



Participants from Asia, Africa and Latin America reflected on mechanisms for promoting and guaranteeing human rights, and how these could be adapted to their own contexts.

PROMOTING AND GUARANTEEING HUMAN RIGHTS

SUMMARY

This document summarises conclusions drawn from the second module of the online learning programme on Latin American lessons and good practice regarding human rights, during which participants from Asia, Africa and Latin America explored three different mechanisms being implemented in the Latin American region for promoting and guaranteeing human rights: the establishment of National Human Rights Institutions, integrating a Rights Based Approach into budgeting and public policy, and strategic litigation. By acknowledging government failures regarding the promotion and guarantee of human rights and by making specific recommendations, these institutions and mechanisms influence public policies and generate social change. The rich discussions allowed participants to highlight similarities and contrasts between Latin America, Sub-Saharan Africa and South Asia and to identify issues and conclusions that seem to be critical for the different themes.





KEY ISSUES:

Several key lessons were drawn from the exchange between participants and experts on mechanisms for promoting and guaranteeing human rights:

- National Human Rights Institutions serve as important intermediaries between citizens and governments when a human rights violation has been detected by acting as a watchdog to monitor state compliance with human rights obligations, bringing cases before public authorities, mediating social conflicts and influencing rights based public policies
- A Right Based Approach to budgeting and policy making can be crucial to help embed a human rights culture in the public administration and improve respect for social, economic and cultural rights
- A well-prepared strategic litigation case presided by a progressive judge has the potential to drive social change and improve the situation of human rights through ordering improvements to public policy

CONTENT

FIRST DISCUSSION THEME: NATIONAL HUMAN RIGHTS INSTITUTIONS

[Page 3](#)

SECOND DISCUSSION THEME: DESIGNING THE BUDGET AND PUBLIC POLICIES WITH A HUMAN RIGHTS APPROACH

[Page 6](#)

THIRD DISCUSSION THEME: JUDICIAL CONTROL OF POLICY MAKING AND STRATEGIC LITIGATION

[Page 9](#)



FIRST DISCUSSION THEME: JUDICIAL CONTROL OF POLICY MAKING AND STRATEGIC LITIGATION

Participants had the opportunity to discuss strategic litigation and court rulings as means to enforce human rights. The use of the justice system to address human rights violations by the state and to advocate for better use of the budget and policy making to generate social change is a common practice in Latin America, Sub-Saharan Africa and South Asia. The following section provides a summary of participants' reflections on the following three issues:

1. The potential of court appeals to generate social change
2. The use of these mechanisms in participants' countries
3. Key features of court appeals and the contexts in which they can be used

Related Sources

Leon, H. 2011. [*Human Rights in Practice: The Work of the Peruvian Ombudsman – and How it Contributes to Legal Empowerment of the Poor*](#). ANLEP Working Paper No. 3. Centre for Development and the Environment, Oslo.

[ELLA Brief: Latin America's National Human Rights Institutions: Fostering Democratic Transitions and Guaranteeing Human Rights](#)

In this discussion participants explored the similarities and differences between the National Human Rights Institutions (NHRIs) that exist in their respective countries and on the best practices they know of. As a starting point, several Latin American NHRIs were presented to participants. Peru's Ombudsman Office, for instance, although it does not count with the authority to mandate actions by the state coercive power, has succeeded in strengthening its credibility and influence among civil society and public authorities. This Ombudsman has managed to remain independent from political parties showing that it is committed to the national constitution and to the Peruvian people. Second, the Ombudsman has the mandate to investigate human rights violations and can take the Peruvian government to court. Since its creation, the institution has channelled significant resources into carrying out these tasks, which has meant that it has been able to set several precedents in terms of human rights. Third, the Ombudsman has developed three mechanisms to improve its effectiveness: a protocol of intervention, an information system and a performance indicator. It has also made considerable efforts to get closer to the people, mainly by opening regional offices and service centres, and in particular through its Itinerant Teams that visit remote communities. Finally, a significant strength of Peru's Ombudsman lays in the diversity of stakeholders it works with. It often works with the National Congress, for example, to pass human rights bills,



with the media to disseminate its reports and opinions, and with the justice system, sometimes as an ally to enforce human rights and sometimes contesting court decisions. The relationship of the Ombudsman's Office with civil society is based on a very high level of trust and the increasing number of citizens that appeal to the institution confirms the legitimacy that it has gained over time. The institution has also made significant efforts to improve its relations with national, regional and local governments, convincing authorities that the Ombudsman is not the enemy and that its recommendations are worth implementing,

Discussions between participants from Latin America, Africa and Asia revealed that although NHRIs across the global South share similar mandates – to monitor government compliance with human rights obligations, present complaints of human rights abuses to public authorities, mediate social conflicts and influence rights based public policy – their particular characteristics and scope of work vary considerably, resulting in an interesting diversity. It is important to note that the recommendations of NHRIs are not binding in any country. After discussing these different models, participants were able to identify three factors that seem to be fundamental to ensure the effectiveness of NHRIs:

- Participants from Nigeria, Ghana and Uganda explained that their NHRIs lack financial autonomy and suffer from underfunding, since governments underestimate – voluntarily or not - the resources required. This severely restricts the work that NHRIs are able to carry out. In Mexico and El Salvador, NHRI budgets are part of the national expenditure and cannot be cut, providing them with financial autonomy and sustainability. Political bias is usually revealed by the appointment process of the head of the NHRI. In several countries, the head is either nominated by the President or the legislative power, such as in South Africa, Togo and Uganda. In Uganda and Togo, this political dependency restrains employees of the National Human Rights Commissions from acting, as they fear they will be removed from their positions or may even be at personal risk. In Latin America however, especially in Bolivia and Nicaragua, innovative mechanisms have been put in place that have opened-up appointment processes to civil society organisations to either submit or evaluate candidates. In Bangladesh, an independent committee has been established to make recommendations for the Chairman and full-time members of the National Human Rights Commission.
- The second common element that participants found decisive to NHRI success is when the institutions are mandated by a constitution provision rather than in common law. This grants NHRIs permanence and autonomy by protecting them from political manoeuvres and reforms that could weaken or remove them altogether.
- Finally, participants found it crucial for NHRIs to have the capacity to carry out investigations and on-site inspections in public institutions and the political clout to guarantee cooperation from civil servants. Since their recommendations are not binding, in the absence of these capacities NHRIs risk becoming “toothless tigers”, as a participant from Bangladesh put it.

Participants also discussed the opportunities presented by NHRIs. They agreed that when they enjoy political, financial and managerial independence and have sufficient resources to meet their objectives, NHRIs can gain strong legitimacy, generating a positive relationship with civil society and successfully encouraging citizens to appeal to the NHRI when their rights have been violated by public authorities. A few participants shared specific



impacts of NHRIs in their countries. In South Africa, for instance, although the Public Protector is appointed by the President, the current incumbent has gained legitimacy in many people’s eyes because she has brought cases of corruption and wrong-doing in public institutions to light. In addition, the South African Human Rights Commission is currently going through a reform process aimed at making it mandatory for all state departments and agencies to consult the Commission when designing public policies that involve human rights. In Bangladesh, progress has been made regarding ethnic minorities’ rights and the National Human Rights Commission has been training police officers on these issues. Finally, several participants agreed that even though the recommendations of NHRIs are not binding, the risk of being publicly denounced for refusing to collaborate and/or failing to comply with NHRI recommendations can provide an effective incentive for governments.

Lessons Learned

- Political, financial and managerial independence improve the financial sustainability of NHRIs and provide their employees with more room for maneuver
- Constitutional provisions provide NHRIs with permanency and autonomy, thereby strengthening their authority and impact
- Although their recommendations are not binding, NHRIs are able to put significant pressure on public institutions by investigating cases, taking the government to court if necessary, as well as publicising their findings. Many public institutions therefore see in their best interest to collaborate with NHRIs.



SECOND DISCUSSION THEME: DESIGNING THE BUDGET AND PUBLIC POLICIES WITH A HUMAN RIGHTS APPROACH

The second discussion focused on the Rights Based Approach (RBA) that has been adopted by some countries to design budgets and public policies. The objective was to reflect on the opportunities and challenges that this approach has faced in Latin America and would face in other regions of the world. The discussion centred on the following two issues:

1. The potential impacts of RBA on budgeting and public policy making in participants' countries
2. The factors that participants felt would be necessary to pave the road for implementing a RBA

Related Sources

[ELLA Brief: Mexico City's Innovation: Budgeting with a Human Rights Approach](#)

[ELLA Brief: Making Human Rights Real: Two Latin American Experiences in the Rights Based Approach to Policymaking](#)

Although RBA is a recent practice and very few countries have implemented it to date, the approach is producing some very promising outcomes in Latin American countries. RBA usually consists of introducing human rights language into policy making processes and defining courses of action and specific recommendations that seek to improve human rights. In Latin America, RBA have been used in attempts to improve social, economic, cultural and environmental rights in particular. RBA also has the potential to transform citizens into rights holders (rather than simple beneficiaries) and reinforce the notion that the purpose of governments should be to take into account the needs of citizens.

The materials presented to participants showcased two interesting Latin American experiences of RBA, described the different stages to implementing the approach as well as the elements that enabled its success:

- The first example is the City of Mexico, where civil society actors have pushed for the implementation of a right based approach in policy making processes, from planning right through to evaluation. This initiative has made Mexico the first country in the region to experiment with the RBA in public policy. The Federal District of Mexico first implemented the Human Rights Programme for the Federal District in a few ministries, as a pilot study, before mainstreaming it across the whole public administration, leading to three major administrative changes: 1) the appointment of specific civil servants in each public agency to coordinate the implementation of the Human Rights Programme; 2) the creation of a Mechanism for Follow-up and Evaluation of the Human Rights Programme in the Federal District, and; 3) the creation of a tool to facilitate the elaboration of quarterly reports assessing the degree to which public agencies incorporate the programme's courses of specially



assigned budgets in 2011 action. All these changes were paid for with national budget in 2011, demonstrating important political support and a cultural shift as the discussion around RBA has evolved to issues around practical implementation.

- The second example featured in the materials is that of Argentina. Although the RBA has just been initiated in this country through the Advancing Human Rights Project, it looks promising since it seeks to replicate Mexico City's experience, this time at the national level. This RBA project will have two components: 1) an assessment to analyse the status of three social rights in Argentina- the right to work, education and social security, and; 2) the definition of human rights indicators, based on regional and international standards, for the elaboration of a handbook.

The discussion mainly revolved around the Mexican and Argentinean examples as RBA is not common practice in other regions. Participants discussed several elements that seem to be essential to the success of RBA. First, it is crucial to elaborate a thorough assessment of human rights in the country. The second element is the highly participative characteristic of both the Mexican and Argentinean models. Mexico City's human rights assessment brought together 58 representatives from CSOs, the local government, the local Human Rights Commission and the UN High Commissioner for Human Rights. The Argentinean process includes observatories, diverse ministries, as well as international institutions. Finally, the third element that seems key to ensure the success of such approaches is the creation of oversight mechanisms.

Although many participants were impressed by the Latin American experiences and felt that RBA would be very useful in countries such as Pakistan and Bangladesh where the government is failing to deliver health and education services to some sectors, they indicated that replicating such an approach in their countries could turn out to be very complex. Sub-Saharan Africa and South Asia face many human rights challenges that constitute critical obstacles to the implementation of RBA in budgeting and policy making processes. First, participants from Pakistan, Bangladesh, Uganda, Togo and Nepal pointed out that the governments in their countries are still struggling to acknowledge political and civil rights, and tend to keep civil society away from decision making processes. Several participants stated that even the thought of implementing a RBA seems a "luxury" in countries where citizens are still fighting for the right to participate in public life. They also pointed out that social and economic rights have not yet been acknowledged as fundamental rights in some national constitutions, meaning it would be impossible to incorporate these rights into political processes using the RBA, denying civil society the legal tools necessary to demand these rights.

Second, several participants discussed the inconsistencies that can be found in many national budgets and public discourses across the world. Indeed, participants across the three continents discussed the controversial arguments that some governments use to justify low investments in social, cultural and environment sectors, such as economic crisis, while at the same time only charging large private companies very low tax rates. Moreover, participants pointed out that in countries like Uganda, Bangladesh and Mexico, military budgets keep increasing.

Third, many countries still lack several significant elements that would facilitate the implementation of the RBA in budgeting and policy making. Several African participants from countries like South Africa and Togo pointed to the absence of a well-organised, pro-active, professional and connected civil society, which would be required to put pressure on governments and trigger the cultural transformation that is needed to implement RBA. Furthermore,



in South Africa weak budgeting processes, low implementation capacity and a shortage of skills amongst civil servants, especially at the local level, are just some of the major obstacles to RBA. Also, although the South African Constitution is very progressive in terms of human rights, the transformation process towards a human rights culture is in practice still very slow.

In these countries, participants agreed that civil society and governments need to resolve many issues before thinking about implementing a RBA. On the one hand, civil society needs to improve its participation in public life, advocating for the enforcement of civil and political rights and for the acknowledgement of social, economic and cultural rights. Strong coalitions between CSOs, academics and other social actors are also required, as are collaborative and consultative relations with governments. On the other hand, governments need to strengthen their budgeting and policy making capacities and redefine their priorities according to what their citizens need.

Lessons Learned

- RBA is more likely to be implemented in countries where civil and political rights are officially recognised by the government, where civil society is part of decision making processes and where social, economic, cultural and environmental rights are acknowledged in national constitutions and legal frameworks as fundamental rights, thereby providing civil society with the backing it needs to advocate for RBA
- RBA offers minimum standards to guide state priorities when allocating resources to different components of the budget
- RBA is more likely to be effective if a thorough assessment of the situation of human rights has been carried out prior to its design, and if oversight mechanisms are created to monitor the progress of the different agencies responsible for implementing the courses of action identified by the RBA.



THIRD DISCUSSION THEME: JUDICIAL CONTROL OF POLICY MAKING AND STRATEGIC LITIGATION

Participants had the opportunity to discuss strategic litigation and court rulings as means to enforce human rights. The use of the justice system to address human rights violations by the state and to advocate for better use of the budget and policy making to generate social change is a common practice in Latin America, Sub-Saharan Africa and South Asia. The following section provides a summary of participants' reflections on the following three issues:

1. The potential of court appeals to generate social change
2. The use of these mechanisms in participants' countries
3. Key features of court appeals and the contexts in which they can be used

Related Sources

[Expert Interview: A Strategic Litigation Case to Improve Access to Health Care for Patients With HIV in Mexico](#)

[ELLA Video: Judicial Control of Public Policies and Budget Allocation](#)

This discussion highlighted that in most countries the Judiciary plays a significant role in enforcing human rights because it can order the government to provide redress for human rights violations, and allocate resources and implement public policies to ensure that citizens' basic needs are being met. Many Latin American CSOs use strategic litigation, or a court appeal, to publicise human rights violations committed by the state, to trigger legal action and to influence public policy.

Among the experiences presented to participants was the strategic litigation led by Fundar, Centre of Analysis and Research and the Committee of INER Health Service Users Living with HIV (USINER) - a centre that cares for about 1,400 people living with HIV. The two organisations have engaged in several strategic litigation cases, denouncing budget cuts and other kinds of issues considered to violate patients' right to healthcare. For instance, since 2012, Fundar and USINER have been involved in a writ of amparo before Mexican Administrative Courts and have filed a complaint before the Federal Commission of Human Rights concerning the construction of a new facility, called Pabellón 13. USINER and Fundar's main demands are: the right to health, the right to life, non-discrimination, enforceability of economic, social and cultural rights, and the correct application and execution of the recent human rights constitutional reforms regarding human rights, as well as a correct and fair application of the federal budget. Although the case is still in the hands of the judge, this writ of amparo is considered a test case, as it could become a precedent in the promotion of economic, social and cultural rights in the country.

In Buenos Aires, Argentina, the judicial branch has made several rulings on public policies and budget allocations regarding the right to housing, water, health and education. In 2002, the judiciary also ruled on prisoners' right to vote and ordered the design and implementation of a voting policy and an electoral system for detention centres.



Numerous contributions from participants showed that the use of the judiciary to enforce specific human rights is a common practice across the three regions. The following chart shows the diversity of rights that have been enforced thanks to this mechanism.

Country	Issue	Outcome (when mentioned by the participant)
Gender		
Pakistan	Forced marriages in Federally Administered Tribal Areas (FATA)	
	Women's participation in politics	In 2012, several women from FATA presented their candidatures and one third of the seats in parliament is now reserved for women
Bangladesh	Sexual harassment	Guidelines were issued by the Court for the government to design a law
Ghana	Gender equality	
Nepal	Gender discrimination	The Supreme Court ruled in favour of LGBT's right to self-determination
Southern African Litigation Center	Sex workers and LGBT's rights	
Health		
Mexico	Indigenous peoples' right to health	In the Mini Numa Case, the Court ordered the construction of a new health facility in an indigenous community
Justice		
Ghana	Right to a fair trial	134 cases in which people had been incarcerated for up to 5 years without a trial were judged, leading to the dismissal of the majority of the cases because the warrants had expired
Nepal	Disappearances, extrajudicial executions and torture	
	Truth and Reconciliation Commission	A government decree that did not meet international human rights standards was rejected by the Court
Others		
Nepal	National Human Rights Commission	Strategic litigation led to the creation of the NHRC
Ecuador	Environmental rights	

During the discussion, participants identified several elements that are crucial to preparing a strong strategic litigation case and for ensuring that the Court's decisions are implemented by public authorities. First, participants agreed that judges need to be aware that they play a strategic role in enforcing human rights and that civil society needs to provide them with enough information so that they understand the human rights situation and are fully aware of how they can influence it. As shown in the video presented to participants, the use of budgetary information is often crucial in strategic litigation. It can either serve as evidence to support a case where human



rights are not being fulfilled by public policies, or the budget can be the object of the litigation itself, for example, when public authorities refuse to disclose this public information. Therefore, it is important for CSOs to have strong expertise in budget analysis and judicial processes. Third, bringing a case to court always has more impact when CSOs work in coalition with other social actors and are backed by a well-organised civil movement mobilisation and a strong media campaign. Participants also found it important for discussions to be opened up between governments, civil society and the judiciary to reach consensus on the best ways to implement the court’s decisions. Strategies to lobby the executive and the legislative branches also seem to be a key accompaniment to strategic litigation. Finally, thorough monitoring of government compliance with court rulings is essential to ensure that real, lasting changes are made

Lessons Learned

- Strategic litigation can be a useful tool to enforce specific social, economic and cultural rights
- Good preparation and legal expertise are indispensable for taking a strategic litigation case to court, as a negative ruling could represent a significant step back
- Well-informed and progressive judges are crucial for judicial control of public policies, since in many countries judges represent the ultimate guarantors of human rights.

CONTACT [FUNDAR](#)

To learn more about Human Rights in Latin America, contact the Moderator, Maria Benitez, Researcher at Fundar, mariab@fundar.org.mx

FIND OUT MORE FROM [ELLA](#)

To learn more about Human Rights in Latin America, visit the [ELLA website](#), which has a full list of the knowledge materials available on this topic. To learn more about other development issues, browse other [ELLA Themes](#).

Maria was supported by the following experts during this Learning Alliance. All can be contacted through the ELLA coordinator, Janet Oropeza, Researcher at Fundar, janet@fundar.org.mx

Discussion 1:

Claudia Lopez, Researcher in Human Rights and Citizen Security Area

Discussion 2:

Janet Oropeza, ELLA Project Coordinator and author of the ELLA Brief Mexico City’s Innovation: Budgeting with a Human Rights Approach
Diego de la Mora, Researcher and Coordinator of the Budget and Public Policy Area

Discussion 3:

Maria Sanchez de Tagle, Lawyer in the Legal Strategies Area

ELLA is supported by:

