



National Human Rights Institutions have played a key role in Latin America's recent history and democratic transition. They have taken a distinct form in the region compared to the rest of the world, one which reflects the specific context and historical moment of Latin America.

LATIN AMERICA'S NATIONAL HUMAN RIGHTS INSTITUTIONS: FOSTERING DEMOCRATIC TRANSITIONS AND GUARANTEEING HUMAN RIGHTS

SUMMARY

[National Human Rights Institutions](#) (NHRIs) in Latin America – also known as Public Defenders, Ombudsman Offices, Human Rights Commissions or Human Rights Attorneys – take on a variety of roles. Overall, they aim to bring civil society demands before public authorities, mediate social conflicts of public interest and provide an array of inclusive mechanisms for social involvement. They also influence public policies to incorporate a human rights approach, address cases of serious human rights violations, promote victims' rights and issue recommendations to authorities in order to reinstitute their rights. Overall, these institutions also serve as a means of balancing power asymmetries between the State and the citizenry and promoting accountability amongst government agencies. This Brief analyses innovative practices implemented by Latin America's NHRIs, as well as the contextual elements which have made their development and efficient enforcement possible.

THE COMMON CHALLENGE OF PROTECTING HUMAN RIGHTS

The 1980s witnessed important democratic transitions throughout Latin America. The newly elected governments replaced authoritarian regimes responsible for severe human rights violations: torture, arbitrary detentions, forced disappearances and extrajudicial executions. A key factor characterising the new political structures in the region was the need to establish a mechanism to control human rights abuses perpetrated by government authorities and advance institutional processes to strengthen the enforcement and validity of human rights in these nascent democracies. In Latin America, the mechanism created was establishing national human rights institutions whose mandate and activities would be orientated towards protecting, defending and enforcing human rights.





Figure 1: Latin American Political Context, 1960s to mid-1990s



Source: Own elaboration.

The situation faced by most countries in South Asia and Sub-Saharan Africa is not too different from the Latin American one. These regions have reported the ongoing occurrence of severe human rights violations such as abuse by police forces, extrajudicial executions, torture, impunity, inadequate justice systems, threats to freedom of speech and gender-based violence. In this light, South Asian and Sub-Saharan African readers could find it useful to learn about practices that Latin American NHRIs have implemented to promote, defend, protect and enforce human rights.

LATIN AMERICA'S NHRI MODEL

By definition, NHRIs are government bodies with a constitutional or legislative mandate to protect and promote human rights. Though they are funded by the State and are part of the State apparatus, they operate and function independently from government. While their specific mandate may vary across countries, generally their role is to address discrimination, promote and protect civil, political, economic, social and cultural rights, and address human rights violations. To fulfil their mandate NHRIs perform functions

like handling complaints, educating about human rights and making recommendations on legal reforms, among others.¹

At the international level, NHRIs originated mainly to perform functions related to oversight of public management. It was only later on that the model would incorporate the defence and promotion of human rights. This model, the most widely recognised one today, emerged in Sweden and was institutionalized there in 1809.²

The *Paris Principles* are the main source of regulatory standards for today's NHRIs and were adopted by the NHRIs during an international workshop held in Paris in 1991. The signing marked the beginning of cooperation and standardisation amongst NHRIs worldwide. They were subsequently ratified by both the Human Rights Commission and the General Assembly of the United Nations. The Paris Principles outline the essential and ideal characteristics which NHRIs should adopt from the moment of their creation all the way through to when they are operational.³

Latin American NHRIs are based mainly on the Spanish and Swedish model. However, they are also clearly related to the Scandinavian model, in that they are independently controlled bodies which do not require parliament to appoint its senior officials and that their actions are not binding.

The clearest difference between the Latin American model and their European parallels is that the former sets out explicit functions that prioritise defending human rights; this is in addition to the non-jurisdictional oversight of

Figure 2: Forced Disappearances in Latin America



Source: Latin American Federation of Associations for Relatives of the Detained-Disappeared ([FEDEFAM](#)).

¹ For more information, see the [website](#) of the International Coordinating Committee for National Human Rights Institutions (ICC).

² González, L. 2003. [The Institution of the Ombudsman: The Latin American Experience](#). *Revista IIDH* 37: 219-248.

³ See, for example: International Council on Human Rights Policy. 2005. [Assessing the Effectiveness of Human Rights Institutions](#). International Council on Human Rights Policy, Versoix.



public administration that is a feature common to NHRIs throughout the world. This explicit human rights function is complemented by the NHRIs' ability to transfer files to the public prosecutor when a criminal investigation is required to initiate or enhance the judicial process, regardless of the human rights-related process being carried out by the NHRI. The Latin American model also includes the obligation to undertake human rights promotion and education activities.

In Latin America, NHRIs adapted specifically to their domestic contexts, clearly acknowledging the international models, yet focusing mainly on the need to protect, promote and enforce human rights. The repression and armed conflicts that most Latin American countries experienced during the 1970s and 1980s played a key role in shaping the creation of the region's NHRIs. Institutions were thus influenced by the social, historical and political context of the region, and were deeply linked to both the constitutional developments of the democratic transitions and the end of the authoritarian regimes. Since their creation, NHRIs embraced the needs of their particular countries in their *raison d'être*, embedding them into a model aimed at improving the recognition and protection of human rights. For example, in El Salvador, a country that suffered a prolonged civil war, the human rights focus of the NHRI was influenced by the goal of stopping armed conflict and promoting coexistence among different social groups. In Bolivia, the NHRI has been entrusted with ensuring that the multi-ethnic and multi-cultural makeup of the country is respected.

Just a few decades after their birth, these institutions have established themselves as potentially ideal platforms for tackling grave human rights violations in the region and fostering citizens' ability to defend and enforce their rights. As a result, one of the main issues on civil society's agenda regarding these institutions is the reinforcement and improvement of their mandate. Overall, it is crucial to highlight the participation of civil society and social movements that, in different degrees of involvement, have played an important role. They have demanded professionalism, transparency and real and efficient fulfilment of NHRIs' mandate, which itself has also had an impact in strengthening Latin America's newly born democracies.

LATIN AMERICAN NHRIs: DESIGN FEATURES AND GOOD PRACTICES

What are the main design features of Latin American NHRIs? This section identifies some of the key characteristics of NHRI design, to later illustrate examples of good practice from the region that stem from these institutional set-ups.

The key design features of Latin America's NHRIs include:

- **Jurisdiction:** well-defined attributions, functions and limits; coordination with other public entities
- **Constitutional or legal creation:** legal status granting permanency and autonomy
- **Selection and profile of the institution's head:** clear, transparent and inclusive procedures
- **Political, budgetary and managerial independence:** linked with legitimacy before civil society and other state agencies and includes having the financial resources needed to operate independently

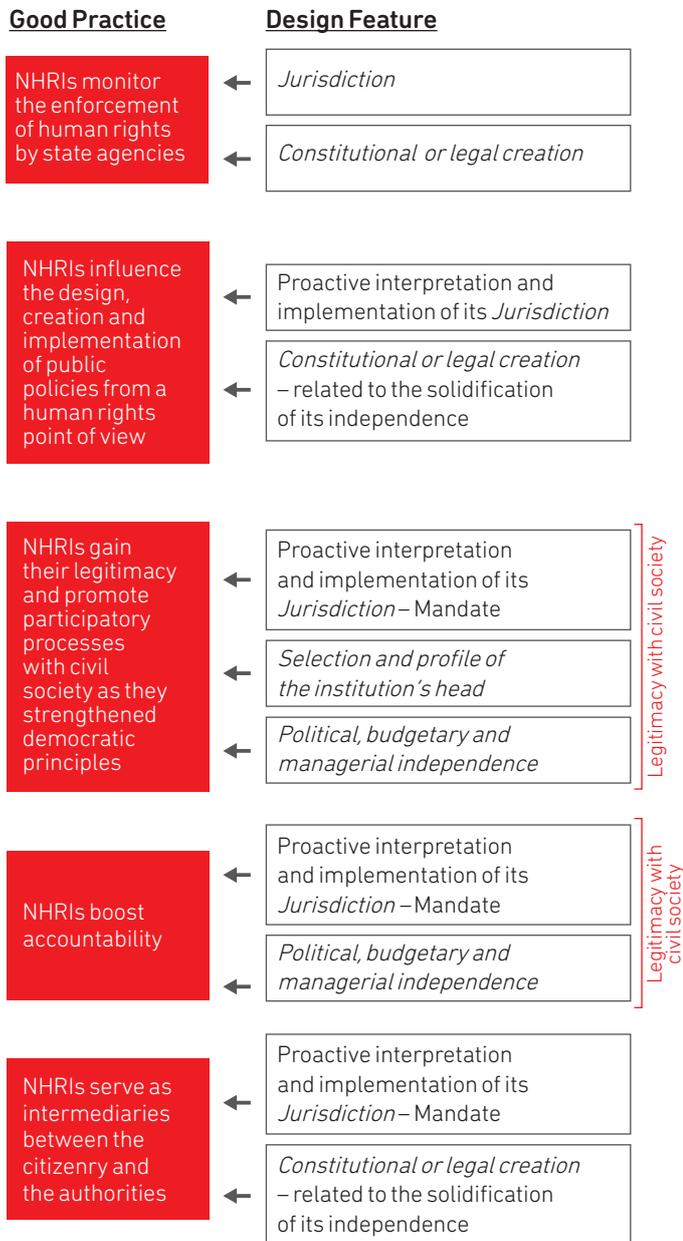
NHRIs' institutional design can vary from country to country, as does their implementation. In broad terms, one of the main purposes of NHRIs is to oversee the work carried out by the public administration. Hence, it is important that NHRIs are empowered to process and submit complaints when the actions or omissions of public authorities are considered to be potential human rights violations. This is directly related with the jurisdiction of the NHRI; these oversight actions can be carried out efficiently only if NHRIs have a certain level of independence from the state, and if the government acknowledges NHRIs' existence and mandate.

So far we have seen that the design features of NHRIs are related to each other. The nature of NHRIs is founded in and orientated towards an institutional design that seeks to generate and strengthen public authorities. In addition, Latin American NHRIs seek to be institutions that are professional, efficient, transparent and close to citizens, and whose guiding principle is promoting human rights.

Good practice from the region is linked with institutional design. The diagram below demonstrates specific design features and the good practices they have fostered.



Figure 3: Latin American NHRIs' Design Features and Resulting Good Practice



Source: Own Elaboration.

SPOTLIGHT ON GOOD PRACTICE

In this section, we highlight some of the good practices of NHRIs from the Latin America region.

Independence to Strengthen Monitoring of State Agencies and Enhance Human Rights Enforcement

Independence from government interference was the keystone, as NHRIs were designed to ensure government

actions respect, protect, enforce and defend human rights. This key requirement made it essential to eliminate any government interference with their performance and to separate NHRIs from political, economic and private sector hubs of power. NHRIs need managerial, budgetary and jurisdictional independence, allowing them to operate without being subject to formal or informal controls that limit or narrow their autonomy.

Budgetary independence is one of the key components of independence overall. In Argentina, Bolivia, Costa Rica, Guatemala and Panama, the NHRIs' budget is included within the budget of the Legislative Branch. In Colombia, Ecuador, Honduras, Nicaragua, Puerto Rico and Venezuela, it is allocated within the general State budget. Only in Mexico and El Salvador do NHRIs have a budget of their own, giving these countries' NHRIs the highest level of both budgetary - and overall - independence.⁴

In addition, autonomy and sustainability are linked with whether or not the NHRI was founded as a law or as a Constitutional provision (see text box next page). The degree of certainty of NHRIs' governance, mandate, legitimacy and permanence is generally seen as greater when they are acknowledged in the Constitution. This is not only due to the juridical tradition of constitutionalism in the region, but also because more complex processes are required for a constitutionally-mandated entity to be reformed or abolished.

Promoting Public Policies with a Human Rights Approach

Thanks to the solidification of their independence and their proactively interpreted and enforced mandates, NHRIs have become key players in promoting a human rights approach within public institutions' agendas and in transforming public policies, programmes and laws within their jurisdiction.

Such is the case of the [Human Rights Programme of the Federal District](#) (2009) in Mexico which came up with a catalogue of specific actions to improve human rights in [Mexico City](#) based on a [diagnosis](#) of the human rights-related problems faced by the city. The Programme is the result of a participatory and plural process in which various civil society and governmental actors were involved.⁵ It includes several courses of action to be carried out by the three branches of government - executive, legislative and judicial - and by autonomous bodies including the [Federal District Human Rights Commission](#) itself.⁶

⁴ Gónzales 2003, above n 2.



A similar exercise was performed at the national level in Mexico, although it differed substantially from the aforementioned one in several ways. The most relevant difference is that in the Federal District civil society was actively involved both in the structuring of the Diagnosis and the Programme. Public policies on the matter were developed, binding the Executive, Legislative and Judicial branches, and the process was formalised through a local law requiring the fulfilment of the Programme and the progressive implementation of a human rights perspective in public agendas.⁷

Constitutionally Created NHRIs

Some examples of countries that created NHRIs via constitutional mandate are Guatemala (1985), Mexico (1990), El Salvador (1991), Colombia (1991), Paraguay (1992), Honduras (1992), Argentina (1993), Peru (1993), Nicaragua (1995), Bolivia (1997) and Venezuela (1999). In Ecuador (1996) and Panama (1996), NHRIs were initially created by law, but then later added into the constitution.

Promoting Civil Society Participation to Gain Legitimacy and Strengthen Democratic Principles

In order to maintain their status as intermediaries between public authorities and the citizenry, NHRIs must fulfil their duty to represent the interests and needs of citizens. They also take on the role of mediators in public conflicts, minimising differences between opposing points of view. For all of these roles, the legitimacy of their origin becomes important.

This legitimacy is based on an array of characteristics, such as the selection of their leaders and the office where appointments take place. Overall legitimacy also includes the legitimacy of their management, built upon the way in which their mandates are developed and fulfilled, as well as on the impact of their activities. This may be reflected in the impact in defending and promoting human rights and how the NHRIs' activities are perceived by citizens. A high level

of legitimacy can be visible, for example, in an increase of complaints or procedures submitted by citizens to NHRIs and the effectiveness of their recommendations addressed to public agencies.

In terms of the appointment of the Head of the NHRIs, the most common formula used in Latin American countries is selection by the legislative branch based on candidate proposals, which may originate from the Executive branch or, preferably, from civil society. Involving civil society in the process can increase legitimacy, promote objectivity and help ensure that the candidates have a more professional background. In Latin America, civil society usually demands that candidates are committed to human rights and that they display independence from other branches of government. That is why the participation of civil society often creates greater legitimacy in the appointment, while also increasing accountability overall.

To cite an example from Mexico, in 2009 [Fundar](#), the author of this Brief, together with other organisations, took part in an [initiative](#) to strengthen the [selection process](#) of the head of the [Mexican National Human Rights Commission](#) and in particular to expand the ways in which civil society can participate in the process. This experience highlighted the importance of a professional President of the NHRI as well as the need to incorporate civil society participation.

There are other examples of good practices in the region in which broad participation of civil society is favoured. In Bolivia, for example, the law stipulates that the appointment process must be open to public competition, and allows civil society to propose or challenge the appointment (Article 7 of the Ombudsman Act of Bolivia). In Nicaragua, candidates are nominated by the legislature in consultation with civil society organisations (Article 138 of the Constitution and Article 8 of the Law of the Ombudsman for the Defence of Human Rights).⁸

Boosting Accountability

The accountability of NHRIs adds to their legitimacy in the eyes of the citizenry. As a result, publicising their

⁵ This exercise, which led to increased citizen involvement, pooled good practices in creating public policy focused on human rights. The Programme will also serve as an accountability mechanism while the implementation and initialisation of its contents are evaluated.

⁶ To learn more about efforts by the Mexico City Government to implement a human rights approach into the budgeting process, see the [ELLA Brief: Mexico City's Innovation: Budgeting with a Human Rights Approach](#).

⁷ To learn more about this case and a recent experience from Argentina, see the [ELLA Brief: Making Human Rights Real: Two Latin American Experiences in the Rights Based Approach to Policymaking](#).

⁸ Gónzales 2003, above n 2, 5.



activities and their scope of action are important means of informing people about the structural causes, contexts and circumstances which foster human rights violations, as well as national efforts to address them. It is therefore understood that institutions must disclose their recommendations and investigations and issue special or themed reports on current and paradigmatic topics.

Accountability also includes being able to issue recommendations or opinions aimed at public entities. Often, though, recommendations are not binding in that there is no enforcement mechanism if they are not followed. However, the political cost of not following the NHRIs' recommendations is usually high, especially when coupled with pressure from civil society, and particularly affected citizens. The legitimacy of the recommendation also comes from the autonomy of the NHRI and in that the motivation for issuing the recommendation is given by its surveillance mandate.

It is also important for NHRIs to be enhanced with liability orders in case public bodies refuse to cooperate with the recommendations. As a result, these mechanisms should, on the one hand, oblige public bodies to cooperate with the investigation and supply all information necessary, and on the other, respond to and comply with recommendations. These sanctions range from administrative or penal sanctions, to social and media pressure.

Other aspects related to accountability depend on the country and the legal establishment of the NHRI mandate. For example, certain countries, such as Costa Rica, Mexico, Panama and Paraguay, restrict NHRIs' involvement in electoral cases. In other countries, such a restriction does not exist. Peru, for example, allowed its Ombudsman to file a complaint in 2001 with the [Inter-American Human Rights Commission](#) against the Peruvian government, arguing that

the National Electoral Jury had [restrictively interpreted the electoral law](#) by allowing gender discrimination when it established a quota which was below the level established by the law.⁹

Serving as Intermediaries Between Citizens and the State

NHRIs in the region perform their mandate through a catalogue of tasks that includes, in broad terms, some of the following functions:¹⁰

- Receiving requests or complaints submitted by citizens about human rights violations
- Channelling investigations about complaints or requests delivered to them, swiftly and free of charge¹¹
- Offering recommendations or non-binding opinions to the public sector
- Mediating social conflicts and conflicts of public interest
- Educating, promoting and disseminating human rights

A large part of their activities focus on investigating cases of human rights violations, making it necessary to endow these institutions with the capability to perform in-depth investigations, including the ability to carry out on-site inspections, practice diligences, glean any and all information they deem necessary, establish precautionary measures and measures for safeguarding rights, and request court orders to guarantee civil servants' cooperation.

In Bolivia, for example, the Ombudsman has played a key role as intermediary. For instance, the agency participated in talks about the coca leaf and comprehensive development in the tropical region of Cochabamba, an area facing a serious dispute over water and suffering negative consequences of coca harvest eradication. The Ombudsman became involved, securing an agreement with indigenous leaders from the area in conflict.¹²

⁹ The Commission, admitted the case due to the alleged violations of Articles 1(1), 23 and 24, of the American Convention. [CASE 12.404, JANET ESPINOZA FERIA ET AL. PERU](#), October 10, 2002.

¹⁰ Cox, S. et al. 2008. *Defensorías Locales: Análisis de Experiencias - Modelos de Réplicas en América Latina (Local Ombudsmen: Analysis of Experiences - Models of Replicas in Latin America)*. Forja, Santiago de Chile.

¹¹ It should be noted that these investigations are not a substitute for administrative or judicial action, but rather a complement.

¹² De la Fuente, M. [La "Guerra" Por el Agua en Cochabamba: Crónica de una Dolorosa Victoria \(The "War" for Water in Cochabamba: Chronicle of a Painful Victory\)](#). Unpublished manuscript.

CONTEXTUAL FACTORS

UNDERPINNING DEVELOPMENT OF LATIN AMERICA'S NHRIs



Though the human rights mantra is universal in its aspirations, the appropriation and the practical exercise of promoting human rights has taken on many different shapes and forms which, when merged with local contexts, have resulted in very different mandates and institutional forms in the region's NHRIs. However, what many of these institutions have in common is the way in which they took part of the democratisation processes in Latin America. In other words, they were established at a time when the region was looking for new kinds of institutions which could be better suited to tackle the social and political conundrums faced by the new governments in democratic transition.

Another relevant contextual factor is the role played by civil society in fostering and acknowledging human rights in the region. Its work set important standards for the enforcement of these rights and encouraged the reinforcement of mechanisms to protect and defend these rights domestically.

Regional networks also played a role in promoting the creation and strengthening NHRIs. For example, the [Ibero-American](#)

[Federation of Ombudsman](#) (FIO), a regional initiative formed in 1995, joins together the different NHRIs of the [Ibero-american countries](#). It has improved the work of these institutions through training, study and research programmes, and enjoyed the support and cooperation of international agencies. Other influential initiatives in the region are those of the [Inter-American Institute of Human Rights](#) (IIDH) based in Costa Rica, which strives to maximise the work of the NHRIs and promote their role in Latin American democratisation.¹³

Finally, underpinning the success of NHRIs has been a focus on strengthening programmes at the national level to support NHRIs' work. In terms of domestic initiatives, one example is Mexico's [Programme to Institutionally Strengthen Public Human Rights Bodies](#) (PFIOPDH). The initiative brought together a group of Commissions and Government Attorneys' Offices¹⁴ from different Mexican states in 2004, to make advances in incorporating international standards within their institutional practices to educate about, promote, defend and protect human rights.

¹³ Cuéllar Martínez, R. 2002. [Estándares Mínimos para el Establecimiento y Funcionamiento del Ombudsman](#) (Minimum Standards for the Establishment and Functioning of the Ombudsman). Congreso Anual de la Federación Iberoamericana de Ombudsman. IIDH, San José.

¹⁴ The initiative brought together the State Human Rights Commissions of the states of Guanajuato, Guerrero, San Luis Potosí, Sinaloa, Queretaro and Chiapas, as well as that of the Federal District.

LESSONS LEARNED

1 Within contexts of severe deteriorations in the enforcement and validity of human rights - as was the case during the region's dictatorships and civil wars - NHRIs have become key players in re-establishing democratic conditions in many Latin American countries.

2 Within countries that adhere to international Treaties or Regulations on

human rights, the NHRIs can play an essential role in achieving their immediate and effective enforcement of human rights at the national level.

3 From the moment they were recognised legally or constitutionally by their countries, NHRIs have been able to establish a mandate which is interpreted proactively and with

guarantees backing it. This recognition has also allowed them to take part in creating public policies with a human rights approach and has empowered them to effectively promote, defend and protect these rights.

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