure that all branches of government contribute to the implementation of human rights commitments.

The importance of some sort of coordinating structure within the executive is a recurring concern of international and regional human rights actors, but also one addressed with caution in light of states' discretion over their institutional organisation. As put by the Committee on the Rights of the Child in 2003:

In examining States parties' reports the Committee has almost invariably found it necessary to encourage [...] coordination among central government departments, [...] between central and other levels of government and between Government and civil society. [...] as a treaty body, it is not advisable for it to attempt to prescribe detailed arrangements appropriate for very different systems of government across States parties.<sup>7</sup>

Nonetheless, as part of a general international movement towards the domestic institutionalisation of human rights as a strategy to overcome the persistent gaps in implementing human rights commitments,<sup>8</sup> various models for national human rights systems have been put forward by international or regional human rights actors in which NHRIs, and some form or elements of GHRFPs, constitute perennial cornerstones.<sup>9</sup>

Two recent models are particularly significant. The first example is significant for its normative strength. In 2006, for the first time in a human rights treaty, the Convention on the Rights of Persons with Disabilities (CPRD) obliged states to establish ‘focal points within government’ for implementation purposes and independent monitoring mechanisms/NHRIs for the promotion, protection, and monitoring of the implementation of standards.<sup>10</sup> The second example is significant as it absorbs much of the current debate on GHRFPs. In 2016, the Office of the High Commissioner for Human Rights (OHCHR) published a practical guide on ‘National Mechanisms for Reporting and Follow-up’ (NMRFs), following which, the UN Secretary-General hailed such NMRFs as a ‘new type of governmental structure’ and found NHRIs, NMRFs and parliamentary human rights committees to be the ‘key elements at the national level’.<sup>11</sup>

Unlike NHRIs’ Paris Principles, there is no unified set of international principles or guidance encapsulating the essence and commonalities of GHRFPs, in part out of respect for states’ sovereignty over institutional choices. The existing international guidance on GHRFPs is fragmented, incomplete and lacks coherence. It is fragmented because the various sets of guidance have addressed specific themes or categories of rights-holders, or specific functions of GHRFPs. It is incomplete because some significant state practices have been neither documented nor covered by international guidance, such as human rights ministries. Existing elements of guidance also lack coherence. Successive layers of guidance, some dating back to the 1970s, have sedimented onto each other rather than incrementally and logically building on each other, leading to conceptual tensions. A ground reason allowing this disjointed approach to persist is that there is no single compendium compiling and reviewing existing practice and guidance as a necessary prelude for articulating and harmonising guidance.

### **OBJECTIVE, METHODOLOGY AND OVERVIEW OF THE STUDY**

The initial objective of this study is, therefore, to document and analyse existing practice and guidance associated with GHRFPs. It is also predicated on the



hypothesis that the review of layers of guidance on specific GHRFPs would make it possible to conceptualise GHRFPs by identifying core attributes that GHRFPs are expected to hold. Such documentation, critical review and the conceptual proposal could have three expected benefits: 1) to help to build more articulated and coherent guidance; 2) to provide a conceptual framework for the assessment and establishment of actual GHRFPs, and 3) to outline and structure a field of inquiry to generate research on GHRFPs.

Methodologically, the research is exploratory and takes new legal realism as a primary approach: It draws on legal reasoning and empirical data informing practice. It is a critical and conceptual piece: It is neither a prescriptive document outlining an ideal for GHRFPs as part of a preferred model for national human rights systems nor a toolkit for their establishment. Having said that, states and practitioners might find this study valuable since it provides, in a single document, a comprehensive overview of existing international guidance. It also identifies and reflects on key issues identified by international guidance as relevant for GHRFPs’ establishment. Boxes have been inserted in the text to provide the readers with key excerpts of existing guidance, relevant examples of practices or models put forward by various human rights bodies in order to raise the study’s practical usefulness. Last, the study’s endnotes serve as a resource for states by referencing guidance and other types of prescriptive literature and providing links to access them.

The study is organised as follows:

- Chapter 1 documents practices and analyses guidance relating to GHRFPs with a thematic mandate, with a primary focus on the rights of women and the rights of persons with disabilities.
- Chapter 2 documents practice and analyses guidance relating to GHRFPs with a comprehensive mandate. It notably assesses how the recent guidance on NMRFs adds to and partly re-directs pre-existing guidance.
- Chapter 3 proposes a conceptual approach to GHRFPs. It infers a concept and core attributes of GHRFPs from the analysis of guidance and points to key issues that could arise in each attribute’s operationalisation.

The conclusion is dedicated to outlining how this conceptual approach can structure a field of inquiry on GHRFPs. It reviews the rare relevant scholarship and assesses methodological options for future research.

# CHAPTER 1

## GHRFPS WITH A THEMATIC MANDATE

The practice of establishing governmental human rights focal points first emerged in relation to specific human rights thematic fields—understood as including fields dedicated to specific categories of rights-holders. Two fields stand out and warrant an in-depth investigation: women’s rights (Section 1.1) and the rights of persons with disabilities (Section 1.2). Section 1.3 reviews additional examples from other thematic fields: children’s rights, business and human rights, responsibility to protect and international humanitarian law.

### 1.1 GHRFPS IN THE FIELD OF WOMEN’S RIGHTS

#### 1.1.1 GUIDANCE

Governmental agencies formally responsible for ‘the advancement of women’ or ‘gender equality’ have been called for in every UN-convened international conference on women since the first such conference held in Mexico City in 1975. On that occasion, the delegates called on states to establish an appropriate ‘national machinery’ and explained as follows.

The establishment of interdisciplinary and multisectoral machinery within government, such as national commissions, women’s bureaux and other bodies, with adequate staff and budget, can be an effective transitional measure for accelerating the achievement of equal opportunity for women and their full integration in national life. The membership of such bodies should include both women and men, representative of all groups of society responsible for making and implementing policy decisions in the public sector. Government ministries and departments (especially those responsible for education, health, labour, justice, communication and information, culture, industry, trade, agriculture, rural development, social welfare, finance and planning), as well as appropriate private and public agencies, should be represented on them.<sup>12</sup>

State conferences have been key to promoting specialised agencies’ diffusion, yet the ideas they promoted are intrinsically rooted in suggestions from global women’s movements. In a seminal review of the international diffusion of ‘national women’s machineries’ from 1975 to 1998, political scientists Jaqui True and Michael Mintrom underscored ‘how important the UN women’s conferences have been, in a sense serving as lightning rods that have helped to channel the collective buzz of ideas and energy emanating from the global women’s movement into

prescriptions for and commitments to policy action at the level of the nation-state.<sup>13</sup> Political scientist Judith Squires also stressed how strategic changes within feminist movements, overcoming their initial suspicion of bureaucracy and their focus on political activism, enabled these institutional developments. Specialised agencies were one facet of the feminist movement's demands, which also supported women's representation and quotas in public service. As such, the 'commitment to the creation of women's policy agencies as an international norm associated with good governance', achieved in 1995, was assessed as a key achievement of women's transnational social movements.<sup>14</sup>

On the occasion of the Fourth World Conference on Women held in 1995 in Beijing,<sup>15</sup> states resolutely spelt out expectations in terms of intended functions and institutional safeguards for establishing such machineries (see Box 1). The resulting Declaration and Platform for Action constitutes to date the most important and consolidated reference for GHRFPs on women's rights.

#### **BOX 1. EXCERPTS FROM THE BEIJING DECLARATION AND PLATFORM FOR ACTION (1995)**

201. A national machinery for the advancement of women is the central policy-coordinating unit inside government. Its main task is to support the government-wide mainstreaming of a gender-equality perspective in all policy areas. The necessary conditions for an effective functioning of such national machineries include:

- (a) Location at the highest possible level in the government, falling under the responsibility of a Cabinet minister
- (b) Institutional mechanisms or processes that facilitate, as appropriate, decentralized planning, implementation and monitoring with a view to involving non-governmental organizations and community organizations from grassroots upwards
- (c) Sufficient resources in terms of budget and professional capacity
- (d) Opportunity to influence development of all government policies

202. In addressing the issue of mechanisms for promoting the advancement of women, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that, before decisions are taken, an analysis is made on the effects on women and men, respectively.

Strategic Objectives: H1. Create or strengthen national machineries and other governmental bodies; H2. Integrate gender perspectives in legislation, public policies, programmes and projects; H3. Generate and disseminate gender-disaggregated data and information for planning and evaluation.

*Source: Beijing Declaration and Platform for Action, Fourth World Conference on Women (UN Doc. A/CONF.177/20/Add.1, 1995) paras. 201 and 203.*

In comparison to states' participation in international conferences and countries' connections with international women's NGOs, membership of international organisations, and ratification of legal instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have not acted as key explanatory variables for the diffusion of such machineries.<sup>16</sup> The 1979 CEDAW did not include provisions prescribing domestic institutions. The CEDAW Committee's sixth General Recommendation, adopted in 1988 and dedicated to 'effective national machinery and publicity', limited itself to recommending states to 'establish and/or strengthen effective national machinery, institutions and procedures, at a high level of Government, and with adequate resources, commitment and authority to: (a) advise on the impact on women of all government policies; (b) monitor the situation of women comprehensively; (c) help formulate new policies and effectively carry out strategies and measures to eliminate discrimination.'<sup>17</sup>

Nonetheless, the CEDAW Committee has been playing a more active role in reviewing and promoting GHRFPs in charge of women's rights, especially after the Beijing Declaration was adopted. The Committee recognised the Declaration as a complementary normative<sup>18</sup> and, therefore, requests states to report on the Beijing Declaration's 12 areas of concerns, of which the establishment of specialised agencies is one. On this basis, it reviews states' structures and makes recommendations. For instance, in 2017, in its review of Jordan's report, the Committee assessed the Jordanian National Commission for Women, and recommended Jordan to:

- (a) Further strengthen the institutional capacity of the national machinery for the advancement of women and provide it with the mandate, decision-making power and human, technical and financial resources necessary to mainstream gender equality throughout all policies of the ministries and in all government offices and for it to be able to open branch offices in all governorates, in particular in rural areas.
- (b) Continue to ensure that the national machinery coordinates and cooperates with civil society and women's non-governmental organizations to promote participatory planning for the advancement of women.
- (c) Undertake an impact assessment of the National Strategy for Women (2013–2017) to evaluate the progress made towards gender equality and develop a new strategy for the period 2018–2022, as well as a plan of action that clearly defines the competencies of national and local authorities regarding its implementation and that is supported by a comprehensive data-collection and monitoring system.<sup>19</sup>

More recent and regional treaties have started to prescribe institutional structures necessary for the implementation of specific women's rights. The 2011 Council of Europe's Convention on preventing and combating violence against women and domestic violence (known as the *Istanbul Convention*) foresees that 'parties shall

designate or establish one or more official bodies responsible for the coordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by [the] Convention. These bodies shall co-ordinate the collection of data [...], analyse and disseminate its results.<sup>20</sup>

What transpires in this swift guidance overview is that, from the outset to today, the GHRFPs in charge of women's rights are primarily aimed at triggering national dynamics, with a key focus on intra-governmental mainstreaming and connection with women's movements. The Beijing Declaration asserts that the 'national machinery's main task is to support government-wide mainstreaming of a gender-equality perspective in all policy areas.' The hope is that mainstreaming avoids the risk that policy coordination through a specialised governmental body would marginalise that policy. While coordination may simply be about the division of activities, their integration in various state programmes and the collection of information, mainstreaming may be more ambitious and aims at transforming institutional missions in terms of both agenda and everyday routines. Mainstreaming relies on a range of techniques, such as gender-monitoring checklists, guidelines and awareness-raising.<sup>21</sup>

Based on engaged scholarship and the accounts of how such mechanisms were promoted, including their enmeshment with feminist and women's movements, 'accountability' has emerged as a significant determinant of national machineries on gender equality. The latter are regularly presented as institutionalising and, therefore, representing feminist or women's movements. As such, the above-mentioned World Bank-commissioned study emphasises 'the importance of groups and individuals outside to the state to recognize that gender machineries are able to speak for and/or represent women' and asserts that 'the notion that women's policy agencies can represent women's interest is [...] seen as a major function of agencies.'<sup>22</sup>

### 1.1.2 STATE PRACTICES

As shown by True and Mintrom, as a result of the World Conferences, 'even countries where women are known to suffer considerable gender injustice have instigated institutional changes to advance the cause of women and gender equity. This rapid global diffusion of a state-level bureaucratic innovation is unprecedented in the post-war era.'<sup>23</sup> In the immediate aftermath of the 1975 World Conference in Mexico City, 17 countries adopted the first 'national women machineries'. The first high-level machineries were set up in 1976 by Canada and Iceland, and the first full-fledged Ministry in New Zealand in 1984. The 1980 Copenhagen and 1985 Nairobi World Conferences constituted further encouragements, and the 1995 Beijing Declaration is held to constitute the definite boost towards their diffusion. In just three years after the Beijing Conference, 28 states established a state mechanism and 13 upgraded pre-existing ones.<sup>24</sup>

Since 1993, the UN<sup>25</sup> has maintained a Directory of 'National Mechanisms for Gender Equality'.<sup>26</sup> It includes primarily the Beijing Declaration's 'machineries' and

other types of related bodies and institutions.<sup>27</sup> The review of the various editions of the Directory allows identifying trends in state practices. One general finding is that all but one state in the world has identified a national gender mechanism.<sup>28</sup> A gradual convergence in terms of general institutional choices can also be observed. In 1996, two-thirds of all national machineries were located in government, and one-third were either non-governmental or mixed structures.<sup>29</sup> By May 2020, 88.5% of them designating a ministerial structure (sometimes a unit within the presidential or prime minister offices) as the national mechanism, with an additional 10% designating an agency, council or commission sometimes related to the executive. Three states still prefer another type of organisation (association, union)<sup>30</sup>, but certain additional types of mechanisms, such as parliamentary committees, have now disappeared from the Directory.<sup>31</sup> This shows an increasing preference for government-based structures.

The ministerial homes in which national mechanisms are anchored differ from one state to another. Out of the 171 countries that appointed a ministerial structure as a national gender mechanism, 84 are ministries with an explicit mandate on gender equality or women in their official title: Eighteen such ministerial departments are exclusively dedicated to gender equality, and 66 cover gender equality as well as other policy areas (social affairs, youth, family affairs are amongst the recurrent areas). Other states commonly assign the mandate to general ministries in charge of social affairs, equality, labour or health. Some exceptions remain—for example, six countries assign the mandate to their ministry of foreign affairs, clearly addressing the mandate as an international prescription, an external rather than internal issue, or a mere point of contact for UN bodies.<sup>32</sup> Box 2 provides an illustration of the evolution over time of institutional choices by countries and the remaining diversity of options, taking the Arab region as a focus.

### **BOX 2. EVOLUTION OF NATIONAL WOMEN’S MACHINERIES (NWMS) IN THE ARAB REGION**

Prior to the Beijing Conference, NWMs presence in the Arab region was primarily limited to departments, directorates or units under ministries with broad mandates such as Ministries of Social Development. A report on NWMs from 2010 refers to the gradual growth of such entities since 1967, when the Syrian Arab Republic established the General Union for Women Syria as part of the executive and legislative authority. Egypt followed in 1970 with the establishment of the Women’s Affairs Directorate in the Ministry of Social Affairs. Other countries in the region followed suit as a response to the international women’s conferences beginning in 1975.

However, since 1995, there have been stronger commitments from governments in the Arab region to support the establishment of NWMs, including several that have been upgraded from commissions or councils to ministries. These establishments had, on many occasions, strong ties with

power structures in their countries given that in many cases NWMs were chaired by the countries' First Ladies, which ensured a stronger political support. [...] In 2010, out of the 15 established NWMs, eight were presided by First Ladies.

Currently, NWMs in the Arab region assume different structures. In some States, NWMs function as full ministries either with standalone mandates specifically dedicated to gender equality and the empowerment of women (for example, the State of Palestine) or have broader and/or combined portfolios that include women's affairs among other mandates (such as in Tunisia and Morocco). In other Arab States, NWMs take the form of quasigovernmental institutions (Bahrain, Egypt, Jordan, Kuwait, and Yemen). In Lebanon, uniquely, the Ministry of State for the Economic Empowerment of Women and Youth and the National Commission for Lebanese Women, divide the gender equality portfolio.

Nonetheless, by and large, the capacity of NWMs, compared to other institutions, is limited, a concern that is also faced by NWMs in contexts outside the Arab region as well. National Women's Machineries have difficulty carrying out their mandates for a number of reasons: their work may be isolated and side-lined; the existence of heavily patriarchal structures; and given economic crises and conflict a number of Arab States face, women's issues are increasingly pushed aside. In some contexts, NWMs are merely tokenistic, which is reflected from the outset in the purposefully weak design of NWMs within the greater institutional structure. In the Arab region, NWMs have faced various challenges since their establishment, including confronting entrenched socioeconomic contexts, weak internal institutional structures, limited human and financial resources and cultural and societal resistance, among others. NWMs have had to grapple with a lack of adequate support, expressed through a dearth of funding and abundant legislative obstacles.

Despite their varied forms and challenges, NWMs in the Arab region have been instrumental in reporting on State efforts to implement CEDAW and the [Beijing Platform for Action] and have advocated for gender-sensitive legal reform, such as the passage of laws addressing violence against women and economic empowerment initiatives.

Source: UN ESCWA, *Cultivating Resilient Institutions in the Arab World: National Women's Machineries in Challenging Times* (UN Doc. E/ESCWA/ECW/2019/4, 2019) 15.

There is widespread literature on national women machineries/mechanisms for gender equality. These include general practice reviews commissioned by international organisations<sup>33</sup> as well as academic inquiries.<sup>34</sup> They inevitably point to the challenges, if not the precarious situation in which a majority of national mechanisms find themselves. As the review of Arab countries presented

in Box 2 illustrates, challenges include lack of staff and financial resources, fragile institutional basis, lack of authority and coordination powers, political marginalisation, and so forth.

A further challenge is for focal point structures to understand their function as a catalyst in mainstreaming cross-cutting issues within government. As captured in a 2010 World Bank-commissioned global study:

Although the [Beijing] Platform for Action guidelines are clear that the mandate of national machineries [is] to promote the achievement of gender equality and women's empowerment through catalytic work and dual-track strategy of gender mainstreaming and targeted measures, there is still a lack of understanding about what catalytic work and gender mainstreaming entail. In many countries, national machineries are still too busy implementing their own projects delivering services to women, rather than doing catalytic work providing policy advice to other ministries and departments to mainstream gender equality issues in their policies and programmes.<sup>35</sup>

## 1.2 GHRFPS FOR THE RIGHTS OF PERSONS WITH DISABILITIES

### 1.2.1 PRE-2006 GUIDANCE AND PRACTICE

The emergence of practices and guidance on GHRFPs related to the rights of persons with disabilities occurred in a similar timeline. The 1982 *World Programme of Action Concerning Disabled Persons* provided that 'governments should establish a focal point (for example, a national commission, committee or similar body) to [...] follow the activities [...] of various ministries, or other government agencies and of [NGOs].'<sup>36</sup>

A primary objective of such mechanisms was to respond to challenges identified in the promotion and protection of rights at the national level, with a key issue arising from the transversal nature of human rights work and the fragmentation of competencies of executive actors. Coordination was, therefore, a primary objective, and in 1991, the UN endorsed *Guidelines for the Establishment and Development of National Coordinating Committees on Disability*.<sup>37</sup> The need for coordination was justified on the premise that 'problems of disabled persons cannot be viewed in isolation':<sup>38</sup> Disability issues are both 'complex' and 'multidisciplinary'.<sup>39</sup> Coordination was further needed to ensure 'a comprehensive, rather than a selective approach' to the matter, as equal opportunities and full participation of persons with disabilities relate to all spheres of society.<sup>40</sup> The Guidelines further posited that coordination avoids duplication of activities, maximises the use of existing resources and, conversely, identifies policy sectors that have under-prioritised rights-related issues and suggests initiatives.<sup>41</sup>

Amongst the major outcome of the Decade of Disabled Persons was the adoption in 1993 by the UN General Assembly of *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*. The Standard Rules constituted



a moral and policy commitment. They consolidated the adoption of a human rights approach to disability and inter alia spelt out the expectations placed on institutional mechanisms, detailed in one of its 22 Rules (see Box 3).

**BOX 3. STANDARD RULES: RULE 17 ON COORDINATION OF WORK (1993)**

States are responsible for the establishment and strengthening of national coordinating committees, or similar bodies, to serve as a national focal point on disability matters.

- (1) The national coordinating committee or similar bodies should be permanent and based on legal as well as appropriate administrative regulation.
- (2) A combination of representatives of private and public organizations is most likely to achieve an intersectoral and multidisciplinary composition. Representatives could be drawn from concerned government ministries, organizations of persons with disabilities and non-governmental organizations.
- (3) Organizations of persons with disabilities should have considerable influence in the national coordinating committee in order to ensure proper feedback of their concerns.
- (4) The national coordinating committee should be provided with sufficient autonomy and resources to fulfil its responsibilities in relation to its decision-making capacities. It should report to the highest governmental level.

Source: UN General Assembly, *Standard Rules on Equalization of Opportunities for Persons with Disabilities* (UN Doc. A/RES/48/96, 1993).

Just as the feminist movement enabled and framed GHRFPs on women rights, the international disability movement has imbued the preferred institutional arrangements for GHRFPs focused on the rights of persons with disabilities. This, in particular, led to a focus on hybrid focal points, composed of state and non-state actors, to share decision-making with persons with disabilities. The disability movement has been focused, especially since the 1990s, on participation in decision-making regarding all aspects affecting persons with disabilities. The aim was to rectify paternalistic tendencies at play not only in government but also in society, including, for instance, by substituting organisations for persons with disabilities, such as charities, with organisations of persons with disabilities. While coordination bodies can include representatives of ministries, the Standard Rules foresaw that 'organizations of persons with disabilities should have considerable influence in the national coordinating committee in order to ensure proper feedback of their concerns.'

Following the issuance of the above soft law recommendations, national disability focal points were established in many countries. They usually took the form of offices guiding the inclusion of disability across sectors, staffed in part by persons with disabilities.<sup>42</sup> By 2006, an estimated 63% of the countries had formed permanent coordinating committees, such as disability boards or councils.<sup>43</sup>

### 1.2.2 GUIDANCE AND PRACTICE AFTER THE 2006 CRPD

In 2006, the Convention on the Rights for Persons with Disabilities introduced an unprecedented provision in international human rights treaties, creating an obligation for States Parties to set up dedicated national implementing and monitoring structures (see Box 4). Its Article 33 provides elements necessary for the fulfilment of the rights enshrined in the Convention, all geared towards the creation of self-sustained systems at the national level. These elements are (1) ‘focal points’ and ‘coordination mechanisms’ within government, for implementation; (2) NHRIs and independent mechanisms, for promotion, protection and monitoring; and (3) civil society and rights-holders participation for all functions.

#### **BOX 4. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES—ARTICLE 33**

‘National Implementation and Monitoring’

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.
2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.
3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

Source: UN General Assembly, *Convention on the Rights of Persons with Disabilities* (UN Doc. A/RES/61/106, 2006).

The mandatory standards set out in CRPD Article 33 are not strictly aligned with the Standard Rules' earlier guidance. A question arises whether focal points and coordination structures shall include state and non-state actors. During the treaty negotiation, organisations of persons with disabilities and human rights groups insisted that 'the concept of such coordinating committees goes beyond that of purely intra-governmental coordination and of a focal point within government as provided for in the [...] draft. The national coordinating committees or similar bodies envisaged in the Standard Rules are permanent structures that should include representation from concerned government agencies, eminent persons and [NGOs], with special emphasis on adequate representation from organizations of peoples with disabilities.'<sup>44</sup> However, the Convention eventually spells out that coordination mechanisms also shall be 'within government'.

Article 33 is also not entirely self-explanatory or at least accommodates various interpretations. The analysis of the CRPD travaux préparatoires shows the polysemy of the notion of 'focal point'—interpreted as either implying a person or a structure. A compounding factor is that 'focal point' was subsequently translated differently in the various official linguistic versions. The CRPD failed to spell out focal points' functions, despite NGO proposals to detail their tasks. The possibility to design 'one or more focal points', introduced to accommodate federal state systems structures, further added conceptual confusion and various interpretation as regards focal points' connexion with coordination mechanisms. Lastly, article 33 retains some discretion of states: Coordination mechanisms are not compulsory, and all structures shall be established 'in accordance with their system of organization'.

In practice, States Parties' interpretations differ significantly. Sometimes, the focal point is also designated as a coordination mechanism. Some States Parties designated the focal point as the coordination mechanism (e.g., Italy, United Kingdom). Some designated a focal point and additional coordination mechanisms internal to the executive branch (e.g., Denmark, France). In contrast, in many states, especially in Latin America, national disabilities councils with representatives from both governments and civil society, and sometimes other actors, were established or designated as coordination mechanisms, and even sometimes as the focal point (e.g., Ecuador, Mexico).

The overseeing treaty body, the Committee on the Rights of Persons with Disability, has demonstrated considerable flexibility regarding Article 33(1) and accepted a great variety of practices. It has failed to engage in clarifying conceptual indeterminacies and divergent interpretations, as my analysis of its jurisprudence shows (see Box 5).

### **BOX 5. CRPD COMMITTEE ON ITS GUIDANCE ON ARTICLE 33 FOCAL POINTS**

The Committee has not published any guidelines on Article 33(1), and my review of [first 55] concluding observations of the Committee finds that only 24 of the 55 concluding observations discussed states' application of Article 33(1). This is striking, given that no less than 34 state initial reports failed to report the appointment of a focal point. States as diverse as Jordan, China, Colombia, and Ukraine reported on a coordination mechanism only, and the Committee did not request them to designate a 'focal point'. In several state reports, disability councils were presented either as a coordination mechanism (e.g., Mexico, Croatia, Jordan), as a focal point (Spain), or referred to in conjunction with Article 33(1) with no clear role (Mauritius, Italy). All of those have been accepted by the Committee—except in two cases (United Arab Emirates, Uganda).

In most cases, the Committee does not enforce the mandatory nature of the focal point designation. Moreover, there is confusion about the logic and distinctiveness of these two mechanisms, and no detail as to how, being distinct, they should work together. In situations where state reports mention neither a focal point nor a coordination mechanism, the Committee's recommendations vary. In three cases, the Committee recommends the designation of both a focal point and a coordination mechanism; in one case, the designation of one focal point; in one case, the appointment of several focal points; and in two cases, the establishment of a coordination mechanism only. In rare cases, the Committee draws States Parties' attention to certain requirements, such as:

- the necessary technical, material and financial resources of the focal point or the legal mandate and authority of the lead institution (Republic of Korea, Iran, Guatemala, Uganda, Argentina, Lithuania and Slovakia);
- the expansion of existing focal points to all levels or branches of government (Germany, Uganda, Bosnia and Herzegovina, Argentina, European Union, Ethiopia and Lithuania); and
- the establishment of implementation actors at a high institutional rank (China – Hong Kong, Argentina, United Arab Emirates and Qatar).

All in all, the CRPD Committee interprets Article 33(1) in a considerably loose manner. In an interview, a former Committee member recognised this, and explained that the Committee is careful to respect the fact that every state is free to organise itself as it wishes. Members prefer to invest in Article 33(2) on independent monitoring mechanisms, which they identify as a 'natural counterpart' of the Committee at the national level. An advisor to its Secretariat added that the Committee is 'very sceptical of going into coordination mechanisms because it is not mandatory [...and] will do so only if it is evident that something is manifestly wrong.'

Source: Sébastien Lorion, *The Institutional Turn of International Human Rights Law and its Reception by State Administrations in Developing Countries* (PhD diss., University of Copenhagen, 2020), 108–110.

Consequently, there are persistent confusions between focal points and coordination mechanisms, both in practice and in international guidance—with UN bodies being hesitant about being too prescriptive. In a 2009 seminal study on the matter, OHCHR recalls that ‘it is not helpful to attempt to describe detailed national arrangements for very different systems of government’<sup>45</sup> and limits itself to identify ‘key general considerations’ captured in Box 6.<sup>46</sup> UN actors adopt a pragmatic position: existing coordination committees based on the earlier Standard Rules may be appointed focal points and/or coordination mechanisms under CRPD Article 33(1) provided that they are strengthened.<sup>47</sup>

Many issues are associated with coordination structures set up by states. As recognised by OHCHR, these include ‘lack of a clear legal mandate, lack of resources made available for the functioning of the coordination mechanisms, limited involvement of persons with disabilities, or exclusion of persons with certain types of disabilities.’ Furthermore, ‘laws establishing coordinating structures have often not been operationalized through the adoptions of rules and regulations.’ In many cases, these structures legally exist on paper but are, in reality, not operational. OHCHR posits that the Convention’s ratification offers an important opportunity for the strengthening of existing structures.<sup>48</sup>

#### **BOX 6. OHCHR’S KEY CONSIDERATIONS FOR THE DESIGNATION OF FOCAL POINTS UNDER THE CRPD**

- It might be advisable to adopt a two-pronged approach and appoint focal points at the level of each or most governmental departments/ministries as well as designate one overall focal point within government responsible for the implementation of the [CRPD].
- The designation of disability focal points at the level of government ministries responds to the recognition that the full and effective implementation of the Convention requires action by most, if not all, government ministries. Such focal points should represent the respective ministry in the national coordination mechanism also provided for in article 33, paragraph 1. Their mandate should include promoting awareness of the Convention within the ministry, participation in the development of an action plan on the Convention, and monitoring and reporting on implementation within their functional lines.
- The appointment of one overall focal point for the Convention within government, at the same time responds to the need to ensure the existence of a general oversight and promotion role. In this perspective, the following considerations are of relevance.
- [Firstly], the paradigm shift endorsed by the Convention on the understanding of disability, away from medical and social understanding to one of human rights, needs to be reflected in the choice of focal point. As such, designation of the ministry of health as the government focal point should be avoided, as should the

designation of special education departments within ministries of education, as is currently the case in some systems. Similarly, placement of the focal point within ministries of welfare and labour as is the practice in the majority of States parties should be reviewed and ministries with responsibility for justice and human rights should be preferred. [...]

- Secondly, implementation of the Convention requires traction at the most senior level of government. Placing the focal point on the Convention close to the heart of government, such as in the Office of the President or the Prime Minister, or the Cabinet Office, would be ideal. [...]. Where ministers in charge of disability are not part of the Cabinet, this might hamper the robustness of the focal points structure.

- Thirdly, the mandate of the focal point should clearly focus on developing and coordinating a coherent national policy on the Convention. As such, the focal point should promote, guide, inform and advise government on matters related to the implementation of the Convention but arguably not implement it by delivering disability support services. The mandate of the focal point could also include coordination of government action on the Convention in respect of reporting, monitoring, awareness-raising and liaising with [NHRIs and civil society].

- [Fourthly], the focal point within government needs to be adequately supported in terms of technical staff and resources. Therefore, maintaining the structure supporting the focal point within large ministries so as to take advantage of economies of scale could in some cases be helpful. In such cases, it might be useful to explicitly recognize the independence of the focal point structure from the parent ministry.

- [...] Article 33 [...] should also be read to refer to States with multiple levels of government, so that disability focal points could be designated at the local, regional and national/federal level.

Source: OHCHR, *Thematic Study on the Structure and Role of National Mechanisms for the Implementation and Monitoring of the [CRPD]* (UN Doc. A/HRC/13/29, 2009) para. 24-36.

There is so far no global overview of state practices, besides a 2011 study commissioned by OHCHR limited on European countries. This study concluded that 'it is too early to determine the impact of this practice on the implementation of the Convention. [...] The effectiveness of the focal points and coordination mechanism can only be evaluated after a certain period.'<sup>49</sup> There is also no academic scholarship taking CRPD focal points as case studies and analysing their inner working and impact. There is an impressive wealth of literature of a more prescriptive nature emanating from engaged scholars, disabled people's organisations and activists suggesting how these focal points should be organised

(see conclusion). The literature derived from the Convention the focal points' expected functions: orchestrating ministerial departments' activities, drafting or amending relevant legislation, building capacity within the government and preparing baselines, reports, and action plans in liaison with civil society.<sup>50</sup> This literature offers complementary perspectives to the development of guidance and support to state practices.

### 1.3 GHRFPS IN OTHER THEMATIC FIELDS

Other thematic human rights fields or policy areas closely associated with human rights promote the adoption of GHRFPS. This section briefly flags four of them.

#### 1.3.1 CHILDREN'S RIGHTS

The Committee on the Rights of the Child has asserted the need for states to establish governmental 'coordination among central government departments, among different provinces and regions, between central and other levels of government and between Government and civil society.'<sup>51</sup> The purpose of coordination is 'to ensure respect for all of the Convention's principles and standards for all children within the State jurisdiction; to ensure that the obligations [...] are not only recognized by those large departments which have a substantial impact on children—education, health or welfare and so on—but right across Government, including for example departments concerned with finance, planning, employment and defence, and at all levels.'<sup>52</sup>

However, as seen in the introduction to this study, the Committee has tended to shy away from prescribing international blueprints for such actors, displaying a high level of deference towards states and their discretion in deciding institutional arrangements. In its 2003 General Comment no. 5, it limited itself to noting that 'there are many formal and informal ways of achieving effective coordination, including for example inter-ministerial and interdepartmental committees for children' and to 'propose[...] that States parties, if they have not already done so, should review the machinery of government from the perspective of implementation of the Convention.'<sup>53</sup>

The Committee warned that 'it is not practicable to bring responsibility for all children's services together into a single department, and in any case doing so could have the danger of further marginalizing children in Government. But a special unit, if given high-level authority—reporting directly, for example, to the Prime Minister, the President or a Cabinet Committee on children—can contribute both to the overall purpose of making children more visible in Government and to coordination to ensure respect for children's rights across Government and at all levels of Government. Such a unit can be given responsibility for developing the comprehensive children's strategy and monitoring its implementation, as well as for coordinating reporting under the Convention.'<sup>54</sup>

Consequently, the Committee, but also other actors such as the UNICEF, tend to focus more on the overall processes necessary in a national child protection system rather than specific institutional prescriptions for focal points themselves.

Recommendations pertain to planning processes, referral mechanisms between protection agencies and inter-sectoral operational workflows, monitoring and data collection, trainings, child-sensitive budgeting, and so forth.<sup>55</sup> This approach looks primarily at the overall governance architecture necessary for protection at the national level, and how, together, its components form an interlocked and efficient system, rather than focusing on the central structure in charge of maintaining this system. On child rights subthemes, guidance on focal points nonetheless emerges; for instance, the Organization for Security and Cooperation in Europe (OSCE) recommends its member states to designate National Focal Points to protect child victims of trafficking in human beings.<sup>56</sup>

### **1.3.2 BUSINESS AND HUMAN RIGHTS**

The establishment of National Contact Points (NCPs) for Responsible Business Conduct is increasingly common. Forty-nine states have established an NCP,<sup>57</sup> set up either as an inter-ministerial body, a multipartite structure (government, business, unions and NGOs), an expert-based body or an individualised structure (e.g., a person within a ministry), at times including NHRIs.

NCPs are set up under the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development (OECD).<sup>58</sup> The Guidelines were initially adopted in 1976 and referred to NCPs as of 1984. In 2000, the OECD Council required states to set up NCPs and provided detailed procedural guidance on their role. According to its decision, ‘adhering countries shall set up [NCPs] to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, taking account of the attached procedural guidance.’ It requested NCPs to ‘operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.’<sup>59</sup>

The 2011 revision of the OECD Guidelines added a chapter on human rights aligned with the UN Guiding Principles for Business and Human Rights (UNGPs).<sup>60</sup> The UNGPs also highlight the NCPs’ role as non-judicial remedy institutions.<sup>61</sup> Indeed, the mandate of resolving issues related to the non-observance of the Guidelines and specific instances of alleged misconduct is an important feature of NCPs. Since 2000, more than 450 such cases have been treated by country NCPs in more than 100 countries.<sup>62</sup> Since the 2011 revision, more than 50% of all cases received by NCPs had a human rights element.<sup>63</sup>

Another noteworthy aspect is that the NCPs offer a rare example of international investment in spelling out focal points’ role and detailed guidance. The OECD produces a wealth of resources and tools to support NCPs in implementing various mandate functions.<sup>64</sup> Since 2001, annual international meetings of NCPs are organised and a system of voluntary peer reviews was instituted in 2017. Peer reviews are facilitated by the OECD Secretariat and carried out by representatives of two to four different NCPs who conduct an on-site visit, meet all stakeholders



and identify strengths and areas for improvement, providing recommendations in a public report. In just three years, 15 NCPs have undergone peer review.<sup>65</sup>

### 1.3.3 RESPONSIBILITY TO PROTECT

Formally recognised in 2005, the Responsibility to Protect (R2P) is a principle according to which the international community must protect populations from war crimes, crimes against humanity, ethnic cleansing and genocide.<sup>66</sup> The principle is directly related to human rights law, targeting the most serious violations.<sup>67</sup> The UN's Framework of Analysis for the Prevention of Atrocity Crimes indicates human rights violations as an early warning sign.<sup>68</sup>

Since 2010, some states and the NGO Global Centre for Responsibility to Protect promote the establishment of focal points for the responsibility to protect. According to the minutes of the 2010 ministerial meeting in which the idea was initially discussed, focal points should be 'senior officials serving as principal national advisers on R2P with the responsibility to coordinate national efforts and collaborate with other such officials in other governments and institutions to enhance efforts to anticipate, prevent and respond better to "R2P crimes"'. States further committed to holding meetings such focal points 'with a view to this becoming a standing network of specifically designated officials improving inter-governmental coordination on mass atrocity prevention.'<sup>69</sup>

As of November 2020, 61 states and two regional organisations (the European Union and the Organisation of American States) have appointed R2P Focal Points.<sup>70</sup> The Global Centre analyses that 'while R2P Focal Points in some countries are located within ministries mainly concerned with domestic policies (Pillar I), the majority of governments have chosen to place R2P Focal Points within the Ministry of Foreign Affairs, including in departments focused on Multilateral Affairs, International Law, Human Rights, and International Organizations.'<sup>71</sup> A main feature of the focal points is their organisation as a standing international network, for which the Global Centre for Responsibility to Protect acts as a secretariat. Since 2019, the network is equipped with an R2P Focal Points Steering Group comprising several focal points. In 2019, a short manual was published by the Global Centre, providing a short guidance framework for focal points.<sup>72</sup>

### 1.3.4 INTERNATIONAL HUMANITARIAN LAW

International standards for humanitarian law are grounded in the 1949 Geneva Conventions. Protocol I of 8 June 1977 provides that states are bound to 'respect and to ensure respect' for their provisions 'in all circumstances'.<sup>73</sup> On this basis, the International Committee Red Cross (ICRC) has been promoting and supporting the establishment of 'national committees for the implementation of international humanitarian law' in all states regardless of circumstances—including in times of peace. In 1995, the 26th International Conference of the Red Cross and Red Crescent encouraged the establishment of such committees.<sup>74</sup>

According to the database of national committees maintained by the ICRC, 112 states have established one.<sup>75</sup> National committees can take many forms, from an informal expert group to an interministerial or inter-institutional body created by ministerial decree or law. The ICRC recommends that such committees should preferably be linked to the executive branch of government, have legal status to be fully effective and able to play the role assigned to it, and have a formal structure to ensure it can continue its work over time. In 2019, the ICRC published ‘Guidelines for Success’, providing national committees with organisational recommendations and models to undertake compatibility studies of national law compared to international standards, plans of actions, reports, worksheets, etc.<sup>76</sup>

In several cases, the same structures have been designated or established by states for both humanitarian law and human rights, which indicates the close association of the two fields. It is the case in Burkina Faso, Cabo Verde, France, Guinea-Bissau, Kazakhstan, Namibia, Turkmenistan and Zimbabwe. In other countries, distinct national committees and GHRFPs are frequently hosted by the same ministerial department (e.g., in Bulgaria, Colombia, Indonesia).

Since 2002, the ICRC has organised at regular intervals ‘universal meetings’ of national committees for the implementation of international humanitarian law. It is meant to be ‘a forum at which the national [...] committees could meet and discuss their respective terms of reference, operations and activities and debate their achievements and the challenges.’<sup>77</sup>

### **REFLEXIONS ON GUIDANCE FOR THEMATIC GHRFPS**

The cross-analysis of the international guidance on GHRFPs with thematic mandates shows core resemblances in what constitutes a GHRFP and points to nuances from one thematic field to another. Comparing GHRFPs in charge of women’s rights and of the rights of persons with disabilities is enlightening.

In both fields, a key function is to coordinate national implementation, and also ensure mainstreaming of the thematic rights at stake into governmental action. A key focus of international guidance is on national interactions and processes: The aim is for national systems to work in a self-sustained way through interactions between GHRFPs and other actors, such as NHRIs and stakeholders. International reporting is secondary in this approach. In fact, in both fields, recommendations for GHRFPs emerged before a dedicated rights treaty was adopted and a treaty body set up.

In terms of institutional design, there are marginal variations between the preferred arrangements in each thematic field. Regarding women’s rights, guidance favours structures that are internal to the government, with emphasis on responsibility and authority. In the field of disability, preferences go towards participation through joint councils and boards gathering both state actors and rights-holders—although the analysis showed that CRPD is not fully aligned with earlier guidance, which points to ambiguities in the development of sets of guidance for the same thematic GHRFPs over time.

The nature of the rights may explain these variations at stake. But more importantly, variations are determined by the preferences of the civil society movements associated with each thematic field. The historical accounts provided in this chapter showed how the creation of thematic GHRFPs participates in a process of institutionalisation of social movements. This has led feminist scholarship to analyse these new state actors as accountable to rights-holders forming the ‘constituency’ for those institutions, with an associated expectation that agents within those institutions espouse the values of the movement.

The review of GHRFPs in other thematic fields added examples of variations in terms of institutional design and mandates. Three prominent functions emerged from the thematic fields analysed in Section 1.3.

First, some GHRFPs have a distinct protection mandate. In particular, the NCPs for Responsible Business Conduct play a recognised role as a non-judicial state-based grievance mechanism. Commentators at times suggest that focal points in other areas could also play a protective function, for example, in enforcing policies or national action plans on certain rights. For instance, the former UN Special Rapporteur for the Rights of Persons with Disabilities argued that CRPD focal points ‘must have the authority to initiate investigations and recommend sanctions to both state and private entities who fail to implement [national strategic plans]. Those can range from simply making the list of non-compliant entities public to the levying of fines, or the confiscation of public funds.’<sup>178</sup>

Second, several thematic GHRFPs are inherently associated with a specific international normative framework. Some are created to ensure national compliance with those standards. This is the case of the NCPs for Responsible Business Conduct, the R2P Focal Points, and national committees for the implementation of international humanitarian law. This does not mean that they are in charge of state reporting under relevant international frameworks, as the latter do not entail a reporting process similar to the one organised for human rights treaties. Rather, they are tasked with implementing and respecting the standards and their integration into national laws and policies. Other GHRFPs have been associated with a dedicated normative framework a posteriori. For instance, GHRFPs in the field of the rights of persons with disabilities pre-existed the CRPD, but many have been designated as focal points to implement the Convention after its adoption in 2006.

Third and last, the NCPs for Responsible Business Conduct, the R2P Focal Points and national committees for the implementation of international humanitarian law also show how GHRFPs may be part of international networks, with elaborate peer support mechanisms, including regular international meetings and the organisation of peer review procedures.

In short, there are numerous points of convergence between GHRFPs with thematic mandates. Nonetheless, nuances appear in functions and mandates that may in

part be linked with the theme at stake, the conditions of their emergence, but also due to the preference of the groups they cater to. Those preferences may not be readily generalisable to all human rights issues. In other words, some specificities of one type of thematic GHRFP could serve as inspiration to develop new functions of another one, others not. This raises the question of both the desirability and the feasibility of forging a general institutional infrastructure that would cater to all human rights comprehensively. The risk is to erase key specificities of thematic GHRFPs by forcibly unifying them into a single structure. As the next chapter will show, there are initiatives venturing into guiding states towards specific comprehensive state-level human rights structures.

## CHAPTER 2

# GHRFPS WITH A COMPREHENSIVE MANDATE

Besides thematic governmental human rights focal points, comprehensive structures within government covering the entire spectrum of human rights have flourished since the 1990s. They remained for long without associated international guidance, yet recent initiatives have ventured into guiding states towards specific comprehensive state-level human rights structures. The practical guide on 'National Mechanisms for Reporting and Follow-up' published by OHCHR in 2016 has attracted much attention in that regard. As this chapter will explain, a closer analysis of these developments shows that such guidance builds upon state practices and at the same time significantly re-orientates such experiences and existing prescriptions for thematic GHRFPs.

### 2.1 HUMAN RIGHTS MINISTRIES AS ONE EARLY TYPE OF COMPREHENSIVE GHRFP

A remarkable form taken by comprehensive governmental human rights focal points has been the establishment of a 'Ministry for Human Rights', an option akin to the innovative solutions adopted in the field of gender equality (see sub-section 1.1.2). The first evidenced prototype was established in 1986 by Mobutu Sese Seko in the Democratic Republic of Congo (then Zaire). Technically a *Department for citizens' rights and freedoms* within the government's Executive Council, it was headed by a vice-prime minister in charge of human rights and citizens' freedoms,<sup>79</sup> commonly referred to as the Human Rights Ministry.<sup>80</sup> Subsequently, ministries for human rights were established in Mali in 1993 in the aftermath of the establishment of the third republic and adoption of a new constitution in Morocco in 1993 by King Hassan II in the context of constitutional reforms aimed at reducing monarchist absolutism, and in Pakistan in 1995 under the reformist government of Benazir Bhutto.

A fundamental challenge of human rights ministries is their high volatility and dependence on contextual choices. Their status is precarious and under permanent threat of discontinuation. For instance, Iraq had such a ministry from 2003 to 2015, Serbia from 2008 to 2011, the Czech Republic from 2007 to 2010 and again from 2014 to 2017. Human rights ministries are also regularly merged with or split from other ministries; those choices may be part of a general decision, for example, to reduce ministerial portfolios. Human rights portfolios may also be a political marker. For instance, Brazil's far-right President Jair Bolsonaro abolished the specialised ministry upon his election in 2018 and established instead a *Ministry*

of *Woman, Family and Human Rights*, perceived as an attempt to impose religious values onto human rights.<sup>81</sup>

There is no historical account or database documenting these experiences. To fill this gap, I undertook desk-based research into the compositions of all countries' governments in May 2019. At that moment, a total of 32 governments comprised a specialised human rights ministry—that is, 16.5% of the countries in the world. Of those:

- Six were solely devoted to human rights (Democratic Republic of Congo, Equatorial Guinea, Morocco, Pakistan, Togo, and Yemen), and an additional five were devoted to human rights and a closely related theme, for instance, minority rights (Bosnia and Herzegovina, Burkina Faso, Haiti, Montenegro and Tunisia).
- Eighteen were ministries in charge of both justice and human rights; for seven of those, the ministerial portfolio covered another theme—prisons, cults, transparency, institutional reforms (ministries for justice and human rights existed in Angola, Argentina, Central African Republic, Chad, Chile, Côte d'Ivoire, Gabon, Guinea Bissau, Indonesia, Mali and Peru; ministries with additional themes were found in Comoros, Republic of Congo, Djibouti, Ecuador, Greece, Lesotho and Mauritius).
- In three countries, human rights ministries were adjoined with ministries for 'women' (Somalia), 'women and family' (Brazil), or 'national solidarity' (Burundi).

This original database is presented in full in Annex 1 of the present study. It must be noted that the state of play in a given country—and therefore, the overall data—can change very quickly. Since this global desk-research was undertaken, some countries, like Tunisia, have changed governments twice, with different decisions taken each time regarding the continuation of a ministerial portfolio covering explicitly human rights.

The data reveals some trends. Notably, the practice of establishing human rights ministries suggests a certain level of emulation between countries. Of these countries with a ministry, 20 are in Africa, of which 16 are former French colonies. Some countries stand out; in particular, Burkina Faso has particularly invested in its Human Rights Ministry. Not only has the ministerial portfolio been kept uninterruptedly since 2000 (either self-standing or together with the Ministry of Justice), but the country has also established a designated cohort of specialised human rights public servants since 2006 (see Box 7).

### **BOX 7. A SHORT HISTORY OF THE HUMAN RIGHTS MINISTRY OF BURKINA FASO**

A dedicated ministerial portfolio was initially established in 2000 by President Blaise Compaoré when his authoritarian regime was being challenged. Public outcries included a human rights dimension. Specifically, the death of journalist Norbert Zongo on 13 December 1998 triggered important demonstrations. In response, a series of human rights commitments were taken, including the ratification in 1999 of three international treaties. In 2000, a governmental reshuffling was undertaken to convey political openness. On this occasion, the first human rights secretary of state was appointed, which became a ministry two years later. Since then, the portfolio has been included in all governments, either as a specialised ministry or merged together with the justice portfolio.

The first minister secured the creation of a dedicated civil service branch for human rights, intending to create structural expertise that would be sustainable and outlive the ministry in the event of a political decision to dismantle it. In 2006, two categories of 'specific employments' were created as part of the civil service: human rights counsellors, with advisory functions and who are of higher administrative rank, and human rights officers, tasked with execution functions. All receive a 30-month specialised training at the National Administration and Judiciary School. In 2016, there were 105 counsellors and 100 officers working for the ministry, 41% of whom were posted in regional delegations.

From the outset, the ministry's primary focus was on structuring the human rights discourse nationally and pointing to the need to educate people. According to the first Human Rights Policy it drafted in 2001, 'the philosophy of human rights does not always coincide with traditions and customs.' Giving the practice of excision as an example, the policy posited that human rights issues would need 'a change of mentalities, that requires a vast enterprise of citizen's education to human rights.'

The second primary objective of the Human Rights Ministry is to mainstream human rights into governmental action. Beyond the executive, the 2013 Human Rights Policy mandates the ministry to ensure synergies and cooperation between actors and steer the human rights 'sector' understood as including governmental actors, independent state actors, NGOs, and even donors. Several coordination mechanisms headed by the ministry aim at supporting intragovernmental consistency on human rights. The Interministerial Committee on Human Rights and International Humanitarian Law gathers representatives of nearly all line ministries. The wider Sectoral Dialogue Framework includes representatives from ministries but also from courts, NGOs, donors and some other structures, including the NHRI. The ministry is also supported by focal points in line ministries, appointed for various purposes (estimated at 35 as of 2017).

International reporting grew to become a substantial part of the ministry's activities. While the first state report to the UPR (2008) was partly drafted by external consultants, the ministry subsequently institutionalised reporting processes. UPR-related processes (reporting, follow-up, mid-term reviews) now overshadow other policy frameworks, including the national human rights policies, in terms of investment and attention by the ministry. This situation is notably explained by the international political salience of this process and the pressure from donors.

Adapted from: Sébastien Lorion, *The Institutional Turn of International Human Rights Law and its Reception by State Administrations in Developing Countries* (PhD diss., University of Copenhagen, 2020), Ch. 9 and 11.

## 2.2 DIVERSITY OF STATE PRACTICES: A TYPOLOGY

Human rights ministries are only one type of governmental human rights focal point with comprehensive mandates set up by states. Information about units within executive bodies is significantly more difficult to gather as it requires investigating administrative units within government. Nonetheless, it is possible to outline a typology of state practices in terms of organisational structures and institutional anchorage.

GHRFPs generally include the following institutional forms:

- Self-standing ministries
- Departments, divisions or units within a ministry with a broader mandate
- Units in prime ministerial or presidential offices
- Non-ministerial governmental agencies; attached to a ministry, they focus on knowledge-building, promotion, and policy formulation
- Hybrid structures: joint committees, councils or committees comprising ministerial representatives and other types of representatives, particularly from civil society

Marginally, other structures can be designated as a governmental human rights focal point: a parliamentary committee or an umbrella association or union. GHRFPs may not only be one organisational structure; they are sometimes one person/sub-structure within a larger organisation. A GHRFP may also combine many such intra-organisational focal points in several ministries and an overall coordination mechanism/network secretariat. As such, it is an arborescent structure that cuts across organisational boundaries.

Focal points situated within a larger structure are also multiform. They may be an individual, a unit, a 'cell', a working group of various focal points across the organisation, for example, in its decentralised offices and implementing agencies.



Such focal points require institutional anchorage and a focal point on human rights is typically located in one of the following organisational branches:

- Advisory units to the leadership: These are close to either political or administrative top hierarchy. Many focal points are located in the cabinet supporting the minister or the office of the ministerial department's Secretary-General. This ensures that political orientation and managerial decisions reflect the issue at stake and that it becomes more visible.
- Planning or policy oversight/monitoring units: These play an important transversal role in administrations. They are responsible for identifying future actions and/or automatically reviewing projects and activities, thus ensuring that issues of a cross-cutting nature are systematically addressed. They are usually entrusted with data collection and knowledge building, an essential attribute of focal points.
- Technical services and units with implementation responsibilities: These are rare since focal points are not supposed to implement activities directly. Nonetheless, organisations may decide to have a human rights focal point in every directorate. Focal points may pursue two-track approaches consisting in both mainstreaming an issue and supporting it through implementing targeted measures and projects.

It is not infrequent that several types of comprehensive GHRFPs co-exist in a single country. In its 2016 study on NMRFs, OHCHR mentioned examples of different structures established for national implementation or external reporting:

- In Mexico, the Interministerial Commission on Government Policy on Human Rights is attached to the Interior Ministry and produces a national human rights programme and monitors the programme and international recommendations' implementation. The Ministry of Foreign Affairs coordinates reporting.<sup>82</sup>
- In Finland, the Ministry of Justice coordinates the Network of Contact Persons for Fundamental and Human Rights across ministries, which monitor the implementation of the NHRAP. The Ministry of Foreign Affairs coordinates reporting.<sup>83</sup>

This duality might be related to the needs they fulfil and the contexts of their establishment. One primary driver for establishing such structures has been inward-looking, focused on national politics, as the origins of human rights ministries in the 1990s presented in Section 2.1, created in times of political contestation or reforms. Similarly, many GHRFPs with comprehensive mandates were established in connection with the adoption of internationally promoted models for national human rights systems within countries, in which a central executive body is meant to play a cornerstone and structuring role. Many GHRFPs with comprehensive mandates play a role directly associated with broad human rights national policies and frameworks, such as national human rights action plans. For instance, in Mauritius, a Human Rights Unit coordinating a multi-stakeholder network was created in 2010 in the prime minister's office to ensure implementation of the NHRAP.<sup>84</sup>

In that regard, some international guidance existed. The 2002 Handbook on NHRAPs published by OHCHR<sup>85</sup> recommended drafting and coordination committees with broad composition and encouraged their institutionalisation beyond the NHRAP for mainstreaming and coordination purposes (see Box 8).

**BOX 8. OHCHR’S RECOMMENDATIONS FOR NHRAPS NATIONAL COORDINATION COMMITTEES (2002)**

**NATIONAL COORDINATING COMMITTEE – POSSIBLE COMPOSITION AND MANDATE**



The key development in the preparatory phase of work on the plan will be the establishment of the national coordinating committee. [...] The committee should be on a scale that permits satisfactory representation of government agencies, stakeholders and interest groups, while at the same time being manageable in terms of decision-making effectiveness and cost. [...] In order to achieve the twin objectives of effective implementation and broad popular support, membership should include representatives of both important

government agencies and civil society organizations. [...] In order to ensure representation from relevant organizations and to mobilize effectively the available expertise, it will probably be necessary to establish subcommittees or 'sectoral working groups' to deal with specific themes within the plan.

In some countries, it may be found useful to institutionalize the coordinating committee as a body with functions that extend beyond the national action plan. The committee may assume continuing responsibility for integrating and mainstreaming human rights issues within government agencies. Its activity may include promoting and coordinating human rights training, capacity-building and events, and mobilizing resources for human rights-related activities.

Source: OHCHR, *Handbook on National Human Rights Plans of Action* (UN Doc. HR/P/PT/10, 2002) 45-49.

A second driver for establishing comprehensive GHRFPs has been outward-looking. GHRFPs have been created for external purposes to coordinate international reporting and engagement with international and regional human rights bodies. The need for cross-sectoral coordination in reporting has been heightened by the establishment of the Universal Periodic Review (UPR) in 2008, which requires a transversal structure that can draw upon sectoral policies and mobilise all involved governmental structures (see Section 2.4 and Box 11).

These comprehensive GHRFPs are established in addition to thematic or sometimes sub-national focal points, which adds to the complexity of structures and may result in having a series of GHRFPs in a country, catering to different needs. This has led certain states to attempt to enhance coherence and interlock the system of focal points.

### **2.3 STATES' ATTEMPTS AT CREATING A UNIFIED ARCHITECTURE FOR THEMATIC AND COMPREHENSIVE GHRFPS**

Some countries have gradually attempted to design an overall institutional architecture that would overcome fragmentation and link up the different types of GHRFPs accumulated over time. This can connect focal points with thematic and comprehensive mandates, focal points at central and regional levels, focal points focused towards national and international engagements, etc. Colombia and Georgia are two countries illustrating well these efforts.

The case of Colombia provides a clear example of how institutional structures are the result of years of successive institutional reforms, with various institutional experiments in place since the 1980s. Political scientists Patricia Herrera-Kit and Stéphanie Taylor have traced how a genealogy of reforms can be identified, with layers of past structures and interventions constituting the sedimented ground on which the current architecture is built.<sup>86</sup> Institutional reforms depend

on various factors, including national political imperatives, attempts to engage with international models such as the concept of NHRAPs, dominant public management ideologies or development cooperation interventions.

An interesting rupture point in the Colombian context has been the resolute attempt to rationalise these elements. In 2011, the government adopted a decree creating the Colombian *National System of Human Rights and International Humanitarian Law* ‘to articulate and coordinate the rules, policy, entities and instances of national and territorial levels, and thus promote the observance and protection of human rights’,<sup>87</sup> onto which subsequent decrees adopted in 2015, 2016 and 2019 built.<sup>88</sup> The decrees restructured and strengthened existing bodies such as the Intersectoral Commission for the Coordination and Monitoring of national human rights and international humanitarian law policy established in 2000, articulated all existing structures and adjoined new ones where relevant—such as sub-systems on thematic areas which generated their own inter-ministerial working groups and subnational focal points. The whole system’s objectives were enshrined in the National Strategy for the Guarantee of Human Rights 2014–2034<sup>89</sup> (see Box 9).

#### **BOX 9. COLOMBIA’S NATIONAL SYSTEM OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW**

The **objectives of the National System are to:**

1. Strengthen institutional capacity to improve social conditions and the enjoyment of human rights by Colombians, and respect for international humanitarian law
2. Organize public institutions to allow the comprehensive, timely, effective and appropriate action and management of the State, at national and subnational levels
3. Structure and contribute to the implementation of the National Strategy for the Guarantee of Human Rights
4. Promote the mainstreaming of the human rights approach to sectoral public policies
5. Promote compliance and monitoring of international commitments and obligations
6. Set up an information system to monitor, monitor and evaluate the situation.

**The National System is composed of** 1. the Intersectoral Commission on Human Rights and International Humanitarian Law; 2. the Technical Secretariat; 3. Subsystems; and 4. Territorial Instances.

**The Intersectoral Commission is headed by the President’s Councillor** for Human Rights and International Affairs and composed of 10 ministers from sectoral policies (Interior, Justice, Labour, Education, etc.) and 10 officials from ministerial departments and agencies (e.g., National Planning Department).

It coordinates the National System, designs, implements, monitors and evaluates the National Strategy, defines the subsystems, promotes initiatives to harmonise the domestic legal system with international standards, promotes compliance and monitoring of international commitments, defines budget resource management strategies for the functioning of the National System, coordinates and determines which entities are responsible for the implementation of redress measures following decisions of international and regional human rights bodies in individual cases, etc.

The **Technical Secretariat**, under the responsibility of the presidential services, technically advises the Intersectoral Commission and each of the subsystems, on the design and management of the National Strategy, serves as a permanent liaison between the instances of the National System, at national and territorial levels, collect and supports all its components in the fulfilment of their mandates.

Eight **subsystems** consist of the units and officials assigned to human rights functions in ministries, administrative departments and various agencies and programmes of the State. They cover the following themes: 1. Citizenship, culture and human rights/peace education; 2. Civil and political rights; 3. International humanitarian law; 4. Economic, social and environmental rights; 5. Justice; 6. Equality and non-discrimination; 7. Transparency and anti-corruption; and 8. Transition and peace-building.

**Territorial Instances.** The National System has an instance in each of the territorial entities. This instance is responsible for designing, implementing, tracking, and evaluating, where appropriate, the National Strategy as well as other relevant public policies, strategies and guidelines formulated by the government. Governors and mayors are responsible for organising and operating these instances in their territories, in accordance with the guidelines and parameters defined by a Nation-Territory Coordination Mechanism, taking into account their competences and the principle of autonomy of territorial entities.

**The National Strategy for the Guarantee of Human Rights 2014–2034** is the result of the coordinated work of the institutions that make up the National System, following an extensive participatory process. The National Strategy defines the strategies and lines of action for each of the eight components of the National System, some being national competence, some at the territorial level and some joint between the national and the territorial levels.

Source: 'Sistema Nacional de Derechos Humanos y DIH' (my translation): <http://www.derechoshumanos.gov.co/areas/Paginas/Sistema-Nacional-de-Derechos-Humanos-y-DIH.aspx>.

Georgia offers a further example where the establishment of the governmental human rights focal point structure is deliberately designed to play the centre-stage role in the wider national human rights system set-up, with processes, actors and frameworks interlocked with each other. It also points to international actors' role in promoting certain types of structures, not necessarily through the development of international standards and norms but through capacity-building and cooperation activities, which have been moulding the unified human rights state architecture.

Following the change of government in 2012, Georgia made integration to the European Union and human rights promotion a political priority. Accompanied by former CoE Commissioner for Human Rights Hammarberg, the country transformed its human rights governmental institutions.<sup>90</sup> The European Union, OHCHR, UNDP, the International Labour Organisation and UNICEF accompanied those reforms by putting into place a large project supporting all actors in the Georgian human rights system.<sup>91</sup> Georgia thus became a prime laboratory to test some of the ideas on the new forms of human rights systemic architecture.

The resulting architecture is attractive as it projects coherence. At the centre, the 2014 national human rights strategy provides for 'a systematic approach to the realization of human rights by all Georgian citizens and the timely rendering of the duties related to these rights by state authorities.'<sup>92</sup> The Inter-Agency Council on Human Rights, chaired by the prime minister and composed of state institutions and NGOs with an advisory role, oversees its implementation. It is supported by a five-person Human Rights Secretariat, which is part of the government administration. The secretariat prepares overall annual reports that are presented in Parliament and lead to a resolution. The Parliament also reviews annual reports by the NHRI (the Public Defender of Georgia). On these bases, the Parliament adopts resolutions that instruct the government.

The Georgian example epitomises how national mechanisms in thematic fields could be interconnected. The architecture put in place in 2014 was rapidly confronted with the multiplication of theme- and category-specific plans and structures, which led to challenges in terms of coherence and issues of timing, funding and consultation fatigue.<sup>93</sup> Gradually, the country and its international supporters addressed the initial problems. Today, thematic plans are, to the greatest extent possible, converted into chapters of the NHRAP and thematic coordination bodies converted into thematic working groups of the Inter-Agency Council, with the secretariat supporting all working groups. The existing committee on the rights of the child was transformed into such a working group in 2016 and called the Interagency Commission for the Implementation of the Convention on the Rights of the Child and Children's Rights Issues. New commitments are also meant to fit this architecture. The Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence was established in 2017, also under the overarching structure of the Inter-Agency Council, and was nominated as the focal point under Article 10 of the Istanbul Convention.<sup>94</sup> Another thematic

working group is likely to be created to serve as the coordination mechanism under Article 33(1) of the CRPD.<sup>95</sup>

These structures, although internationally supported, were initially inward-looking. They aimed at triggering domestic reforms and accompany the democratic transition of Georgia. International and regional reporting came second in these processes. However, faced with problems in the actual operation of these institutions—the Inter-Agency Council rarely meets—and in light of the recent OHCHR’s focus on ‘national mechanisms for reporting and follow-up’, the Georgian government is now encouraged to reconsider how its main GHRFP and human rights architecture are organised.<sup>96</sup> Invited to address the Inter-Agency Human Rights Council on 23 April 2019, UN Resident Coordinator Louisa Vinton argued:

Through our experts, we have suggested some new, more active and more affirmative directions the Council could take in the future, including by transforming itself into a National Mechanism for Reporting and Follow-up. This would be a good way to translate the state’s commitment to human rights from enthusiastic affirmation into equally enthusiastic implementation. We see such a transformation as both timely and necessary.<sup>97</sup>

This transformation, Vinton posited, would help overcome some of the challenges faced by the Council. As in Georgia, the UN actively advocates for states around the world to embrace ‘national mechanisms for reporting and follow-up’, in line with guidance produced by OHCHR in 2016.

## **2.4 GUIDANCE ON ‘NATIONAL MECHANISMS FOR REPORTING AND FOLLOW-UP’**

The practical guide on ‘National Mechanisms for Reporting and Follow-up’ developed by OHCHR in 2016 constitutes an innovative attempt to advance international guidance on governmental human rights focal points with a comprehensive thematic mandate. The guidance only tackles certain mandate functions of GHRFPs, related to interactions with supra-national human rights mechanisms, but its supporters have used NMRFs as an entry point for national systems’ enhancement.

### **2.4.1 CONTEXT: THE UN TREATY BODY REFORM**

The guidance was developed as part of the tasks assigned to OHCHR in the context of the treaty bodies’ reforms, notably to respond to states’ complaints about overwhelming reporting obligations.<sup>98</sup> It built on the UN High Commissioner’s report on strengthening the human rights treaty body system of 2012,<sup>99</sup> in which Navi Pillay called on states to establish or reinforce Standing National Reporting and Coordination Mechanisms. Such mechanisms aimed at ‘facilitating both timely reporting and improved coordination in follow-up to treaty bodies’ recommendations and decisions’ and enabling states ‘to deal with all United Nations human rights mechanisms requirements with the objectives of reaching efficiency, coordination, coherence and synergies at the national level.’<sup>100</sup>

With the 'ultimate [goal to] serve as the central State interlocutor with all international and regional human rights bodies and mechanisms', the High Commissioner's report recommended that states:

- where a standing national reporting and coordination mechanism does not already exist, establish one if possible by law, that would serve as the core reference body in relation to human rights protection at the country level, particularly with regard to the treaty bodies;
- mandate the SNRCM to respond to all the international and regional human rights reporting obligations of the State to the treaty bodies, the UPR and Special procedures as well as regional bodies, and coordinate the implementation of their recommendations;
- mandate the SNRCM to respond to the individual communications procedures of the treaty bodies and other regional and international bodies;
- mandate the SNRCM to establish and execute the modalities for systematic engagement with national stakeholders, including NHRIs, civil society actors and academia.<sup>101</sup>

In line with the ambition to have one 'central state interlocutor', the UN, therefore, promotes that such a focal point deals with all supranational human rights bodies, whether international or regional, and for all types of interactions (report, follow-up, but also the implementation of decisions in the context of individual communications). Regional bodies, such as the Council of Europe and the African Commission on Human and Peoples' Rights, have also called for central structures to be in place. However, a more granular look at their guidance pertaining to the implementation of regional courts' decisions as well as the actual practice of states in relation to treaty bodies' individual decisions raises some interesting questions. For instance, should a single state structure be in charge of defending the position of the state in front of a court or a treaty body and then also be in charge of implementing the decisions condemning the same state? Box 10 presents some findings of a recent major research project conducted on this issue.<sup>102</sup>



### **BOX 10. NATIONAL IMPLEMENTATION OF INDIVIDUAL DECISIONS OF REGIONAL AND INTERNATIONAL BODIES**

'The Parliamentary Assembly of the Council of Europe<sup>103</sup> called on states to consider "establishing a national body responsible solely for the execution of the Court's judgments, in order to avoid a conflict of responsibilities with the agent representing the government before the Court". Similarly, the African Commission recommends that states establish "a central mechanism or unit at national level responsible for coordinating issues regarding implementation of decisions of the Commission" which should be "adequately funded and represented, with an open-ended composition of state actors, NHRIs, and inter-governmental organizations."<sup>104</sup>

In [practice], the picture is mixed. In Georgia, supervision of treaty body decisions and judgments of supranational courts takes place under the Ministry of Justice and the Department on Execution for International Decisions. [...]

Canada's Continuing Committee of Officials on Human Rights (CCOHR) is chaired by the Department of Canadian Heritage, with participation of the Departments of Justice and Global Affairs. The CCOHR meets annually in person, and monthly via teleconference. It is a federal–provincial–territorial (FPT) forum which, among other things, acts as the consultation mechanism on treaty ratification; encourages information exchange regarding interpretation and implementation of Canada's obligations; facilitates the preparation of reports for international human rights bodies and 'the flow of information on developments in international human rights, including concluding observations and views of treaty bodies'; and engages with civil society and Aboriginal groups regarding its coordinating functions [...]. However, the CCOHR is not involved in the litigation or implementation of individual communications. When a treaty body finds Canada in violation of its international human rights obligations in the context of an individual communication, the decision is notified to Global Affairs, through the respective Permanent Mission which, in turn, forwards it to the Department of Justice [...]. An interdepartmental consultation process involves the departments and agencies relevant to the communication's subject matter. Officials consider "negative final views" in light of the treaty body's reasoning, facts relied upon and recommendations, as well as domestic law and jurisprudence, and then recommend to senior officials "whether Canada should accept the treaty body's recommendations and what remedy should be offered, if any":

Source: Rachel Murray and Christian De Vos, 'Behind the State: Domestic Mechanisms and Procedures for the Implementation of Human Rights Judgments and Decisions', *Journal of Human Rights Practice*, 12, 2020, 22–47.

### 2.4.2 GUIDANCE ON NATIONAL MECHANISMS FOR REPORTING AND FOLLOW-UP

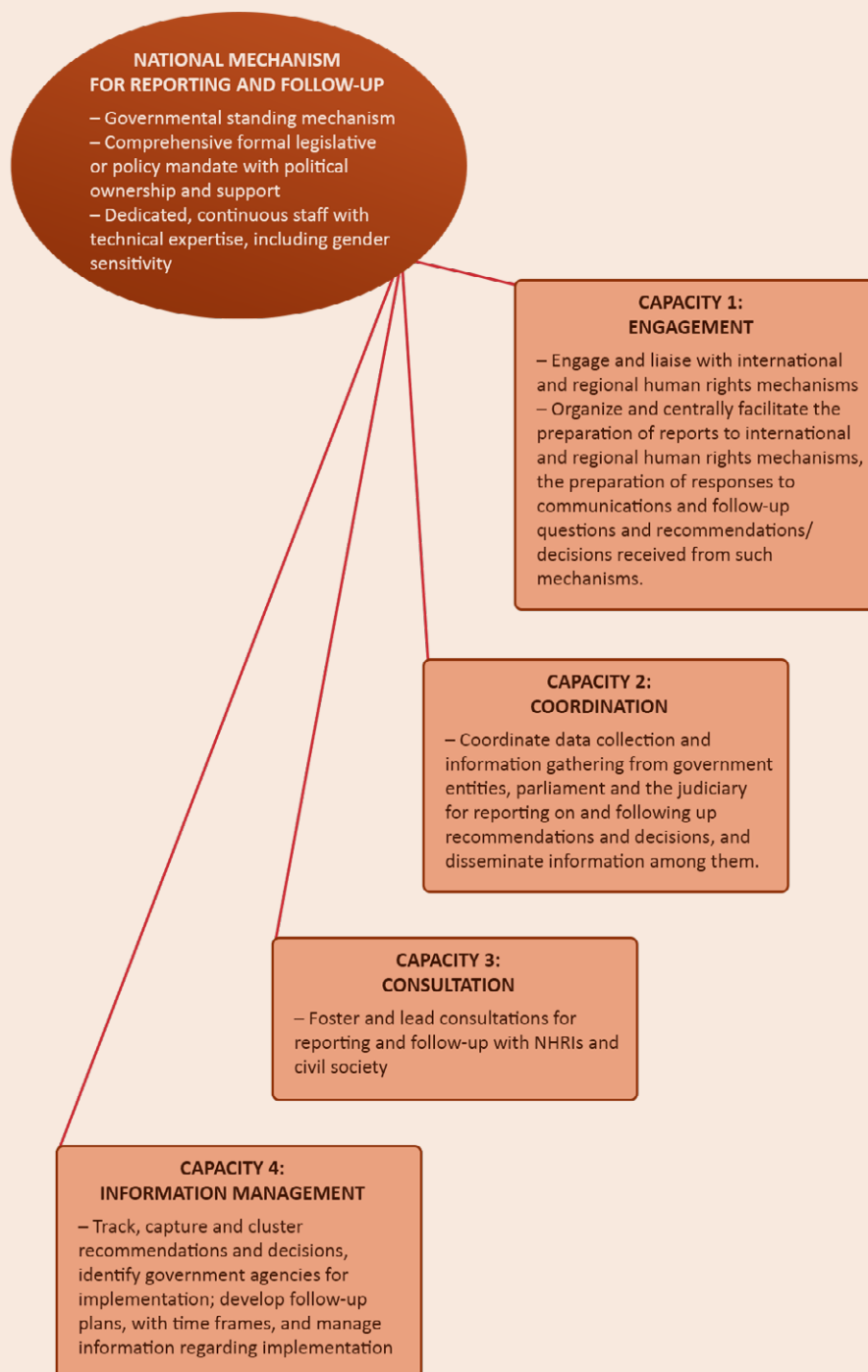
Building on and expanding the concept of Standing National Reporting and Coordination Mechanisms,<sup>105</sup> OHCHR published a study in 2016 on state engagement with international human rights mechanisms<sup>106</sup> and a practical guide<sup>107</sup> on National Mechanisms for Reporting and Follow-up (NMRFs).

Drawing on existing state practices, NMRFs are defined as ‘a **national public mechanism or structure** that is mandated to **coordinate and prepare reports to and engage with** international and regional human rights mechanisms (including treaty bodies, the universal periodic review and special procedures), and to **coordinate and track national follow-up and implementation** of the treaty obligations and the recommendations emanating from these mechanisms. It may be **ministerial, interministerial or institutionally separate**. [...Its] **approach is comprehensive** and it engages broadly on all human rights, with all international and regional human rights mechanisms, and in following up on recommendations and individual communications emanating from all such human rights mechanisms. [...] A national mechanism is **a government structure** and thereby differs from a national human rights institution (NHRI), which is **independent** [...] It **does not directly implement human rights obligations** but prepares State reports and responses to communications, visits of independent experts, follow-up to facilitate implementation by line ministries, and manages knowledge around the implementation of treaty provisions and related recommendations and decisions by other parts of the governmental structure.’<sup>108</sup>

The guidance accommodates for multiple institutional designs and explicitly rejects a ‘one-size-fits-all solution’.<sup>109</sup> Rather than being overtly prescriptive, the OHCHR’s guide presents various existing arrangements (*ad hoc*, single ministry-based, interministerial and institutionally separate structures) and invites states to consider certain aspects perceived as strengthening effectiveness. However, in terms of institutional design, the practical guide strongly recommends states to:

- establish standing mechanisms and avoid reinventing *ad hoc* arrangements for each reporting cycle;
- enshrine the mechanism centrally at the highest administrative levels to ensure the necessary political support, with preferably a formal, comprehensive mandate based on law or a policy;
- assign a ‘dedicated, capacitated and continuous staff, building expertise, knowledge and professionalism at the country level.’<sup>110</sup>

## BOX 11. OHCHR'S KEY STRUCTURAL SAFEGUARDS AND CAPACITIES FOR NMRFS



Source: OHCHR, *National Mechanisms for Reporting and Follow-up: A practical guide to effective engagement with international human rights mechanisms* (UN Doc. HR/PUB/16/1, 2016) 29.

For each of these capacities, the guide suggests specific arrangements to be considered by states. These include the following:

- In terms of engagement capacity: Establish an executive secretariat and build its capacity for engagement with international mechanisms, including drafting and presentation skills; establish a network of focal points in each ministry; establish standardised reporting guidelines and procedures; make an inventory of upcoming reviews and special rapporteurs' visits; develop a work plan of activities with timelines, assignment of responsibilities and estimated costs; establish specific drafting groups from among the network of focal points,
- In terms of coordination capacity: Hold regular meetings of the national mechanism; establish e-mail-based coordination for information sharing; for upcoming reports, hold meetings, share templates, with requests for information or draft input; transmit recommendations from human rights mechanisms to the judiciary; establish a standing procedure to interact with parliament,
- In terms of consultation capacity: Establish a 'desk' for consulting with the NHRI and civil society during the drafting process; systematically include NHRI representatives in the national mechanism's structure (without voting rights); invite civil society to participate periodically in selected plenary or focal point meetings; hold subject-specific meetings,
- In terms of information management capacity: Cluster recommendations by theme, analyse and prioritise them; develop Recommendations Implementation Plans or NHRAPs and track their implementation; if a database is used, keep it up to date, recording progress, and make it public; report to be public; produce and populate indicators.<sup>111</sup>

### 2.4.3 DIFFUSION AND PROMOTION

UN agencies sponsor the diffusion of the model intensively, notably through capacity-building programmes run by OHCHR and UNDP.<sup>112</sup> Between the end of 2017 and October 2019, the OHCHR's capacity-building programme team alone encouraged and assisted 24 states in establishing new or strengthened NMRFs.<sup>113</sup> Having said that, other important human rights actors, in particular treaty bodies themselves, do not actively promote the NMRF agenda and instead call for GHRFPs based on the models relevant to their thematic sub-fields and more focused on strengthening nationally driven dynamics, as presented in Chapter 1.<sup>114</sup>

Amongst states, a 'Group of Friends' composed of 28 countries<sup>115</sup> actively supports the diffusion of 'national mechanisms on implementation, reporting and follow-up' (NMIRFs—on the addition of the word 'implementation' see next Section). They notably ensure that the matter features prominently in the work of the UN Human Rights Council (HRC), including UPR dialogues and recommendations.<sup>116</sup> Two HRC resolutions were adopted on the matter in 2017<sup>117</sup> and 2019.<sup>118</sup> Both encourage states to establish or strengthen NMIRFs. The 2017 resolution attempts to boost interest in NMIRFs by linking it to the contribution they can make to the implementation of the Sustainable Development Goals (SDGs). The 2019 resolution further tasks OHCHR to 'organize five regional consultations to exchange experiences and good practices relating to [NMIRFs] and their impact on effective

implementation of human rights obligations and commitments, in consultation with all relevant stakeholders.<sup>119</sup>

Significantly, proselyte advocacy favouring NMIRFs has been undertaken, from the outset, by the Geneva-based Universal Rights Group.<sup>120</sup> This human rights think-tank has contributed ideas, served as a convening force and supported the development of policy frameworks on NMIRFs. It also helped develop tools, such as IT technologies, to raise national mechanisms' information management capacity in cooperation with other non-state actors. It played a role in establishing the 'group of friends' and continue feeding ideas and expertise to the group of friends' and other states' initiatives.<sup>121</sup>

These initiatives have led to states starting to commit themselves to adopt NMIRFs. For the first time in 2020, a regional grouping of states adopted a policy document aimed at guiding the establishment and strengthening of NMIRFs: The 'Pacific Principles of Practice of National Mechanisms for Implementation, Reporting and Follow-up' were launched by the Pacific Community on 3 July 2020 and endorsed by eight states.<sup>122</sup> They identify three overarching principles and an additional seven sets of features that detail ideals in terms of the composition, function, resources and tools of NMIRFs. These are presented in Box 12.

#### **BOX 12. PACIFIC PRINCIPLES OF PRACTICE OF NATIONAL MECHANISMS FOR IMPLEMENTATION, REPORTING AND FOLLOW-UP (2020)**

1. There is no 'one size fits all' approach to NMIRFs.
2. NMIRFs should be permanent and be established by the executive or legislature.
3. NMIRFs shall be given a structure, mandate and resources to effectively coordinate and track national implementation of human rights and other overlapping frameworks.
  - 3.1 **Composition**—An effective NMIRF should include representation of all primary actors involved in the implementation of human rights including, but not limited to, government ministries and agencies, statutory bodies, parliamentarians, the judiciary, civil society, national human rights institutions, traditional and religious leaders/groups, national statistics offices and the private sector. Different levels of membership of the NMIRF may be appropriate (e.g., full / observer members) and all representatives should be at a level of seniority that enables their full participation.
  - 3.1 **An NMIRF should be mandated** to coordinate implementation of human rights obligations across all national implementing actors, through all or some of the following responsibilities:
    - a. Receiving, clustering, planning, tracking and centrally managing all human rights;

- b. Recommendations, treaty body and national legislative or constitutional obligations, through the development of [NRHAP] or Implementation Plans;
  - c. Centralised collection of data and information management to continuously track progress and identify implementation gaps;
  - d. Regular convening of all national implementing actors;
  - e. Making all recommendations, past reports and implementation status publicly available in primary national languages;
  - f. Regular reporting to Parliament on implementation progress;
  - g. Managing requests for invitations from the Special Procedures and coordinating their visits;
  - h. Establishment of drafting committees for report drafting;
  - i. Consultations on all draft reports and implementation plans;
  - j. Building the capacity of members through training and information sharing;
  - k. Engaging with international development partners to address implementation gaps.
- 3.3 **National development**—NMIRFs should seek to capitalise on the interrelated and mutually reinforcing nature of human rights, the international development agenda and national development frameworks to ensure no one is left behind by adopting an integrated and holistic approach to developing National Action Plans and the implementation and tracking of these obligations and commitments.
- 3.4 **Utilisation of technology**—to facilitate the aims and functions of an NMIRF and simplify reporting writing processes tracking software/tools can be used to:
- a. Create a single national database of clustered recommendations that becomes a 'living national human rights action plan' through continuous inputs from line ministries and other implementing actors;
  - b. Link human rights obligations to national and international development commitments;
  - c. Automate and semi-automate many of the processes required for the effective implementation, tracking, measurement and reporting [...];
  - d. Enable public tracking of implementation activities and progress [...];
  - e. Expand the space for civil society engagement through a platform that allows data inputs from the full range of implementing actors.
- 3.5 **Working methods**—Terms of reference should be developed and published by any NMIRF, which establishes frequent meetings, decision making rules, roles and responsibilities, and other relevant processes necessary for the effective functioning of the NMIRF.
- 3.6 **Secretariat**—A secretariat should be established and written into the terms of reference to enable the effective functioning of an NMIRF.
- 3.7 **Resources**—An NMIRF should be provided with adequate resources to fulfil its mandate by the government including, but not limited to, costs of the secretariat, any required translations, stakeholder consultations and the installation and use of tracking tools.

Source: Pacific Community, *Pacific Principles of Practice of National Mechanisms for Implementation, Reporting and Follow-up*, 2020.

#### 2.4.4 NMIRFS AS CORNERSTONE ACTORS IN NATIONAL SYSTEMS?

In keeping with the OHCHR's mandate and the context of the treaty body reforms, the 2016 guide addresses NMRFs as relays of international bodies, both in terms of reporting to UN machineries and execution of the latter's recommendations, through efficient and inclusive institutional arrangements at the domestic level. As such, the OHCHR's guide does not tackle the wider range of catalytic functions played by GHRFPs in national human rights systems.<sup>123</sup> The guide defines NMRF's institutional effectiveness solely on the basis of three criteria: reporting effectiveness (timely reporting; reduction in reporting backlog); displaying specific capacities, that is, the ability to engage with human rights mechanisms, coordinate, consult and manage data; and effectiveness more broadly, that is, the production of a self-assessment by the state of its record in implementing treaties and recommendations.<sup>124</sup>

Nonetheless, supporters have used the guidance on NMRFs as an entry point for national systems' enhancement. To start with, in his opening to the 2016 Practical Guide, former High Commissioner Zeid Ra'ad Al Hussein said that:

The essence of the reporting process is nationally driven. National mechanisms for reporting and follow-up build national ownership and empower line ministries, enhance human rights expertise in a sustainable manner, stimulate national dialogue, facilitate communication within the Government, and allow for structured and formalized contacts with parliament, the judiciary, national human rights institutions and civil society. Through such institutionalized contacts, the voices of victims and their representatives will also increasingly be heard.<sup>125</sup>

Building on this, the UN Secretary-General heralded NMRFs as a 'new type of governmental structure' that has 'the potential to become one of the key components of the national human rights protection system, bringing international and regional human rights norms and practices directly to the national level by establishing a national coordination structure. This may result in the building of professional human rights expertise in every State.'<sup>126</sup> Accordingly, his 2017 report outlines a 'uniform and objective approach' for UN support to national human rights protection systems, centred on 'elements at the national level that will make international cooperation and multilateral and bilateral technical cooperation, as well as national efforts for the promotion and protection of human rights, more effective.'<sup>127</sup> This vision identifies five 'key elements at the national level', including three actors: national mechanisms for reporting and follow-up, national human rights institutions, and parliaments, and two policy frameworks: NHRAPs and recommendation implementation plans.<sup>128</sup> In other words, GHRFPs with comprehensive mandates are addressed and supported through the prism of the NMRF guidance.

This could impact state's practices: The OHCHR's study on NMRFs deplores that coordination structures for reporting are generally with ministries of foreign affairs,

whereas the coordination of human rights policies and NHRAPs lies with ministries of justice—as illustrated by the above cases mentioned in Section 2.2 (Mexico, Finland). The focus on NMRFs could force states to merge both types of structure, with the potential effect of recasting domestically oriented actors into transmission belts for international machineries. Accordingly, UN country teams are actively calling for existing, domestic-oriented GHRFPs to ‘transform’ into an NMRF. The UN Resident Coordinator in Georgia’s call to the Inter-Agency Human Rights Council to ‘transform[...] itself’ into an NMRF, discussed above, is a case-in-point. It points to confusions as to the purpose of the NMRF model since international reporting is not the biggest challenge for Georgia, which lags behind only in relation to two international reports. The real problem is that the Inter-Agency Council does not perform well, and in fact, did not even convene for over three years (2015–2019).<sup>129</sup>

The question of whether NMRFs should holistically cover all human rights processes, whether they are connected to international or national standards, policy and commitments, is symbolically captured in the addition of the ‘i’ in NMIRFs, standing for ‘implementation’, in complement to ‘follow-up’, which requires external intervention. The Universal Rights Group, the group of friends and the Pacific Community have embraced this extended approach, and so did the Human Rights Council in its 2019 resolution, which calls on states ‘to establish or strengthen national mechanisms for implementation, reporting and follow-up for further compliance with human rights obligations or commitments, and to share good practices and experiences in their use for the elaboration of public policies with a human rights approach.’<sup>130</sup> Although the anchorage point of the resolution remains international cooperation, the resolution points towards dynamics at the national level by reminding that ‘states should integrate their obligations and commitments under international human rights law into their national legislation and public policies in order to ensure that State action at the national level is effectively directed towards the promotion and protection of all human rights and fundamental freedoms, in order to contribute to the prevention of human rights violations.’<sup>131</sup>

Pushing the idea further, the Universal Rights Group promotes the unification of various processes under the NMIRFs. For instance, it advocates for NHRAPs and thematic national action plans to be subsumed into the recommendation implementation plans generated using IT tools developed for NMIRFs. To underpin this logic whereby recommendation action plans substitute any forms of plans, supporters insist that the recommendations emanating from UN machineries are as useful, if not more comprehensive and already available, than knowledge produced through baseline study and consultations, which were crucial steps in the 2002 guidance on NHRAPs. For the URG, ‘taken together, these recommendations [...] represent a detailed, nuanced and politically astute blueprint for human rights, rule of law and democratic reform for—in principle—every country on the planet.’<sup>132</sup>



The paradox is that human rights Treaty Bodies themselves—in other words, the source of these recommendations—advocate rather for specialised national action plans, focused on one theme or even on a variety of sub-themes. The CRPD Committee, for instance, advocates for rights-specific plans (e.g., plans on inclusive education, de-institutionalisation, etc.). Also, Treaty Bodies promote planning processes driven by national consultations rather than imposed top-down by international recommendations. Nonetheless, the idea of substituting NRHAPs with automated recommendations implementation plans found its way into, for example, the Pacific Principles. The latter foresee that the developed technology may ‘create a single national database of clustered recommendations that becomes a “living national human rights action plan” through continuous inputs from line ministries and other implementing actors.’<sup>133</sup>

Adding to the holistic outreach of NMIRFs, the ‘question as to whether a unified system for the implementation of the recommendations made by the human rights mechanisms and of the [SDGs] could be devised’<sup>134</sup> regularly comes back to the fore in debates on NMIRFs’ roles.<sup>135</sup>

### **REFLEXIONS ON GUIDANCE FOR COMPREHENSIVE GHRFPS**

The guidance on NMRFs captures much of the attention on GHRFPs with comprehensive mandates because it fills a gap in guidance. Before that, comprehensive GHRFPs were addressed only in connection with certain processes, in particular, NHRAPs. The NMRFs guidance only partially fills the gap and nominally relates to GHRFPs functions linked with international and regional human rights bodies. Nonetheless, it increasingly serves as a yardstick and intervention framework for all of GHRFPs functions holistically. As seen in the last sections, NMRFs supporters tend to have NMRFs substitute rather than complement earlier guidance on thematic or NHRAPs-linked GHRFPs. This points to conceptual evolutions and possibly hiatus, which warrant consideration.

First, the NMRF guide constitutes a valuable reference point for states to organise themselves in view of fostering inclusive and efficient reporting and follow-up. Also, it is noteworthy that the guide addresses certain aspects of institutional work with more fine-grained attention than earlier guidance; for instance, the role of public servants within institutions. Agency within organisations was rarely touched upon in earlier guidance. In the 2002 Handbook on NHRAPs, planning choices are typically presented as a political decision, with no mention of public servants. Guidance on thematic GHRFPs flagged the need for adequate staff and appropriate training<sup>136</sup> but did not go further than that.

The role of public servants is one of the three pillars that should underpin any NMRF, together with their standing nature and a comprehensive mandate reflecting political ownership and intragovernmental coherence. NMRFs ‘should have dedicated, capacitated and continuous staff.’<sup>137</sup> Staff shall hold ‘technical capabilities for data collection, analysis and reporting.’<sup>138</sup> The guide describes

expected tasks (see example under the capacities presented in sub-section 2.4.2). Beyond the NMRF staff themselves, the ultimate goal is ‘professionalization and sustainability of improved nationally owned and developed human rights expertise within government structures.’<sup>139</sup>

This focus is explained by the belief that staff may have been ill-equipped to perform their roles in the past. An additional sub-text of the guidance is that they may also have displayed discretionary behaviours, leading to bureaucratic control over reporting and follow-up processes. The solution advanced is to raise technical knowledge and administrative specifications to eradicate or minimise bureaucratic discretion. For the Universal Rights Group, NMRFs’ focus on consultations will overcome the fact that ‘national processes and systems of implementation-reporting have always tended to be bureaucratic [...and] tightly controlled by civil servants’,<sup>140</sup> and NMRFs’ guidance ‘help[s] turn implementation and reporting from a “bureaucratic process into a democratic process”’.<sup>141</sup> NMRF supporters’ focus on developing software tools that automatically collect, cluster, and prioritise international recommendations can be read as supporting or substituting civil servants in some analytical functions.

Second, some dilemmas still need to be resolved if the NMRF guidance is to be used to cover all functions of GHRFPs with comprehensive mandates. The above-described suggestions to subsume all thematic and national action plans under automated recommendations implementation plans, for instance, raised some questions. As recognised by the UN Secretary-General, ‘recommendation implementation plans are [...] fundamentally different from national human rights action plans in terms of process, coverage (such plans focus on and contain only human rights mechanism recommendations), flexibility, timespan and format. The development of recommendation implementation plans could include some sort of consultations with stakeholders, in particular, civil society organizations, but ultimately, the scope of such consultations will not mirror the scope of those on the development of [NHRAPs].’<sup>142</sup> Indeed the latter shall be a national undertaking, and the quality of the process towards its development ultimately determines the political support for the plan, the recognition and buy-in by the public and civil society, as well as the effectiveness of the monitoring of its implementation.<sup>143</sup>

In other words, the NMRF guidance is not yet well-articulated with the rare pre-existing elements of guidance on comprehensive GHRFPs. It addresses only national interactions in so far as they are linked or contribute to international processes. It discards purely domestic dynamics and processes, including powerful ones such as the pro-rights dynamics that can emerge after a change of regime and/or adopting a new constitution. Such dynamics may have more salience and legitimacy in society and amongst the governments than external inputs, and attention shall also be paid to the capacity of GHRFPs to implement national commitments.

Third, the question of the articulation of thematic and comprehensive GHRFPs adds another layer of complexity, especially if NMRF-inspired GHRFPs are ultimately to serve as the overarching structure integrating thematic bodies. A primary difficulty is the NMRFs' return to considering executive actors as intermediaries of international bodies. This is the opposite point of departure compared to the thematic developments on gender equality and the rights of persons with disabilities. There, the aim was to reinforce national processes, with reporting being a secondary preoccupation. As shown in Chapter 1, these prescribed institutional processes' primary ambition has been to ensure participatory, if not shared, decision-making processes with the groups affected by national policies.

The organisation of state-level structures primarily as NMRFs considerably challenges the thematic GHRFPs' philosophy anchored on shared decision-making. In the NMRFs, the 'coordination capacity' strictly refers to coordination within government, understood as 'government entities, but also other State actors such as the national office for statistics, parliament and the judiciary.'<sup>144</sup> The involvement of civil society, as well as NHRIs, is limited to NMRFs' 'consultation capacity'. Consultations are focused on discussing draft reports and responses to international and regional human rights bodies. The NMRF guide could structurally enhance the systematic consultations of rights-holders, but it anchors national processes with international recommendations in an essentially top-down process. This is at odds with one of the primary features of the institutional choices in category-specific human rights sub-fields to fundamentally transform decision-making processes at domestic levels, aimed at co-producing human rights policies with those impacted by it. For instance, a determinant and major function of GHRFPs specialised in women's rights, identified in the literature on such actors, is their ability to represent women's interests and reflect loyalty to the aspirations of women's movements. In other words, GHRFPs should be accountable to the social movement. Furthermore, the question of representativeness and inclusion within institutions is important in both fields of women's rights and the rights of persons with disabilities, with a focus on diverse or hybrid structures. Conditions of staff representativeness are considered in the NMRFs guide in relation to gender only.<sup>145</sup> Apart from that, accountability to social groups is not considered, and NMRFs limit themselves to foresee that consultations shall focus on the most vulnerable groups.

Last, as noted in Chapter 1, thematic GHRFPs hold specificities depending on the theme they address or of the preference the categories of rights-holders to whom they cater. The scaling up of thematic and categorial soft law to a unified and holistic level could serve to erase some of these differences.

In short, this innovative set of guidance on NMRFs usefully considers a series of parameters that have long been neglected. Yet, if taken as a reference for all GHRFPs mandates and functions and with a unifying pattern, some practical and conceptual issues are currently left either ignored or recognised but unresolved. Is

it advisable that the much-needed and useful guidance on reporting and follow-up is, as such, extrapolated to all catalytic functions of GHRFPs at the domestic level? Or should additional guidance on GHRFPs, looking at national functions, be issued? I argue in the conclusion of this study that more research, especially empirical research on the practice of GHRFPs, would be helpful to inform those questions and help outline a way forward. To do so, it is necessary to conceptualise GHRFPs to structure existing insights and areas warranting further investigation, a task to which I will now turn.

## CHAPTER 3

# DEFINING GHRFPS: A CONCEPTUAL FRAMEWORK

The analysis of prescriptions on focal points presented in Chapters 1 and 2 showed that the guidance on institutional arrangements for governmental human rights focal points entail some variations depending on the thematic fields from which they emanate and revealed some gaps and conceptual questions as regards the nascent guidance on GHRFPs with comprehensive mandates. Also, these sets of guidance remain highly flexible and accommodate the discretion of states in the choice of structure. NMRFs, like other types of focal points, are characterised by key mandate functions and overarching organisational principles but do not provide archetypical blue-prints.

Shared ideal characteristics may nonetheless be distilled from these policy and legal documents and serve as defining features of GHRFP as a concept. Based on the review of existing guidance, I find that six core attributes are recommended for all governmental human rights focal points. In turn, this concept and these attributes can serve as yardsticks to outline and organise a field of academic inquiry into GHRFPs. This chapter puts forward a conceptual proposal. It first explains the choice of label 'governmental human rights focal points', then outlines and discusses the six core attributes. In complement, it ponders whether the principle of accountability could emerge as a potential seventh core feature.

### **WHY 'FOCAL POINT'?**

In the terminology 'governmental human rights focal point', the governmental anchorage and the human rights mandate relate to core features of these bodies, which I will discuss below. But why choosing 'focal point'? The Danish Institute for Human Rights has used the terminology of GHRFPs to describe its decades of collaboration with such actors.<sup>146</sup> But allegedly, 'focal point' is one of many terminologies used in the sets of guidance, with other options including 'machinery', 'mechanism', 'committees', 'contact point', etc. As seen in Chapters 1 and 2, even within one stream of guidance dedicated to one theme or one set of functions, hesitations surface as to which terminology should be adopted (women machineries became mechanisms for gender equality, standing committees became NMRFs and then NMIRFs, etc.).

The short and most important explication is that the notion of 'focal point' stands out because it is the only idiom that has been codified as a state obligation in

international human rights law through the adoption of the Convention on the Rights of Persons with Disabilities in 2006. But more can be said about it.

All the alternative phrasing is generic, and none is adequately clarified by the existing public administration literature. Contrary to terminologies that may suggest certain organisational arrangements (such as ‘committee’), the notion of ‘focal point’ is nebulous. In the *Routledge Handbook on Gender and Development*, ‘focal points’ are identified as ‘a notoriously weak formulation’ which discards the need to define it: In many structures, ‘focal points’ stand out for the lack of associated mandate.<sup>147</sup> This, the handbook argues, may explain its popularity. ‘Focal point’ is indeed a vernacular idea that proliferates across policy fields and organisational structures. Adopting ‘focal point’ allows us to use a popular reference and a sufficiently broad terminology that may encompass the range of governmental setup and specialised organisations in charge of human rights at the national level.

Arguably, each terminology has a different ringtone, leading the concepts they describe to be perceived in specific ways. Mechanisms and machineries point towards formalised and systematic work operated by an ensemble of structures, with the ‘mechanism’ itself being a sort of transmission belt. To operate, a mechanism needs technical resources that are neutral, efficient and rationally interlocked. The cover page of the 2016 guide representing NMRFs as gears reflects well that mind-set. The constitutive agents of ‘women machineries’ are addressed as a whole, as a ‘professional capacity’.<sup>148</sup> Civil servants are expected to exert rationality, skills and automaticity of action. Some of their work is now actually automatised using software and algorithms.

‘Focal point’ is rather associated with the common meaning: ‘something that people concentrate on or pay most attention to’. This is derived from a scientific term referring to the point on the axis of a lens to which rays of light converge or from which they diverge after refraction. It suggests the concentration of information and a constant state of transmission and transformation. Indeed, in practice, one can observe that GHRFPs are usually focal points for a specific policy field or knowledge; or focal points for another actor—sometimes at the request of the latter (e.g., the ICRC and the R2P network promote the idea of focal points in each country).

This points to two essential dimensions of ‘focal points’:

- (1) Knowledge and expertise: Like the light that is concentrated and then transformed on a lens, focal points must be able to consolidate data and translate new expertise in a way that makes sense to the structures they address. Studies of gender equality mechanisms show how focal points must develop ‘bilingualism’ in both the institutionally dominant and gender discourses.<sup>149</sup>
- (2) Relational dimension: Focal points act as interfaces and engage in multi-directional interactions. They must be proactive and responsive to requests. They interact with entities or individuals at various levels. Focal points are expected to interact with other structures and transform them by infusing

their knowledge into these organisations. To external stakeholders, such as a parliament or NHRIs, and non-state actors and international bodies, a focal point is also the government's entry or contact point.

While the terminology of 'focal point' is ubiquitous and indistinct, it does not mean that the concept of 'governmental human rights focal points' is undefined. I suggest that the concept has six core attributes that can be inferred from the analysis of the guidance presented in Chapters 1 and 2. All these sets of guidance converge towards six ideal prescriptions.

### **ATTRIBUTE 1: GHRFPS SHALL BE GOVERNMENTAL**

The concept of GHRFPS refers to governmental structures. Its emphasis is on the coherence of executive actors' work. GHRFPS, therefore, differ essentially from other human rights specialised state actors involved in human rights protection and promotion, which are not based in the government, such as national human rights institutions or parliamentary human rights committees, which are covered by other sets of international guidance.<sup>150</sup> As made clear in OHCHR's guidance on NMRFs, the latter exclude NHRIs and National Prevention Mechanisms under the OPCAT and monitoring and protection frameworks under Article 33(2) of the CRPD.<sup>151</sup> CRPD Article 33, which distinguishes focal points and independent monitoring mechanisms, has led to a watertight interpretation of independence, which has the effect that NHRIs shall not, for instance, co-draft human rights action plans with GHRFPS.<sup>152</sup>

GHRFPS shall be governmental in the sense that they have national coverage and help organise the state's responsibility vis-à-vis its national or international commitments. The notion of GHRFP does not primarily refer to isolated individuals within ministries who have a human rights mandate, even if those may be part of a network of individual focal points that, together, form a state-level GHRFP. The crux of the matter is—as reminded by the UN Human Rights Committee in its General Comment no. 31—that States Parties to a treaty are bound 'as a whole'. Although 'all branches of government (executive, legislative, and judicial), and other public or governmental authorities, at whatever level—national, regional or local—are in a position to engage the responsibility of the State Party', it is 'the executive branch that usually represents the State Party.'<sup>153</sup> There is a need for a centralising structure within government.

The GHRFP concept's core attribute of being 'governmental' triggers some questions in practice. First, GHRFPS' governmental nature necessarily implies that they include both an administrative and a political dimension. How the nexus between politics and civil service shall be articulated is not spelt out in guidance. Most notably, states have to decide whether the structure will be headed by a minister or not. As seen in Chapter 1, cabinet representation is encouraged for gender equality mechanisms, less so for the disability coordination mechanisms, which prefer to displace the political authority on decision-making away from politicians and share it with rights-holders.

Second, GHRFPs are always government-based but are not necessarily only governmental. Various hybrid forms of focal points entail the participation of both state- and non-state actors, especially under the impulse of new governance modes of governance that aim at co-producing policies and share decision-making authority with those affected by the policies. States Parties' practice of nominating mixed councils as 'focal point within government' under CRPD Article 33(1) and its acceptance by the CRPD Committee is a case-in-point.

A third caveat is that, depending on the state's system of organisation, GHRFPs are not necessarily only 'national'. Federal countries need to consider their organisational setup and the distribution of competencies between different levels of government. CRPD Article 33(1) foresees the designation of 'one or more focal points within government' precisely to accommodate federal states' situation. However, no further guidance has been issued to unpack how this should be organised and the relation with the central GHRFP arranged.

### **ATTRIBUTE 2: GHRFPS SHALL HAVE AN EXPLICIT MANDATE ON HUMAN RIGHTS**

This mandate may be comprehensive, covering all human rights—including national and international commitments, or specific to thematic rights or categories of rights-holders. As seen in Chapter 1, several international or regional treaties or actors require states to nominate a focal point structure for the purpose of implementing a specific set of commitments. While the fields of gender and disability have in part been approached as a social issue, the fact that dedicated GHRFPs shall also advance rights as part of their mandates was recognised from the very early policy initiatives recommending their establishment before the adoption of the specific human rights treaties.<sup>154</sup> The adoption of dedicated human rights treaties (CEDAW in 1979 and CRPD in 2006) consolidated the adoption of a rights-based approach to address women's and persons with disabilities' 'issues', to the extent that it has been argued that CRPD focal points shall be anchored in justice ministries and no longer in social affairs ministries.<sup>155</sup>

Thematic focal points may have a mandate based not only on human rights standards but also on closely-aligned yet distinct normative fields. That might have initially been the case of the NCPs set up under the OECD Guidelines for Multinational Enterprises. However, the 2011 Guidelines' revision added a human rights chapter, and NCPs are also referred to in the UN Guiding Principles on Business and Human Rights.

States have to decide whether they will nominate the same comprehensive GHRFP for all thematic and category-specific frameworks or if several comprehensive and thematic GHRFPs will co-exist. Some states have tried to link up different thematic GHRFPs with an overarching architecture coordinated by a comprehensive GHRFP (see Section 2.3). This is not necessarily the case and, as seen in Section 2.2. and Box 10, states may even prefer to have several GHRFPs with comprehensive human rights coverage but discharging distinct functions (e.g., implementation



of individual court and treaty body decisions, reporting/follow-up, coordination of NHRAP, etc.). This can be identified as a conceptual difference between comprehensive and holistic mandates.

The question of whether there ought to be an optimal number of GHRFPs, and whether those should be unified, or at least articulated, remains. The NMRF guidance favours certain functions to be merged (e.g., implementation of decisions and reporting and follow-up) and is leveraged by some actors to promote unified architecture (see sub-section 2.4.4). But guidance on how the coordination of multiple GHRFPs could be achieved is inexistent. It is noteworthy that similar debates have long been held regarding NHRIs, and their ideal number, nature, and coordination in a country. In 2008, the Sub-Committee on Accreditation of the Global Alliance of NHRIs 'encourage[d] the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive [NHRi].'<sup>156</sup> Other positions are more nuanced and present the pros and cons of both specialised or broad-based NHRIs, depending on the themes, international law and context.<sup>157</sup> Where several NHRIs exist, the Paris Principles foresee that the main NHRIs shall 'maintain consultation with the other bodies'. Faced with the persistence—if not development—of thematic and sub-national NHRIs, the Sub-Committee on Accreditation has unpacked this principle of consultation and has suggested 'formaliz[ed,] clear and workable relationships [...] such as through public memoranda of understanding,' and that 'interactions may include the sharing of knowledge, such as research studies, best practices, training programmes, statistical information and data, and general information on [their] activities.'<sup>158</sup> Whereas these debates on an ideal number of NHRIs and coordination are unsettled, they could, by way of analogy, inform reflexions on GHRFPs.

### **ATTRIBUTE 3: GHRFPS DO NOT DIRECTLY IMPLEMENT POLICIES, BUT SHALL MAKE OTHER GOVERNMENTAL STRUCTURES WORK**

GHRFPs help to ensure that the state implements its commitments. CRPD Article 33, for instance, allocated implementation to the governmental focal points, and promotion, monitoring and protection to NHRIs and other independent actors. However, it does not mean that the GHRFP directly implements policies. On the contrary, the sets of guidance analysed in Chapters 1 and 2 consistently foresee that GHRFPs have various functions, except direct implementation of policies. International guidance on thematic GHRFP in the field of women's rights insists that the latter are 'a catalyst for gender mainstreaming, not [agencies] for policy implementation.'<sup>159</sup> Similarly, OHCHR posits that NMRFs shall 'not directly implement human rights obligations.'<sup>160</sup>

GHRFPs enhance rights enjoyment indirectly by triggering other executive actors into action. This happens through mainstreaming and coordination, two strategies that are symbiotically associated with the emergence of GHRFPs in the field of women's rights and the rights of persons with disabilities. According to the Beijing Declaration, a 'national machinery's main task is to support government-wide mainstreaming of a gender-equality perspective in all policy areas.'<sup>161</sup> The belief is

that mainstreaming avoids the risk that policy coordination through a specialised governmental body would, in fact, marginalise that policy. Mainstreaming seeks to transform the very missions and approaches adopted by governmental actors in their policy areas. The need for coordination arises from the transversal nature of human rights work and the fragmentation of competencies of executive actors. Most notably, the 1991 UN Guidelines for the Establishment and Development of National Coordinating Committees on Disability insisted that the access to rights for persons with disabilities is 'complex' and 'multidisciplinary'<sup>162</sup> and require 'a comprehensive, rather than a selective approach.' Coordination avoids duplication of activities, maximises the use of existing resources and, conversely, identifies policy sectors that have under-prioritised rights-related issues and suggests initiatives.<sup>163</sup>

Recent guidance on NMRFs also insists on coordination but generally refers to mainstreaming as a by-product rather than an essential objective of governmental coordination mechanisms.<sup>164</sup> A second change of optics under that guidance, as seen above, is that NMRFs respond to externally oriented challenges rather than seeking the optimisation of national actors' interactions. NMRFs, and their insistence on coordination, respond primarily to states' critique of the administrative burden created by expanding international reporting obligations.

In practice, it happens that GHRFPs occasionally directly implement activities. This may be part of their mandate for historical reasons when institutional choices have followed specific pathways that were initially project-oriented. It may also be due to the practical redefinition of mandates by the GHRFPs themselves, when they find that they do not have the administrative authority, protocolary rank, or political clout to trigger other state bodies into action and revert to direct implementation of activities. The question that arises is whether the direct implementation of activities is compatible with or preserves the need to trigger other actors into implementation. There is an inherent risk of capturing or isolating human rights action in the dedicated bodies specialised in the theme. The balance between the two objectives has been a topic of discussion regarding GHRFPs on women's rights. It is accepted that they would adopt a dual-track approach by complementing their mainstreaming objective with the direct realisation of specific and targeted initiatives that would be essential to the theme and its mainstreaming—for instance, in the case of women's rights, initiatives to set-up a women's quota in parliament.<sup>165</sup> However, in practice, this has led some focal points to forfeit mainstreaming to focus on activities (see sub-section 1.1.2).

Another operational question raised by this feature is the type of authority, may it be political or administrative, that the GHRFP should possess to effectively trigger other executive actors into action. The Beijing Declaration foresees that GHRFPs must have 'defined mandates and authority' and the 'ability and competence to influence policy'.<sup>166</sup> As put by a leading disabled persons organisation about CRPD focal point, the latter must have 'sufficient political leadership to drive a process of change, distribute and mobilise leadership throughout government, motivate

colleagues, push ministerial boundaries, challenge the status quo, gather resources and garner support both within and outside government.<sup>167</sup> In other words, there may be more variables than the legal administrative authority that influences GHRFPs' ability to coordinate governmental action.

#### **ATTRIBUTE 4: GHRFPS SHALL ACCUMULATE AND 'TRANSLATE' SPECIALISED KNOWLEDGE ON HUMAN RIGHTS**

A pivotal task of GHRFPs is to produce and accumulate specialised human rights knowledge and, in turn, use this knowledge for advisory functions, policy proposals, reports, etc. This role is highlighted in guidance on various types of GHRFPs. OHCHR posits that 'information management' is one of the four key types of capacity that an NMRF should possess.<sup>168</sup>

Human rights knowledge includes expertise regarding rights standards, governmental implementation efforts, and reality. GHRFPs shall also be informed of sectoral policies: The Beijing Declaration requires states to 'establish procedures to allow the machinery to gather information on government-wide policy issues at an early stage and continuously use it in the policy development and review process within the Government.'<sup>169</sup>

Research and documentation on the rights-holders' actual situation play a key role in thematic GHRFPs. Feminist authors have flagged investment in research as a key role of GHRFPs in the field of women's rights to be proactive rather than reactive to state initiatives.<sup>170</sup> In the field of disability, CRPD commentators have also justified the need for governmental focal points on the belief that rational policy can rest only on an accurate picture of rights-holders' situation.<sup>171</sup> Furthermore, CRPD Article 31 enshrines the obligation of data collection in a treaty and foresees that 'States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention.'

Besides research, the UN has increasingly subsumed expertise with the production of statistical data and indicators.<sup>172</sup> Accordingly, OHCHR posits that NMRFs 'need to build capacity to provide in-depth information, not just on laws and policies (structural indicators) but on their actual implementation (process indicators) and on the results achieved for the beneficiaries (outcome indicators).'<sup>173</sup>

Regarding expertise on norms and standards, it is worth noting that certain thematic GHRFPs are, in essence, directly connected with a specific set of standards, which is the normative referential framework for their work. Focal points under CRPD are designated or established 'for matters relating to the implementation of the present Convention'. This is also the case for NCPs for Responsible Business Conduct, established by countries to ensure the implementation of the OECD Guidelines.

GHRFPs 'translate' their knowledge in ways that make sense and are adapted to other actors they seek to influence. Translation is multi-directional. GHRFPs may translate:

- 'upwards': they document and represent reality of rights enjoyment, and feed it into policy-making processes or supra-national reporting processes,
- 'downwards': they serve a site of localisation of international or national standards into the life of citizens, through awareness-raising activities, or
- 'outwards': they infuse their specialised knowledge into the work of other state actors which can implement rights while rolling out sectoral policies.

As the focal point on a lens is the point where rays of lights converge and diverge after refraction, GHRFPs shall be a repository of human rights knowledge and adapt this expertise to pass it on in a relevant way to other actors.

This core attribute raises certain issues, the nature of which has changed other time with the emergence of new knowledge production and management strategies, particularly the rise of measurements, planning, and technologies. The use of knowledge management tools, such as planning, indicators, and software, appears to increase objectivity and automaticity but also conceals discretionary practices and normative questions regarding how to adapt a human rights-based approach to a specific policy sector. For anthropologist Sally Engle Merry, measurements displace and submerge contestation over substantive rights issues into seemingly technical decisions, yet the 'production of indicators is itself a political process, shaped by the power to categorize, count, analyze.'<sup>174</sup> My review of NHRAPs and recommendations implementation plans in Nepal and Burkina Faso further showed how GHRFPs engage in 'relabelling' rather than genuine human rights translation, pointing to 'processes whereby existing sectoral policies are tallied with human rights commitments, leaving out the normative dimensions of rights, as well as justiciability and accountability.'<sup>175</sup>

#### **ATTRIBUTE 5: GHRFPS SHALL BE PERMANENT STRUCTURES**

International guidance on thematic or comprehensive GHRFPs has systemically encouraged states to establish permanent structures that outlive time-limited or process-specific bodies, for instance, created to accompany a regime transition or a specific reporting process. Sustainability is a condition for the accumulation of expertise and other types of capacity and is often associated with adequate resources. In thematic fields, the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities encouraged the establishment of 'national coordinating committees, or similar bodies, to serve as a national focal point on disability matters,' that shall 'be permanent and based on legal as well as appropriate administrative regulation' and have 'sufficient autonomy and resources'.<sup>176</sup> The Beijing Declaration insists more on the political commitment and cabinet minister representation—nonetheless, it foresees that 'where national machineries for the advancement of women [...] have not yet been established on a permanent basis, Governments should strive to make available sufficient and continuing resources for such machineries.'<sup>177</sup>

The Practical Guide on NMRFs finds that it is ‘fundamental’ that the structure should be standing<sup>178</sup> and recommends governments to invest in establishing standing mechanisms and strengthening existing bodies’ legal basis and capacities. Amongst the arguments in favour of a standing structure, OHCHR finds that:

- ‘Standing mechanisms enable continued monitoring throughout the reporting cycles, including for the universal periodic review’s midterm reports and the follow-up procedures established by the treaty bodies.
- Standing mechanisms enable active and systematic follow-up on implementation responsibilities; ad hoc structures do not.
- Standing mechanisms are more conducive to strengthening national coherence in the field of human rights.
- Standing mechanisms are more effective in sustaining links with parliament, the judiciary, NHRIs and civil society in relation to international human rights reporting and follow-up.<sup>179</sup>

This raises some questions regarding how to ensure institutional permanence. In relations to NHRIs, the Paris Principles foresee that permanence is fostered when an institution is created by law or enshrined in the constitution, rather than by, e.g., decrees. This is considered one of the institutional safeguards necessary to guarantee not only the permanence, but also the independence of NHRIs, and prevent the contestation of their mandates. Whether a similar legal basis shall be desirable for GHRFPs is debatable. Some institutional designs are more fragile than others. As seen in Section 2.1, GHRFPs designed as human rights ministries are highly vulnerable to discontinuation or dismantlement—yet they heighten the political clout of the focal point by ensuring a representation within government.

#### **ATTRIBUTE 6: GHRFPS SHALL HAVE PROFESSIONAL STAFF AND RATIONAL ADMINISTRATIVE CAPACITIES**

GHRFPs are structures with agents operating in them. Even when they are constituted as committees, they are supported by an administrative secretariat. Staff is usually part of the state’s civil service, and the interactions between the GHRFP and other state actors are organised according to administrative law and processes. As part of the guidance on GHRFPs, attention has been placed on the professionalisation of agents, work routinisation, and technical capacities. This focus has been increasingly explicit and detailed throughout the years.

In 1995, the Beijing Declaration posited that one of the four ‘necessary conditions for an effective functioning of [gender] national machineries [was...] sufficient resources in terms of budget and professional capacity.<sup>180</sup> However, the declaration did not provide more detailed instructions on the matter—except that states shall provide all civil servants with ‘training in designing and analysing data from a gender perspective’.<sup>181</sup>

The recent guidance on NMRFs pays more attention to public servants within GHRFPs, emphasising that staff shall be trained and retained. In contrast to

NHRIs, NMRFs' effectiveness does not hinge on an autonomous budget and staff. But it is crucial that they would benefit from an adequate level of resources, including dedicated, capacitated and continuous staff. According to OHCHR, a 'decisive factor for effectiveness is the continuity of staff who are responsible for collecting information on specific rights, developing in-depth expertise on those rights and coordinating the national mechanism's work in relation to those rights. This continuity will build sustainable expertise, knowledge and professionalism at the country level. A stable secretariat, as well as a mechanism with a broad membership, supported further by a network of focal points in ministries can contribute to such sustainability.'<sup>182</sup>

Beyond internal efficiency, the guidance aims to reinforce the structures' impact on the overall national human rights systems by establishing administrative arrangements that are 'structured and formalized' in view of 'systematiz[ing] and rationaliz[ing]' engagement between actors.<sup>183</sup> GHRFPs aim at ensuring that the multiple executive actors are interlocked, with well-established interfaces leading to automaticity of administrative action. The terms of 'machineries' or 'mechanisms' symbolise well these ambitions.

The question of staff professionalisation, working methods and routine systematisation are related to public management theories. Over time, there have been different dominant ideals for what efficient bureaucratic organisations should look like. Classically, Weberian ideals for efficient bureaucracies relied on qualified staff, accumulation of knowledge, predictability of actions and outcomes, and maximisation of resources. More recently, international human rights law has increasingly relied on neo-Weberian models, which are marked by direct citizen involvement, greater orientation towards results—with a focus on monitoring and evaluation, management and professionalism.<sup>184</sup> The guidance on GHRFPs borrows from both models. For instance, concerning the CRPD, some authors insist that focal points 'are an issue of internal public administration'<sup>185</sup> and promote centralisation, hierarchy and authority over multiple administrative entities, while others adopt a neo-Weberian reading promoting focal points that are hybridised and include non-state actors.<sup>186</sup>

### **ACCOUNTABILITY AS A SEVENTH ATTRIBUTE OF GHRFPS?**

As 'key components of the national human rights protection system',<sup>187</sup> are GHRFPs expected to contribute directly to protection? This would imply preventing violations and contributing to redress if necessary. GHRFPs are rarely assigned with remedial functions, but there is one key exception: NCPs for Responsible Business Conduct may handle enquiries and contribute to the resolution of issues that arise in the implementation of the OECD Guidelines, including since 2011 human rights provisions. The 2011 UN Guiding Principles on Business and Human Rights recognised the NCPs to be state-based non-judicial grievance mechanisms contributing to access to effective remedies for rights-holders (see sub-section 1.3.2). As such, NCPs 'play both a preventive and a reactive remedial role', with a focus on mediation.<sup>188</sup>

Other GHRFPs do not have protection mandates. The prevention of violations and provision/facilitation of redress and reparations in case of abuses is absent from the guidance on NMRFs. CRPD Article 33 explicitly allocates protection to NHRIs and independent mechanisms. Nonetheless, drawing on new forms of accountability approaches arising from, for example, new governance theories that seek to avoid the recourse to judicial action for redress, some commentators have sought to entrust GHRFPs with accountability functions. This is the case of the former UN Special Rapporteur on the Rights of Persons with Disabilities, who suggested that focal points in this thematic field should be allowed to sanction public and private entities disregarding agreed plans (see Chapter 1).

In new governance theories, ‘accountability’ is raised through non-judicial techniques, notably by enhancing transparency and accessibility. This includes the obligation to produce reports on state actions and the obligation to put in place participatory processes and set up avenues for anyone to contact the state to demand a response or information. As such, it could be argued that all GHRFPs play, by their intrinsic nature, a role in new forms of compliance that are not strictly anchored on complaint-based redress but rather part of more fluid forms of accountability. Indeed, focal points entail a relational dimension: They act as interfaces with and might be solicited by a wide range of entities or individuals at various levels: government and political leaders, other state actors, including subnational structures in charge of human rights implementation, non-executive actors (parliament, justice, etc.), NHRIs, civil society and rights-holders, etc. Focal points are also expected to interact with the entities having an authoritative say in the field of expertise in which the focal point is specialised (typically, a treaty body). The *raison d’être* of the focal point is that they engage with others.

GHRFPs shall centralise knowledge on the norms and state actions in their dedicated field. In return, they may either communicate the state of play to the relevant bodies holding the state accountable and/or make advise to the state on the necessary reforms and actions. Doing so, they hold responsibility regarding progress towards human rights implementation and become a reference point for evaluating the responsibility of the state in fulfilling its obligations. For OHCHR, the CRPD focal points, to take one example, are essential to ‘avoid the blurring of responsibility across government’.<sup>189</sup> Nonetheless, it is also important to keep in mind that GHRFPs, as the entities responsible for preparing responses on behalf of the executive power, may also if not primarily be defensive. They are tasked to respond to allegations or suspicions of violations or communicate states’ efforts while minimising failures to implement commitments. As such, GHRFPs may play an ambivalent role, and their role in raising accountability should be more carefully considered.

A last question is whether a GHRFP should itself be accountable to anyone other than the government? This point is raised in relation to gender equality mechanisms, but in comparison, the guidance on NHRIs is much more detailed.

NHRIs shall be accountable to rights-holders. For the UN, NHRIs 'should also be directly accountable to its clients, i.e. to the constituency which it was established to assist and protect. Public accountability can be achieved in a number of ways. A national institution may, for example, be compelled to conduct public evaluations of its activities and to report on the results.'<sup>190</sup>

### **REFLEXIONS ON CONCEPT AND ATTRIBUTES OF GHRFPS**

Six core attributes can be inferred from international guidance that serve to define the concept of GHRFPS. Ideally, GHRFPS 1) are government-based, 2) have an explicit human rights mandate, 3) mainstream and coordinate human rights action rather than implement policies, 4) accumulate and translate specialised knowledge, 5) are permanent, and 6) engage in the professionalisation of its agents, work routinisation, and technical capacities.

These essential attributes delineate and help define the concept of GHRFPS. In practice, given the great heterogeneity of GHRFPS' embodiments, real-life focal points may be less performant on one of the criteria (e.g., human rights ministries regarding permanence). Nonetheless, these core attributes serve as analytical yardsticks to overcome heterogeneity and help identify how GHRFPS as one singular phenomenon, worthy of attention. The core attributes constitute reference points that can help present and evaluate state practices in a way amenable to comparison. Like the Paris Principles for NHRIs, having core reference points renders possible the identification of divergences in institutional designs and enables the evaluation of how those variations impact performance.

The review of the six core attributes presented in this chapter raised questions. Notably, how does the preferred institutional design emerge in context? How does the nexus between political and administrative components of focal points play out? Is avoiding direct implementation practical and endurable in practice? What is the impact of hybrid forms of structures involving non-state actors? How do the thematic focus or temporary nature of structures impact their specialisation? Are focal points essentially connected to national or international normative frameworks and actors? How do the everyday work of public servants and bureaucratic dynamics influence institutional outcomes? The conclusion outlines methodological options for scholars to venture into answering these questions.



## CONCLUSION

# FOR A SCHOLARLY FIELD OF INQUIRY ON GHRFPS

### EXISTING SCHOLARSHIP ON GHRFPS

Scholarship has been fragmented so far. It has mostly focusing on distinct GHRFPs embodiments or specific mandate functions, analysing them in isolation. GHRFPs with comprehensive mandates have been blatantly under-researched. Human rights ministries fall into an academic blind-spot even though many states have established such ministries since the 1990s, thus offering relevant sites of inquiry to investigate the impact of GHRFPs over time. Academic literature on NMRFs or specific functions of comprehensive focal points, such as the development of NHRAPs, has been limited to a handful of scholarly publications.<sup>191</sup>

As regards GHRFPs with thematic mandates or in charge of specific groups, literature is now abundant on focal points for the rights of persons with disabilities and for women's rights. However, such scholarships have tended either to be prescriptive rather than empirical or to apply distinct conceptual frameworks. Without making such contributions less valuable, these lenses serve to prevent the easy generalisation of findings to other types of GHRFPs. The following paragraph offer a rapid overview of these scholarships.

The wealth of literature on GHRFPs for the rights of persons with disabilities has surged following the adoption of the CRPD in 2006. Little empirical research had been conducted on pre-existing coordination committees and joint councils on disability issues. This recent and rather forward-looking academic interest is explained by the fact that the CRPD is the first human rights treaty to codify an obligation to set up GHRFPs. Engaged scholars,<sup>192</sup> alongside disabled people's organisations and activists,<sup>193</sup> seek to give concrete meaning and flesh out the provisions sketched out in CRPD Article 33. Insisting that the Convention 'introduces a structural shift in international law [by creating] obligations of conduct',<sup>194</sup> authors have attempted to extrapolate from Article 33 a 'model for future efforts to improve implementation' of all human rights treaties at large.<sup>195</sup> As such, this literature has primarily been *prescriptive*—attempting to interpret or supplement existing guidance, or suggest new models for UN bodies to promote and for states to implement.

I analysed this interpretive corpus in a 2019 article<sup>196</sup> and showed how authors, to unpack the elements sketched in Convention, rely on ideologies and models emanating from public administration and management literature and ideals—

either implicitly or explicitly. Two main interpretative paths have emerged to suggest how focal points should operate and interact within wider governmental structures: one that privileges internal bureaucratic rationality à la Weber, with a focus on administrative organisations within government, while the other focuses on participatory institutions imprinted with *new governance* theories, insisting on hybrid structures formed of both state actors and rights-holders or their representatives, and relying on iterative standard-setting and experimentation. This approach fits a wider ‘new governance approach’ to international legal scholarship, in which academics tend to engineer through law public management ‘solutions’ to compliance problems.<sup>197</sup> Such prescriptive approach also characterises other academic writings on GHRFPS<sup>198</sup> and proposals for the future developments of international human rights law.<sup>199</sup>

On the contrary, the extended literature on gender equality mechanisms is largely empirical, producing numerous case studies on either GHRFPS for women’s rights as organisation structures<sup>200</sup> or exploring the role of individual gender experts in governmental administrations. Past research investigated institutional and political contexts as diverse as Morocco,<sup>201</sup> Ghana,<sup>202</sup> Cambodia,<sup>203</sup> the United Kingdom,<sup>204</sup> Thailand or Laos.<sup>205</sup>

A significant share of this literature falls part of ‘state feminism studies’.<sup>206</sup> The latter uses a critical feminist analytical approach, reviewing GHRFPS notably for their ability to reinforce accountability vis-a-vis women’s movements and uphold feminist values.<sup>207</sup> As such, gender equality mechanisms’ staff are expected to showcase a ‘dual entity: they can’t be just bureaucrats; they have to bring in the goals of the women’s movement that are outside the state and make them palatable within the state’.<sup>208</sup> This scholarship informs key GHRFPS’ attributes identified in Chapter 3—notably how rights are ‘translated’ as part of bureaucratic dynamics and the interplay between politics and civil servants.<sup>209</sup> But it does so by applying distinct analytical lenses pursuing a critical objective that weakens the potential to generalise findings to other thematic or comprehensive GHRFPS.

Other thematic GHRFPS are so far less addressed in academic research. Scholarship has emerged on NCPs for Business Conduct, interrogating institutional set-up and actual NCPs’ practice.<sup>210</sup> This literature has however been specifically focused on NCPs’ remedial functions, which—as seen in this study—is a rather unique role of NCPs compared to other types of GHRFPS.

### **FOR AN EMPIRICAL AND INTERDISCIPLINARY RESEARCH AGENDA**

In a previous research project on the ‘domestic institutionalisation of human rights’,<sup>211</sup> Stéphanie Lagoutte, Steven Jensen and I decrypted the tendency, by the UN, activists and scholars alike, to act as norm entrepreneurs to prescribe models for national human rights systems.<sup>212</sup> These normative and prescriptive efforts aim to enhance human rights protection at the domestic level by entrusting domestic state actors with a mandate to promote and implement human rights and by putting forward a systemic approach to national human rights protection.<sup>213</sup> This research

project showed the crucial need to inform these normative efforts and compliance strategies with an understanding of how the proposed institutional models operate in practice.

The need for empirical studies has imposed itself in legal scholarship at large. Doctrinal research is increasingly recognised as insufficient to decrypt the complex institutional dynamics that legal prescriptions seek to transform. For instance, it tends to rely on behavioural and causal assumptions.<sup>214</sup> Legal research is gradually moving away from considering public bureaucracies as merely the instrument of governments—with behaviours harmonised by administrative law and deviations corrected through administrative litigation. The methodological approach coined ‘new legal realism’, in particular, ‘highlights the interconnections between an understanding of law that acknowledges both the coercive and the normative aspects of law—but also requires any understanding of law to be grounded in empirical knowledge of law in action’.<sup>215</sup>

This need for empiricism is blatant in the field of human rights when it comes to institutional compliance strategies. Authors interested in understanding how international guidance and institutional models impact practice are usually immediately met with a sobering lesson. As Stéphanie Lagoutte reminds:

inter-governmental human rights committees [and institutions] may well formally exist but with a mandate that is unclear or of very little use. Even when formally established with a strong mandate on paper, such actors may never work or meet, nor participate in any type of process where they formally have a role to play. And even if they formally meet, consult, etc., they may never get any work done in fact nor have influence on relevant processes.<sup>216</sup>

Going further, Rachel Murray and Christian De Vos warn that ‘the mere existence of an executive-convened committee tasked with implementing decisions and judgments create “the illusion of compliance”’.<sup>217</sup> This conclusion draws on a large international research investigating a specific function—implementation of individual decisions—usually falling under the mandate of a GHRFPS. The research project produced empirical investigations into countries as diverse as Belgium, Burkina Faso, Cameroon, Canada, Colombia, the Czech Republic, Georgia, Guatemala and Zambia.<sup>218</sup> These confirmed that in many cases, arrangements may ‘one the face of it [considered as] fulfilling many of the criteria advocated by the OHCHR and others’, while in practice ‘implementation [is] hampered by a body’s erratic workings or lack of transparency’.<sup>219</sup>

Such empirical investigations call for interdisciplinarity. Social sciences have long recognised that large complex organisations cannot be reduced to monolithic entities, integrated with single decision-makers. Complex bureaucratic behaviours have an impact precisely on the ability to oversee the action of administrations, which is a key predicament of human rights compliance goals. As put by political scientists John Brehm and Scott Gates, it is:

largely meaningless to think of bureaucracies as unitary actors with homogeneous preferences. To the extent that bureaucrats hold heterogeneous preferences among themselves and wield significant degrees of discretion about how to achieve those preferences, agencies will never behave as a cohesive unit. This has extremely important implications for understanding bureaucratic accountability. To understand issues of accountability, responsiveness, oversight, and control, we must focus on individual bureaucrats rather than aggregated bureaus.<sup>220</sup>

Neo-institutional studies, incorporating insights from all social science fields and notably state anthropology,<sup>221</sup> can therefore prove useful in the context of human rights. Hans-Otto Sano and Tomas Max Martin demonstrated how neo-institutionalist research methods can and should be adapted to the study of human rights state administrations, insisting that ‘the neo-institutional perspective emphasize[s] historical, sociological, political and economic factors to examine what happen[s] inside the “black box” of formal institutions. Power relations, rules and procedures, behavioural responses, and norm affected actions are some of the principal research dimensions of the neo-institutional perspective’.<sup>222</sup>

Anthropological studies are increasingly taking human rights local dynamics as a field of inquiry. Scholarship on human rights localisation—or venularization—offers a powerful conceptual apparatus and methodology to understand ‘translation’ processes at the national level,<sup>223</sup> but has not yet applied it to governmental actors—save for very rare exceptions focusing on specific processes.<sup>224</sup> Recognising this gap in scholarship, authors have called for localisation studies to resolutely look into the role of state actors and administrative practices in translation and implementation processes.<sup>225</sup> State actors deserve critical exploration, especially given their inherently ambivalent yet crucial nature with regards to respect for human rights: indeed, executive actors may be potentially involved in both human rights implementation and violations.

### **FOR A UNIFIED FIELD OF INQUIRY INTO GHRFPS**

To answer this need for empirical studies and to overcome the siloed approach to GHRFPS as well as gaps in attention, the Danish Institute for Human Rights launched in 2019 an interdisciplinary research project, calling in researchers around the world to participate this research agenda. The general aim was to promote GHRFPS as a unified field of inquiry, by offering a common conceptual framing to analyse different types of GHRFPS and offer in-depth perspective as to how different sets of guidance are part of a genealogy of recommendations.

By recognising how various types of GHRFPS are part of a singular phenomenon, taking its roots in the 1970s in thematic fields, the project hypothesised that is possible to develop knowledge and perspective and ensure that lessons from past and ongoing experiences inform our understanding of recent guidance and practice otherwise presented as new. To understand state practices, the project adopted a new legal realist approach, emphasising the relevance of neo-institutional insights.

As such, it sought to generate empirical case-studies, drawing on methodological insights from various disciplinary fields but all relying on the same conceptual approach to GHRFPs. The six core attributes of GHRFPs identified in Chapter 3 served to structure a coherent and unified field of inquiry.

Based on a call for contributions to which more than 40 researchers responded,<sup>226</sup> the research project conveners—Stéphanie Lagoutte and myself—identified eight paradigmatic cases relevant for exploration, to be investigated by researchers from different geographical and disciplinary horizons. Part of the produced research was presented at a dedicated panel at the 2020 Conference of the Association of Human Rights Institutes.<sup>227</sup> In addition, four case studies will be published in June 2021 in a dedicated Special Issue of the *Netherlands Quarterly of Human Rights*. Each address not only a specific embodiment of GHRFPs, using the analytical grid presented in Chapter 3, but delve into some of the key operational questions associated with each GHRFP core attributes. The Special Issue will include the following articles:

- 'Inside the Human Rights Ministry of Burkina Faso: How Professionalised Civil Servants Shape Governmental Human Rights Focal Points', by Sébastien Lorion
- 'Governmental Human Rights Focal Points: Lessons from Focal Points under the Convention on the Rights of Persons with Disabilities', by Colin Caughey,
- 'Governmental Human Rights Focal Points in Federal Contexts: The Implementation of the Istanbul Convention in Switzerland as a Case Study', by Matthieu Niederhauser
- 'Never Again? The Role of the Global Network of R2P Focal Points in Preventing Atrocity Crimes', by Martin Mennecke.

All in all, that case studies and research project confirmed the relevance of decompartmentalising research on GHRFPs. The six core attributes proved to serve as useful conceptual yardsticks enabling scholars to cross-analyse sets of guidance. As part of our reflexive introduction to the upcoming Special Issue, we exemplified some of the benefits stemming from this approach and made apparent by the generated case studies. These include the following:

- First, the assessment of the variations of a specific GHRFP's function or design offers insights that could be used by others. For instance, the ways in which the international network adds value to the role of R2P Focal Points could inspire other types of GHRFPs.
- Second, the cross-analysis of different types of GHRFPs allow scholars to undertake a more granular and informed assessment of the related guidance. Most notably, while claims have been made that NMIRFs' insistence on consultations 'democratises' national decision-making processes, Colin Caughey shows how CRPD guidance suggests a much more meaningful and detailed approach to rights-holders' participation. Similarly, insights from decades of professionalisation of human rights civil servants in Burkina Faso cast a light on the NMIRFs' guidance on staff capacity. It helps to debunk certain assumptions

made in the guidance regarding the role of civil servants and ways to reinforce their performance, and it warns against potential counter-productive impacts of some proposed solutions.

- Third, the case studies cast a light on practical issues that are not yet properly covered by existing guidance. The question of GHRFPs' organisation in federal States is discussed in relation to women's rights structures, but the analysis of the Swiss approach could inform other thematic and comprehensive GHRFPs.<sup>228</sup>

In short, the present study and related project promote a research agenda that explores GHRFPs as a unified field of inquiry. They propose a conceptual framework and put forward a critical mass of case studies to structure and feed this agenda. These contributions remain a first dint into the matter: important issues have been identified, that are inadequately covered by guidance and research. For instance, how does institutional design emerge in context? How does the nexus between political and administrative components of focal points play out in practice? Is a mandate limited to coordination and excluding direct implementation practical and enduring in practice? What is the ideal number of (thematic) GHRFPs and is it desirable and feasible to unify them under a single architectural structure? Further research would be welcomed. Besides generating more knowledge on GHRFPs' practices, additional research could also help refine—or possibly challenge or complement—the six core attributes inferred for the GHRFP concept, by testing their conceptual and operational boundaries.

## ENDNOTES

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- 25 Initially its Division for the Advancement of Women, today UN Entity for Gender Equality and the Empowerment of Women (UN Women).
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- 227 The panel included inter alia presentations on NCPs for Responsible Business Conduct, by Prof. Karin Buhmann, Copenhagen Business School; on NMRFs, by Prof. Dr. Jeremy Sarkin, University of Lisbon; on the use of human rights implementation taskforces in Kenya, by Henrietta M. Ekefre, University of Pretoria; and on inter-institutional coordination for human rights implementation in Colombia, by Dr. Patricia Herrera Kit, Universidad Externado de Colombia and Dr. Juan Carlos Botero, Universidad Javeriana Law School. All but one presentations records are accessible on our research project webpage, at: <https://www.humanrights.dk/research-project/governmental-human-rights-focal-points>.
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## ANNEX

# HUMAN RIGHTS MINISTERIAL PORTFOLIOS IN THE WORLD

In May 2019, 32 countries had a human rights ministerial portfolio in government. Three were ministers, as individuals sitting in Cabinet, while others were ministries, with a corresponding department.

1. Angola  
Ministry of Justice and Human Rights  
(*Ministério da Justiça e Direitos Humanos*)
2. Argentina  
Ministry of Justice and Human Rights  
(*Ministerio de Justicia y Derechos Humanos*)
3. Bosnia i Herzegovina  
Ministry of Human Rights and Refugees  
(*Ministartvo za ljudska prava i izbjeglice*)
4. Brazil  
Ministry of Women, Family and Human Rights  
(*Ministério da Mulher, da Família e dos Direitos Humanos*)
5. Burkina Faso  
Ministry of Human Rights and Civic Promotion  
(*Ministère des Droits Humains et de la Promotion Civique*)
6. Burundi  
Ministry of National Solidarity, Human Rights and Gender  
(*Ministère de la Solidarité Nationale, des Droits de la Personne Humaine et du Genre*)
7. Central African Republic  
Ministry of Justice and Human Rights  
(*Ministère de la Justice et des des Droits de l'Homme*)
8. Chad  
Ministry of Justice, in charge of Human Rights  
(*Ministère de la Justice, chargé des droits humains*)

9. Chile  
Ministry of Justice and Human Rights  
(*Ministerio de Justicia y Derechos Humanos*)
10. Comoros  
Ministry of Justice, Islamic Affairs, Public Administration and Human Rights  
(*Ministère de la Justice, des Affaires islamiques, des Administrations publiques et des Droits humains*)
11. Congo (Republic of)  
Ministry of Justice, Human Rights and Indigenous People Promotion  
(*Ministère de la Justice, des Droits humains et de la Promotion des peuples autochtones*)
12. Côte d'Ivoire  
Ministry of Justice and Human Rights  
(*Ministère de la Justice et des Droits de l'Homme*)
13. Democratic Republic of Congo  
Ministry of Human Rights  
(*Ministère des Droits Humains*)
14. Djibouti  
Ministry of Justice and Penitentiary Matters, in charge of Human Rights  
(*Ministère de la Justice et des Affaires Pénitentiaires, chargé des Droits de l'Homme*)
15. Ecuador  
Ministry of Justice, Human Rights and Cults  
(*Ministerio de Justicia, Derechos Humanos y Cultos*)
16. Equatorial Guinea  
Vice Prime Minister in charge of Human Rights
17. Gabon  
Ministry of Justice and Human Rights  
(*Ministère de la Justice et des Droits Humains*)
18. Greece  
Ministry of Justice, Transparency and Human Rights  
(*Υπουργείο Δικαιοσύνης, Διαφάνειας και Ανθρωπίνων Δικαιωμάτων*)
19. Guinea-Bissau  
Ministry of Justice and Human Rights  
(*Ministère de la Justice et des Droits de l'Homme*)

20. Haiti  
Minister delegate for human rights and the fight against extreme poverty  
(*Ministre déléguée auprès du Premier ministre en charge des Droits humains et de la lutte contre la Pauvreté extrême*)
21. Indonesia  
Ministry of Law and Human Rights  
(*Kemenkumham*)
22. Lesotho  
Ministry of Justice, Human Rights and Correctional Services
23. Mali  
Ministry of Justice and Human Rights  
(*Ministère de la Justice et des Droits de l'Homme*)
24. Mauritius  
Ministry of Justice, Human Rights and Institutional Reforms
25. Montenegro  
Ministry for Human and Minority Rights  
(*Ministarstvo za ljudska i manjinska prava*)
26. Morocco  
State Ministry in charge of Human Rights  
(*وزارة الدولة المكلفة بحقوق الإنسان والعلاقات مع البرلمان*)
27. Pakistan  
Ministry of Human Rights  
(*وزارة حقوق الإنسان*)
28. Peru  
Ministry of Justice and Human Rights  
(*Ministerio de Justicia y Derechos Humanos*)
29. Somalia  
Ministry of Women and Human Rights Development  
(*Wasaaradda Haweenka iyo Hormarinta Xaquuqda Aadanaha*)
30. Togo  
Ministry of Human Rights, in charge of relations with Institutions  
(*Ministère des Droits de l'Homme et chargé des relations avec les institutions de la République*)

31. Tunisia

Minister (under the Prime Minister) for Relations with Constitutional Instances,  
Civil Society and Human Rights

(وزير معتمد لدى رئيس الحكومة مكلف بحقوق الإنسان والعلاقة مع الهيئات الدستورية والمجتمع المدني)

32. Yemen

Human Rights Ministry

(وزارة حقوق الإنسان)

*In Defining Governmental Human Rights Focal Points: Practice, Guidance and Concept*, Sébastien Lorion, PhD, Senior Advisor at the Danish Institute for Human Rights, analyses governmental human rights focal points, understood as states' administrative structures mandated to provide the human rights response of the executive power and ensure human rights at the national level.

Whether called 'national mechanisms for reporting and follow-up', human rights ministries, interministerial delegations or human rights units, governmental human rights focal points share commonalities. They have emerged in international guidance as a key element of national human rights systems. Nonetheless, state practices, international guidance and academic investigation remain fragmented.

This study lays the ground for the comprehension of governmental human rights focal points as a singular phenomenon and type of actor. It documents practices, compiles and analyses relevant guidance, and puts forward a conceptual proposal—inferring from this review six core attributes associated with governmental human rights focal points.

The study is one of the outputs of a wider research project launched by the Research Department of the Danish Institute for Human Rights and involving researchers from various disciplinary fields and regions across the world. It draws on research on institutions and national human rights systems, as well as on lessons from decades of cooperation and partnerships between the Danish Institute for Human Rights and many governmental human rights focal points around the world.