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EUROPEAN UNION · BRAZIL



FINAL REPORT

National Human Rights Institutions: an analysis of six models from the European Union and Latin America. The cases of Spain, Portugal, Germany, Mexico, Argentina and Colombia

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Executive Summary

This study analyzes the National Human Rights Institutions of different countries that, since their creation, have adopted a model guided by the figure of the Ombudsman¹ (in some cases), following the Scandinavian standard, incorporating it as an NHRI. Examples of this NHRI model include the Ombudsman of Spain, the Provider of Justice of Portugal, the Ombudsman's Office of Argentina, the National Human Rights Commission of Mexico and the Ombudsman's Office of Colombia. A separate case is the German Institute for Human Rights. The Institute operates not as an Ombudsman model but as a civil society institution that collaborates with the State and Government to observe and disseminate human rights. However, it has no authority over complaints, the investigation of violations, and citizens' complaints.

Internationally, NHRIs have developed the following four models according to their competencies, configuration and action strategies²: the Committee model, the Commission model, the Ombudsman model, and those that take the form of an Institute. Depending on the institutional model of the NHRIs, they have different competencies and organizational systems, with some characteristics that are common to all NHRIs:

- i. **Their mission is to develop a culture of respect for human rights** in their respective countries, implementing strategies, to this end, according to their competencies and capacities and their founding mandate.
- ii. **They enjoy significant autonomy and independence** in relation to the political power and the other powers of the State; a regulatory law confers powers and certain protections to the person in charge of the body when facing administrative or criminal pressures and/or responsibilities for their actions.
- iii. In all cases, **their mandates are enshrined in the political Constitution** of their respective states and generally are institutions that are included in the section reserved for fundamental rights.
- iv. Generally, every legal system governing such organizations has a supreme legal framework. Their common feature is that the holder is given powers, guarantees and specified impediments³, as well as its appointment - generally by Parliament - to which is added individual immunity (not being able to be tried or prosecuted) for decisions taken while exercising its responsibilities. These are mechanisms designed to guarantee that the holders exercise their mission with freedom, autonomy and independence.

¹ This is a body that defends fundamental rights, mediating and protecting them against the excesses of Government authorities. It does not have a judicial role, but rather one of persuading and dialoguing with the parties that are the object of denunciations and complaints.

² We consider it important to focus on this explanation because the cases analyzed are exemplars of several of them, allowing the Brazilian CDNH to reflect on the characteristics of its model and/or adopt in the future the reforms that may guarantee it greater administrative and political autonomy.

³ The holders of these bodies enjoy privileged conditions throughout their mandate, such as guaranteed job stability at their place of work or, as in the case of Portugal, allowing them to enjoy the same social security rights as public servants. All of this is designed to ensure that holding office does not take a personal and professional toll on the incumbent in office.

- v. **The organizations do not depend on any particular Administration, whether functionally or organically**, do not obey a superior authority of the State, and are not accountable to any power except to the Parliament (which appoints them), and to which they annually submit reports and accounts of their activities. Likewise, Parliament is the constitutional power that gives them democratic legitimacy and authority, key to the effectiveness of their actions. As has been seen, these organizations do not have judicial powers or coercive capacities but only "persuasive" capabilities and the ability to collaborate with state agencies that are the object of complaints or denunciations from citizens. This is done in a spirit of cooperation and not in the nature of supervision in the term's strict sense (*stricto sensu*).
- vi. In all cases, the **law that creates the institutions provides them with their own material resources** (headquarters, premises, offices) and financial resources as part of the Parliament's budget. They employ their staff, following specific, open and transparent selection and recruitment methods governed by criteria ensuring equal access for any citizen. In simultaneous selection processes, they are evaluated on merit, capacity, and competencies for performing the functions of the different professional profiles.
- vii. In the **human resources management model configuration**, they play a significant role in the professional career system, preventing volunteers and amateurs from being the profiles that occupy technical, administrative and managerial positions. Otherwise, this would mean a significant reduction in technical and organizational skills, resulting in low-quality management and poor effectiveness of the organization in fulfilling its mission.
- viii. They are also endowed with a **visible and clear institutional project**, and a mandate that leaves no doubt as to their mission and objectives, and without duplicating functions with other state organizations, or with other institutions or administrations whose functions and competencies overlap.

On the other hand, **they differ substantially in these characteristics:**

- i. The **NHRI "Committee" model** is characterized by advising the government and government leaders in private, has an advisory profile, and is not a complaint-processing body with the capacity to resort to legislation for possible cases of human rights violations in a public or private institution. It generally employs advocacy strategies by making recommendations to governmental bodies to improve their practices or to correct measures and legislation that infringe on human rights issues. Its mandate and powers are vested in a large number of commissioners who form an advisory board. This NHRI model is seen in France, Greece, Luxembourg, and Morocco.
- ii. The **NHRI "Institute" model** has a profile linked to research, education, and advocacy with policymakers. Its strategy is advocacy, seeking to maximize the impact of its reports and position papers on the human rights situation in the country. Its human rights research, education, and advisory mandate generally have more limited powers than other NHRIs. This NHRI model is encountered in Denmark, the Netherlands, and Germany, whose case - that of the German Institute for Human Rights (DIMR) - was analyzed in this consultancy.
- iii. The **"Ombudsman" or "People's Ombudsman"** NHRIs exist in most European and Latin American countries. They are characterized by their work in protecting human rights through complaint handling, reporting, monitoring, and providing legal protection.

In addition to its role as the promoter of a culture of respect for human rights in general and for economic and social rights, it also denounces crimes against the environment, quality of life, and the consumer. Its mandate revolves around the figure of an ombudsperson whose mission has traditionally been to deal with individual petitions or complaints. This NHRI model is found in Portugal, Spain, Argentina, Mexico and Colombia and is dominant in Latin American countries.

- iv. The **NHRI "Commission"** model is distinguished by its wide range of competencies. Its mandate is carried out by a multi-member Council with wide-ranging powers to protect, promote, and monitor human rights through reporting, research or legislative review, advocacy, and education. This NHRI model can be found in countries such as India, Nigeria, South Africa, and Uganda.

The main findings of this study highlight that the implementation of legal and constitutional reforms, which has contributed to the consolidation of solid and independent NHRIs in the countries addressed, has not been free from challenges arising from institutional and political deadlock situations. In all cases, the different paths of institutionalizing NHRIs have been accompanied by ongoing reforms in their regulatory legislation, granted Constitutional status in most cases, thus providing them with the highest level of meaningful legal regulation within the respective state frameworks.

Therefore, in the case of the Brazilian NHRI, the idea that it should follow another NHRI model has been ruled out. However, best practices from other NHRIs can be used to strengthen certain organizational and administrative aspects and its own institutional structure to provide it with greater autonomy and political independence.

Accordingly, the Brazilian NHRI should spearhead a dialogue process to reach an institutional consensus on which human rights body should be accredited as an NHRI before the GANHRI.

I. Introduction

This report was prepared under the European Union-Brazil Dialogues Support Facility. Its purpose is to support Brazil's National Human Rights Council (Conselho Nacional de Direitos Humanos – "CNDH") in defining and implementing its candidacy as a National Human Rights Institution ("NHRI") that adheres to the guidelines established by the Paris Principles at the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions.

This support resulted in the development of a consultancy aimed at studying the structure and the operational and institutional capacity of six NHRIs certified as "A" Status by the certification subcommittee ("SCA") of the "Global Alliance of National Human Rights Institutions. Three of these NHRIs belong to the European Union, such as the Ombudsman of Spain (Defensor del Pueblo), the Portuguese Ombudsman (Provedor de Justiça), and the German Institute for Human Rights. The other three NHRIs belong to Latin America, such as the Office of the Ombudsman of the Argentine Nation (Defensoría del Pueblo de la Nación Argentina), Mexico's National Human Rights Commission (Comisión Nacional de Derechos Humanos - Mexico) and Colombia's Office of the Ombudsman (Defensoría del Pueblo - Colombia).

The consultancy's specific goals are to obtain a broader knowledge from managers and decision-makers of the CNDH regarding other NHRIs certified by the GANHRI Certification Subcommittee as possible models to be followed and adapted to Brazil's context with a view to seeking future certification of the CNDH as an NHRI in this entity, based on European Union and international experience.

The methodology followed in preparing the report consisted of mapping different NHRIs at the international level by selecting and proposing six case studies to the CNDH technical team responsible for the consultancy's follow-up. This study is based on NHRI proposals considered to be of interest to the CNDH. It is essential to mention that there are 84 NHRIs worldwide certified with "A" Status by GANHRI as they fully comply with the Paris Principles, and 33 NHRIs certified with "B" Status, which partially abide by these principles. This great diversity of NHRIs requires a more significant assessment effort in deciding which cases will be studied and which experiences, although also valuable, will be excluded from the scope of our study. When selecting the NHRIs to be analyzed, it was essential to consider the cultural, institutional, and social diversity similarities in the Brazilian context.

II. The selected NHRI cases

The purpose of consulting has been to compare the operation of the CNDH with six NHRI cases certified with "status A" by the GANHRI Certification Subcommittee. The goal is to identify strengths and weaknesses and the CNDH's potential to apply for a new certification from this entity.

First, the cases of the Spanish and Portuguese NHRIs are important because these European countries have strong cultural, historical and institutional ties with Latin America, which are reflected in a shared tradition of Constitutional and Administrative Law. The mechanisms for the protection and defence of human rights are also similar. Spain, Portugal and Latin American countries, including Brazil, work within the Iberoamerican Ombudsman Federation (FIO), a cooperation mechanism to strengthen ombudspersons and NHRIs in the region. Similarly, the implementation of NHRIs in the Ibero-American world addresses the process of political change that occurred in the 1970s and 1980s. During this period there was a transition from military dictatorships to democratic regimes, a phenomenon of chain democratization that the famous political scientist Samuel P. Huntington called the "Third wave of democratizations."

On the other hand, it is also important to highlight the role played by the Ombudsman of Spain (Defensor del Pueblo), a country whose State is territorially organized in Autonomous Communities or regions with political and administrative autonomy, each of which has its own autonomous Ombudsmen who coordinate their work with the Ombudsman of Spain. Likewise, the Portuguese Ombudsman (Provedor de Justiça), as an NHRI created in 1975 and certified with GANHRI since 1999, plays a fundamental role in the protection of human rights and in its territorial and institutional coordination in both the continental and isolated regions.

Second, the selection of the cases of the NHRIs of Argentina and Mexico was justified due to the federated structure of these countries in the Latin American region, which, like Brazil, have diverse territorial, population, and social dimensions. It should also be emphasized that Colombia, although, is not a federal state but a decentralized unitary state. It has a consolidated Ombudsman's Office, with territorial and civil society ties, which has allowed it to serve as a reference in dealing with issues of the culture of peace and pacification in the region.

Third, it is important to note that the NHRIs of Argentina, Mexico and Colombia are included and protected in their respective Federal Constitutions. This illustrates the path these Latin American countries followed in providing constitutional protection and political autonomy to NHRIs responsible for protecting the human rights of their citizens in light of the traumatic experiences of serious human rights violations of the past.

Finally, the experience of the German National Institute for Human Rights was also included in this sample of reviewed cases. This institution performs an important job within a federal state structure, being one of the largest countries in Europe with a substantial immigrant population, and which has been the victim, in recent years, of some cases of xenophobia. Thus, the inclusion of this NHRI allows us to analyze its best practices and its role in international cooperation with other NHRIs in Southern Europe and Latin America.

III. The NHRI's aspiration to be certified as an NHRI

As is known, the CNDH is seeking to be certified as an NHRI by the GANHRI Certification Subcommittee. In July 2016, the CNDH declared that the Paris Principles were being followed and petitioned for certification as an NHRI. In March 2017, the Certification Subcommittee denied certification and noted shortcomings in adherence to several general observations concerning the autonomy and independence of the Council. The Subcommittee also emphasized the need for more significant and comprehensive publicity of the openings for CNDH Councilors and an independently and transparently conducted selection process based on the criteria of competence and plurality.

Based on this response, the CNDH is again preparing for certification as an NHRI in GANHRI; the first step in this direction was to analyze other cases of certified NHRIs to seek solutions that can be applied to the Brazilian reality, given its legislative, administrative, and political realities. Therefore, it is essential to stress the unique nature of the CNDH's institutional structure, which is most similar to the Commission model adopted by some NHRIs worldwide. These NHRIs comprise of a plenary as a sovereign body, consisting of eleven representatives of the Brazilian State and eleven representatives of civil society, which makes decisions and issues resolutions in a collegiate fashion. In light of this institutional structure, CNDH will have to reapply for certification with the GANHRI Certification Subcommittee, which will require information on the functioning of other NHRIs certified by this Subcommittee.

These efforts by NHRIs to be certified by GANHRI fulfil the need to demonstrate their capacity to act independently and effectively regarding human rights at the international level. Thus, an "A" certification status granted by GANHRI means that NHRIs acquire specific rights to participate in global and regional mechanisms, such as addressing rights at the UN Human Rights Council and before organizations signatories to UN treaties. It also means that NHRIs are trusted as independent and credible human rights actors, enabling them to enhance their work by reflecting and acting on the Subcommittee's recommendations. They can also apply the Paris Principles in their national settings and ensure their independence, pluralism, effectiveness, and accountability transparency.⁴

IV. Overview of the analyzed NHRIs

Overview of the analyzed NHRIs. The first case analyzed concerns the figure of the Ombudsman of Spain, an institution with deep roots in democratic society. It began its work in the constitution drafting period following the dictatorship, which helped it to gain much strength and prominence in the legal system as a result of being created by means of a constitutional mandate. Its conception and organization was also made possible through an Organic Law reserved in the Spanish legal system for issues related to fundamental rights and freedoms. This legal conception and coordination allow this body

⁴ Refer to <https://www.rindhca.org/miembros/acreditacion-indh-ganhri>

to have complete autonomy and independence in its organization and in the financing of its activities, whose budget is linked to Parliament itself, but whose elaboration is the Ombudsman's responsibility.

In the second case, we present the case of the Ombudsman of Portugal, an institution whose origins date back to the 1970s, coinciding with the democratization process initiated on April 25, 1974 with the Carnation Revolution. The institution emerged in a proposal by a group of lawyers committed to the cause of protecting citizens' rights in this context of political transition towards a State of Democracy and Rule of Law. In addition to the creation of this NHRI, its successful regulation has succeeded in consolidating it as a sound body dedicated to the defense and promotion of human rights, as well as highlighting its ability to respond to the expansion of competencies that allowed it to be accredited from the beginning as a body that fully complies with the Paris Principles.

The third case study concerns the experience of the German Institute for Human Rights (DIMR). The DIMR was founded as an independent association in 2001 following a long process of social debate that culminated in the German Parliament's decision to create an NHRI. It possesses specific regulations governing its legal status, functions, and funding, in accordance with the Paris Principles. In contrast to the other NHRIs analyzed, which adopted the Ombudsman model, the DIMR adopted a different model, that of an Institute, legally configured as a non-profit association that includes representatives of civil society and of the different branches of government (executive, legislative, and judicial) on its Board of Directors (decision-making body), but the latter are not entitled to vote.

The fourth case, which the study presents is that of Mexico's National Human Rights Commission, an NHRI that can serve as a model for Brazil's NHRC, since it also has a hybrid composition comprising representatives from both public authorities and civil society. Mexico's NHRC is a consolidated institution thanks to a long process of continuous constitutional reforms. The experience of Mexico's CNDH shows that regulatory foundations, including constitutional ones, should not be static; rather, they must evolve as they need to respond to changes and social and institutional imperatives. Even though this CNDH has achieved great prestige as an NHRI, the renewal of its certification in GANRHI was criticized in 2021 due to complaints sent by some NGOs. This means that although the "A" certification of the NHRI was upheld after its evaluation, this process demonstrates that adherence to the Paris Principles is a dynamic process, and that if an NHRI fails to adhere to these principles, particularly the principle of independence, it may lose its certification.

The experience of the Office of the Public Ombudsman of Argentina, an NHRI recognized by the United Nations, is presented next. This recognition was enshrined by the granting of the highest possible "A" status certification, as a result of its complete adherence to the Paris Principles. Obtaining this recognition has meant for the Ombudsman's Office not only the acquisition of the role of a Human Rights Guarantor Institution within the country, but has also provided the Argentinian State with the confidence that solid democratic processes are respected and taken seriously at their

core, given that the Ombudsman's Office is seen as a key actor in the field of human rights. Despite this, the National Ombudsman's Office in Argentina has suffered an institutional decline in recent years due to the inability to secure a parliamentary consensus to choose the head of the Ombudsman's Office. This jeopardizes its status as a body that guarantees the defense and protection of human rights in Argentina and also its current status as an NHRI.

Finally, the case of the Ombudsman of the Republic of Colombia is analyzed, an institution incorporated as a body tied to the Prosecutor's Office in the Political Constitution of 1991, and whose mission was to focus on the protection and promotion of human rights throughout the entire country, especially when there was a notable increase in political violence. Over time, the Ombudsman's Office has established itself as a reliable institution in the protection and promotion of fundamental rights, which has been recognized by Colombia's citizens. According to the 2015 report, The Political Culture of Democracy in Colombia, the Ombudsman's Office is one of the institutions most trusted by Colombian citizens. The Ombudsman's Office has an extensive organizational structure that allows it to respond to different needs throughout the national territory.

Finally, it should be observed that in all cases analyzed in this study, the different trajectories and experiences of institutionalization of these bodies in each country were identified, with their similarities and differences, based on the analysis of various issues: the historical development of the body, the regulatory framework, its design and competencies, the organizational and administrative structure and management model, the international cooperation activity, and ending with a description of the strengths and weaknesses observed in each case.

This report ends by drawing a series of conclusions reached during the course of this work.

Ombudsman of Spain

Background to its creation Origins and context

In Spain the institution of the Ombudsman was born with force because it would appear in a context of reinstatement of democratic institutions in a constituent period after a long dictatorship: that is why the Constitution of 1978 introduced into the legal system this body that appears in its article 54 within the first title – "Of the fundamental rights and duties" – chapter IV – "Of the guarantees of the fundamental freedoms and rights".

The Spanish Constitution defines it in the following terms: - "An organic law shall regulate the institution of the Ombudsman as high commissioner of the Cortes Generales⁵, appointed by them for the defense of the rights included in this Title, for which purpose he may supervise the activity of the Administration, reporting to the Cortes Generales"⁶

After the approval of the Spanish Constitution, on May 7, 1981, Organic Law 3/1981 of April 6, Ombudsman, would be promulgated, and the Cortes Generales appointed the first head of the body on December 28, 1982, Mr. Joaquín Ruiz Giménez Cortés, having held the position five people including the current Mr. Ángel Gabilondo Pujol, on only one occasion was a mandate repeated in the person of Mr. Enrique Múgica Herzog.

This figure was established from the beginning following the model of the Ombudsman following the model of the countries of northern Europe, whose central mission is the protection of fundamental rights, in addition to controlling the Public Administration. **It is an important feature of the Spanish Ombudsman its strong legitimacy that derives from its direct link of the Cortes Generales (Spanish parliament)** that guarantees its free action with respect to the parliament itself, even attributing to it the power to file appeals of unconstitutionality -in the defense of fundamental rights- before the Constitutional Court against the activity of the body that appoints it. Therefore, the experts point out, it is advisable not to confuse the obligation of the body to render accounts of its actions, with the functional dependence.

Therefore, it is a body created by the Spanish Constitution, and regulated by this law of higher rank that includes in detail all the fundamental aspects of its operation, independence, and autonomy with respect to political power, its powers, and functions, as well as the formula for appointment and regime of incompatibilities of the head of the institution.

The Ombudsman in Spain depends functionally on the Joint Commission Congress Senate to which the body that included in its day the two main functions that falls today is linked: Alto Comisionado de las Cortes Generales for the defense of constitutional rights and **is also officially in Spain the National Institution of Human Rights (INDH), and the National Mechanism for the Prevention of Torture (MNPT).**

The figure of the Ombudsman in Spain is an institution that has been consolidated over time along with the democratic regime. Today it is a body that has a high valuation by Spanish citizens, as repeatedly expressed by the surveys of the Center for Sociological

⁵ Cortes Generales (Spanish Parliament)

⁶ <https://www.defensordelpueblo.es/>

Research (CIS), perceived as the second most important institution in the guarantee of fundamental rights, and their protection against public administrations. He has achieved broad confidence through his actions, even ahead of the Judiciary and the Constitutional Court.

Analysis of the legal framework

The Ombudsman in the Spanish Constitution

There are three features that constitutionally make up the institution:

Direct dependence on the Spanish Parliament. There is, as we have said, a Joint Congress Senate Commission to which the body is accountable, and on which it depends functionally, a **link that does not imply that it is under the authority or political or administrative jurisdiction of any power of the state**, nor of the executive.

Protection of Fundamental Rights and control of the administration.

Control of public administrations in relations with citizens.

The competence to defend fundamental rights is not exclusive to the Ombudsman, there are other institutions, especially the Attorney General's Office with overlapping powers in the defense of citizens' rights, but well defined in the Constitution itself, one linked (case of the Ombudsman) and another title VI on "the judiciary", the Public Prosecutor's Office. One of the differences between the two is that while the Prosecutor's Office in the exercise of its powers can file appeals for amparo, and not for unconstitutionality, the Ombudsman is a power that characterizes him, as we have said, this body has the power to appeal to the High Constitutional Court.

The Organic Law of the Ombudsman: design and regulation of the body.

Organic Law 3/1981, of 6 April, on the Ombudsman

The Ombudsman carries out non-judicial, i.e., non-binding, control in the image and likeness of other Ombudsmen in the world. Therefore, its magistracy acquires the relevance that its action is marked by its *auctoritas*, by its ability to influence the powers of the state in the defense of fundamental rights, and the observation and / or denunciation of the fulfillment of human rights and in the relations of citizens with the Public Administration. It is an organ that is located on a different plane from that of judging, thus fulfilling a role more of collaborator of those who have this function in the state: the Courts, the Courts, or the Administration.

In Title I of the Constitution, it is stated that the scope of action of the Ombudsman is broad, that of a Social and Democratic State of Law, being able (also includes this title) to supervise the action of the Administration, be it the General Administration of the State, Autonomic (regional) or Local, Military, Justice or Civil.

Regarding the nature of the organ:

Constitutional experts do not classify it within the classic powers: Executive, Legislative and Judicial, being able to consider one more constitutional power, or what jurists call one of the new powers.

Regarding the design, organization, and operation:

Organic Law 3/1981, of 6 April, on the Ombudsman regulates, among other aspects, the following: ⁷

The System of Election of the Head of the Organ:

The Incumbent is elected by the Cortes Generales for a period of 5 years.

The Ombudsman has direct dialogue with the Cortes Generales and is accountable for his activity before parliament through the presidents of both chambers.

The proposed candidates must obtain the support of the 3/5 parts of the Congress of Deputies, and a subsequent absolute majority in the Senate.

The presidents of both chambers ratify the appointment.

The cessation is regulated in the law. This cessation in office can occur due to several circumstances: fulfillment of the mandate, due to a supervening circumstance (his death or resignation), or gross negligence that disqualifies him, firm conviction, or malicious delite. In cases of interim, they occupy the position temporarily, deputies, while a new appointment takes effect.

The prerogatives and obligations of the holder of the organ:

The head of the body enjoys inviolability, "enjoys a special jurisdiction" may not be accused, persecuted, issued, fined, or tried, for the acts he undertakes in the exercise of his office. He can only be indicted, imprisoned, prosecuted, and tried by the Criminal Chamber of the Supreme Court. In the same way, it is not subject to any authority to which it is accountable, it is therefore endowed with full powers and autonomy for the exercise of its constitutional functions. Spain has set up a statute of its holder of great independence. As we have seen, it can only be dismissed by Parliament in an exceptional case because of acts of the utmost gravity.

Regime of incompatibilities:

There is a prohibition on the exercise of other public or political offices during the exercise of the responsibilities linked to the office. They will not be authorized to perform administrative functions, responsibility in political parties, or any other public / or private function or position.

The same system of incompatibilities applies to those attached to the Ombudsman. The appointment of the deputies, who assist him in the fulfillment of his functions, are appointed by the holder with the prior approval of the chambers.

The independence of the body:

The law leaves no doubt about the independence of the institution from the parliamentary commission that elects it (Joint Congress-Senate Commission). From the appointment, the autonomy and independence of the body with respect to the parliament is total and complete, reaching the point of being able to censure the legislative in its recommendations and reports, including the judicial route. Article 6.1 of the law

⁷ It must be considered that in the Spanish legal system the Organic Laws have a higher rank, and they are reserved for regular subjects and rights Fundamental collected in the own Spanish Constitution.

summarizes this independence by stating that "the Ombudsman shall not be subject to any mandatory mandate".

The internal structure

Institutional design, organization, and media

The Ombudsman institutionally, despite being a single-person body, operates in a collegial manner, for this purpose it is composed of a person assisted by two Deputies (First Deputy and Second Deputy) who replace him in case of absence by order of the holder, in which he will delegate his functions temporarily (in the cases of temporary impossibility or cessation) a Technical Cabinet, Torture Prevention Unit, and a General Secretariat responsible for the management of the material, human and economic resources of the institution. Its structure includes a press office and relationship with the media.⁸

The General Secretariat has an administrative structure for its operation:

Indoor area and records.

Economic Regime Area.

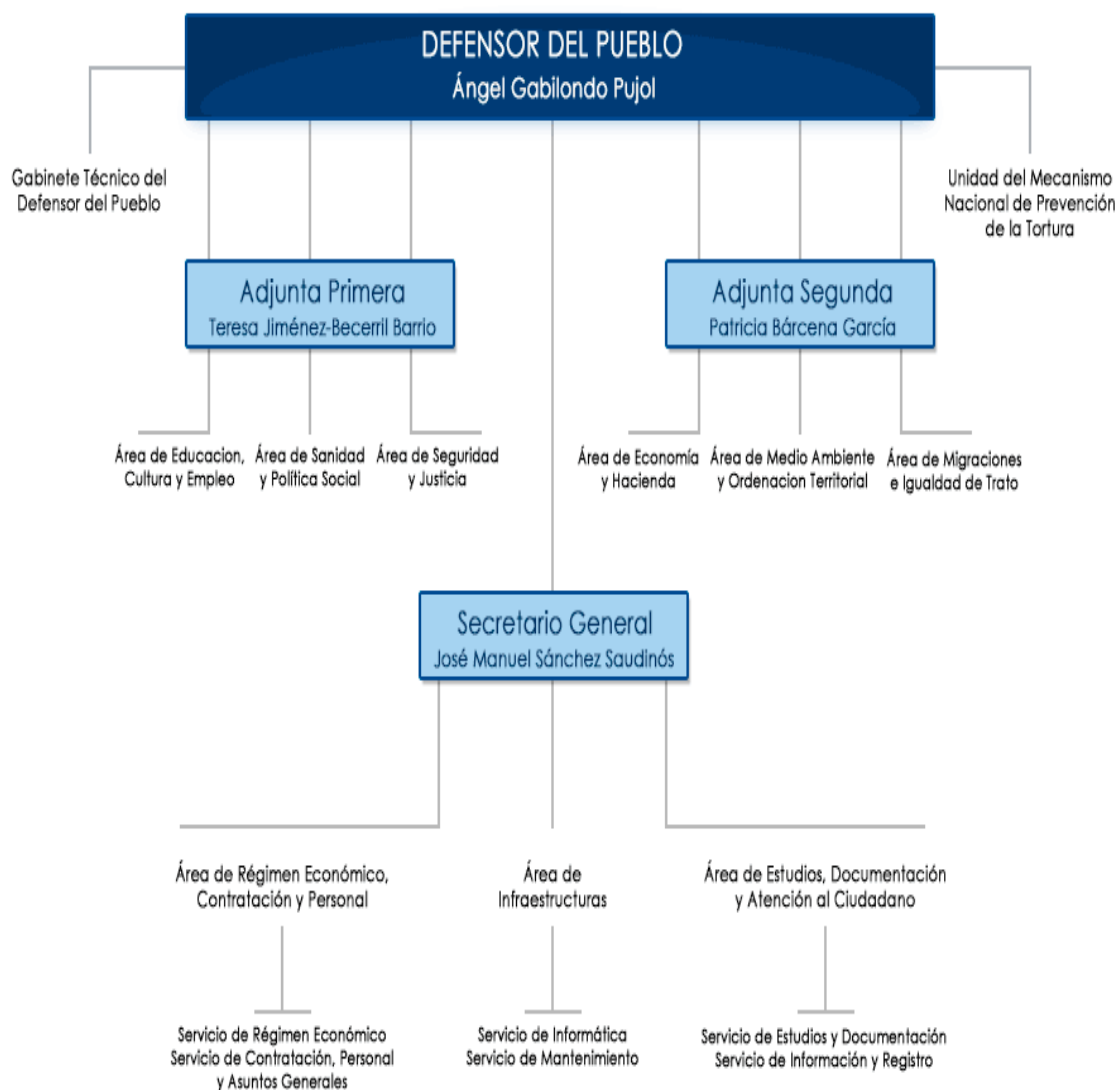
Area of Studies and Modernization.

Publications, Documentation, and Informatics Area.

As can be seen, the body is also very specialized in the defense of social rights, for this reason there are areas related to the management of complaints, claims and denunciations that affect social policies, education, health, migration, citizenship and public security, housing, employment, or equal treatment, among others.

⁸ Art. 8 of the Law establishes that the Deputies will be appointed by the Cortes Generales (Parliament) on the proposal of the Ombudsman having the same regime of incompatibilities and prerogatives as the head of the body.

Current structure of the institution:



Fountain. www.defensordelpueblo.es

The body by its design is very oriented by the leadership of **the holder, the internal coordination is articulated through the Coordination Board**, formed by the **Ombudsman and his two deputies** in addition to the **General Secretariat** (the latter with voice, but without vote). The operation is governed by an Internal Operating Regulation (ROF) provided for in the law of development of the organ. This regulation approved by the bureau of both chambers (Congress of Deputies and Senate) at the proposal of the Ombudsman, includes in addition to the powers of the head of the body

and his responsibilities, and those of the deputies, the collegiate bodies that will serve as support by referring to this "Board of Coordination and Internal Regime", Advisory Council of the National Mechanism for the Prevention of Torture and the Secretary-General.

The practice of operation has favored the flexibility of the management of the processes, and the horizontal coordination more than the hierarchical operation, adapting the processes to the needs of answers and requests received by the citizens.

THE DEPUTIES (Deputy at that time since the position is occupied by women) are appointed directly by the Ombudsman, previously having the approval of the parliamentary chambers in the Mixed Commission, the usual procedure is that the parties with greater parliamentary representation propose a candidate for each of the figures.

Deputies are governed by the same regime of incompatibilities, eligibility and prerogatives as the Ombudsman.

They are responsible for assisting the holder in the fulfillment of their functions and competences and may receive delegated commissions or commissions from the holder in specific areas or topics. In addition, they replace it in exceptional circumstances, due to temporary impossibility or cessation of the holder, being its functions included in the Regulation of Organization and Internal Functioning of the Ombudsman (ROF).⁹

Regarding its functions

Exercise of its activity:

Powers to initiate ex officio, or at the request of a party, investigations aimed at clarifying acts or actions of public administrations in their relationship with citizens, and respect for the fundamental rights contained in the Spanish constitution.

The powers of the Ombudsman extend to the activity of ministers, public officials in general, and any employee in the service of the public service.

Any individual or legal person who perceives a violation of their fundamental constitutional rights and freedoms, regardless of their condition, sex, race or social status, internment in a Penitentiary Center, or place of residence, may request the protection of the Ombudsman's Office.

Likewise, individual deputies and senators, parliamentary committees of inquiry related to rights and freedoms, and the joint senate congress commission in relation to the Ombudsman, may request the latter to investigate cases and actions of the administrations to clarify possible violations of constitutional rights.

Complaints to the Ombudsman by administrative authorities in areas within their competence are prohibited.

The activity of the body will not be subject to the electoral and parliamentary cycle, its operation being independent of the Cortes Generales (Parliament) being dissolved by

⁹ The Regulations on the Organization and Internal Functioning of the Ombudsman were approved by the Cortes Generales (Bureau of the Congress and Senate) on the proposal of the Ombudsman at their joint meeting on 6 April 1983.

calls for elections. If these have expired their mandate, the holder will go to the Permanent Deputation.

States of siege or exception shall not interrupt the activity of the body, nor the power to resort to its protection by citizens.

Human and material resources

The guarantee of independence of the body is also revealed in the autonomous disposition of the material, human and financial resources that this body manages with total independence and autonomy:

The law that creates the body provides it with the following resources for the fulfillment of its constitutional powers and functions:

Personal means:

All human resources at the service of the Ombudsman are considered personnel at the service of Parliament (Cortes Generales).

It does not have the strict consideration of public officials, because it is governed by different labor regulations.

The incumbent has a wide margin to elect advisers, who will cease at the same time as the holder of the position.

Two traits of this staff: transient (not permanent) and trust relationship.

In practice there is stability in jobs, changes of the incumbent usually do not imply a change in the structure of personnel and organization.

The problem of the personnel selection model is with respect to the principles of equality, merit and capacity that governs entry into the Spanish public service (art. 23.2 CE). However, this would be the case if the appointments made were unqualified persons, in this case the appointments could be annulled by the contentious administrative tribunals.

Although there is no fixed template, it is adapted to the needs, practice shows that over time there is an increase and stability of this.

Material means:

The financial resources for the functioning of the body are allocated by the Parliament (General Court) annually, as a separate item within the parliament's budget.

This budget item consists of two sections: (1) Chapter I for staff costs, and (2) Chapter II for current expenditure. This item has evolved increasingly as well as the functions and demands of action of the organ by the citizenry.

Cooperation and collaboration with sub-state ombudsmen 'autonomous communities' offices

National level

Spain is in relation to the territorial articulation of political power a Composite State, with elements of a federal state, this due to the administrative political decentralization

initiated with the Political Transition after the approval of the Spanish Constitution of 1978, which in its Title VIII opened the way to the return of power to the regions, providing these with their own Administration, Parliament, and Governing Council, today in Spain there are 17 Autonomous Communities (two are autonomous cities Ceuta and Melilla) circumstance that has facilitated that in 14 of them there is this same figure of the Ombudsman with similar powers to the Ombudsman of the State, responsible for the defense of fundamental rights and the protection of the citizen in his relationship with the sub-state administrations, following in all of them the same model as the state institution, both in terms of its creation (Statutes of Autonomy) and its parliamentary linkage, appointment system, and autonomy and complete independence. To date this figure has been created in the regions of Aragon, Catalonia, La Rioja, Region of Murcia, Andalusia, Catalonia, Valencian Country, Galicia, Castilla y León, Basque Country, Castilla La Mancha, Canary Islands, Navarra, and Principality of Asturias.

Competences and coordination with the Regional Ombudsmen's Offices¹⁰:

The Ombudsman, according to the law that regulates it, has the power to investigate on his own initiative or at the request of a party the activity of the administration of a subnational government, and must coordinate his action with these bodies in the regions where the body exists at the subnational level.

When the Ombudsman receives related complaints from the Ministry of Justice, the body shall apply directly to the Attorney-General's Office for investigation of the case.

In the present case, cooperation is the practice that predominates in the relationship between the State Ombudsman's Office and the Ombudsmen at the subnational territorial level, the competences and coordination between these bodies are regulated by Law 36/1985 of November 6. This does not prevent the state body from intervening and raising files for practices or complaints of citizens related to subnational administrations. In fact,¹¹ the law obliges the bodies to agree and cooperate in the resolution of files that affect a specific territorial area.

The Ombudsman renounces to initiate proceedings for citizen complaints before regional administrations, when the Regional Ombudsman's Office has also received the same complaint from the same citizen.

At the same time, the law provides that the Regional Ombudsman will assist the State body when the complaint comes from a citizen residing in its territorial scope.¹²

The Ombudsman may, in any case, ex officio or at the request of a party, supervise by himself the activity of the Autonomous Community and its administration within the scope of competence defined by this Law. Similar bodies of the Autonomous Communities shall

¹⁰ The LO 3/ 1981 of the Ombudsman, provided in its article 12.2 the existence of this body at the subnational level, and the Statutes of Autonomy (Sub-State Constitutions) were collecting it.

¹¹ <https://www.boe.es/eli/es/l/1985/11/06/36>

¹² The Ombudsmen's Offices in Spain have appeared over the years at the initiative of their own representative chambers, it happens that they have been adopting a different denomination according to the cultural identity of each region, but they are figures who practically copy and assume the functions of the State Ombudsman, without limiting the functions and competences of this, but complements them and avoids in many cases duplications.

coordinate their functions with those of the Ombudsman and the latter may request their cooperation. When the Ombudsman receives complaints concerning the functioning of the Administration of Justice, he must address them to the Public Prosecutor's Office so that it can investigate their reality and take the appropriate measures in accordance with the law, or transfer them to the General Council of the Judiciary, depending on the type of complaint in question; all this without prejudice to the reference that in its general report to the Cortes Generales may make to the subject. The Ombudsman shall ensure respect for the rights proclaimed in the First Title of the Spanish Constitution in the field of Military Administration, without it being able to imply interference in the command of the National Defence.

Table 1: Regional Commissioners

Autonomy (REGION)	Institution	Implantation
Andalusia	Andalusian Ombudsman	1984
Aragon	Justice of Aragon	1988
Castile-La Mancha	Ombudsman of Castilla La Mancha	2002
Castile and León	Procurator of the Common	1994
Catalonia	Union of Grievances of Catalonia	1984
Community of Valencia	Union of Grievances of the Valencian Community	1993
Galicia	Ombudsman of people	1990
Balearic Islands	Sindic de Greuges of the Balearic Islands	
Canary Islands	Member of the Commons	1986
La Rioja	Riojan Ombudsman	2006
Navarre	Ombudsman of Navarre	2001
Basque Country	Ararteko	1989
Principality of Asturias	Attorney General of the Principality of Asturias	2015
Region of Murcia	Ombudsman of the Region of Murcia	2008

Source: The Ombudsman's Book (2017)

Operation: competence and procedure scope

Article 9 of the Law states that the Ombudsman *"may initiate and continue, ex officio or at the request of a party, any investigation leading to the clarification of the acts and resolutions of the Public Administration and its agents, in relation to citizens, in the light of the provisions of Article 103.1 of the Constitution and the respect due to the Rights proclaimed in its First Title"* It should be noted that the law provides that the powers extend to authorities such as Ministers, administrative authorities, public officials and any person acting on behalf of the Public Administration.

Regarding the initiation of proceedings at the request of a party, the law specifies that it is not necessary to have any nationality, sex, residence, age or disability (it is included to be interned in a penitentiary center). However, it provides that an administrative authority within the scope of its competences may not lodge complaints with the Ombudsman. Finally, all legal and administrative actions and actions initiated by this body are free of charge, and the procedural procedures are followed under the most absolute reserve.

It should be borne in mind that the Ombudsman or his deputies may appear to collect information in any unit of the Public Administration, and **the Organic Law of 10/1995, of November 23, of the Criminal Code, establishes the criminal responsibility of administrative bodies that hinder, deny or delay the sending of files hindering the action of the investigations of the institution of the Ombudsman.**

Different are the procedures that structure the activity:

Subjective: Government and Public Administration.

Objective: Acts and Resolutions.

Control parameter.

Resolution of Complaints.

Procedure. Submission and admission of complaints.

Forms of completion of the procedure: The estimatory resolution.

The investigation procedure: the complaint of part.

Reports to the Cortes Generales.

The Appeal of Unconstitutionality.

Cooperation with other international institutions in the protection of human rights

International level

The Ombudsman, in his capacity as the National Institute for the Promotion and Protection of Human Rights (NHRI), develops relations of collaboration and technical assistance with similar institutions in other States and the European Ombudsman independently facilitates the follow-up regularly carried out by international organizations. on the situation in Spain about the protection of human rights.

In Spain, the norms on fundamental rights and freedoms must be interpreted in accordance with the Universal Declaration of Human Rights and ratified international treaties (article 10 of the Spanish Constitution). The body participating in the Global Alliance of National Institutes (GANHRI) has repeatedly received "A" accreditation from the Accreditation Subcommittee of that alliance. The last accreditation renewal took place in 2018, and the next one will be presented in 2023.

Spain has ratified most of the international human rights treaties. Some of the most important are the following:

General

International Covenant on Civil and Political Rights (New York, 19/12/1966), ratified by Spain on 13/04/1977 (consolidated text)

International Covenant on Economic, Social and Cultural Rights (New York, 19/12/1966), ratified by Spain on 17/04/1977 (consolidated text)

European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4/11/1950), ratified by Spain on 26/09/1979

Charter of Fundamental Rights of the European Union (Nice-Strasbourg, 07/12/2000-12/12/2007), which entered into force on 01/12/2009

Special:

European Social Charter (Turin, 18/10/1961), ratified by Spain on 6/05/1980 (consolidated text)

Convention on the Prevention and Punishment of the Crime of Genocide (New York, 9/12/1948), accession of Spain on 13/09/1968

International Convention on the Elimination of All Forms of Racial Discrimination (New York, 21/12/1965), accession of Spain on 13/09/1968

Convention relating to the Status of Refugees (New York, 28/07/1951) and Additional Protocol of 16/12/1966; accession of Spain on 22/07/1978 (consolidated text)

Convention on the Elimination of All Forms of Discrimination against Women (New York, 18/12/1979), ratified by Spain on 16/12/1983 (consolidated text)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 10/12/1984), ratified by Spain on 19/10/1987

Likewise, Spain depends on the Regional Office for Europe of the OHCHR whose mission is the observation and promotion of human rights in the European Union, through the FRA (Fundamental Rights Agency) European Agency, European countries are supervised and receive recommendations for the improvement and strengthening of human rights in their respective countries. ¹³

¹³ [fra-2020-strong-effective-nhris-summary es.pdf](#)

The Ombudsman as an Institution for the Defense of Human Rights collaborates with various international institutions, including the United Nations, the European Union, and the Council of Europe. Especially in the implementation and monitoring of the Sustainable Development Goals (nº 16) on solid institutions that refers to the indicator (16.a.1.) that obliges national institutions to comply with the Paris principles.

It also applies the standards approved at the United Nations and its recommendations, for example, resolution A/RES/75/1861 on the role of governance institutions and the rule of law."

Within the framework of this participation and collaboration with the Council of Europe, in March 2021 this institution promoted the recommendation to strengthen the Human Rights Institutes of the member countries, as bodies of great impact on the preservation of human rights in Europe. ¹⁴

The Ombudsman carries out cooperation and technical assistance activities with the National Institutions for the Defense of Human Rights of other states, within the framework of Law 2/2014 on Action and the Foreign Service of the Spanish State.

This cooperation is materialized in several ways: ¹⁵

Contribution to the Report: The urgency of now. Systemic racism and opportunities in 2021. UN Working Group of Experts on People of African Descent.

Contribution to the study promoted by the UN "**non-take-up**" or waste of social protection benefits. This project affects the difficulties of certain groups to access the social benefits of the state due to barriers such as difficulty of access to information, complexity and cost of the application, absence of digital skills, fears of interacting with administrations, corruption, etc.

Report for the European Network of National Human Rights Institutions (ENNHRI) for the European Parliament and the European Commission, on the situation of Human Rights in the member countries.

Cooperation with the European Ombudsman in the investigation into the FRONTEX complaints system, to which the Spanish body provided evidence that it is a complaints system that does not work due to the existing ignorance on the part of the people expelled.

Collaboration with the Organization for Security and Cooperation in Europe (OSCE). The Ombudsman provided information on the diagnosis of threats to NHRIs in the region and the mapping of capacity building capacities to strengthen equality and human rights organizations.

¹⁴ https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a1f4da

¹⁵ Information extracted from the Ombudsman's Annual Report 2021, Annexes (Annex E) International Activity.

The Spanish Ombudsman also collaborates with the International Ombudsman Institute (IOI) to promote the rights of older people in the era of longevity.

Cooperation meetings with the European Agency for Fundamental Rights (FRA) and the Ombudsman to study the reception conditions of migrants in the Canary Islands.

The Global Alliance of National Human Rights Institutions (GANHRI) of the United Nations System participated in the last meeting, in July 2021, in which the violation of human rights in the company was discussed in the context of the pandemic.

Collaborates and is an ex officio member of the Ibero-American Federation of Ombudsman (FIO)

The participation of the Ombudsman in this body has been very active since its inception, currently occupying the Technical Secretariat of the organization. The Ombudsman participates in the Network of Human Rights Institutions of the Americas (RINDHCA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) on "good practices to prevent human rights abuses and violations against migrants in border areas"

It has supported and cooperated with the Colombian Ombudsman for the development of regional and state strategies for the prevention, detection and specialized care of migrants who have been victims of sexual violence, child labor, trafficking in human beings, trafficking, exploitation, and other forms of abuse.

It should be noted that the Ombudsman within the framework of this international cooperation agenda also receives visits from the heads of this body in other countries, to learn about its operation and good practices, the most recent have been that of the president of the Venice Commission who requested collaboration for the Ibero-American field, the Ombudsman of the Dominican Republic and the President of the Ibero-American Federation of Ombudsmen.

The Ombudsman of Spain, as the body responsible for the Defence and Protection of Human Rights, is part of the following international bodies, in which it actively participates:

Global Alliance of National Human Rights Institutions (GANHRI)

Network of National Institutions for the Promotion and Protection of Human Rights of the American Continent

Cooperation with international and regional human rights bodies.

Ibero-American Federation of Ombudsman (FIO).

Mediterranean Ombudsman Association.

International Ombudsman Institute.

European Ombudsman.

Inter-American Court of Human Rights.

Inter-American Commission on Human Rights.

International Criminal Court.

European Court of Human Rights.

United Nations.

Council of Europe.

Compliance with and follow-up of the principles and recommendations on the protection and defense of human rights

As previously stated, the Ombudsman in Spain, in addition to being the High Commissioner of the Cortes Generales for the defense and protection of Fundamental Rights, is also the National Human Rights Institution (INDH). That is why it develops an activity in line with this mission and compliance with the Paris Principles adopted in 1991, approved a year later by the United Nations Commission on Human Rights, and ratified in its Assembly of 1993. In line with these principles and the fundamental mandate, it promotes measures aimed at the fulfillment of human rights.¹⁶

The Ombudsman of Spain is accredited with "A" status by the Global Alliance of National Institutes of Human Rights (GANHRI) which ensures compliance with these Paris Principles. And it has last renewed its accreditation in May 2018, before the accreditation subcommittee (SCA) of the Global Alliance of National Institutes of Human Rights (GANHRI), and will resubmit its renewal in 2023, the renewal of accreditation is renewed every five years. For the purposes of this report, it makes sense to take up the fundamental axes of these:¹⁷

The key pillars of the Paris principles are:

Broad mandate,

Extensive functions,

Independence from the government,

Pluralism

Appropriate faculties,

Adequate resources,

Cooperative work,

International commitment.

GANHRI's recommendations for accreditation can be consulted on its own website¹⁸

¹⁶ The Paris Principles is a term referring to the status of National Human Rights Institutions and sets the minimum standards that NHRIs must meet for effectively fulfill its mission autonomously and independently of interference from political power and the Public Administration.

¹⁷ https://ganhri.org/wp-content/uploads/2022/02/StatusAccreditationChartNHRIs_28.12.21.pdf

¹⁸ <https://ganhri.org/information-for-nhris/> Here we will find all the practical information about the accreditation process.

In this sense, it must be said that the Ombudsman is an institution that, due to its own configuration, design, and organization, complies with the Paris Principles, which ensure that NHRIs comply with minimum standards that guarantee them the independence and autonomy of operation for the good fulfillment of their mission. In the next phase of accreditation for the Ombudsman of Spain, it is expected that there may be difficulty due to issues related to the problems of renewal of the head of the body in recent years.

Summary of the activity and incidence in the last 5 years

Recommendations:

The Ombudsman has made in recent years many recommendations to the bodies of public administrations of their duty to comply with the law and avoid the violation of rights:

Examples:

Recommendations to the Secretary General of Penitentiary Institutions, Health Services, General Directorate of the Police, among other bodies, situations of deficit or breaches of the protection of Human Rights.

Warnings:

By which the body sends a report resulting from an investigation that challenges an administration to comply with what is contained in the conclusions of the investigation.

Applications for Appeals to the Constitutional Court.

Examples:

Numerous requests were received from citizens to file appeals of unconstitutionality against the second decree of the state of alarm within the framework of the measures to contain the spread of infections caused by SARS-CoV-2.

Appeal to Royal Decree-Law 35/2020, of 22 December, on urgent measures to support the tourism sector, hospitality, and commerce and in tax matters.

Ex officio proceedings before the following bodies:

Secretary General of Penitentiary Institutions

Directorate-General for Tax Administration

Directorate-General of the Police

General Directorate of the Civil Guard

Instituto Nacional de Ciberseguridad de España S.A.

Telematic Crimes Group of the Civil Guard.

Ministry of Health.

Undersecretary of the Ministry of State for Defense.

General Directorate of Migration.

National Institute of Social Security.

The Spanish Ombudsman is obliged to render accounts of his actions, for this purpose he presents his annual report to the Congress of Deputies in which he gives an account of the complaints presented by the citizens, and the actions derived, their results and incidence; the suggestions accepted by the Public Administration. The areas in which it has had a special incidence also linked to those that have registered the highest number of incidents, have been in the last report presented:

Administration of Justice,

Prisons

Citizenship and Public Safety,

Migrations

Equal treatment,

Violence against women,

Education

Health

Social Security and Employment,

Social Policies,

Housing Policy,

Public finance

Economic activity

Communications and Transport,

Environment

Town planning

Local government

Function and Public Employment.

Evolution in the last 5 years

	2017	2018	2019	2020	2021
Performances¹⁹	25.776	25.615	20.722	29.335	29.401
Reports	59	60	56	58	59

¹⁹ Complaints, Ex officio Proceedings and Requests for the lodging of appeals before the Constitutional Court. Of these complaints, 93.79% were filed directly by citizens; 6.13% by regional parliamentary commissioners (Ombudsmen of regions) and 0.08% by other agencies.

In 2017, 71.33% of the recommendations were accepted, and 70.38% of the suggestions submitted.

In 2018, 74.25% of the recommendations were accepted, and 48.60% of the suggestions, and 35.03% were rejected. In the 2018 Report, two themes deserved special attention: the situation of children and adolescents, and the situation of persons with disabilities, which were the subject of two case studies in both cases.

In 2019, 68.09% of the recommendations were accepted, and 56.55% of the suggestions, a small increase over the previous year, having been rejected 17.33% of the recommendations, and 26.19% of the suggestions.

In the 2020 Report we observed a significant increase in complaints and claims, which would mainly be linked to the provision of health services (related to the Covid-19 pandemic) and the problems derived from the restrictions on mobility implemented by the government of the nation. Of the complaints submitted, 32.06% were accepted, 19.50% of them were rejected, and as for the suggestions, 48.78% were accepted and 31.63% were rejected.

In the last report presented to the Cortes Generales in 2021, coinciding with the inauguration of its current holder Mr. Ángel Gabilondo Pujol, we can see that the number of claims and complaints presented continues to increase relatively, of which many the recommendations were accepted 68.27%, the rest rejected, and the number of suggestions accepted increased significantly by 53.45%, 21.53% were rejected.

In addition to these annual reports that are presented to parliament, the institution has carried out the following studies:

Study on Immigration in the Canary Islands (2021)

Actions in the face of the Covid-19 Pandemic (2020)

The Contribution of Immigration to the Spanish Economy (2019)

Specific attention to acquired brain damage (2019)

The Economic Crisis and Inequality (2018)

Other advocacy activities in the promotion and defense of human rights:

In 2002, within the framework of collaboration in the promotion and study of human rights, the Ombudsman and the University of Alcalá de Henares (Madrid), with the support of the King, instituted the King of Spain Human Rights Prize, which is awarded biennially, has an economic endowment currently set at € 25,000 and a medal created for this award.

The purpose of the award is to serve as recognition and encouragement to entities of a public or private nature that in Spain, Portugal and other Ibero-American countries are distinguished by their work in the defense and promotion of human rights and democratic values, or that promote research and the implementation of action programs aimed at promoting these values.

Eight editions of the King of Spain Human Rights Award have been held, in alternate years from 2004 to 2018. The award-winning organizations have been the Brazilian entity Pastoral da Criança (2004); the Myrna Mack Foundation of Guatemala (2006); the non-profit association, based in Peru, Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) (2008); the non-governmental organization "Un techo para mi País", which has its main office in Santiago de Chile (2010); the National Network of Civil Human Rights Organizations "All Rights for All" (DTT Network), of Mexico (2012), the Congregation of Religious Adorers Slaves of the Blessed Sacrament and of Charity (2014); the Colombian Civil Air Patrol (PAC) (2016) and, in 2018, awarded the prize in 2019, the Collaboration and Effort Association (ACOES), a Honduran NGO that develops projects for disadvantaged people or at risk of exclusion.

Accreditation strategy of the spanish ombudsman's office to the ganhri subcommittee on accreditation

The Ombudsman, as we have said before, participates in the Global Alliance of National Institutes (GANHRI) and has repeatedly received "A" accreditation from the Accreditation Subcommittee of that alliance. The last accreditation renewal took place in 2018, and the next one will be in 2023. In this sense, it must be said that according to one of the interviewees to be asked about this aspect, the answer was that generally the renewal of the accreditation passes without major problems, this is due, this person said, to the fact that the design and operation of the body and its trajectory means that there is little doubt about compliance with the Paris Principles, especially those most relevant to the accreditation subcommittee whose composition had recently changed and was quite demanding in this regard. In fact (continued this interviewee) perhaps the Spanish Ombudsman will face the next renewal with more difficulties than those experienced previously. This is due to the lack of long-term agreement between the two most important parties of the chamber regarding the person who should occupy the ownership of the institution, which meant a long period of interim at the head of the organ; problem recently solved with the appointment of Mr. Ángel Gabilondo Pujol.

STRENGTHS	WEAKNESSES
1. Creation of the body by constitutional mandate and legal development by law of the highest rank, Organic Law.	1. Lack of representation in the body of social groups representing minorities (ethnic, cultural, etc.)
2. Broad regulatory framework and clear design of prerogatives, organization, functions and competences.	2. Poor openness to society, despite its consolidation and extensive activity, is still very unknown in broad social strata, especially the most vulnerable groups.
3. Strong legitimacy for its link with the Chamber of Deputies and its independence and autonomy in the fulfillment of its mission.	3. Poor system of communication with citizens, especially with the groups that have the greatest problem of access to new technologies, such as the elderly who live in rural areas.

4. Broad powers of action. Amparo appeals, Constitutional Appeals, including proceedings with respect to the body to which it is accountable (Congress of Deputies)	4. There is an annual accountability that is specified in the presentation of reports to the Cortes Generales, but has a deficit of accountability to society in general.
5. Flexible and effective organizational structure composed of numerous thematic areas that cover most situations of violation of rights.	5. Image of a certain opacity regarding matters and procedures, subtracting as an administration that resembles a ministerial (bureaucratic) model with a certain distance.
6. Sufficient material and personal resources with a guarantee of stability.	6. Relatively important blockages due to lack of agreement on the appointment of the holder, leaving the body without a holder (in the last period 6 years without occupying) due to lack of parliamentary agreement.
7. Participation in international organizations, serving as a model to be followed by other European countries and the ibero-american field.	
8. High social valuation, consolidated as an institution of utility and effectiveness in the mission entrusted.	

CONCLUSIONS

The Ombudsman in Spain is an institution strongly rooted in democratic society to appear in the constituent period that followed the dictatorship, this made it gain great strength in the legal system by being created by constitutional mandate and complete its design and organization through an Organic Law reserved in the Spanish legal system for issues related to fundamental rights and freedoms.

This design and legal articulation mean that the body in the fulfillment of its mission has complete autonomy and independence in the organization and in the financing of its activity that is linked to the budget of the parliament itself, but whose elaboration is the responsibility of the Ombudsman.

Over the years and for the performance of its activity it is today an institution that has achieved an important prestige in Spanish society, considering itself a body that in relation to the defense of fundamental rights is perceived as more effective than the judiciary itself.

This prestige has made other countries, recently the French Republic (one of the interviewees informed us), have sought in this institution a model to follow, having adopted in its legal system a figure with prerogatives, appointment system, and parliamentary linkage, following the Spanish example.

Despite this and the fact that in its management it has managed to modernize its processes and openness to society, it continues to function as an administrative body

that suffers from the presence in its decision-making bodies of the participation of the most disadvantaged groups, being nevertheless an institution that is open to the problems linked to its mission that citizens have today, one only has to see the large number of complaints, appeals and recommendations that are accepted by the bodies that are the subject of them. On the other hand, the long interim in the position of the first Deputy, six years, until the recent appointment by the Cortes Generales of his new holder who has been in office for a few months, has raised for the first time a problem of difficulty of configuration of majorities for his appointment, in the Spanish case very dependent on agreements between the majority parties.

ANNEX 1

INTERVIEWS²⁰

This report is completed with two interviews with technicians responsible for different areas in the Ombudsman of Spain. These interviews are framed in the context of the project object of this report to extract useful experiences for accreditation.

Interview (1) March 29, 2022. Ombudsman's Office of Spain.

Summary:

Strategy that he recommends for Brazil in the face of accreditation: a strategy based on action, changes, taking small steps that visualize what they are achieving in terms of Promotion and Defense of Human Rights in the country.

Generation of evidence that is well supported are those that help justify their trajectory and are considered by the subcommittee of the GANHRI.

Value these changes (identify them well) and that they are the ones that accredit a course and a strategy towards the best of scenarios.

On the other hand, contextualize the changes, trying to explain that the changes, however small, occur in a context that is not exactly easy and that is why it is more necessary external support that supports them and makes them continue to move towards full compliance with the Paris Principles.

Keep in mind that the evaluators also pay close attention to the country's fulfillment of social rights, in addition to civil and political rights; that is, rights related to access to education and health.

Articulate an advocacy alliance that supports the changes so that the dependence of the body is on the parliament, in tune with the Paris Principles.

Show that the body is economically and financially independent. This means that the budget for its operation is prepared and executed autonomously by that body.

It is important that the appointment of the head of the body is by the Parliament of the Nation and not by a person in charge of the executive, the first attributes credibility, autonomy and high legitimacy for its link with national sovereignty.

Financial independence, although now (in Brazil depends) completely on the executive, propose formulas that go along the lines of financing being increasingly independent of executive decision-making. Formulas and/or strategies for decoupled financing can be proposed and the link with the financing of the parliament can be sought. Or, that the budget allocation depends on a parliamentary body in which all parties are represented, national sovereignty.

As for the appointment, powers, prerogatives and inviolability and guarantees of the head of the Council, continue working on it: propose strategies of disengagement (if it is already so) currently, emphasize that this is the way to go, disassociate the

²⁰ We have considered that for reasons of confidentiality the names of the interviewees do not appear.

leadership and appointment of the organ of political power, regardless of who occupies it. Promote legislative changes that design an independent NHRI body in its operation and performance of its mission.

Put the emphasis on the advances, regulatory changes achieved. To give the example of Spain whose Ombudsman takes decisions that are not binding, but favor's regulatory changes.

Establish and promote an alliance with political and civil society actors that promote the necessary regulatory changes.

A recent example of the impact on regulatory changes of the Spanish Ombudsman in relation to the protocol followed in the detention of minors used in juvenile detention centers:

- "Protocol of detection of minors, a system was used to paralyze adolescents who resisted or were aggressive, the protocol of action followed caused 4 deaths of adolescents" - the complaint of the Ombudsman has allowed the Law of Protection of minors recently approved to force to change this protocol by the Police" -.

SUGGESTIONS.

Have a two-part accreditation strategy:

Seek by the accrediting body that it is recognized that it is on the right track, there are changes, these changes are recognized and can facilitate at a later stage the obtaining of said accreditation.

Present the accreditation already with this support and recognition of the accrediting body.

Very important: to influence the idea that the National Human Rights Council of Brazil is firmly committed to its participation in international organizations and networks for the promotion and defense of Human Rights, showing a commitment to adopt international standards and the principles and values that inspire it. At the moment they are not part of the FIO (there is the Attorney General's Office) but it is recommended that they have a presence in all the international bodies and spaces of the sector; cooperating, receiving experiences of good practices, and institutional and technical support.

To influence the need to contextualize socially, politically and economically the changes, give them the value they have, and the great value that internally can have to obtain international support for their consolidation.

Interview (2) April 4, 2022. Ombudsman's Office

Summary

In this second interview we tried to contrast the information obtained in the first, especially on the feasibility of an accreditation in two phases, as we can deduce from the answers this would not be possible if the subcommittee considers that the body does not comply with the Paris principles especially in the following sections:

As is known, the GANHRI, in a document of General Comments of the Subcommittee on Accreditation adopted on February 21, 2108, in its point 3 specifies that **the Paris Principles are the basic criterion used to accredit National Human Rights Institutions, by the Subcommittee on Accreditation (SCA).**

In this sense, it is necessary to highlight the fact that, in the present case, that in point 5 it is stated that – **"the Subcommittee on Accreditation understands the issues faced today by NHRIs, which operate in a wide variety of circumstances, which include various institutional models and political systems, for this reason it has developed clear examples (to be taken into account for the purposes of this report) in accordance with the Principles. of Paris in practice.**"²¹ However, the SCA considers that (point 7 of the general comments) the National Institutions for the Defense of Human Rights (regardless of their structural model) have to comply with these general principles. **These criteria, in short, explained the person interviewed, are independent of the individual or specific context of each NHRIs in each country, its configuration and institutional context, are therefore of universal application.**

Among the recommendations expressed are the following:

This person first recommends that progress be made on a law so that the National Human Rights Council becomes a Parliamentary Commissioner. This would guarantee independence and autonomy, linking their accountability to national sovereignty, including for the purposes of appointing the head of the body and its prerogatives.

The participation of civil society is important.

Changes for the creation and independence of the body are not necessary to involve constitutional reforms, a law is enough.

It must be considered, in the accreditation process, that the subcommittee does assess the circumstances of the country, the difficulties of a diverse nature in which the different NHRIs operate.

Regarding the body's participation in international organizations and networks, he pointed out that the Brazilian National Human Rights Council did not participate in the FIO in which it thought the Attorney General's Office was present. It is very important that this NHRIs be linked and participate as much as possible in the regional and international bodies that work in the promotion and defense of human rights.

²¹ The interviewee stated that these principles are the basis of the accreditation standard for any country, but that the subcommittee is aware of the institutional differences, social and political contexts, and diversity in which they operate; however, this does not mean that NHRIs can be accredited that do not meet minimum criteria of autonomy, independence, and guarantees of the body.

The fact that the body is directly linked to a Ministry as is currently the case does not facilitate its independence or autonomy, being precisely a Ministry such as the Family Ministry, which is very questioned lately. Surely it will be difficult for them to obtain accreditation without changing this aspect, because they do not comply with the Paris principles in their most fundamental aspects: composition and guarantee of independence (especially of political power) and pluralism. This section for the case at hand is important to consider. The subcommittee considers in its general principles that the NHRI should be independent of governments both in their structure, composition, decision-making mechanisms and working methods²², for an effective fulfillment of their mission.

ANNEX 2

QUESTIONNAIRE

This questionnaire served as a guide for the interviews and was adapted as the semi-structured interview with the two technicians of the Ombudsman evolved. This qualitative research technique allows to know the discourse of the interviewees regarding the central problem raised, in this case, the experience of the Spanish institution and its recommendations for accreditation.

Summary of the evolution of the institution.

Evolution and fulfillment of the function of an organ for the defense of human rights.

What would you highlight about the organ? Why is it successful in fulfilling its functions?

What has been the experience over time when it comes to accreditation and accreditation renewal?

What should countries like Brazil its CNDH aspire to accreditation consider?

Which strategy would be the most appropriate, considering that aspects such as constitutional reform do not depend on this body?

Is a two-stage accreditation possible? *-Question included in the second interview based on the information of the first-*

According to their experience, the body that accredits which aspects are the ones that they consider the most and if they value the steps taken in positive by the countries in this regard.

Does it make sense to consider accreditation in two phases?

9. Would you be willing to attend as an expert the conference to be held within the framework of this consultancy in the coming months?

10. Can you provide us with any contact in Portugal? Person, or technician with whom to conduct an interview.

²² In section (1) Essential requirements of the Paris Principles. O.G. 1.9.

The Ombudsman of Portugal (provider of justice)

Background to its creation

Origins and context

In Portugal, the figure of the Ombudsman (“Provider of Justice”) harks back to the 1970s, which coincided with the democratization process initiated on April 25th, 1974 in the wake of the Carnation Revolution. This Institution came about as the result of a proposal by a group of lawyers very much committed to the cause of protecting the rights of citizens within this context of political transition towards a Democratic State rooted in the Rule of Law in Portugal.

The first explicit references to this figure may be found in the writings of José Magalhães Godinho in 1971 (who later became the second Ombudsman of Portugal and the first to be nominated by the Assembly of the Republic), inasmuch as the first Ombudsman immediately became a member of the first democratic government by being designated as Interior Minister of the nascent Portuguese Republic.

It was within this context of political transition towards a democratic regime that this Institution arose and was later incorporated into the Democratic Constitution in its Article 24 (23)²³, whose Constituent Courts then discussed the creation of a figure that would act as mediator between citizens and the public administrations. At that time, the focus was on the creation of a national council geared to the protection of rights, aimed at receiving the complaints of citizens against the Public Administration as well as occasional abuses perpetrated by State bodies and their agents.

The model considered at that time was that of the Scandinavian Ombudsman – a model that eventually gained traction among political parties and groups that advocated the creation of an institution charged with restraining the power of the State and guaranteeing the fundamental rights of citizens. However, these first proposals had to wait until the reestablishment of public liberties in Portugal.²⁴

The importance ascribed to this official within that historical period of the country was reflected in the fact that a pre-constitutional decree – Law-Decree number 212/75 dated April 21st – provided a boost to the latter, even before the approval of the new Democratic Constitution. This decree regulated that entity along the lines of the Scandinavian model, yet refined by the Danish model, whose difference vis-à-vis the previous ones was that it did not have the power to intervene in decisions issued by the Courts, nor did it have the capacity to initiate either direct lawsuits or disciplinary actions against civil servants accused of malfeasance.

²³ In the latest consolidated (reformed) text of the Portuguese Constitution dated 2005, it appears in its article 23; however, in the original text of 1976, the figure of the Provider of Justice appeared in article 24, always (indeed) in Part I, geared to Fundamental Rights and Duties.

²⁴ Silveira, Luis (1988), “El Defensor del Pueblo en Portugal”, *Revista de Estudios Políticos* (Nueva Época), Numbers 60-61, April-September, pp. 661-698.

Insofar as this figure came into existence in the phase prior to the change of the political regime, both civil and military jurisdictions were completely separated, and that was the reason why it did not have the power to intervene in the Armed Forces, a capacity later bestowed upon it in the wake of the modifications in the legal statute of that entity at a later stage in the democratic process. It is also for this very reason that the first head of the entity was nominated directly by the President of the Republic (and by Parliament, as was the procedure at a subsequent stage) upon the proposal of the Ministry of Justice. The first such nomination came into effect on December 9th, 1975, and the office opened on June 9th of the following year.

On that occasion, the entity had already been incorporated to the Constitution approved on April 9th, 1976, whose Article 24 consecrates the Institution of the Provider of Justice, integrated in the first part of the Constitution devoted to Fundamental Rights and Duties. The Institution was consolidated in the Portuguese Constitution as a State Institution, but without the nature of a sovereign entity, inasmuch as it was linked directly to Parliament, which is responsible for nominating the head of the entity and to which it is directly accountable. That entity thus took on the role of advocate and guarantor of civil rights in their relationship with the public administrations, intervening by means of complaints, reports of wrongdoings, as well as recommendations, and urging the departments of the Administration to correct violations of such rights.

According to Silveira (1988), a distinctive feature characterizing this entity in the case of Portugal was introduced in Article 281 of the Constitution which, differently from other European models for the Ombudsman, included the latter among the competent entities to request the then-existing Council of the Revolution to issue a declaration of unconstitutionality for certain laws and other norms.

The model currently in operation

The Assembly of the Republic approved, on November 22nd, 1977, the Statute of the Ombudsman by means of Law number 81/77, which was later complemented by the organic law of the corresponding services, namely Law number 10/78 dated March 2nd.

This statute reaffirmed the previously-designed model – as mentioned earlier, a model that foresaw an official independent from the political powers-that-be, to be designated by Parliament and independent not only from a legal standpoint, but also in financial terms vis-à-vis the Executive Branch of Government. The norm that regulates it states with the utmost clarity that the latter shall have its own budget linked to that of the National Assembly.

These two texts – the Statute of the Ombudsman and its Organic Law²⁵ – complete its framework and its regulation, together with the abovementioned article that created it

²⁵ The Organic Law contributed to strengthening the autonomy of the body, insofar as it granted its Head the ability to nominate and select and/or fire the administrative personnel and assistants performing their professional career in this Institution.

and that is featured in the Constitutional Charter; these are the fundamental legal frameworks that design and regulate this entity and that underwent a few changes at a later stage, but without modifying this fundamental architecture in a significant manner.

The first constitutional modifications in Article 23 were implemented in 1982, and these reforms ushered in the Constitutional Court, which affected the framework of the Ombudsman by strengthening the autonomy, legitimacy, and independence of that entity, including the following changes:

Nomination by 2/3 of the Deputies present at the Assembly of the Republic, thus eliminating the simple majority enshrined in an earlier version of Article 23. The latter change (in our view) is seen as the formula for the consolidation of the legitimacy of the entity as well as its capacity to act.

The Head of the Ombudsman's Office was included as a member of the State Council, an entity of the Presidency of the Portuguese Republic having a consultative nature.

This reform meant that the latter was no longer part of the Council of Magistrates, as had been the case previously.

It was awarded the competencies to file unconstitutionality appeals on grounds of omission²⁶ before the Constitutional Court.

It stipulated that the National Defense Law and that of the Armed Forces, namely Law number 29/82 dated December 11th, implied that any citizen – whether civilian or military – could file complaints against those in charge of the Armed Forces. The above modification had a significant impact on the Ombudsman in his ability to act in connection with matters pertaining to the military institutions.

In addition to the aforementioned norm, other stipulations led to a wider scope of action on the part of the Ombudsman. For instance, Law number 69/78 dated October 6th, which bestowed upon that entity the ability to request that the Constitutional Court curb or abolish fascist organizations.

Law-Decree 496/85 of October 25th concerning contracts, which bestows upon the Ombudsman the ability to denounce, before the Public Attorney's Office, those contracts harboring abusive clauses and/or items contrary to good faith, either resorted to or imposed by Public Administrations.

It was instituted as an entity separate from the remainder of the Control Departments of the Public Administration – regardless of whether or not these could actually file lawsuits – with a role geared, above all, to persuading through its recommendations, as well as preventing and correcting the actions of the administrations that could be harmful to citizens.

²⁶ According to José Julio Fernández Rodríguez (1998), inaction by legislators implies that certain constitutional precepts demand overly-long development times, which engenders, as a result, civil rights violations.

Analysis of the legal framework

Regarding the nature of the entity and its structure

As stated above, this is an entity consecrated in the Portuguese Constitution, yet one that does not stem from the articulation of a particular Constitutional Branch of Government; hence, it is not looked upon as a sovereign entity.

The Ombudsman arose in the Constitution promulgated on April 25th 1976, more precisely in the section geared to fundamental rights and duties – Article 23 of the Constitution – in the midst of a full-fledged general legal regime of fundamental rights. As a result, this State entity has the fundamental role of defending and promoting the rights, liberties, guarantees, and legitimate interests of citizens, and its mission is to ensure justice and legality in the exercise of public authority.²⁷

As was seen in the analysis of the background to its creation, this is an entity that relies on a sufficiently clear organizational and legal architecture that is firmly anchored in the Constitution, and the laws that regulate it make it very difficult to extinguish it through a political decision, even one issued by the National Parliament itself (by means of ordinary legislation). Therefore, this is an entity shielded against occasional context-induced political changes, government decisions, or shifts in parliamentary majorities.

As stated by Silveira (1988), this is a unique entity in the whole country, one which bears many resemblances with other entities with a similar nature, as has been seen in the cases of Spain, Germany, Mexico, and Colombia in light of the analysis attempted throughout the present work, thus bringing it close to the layout, structure, and evolution of this figure elsewhere in the world.

This is an official elected by the Assembly of the Republic (2/3 of all Deputies) in the wake of the constitutional reform of 1982.

This is also an independent institution that does not depend hierarchically on any other outside institution.

It has full autonomy in relation to the Executive Branch, and its nomination reinforces such independence, in addition to the fact that it relies on its own material, financial, and administrative means, with full management autonomy.

It has budgetary autonomy as well, inasmuch as its budget is linked to the Assembly of the Republic and subject to the exclusive control of the Court of Accounting, similarly to all other State institutions and public administrations.

The Ombudsman is independent even from the entity that nominates him/her, from which s/he receives no instructions whatsoever or orders of any kind.

Any citizen with a proven reputation marked by honesty and independence is eligible for the position.

²⁷ Art. 1.1 of the Statute of the Provider of Justice in force (Law 9/91 of April 9th, modified by Law 30/96 of August 14th). Only the Political and Judicial Roles of the State are outside the scope of the Provider of Justice.

Mandates have a duration of four years, and the Ombudsman may be reelected only for a second mandate. Up until the present time, none of the heads of the institution has applied for reelection.

This is an office that enjoys total autonomy whilst performing its duties, and this independence derives from the nomination of its head by the Assembly of the Republic. As mentioned above, it also features administrative and economic autonomy, insofar as its budget and the employees on its staff are managed without intervention or surveillance by any other higher institution, with the exception of the Court of Accounting, as with all other State institutions and administrations.

The fact that this is an official nominated by Parliament does not mean that s/he acts as a “Parliamentary representative”; rather, his/her independence and autonomy are applicable even in relation to the entity that his/her nomination stems from. This figure which, at its inception (pursuant to the model of the Scandinavian Ombudsman), had as its overriding mission the defense of the rights of citizens vis-à-vis the public administrations, gained – starting in the 1980s – greater relevance owing to the fact that the latter was vested with a fundamental role in the defense of human rights,²⁸ as in the Portuguese case, in which it has been granted competencies pertaining to the defense of rights, liberties, guarantees, and legitimate interests, and where emphasis has been placed on all the issues related to the defense and protection of civil rights through informal justice mechanisms, and control has been exerted on the actions of public administrations.

In the case of the Ombudsman of Portugal, the Constitution includes, its Article 1st, the role of an entity in charge of the protection and defense of Human Rights, understood in complementary fashion to the defense of the interests of citizens vis-à-vis the Public Administration; in fact, the text refers to the “defense of the rights, liberties, guarantees, and legitimate interests,”²⁹ as the overarching role of the Ombudsman.

The Portuguese Constitution refers to the fact that the mission of this entity is not limited to protecting and safeguarding fundamental rights and freedoms; rather, it states that such a role extends to the remainder of rights, among which the following are included: social, economic, and cultural rights, with special emphasis on those related to Social Security (art. 63), Health (art.64), Housing (art. 65), Education, Environmental Protection, and Quality of Life (art. 66), Protection of Children (art. 69), of Youth under precarious conditions (art. 70), the Elderly (art. 72), or to Education and Culture (art. 77).

In view of all of the above, one must understand that this entity was designed as a mechanism endowed with a role geared to the protection of citizens vis-à-vis the powers-that-be, compatible with a relevant role within a wide array of social and civil rights that

²⁸ In the decade of the 1980s, several congresses and seminars were convened with all the Ombudsman’s Offices implemented in most countries in the world, which consolidated the enlargement of the roles of these bodies to include the defense of Human Rights: Resolution 85/8 of the Council of Europe (Seminar of Siena 1982); the World Conference of Ombudsmen in Stockholm (1984); the Colloquium that took place on Madeira Island in 1983 on the Human Rights and the Rights of Foreigners in Europe; and the Roundtable of European Ombudsmen in Madrid in 1985.

²⁹ In this manner, it appears explicitly in the text of Law 9/91 dated April 9th of the Regulatory Statute of the Provider of Justice.

require an entity with a clear operation with a view to ensuring that citizens will avail themselves of such rights to their fullest extent.

This commitment is undertaken not only by presenting appeals to the corresponding administrative entities, but also by submitting annual reports to the Assembly of the Republic. These reports list violations and urge administrative entities or institutions denounced as being responsible for such violations to adopt mitigating measures as applicable.

Likewise, this entity has the ability to send to Parliament specific reports in which complaints are made in regards to situations pertaining to violations or refusal on the part of the administrations in connection with the fulfillment of the recommendations issued by the Ombudsman.

Law of Access of the Armed Forces to the Ombudsman

In the case of Portugal, special legislation has been developed to regulate access to this entity by the personnel belonging to the Security Forces and Institutions of the State. In particular, Law number 19/95 of July 13th regulates this issue.

This directive establishes a specific framework for complaints by the members of the contingents of the Security Forces and Institutions of the State as well as the Armed Forces, which is justified – on the basis of our previous analysis – by the special statute of such employees, as well as confidential issues and respective information linked to public security and national defense.

It was stipulated that all citizens may resort to the protection of the Ombudsman in those cases where evidence points to the violation of a fundamental right. Should this complaint be presented by a military officer, it will be welcomed by the Ombudsman provided the internal hierarchical avenues enshrined in the legislation have been exhausted. Should such complaints fail to be processed within a specific deadline, the latter will be sent by the Ombudsman to the Joint Chiefs of Staff, who shall then find a suitable solution to them within an equally-specified deadline.

The law stipulates that the complaints filed by military personnel or by members of armed institutions shall not be based upon information deemed secret or related to confidential matters.

Complaints are not anonymous (in this case), and they shall contain all the information pertaining to the party filing the complaint, as well as his/her position, unit, personal details, and hierarchical superior, amongst other data.

Lastly, as regards this issue, the Ministry of National Defense shall assure the Ombudsman of all the conditions needed for the conduct of his/her investigations and inquiries pertaining to complaints about illicit acts or those found to be in violation of fundamental rights.

The first conclusion that draws one's attention is that the members of the Armed Forces may resort to the Ombudsman in the case of violation of their rights, but the latter shall act only after internal channels have been exhausted or when these prove fruitless. Nonetheless, a later nuance was introduced by means of Sentence N° 404/12, dated September 18th, 2012, when the Constitutional Court resolved thus:

Not to declare the unconstitutionality, with general mandatory force, of the norms contained in article 34, number 1, of Organic Law number 1-B/2009, of July 7th, as well as in article 2, number 1, of Law number 19/95, of July 13th, in the section in which they mandate previous recourse to all hierarchical avenues established in the legislation for the filing of a complaint before the Ombudsman by military officers or military agents. To declare the unconstitutionality, with general mandatory force, for violation of article 23 of the Constitution, of the norm stipulated in article 34, number 1, of Organic Law number 1-B/2009, of July 7th, in the section that restricts the possibility of filing complaints before the Ombudsman for actions or omissions on the part of the Armed Forces to those cases in which there are violations of the rights, liberties, and guarantees of military officers filing those complaints.

Duties of the ombudsman of Portugal that differentiate it from similar entities:

Having a general nature, the Ombudsman may file appeals in connection with laws or norms deemed unfair or that violate the rights and liberties of the individuals, in which case recommendations may be geared to the Departments of the Administration or to the Legislative Bodies that drafted such laws.

In the case of Portugal:

The Provider of Justice has the capacity to intervene in matters related to state, regional or local public administrations.

S/he has the ability to intervene and receive complaints pertaining to actions carried out by the Armed Forces.

S/he also has the capacity to undertake actions in Public Institutes (for example, the IFADAP providing financial support to Agriculture and Fishing) as well as all the other Institutes created subsequently as part and parcel of the Portuguese Administration.

S/he is able to intervene in matters linked to mixed enterprises and publicly-owned companies that are inserted within his/her scope of action.

Institutions exempt from control by that Entity:30

President of the Republic.

Assembly of the Republic.

Government.

Courts of Law.

³⁰ It should be noted, according to Silveira, that although the Ombudsman may not control Government, the Assembly, or the Courts, s/he may intervene in connection with administrative acts of these bodies. For example, a call or decision of public reach that violates public rights and/or liberties.

Legislative Assemblies and Governments of the two Autonomous Territories (Madeira and the Azores)

Procedures and actions:

The Ombudsman may initiate procedures on the basis of complaints made by citizens, as well as upon his/her own initiative. Complaints may be filed either by individuals or groups of concerned persons, with no deadline required in the case of such procedures. A unique feature in this case is that complaints may be filed by people with a direct interest in the subject of the complaint, both individual persons and entities without their own legal entity status. These may be sent directly to the Ombudsman's Office or through any offices belonging to the Public Attorney's Office, the Assembly of the Republic, or any of their parliamentary commissions, which makes it one of the most liberal and wide-ranging access regimes in the European context.

The Ombudsman initiates actions on the basis of information that comes to him/her through any channel – including the Press – and the instruction of the procedures in the course of their processing is not subject to any exhaustive administrative regime, but rather marked by flexibility. In fact, the Head of the Office as well as its own employees are authorized to conduct such instruction.

During these diligences, both the Public Attorney's Office and the Administrations have the obligation to ensure their cooperation with a view to shedding light on the facts under investigation.

Measures:

The Ombudsman does not have the power to judge; hence, the finalization of an investigation by this entity does not bear the status of "a case closed, accompanied by a verdict." For this reason, its conclusions may be revoked or modified at a later stage.

Typical measures taken (recommendations)

These have the goal of petitioning the entity under consideration to revoke or modify a law or norm, or an administrative and/or material act that somehow infringes upon a fundamental right or liberty.

Due to their nature, these recommendations do not bind the entity affected to fulfill them, nor does failure to abide by these recommendations constitute an illegality in and of itself, yet sanctions of a different nature may be applied to the entity found to be at fault, thus forcing the Ombudsman, for instance, to urge the hierarchical superior in charge of the entity under consideration to remedy the act that gave rise to such sanctions.

By keeping the Assembly of the Republic abreast of such facts.

Disseminating them on social communication media, a resource expressly stipulated in its statute and used in cases of large public repercussion.

Censures and Reparations:

These are criticisms about facts already dealt with that are not conducive to review or rectification, or minor subjects that lead to criticism against the administrative entity responsible for the actions subject to sanction.

Suggest penal or disciplinary actions:

These are measures undertaken by the Ombudsman when, in the course of his/her investigations, objective causes arise in connection with flagrant indications of a misdemeanor, which prod the Public Attorney's Office to seek information about the facts related to the complaint so that the necessary penal or disciplinary measures applicable in this case may be taken.

Annual and special reports addressed to the Assembly of the Republic:

These are recommendations and sanctions that are included in Annual Accountability Reports, or Special Reports for motivated causes and cases of urgency presented to the Assembly of the Republic.

Reconciliation:

This is a role stipulated in its regulation which fundamentally consists of mediation work conducted between the administrative entity under censure and the citizens whose rights have been violated, in order to ensure that the latter obtain reparation for such facts and so that the administration will have the opportunity to improve its procedures.

Public Communication:

This is a resource inserted in its scope of action in connection with the fulfillment of its mission, and not only in those cases in which its recommendations have not been accepted by a particular entity, but also in order to keep all parties abreast of its cases and actions.

Atypical measures: those that differentiate it from other entities with a similar nature.

The unconstitutionality appeal for any law or norm that may violate fundamental rights and/or liberties.

The unconstitutionality appeal for omission.

Petition of illegality for decisions or directives stemming from autonomous regional entities, or by sovereign entities that violate fundamental rights.

Petition to declare the illegality of fascist organizations.

Petition to urge the Public Attorney's Office to intervene in situations of contracts that infringe upon fundamental rights or that contain clauses deemed abusive or contrary to good faith.

Summary of the first experience of operation one decade after its creation:

We have seen fit to include this section because it shows how the entity went on adapting to changes in the country's institutional and social landscape, which prompted its restructuring in regards to its roles and duties and triggered legal reforms, as well as material and management means and capacities.

The uniqueness of this Institution favored consolidated criteria, yet it hampered the access of citizens on the basis of their place of residence and the territories they hailed from. This fact became all the more visible in the cases of Madeira and the Azores, as witnessed by the limited number of complaints and reports of violations presented.³¹

The Institution succeeded in garnering prestige and gaining the confidence of citizens thanks to the work of the first Heads of the Ombudsman's Office, who performed their duties impartially and with independence, especially in the only two cases in which office holders had political affiliation, when public opinion realized their actions had an impact on administrations that followed the same political lines as they did.

In practical terms, the nomination of the Ombudsman was included in the agreements of parliamentary majorities aimed at renewing constitutional bodies. An agreement was reached whereby a person would be elected without any known political affiliations as a way to ensure the latter's independence.

It behooves us to stress, in the view of experts, the inclusion of the Ombudsman's Office among the bodies comprising the State Council in the wake of the constitutional reform undertaken in 1982.

The handling of individual complaints did not serve, during that period, to detect and try to enhance the operation of public organizations in their relationship with citizens.

As regards the role of defense of fundamental rights, the latter materialized in a more tangible manner through regular visits to penitentiary centers as well as petitions of unconstitutionality coupled with legislative recommendations.

In the 1980s, the Ombudsman undertook two relevant investigations at penitentiary facilities in which systematic acts of violence were being perpetrated against inmates without plausible justification, which forced the Ombudsman to make public the ensuing results and conclusions in a report, which in turn required officials to adopt preventive and punitive measures against the agents involved.

In its first decade of existence, it was noticed that a significant part of the complaints and claims of violations came from large cities and their metropolitan areas (mainly Lisbon

³¹ It behooves us to highlight that this situation was solved for two reasons: 1) the opening of delegations (or extensions) of the Institution on these two archipelagoes that are Autonomous Regions; and 2) the new web technologies and internet resources of general use by the vast majority of the population, as well as the availability of toll-free telephone lines that allow for almost universal accessibility; there is today greater ease in order to present complaints without recourse to physical channels, paper, stamps and registration, as was the case in the years 1980s and 90s.

and Porto), in relation to other geographic areas, but it was ascertained that there were not only territorial and physical accessibility reasons at the root of such reduced activity, but also cultural, social, and cultural barriers as well.³²

At that stage, it became all too clear that cooperating intermediary institutions – namely the Public Attorney’s Office and the Assembly of the Republic – did little to improve the Ombudsman’s accessibility.³³

The prerogatives and duties of the Head of the Institution:

Pursuant to the Law of the Statute of the Ombudsman, the latter is assured of several guarantees and prerogatives:

Guarantees associated with employment:

Stability in original employment.

Guarantee that professional career development will not be hindered due to dedication to the position.

Preservation of his/her status in the Social Security regime s/he is entitled to, with no reduction on account of this position.

Recognition of seniority in the original position as regards the duration of tenure in the latter.

The Ombudsman shall benefit from the Social Security regime of civil workers in government employment, should s/he not be previously contemplated by another, more favorable regime.

Personal identification:

S/he acquires the right for special identification, accredited by means of an “identification card” issued by the Secretariat of the Assembly of the Republic and assigned by the Presidency.

Such a credential ensures his/her identification with a view to enabling free transit around the Departments of the Public Administration at the central, regional, and local levels, including both civil and military services or any department subject to the Ombudsman’s control.

Regime of incompatibilities:

³² This situation has been rectified, at the present time, thanks to the rise in the living standards of the Portuguese population vis-à-vis previous decades, coupled with access to quality public services (most notably education, health, and social security), which explains why the younger generations of Portuguese citizens have higher competencies, skills, and the possibility to access the Ombudsman’s Office in order to present complaints and file reports, as shown by the data contained in the annual reports over the past few years.

³³ In Portugal, the Law of the Statute that created this body established that the Ombudsman would rely upon the Offices of the Public Attorney General, spread all over the territory to receive citizens’ complaints and reports of violations; we do not know exactly how this is working these days, but in all certainty, easy accessibility via web and e-mail, directly to the Institution, makes the physical presence on the ground largely unnecessary in those territories.

The Head of the Institution has, in the course of his/her tenure as Office Holder, a series of incompatibilities pursuant to article 11 of the aforementioned Law, similarly to all other officials acting as Magistrates in the exercise of their duties.

In view of the above, the latter may not take on any position of responsibility in political parties or associations, or in institutions implying political duties of a public nature.

Moreover, the latter has the duty of upholding the total secrecy of the information available to him/her as a result of the performance of his/her job; such secrecy must also be upheld by any organization that might be subject to investigative procedures by the Ombudsman.

Vacancy, Cessation, Resignation:

The cessation of the duties of the Head of the Office, prior to the end of his/her four-year mandate, occurs only in the following cases:

Death of the office holder, or his/her physical incapacitation.

Loss of eligibility requirements mandated by the Assembly of the Republic.

Ensuing incompatibility.

Resignation.

In the case of cessation, the nomination of a new Ombudsman will be the responsibility of the Assembly of the Republic, which applies its operational regulations to this specific event. The vacancy must be filled within a pre-established deadline of 30 days.

The Ombudsman is not subject to the stipulated legal provisions as regards retirement or the age limit for the exercise of the duties of the position.

Internal structure

The adaptation of the organic structure of the Institution was carried out in light of Law-Decree number 279/93 dated August 11th, which reformulated the 1991 Statute of the Ombudsman, approved by means of Law 9/91 dated April 9th.

This adaptation was undertaken with a view to providing the Entity with the technical, administrative, and material capacities needed for the performance of its constitutional roles and in order to ensure the Entity would be able to effectively carry out its tutelage duties.

Therefore, the norm sets forth the following:

The Ombudsman enjoys financial and administrative autonomy.

The financial management of the Entity is ensured by means of an administrative council.

Assistant Ombudsmen are nominated on the basis of service commission, and their remuneration shall amount to 80% of the base-salary and representation expenses of the Head of the Office.

The General Secretariat is the management body of the Ombudsman's Office in charge of surveillance and coordination of activities pursuant to the guidelines set by the Head of the Office in the performance of the competencies that the Law bestows upon him/her or which have been assigned to him/her by the Office Holder.

The special competencies of the Secretary General are as follows:

Drafting the annual budget.

Coordinating the work pertaining to the annual reports presented to the Assembly of the Republic.

Managing both the staff and their services.

The Secretary General is nominated by the Prime Minister upon the Ombudsman's proposal and has the level of Director General.

The structure of the Entity has a Technical Support Division, as well as a team of assistants and coordinators in charge of specific areas.

The decree itself lists the competencies of the technical support division, assistants, and coordinators, and states that the latter are considered "public officials" even for criminal purposes.

Its structure is completed thus:

Division of Technical and Administrative Support Services.

Division of Documentation.

Division of Information and Public Relations.

Administrative Office.

Information Technology Services.

Accounting, Assets, and Treasury Services.

Personnel, General Office Hours, and Archival Services.

Concerning the Statute of the Personnel at the service of the Ombudsman's Office, the same professional statute applied to the remainder of State and Public Administration civil service positions shall apply herein as well.

Law-Decree number 195/2001 of June 27th made special reference to the extension of the activities performed by the Ombudsman to the Autonomous Regions of Madeira and the Azores, a circumstance that assumed, from a material viewpoint, the renewal of the personnel and material structure at the disposal of the Ombudsman.

This legal reform was drawn upon in order to harmonize the labor regimes for all employees working at this Institution.

The delegations (or extensions) of the Entity to the autonomous regions were institutionalized, and personnel as well as resource endowments were thus strengthened.³⁴

After Law-Decree Nº 80/2021 of October 6th, the next-to-last reform of the organic structure was undertaken due to the growing number of requests and petitions sent by Portuguese citizens to the Ombudsman to ensure the protection and safeguard of their fundamental rights, which brought to the fore the weaknesses in the organic, technical, and material structure available for the adequate exercise of its competencies over time.

Such shortcomings became all-too-evident with special emphasis after 1999, the year in which this Entity was designated as the “National Human Rights Institute” (INDH) and “National Mechanism for the Prevention of Torture” of Portugal (MNP).

In sum: the statute originally designed a structure rooted especially in the figure of the Head of the Entity, who has ample abilities and capacities to conduct and manage the overall administrative structure associated with this Institute. With a view to ensuring the performance of his/her stipulated constitutional duties, s/he is assisted by two Adjunct Ombudsmen, similarly to the case, for example, of Spain, as previously noted in the present work.

These Assistants are nominated by the Ombudsman by choosing among individuals rendered eligible through a capacity-building higher-education course who have, in addition, a proven record of honesty and independence.

These two Adjuncts may be delegated specific roles by the Ombudsman, thus cooperating towards the fulfillment of his/her duties, including the case of absence of the Head of the Office, or cessation of the latter’s duties, which ensures the ongoing operation of this Institution. The same regime of incompatibilities and inviolability is applied to the Assistant Ombudsmen as to the Head of the Office: the duty to uphold secrecy, the same labor assurances, and the same freedom of movement (contingent upon their special identification) in and around the departments of the administrations, institutions, or public services of the State.

In addition to the Adjuncts, the Ombudsman relies upon the cooperation and support of coordination structures that aid the development of his/her roles.

It should be noted that both the Head of the Office and his/her Adjuncts, as well as coordinators and assistants, are considered “public officials” for all intents and purposes – including those of a personal and criminal nature – that may derive from their performance whilst holding office.

This structure was modified once again through Regulation Number 182/2022, dated February 21st, 2022, known as “Regulation on the Organization and Operation of

³⁴ The Portuguese State, in its territorial power articulation, features only two territories that enjoy ample political autonomy, namely: the archipelagoes of Madeira and the Azores, endowed with their own representative assemblies and government capacities to deal with their own public issues within the framework of their autonomy statutes.

Support Services for the Justice Provider,” in order to adapt the organization of the services of the Ombudsman’s Office to new requirements and growing demands.

The structure was thus reconfigured in the wake of the latest changes:³⁵

Two Assistant Ombudsmen.

Secretary General. Administrative Services.

Departments: Assistants and Coordinators.

General Intervention.

National Mechanism for the Prevention of Torture (MNP), which operates in independent fashion and has its own structure. It is accountable to the Ombudsman.

Department of Legal and International Affairs, on which the National Human Rights Institute relies directly.

Department of Studies and Projects.

Duties:

The duties of the Ombudsman are outlined in article 20 of its Regulatory Statute, Chapter III, among which one will find the following:

Forward recommendations to the competent bodies according to the case and the nature of the investigation under consideration in order to correct the illicit or illegal acts committed by public departments and with a view to contributing to the improvement of the latter’s operations.

Point out the legislative deficiencies detected whilst suggesting the review and alternative drafting of the latter as well as changes or modifications. Offer suggestions channeled through the President of the Assembly of the Republic, the Prime Minister, the Ministers directly involved, or the Presidents of Regional Assemblies or Regional Governments.

Issue opinions upon petition of the Assembly of the Republic, on any topic on which his/her advice has been sought in connection with his/her area of expertise.

Foster and emphasize the actions and operation of the Ombudsman in regards to the protection of fundamental rights and liberties, thus facilitating knowledge thereof on the part of citizens, as well as means available to the latter in order to file their complaints and seek the Ombudsman’s protection.

³⁵ At the end of the study of the Portuguese Ombudsman’s Office, one may peruse the institution’s flowchart as it has been structured at the present time, in which the hierarchy, departments, and the support structure for the services of this Institution may be viewed more easily.

Intervene along the lines stipulated in the legislation towards the defense of collective interests that might have been infringed upon by public officials.

It is incumbent upon the Ombudsman to take part in the State Council.

S/he has the competency to request from the Constitutional Court the declaration of unconstitutionality or illegality of laws and norms, pursuant to the terms outlined in Article 281 of the Portuguese Constitution.

S/he has the competency to request from the Constitutional Court the decision to declare unconstitutionality due to omission as per the terms stipulated by the Constitution in its Article 283.

It is important to highlight that the recommendations issued by the Ombudsman – both to the Assembly of the Republic and the Regional Assemblies – are published in the Official Bulletins of these Parliaments.

Human and material resources

The Ombudsman's Office relies on its own facilities in which it carries out its activities, as well as its own human, technical, and financial resources. Under the legislation, this Institution features total independence in the management of its human, material, and administrative resources, on which it has full disciplinary competencies as well.

Human resources:

As noted previously, the Ombudsman's Office has its own human, technical, and administrative resources, whose management falls under the responsibility of the Head of the General Secretariat. Processes geared to recruitment and personnel selection are run by the Institution itself, in accordance with the applicable legal principles upheld by the Portuguese Public Service. In this regard, it must be further noted that in the current year of 2022, the latest reform of the law regulating the Entity has been undertaken with a view to ensuring greater effectiveness and self-sufficiency, as required by the growth of its duties and roles, as well as the significant increase of complaints and claims of violations received.

In Regulation N° 182/2022 dated February 21st, 2022, changes and updates were introduced with regard to organizational aspects and issues of personnel at the service of the Institution:

Up until the present time, the structure has been established in the following manner:

Two Adjunct Ombudsmen.

Secretary General. Administrative Services.

Departments: Assistants and Coordinators.

General Intervention.

National Prevention Mechanism. It operates in independent fashion and relies on its own structure. It is accountable to the Ombudsman.

Department of Legal and International Affairs. National Human Rights Institute.

Department of Studies and Projects.

In accordance with recent publications, at present the Ombudsman's Office of Portugal features a total of 104 employees spread around different professional categories, with special numerical emphasis on technical assistants and adjuncts, for reasons related to operational and managerial issues.³⁶

Material resources:

Financial issues are equally contemplated in the Law of the Regulatory Statute of the Entity, which stipulates that the latter has its own budget, which is part of the Budget of the Assembly of the Republic.

The Budget of the Ombudsman's Office for 2021 was 5.269.880 €, distributed between 5.227.880 € (current expenses) and 42.000 € (capital expenses).³⁷

Internal cooperation and collaboration (autonomous regions of Madeira and the Azores)

As regards the territorial articulation of the Portuguese State pursuant to the Portuguese Constitution of 1976, the State is unitary and territorially divided in 18 Administrative Districts, as well as two insular Autonomous Regions – namely, Madeira and the Azores. The Constitution sets aside articles 227, 228, 229, and 230 to the regulation of the “Powers of the Autonomous Regions,” but in no section of such an articulation is it stated that the creation of the figure of the Ombudsman (at the regional level) is to be contemplated; rather, and as matter of fact, what does exist in those territories are delegations of the Institution's Headquarters. That means that this is a decentralized body in the territory of these two regions, yet certainly not independent, but managed directly by the Ombudsman's Office, which manages its own means, resources, as well as the assets, budget, and both material and human resources of the Entity headquartered in the capital of the Republic (Lisbon).

It should be stressed that both Madeira and the Azores are Public Entities endowed (in the Portuguese jurisdiction) with political and administrative autonomy. Such autonomy, in its double nature, is exercised over those territories in exclusive fashion. The powers of both bodies are granted by the Constitution and the Statute of Autonomy that bestow upon them legislative, government, and administrative powers.

Internal cooperation was established at the outset between the Ombudsman's Office and the Offices of the Public Attorney General – scattered across the country's territory – in addition to the Assembly, both featuring the capacity to cooperate with the Entity in the

³⁶ Personnel Chart: Art. 41 of the Statute of the Provider of Justice. Art. 27 of the Organic Law of the Provider of Justice, Art. 29 of the General Law of Public Service and Government Work.

³⁷ This is the latest budget published so far.

receipt and channeling of complaints and reports; a cooperation that was found to be far from effective throughout the 1980s and 90s due to lack of actual cooperation.

At the present time, given the size of the country and the ease of access to file complaints and reports, besides the fact that this is a very well-known and respected Institution within Portuguese society, it is not so important to maintain territorial offices, especially when the very articulation between the State and the Administration does not justify it. Access by all Portuguese citizens, regardless of their place of residence, is ensured by means of toll-free telephone numbers available as well as easily-accessible electronic means through which to make complaints or file reports from one's own home. Moreover, the fact that offices of the Entity have been set up in both territories has also increased the speed of response to the complaints of Portuguese residents in both archipelagoes.

Cooperation with other international institutions in the protection of human rights

The Portuguese Ombudsman's Office is a member of several important organizations charged with the mission of defending and protecting fundamental rights. Among such institutions, the United Nations, the European Union, the Council of Europe, the Community of Portuguese-Speaking Countries, and the Ibero-American Federation of Ombudsmen are worthy of notice, among others.

It is part of the International Committee for the Coordination of National Human Rights Promotion and Protection Institutions (CCI), the organization in charge of the accreditation of National Human Rights Institutes at the world level.

It participates in the European Network of National Human Rights Institutions.

It engages in close ongoing cooperation with the European Council's support and assistance mechanisms.

It is part of the European Network of Ombudsmen as well as the European Ombudsman.

It is a member of the Agency for Fundamental Rights of the European Union.

There is a firm commitment to support the improvement of national mechanisms towards the defense of human rights in Portuguese-speaking countries.

It is a founding member of the Ibero-American Federation of Ombudsmen (FIO). Currently, Portugal's Ombudsman holds the 1st Vice-Presidency and participates actively in all of the activities geared to the promotion and defense of fundamental rights within the Ibero-American region.

Overall, this Institution features a high number of activities and efforts geared to strengthening the structures of Ombudsmen as well as promoting and defending human rights at the international level.

At the regional level, it is also a member of the Association of Mediterranean Ombudsmen (AOM), which directs its efforts to promoting Democracy, the Rule of Law, as well as social peace in this geographic region.

Lastly, it is a member of the International Institute of Public Defenders.

Fulfillment and follow-up of principles and recommendations geared to human rights protection and defense.

Accreditation strategy of the Ombudsman's Office of Portugal before the Subcommittee on Accreditation of GANHRI

The Ombudsman's Office of Portugal was first awarded level "A" accreditation by GANHRI in 1999 (Subcommittee on Accreditation – SCA – of the Global Alliance of National Human Rights Institutions – GANHRI in the English acronym); this accreditation was renewed in October 2007, November 2012, and lastly in November 2017, which means that it will be audited by the Institute's Subcommittee on Accreditation once again in the coming months.

As previously ascertained as regards the Entity's layout, design, and duties, as well as its activities and effectiveness, this is an Institution that fully complies with the Paris Principles.³⁸ This status allows the Ombudsman of Portugal to avail him/herself of a set of prerogatives, such as: the right to be heard at the Council on Human Rights and specific Committees instituted under the aegis of International Law in which s/he participates. It also implies duties, such as, for instance, permanent cooperation with the international bodies that comprise the Universal and European Human Rights Protection Systems.

In this sense, the intensive ongoing cooperation with all international and regional bodies and institutions undertaken by the Ombudsman's Office of Portugal assures this Institution of the best conditions with a view to renewing its accreditation with "A" status, as has been the case thus far. This work has been complemented by permanent internal actions towards the dissemination and promotion of human rights, coupled with their protection.

³⁸ Graph of the status of national institutions accredited by the Global Alliance of National Human Rights Institutions. Status "A" accreditation on December 28th, 2021. Europe 22. Portugal.

Summary of activities and their impact over the past five years:

Evolution over the past 5 years:

	2017	2018	2019	2020	2021
Actions	40.939 ³⁹	48.129 ⁴⁰	51.313	52.324	Pending publication
Reports	6 ⁴¹	3	12 ⁴²	6 ⁴³	7
Recommendations	3	6	3	10	10

It should be highlighted that these activities have been complemented over the past few years by the publication of other types of reports based on investigations undertaken that are worthy of notice in this section, designated as “Notebooks on the Pandemic.”

Notebooks on the Pandemic. Rule of Law (2021)

Notebooks on the Pandemic. Education (2021)

Notebooks on the Pandemic. The Homeless (2021)

Implementation of Public Policies for Social Housing in the Autonomous Region of Madeira.

Access to the Regional Health System. Autonomous Region of the Azores.

³⁹ It should be noted that within this number of complaints (received to a large extent through the toll-free telephone lines available), a total of 1.545 were disregarded from the start because the subject of the complaint did not fit the competency of the Institution. By Ministries, the one that received the highest number of complaints and violation claims this year were the Ministry of Finance, the Ministry of Education, and the Interior Ministry (Internal Administration). In the current year, the subject that sparked the highest number of calls and the filing of complaints were – with some differences – so-called “social benefits.”

⁴⁰ This year, the body that handled the highest number of procedures opened throughout its whole history – 9.338 procedures, a 20% increase in relation to the previous year, 5 of which were started upon the Ombudsman’s own initiative. Likewise, it is important to stress that this was the year when it was charged by the Council of Ministers with the task of handling the awards to be paid to the victims of forest fires that burned to the ground large sections of the Portuguese landscape in the previous summer.

⁴¹ It is worth highlighting that six of these reports were the outcome of visits by the Ombudsman to the country’s Detention Centers in order to ascertain local conditions and the living standards of inmates (Leiria Prison, Evora Prison, Sao Joao de Deus Penitentiary Hospital, Tomar Military Prison, Pinheiro da Cruz Jail, and Porto Prison).

⁴² This year, a series of thematic studies will start to be published, among them reports on the rights of children and women, of people with disabilities, the elderly, the environment, water, housing and living standards, as well as the rights of afro-descendants, amongst others.

⁴³ This year, the contents of the reports have changed due to the pandemic and the circumstances engendered for various collective groups; therefore, we have the *Relatório da Pandemia Covid-19 – Trabalho do Defensor Público no Estado de Alerta* on the measures adopted in Portugal to support companies, workers, families, and the social system (FIO II); Detention of Migrant Children (Special UN Rapporteur).

Table with strengths and weaknesses found in the analysis of the INDH

STRENGTHS	WEAKNESSES
Historical trajectory and deep roots within Society and the State	Incorporation of social plurality into decision-making
Ability to adapt to changes in society	Somewhat heavy bureaucratization due to the fact that it was designed as one more State body, with strong assurances of independence and autonomy, but with procedures bent on “guaranteeism.”
Constitutional framework and articulation	Limited presence of civil society in the institution, as well as collective groups and vulnerable communities.
Operation and transparency	

Conclusion

The Ombudsman’s Office of Portugal is an Institution that came about within the legal framework of the State even before the approval of the Democratic Constitution in force since 1976, which turned it into a State Body with important guarantees and prerogatives, which were later regulated in its Organic Law and the Statute of the Ombudsman, which bestow upon him/her a wide array of capacities that protect him/her, coupled with assurances of operation and full autonomy, and his/her nomination depends directly upon the Assembly of the Republic. We consider that this reason, combined with the historical trajectory of the Entity itself, which began to operate when Democracy and the Rule of Law were implemented in the country, have strengthened it and laid its roots firmly in the arena of the institutions that comprise the modern Portuguese State.

As we have remarked, in this case, in addition to the framework of the Entity and the regulations agreed upon, its adaptations and modifications sought to strengthen it, and its ability to provide answers to ever-wider competencies has certified it from the very beginning as an Institution that fully complies with the Paris Principles. It should be further noted that the Ombudsmen that had political affiliations have fully ascertained their independence whilst managing this position. Nevertheless, the subsequent pact, in practical terms, among parliamentary political forces in order to always seek a person without a well-defined political affiliation kept the latter, throughout his tenure in office, from facing hurdles to his performance.

In addition to the above, the Institution’s strength and prestige have benefitted greatly from the Ombudsman’s activities and his constant commitment by allying himself with and actively participating in international, European, and regional bodies devoted to the defense and protection of fundamental rights overall, and that of human rights in

particular. Added to all this was his performance in activities geared to dissemination and promotion of fundamental rights inside the country, as well as in other Portuguese-speaking countries.

The weakness that we have found, in this case, is that it seems that civil society, minorities, and least-favored collective social groups lack adequate representation in the decision-making process of this Institution.

Bibliographic references:

FERNÁNDEZ RODRÍGUEZ, JOSÉ JULIO (1998), “La inconstitucionalidad por omisión en Portugal”, *Revista de Estudios Políticos (Nueva Época)*, Number 101, July- September, pp- 335-359.

SAMPAIO VENTURA, CATARINA (2004), “Sistema Europeo de Promoción y Protección de los Derechos Humanos: experiencias de la Proveduría de Justicia de Portugal”, *Cuadernos Electrónicos N° 7 – Derechos Humanos y Órganos del Estado*, Programa Regional de Apoyo a las Defensorías del Pueblo de Iberoamérica, Universidad de Alcalá, pp. 54-68.

SAMPAIO VENTURA, CATARINA (2008), “El papel del Defensor del Pueblo en la defensa de los derechos fundamentales”, *Quórum Revista de pensamiento iberoamericano* Number 21, Universidad de Alcalá, pp. 52-61.

SILVEIRA, LUIS (1998), “El Defensor del Pueblo en Portugal”, *Revista de Estudios Políticos (Nueva Época)*, Number 60-61, April–September, pp. 661-698.

Legislation quoted:

Law number 9/91 dated April 9th. Regulatory Statute of the Provider of Justice.

https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=657&tabela=leis&so_miolo=

Law-Decree 279/93. Electronic format of “Diário da República.”

<https://dre.pt/dre/detalhe/decreto-lei/279-1993-354930>

Law-Decree N° 195 2001 dated June 27th. Electronic format of “Diário da República”.

<https://dre.pt/dre/detalhe/decreto-lei/195-2001-349285>

Constitution of Portugal 1976, with amendments until 2005.

https://www.constituteproject.org/constitution/Portugal_2005.pdf?lang=es

Regulation N° 182/2022 21 dated February. *Summary*: Regulation on the Organization and Functioning of Services to Support the Provider of Justice. “Diário da República,” 2nd Series. Part B. Number 36.

<https://dre.tretas.org/dre/4819635/regulamento-182-2022-de-21-de-fevereiro>

Members of the European Network of Public Defenders

<https://www.ombudsman.europa.eu/es/european-network-of-ombudsmen/members/all-members>

Annual reports presented to the Assembly of the Republic.

Provider of Justice. National Human Rights Institution. Report to the Assembly of the Republic 2017. Lisbon 2018.

Provider of Justice. National Human Rights Institution. Report to the Assembly of the Republic 2018. Lisbon 2019.

Provider of Justice. National Human Rights Institution. Report to the Assembly of the Republic 2019. Lisbon 2020.

German Institute for Human Rights Deutsches Institut für Menschenrechte (DIMR)

Background to its creation

The system geared to the protection of human rights in this country is rooted in the Fundamental Law of the Federal Republic of Germany dated May 23rd, 1949, a fundamental text equivalent to the Constitutions that rule over the system of government in any country. In this sense, it is important to highlight the origins of the German Constitution, inasmuch as Constitutions are norms of reaction that usually come about in the world at times of change, transition, or in periods marked by a crisis. They must often give shape – in a completely different manner as was attempted before – to a new legal framework.⁴⁴ It is not surprising that armed conflicts, economic crises, and those processes in which grave human rights violations were committed should leave as a legacy not only a Magna Carta or a transitional piece of legislation in lieu of the latter, but one that could also be accompanied by a new way of interpreting the Law, whereby one hopes not to fall back on the vices that were left behind.

The Fundamental Law of Germany — a norm that came about as a temporary law, but which was later converted into the country's Political Constitution – also represented a reactive norm – and it could not be any different – as well as an answer to the historical experience of National-Socialism, and that becomes evident in its First Article – “Human dignity is intangible. To respect and protect it is the duty of all Public Officials” (*Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt*). Whereas most Constitutions start off with a statement regarding the structure of the State, and also proclaiming the sovereign and independent nature of the latter, the Fundamental Law places human beings at the center of the new German Legal System. The State will no longer be the most important actor; rather, it is the individuals, in a new framework of rights and guarantees, that will play the most important role in the Federal Republic. That turned the Fundamental Law into a norm that was appreciated all over the world, every time the German response to the totalitarian experience served as a guideline to other countries. It should not be forgotten that those States that witnessed a relatively continuous democratic development devoid of totalitarian or authoritarian experiences are clearly the exception in the International Community.

Upon this foundation, Germany has developed a solid system geared to the protection of human rights that includes – most importantly but not exclusively – the **German Institute for Human Rights** (henceforth **DIMR** in the German acronym) as an institution enshrined in civil society. The latter was founded as an independent association on March 8th, 2001 as the result of a long process of

⁴⁴ Bernd Rüthers, *Die heimliche Revolution vom Rechtsstaat zum Richterstaat*, Tübingen, Mohr Siebeck, 2014.

social debates that culminated in the unanimous decision by the German Parliament (*Bundestag*) on December 7th, 2000 to create a German Institute for Human Rights.

As an independent national institution, the latter has been committed ever since its inception to ensure that the Federal Republic would uphold and promote human rights in the country as well as abroad. Since 2009, the DIMR has performed the role of an independent monitoring mechanism in light of Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities (CRPD). To that was added, in 2015, the mandate to oversee, in independent fashion, the implementation in Germany of the United Nations Convention on the Rights of Children (CRC).

In 2015, its legal framework was strengthened upon the approval by the Federal Council (*Bundesrat*)⁴⁵ – as a body representing all 16 Federated States – of the “Law on the Legal Status and the Work of the German Institute for Human Rights.” This norm regulates its legal status, operations, and financing in accordance with the “Paris Principles” of the United Nations, the UN international standards for national human rights institutions.

The Global Alliance of National Human Rights Institutions (GANHRI) is an international association that brings together over 100 National Human Rights Institutions (INDHs). The DIMR, in its capacity as Germany’s INDH, was acknowledged by GANHRI with type “A” accreditation (the highest level).

The DIMR contributes to the promotion and protection of human rights, mostly by offering counseling on policies and raising awareness in regards to human rights issues with relevance in the national context as well as abroad. The DIMR is geared both to public policymakers and to actors within civil society, at all levels of Germany’s federal structure through myriad formats: policy documents and legal analyses, follow-up reports, expert panels and seminars, human rights training and capacity-building programs, as well as documentation services and a library.

Moreover, the Institute participates in third-party interventions in those legal cases of great importance to the promotion and protection of human rights in Germany as well as abroad (as *amicus curiae*). The DIMR defines itself as a forum geared to the exchange of ideas and information between state institutions and civil society agents in the realm of human rights.

⁴⁵ The Federal Council (in German, *Bundesrat*) is the body of representation for all 16 Federated States in Germany, headquartered in Berlin. The *Bundesrat* acts as the Federative as well as Legislative Constitutional Body of Germany. It performs the roles of an Upper Chamber (the Lower Chamber would be the *Bundestag*). The *Bundesrat* has the duty of approving, rejecting, or sanctioning the Federal Laws that affect the competencies of the Federated States. Its members are nominated by the Governments of the Federated States.

Analysis of the legal framework

a) National level

The German Legal System harbors a strong commitment to human rights as spelled out in Article 1 of its Fundamental Law.⁴⁶ The associated system of values must also be understood in the sense that the Fundamental Law interprets and safeguards national fundamental rights as an expression of international human rights.⁴⁷ In this vein, the protection of fundamental rights is tantamount to the protection of human rights, and all procedures and institutions aimed at protecting such fundamental rights within the German Constitutional State also serve as tools to implement the corresponding human rights. Additionally, one must recall Article 19, paragraph 4 of the Fundamental Law: according to this provision, national citizens and foreigners alike have a legal resource in Germany should their rights be infringed upon by public officials. Finally, the Executive Branch of Government, within the global exercise of Public Authority, is subject to Article 1, paragraph 2 of the Fundamental Law.⁴⁸ Based on an international comparison, it must be stressed that Germany has a fully operational Judiciary Branch that contributes to the protection of human rights.

The Institute, headquartered in Berlin, exists in the legal form of an association registered since 2001, but for a long time it operated without a previously-defined legal foundation. On December 7th, 2000, the Parliament unanimously saw fit to found the DIMR as Germany's National Human Rights Institution. The DIMR and similar human rights institutes in other countries are based upon the "Paris Principles." The latter stipulate several binding criteria for countries by requiring, among other things, that their national human rights institutes rest on a foundation anchored in the Constitution or in a particular piece of legislation. Such national institutes receive a status from the ICC through an accreditation process, and compliance with the Paris Principles plays a crucial role in that regard. The "A" status is the highest, insofar as it is the only accreditation level that awards the important rights of participation at the international level, such as the right to speak at the United Nations' Human Rights Council.

Even though such a law did not exist, and despite the repeated postponement of the creation of such a legal foundation, the "A" status was finally bestowed upon the DIMR; at the same time, though, the latter was told in no uncertain terms that such a state of affairs would not be accepted in the future, and the institution was warned that it should have a legal framework by March 2015, otherwise its status could be

⁴⁶ Article 1 [Protection of human dignity, compliance by Public Officials with fundamental rights]: (1) Human dignity is intangible. To respect and protect it is the obligation of all Public Officials. (2) The German People thus acknowledge sacrosanct and inalienable human rights as the foundation for all human communities, as well as peace and justice in the world. (3) The following fundamental rights bind the Legislative, Executive, and Judiciary Branches as directly applicable rights.

⁴⁷ Jarass/Pieroth, GG Kommentar, 13. Auflg. 2014, Art 1 Rz. 26 ff m.w.N.

⁴⁸ Jarass/Pieroth, GG Kommentar, 13. Auflg. 2014, Art 1 Rz. 27 m.w.N.

downgraded to level “B”, which would entail the exclusion of Germany from commissions and would even make it lose the right to speak at the UN Human Rights Council. This warning prompted a large coalition aimed at codifying the legal status of the DIMR, and the draft was finally approved by the Federal Government in mid-March 2015 – quite late indeed, but still in time to prevent the institute from being downgraded and exposed to an embarrassment at the world level. Finally, on July 16th, 2015, such structural weaknesses of the institute were laid to rest, and the “Law on the Legal Status and Tasks of the German Human Rights Institute” (DIMRG) entered into force.

The DIMR, as a nonprofit association, is also regulated by the General Tax Law (*Abgabeordnung*) in its § 52. Pursuant to this norm, it is estimated that “a legal entity aims at charitable purposes if its activities are geared to the disinterested overall public promotion of contents linked to material, intellectual, or ethical domains.” However, only those activities listed therein are considered charitable for tax purposes. That includes, among other goals, the promotion of science and research, education and capacity-building, arts, religion and culture, sports, as well as humanitarian aid in cases of disasters. That is often taken into account for tax purposes as well. If a legal entity was recognized by the Tax Bureau as a not-for-profit institution, it is generally privileged or is completely exempt from the payment of income taxes as well as property taxes whilst carrying out charitable goals (*Gemeinnützige Zwecke*).

b) International level

Upon the basis of the United Nations Charter and the Universal Human Rights Declaration, the Member States of the United Nations have laid down a wide-ranging system of treaties around human rights guarantees. The German State is a party to all of the important treaties on human rights of the United Nations and their additional protocols, and it keeps UN treaty surveillance bodies abreast on a periodic basis of the fulfillment of the corresponding obligations.

- Universal Human Rights System. The main international human rights instruments ratified by Germany are: The International Pact on Economic, Social, and Cultural Rights, the International Pact on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention for the Protection of All Persons against Forced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and other Cruel, Inhumane or Degrading Treatments or Punishments, the Convention on the Rights of Children, and the International Convention on the Rights of Persons with Disabilities.
- European Human Rights System. The main international human rights instruments ratified by Germany are: the European Convention on Human Rights, the European Union Treaty, the Charter of Fundamental Rights of the

European Union, the competency of the European Court of Human Rights, the European Social Charter, the European Treaty for the Prevention of Torture and Inhumane or Degrading Treatments or Punishments, the European Council Treaty against Human Trafficking, the Treaty to Prevent and Combat Violence against Women and Domestic Violence, the European Framework Agreement for the Protection of National Minorities, and the European Charter for Regional and Minority Languages.

In the German case, the DIMR acts as a reviewer and supervisor by following up on and monitoring the implementation of the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of Children. In view of these goals, the Monitoring Body of the Convention on the Rights of Persons with Disabilities and the Monitoring Body of the Convention on the Rights of Children have also been created.

Analysis of the institutional and administrative operation of this body

a) Institutional framework

As has been previously mentioned, and pursuant to German Law, the DIMR has been structured as an independent, nonprofit organization whose mission is to keep the public abreast of the status of human rights in the country as well as abroad, in addition to promoting and protecting human rights, provided it performs the duties derived from the Paris Principles set by the United Nations in 1993. Moreover, and as mentioned previously as well, the DIMR performs all the while the duties of an independent mechanism in accordance with the United Nations' Convention on the Rights of Persons with Disabilities dated December 13th, 2006.

The DIMR statutes encompass the following bodies: the General Assembly, the Administrative Council, and the Executive Board. In some cases, Advisory Committees (*Beiräte*) are called upon to act on specific topics or projects as deemed appropriate or necessary.

i. General Assembly

The General Assembly is comprised of natural persons and legal entities, as well as associations of persons whose significance has been ascertained through their voluntary or professional work towards the protection and promotion of human rights.

The main duties assigned to the latter are:

1. Issue recommendations about the work principles of the institute.
2. Undertake changes in the social statutes, in internal regulations, and the electoral regulation.

3. Receive annual financial statements and the Annual Report of the Institute.
4. Find solutions for the dissolution of the Executive Board.
5. Confirm the decision of the Administrative Council regarding admission of new members.
6. Hear the appeals of expelled members against severance resolutions issued by the Administrative Council.
7. Elect the six members of the Administrative Council to act as delegates in compliance with Section 24 (1) (e).
8. Set the pertinent sum and payment deadline for membership fees based on a schedule of fees.
9. Elect the two auditors.
10. Bestow the title of Honorary Member.

ii. **Administrative Council**

In accordance with the statutes, the Administrative Council is comprised of honorary managers nominated in compliance with the Law on the Legal Statute and Works of the Institute. The members with voting rights on the Administrative Council are assigned for a period of four years, and they may be reconfirmed for an additional period of time. Later reelection or the renewal of nomination are only possible after a minimum period of four years.

The members of the Administrative Council bearing voting rights are representatives of the following organizations:

- Six representatives of the General Assembly of the DIMR.
- One representative of the German Council for Persons with Disabilities.
- Two members of the Commission on Human Rights and Humanitarian Aid of the German Parliament.
- Three representatives of scientific institutions linked to human rights, to be nominated by the German Parliament.
- Three members of civil society to be nominated by the German Parliament.
- Three representatives of the Forum on Human Rights.

The members of the Administrative Council **without** voting rights are representatives of the following organizations:

- Federal Government Commission on Migration, Refugees, and Integration.
- Federal Government Commission on Human Rights and Humanitarian Aid.
- Federal Government Commission on Human Rights Issues.
- Federal Government Commission on Issues Regarding Expatriates and National Minorities.
- Federal Government Commission on the Interests of Persons with Disabilities.
- Federal Ministry of Economic Cooperation and Development.
- Federal Ministry for Family Issues, the Elderly, Women, and Youth.

- Federal Ministry of Defense.
- Federal Council.

The representatives of the General Assembly on the Administrative Council are elected through a secret ballot and the election is carried out in a personal nature. Should the members amount to legal entities, only the authorized representative assigned in compliance with the Social Statutes may be selected. For the election of the Administrative Council, a majority of at least two-thirds of votes actually cast is required, and abstentions shall not be taken into account in the tally of such a majority. The candidates that obtain the highest number of votes above the stipulated quorum shall be declared elected, contingent upon the number of vacancies to be filled on the Administrative Council.

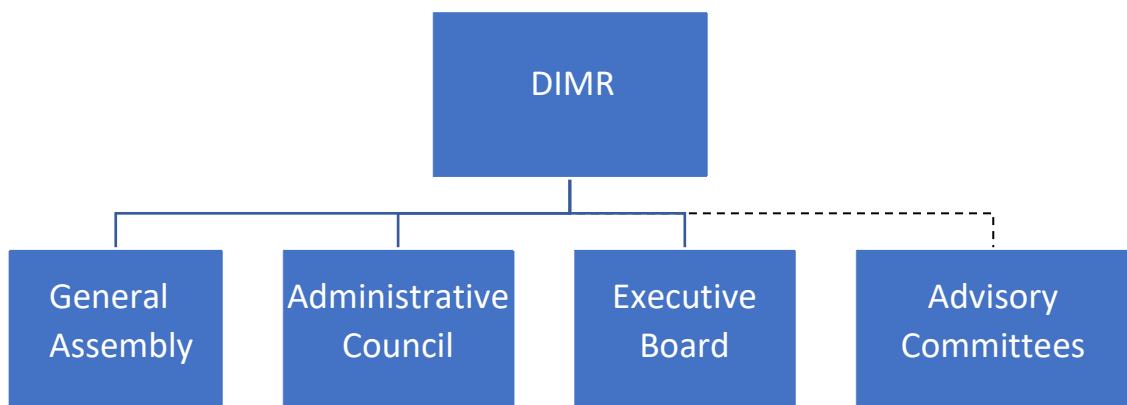
iii. Executive Board

The Executive Board is comprised of the President and an Alternate. The Administrative Council shall nominate the members of the Executive Board on the basis of public calls for a period of four years.

iv. Advisory Committees

The Advisory Committees are groups of experts that the Administrative Council may assign in order to provide assistance to itself and to the Executive Board. It would be interesting to note that most Advisory Committees are made up of representatives of civil society and shall mirror the social and ideological plurality of government bodies and non-government agencies charged with human rights issues and the wide array of tasks performed by the Institute.

Below is the DIMR Flowchart, in which its make-up may be perused.



b) Duties

The DIMR has the twin goal of keeping the public abreast of the status of human rights in the country as well as abroad and contributing to the prevention of human rights violations, in addition to promoting and protecting human rights. The DIMR

acts independently of the guidelines and instructions issued by the Federal Government or other public and private bodies – of its own accord or upon the request of the Federal Government or Parliament – by means of the resources under its own responsibility.

It behooves us to consider that in the General Observations issued by the Subcommittee on Accreditation of GANHRI, the above feature is looked upon as one of the “Essential requirements that all INDHs must have legislative mandates with specific duties geared to the protection and promotion of human rights.” The Subcommittee understands that “promotion” includes those duties that seek to create a society in which human rights are understood and respected more broadly. Such duties may include education, capacity-building, counseling, public dissemination, and advocacy.

The roles of “protection” may be understood as those aimed at tackling and preventing human rights violations. Such roles include follow-up, consultations, investigations, and the filing of reports on human rights violations and may include the processing of individual complaints. The mandate of an INDH should be interpreted in manner at once wide, liberal, and deliberate in order to foster a progressive definition of human rights that may encompass all of the rights enshrined in international as well as national and regional instruments, including economic, social, and cultural rights.⁴⁹

In the case of the DIMR, in its capacity as Germany’s INDH, the main duties are as follows:

Promotion and protection of human rights

- Foster dialogue as well as national and international cooperation with the competent bodies on issues bearing on human rights.
- Ensure that Germany will uphold and promote human rights both within the country and abroad.
- Follow up on and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of Children.
- Undertake the tasks outlined in Article 33, paragraph 2 of the United Nations Convention on the Rights of Persons with Disabilities.
- Present statements as *amicus curiae* in procedures selected at German Courts or international decision-making bodies should a pending case entail an issue of fundamental importance in human rights compliance and implementation, provided the Institute is working on that specific issue.

Investigation and assistance

⁴⁹ GANHRI, *General Observations of the Sub-Committee on Accreditation*, Geneva, February 21, 2018.

- Carry out multidisciplinary investigations that may be applied to issues bearing on human rights and the surveillance of the status of human rights in Germany.
- Assist Federal Politicians and those of Federated States, the Judiciary Branch, legal practitioners and professionals, as well as companies and civil society organizations, with respect to the implementation of international treaties pertaining to human rights.
- Provide information to the German Parliament and draft statements to National and International Courts, as well as international bodies geared to human rights.
- Support education professionals with a view to strengthening human rights within capacity-building and higher education in professions with close links to human rights, as well as designing school curricula and extracurricular activities having an impact on human rights.
- Act as a forum for exchanges between the State and civil society, science and praxis, as well as between national and international organizations and institutions.
- Work in close cooperation with the human rights bodies of the United Nations, the Council of Europe, and the European Union.
- Undertake analyses of the consequences to human rights of totalitarian dictatorships as well as war and post-war events so as to complement the work of existing institutions.

Information and documentation

- Keep the public abreast of the status of human rights in the country as well as abroad.
- Provide information to the public on the most important human rights treaties and reports and their implementation in Germany.
- Create and manage a specialized library providing materials on human rights.
- Present an Annual Report to the German Parliament on the work of the Institution and the evolution of the status of human rights in Germany, upon which Parliament must comment.

c) Administrative and political autonomy

The DIMR enjoys political independence and acts out of its own choosing and regardless of the guidelines and instructions of the Federal Government and other public and private bodies, either of its own accord or upon the request of the Federal Government or Parliament, by means of resources under its own responsibility.

d) Resources

The DIMR is financed through public subventions in accordance with § 1, paragraph 1, sentence 2 of the Law that regulates the DIMR and, in addition, with membership contributions as well as public and private subventions linked to

projects and private donations. The DIMR may acquire goods to promote its goals, and third-party donations geared to that purpose are added to the working capital of the Institute. The DIMR is financed by the German Parliament and through third-party funds. These funds are available to finance tasks pursuant to § 2, paragraphs 2, 4, and 5, on the condition that they are included in the Budget of the German Parliament and provided minimum requirements laid out in §§ 2 through 7 of the corresponding DIMR statutes are complied with.

e) Cooperation with other institutions towards the protection of human rights

The European Union is committed to the implementation of democracy and human rights, and Germany – as a Member-State – must thus help bring this commitment to fruition through procedures and institutions geared to the protection of human rights, both internally and under the aegis of its foreign relations.

Among the state institutions and nongovernment organizations committed to complying with human and fundamental rights that cooperate with the DIMR, one may find:

- Federal Parliament.
- Federal Government Commission for Human Rights and Humanitarian Aid Policies.
- Federal Government Commission for Human Rights Issues.
- Committee on Human Rights and Humanitarian Aid.
- Federal Agency against Discrimination.
- National Agency for the Prevention of Torture.

Furthermore, in its capacity as an Advisory Body on Human Right Issues, several Federal Government Commissions geared to areas of activity with strong links to the human rights arena uphold a close relationship with the DIMR.

The German Charter for Democracy and Civil Society highlights that in Germany, the not-for-profit organizations operating in several different domains in society are considered advocates for social cohesion. Such organizations assemble opinions from a wide array of sectors within society, listen to their constituents and bring together individual voices in coordinated positions. The commitment to a diverse democracy coupled with human rights allows many people to take part in the development of standpoints that shape society. Democracy calls for wide spaces for the participation of civil society outside political parties, and the Federal Government, Parliaments, and Courts must safeguard these spaces continuously, in addition to enlarging them whenever necessary.

The work of the DIMR draws upon the existence of such a strong and active civil society in three distinct manners. First and foremost, this very civil society stands for a reliable agent for complaints in regards to human rights violations. Secondly, civil society plays the role of overseer of myriad actions and programs carried out by the DIMR that aim at protecting and promoting human rights. Lastly, it is also

members of civil society that comprise the advisory committees that the DIMR turns to for expert opinions with respect to certain cases. Both individuals and organizations keen on the topic of promoting and protecting human rights have the opportunity to request DIMR membership. The Administrative Council and the General Assembly decide jointly on these membership requests in accordance with the pertinent provisions in the Law that regulates the DIMR, the statutes, and the principles for the treatment of such membership requests. At present, the Association has 88 members.

At the international level, the DIMR together with the Civil Peace Service (*Ziviler Friedensdienst*) supported the Commissions on Human Rights in Ruanda, Afghanistan, Nepal, Peru, and Guatemala. Its focus has always been grounded in the development of the capacity for non-violent transformation of conflicts and peace-building in tandem with education in human rights by virtue of its preventive effects. Likewise, the DIMR, together with the Federal Ministry of Economic Cooperation and Development (*Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung [BMZ]*) has been working with the INDH of Colombia (*Defensoría del Pueblo de Colombia*). This partnership is geared to guaranteeing that companies on both sides of the supply chain fulfill their due diligence requirements regarding human rights issues and ensuring that the governments of Germany and Colombia adopt the necessary measures with a view to protecting the persons affected.⁵⁰

f) Participation in international human rights bodies

i. Global Alliance of National Human Rights Institutions (GANHRI)

The DIMR boasts type “A” accreditation (the maximum accreditation level, having been reaccredited for the last time in the year 2015)⁵¹ and participates actively in the Workgroup on Companies and Human Rights established in March 2009.

⁵⁰ The Rule of Law status and the protection of human rights are intertwined. Hence, with a view to promoting human rights and the Rule of Law, the DIMR has sought to cooperate with the Ministry of Foreign Affairs in order to support the Polish Ombudsman, and they have jointly organized a conference with the Polish INDH about the protection of the Rule of Law and the importance of an independent Judiciary Branch. It relied on a conference about the 70th anniversary of the European Court of Human Rights (CEDH), organized jointly with the Ministry of Foreign Affairs and the Ministry of Justice and Consumer Protection of Germany, in order to muster political and public support for a solid human rights protection system through the European Court of Human Rights, insofar as the latter is an important guardian of the Rule of Law.

⁵¹ The “A” accreditation for a State also confirms that the Institution under consideration fully complies with the Paris Principles. Ever since the development for the first time of the practice of accreditation, the Community of States and International Organizations have paid close attention to ascertaining whether or not a State upholds an INDH. An accredited institution is looked upon as an indicator of the credibility of the human rights policy of that State. Accreditation strengthens the position of the Institution vis-à-vis the Political Authorities in the country of origin, inasmuch as accreditation also ascertains the independent nature of the Institution.

The first meeting took place in August 2009 in Copenhagen. From 2016 to 2019, the DIMR Director – Professor Beate Rudolf – held the Presidency of GANHRI.

ii. European Network of National Human Rights Institutions (ENNHRI)

The DIMR is a member of the ENNHRI, the European Network of National Human Rights Institutions that brings together over 40 national human rights institutions (INDHs) from all over Europe with a view to improving the promotion and protection of human rights in the region. The network provides a platform for cooperation and solidarity by tackling challenges to human rights and a common voice for INDHs at the European level.

HUMAN RIGHTS RECOMMENDATIONS: ENFORCEMENT AND FOLLOW-UP

It behooves us to remember that the INDHs may adopt four different models: Committee, Institute, Ombudsman, and Commission. Such institutions differ considerably in several aspects. The type known as “Committee” is characterized by its mission to assist the Federal Government and government leaders in particular. Such Institutes are charged mainly with education, investigation, and political promotion, whereas the main activities of the type known as “Ombudsman” are centered in aspects of individual legal protection and processing complaints. The type referred to as “Commission” is characterized to a large extent by its wide array of tasks, including investigations of human rights violations, educational work, and public relations, as well as participation in legal procedures and lawsuits. In most cases, the types known as Ombudsman and Commission have ample powers to investigate and gather information, while the type referred to as “Committee” only has limited powers, and the so-called “Institute” does not have government powers.⁵²

In the case of Germany, the DIMR has the legal nature of an Institute, hence it does not receive individual complaints nor can it carry out the follow-up of particular cases, its human rights protection strategy being based on promotion, investigation, counseling, information-gathering, and document filing. The Ombudsman system that has met with success in Nordic countries is not quite suitable for replication in a State like Germany, inasmuch as the latter already features a fully-developed Administrative Judiciary Branch, and because there are numerous procedures in Germany to effectively ensure individual legal protection against most forms of sovereign actions. That includes even administrative omissions in connection with certain legally-qualified rights.

That being the case, the establishment of Public Ombudsmen with general responsibility would usher in a parallel system that seems neither necessary nor

⁵² Aichele, Valentin, *National Human Rights Institutions: An Introduction*, German Institute for Human Rights, 2010, pp. 15 e 16.

sensible. There is, in this case, the risk that the establishment of an Ombudsman in addition to the previously-existing legal protection system might undermine the credibility of the Judiciary, particularly the Administrative Judicial Branch. Indeed, parallel structures could give rise to legal ambiguity among concerned Jurists and even discourage them from filing appeals or missing deadlines for doing so. As a result, formal legal protection of affected persons might even be weakened. The transfer of a “best practice” that was successful in a given country, therefore, does not necessarily serve the purpose of improving human rights protection in another country.⁵³

Summary of activities and impact of the institution over the past five years

In Germany, human rights make up the central and binding benchmark framework that shapes its community. That is what the Fundamental Law requires, and that is also recognized in the country’s political reality. The report of the Institute has the goal of helping ensure that the human rights of all people are upheld and implemented. To that end, it must look into the effects of legal norms, especially as regards their application, and the manner whereby the latter are impacted by other political measures. That is the only way of identifying where there might be a need for action. The report delves into subjects to which the DIMR wishes to draw attention every time it is estimated that there are situations in which it is incumbent upon the Federal Government to adopt initiatives. The Law thus stipulates that Parliament shall make comments about the Institute’s Report. The presentation of reports about human rights pursuant to § 2, paragraph 5 of the Law that regulates the DIMR is, therefore, the expression of an attitude of self-criticism and, as a result, the constitutional self-image of Parliament.

In accordance with the Law that regulates the DIMR, the latter is supposed to present annually to Parliament a report with respect to the status of human rights in Germany.

The following Table – Table N° 1 – showcases an analysis of the main topics presented to the German Parliament between the years 2017 and 2021. The Annual Report presented by the DIMR to Parliament depicts the problems that it deems most worrisome and for which the latter urges actions on the part of the Federal Government, in addition to coordination with the Federated States and the eventual promulgation of directives geared to mitigating the problems denounced therein.

Table N° 1: Main Topics Presented by the DIMR to Parliament

2021	2020	2019	2018	2017
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⁵³ Deutscher Bundestag, *Zur Institutionalisierung des Menschenrechtsschutzes*, 2010, p. 10.

Rule of Law in Democratic States – racism and rightwing extremism	Youth with disabilities: educational training acknowledged in places of special itineraries	Homeless people: shelter for homeless people on the part of municipalities.	Labor exploitation and wage complaints by immigrants in Germany.	Organization of daily life in community shelters compatible with human rights.
Social rights – regulation of due diligence in supply chains.	Deportation and diseases: practical human rights prospects and obligations	Human rights education: quality traits in capacity-building for male and female elementary school teachers.	Compulsion in the general psychiatry of adults.	Refugees with disabilities: identification, shelter, and care.
Protection against discrimination: the issue of screening.	Advances in themes from previous human rights reports: lack of housing, access to education for refugee children, arms exports, the economy and human rights.	Extrajudicial appeals for victims of human rights violations on the part of companies abroad.	Arms exports: the role of human rights in the approval process.	Rights of children to be in contact with their detained parents.
Exile, escape, and immigration – family reunification.		Advances in themes from previous human rights reports: Exclusion of people with disabilities from right to vote; family reunification, children of detained	Advances in themes from previous human rights reports: escape, exclusion of people with disabilities from right to vote, national action plan for the	Advances in themes from previous human rights reports: escape, exclusion of people with disabilities from right to vote, sustainable development goals, national

		people and their right to personal contact, arms exports.	economy and human rights.	action plan for the economy and human rights.
Rights of Children: Children as individuals entitled to their own rights.				
Legal assistance for people with disabilities.				
International: world equity as regards vaccination.				

Source: Own compilation on the basis of a review of Annual Reports presented by the DIMR to the German Parliament, years 2017-2021.

In the past few months and following the lines of its latest Report, the DIMR drew attention to three important topics: hate crimes, racism, and anti-Semitism (with special emphasis on Police actions); the rights of refugees (especially in regards to the subject of family reunification); and equality of access to vaccines against COVID-19.

Additionally, over the past years there has been a troublesome spike in hate crimes, against which, however, local officials have not been able to design an integral strategy to combat violence stemming from discrimination. In May 2022, the Federal Interior Ministry informed that hate crimes had grown by 19% in relation to the previous year. In that same month, the Federal Government approved a package with 89 measures against crimes connected to racism. The DIMR viewed with satisfaction the fact that the Federal Government acknowledged that fighting racism, anti-Semitism, and rightwing extremism has considerable political importance. Nonetheless, the package of measures adopted lacks concrete measures and a long-term strategy to tackle institutional racism in the Police and the Judiciary. Even though such measures have lent more support to civil society,

they have not dealt with institutional racism and have failed to establish an overall strategy against racist violence. The absence of an independent mechanism to investigate complaints at the level of the Federated States and the Federal Government, coupled with the fact that the Police were not required to wear identification badges in six Federated States posed an obstacle to proper accountability in regards to discrimination abuses committed by the Police.

In order to curb institutional racism by the Police, the DIMR has suggested the following:

- Enhance the identification of the problem: there remains a dearth of empirical knowledge based on independent studies about racist structures within Police forces and regarding the extent and effects of racist and anti-Semitic violence on the part of the Police.
- Eradicate racial profiling as a Police practice: an essential basis for the design of racial profiles are the Police authorization norms to carry out personal checks regardless of a reason (§§ 22 Paragraph 1a, 23 Paragraph 1 No. 3 Federal Police Law, Federated State Police Laws). The Legislative Branch must ensure that laws do not stimulate racist Police controls. A review of fundamental and human rights is required and, when necessary, respective legal provisions at the Federal level as well as that of Federated States that facilitate the drafting of racial profiles must be eliminated.
- Establish procedures for complaints and assistance centers: the Federal Government and that of Federated States must set up offices to hear complaints, both institutionally and personally, independently from Police and State Departments, where individuals affected by discriminatory Police practices may file reports, especially those of a racist nature, including violence.
- Investigations of and lawsuits against racist crimes: the ability to recognize racist and anti-Semitic crimes must be developed in the training of Police forces and that of members of the Judiciary. Towards that goal, the Police and the Judiciary must strengthen and consolidate their capacity-building courses in connection with issues of racism and anti-Semitism.
- Boost human rights education in training, higher education, and ongoing capacity-building for the Police and the Judiciary: in order to fight rightwing extremism and racism, measures geared to training, higher education, and additional capacity-building for the Police and the Judiciary must be structurally rooted in respect for human rights. Education in topics pertaining to human rights must be made a mandatory transversal theme. In addition to imparting knowledge and values, this has to do also with shedding light on stereotypes associated with certain groups and changing those perceptions. Effective actions must be encouraged against rightwing extremism and racism.

- Systematically tackle the recommendations issued by the Independent Commission on Anti-Gypsy Discrimination: at the start of the new Legislative Year, the Federal Government and Federated States must jointly tackle the recommendations of the Independent Commission on Anti-Gypsy Discrimination and develop an Action Plan in order to implement such recommendations, supporting it with the necessary financial resources and continuously monitoring its implementation.

A second topic that has raised a great deal of concern since the issuance of the latest Report has to do with the rights of refugees and immigrants. The Principle of Non-Interdiction at the Border (*non-refoulement*) was not complied with in 167 documented cases of males deported to Afghanistan. After the Taliban took the reins of power in Afghanistan in August 2021, the Federal Government promised humanitarian visas for 2,600 most vulnerable Afghan persons and their families in September. The new Federal Government announced a program geared to the humanitarian admission of Afghan persons. Delays in the processing of family reunification claims have raised concerns as regards the right to family life. Persons hailing from Afghanistan, Eritrea, and Syria that had requested reunification with relatives living in Germany waited more than a year until the first interview at the German Embassy before they could start visa procedures.

The DIMR stressed that the right to family life has been consecrated as part of fundamental and human rights (Article 6 of the Fundamental Law, Article 8 of the CEDH). Should children be affected, the United Nations Convention on the Rights of Children must also be taken into account. Pursuant to this Convention, requests for family reunification must be processed “with the utmost expediency” (Art. 10) and, for that purpose, priority must be given to the higher interest of the children affected (Article 3, paragraph 1). Although that does not give rise to an unlimited right to family reunification, an overall refusal vis-à-vis these requests is inadmissible. The applicability of such a right is contingent upon the family situation and must be reviewed on a case-by-case basis. Of special relevance is the effort to ascertain whether families may live together under reasonable conditions in the country of origin. In the case of persons having the right to international protection, the latter is usually discarded indefinitely – on account of persecution, threats of grave human rights violations or a prolonged civil war in the country of origin. In the case of refugees that have been separated from their families for a long time, that engenders long-term consequences: the long wait by parents, siblings, or children – coupled with uncertainty regarding their whereabouts – triggers feelings of dwindling prospects and lack of hope in the people affected.

In view of this situation, the DIMR has suggested the following:

- The Interior Ministries of the Federated States must ensure that the provision currently in use – issuance of a visa pursuant to § 32 paragraph 1 of the Residency Law (reunification of children through the parents that come into

the country at the same time) or according to § 36 paragraph 2 of the same Law (other family members) – must not take into account either the need for living space or certification of means of subsistence. Therefore, Schleswig-Holstein and Berlin have already ensured that, by means of decrees or through procedural instructions whereby the competent immigration officials are instructed to abstain from enforcing these requirements in cases of reunification of siblings.

- Immigration officials, whilst availing themselves of their discretionary power, must dispense with such requirements (sufficient vital space, certification of means of subsistence) whenever they look into visa requests for siblings.

Finally, with respect to the theme of the right to health, it is utterly important to mention that Germany delivered 84 million vaccine doses against COVID-19 to the COVAX Mechanism. The Federal Government was opposed to the exemption in connection with the Agreement on Issues of Commerce-Related Intellectual Property Rights (ADPIC) proposed by the World Health Organization (WHO) and abstained from pressuring the BioNTech Company into joining the Joint Access to Technology against COVID-19 (C-TAP) or the Center for Technology Transfer of ARNm Vaccines aimed at sharing its knowledge and technology and thus speed up world production.

Faced with this problem, the DIMR suggested the following:

- The Federal Government should not sign purchase contracts with vaccine manufacturers, be it individually or within the framework of the EU, without regulations about the voluntary transfer of patents to the CTAP or comparable initiatives. Such purchase contracts must be made more transparent to the public to the extent possible, in light of the competition legislation.
- The Federal Government must exhaust all avenues within the EU with a view to increasing the production of vaccine doses in the short, medium, and long terms as well as ensure their fair distribution, including mandatory licenses and patent approvals.

Accreditation strategy of the DIMR before the subcommittee on accreditation of GANHRI

The DIMR was awarded the “A” status by the Subcommittee on Accreditation (SCA) in 2001. Subsequently, this accreditation was reviewed in 2002; in 2003; in November 2008; in November 2013 (postponed until October 2014); in March 2015 (delayed until November 2015); and in November 2015. In all of the review procedures, the “A” status of the DIMR was upheld. The keys to upholding its classification have been: the prestige bestowed upon the Institute, its work towards promotion and education in matters pertaining to rights, its joint work with civil

society, its administrative and budgetary autonomy, as well as the assistance provided to the Federal Government.

Nonetheless, the institutional foundations of the DIMR also harbor weaknesses. Among its recommendations, the SCA emphasized, for example, that the representatives of the Federal Government and the Members of Parliament should not be members with voting rights at the Administrative Council. The Subcommittee of GANRHI also stressed the need for the DIMR to receive extra funds compatible with its additional mandates and urged it to advocate in favor of suitable amendments to the legislation that enables its operation with a view to bolstering and shedding light on its protection mandate.

The following Table – Table N° 2 – showcases the strengths and weaknesses pinpointed in the DIMR by means of this Consulting work.

Table N° 2: Strengths and weaknesses detected in the case study

STRENGTHS	WEAKNESSES
Great use of strong German institutions and environment of respect for the Rule of Law in which its activities are carried out.	Cooperation with authorities in Federated States must improve. Although Germany is a federal country, the work carried out by the DIMR is still very centralized.
Organization consolidated at GANHRI and EENHRI. Its reaccreditation processes have always been successful.	The Institute has grown over the past years, yet its budget has not kept pace with such growth.
The System of Advisory Committees ensures a voice for civil society.	The participation of Parliament in the Administrative Council could impinge on its independence.
Possibility of acting as <i>amicus curiae</i> bestows upon it an important voice to issue statements regarding different processes.	Inability to participate of its own choosing in discussions about legislative bills.
Undertakes important work in education and promotion of human rights.	
High social appreciation for its work in promoting human rights.	
It is perceived as a leading organization globally and in Europe for the active role it plays as a member of both GANHRI and ENNHRI.	

Its joint work with civil society at the level of Federated States ensures important information for the Federal Government about hotspots of human rights violations and the actions that must be taken to curb them.

Source: Own compilation based on an analysis undertaken of the DIMR.

CONCLUSION

Germany is a Democratic State abiding by the Rule of Law, which is not to say that human rights violations are unheard of. Rather, the system exerts great efforts in order to correct such violations whenever they occur. On that basis, Germany has developed a solid human rights protection system that includes the DIMR as an independent nonprofit organization whose mission is to keep the public abreast of the status of human rights both in the country and abroad, as well as foster the promotion and protection of human rights. In general terms, the DIMR upholds excellent work relations with State officials. Its expertise and assistance are very much appreciated.

The foundation of the DIMR based on a unanimous decision by Parliament was a significant step taken by Germany towards the implementation of its obligations in the realm of human rights. Ever since that turning point, the DIMR, in its capacity as an independent national human rights institution, has been working quite successfully in order to ensure that the Federal Republic will respect and promote human rights inside the country as well as abroad.

In spite of the above, the operation of the DIMR must improve. First and foremost, when Parliament convenes to debate a Legislative Bill tackling issues that may interfere in topics bearing on human rights, the DIMR does not have the right to participate out of its own volition; rather, it must be invited by a Party represented in Parliament. The Institute also lacks other fundamental competencies, such as the right to peruse files, the right to file lawsuits, or the opportunity to present unsolicited statements at hearings.

Furthermore, financial resources play an important role in ensuring a conducive atmosphere for the DIMR. Even though there has been a relatively small increase in institutional financing for the Institute, it behooves us to remember that the wide-ranging mandate performed by the latter is not satisfactorily matched by the levels of financing currently available. In particular, the DIMR needs more financial resources for investigation and follow-up purposes. Although Parliament has always demonstrated that it is the custodian of the Institute's independence, the latter could fulfill its counseling mandate much more efficiently if additional rights were to be granted.

One of the main pending tasks of the DIMR is the strengthening of relationships and effective work cooperation with the Federated States. According to DIMR Director Beate Rudolf, it is difficult, especially within a Federative System, to reach individual Federated States through a merely consultative role and with such a centralized organizational system. The DIMR has offices only in Berlin. It would thus be recommendable to draw upon offices located in regional capitals as well. In its capacity as an organization with a nature geared to information, promotion, and counseling regarding human rights issues, the DIMR keeps Parliament abreast of the status of human rights in the Federated States, yet the Institute lacks the competency to undertake direct actions.

Ombudsman's office of the people of Argentina

Background to its creation

The first antecedent of the Defensoría del Pueblo de la Nación Argentina, the current National Human Rights Institution (INDH) of the country, can be found in the First Colloquium on the Ombudsman Project for Latin America held in 1983. This event gave rise to the Latin American Ombudsman Institute (ILO), an institution that continues to this day and which seeks to promote the figure of the Ombudsman in Latin America and contribute to the consolidation of democratic processes, a prevailing need at that time in the region after years of de facto governments, institutional violence and state terrorism.

The ILO was the starting point for the proliferation of studies, research and consultations that subsequently led to draft legislation creating the figure of the Ombudsman in almost all Latin American countries, including Argentina. In fact, Argentina was one of the Latin American countries where both doctrinal studies and legislative initiatives proliferated the most⁵⁴, although the implementation of the institution at the national level did not take place until 1993, almost 10 years after the presentation of the first draft law⁵⁵, although there had previously been some experiences of implementation of this figure at the local or municipal level⁵⁶.

In the Argentine national context, the institution was conceived to exercise a dual function of control and protection and was approached not only from a purely legal perspective, but also from the role that the figure could play in the social and political sphere. Thus, one of the most important aspects of the Ombudsman's role was to increase control over the Public Administration in areas that generally escape the traditional bodies and procedures, thus increasing the sphere of protection and legal protection of citizens. This would provide them with a more comprehensive defence of their fundamental freedoms and rights, not only those of a civic nature, but also those of an economic, social and cultural nature, as well as those belonging to the third generation or those of social solidarity. Efforts were also made to ensure that both the figure and the legislation protecting it would serve as an instrument to encourage citizen participation in the management of public affairs, and in this sense it was a pioneering institution of the multiple channels of participation already consolidated today⁵⁷.

⁵⁴ In this sense, the scientific-intellectual contribution of Jorge Luis Maiorano with his doctoral thesis "EL OMBUDSMAN: Defensor del Pueblo y de las instituciones republicanas" in 1987 was crucial for the emergence of the figure. Maiorano subsequently became the first Ombudsman appointed by the National Congress of the Argentine Republic.

⁵⁵ It was Senators Eduardo Menem and Libardo Sánchez who in 1984 presented the first bill referring to the Ombudsman.

⁵⁶ The figure of the Ombudsman had already been implemented in some provinces of Argentina, as is the example of the province of San Juan Rioja, which was the forerunner in the matter and incorporated the institute of the Ombudsman into its provincial Charter on 23 April 1986. It was followed by the provinces of Salta, La Rioja, Córdoba and San Luis.

⁵⁷ Maiorano, J. L. (2000). El Defensor del Pueblo de la Nación: una nueva institución de control y tutela. *IDEARIUM*.

The Argentine Ombudsman was conceived on the basis of the traditional *Ombudsman*, assigning it the classic non-binding or coercive character of its resolutions as a form of persuasion. The difference with the classic Scandinavian model is that it has been committed to the defence and protection of human rights and has been granted broad legal standing.

Initially, the figure of the Ombudsman in the Argentinean legal sphere was enshrined in legislation and subsequently elevated to the constitutional rank it currently holds. On 1 December 1993, Law No. 24.284 was passed, regulating the organisation and functioning of the Ombudsman's Office. Prior to the incorporation of its first incumbent, the new Argentine Constitution was approved and came into force in 1994, the result of the National Constituent Convention of the same year⁵⁸. The renewed constitutional text brought a series of far-reaching changes in relation to the original, which dated from 1853. Among them was the modification introduced by article 86, which endowed the figure of the Ombudsman with constitutional relevance, thus shielding his autonomy, election, powers and mandate.

The National Ombudsman's Office is the only National Human Rights Institution (NHRI) in Argentina recognised by the United Nations. This recognition was granted with class A status, the highest possible, as it fully complies with the Paris Principles. Obtaining this recognition as a National Human Rights Institution not only gave the Ombudsman's Office the role of guarantor of Human Rights in the country, but also gave the Argentine State the confidence that solid democratic processes are respected and carried out within it, as the Ombudsman's Office is considered a fundamental actor in the field of human rights.

The body began its work on 17 October 1994 with the appointment of Jorge Luis Maiorano as the first elected Ombudsman, although its activity did not become evident until well into 1995. In the first years of its operation, it was very active on issues of considerable public impact, such as the rebalancing of telephone tariffs, the renegotiation of the drinking water service and the privatisation of the flag carrier, Aerolíneas Argentinas. The ombudsman acted in the aforementioned cases in accordance with his constitutional mandate, although his judicial interventions were unsuccessful.

Perhaps the most relevant characteristic of the figure is its legal standing, i.e. its capacity to intervene as a party in certain legal proceedings "against any form of discrimination and in relation to the rights that protect the environment, competition, users and consumers, as well as collective rights in general", according to article 43 of the Argentine National Constitution, although this has not been free of controversy. The scope and interpretation of this jurisdictional power, which is configured on the basis of the two articles of the National Constitution on which it is based (43 and 86), was shaped by various pronouncements of the Argentine high court, leaning towards a thesis that limited its procedural standing.

⁵⁸ Romanini, J. M. (2018). *Atribuciones y funciones del defensor del pueblo de la nación argentina* (Undergraduate thesis).

Regardless of these vicissitudes, the body has managed to maintain a constant and lasting activity since its creation, with a notable presence and intervention within society, establishing itself as a relevant figure for Argentina. Proof of this is that in the period between 2005 and 2009, the Ombudsman's Office participated in a total of 52 lawsuits, initiated 26 judicial cases and appeared as *amicus curiae* in 26 others. However, a mixture of political apathy and the manifest inconvenience of the existence of a body that controls the activity of the public administration, inaugurated a period of institutional decline of the body that has lasted until the present day.

The period of institutional weakness began in 2009, when the last constitutionally appointed Ombudsman resigned⁵⁹ and since then the post has been vacant. There are many reasons for the lack of progress in the appointment of a new Ombudsman, from the lack of political will to the absence of consensus between the ruling and opposition parties in Congress⁶⁰, as well as the lack of institutional commitment in the appointment by two governments of different political persuasions (2009-2015 and 2015-2019). All of this brought with it extremely serious legal and functional consequences.

At present, the Assistant Secretary General, the most senior official in the agency, acts as Ombudsman. However, the scope of his powers is unclear and it is therefore uncertain what powers he may have as Ombudsman. The Secretary General does not have the basic guarantees that allow the Ombudsman to exercise his office with complete independence and immunity, which conditions his performance and limits his actions, resulting in a considerable reduction in his activity⁶¹.

The Ombudsman's Office has enormous potential to become one of the highest guarantors of the protection and promotion of human rights in the country. Beyond the actions determined by Law 24.284 which regulates it, there are currently new national and international instruments, as well as new structures established in the organisational charts of the United Nations and the Organisation of American States, in addition to the provisions and resolutions issued by them, which determine its potential for transformation. All of this, together with the creation of new national bodies and a wide range of laws in line with new rights recently recognised at the beginning of the 21st century, could turn this institution into one of the greatest defenders of human rights. The fact that the institution has the capacity to initiate investigations with the aim of supervising, advising, informing and elaborating proposals for a better functioning of the State, as well as on situations of human rights violations, and that it is protected by article 86 of the National Constitution, the International Treaties and Conventions, the Resolutions issued in this sense by the OAS and the United Nations and, in particular,

⁵⁹ Eduardo Mondino was the last to hold the post at the time of writing. An article from the news portal "Infobae" can be consulted at: [<https://www.infobae.com/2009/04/06/440698-mondino-renuncio-la-defensoria-del-pueblo-ser-candidato/>].

⁶⁰ Gago, M. E. and Gómez Zavaglia, T. (2019). The Ombudsman of the Nation: between oblivion, intention and neglect. *Constitución de la Nación Argentina a 25 años de la reforma de 1994*. Page 531. *Editorial Hammurabi*.

⁶¹ Conclusion drawn from the report "Impacto de la falta de nombramiento del Defensor del Pueblo sobre la vigencia de los Derechos Humanos en Argentina" (Impacte os Theo lack of appointment of the Ombudsman on the enforcement of Human Rights in Argentina), prepared by Poder Ciudadano and other civil society organisations.

the Paris Principles, makes it an essential and necessary body to counteract the serious human rights violations that occur in Argentina.

Analysis of the legal framework

a) National level

The figure of the Ombudsman in Argentina is governed by Law No. 24.284, which regulates the organisation and functioning of the Ombudsman (subsequently amended by Law No. 24.379). The law was passed shortly before the 1994 reform of the Argentine Constitution was approved and came into force⁶², which contains profound innovations, incorporating the figure of the Ombudsman in its article 86, which states that "The Ombudsman is an independent body instituted within the scope of the National Congress, which will act with full functional autonomy, without receiving instructions from any authority. Its mission is the defence and protection of human rights and other rights, guarantees and interests protected in this Constitution and the laws, in the face of facts, acts or omissions of the Administration; and the control of the exercise of public administrative functions. The Ombudsman has legal standing. He/she is appointed and removed by the Congress with the vote of two thirds of the members present in each of the Houses. He/she enjoys the immunities and privileges of legislators. He shall hold office for five years, and may be reappointed only once. The organisation and functioning of this institution shall be regulated by a special law.

Article 86 of the Argentine National Constitution (CNA) not only grants constitutional protection⁶³ to the Ombudsman, but also endows him with a series of essential characteristics that allow him to carry out his functions without interference or impediments of any kind. Firstly, the article reaffirms his independence, clarifying that he cannot receive instructions from any authority, thus disassociating him from any possible influence by the political power. Secondly, it is assigned a wide margin of action, being able to intervene not only in matters relating to the defence and protection of human rights, but also of the "other rights, guarantees and interests protected in this Constitution and the laws, in the face of facts, acts or omissions of the Administration", which implies that it can also intervene in those cases contemplated in international treaties that are equivalent to the National Constitution. Specifically, this refers to those cases in which such rights and guarantees are affected by the action or omission generated by national public administrative activity (centralised and decentralised), autarchic entities, State companies and corporations, mixed economy companies with majority State participation and all other State bodies, whatever their denomination, and legal and private persons providing public services⁶⁴.

Another fundamental feature provided by article 86 of the constitution is its broad procedural legitimacy, which enables it to initiate and intervene in certain legal

⁶² It was incorporated as a result of a broad consensus among all the intervening forces within the Constituent Convention after having debated approximately fifty versions of the same draft.

⁶³ This means that it does not have the status of an organ of a particular government, but of an Authority of the Nation or Institution of the Republic, which reinforces its independence.

⁶⁴ Arts. 14, 16 and 17 of Law N° 24.284.

proceedings. Finally, its democratic legitimacy is guaranteed by its election by a special majority of two thirds of each chamber, its irremovability as it is equal in immunities and privileges to national legislators, and its independence and autonomy as it has an extended 5-year mandate that prevents it from coinciding with the presidential mandate, which has a duration of 4 years.

But of all the characteristics described above, it is procedural standing that best defines the Argentinean Ombudsman and sets him apart from his Latin American and European peers, with article 43 of the National Constitution outlining the exercise of this legal standing. This article provides that "Any person may file a prompt and expeditious action for amparo, provided that there is no other more suitable legal remedy, against any act or omission of public authorities or private individuals, which actually or imminently injures, restricts, alters or threatens, with manifest arbitrariness or illegality, rights and guarantees recognised by this Constitution, a treaty or a law. In such a case, the judge may declare the unconstitutionality of the rule on which the injurious act or omission is based. This action may be brought against any form of discrimination and in relation to the rights that protect the environment, competition, users and consumers, as well as collective rights in general, by the affected party, the ombudsman and the associations that promote these purposes, registered in accordance with the law, which shall determine the requirements and forms of their organisation. This legal empowerment, therefore, allows the Ombudsman to file appeals for the protection and unconstitutionality of laws.

It is also worth noting some of the changes made to Law N° 24.284, which regulates the functioning of the Council, by Law N° 24.379, which was passed shortly after the original law. It was considered that some of the provisions of the original law required specific modifications in order to streamline the functioning of the body and adapt it to other treaties and agreements in force, in addition to making certain formal corrections to errors made during its parliamentary processing. Among the most relevant modifications are the reform of article 24, which adapts it to the norms of the Pact of San José de Costa Rica, ratified by Law N° 23.054; and the reform of article 36, which seeks to provide the Ombudsman's Office with greater operability and functional independence, as prescribed by article 1 of Law N° 24.284 and in harmony with article 86 of the National Constitution, which states that the Ombudsman does not receive instructions from any authority. From this premise arose the need to provide this body with the necessary means to enable the effective and comprehensive fulfilment of its functions.

Now applicable to the internal regime of the body, we find the Ombudsman's Rules of Organisation and Functioning, which were established by Resolution N° 01 of 24 October 1994 and sent to the Permanent Bicameral Commission for its consideration, which approved them on 26 October 1994 (by Resolution RS N° 01/94). The Regulations set out the basic provisions governing the internal management of the body.

Having explained the legal provisions governing its functioning, we will now focus on the Ombudsman's scope of action. In addition to the defence and protection of human rights and the control of the functioning of the administration, an essential part of its functions, it also has special powers of intervention in matters relating to the protection of the

environment, competition, consumer and user rights and collective rights in general, also known as diffuse or supra-individual interests.

Several of these matters that make up its sphere of action are also regulated by their respective specific legislation. Thus, in environmental matters, it is section 30 of Law N° 25.675 in connection with section 43 of the CNA which grants it the legitimacy to intervene in environmental damage, empowering the Ombudsman to promote the cessation of activities generating collective environmental damage and the recomposition of the damaged environment. With regard to consumer and user protection, section 52 of Law 24.240 (as amended by Law 26.631) regulates the possibility of the Ombudsman to initiate legal action when the interests of users or consumers are affected or threatened. Law N° 25.326 also establishes the possibility that the Ombudsman may intervene in an action for the protection of personal data or habeas data brought by the affected party. Finally, Law No. 24.747 regulates the assistance to be provided by the Ombudsman with regard to the verification of the content of popular legislative initiative projects prior to the circulation and collection of signatures.

As for the power to control the functioning of the administration, a crucial part of its functions, this can be exercised by the Ombudsman not only against public bodies, but also against mixed legal entities exercising public prerogatives and also against private entities providing public services, thus extending the scope of action to the public administration in general, with article 17 of the Organic Law of the Ombudsman regulating the scope of the prerogative.

b) International level

The Argentine National Constitution recognises the Ombudsman as the body responsible for the defence and protection of the human rights established in the Constitution, including those derived from international treaties approved by Argentina. These treaties and agreements, while in force, have constitutional hierarchy and should be understood as complementary to the rights and guarantees recognised by the Argentine Constitution.

The treaties and agreements adopted by Argentina in the field of human rights are:

American Declaration of the Rights and Duties of Man.

Universal Declaration of Human Rights

American Convention on Human Rights (Law N° 23.054, 1984).

International Covenant on Economic, Social and Cultural Rights (Law N° 23.313, 1986).

International Covenant on Civil and Political Rights and its Optional Protocol (Law N° 23.313, 1986).

Convention on the Prevention and Punishment of the Crime of Genocide (Decree-Law 6286/1256, 1956).

International Convention on the Elimination of All Forms of Racial Discrimination (Law No. 17.722, 1968).

Convention on the Elimination of All Forms of Discrimination against Women (Law N° 23.179, 1985).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Law No. 23.338, 1987).

Convention on the Rights of the Child (Law N° 23.849, 1990).

Inter-American Convention on Forced Disappearance of Persons (Law N° 24.556, 1995).

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (Law No. 24584, 1995).

Convention on the Rights of Persons with Disabilities (Law 26.378, 2008).

Analysis of the institutional and administrative functioning of the body

a) Institutional design

As indicated, the National Ombudsman's Office is an autonomous body whose constitutional status is established in articles 43 and 86 of the CNA. Its main function is the defence and protection of human rights and other rights, guarantees and interests protected by the Constitution and the law. In this sense, the nature of the body is in line with the Paris principles regarding the establishment of the national human rights institution under primary law or the constitution.

i. Initial organization

The internal organisation of the body was foreseen in accordance with the estimated needs to be met by the institution and applying the principles of agility and efficiency. The Organisational Structure was established by Resolution N° 02 of the Ombudsman, on 24 October 1994, and was approved by the Permanent Bicameral Commission, together with the Rules of Organisation and Functioning. Subsequently, this structure was subjected to numerous changes which, together with the complicated situation that the body is currently going through, led to the current situation in which the Under-Secretary General is the only authority in charge of the body.

The institution was originally structured around the figure of the Ombudsman and his two deputies as main authorities. The system for the election, appointment and assumption of the deputies is established in article 13 of Law No. 24.284. The deputies are responsible for assisting the Ombudsman in his or her task, and may replace him or her in the event of dismissal, resignation or death, among other cases. It is the Ombudsman who proposes their appointment and dismissal to the Permanent Bicameral Commission and delimits their respective spheres of functions. In their capacity as assistants, the deputies are responsible for intervening in the processing of the proceedings, proposing their admission or rejection and the appropriate resolutions, in accordance with the delegation of the exercise of competence made by the Ombudsman.

The initial organisational design presented a clear differentiation between the areas of analysis and those of management support. The areas of analysis were organised according to functional criteria of distribution of the matters subject to the Ombudsman's competence. Subsequently, each Deputy was delegated the exercise of powers to

intervene in the processing of the actions under the responsibility of the areas, which were assigned as follows:

OMBUDSMAN	
Attachment I	Attachment II
Human Rights and Home Affairs	Environment, Cultural and Educational Administration
Health Administration and Social Action	Administration of Justice
Economic Administration	Employment and Social Security Administration

These areas were tasked with analysing, investigating and proposing courses of action in the cases provided for in Articles 43 and 86 of the National Constitution and Law 24.284.

Likewise, the body has a Legal and Litigation Department -formerly called Legal and Technical-, reporting directly to the head of the Institution, which in addition to the basic functions of legal advice, was in charge of preparing the documents to be sent to the Attorney General of the Nation and the processing of the actions promoted ex officio by the Ombudsman.

ii. Current organization

As mentioned in previous sections, since 2009 the body has been experiencing serious difficulties that jeopardise its functioning. Specifically, the body lacks its highest authority, as it has not been possible to appoint it for 13 years. Logically, this means that the positions of the deputies are also vacant, leaving the body without the essential figures for its management that were conceived since its constitution.

At the present time, the General Sub-Secretary is the head of the body, although he lacks the powers of the Ombudsman, so his actions are severely limited. This is mainly supported by the Legal and Technical Area, which is in charge of the legal representation of the Ombudsman's Office in legal proceedings and the preparation and response to complaints, intervening in the processing of all proceedings, both in national and international jurisdiction. It also participates in the drafting of Resolutions and Provisions; it instructs or delegates under its control the administrative summaries and drafts the complaints presented to the Public Prosecutor's Office. It also rules on complaints, and coordinates with the other areas the courses of action to be followed in investigations; and unifies, defines and systematises the criteria for the interpretation and application of laws, decrees, regulations and other legal norms.

She is also in charge of the Coordination of the Monitoring and Evaluation Programme of the Sustainable Development Goals; the Monitoring and Evaluation Programme of the Universal Periodic Review; the GANHRI Programme, and the Organisation for Economic Co-operation and Development (OECD) Programme, among others. It is also in charge of the General Coordination of the Femicide Observatory. Finally, it contributes to the

promotion of human rights. Finally, it should be noted that the area has three support units: Jurisprudence, Documentation and Library; Legal and Litigation; and Legal and Technical.

The other areas in which the Ombudsman's competences are currently distributed are divided into thematic areas and support areas and are as follows:

Under-Secretary-General	
Thematic areas	Support areas
Identity and Citizenship	Legal and Technical Advice
Health, Social Action, Education and Culture	Institutional Relations
Environment and Sustainable Development	International Relations
Users, Public Works and Services	Registration, Notifications and Archiving
Social Security and Labour	Management Control
Gender and Diversity	Systems
Promotion of HR & Communication	Administration and Human Resources
Vulnerable Groups	Accounting and Finance

It is also of interest for this report to outline the activity of the International Relations Area, which is responsible, among other functions, for collaborating in the maintenance of permanent relations with all United Nations organisations, especially with the Office of the United Nations High Commissioner for Human Rights, as well as collaborating in the maintenance of permanent relations with the American Regional structure for the integration of States: Organisation of American States, in particular with the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights; to collaborate in maintaining permanent relations with the Geneva-based Coordinating Committee of National Institutions and the International Ombudsman Institute and to advise on the drafting of treaties, conventions, agreements and other legal measures of a bilateral or multilateral nature, making recommendations for their implementation.

With regard to internal administration tasks, responsibility for their implementation has been assigned to the General Secretariat, which is responsible for the management support units.

The Registry, Notifications and Archives area is responsible for attending to the public, receiving complaints, registering and dispatching documentation. The Administration and Human Resources area is responsible for meeting the needs for goods and services and implementing personnel policies, while the Accounting and Finance area is responsible for budget formulation and execution as well as accounting management. The implementation, development and supervision of the Institution's IT resources are assigned to the Systems area. It was also foreseen the creation of the area of Dissemination, Publications and Library, later named Promotion of Human Rights and Communication, for the coordination of academic and dissemination activities, the design and edition of publications and the organisation of the documentation and

bibliography centre. Currently, it is also responsible for the management of social networks, in addition to the analysis, evaluation and systematisation of journalistic information that refers to or is of interest to the Institution, as well as the development of the written, radio and television journalistic archive of the Institution.

In addition, as a consultative and advisory body, a Management Board has been set up comprising the Ombudsman, the Deputies and the Secretary General. This Board assists, in particular, in matters relating to personnel, coordination of the activities of the various units and the organisation of the services.

Finally, as the Ombudsman is a single-person institution, it should be noted that the Ombudsman has sole responsibility for governing and administrative functions. The Ombudsman has the power to lay down the internal rules for the organisation and operation of the institution and to enter into any act or contract necessary for the performance of his or her duties.

b) Functions

Broadly speaking, the functions of the Ombudsman consist of initiating and pursuing, ex officio or at the request of the interested party, any investigation in all those cases originated by any agency of the National Public Administration and the companies providing public services, even privatised ones, in relation to:

- Malfunctioning,
- Illegitimacy,
- Lack of response to complaints made,
- Poor service, care or treatment,
- Insufficient information,
- Violations of human, user and consumer rights,
- Environmental preservation issues,
- Cases of non-compliance with court rulings by the state.

However, it may not intervene in disputes between private parties when an administrative or judicial decision is pending on the matter in question and/or when more than one calendar year has elapsed since the occurrence of the event, act or omission that is the subject of the complaint.

It is also empowered to carry out investigations, inspections, verifications, request files, reports, documents, background information, determine the production of any other evidentiary measure or element it deems useful for the purposes of the investigation. In turn, it may request the intervention of the courts to obtain the remission of all documentation that has been denied and it is also empowered to propose to the Legislative Power and the Public Administration the modification of those rules whose strict compliance could lead to unfair or harmful situations.

We will now look in more detail at some of these functions that are of particular interest. For example, as part of the feature of persuasion⁶⁵, the Ombudsman has immunity of opinion, understood as that freely expressed through recommendations, suggestions and warnings, combining as the concrete manifestation of his moral power. Equally relevant is the power of investigation and control, which can be promoted by a natural or legal person, individual or collective, or ex officio. This ex officio action is precisely one of the legal mandates explicitly included in article 15 of Law 24.284, which states that the ombudsman must pay special attention to "systematic" failures and errors in the administration, making ex officio action an indispensable instrument. And it is equally significant to highlight its easy accessibility, since when the action originates in a complaint, those requesting its action are not required to prove any of the conditions usually required by law, such as legitimate interest or subjective right, being only required to have some kind of connection to the issue raised.

It is also interesting to note that in order to guarantee its power to request files, reports, documents and, in general, any other element useful for the purposes of oversight, anyone who impedes the course of a complaint or obstructs its investigations will be subject to the offence of disobedience provided for in the Criminal Code. And, if the attitude of obstruction is persistent, he/she may report it to the Congress of the Nation in a special report, in addition to highlighting it in his/her annual report.

Finally, it is interesting to note that taking into account that one of the peculiar characteristics of this institution is the speed with which it must respond to the problems raised, the working method for the study and processing of the proceedings is not rigid and is not subject to the traditional requirements of administrative procedure or judicial process, therefore the processing is summary.

c) Resources

One of the features that reinforce the Ombudsman's independence, and which is provided for in its regulatory law, is that it has its own administrative and financial service, and is therefore empowered to administer its budget and appoint and remove its staff, which guarantees the exercise of the powers attributed to it without the risk of it becoming inoperative in the absence of funding. It is usual for this type of body, with functional independence and competences that may be uncomfortable for the public authorities, to lack the necessary means to carry out its work, which in practice means that it is hindered in its proper functioning, which is not the case here.

Article 16 et seq. of the Ombudsman's Rules of Organisation and Functioning establishes the general provisions concerning the staff of the body, while Article 2 et seq. of the Ombudsman's Staff Regulations establishes the individual rules that apply to the staff. At present, according to its latest published annual report 2020, the Ombudsman has a total of 520 staff on its payroll, the vast majority of whom are "permanent staff", i.e.

⁶⁵ This is expressed in the maxim "The Ombudsman does not win but convinces".

permanent employees of the institution, and a minority of whom are "transitional staff", i.e. temporary employees who have not yet secured permanent status.

As for the operating budget, the agency does not seem to have experienced any problems in providing itself with the necessary means and personnel to carry out its work throughout its existence. In 2020, the last year reported, it was allocated an appropriation of \$921,411,050 million Argentinean pesos, which comparatively represents 0.013% of the total budget of the National Public Administration and 2.82% of the total budget allocated to the National Legislative Branch.

The budget has remained stable in relation to previous years, although it is difficult to estimate the percentage increase or decrease in relation to previous years due to the high inflation in the country. It is important that such bodies do not experience difficulties in obtaining a budget that allows them to operate autonomously and freely. Adequate funding is one of the essential requirements of the Paris Principles on "Adequate resources for NHRIs": "To function effectively, an NHRI should have an appropriate level of funding to ensure its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funds according to its priorities. In particular, sufficient funds should be ensured, in a reasonable manner, for the organisation to optimise its functioning and the fulfilment of its mandate in a gradual and progressive manner (...)"⁶⁶.

d) Cooperation with other institutions for the protection of human rights

Throughout its existence, the Ombudsman has been actively collaborating with various non-governmental or civil society organisations in order to better fulfil his functions. The general mechanism for such collaboration is the so-called "collaboration agreement", which the Ombudsman has been using on a recurrent basis since the beginning of his activity.

The format of the agreement is simple and the document introduces the basic obligations to which the parties commit themselves, as well as establishing a minimum duration, normally two years, which can be extended until the parties decide to terminate it. To date, the institution has signed more than 280 agreements, many of which are with Foundations, Civil Entities, Associations, Entities from different fields and NGOs, with which it maintains close collaboration.

The area of the Ombudsman mainly responsible for working together with this type of organisations is the Institutional and Internal Relations Area, which is in charge of advising on the drafting of treaties, conventions, agreements and other legal measures of a bilateral or multilateral nature, formulating recommendations for their application. This area also has the possibility of making direct interventions or acting in cases that require urgent solutions. The Ombudsman's Office also works in a cross-cutting manner between the different areas and civil society organisations. The Ombudsman's Office uses contacts with these organisations to obtain information that helps them to obtain a

⁶⁶ GANHRI, General Observations of the Sub-Committee on Accreditation, Geneva, 21 February 2018.

broader picture of specific problems. From the exchange of information on a particular problem, it is possible to conclude that it is not a matter of isolated cases or specific problems of certain individuals, but rather a problem of a structural nature that requires a different kind of approach, such as a collective approach with effects for all those affected.

e) Participation in international human rights bodies

The Argentine Ombudsman, through the International Relations Area, has been actively participating in the various international human rights bodies of which it is a member. Interaction with the international human rights system is precisely another of the essential requirements of the Paris Principles, established in G.O. 1.4: "The Paris Principles recognise that monitoring and engagement with the international human rights system, in particular with the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and with the United Nations Human Rights Treaty Bodies, can be an effective tool for NHRIs in the promotion and protection of human rights in the country".

i. Office of the United Nations High Commissioner for Human Rights (OHCHR)

Through this body, the Ombudsman collaborates in the maintenance of permanent relations with all the United Nations Organisations, as well as participating in various reports and joint actions from the different areas that make up the Ombudsman. The most recent collaborations (dating back to 2020, the last year for which statistics are available) are the one carried out by the Identity and Citizenship Area of the Ombudsman in relation to Resolution A/HRC/RES/44/12 on "Freedom of opinion and expression"; or the contributions to the Special Rapporteur on the rights to freedom of peaceful assembly and association.

ii. American Regional Integration Structure of States

The area also collaborates in the maintenance of permanent relations with the American regional structure of State integration, which includes the Organisation of American States and in particular with the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. In this sense, the collaboration carried out by the Ombudsman is wide-ranging and is developed through its various thematic areas.

iii. Network of National Institutions for the Promotion and Protection of Human Rights in the Americas (RINDHCA)

RINDHCA is the regional member organisation of the Global Alliance of National Human Rights Institutions (GANHRI) that brings together American Ombudsman Offices, established according to the Paris Principles, with the aim of cooperating directly with the Global Alliance of National Human Rights Institutions (GANHRI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). Currently, the Deputy Secretary General of the Ombudsman's Office of Argentina, Juan José Böckel, Acting Ombudsman, is a member of the Coordinating Committee of the RINDHCA.

iv. Regional Ombudsman Organisations in the different continents

The Ombudsman's Office of Argentina maintains close collaboration with its regional and international peers mainly through the International Relations Area and in particular through the various thematic areas of which it is composed. Specifically, it collaborates in the maintenance of permanent relations with other Regional Ombudsman Organisations of the different continents, as well as in the maintenance of permanent relations with each and every one of the Offices of the Ombudsman, Ombudsman, Human Rights Commissions, Mediator, and officials with different functions in the different countries.

Ibero-American Federation of Ombudsmen (FIO)

The Ibero-American Federation of Ombudsmen brings together more than 100 ombudsmen, procurators, providers, presidents of national or state human rights commissions from 22 Ibero-American countries to provide a forum for cooperation, exchange of experiences and the promotion, dissemination and strengthening of the institution of the Ombudsman. The Defensoría del Pueblo de la Nación Argentina is a national member of the FIO, being part of the Steering Committee and the Governing Council, of which the acting Ombudsman, Juan José Böckel, is its fourth Vice-President.

Cooperation with international and regional human rights organisations and bodies

The Ombudsman also collaborates, through the International Relations Area, in strengthening and maintaining permanent relations with the Coordinating Committee of National Institutions (ICC) based in Geneva and the International Ombudsman Institute. Likewise, regular and permanent collaboration is maintained with the main international NGOs, especially those related to Human Rights.

Compliance with and follow-up to human rights warnings and recommendations

Due to its organisation through thematic areas, the Ombudsman monitors compliance with and follow-up of its recommendations and warnings through these areas. All of them can promote different types of recommendations and actions, which can be summarised as follows:

Complaint handling and resolution (advice and assistance)

Direct interventions

Action in cases requiring urgent solutions.

Monitoring the implementation of laws

The Ombudsman's intervention is mainly through complaints, claims or denunciations (all these denominations are used interchangeably), although he can also act *ex officio* as indicated in previous sections. Complaints must be submitted in written form containing a series of basic personal details of the injured party and must be signed by the injured party or by a representative. The letter must detail the nature of the problem

and the subsequent instances of the problem, as well as the complaints and responses received, if any. It must be submitted within a maximum period of one calendar year from the occurrence of the event, act or omission giving rise to the complaint and must be accompanied by all related documentation that may be of interest for the resolution of the complaint. Proceedings before the Ombudsman's Office are absolutely free of charge and do not require the assistance or signature of a lawyer. Once the complaint has been made, it is assigned a file number and assigned to one of the areas of the Ombudsman's Office.

The length of time taken to process a complaint will largely depend on the type of complaint filed and the level of cooperation of the administration. It is expected that about 10 days elapse between the submission of the complaint and the request for a report to the body complained against, although in practice this may be longer. The deadline set for the respondent body to reply is 15 days, with a formal provision for reiteration of the request for a report in the absence of a response. In this way, the activity is intended to comply with the maximum period of 30 days for responding to reports requested by the DPN established by Law 24.284. A special regime is established for the abbreviation of the process when the circumstances of the case so require. If a case is considered "abbreviated", it will be classified as urgent and the above-mentioned provisions on time limits will not be applied. In such cases, officials and employees of the Ombudsman's Office must expedite the processing of the complaint, and may shorten the deadlines for response from the bodies from which reports or compliance with recommendations are required⁶⁷.

In relation to the formalisation of complaints, the institution is clearly behind schedule. Despite having enabled the possibility of making a complaint via the web, it is still required to comply with the requirements established by art. 19 of Law 24.284, that is, that the complaint must be signed and accompanied by the name and address of the complainant. There is no provision for the possibility of anonymous reporting, nor is there any regulation on confidentiality or reserve of the personal data required. According to a 2014 report, there is only the possibility of making a complaint with identity confidentiality, but this procedure is not accessible from the online complaint, so that, if it exists at present, it probably requires prior formalities in person. In addition, complaints are temporarily limited to the acts or facts reported having occurred within a period of one year prior to the filing of the complaint.

In addition, the Ombudsman, in application of the essential requirement of the Paris Principles G.O. 1.6, undertakes extensive human rights work by making recommendations through its annual special and thematic reports. G.O. 1.6 states that: "Annual, special and thematic reports of NHRIs serve to highlight key national human rights concerns and provide a means by which these bodies can make recommendations and monitor the respect of public authorities for human rights. NHRIs, as part of their mandate to promote and protect human rights, should take follow-up action on the

⁶⁷ The procedure is explained in detail in "La Defensoría del Pueblo de la Nación Argentina: Diagnóstico y recomendaciones en materia de transparencia, rendición de cuentas y apertura a la ciudadanía". Civil Association for Equality and Justice. March 2014.

recommendations contained in these reports and should publish detailed information on the steps taken or not taken by public authorities to implement specific recommendations or decisions. In fulfilling its protection mandate, an NHRI should not only monitor, investigate and report on the human rights situation in the country, but also undertake rigorous and systematic follow-up activities that promote and advocate for the implementation of its recommendations and findings, and the protection of those whose rights have been found to have been violated. Public authorities are encouraged to respond to NHRI recommendations in a timely manner and to provide detailed information on any practical and systematic follow-up action to NHRI recommendations, as appropriate."

In the last published report, dating from 2020, the Ombudsman has addressed in the two special reports he has issued various issues such as the "Situation of the rights of indigenous peoples in relation to the achievement of the ends of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)", or the "Memorialisation processes after serious violations of human rights and international humanitarian law", among various and sundry others.

Summary of the body's activity and impact over the last 5 years

During the period prior to the institutional decline, which began with the resignation of the last Ombudsman appointed through the parliamentary procedure, the Ombudsman's Office stood out for its intense work in procedural matters and its presentation as "Amicus Curiae" in various judicial cases of public interest. Perhaps the most active year was 2007, two years before Eduardo Mondino resigned, when the Ombudsman's Office initiated 10 cases and was cited as a third party in another six, totalling sixteen cases.

Another of the indicators by which the level of activity of the institution can be measured is through the resolutions it issues, which consist of exhortations and recommendations to public bodies and/or private individuals, as well as decisions of the Institution referring to internal organisation. Since 2009, there has been a sharp decline, coinciding with the loss of the head of the institution. Since 2014, it is possible to affirm from statements made by the acting Ombudsman - given that there are no official statistics in this regard - that no judicial activity has been recorded. This is due to the fact that the acting Ombudsman does not have the prerogatives of the Ombudsman as he has not been formally appointed.

	2016	2017	2018	2019	2020
Actions	250.000	272.081	-	248.894	310.780
Reports	56	-	-	49	

The only statistical data included in the annual reports are the total number of actions and reports carried out in a year, without indicating whether the actions correspond to consultations, calls, complaints, interventions or opinions, which makes it difficult to

make an accurate estimate of the Ombudsman's performance. Despite the statistical deficiencies, it can be inferred from the high volume of actions that the Ombudsman carries out relevant work for citizens and intervenes in numerous situations on their behalf.

Accreditation strategy of the Argentine National Ombudsman's office to the GANHRI subcommittee on accreditation

On 20 December 1993, the United Nations General Assembly adopted the Principles relating to the status of national human rights institutions, known as the "Paris Principles", which set international standards on the competence, powers and composition of NHRIs. The Argentine Ombudsman's accreditation strategy has basically consisted of compliance with the Paris Principles, having obtained A status from the Sub-Committee on Accreditation in 1999, which indicates that the institution is fully compatible with these principles. There are currently 86 institutions with such status, which allows them to enjoy certain specific rights of participation in international and regional mechanisms, such as speaking on rights issues at the UN Human Rights Council and before UN treaty bodies, and certain voting rights and capacity to hold governance positions in networks of NHRIs, such as ENNHRI and GANHRI.

After obtaining A status in 1999, Argentina's accreditation was reviewed in 2006 and 2011. Subsequently, in 2016, it underwent a new review that was postponed year by year until 2019, the last year in which the review was attempted. To date, it has not been attempted again, but its status has been maintained in all the reviews carried out⁶⁸. The reasons why this appointment has not been made so far have not been revealed, but it is probably due to the peculiar situation within the body, with no Ombudsman appointed since 2009 due to various political inconveniences that have already been discussed in the first section of this report.

This situation jeopardises the maintenance of the current status because another essential requirement of the Paris Principles for the establishment of an NHRI is set out in G.O. 1.1: "An NHRI should be established in a constitutional or legislative text in sufficient detail to ensure that the NHRI has a clear and independent mandate. In particular, the role, functions, powers, funding and lines of accountability of the institution should be specified, as well as the designated mechanism for its members and the terms of its mandate. The establishment of an NHRI by other means, such as an instrument of the executive, does not provide sufficient protection to ensure permanence and independence."

The following is a summary of the strengths and weaknesses of the body at present. As can be seen, almost all the weaknesses detected are linked to the lack of appointment of the Ombudsman.

⁶⁸ GANHRI, ACCREDITED BY THE GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS, accreditation status as of 28 December 2021.

STRENGTHS	WEAKNESSES
Constitutional recognition	1. Lack of appointment of the Ombudsman, the main figure of the body (since 2009).
2. Comprehensive and detailed regulatory framework	2. Insufficient information about the complaints procedure and in general about the body and its activity.
3. Legal standing to intervene and to initiate legal proceedings for the protection of citizens.	3. Deficient system of communication with citizens.
4. Wide-ranging powers of action.	4. Precarious system for filing complaints and following up on them.
5. Internal structure composed of numerous thematic areas covering most situations of rights violations.	5. Little accountability, especially in relation to its activity, making it impossible to ignore the work carried out by the body.
6. Sufficient material and personnel resources with guaranteed stability.	6. Impossibility to intervene or initiate legal action at present due to the lack of appointment of an ombudsman.
7. Active participation in international organisations.	7. Lack of pronouncement on serious human rights violations, also linked to the lack of appointment of an ombudsman.

Conclusions

It is clear from the analysis that the institution of the Ombudsman or Ombudsman must be characterised primarily by its independence from political power. GANHRI focuses on independence as a fundamental quality for accreditation as an NHRI. This independence should be based on the legal system that regulates the body, as well as on its activities, principles and control of its resources. As Jorge Luis Maiorano summarises, the figure of the Ombudsman:

"It should not be an organ of the government of the day, an appendix of any political party or a buffer for political disputes; it should be, without a doubt, an Institution of the Republic; it should not be a cosmetic or aesthetic figure, but on the contrary, a serious and objective figure; it should be characterised by its prudence, which should not be understood as a synonym for complacency with power; it cannot claim to replace the traditional control bodies and procedures; only in terms of complementarity is the Ombudsman or Ombudsman justified; its appropriate profile must be that of a critical collaborator of the Administration, not its effective contradictor; to these ends, and whenever circumstances permit, it will exhaust its efforts to persevere in a mediating management between the Administration and the citizen; it must help in the solution of the particular problems raised by the complainants, without forgetting, at any time, that these problems are a symptom or effect of causes, surely deeper, which it must tend to overcome."

It is clear that the Defensoría del Pueblo de la Nación de Argentina must first and foremost resolve the current situation of lack of capacity, which prevents it from

carrying out all the functions legally attributed to it, which are of utmost importance for the defence and protection of citizens and their rights. The Bicameral Commission, the collegiate body responsible for the appointment of the Ombudsman, has consistently failed to fulfil its obligation to initiate the procedure for the appointment of a new Ombudsman.

At present, the Under-Secretary General can hold the post in office by authorisation of the Bicameral Commission, although the wording is ambiguous and imprecise, allowing for two possible interpretations⁶⁹, neither of which clarifies the functions that he or she can perform, preventing in practice the normal performance of the post.

Uncertainty about the powers of the official in charge and the constraints on his actions as a result of his instability have led to a considerable decrease in the Ombudsman's activity, jeopardising his status as the body responsible for the defence and protection of human rights in Argentina and also his current status as a National Human Rights Institution. The sharp decline in activity since 2009 has been recorded in all areas, although it is particularly noticeable in terms of the quantitative drop in judicial activity, the decrease in appearances in the country's main print media and, most seriously, the lack of pronouncements on serious human rights violations in Argentina, currently limited to requesting reports on complaints, whereas in previous years it intervened by initiating legal proceedings. To give an example related to the covid-19 pandemic, an ombudsman with a constitutional mandate, having a federal scope, could have presented amparos before the courts to assist people prevented from entering the provinces by the restrictions established during the pandemic. However, these people were legally represented by legislators and councillors opposed to the governor of the province in question, and the judicial dispute became politically tinged, when we were dealing with an issue of rights.

The appointment of a new Ombudsman is therefore urgently needed, given that since 2014 there has been no judicial involvement by the body, reducing the Ombudsman's Office to a mere administrative entity that issues recommendations and warnings.

⁶⁹ The first interpretation that emerges is that the aforementioned official was granted purely administrative powers, not being able to carry out any act other than "administration or conservation", and therefore the body would be completely headless, with no one having the powers of the Ombudsman. The second possible interpretation is that the Bicameral Commission granted the Ombudsman's powers, which leads to two problems: first, it virtually elected an Ombudsman without having the powers to do so, and second, due to the irregular appointment, it does not have the guarantees of independence and immovability in the position of Ombudsman, since he could be removed at any time using the same mechanism by which he was appointed.

The National Human Rights Commission of Mexico

Background to its creation

In Mexico, the institutional consolidation of what is now the National Human Rights Commission (CNDH) has been an active process that has required several constitutional reforms. Through the creation of the CNDH and its continued institutional strengthening, these reforms have contributed to the promotion of human rights guarantees in that State⁷⁰.

The first direct antecedent of what is now the CNDH is found in the Internal Regulations of the Ministry of the Interior, published on 13 February 1989 in the Official Gazette of the Federation⁷¹. These regulations were issued by Carlos Salinas de Gortari, then Constitutional President of the United Mexican States. The Ministry of the Interior is an agency of the Federal Executive Branch, within whose structure the General Directorate for Human Rights was created. Article 15 of these regulations established the powers of this Directorate, one of the main ones being: "V.- To receive and deal with administrative complaints about human rights violations presented by individuals or public or private institutions, and to propose to the Head of the Branch the necessary actions for their immediate resolution (...)"⁷².

A year after the creation of the General Directorate for Human Rights, on 6 June 1990, and under the same government, a Decree was issued creating the National Human Rights Commission as a decentralized body of the Ministry of the Interior⁷³.

Structure: the CNDH was headed by a president, but also included in its structure a Council made up of 10 prestigious members of Mexican society, from the most diverse ideologies and professions, to discuss the general guidelines for the Ombudsman's action. 2) Functions: among the CNDH's functions, preventive human rights promotion functions were added, such as disseminating, divulging, training and strengthening the culture of human rights.

However, these beginnings of the CNDH were not without criticism and mistrust of the institution's autonomy, as it was questioned that the CNDH emerged from a presidential decree and that it was a decentralized body of the executive branch. Likewise, the fact that the president of the CNDH was appointed by the executive branch also raised doubts. In fact, the CNDH's first president, Jorge Carpizo, acknowledged that the institution's normative basis was not the most adequate, but rightly pointed out that legal

⁷⁰ CNDH, *La Comisión Nacional de los Derechos Humanos en la Constitución*, 2017. IBARRA REYNOSO, C. (coord.), *Comisión Nacional de los Derechos Humanos*. Mexico, CNDH, 2016.

⁷¹ DOF: 13/02/1989, Reglamento Interior de la Secretaría de Gobernación. Available at: http://www.dof.gob.mx/nota_detalle.php?codigo=4806169&fecha=13/02/1989

⁷² Ibid.

⁷³ DOF: 06/06/1990, Decreto por el que se crea la Comisión Nacional de Derechos Humanos como un órgano desconcentrado de la Secretaría de Gobernación (Decree creating the National Human Rights Commission as a decentralized organ of the Ministry of the Interior). Available at: http://dof.gob.mx/nota_detalle.php?codigo=4659530&fecha=06/06/1990

frameworks are not immutable and that every ombudsman can be enriched and perfected⁷⁴.

From then on, the CNDH began its institutional strengthening through hard work aimed at obtaining results. This led to the number of complaints received during its first two years of existence, demonstrating that this institution is necessary, recognized and socially accepted as an effective body to control arbitrary actions by the public administration. Thus, through a constitutional reform published on 28 January 1992, section B was added to Article 102 of the Mexican Constitution, granting the CNDH constitutional status and the legal nature of a decentralized body, with its own legal personality and assets.

In 1999, through another constitutional reform, published on 13 September, the CNDH was consolidated as an institution with full management and budgetary autonomy, changing its name from National Human Rights Commission to National Human Rights Commission.

Subsequently, the constitutional reform published in the DOF on 14 September 2006 was made with respect to Article 105, section II, paragraph g). This modification implied adding an additional power to the CNDH, by virtue of which it could file unconstitutionality actions before the Supreme Court of Justice of the Nation to challenge federal or state laws, as well as international treaties, that violate the human rights enshrined in the Constitution. The same power was attributed to local commissions, in relation to their respective areas of competence.

In June 2011, a landmark constitutional reform on human rights was published in Mexico, amending 11 articles. This reform introduced important changes to the powers and competences of the CNDH⁷⁵. Among them: 1. Articles 97 and 102 granted the National Human Rights Commission the power of investigation, previously assumed by the Supreme Court of Justice of the Nation. 2. Article 102, section B, established the obligation of the authorities to respond to the recommendations issued by the CNDH and, if they do not accept them, to publish the reasons for not accepting them. When the recommendations are not accepted or complied with, the Chamber of Senators or, in its recess, the Permanent Commission may, at the request of that body, summon the responsible authorities or public servants to appear before it, so that they can give reasons for their refusal. 3. Article 105, section II (g), broadened the competence to bring actions to challenge the norms, but no longer only about the human rights included in the Constitution, but also to the human rights enshrined in the international treaties signed by Mexico.

Since 1990, the following persons have been heads of the CNDH: Jorge Carpizo (from 6 June 1990 to 4 January 1993); Jorge Madrazo (from 14 January 1993 to 26 November 1996); Mireille Roccatti (from 8 January 1997 to 13 November 1999); José Luis Soberanes Fernández (from 16 November 1999 to 15 November 2009); Raúl Plascencia

⁷⁴ CNDH, La Comisión Nacional de los Derechos Humanos en la Constitución, 2017, p. 11.

⁷⁵ CNDH, La Comisión Nacional de los Derechos Humanos en la Constitución, 2017, p. 11.

Villanueva (from 16 November 2009 to 15 November 2014); Luis Raúl González Pérez (from 16 November 2014 to 15 November 2019); María del Rosario Piedra Ibarra (from 16 November 2019 to the present)⁷⁶.

As we have seen, in Mexico, continuous constitutional reforms have contributed to the institutional strengthening of the CNDH and its autonomy. These reforms are a good practice that shows that normative frameworks, including constitutional ones, should not be static; on the contrary, they are called to transform themselves to respond to changes and to institutional and social needs.

However, despite the constitutional advances we have pointed out, in practice the CNDH is an institution with lights and shadows, which is why it is permanently in the sights of non-governmental organizations and civil society, who demand a better performance of its constitutional attributions and more autonomy in the actions of its head⁷⁷. In this regard, in 2021, the CNDH's A accreditation was reviewed in the Sub-Committee on Accreditation due to complaints filed by NGOs. Although the CNDH's A accreditation was maintained after the respective analysis, this process shows that compliance with the Paris Principles is a dynamic process and that even an institution as consolidated as the CNDH can lose its accreditation if it is shown to be in breach of these principles in its actions, particularly about its independence⁷⁸.

Analysis of the legal framework

a) National level

At the national level, the main legal framework of the CNDH⁷⁹ and on which its functioning is based is the Political Constitution of the United Mexican States, whose main reforms we analyzed in the previous section, and the Law of the National Human Rights Commission (LCNDH)⁸⁰. The LCNDH was published in the Official Gazette of the Federation on 29 June 1992 and its last reform took place on 20 May 2021, having undergone 17 reforms since its publication⁸¹.

It establishes that the CNDH has "(...) competence throughout the national territory to hear complaints related to alleged human rights violations when these are attributed to federal authorities and public servants, with the exception of those of the Federal Judiciary" (art. 3). This law consists of 76 articles divided into VI titles that regulate the following aspects of the CNDH's institutional life: Title I is dedicated to general provisions; Title II deals with the integration of the CNDH and its structure; Title III with procedures before the institution; Title IV with the duty of authorities and public servants to

⁷⁶ <https://www.cndh.org.mx/cndh/antecedentes>

⁷⁷ HUMAN RIGHTS WACH. Mexico's National Human Rights Commission. A Critical Assessment. Available at: https://www.hrw.org/es/report/2008/02/12/la-comision-nacional-de-los-derechos-humanos-de-mexico/una-evaluacion-critica#_ftn8

⁷⁸ Report of the GANHRI Sub-Committee on Accreditation - June 2021.

⁷⁹ CNDH, Normatividad de la Comisión Nacional de los Derechos Humanos, 2017.

⁸⁰ SOBERANES FERNÁNDEZ, J.L.; GARCÍA LÓPEZ-GUERRERO, L.; JORGE MENA VÁZQUEZ, J. (COORDS.), Ley de la Comisión Nacional de los Derechos Humanos Comentada y concordada, 2005.

⁸¹ <https://www.diputados.gob.mx/LeyesBiblio/ref/lcndh.htm>

collaborate with the CNDH; Title V with the labor regime; and Title VI with the institution's assets and budget.

The legal regime applicable to the CNDH is as broad as its powers. Internally, some of the main rules governing its functioning are: the Code of Ethics of the National Human Rights Commission; the Code of Conduct of the National Human Rights Commission; the Internal Regulations of the CNDH; the Regulations on Transparency and Access to Information of the CNDH; the Regulations on the National Human Rights Award; the Internal Regulations of the National Human Rights Centre; the General Organization Manual of the CNDH; the Statute of the Civil Career Service of the National Human Rights Commission; the Policy on Gender Equality, Non-Discrimination, Inclusion, Diversity and Access to a Life Free of Violence 2020-2024; the Regulations of the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Designation of the CNDH as the National Mechanism for the Prevention of Torture; and the Collaboration Agreement between the Federal Government and the CNDH for the National Mechanism for the Prevention of Torture.

In addition, other relevant norms for the CNDH's activity⁸², because they refer to its sphere of competence, are: the Law on the Rights of Older Persons, the General Law on Transparency and Access to Public Information, the General Law for Equality between Women and Men, the General Law to Prevent, Investigate and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the General Law on Victims, the Federal Law to Prevent and Eliminate Discrimination, the General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and the National System for the Search for Persons.

Similarly, the following areas of action of the CNDH are particularly noteworthy, as regulated by the following norms: in migration, the Migration Law and its Regulations. On trafficking in persons, the General Law to Prevent, Punish and Eradicate Crimes of Trafficking in Persons and for the Protection and Assistance to the Victims of these Crimes and its Regulations. Against gender-based violence, the General Law on Women's Access to a Life Free of Violence and its Regulations. Finally, about the protection of the rights of indigenous peoples, the Law on the National Institute of Indigenous Peoples and the General Law on the Linguistic Rights of Indigenous Peoples.

b) International level

As mentioned above, the Mexican Constitution recognizes that all persons shall enjoy the human rights recognized in the international treaties to which Mexico is a party, as well as the guarantees for their protection. Therefore, the competence of the CNDH extends to the rights recognized in these international instruments.

The main international human rights instruments that have been ratified by Mexico are:

⁸² <https://www.cndh.org.mx/cndh/marco-normativo>

Universal System of Human Rights: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocols; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Rights of the Child and its Optional Protocols; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.

Inter-American Human Rights System: the American Convention on Human Rights and its two additional protocols on Economic, Social and Cultural Rights, as well as the one on the abolition of the death penalty; the Inter-American Convention to Prevent and Punish Torture; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará"; Inter-American Convention on the Forced Disappearance of Persons; Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

Analysis of the institutional and administrative functioning of the body

Institutional design

The CNDH is an autonomous institution of constitutional rank established in Article 102, section B, of the Mexican Constitution. The essential purpose of the CNDH is "the protection, observance, promotion, study and dissemination of the human rights protected by the Mexican legal system" (art. 2 LCNDH). To this end, the nature of the CNDH complies with the first Paris Principle.

To this end, it has jurisdiction throughout Mexico to hear complaints related to human rights violations attributable to federal public servants. Except for the judiciary. It is also competent if public servants from federal and federal or municipal entities are involved in the same event (art. 3 LCNDH).

The structure of the CNDH is made up of the following entities: the Presidency; the Advisory Council (composed of 10 councillors); the 6 General Visitorships; the Executive Directorate of the National Mechanism for the Prevention of Torture; the Executive Secretariat; the Technical Secretariat of the Consultative Council; the General Coordination of Administration and Finance; the General Directorate for the dissemination of human rights; the General Directorate for complaints and orientation; the General Directorate for institutional planning and strategy; the General Coordination for the follow-up of recommendations and legal affairs; the National Human Rights Centre (CENADEH); and the Internal Control Body⁸³.

⁸³ <https://www.cndh.org.mx/cndh/estructura>

The President of the CNDH exercises the legal representation of the body and is responsible for formulating general guidelines for administrative activities and dictating the specific measures he/she deems appropriate.

The thematic competencies of the General Visitorships can be summarized as follows:
First General Visitorship: it oversees four special programs, the Program for Presumed Disappeared Persons; the Program on Children and Family Affairs; the Program for Attention to Victims of Crime, the HIV-AIDS and Human Rights Program and the General Directorate for Attention to Disability. In addition, among its attributions is that of carrying out the necessary activities to achieve, by means of conciliation, the solution of the problems raised between parties.

Second General Visitorship: hears complaints relating to torture, forced disappearance and extrajudicial executions, among others.

Third General Visitorship: deals with complaints in general and, in particular, those concerning penitentiary matters or related to acts allegedly violating human rights committed inside prisons.

Fourth General Visitorship: receives and processes complaints from indigenous peoples and individuals; carries out dissemination and training work on the human rights of indigenous peoples; researches and publishes all kinds of documents on issues related to the subject; and, mainly, defends the fundamental rights of indigenous inmates, defendants and convicted persons, both in federal and common jurisdiction. It is also in charge of the Women's Affairs and Gender Equality Program.

Fifth General Visitorship: it oversees the programs of Attention to Migrants, Trafficking in Persons and Offences against Journalists and Civil Human Rights Defenders.

Sixth General Visitorship: has jurisdiction over labor, environmental, cultural, economic and social matters.

In addition, for the purposes of this report, it should be noted that the Executive Secretariat is the body in charge of the CNDH's activities in the international arena and of promoting international issues domestically, as well as the dissemination of international human rights law. In the development of its functions, it promotes and develops follow-up activities, technical cooperation, exchange of information and experiences with national institutions for the promotion and defense of human rights.

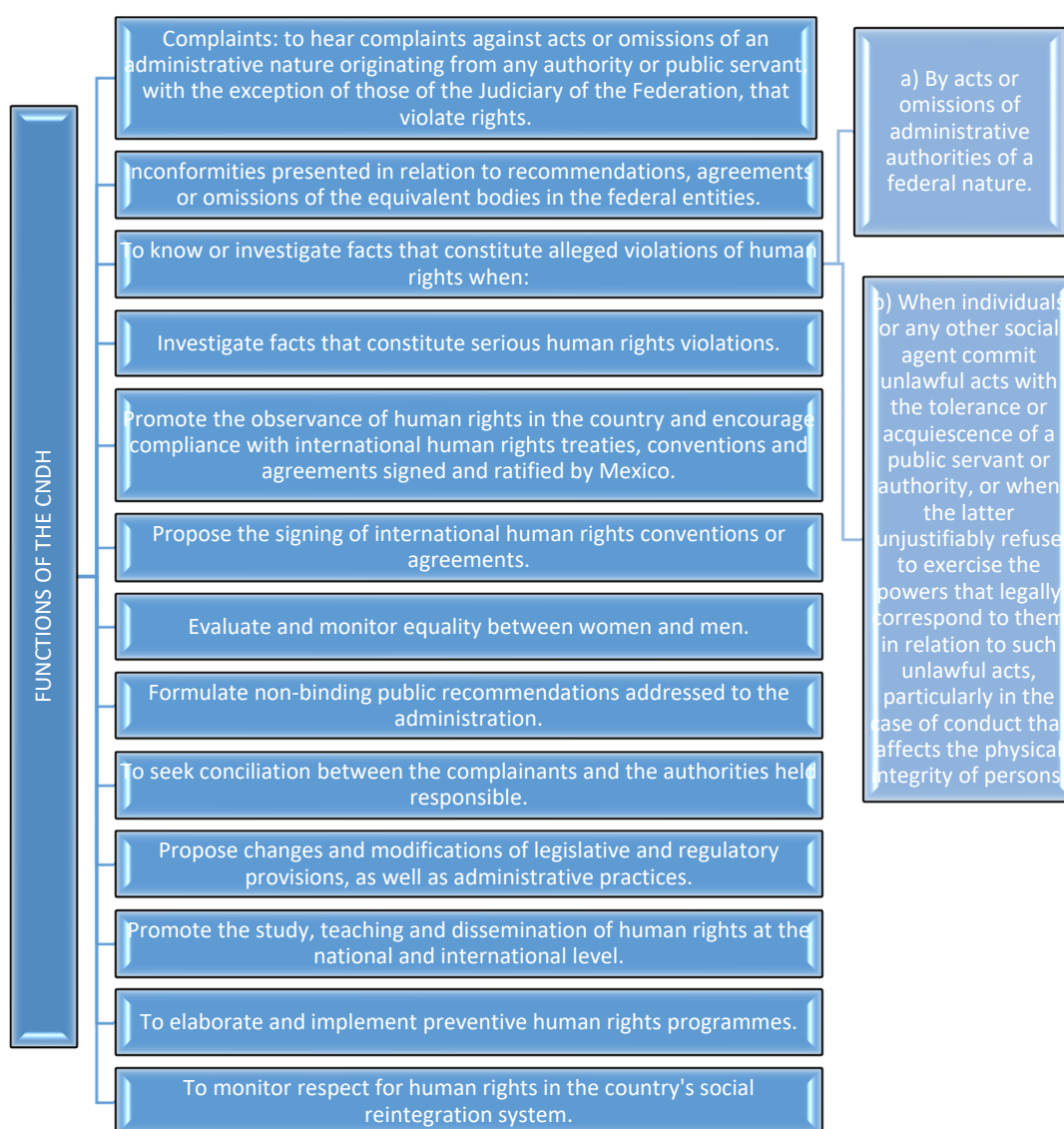
Functions

In its General Observations, the SCA considers this feature to be one of the “Essential Requirements of the Paris Principles”: “G.O. 1.2 Human rights mandate. All NHRIs should be legislatively mandated with specific functions to both promote and protect human rights. The SCA understands ‘promotion’ to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. ‘Protection’ functions may be understood as those that address and seek to prevent

actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling.

An NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights (...)”⁸⁴.

The CNDH has broad functions based on the provisions of Article 102 (B) of the Mexican Constitution and Article 6 of the LCNDH. These constitutionally and legally established functions have been key to the CNDH's A rating, as the institution fully complies with the Paris Principles regarding competence and powers. These can be illustrated as follows:



⁸⁴ GANHRI, General Observations of the Sub-Committee on Accreditation, Geneva, 21 February 2018.

On the other hand, according to Article 105, section II, paragraph g) of the Mexican Constitution, the Presidency of the CNDH may present actions of unconstitutionality before the Supreme Court of Justice of the Nation, within thirty calendar days after the publication of the issuance, reform or modification of federal, state and Federal District laws, as well as international treaties, when it is considered that they violate human rights and are incompatible with the constitutional text or international treaties signed by the Mexican State.

Administrative and political autonomy

The CNDH's independence was consolidated in 1999, with the reform to Article 102 (B) of the Constitution, which granted it managerial and budgetary autonomy, legal personality and its own assets. These characteristics are also reflected in Article 2 of the LCNDH.

In addition to its legal nature as an autonomous institution, the CNDH complies with the three guarantees of independence and pluralism established in the Paris Principles, which in summary refer to: the appointment of its head; its infrastructure and sufficient resources (see point d); and the stability of its members' mandate.

According to article 10 of the LCNDH, the president of the institution is elected by a qualified vote corresponding to the vote of two thirds of the members of the Chamber of Senators present or, in its recesses, by the Permanent Commission of the Congress of the Union. To guarantee pluralism in the election of the head of the CNDH, the same article determines that for his or her election, the corresponding commission of the Senate must conduct a broad search among social organizations representing the different sectors of society, as well as among public and private bodies promoting or defending human rights. As a result of this search, the corresponding commission proposes a shortlist of candidates to the plenary of the Chamber, from which the head of the CNDH is chosen. More information on the election procedure of the CNDH President can be found in Articles 10 Bis and 10 Ter of the LCNDH.

On stability of tenure, Article 11 of the LCNDH stipulates that the CNDH chairperson shall serve for five years and may be re-elected only once. Furthermore, the CNDH president may be removed from office and, if necessary, subject to liability, only for the causes and through the procedures established in the Mexican Constitution. In that case, he/she is replaced on an interim basis by the First General Visitorship (art. 14 LCNDH). Other aspects of the position of both the president and the general visitors that are regulated in the LCNDH and that contribute to the independent action of the CNDH are: 1. incompatibility with the performance of any other position, employment or profession, except for academic activities (art. 12); and 2. the fact that they may not be detained or subject to civil, criminal or administrative liability for the opinions and recommendations they formulate or for the acts they perform in the exercise of their duties (art. 13).

Resources

Regarding material resources, Title VI of the LCNDH deals with the CNDH's patrimony and budget and establishes that it will have its own patrimony, for which the federal government must provide it with the material and financial resources for its proper functioning (art. 75). Along these lines, the CNDH has the power to prepare its annual draft budget, which is sent directly to the competent Secretary of State, for the corresponding procedure (art.76).

Likewise, the labor regime of the CNDH's employees is established in Article 74 of the LCNDH, which determines that the personnel providing services to the CNDH will be governed by the provisions of Article 123 (B) of the Mexican Constitution and the Federal Law of State Workers. In addition, all public servants who are part of the CNDH are considered trustworthy workers due to the nature of the functions they perform.

The CNDH has sufficient financial means to carry out its activities. Compared to other NHRIs, the CNDH's budget has been considered one of the highest in the world and the highest in Latin America. So much so that in 2021 the CNDH itself presented a decrease in its approved budget, which represented a decrease of 13% in real terms compared to the budget approved for the financial year 2020. According to its Annual Report: "with this budget, the CNDH seeks to stop being one of the most expensive human rights defense bodies in the world, guaranteeing the achievement of results, through the revision and improvement of the institutional design, as well as the responsible and efficient use of resources, based on the applicable regulations, with a clear preferential option to strengthen the priority areas of direct attention to victims and people at risk of having their human rights violated"⁸⁵. For Fiscal Year 2022, the CNDH's approved budget amounts to 1.722 billion pesos, which represents an increase of 42 million pesos compared to 2021⁸⁶.

The CNDH is undergoing a process of transformation of its institutional life that includes internal reorganization, budget restructuring and resource management. This transformation began with the current administration in 2020, and it is premature to assess it⁸⁷.

In its General Observations, the SCA considers this feature to be one of the "Essential Requirements of the Paris Principles": "G.O. 1.10 Adequate funding of NHRIs. To function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the NHRI's operations and the fulfilment of its mandate (...)"⁸⁸.

⁸⁵ CNDH, Annual Report 2021, p. 346.

⁸⁶ <https://diputadosmorena.org.mx/avala-la-comision-de-derechos-humanos-su-opinion-respecto-de-la-propuesta-del-pef-para-el-ejercicio-2022/>

⁸⁷ CNDH, Annual Report 2021, p. 257.

⁸⁸ GANHRI, General Observations of the Sub-Committee on Accreditation, Geneva, 21 February 2018.

Cooperative work with other institutions for the protection of human rights

The CNDH is competent to resolve cases of non-compliance with the recommendations, agreements, or omissions of the equivalent bodies in the federal states and for non-acceptance of their recommendations by the authorities, or for deficient compliance with them. Likewise, if there is a complaint for omission or inactivity in its subject matter that the CNDH considers important and in which the state body may be slow to respond, the federal entity may take over this competence for itself (art. 60 LCNDH).

Among the collaboration agreements that exist between the CNDH and the federal entities, we can highlight that the National Human Rights Commission (CNDH), the State Human Rights Commission (CEDH) of Durango and 48 local Civil Society Organizations signed a collaboration agreement in favor of the dignity of people and the consolidation of the constitutional and democratic rule of law in the state of Durango⁸⁹. Similarly, the National Human Rights Commission considered it necessary to consolidate effective tools for the protection of the human rights of children and adolescents (NNA), mainly those who are migrants, and to this end signed a collaboration agreement with the State Human Rights Commission (CEDH) of Chiapas⁹⁰.

Finally, we can point out that in case there is no CNDH office close to the person who wants to file a complaint, the person can go to the State Commission and the body of the state in question will forward the complaint to the CNDH for processing.

In its General Observations, the SCA considers this feature to be one of the “Essential Requirements of the Paris Principles”: “G.O. 1.5 Cooperation with other human rights bodies. Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations”⁹¹.

Participation in regional and international human rights bodies

The CNDH has been characterized by its active participation in various international fora, including its participation and leadership in the three main international networks of NHRIs. In its General Observations, the SCA considers this feature to be one of the “Essential Requirements of the Paris Principles”: “G.O. 1.4 Interaction with the international human rights system”⁹².

i. Global Alliance of National Human Rights Institutions (GANHRI)

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) was established in 1991 to maintain cooperation and

⁸⁹ https://www.cndh.org.mx/sites/default/files/documentos/2021-06/COM_2021_157.pdf

⁹⁰ https://www.cndh.org.mx/sites/default/files/documentos/2021-03/COM_2021_060.pdf

⁹¹ GANHRI, General Observations of the Sub-Committee on Accreditation, Geneva, 21 February 2018.

⁹² GANHRI, General Observations of the Sub-Committee on Accreditation, Geneva, 21 February 2018.

ensure regular contact between NHRIs. The ICC is headed by a President and a Vice-President, a position held by the CNDH from 1997 to 2006. Likewise, during the period Luis Raúl González Pérez (from 16 November 2014 to 15 November 2019) the President of the CNDH was a member of the Bureau of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and President of the Finance Committee of the Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Through this body, the CNDH supported the creation of several NHRIs in the Latin American region. The importance of the ICC has allowed it to fight before the Office of the UN High Commissioner for Human Rights for an appropriate status for NHRIs to participate as autonomous and independent bodies in UN human rights meetings. Similarly, the CNDH hosted the 12th International Conference of the ICC in the city of Merida in October 2015, in which 120 countries participated. At that Conference, the "Merida Declaration" was approved, in which it was proposed to change the name of the organization to the Global Alliance of National Human Rights Institutions (GANHRI)⁹³, a proposal that was adopted in Geneva in March 2016.

ii. Network of National Institutions for the Promotion and Protection of Human Rights of the American Continent

In the framework of the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas⁹⁴, the President of the CNDH held the position of Secretary Pro Tempore, and subsequently served as Secretary General of the Network until 2008 and in 2016 the President of the CNDH was a member of the Network's Coordination Committee.

iii. Ibero-American Federation of Ombudsmen

In 1995, the CNDH was one of the main actors in the creation of the Ibero-American Federation of Ombudsmen (FIO)⁹⁵, whose mission is to achieve inter-institutional collaboration and the exchange of good practices that allow for the more efficient development of the Ibero-American Ombudsmen's tasks. Within the framework of the FIO, the President of the CNDH was the Coordinator of the Ibero-American Observatory of Human Rights Violations against Migrants and Victims of Human Trafficking. The CNDH has hosted four of the meetings held by the FIO. In 2014, the CNDH, having held the presidency of the FIO since 2013, hosted the XIX General Assembly and the International Congress of that organization.

iv. Cooperation with international and regional human rights bodies

Similarly, the CNDH has been characterized by its relations of cooperation and collaboration with international organizations, both universal and regional, to promote the

⁹³ <https://ganhri.org/membership/>

⁹⁴ <https://www.rindhca.org/>

⁹⁵ <http://www.portalfio.org>

protection of human rights and compliance with international human rights treaties to which Mexico is a party.

United Nations: Within the framework of the United Nations (UN) system, the CNDH has strengthened its relationship with the mechanisms and treaty bodies of the system, the Human Rights Council and its special procedures, as well as with the Office of the United Nations High Commissioner for Human Rights⁹⁶.

Inter-American Human Rights System: The CNDH has maintained a close relationship with both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, carrying out various collaborations including provisional measures and human rights promotion and education⁹⁷.

Compliance with and follow-up of human rights recommendations

Although each General Inspectorate carries out the corresponding follow-up of the Recommendations issued in its area of competence, with the Agreement of the Consultative Council of the National Human Rights Commission, through which various articles of the Internal Regulations of the National Human Rights Commission were modified and added on 14 May 2012, published in the Official Gazette of the Federation on 21 May 2012, the General Directorate for the Follow-up of Recommendations was created. This Directorate is responsible for analyzing, evaluating and promoting the follow-up of the Recommendations issued by the National Commission to ensure their compliance (articles 21, section IX and 32 of the Internal Regulations of the National Human Rights Commission). It should be noted that this entity is also in charge of carrying out the functions of a liaison unit for transparency and access to public information, in terms of the Federal Law on Transparency and Access to Public Governmental Information and the CNDH's Regulations on Transparency and Access to Information.

The General Directorate for Follow-up of Recommendations has a computer system called "System for Analysis of the Processes Related to the Follow-up of Recommendations". This mechanism is aimed at consolidating itself as an online follow-up system, in which all areas and General Visitorships are articulated for the monitoring of Recommendations and which allows for the generation of reports on compliance or non-compliance by the authorities with the CNDH's individual Recommendations (as can be seen in the CNDH's 2015 Annual Report).

The "Cédula Recomendación en Seguimiento" document, which is generated by the system, contains follow-up information for each recommendation, both by recommendation point and by compliance by authority. In addition, in the Follow-up System, the information is organised based on a catalogue linking the violations with the fundamental rights allegedly violated. At the same time, the system classifies the authorities' compliance with the recommendations according to three criteria:

⁹⁶ CNDH, Annual Report 2021, p. 225 - 227.

⁹⁷ Ibid., 227-228.



In its General Observations, the SCA considers this feature to be one of the “Essential Requirements of the Paris Principles”: “G.O. 1.6 Recommendations by NHRIs Annual, special and thematic reports of NHRIs serve to highlight key national human rights concerns and provide a means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities. NHRIs, as part of their mandate to promote and protect human rights, should undertake follow up action on recommendations contained in these reports and should publicize detailed information on the measures taken or not taken by public authorities in implementing specific recommendations or decisions. In fulfilling its protection mandate, an NHRI must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow up activities to promote and advocate for the implementation on its recommendations and findings, and the protection of those whose rights were found to have been violated. Public authorities are encouraged to respond to recommendations from NHRIs in a timely manner, and to provide detailed information on practical and systematic follow-up action, as appropriate, to the NHRI’s recommendations”⁹⁸.

Summary of the body’s activity and impact over the last 5 years

PRODUCTION AND INCIDENCE	2021 ⁹⁹	2020 ¹⁰⁰	2019 ¹⁰¹	2018 ¹⁰²	2017 ¹⁰³
Complaint letters received	65,303	58,722	55,824	--	45,639
Special reports	10 (5 special reports 3 reports of cases attended 2 diagnostic reports)	2 special reports. 3 pronouncements and 1 study.	13	6	4

⁹⁸ GANHRI, General Observations of the Sub-Committee on Accreditation, Geneva, 21 February 2018.

⁹⁹ CNDH, Annual Report 2021.

¹⁰⁰ CNDH, Annual Report 2020.

¹⁰¹ CNDH, Annual Report 2019.

¹⁰² CNDH, Annual Report 2018.

¹⁰³ CNDH, Annual Report 2017.

Actions of unconstitutionality	115 (109 with favorable resolution, 67 Resolved by the Supreme Court of Justice of the Nation)	113	<p>From November 16, 2014 to September 30, 2019, there were 220 complaints of unconstitutionality. 2019 there were 220 complaints of unconstitutionality before the SCJN, of which of which 17 were against norms issued by the Congress of the Union, while the remaining 203 were filed against provisions approved by the Congress of the Union. Congress, while the remaining 203 were filed against provisions approved by local legislative bodies. local legislative bodies. The SCJN ruled on 108 actions of unconstitutionality promoted by the CNDH, of which 9 correspond to laws in force at the federal or national level and 99 to legislation approved by local legislative bodies. federal or national level and 99 to state or Mexico City legislation. - 2017: 34 lawsuits of actions of unconstitutionality. The SCJN ruled on 22 actions of unconstitutionality by this National Commission, determining in 14 of them the constitutional invalidity of at least one of the constitutional invalidity of at least one challenged article. 2018: 53.</p>		
Recommendations	155 (146 R. particulares, 2 R. Generales, 7 R. por graves violaciones de los DDHH)	103 (90 R. individuals, 2 R. General, 11 Recommendations for Serious Human Rights Violations).	121 (99 R. individuals and 15 R. for serious violations). Serious Violations. 7 R. General)	101 (90 R. Particulars; 3 R. Generals; 8 R. for serious violations)	97 (81 R. Individuals; 5 R. Serious Violations; 8 R. Prevention of Torture, and 3 R. General) 97

					R. prevention of torture, and 3 general R.).
Recommendations for serious human rights violations	7	11	7	8	5

Accreditation strategy of the CNDH to the GANHRI subcommittee accreditation

The strategy for the accreditation of the CNDH has been to comply with the Paris Principles, which is how it obtained A status from the Sub-Committee on Accreditation in 1999, once its independence and autonomy was established in the Mexican Constitution. Subsequently, this accreditation has been reviewed in October 2006; in October 2011; in November 2016; in December 2020 and a special review in June 2021. In all review procedures, the CNDH's A status has been maintained, having been fundamental to the constitutional status of the institution, which includes its administrative and budgetary autonomy and broad competences for the promotion and protection of human rights¹⁰⁴. In its General Observations the Sub-Committee on Accreditation considers such regulation to be the number one of the “Essential requirements of the Paris Principles”:

“G.O. 1.1 The establishment of NHRIs An NHRI must be established in a constitutional or legislative text with sufficient detail to ensure the NHRI has a clear mandate and independence. In particular, it should specify the NHRI’s role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members. The establishment of an NHRI by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence”¹⁰⁵.

Good practice	Weaknesses
1. Constitutional recognition.	1. Deficient relationship with civil society organizations.
2. Legal configuration.	2. In practice, problems of independence of the head of the institution from the executive branch, depending on who presides over the institution. For example, during the

¹⁰⁴ GANHRI, ACCREDITED BY THE GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS, Accreditation status as of 28 December 2021.

¹⁰⁵ GANHRI, General Observations of the Sub-Committee on Accreditation, Geneva, 21 February 2018.

	presidency of Raúl Plascencia Villanueva, there was serious criticism of the CNDH's actions in the face of serious human rights violations.
3. Broad competences.	3. Insufficient response to human rights violations. In several cases, there have been allegations that the NHRC is self-limiting its competences.
4. Internal structure divided by thematic areas and specific programs of action.	4. The large internal structure of the NHRC can lead to bureaucratic practices. In practice, it has been questioned that the institution's top positions are a gilded bureaucracy due to the high salaries of the institution.
5. Sufficient material resources.	
6. Human resources with guaranteed stability.	
7. Participation in international organizations.	
8. Structured system for the follow-up of human rights recommendations.	

Conclusions

The CNDH's constitutional and legal regulations, which provide the institution with independence, broad powers and sufficient resources, have enabled the CNDH not only to obtain, but also to maintain, since 1999, an A rating from the Sub-Committee on Accreditation. Because these regulations constitute a guarantee of its independence and autonomy vis-à-vis other branches of government.

While the CNDH has played a valuable role in identifying human rights violations in Mexico and, in some cases, has promoted the adoption of measures to remedy them. The normative framework is not sufficient and in practice this institution has had lights and shadows in its actions. That make it clear that the evaluation of compliance with the Paris Principles must be dynamic and periodic in order to verify the real adequacy of these institutions to them.

Ombudsman of Colombia

Background to its creation

The 1991 Political Constitution amounted to a great breakthrough towards the protection and promotion of fundamental rights in the Republic of Colombia. This was the first time in which conditions of feasibility were laid down so that a culture centered on fundamental rights could be recognized and enforced in Colombian society. Prior to that turning point, the language of fundamental rights lacked social, political, and legal recognition. There was a certain refusal to accept a culture grounded in fundamental rights, and human rights activists were actually often targeted for persecution.

This state of affairs changed in 1991, as the new Political Charter stemmed from a social consensus combined with a popular struggle to ensure peace and respect for the rights and freedoms of all citizens. By so doing, the citizenry attempted to put an end to an environment marked by high levels of violence coming not only from insurgent and criminal social actors, but also from the State itself. It was also acknowledged that Colombia featured a rich multicultural reality characterized by strong intermingling, and that such a diverse social makeup should be taken into account by Constituents, Public Officials, and the country's Legal Framework overall. Recognizing such plurality within a culture founded on tolerance and inclusion sought to strengthen Colombia's heretofore weak democratic institutions and replace them with an environment fraught with respect for rights as well as freedoms.

It was also within the context of this new Constitution that the Ombudsman's Office of the Republic of Colombia emerged, an agency linked to the Public Attorney's Office whose mission is to foster fundamental rights within Colombian society and, on the basis of this promotion and in cooperation with other institutions – public and private alike – usher in and reinforce a humanistic culture revolving around rights and freedoms. By the same token, as a State Institution, it must ensure that all the powers-that-be, both public and private, respect and uphold the fundamental rights of everyone, and its foremost goal is to curb violations of such rights by preventing and rectifying them, as well as by seeking reparation for violations should they occur.¹⁰⁶ The Ombudsman's Office has gained strength as a trustworthy Institution in the protection and promotion of fundamental rights, and that has been reflected in the recognition that the Colombian people have bestowed upon it. According to the 2015 Report, *Political Culture of Democracy in Colombia*, the Ombudsman's Office is the Institution geared to the protection of rights that elicits the highest level of trust among Colombian citizens. Should the latter become victims of a human rights violation, they would seek the Ombudsman's Office over and above any other Institution, such as the Public Attorney's Office or the Police. This Report also makes clear that the perception

¹⁰⁶ Pabón Arrieta, Juan Antonio. "La autonomía orgánica de la Defensoría del Pueblo en Colombia y su independencia como garantía de los derechos fundamentales", *La protección de los derechos humanos por las defensorías del pueblo. Actas del Primer Congreso del PRADPI*, Escobar Roca, Guillermo (Ed.). Dykinson S.L., Madrid, 2013, p. 1028.

of citizens when it comes to gaining access to this Institution has improved remarkably in relation to previous years.¹⁰⁷

Analysis of the legal framework

a) National level

The 1991 Colombian Constitution, in its Articles 281, 282, 283 and 284, regulates the figure of the Ombudsman and the Ombudsman's Office as an Institution.¹⁰⁸ In this sense, Article 281 defines its nature, election procedures, and the duration of its mandate:

«The Ombudsman shall be part of the Public Attorney's Office and shall perform his/her role under the High Oversight of the State's Public Attorney General. S/he shall be elected by the House of Representatives for a four-year mandate from a triple list drafted by the President of the Republic».¹⁰⁹

Likewise, Article 283 stipulates thus:

Article 283. The Legislation shall issue stipulations regarding the organization and functioning of the Ombudsman's Office as an autonomous entity from an administrative and budget viewpoint.¹¹⁰

The stipulations enshrined in Article 283 were further developed in Law 24 dated December 15th, 1992, in which the Ombudsman's Office is assigned its current duties. The legislation thus went on to set the operation and the National Human Rights Institution. Specifically, Article 1 of the Law lays down the legal nature of the Ombudsman's Office, as well as the general mandate vested therein:

«The Ombudsman's Office is an Agency that is part of the Public Attorney's Office, performing its role under the High Oversight of the State's Public Attorney General and charged with essentially overseeing the promotion, enforcement, and dissemination of human rights. The Ombudsman's Office enjoys administrative and budgetary autonomy».¹¹¹

Law 24 of 1992 established the administrative and budgetary autonomy of the Entity, contingent upon recognition by the State's Public Attorney General as the Head of the Public Attorney's Office (Art. 1st). The permanent cooperative work, without redundancy of efforts, has generated for the Ombudsman's Office expertise in the promotion and dissemination of human rights in the national territory with support from

¹⁰⁷ García Sánchez, Miguel; Motalvo, Jorge Daniel; Seligson, Mitchell A. *Cultura política de la democracia en Colombia, 2015. Actitudes democráticas en zonas de consolidación territorial*, Vanderbilt University, USAID, Universidad de los Andes. p. 59.

¹⁰⁸ Ramírez Calderón, Cristina. "III Colombia", *Defensorías del Pueblo en Iberoamérica*, Escobar Roca, Guillermo (Ed.), Thomson-Aranzadi, 2008, p. 73

¹⁰⁹ Political Constitution of Colombia, art. 281.

¹¹⁰ Political Constitution of Colombia, art. 283.

¹¹¹ Law 24 of December 15th, 1992, art. 1.

regional as well as sectional ombudsman's offices, which has ensured the Institution's proximity vis-à-vis Colombians as a whole.¹¹²

Yet another piece of legislation that showcases the work of the Ombudsman's Office is Law 941 of January 14th, 2005, which created the National System of Ombudsman's Offices and attributed it to the Ombudsman's Office under the aegis of the legislative development of the Political Constitution through Law 24 of 1992:

«The National System of Ombudsman's Offices has the goal of ensuring people's access to the Administration of Justice in criminal matters, under conditions of equality and in light of the Due Process of Law with respect to substantial and procedural rights and guarantees».¹¹³

This latter piece of legislation was further developed by means of Decree 3564 dated October 11th, 2006, which added two staff members to the overall Staff of the Ombudsman's Office.

b) International level

The Colombian Constitution acknowledges that all individuals shall enjoy human rights as enshrined in International Treaties ratified by Colombia, as well as assurances of their protection. Thus, the competency of the Ombudsman's Office extends to the rights recognized in the following international instruments.

The main international human rights instruments that have been ratified by Colombia are:

- Universal System of Human Rights. The main international human rights instruments ratified by Colombia are as follows: The International Pact for Economic, Social, and Cultural Rights, the International Pact for Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatments and Punishments, the International Convention for the Protection of All Persons Against Forced Disappearance, the Convention on the Rights of Children, the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, and the International Convention on the Rights of People with Disabilities.

Interamerican System of Human Rights: the American Convention on Human Rights and the Additional Protocol to the American Convention on Economic, Social, and Cultural Rights, the Interamerican Convention for the Prevention and Punishment of Torture, the Interamerican Convention on Forced Disappearance of Persons; the

¹¹² Pérez Portillo, Soraya. "La Defensoría del Pueblo". Journal *Derecho del Estado* No. 21, 2008, p. 112.

¹¹³ Law 941 of January 14th, 2005, art. 1.

Interamerican Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities. Additionally, Colombia has adhered to the Interamerican Convention for the Prevention, Punishment, and Eradication of Violence against Women, known as the “Convention of Belém do Pará”.

Analysis of the institutional and administrative operation of the agency

a) Institutional framework and roles

The Ombudsman’s Office of Colombia is an institutional autonomous agency that encompasses the following departments: i. Ombudsman, ii. Advisory Offices, iii. Office of the Vice-Ombudsman, iv. Regional Ombudsman’s Offices, and v. General Secretariat.

i. The Ombudsman

This is a Natural Person elected by the House of Representatives from a triple list drafted by the President of the Republic for a mandate lasting four years, and s/he shall feature the same qualifications required of a Magistrate on the Supreme Court of Justice, the Constitutional Court, or the State Council. S/he shall perform the following roles:

- Establish policies, set the overall framework of guidelines, and adopt the regulations and other mechanisms needed for the efficient and effective operation of the Ombudsman’s Office.
- Draft, direct and adopt, together with the State’s Public Attorney General, policies geared to the promotion and dissemination of human rights in the country with a view to protecting and defending them.
- Make recommendations and observations to public officials and private individuals in cases of threats to or violations of human rights, as well as overseeing their promotion and enforcement. The Ombudsman may choose to make such recommendations public and keep Congress abreast of the answers received.
- Set the overall framework to seek out assessments of a general scope on economic, social, cultural, legal, and political situations that might impinge upon human rights.
- Set guidelines in order to ensure that private organizations abstain from overlooking such rights.
- Disseminate knowledge regarding the Political Constitution of Colombia, especially in connection with fundamental rights of a social, economic, cultural, collective and environmental nature.
- Direct and coordinate the National System of Ombudsman’s Offices.
- Set the overall framework in order to establish strategies and courses of action required to uphold the rights of individuals subject to special protection under the Constitution.

- Demand, overrule, stress or defend before the Constitutional Court, of its own choosing or upon request of any individual and whenever deemed appropriate, those norms pertaining to human rights.
- File public lawsuits in the defense of the Political Constitution, the Law, the general public interest or that of private individuals, before any jurisdiction, civil servant, or public official.
- Act as a mediator in the case of collective petitions filed by civil or popular organizations before the Public Administration, upon request of such organizations.
- Act as a mediator between users and public as well as private companies rendering public services, whenever required by the former, in defense of rights that might have been infringed upon.
- Set the guidelines for the due process of the alleged petitions brought before the Entity for violations of or threats to human rights.
- Set the guidelines for the management of the Centralized Public Record of Popular Lawsuits and Class Actions that may be filed in the country.
- Adopt humanitarian protocols that must be adhered to by civil servants and third parties hired by the Ombudsman's Office in the performance of their duties.
- Present to the Congress of the Republic, on an annual basis, a Report about its activities, which shall include a list of the types and number of petitions received, the measures taken for their attention and due process, the express mention of recalcitrant employees or private individuals involved, and the recommendations of an administrative and legislative nature that it may deem necessary.
- Support the Attorney General whilst drafting reports on the status of human rights in the country.
- Participate in monthly meetings held by the Commission on Human Rights, in hearings held by the Congress of the Republic, and whenever special hearings are held, in order to set joint policies in coordinated fashion towards the defense of human rights, in accordance with provisions outlined in Congress Regulations.
- Issue periodic reports to public opinion about the results of investigations led by the Ombudsman's Office and publicly denounce instances of lack of compliance with human rights and International Humanitarian Law.
- Lay down guidelines towards the definition and establishment of the mechanisms needed for permanent communication and information sharing with government as well as nongovernment organizations, both national and international, geared to the protection and defense of human rights, in addition to designing actions to be undertaken jointly with such organizations.
- Sign partnership agreements with educational establishments as well as national and international research centers towards the dissemination and promotion of human rights.

- Sign contracts and issue administrative acts required by the operation of the Entity, as well as ensuring its legal and judicial representation, for which purpose it may bestow the necessary powers and mandates as appropriate.
- Manage the expenses incurred by the Entity, in compliance with the Constitution and the Legislation.
- Be acquainted with appeals in connection with the disciplinary lawsuits brought against current civil servants and former employees of the Entity.
- Create, organize, and convene, through an internal resolution and in permanent or transient fashion, internal workgroups and committees in order to cater to the needs of the services and the opportune, efficient, and effective fulfillment of the goals, policies, and programs carried out by the Entity, whilst defining the activities that must be performed and the personnel in charge of them.
- Hire and dismiss the civil servants working at the Entity, as well as outline their administrative statuses.
- Conduct administrative actions and coordinate the tasks performed by the various Departments that comprise the Ombudsman's Office.
- Lead the implementation of the integrated model for institutional management.
- Undertake the necessary actions conducive to internal controls and internal disciplinary oversight, as well as oversee their effectiveness and compliance with their recommendations.
- Other sundry roles as stipulated in the Legislation.

ii. Advisory Offices

Moreover, the Ombudsman relies on Advisory Offices charged with the following issues:

- a) Planning
- b) Legal Assistance
- c) Internal Controls
- d) Communications and Institutional Image
- e) International Affairs
- f) Internal Disciplinary Controls

iii. Office of the Vice-Ombudsman

It encompasses the figure of the Vice-Ombudsman, National Departments, as well as Delegated Ombudsman's Offices.

The Vice-Ombudsman performs the following duties:

- Assist the Ombudsman in the formulation and implementation of the policies, plans, programs, and projects of the Entity.

- Direct, lead, and coordinate the management of the mission departments of the Entity linked to his/her Office, under the overall framework of guidelines set by the Ombudsman and the institutional policies.
- Fulfill the duties and perform the roles assigned by the Ombudsman and act as the latter's surrogate in such situations as required.
- Replace the Ombudsman in the case of temporary or definitive absence. In cases of temporary absence, no special assignment will be required, Should the Ombudsman cease to perform his/her duties on a definitive basis, however, including the end of his/her mandated term in office, the Vice-Ombudsman shall assume the latter's duties until the House of Representatives elects a new Ombudsman through proper channels in accordance with the procedures set forth in the Political Constitution, and while s/he has not yet taken office.
- Engage in due process, solve and issue decisions on the matters that the Ombudsman has refused to act upon or has been allowed to recuse him/herself.
- Act before the Congress of the Republic and the High Courts on behalf of the Entity whenever the Ombudsman so chooses or deems appropriate.
- Apply and implement the policies, protocols, directives, guidelines, and recommendations of the Ombudsman and ascertain their implementation and compliance on the part of the mission departments.
- Coordinate the activities developed by the Ombudsman's Office, in tandem with other institutions that comprise the Public Attorney's Office or other public as well as private institutions in matters pertaining to the Entity's jurisdiction.
- Coordinate the drafting of the Annual Management Report that the Ombudsman must present to the Congress of the Republic.
- Set the overall framework conducive to establishing, updating, and implementing capacity-building and educational programs geared to relevant agents in issues bearing on human rights and International Humanitarian Law.
- Establish, together with the Ministry of Education and various different entities or training centers, the development and implementation of programs and activities aimed at teaching the foundations of democracy and human rights and compliance with International Humanitarian Law.
- Lead investigations that may contribute to the fulfillment of the goals and duties of the Ombudsman's Office.
- Set an overall framework to boost the participation, social control and performance of citizens' oversight commissions.
- Outline guidelines aimed at providing capacity-building to victims in the exercise of their rights.

- Set the guidelines for the operation of the Technical Secretariat of Departmental Missions and the National Mission for Victims' Participation, in compliance with the provisions set forth in the Legislation.
- Set the overall framework of guidelines for the drafting of Reports, interventions, and statistics that the Entity must present to the various different agencies by dint of the Legislation.
- Set the overall framework to draft an integrated system of statistical information for the Ombudsman's Office with a view to ensuring the fulfillment of its mission.
- Draft, guide, and publicize the humanitarian protocols that must be adhered to by the civil servants and third parties hired by the Entity whilst carrying out their duties, and recommend such protocols for adoption by the Ombudsman.
- Coordinate, with the relevant entities and officials, the establishment of protocols and programs for the protection and security of civil servants and third parties hired by the Ombudsman's Office and their families, who have been assigned roles aimed at upholding and safeguarding human rights.
- Draft and implement annual plans within the scope of its duties and pursuant to the methodology outlined by the Office of Planning.
- Apply guidelines and directives pertaining to the Integral Management System of the Ombudsman's Office.
- Other miscellaneous duties, assigned to it as appropriate in light of the nature of the department under consideration.

The Ombudsman's Office is an entity geared to mediation between citizens and the State. Such an activity is carried out in many different ways, according to the particular needs of the situation, and is thus supported by four Departments with a national reach:

- a) Promotion and Dissemination of Human Rights
- b) Attention to Complaints and Due Process
- c) Lawsuits and Legal Appeals
- d) Ombudsman's Office

Furthermore, it is supported by 15 Departments acting in delegation:

- a) Counseling and Assistance for Victims of Internal Armed Conflicts
- b) Prevention of Risks and Early Alert Systems
- c) Agrarian and Landholding Affairs
- d) Rights of Women and Gender Issues
- e) Collective and Environmental Rights
- f) Ethnic Groups
- g) Children, Youth, and the Elderly
- h) Criminal and Penitentiary Policies
- i) Right to Health and Social Security

- j) Legal and Constitutional Affairs
- k) Rights of Displaced Human Populations
- l) Economic, Social, and Cultural Rights
- ll) Protection of the Right to Sports
- m) Prevention and the Transformation of Social Conflicts
- n) Protection of Rights in Virtual Environments

iv. Regional Ombudsman's Offices

The structure of the Ombudsman's Office relies on the existence of Regional Ombudsman's Offices. These are located in 42 cities, thus facilitating citizens' access to the Institution and supporting the Ombudsman in his/her task of providing advice to Municipal Officials in their work as Ombudsmen as well as local residents acting on citizens' oversight committees.

V. General Secretariat

The Secretary General has the following duties:

- Draft and assist the Ombudsman in order to outline policies, goals, and strategies in connection with the management of the Entity.
- Lead the implementation of programs and activities related to financial and accounting affairs, as well as subjects linked to public procurement, information technology support, administrative services, and the management of documents pertaining to the Entity.
- Draft and implement policies and programs geared to the management of personnel, social welfare, and recruitment, as well as register and control, capacity-building, incentives, assessment of the performance and development of human resources, in addition to administrative management.
- Lead and coordinate the actions needed for the fulfillment of policies, norms, and the provisions that regulate the procedures and operations of a managerial and financial nature carried out by the Ombudsman's Office.
- Draft, consolidate, and present, with support from the Office of Planning, the Bill for the Budget, the Budget Schedule, as well as the projects and the Long-Term Plan of the Entity, in coordination with the relevant departments, and submit them for approval by the Ombudsman.
- Ensure the availability of resources for the development of institutional plans, programs, and projects.
- Oversee the rendering of adequate services to the citizenry and ensure proper attention to complaints and claims presented by citizens regarding the performance of the various departments and people that work at the Entity, in coordination and close cooperation with the Office of Internal Controls.
- Coordinate the drafting and submission to the Ministry of Finance and Public Credit of the Annual Budget Program, pursuant to previously-arranged financial obligations.

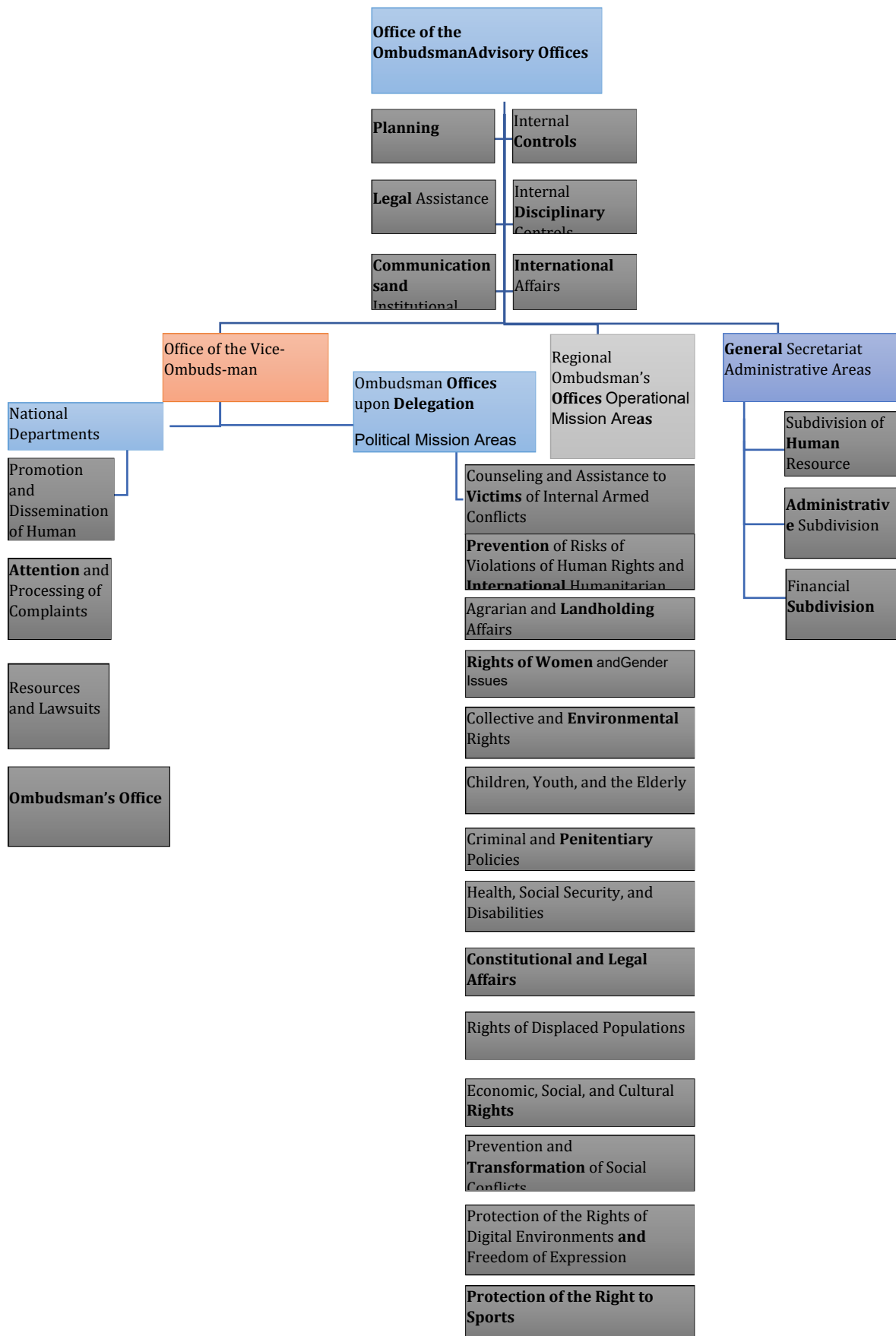
- Lead the programming, drafting, and implementation of plans geared to hiring and acquiring goods, services, and public works by the Entity, in articulated fashion with planning tools and the overall budget.
- Lead the drafting and implementation of the Plan of Acquisitions of the Entity.
- Outline the instructions aimed at following up on the implementation of the resources assigned to investment projects as well as drafting and following up on projects pertaining to the operation of the Ombudsman's Office.
- Support the Office of Communications and Institutional Image in order to update the information published on the Webpage and other communication channels available to the Ombudsman's Office.
- Coordinate the internal communication of the Entity with the Office of Communications and Institutional Image.
- Follow up on the adequate implementation, accounting and drafting of reports as well as fiscal, budget, and financial accounts for the resources allocated to the Ombudsman's Office, either directly or from other funds.
- Direct, coordinate, control, and assess activities related to the storage, custody, maintenance, distribution, and inventories of elements, equipment, and other goods needed for the normal functioning of the Ombudsman's Office.
- Manage and coordinate the execution of the Institutional Plan on issues linked to information technology and information and communications systems through close articulation with the Institutional Strategic Plan.
- Coordinate the control and registration of the administrative acts issued by the Ombudsman's Office.
- Support the development and maintenance of the Integrated Institutional Management System and compliance with its recommendations within the scope of its competency.
- At the behest of the Ombudsman, order expenses in accordance with their respective attributions and ensure their control and assessment through the Financial Subcommittee, should the requisition of expenses be delegated to other employees of the Entity.
- Coordinate and control the preventive and corrective maintenance of computer equipment and other related elements that comprise the infrastructure of Information Technology.
- Draft and implement the annual plans within the scope of its competency and pursuant to the methodology designed by the Planning Office.
- Apply the directives and guidelines of the Integral Management System of the Ombudsman's Office.
- Other sundry duties that may be assigned in light of the nature of the department under consideration.

The General Secretariat features three Administrative Areas:

Subdivision of Human Resources Management
Administrative Subdivision
Financial Subdivision

The flowchart of the Ombudsman's Office is reproduced below, in which one may peruse its makeup.

(Next page)



b) Administrative and political autonomy

It is common for High Public Office to enjoy immunity privileges for the person holding it. Nevertheless, in the Ombudsman's case, Colombian Legislation is remiss in that regard. Whereas most Latin American legislative frameworks regulating this Institution stipulate immunity in order to shield the organization and its office holder from potential external pressures that might impinge on the latter's work, the Colombian Ombudsman's Office lacks such a privilege and attention is drawn to the fact that no State Employee of the Republic of Colombia shall enjoy any kind of immunity. However, high-level State Officials do indeed benefit from special immunity. Hence, the Ombudsman shall only be investigated and criminally prosecuted by the Supreme Court of Justice should s/he commit a misdemeanor or engage in fiscal or disciplinary misconduct in the course of his/her term in office.¹¹⁴

The Ombudsman's Office fulfills all three assurances of independence and pluralism laid out in the Paris Principles which, in a nutshell, refer to: the assignment of its office holder; its infrastructure and sufficient resources; and the stability of the mandate of its members.

Pursuant to Article 281 of the Colombian Constitution, the Ombudsman shall perform his/her duties in autonomous fashion and shall be elected by the House of Representatives for an institutional period lasting four years following a triple list drafted by the President of the Republic.¹¹⁵

c) Resources

The working capital of the Ombudsman's Office shall be made up of allocations from the National Budget as well as resources with a specific destination and contributions and donations from both national and international agencies.¹¹⁶

The Ombudsman shall be responsible for ordering the expenses incurred by the Entity in compliance with the Constitution and the Legislation.¹¹⁷ Moreover, s/he shall take charge of the proper management of the goods and resources available to this Institution, being also responsible for the outlays undertaken and the allocation of such disbursements. At any rate, s/he shall be assured independence in order to issue expense requests whilst abiding by the General National Budget Law and its regulatory norms.

d) Cooperation with other institutions for the protection of human rights

The Ombudsman's Office of Colombia has ushered in the Coordinating Unit for International Cooperation in order to develop a system of internal as well as external coordination aimed at managing the resources received through such cooperation inasmuch as, according to the Ombudsman, a high percentage of its financing stems from international cooperation. The Coordinating Unit for International Cooperation is under the direction of a coordinator and his/her main tasks are the following: set the

¹¹⁴ Ramírez Calderón, op. cit, p. 76.

¹¹⁵ Political Constitution of Colombia, art. 281.

¹¹⁶ Law 24 of 1992, art. 40.

¹¹⁷ Decree 25 of 2014, art. 5 item 23.

policies of the Institution in issues of international cooperation, coordinate both national and international activities in that domain, develop methodologies for cooperation projects, inter-institutional coordination with the Government, the Public Attorney's Office, international sources and nongovernment organizations – national and international alike – as well as upholding ongoing dialogue with external cooperation agencies by coordinating treaties, partnership agreements or projects presented to the international community.¹¹⁸

a) Participation in international human rights bodies

i. Global Alliance of National Human Rights Institutions (GANHRI)

The Global Alliance of National Human Rights Institutions (GANHRI), formerly known as Coordinating Committee of National Human Rights Institutions (ICC), is an international association that brings together over 100 National Human Rights Institutions (INDHs). The Ombudsman's Office has been awarded type "A" certification (the highest level, the latest recertification having taken place in March 2017)¹¹⁹ and participates actively in the organization. Hence, for example, the GANHRI Bureau convened on November 20th through 22nd, 2019 in Medellin, Colombia, so as to discuss the document that later became its new Strategic Plan (2020-2022) and the future activities that would boost its work in support of human rights. From 2019 to 2020, Ombudsman Carlos Alfonso Negret Mosquera held the Presidency of GANHRI. Carlos Ernesto Camargo Assis, the current Ombudsman, is also the President of GANHRI at present.

ii. Network of National Institutions for the Promotion and Protection of Human Rights on the American Continent (RINDHCA)

Within the framework of the Network of National Institutions for the Promotion and Protection of Human Rights on the American Continent (RINDHCA), it was suggested that Ombudsman Carlos Ernesto Camargo Assis hold the Presidency of GANHRI. Additionally, Mr. Camargo Assis also acts as a member of the Coordinating Committee of the RINDHCA.

iii. Ibero-American Federation of Ombudsman Offices (FIO)

In 1995, the Ombudsman's Office was one of the main actors in the creation of the Ibero-American Federation of Ombudsman Offices (FIO),¹²⁰ during the Annual Meeting of Ombudsmen, Public Attorneys, Commissioners, and Presidents of Public Human Rights Commissions of Ibero-America which took place in Cartagena de Indias. In 2015, Colombia's Ombudsman Jorge Armando Otálora was elected President of the FIO.

¹¹⁸ Ramírez Calderón, *op. cit.*, p. 82.

¹¹⁹ The accreditation with "A" status also confirms that the Institution under consideration fully complies with the Paris Principles. Ever since the practice of accreditation was first developed, the Community of States and International Organizations have paid close attention to whether or not a State supports an INDH. An accredited institution is looked upon as an indicator of the credibility of the human rights policy upheld by that State. The accreditation thus strengthens the position of the institution vis-à-vis the public officials and political agents of the country of origin, inasmuch as accreditation also confirms the independent nature of the institution.

¹²⁰ <http://www.portalfio.org>

Summary of activities and impact of the agency over the past five years

Table N° 1 encapsulates the number of petitions on issues pertaining to Human Rights and International Humanitarian Law filed and answered by the Ombudsman's Office in the period ranging from 2016 to 2020.

Table N° 1: Filing of Petitions brought before the Ombudsman (2016-2020)

2020	2019	2018	2017 ¹²¹	2016
38.039 requests	38.839 requests	35.282 requests	----	22.156 requests
27.610 complaints	37.627 complaints	38.044 complaints	----	28.834 complaints
15.763 counseling cases	22.923 counseling cases	22.848 counseling cases	----	66.491 counseling cases
81.412 petitions answered	99.389 petitions answered	96.174 petitions answered	----	117.481 petitions answered

Source: Own compilation based on a review of the Reports sent by the Ombudsman to the Congress of the Republic. Years 2016-2020.

Reports on the situation of human rights in colombia (2016-2020)

During the 2016-2020 period, the Reports of the Ombudsman presented to the Congress of the Republic centered on overarching thematic axes focusing on the prevention and assurances of non-repetition of human rights violations during armed conflicts; the protection of the rights of historically marginalized groups such as migrants, children, women, the elderly, persons with disabilities, persons with diverse sexual orientations and gender identities (OSIGDs), as well as indigenous populations, persons deprived of liberty, etc.; the protection of social, economic, and cultural rights; access to Justice for vulnerable populations; protection of collective as well as environmental rights; and the analysis of social protest movements in 2020.

Table N° 2 depicts the main topics found in the Annual Reports forwarded by the Ombudsman to the Congress of the Republic of Colombia.

Table N° 2: Main topics presented by the Ombudsman to Congress

¹²¹ It was not possible to find data concerning attention and due processing of petitions linked to Human Rights and International Humanitarian Law pertaining to the year 2017.

2020	2019	2018	2	2016
Prevention and assurances of non-repetition				
Dynamics of armed conflict and sociopolitical violence in Colombia.	Dynamics of armed conflict and sociopolitical violence in Colombia.	Dynamics of armed conflict and sociopolitical violence in Colombia.		
Human rights activists, male and female social leaders, their organizations and collective groups.	Male and female leaders and human rights activists.	Violence and threats against male and female leaders, as well as male and female human rights activists.	Violence and threats against human rights activists and leaders	
		Warnings against risks for the prevention of violations of the human rights of social leaders and human rights activists		
		Protection of the lives of social leaders and human rights activists and guarantees for their work in the defense and enforcement of human rights		
			Spatial Territories for Capacity-Building and Reintegration (ETCR)	
		Increase in the number of complaints of violations of the right to life and to physical integrity of populations subject to special protection by the State		
Victims of armed conflict.	Victims of armed conflict.	Victims of armed conflict.	Victims of armed conflict.	
		Victims belonging to ethnic communities		
Process of reintegration for former combatants of FARC-EP: Relationship with commitment to access to land.	Process of reintegration for former combatants of FARC-EP.			

Forced displacement.	Forced displacement.	Forced displacement.		Rights of communities at risk and under threat of displacement.
Groups historically subjected to discrimination				
Forced migration of Venezuelan population	Forced migration of Venezuelan population	Forced migration of Venezuelan population	Migrants	
Status of rights of girls, boys, adolescents, and youth	Status of rights of girls, boys, adolescents, and youth	Boys, girls, adolescents, and youth	Boys, girls, adolescents, and youth	Situational context of boys, girls, adolescents, youth, and the elderly during 2016
Sexual violence against girls, boys, and adolescents.				
		The elderly	The elderly	
Violence and discrimination against persons with diverse sexual orientation and gender identity (OSIGD)	Violence and discrimination against populations with diverse sexual orientation and gender identity (OSIGD)	Persons with diverse sexual orientation and gender identity (OSIGD)	Persons with diverse sexual orientation and gender identities	
Violence and discrimination against women	Violence and discrimination against women.	Women	Status of women	The rights of women and gender issues.
Ombudsman's actions to effectively tackle the crime of human trafficking				
Status of the human rights of the elderly in Colombia	Status of the human rights of the elderly in Colombia			
Persons with disabilities	Persons with disabilities		Persons under conditions of disability.	

Status of the human rights of indigenous people, Afro-Colombians, “raizales”, “palenqueros”, and gypsy people	Status of the human rights of indigenous people, Afro-Colombians, “raizales”, “palenqueros”, and gypsy people			
Status of the peasant population as regards human rights issues.	Peasant population.	Acknowledgment of peasants as individuals subject to special Constitutional protection, the basis for the materialization of Integral Rural Reform	Peasant population.	Peasant population: access to land, basic income, and participation.
Status of the rights of persons deprived of liberty (PPL).	Persons deprived of liberty			
	Recommendations on issues of equality, non-discrimination and differentiated approaches.			
		Status of the human rights of ethnic people and their communities	Ethnic groups	Fundamental collective and integral rights of ethnic groups
Economic, social, and cultural Rights				
Right to education	Right to education	Right to education		
Current status of the right to health in Colombia	Right to health	Right to health and social security in the Colombian health system		
The COVID-19 pandemic and the fundamental right to health.				
Status of the right to work in Colombia				
Challenges and breakthroughs of the Integral National Program for the Substitution of Illicit Crops (PNIS)				
Challenges and breakthroughs of the Development Programs Geared to Territories (PDET)				
Human rights and companies		Human rights and companies		

	Agrarian development policy			
	Breakthroughs and challenges whilst enforcing human rights at companies			
Access to Justice				
		Integral System of Truth, Justice, Reparation, and Non-Repetition (SIVJRNR)	Integral System of Truth, Justice, Reparation, and Non-Repetition (SIVJRNR)	The quality of service provision by the Ombudsman's Office
		Population deprived of liberty.	Persons deprived of liberty	Progressive development of Human Rights starting with Ombudsman's litigation
				Rights of victims in the framework of the Integral Attention and Reparation Law
Collective and environmental Rights				
Participation in environmental issues				Socio-environmental status of hydro power plants
	Air pollution			
	Water quality			
Strategic ecosystems	Strategic ecosystems and climate change			
Household public services	Public services			
	Other environmental problems and follow-up on enforcement of verdicts in tutelage cases and popular lawsuits.			
	Recommendations in relation to collective and environmental rights			
Social protest movements in Colombia				
Social context of the right to social protests during 2020				

State response to the exercise of the right to protests.	State response	State response		
Recommendations	Recommendations in relation to the exercise of right to social protests			

Source: Own compilation based on a review of the Annual Reports forwarded by the Ombudsman to the Congress of the Republic. Years 2016-2020.

Accreditation strategy of the ombudsman’s office before the subcommittee on accreditation of GANHRI

The Ombudsman’s Office was awarded “A” status by the Subcommittee on Accreditation (SCA) in 2001. Subsequently, this accreditation was reviewed in October 2007, March 2012, and again in March 2017. The Ombudsman’s Office successfully ascertained that it has undertaken great efforts towards the defense and promotion of human rights, as well as their dissemination across the territory (by means of regional Ombudsman’s Offices) and across a growing number of topics tackled (through Ombudsman’s Offices acting under delegation), which has allowed it to increase its proximity vis-à-vis civil society, not only by welcoming petitions (requests, complaints, and counseling), but also by effectively following up on popular movements and protests. The abovementioned facts prompted Colombian civil society to look upon this Institution with ever-higher levels of trust, thus considering it today the organization of choice to turn to – even more so than traditional jurisdictional institutions – in cases involving violations of rights. The fact that it has become an authoritative voice has also turned it into an important actor throughout peace negotiations, in the course of which the Institution provided reports of a general nature, as well as in connection with groups that could be particularly affected.

The above issues have brought the importance of the Ombudsman’s Office to the fore in Colombia’s political landscape, especially in regards to respect for human rights. Nevertheless, this Institution has not been free from weaknesses. The Subcommittee on Accreditation has acknowledged the outstanding work carried out by the Ombudsman’s Office in a historical context marked by high levels of violence. Be that as it may, though, the SCA has stated that tangible improvements must still be made on three fronts: i) selection and nomination, ii) sufficient resources, and iii) dismissal process.

i. Selection and nomination

The process currently enshrined in the Legislation is neither transparent nor sufficiently wide in its scope. In particular, it fails to comply with the following:

- Require the announcement of job openings.
- Set clear and uniform criteria whereby all parties concerned may assess the qualifications of eligible candidates.

- Spell out the process in order to ensure wide-ranging consultations and/or participation in the process involving requests, evaluation, selection, and nomination.

The Subcommittee has urged the Ombudsman's Office to work towards specifying and applying a formal process encompassing the following requirements:

- a) Ensure wide publicity to job openings.
- b) Maximize the number of potential candidates stemming from a wide gamut of social groups and educational skills.
- c) Foster wide-ranging consultations and/or participation in the process involving requests, research, selection, and ultimate assignment.
- d) Assess candidates on the basis of predetermined criteria that are clear-cut and widely known to the public.
- e) Select members that will render services on the strength of their own individual abilities rather than on behalf of the organization that they may represent.¹²²

iii. Sufficient resources

The Ombudsman's Office states that its financing is not enough to carry out its mandate effectively, especially in view of the recent signing of the Peace Agreements and the additional responsibilities assigned to this Institution as a result. Hence, the Ombudsman's Office faces a situation of paucity of personnel and difficulty in retaining employees with the required skills. The Subcommittee further states that, in order to operate effectively, an INDH must secure an adequate level of financing so as to ensure its independence and its ability to set priorities and activities freely. The State must thus provide the latter with sufficient resources, including the following as a bare minimum:

- a) Assignment of funds to establishments accessible to a wide-ranging community encompassing persons with disabilities. Whenever possible, accessibility must be improved, thus setting a permanent regional presence.
- b) Wages and benefits for all personnel, comparable to those received by employees undertaking similar tasks in other independent State Institutions.
- c) The remuneration of the members of its Board of Directors (whenever applicable);
- d) Establishment of communications systems that operate correctly and include a phone number and Internet services.
- e) Assignment of a sufficient amount of resources to carry out the activities requested.

¹²² Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendations of the Period of Sessions of the Subcommittee on Accreditation, p. 22.

Should the State assign additional duties to an INDH, extra financial resources must be provided in order to allow it to take on the responsibility to fulfill such additional tasks.¹²³

Dismissal process¹²⁴

A third point – perhaps the one that casts more shadows over the actual independence of the Ombudsman’s Office – is the fact that the Legislation does not spell out any provisions concerning transparency and impartiality in the dismissal process involving the Ombudsman. The Subcommittee on Accreditation claims that in order to tackle the requirement enshrined in the Paris Principles regarding a stable mandate – crucial to reinforce the Institution’s independence – the legislation underpinning an INDH must include an independent and unbiased dismissal process, similar to the one applying to the members of other independent State bodies.

This process must be applied in uniform fashion to all nominating entities. The cause for dismissal must be defined with the utmost clarity and must be limited to those actions that might have a negative impact on the employee’s ability to fulfill his/her mandate. Whenever applicable, the legislation must specify that the application of a specific cause must be buttressed by a decision by an independent body that is also jurisdictionally appropriate. Dismissal must be carried out in a manner strictly compliant with the substantive requirements and procedures outlined in the Legislation. Dismissal must not be allowed in those cases in which it is based solely upon the discretion of the public officials in charge of the nomination process.¹²⁵

Table N° 3 showcases the strengths and weaknesses depicted through this Consulting work in the Institution of the Ombudsman’s Office of Colombia.

Table N° 3: Strengths and weaknesses detected in this case study

¹²³ Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendations of the Period of Sessions of the Subcommittee on Accreditation, p. 23.

¹²⁴ On this topic, one may refer to Pabón Arrieta, one of the most critical voices as regards the close connection between the Ombudsman’s Office and the Public Attorney’s Office: “Upon reading the texts mentioned, one may observe, without much hermeneutical effort, that the institution is not independent, insofar as it is subject to the direction of another institution, that of the Office of the State Attorney General, as the Public Attorney’s Office is known. This state of affairs – the absence of organic Independence – is as evident as the origin of the position that is not parliamentary in nature but, rather, assigned by a Parliament body, and the candidate is selected from a triple list drafted by the President of the Republic who acts, in his own right, as Head of State, Head of Government, Supreme Administrative Official, and Commander-in-Chief of the Armed Forces (Art. 189 of the Political Charter). The lack of functional independence of the Ombudsman’s Office of Colombia weakens its role geared to safeguarding fundamental rights. Because s/he lacks independence, the Ombudsman faces difficulties whilst attempting to draft policies in defense of fundamental rights and implement such policies; furthermore, according to the legislation pertaining to the Public Attorney’s Office, the latter is headed by the State’s Public Attorney General, and the Ombudsman plays second fiddle to it, as stated with the utmost clarity in the 2nd item of Article 277 of the Political Charter, which stipulates: “The State’s Public Attorney General, by him/herself or through his/her surrogates and agents, shall fulfill the following roles: 2nd. Protect human rights and ensure their effectiveness, with support from the Ombudsman’s Office”. Pabón Arrieta, op. cit., p. 1029.

¹²⁵ Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendations of the Period of Sessions of the Subcommittee on Accreditation, p. 24.

STRENGTHS	WEAKNESSES
1. Territorial capillarity and wide range of topics, allowing for tight coordination with civil society.	Its links to the Public Attorney's Office call into question its independence.
2. Organization consolidated at both GANHRI and RINDHCA. Its recertification process has always been successful.	Selection and dismissal processes for the Ombudsman must be imbued with greater clarity and transparency.
3. High esteem for its work within Colombian society.	Insufficient resources.
4. Due to its nature as an Ombudsman, it may follow up on claims of human rights violations.	
5. Undertakes important tasks centered on the education and promotion of human rights.	
6. Authorized agent in peace negotiations.	

Source: Own compilation based on the DP analysis undertaken.

Conclusion

Colombia has undergone significant changes in its political landscape. Nonetheless, regarding democracy and human rights, breakthroughs towards the consolidation of a democratic society have unfolded under a great deal of uncertainty. Indeed, Colombia faces many challenges when it comes to the enforcement of human rights. Poverty, the fight against drug trafficking, and decades of conflict with rebel groups have severely undermined life standards for most Colombians. These enormous challenges require well-calibrated public policies in order to avoid larger crises or, at the very least, mitigate their effects. Contextual aspects of various natures affecting the entire nation have triggered violations of the rights of individuals as well as whole communities. This problem is worsened when the State – to be sure, the Entity that should offer solutions to those problems – turns time and again into an agent that infringes upon the most basic civil liberties.

State-sponsored violence coupled with lack of accountability is one of the most daunting problems besetting public officials. The need to rely on additional layers of protection against abuses by the powers-that-be is especially glaring in countries like Colombia, which have traditionally reeled from low levels of representativeness in their institutions as well as weak measures to ensure accountability. This state of affairs has led to self-criticism by the State, prodding the latter to bolster safeguards to human rights, as well as the incorporation of new institutions of control in tandem with the reform of the State. Among such guarantees to improve the protection of human rights, the Ombudsman's Office stands for yet another assurance of non-judicial surveillance. Even though its decisions and recommendations are non-binding, its guidelines may indeed bring about effective tools to increase accountability.

The Ombudsman's Office must undergo a process aimed at its strengthening, yet the latter depends upon political will on the part of Government, which must seek mechanisms to make human rights truly effective in order to enable the proper operation of democratic institutions and the intervention of civil society in its entirety. Notwithstanding its praiseworthy work thus far, the Ombudsman's Office needs to be fine-tuned so as to provide it with actual independence. An independent Ombudsman's Office – autonomous and free from the oversight of a powerful government agency such as the Public Attorney's Office (Office of the Attorney General of the Republic) – that is imbued with flexibility, a decentralized scope and a degree of capillarity at once regional and democratic vis-à-vis its institutional duties will be an Institution capable of facing the immense tasks and challenges entailed by the protection of fundamental rights.

The Ombudsman's Office should not be called upon to act as the sole guarantor of the Rule of Law, insofar as there are normative as well as jurisdictional assurances enshrined in the Colombian Constitution. The Ombudsman's Office should be a constitutional mechanism aimed at empowering all the other tools traditionally established in all democratic societies, such as independent Courts of Law. The Ombudsman's Office is not meant to overrule any previously-established State agencies; rather, on the contrary, it must ensure that the latter operate properly whilst abiding by their specific institutional mandates.

Conclusions and thoughts concerning the NHRIs

To conclude the perspective adopted by this study of the models adopted for NHRIs in the selected countries and to suggest a set of conclusions, we will consider the specificities for instituting each one of the NHRIs. Likewise, these conclusions are accompanied by some considerations regarding Brazil's NHRC and its unique nature.

- i. NHRIs that have adopted the "Ombudsman" and "Commission" models have the mandate to be able to investigate and denounce cases of human rights violations. This does not occur with the bodies structured following the "Committee" model, whose capacities are very restricted or with those that have adopted the "Institute" model, which do not have these competencies, as they are conceived as bodies tasked with academic research and the dissemination of human rights, as is the case with the German Institute for Human Rights (DIMR).
- ii. All NHRIs analyzed have come a long way to achieve their institutional consolidation. However, this has not occurred without their difficulties derived from political and social circumstances. The result has been the creation of bodies with a solid legal and organizational architecture for carrying out their mission, with ample autonomy concerning political power. They rely on the legitimacy derived from the appointment of their chief executive, along with the independence to manage material, human, and financial resources.
- iii. The implementation of constitutional and legislative reforms of NHRIs - which contributed to the consolidation of solid and independent NHRIs - has not been free from challenges arising from political and institutional impasses that have occasionally paralyzed these bodies and undermined their ability to protect human rights. Such was the case with the Ombudsman's Office of Argentina, which, due to the lack of parliamentary consensus among the different political forces, has been unable to elect a new head of this body since 2009, with its Deputy Under-Secretary-General leading the institution on an interim basis.
- iv. Along similar lines, civil society organizations have criticized Mexico's National Human Rights Commission in recent years for its inaction in cases of flagrant human rights violations. This has placed Mexico's NHRC in a risky position regarding the renewal of its accreditation by the GANHRI Accreditation Subcommittee. Likewise, sectors of civil society organizations have questioned the independence of the head of this body, associating them to the ruling party's militancy.
- v. Despite this, it is essential to highlight that Mexico's NHRC has been a fundamental reference point for protecting human rights in that country, acquiring a high degree of legitimacy due to its commitment and proven independence. Therefore, this report considers that the Mexican NHRC could be a reference model for Brazil's NHRC since this body was born out of the activities developed by the General Directorate of Human Rights, which depends on the Government's executive branch, that is, on the President of the Republic. Thanks to successive political

reforms, this unit under the executive power has acquired full autonomy and independence, achieving the status of an NHRI and establishing itself as one of Latin America's most important national human rights institutions.

- vi. It should be noted that the NHRC of Mexico is a decentralized body with NHRI status thanks to subsequent political reforms, such as the 1992 and 1999 constitutional reforms, which gave it complete management and budgetary autonomy. The NHRC was born out of a "Commission" model - it has an Advisory Council composed of ten councilors - and has gradually incorporated the competencies of the "Ombudsman" model, with the capacity to denounce and investigate cases of human rights violations. This does not mean that Brazil's NHRC should follow the Ombudsman model, but rather that it should study the political reforms that have allowed Mexico's NHRC to achieve full autonomy and control over its material, human, and administrative resources.
- vii. The case of Mexico's NHRC could shed light on Brazil's NHRC in its accreditation process as an NHRI before the GANHRI, even though the nature of the two bodies is different. While Mexico's NHRC has a President - with Ombudsman powers - and an Advisory Council composed of civil society representatives elected by two-thirds of the members present in the Senate or, in its recess, by the Permanent Commission of the Congress of the Federation; in the case of Brazil's NHRC, the Plenary (its sovereign body) is composed of twenty-two councilors (eleven from civil society and eleven from the branches of State) with the right to speak and vote. Thus, the participation of its councilors from civil society is defined through bottom-up direct democracy procedures. It is the social movements themselves that occupy a place in the Plenary. This situation gives the NHRC a high degree of political autonomy, even though they depend on the Ministry of Women, Family and Human Rights in administrative and budgetary matters.
- viii. In terms of the governance model of the NHRIs analyzed, in no case was a model similar to that of Brazil's NCHR identified, whose central decision-making body is the Plenary. This structure is more comparable to that of the German Institute for Human Rights, which is legally configured as a non-profit association that includes institutional representatives from different government branches (executive, legislative, and judicial) in its Board of Directors (decision-making body), but with one important difference: there is no right to vote.
- ix. In all cases, the different paths of institutionalizing the body have been accompanied by ongoing reforms in its regulatory legislation, enshrined in the constitution in most cases, providing them with legal regulation of the highest significance level within the legal frameworks of each State. These reforms have achieved essential objectives to guarantee the autonomy and independence of the agency, protecting it from potential political power meddling. Regardless of the type of institution adopted, whether Ombudsman or Institute, work has been done to develop legislation that guarantees its autonomy in managing organizational, material, human, and financial resources, with its budgets being part of the State, specifically the national parliaments.

- x. These NHRIs have a common feature in that they are regulated by a transparent regime of incompatibilities and elements of protection (inviolability) for the office holders - advocates, presidents, directors - regardless of whether they are appointed by Parliament or by an assembly composed of representatives of civil society. Their role at the head of these bodies is crucial to upholding the independence and autonomy their actions may require, mainly when they must supervise and investigate state agencies.
- xi. On the other hand, this study concludes that there is no better or worse NHRI model and that all the institutions analyzed have a trajectory based on their own national reality and social context. The cases of the NHRIs in Portugal and Spain are emblematic since their citizens perceive these institutions as more useful instruments in the defense of human rights than the Public Prosecutor's Office.
- xii. For this reason, the idea that Brazil's NHRC has to follow one NHRI model or another is completely ruled out because these models cannot be exported to any other country; each model responds to the historical and political context that has evolved over time. However, the best practices and experiences of these NHRIs can be used by Brazil's NHRC to strengthen certain organizational and administrative aspects and its own institutional structure to provide it with greater organizational capacity, autonomy, and political independence.
- xiii. Therefore, after analyzing these experiences, we conclude that Brazil's NHRC should lead a process of dialogue with the bodies and actors involved in defense and promotion of human rights in Brazil, especially to reach a political and institutional consensus on which body should be accredited as an NHRI before the GANHRI, given that there are currently three institutions that aspire to have this accreditation: the NHRC itself, the Office of the Prosecutor General of the Republic, and the Office of the Public Defender of the Republic.

Other points of interest for the Brazilian NHRC:

- I. The NHRC, unlike its predecessor, the CDDPH, is inspired by compliance with the Paris Principles, conceived to have the legal and operational instruments that guarantee its autonomy in the defense and promotion of human rights. Nevertheless, the NHRC has problems obtaining its accreditation as an independent human rights body before the Accreditation Subcommittee of GANHRI, which would qualify it to participate in the consultative bodies of the United Nations.
- II. This institutional stance is also visible on the Internet - website and social networks where the institution promotes its activity - which are a gateway to the institution, access to information and accountability (all reports presented each year, the results of its specific investigations, and its activity related to denunciations, procedures, investigations and their results are displayed).

- III. Efficient action is observed when sending missions composed of councilors in severe cases of human rights violations, which respond appropriately to these events and often have a high social and media impact. This engagement in the investigation and denunciation of human rights violations has allowed the Brazilian NHRC to establish its own profile as a human rights institution, being perceived by Brazilian citizens as a body that is close, accessible and useful in the protection and defense of their rights.
- IV. It is also worth highlighting its strength regarding the participation of representatives from public agencies and civil society in the NHRC's decision-making process, which allows it to establish alliances involving civil society and the Government to make its investigations more effective. It is also worth highlighting the NHRC's coordination with the National Network of Human Rights Councils, which strengthens collaborative work in defending and promoting human rights throughout the country. A clear example of this collaboration mechanism was the Joint Recommendation N° 1 of June 29, 2022, which recommends that the presidents of the executive, legislative and judicial branches, Brazilian civil society entities, popular movements, political parties, media, the Electoral Public Ministry, states, the Federal District and the Superior Electoral Court (TSE) adopt measures to ensure that the electoral process is guaranteed.
- V. However, the NHRC's governance model based on collegiate decisions, based on the participation and right to voice and vote of State agencies, may indeed become an obstacle when objectively evaluating its independence. The ability of councilors from public agencies to veto or oppose resolutions adopted by the Plenary can be interpreted as a lack of political freedom of the NHRC, even if, at the time of voting, the opposition or veto of these councilors is a minority position. To lend the NHRC greater independence - evaluated objectively against the parameters of the GANHRI Accreditation Sub-Committee, which require formal and functional independence of the aspiring NHRI body - it would be advisable to evaluate the voting rights - but not the right to speak - of the counselors of the State branches.
- VI. On the other hand, it is considered appropriate to offer more significant guarantees to whoever holds the office of President of the NHRC. The President should enjoy the same assurances that ensure the work of the heads of the other NHRIs analyzed. Therefore, it would be appropriate to reflect on the importance of his election coming directly from Parliament, with a four-year term, if possible, not coinciding with the electoral cycle.
- VII. One can see that in none of the NHRIs analyzed is the head elected by an assembly of representatives, or Council, except in the case of the German DIMR, which, as already mentioned, is legally structured as an association and its statutes provide for the appointment of its President by a Steering Committee; but this is a body that does not have the powers of the Brazilian NHRC to investigate cases and reports of human rights violations, and it is essential to emphasize this nuance.

- VIII. The competencies of the Brazilian NHRC are no different from those of the NHRIs that have followed the Ombudsman model. The NHRC has competencies and a mission identical to those of the other models discussed. Therefore, although the NHRC is not an Ombudsman-type model, neither is it radically different since it has the competencies to initiate investigations at the request of one of the parties (denunciations) or ex officio when human rights violations occur.
- IX. Another essential aspect of the work done by the councilors who comprise the plenary - especially the representatives of civil society organizations - is the unpaid nature of their work at the NHRC. Their involvement in the NCHR's work should be compensated to obtain an efficient performance of their work during their mandate.
- X. On the other hand, it should be mentioned that although the NCHR formally exercises its activity with independence and autonomy, it is not easy to assess that it is entirely independent of the Ministry of Women, Family and Human Rights. The Ministry of Women, Family and Human Rights is responsible for providing a physical space where the Plenary of the NHRC meets, hiring its administrative staff, approving the NHRC budget, and daily allowances received by the councilors. Likewise, an obstacle to achieving complete material independence from the NHRC is the contractual dependency of the executive secretary's position on the Ministry. This situation compromises the body's autonomy and exposes the executive secretary to interference by the incumbent minister.
- XI. The remaining NHRIs analyzed occupy premises entirely independent from other state entities and have their own headquarters, assets, and budget. They also have human resources that the agency selects following transparent and competitive processes based on merit, equality, capacity and technical competence criteria.
- XII. Finally, it should be noted that the NHRC could continue its work under the same format, which entails a governance model composed of a Plenary with representatives from public agencies and civil society, in which the former has a voice but not a vote. This would also imply evaluating the possibility of achieving full devolution of the Ministry of Women, Family and Human Rights using political reform, thus obtaining full political, financial and resource management autonomy.