

**AHRI Conference 2020**  
**Panel proposal under**  
**Track 3: Ensuring implementation of human rights**

***Panel title:***

**Understanding governmental human rights focal points**

***Panel organisers:*** Stéphanie Lagoutte and Sébastien Lorion, The Danish Institute for Human Rights

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***Panel participants and paper authors:***

Chair: Dr. Stéphanie Lagoutte, Senior Researcher, The Danish Institute for Human Rights

Presenters:

- Prof. Dr. Jeremy Sarkin, University of Lisbon
- Prof. Karin Buhmann, Copenhagen Business School
- Dr. Sébastien Lorion, The Danish Institute for Human Rights
- Dr. Patricia Herrera Kit, Universidad Externado de Colombia (co-author: Juan Carlos Botero, Consultant/Lawyer)
- Henrietta M. Ekefre, University of Pretoria
- Matthieu Niederhauser, University of Lausanne
- Colin Caughey, National University of Ireland Galway

Discussant: (tbc).

***Panel description:***

Building on reflexions started in AHRI 2016 and 2018 Conferences, this panel continues the exploration of the 'domestic institutionalisation' of human rights as a response to the implementation gap between commitments and reality. Within this research agenda, much scholarship has been devoted to NHRIs and other types of independent state actors. However, there is a gap in research on governmental human rights focal points. This panel aims at generating accrued attention and research on such actors.

The practice of nominating governmental human rights focal points first emerged in thematic fields, in particular with regards to women's rights and the rights of persons with disabilities, initially under the impulse of international state conferences. Human rights bodies and treaties first shied away from prescribing international blue-prints for such actors, but throughout the 1990s, more detailed prescriptions on intra-governmental coordination emerged. International law itself followed suit, and the 2006 Convention on the Rights of Persons with Disabilities obliges states to designate focal points and possibly coordination mechanisms within government.

Beyond thematic focuses, international guidance has recently emerged pertaining to such structures, this time with general and comprehensive mandates. Since 2016, OHCHR insists on the establishment

of “National Mechanisms for Reporting and Follow-Up”. In 2017, the UN Secretary-General found the latter to constitute a “new type of governmental structure” and a “key element at the national level” (UNSG 2017).

Governmental human rights focal points come in different shapes. Whatever their name (“machineries”, “contact point”, “coordination mechanisms”, “system”, etc.), their organisational structure (unit, ministry, inter-ministerial committee, taskforce, etc.) and scope (thematic or comprehensive), they share some core attributes, which the panellists find to be the following:

- (1) They are *government-based arrangements*, with a main emphasis on coherence within executive actors’ work. Although variations exist (e.g. hybrid structures with non-state actors), they are meant to essentially differ from NHRIs, which are independent from political whims.
- (2) They do not *directly implement policies*. Their role is catalytic, enhancing *coordination and mainstreaming*, sometimes redress, with impact on rights enjoyment being indirect, through triggering other executive actors into action.
- (3) A pivotal task of national mechanisms is to *produce and accumulate specialised knowledge*, which is used for advisory functions, policy proposals, reports, etc. Some are by essence connected to a specific normative framework, while others are generic.
- (4) International guidance aims at ensuring focal points’ sustainability, emphasising the *permanence of the structures*.
- (5) Given their organisational shape and the objectives of knowledge building, a strong focus is placed on *professionalisation of agents, work routinisation and technical capacities*.

Each of these features raises specific questions, that the articles seek to explore. How does the preferred institutional design emerge in context? How does the nexus between political and administrative components of focal points play out? Is the limitation to coordination and on non-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 does the everyday work of public servants and bureaucratic dynamics influence institutional outcomes?

This interdisciplinary panel largely draws on case studies exploring how these features play out in context and according to different institutional design choices. It aims at consolidating and structuring a research agenda on governmental human rights focal points.

## Paper no. 1

### **Title: The Importance of National Mechanisms for Reporting and Follow-Up in Light of States' Treaty and Other Obligations**

#### **Author:**

Professor Dr Jeremy Sarkin

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Former Chair-Rapporteur, United Nations Working Group on Enforced or Involuntary Disappearances.

#### **Abstract:**

This article studies the rise of new domestic human rights institutions called Mechanisms for Reporting and Follow-Up (NMRFs). More than 40 of these institutions have been created in more than 40 countries because they are seen to be critical to a state meeting its international human rights and other obligations.

The article analyses why these institutions have become so important in the context of increased state reporting. It evaluates what NMRFs are, what the different models of NMRFs are, and how they can be made successful in promoting human rights in the countries they operate in.

The article focuses on developments in the country of Georgia in 2019 and 2020 to reform their processes that deal with reporting and follow up to deal better with human rights issues in the country. These have however been complicated by the political environment. This article therefore approaches this article by way of an empirical study using Georgia as a model to focus on these issues.

The article therefore promotes an understanding of the necessity of these institutions, but at the same time types of resistance to them, because of the political role they play. A key focus of this article is the extent to which a tension that exists between states controlling the narrative about human rights in their country, and the need to comply with international organisations' desire to increase human rights promotion and protection in states around the world. Thus, a state's charter and treaty obligations are at times in conflict with what a state wants to do. NMRFs help states meet their international obligations. However, because NMRFs are usually internal governmental structures, the state has control of the process of implementing and reporting back to the international institution that made recommendations to the state. Some domestic processes however include external actors for a variety of reasons, including the need to reflect wider involvement in reform processes.

**Keywords:** Charter and treaty obligations, human rights, Mechanisms for Reporting and Follow-Up, state reporting obligations, the Human Rights Council, Georgia.

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## Paper no. 2

***Title:* National institutions with extraterritorial powers to enforce business responsibilities for human rights: A comparative analysis of OECD National Contact Points in the Nordic and Baltic area**

***Author:***

Prof. Karin Buhmann

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***Abstract:***

OECD National Contact Points (NCPs) are charged with promoting and enforcing a series of standards of conduct for business enterprises with regard to their societal impacts. NCPs are so-called state-based remedy institutions with a history going back more than 20 years and a legal basis in OECD member states' obligations under the OECD Investment Declaration and the OECD Guidelines for Multinational Enterprises. NCPs have seen a strong revival and a surge in human rights related cases since they were highlighted as a key remedial institution for business-related human rights infringements in 2008. That occurred in recommendations to the Human Rights Council in the 2008 UN 'Respect, Protect and Remedy' Report ('UN Framework) submitted under a special procedure mandate, and resulted in a 2011 revision of the OECD Guidelines to enhance the role of NCPs to handle business-related human rights infringements. NCPs are unique in combining a state-based institutional basis with extraterritorial jurisdiction, based on their power to handle complaints against companies operating not only in but also out of the OECD states and the 12+ adhering non-OECD countries. Non-judicial institutions, NCPs enjoy the power to issue statements, critique and advice for future conduct.

Despite their role as national focal points for business and human rights and despite the rise in cases on human rights since 2011, NCPs are understudied in the human rights and legal institutional literature in regard to their human rights role. This paper contributes to remedying that gap through a comparative analysis of human rights related cases and statements from NCPs in the Nordic and Baltic area. The paper contributes to knowledge on the role of national institutions in regard to business impacts on human rights in line with the regime on business and human rights that can be traced to the UN Framework.

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### **Paper no. 3**

**Title:** Human Rights Ministries as sites of governmental coordination and expert translation: Professionalisation vs bureaucratic dynamics in Burkina Faso

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**Abstract:**

*Human rights ministries* are one possible institutional designs for governmental human rights focal points. In 2019, 32 states had a standing ministerial human rights portfolio – all but one in developing countries. Like any governmental human rights focal points, such ministries' mandate is transversal, attempting to trigger executive actors into operationalising human rights commitments. This happens this through coordination and expertise, supported by agents' professionalisation. Yet, ministries' permanence is often jeopardised by governmental reshufflings.

No research on such actors has been published to date. To fill this gap, the author conducted an inquiry into human rights ministries in development contexts. It focuses on two core features of governmental focal points: coordination techniques and human rights knowledge, both necessary to operate as transmission sites. Methodologically, the inquiry draws on neo-institutionalism and in particular sociological and anthropological insights on individual agents' role in shaping institutional outcomes and on the local vernacularisation of human rights.

The article takes the Human Rights Ministry of Burkina Faso as a case study. The latter offers a prototypical embodiment of such ministries, with uninterrupted experience since 2000 and the establishment of a designated cohort of specialised human rights public servants. Original data was collected through 33 interviews with public servants, direct observation of sites of coordination and documentary analysis of bureaucratic artefacts.

The paper finds that the human rights ministry has indeed professionalised in 'translating' human rights. However, translation happens in a narrow sense, with limited attention to normative dimension of rights and accountability. It tends to become an end in itself, with little impact on other state actors. This results from the combined effects of various factors – from overly technical international guidance to low policy and institutional integration nationally. Bureaucratic dynamics and the *habitus* of public servants play a significant and largely discretionary role in these processes.

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## Paper no. 4

**Title: Inter-institutional coordination as a strategy for human rights management. Case study: Project for Attention communities at risk in Colombia**

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**Abstract:**

Despite the alarming human rights situation in the country, Colombia has a long process of construction of management alternatives for human rights public action (Herrera-Kit, 2012). This process is not only characterized by a broad regulatory body, but by multiple and diverse policies, programs and projects design and implementation (Roth Deubel, 2006; Soto Restrepo, 2006). In particular, it is noteworthy, although it does not have enough academic analysis, the profuse exercise of institutional adaptation both at the national and territorial level and which, among others, includes the implementation of inter-institutional management schemes.

In this context, the present paper seeks, from public management analysis, to document the inter-institutional coordination scheme that took place within the Project for Attention to Communities at Risk that, during four years, was implemented in Colombia. The purpose of this strategy sought to generate human rights and IHL protection and prevention mechanisms in territories affected by the armed conflict. This project is one of the policy instruments that materializes various previous efforts of intersectoral management and, at the same time, represents an antecedent for the most recent bets such as the creation of the National Human Rights and IHL System (Herrera-Kit and Taylor, 2012).

For this purpose, at first, will be presented a conceptual reflection on inter-institutional coordination. Then, will be outlined the background of human rights management practices and the efforts of their territorialization in the country. The third part, based on a documentary review, characterizes the coordination scheme implemented in the framework of the execution of the Project for Attention to Communities at Risk, the good practices and difficulties of the model to advance coordination mechanisms and institutional articulation.

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## Paper no. 5

**Title: Human rights governmental focal points and coordination structures for implementation: interrogating the use of taskforces in Kenya**

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**Abstract:**

The absence of clearly defined structures for the coordination of implementation efforts inevitably limits the prospects for implementation. Over the years, states have adopted domestic structures often referred to as national mechanism for reporting and follow up (NMRF) in form of ad hoc, ministerial and inter-ministerial committees as well as separate institutional bodies for the purpose of enhancing coordination and ensuring the implementation of international human rights decisions and African states have not been an exception. From the Democratic Republic of Congo's human rights themed ministries, to Burkina Faso, Tanzania and Zambia's inter-ministerial committees to mention but a few, African states are also exploring the use of domestic structures within the executive organ's purview to facilitate implementation. On two occasions, Kenya constituted taskforces in response to African human rights mechanisms' (AHRM) decisions against itself, both of which was to facilitate the implementation of the decisions. First was the Task Force on the implementation of the decision of the African Commission on Human and Peoples' Rights contained in Communication No. 276/2003 (Centre for Minority Rights Development on Behalf of Endorois Welfare Council Versus Republic of Kenya as per Gazette Notice no. 6708. Second was the Taskforce on the Implementation of the decision of the African Court on Human and peoples' Rights issues against Kenya in respect of the Rights of the Ogiek Community of Mau and enhancing the participation of Indigenous communities in the sustainable management of forests as per Gazette No 11215. This paper interrogates human rights governmental focal points and coordination structure as a means of ensuring the implementation of decisions from AHRM with a focus on the use of taskforces in Kenya. The paper then juxtaposes the use of taskforces as a governmental mechanism in relation to other forms of NMRF instituted in states like Zambia, Burkina Faso and Tanzania. The paper will employ desktop research to answer the questions raised and where needed refer to previously conducted qualitative research (which form part of my doctoral research). The paper finds that despite the show of good faith which the institutionalisation of governmental focal points and coordination structures represents, it is imperative that these domestic mechanisms for implementation are equipped to actually facilitate implementation and not just create a facade of implementation efforts.

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## Paper no. 6

**Title: The implementation of the Istanbul Convention in a federal state: uncovering multi-level governmental coordination mechanisms and focal points**

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**Abstract:**

The implementation of international human rights law in federal states is an under-explored process. The fact that some sub-national entities enjoy a certain degree of sovereignty raises the question of whether – and how – these entities engage with obligations of international law. One solution has been to use multi-level coordination mechanisms and focal points, which serve as a nexus for federal and subnational governments to implement human rights obligations.

This paper aims to present and evaluate such mechanisms, using the implementation of the *Convention on preventing and combating violence against women and domestic violence* (the Istanbul Convention) in Switzerland as a case-study. The implementation of the Istanbul Convention in Switzerland is complicated by the fact that several obligations fall under the competencies of sub-national entities – the cantons. For instance, article 23 of the Convention obliges states to take the necessary legislative or other measures to provide for the setting up of shelters in sufficient numbers to victims of domestic violence – such task falls under cantonal (sub-national) competencies in Switzerland.

So as to implement the Convention at the cantonal level, so-called “conferences of cantonal governments” have been used. These “conferences” are in fact coordination mechanisms where members of federal and cantonal governments meet to discuss issues of common interest. In the case of the Istanbul Convention, the Conference of Cantonal Ministers for Justice and Police (CCDJP) and the Conference of Cantonal Ministers of Social Affairs (CDAS) mandated the Swiss Conference against Domestic Violence (CSVD) to facilitate the intercantonal implementation of the Convention. These conferences thus constitute some kinds of thematic multi-level national coordination mechanisms. The CSVD regroups civil servants embedded within the governmental administration who are in charge of domestic violence issues and act as thematic focal points. This paper aims to shed light on these mechanisms and focal points, and to assess their effectiveness. It is based on original empirical data, as I am currently conducting semi-directive interviews with members of cantonal governments and administrations who participate in this implementation.

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## Paper no. 7

**Title:** CRPD Focal Points a new solution to an old problem: making the marginalised a priority

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**Abstract:**

Many of the challenges faced by persons with disabilities may be classed as socially complex wicked problems that cannot be resolved by the actions of one government department. Therefore ensuring coordination across departments and a holistic government approach is a pre-requisite to delivering the rights of persons with disabilities. The CRPD seeks to facilitate coordination through requiring Governments to establish a focal point with responsibility for implementation. This article will consider the relationship of the focal point with government departments and its role in monitoring implementation, including how a focal point can address a failure to implement. The relationship of the focal point with Article 33(2) mechanisms will also be considered.

Noting that persons with disabilities are often marginalised and excluded from decision making, the article will draw on research into how policy is influenced to critically assess how officials within focal points can make CRPD compliance and the realisation of the rights of persons with disabilities a policy priority. The potential for the development of national action plans and mainstreaming measures to promote implementation will be assessed. In addition the role of the focal point during examinations by the CRPD Committee will be considered, with reference to practical examples and to the experience in the UK.

Much of the literature on bringing about human rights compliance emphasises the important role performed by civil society in engaging with decision makers and in adapting human rights standards to the local context. Similarly the New Public Management paradigm emphasises the potential benefits of involving civil society organisations in the delivery of public services. The article will consider the potential for focal points to collaborate with civil society in developing evidence based policy solutions and in monitoring their implementation across government, therefore providing a networked version of coordination which includes persons with disabilities.