Government human rights focal points: Lessons learned from focal points under the Convention on the Rights of Persons with Disabilities

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Abstract
The exploration for tools and approaches that will make the UN human rights treaty system more impactful has been ongoing for over thirty years. The UN Convention on the Rights of Persons with Disabilities continues to represent the most innovative approach to effecting human rights implementation at the domestic level, through placing obligations on States to designate a Disability Focal Point within government and an Independent Monitoring Mechanism outside of government. This article examines the role of Disability Focal Points and considers in particular how the current drive for the establishment of National Mechanisms for Reporting and Follow-Up may have unintended consequences for their development. The article utilises the United Kingdom as a case-study to assess the potential benefits of allocating responsibility for international reporting and follow-up to a Disability Focal Point.

The article finds that the role performed by Disability Focal Points at the domestic level makes them best placed to coordinate reporting and follow-up relating to the CRPD. Furthermore, the fact that Disability Focal Points are fully integrated into domestic national policy mechanisms means that they ought to be well positioned to harness the transformative potential of the treaty body examination process.

Keywords
Treaty body, disability, human rights implementation, focal points, State capacity

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I. INTRODUCTION

The establishment of governmental human rights focal points (GHRFPs) is emerging as a widespread State practice. While international guidance on comprehensive GHRFPs is recent and is limited to reporting and follow-up to international bodies, thematic governmental focal points have existed for a long time. As with all public actors within the national human rights system, GHRFPs participate in domestic processes alone or in cooperation with other domestic actors, as well as interacting with international and regional human rights mechanisms. Governmental focal points for the rights of persons with disabilities are a case-in-point. They were first mentioned in soft law guidance in the 1980s, but then became a legal obligation for the States having ratified the 2006 Convention on the Rights of Persons with Disabilities (CRPD or Convention). This points to the CRPD and associated State practices as crucial areas of investigation informing the development of comprehensive GHRFPs.

This article seeks to assess the contribution of the CRPD to the notion of focal points by both looking at the legal prescriptions and an example of State practice. In addition, it cross-examines this contribution in light of the 2016 international guidance on National Mechanisms for Reporting and Follow-Up (NMRFs), which is the sole guidance on comprehensive GHRFPs.

NMRFs and CRPD focal points share the goal of ensuring that human rights systems are more impactful. However, there is a foundational difference in the main orientation of these focal points. CRPD focal points are primarily addressed as ‘implementation’ structures, as explicitly stated in Article 33(1) of the Convention, stressing both their national role and catalytic role within national actors and policies. The CRPD diverges from established practices in both its construction and in the monitoring of the Convention. During the negotiation of the CRPD, innovative approaches to international monitoring were discussed. However, States were cautious of untried international examination processes and the push for innovation shifted to the domestic level.

In contrast, an NMRF is a government body mandated to coordinate and prepare reports to international and regional human rights mechanism and to coordinate follow up. It is mainly a transmission belt for international processes. The development of NMRFs is grounded in the objective of reducing the burden of reporting arrangements vis-à-vis international bodies, in the hope that they will enrich examination processes and bring about effective follow-up.

Whereas the theory of change which underpins the CRPD seeks to influence the domestic system to internalise the Convention, an NMRF is intended to improve and streamline the international system. This distinction is most evident in the treatment of recommendations from international treaty bodies. NMRFs tend to treat these as an authoritative translation of the universal norms. The CRPD system emphasises the role of domestic actors in translating norms in the

1. See introduction to this Special Issue: Sébastien Lorion and Stéphanie Lagoutte, ‘What are Governmental Human Rights Focal Points’ (2021) Netherlands Quarterly of Human Rights, Section 2.
2. Sébastien Lorion, Defining Governmental Human Rights Focal Points: Practice, Guidance and Concept (Danish Institute for Human Rights, 2021) Chapter 2 <https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Lorion%20Defining%20GHRFPs%20-%20DIHR%202021%20Final.pdf> accessed 28 April 2021.
3. OHCHR, National Mechanisms for Reporting and Follow-Up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms, 2016.
4. See introduction to this special issue.
5. Meredith Raley, ‘The Drafting of Article 33 of the Convention on the Rights of Persons with Disabilities: The Creation of a Novel Mechanism’ (2016) 20(1) The International Journal of Human Rights 138.
6. OHCHR, ‘Practical Guide’ (n 3) 2.
7. Report of the UN High Commissioner for Human Rights, 26 June 2012, UN Doc. A/66/86, p. 5.
domestic context. The CRPD system is at the start of a process of translation that will end in the realisation of human rights at the domestic level. The CRPD at Article 4(2) recognises that the full realisation of economic, social and cultural rights will be progressively achieved, requiring continuous action by the state actors which can go beyond the specific requirements of the CRPD.

As the role of NMRFs continues to expand, there will be an increasing need to consider how NMRFs relate to the role of CRPD focal points, and other thematic human rights focal points. This is particularly the case as the Office of the High Commissioner for Human Rights (OHCHR) has emphasised that NMRFs need to extend ‘beyond the narrow remit of reporting to international and regional human rights mechanisms’. To symbolise this expansion, supporting NGOs and a number of States gathered in a ‘group of friends’, precisely to advocate for the re-labelling of NMRFs as national mechanisms for implementation, reporting and follow-up.

The relationship between NMRFs and focal points raises not only legal but also practical questions which best reveal themselves through empirical investigation. Drawing on the example of the United Kingdom (UK), this article will consider whether concentrating all human rights reporting and follow up activities within a centralised unit may hinder the potential transformative effect which the international system can have upon government bureaucracies.

This article begins by setting out a legal analysis of the CRPD focal points and how they qualify as GHRFPs. It will then assess how their role overlaps with that performed by NMRFs. After utilising the UK as a case-study to illustrate the above point concerning the centralisation of reporting and implementation, this article will conclude by highlighting that the development of GHRFPs must be informed by circumstances in the State in question and be guided by the ultimate goal of human rights implementation. In this respect, this article highlights the need for an approach which is complementary.

2. CRPD FOCAL POINTS AS GOVERNMENTAL HUMAN RIGHTS FOCAL POINTS

The CRPD is unique in both its content and in its approach to implementation. Rather than setting out substantive rights which can be incorporated by States Parties, the CRPD puts forward a ‘normative steer’ and seeks to influence the internal dynamics of the domestic system within States Parties. This reflects a general trend in human rights compliance theories which emphasises the need to internalise human rights values. In order to achieve this, the CRPD places a specific obligation on ratifying States to designate a CRPD focal point, to consider the development of a coordinating mechanism and to establish an independent monitoring mechanism. These bodies will provide the architecture for change. The focal point plays a key role in adapting bureaucratic processes and cultures to reflect the principles and values of the CRPD.

8. OHCHR, ‘Practical Guide’ (n 3) 16.
9. In particular, the Universal Rights Group, see: <https://www.universal-rights.org/programmes/focus-domestic-implementation-universal-norms/project-1/> accessed 11 November 2020.
10. HRC Res 42/30 (UN Doc A/HRC/42/30, 24 September 2019).
11. Gerard Quinn, ‘Bringing the UN Convention on Rights for Persons with Disabilities to Life in Ireland’ (2009) 37(4) British Journal of Learning Disabilities 245, 249.
12. Gerard Quinn, ‘Resisting the “Temptation of Elegance”: Can the Convention on the Rights of Persons with Disabilities Socialise States to Right Behaviour?’ in Oddny Mjoll Arnardottir and Gerard Quinn (eds), The Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives (Martinus Nijhoff 2009).
Article 33(1) spells out the obligation to nominate focal points as follows:

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.

The text of Article 33 does not prescribe ‘either the form or the specific function of a focal point’,13 and the OHCHR has emphasised that ‘States are free to determine the appropriate structure according to their political and organizational context’.14 This position reflects a desire across the international human rights system to allow States to develop focal points in line with their own particular circumstances.15

Guidance by the CRPD Committee on the formation of focal points issued since the opening of the CRPD for signature brings some additional prescriptions but has not been conclusive on all aspects, and in some matters has been inconsistent. The UN Special Rapporteur on the Rights of Persons with Disabilities (hereafter, the Special Rapporteur) is a third source of soft law guidance that addressed this issue. In 2009, the OHCHR published a thematic study on the structure and role of national mechanisms for the implementation and monitoring of the CRPD,16 followed by a guidance document on CRPD focal points in 2014.17

This section envisages CRPD focal points following the GHRFP conceptual dimensions and principal attributes outlined in the introduction to the Special Issue.

2.1. GOVERNMENT-BASED STRUCTURE

Article 33(1) makes it clear that focal points are ‘within government’. A focal point is to be composed of public officials. The text clearly does not foresee including organisations outside of government.

The OHCHR has emphasised that the preferred administrative home for a focal point is at the most senior level of government.18 In its concluding observations, the CRPD Committee has raised concerns when they have considered that the Article 33(1) institution is ‘not of a sufficiently high institutional rank to effectively carry out its duties’.19

The CRPD permits States to designate one or more focal points. The CRPD Committee, in its concluding observations, has on occasion demonstrated a preference for the designation of multiple focal points. For instance, it recommended that the Ugandan government ‘expedite the

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13. OHCHR, ‘National Implementation and Monitoring’ UN Doc CRPD/CSP/2014/3 (1 April 2014) para 8.
14. OHCHR, ‘Thematic Study by the Office of the High Commissioner for Human Rights on the Rights of Persons with Disabilities: A Commentary’ (Oxford University Press 2018) 986.
15. Valentin Aichele, ‘Article 33 National Implementation and Monitoring’ in Ilias Bantekas, et al (eds), The UN Convention on the Rights of Persons with Disabilities (Oxford University Press 2018) 986.
16. OHCHR, ‘Thematic Study’ (n 14).
17. OHCHR, ‘National Implementation’ (n 13).
18. ibid para 11 (b).
19. CRPD Committee, ‘Concluding Observations on the Initial Report of Argentina’ CRPD/C/ARG/CO/1, October 2012 para 51.
process of appointing focal points within ministries and other government bodies’.\textsuperscript{20} The OHCHR guidance document emphasises the development of a two-pronged approach, with a central focal point and focal points across levels of government and within departments.\textsuperscript{21} Where there are multiple focal points, the Special Rapporteur has reiterated the need to ensure ‘a mechanism to coordinate and harmonize the initiatives carried out at the federal, provincial and territorial levels by these different focal points’.\textsuperscript{22}

2.2. HUMAN RIGHTS MANDATE

The CRPD focal points must have a clear thematic human rights mandate. Article 33(1) refers to the ‘designation’ of a focal point, whereas it refers to the ‘establishment or designation’ of a coordination mechanism. The OHCHR acknowledges that ‘relevant bodies’ may already exist. The mandates of existing bodies must be revised to include ‘overseeing the implementation of the Convention’.\textsuperscript{23} This will include promoting awareness of the Convention, participation in the development of an action plan, and monitoring implementation.\textsuperscript{24}

The OHCHR highlights that the ‘designation of the ministries of health or of welfare and labour as the government focal point should be avoided’, and the preferred administrative home of a CRPD focal point is in ‘ministries responsible for human rights, social affairs and justice’.\textsuperscript{25}

2.3. COORDINATION

The OHCHR emphasises that one of the functions of a CRPD focal point is ‘to avoid uncoordinated action’.\textsuperscript{26} In addition to the obligation to establish a focal point, a State is also required to consider the development of a coordination mechanism. The OHCHR suggests that a coordination mechanism ‘might take the shape of an inter-ministerial group, tasked with coordinating implementation of the Convention across respective departments/sectors or levels of government’.\textsuperscript{27} Lord and Stein highlight that the requirement to establish a co-ordination mechanism was ‘an explicit acknowledgement by the drafters that responsibility at the national level for ensuring the rights of persons with disabilities extends across a wide range of government sectors; therefore it poses significant coordination and coherency challenges’.\textsuperscript{28}

As with focal points, coordination mechanisms are ‘within government’ according to CRPD Article 33(1). Disability rights groups and engaged scholars have argued, for different reasons, for

\textsuperscript{20} CRPD Committee, ‘Concluding Observations on the Initial Report of Uganda’ CRPD/C/UGA/CO/1, 12 May 2016 para 65(a).
\textsuperscript{21} OHCHR, ‘National Implementation’ (n 13) para 10.
\textsuperscript{22} Special Rapporteur, ‘End of Mission Statement by the Special Rapporteur on her Visit to Canada’, (OHCHR 12 April 2009). <www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24481&LangID=E> accessed 10 November 2020.
\textsuperscript{23} OHCHR, ‘National Implementation’ (n 13) para 8.
\textsuperscript{24} ibid para 10.
\textsuperscript{25} ibid para 11(a).
\textsuperscript{26} ibid para 4.
\textsuperscript{27} OHCHR, ‘Thematic Study’ (n 14) para 32.
\textsuperscript{28} Janet Lord and Michael Stein, ‘The Domestic Incorporation of Human Rights Law and the UNCRPD’ (2008) 83 Washington Law Review 449, 463.
coordination structures to include rights-holders.  This is in line with earlier guidance on disability rights focal points. The 1993 ‘Standard Rules on the Equalization of Opportunities for Persons with Disabilities’ foresaw that ‘national coordinating committees, or similar bodies, to serve as a national focal point on disability matters shall be composed of ‘a combination of representatives of private and public organizations […] drawn from concerned government ministries, organizations of persons with disabilities and non-governmental organizations’.  

Most States have decided not to establish coordination mechanisms. As a result, focal points have taken on both a coordination and implementation role. In its concluding observations on State reports, the Committee has accepted merged focal points and coordination mechanisms, and structures including rights-holders. It has, however, called on States to adopt strategies and action plans that distribute implementation actions to various governmental structures. Similarly, the Special Rapporteur has advocated for collaborative action plans to provide for ‘clear lines of accountability as to which State authorities are responsible for implementing them and in what time frame’.

2.4. SPECIALISED KNOWLEDGE

The CRPD focal point and its staff are required to have technical expertise on the CRPD and to have knowledge of how government works to effect implementation. For the first time in a human rights treaty, the Convention requires 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’. Article 31(2) further recognises the role of data to assess implementation, and identify and address barriers faced by persons with disabilities.

During the negotiation of the CRPD, it was at one point suggested that Article 31 and Article 33 should be merged, and a CRPD focal point should be allocated responsibility for data collection. This proposal was not adopted, but the CRPD Committee has acknowledged the need for CRPD focal points to develop a good working relationship with Statistical Offices. The CRPD Committee emphasises that ‘monitoring of the implementation at the domestic level requires collective, coordinated and continuous efforts by States parties’ national statistical commissions, focal points and coordination mechanisms’. The process of monitoring implementation therefore requires

29. International Disability Alliance’s Forum for the CRPD, ‘Contribution to the OHCHR Thematic Study’ (policy recommendations by IDA 2009) 6.
30. UN General Assembly, ‘Standard Rules on the Equalization of Opportunities for Persons with Disabilities’ (1993) UN Doc A/RES/48/96, Rule 17.
31. Gauthier de Beco, Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe (OHCHR 2011) 42.
32. For an overview of arguments and an analysis of the CRPD Committee’s jurisprudence, see: Sébastien Lorion ‘A Model for National Human Rights Systems? New Governance and the Convention on the Rights of Persons with Disabilities’ (2019) 37(3) Nordic Journal of Human Rights 234.
33. UN Special Rapporteur, ‘Report of the UNSR: Seventy-first session of the United Nations General Assembly’ (2016) UN Doc. A/71/314, para 67.
34. UN Convention on the Rights of Persons with Disabilities A/RES/61/106 24 January 2007, Article 31.
35. Raley, ‘The Drafting’ (n 5) 143.
36. CRPD Committee, Guidelines on Independent Monitoring Frameworks and their Participation in the Work of the Committee, 2018.
37. ibid para 36.
partnership across government, and the CRPD focal point is central to fostering and sustaining these partnerships.

2.5. PERMANENCE OF THE STRUCTURES

CRPD Article 33 does not specifically set out a requirement that Article 33(1) focal points be permanent. However, the obligation to establish a focal point is not time bound and applies so long as a State is a party to the CRPD.

It would have provided greater assurance of permanency if the CRPD required States Parties to place the CRPD focal point or coordination mechanism on a permanent basis. The aforementioned Standard Rules includes a requirement that a national coordinating committee ‘be permanent and based on legal as well as appropriate administrative regulations’. 38

The Committee and UN Special Rapporteur have emphasised the importance of States having permanent arrangements for engaging with civil society, and it is presumed that these arrangements would be centred around the focal point. 39

2.6. PROFESSIONAL STAFF AND RATIONAL ADMINISTRATIVE CAPACITIES

The CRPD Committee has asserted that a CRPD focal point must have capacity to perform its duties. 40 In its concluding observations on Guatemala, the Committee emphasised the need to ensure the focal point has ‘sufficient material resources and qualified human resources to perform its role’. 41 The OHCHR has stressed that the focal points ‘need to be adequately supported in terms of technical staff and resources’. 42

The OHCHR has not explicitly suggested that focal points should have their own budgets, and has acknowledged that ‘a support structure’ within a ministry may be the most efficient approach. However, the OHCHR has emphasised that ‘it may be useful to explicitly recognise the independence of the focal point structure from the parent ministry’. 43

Furthermore, the CRPD Committee envisages that a CRPD focal point will develop formal procedures of engagement and liaison with civil society. 44 The CRPD Committee has also emphasised the need for a strategy ‘to coordinate public policies in all areas covered by the Convention’. 45

38. UN General Assembly (n 30) Rule 17(1).
39. Special Rapporteur, ‘Report of the UN Special Rapporteur on her Visit to the Dominican Republic’, A/HRC/31/62 12 January 2016.
40. CRPD Committee, ‘Concluding Observations on the Initial Report of Slovakia’ CRPD/C/SVK/CO/1 17 May 2016, para 88.
41. CRPD Committee, ‘Concluding Observations on the Initial Report of Guatemala’ CRPD/C/GTM/CO/1 29 September 2016, para 76.
42. OHCHR, ‘National Implementation’ (n 13) para 11(d).
43. ibid.
44. CRPD Committee, ‘General Comment No. 7 (2018) on the Participation of Persons with Disabilities, including Children with Disabilities, through their Representative Organizations, in the Implementation and Monitoring of the Convention’, CRPD/C/GC/7 9 November 2018, para 35.
45. CRPD Committee (n 20) para 64.
3. IMPLEMENTATION OR FOLLOW-UP? A COMPARISON OF CRPD FOCAL POINTS AND NMRFS

Article 33(1) provides that a focal point will be designated for ‘matters relating to the implementation of the present Convention’. The OHCHR defines implementation as ‘the process whereby States parties take action to ensure the realization of all rights contained in a given treaty within their jurisdiction’.46 Whilst the OHCHR envisages that a CRPD focal point will play a role in coordinating reporting on the Convention, it emphasises that a focal point should ‘clearly focus on developing and coordinating a coherent national policy on the Convention’.47 Due to the broad scope of the CRPD, a national policy on the CRPD is inevitably one and the same as a national disability policy.48

NMRFs are focused on ‘reporting’ to the international and regional human rights system, and on managing the ‘follow-up’ with a view to ensuring effective implementation of recommendations. In theory, NMRFs comprehensively cover all ratified treaties, including the CRPD. The process of implementation is closely related to international reporting and follow-up. However, they are distinct processes. Whilst implementation is grounded in the domestic context, reporting and follow-up is grounded in the international system. The OHCHR’s Guide sets out four types of roles for NMRFs: engagement with UN machineries; coordination within domestic executive actors involved in reporting and follow-up; consultation with all stakeholders at the national level; and information management, organised by planning and measuring activities.

Building on these four identified roles, the following section compares and contrasts the roles of NMRFs and CRPD focal points.

3.1. ENGAGEMENT WITH INTERNATIONAL HUMAN RIGHTS MECHANISMS

The principal rationale for the development of NMRFs is to facilitate timely reporting to the international human rights system.49

Whilst one of the responsibilities of a CRPD focal point is to coordinate State reporting relating to the CRPD, their establishment does not appear to have led to an increase in compliance with reporting requirements.50 In 2018, the OHCHR recorded that the CRPD was the treaty with the second highest proportion of non-reporting States, with 29% of parties recorded as non-reporting States parties.51

One of the suggested roles of an NMRF is the facilitation of visits by experts.52 We see here how the roles of NMRFs and CRPD focal points overlap. For instance, whilst the Spanish government has a CRPD focal point, the Spanish NMRF within the Ministry of Foreign Affairs was responsible for supporting the CRPD Committee and facilitating its visit for the purposes of a Committee

46. OHCHR, ‘Thematic Study’ (n 14) para 10.
47. ibid.
48. Eilíonóir Flynn, From Rhetoric to Action (Cambridge University Press 2011).
49. OHCHR, ‘Practical Guide’ (n 3) 1.
50. OHCHR, ‘National Implementation’ (n 13) para 11(c).
51. OHCHR, ‘Compliance by States Parties with their Reporting Obligations to International Human Rights Treaty Bodies’, HRI/MC/2018/2, para 12.
52. OHCHR, ‘Practical Guide’ (n 3) 3.
inquiry. In contrast, when the Committee conducted an inquiry into the UK, the UK CRPD focal point was responsible for engaging with the Committee and facilitating its visit. In both inquiry reports the Committee recorded its gratitude to the relevant State for assisting its visit.

The remit of the focal points most significantly overlaps with respect to reporting and follow-up. The preparation of a State report and follow-up activities can provide an opportunity for learning. Harold Koh highlights that participation in the international system of human rights enhances the capacity of States and State officials to become ‘discursively competent’ in human rights and to develop their ‘internal value set’. Bureaucrats responsible for the examination and follow-up processes can raise awareness of human rights amongst fellow policy makers, and highlight how their work relates to the implementation of the State’s human rights obligations. In addition, Creamer and Simmons highlight that treaty examinations can ‘set in motion bureaucratic routines to gather, authenticate and analyse information that might not have occurred in the absence of the obligation to report’. CRPD advocates emphasise the importance of such process-based innovations as the key to successful implementation.

If it is the case that treaty examinations and follow up activities provide opportunities for learning and procedural innovation, consideration is required as to whether these opportunities are more likely to be capitalised by bureaucrats working within a CRPD focal point or those within an NMRF.

3.2. INFORMATION MANAGEMENT AND PLANNING

One of the stated roles of an NMRF is ‘data collection and information gathering’ for inclusion in reports. On the face of it, this role appears straightforward. However, treaty bodies have become more exacting in their requests for information in preparation for an examination, and will increasingly recommend that States Parties develop their data collection capacity. This includes the CRPD Committee, which has repeatedly encouraged States to develop human rights based indicators. The OHCHR has similarly emphasised the utilisation of indicators within Recommendation Implementation Plans (‘RIPs’), elaborated by NMRFs to serve as information management tools.

Data collection plays a comprehensive role that goes beyond tracking implementation. The development of indicators is central to implementation planning. Eilionóir Flynn has highlighted that ‘the CRPD implicitly requires the development of future indicators and sets the contours for

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53. CRPD Inquiry Concerning Spain under the Optional Protocol CRPD/C/20/3, para 10.
54. CRPD Inquiry Concerning the UK under the Optional Protocol CRPD/C/15/4, para 47.
55. Harold Koh, ‘The 1998 Frankel Lecture: Bringing International Law Home’ (1998) 35(3) Houston Law Review 623, 647.
56. Cossette D. Creamer and Beth A. Simmons, ‘Ratification, Reporting, and Rights: Quality of Participation in the Convention against Torture’ (2015) 37(3) Human Rights Quarterly 579, 608.
57. Quinn (n 12) 259.
58. Especially as NMRF staff are not supposed to be specialists of all human rights normative contents: for a discussion on this, see article by Sébastien Lorion in this Special Issue.
59. OHCHR, ‘Practical Guide’ (n 3) 29.
60. Kevin Davis, Benedict Kingsbury and Sally Engle Merry, ‘Indicators as a Technology of Global Governance’ (2012) 46(1) Law & Society Review 71, 84.
61. Mads Pedersen and Federico Ferretti, Art.31 Statistics and Data Collection in Ilias Bantekas, et al (eds), The UN Convention on the Rights of Persons with Disabilities: A Commentary (Oxford University Press 2018) 939.
62. OHCHR, The National Recommendations Tracking Database <https://www.ohchr.org/Documents/HRBodies/UPR/NRTD.pdf> accessed 1 April 2021.
measuring success in improving the lives of persons with disabilities’. The process of developing human rights indicators is a complex exercise which requires technical expertise and knowledge of the inner workings of government. Gauthier De Beco notes that whilst States often invest significant time in the development of human rights indicators, the indicators often prove unworkable in practice. The process of developing indicators must be open and transparent. Indicators frame problems and if the process for their development is not robust and inclusive, they may be manipulated to present narratives of success. There is also a risk that the utilisation of indicators will privilege those with technical expertise over the views of rights-holders. State actors responsible for the development of indicators must overcome these obstacles if they are to develop indicators which go beyond tracking ‘technical’ implementation and reflect the realisation of human rights in practice. In 2020, the OHCHR published a resource package including a set of human rights indicators on the CRPD presented article by article, with an accompanying guide to data sources. This resource provides practical guidance for States on the development of indicators which they can adapt to reflect their national contexts.

Data collection serves the dual roles of implementation and monitoring. Given the emphasis on reducing the burden which reporting places on States, it would appear most appropriate for monitoring activities emerging from the treaty process to be integrated into domestic monitoring systems. As set out above, this is an issue which the CRPD Committee has highlighted in guidance on focal points. A CRPD focal point which has knowledge and expertise in national policy and established processes of engagement with rights-holders can perform a constructive role in engaging with statistical offices to bring together the science of indicators with the values and principles of the CRPD. These are attributes which an NMRF may not exhibit.

During the negotiation of the CRPD, the Australian NHRI proposed the incorporation of an obligation on ratifying States to develop a National Disability Action Plan (NDAP) on implementation of the CRPD. Whilst this proposal was not adopted, interest in the utility of NDAPs remains. Jerome Bickenbach highlights that to be effective, rights must be ‘operationalizable’ into policy goals, which should then be broken down into ‘challenging yet feasible’ targets. An NDAP provides a policy instrument for the collection of these goals and targets.

63. Flynn ‘From Rhetoric’ (n 48) 34.
64. Gauthier De Beco, ‘Human Rights Indicators: From Theoretical Debate to Practical Application’ (2013) 5(2) Journal of Human Rights Practice 380, 395.
65. Davis, Kingsbury and Engle Merry, ‘Indicators’ (n 60).
66. Bengt Jacobsson, ‘Standardization and Expert Knowledge’, in Nils Brunsson et al. (eds), A World of Standards (OUP 2000) 40, 46.
67. OHCHR, SDG-CRPD Resource Package: Human Rights Indicators, 2020 available at <https://www.ohchr.org/EN/Issues/Disability/Pages/SDG-CRPD-Resource.aspx> accessed 1 April 2021.
68. Quinn (n 12) 259.
69. Jerome Bickenbach, ‘Monitoring the United Nation’s Convention on the Rights of Persons with Disabilities: Data and the International Classification of Functioning, Disability and Health, (2011) 11 BMC Public Health 1, 5.
70. Michael Stein and Janet Lord, ‘Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential’ (2010) 32 Human Rights Quarterly 689, 702 -703.
71. ibid.
72. Bickenbach (n 69).
The OHCHR guide suggests that focal points should be tasked with the development and implementation of an NDAP. Flynn highlights that NDAPs can play a valuable role in facilitating cross-departmental collaboration on the implementation of the CRPD, and can be used as a policy framework for holding relevant authorities to account. The development and assessment of goals relating to the CRPD requires technical knowledge of the CRPD, political perceptiveness and interpersonal skills.

The OHCHR’s interest in national action plans has given way to interest in RIPS, which the OHCHR considers that NMRFs are well placed to coordinate. Advocates consider that a RIP coordinated by an NMRF overcomes many of the drawbacks of a national action plan and sectoral plans through using recommendations from the international system as the principal guide rather than a baseline assessment. We again see here the difference of approaches to compliance which underpin a CRPD focal point and NMRFs. Advocates of NMRFs consider that recommendations from the international system provide a blueprint for implementation efforts. CRPD advocates see the CRPD and the international system as providing a normative framework, the translation of which takes place at the domestic level through inclusive processes which harness the transformative potential of participation. Such processes draw on local knowledge, capacity and creativity. In contrast, the RIP process seeks to restrict domestic processes which may taint or water down recommendations from the international system. A CRPD focal point embedded in the domestic policy framework is well-placed to grow expertise and foster the establishment of rational capacities to facilitate the development of national plans and the application of workable indicators.

### 3.3. Consultation with other stakeholders

It is suggested that NMRFs will share information and ensure the involvement of a number of stakeholders in implementation and reporting. The OHCHR practical guide emphasises the need to ensure they have capacity to engage with civil society and other stakeholders. Advocates of NMRFs suggest that they can democratise the implementation process through involving civil society.
However, Sarkin suggests that ‘in many countries, these institutions generally remain closed, opaque and largely unknown outside the government’.82

CRPD Article 4(3) requires States to consult with and actively involve persons with disabilities in the development and implementation of legislation and policies to implement the CRPD. The CRPD envisages a central role for a focal point in facilitating the participation of persons with disabilities in the co-production of policies.83 Co-production is a broad concept which emphasises collaborative interaction on public policy from a broad range of actors both inside and outside of government through networks and partnerships.84 The UN Special Rapporteur emphasises that the duty towards persons with disabilities ‘stretches beyond consultation and access to public decision-making spaces and moves into the area of partnership, delegated power and citizen control’.85 Co-production allows public bureaucracies to draw on the policy capacity of organisations outside of government.86 CRPD advocates emphasise the transformative potential of participation.87 Through facilitating the participation of persons with disabilities in public policy production, a CRPD focal point can ensure the development of policies which genuinely implement the CRPD.

Waldschmidt and others highlight that the CRPD creates ‘new conditions for strengthening the political influence of persons with disabilities’.88 A CRPD focal point can facilitate the development of a more routinised relationship with government which is self-sustaining.89 The creation of a public body whose remit is clearly related to an interest group constituency has been shown to have an empowering effect on the constituency.90 Whether a body which has a general remit with respect to human rights reporting can have a similarly empowering effect has not been clearly demonstrated.

3.4. COORDINATION OF EXECUTIVE ACTORS INVOLVED IN IMPLEMENTATION

The development of the CRPD focal point was in part motivated by a realisation that persons with disabilities are particularly ill-served by silo ways of working within government.91 A CRPD focal

82. Jeremy Sarkin, ‘The 2020 United Nations Human Rights Treaty Body Review Process: Prioritising Resources, Independence and the Domestic State Reporting Process over Rationalising and Streamlining Treaty Bodies’ (2020) The International Journal of Human Rights 16.
83. Special Rapporteur, Report of the Special Rapporteur on the Rights of Persons with Disabilities: Thirty-first Session of the Human Rights Council (UN Doc A/HRC/31/62, 2016) para. 63; R. Kayess and P. French, ‘Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8(1) Human Rights Law Review 1.
84. Tony Bovaird, ‘Beyond Engagement and Participation: User and Community Coproduction of Public Services’ (2007) 67(5) Public Administration Review 846.
85. Special Rapporteur (n 83), para. 63.
86. George Anderson, ‘The New Focus on the Policy Capacity of the Federal Government’ (1996) 39(4) Canadian Public Administration, 469.
87. Stacy Clifford, ‘Making Disability Public in Deliberative Democracy’ (2012) 11 Contemporary Political Theory 211, 220.
88. Anne Waldschmidt, Andreas Sturm, Anemari Karačić and Timo Dins, ‘Implementing the UN CRPD in European Countries’ in Rune Halvorsen, Bjørn Hvinden, Jerome Bickenbach, Delia Ferri, Ana Marta Guillén Rodríguez (eds) The Changing Disability Policy System Active Citizenship and Disability in Europe (Routledge 2017) 178.
89. Meyer and Tarrow, The Social Movement Society (Rowman & Littlefield Publishers 1997) 21.
90. Richard K. Scotch, ‘Politics and Policy in the History of the Disability Rights Movement’ (1989) 67(2) The Milbank Quarterly 380.
91. Gerard Quinn, ‘The UNCRPD: Toward a New International Politics of Disability’ (2009) 15 Texas Journal on Civil Liberties & Civil Rights 33, 34.
point is therefore focused on the co-ordination of executive actions of relevance to the implementation of the CRPD.

The OHCHR guide on NMRFs sets out a specific role for an NMRF in clustering recommendations and working with relevant departments to identify required actions and monitor their delivery. The reality of implementing treaty body recommendations is somewhat more complex. Treaty body recommendations are rarely actionable without significant development. This is particularly the case in the context of the CRPD, where three factors complicate the implementation of recommendations from the CRPD Committee.

First, the language of the CRPD is open-textured. Gráinne de Búrca highlights that the CRPD was ‘deliberately defined in broad and open-ended ways’, which call for interpretation and elaboration when they are implemented in practice. 92 A compounding factor is that the recommendations which emerge from the Committee’s examinations tend to be of a similarly general nature. Indeed, the CRPD Committee has been criticised for failing to guide States on how proposed reforms ought to take place. 93

Second, the development of policy measures to address disability discrimination are largely context specific and need to be informed by the lived experience of persons with disabilities. 94 Whilst the Committee can provide unique insights into the requirements of the Convention, the precise design of policy measures to realise their implementation requires inputs from those with practical experience.

Third, effective implementation is complicated by the fact that many of the challenges persons with disabilities face are complex and may be classed as ‘wicked problems’. ‘Wicked problems’ are defined as ‘multifaceted policy problems [which] defy simple solutions and straddle the borders of organizations and ministerial areas of responsibility as well as administrative levels’. 95 The crafting of policy solutions requires detailed consideration of domestic factors.

A public body with human rights expertise cannot develop workable policy solutions alone, and instead must work alongside other government departments and agencies to develop solutions. The role of a CRPD focal point in coordinating disability policy has been extensively discussed. This discussion brings to the fore the dilemma of developing an appropriate strategy for the coordination of implementing human rights obligations across government which all human rights focal points will face. Namely, the question of whether the focal point should seek to develop itself as an authority which can require or compel action by other departments or bureaucrats, or if instead it should position itself as a persuader and influencer.

A number of sources suggest that CRPD focal points be positioned to direct action by other departments and to call them to account for their failure. The OHCHR Handbook for Parliamentarians suggests that the ‘national focal point(s) should coordinate the activities of various ministries with regard to disability rights; draw up, revise, or amend the relevant regulations’. 96 Quinn and Crowther highlight that ‘it is critical that the focal point has the authority to lead and

92. Gráinne de Búrca, ‘Human Rights Experimentalism’ (2017) 111(2) American Journal of International Law 277, 283.
93. Janet Lord and Michael Stein, ‘The Committee on the Rights of Persons with Disabilities’ in Philip Alston and Frédéric Mégret (eds) A Critical Appraisal (2nd Edition OUP 2020) 547, 576.
94. Lisa Vanhala, ‘The Diffusion of Disability Rights in Europe’ (2015) 37 Human Rights Quarterly 833.
95. Per Lægreid, Tiina Randma-Liiv, Lise H. Rykkja and Külli Sarapuu ‘Emerging Coordination Practices of European Central Governments’ (2015) 81(2) International Review of Administrative Sciences 346.
96. United Nations, ‘From Exclusion to Equality: Realizing the Rights of Persons with Disabilities’, October 2007, No 14-2007.
coordinate government wide initiatives’. Most significantly, the UN Special Rapporteur has indicated that the focal point as ‘the State entity overseeing the national strategic plans on disability inclusion must have the authority to initiate investigations and recommend sanctions to both State and private entities who fail to implement them’. This approach appears at odds with the general view that persuasion is the more effective approach to realising human rights implementation. In line with this perspective, States tend to emphasise the role of focal points in promoting rather than requiring coordination (for example, this is the case for the UK, as shown below in sub-section 3.3). The CRPD Committee has not reconciled these positions through its concluding observations, at times suggesting that a focal point play a role in ensuring the ‘accountability of government departments’, and at other times suggesting a promotional role.

All GHRFPs will require strategies to obtain cooperation and buy-in from policy makers throughout government. Public policy theorists highlight that bureaucrats are often limited by bounded rationality, which includes the ‘inability to separate values from facts in any meaningful way, or rank policy aims in a logical and consistent manner’. Love and others note that the CRPD calls for a ‘fundamental realignment of the accepted and ingrained norms and procedures that have dictated how disability policy is made and who gets to participate in that process’. A CRPD focal point performs a central role in changing underlying values within the broader bureaucracy in line with the CRPD, and in encouraging bureaucrats to appreciate the value of ensuring the effective inclusion of persons with disabilities in developing public policy.

In contrast, an NMRF and its staff are guided by the implementation of recommendations from the international system and their practical application. The language used in the OHCHR guide suggests that these recommendations will be applied in a neutral and impartial manner, and that the tasks to be performed by an NMRF are principally procedural in nature. It is not suggested that NMRFs will attempt to socialise and persuade policy makers, or substantively change their ways of working.

The more ambitious remit of a CRPD focal point, which is focused on culture change, may in fact make it better placed to foster coordination throughout government. This view reflects that of human rights theorists who emphasise the importance of norm entrepreneurs in bringing about culture change across government bureaucracies. Whilst norm entrepreneurs are seen as central to bringing about compliance there is a lack of empirical evidence on how they go about this.

97. Asia Pacific Forum of National Human Rights Institutions, Human Rights and Disability: A Manual for National Human Rights Institutions (2017) 90.
98. Special Rapporteur, Report to the Seventy-first Session of the UN GA (2016) UN Doc A/71/314, para 68.
99. Koh (n 55).
100. CRPD Committee (n 20).
101. CRPD Committee, ‘Concluding Observations on the Initial Report of Ethiopia’ CRPD/C/ETH/CO/1 31 August 2016, para 71.
102. Paul Cairney, ‘The Myth of “Evidence-Based Policymaking” in a Decentred State’ (2020) 0(0) Public Policy and Administration 1, 4.
103. Laufey Love, Rannveig Traustadottie & James Rice, ‘Shifting the Balance of Power: The Strategic Use of the CRPD by Disabled People’s Organizations in Securing a Seat at the Table’ (2019) 8 Laws 1.
104. M. Howlett, ‘The Supply and Demand for Policy Analysis in Government’ (2015) 34 Policy and Society 173, 174.
105. OHCHR, ‘Practical Guide’ (n 3) 22.
106. OHCHR, ‘National Implementation’ (n 13) para 10.
107. Koh (n 55).
Gauthier De Beco and Alexander Hoefmans suggest that CRPD focal points should establish themselves as an ‘expertise centre for all government actors when it comes to the CRPD and its implementation’. This view reflects the premise that expertise brings power. While this premise underpins a number of approaches to understanding public policy, Page highlights that expertise is often not the principal factor which generates influence. Kingdon and other policy analysts stress the importance of influencers having persuasive power and an ability to capitalise on political opportunities. A thematic focal point with policy expertise and a knowledge of the political context, including the dynamics in relevant interest groups, is arguably better placed than a general NMRF to effect change. The question of how institutional agents socialise and persuade government bureaucracies towards human rights principles and values is pertinent to the development of all GHRFPs, and warrants further research and analysis.

In summary, this section has identified how the role allocated to a CRPD focal point is more expansive than that allocated to an NMRF. A CRPD focal point is to be a socialiser and influencer of the general bureaucracy and to facilitate the participation of persons with disabilities. The role of a CRPD focal point clearly overlaps with that proposed for an NMRF. There are a number of features of a CRPD focal point which suggest that it is better placed to take on the role of reporting and follow-up relating to the CRPD. However, a thorough examination is hindered by the lack of empirical evidence on the effectiveness of either CRPD focal points or NMRFs.

4. THE UNITED KINGDOM’S CRPD FOCAL POINT AS A CASE STUDY

The UK has a developed disability and human rights law framework, having enacted comprehensive anti-discrimination legislation specific to persons with disabilities in 1995. The UK government also has a history of developing innovative approaches to coordinate and join up government activities across departments, in particular through the development of implementation units. The experience of the UK provides an interesting insight into the role of a focal point in international monitoring; in promoting changes across government; and in facilitating the participation of persons with disabilities.

4.1. ESTABLISHMENT OF THE UK CRPD FOCAL POINT

At the time of ratification of the CRPD, the Office for Disability Issues (ODI) within the Department for Work and Pensions was designated as the CRPD focal point. This body was established in 2005 with a remit focused on ensuring effective joined-up working across government to improve
the life chances of persons with disabilities.\textsuperscript{113} In line with a government commitment to develop a new national disability strategy, the ODI was abolished and subsequently replaced by the Disability Unit in 2019.

The establishment of the Disability Unit – which sits within the UK Cabinet Office – was welcomed by the disability movement as reflecting OHCHR guidance that a focal point should be at the highest possible level of government.\textsuperscript{114} The Cabinet Office is the department which usually takes responsibility for the implementation of strategic cross-departmental aims.\textsuperscript{115}

As a unit within a government department, the Disability Unit does not have a distinct legal base. The establishment of the Disability Unit was effected by way of a written statement from the UK Prime Minister to the House of Commons.\textsuperscript{116} Coordinating implementation of the Convention is not included as one of the four responsibilities of the Disability Unit.\textsuperscript{117} However it should be noted that one of the responsibilities of the Unit is to support the work of the Minister for Disabilities, who co-ordinates the Inter-Ministerial Group on Disability and Society which is intended to ‘to drive coordinated action across government, and implement the UNCRPD’.\textsuperscript{118}

4.2. REPORTING AND FOLLOW-UP

The UK CRPD focal point has taken on the role of coordinating reporting and follow-up relating to the CRPD. The UK is one of a small number of States which are recorded as being 100\% compliant with human rights reporting obligations.\textsuperscript{119} Therefore, the necessity for it to develop an NMRF is not evident. The UK government approach to human rights monitoring can perhaps be characterised as a mainstreaming approach. This means that responsibility for developing reports and follow-up is distributed to relevant departments rather than centralised within one body.

The ODI coordinated the UK input to the CRPD Committee’s inquiry into social security reform and to the CRPD Committee’s periodic review of the UK.\textsuperscript{120} The head of the ODI led the UK delegation during the examination process. The delegation included representatives from across a range of departments who were there in person or participated via video conference.\textsuperscript{121} The composition of the delegation and the use of video conferencing was clearly intended to ensure that the Committee members received substantive responses to their questions.

\begin{footnotes}
\footnotetext{113}{Prime Minister’s Strategy Unit, ‘Improving the Life Chances of Disabled People’ (London: HMSO, 2005).}
\footnotetext{114}{OHCHR, ‘National Implementation’ (n 13) para 11(b).}
\footnotetext{115}{Mathew Flinders, ‘Governance in Whitehall’ (2002) 80 (1) Public Administration 51, 59.}
\footnotetext{116}{Prime Minister Written Statement, ‘Machinery of Government Change’ (The Office for Disability Issues HC Deb, 25 June 2019, cWS).}
\footnotetext{117}{Disability Unit, ‘About Us’ <www.gov.uk/government/organisations/disability-unit/about> accessed 9 November 2020.}
\footnotetext{118}{Office for Disabilities, ‘Fulfilling Potential: Outcomes and Indicators Framework: Second Annual Progress Report’, November 2015, 2.}
\footnotetext{119}{OHCHR, ‘Treaty Bodies Database’ (June 2019) <www.ohchr.org/Documents/Issues/HRIndicators/Reporting_Compliance.pdf> accessed 7 November 2020.}
\footnotetext{120}{CRPD Committee, ‘Concluding Observations on the Initial Report of the United Kingdom’ CRPD/C/GBR/CO/1 3 October 2020.}
\footnotetext{121}{UK Government, ‘Opening Statement’, INT/CRPD/STA/GBR/28676/E, 23 August 2017.}
\end{footnotes}
The ODI live-streamed the examination process and invited stakeholders to attend an event at their offices to watch the examination.\textsuperscript{122} This initiative was positively noted by the CRPD Committee Rapporteur on the UK.\textsuperscript{123} This provides an example of how a CRPD focal point which is connected with domestic civil society actors can localise and provide visibility of treaty body examinations.

The reports and inputs developed by the UK focal point during both the initial examination and inquiry process were broadly conclusive and addressed questions raised by the Committee. In its response to the Committee’s inquiry, the UK government expressed strong disagreement with the Committee’s recommendations. However, the response addressed each of the recommendations and provided substantive detail of the government’s position.\textsuperscript{124}

The CRPD focal point has continued to coordinate follow-up reporting. In its 2017 concluding observations, the Committee identified four concluding observations which the UK government was asked to report on within one year.\textsuperscript{125} In addition, the Committee recommended that the UK report to the Committee on implementation of the Inquiry report recommendations annually.\textsuperscript{126}

The UK government has complied with these follow-up reporting requirements, with substantive reports submitted on time. Indeed, on occasion the government has gone beyond its specific obligations. In its 2018 follow-up report, the Minister for Disabilities provided a substantive covering note setting out broader information on UK disability policy.\textsuperscript{127} The 2019 report provided holistic detail on the issue of social security reform.\textsuperscript{128} The imposition by the Committee of an obligation to produce an annual progress report on social security reforms has clearly led to the UK focal point putting in place bureaucratic evidence-gathering and data collection processes to ensure compliance. In addition, the UK focal point has used the reports to inform stakeholders, promoting the reports online and producing an easily readable version of the 2019 progress report.\textsuperscript{129}

The CRPD Committee has not published substantive comments on either the 2018 or 2019 reports. This apparent inaction by the Committee underscores a concern that if domestic implementation processes are to take their lead from the treaty body system, delays within this system will impact adversely on domestic implementation efforts.\textsuperscript{130}

\begin{itemize}
\item \textsuperscript{122} Disabled People Against Cuts, ‘ODI Live Streaming of Periodic Examination of the UK by UN Disability Committee’ (27 July 2017)<https://dpac.uk.net/2017/07/odi-live-streaming-periodic-examination-uk-un-disability-committee/> accessed 5 November 2020.
\item \textsuperscript{123} OHCHR, ‘Committee on the Rights of Persons with Disabilities Reviews Report of the United Kingdom’ (24 August 2017) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21993&LangID=E> accessed 7 November 2020.
\item \textsuperscript{124} UK Government, ‘Observations on the Report of the CRPD Committee under the Optional Protocol’ CRPD/C/17/R.3, 3 November 2016.
\item \textsuperscript{125} CRPD Committee (n 120), para 73.
\item \textsuperscript{126} \textit{ibid} para 74.
\item \textsuperscript{127} UK Government, ‘Follow-Up to the Concluding Observations’, CRPD/C/GBR/CO/1/Add.1, 3 June 2019.
\item \textsuperscript{128} ODI, ‘Progress Report on the UK’s Vision to Build a Society which is Fully Inclusive of Disabled People’ October 2019.
\item \textsuperscript{129} ODI, ‘The Government’s Report to the United Nations about the Rights of Disabled People 2019 Easy Read Version’, October 2019.
\item \textsuperscript{130} Aslan Abashidze and Aleksandra Koneva, ‘The Process of Strengthening the Human Rights Treaty Body System: The Road towards Effectiveness or Inefficiency?’ (2019) 66 Netherlands International Law Review 357.
\end{itemize}
4.3. The Promotion – Authority Dilemma in Practice

During a recent parliamentary inquiry on disability, a number of stakeholders expressed frustration that the CRPD focal point had not been effective in directing coherence throughout government and across government departments on CRPD implementation. The head of the UK focal point informed the inquiry that it had a role in ‘challenging others to take account of the needs of disabled people and to involve them in matters that impact on them’. However, the head of the focal point made clear that it is ‘not a policing forum’ and had ‘no powers to require other departments to do things’.  

The view that the UK’s CRPD focal point should take on an authoritarian role directing activities across government departments was perhaps never a realistic prospect. This is underscored by the fact that the Minister for Disabilities, who has direct responsibility for the focal point, is a Parliamentary Under Secretary of State -effectively the lowest rank for a UK Minister. At a bureaucratic level, political scientists have highlighted that the UK Civil Service tends to focus on the construction of consensual solutions to cross-government issues rather than the imposition of solutions. This approach is reflected in the UK government’s description of the role performed by the focal point within its initial report to the CRPD Committee. The government stated that the role of the focal point is to ‘help government policy departments that are responsible for the delivery of Convention rights in their policy areas, to ensure that they are aware of the obligations of the Convention, and consider them as they develop new legislation, policies and programmes’.

This quote raises a query relating CRPD focal points, namely whether they should provide advice to departments on specific policies or bills, or if instead they should focus on government or departmental strategies relating to the CRPD.

The UK has pioneered the development of equality impact assessments within the policy development process -a mechanism for assessing the impact of a proposed policy or bill on numerous protected groups, including persons with disabilities. Given the focal point’s knowledge of the CRPD and relationship with persons with disabilities, it could provide informative inputs to such assessments. Unfortunately, guidance on conducting equality impact assessments does not suggest that public authorities should seek the views of the focal point. The role of the focal point in the UK policy development process is somewhat unclear, and it appears that opportunities for its integration are not being seized.

The CRPD focal point has been criticised for failing to comment on specific issues affecting persons with disabilities. For instance, a number of disabled persons organisations have been critical of the focal point for failing to issue guidance or make substantive comments during the

131. The Select Committee on the Equality Act 2010 and Disability Inquiry, ‘Neil Crowther and Nick O’Brien – Oral Evidence’ (QQ 157-165) 316.
132. The Select Committee on the Equality Act 2010 and Disability, ‘Inquiry Evidence Session No. 1 Heard in Public Questions 1 – 13’, 7 July 2015, p. 3.
133. ibid p. 7.
134. Edward Page and Bill Jenkins, Policy Bureaucracy: Government with a Cast of Thousands (OUP 2005).
135. UK Government, ‘Initial Report on UNCRPD’, CRPD/C/GBR/1, para 349.
136. House of Commons Library, ‘The Public Sector Equality Duty and Equality Impact Assessments’, Number 06591, 8 July 2020.
137. Equality and Human Rights Commission, Meeting the Equality Duty in Policy and Decision-Making: England (And Non-Devolved Public Authorities in Scotland and Wales) 2014.
coronavirus pandemic. The CRPD focal point has also been notably absent from a number of key policy discussions. In particular, the CRPD focal point did not appear to input to a post-legislative inquiry into the Mental Capacity Act 2005. The inquiry raised substantive concerns that the empowering ethos of the Act was undermined due to paternalistic attitudes across government bureaucracies - the very practices which focal points should be seeking to address.

In the UK context, the potential for the Disability Unit to establish itself as a body which provides technical expertise on the CRPD is limited due to the trend for UK civil servants to be generalists rather than specialists. Reflecting this approach, the UK focal point has tended to be focused on the development and implementation of national strategies or NDAPs, rather than the provision of technical advice. Whilst such tasks require a degree of technical expertise, they also require ‘political perceptiveness and well-developed interpersonal skills’.

Throughout 2020, the Disability Unit has been seeking to progress with the development of a new national disability strategy. In doing so, the Unit has sought to promote new ways of working and to challenge the disjointed and descriptive manner in which departments collate disability data. The proposed new national strategy will provide an opportunity for a joined-up data collection system, which will provide a clear overview of the lived experience of persons with disabilities. Such a system can provide an accurate account of the experience of persons with disabilities to inform the development of rational policy.

The Unit has not yet explicitly set out how the strategy will integrate the CRPD reporting requirements. Aligning the strategy with the obligation to submit annual progress reports and periodic reports to the CRPD Committee would assist both in localising the Convention and in reducing the reporting burden on the State.

### 4.4. Facilitating the Voice of Persons with Disabilities

The Disability Unit is responsible for ‘bringing the views, insights and lived experience of disabled people to the centre of policy making’. In July 2020, the Disability Unit established the Disabled People’s Organisations Forum (‘the Forum’). The Forum is intended to place the ‘expertise of disabled people into the heart of government policy making’. The Forum is composed of disabled peoples’ organisations and representatives from eight regional stakeholder networks,

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138. Disability News Service, ‘Coronavirus: ‘Scandalous’ Silence of Government’s Disability Unit as Thousands Die’, 16 July 2020 <www.disabilitynewsservice.com/coronavirus-scandalous-silence-of-governments-disability-unit-as-thousands-die/> accessed 7 November 2020.
139. UK House of Lords, ‘House of Lords Select Committee on the Mental Capacity Act 2005 Report of Session 2013–14 Mental Capacity Act 2005: Post-Legislative Scrutiny’, 13 March 2014 HL Paper 139.
140. Page (n 109) 266.
141. Mintrom (n 75).
142. Presentation by Marc Verlot to DARE Public Event, ‘Engaging Disability Research for Policy Reform’, 29 October 2020 <https://www.youtube.com/watch?v=UXmypsF08Cg&feature=youtu.be> accessed 9 November 2020.
143. Quinn (n 12) 254.
144. Disability Unit, ‘About Us’ available at: <https://www.gov.uk/government/organisations/disability-unit/about> accessed 30 March 2021.
145. Disability Unit, ‘Disabled People’s Organisations (DPOs) Forum Launches this Month’ (20 July 2020) <www.gov.uk/government/news/disabled-peoples-organisations-dpos-forum-launches-this-month> accessed 30 March 2021.
which the Unit also administers. Importantly, there is a strong emphasis on the membership reflecting the lived experience of persons with disabilities.

The success of the Forum will be largely dependent upon the ability of Unit staff to create an enabling environment in which persons with disabilities can formulate their positions. Within such an environment, the Unit staff can share their expertise on ways of working within government and the priorities of fellow policy-makers. Such insights can greatly assist persons with disabilities in framing their policy positions in a manner which resonates with policy-makers throughout government.

Whilst a CRPD focal point as part of government bureaucracy is limited in its ability to influence the political priorities of government, a focal point can indirectly influence the political priority afforded to disability issues through facilitating the participation of persons with disabilities. Scharpf highlights that ‘policy formulation and policy implementation are inevitably the result of interactions among a plurality of separate actors with separate interests, goals and strategies’. The Forum clearly has potential to empower persons with disabilities in the policy context.

5. CONCLUSION

The analysis set out in this article is intended to contribute to and stimulate general discussions on the role of GHRFPs. Whilst it has long been accepted that committed bureaucrats are key to bringing about human rights compliance through socialising and persuading their colleagues, there is limited exploration of how they go about doing so. This article and the present special issue seek to address this need. Analysing empirical evidence on the practical effects of GHRFPs will facilitate the identification of best practice, and ultimately improve the performance of both CRPD focal points and NMRFs.

As the OHCHR continues to promote the adoption of NMRFs, the appropriateness of comprehensive structures covering all rights and focused on human rights reporting and follow-up requires consideration. Concerns have been raised that clustering treaty body examinations may undermine the fundamental and specific nature of the individual Conventions. These concerns are of relevance to the development of NMRFs and are particularly pertinent with respect to the CRPD.

As outlined, the CRPD focal point is the most developed of all thematic GHRFPs. Its development was influenced by a number of unique attributes of the CRPD, which make it necessary for the State to establish structures to promote culture change within government and to facilitate the participation of persons with disabilities in the co-production of policies.

The assessment of the UK demonstrates that CRPD focal points are still in the process of developing themselves and new approaches across government to effect change. It also

146. Disability Unit, ‘Regional Stakeholder Network to Give Disabled People a Stronger Voice’ (2 April 2020) <www.gov.uk/government/news/regional-stakeholder-network-to-give-disabled-people-a-stronger-voice> accessed 30 March 2021.
147. Richard Freeman, ‘Epistemological Bricolage How Practitioners Make Sense of Learning’ (2007) Administration & Society 39(4) 476, 480.
148. Fritz Scharpf, ‘Interorganizational Policy Studies: Issues, Concepts and Perspectives’, in Kenneth Hanf and Fritz W. Scharpf (eds) Interorganizational Policy Making: Limits to Coordination and Control (Sage 1978) 347.
149. Abashidze and Koneva (n 130), 382.
demonstrates that they have the ability to translate the norms within the CRPD into national policies in a way that is simply not open to NMRFs.

It is important for advocates of NMRFs to acknowledge the risk that their development may undermine CRPD focal points and innovative processes which they have developed. Replacing them with processes that may be administratively more efficient might stifle the transformative potential of international monitoring.

The structural changes needed to bring about human rights compliance requires gradual transformation. The absence of empirical evidence on the activities and impact of the work of CRPD focal points prevents a full assessment of the implications of the growth of NMRFs. This is something which the CRPD Committee should seek to address in its dialogue with States. GHRFPs clearly have potential to transform domestic ways of working. However, their development must be underpinned by a coherent strategy which accepts that a one size fits all approach will not work in every jurisdiction.

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